

What's Wrong With Mesirah

Two Rabbis, one Reform and one Conservative, were in the news recently for alleged wrongdoing. Coverage in Jewish newspapers was minimal, raising once more the question of why our press is so hot to the trot whenever an Orthodox rabbi is accused. Could it be that editors and reporters do not accept the clerical credentials of the non-Orthodox?

Suffice it to say because the details are puerile, the Reform clergyman who is being sued by a former mistress who is not Jewish is being kept on by his Manhattan congregation. Less fortunate is the Conservative fellow who now sells used cars and, more ominously, is under indictment after lay leaders at the Manapalan, New Jersey, congregation he once served discovered that he had put his hands into the synagogue's cooking jar and removed nearly \$100,000 that wasn't his. They snatched on him to the local authorities.

Which brings me to mesirah or the halachic misdeed of informing to government officials, a subject that has a long and painful history. We need not delve into the tragic record which encompasses the awful consequences of apostasy in hostile and usually Christian societies. Even in benign places, mesirah ordinarily is not permitted under our religious laws. This apparently was no concern to the Manapalan Conservatives who did not consult their movement's religious leaders. It also appears that the ex-rabbi was not given the opportunity to make restitution.

Serious financial wrongdoing is not a common occurrence in our institutional affairs. It does happen, as does other wrongdoing. Among the Orthodox, the halachic ban against mesirah is a powerful cultural norm. A related norm is the obligation of the person who acted wrongfully to take responsibility for his deeds and to make full restitution. This prudent course often results in full financial recovery and it strikes me as preferable to sending the perpetrator to prison, a course that results in little or no recovery and much collateral grief.

Even in financial matters, the halachic objection to mesirah

comes under attack from secularists and other Jews who leap at every opportunity to attack our religious practices. They regard the mesirah ban as designed to cover up misdeeds. It means nothing to these critics that this way of life essentially has worked in our community and has resulted in what may be termed proximate justice. There are severe attitudinal and practical penalties directed against those who act wrongfully. Of course, the halachic system is imperfect in its execution because execution is in the hands of mortals for whom perfection is beyond reach. Yet, when compared with the usual outcome under civil or secular procedures aimed at curtailing or punishing wrongdoing, it should be evident that the halachic system comes out favorably.

The ban against mesirah is not total. There are circumstances when civil authorities are to be informed, particularly when the alleged wrongdoing endangers the welfare of others. There are instances of spousal abuse, child abuse and other situations where leading Orthodox rabbis instructed that civil authorities be notified.

Those who deprecate the Orthodox point to sexual abuse of children, including by a tiny number of rabbis, as an area where communal norms create a culture of cover-up with concern for the victims being subordinate to concern for the wrongdoers. The yeshiva deans who comprise the Rabbinical Board of Torah Umesorah, the National Society of Hebrew Day Schools, adopted a policy statement that should dispel this canard. It begins, "We address ourselves to the problem of child molestation in our community." They continue, "in addition to the sins which they have committed, they have created painful memories in the minds of their victims, memories which can have a devastating lifetime impact." In a cover letter to principals, Rabbi Joshua Fishman, the organization's executive head, wrote "If there is indeed an allegation of child abuse that proves to be true, and the matter that had come to your attention was not attended to, you will be liable both in the eyes of G-D and according to secular law."

One of the advantages of the norm against mesirah is that

it pays more than lip service to the obligation to protect the innocent. It should matter that the principle of a person being innocent until proven guilty is increasingly disparaged and also that prosecutorial abuse is widespread. We know that innocent people have been convicted of serious crimes they did not commit. The record in this regard in the area of sexual abuse is especially dismal. Persons charged with such crimes invariably are found guilty in the media and they are considered guilty until proven innocent. There was a notable case recently involving Temple Emanuel in Manhattan and its officials acted with much courage.

The state of criminal justice in this country – and in Israel – is too shaky to ignore and this has a bearing on the issue of mesirah. There is too much reliance on circumstantial evidence, of the kind proscribed in halacha. There is too much plea bargaining and other prosecutorial techniques that provide incentives for questionable and even false testimony, as witnesses seek to save their own skin.

If this isn't sufficient to induce doubts about contemporary criminal justice and also serve as an argument for the anti-mesirah standard, there is the expanding record in this country of mooting out harsh sentences. Fully one-quarter of the world's prison population is in the U.S., an astounding statistic. We are becoming a gulag society. Even as virtually all categories of serious crime have seen sharp reductions over the last decade, there is each year a significant rise in the prison population. Judges, including on the federal bench, hand out long sentences without regard to family or societal consequences.

Why, then, should we trust civil authorities. At least in monetary matters, we should abide by the anti-mesirah rule. Violence and sexual abuse are different matters.

Marvin Schick

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Comments can be emailed to: machick@mindspring.com or sent by fax to (212) 334-1324.

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