

Was US student's death negligent homicide?

Ariel Newman, here for gap-year program, died in 2014 of heat stroke during scorching desert hike

By YONAH JEREMY BOB

When does a tragedy evolve from being a terrible accident to something criminal?

That is the central question being asked to determine whether the now defunct Mechinat Yeud, and some of its employees, were responsible for negligently causing the death of American student Ariel Newman, 18, during a hike in the Judean Desert on September 10, 2014.

Yeud, based in Kibbutz Migdal Oz in Gush Etzion, was a program for Modern Orthodox Americans to spend a gap year between high school and college studying traditional Jewish texts in a yeshiva, but unlike many other such programs, it had a significant hiking component.

However, only eight days into his gap year in Israel, Ariel collapsed and died on the second day of a long trek in the Judean Desert in conditions of extreme heat.

A medical report with the cause of death given to Ariel's parents, Mark and Ellen Newman of Great Neck, New York, said he died from exertional heat stroke, along with dehydration.

EHS occurs when someone exerts himself in extreme heat – the temperature on the day of the hike was 35 degrees Celsius (95 degrees Fahrenheit) – causing the body's temperature to rise significantly (Ariel's was at a staggering 43 C (109 F) when he died) and potentially leading to widespread organ failure and death.

The Newmans tried to push an investigation forward to see whether Yeud's hike-tour guide who was with Ariel, Josh Ettinger, and Rabbi Yaakov Shapira, the head of the yeshiva who approved the hike, which the Newmans claim itself was inherently danger-

ous, had committed negligent homicide.

Still, five months later, in February 2015, they felt they were getting nowhere. After losing patience with the red tape, they hired Jerusalem lawyer A. Amos Fried, who began to engage more aggressively with the police.

Fried told *The Jerusalem Post* a negligent homicide case against Shapira and Ettinger is a slam dunk.

"The route that Ettinger decided on couldn't have been in a worse place for purposes of evacuation," Fried said. Furthermore, Fried said Ettinger and Shapira should not have approved an advanced desert hike on such a dangerously hot day with beginner-hiking tourists who had not yet acclimated to the hot Israeli climate.

He also accused Shapira of being negligent in hiring Ettinger to ensure the hikers' safety when, he said, Ettinger lacked proper certification.

Perhaps most damaging to Ettinger, added Fried, was that Ariel had approached the guide and told him he could not go on and had even fallen asleep from the heat. Still, Ettinger forced him to keep going.

Fried, who corresponded with police and pressed them to take action, described the police as having a lazy attitude toward the case.

Finally, on May 13, 2015, the Arad police called the other hike participants, including Shapira and Ettinger, in for questioning.

Despite what Fried called Yeud's attempt at "brainwashing" the students, documents obtained by the *Post* confirm that other students besides Ariel had significant dehydration difficulties on the hike with some needing medical treatment.

Following the questioning, the police transferred the file to the Southern District Attorney's Office in June 2015 where it was punted around without any progress through January 2016.

A combination of complaints to the Justice Ministry oversight czar's office and a meeting with Justice Minister Ayelet Shaked on March 28, 2016, got the Southern DA's office to finally start looking at the file more seriously, said Fried.

On November 15, 2016, the DA's office closed the case for insufficient evidence, but did not explain why.

A month later, on December 15, Fried appealed to State Attorney Shai Nitran, who responded last week that he would decide the appeal by mid-August.

Why would the Newmans go after Shapira and Ettinger in a criminal negligent homicide claim instead of a civil wrongful-death damages claim, which requires a much lower threshold of proof?

One reason might simply be strategic.

If the Newmans get the police and the prosecution to indict and convict Shapira and Ettinger, they can still file a civil claim later, and 90% of their case will already be proven based on the criminal case with the only issue left being proving damages.

But there is more to it than that. Mark and Ellen Newman told the *Post* they have been devastated not just by their only child's death, but by the haphazard fashion with which they feel the system has handled his case.

Ellen said: "I wouldn't say that it is a cover-up, so much as a cowardliness. There is so much overwhelming evidence... of negligent homicide. The fact that they would



ARIEL NEWMAN stands with his parents, Mark and Ellen Newman, at his graduation ceremony from Yeshiva University High School for Boys in June 2014. (Courtesy)

say 'There is no evidence... it's just not true... a total cowardice'."

"Do they not want to go after our leaders, so as not to hurt the tourist industry – exposing the dirty secret that people die on hikes? No one reports it. There are no statistics. They don't want to shed light on it and I don't think we are the only people this has

happened to. Ariel was not isolated," continued Ellen.

"If you don't have money – we used retirement money to fly back and forth to Israel for meetings – forget it, there is no justice... There is something not kosher about that," she said.

Mark chimed in: "What is the real purpose of our pushing for this? The real purpose

is to make sure, unequivocally, that everyone in the country understands that you can't do whatever you feel like... because there won't be any consequences."

Regarding going for criminal charges as opposed to civil damages, Mark said: "Money is effective in affecting the large companies, but criminal law, if someone is convicted,

it will impact the tour guides themselves, the individuals... It's what really strikes fear in people... and sheer justice demands this, because there is a law called negligent homicide and this fits it to a T."

Mark added: "Their starting point was 'Screw the rules, screw safety, we know what we are doing, we've done it for years.' There is a world of difference between pushing someone and putting people on a death march."

The *Post* attempted several channels to contact Shapira and Ettinger to get a response, including the law office of Eliad Shraga, the lawyers for the Yeud Yeshiva; Rabbi Naftali Rothstein, who accompanied the hike in a vehicle at certain stopping points to drop off lunch and water; as well as former Yeud executive director Shmil Atlas – but received no response or additional contact information.

The police dispute the claims against it, saying it promptly opened an investigation into the tragic death and that the probe was impacted by "the refusal of the family to have an autopsy conducted."

"After eight months, upon receipt of the professional opinion of the state medical-legal center, the classification of the case was changed to a suspicion of negligent homicide, and accordingly, additional investigative activities were undertaken," a police statement said.

The Justice Ministry responded that it was saddened by the "family's feelings" but that the case was complex; required gathering of additional evidence; and ultimately was closed due to insufficient evidence. The ministry's statement also noted that the Newmans' appeal is still pending.

Closure of 'ticking time bomb' ammonia tank in Haifa uncertain

Court delays ruling on Haifa Chemicals appeal

By SHARON UDASIN and LIDAR GRAVE-LAZI

Drama continues to build around the Haifa Bay's "ticking time bomb" ammonia container after the city's local affairs court on Sunday postponed making a decision about the facility's fate.

The court convened for several hours to discuss an appeal filed by the container's proprietor, Haifa Chemicals, regarding a ruling earlier this month to empty the storage tank. After the court delayed the ruling's implementation in order to follow up on the appeal, a decision on the matter was supposed to take place on Sunday.

The increasingly controversial 12,000-ton ammonia processing and storage facility that sits in the Haifa Bay has long been seen by environmentalists and politicians alike as a threat to the region.

The container, which contains all the ammonia imported by Israel, began garnering international attention a year ago when Hezbollah chief Hassan Nasrallah threatened to attack it. While ammonia is a key ingredient in industrial



A HAIFA CHEMICALS ammonia tank is seen in the Haifa Bay area yesterday. (Bar Ratner/Reuters)

refrigeration and fertilizer production, it is also a highly toxic gas once exposed to open air.

"My decision will be given in the coming days," wrote Justice Tamar Sharon-Netaon following the court's session.

Last Wednesday, the Environmental Protection Ministry

had stepped in to ensure the container's shutdown, regardless of the court proceedings.

Slamming Haifa Chemicals for failing to provide suitable alternatives, ministry officials said they would not renew the site's toxins permit when it expires on March 1, but allowing imports for emergency purposes through June 1.

The ongoing court discussions are the result of a Haifa Municipality request following the publication of a report commissioned by the city that the court shut down the facility.

Led by Prof. Ehud Keinan of the Technion-Israel Institute of Technology, the report concluded that an attack on the tank could lead to the deaths of thousands of area residents, while a strike on the ammonia delivery ships could kill hundreds of thousands.

On Sunday morning, before the inconclusive hearing, several thousand concerned residents and environmentalists

protested outside the courthouse.

Meanwhile, students throughout the country and the Haifa area joined the call to shut down the container; the National Student and Youth Council, together with the Haifa district student council, canceled classes in some eight municipalities in the area until noon.

"The ammonia tank is a ticking time bomb. We cannot let this tremendous danger continue to reside in the heart of an area populated with so many residents," Hana Yezadi, head of the National Student Council, said. "Youth in the State of Israel call for the immediate closure of the ammonia tank."

Mor Gilboa, CEO of the Green Coast student movement, praised the protesters and students for their civic participation, saying Haifa area residents "showed up in droves to convey a clear message to the Israeli government that we must get rid of this ticking time

bomb in the Haifa Bay."

Nobel Prize-winning chemist Prof. Dan Shechtman also joined in the fight, describing the infrastructure as "very, very dangerous" in an interview with Israel Radio's Reshet Bet on Sunday morning.

"Ammonia is a toxic substance and we cannot allow the container to remain in the heart of a civilian population while Haifa Chemicals totally disregards the law," he said.

Shechtman, a professor of materials science at the Technion, later told *Haaretz* he was prohibited from speaking during the morning's court discussion despite a three-hour wait at the building.

Like Keinan, Shechtman stressed that even more problematic than the poor and itself are the vessels that deliver the ammonia.

Cabinet again postpones decision on legislation

Sources close to Shaked say coalition chairman bullied cabinet

By UDI SHAHAM

Due to the ongoing rift between Justice Minister Ayelet Shaked and coalition chairman David Bitan, the Ministerial Committee for Legislation on Sunday postponed voting on most bills proposed for the cabinet's support for the second consecutive week.

Sources close to Shaked (Bayit Yehudi) said that, before the weekly meeting, Bitan (Likud) expressed discontent with one of Shaked's advisers who, he claimed, "hung the phone up on him."

The source added that Bitan demanded the adviser be dismissed from his post as coordinator between the committee and the coalition.

During the meeting on Sunday, Tourism Minister Yaniv Levin (Likud) who also is the coordinator between the cabinet and the Knesset, decided to veto all votes on private member's bills (which account for most of the legislation discussed by the ministerial committee) despite an understanding between the coalition and Shaked's office that voting would happen on Sunday.

The source said the Likud runs over everything that comes in its way and that Prime Minister Benjamin Netanyahu is unable to control his people, especially Bitan.

In response to the allegations, Bitan said his arguments with Shaked are in order to promote social legislation for the poor and to oppose what he sees as an offensive by the cabinet against the power of the Knesset.

Bitan added that the proper solution to the situation is an

agreement on a framework for work between the coalition and the Committee for Legislation.

"I will not let the justice minister, as the chairman of the Ministerial Committee for Legislation, harm the Likud, United Torah Judaism, Yisrael Beytenu and Shas," Bitan said in a statement. "It is a fundamental argument on the status of the legislation of the ministerial committee. We should have an agreed-upon procedure of work between the two bodies."

Bitan also addressed the fact that bills are being delayed due to the conflict.

"No damage will be done to social legislation," he said. "Even if voting on a bill is delayed for a week or so, nothing will happen."

Voting on the bill to extend parental leave by one week, for instance, will not happen until the end of this [Knesset] session anyway. If it has waited 68 years, it can wait until we can find the proper framework that will allow us to pass dozens of social bills that the Justice Ministry prevents us from passing for different reasons."

Regarding the allegations by Shaked's advisers, Bitan said he has issues with them but they are not the primary problem and will be dealt with when the other matters are discussed.

Last week, the committee halted its decisions due to a threat by Bitan to whip votes for a bill to which the cabinet objected. Shaked then responded by saying Bitan's moves were destabilizing the delicate relationship between the executive and legislative branches.


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