

OH 55:4.2025b

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*This paper was submitted, in April 2025, as a concurrence to "A Minyan is Constituted by Ten," by Rabbi David J. Fine. Dissenting and concurring papers are not official positions of the CJLS.*

I voted in favor of Rabbi Fine's paper because I do believe it is a correct ruling, that generally speaking, you cannot use an inanimate object to make the tenth in a minyan.

However, I would differentiate between *l'khatila* and *b'dievad*. I would never introduce the practice to a congregation, but if it was a long-standing custom before a rabbi arrived, there are grounds to allow it to continue. That is how I ruled when confronted with such a situation in a congregation I served.

There is some evidence that in Geonic times they may have considered six or seven a minyan in Palestine, and after the Shoah some communities (including in Dubrovnik) also resorted to accepting six or seven as constituting a minyan.

I also think perhaps when the Gemara talks about nine which look like ten, it may be saying, "don't be so punctilious." Looks like ten, don't bother counting, lest you end up disappointed.

There are also those who say it's not an inanimate object joining the minyan, but that by opening the ark it is symbolizing God's presence, which is what's joining the minyan.

I share the author's concern that:

By permitting a leniency that was originally intended only as a *she'at dehak* to general practice, we will in essence be lessening the standards of forming a minyan and relieving our communities of the incentive to gather ten for public prayer.

However, I feel that allowing people to recite mourner's kaddish is a pressing need, so what I ruled in the community where this came up was that I would only allow opening the ark for the final mourner's kaddish, but not for other *devarim sh'bekedusha* such as the *Barkhu*, Torah reading, repetition of the Amidah, etc. I wanted to reinforce that ten is not really a minyan, but people do feel a powerful need to say kaddish, and for many that is why they come to minyan, so I wanted to enable people to say kaddish. Failing to do so could discourage some people from coming.

I note that my approach is the opposite of what Mishnah Berurah says is appropriate:

(כד) בשעת הדחק - ר"ל אפילו בלי חומש וכדעת היש מתירין הנ"ל. ודוקא אחד ולא ב' ובלבוש כתב שלא ראה נוהגין לצרפו אפילו בשעת הדחק ובזמנינו נוהגים לצרף קטן ע"י חומש שבידו ומיהו דוקא לשמוע ברכו וקדיש שהוא חיוב אבל קדיש שאחר עלינו לא יאמרו

“...in our times the custom is to join a minor with a *humash* in his hand, and nonetheless only for hearing Barkhu and the Kaddish that is obligatory, but the Kaddish after Aleinu is not said (because it is not obligatory).”

The more often that people come together to form a minyan and do not succeed, the more discouraged they get and the less likely they will be to continue making the effort. Allowing communities that already have the custom to continue with it may help to encourage them to keep making the effort to show up to form a minyan. It also reduces any implied criticism that a previous colleague was doing something contrary to halakhah.