

בס"ד
Yeshiva Night
11.17.11

You Should Not Stand Idly by the Blood of Your Brother Penn State, Joe Paterno, and our obligation to report cases of abuse

I. The Prohibition of *Mesirah* – Informing on fellow Jews to secular authorities

1. תלמוד בבלי מסכת ראש השנה דף יז עמוד א

אבל המינין, והמסורות, והמשומדים והאפיקורסים, שכפרו בתורה, ושכפרו בתחיית המתים, ושפירשו מדרכי צבור, ושנתנו חיתיתם בארץ חיים, ושחטאו והחטיאו את הרבים, כגון ירבעם בן נבט וחביריו - יורדין לגיהנם, ונידונין בה לדורי דורות,

Babylonian Talmud, Tractate Rosh Hashana 17a

But as for the *minim*⁹ and the informers and the scoffers,¹⁰ who rejected the Torah and denied the resurrection of the dead, and those who abandoned the ways of the community,¹¹ and those who ‘spread their terror in the land of the living’,¹² and who sinned and made the masses sin, like Jeroboam the son of Nebat and his fellows — these will go down to Gehinnom and be punished there for all generations.

2. רש"י מסכת ראש השנה דף יז עמוד א

והמסורות - מלשינים, שמוסרים ממון ישראל ביד עובדי כוכבים.

Rashi, ibid.

“The Informers” – tale-bearers, who give the wealth of the Jews over to the idolaters.

3. תלמוד בבלי מסכת גיטין דף ז עמוד א

שלח ליה מר עוקבא לר' אלעזר: בני אדם העומדים עלי ובידי למסרם למלכות, מהו? שרטט וכתב ליה: +תהלים ל"ט+ אמרתי אשמרה דרכי מחטוא בלשוני אשמרה לפי מחסום בעוד רשע לנגדי, אע"פ שרשע לנגדי אשמרה לפי מחסום. שלח ליה: קא מצערי לי טובא, ולא מצינא דאיקום בהו! שלח ליה: +תהלים ל"ז+ דום לה' והתחולל לו, דום לה' והוא יפילם לך חללים חללים, השכם והערב עליהן לבהמ"ד והן כלין מאיליהן. הדבר יצא מפי ר"א, ונתנוהו לגניבא בקולר.

Babylonian Talmud, Tractate Gittin 7a

Mar ‘Ukba³ sent for advice to R. Eleazar, saying: Certain men are annoying me, and I am able to get them into trouble with the government; shall I do so? He traced lines on which he wrote [quoting], I said, I will take heed to my ways, that I sin not with my tongue, I will keep a curb upon my mouth while the wicked is before me;⁴ [that is,] he added, although the wicked is before me, I will keep a curb on my mouth. Mar ‘Ukba again sent to him saying: They are worrying me very much, and I cannot stand them. He replied [with the quotation], Resign thyself unto the Lord, and wait patiently [hitholel] for him;⁵ [that is to say,] he added, wait for the Lord, and He

will cast them down prostrate [halalim] before thee; go to the Beth-Hamidrash early morning and evening and there will soon be an end of them. R. Eleazar had hardly spoken the words when Geniba⁶ was placed in chains [for execution].⁷

4. תלמוד בבלי מסכת בבא מציעא דף פג:-פד.

אתיוה לרבי אלעזר ברבי שמעון, וקא תפיס גנבי ואזיל. שלח ליה רבי יהושע בן קרחה: חומץ בן יין, עד מתי אתה מוסר עמו של אלהינו להריגה! - שלח ליה: קוצים אני מכלה מן הכרם. - שלח ליה: יבא בעל הכרם ויכלה את קוציו...פגע ביה אליהו, אמר ליה: עד מתי אתה מוסר עמו של אלהינו להריגה? - אמר ליה: מאי אעביד? הרמנא דמלכא הוא! - אמר ליה: אבוך ערק לאסיא, את ערוק ללודקיא.

Babylonian Talmud, Tractate Bava Metzia 83b-84a

R. Eleazar, son of R. Simeon, was accordingly sent for, and he proceeded to arrest the thieves. Thereupon R. Joshua, son of Karhah, sent word to him, 'Vinegar, son of wine!¹⁵ How long will you deliver up the people of our God for slaughter!' Back came the reply: 'I weed out thorns from the vineyard.' Whereupon R. Joshua retorted: 'Let the owner of the vineyard himself [God] come and weed out the thorns.' ...[One day] Elijah met him and remonstrated with him: 'How long will you deliver the people of our God to execution!' — 'What can I do', he replied, 'it is the royal decree.' 'Your father fled to Asia,'¹he retorted, 'do you flee to Laodicea!'

5. שולחן ערוך חושן משפט הלכות מאבד ממון חבירו ומוסר ומלשין סימן שפח סעיף ט

נזן אסור למסור לישראל ביד עובדי כוכבים אנסים, בין בגופו נחן בין בממונו; ואפילו היה רשע ובעל עבירות; כזן ואפילו היה מיצר לו ומצער. הגה: נטן ודוקא בדברים בעלמא; אבל אם מסרו, מותר למסרו, דהרי יוכל להרגו בדין נב במקום שיש חשש שיחזור וימסרנו לאנסים (הרא"ש כלל י"ז סי' א', וב' ותשו' רשב"א סי' קפ"א); ס' או אם אי אפשר להציל עצמו בדרך אחר; סא' אבל אם אפשר להציל עצמו בדרך אחר; הוי כשנים שמסרו זה את זה וכל מי שהפסיד חבירו יותר חייב לשלם המותר בנזק שלם (מרדכי פ' הנ"ל ותשובת סב' מיימוני לס' נזיקין סימן ט"ו). נג סג' וכל המוסר ישראל ביד עובד כוכבים, בין בגופו בין ממונו, אין לו חלק לעולם הבא.

Code of Jewish Law, Choshen Mishpat 385:9

It is forbidden to inform upon a Jew to the non-Jewish enforcers, whether his body or his money. And this is even if he is wicked and a sinner, and even if he pains him. *Rama: However, this is specifically if he pains him with words in general. But if he has informed upon you, you may inform upon him, for you could even kill him in case where you believe he might inform on you once again to the enforcers, or if there is no other way to protect yourself... and anyone who informs upon a Jew to the non-Jews, whether his body or money, does not have a place in the world to come.*

II. Gaining a better understanding of the origins of this Law

6. ש"ך חושן משפט סימן שפח:מח

...דז"ל מהר"מ מריזבורק מצוה לכל אדם להגיד לשופט פלוני הכה פלו', ועוד הולכים בכעסם תעשה כך שלא יוסיף עוד ואם יעליל השופט עליו ויקח כל אשר לו פטור המגיד דאל"כ אין לך אדם מציל את חברו מיד מכהו..

Shach, ibid: 45

This is the language of the Maharam from Rizburk: "It is a *Mitzvah* for every person to inform the judge that John Doe hit someone else and he remains angry in order that it should not continue. And if the judge takes all of his money, the informer is absolved of payment. For if this were not the case no person could ever be saved from his friend who is attacking him.

7. Aruch Hashulchan, ibid:7

Rav Yechiel Michel Epstein, Lithuania, 1829-1908

It is known to all who have read about the generations [before us] that in the earlier times in far off lands a person did not have protection, whether physically or monetarily from bandits and rapists, even though they called themselves the government, as is the case even today in many places in Africa where the government is involved in robbery and violence. And we should remember fondly the kings of Europe, and specifically our master the Czar of Russia and his predecessors, and the Kingdom of Brittain who have spread the wings of their rule to far-off places in order that every man should have security both physically and monetarily.... And it is around all of this that we have the laws of the informer in the Talmud and the Poskim... for one who informs on his fellow before bandits such as these has endangered his body and possessions, and therefore it is permissible to kill him to save oneself.

III. The Torah obligation to protect those who cannot protect themselves**8. ויקרא פרשת קדשים פרק יט**

(טז) לֹא תֵלֵךְ רֹכִיל בְּעַמֶּיךָ לֹא תַעֲמֹד עַל דַּם רֵעֶךָ אֲנִי יְקֹנֵךְ:

Leviticus 19:16

You shall not go up and down as a talebearer among your people; neither shall you stand idly by the blood of your neighbor: I am the LORD.

9. תלמוד בבלי מסכת סנהדרין דף עג עמוד א

משנה. ואלו הן שמצילין אותן בנפשן: הרודף אחר חבירו להרגו, ואחר הזכר, ואחר הנערה המאורסה. אבל הרודף אחר בהמה, והמחלל את השבת, ועובד עבודה זרה אין מצילין אותן בנפשן.

גמרא. תנו רבנן: מניין לרודף אחר חבירו להרגו שניתן להצילו בנפשו - תלמוד לומר +ויקרא י"ט+ לא תעמד על דם רעך. והא להכי הוא דאתא? האי מיבעי ליה לכדתניא: מניין לרואה את חבירו שהוא טובע בנהר, או חיה גוררתו, או לסטין באין עליו, שהוא חייב להצילו - תלמוד לומר לא תעמד על דם רעך. - אין הכי נמי. ואלא ניתן להצילו בנפשו מנלן? - אתיא בקל וחומר מנערה המאורסה, מה נערה המאורסה, שלא בא אלא לפוגמה - אמרה תורה ניתן להצילה בנפשו, רודף אחר חבירו להרגו - על אחת כמה וכמה. - וכי עונשין מן הדין? - דבי רבי תנא: הקישא הוא, +דברים כ"ב+ כי כאשר יקום איש על רעהו ורצחו נפש, וכי מה למדנו מרוצה? מעתה, הרי זה בא ללמד ונמצא למד, מקיש רוצח לנערה המאורסה: מה נערה המאורסה ניתן להצילה בנפשו - אף רוצח ניתן להצילו בנפשו. ונערה מאורסה גופה

מנלך - כדתנא דבי רבי ישמעאל. דתנא דבי רבי ישמעאל: +דברים כ"ב+ ואין מושיע לה, הא יש מושיע לה - בכל דבר שיכול להושיע. גופא: מנין לרואה את חברו שהוא טובע בנהר או חיה גוררתו או לסטין באין עליו שהוא חייב להצילו תלמוד לומר לא תעמד על דם רעך. והא מהכא נפקא? מהתם נפקא: אבדת גופו מניין - תלמוד לומר והשבתו לו! - אי מהתם הוה אמינא: הני מילי - בנפשיה, אבל מיטרה ומיגר אגורי - אימא לא, קא משמע לך.

Babylonian Talmud, Tractate Sanhedrin 73b

MISHNAH. THE FOLLOWING MUST BE SAVED [FROM SINNING] EVEN AT THE COST OF THEIR LIVES: HE WHO PURSUES AFTER HIS NEIGHBOUR TO SLAY HIM, [OR] AFTER A MALE [FOR PEDERASTY]. [OR] AFTER A BETROTHED MAIDEN [TO DISHONOUR HER].¹ BUT HE WHO PURSUES AFTER AN ANIMAL [TO ABUSE IT]. OR WOULD DESECRATE THE SABBATH, OR COMMIT IDOLATRY, MUST NOT BE SAVED [FROM SINNING] AT THE COST OF HIS LIFE.

GEMARA. Our Rabbis taught: whence do we know that he who pursues after his neighbour to slay him must be saved [from sin] at the cost of his own life? From the verse, Thou shalt not stand by the blood of thy neighbour.² But does it come to teach this? Is it not employed for the following [Baraita] that has been taught: Whence do we know that if a man sees his fellow drowning, mauled by beasts, or attacked by robbers, he is bound to save him? From the verse, Thou shalt not stand by the blood of thy neighbor! — That in truth is so. Then whence do we know that [the pursuer] must be saved at the cost of his own life? — It is inferred by an ad majus reasoning from a betrothed maiden. If a betrothed maiden, whom he wishes merely to dishonour, yet the Torah decreed that she may be saved by the life of her ravisher, how much more so does this hold good for one who pursues his neighbour to slay him. But can punishment be inflicted as a result of an ad majus conclusion?³ — The School of Rabbi taught, It is derived by analogy:⁴ For as when a man riseth against his neighbour, and slayeth him, even so in this matter.⁵ But what do we learn from this analogy of a murderer?⁶ Thus, this comes to throw light, and is itself illumined.⁷ The murderer is compared to a betrothed maiden; just as a betrothed maiden must be saved [from dishonour] at the cost of his [her violater's] life, so in the case of a murderer, he [the victim] must be saved at the cost of his [the attacker's] life. And whence do we know this of betrothed maiden? — As was taught by the School of R. Ishmael. For the School of R. Ishmael taught; [The betrothed damsel cried]; and there was none to save her,⁸ but, if there was a rescuer, he must save her by all possible means [including the death of her ravisher].

10. Responsa Tzitz Eliezer 19:52

Rav Eliezer Waldenberg, Israel, 1915-2006

Regarding your first question [parents physically abusing their child], it appears as follows: If there is a basis for assuming that the parents of this child will continue abusing him in this way, and even worse to a point where he could potentially die, since the doctor is only telling the police to save this child from his parents, **he is required to do so in order to save one Jewish life from being destroyed.** And with regard to what the authorities will do later on in order to save

him, the doctor is considered only an indirect cause and there is no violation of “placing a stumbling block” [before the child who will be placed in a non-Jewish environment] for it is not certain that they will place him specifically in a non-Jewish environment... and plus, the child is not yet required to keep the commandments.... However, if the circumstances are not clear, then one would be prohibited from doing so if the child will likely be placed in a non-Jewish environment.

Regarding a father who is sexually abusing his daughter, the law would be the same as I mentioned above... for one who pursues someone to sexually assault them is the same as one who pursues them to murder them... And one would be required to stop it.... And the fact that the Shulchan Aruch states that one may not turn someone over to the government even if they are wicked and sinful, this has nothing to do with our case. For that is not with regards to saving him from his wickedness, rather where they want to hand him over in order to defame him. However, in our case where we are trying to keep him from exercising his desire to sin, certainly it is permissible.... And certainly this is not similar to the case in Shulchan Aruch that one may not inform even if he is causing one pain and suffering, for in this case he damaging her body and soul. And look in Shulchan Aruch there in law 7 where the Rama writes that one who is injuring his fellow can report him to the government, even though this will cause him serious punishment. And the Shach writes as well that when one is informing in order to prevent further abuse it is permissible. And this case is much worse than regular injury, in which case one may inform on this person in order that this not occur in the future, for the Rabbinical Court is the father of young children.... And this would certainly be true as well regarding teachers in schools who are also damaging the public, not just one child....

11. Steven Oppenheimer, D.D.S, *Confronting Child Abuse, The Journal of Contemporary Halacha and Society, Volume 44, p. 39-47*

Rabbi Y. Sh. Elyashiv cites the above [Talmud Bava Metzia p.83b-84a] as proof that one is certainly allowed to report a teacher to the school principal, and if nothing is being done, one may report the teacher to the police. Our case is much more serious than thievery, says Rabbi Elyashiv, and it makes no difference whether the student is male or female. Rabbi Dovid Cohen writes that there is no prohibition of mesirah in these cases, as the Shulchan Aruch points out that one may inform on a person to the secular authorities if he harasses the public and causes them distress. It is permitted to kill someone who is pursuing and attempting to kill another person, says Rabbi Cohen, and it is for this reason that it is permitted to injure someone who is pursuing another person to injure him. Rabbi Cohen says the rulings brought by Professor Avraham in his Sefer Nishmat Avraham are well known, and he has heard that Rabbi Moshe Feinstein, zt”l, and Rabbi Mordechai Gifter, zt”l, instructed accordingly. He also reports that this is the opinion of Rabbi A. L. Steinman.... Rabbi Moshe Sternbuch rules that should there be any suspicion that the abuser may do this again, *mechuyavin le’farsem*, one *must* publicize the matter.

12. Rabbi Chaim Jachter, *The Mesirah Dillema, Chavrusa Magazine, Elul 5769*

Rav [Herschel] Schachter (in his aforementioned Teaneck address) stressed that parents and educators should teach children to report to them cases of abuse. He noted that most cases of abuse go unreported, in part because the victims were not trained and prepared to report such behavior. Once parents and educators inform youngsters of their being open to such reports, the incidence of unreported abuse should subside. Rav Schachter cautions, though, that sometimes these reports are of highly questionable veracity. Therefore, Rav Schachter advises rabbanim to consult competent professionals who can determine the legitimacy of the claims of abuse. This concern also stresses the need for each case being presented to a competent halachic authority for adjudication before reporting such cases to government authority. Rav Eliashiv (*Kovetz Teshuvot* 3:231) expresses similar concern. An example of a rav who makes such determinations is Rav David Cohen, who serves as the *posek* for Ohel, a New York social service organization, who regularly is posed with such situations for adjudication. Indeed, the example of Potiphar's wife's unfounded slander against *Yosef HaTzaddik* compels us to exercise caution and to do our best to insure that innocent individuals are not maligned either by malicious or disturbed individuals.

13. Pischei Teshuva, Orach Chaim 156

All the *mussar* books admonish people regarding the sin of *lashon ha'ra*. I admonish the world about a greater, more prevalent sin, namely, not speaking up when necessary to protect the oppressed from the oppressor.... [By not speaking up], you violate the commandment *lo ta'amod al dahm rei'echa*. Similarly, in monetary matters, we are obligated by *hashavat aveida*, returning a lost article to its owner. If you see that someone's employees are stealing from him, or a person's partner is taking advantage of him, someone is being misled in a business transaction, or an individual seeks to borrow money and he is someone who doesn't pay his debts, and similarly, in matters of matchmaking, if you possess knowledge that this person has a bad character, all these are examples of *hashavat aveida*.