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Written by Rabbi Yair Hoffman

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On the Parsha

“Prosecutorial misconduct,” occurs when a prosecutor who is tasked to seek justice, behaves incorrectly in pursuit of justice. For example, a prosecutor may believe that a suspect is guilty and in his zeal to gain a conviction, may overlook (or even withhold) evidence that could exonerate the suspect. According to a 2020 study issued by the National Registry of Exonerations, close to 50% of wrongful convictions can be attributed to prosecutorial misconduct.

One reason for this misconduct, is obviously the desire by the prosecutor to obtain more convictions. The higher a prosecutor’s conviction rate, the more honor he receives and the more money he can receive when that prosecutor, who currently works for the municipality, decides to seek a job with a law firm later in his career.

It is conceivable that another contributory factor could be that, at times, there is a greater propensity for a prosecutor to cause a miscarriage of justice, because he or she, although well-intentioned, may be overzealously pursuing justice. There is a fascinating Rabbeinu Yonah in this week’s Parsha (Vayikra 16:1) which supports this dynamic.

Rabbeinu Yonah writes: “These were the children of Aharon (Nadav and Avihu) who were extremely righteous. This is seen from the fact that when Hashem called Moshe to approach [Him], He mentioned their names right after that of Moshe and Aharon and before the [very righteous] seventy elders of Israel (see Shemos 24:1). Their intent when they approached Hashem in offering the incense was to serve Hashem in awe... Nonetheless, they were punished because they approached Hashem when He did not command them to do so. The Torah began this Parsha by mentioning their death to show that Hashem will not tolerate those who do things without His permission. This is to warn the Kohain Gadol not to change things in all that he is entrusted to do.”

One may ask, if Nadav and Avihu were so righteous, how could they have possibly erred and brought the incense when they were not supposed to? It seems from the wording of Rabbeinu Yonah that in their overzealous effort, “to serve Hashem in awe,” they made this mistake. We also see that even the Kohain Gadol needs this warning as he may fall victim to this dynamic as well. In addition, perhaps those like the Kohain Gadol and others in authoritative positions need to be especially careful, as their status may serve to fuel their need to ensure that everything goes right, which can motivate them to overlook or discount things they should not. For example, a Mashgiach (Supervisor of Kashrus) for a Pesach program, may yell or embarrass his staff in his zeal to ensure that his high standards of Kosher supervision are adhered to for the benefit of the program patrons.

Similarly, the Sfas Emes explains the sin of the Meraglim (the spies who spoke ill of the land of Israel) in this manner. It was because of their righteousness and position of authority as leaders of Bnei Yisrael that caused them to sin (BaMidbar Parshas Shlach 5639). They felt that they were Bnei Yisrael’s salvation and that they desperately needed their leadership. Accordingly, with noble intentions, they sinned when they spoke against the land of Israel which they believed would help them remain in power and to continue to provide the leadership that they thought Bnei Yisrael needed.

Halacha – Jewish Law

QUESTION: I am a high school senior, and I am interviewing for seminary next year in Israel. During these interviews, some of the questions that the seminaries have asked me are of a nature that if I respond truthfully, they may not accept me. For example, “Do I get along with all of my teachers?” In honesty, I cannot really say that I do, but how will that make me look in the eyes of the seminary? Therefore, I am tempted to lie. By asking such questions, is the seminary transgressing Lifnei Iver

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(the prohibition of causing another to sin) if I give in to my temptation to lie? Furthermore, how may I handle such a question without lying?

ANSWER: It seems that there are many authorities that clearly rule that there is a prohibition of Lifnei Iver regarding causing another to lie [the Turei Even on Megilah 28a, ‘Umah”, the Tumim in C.M. Siman 32, Rav Meir Auerbach in his Imrei Binah (C.M. Siman 34).]

The Gemara in Nedarim 62b tells us that Rav Ashi owned a forest (Avah) that he sold to a fire temple (where they burn wood for idol worship purposes). When asked about the prohibition of Lifnei Iver, he responded that in the majority of cases, the wood that the fire temple buys is used for ordinary heating and not for idol worship and that he had the right to rely on the majority of cases.

However, there are other passages in the Gemara that seem to contradict the above and indicate that there is a prohibition of Lifnei Iver whenever a strong likelihood of a violation exists even if in the majority of cases a violation would not occur. In Bava Metzia 75b, we see that it is a violation of Lifnei Iver to loan money when there are no witnesses because of the concern that the money will not be paid back. There is also an indication of the same reasoning from Bava Metzia 5b.

Three Approaches to Resolution

One approach to resolving the contradiction is that whenever there is a greater probability of a violation than a non-violation, then we assume that a violation will occur, and there is Lifnei Iver. This is the approach of the HaGaos Tosfos Anshei Shem in Mishnayos Shivi'is 5:7 and the TaZ in Y.D. 151. The Gemara in Bava Metzia 75b and 5b above, believes that in these cases there is a greater probability of a violation than non-violation and that is why they say there is a prohibition of Lifnei Iver (in accordance with the reasoning in Nedarim 62b). The seminary that asks the types of questions that you are referring to may be relying on the fact that although a girl may be tempted to lie by the question asked, in their estimation, most girls would tell the truth.

Another approach is that the cases in the Gemara in Bava Metzia 75b and 5b above that say there is a prohibition

of Lifnei Iver when there is a strong likelihood of a violation (even if there isn't a greater probability than not of a violation) is a prohibition of a Rabbinic Lifnei Iver (see Tzitz Eliezer Vol. IV 5:3). The seminary that asks the types of questions that you are referring to may be relying on the fact that although a girl may be tempted to lie by the question asked, in their estimation, there would not be a strong likelihood that the girl would lie.

Rav Dovid Feinstein ZT”L explained that if the action being performed will directly lead to a violation on the part of the recipient, and without it, the recipient would not have had the desire to violate Halachah, then it is a violation of Lifnei Iver. According to Rav Dovid’s approach, the seminary should not be asking these types of questions.

Regarding how to answer the question, perhaps you can respond with something like, “That is an excellent question, and I try and generally do get along with my teachers. I do very much want to grow in my year in seminary and seek to get along with everyone.”

Chizuk - Inspiration Rav Tzvi Pesach Frank ZT”L was a Rav in Yerushalayim during the Ottoman era, the British mandate, and after the State of Israel was founded until 1960, when he passed away. During much of this time, the residents of Yerushalayim were extremely poor. A woman was uncertain whether the chicken that she had purchased was Kosher, so she brought it to Rav Frank for a ruling. Upon examination, Rav Frank realized that the chicken was Treif (not Kosher). He also realized that the woman, like many during that time, was very poor. Rav Frank did not want to tell her that her chicken was Treif, because she had no money to purchase another one. He also did not want to lie and tell her that it was Kosher. Accordingly, he quietly asked his wife if they had a chicken in the house. She nodded affirmatively and gave it to him. He brought out the second chicken and told the woman truthfully, "This chicken is completely Kosher according to all opinions!" The woman did not realize that her chicken had been switched with Rav Frank’s. She was relieved to hear the Rav’s ruling and went happily on her way.