

HOW TO WALK THE BUSINESS TIGHTROPE:

BY BENJAMIN BRAFMAN



MORALITY IN THE WORKPLACE

As a criminal defense lawyer who often represents celebrities in high-profile cases, the media does not only cover my cases but also very often writes about me personally. As a result, the fact that I am an observant Jew often finds itself into many news stories, even though that information is never relevant to the case I am working on. Accordingly, I have to be very careful about what I say and how I say it, as despite my stature within the legal community, to many I am still the “Jew” lawyer. If I win the case, it is

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important to all Jews. Regardless of whether I win or lose, however, I must act with grace and respect as my public statements impact all Jews.

For example, when the late Johnnie Cochran and I successfully defended Puff Daddy, one of the world’s best-known celebrity hip-hop stars, the stunning verdict, an acquittal on all counts, was announced in New York late on a Friday afternoon. This was a fabulous professional victory for me, which I knew would be trumpeted by the media throughout the world. With Shabbat rapidly approaching, I left the courthouse where hundreds of reporters waited to discuss the verdict. I was very conscious of the fact that every word I said would be quoted all over the world, but also well aware that it was already very late. I looked straight into dozens of cameras and said, “This is an amazing victory, and I am, of course, very happy for Puffy and his family. I know that following the Super Bowl, the winning quarterback generally announces that he is now ‘going to Disneyland.’ Well, ladies and gentlemen, this winning quarterback is going to synagogue—Shabbat is coming!” I then jumped into a waiting car and sped away. Since that episode, I have been told by hundreds of people that my winning the Puff Daddy case was an important shot in the arm for Jews everywhere, but my leaving a press conference because “Shabbat is coming” turned a personal professional victory into a genuine *kiddush Hashem*.

Perhaps my situation is unique since not many Orthodox Jews occupy high-profile jobs that are routinely covered by the media. Yet I recognize that what I do and how I do it are often a matter of public discussion and scrutiny, whether or not I like it. Accordingly, even minor encounters or seemingly inconsequential episodes in my professional life can take on extraordinary significance.

Thus, for example, some years ago I represented the principal defendant in a major trial, held in New York, that was receiving intense daily media cover-

behavior *does* affect others—not just our family members but also other Jews we have never met but nevertheless have a responsibility to. This holds true for all of us, not just those of us who make it into the press. One's personal conduct as a Jew reflects on Jews throughout the world, as we are viewed as "one" people by non-Jews. As I noted during a recent symposium on business ethics in Borough Park, Brooklyn, before an audience of almost 2,000, when Jews were herded into the gas chambers in Auschwitz, there was one line for *all* Jews. Differences between various

this courtesy is announcing to the world, through his or her dress, "I am an observant Jew." On the other hand, the boisterous behavior of a group of teenagers sporting yarmulkes can have a negative impact, as bystanders will question whether religious kids always act in such an offensive and obnoxious manner. In a world where anti-Semitism flourishes and where the State of Israel is increasingly isolated, we do not need to encourage more people to dislike us.

More Honest—More Careful

Those who openly display their

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age. One news article that dealt with trial scheduling issues included the observation that the trial would adjourn at two o'clock on Fridays because "lead counsel Ben Brafman, an observant Jew, had to be home before sundown." To the average reader and even to those involved in the case, that passing observation was not significant. To some Orthodox Jews, however, it was far more important than I could have possibly imagined, as for months following the trial, people I did not even know would stop me on the street to tell me how my "public" announcement about not working on Shabbat made it much easier for them to explain observance issues to their own employers. To be perfectly candid, it never occurred to me that my keeping Shabbat would help others resolve sensitive issues in their own professional lives.

Perhaps the point of this discussion is exactly that. As Jews, our public

Jewish groups may, unfortunately, be real within the Jewish community but to the non-Jewish world, we speak and act with one voice and are all viewed as the same.

A decision, therefore, to wear a yarmulke in the workplace, for example, carries with it an extra measure of responsibility. Giving up one's seat to an elderly person on a crowded subway is a rather ordinary act of kindness. When performed by a boy wearing a yarmulke or a *frum* girl dressed modestly, however, such behavior can make a meaningful statement about the Jewish people as a whole. Even simple acts like holding a door open for someone can be a *kiddush Hashem* when the person exhibiting

devotion to God and Judaism have an obligation to be *more* honest, *more* careful, *more* courteous and *more* prudent. A truly religious Jew must also be a law-abiding citizen and must act in a manner consistent with what one would expect of a deeply religious person. He or she must remain aware at all times that when a religious Jew takes even a

The Call of Duty

My father worked for the United States government for fifteen years as a physicist, specializing in lasers and computer memories. He made it a strict policy to never make a personal phone call on government-owned equipment. Since this was before the advent of the cell phone, he would actually leave his office, go to the closest available payphone and slip in his own dime, undoubtedly outside of company time.

As told to Bayla Sheva Brenner, senior writer in the OU Communications and Marketing Department, by Sheldon Shulman.

slight misstep, it can be magnified beyond any measure of reasonableness.

An unfortunate example of this is when the media highlights unsafe conditions in an apartment building cited for hundreds of city housing code violations, and the “slumlord” is identified as an Orthodox Jew. Such a news story makes all Jews cringe, even when the landlord is not at fault, as in the case of tenant-created building code violations. Nevertheless, the damage is done, as the story hook that captures the media’s interest is the “rich” Jewish landlord who allows “poor” tenants to wallow in misery. We are vulnerable as a people. This truth makes it incumbent upon all of us to be better at what we do and more careful about how we do it.

From *Kollel* to Wall Street

Thousands of young Jewish men and women spend several years engaged in full-time Torah study in *yeshivot* in the United States and in Israel, where they are exposed to the depth and richness of Judaism, but receive little or no preparation for confronting the challenges of the “real” world. Young people must be prepared to face the prospect of paying taxes, applying for credit cards and living within a personal budget. Similarly, they must be prepared to contend with the complicated application process required to obtain student loans, scholarships or research grants. These applications are generally submit-

ted under oath, with severe sanctions imposed for inaccurate or false reporting. How to respond to official inquires, what information to provide, how to obtain assistance that one is legally entitled to and how to refrain from applying for funding that one is *not* entitled to are all important issues that must be addressed from a legal as well as a Torah perspective.

Ignorance Is *Not* Bliss

Many young people are simply not aware of the serious consequences

Medical Ethics

Just three months into his new job as a doctor at a New York medical center, Josh Abrams* faced a decision that would test his integrity.

A woman came in complaining of injuries from a car accident. Josh assisted the supervising doctor throughout the initial examination and, as he prepared to write up the diagnostic report, the doctor asked to speak with him privately. The doctor explained that the patient was suing the other party involved in the mishap, and, when the case goes to court, he wanted Josh to represent the medical center with testimony describing the extent of the plaintiff’s injuries. He then instructed Josh to write an exaggerated report. Josh deduced that his supervisor had a mutually “beneficial” arrangement with the patient’s lawyers. Taken aback by the blatant dishonesty, and feeling the weight of this difficult dilemma, Josh decided he needed advice, and he needed it quickly.

That evening, Josh met with his rabbi and explained the situation. The rabbi informed him that the Torah clearly forbids perjury; Josh had to refuse the doctor’s directive to present false testimony. As Josh had expected, he was fired.

A month later, after he had gotten another position, Josh paid his rabbi another visit, this time thanking him for his valued advice. Josh shared how in retrospect he felt very good about what had happened. He viewed it as a very positive spiritual experience, an opportunity to do the right thing. As his rabbi put it, “It was an expression of his true self.”

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*Name has been changed.

that can ensue when state or federal laws are broken or when regulations affecting ordinary business commerce are ignored, even when the intent is not corrupt. But having good intentions or being ignorant of the law is not a legitimate excuse for breaking the law, nor is it a valid defense in a court of law.

impact on the severity of the punishment imposed, in most cases it does not help one escape prosecution or punishment.

In a case I am familiar with, a young couple needing a place to live applied for government-subsidized housing. To qualify for the housing,

Bad Behavior for a Good Cause

There are some individuals who rationalize breaking the law for the sake of a mitzvah. From a halachic perspective, this is unacceptable; the Eighth of the Ten Commandments states “Thou shall not steal”; it does *not* state “Thou shall not steal—unless you think you have a really good reason.” From a purely legal standpoint, crime for a good reason can still lead to very severe consequences. While the motive behind a legal violation may, on rare occasion,

however, a salary cap had to be verified as such housing is intended for those who earn *below* a certain level of income. The husband, together with a sympathetic employer, arranged for some “off the books” compensation as part of his salary, thereby creating the false impression that the salary cap had not been exceeded. Because of his naiveté, the husband felt this kind of legal infraction was “no big deal,” and the employer, who knew it was not right, really believed he was doing a great mitzvah. The number of compli-

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cated legal issues that arose when this scheme was discovered was staggering. It led to criminal prosecution with severe consequences for *both* the husband and the employer. Moreover, it forced many other Jews into the terrible predicament of being required by law to testify against fellow Jews or risk prosecution themselves.

A similar situation arises when an individual who does not qualify for his company's health care plan because of a pre-existing medical condition purposefully conceals the condition from the insurer in order to fraudulently obtain health insurance. This is wrong, even if the deception is committed in order to deal with a catastrophic illness. Indeed, all who assist in carrying out this fraud, although acting for "humanitarian" rea-

tance or scholarship subsidies they would otherwise not be entitled to. Is obtaining a good Jewish education for a Jewish child worth the risk of criminal prosecution? Obviously not. At the time the crime is committed, however, the focus is not on the potential consequences or even on the halachic ramifications. It is on how to accomplish the objective at hand—how to skirt the rules, do the "mitzvah" and then rationalize the behavior so that it appears to be consistent with the principles that a religious organization is supposed to adhere to. The fact is that a lie for a good reason is *still* a lie. A crime committed to help oneself or someone else is still a crime—it is against the law and against *halachah*, exposing oneself to punishment in *two* worlds!

unfortunately, *not* tax deductible). Second, houses are generally more costly in *frum* areas since the demand to live in those places is high. Adding to these burdens is the high cost of kosher food. Simply put, being Orthodox involves a fairly expensive lifestyle even without extravagance.

These staggering expenses that are unique to the Orthodox community can lead one to rationalize misconduct. Thus, for example, a parent struggling to make ends meet might say "I need to send my seven children to yeshivah, so what harm is there if I lie just a little in order to obtain the credit line I need so that I can make this happen?" or "If I need a second 'off the books' *cash* job in order to provide my family with *basic* needs, is it really such a big deal if I do



THE FACT IS THAT A LIE FOR A GOOD REASON IS STILL A LIE.

sons, may nevertheless face very serious consequences because of an insurance industry that is generally unsympathetic, and a rabid media that devours human-interest stories that contain an extra measure of irony or sadness.

The "mitzvah" excuse often also carries over into the education arena. Thus, it is wrong for a private day school to encourage parents to provide inaccurate or even patently false financial information in order to permit students to qualify for government assis-

High Cost of Orthodox Life—The Facts/The Excuse

Related to this discussion is the real concern over the rising cost of maintaining a *frum* lifestyle. For the average Orthodox family, it seems that each year it becomes more and more expensive to sustain even a modest existence. First, there is the very high cost of a yeshivah education, an expense that can be overwhelming, especially with a large family. (Yeshivah tuition is also,

not include that extra income on my tax returns?" While the dishonesty is obvious, what is not obvious to many is the nightmare that will unfold when the misconduct is exposed and a criminal prosecution is pursued.

The Government Is Not the Enemy

Following the Holocaust, hundreds of thousands of survivors devoted to their faith came to this country where they found true refuge. Most of these new citizens escaped from coun-

tries where the government was indeed the *enemy*, intent on murder, with Jews singled out for vicious brutality and death. As a result, many of the children of these immigrants were raised hearing extraordinary tales of what their parents had to do in order to survive. In some cases, passports and identity papers were forged or obtained through bribery, allowing borders to be crossed and parents and children to be reunited. Under those circumstances, breaking the law was justified.

This “survival” mentality is at least in part responsible for trivializing the obligation to strictly comply with government rules. But we must understand and make our children understand that in the United States, the government is *not* the enemy. The life of the Jew has improved over time. It has dramatically improved in this country, and our children need to understand that they no longer need to violate the rules in order to survive. Indeed, our persistence as a pious, respected and learned people is dependent on our living by rules—rules imposed by the Torah, rules imposed by society.

Looking Ahead

You cannot be *frum* if you are not *frum*. It is that simple. You cannot be strictly observant yet pick the rules you live by. Torah Judasim does not allow for selective enforcement of *halachah*, nor does it permit the violation of secular laws.

Day schools and *yeshivot* across the Orthodox spectrum must strive to address the ethical issues that our students will confront in the world at large. In those institutions where secular subjects are not emphasized, if taught at all, and where men and women are not at all prepared for entry into the workplace, students *must* be made to understand their basic obligations as citizens, employers, employees and homeowners. Even older students in *kollels*, for example, must be given periodic lectures on laws regarding paying personal income taxes, buying a home, obtaining health insurance, borrowing money, applying for government assistance, et cetera. Religious and educational leaders must stress the importance of asking for professional guidance when the need arises.

In those institutions where students are taught secular studies and are, therefore, knowledgeable about government regulations, we must still impress upon them that as Jews, their behavior in the public sector will speak for an entire people. It is also important that we emphasize the obligation of the Orthodox Jew in particular to behave properly at all times. It is not enough to be a good law-abiding citizen; we need to act with proper decorum, to be courteous and kind, to be a mensch at home *and* on the street in order to make a *kiddush Hashem*.

Finally, we must teach the next generation to be thankful that we live in a democracy in which all people are given extraordinary freedom and opportunity. We must be grateful to this great country that opened its arms to so many of our grandparents and great-grandparents, providing refuge, security, freedom, tolerance and for helping all Jews practice their faith without fear, and with great pride. **JA**

Do the Right Thing

Ten years ago, when a fire consumed the Malden Mills factory, company president Aaron Feuerstein became famous for an act that positively affected thousands of people. Not only did Feuerstein, an Orthodox Jew, refuse to shut down his business or move his operation overseas, he continued to pay the full salaries and benefits of 3,000 employees while the company was being rebuilt.

This act of kindness was extraordinary at a time of corporate downsizing and layoffs. Feuerstein said his actions were influenced by the lessons he learned from studying the Talmud, specifically the words of Hillel: “In a situation where there is no righteous person, try to be a righteous person.”

“I have a responsibility to the worker,” Feuerstein told *Parade Magazine* in 1996, “both blue-collar and white-collar. I have an equal responsibility to the community. It would have been unconscionable to put 3,000 people on the streets and deliver a deathblow to the cities of Lawrence and Methuen [Massachusetts]. Maybe on paper our company is worthless to Wall Street, but I can tell you it’s worth more.”

Unfortunately, subsequent years brought increasing debt, and in 2001 Malden Mills filed for bankruptcy. Many wondered if Feuerstein’s generosity—which cost millions of dollars—may have helped bring about the downfall of his company. However, when asked by CBS’ *60 Minutes* if, knowing how things turned out, he would have done the same thing, he responded, “Yes, it was the right thing to do.”

In addition to the widespread media coverage Feuerstein received, The Ethics Resource Center Fellows will formally present him with the sixth annual Stanley C. Pace Leadership in Ethics Award (which is determined by a secret ballot) at their January 2006 meeting.

Malden Mills, which makes Polartec fleece, a state-of-the-art synthetic fabric used to make and insulate clothing, had previously declared bankruptcy in 1981, but Feuerstein brought the company back. And between the first bankruptcy and the fire, Malden Mills’ revenues more than tripled. *Fortune Magazine* called Malden Mills the “historically successful policy of a genial manufacturing genius who might serve as a model for every man and woman in business.”

“In the long term,” Feuerstein was reported as saying, “doing the right thing adds to the profitability of the corporation.”

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