

The Millie Arbesfeld  
**Midreshet Yom Rishon**

Sunday Morning Learning Program for Women

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*Gedalia's Dilemma:  
Listening to Gossip  
to Prevent Harm:  
When is it  
Permitted?*



Rabbi Michael Broyde

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צום גדליה

**Cases:**

- (1) It is Sunday afternoon at 3:30. Licensed Marriage Counselor calls and recounts the following. Marriage Counselor has been counseling a couple with three children in their very difficult marriage. Ten days ago, at the end of the last counseling session, husband (age 42) announced that he was leaving the marriage and seeking divorce. Wife (age 40) begged, threatened and cajoled him not to leave, and he agreed not to. Sometime this Saturday night or early Sunday morning Husband died in his sleep. Cause is unknown. Wife has set funeral for Monday morning. Police have walked door to door in the neighborhood asking if anyone has any reason to suspect any form of foul play, and have gotten no positive response. Under the law in the state Marriage Counselor is in, a search warrant is needed to compel an autopsy against the wishes of the family. Wife will not give permission for autopsy, citing religious beliefs. Marriage Counselor believes that if he tells the police what he knows, that will be enough to generate probable cause for a warrant to be issued and the autopsy done. This will delay the funeral a day, at a minimum, and also be public knowledge that probable cause was found to order an autopsy. Marriage counselor wants to know if he should, must, may or must not speak to the police.

Is this gossip? What information is known? Is it of benefit? Why? To whom? Would it matter if husband was really really a bad person? Would it matter whether marriage counselor thought wife would never remarry (or would remarry)? Does the wife have a privacy expectation?

- (2) You are a tax lawyer in a firm and a part time shul rabbi, and due to a slip of the tongue by two of your colleagues in a competing firm [one of whom mentioned that Reuven Goldberg had come to his firm as a new client with interesting business, and another of whom asked your advice about a criminal tax matter, saying that the firm rarely does this work, but a new client came in with a serious criminal tax matter and is facing indictment], you suspect that Reuven Goldberg might be facing criminal tax charges. Many members in your shul know Reuven well and you face the following two questions:

- Steven, a congregant in your shul, asks you if “you know anything about Reuven, as Reuven asked Steve to lend Reuven \$50,000 for 30 days?”
- Rachel asked you about setting up Reuven’s daughter with her son. She asked “Rabbi – anything I need to be aware of?”

Is this gossip? What information is really known? Is it of benefit? Why? To whom?

2) רשי (שם)

**(3) תוספי הרא"ש (שם)**

**(4) תוספות (שם)**

## Artscroll Translation of Niddah 61a (5

**This type of speech, – הוא לישנא בישא – Rava said: – אמר רבא, although one should not accept it as truth,<sup>[30]</sup> לקבולי לא מבעי – מיהש ליה מבעי – one should nevertheless be mindful of it.<sup>[32]</sup>**

Having cited the verse, the Baraisa comments on it:<sup>[27]</sup>

The Gemara cites an incident in which a Tanna invoked this principle:

הָנָהוּ בְּנֵי גָלִילָא דְּנִפְקַע עֲלֵיהוּ קָלָא דְּקִטּוּל נִפְשָׁא – There were these Galileans about whom a rumor spread that they killed a person. – אָתָּו לְקַמֵּיָּה דְּרַבִּי טַרְפוֹן – They came before R' Tarfon – אָמְרוּ לֵיהּ לְטַמְרִינָן מִרְּהוּ – and said to him, “The master should hide us from the authorities.” – אָמַר לְהוּ הֵיכִי נִעְבִּיד – He said to them, “What should I do? – אִי לֹא אֶטְמְרִינְכוּ הוּוּ יִתֵּיכּוּ – If I do not hide you, [the authorities] will see you and execute you. – אָמַר – On the other hand, should I hide you? – דְּבָנָן – Why, the Rabbis said: – הָאִי לִישָׁנָא בִּישָׁא – This type of speech, *lashon hara*, – אֲף עַל גַּב דְּלִקְבּוּלִי לֹא מִבְּעֵי – although one should not accept it as truth, – מִיחָשׁ לֵיהּ מִבְּעֵי – one should nevertheless be mindful of it.<sup>[33]</sup> – יוֹלֵוּ אֶתְּוֹן טַמְרוּ נִפְשֵׁיכּוֹן – Rather, you go and hide yourselves.”

The Gemara cites an exposition regarding an incident of speech which resembled *lashon hara* and was heeded, and of the consequences that it had:<sup>[34]</sup>

“וַיֹּאמֶר ה' אֱלֹהֵי מֹשֶׁה אֶל-תִּירָא,, – The Torah states that when Og, the king of Bashan, came to wage war with the Israelites: *Hashem said to Moses, “Do not fear him ...”*<sup>[35]</sup> – מִכִּדִּי – Now, let us see. – סִיחוֹן הוּוּ עוֹג אָחִי הוּוּ – Sichon the king of the Amorites and Og were brothers,<sup>[36]</sup> – דָּאָמַר מִרְּ – for the master said: סִיחוֹן

– *Sichon and Og were the sons of Achiyah bar Shamchazai.*<sup>[37]</sup> – וְעוֹג בְּנֵי אָחִיָּה בְּרִי שְׁמַחְזַאי הוּוּ – What was different about Og that [Moses] feared him, – וְאִי שָׁנָא – and what was different about Sichon that [Moses] did not fear him?<sup>[38]</sup> – אָמַר רַבִּי יוֹחָנָן אָמַר רַבִּי שִׁמּוֹן בֶּן יוֹחֵי – R' Yochanan said in the name of R' Shimon ben Yochai: – מִתְּשׁוּבָתוֹ שֶׁל אוֹתוֹ צָדִיק – From the answer given by Hashem to that righteous one [i.e. Moses],<sup>[39]</sup> – אָמַר יוֹדֵעַ מַה הָיָה

– you can know what was in [Moses'] heart. Moses was afraid because – אָמַר שְׁמָא תַעֲמֹד לוֹ זְכוּת שֶׁל אַבְרָהָם אָבִינוּ – he said, “Perhaps the merit of Abraham our forefather will stand up for him.”<sup>[40]</sup> – שְׁנָאָמַר – For it is stated:<sup>[41]</sup> – וַיָּבֵא, – The escapee came and told Abram, the Ivri, [that Abram's nephew, Lot, was captured].<sup>[42]</sup> – וְאָמַר – And R' Yochanan said: – זֶה עוֹג שֶׁפָּלַט מִדּוֹר הַמְּבּוּל – This [i.e. “the escapee”] is Og, who escaped from the punishment of the Generation of the Flood.<sup>[43]</sup>

32. One should be concerned for the possibility that it might be true and take the necessary precautions to protect himself – and others – from possible harm.

33. And since I must be concerned that perhaps you did kill, it is forbidden for me to save you (*Rashi*).

*Rosh* finds it inconceivable that it would be forbidden to save a Jew on account of a mere rumor. He, therefore, adopts the interpretation first offered by *She'iltos DeRav Achai Gaon* (*Shelach* §129), that R' Tarfon meant to say as follows: Since the Sages said that one must be heedful and take precaution that no harm come his way in the event that the *lashon hara* is true, I must be concerned that you are indeed murderers and take precaution that I not be punished by the authorities for shielding murderers. See also *Tosafos*. [It should be noted that if it would be known with certainty that an individual committed murder, all agree that it is forbidden to save him from being executed by the authorities for his crime (*Chochmas Shlomo* and *Teshuvos Chavos Yair* §146).]

34. See *Tosafos*, cited below, end of note 43.

43. *Tosafos* explain that the Gemara cites this exposition here because the incident involved speech which was similar to *lashon hara*. For, as related in *Bereishis Rabbah* 42:8, Og's true motive in telling Abram about Lot's capture was so that Abram would wage battle with the four kings and be killed, and Og would then marry Abram's widow, Sarah. [It was thus similar to the type of *lashon hara* involving harmful, as opposed to derogatory, speech; see *Rambam, Hil. Dei'os* 7:5.] Nevertheless, Moses feared that the merit of providing a service for Abraham – his bad intentions notwithstanding – would enable Og to defeat the Israelites. Cf. *Gur Aryeh* to *Genesis* 14:13.

25. Scripture (*Jeremiah* Chs. 40 and 41; see also *II Kings* 25:22-25) relates that after the destruction of the First Temple, Nebuchadnezzar appointed Gedaliah ben Achikam to serve as the governor of the Jews who remained in Judah. Yochanan ben Karei'ach warned Gedaliah that Baalis, the king of Ammon, had sent Ishmael ben Nesaniah to assassinate Gedaliah, and asked his permission to kill Ishmael. Gedaliah did not believe Yochanan and forbade him to kill Ishmael. When Ishmael was later invited by Gedaliah to a feast at the governor's court, he assassinated Gedaliah and the other attendees. On the following day, Ishmael slaughtered a group of eighty people who were bemoaning the destruction of the Temple, and threw their corpses into a large pit. According to *Malbim, Jeremiah* 41:4-7, Ishmael's plan was to make it appear as though the group had been killed at the behest of Gedaliah for bemoaning the Temple and not being content with being subservient to Nebuchadnezzar, so that the Jews would then support Ishmael for assassinating Gedaliah.

26. *Jeremiah* 41:9.

27. *Aggados Maharsha*.

28. [See note 25.] That is, he should have heeded what Yochanan was saying and taken proper precautions that would have saved his life and the lives of these people; however, his refusal to allow Yochanan to kill Ishmael was proper [since he had no proof that Ishmael actually intended to assassinate him, other than Yochanan's statement] (*Aggados Maharsha*).

29. Since their massacre was the result of Gedaliah's not taking precaution against Ishmael, he was considered responsible for their deaths.

30. Speech which is derogatory or harmful to another person.

31. Not only is it forbidden to speak *lashon hara*, it is also forbidden to accept *lashon hara* as truth; see *Pesachim* 118a.

**(6) חפץ חיים – הלכות רכילות (ט:א)**

אם אחד רואה שחברו רוצה להשתתף באיזה דבר עם אחד, והוא משער שבודאי יסבב לו על ידי זה ענין רע, צריך להגיד לו כדי להצילו מן הענין הרע ההוא, אך צריך לזה חמשה פרטים שאבארם בסמוך.

**(7) חפץ חיים – הלכות לשון הרע (י:א)**

אם אחד ראה אדם שעשה עולה לחברו, כגון שגזלו או עשקו או הזיקו – בין אם הנגזל והנזק יודעים מזה או לא – או שבישו או שצערה והונה אותו בדברים, ונודע לו בברור שלא השיב לו את הגזלה ולא שלם לו את נזקו ולא בקש פניו להעביר לו על עונו, אפילו ראה דבר זה ביחיד, יכול לספק הדברים לבני אדם כדי לעזור לאשר אשם לו ולגנות המעשים הרעים בפני הבריות. אך יזהר שלא יחסרו אלו השבעה פרטים שנבארם בסמוך.

***The Pursuit of Justice and Jewish Law (pp. 73-74) (8)******Chapter Ten***

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*The Pursuit of Justice****Examination of Witnesses***

- (4) The lawyer must instruct the client not to repeat this information to others; and
- (5) The lawyer must contemplate his course of conduct considerably and only recount information that needs to be repeated.<sup>3</sup>

**Truth-Telling in Court**

One particular issue, however, is unique to lawyers. When may one, in the process of litigation, expose a person's prior misdeeds to undermine the credibility of his testimony? It is accepted that a lawyer may, in the process of cross-examining a witness, subject the witness to questioning if such questioning seeks to demonstrate that the witness is not telling the truth or the complete truth, even if (or because) that embarrasses the witness.<sup>4</sup> However, it is prohibited for a lawyer to undermine the credibility of a witness whom the lawyer knows is telling the truth, in order to cast false doubt on the truthfulness of the testimony. That would seem to be a violation of the Bible's commandment of "distancing oneself from falsehood,"<sup>5</sup> as well as embarrassing another in public for no valid reason.<sup>6</sup> Many violations of these rules also violate the Code of Professional Responsibility for lawyers, which prohibits the presentation of evidence designed to mislead the jury, judge, or other litigants.<sup>7</sup>

A lawyer may not cooperate with a client's desire to present a defense which falsely exonerates the client in a civil matter.<sup>8</sup> Thus, when a client

**Repeating Harmful Information and Truth-Telling**

Lawyers, like all Jews, are prohibited from speaking falsely or derogatorily about people without just cause. Three distinctly different things are forbidden: making unflattering, but true, remarks about a person for no reason; recounting to a person gossip heard about him; and knowingly communicating false, negative statements about another.<sup>1</sup> Many lawyers, for whom giving advice is a central part of their professional life, must know when it is permissible (or prohibited) to repeat negative comments heard about another. The details of when this type of conduct is prohibited and when it is mandated have been addressed numerous times and are beyond the scope of this book.<sup>2</sup> In order for a lawyer to repeat damaging information about another, most authorities mandate that a five-part test must be satisfied. These five parts are:

- (1) The lawyer must not exaggerate the truth;
- (2) The lawyer must be motivated by a desire to aid the client;
- (3) The least damaging means must be employed;

1 In Hebrew, the first is called *lashon hara*; the second, *rekhilut* and the third, *motzi shem ra*; see Maimonides, *Deot* 7:1–7, where these distinctions are clearly articulated. For the classical work on this, see generally, R. Israel Meir Kagan, *Hafetz Hayyim*.

2 For a general discussion of giving advice within the rubric of activity discouraged because of the mandate of *Avot* 1:8, see chapter two of this book.

3 R. Israel Meir Kagan, *Hafetz Hayyim*, *Rekhilut* 9:1–15 and *Lashon Hara* 10:1–17. There is no requirement of personal knowledge, and reliable hearsay may be repeated.

4 To rule to the contrary would prevent truth-seeking in many court proceedings, since pronouncement of a verdict frequently reveals one of the litigants to be a liar.

5 Exodus 23:7.

6 *Sotah* 10b; see also *Bava Metzia* 58b. *Shevuot* 30b-31a recounts examples of the obligation to distance oneself from falsehood (*midvar sheker tirhak*) in a legal proceeding. It is possible that it may be permitted to cast false doubt on the truthfulness of a portion of a person's testimony, if that is needed to undermine the viability of other sections of his testimony which actually are false. For similar cases, see *Shulhan Arukh*, *Hoshen Mishpat* 4:1 and 28:11.

7 Model Code of Professional Responsibility DR7–102 (A)(4).

8 A false defense is presented when a client seeks to deny liability based upon the plaintiff's inability to prove his case in a court of law or through the client's committing perjury.