CHAPTER 5

Only in America!

Benardo’s Building

It takes a long time for a case to arrive at the Supreme Court. The trial court where Louis Grumet filed his lawsuit in early 1990 did not reach a decision about the constitutionality of Chapter 748 until 1992. Two years after that, the U.S. Supreme Court heard an appeal of that state court decision and issued a decision that appeared to strike a decisive blow against the school district. In fact it only prolonged the uncertainty about its constitutionality. Following that, Grumet would spend another six years challenging the creation of the Kiryas Joel School District in state courts. Altogether there would be a full decade of litigation, during which time the legal fate of the district would remain uncertain.

In the meantime, Chapter 748, the law authorizing the establishment of a school district in KJ, remained in force. Unless and until a final pronouncement came down declaring it to be unconstitutional, the Satmars had no need to refrain from doing what the statute authorized, namely, exercising “all the powers and duties of a union free school district under the provisions of the education law.” The Satmars had not sought those powers, but they lost no time in exercising them. Immediately following the passage of Chapter 748, KJ village leaders, led by Wieder, convened to figure out how first to build and then to run a school district.

The first order of business was to elect a school board and hire a school superintendent. It would take a person with manifold skills not
just to run but to create a brand-new school system. It would require expertise in special education, a still relatively new and complex field. But it would also require building a school from scratch and developing a culturally and linguistically unique program to serve the distinctive needs of Satmar children. Beyond that, the superintendent would be responsible for serving the needs of the entire school-age population of KJ that was eligible for legally mandated state-funded programs. All of the services formerly provided by the Monroe-Woodbury School District—bus transportation, remedial education, diagnostic evaluations to determine the existence of special needs—would be transferred to the fledgling school district. At the same time, the superintendent would have to contend with the ongoing legal challenge and the ever-present threat of the district’s dissolution. Clearly, it would take a person with an impressive array of talents—and a lot of gumption.

To the credit of KJ’s leaders, such a person was found. Like many other significant developments in KJ, the selection of a superintendent happened more by accident than by design. The assignment initially proposed to the man who assumed the job was simply to draft a blueprint for the new school district that would satisfy the requirements of the New York State Board of Education. Seeking to dispense with this task as quickly as possible so the school would be ready to open in the fall of 1990, the village leaders consulted their legal adviser, George Shebitz. Shebitz in turn placed a call to his good friend, Steve Benardo, who at the time was working as superintendent for special education in the Bronx, one of the largest school districts in the country.6

Shebitz and Benardo had become friends eight years earlier when both were involved in *Jose P. v. Ambach*, one of the first class-action suits to be brought under the Education for All Handicapped Children Act.7 At the time, Grumet was still at the Department of Education, and Ambach, then New York’s commissioner of education and the named defendant in the case, was Grumet’s boss. Thus, three of the key figures in determining the fate of the KJ School—Shebitz, Grumet, and Benardo—first became acquainted with one another through *Jose P*. They were, as Grumet later recalled, an “unlikely trio,” since they stood on opposite sides of that dispute, with Shebitz serving as counsel to the
Department of Education and Benardo serving as the department’s court liaison, while Grumet was supporting the plaintiffs’ position that the New York City School District was not in compliance with the special education law.

Bernardo’s doctoral training in bilingual special education made him a natural person for Shebitz to turn to when, following the passage of Chapter 748, the need arose to find someone who could develop a plan for the new school district, as was required by state law. Benardo accepted the assignment as a favor to Shebitz, but also out of curiosity. In his work in the Bronx, Benardo oversaw the education of thirty thousand special needs students, located in 186 schools as well as in the juvenile detention facilities that the district superintended. It was the polar opposite of KJ, where only thirteen children with special needs would be attending the new school when it first opened and only a few more were identified as being in need of auxiliary services. Sizing it up, Benardo initially thought it would be no more than a moonlighting job. The joint expectation of both Benardo and the KJ leaders who hired him was that the implementation of the blueprint he designed would be carried out by someone else.

But Benardo’s irrepresible curiosity soon got the better of him. The challenge of creating special needs programs for Yiddish-speaking Hasidic children with their unique cultural traits was just too intriguing for an expert in bilingual special education to resist. Conversely, the same skills that made Benardo the obvious person to turn to for formulating the blueprint for the new school district made him equally attractive to KJ’s leaders for the permanent position. Thus, a job Benardo thought would be a matter of days, or weeks at the most, evolved into the full-time role of serving as the school district’s first superintendent.

Of course Benardo was an outsider to the Satmar community, and his hiring represented a significant intrusion of the outside secular world. But the village leaders perceived that Benardo’s outsider status was an asset if they wanted to avoid conflicts with state authorities that
would lead to even more intervention. As a public entity, the school
district, by law, had to be run as a secular school system. That meant
keeping religious teaching and observance out of the school, adhering
to secular teacher training, and pursuing secular curricular standards
and practices. No one in the Satmar community had the training to
adhere to these standards. And, by the same token, none possessed the
credentials to serve as superintendent.

Furthermore, an experienced school administrator from outside the
community would help to allay the suspicion that many outsiders had
that the KJ School District would fail to comply with the separation
between church and state. Grumet was by no means the only one watch-
ing the implementation of Chapter 748 with concern. The Satmars
needed to demonstrate the secular nature of the school district in order
to fend off a growing number of critics, including officials inside New
York’s Department of Education.13 (As we shall see, the dissidents had
the exact opposite fear: that the school district would be thoroughly
 secular!) Benardo not only had the skills and experience needed to figure
out how to satisfy the educational standards prescribed by state law but
also had the personality to fill a key task in KJ: that of a cultural translator
who was able to explain the requirements of secular standards to the Sat-
mar community and adapt them to their distinctive culture and equally
able to explain the Satmars’ needs and activities to the outside world.14

With Shebitz’s strong endorsement, Benardo thus appeared to the
village leaders as quite literally a godsend, an impression he cannily con-
firmed during his job interview, which Wieder kicked off in classic Tal-
mudic style by launching not just one but a whole volley of questions.
Starting off with the disarmingly simple “Let me ask you a question,” he
deftly moved from the practical (“Can you explain what you got to
do?”) to the topical (“Do you like sports?”) to the mystical (“Do you
think that God can make both teams win a game?”) without a pause.
With dry humor, Benardo recounts, “I gave him the answer I knew he
wanted,” clinching the job with the perfect retort: “God can do anything
he wants.”15

Benardo threw himself into his new work. He acquired the buses
used to transport KJ’s children to and from the community’s private
religious schools and took over the administration of both the bus transportation service and the Title I program. He hired administrators, special ed teachers, and therapists, finding Modern Orthodox educators in the region who could serve as Yiddish language specialists. For positions such as teacher’s aide, janitor, and driver that did not require degrees, he drew from the local Satmar community. The staff that had been hired to work in the Shaarei Chelmsah school constituted a readymade workforce that he transplanted more or less wholesale into the public school. The children from Shaarei Chelmsah went with them. Last but not least, Benardo oversaw the construction of a prefab building in which the new school could be housed on property leased from the village. Outside this hastily constructed building a flagpole with the American flag was firmly planted, signifying the secular character of this emphatically American, yet also clearly Satmar, public school.

All of this activity took place in less than a year, between the end of the summer of 1989 and the summer of 1990, as Benardo and his new staff rushed to prepare for the opening of the school in the fall of 1990. In addition to the thirteen children with special needs from KJ, arrangements had been made to admit children with severe disabilities from the nearby communities of New Square and Monsey, where other Haredi groups lived.¹⁶ Plans for providing auxiliary services for children with less severe impairments (like the Wieders’ daughter) were put into place. Grumet’s lawsuit, which was proceeding, lurked in the background. So far, nothing but procedural motions had been heard addressing various technicalities. Shebitz, with whom Benardo was in constant communication, was on the case, allowing the superintendent to focus on setting up a state-of-the-art program to meet the needs of Kiryas Joel.

Kiryas Joel’s Dissidents

Meanwhile, another controversy in KJ was brewing. Although the sources of this controversy had nothing to do with the dispute over special education, the creation of the new public school provided further grist for the mill for the growing number of Satmar dissidents who were now casting Moshe and Aaron as betrayers of the old Rebbe’s holy
way. However, the majority of the community accepted the creation of a secular school district as a necessary price to pay in order to serve children in need and end the conflict with the Monroe-Woodbury School District. Foremost among those who took this position were the longtime advocates for Satmar children with disabilities. For Malka Silberstein, the opening of the public school in KJ was the fulfillment of her dream. At long last, she saw the creation of a learning environment that would promote her daughter’s successful integration into Satmar society. In an interview she gave not long after the public school opened, she emphasized “acceptance by the community” as “the name of the game.” She lauded the new school for its culturally sensitive programs, which, she said, made “whatever her siblings was doing relevant to what [her daughter] was doing.” And she sharply contrasted the new school, where her daughter was “able to participate in all,” to the programs offered by Monroe-Woodbury, which Silberstein said exposed her to things that were “offensive to our culture.”¹⁷

For Abe Wieder, the creation of the school district was both a political and a personal triumph. The efforts he and his wife had taken on behalf of their daughter almost a decade earlier had been vindicated. And his leadership in the campaign solidified his emerging role as a powerful political operator. Reflecting his increased influence, Wieder was selected by Moshe and Aaron Teitelbaum to head the slate of candidates that would run for the new school board. Although Wieder would briefly step down from his position on the village board of trustees after being elected to the school board (in order to mollify the dissidents), from this time onward, he was, for all intents and purposes, the outward face and effective secular leader of Kiryas Joel. His warm embrace of Benardo set the tone for the rest of the community’s reception.

Benardo himself became a fixture in the community almost instantly.¹⁸ He established a rapport not only with the village leaders but also with the families of the children with disabilities, who welcomed him into their homes. This openness was greatly facilitated by Benardo’s genial personality. Along with his professional expertise, Benardo projected a sense of caring and respect for the community. He soon became
a kind of ambassador for Kiryas Joel, defending it and explaining its ways to the outside world.

For its part, the community recognized that hiring an outsider to run the school district was not just a legal and political necessity, but the precondition of an unforeseen but welcome opportunity to secure important benefits they otherwise could not obtain. These included the ability to dedicate their property taxes to their own school district, rather than having to support Monroe-Woodbury; the receipt of substantial amounts of federal and state funding for educational services; and, last but certainly not least, the delivery of the special education programs supported by those public funds inside the village—precisely what parent activists and village leaders had been advocating for since 1985, the year the Supreme Court held Title I programs inside parochial schools unconstitutional. The fact that the new public school would have to be staffed and run by outsiders and adhere to a strictly secular curriculum seemed to be an acceptable compromise to the majority of the community.

But not everyone in KJ accepted this logic. In particular, the dissidents strenuously resisted the new school district, opposing it as an unholy intrusion of secular government and culture. They saw the threat that contact with outside educators posed to the Satmars’ ability to insulate themselves. And they also saw the school battle as an opportunity to intensify their mounting resistance to Moshe and Aaron. The Rebbe and her followers had been trying to protect Reb Yoelish’s legacy from Moshe and his followers ever since Moshe took office in 1979. After Moshe appointed Aaron as Rov of Kiryas Joel in 1984, the target of the Faiga faction’s opposition expanded to include both Moshe and Aaron. “Faiga’s menshen” (Faiga’s men), as they came to be known, had been engaged for the previous ten years in a series of complicated financial and legal maneuvers aimed at establishing control over a number of valuable properties in Brooklyn and Orange County. The properties in contention included the Bedford Avenue property in Brooklyn, where the Rebbe had lived with her late husband before moving to KJ, as well as the “parsonage,” the apartment attached to the back of KJ’s grand synagogue, which had been intended for the Rebbe to live in and served as the Rebbe’s living quarters after his death.
By coincidence, the dispute between the Faiga faction and Moshe's camp, which had been simmering for years, boiled over at precisely the same time that the events leading up to the passage of Chapter 748 were heating up. At the end of 1989, as plans for creating the KJ School District were just getting under way, Faiga’s menschen maneuvered to have the title to the Bedford Avenue property transferred to a newly formed shell corporation called 26 Adar Corporation, which was owned and controlled by one of the leaders of her faction, Nachman Brach. While this transaction was in process, but before the transfer was judicially approved, Brach, along with two other of Faiga’s menschen, took out a loan for $1,125,000 secured by the Bedford Avenue property. The bank that provided the loan was led to believe the property still belonged to Faiga and would remain in her hands, for her personal use. In fact, Brach and the others were hatching plans to construct new apartments in the building, which they could sell off at a profit, and establish control over the synagogue that continued to operate inside the late Rebbe’s former residence in Williamsburg. 20

The following year, in March 1990, as the conflict between the Faiga group and Moshe continued to escalate—and as the school district was
simultaneously getting off the ground—Brach obtained judicial approval for the transfer. Once he succeeded in establishing legal ownership of the Bedford Avenue property, he installed a metal gate at the entrance in order to keep members of the Moshe faction out. In response, Moshe's supporters brought suit against Brach and his 26 Adar Corporation, challenging the validity of the transfer of the Bedford Avenue property to the corporation that Brach controlled. They argued that the property actually belonged to the Yetev Lev Congregation in Williamsburg and not to Faiga, who, as its former occupant and supposed owner, had purported to authorize its transfer. This litigation would drag on for decades, during the course of which Der Yid, the establishment party's paper of record, published an article calling Brach a "robber" and asserting that he had obtained the title to the Bedford Avenue property through "lies and deceit." This would lead to even more litigation when Brach retaliated, accusing Der Yid of libel.

While much of this action centered on Brooklyn, the reverberations were keenly felt in KJ, where both Brach and Faiga owned homes, and where another rebellion against the established leadership was being fomented at the same time. This rebellion—the second source of the emerging dissident movement—was spearheaded by families in the village who felt their children were being mistreated in the yeshivah. The controversy over the yeshivah had been brewing since the mid-1980s, when the division between Moshe's opponents (the misnagdim) and Moshe's supporters (the so-called hasidim) began to harden. According to the misnagdim, their children were being teased, bullied, and ostracized by their classmates, often, they suspected, at the behest of the bullies' parents. In addition to the mistreatment their children suffered at the hand of their peers, the misnagdim were convinced that the school administrators were deliberately placing them in classrooms led by teachers aligned with Moshe. Requests to have them transferred to teachers sympathetic to the misnagdim were harshly rebuffed.

While Moshe was the original target of the misnagdim, it was Aaron who became the focal point of the opposition after he was appointed Rov of KJ in 1984. Not only was Aaron perceived to be responsible for the classroom assignments in his role as the UTA's chief administrator,
but he also was seen by the dissidents as insufficiently devoted to the old Rebbe’s way and generally lacking in the spiritual leadership qualities required of a rebbe. On top of all this, he was regarded as harsh and punitive in the way he responded to his critics, in contrast to his father’s gentler style. Instead of finding ways to mollify the misnagdim, Aaron had a high-handed manner that served only to fuel the conflict.²⁸

As agitation over the treatment of their children grew, some of the dissidents began to organize. This source of growing opposition to Moshe and Aaron’s leadership coincided with, yet was distinct from, the activity of Faiga’s entshen. The latter were chiefly motivated by their view of Moshe as an illegitimate successor to the late Rebbe. The parents’ group, by contrast, was chiefly focused on Aaron’s perceived transgressions as steward of the UTA. Only a few of them were in Faiga’s inner circle. Nonetheless, there was substantial contact between the two groups and overlap in their views about the shortcomings of the leadership.

In fact, by 1987, the threat was perceived to be so great that a special joint meeting of the Kiryas Joel and Williamsburg Yeter Lev congregations was held with the apparent aim of shoring up the KJ establishment. Representing Kiryas Joel at the meeting were Abe Wieder and other lay leaders of the village who sat on the KJ congregation board. Representing the Williamsburg congregation were its board members, including Berl Friedman and Jacob Kahan, who, a decade later, would face off as the leaders of the two rival factions following Aaron and Zalman. In 1987, Friedman and Kahan and the rest of the board of the Brooklyn congregation stood shoulder to shoulder with Wieder and his fellow KJ board members in seeking to suppress the unfolding protest from within.

Taking note of the “internal dissension” in KJ, as well as the financial challenges facing the KJ congregation, the participants at the joint meeting adopted a resolution to transfer title of the KJ cemetery from the KJ congregation to the Williamsburg congregation. In addition, it was decided that the two congregations would share the income from the cemetery, but that the Williamsburg congregation would funnel its share to the support of KJ’s yeshivah, at least for the first couple of years
of this new arrangement. Finally, the leaders of the two communities decided that governance of the cemetery also would be shared between the two congregations.  

If the hope was that this joint effort would quell the unrest, this ambition was quickly dashed. The dissident parents, who had grown increasingly frustrated with the UTA's intransigent response to their requests for transfers to sympathetic teachers, were reaching a breaking point. In the summer of 1988, one disgruntled KJ parent, Avraham Hirsch Weinstock, decided to hire a private teacher, Moshe Mordechai Friedman, for his son Zalman Leib. Soon thereafter, Zalman Leib was joined by five other students whose parents pulled them out of the UTA school. The six boys and their teacher began to meet in various rented rooms in the village through the winter of 1989, at which point hostilities broke out into the open.  

Consistent with past behavior, the KJ establishment of Aaron and Moshe did not take kindly to this perceived act of insubordination. They demanded compliance with communal regulations, invoking the legacy and unquestioned authority of R. Joel Teitelbaum. Initially, Moshe's chief aide-de-camp, Moshe (Gabbai) Friedman, was charged with the task of pressuring the parents to shut down their makeshift cheder (or chaider, rhyming with cider, in the Satmar pronunciation). Dissidents recall Friedman acting like a "bulldozer," as he vainly tried to convince the six defectors to return their sons to their yeshivah.  

When it became clear that the parents had no intention of doing so, the ante was raised. The establishment party issued a broadside in the name of the "Administration of the Cong. Yetev Lev," excoriating "a group of people residing in Kiryas Joel [who] have recently rebelled against the ordinance of our late revered Rabbi and Leader." The document went on to state that "it is well known that Rabbi (Joel) Teitelbaum O.B.M. (of blessed memory) dealt especially harsh [sic] with nonconformists, and banished them from within the confines of his private institutions." The text then named over forty men who "are totally banished from our Congregation." This meant that they and their families were no longer welcome in Satmar synagogues, educational institutions, and cemeteries. To leave no doubt, a stern warning was sent
to those who assisted them “in the act of rebellion.” “Let it be known,”
the missive admonished in Yiddish, “that we will deal with them with
asperity.”

The rhetorical stakes were raised even higher in a notorious sermon
or *drushe* that R. Moshe gave in Williamsburg after Shabbes on Saturday
evening, February 25, 1989. The controversial “Ki-sisa drushe” took
its name from the weekly Torah portion to be read the following Saturday in synagogue that dealt with the famous biblical episode of the
golden calf.

Significantly, the first Satmar Rebbe had commented on this portion
in unequivocal terms in his most famous work, the anti-Zionist *Va-yo’el
Mosheh* (1959–1960). R. Yoelish analogized the sin of worshipping the
golden calf to Zionist “idolators” in modern times. The resulting danger
required stern rebuke of those who had succumbed to “disease [that]
has spread” among Jews.

Moshe Teitelbaum could not match the commanding presence of his
uncle, R. Yoelish. Indeed, the memory of his uncle was likely a burden
for him, given the constant comparisons between them in which he
always came up short. But he was willing to borrow from his uncle’s
playbook to deliver a stern rebuke to violators of the true path. Ki-sisa
provided the perfect occasion, with the story of the “golden calf,” which
offered ample opportunity for admonition—and even a measure of iden-
tification with a towering ancient namesake. In his sermon, Moshe Teit-
elbaum moved swiftly from an account of how the biblical Moshe
smashed the original tablets of the Ten Commandments when he saw the
Israelites dancing around the idol to his own ire over the sins of the par-
ents who had the temerity to pull their children out of the KJ yeshivah.

Moshe enjoined his audience to resist the rebels, stirring up the
crowd with a now famous utterance in Satmar lore: “Sheygets aroys”
(Gentile, get out!). Labeling the renegade parents with this disparag-
ing Yiddish term—in effect, denying they were Jews—represented a
sharp escalation of the conflict between the established leadership and
the reviled misnagdim.

Word of Moshe’s drushe quickly traveled from Brooklyn to KJ. Ac-
cording to the dissidents, the next day yeshivah students stormed the
site where the private lessons for the sons of the six families were being held. Brandishing sticks, they overturned tables and chairs, smashing things and cursing the participants. Parents of the boys who studied there recall being threatened, even receiving death threats for breaking with the community's ironclad discipline.36

Aaron Teitelbaum was away in Florida when the violence broke out in KJ. By the time he returned, the negotiations that Moshe Gabbaï conducted with the defectors had failed. As the parents saw it, the Ki-sisa sermon—in which Moshe had declared that the children would be placed in separate classrooms if they returned to the yeshivah in order to avoid "infesting" the school—was the last straw.37 It was now clear to them that pulling their children out of the KJ yeshivah was more than a temporary step; they would have to form a new yeshivah, beyond Aaron's control. This was the beginning of a movement to create a parallel set of institutions in Kiryas Joel that would define itself in opposition to the establishment party from this point forward under the name of Bnai Yoel.

The hardball tactics of the establishment did fortify some of the faithful, but they stirred up sympathy for the opposition as well. Families who had previously stood in the background were now forced to take sides, and more than a few chose to be with the defecting parents. Indeed, as the establishment continued to post the names of the dissidents in public, the ranks of the opponents kept growing in spite of the threat of expulsion. One member of the establishment quipped that perhaps the rabbis should stop publicly posting the dissidents' names since it served only to advertise how rapidly the movement was growing.38

These were not the only expulsions that took place within KJ in 1989. Faiga's menschen were providing support to Bnai Yoel and continuing to challenge Moshe in ways that were guaranteed to lead to their expulsion as well. In addition to their ongoing effort to gain control of the Bedford Avenue synagogue in Williamsburg, Faiga and her menschen were providing sanctuary to anyone in the community who crossed Aaron and Moshe. Aaron publicly acknowledged this widely known fact when he expelled the Bnai Yoel families, accompanying his formal expulsion decree with a warning that, from now on, they would find only
one house of worship open to them. Without naming Faiga, everyone understood he was referring to the congregation known as Bais Yoel (House of Joel) that her menschen had established in the "parsonage" behind the main synagogue, where Faiga continued to live. Now, with the doors of the main synagogue (and most of the smaller synagogues in KJ) closed to the members of Bnai Yoel, it became their alternative shul. There, they could pray and congregate with other opponents of Moshe and Aaron. The two groups of dissidents, Faiga's menschen and the families who had withdrawn their children from KJ's schools, thus began to crystallize into a full-fledged dissident movement under the protective eye of the Rebbetsin.

By now, the movement had a name (Bnai Yoel), an objective (the establishment of their own chaider, free from the establishment's control), and momentum. Soon they began to attract financial support. Backers from as far away as London, moved by the children's plight, contributed funds for a new school. Nachman Brach also offered financial support and provided space in one of the buildings he owned in KJ where classes could be held until a permanent building was constructed. Defying pressure from community leaders in Brooklyn and KJ, Faiga continued to open up her home to the members of Bnai Yoel, drawing Moshe and Aron's wrath and confirming the Rebbetsin's role as the dissidents' symbolic leader. What had begun as a temporary act of withdrawing children from a class had turned into a movement to create a new set of moysdes (communal institutions) to serve the growing dissident population.

To combat this movement, the village leaders summoned all the powers at their disposal. But figuring out what powers they had was a learning process in itself. At least initially, KJ's leaders did not deploy the tools of government that village incorporation had conferred on them not, primarily, because they feared external scrutiny but because those powers were new and still, to a significant extent, unknown to them. Instead of exercising their municipal powers, the village leaders' first resort was to utilize the powers they exercised in their private capacity, as synagogue leaders and property owners. Those powers were no less formidable than their public powers. Besides the power to expel
members of the opposition, in their private capacity as synagogue officers, KJ leaders possessed the ability to extend their authority over property controlled by the mainstream congregation—or from 1989, by the Vaad hakirya, the “village council” cum development company that acted on the congregation’s behalf.40 In fact, it was in 1989, in response to the political ferment, that Moshe allegedly instituted a ten-thousand-dollar fee on all new buildings in Kiryas Joel, to be earmarked for the council or, in other accounts, to be dedicated to the mainstream faction’s system of private schools.

At the same time, the establishment leadership introduced a requirement that contractors and owners pledge not to sell or rent units in KJ to those who did not meet the congregation’s approval.41 Of this requirement, Moshe is said to have declared: “Anyone that rents without this permission has to be dealt with like a real murderer . . . and he should be torn out from the roots.”42 This kind of “covenant” restricting occupancy and ownership to people approved by the congregation recalls the racially restrictive covenants once widespread in American property deeds (and deployed against Jews themselves). Covenants are a way of using private property rights to ensure residential homogeneity, enforce conformity, and discipline people tempted to deviate from the established norms. Their legality is questionable; the use of racially restrictive covenants was deemed unconstitutional by the Supreme Court in 1948, and they could be deemed to violate fair housing statutes as well. But whether these particular covenants would be deemed to be illegal was never squarely confronted, and even their existence was never clearly proved.

In addition to these measures aimed at restricting residential property to people of whom they approved, the establishment now forbade access to the KJ cemetery to dissidents, touching on one of the most elemental and sensitive sources of Jewish ritual observance. Like the expulsions that took place that year, the property restrictions placed on the cemetery and residential properties in the village were all private measures designed to ensure loyalty to the establishment and squelch the opposition. Eventually, the dissidents would challenge these restrictions. In the frenzied year of 1989, however, when the conflict first
erupted, the members of Bnai Yoel were simply trying to survive the attacks on them and find a way to ensure their children's religious education.

But in the spring of 1989, a new character came onto the scene, presenting himself as a spokesman for the dissidents with bold ideas for political action. Joseph (or Yosl) Waldman, a longtime resident of KJ, was an idiosyncratic—his critics would say grandstanding—character who occupied an ambiguous place in the village's political landscape. On the one hand, he was a master publicist, enthralled with media and technology, who was chiefly responsible for bringing the dissident movement's existence to public light. On the other hand, he never belonged to any particular dissident group. He considered himself a champion of Bnai Yoel, but he was never a member of it. He did not come from one of the six original families who broke away from the yeshivah in 1989, nor did he send his children to be educated at the Bnai Yoel school, which was founded not long after. Instead, with the exception of a brief period when his children were expelled because of his dissident activities, Waldman insisted on their attending the schools run by the UTA in KJ. He abhorred the treatment of the Bnai Yoel children as "hostages" and held himself out as Bnai Yoel's biggest supporter. But his insistence on sending his children to UTA set him apart from Bnai Yoel's core membership, as did the provocative and publicity-grabbing style of his activism, which alienated many of his fellow dissidents.

Waldman went on to play a central role in founding various umbrella organizations, with names such as the Committee for No School District, the Committee for the Well-Being of Kiryas Joel, and the Kiryas Joel Alliance, that brought together the disparate elements of the growing dissident community. But he always stood apart from the various dissident groups that he helped to promote. While other dissidents went on to form tight-knit subcommunities within which their children were educated and married, Joseph was, as his longtime lawyer Michael Sussman would say after many decades of representing him, "a different cat." Not only was he different from the parents who formed Bnai Yoel; he was different from his own brothers, who were core members of Faiga's mentschen. Indeed, Joseph's older brother, Zalman Waldman,
was Faiga’s close aide and caretaker, responsible for establishing and superintending the synagogue that ran out of her home.

Joseph Waldman was in many ways an exception to the rules that obtained in Satmar society. He was a fully observant but independent-minded man who resisted constraints and admonitions. He defied the general communal principle of behaving with discretion, quietude, and limited contact toward the gentile world.

That said, it was not until the winter and spring of 1989 that Waldman was prompted to rebel. The triggering event, by his account, was his witnessing of the ongoing harassment of Bnai Yoel kids, who still had no school building of their own. Waldman asserts that on one particularly violent day he watched as they fell victim to attacks by an “army” of yeshivah bokhers whom he perceived to be acting on Aaron’s orders. In his view, by encouraging the attacks and expelling families from the congregation and the UTA, Aaron was making clear that he was willing to sacrifice children to preserve his power base.

During this period, Waldman reports, he was “cruising along on the borderline, very, very much on the string,” watching from afar—until one Shabbos, when he ventured to make a “kinda supportive message” in favor of the dissidents, in response to which he received a punch in the nose from Meyer Deutsch. Soon enough, Meyer Deutsch would himself join the ranks of the dissidents. At the time, he was still a member of the establishment and sat on the board of the KJ congregation. Perhaps because of Deutsch’s stature in the community or because Waldman was still adhering to community norms, Waldman says that he resisted “losing control” and “instead . . . immediately contacted Aaron Teitelbaum” to seek redress. Commencing what would become a trademark tactic of his, Waldman used his cherished electronic equipment to make a secret recording of his conversation with Aaron, which he subsequently posted on a hotline frequented by the more adventurous members of the Hasidic community. In that conversation, Aaron promised, according to Waldman, that he would “take care of” the situation in exchange for Waldman refraining from going to the state authorities. As Waldman recalls his evolution into a dissident warrior, it was Aaron’s subsequent failure to keep his end of this bargain that
marked the beginning of “my war against him.” Shocked to the core, Waldman says, he then told Aaron that “if you’re not gonna be responsible, then I have to do what I’m going to have to do.” Much like Grumet’s response to Cuomo’s rhetorical question, “Who’s gonna sue, Luigi” (“I will, governor”), this was a declaration of war.

A few weeks later, on the night of Lag Ba-Omer, a violent incident occurred that, Waldman avers, “changed my life completely.” On that night, Waldman says, he was awakened at one o’clock by “a terrible noise.” After calling the state police, he discovered that it emanated from the nearby cemetery. He then jumped into his car and—packing a gun that he had begun to carry for his security business—drove to the cemetery. There, he says, he “saw a scene that is engraved in my mind”: a throng of yeshivah students “throwing stones” at the Rebbetsin as she and her entourage came out of their cars.

It was well known to everyone in the community that Paiga was in the habit of making nocturnal visits to the cemetery, especially on ritually significant occasions such as Lag Ba-Omer. Often, she would maintain a silent vigil at her dead husband’s graveside for hours at a time. This night, however, was anything but silent. Yeshivah students were throwing stones that were “flying right and left,” according to Waldman. Three cars belonging to Paiga’s menschen were “all smashed up” and the windows broken. Only the arrival of state troopers put an end to the shower of stones.

After the police had dispersed the yeshivah students, the Rebbetsin’s entourage, led by Waldman’s brother Zalman and other aides, returned to her home, with Joseph in tow. Joseph recounts that he watched as they “tried to give her something to drink” and began to place calls to “the dayanim,” rabbinic judges in Israel. True to form, upon observing the Rebbetsin “shaking” and “ferociously crying,” Waldman ran home and returned with his trusty tape recorder so that he could “record her crying” and talking with the rabbis in Israel about the need to shut down KJ’s “disrespectful” yeshivah. Eventually, his brother admonished him and took the tape recorder away, but Joseph was undaunted. He ran back home and retrieved another tape recorder. Waldman explains that he thought it likely that village leaders would deny the incident: “that’s
one thing I learned—that history is in the making." From that night on, he applied his talent for creating videos and tape recordings, which he had previously applied to painting a positive portrait of Satmar life on behalf of the establishment, to documenting the travails of the dissidents and the excesses of the establishment.\textsuperscript{51}

More than that, he used his PR skills to stage events that brought the plight of the dissidents to public attention. The first such incident was a battle over KJ's first school board election, which Waldman instantly saw to be an opportunity to expose the corruption and abuse of power he and the other dissidents believed the village leaders were guilty of. The negotiations with Assemblyman Pataki and other state and local politicians that culminated in the passage of Chapter 748 were going on during the very period when the harassment of the dissidents was occurring. With the passage of Chapter 748 on June 21, 1989, shortly after the incident at the cemetery that led Waldman to declare his support for the dissidents, a new front opened up against the establishment.

For example, the prominent businessman and founder of Shaarei Chemlah, Wolf Lefkowitz, never accepted the idea that a public school should replace the private school that he had founded for children with special needs. Unlike many other parents of children in Shaarei Chemlah, who welcomed the arrival of Benardo and the new public school, he strenuously resisted moving the children out of the privately run program that he ran inside the Bais Ruchel girls' school. Like other dissidents, he took the position that all Satmar children should be educated in the physical and cultural confines of the religious schools, including children with special needs.\textsuperscript{52}

Lefkowitz, of course, had a personal investment in preserving the school that he founded and ran. But apart from his personal interests, there were a number of reasons why he and others found the creation of the school district objectionable. First, he and other dissidents believed that a public school run in secular fashion was a profanation of the Rebbe's holy way. In the subsequent years, rabbinic figures sympathetic to the dissidents would inveigh against the public school as an abomination. One Bnai Yoel pamphlet from 1994 referred to Steven Benardo as
"a transgressor of the foundations of Judaism." The school itself was nothing less than "a calamity for [the idea of] a pure education."53

Wolf Lefkowitz and other opponents of the public school district in KJ had other grounds for discontent. The school district, they believed, would significantly expand the powers of the village leaders. Although the district was to be governed by an elected school board that technically would be independent of the village leadership, members of the new school board, like the village mayor and the members of the village board of trustees, would be vetted and approved by Moshe and Aaron. Moshe clearly asserted his power to appoint school board members in this period of upheaval: "It's like this. With the power of the Torah, I am here the Authority in the Rabbinical Leadership. . . . As you know I want to nominate seven people and I want these people to be the people."54

And so Moshe and Aaron designated their allies, including Abe Wieder, to fill the seven spots on the school board in what was fully expected to be an uncontested election. In this fashion, the Rebbe and his advisors essentially appointed local political officeholders. In so doing—and in full compliance with the democratic procedures prescribed by state law—the religious leaders of the community exercised control over KJ's secular political institutions. Already, the interlocking political and religious leadership of the village wielded both the powers of municipal government and the powers of private governance with which the congregation as a private corporation was endowed. Now, those leaders would effectively control the school board as well.

More specifically, their authority would be augmented by the power to impose property taxes to fund the operations of the school district, the power to receive and distribute funds from the state and federal government for education-related expenses, the power to purchase or lease sites dedicated to schoolhouses and playgrounds and to construct and furnish them, and the power to hire teachers and maintain a transportation force. All of these powers were granted under Chapter 748, in addition to the power to provide remedial and special education services for children in the newly created district.55 These powers would be directly exercised by the members of the school board, who
would be elected after being nominated by the village religious and lay leadership. The consequent augmentation of the village leaders’ powers and tightening of the political and religious power structure served to agitate further the growing group of dissidents.

They expressed their political discontent in theological terms. How, they asked, could the arrogation of the powers of a secular school district by village leaders be reconciled with the Rebbe’s insistence upon separation from the secular world—the very principle that led Joel Teitelbaum to establish a shtetl at a remove from the city decades earlier? To its Satmar critics, the establishment of the public school system created an impossible choice: either the Satmars would have to lie about the character of the new school system, pretending that it was secular when it was not, or they would have to perpetrate the grave act of removing God and religion from the children’s education. Either way, the leaders of the village, with Moshe’s blessing, would be violating Jewish law and corrupting Reb Yoelish’s holy intent.

These sentiments were widely shared and deeply felt among the dissidents. But it was Joseph Waldman who came up with a plan for turning these feelings into an overt political challenge. His idea was to organize a slate of alternative candidates for school board and thereby demonstrate the political force of the dissidents inside KJ. It was an audacious and paradoxical strategy. If his candidates won, his aim was to get them to use the power of the school board to shut the school down, ideally before it ever opened. If they lost, Waldman reasoned, the election would serve to expose the village leaders’ embrace of secular power and the ways they used that power to suppress internal dissent. By appealing to outside authorities such as the county officials charged with supervising school board elections, Waldman hoped to preserve the Rebbe’s—and now the dissidents’—vision of withdrawal from the world. It was an ironic quest to stop the secular power grab by enlisting secular support. Only by playing the dirty game of politics could they hope to return the community to its posture of separating itself from such “worldly” affairs.

The only problem with Waldman’s plan was that he could find only one person to run on his protest slate: himself. Predictably, after
announcing his candidacy, Waldman was formally expelled from the Yeter Lev congregation. Undeterred, he persisted in his plan to turn the school board vote into the village’s first contested election. On January 3, 1990, along with the seven candidates who had been selected by Aaron and Moshe, he filed a formal petition declaring his candidacy with the BOCES superintendent in charge of overseeing county school board elections. The next day, Waldman found his tires slashed. He also received a slew of phone calls, warning him that if he did not pull out of the election, he and his family would face repercussions. Waldman made sure to record all of this and pass it on to local reporters. He was an effective, persistent, and often sensationalist source for the local paper, which made it its business to investigate the dissidents’ allegations of mistreatment and misuse of power by the establishment, of which there would be many. From this point onward, the Times Herald-Record reported regularly on Waldman’s claims of harassment and on the dissidents in general.

Even more significant than Waldman’s appeal to the press was his appeal to the law. It was after receiving the harassing phone calls that threatened not only him but also his children that Waldman placed a phone call of his own, to Michael Sussman, a local civil rights lawyer who had gained acclaim as the lead lawyer in the Yonkers case, a high-profile housing discrimination suit launched in the 1980s (dramatized in the 2015 television miniseries Show Me a Hero). Waldman’s question for Sussman revealed his complicated personal and communal agenda: how could he prevent Aaron from throwing his children out of the yeshivah without pulling out of the school board election? Could the secular legal system protect his children, as well as his own electoral prospects?

That phone call changed the course of the dissident movement in KJ, in ways both foreseen and unforeseen. As Waldman well understood, merely making recourse to non-Jewish courts was seriously discouraged in traditionally Orthodox communities even into the late twentieth century. It was deemed far preferable, if not religiously required, to address one’s disputes in rabbinical court. Over time, Haredim in KJ and elsewhere had started turning to state courts to resolve disagreements,
especially over business. But what Waldman was instigating was far more dramatic than the arbitration of a business dispute. For a Satmar Hasid to turn to secular law to challenge the authority of the community’s religious leaders was a shocking breach of precedent and customary norms. Yet bringing a legal complaint against Moshe and Aaron is exactly what Waldman had in mind.

As Sussman recalls of that first phone call, he advised Waldman on the possible courses of action that lay open to him. Addressing Waldman’s concern about his children, Sussman explained to him that the law was unclear: On one hand, “there’s a strong preference for letting private institutions, particularly religious institutions, decide their own destiny.” On the other hand, there was an “equally strong concern about children,” which, in light of there being “no other alternative school,” could militate in Waldman’s favor. The bottom line was that Aaron, as the chief executive of the UTA, was the legally responsible party and could be sued. Waldman then cut to the chase. Sussman recounts: “He said, ‘I want to run,’ so I said, ‘go ahead, run.’”

The lawyer-client relationship established as a result of this phone call would last for many decades. The client group would expand to include not only Waldman but virtually all of the dissidents engaged in battle with the village leadership. In much the same way that George Shebitz served as in-house counsel for the village, Sussman assumed the position of chief legal adviser to the dissidents. Over the ensuing years, he would play an active role in shaping the dissidents’ agenda as well as the strategies they would use to pursue their agenda. He would advise them to build their own alternative institutions. He would help them to monitor the elections that took place inside the village. And he would challenge the property restrictions and zoning regulations that the village leaders tried to use to thwart the dissidents from creating their own moysdes. Eventually, he would even lead them to challenge the very constitutionality of the village itself. Throughout all of this, he performed the important function of translating the dissidents’ complaints about violations of religious law into the language of secular law. Conversely, he introduced the idiom of American law into the language of the dissidents. He thus fulfilled Waldman’s paradoxical vision of using
secular legal authority to preserve the Rebbe’s domain of spiritual sanctity.

At the dawn of 1990, however, Sussman was still new to the area, and the situation of the Satmars in KJ was unfamiliar to him. Sussman’s first act for Waldman was modest enough; he assisted Waldman in getting the polling booth moved out of the main synagogue.\textsuperscript{62} On January 17, the school board election was held: 1,769 residents cast ballots, the highest turnout for an election since the village had been founded. Although Waldman lost, he could (and did) boast of receiving 673 votes, notwithstanding his assertion that many votes were cast for the establishment candidates by underage students.\textsuperscript{63} If it was not quite the stunning defeat of the establishment that Waldman had imagined, it was a revealing demonstration of the extent of the political resistance and a harbinger of the strife yet to come.

This new phase of the conflict inside KJ coincided with the external attack on the new school district that Grumet had set in motion. Just two days after the school board election, Grumet filed his lawsuit against the New York State Department of Education, challenging the constitutionality of Chapter 748. The village’s leaders were now facing an external legal challenge and an internal political challenge. The question of whether they were comporting themselves in ways that were consistent with American constitutional principles—and with the late Rebbe’s religious principles—could no longer be avoided.

Although they came at the KJ establishment from different angles, Lou Grumet’s lawsuit and Yosel Waldman’s legal forays proceeded in lockstep. When Waldman was first dreaming up his idea of a protest slate in September 1989, the New York State School Board Association (NYSSBA) was holding its first meeting to discuss how to respond to the recent passage of Chapter 748. The NYSSBA board members all shared Grumet’s concerns about the statute, which they feared might create a precedent for other communities to secede from established school districts.\textsuperscript{64} Situating that concern in the political context of the day, Grumet later explained that “in the Reagan years, that was a plausible” scenario.\textsuperscript{65} (The Reagan administration had ended just one year earlier.) Public education was also facing the challenge of the homeschool
movement, which threatened to draw resources away from public school districts composed of students with different backgrounds and levels of wealth. This threat would be greatly exacerbated if communities that wanted to separate themselves from others could command the resources of a public school system. Facing that threat head-on, Grumet’s board readily agreed with him that the NYSSBA should do what it could to push back. On January 6, 1990, three days after Waldman and Wieder submitted their respective petitions to run for the school board, the NYSSBA held another meeting at which Grumet’s proposal to bring a lawsuit was formally approved. The lawsuit was filed on January 19, two days after the school board election took place.

The complaint initially named the New York State Department of Education, along with the state officials responsible for implementing the law, as the defendants. This choice reflected the theory of the case that Grumet’s lawyers had devised. Rather than argue that the school district was operating in an unconstitutional fashion, the complaint asserted that it was the state that had acted unconstitutionally by granting Kiryas Joel the right to establish its own school district. On this theory, even if the new school district operated in full compliance with the constitutional principle that religion has no place in public education, the statute violated the principle of separation between church and state by bestowing the powers of a public school district on a religious community. The complaint argued that this move was prohibited by the Establishment Clause of the federal Constitution and by a state constitutional amendment, known as the Blaine Amendment, which specifically prohibited the expenditure of public money on schools that are "wholly or in part under the control or direction of any religious denomination." The complaint also rested on the claim that the school district violated the Equal Protection Clause of the Fourteenth Amendment by "carving out a new school district from an existing district when such an effort will have the effect of creating a segregated school."

Not long after the suit was filed, both the Monroe-Woodbury School District and the Kiryas Joel School District (now formally constituted and run by the newly elected board presided over by Wieder) made motions to intervene. Each argued that it had a direct interest in the
outcome of the case and therefore should be added as a codefendant in order to have the opportunity to explain why Chapter 748 should be upheld from its point of view.

While the trial court was taking these motions under advisement, Waldman was turning his attention to a new challenge. Having lost the school board election, but not his political zeal, Waldman announced that he would work to defeat the incumbents on the village board of trustees. Given his recent showing in the school board election, this was no idle threat. Responding to this challenge, Wieder and another member of the village board agreed not to seek reelection. Wieder further agreed that the village leaders would not oppose the creation of the new school that the Bnai Yoel was then in the process of establishing.

This appeared to be a significant concession, but only briefly. On March 18, two days before the village election was scheduled to take place, the congregation decreed that Waldman's children would be expelled from the KJ schools, effective March 27. Four days later, two days after the village election, Wieder sought and was granted the right to intervene personally as a party in the Grumet litigation. The timing of this action reflected the extent to which the Grumet litigation and Waldman's campaign were intertwined, at least from the villagers' point of view. Waldman, for his part, regarded Grumet's lawsuit as an opportunity to achieve what his run for the school board had failed to do: the dissolution of the school district. Meanwhile, Wieder saw fit to intervene in the case in his personal capacity—above and beyond the motion to intervene he had already filed on behalf of the Kiryas Joel School District—in order to widen the theater of battle against the dissidents.

Four days after Wieder made his successful motion to intervene in the Grumet litigation and one day before the appointed date, the congregation carried out its threat to expel Waldman's six minor children. The children were physically removed from KJ's United Talmudic Academy schools and ordered not to return.

Waldman was not unprepared for this development. Far from it. The first thing he did was to make sure that the press and the state police were present to witness the spectacle of his children being removed from the very schools, which he had contrived. “Don't you dare come
home," Waldman instructed his children when his son called to report that the principal was throwing them out and sending them home in a car. Instead of accepting the ride, Waldman ordered his children to wait for him outside in the cold, which enabled him to say to anyone who would listen, "They didn't even allow the children, the small children, to wait inside, it was brutal." 70

The next day, Sussman filed a lawsuit on Waldman's behalf against the KJ UTA. Moving with dispatch, he sought and obtained a temporary restraining order requiring the UTA to readmit Waldman's children, which he personally delivered to Aaron at his home later that day. A full hearing of the case was scheduled for April 11, the first day of Passover.

Aaron's response to this invocation of state authority was defiant. He tossed aside the documents that Sussman had served him, including a handwritten note stating in bold letters, "WARNING. YOUR FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT." 71 Aaron let it be known that he would not let the children back into the schools.

Waldman responded to Aaron's display of defiance with an equal display. Knowing full well that his children would be sent away, Waldman packed them off to school the next day anyway. As the children were dutifully reporting to their respective schools, Waldman was serving the order to appear in court on the principal of the Bais Ruchel. 72 Meanwhile, over at the boys' school, the principal was once again ordering Waldman's sons to leave, repeating the scene of the previous day. 73 On cue, Sussman galloped back to court to make the case that Aaron was now acting in contempt of court. Not surprisingly, since Aaron was openly defying the court order to readmit the children pending a full trial of Waldman's case, the judge readily granted Sussman's petition and ordered Aaron to appear in court to explain why the UTA should not be held in contempt. 74

This was an unprecedented development. Never before had a Satmar religious leader been summoned to a secular court to defend his actions. The order to Aaron to appear in court sliced into the very heart of the Satmar system of religious authority, challenging the supposed autonomy of Jewish law embodied in the figure of the all-powerful Rebbe.
Facing the order of contempt, Moshe and Aaron had little choice but to submit to the order and defend their autonomy from state law in court.

Thus it was that, on March 30, two days after the court’s order was issued, Moshe and Aaron appeared in the courthouse, accompanied by roughly two hundred supporters from Brooklyn and Kiryas Joel. It was an amazing spectacle to behold. There, in a room crowded with Satmar Hasidim, Judge Peter Patsalos, the son of Greek immigrants, told Moshe and Aaron, “The keys to prison are in your pocket; you either allow these children in or you’re being imprisoned.”

The results of Judge Patsalos’s intervention were decidedly mixed. On the one hand, the children were allowed back in school the following day, pending the trial now rescheduled to commence the day after the eight-day Passover holiday. On the other hand, hostility against Waldman within the community intensified. On the same day that Waldman’s children were allowed back in school, their family home was surrounded by protesters throwing rocks and chanting “Death to Joseph Waldman.”

Waldman responded to this act of aggression by again turning to the courts. Michael Sussman, his now notorious lawyer, sought an order of protection, which Judge Patsalos readily granted. The coming of Passover provided a further reprieve. With the commencement of school recess, the issue of the children’s right to attend the schools was temporarily postponed, and Judge Patsalos took advantage of the lull by trying to get the warring parties to agree to a settlement. But as soon as school resumed at the end of the Passover recess, Waldman’s children were again denied entry. This was a particularly brazen act, as it occurred on the very day that the hearing of the case of Waldman v. UTA was scheduled to take place in Patsalos’s courtroom.

Pandemonium was breaking out in Kiryas Joel. Over the course of a tumultuous week, dissidents’ cars were torched, houses were pelted with stones, and people were physically beaten. In typical Satmar fashion, the violence made its way to Brooklyn, where Moshe’s supporters forcibly removed the metal gate that Brach had recently installed to keep them from entering the Rebbe’s old abode, prompting the police to be placed on alert. In the midst of this week of violence, Judge Patsalos issued his decision in favor of Waldman and ordered Aaron to readmit
the children, at pain of a penalty of $250 for every day they were denied entry.\(^{81}\)

Three days later, with the children still being denied entry, Sussman was back in court seeking to enforce the fines against Aaron and Moshe for contempt. Three days after that, Louis Grumet filed an amended complaint to his lawsuit, attempting to deny Monroe-Woodbury’s and the Kiryas Joel School District’s motions to intervene. On May 3, even before the court had had a chance to make its decision, Grumet filed a motion for summary judgment, arguing that it was not necessary to conduct a trial to conclude that the statute was unconstitutional on its face.\(^{82}\) While the state court considered the pending motions, rioting continued in Kiryas Joel. On May 12, Moshe reprised his infamous “Ki-sisa drushe,” issuing another sermon on the heels of the Sabbath that denounced the dissidents. The next day, more than one hundred fifty yeshivah students surrounded Waldman’s home.\(^{83}\)

Over the course of the following week, Moshe and Aaron took a number of steps to get the situation under control. On one hand, they extended an olive branch by negotiating a truce with Waldman in KJ; on the other hand, they detonated a legal explosion by commencing legal action against Nachman Brach in Brooklyn.\(^{84}\) The terms of the truce allowed Waldman’s children to return to the UTA’s religious schools in exchange for his making a public apology to Aaron.\(^{85}\)

The treatment of Brach was less forgiving. The Williamsburg congregation claimed that the transfer of the Bedford Avenue property to Brach’s corporation was fraudulent. On May 17, they filed a lawsuit in Kings County (Brooklyn) to “quiet title” and restore the right to possess and use the property to the congregation.\(^{86}\) This lawsuit, known as *Yeter Lev D'Satmar, Inc. v. 26 Adar N.B. Corp.*, or simply, *26 Adar* (after the name of Brach’s corporation), would persist for nearly two decades, outlasting even the Grumet litigation. Eventually, the Adar Corporation would be dissolved and Brach himself would drift away from the center of communal activity and cease to be a significant force in Satmar politics.\(^{87}\) By the turn of the twenty-first century, he was largely forgotten inside the Satmar community. But the lawsuit against his ghostly corporation would live on.
Back in 1990, Brach’s dispute with the leadership was very much alive. The lawsuit filed against him was just the opening salvo in a series of legal battles between him and Satmar leaders that unfolded over the next five or so years. In fact, the lawsuit filed against Brach marked the first time the Satmar leadership brought suit against any of the dissidents. The 26 Adar suit served as a warning to the dissidents that appealing to the secular courts to settle the dispute was not a one-way street.

Later in May, the Satmar leaders got the news that the KJ School District’s motion to intervene as a codefendant in Grumet’s lawsuit had been granted, along with that of Monroe-Woodbury. This was good news for the village but created a serious problem for the plaintiffs. The case had been brought in the name of the NYSSBA (the school board association run by Grumet)—of which Monroe-Woodbury, now formally an adversary, was a member organization. That spelled trouble for the NYSSBA, which now was bringing a lawsuit against a group of defendants that included one of its own members. The complaint had asserted: “The Monroe-Woodbury School District stands, and has always stood, ready and willing to provide appropriate educational services to any and all school age children living within the village of Kiryas Joel on the premises of the Monroe-Woodbury district’s public schools.” But now Monroe-Woodbury was openly contradicting this, declaring that it supported Chapter 748 and opposed Grumet’s claims. In response, Grumet submitted an affidavit arguing that it was not in Monroe-Woodbury’s interests to defend Chapter 748. Not mincing words, Monroe-Woodbury’s lawyer submitted an affidavit stating, “I am amazed at the condescending and paternalistic tone of the affidavit of Louis Grumet” and further, that “I believe it to be unmitigated chutzpah for plaintiffs, a trade organization and its representatives, to lecture a popularly elected board of education on what constitutes the best interests of the school district which it administers.”

The court dealt with this issue by ruling that the NYSSBA did not have standing to bring the lawsuit—but that Grumet, in his personal capacity, did. The same logic applied to Albert Hawk, the titular president of the NYSSBA, who was also a formal party to the litigation,
though he never played an active role. Under state and federal law, any tax-paying citizen had standing to bring a lawsuit claiming Establishment Clause violations.\textsuperscript{91} Therefore, while neither Hawk nor Grumet could go forward in their capacity as an NYSSBA officer, they both could proceed as private citizens. The case was thus reconfigured so that it was now Grumet and Hawk, not NYSSBA, suing the school districts of Monroe-Woodbury and Kiryas Joel along with New York State’s Department of Education.\textsuperscript{92}

The Public’s Response to \textit{Grumet v. Kiryas Joel}

Public attention to the case grew slowly but steadily. Since the trial court had been asked to rule on a motion for summary judgment, there would be no trial to attract public notice. But the New York State teachers’ union had learned of the litigation and filed an amicus brief in support of Grumet’s position, guaranteeing that a significant constituency would be paying attention to the outcome.\textsuperscript{93} Sure enough, when the trial court issued its decision, in January 1992, it caught the media’s eye. In its first story about the case, the \textit{New York Times} reported: “A special public school district in a Hasidic community in Orange County was established in violation of the constitutional separation of church and state, a State Supreme Court judge ruled today.”\textsuperscript{94} Noting that KJ planned to appeal the decision, the article stated: “If it is upheld, the ruling will effectively close the school, leaving the children to find an education elsewhere” and “throw[ing] into disarray Kiryas Joel’s carefully crafted plan to educate its disabled children.”\textsuperscript{95}

In fact, the village’s “carefully crafted plan to educate its disabled children” was undisturbed by the court’s ruling. Benardo, the man responsible for crafting the plan, was keeping close tabs on the case and could hardly fail to feel anxiety about its ultimate fate. But his main focus was on fostering the programs, which had been up and running since the fall of 1990. He was relieved to learn they would be allowed to continue pending the case’s appeal.\textsuperscript{96} The fact that the trial court had ruled the law creating the school district unconstitutional was certainly cause for concern. But the newfound attention to the case gave Benardo
and the community leaders reason to hope that the ruling might be overturned on appeal.

That hope was reinforced as the case progressed through the appellate process and various advocacy groups began to rally around it. The more defeats KJ suffered—its petition to reverse the trial court's decision was rejected twice, by New York State's appellate division and then by its highest court, the Court of Appeals—the more support it attracted, in particular from conservative Christian organizations.97

Not that the Satmars had sought out their support. But the litigation coincided with a new stage in the history of the Christian right in America, which focused on courts as "the next battleground of conservative Christian activism."98 Conservative unhappiness with the Court had been brewing for decades. But it was only in 1980 that a "new Christian right" began to emerge with the mission to "take back the Court." Ronald Reagan's election in 1980 made that goal a real possibility.99 Facing reelection in 1984, he strongly backed the Equal Access Act, passed by Congress in 1984 in response to growing criticism of university policies that denied religious groups access to university venues and funding.100 He also made a campaign promise to deliver a constitutional amendment protecting the right of states and school boards to reinstitute prayer in public schools.101 This amendment never came to pass. But thanks to Reagan's focus on judicial appointments, both the Supreme Court and the lower federal courts were increasingly populated by conservatives, who were, to varying degrees, receptive to the positions of the Christian right.

But it was not only conservatives who were moving courts in the direction of greater receptivity to religious groups. In fact, the notion that religious groups deserved equal access to university venues also received broad support from Democrats. The discourse of multiculturalism and equal access for diverse viewpoints was gaining ground among progressives, and conservatives seized upon that to argue that it should apply to religious groups and conservative beliefs too.102 Liberals could hardly disagree. In 1990, the year the Grumet litigation began, the Supreme Court approved the constitutionality of the Equal Access Act and held, further, that it was unconstitutional to deny a Christian
club equal access to use of the premises of a high school as an after-
school activity. The opinion for the Court was written by Justice San-
dra Day O'Connor, a moderate conservative appointed to the Court by
Ronald Reagan. But a concurring opinion was written by Justice Thur-
good Marshall, one of the two most liberal justices then on the Court.
And the decision received the support of all but one of the liberal jus-
tices, Justice Stevens, who would stake out an equally singular position
in the Grumet case four years later.

To recall, 1990 was also the year that saw the formation of the Ameri-
can Center for Law and Justice, the most prominent of the conservative
Christian “public interest law firms” that were established in 1990 with
the specific aim of reshaping First Amendment doctrine in order to ex-
pand religious liberty and weaken the wall of separation between church
and state. Founded by the well-known evangelical minister Pat Rob-
ertson in 1990 and known by its acronym, the ACLJ (a name clearly
intended to echo that of its nemesis, the ACLU), it was part of a con-
certed campaign to use the tactics of liberal legal advocacy groups in the
service of conservative ends. In 1992, Robertson appointed Jay Sekulow,
an attorney who had recently won a unanimous ruling in favor of the
Jews for Jesus before the Supreme Court and was himself a Messianic
Jew, as chief counsel of the ACLJ, a position in which he served from
1992 until 2018. In this position, Sekulow would have a hand in nearly
every free exercise and establishment case of note and in notable free
speech cases as well, making him one of the most influential agents in
transforming the law of the First Amendment.

Between 1990 (the year the Grumet case commenced) and 1994 (the
year it went to the Supreme Court), Christian-affiliated legal groups
such as the ACLJ proliferated, and the number of religious liberty cases
they litigated—or participated in as “friends of the court”—grew by
leaps and bounds. Some of this burst of energy was stimulated by a
surprising source: a decision written by Justice Antonin Scalia, who was
widely revered by religious conservatives, and generally regarded as a
great supporter of their legal agenda, but who bitterly disappointed
them in 1990 by handing down a decision that held that the Free Exer-
cise Clause does not grant religious objectors the right to an exemption
from neutral laws of general application. This seeming rejection of the right to religious accommodation, in a case called *Employment Division v. Smith*, pointed up tensions within twentieth-century conservatism that mirrored the tensions that existed within liberalism itself. These tensions manifested themselves in complicated ways. At the same time that liberalism was splitting between a sameness model of equality and a difference model that undergirded the move toward multiculturalism and pluralism, conservatism also was riven between conflicting impulses. Both conservative and liberal thought contained a strand of deep-seated skepticism about the use of state power to regulate behavior and, even worse, thought. Opposition to state-sponsored orthodoxy and indoctrination was a principle of classical liberalism to which both laid claim. On the other hand, both also accepted the necessity of state regulation to maintain social order and protect public safety and basic civil rights, notwithstanding the fact that upholding such regulations inevitably entails some degree of behavioral, and maybe even mental, conformity. The resulting ambivalence regarding the conflicting values of individual freedom and law and order came to a head in the *Smith* decision.\textsuperscript{107} Members of the religious right were confused and outraged when Scalia rejected the principle that the Free Exercise Clause confers a broad right to religious exemptions. But in doing so, Scalia was upholding equally conservative principles—of judicial restraint and deference to the authority of the state. Above all, Scalia gave voice in *Smith* to the long-standing conservative principle of law and order and the consequent need for conformity to a single, state-approved, set of rules of conduct. To hold otherwise, he said, “would be to make the professed doctrines of religious belief superior to the law of the land, and, in effect, permit every citizen to become a law unto himself.”\textsuperscript{108}

The idea that state power and conformity to the law are necessary to keep anarchism at bay was as venerable a principle of conservative political thought as they came. Nonetheless, the conservative political movement, which was growing ever stronger in the early 1990s, rejected Scalia’s appeal to law and order swiftly and vociferously—alongside liberal civil rights and civil liberties groups. The coalition of strange political bedfellows that formed in reaction to the *Smith* case was telling. At
the same time that it demonstrated the tensions internal to liberalism and conservatism, it also revealed surprising commonalities. These commonalities led to the formation of a political alliance between liberal civil libertarians and religious and political conservatives in the early 1990s that today is almost unimaginable, but was, in the moment, completely consistent with the tacking of liberal Democrats toward the center and the increasing value placed on group identity, including religious group identities, by both the left and the right. Thus it was that the ACLU and other liberal civil liberties advocacy groups joined forces with the ACLJ and other nascent conservative “civil rights firms” to lobby for the passage of a law that was designed in effect to overturn the widely detested Smith decision by requiring courts to grant exemptions from laws that impose a substantial burden on the free exercise of religion. Dubbed the Religious Freedom Restoration Act, or RFRA for short, the proposed statute reflected the outrage at the Smith decision that was then widely shared. Its passage certainly reflected the growing influence of the religious right and the broader conservative movement of which it was a part. But it also reflected the points of convergence that were emerging between conservatism and progressivism as each embraced identity politics and the value of preserving cultural differences.

The real turning point came in 1993. Ending twelve years of Republican administrations, Bill Clinton, who assiduously courted traditional religious voters as part of his strategy of tacking to the right, was inaugurated president on January 20. One month later, the new Christian right scored its first major legal victory in the case of Lamb’s Chapel v. Center Moriches School District. Like so many Establishment and Free Exercise Clause disputes, this was a case that focused on schools. More specifically, it was a case in which the Supreme Court ruled unanimously that public schools that open their facilities to secular organizations after hours must make them available to religious groups as well. This was an argument that conservative lawyers had long been pressing, and now, for the first time, it had prevailed. Sensing their momentum, the ACLJ lawyers who won this case, led by Jay Sekulow, were looking around for other cases that could advance their agenda.
Eleven days later, the Supreme Court handed religious conservatives yet another victory in the case of Zobrest v. Catalina Foothills School District, which held that the Free Exercise Clause required the school district to provide a Sign-language interpreter to a Deaf child attending a Catholic school and, further, that the Establishment Clause did not prohibit this arrangement. Like Grumet, it was a case that involved disability rights as well as the right of religious freedom and presented a sympathetic case for allowing publicly funded services, in religious school settings, for children with disabilities.

Meanwhile, lobbying for the Religious Freedom Restoration Act was in full swing. The bill to approve the new law was formally introduced by then-congressman Charles Schumer of New York on March 11, 1993, fewer than three weeks after Lamb's Chapel came down. It passed with near unanimity and was eagerly signed into law by President Clinton in November. In the interim, in the summer of 1993, KJ School District had suffered its final defeat in state court. It did not take long for it to appear on the radar of the new religious rights advocacy organizations, which were casting about for a follow-up to their recent successes in Lamb's Chapel and Zobrest. KJ v. Grumet was, in some ways, an unlikely lawsuit for these advocates to latch onto. But in other ways it was a perfect vehicle for their cause. Logically enough, most of the cases that conservative Christian lawyers took on featured Christian plaintiffs or promoted Christian causes. The organizations they represented made no bones about the fact that their primary agenda was to promote the values of evangelical Christians. But they represented their cause in terms of the general—liberal—principle of "religious freedom," which in theory protected people of every religion. For reasons of both principle and expediency, conservative Christian advocacy groups were happy to support cases brought by members of other religious faiths, so long as the values, legal strategies, and expected outcome were congruent with their own.

This was made possible by the fact that traditional Christians and religious traditionalists of other faith traditions shared certain goals. One such goal was to secure public support—government funding—for private religious education. Another was to return prayer and other
religious practices to the public schools, which was a central plank in the Christian right's broader platform of returning religion to "the public square." Restoring religion to its previous position as a source of a public, and not merely private, authority was an objective shared by traditionalists of many different religious denominations, including Orthodox and especially Haredi Jews. Although most Orthodox and Haredi Jews had little to no contact with Christians, conservative or otherwise, they came to understand their affinity with this conservative Christian cause.¹¹⁴

The belief that religion belongs in the public realm was just one point of affinity between the mainstream Satmar party in KJ and the new Christian right. Closely related was their shared struggle with the doctrine of separation between religion and state. The Satmars sought to demonstrate that the creation of the KJ School District was consistent with the principle of separation that was embodied, according to the Court in *Everson*, in the First Amendment's Establishment Clause. More specifically, they sought to show that Chapter 748 satisfied the elements of the so-called Lemon doctrine, named for the 1971 case of *Lemon v. Kurtzman*, in which the Supreme Court had laid out its three-part test for determining when the principle of church-state separation is satisfied. All of the lower court decisions rested on the conclusion that Chapter 748 failed to meet the requirements of Lemon's three-part test. But by the time the *Grunet* case reached the Supreme Court, some advocates were arguing not only that it met the Lemon test but that the Lemon test shouldn't be applied at all and that the very notion of a high and impregnable wall of separation between church and state should be discarded.

Indeed, *Lemon v. Kurtzman* stood alongside *Roe v. Wade* (the decision in which the Supreme Court recognized the right to abortion) as one of the chief targets against which the Christian legal movement took aim. Lemon was the most prominent of a spate of "strict separation" decisions that were handed down following *Everson*, many of which addressed state programs designed to help subsidize parochial schools. Lemon specifically held that salary subsidies for teachers who work in parochial schools are unconstitutional even if the funds are only used
to pay for teachers of secular subjects. At a more general level, it affirmed the strict version of the principle of church-state separation expounded (though not adhered to) in Everson. And it sought to operationalize that principle by identifying three separate requirements, each of which state action must meet to escape the judgment that it violated the Establishment Clause. First, according to Lemon's three-part test, a state's action must not have the intent of promoting or inhibiting a religion. Second, it must not have the primary effect of promoting (or inhibiting) religion. Third—and this was the real novelty of Lemon, the secular intent and effect requirements having already been articulated by the Supreme Court in prior case law—the law in question must not "excessively entangle" the government with religion.

As much as Roe v. Wade, which came down just two years after Lemon, and as much as the school prayer decisions issued ten years earlier, the "Lemon doctrine" was widely reviled by Christian conservatives, who saw it as the embodiment of everything that was wrong with the liberal approach to religion. They objected to the requirement that the law must have a secular intent. They objected to the requirement that the law could not have the effect of promoting religion, even if that was unintended. And they especially objected to the proposition that the government could not be "excessively entangled" with religion. As they viewed it, this created a catch-22 for religious groups since the second prong of the test required religious institutions to limit their use of government funds to secular functions, while the third prong supported the conclusion that the monitoring mechanisms needed to ensure their compliance with that requirement were too invasive. Indeed, it was precisely this reasoning that had led Justice Brennan to conclude in Aguilar that Title I instruction could not take place inside parochial schools. As he saw it, the only way the government could ensure that Title I instructors confined themselves to secular subjects (as required by Lemon's second requirement) was by monitoring what they did in the parochial schools—in violation of Lemon's third prong.

Conservatives were not the only ones who found fault with Lemon. There was also lots of liberal handwringing over Lemon's three-part test, which judges and commentators across the political spectrum perceived
to be wildly unpredictable in its results. When Senator Moynihan made his famous quip about the inconsistency of decisions that allowed the government to provide secular textbooks to private schools but not maps or other instructional materials ("What about atlases?") it was the application of the Lemon doctrine that he had in mind. But whereas liberals yearned for a better way of applying the principle of separation between religion and state than that provided by the Lemon doctrine, one that would uphold the principle while avoiding inconsistent and unfair results, conservatives questioned the principle itself. Some objected to the wall of separation metaphor for being too strict and called for its replacement with a softer line of separation between church and state, one that would allow for some forms of public support for religion and some expressions of religion in the public realm. Others called for a rejection of the principle altogether.

Sensing the wind at their backs, religious conservatives were intensifying their campaign against Lemon in the early 1990s. The victory in Lamb's Chapel in February 1993 gave them reason to believe that the time was finally ripe to get the Supreme Court to do what they had long only dreamed of doing: overturn it. All they needed was a case before the Supreme Court that involved the Establishment Clause with facts that made a compelling argument for allowing the line between government and religion to be blurred. With its sympathetic subjects (religious children with severe disabilities, not unlike the Deaf Catholic schoolboy in Zobrest), Grumet seemed like the perfect case.

Thus, it was that the KJ School District’s appeal to the Supreme Court became the first opportunity to reconsider Lemon v. Kurtzman following Lamb’s Chapel and Zobrest, cases that raised the tantalizing possibility that the Court had had its fill of Lemon and strict separation. At the least, it was an opportunity to reconsider whether the Lemon doctrine was the right way to think about publicly supported religious education. Even though, technically (and in truth), the Kiryas Joel School District was run as a secular system of education, everyone understood that its creation was an accommodation to the Satmars’ way of life that had been necessitated by the Court’s past refusal to allow public school districts to provide services to children inside parochial
schools. It was the application of the *Lemon* doctrine that had led the Court to conclude in *Aguilar v. Felton* and *Grand Rapids v. Ball* that Title I services could not be provided in parochial schools, and it was the handing down of that pair of cases that had led Monroe superintendent Daniel Alexander to pull the plug on the short-lived special ed program inside KJ’s religious school. That in turn was the event that precipitated the passage of Chapter 748. Now, just shy of a decade after those events, *Grumet* seemed like it could provide the occasion for reconsidering both those cases and the *Lemon* doctrine on which they were based.

At least that was the agenda of the new Christian right, which in 1993 began to take an interest in the *Grumet* litigation. Flush with optimism and energized by their recent victories in *Lamb’s Chapel* and *Zobrest*, the newly minted Christian legal advocacy firms decided to file amicus briefs in *Grumet*. Taking the lead was the ACLJ, headed by Jay Sekulow. Amicus briefs were filed by numerous other conservative Christian organizations as well, both old (e.g., the Knights of Columbus, the Catholic League for Religious and Civil Rights, and the Archdiocese of New York) and new (e.g., the Rutherford Institute and the Christian Legal Society). Amicus briefs in support of the Kiryas Joel School District also were submitted by the Orthodox Agudath Israel and the National Jewish Commission on Law and Public Affairs (COLPA).115

Recognizing the seriousness of the challenge they were facing, all of the major liberal organizations committed to maintaining the separation of church and state submitted briefs in support of Louis Grumet and, more broadly, *Lemon*. The long list of liberal advocacy groups that supported Grumet’s position included the ACLU, Americans United for the Separation of Church and State, and, standing in counterpoint to the conservative Jewish advocacy groups that lined up with the conservative Christian advocacy organizations, three venerable Jewish organizations with a long-standing commitment to separation of church and state: the American Jewish Committee, the American Jewish Congress, and the Anti-Defamation League (ADL).

Formed in the early twentieth century, these three groups were united in their desire to fight antisemitism and support equality in America. Two of them, the AJ Committee and the ADL, were among
the earliest supporters, one might even say formulators, of the principle of church-state separation adopted by the Supreme Court. The participation of these three Jewish organizations in the *Grumet* case reflected the fact that nested within the broader fight between liberals and conservatives in America was a smaller proxy fight taking place within the American Jewish community between liberal and conservative Jews.

*Kiryas Joel School District v. Grumet* became a screen onto which this political division was projected. The case had gone from being an obscure lawsuit, followed by only a few interested parties in New York, to a national news story pitting two competing visions of America against each other. On one side stood the vision of America as a country dedicated to integration and inclusivity. On the other side stood the vision of America as a “Christian nation,” founded on Christian and biblical values—or, as it was sometimes expressed in more nonsectarian terms, “family values.” According to this vision, the state had not only a responsibility to govern in accord with Christian and biblical values but also the right to transmit such values through public support for religious education.

*Kiryas Joel’s* version of a godly place was surely not Christian. But it did challenge the prevailing secularist vision and the more specific proposition that the government should not provide support to religious groups. The controversy generated by KJ’s public school was part of a larger debate that cut across religious denominations. That debate reflected an ever-widening division—in fact, a culture war—between traditionalists of different religious persuasions and liberal secularists of different religious and nonreligious bents. The *Grumet* case offered an opportunity not only to stage this debate but—possibly—to reverse the balance of power that up until this point had seemed to favor the liberal position. It thus became one of the many theaters in which the national culture war was being waged.

But it also became a theater for a more local culture war within the American Jewish community. Many, indeed most, of the key players in the litigation were Jews. Beyond the Satmar protagonists themselves, Louis Grumet was Jewish; the lawyers who argued the case for Grumet
from the New York State School Association, Jay Worona and Pilar Sokol, were Jewish; George Shebitz, the village’s lawyer, was Jewish; Nathan Lewin, the lawyer hired by the village to represent the school district, was Jewish; superintendent Steve Benardo, who testified for the school district, was Jewish; Michael Sussman, who represented Joseph Waldman, was Jewish; Robert Abrams, New York’s attorney general, who defended Chapter 748 on behalf of the state, was Jewish; Julie Mereson, the lawyer who argued the case for the state before the Supreme Court, was Jewish; Justice Lawrence Kahn, the trial court judge who issued the first ruling striking down Chapter 748, was Jewish; Judge Howard Levine, who dissented from the Appellate Division’s decision to affirm Kahn’s ruling, was Jewish. And so, too, was Judge Judith Kaye, the first woman on New York’s highest court, who wrote the decision in the *Wieder* case, denying the Satmars the right to force the Monroe-Woodbury School District to provide special ed classes at a neutral site.

Alongside these figures who were directly involved in the *Grumet* litigation, there were others who played key roles in bringing the litigation about and shaping its outcome, a high percentage of whom also were Jews. Daniel Alexander, the former superintendent of the Monroe-Woodbury School District whose refusal to accommodate the Satmars’ request for services in Kiryas Joel led to the passage of Chapter 748, was Jewish. Many members of the NYSSBA board, who stood firmly behind Grumet, were Jewish. Curiously enough, even Jay Sekulow, the Brooklyn-born, Long Island–raised lead lawyer for the ACLJ, was a Jew who found Jesus after his family moved to Georgia and then became a Messianic Jew. Together, these men and women represented the full spectrum of political and religious positions occupied by American Jews.

At the far end of that spectrum stood the Satmar Hasidim themselves, defined by their total renunciation of liberal secular values. Closer to this side of the spectrum than his liberal coreligionists, though not nearly as far to the right as the Hasidim, was Nat Lewin, the lawyer whom the Satmars employed to defend the constitutionality of Chapter 748 on behalf of the school district. A top attorney and Orthodox Jew himself, Lewin was well known for his advocacy of Jewish causes,
especially Orthodox and ultra-Orthodox ones. Among the many cases he had already argued before the Supreme Court was the "menorah case," in which he represented Chabad, the Lubavitch Hasidic movement, and successfully persuaded the Court to uphold the constitutionality of a public holiday display that included a menorah alongside a Christmas tree.\(^{119}\) He also argued the "yarmulke case," in which a Jewish officer in the air force sought an exemption from a military regulation forbidding the wearing of head coverings while in uniform.\(^{120}\) In addition, Lewin had represented the largely Satmar Hasidic community in Williamsburg in a redistricting case, arguing (unsuccessfully) that the use of racial criteria to correct invidious discrimination against nonwhites was unconstitutional.\(^{121}\)

Lewin's career was a dazzling example of the success of Modern Orthodoxy, with its goal of synthesizing strict observance of Jewish law with full participation in the modern world. Born in Poland, Lewin escaped the Nazis with his family and arrived in New York in 1941. He grew up in the leading Modern Orthodox institutions of New York, excelling at Yeshiva University High School for Boys and Yeshiva College, where he graduated summa cum laude. From there, he went on to become a star student at Harvard Law School, where he befriended an Italian American classmate by the name of Antonin Scalia. When Scalia died, Lewin wrote a eulogy for Scalia titled "The Supreme Court's Jewish Gentile," in which he recalled how the two had bonded as editors on the *Harvard Law Review*. Averring that "we seemed to share identical views on church-state issues," Lewin said the only thing they ever disagreed over when they were students in the early 1960s was how the Court should decide the cases challenging the Sunday Closing Laws that were then being litigated.\(^{122}\) In contrast to Lewin, Scalia was of the view that requiring everyone, including Saturday Sabbath observers, to adhere to Sunday Closing Laws was perfectly constitutional.

After graduating from Harvard, Lewin clerked for Justice Harlan and served as an assistant to solicitors general Archibald Cox and Thurgood Marshall before working in the Civil Rights Division of the Department of Justice. He then went on to an illustrious career as a Washington lawyer. Throughout it all, he maintained his steadfast commitment to
Orthodoxy and took on pro bono cases supporting traditionally obser-
vant Jews. It made perfect sense, then, for Abe Wieder to approach
Lewin at the beginning of the Grumet litigation to ask him to represent
Kiryas Joel. When Lewin accepted the invitation, he had no expecta-
tion that the case would make its way to the Supreme Court. But he saw
the assignment as falling “squarely within what I had been doing before.”
That is, he was “representing a religious Orthodox community in litiga-
tion that tested their ability to carry out a function, at public expense,
that they thought was necessary.”

If Nat Lewin—hailed as Orthodox Jews’ “foremost advocate on legal
and legislative issues”—was the perfect pick to represent the Satmars,
he was also the perfect foil to Louis Grumet, who occupied the opposite
pole of the American Jewish political spectrum with regard to his atti-
tudes toward religion as well as his political attitudes. Married to a
gentile, Grumet had raised three daughters in a completely secular
home, “[telling,] them they could make up their own minds” about what
to believe. He himself was raised in West Virginia, in an observant
Jewish household, by parents who were both immigrants from Eastern
Europe. But he cast off his family’s traditional religious practices at the
same time that his high school was undergoing desegregation. As a teen-
ager, he formed an intense identification with the experience of African
Americans, based on his own sense of himself as an outsider. To Jews
like Grumet who came of age in the 1950s and 1960s, secularism and
liberalism were very much of a piece. Both pointed in the direction of
integration into a common democratic culture in which differences of
race, creed, and color would fade in importance.

Many American Jews of Grumet’s generation and slightly older not
only subscribed to this “liberal consensus” but had played an active role
in creating and promoting it. In the most renowned instance, Jews
were prominently involved in the civil rights movement. Less well
known is the involvement of Jews in crafting the legal doctrines that
articulated the legal secularist theory of religious liberty, according to
which religion belongs in the private realm. Beginning in the late 1940s
and continuing in the early 1960s, Jewish constitutional lawyers assumed
a leading role in articulating the rationales for the “strict separationist”
position, of which *Lemon* was the apotheosis, demanding that a strict separation between religion and state be maintained.\textsuperscript{129}

Foremost among these Jewish lawyers was Leo Pfeffer, the longtime head of the American Jewish Congress. Although he was born in Hungary (the home country of Satmar Hasidism as well) and was a resident of Goshen (a mile away from Kiryas Joel), Pfeffer was as far away from the Satmars culturally as a Jew could be. A self-described “secular humanist,” who became the AJ Congress’s legal adviser in 1945, he was widely acknowledged as the dominant force in church-state litigation throughout the 1950s and 1960s. He retained that position of influence into the 1970s, when *Lemon v. Kurtzman*, which he essentially crafted, was handed down.\textsuperscript{130} Pfeffer had been a source of controversy in the internal politics of the American Jewish community for years, owing chiefly to his role in the school prayer cases of the early 1960s and his subsequent role in developing and applying the *Lemon* doctrine. Prior to the school prayer decisions, which held that prayer and devotional Bible reading in public schools violated the Establishment Clause, the American Jewish community had been united in its support for the separationist doctrines that Pfeffer was advancing on behalf of the AJ Congress, along with the ADL and the AJ Committee.\textsuperscript{131} His belief that “a secular state would allow private religion to flourish” and that the removal of religion from the public sphere would “promote the integrity of the public school system” was, for a time, the consensus position of the American Jewish communal establishment.\textsuperscript{132}

But the school prayer decisions of the early 1960s divided the American Jewish community much as they divided Protestant and Catholic denominations, though not for the same reason. For Jews, the concern was not to maintain the practices of reciting Christian prayers and Bible readings but rather to avoid blame for ending those practices.\textsuperscript{133} Even Pfeffer thought it unwise for his organization to participate in *Engel v. Vitale*, the case that ended school prayer in 1962. He sought to dissuade the ACLU from bringing the case. But the ACLU decided to forge ahead. At that point, Pfeffer decided to initiate what he hoped would be a more palatable companion case. His aim was to underscore that removing public support from religious schools was good for religion and
therefore should be supported by people of faith as well as secularists. But from that moment on, a rift emerged in the American Jewish community, with the majority siding with Pfeffer's liberal position, but a growing minority rejecting it in favor of a conservative stance.

The school prayer decisions occasioned a clear-cut break. Laura Gifford and Daniel Williams recount in The Right Side of the Sixties: “After years of falling in line with the liberal civic agencies on constitutional matters, the chief Orthodox groups dissociated themselves from the litigation and amicus briefs generated by Pfeffer.”134 For the rest of his life, Pfeffer would claim that “the Orthodox consider me the worst enemy they've had since Haman in the Purim story.”135

In 1964, the Union of Orthodox Jewish Congregations of America, known as the Orthodox Union, formed a new Jewish legal advocacy group called the National Jewish Commission on Law and Public Affairs, better known as COLPA, which was specifically dedicated to combating Pfeffer's brand of church-state jurisprudence. While Pfeffer was busy assisting the ACLU, the Orthodox founders of COLPA were forging a new alliance with Christians who objected to the removal of religion from the public schools. The Jews who created COLPA maintained that the First Amendment guarantees were “meant to protect the wisdom of the devout over the impulses of the licentious” and that the Constitution should be interpreted “to honor God's law.”136 Its chief objective was to counter the forces of secular humanism that its supporters believed were taking over the public schools by persuading the Court that state funding of religious schools was not an establishment of religion. The attorney hired to advance this position was a recent graduate of Harvard Law School: Nat Lewin.137

By the time that Kiryas Joel School District v. Grumet was being litigated in the 1990s, Nat Lewin and Leo Pfeffer had been squaring off for decades. But while Lewin was still in his prime, Pfeffer was then entering his eighties and no longer actively engaged in litigation. Moreover, the doctrine of strict separationism for which he had tirelessly advocated no longer held sway. The Supreme Court's decision in Lamb's Chapel, handed down on June 7, 1993, initiated the process of dismantling what could fairly be called the Pfeffer doctrine. Just three days
before that pivotal decision was announced, Leo Pfeffer died at the age of eighty-three of congestive heart failure.\textsuperscript{138} Two weeks later, the Supreme Court handed the foes of separationism another victory with the decision in \textit{Zobrest}, the case authorizing the provision of a Sign language interpreter to a Catholic school student.

It was a supreme irony—though perhaps an inevitable development in the dialectics of American Jewish culture—that the process of dismantling Pfeffer's jurisprudence was being led not only by Nat Lewin, but even more aggressively by Jay Sekulow, whose Messianic Judaism fused Jewish belief and Christian evangelicalism. Sekulow's role at the helm of the conservative Christian legal movement symbolized the complex relations between Jewish and Christian religious conservatives. Notwithstanding their profound theological disagreements, chiefly over the status of Jesus, Jewish and Christian conservatives increasingly shared a common religious language and political agenda, beginning with the goal of getting the Court to reject the interpretations of the First Amendment favored by liberal civil rights groups such as the AJ Congress and the ACLU.

In July, a month after the Supreme Court handed down its \textit{Lamb's Chapel} and \textit{Zobrest} decisions, signaling its receptivity to conservative arguments against strict separation, New York's high court moved in the opposite direction. It issued a decision in the \textit{Grumet} case, applying the \textit{Lemon} doctrine to support its conclusion that Chapter 748 was unconstitutional. Leo Pfeffer was no longer around, but Lou Grumet was. A man very much in the model of Pfeffer, he was determined to defend strict separationism on behalf of that large swath of the American population, both Jewish and non-Jewish, that still adhered to the erstwhile "liberal consensus" in favor of a separation of church and state and devoted to the ideal of the public school as the site of integration into a common, democratic, and secular culture.

But if Grumet was the living embodiment of that brand of liberalism, KJ school superintendent Steve Benardo was a sign of its internal contradictions. A New York Jew of Sephardic heritage, Benardo shared Grumet's general outlook. When relating his involvement with KJ, he would always ask: "How did a New York liberal end up being the super of KJ?"\textsuperscript{139} The irony embodied in the question clearly tickled Benardo.
But the answer he gave to this question tracked not only the change of attitude that he underwent, but the splintering that liberalism itself was undergoing in the 1980s and 1990s. For much of his career, Benardo subscribed to the belief that the mission of the public schools was to serve diverse communities and integrate them into a common civic culture. But after becoming the “super of KJ” and participating in its legal defense, he came to see the Satmars’ claim for accommodation as “the ultimate liberal issue.”

It made sense that a proponent of bilingual and special education would see the right to be educated in a separate environment as a liberal claim. As we have seen, disability rights advocates were at the forefront of contesting the hegemony of the “sameness model,” according to which the liberal principle of equality requires that every individual be treated the same as every other. In its stead, they argued for a difference model of equality, according to which equality requires recognizing differences and accommodating them. This was a position that stood in tension with the regnant idea of “mainstreaming,” which called for children with special needs to be put in the same environment as everybody else—a clear application of the sameness model of equality. The difference model of disability rights rests on the recognition that some differences are so profound that children need to be put in a separate environment. Benardo readily transferred the logic of accommodating difference through separation to the cultural and linguistic differences that separate ethnic and religious groups from one another. The disability rights movement was thus an important factor in contributing to the ethos of difference that came to be embraced widely in the 1990s, to the benefit of Kiryas Joel.

Indeed, this new language allowed supporters of KJ to describe religious differences as cultural differences and thereby maintain that they were not asking the state to support a group based on religious grounds. This had the effect of fusing together disparate threads into a single argument: a new religious conservatism aimed at overcoming strict separation, the new language of multiculturalism aimed at achieving a “politics of recognition,” otherwise known as identity politics, and the new disability rights movement aiming at accommodating special needs.
CHAPTER 5

These were the kinds of claims that Lewin put forth in Grumet. In good lawyerly fashion, he argued that (1) the KJ School District was not a religious accommodation, but rather a cultural one, and (2) if it were a religious accommodation, it was constitutionally permissible if not constitutionally required. This two-pronged argument reflected the logic of the difference model, which, by the 1980s and 1990s, was being embraced with equal vigor by liberals and religious conservatives (even if some liberals had qualms). In fact, liberals could be even more expansive in their embrace of the difference model than conservatives given their openness to the project of multiculturalism and its goal of redressing racial and gender bias and exclusion by recognizing difference.

Liberalism itself was fracturing. Some of its proudest adepts—to wit, Lou Grumet—expressed ambivalence about multiculturalism. Others, such as Steve Benardo, supported a group's right to cultural difference. For the latter group, the ideal of integration was no longer possible or even desirable.

A prime example of this change of sensibility was Michael Sussman, the lawyer who represented KJ's dissidents. He represented a generation that came of age in the 1970s. Like Grumet, and like so many Jews born in the decades between the 1930s and the 1970s, Sussman was deeply imprinted by the American struggle for racial equality and inspired by the leaders of the movement for civil rights. But whereas Sussman had an instinctual affinity for the project of integration, he also had an understanding that the time for that ideal may have passed. As the lawyer for the NAACP who led the fight to end housing and school discrimination in Yonkers, he experienced firsthand the disenchantment with the pursuit of integration expressed by most of his African American colleagues and clients. He understood their fatigue and frustration, even as he personally felt duty bound to honor the principle that racial segregation is a violation of the principle of racial equality. He pursued the project of racial integration in the Yonkers litigation, but he recognized that it had become passé.

Sussman's sympathetic understanding of the Black community's turn away from desegregation was one manifestation of the changes that white liberals, and Jewish liberals in particular, were undergoing. The
work he ended up doing for the dissidents in KJ was another. Sussman saw his work for the dissidents as part and parcel of the larger theory of minority rights and structural discrimination that had animated his work against race discrimination in Yonkers. It was not lost on him that his clients in KJ wanted more, not less, separation from the outside world and less, not more, secularism than even the mainstream Satmar leaders countenanced. His clients were hyper-Satmars, more Satmar by their own estimate than the living Rebbe. But he nonetheless viewed them as a victimized minority being subjected to systemic forms of discrimination. The fact that Sussman saw his support for their cause as an extension of his liberal commitments exemplified the contradictory ways that liberalism was being interpreted and applied in Jewish-American circles and in the broader American political scene.

These fractures within liberalism were taking place under the pressure of an even larger struggle between progressive and conservative forces in American political culture. As American politics grew more polarized, there were very few participants in the KJ litigation who did not occupy one pole of the political spectrum or the other. Those who came closest to the middle, or perhaps the center-left, were Grumet’s lawyers. Jay Worona and Pilar Sokol were both young Jewish attorneys who had only been working at the NYSSBA for a few years when the litigation started. Born in the late 1950s and early 1960s, theirs was a generation sufficiently removed from the Jewish immigration experience that, for them, integration into the mainstream of America was a given. As a child, Worona attended the Conservative synagogue in Poughkeepsie with his family. After graduating from Albany Law School, he joined a Conservative synagogue there, as did Sokol, who was a member of the same Conservative synagogue attended by Robert Abrams, New York’s attorney general. Over the course of the decade that they were fighting on opposite sides of the KJ case, Sokol and Abrams met regularly at their shul.

It was Worona, then in his thirties, who worked on the case from start to finish and served as Grumet’s lead lawyer, facing off against the far more experienced Lewin, as the case made its way to the Supreme Court. Worona was Grumet’s protégé, or at least Grumet liked to see him that
way. He regarded his charge as “a young guy with all this adrenaline,” possessing both “a lot of insecurity” and a lot of “raw intelligence.”

Worona was certainly a far more modest type than the rest of the cast of characters in the drama (as, apparently, is Sokol, who did not respond to interview requests). In his interviews, Worona frequently used the word “self-deprecating” to describe himself, and equally often condemned “arrogance” as a personality trait, without ever naming whom he had in mind.145 But if he was less confident, experienced and creden- tialed than the other lawyers involved in the litigation, he was the one who had the prescience to see that Leo Pfeffer’s doctrine of strict separ- rationism, favored by Grumet, was not going to save the day. Worona keenly sensed that the political winds were changing and the days of strict separationism were over. Instead of arguing that the purpose of the Chapter 748 was religious, he proposed that the legal team should attack the constitutionality of Chapter 748 on different grounds, namely, that it was a violation of the Establishment Clause to “single out” a reli- gious community and bestow upon it a benefit that other people and groups did not receive. Grumet fought him tooth and nail, but in the end Worona prevailed, both in his debate with Grumet and in the U.S. Supreme Court itself.

It was a remarkable triumph for such a green lawyer, all the more so given that the more seasoned lawyers who headed the liberal civil rights organizations did their best to elbow Worona aside when it came time to appear before the Supreme Court. In his memoir, Grumet replays the scene over who would argue the case. The discussion took place at the National Education Association’s headquarters in Washington, D.C., shortly before the Supreme Court was scheduled to hear the case. Gath- ered together to confer about the case were all of the lawyers who had filed briefs in support of Grumet’s position, both from his own team and from allied groups. As Grumet recalls it, “All the amici are in the room and we’re talking about a whole group of very bright, very ambitious, Ivy League lawyers. And Jay is making his presentations and Jay leaves the room to go to the bathroom. At which point they all say to me, you can’t let him handle the case. I can handle the case. And of course, everyone was I.”
As he recalled it, Grumet "looked up and said, 'he's handled this four times in court so far, and he won in the New York Court of Appeals, which is not chopped liver. And he's lived this case.'" Then Grumet added the kicker: "You guys don't understand. He hasn't been paid for this." Indeed, after the trial court ruled the NYSSBA lacked standing, it was no longer permissible for its legal staff to work on the case. Ever since then, Worona—later joined by Sokol—had been working on the case gratis, "doing this at night basically. And weekends, putting other stuff aside." According to Grumet, the assembled lawyers responded to his explanation of why Worona deserved to argue the case by telling him (in his paraphrase): "You're going to destroy the First Amendment. You don't understand. The reason this case is coming up has nothing to do with the Hasids and has everything to do with the Lemon test. And that's the only reason they're taking this case." But Grumet argued forcefully for his protégé, and by the time he returned to the room, it was settled: Worona would argue the case.\textsuperscript{146}

One more event occurred before the day of the oral argument, of limited significance at the time, but notable because it involved an individual who later would assume the position of highest judicial authority. As was customary, a "moot court" had been arranged to help Worona practice his courtroom performance. The lawyer brought in to role-play the Supreme Court justices was a young attorney who had clerked for Chief Justice Rehnquist in 1980 and then served as a special assistant to the attorney general in the Reagan administration before joining the Washington firm of Hogan and Hartson, which was hosting the moot. An early product of the conservative legal movement, that young attorney who assisted the Grumet legal team in preparing for oral argument was John Roberts.\textsuperscript{147} Eleven years later, he replaced William Rehnquist as chief justice of the Supreme Court.

On March 30, 1994, the long-awaited day arrived. The scene at the Supreme Court was unlike any other the nation had ever seen. And the nation was watching. The courtroom was packed as usual. But the Satmars who filled the benches made for an unusual sight. The Rebbe (Moshe), the KJ Rov (Aaron), KJ's mayor (Leibish Lefkowitz), and Abe Wieder all were present, along with other KJ officeholders and lay
leaders. Representing the school district were Superintendent Benardo and Mrs. Silberstein. Waldman had, of course, not been invited to be part of the village entourage. But thanks to the alternative newspaper he had founded to serve as a voice for the dissidents, he managed to wrangle a press pass. Standing outside the courthouse were dozens of dissidents, men in traditional garb, with young boys at their sides, bearing placards with handwritten statements in English such as “Faith and Torah Are Not for Sale,” “Jews Resist Secularization,” and “Judaism and Secularism [sic] Are Extreme Opposites.” Grumet, of course, was in the courtroom and had brought his daughter and wife as guests. Worona had brought his parents and was seated near the podium alongside his co-counsel, Sokol. On the other side of the podium were Nat Lewin, Lawrence Reich, a lawyer who had been hired to represent the Monroe-Woodbury School District, and Julie Mereson, an assistant attorney general, who was representing New York State.

Each side made its arguments and held its own. Justice Sandra Day O’Connor led the questioning by asking why the law took the form of special legislation, which applied to only one community, rather than being a neutral law of general application. Justice Anthony Kennedy asked if it was “fair to say that governmental power was transferred here to a geographic entity based on the religious beliefs and practices of residents,” a suggestion Lewin batted away. According to him, the statute did not draw lines on the basis of religion but rather conferred the power to form a school district on residents of the village irrespective of their religion, meaning that, in principle, anybody could buy or rent in the village. A number of the justices challenged these assertions, including Souter and Kennedy, who expressed doubt that the lines around the district had not been drawn on the basis of religion, even if that was not made explicit in the text of the statute. But it was Ruth Bader Ginsburg, then the sole Jewish member of the Court, who dominated the oral argument, speaking even more than the famously garrulous Antonin Scalia, although she had joined the Court only six and a half months earlier.

Like Souter and Kennedy, Ginsburg questioned whether the coinciding of municipal lines with religious affiliation was a mere happenstance.
Expressing her skepticism, she queried both Lewin and Worona about what would happen "if a religious body, say, the board of the synagogue" were given the power to run the school board. In response to Lewin's insistence that KJ's homogeneity was the product of private choice, she asked if it were true that Satmars were free to choose to sell to outsiders, pointing to the allegations that properties in KJ were subject to privately imposed covenants. Justice Scalia, by contrast, displayed considerably more sympathy for the Satmars, as did Chief Justice Rehnquist, who likened the Satmars' situation to that of "a large group of Roman Catholics [who] lived close together in New York State, and they decide they would like a separate school district," a scenario that was presumably perfectly constitutional. Both Rehnquist and Scalia indicated their support for a broad principle of cultural accommodation and invited (or in the case of Worona and Mereson, challenged) the lawyers to distinguish the "purely cultural needs" of a religious group from needs that are religious in nature. And Justice Scalia went a step further, drawing out the broader implications of the issue that made the Satmar village an object of such interest to Christian religious traditionalists. Making the culture war framing plain, he asked Worona to deal with the hypothetical situation of "a community divided by railroad tracks," one side of which is "a very swinging, modern-type crowd, and they like avant-garde education and all that," while "the other side of the tracks, influenced by a reaction to modernity, feminist aversion to obscenity and so forth, want old-fashioned education." Scalia was well on his way toward rehabilitating his reputation as a strong defender of religious liberty and traditionalism, in the wake of the debacle of his 1990 decision. Returning to this scenario, his final words at the oral argument were: "It's like a parent in the hypothetical I gave you who wants her child to have sex education and seeks permission from the school district on the one side of the tracks to send the child to the school district on the other side. What's so wrong about that?"

Scalia and the chief justice had clearly telegraphed how they would rule. The other justices, however, were harder to read. From the questions they had posed, it was anyone's guess how the Court would rule. Over the next three months, suspense continued to build, fostered by
the media. Indeed, while Americans paid scant attention to most Supreme Court cases, Kiryas Joel had been turned into a national media spectacle, a phenomenon that began with the 60 Minutes story broadcast before the Supreme Court argument and now continued as reporters rushed to interview the Satmars and their lawyers on the courthouse steps. Flashing on the frock-coated, bearded Hasidim, the news cameras captured both the village leaders and the village dissidents, which they clearly had trouble distinguishing. Joseph Waldman had little difficulty grabbing the microphone in between dignified speeches delivered by Abe Wieder and Malka Silberstein. Their shared Yiddish accents, rarely heard on national TV, were yet another reminder to the outside world of the otherworldliness of the Satmars. Grumet cut an equally striking figure, sporting one of his trademark canes. As the parade of participants flitted by, it was hard to say who was the more quixotic, Grumet or Waldman, and who was the more likely to succeed in persuading the Court, Worona or Lewin.

What was clear was that through the litigation, the Satmars had become even more of an American cultural phenomenon. Actually, they had been an American phenomenon all along, exemplifying the long history of tolerance for religious subgroups in the United States. But now they had become a phenomenon of national renown, exhibiting to the country the contradictory strands of its political and religious culture. Even as they seemed to the nation to be strange and alien, they were serving as a canvas onto which the ambiguities and ambivalences of American politics and collective identity were splashed. At the very same moment, the Satmars were using the American political and legal systems as tools to defend their separatist institutions and affirm their right to withdraw from the world. It was a perfectly symbiotic relationship.