

May a Shabbat Service Be Taped?

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This paper was adopted on September 13, 1989 by a vote of nine in favor, eleven opposed, and one abstaining (9-11-1). Members voting in favor: Rabbis Ben Zion Bergman, Elliot N. Dorff, Richard Eisenberg, Dov Peretz Elkins, Arnold M. Goodman, David H. Lincoln, Lionel E. Moses, Seymour J. Rosenbloom, Gordon Tucker. Members voting in opposition: Rabbis Amy Eilberg, Jerome M. Epstein, David M. Feldman, Ezra Finkelstein, Howard Handler, Herbert Mandl, Mayer E. Rabinowitz, Avram I. Reisner, Joel Roth, Morris M. Shapiro, Israel N. Silverman. Member abstaining: Rabbi Kassel Abelson

A concurring opinion was written by Rabbi Elliot N. Dorff and Rabbi Gordon Tucker, and Rabbi Howard Handler added some observations.

שאלה

May a Shabbat service be audio-taped or video-taped?

תשובה

The first instance of the question of tape recording on the Shabbat occurred in a paper, on a question posed in 1954 to the Law Committee by Rabbi Sidney Greenberg. On March 23, 1954, the answer was, "The Committee has permitted use of electricity on Shabbat only for illumination and for Sabbath delight. There is מלאכה (prohibited labor) involved and it is not calculated directly to add to the Shabbat beauty."¹

The Agus Paper

The matter was next discussed on March 13, 1956, in a paper presented by the late Rabbi Jacob Agus, then a member of the Law Committee. He called for a תקנה (decree) permitting taping of a portion of the divine service, provided that the machine was prepared by a non-Jew

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

and carried out without any conspicuous action being visible to the congregation.²

His conclusion was based on the following principles:

1. Tape-recording is not מלאכה. Even if it (tape-recording) were regarded as a form of כתיבה (writing), it is not performed in the usual way (כדרך עשייתו).³

2. The rabbis' definition of מלאכה reflects categories of work associated with the building of the משכן (tabernacle). These archaic terms were specifically enumerated in order to allow latitude to future generations, should new categories develop.⁴

3. Those who prohibit operating any electrical device, such as a microphone, on Shabbat would naturally extend the same prohibition to the use of a tape-recorder. Since the CJLS had already decided that the manipulation of electric current is not to be considered as a form of kindling of fire, the operation of a tape recorder can only be viewed by us, at most, as an איסור דרבנן (rabbinic prohibition) since it resembles the act of writing.⁵

4. There is a positive value for Judaism in recording a bar mitzvah or similar occasion, since Jewish piety today is not coextensive with a person's life. It is now found in certain strong points of which the bar mitzvah observance is one of the most important. The more this ceremony is recalled at family gatherings, the better it is for Judaism.⁶

At the June 12, 1956, CJLS meeting, Rabbi Agus' ז"ל, paper was discussed. Rabbi Isaac Klein, ז"ל, opposed the Agus position, but not on halakhic grounds. Klein was concerned that taping would transform the service into a performance or a "show." Rabbi Neulander, ז"ל, disagreed on the grounds that nobody "knows or sees" the recording device and hence, as regards the congregation, there is no aspect of performance. Since the recording will bring repeated edification whenever the bar mitzvah listens to it, the CJLS should permit it. Rabbi Judah Nadich agreed. Since the committee was split on the issue, Rabbi Agus suggested that every committee member write an opinion. The collective wisdom could then be coalesced into an appropriate decision.⁷

Regrettably, there is no record of further discussion of Agus' תשובה. Since at that time an opinion of one member sufficed to create a minority opinion, the Agus תשובה was an official minority opinion.

The Papers of David Lincoln and Mayer Rabinowitz

The above discussions dealt with audio-taping. In 1982, with the advent of video-taping, the issue of taping was reintroduced. At the CJLS meeting of December 15, 1982, there was a unanimous decision to

disallow video-taping on Shabbat either by a person or by automatic means. This decision was based on papers prepared by Rabbi David Lincoln and Rabbi Mayer Rabinowitz.

1. Rabbi Lincoln objected on non-halakhic grounds. He was concerned about aesthetics and about the negative input of video-taping upon the ambiance of service.
2. Rabbi Rabinowitz objected on the grounds that taping (video and audio) is a form of כתיבה (writing). He defines כתיבה as any process that creates a permanent record. At the CJLS meeting of November 11, 1984, his paper passed with a vote of 7-7-3.
3. Although their rationales differed, the conclusions were the same. Rather than adopt either paper, the committee established the standard of disallowing video-taping on Shabbat or Yom Tov either by a person or by automatic means. This motion was passed unanimously.⁸

There is no clear CJLS ruling as to whether taping (video and audio) is כתיבה and, hence, halakhically prohibited. This issue, addressed in a paper prepared by Rabbi Mayer Rabinowitz and Dvora Weisberg, resulted, as indicated above, in a split decision.

Reconsidering the Agus Paper

The difference in opinion whether video-taping should be prohibited for halakhic reasons or for “aesthetic” reasons has created confusion. I submit that our position on this issue be studied in the context of the 1954 Agus paper. The issues before us are:

1. Is any technique which creates a permanent record a form of כתיבה, even if this technique were unknown in biblical or rabbinic times?
2. Should video-taping be permitted to enable services to be brought into the homes of shut-ins, into hospital rooms, and into Jewish nursing homes?
3. Should a distinction be made between audio and video-taping? Should the same aesthetic standard apply to both?

The Physics of Tape-Recording

The process is similar for both audio and video-taping. A thin oxide film covers the tape’s surface in which there is a magnetic field. This can best be understood as a collection of tiny bar magnets randomly strewn within the oxide film. The voice produces sound waves through the electrical impulse which flows from the microphone through an electrical coil which, in turn, diverts the current into the magnetic field (causing

the re-ordering of the magnets). No marks or grooves (visible or invisible) are made on the tape; it remains free of even the most minute bump. Public address systems also depend on electrical impulses. The flow is from the voice to the microphone to an electric coil which is suspended in the loudspeaker's electric coil; it, in turn, energizes a diaphragm. The magnification of sound is caused by the various movements of the diaphragm.⁹

Is Taping to Be Considered כתיבה?

Some halakhic interpretations hold that taping is כתיבה, defining כתיבה as the process of creating a permanent record – regardless of the method of creating the record. It seems to make no difference whether the כתיבה is כדרך עשיתון (the normal manner) or not.

Yet, utilizing the “reasonable person” definition, כתיבה or writing is a process of placing words or images on a surface by manipulating instruments with one's hands and fingers. These instruments have changed through the ages as have the writing surfaces and the symbols (from hieroglyphics to letters). We have evolved from stone engravings to parchments and quill, to pen and paper, to the typewriter, to the computer. What is common to every process is that hand and fingers create upon a surface symbols which are apparent to the naked eye.

While taping does create a permanent record, it does not fall under the reasonable definition of כתיבה. The Conservative Movement is committed to halakhah, but it perceives an evolving halakhic process, enhancing the quality of Jewish life and broadening life's experiences by embracing and integrating tradition and change. The increasing number of Conservative colleagues who accept taping on Shabbat seems to point to a trend in the Conservative Movement to adopt a “reasonable person's” definition of כתיבה.

Reasons Many Rabbis Permit Taping

1. Providing a tape of Shabbat, or ḥag, or Yamim Noraim services to those hospitalized or confined to their homes or in nursing homes is an important mitzvah. The Law Committee's recent decision to approve closed circuit TV to enable synagogues to meet the need of limited seating facilities should also be extended to permit the taping of services to help those who cannot be present in the synagogue to have a sense of Shabbat and Yom Tov in their homes, or in health care facilities.
2. All too often family members are absent from significant events due to chronic illness, temporary incapacity, or the difficulty of undertaking a long trip (i.e. grandparents living in Israel). For these family members, a

tape enables those not physically present to share in the excitement of the event.

3. Audio tapes and video tapes are lasting records of significant events. Such tapes enable us to relive significant life experiences. Where these are Jewish life experiences, tapes can have a lasting and positive impact upon Jewishness. This argument was advanced by Rabbi Agus in 1954, and thirty-five years later with the continuing development of technology, his argument is even more cogent.

Restrictions on the Taping Process

In his 1954 paper, Rabbi Agus issued a clear caveat: The taping process was to be restricted. “The machine was to be prepared by a non-Jew and carried out without any conspicuous action being visible to the congregation.”

The recorder should be either connected to a timer or placed in operation by a non-Jewish staff person (usually the maintenance person). When the service begins, he/she would place the recorder in operation just as he/she puts on the lights and the heating/air conditioning systems. In either case, everything said or enacted will be recorded.

The issue of energizing the electrical impulses for taping is no more or less a concern than the impact upon the heating and air conditioning with the arrival or departure of each individual from the sanctuary. Each entering person adds to the warmth of a room and then each departing person contributes to its cooling. When this is transmitted to the thermostat, it energizes the heating/air conditioning equipment.

Following the concept of שינוי (variation), the recording equipment should be hidden from view. For video taping, the camera should be as inconspicuous as possible and remain stationary and unmanned. The camera, through its wide angle lens, will record everything that occurs on the pulpit, and the family can edit the resulting tape as it sees fit. Such a procedure will differentiate audio taping and video taping from what can be done during חול (weekdays).

Distinguishing Video-Taping from Audio-Taping

While there is no difference in the physics of audio-recording or video-taping, video-taping, even with a stationary camera, raises some specific concerns.

1. *The invasion of privacy.* There are people who object to being videotaped while in prayer. Congregations that desire to avail themselves

of the הטר (permission) to video-tape should explore this issue very carefully.

2. *The pressure for a professional product.* The stationary unmanned camera will not result in a professional product. Simḥa families may well pressure to have the video done by a professional videographer. This would inevitably interfere with the service and detract from its sanctity. Even if this concern could be removed, we could not permit a Jewish videographer to work in the synagogue on Shabbat. If we restricted the jobs to Gentiles, we would be discriminating against Jews.

3. *The “theatrics” factor.* While videotaping is a common occurrence today, with virtually every middle-class family owning a camcorder, there is still a tendency on the part of people to play to the camera. Unlike the microphone for an audio-recorder, the video camera, regardless of how inconspicuous and stationary we try to make it, it is still an obvious presence.

CONCLUSION

Following a “reasonable person” definition, taping is not כתיבה, and we accept Agus’ 1954 call for a תקנה permitting audio-taping (which can be effected with total concealment) on Shabbat and Yom Tov consistent with the restrictions enumerated above.

Video-taping, because of the additional concerns it raises, is left to the discretion of the congregational rabbi, who, as מרא דאתרא, can best determine whether these concerns pose valid reasons to prohibit it on Shabbat and Yom Tov.

NOTES

1. CJLS minutes, March 23, 1954, p. 3.
2. Jacob Agus, “Recording a Service on Shabbat,” CJLS minority opinion, 1956, p.1.
3. *ibid.* p. 1.
4. *ibid.* p. 2.
5. *ibid.* p. 2.
6. *ibid.* p. 3.
7. CJLS minutes, June 12, 1956, p. 4.
8. CJLS minutes, November 11, 1984.
9. Conversation with George Petronius, Professor of Physics, Georgia Tech.