

Shira Berkovits, is a psychologist and attorney who has helped Jewish communities around the globe confront the problem of institutional abuse. A Wexner Field Fellow and author of the “Child Safeguarding Policy Guide,” she is founder and director of Sacred Spaces, a new non-profit that works with Jewish institutions to help them prevent and respond to abuses of power in a way that minimizes damage to the institution, while ensuring that support for the victim and protection for constituents remain the institution’s top priority. Sacred Spaces’ work focuses on empowering institutions with the tools they need through policy development and training, in a journey towards accreditation for the institution.

INSTITUTIONAL ABUSE IN THE JEWISH COMMUNITY

As the secular and Christian worlds seek to address sexual abuse’s root causes while implementing institutional solutions, the Jewish community writ large has also expanded its exploration of solutions to this communal problem. Sexual abuse occurs across denominations and affects people of various backgrounds and demographics in profoundly life-altering ways. As a professional who works to combat abuse in the Jewish community, I have observed ways in which institutions – even well-intentioned ones – may be misguided in their understanding of abuse or misconduct. In this article, I explore three foundational categories of error in communal responses to allegations of sexual abuse – psychological, legal, and halakhic issues – and offer suggestions for avoiding these common missteps.¹

The author is grateful to Dr. Gillian Steinberg, Rabbi Moshe Pessin, Professor Timothy Lytton, Rabbi David Chamudot, Shira Ritholtz, Dr. Ari Spiro, and Dr. Amar Mehta for their helpful review and comments. All errors are the author’s own.

¹ Analyses and suggestions provided herein are meant to be informational and are not intended to provide legal, psychological, or halakhic advice.

I. Psychological Factors

Although its visibility has grown in the Jewish community in recent years, sexual abuse is a human problem, not a uniquely Jewish one. As a human problem, responses to sexual abuse are subject to the same fallibilities and oversights present in any human endeavor. Experts in the field of sexual abuse often see individuals charged with responding to abuse allegations downplay or otherwise mishandle them. A closer examination of some psychological explanations for such abnegation of responsibility can help the Jewish community not only avoid similar error but also become more acutely aware of the ways in which our psychologies may lead us towards false assumptions. Those errors can unintentionally undermine Jewish values and damage individual members and our communities as a whole.

Here, I examine four fundamental ways – they are by no means the only ways – in which psychological factors interfere with justice-seeking and victim-support: 1) cognitive dissonance, 2) cognitive distortions, 3) discounting of victims’ disclosures, and 4) misunderstandings of clinical evaluations. By understanding how these types of thinking and responses emerge from well-intentioned community members, institutions can learn to avoid and better handle similar situations.

1) *Cognitive Dissonance*

When individuals are faced with evidence that is inconsistent with their beliefs or behaviors, they experience an unpleasant tension, dubbed “cognitive dissonance” in the 1950s by social psychologist Leon Festinger.² In an effort to reduce this dissonance, people may alter their beliefs and behavior or seek to discredit and reject the conflicting evidence.

Cognitive dissonance often plays a role in abuse cases, particularly when the alleged perpetrator is a leader or respected community member. Faced with allegations of abuse against someone they know and respect, institutional leaders all too often reject the evidence, privileging their prior beliefs about the individual instead. In fact, sexual offenders report exploiting this tendency by intentionally situating themselves at the center of the community, as generous, kind, learned, and pious leaders, who are truly exemplars in every way. Their sexual abuse behind closed doors thus remains hidden with the victims, and the community often refuses to accept allegations that may eventually emerge.

² Festinger, L. (1957). *A theory of cognitive dissonance*. Stanford University Press, Stanford, California.

One offender clearly articulated his benefitting from others' cognitive dissonance.³ In my conversation with him, he explained: "I went out of my way to make sure I was considered an *ehrllich* person in my community, doing the most *hessed*. In some ways I may have been assuaging my guilty conscience, but even more, it was critically important to me that others saw me this way." He recognized that, if others in the community saw him as especially pious, he would have freer movement in the community and raise fewer suspicions if allegations arose. His perceived *tsid-kut* was in actuality a deliberate manipulation, crafted to provide the community with ample evidence of his "good character" with which to counter allegations that were bound to surface later.⁴

In a similar case, an offending clergyperson, initially accused of a single act of sexual abuse but ultimately found to have abused 96 children altogether, told psychologist Dr. Anna Salter that he would "do kind and generous things for people," including giving charity, visiting the sick, and other acts of kindness, especially for older members of the community. When he was eventually accused of abuse, he related that:

They immediately rallied to my defense... They said, 'We know this young man... He has been in our community all of his life. We know his parents, his grandparents, his aunts, his uncles. This is not something he would do. This is not something that goes along with behavior that we see in him day in and day out,' and that was true because I was very careful that they did not see that behavior day in and day out.⁵

He was not forced to deny the accusations nor defend himself; others did so for him. Their cognitive dissonance was so great – and had been so carefully cultivated by the perpetrator – that they ignored the overwhelming evidence rather than undertake the more difficult work of reframing their conceptions of this individual.

Cognitive dissonance is not merely a potential pitfall for community members and institutional heads but also for abusers themselves. On two

³ Significant descriptive and factual details of all cases included in this article have been changed to protect the identities of those involved. In some instances, multiple institutions have dealt with the same issues, and so for the purpose of this article, these cases have been merged. Any information resembling a case known to a reader is by chance, and likely reflects the universality of the patterns and dynamics found in sexual abuse cases.

⁴ Such behavior may be referred to as "grooming a community." See Footnote 7 below.

⁵ See p. 33 in Salter, A. (2003). *Predators, pedophiles, rapists, and other sex offenders: Who they are, how they operate, and how we can protect ourselves and our children*. New York: Basic Books.

TRADITION

different occasions, rabbis asked me to consult on issues of child protection for their institutions. In each case, these communal leaders spent the bulk of our time together detailing their efforts to protect children from abuse and seeking commendation for these efforts. Indeed, their safeguards would have contributed significantly to the safety of children in their *shuls*, if not for the fact that each of them was later found to be harming children. The values these rabbis preached were in tension with their private behaviors; their retaining me was their effort to reduce this tension as they themselves desperately needed to believe the image they projected to their communities. A discussion of denial and acceptance (i.e., an inability to see their abusive actions for what they were) is beyond the scope of this article, but I include these cases here to demonstrate the lengths to which people will go to reduce cognitive dissonance, even when they themselves are the abusers.

One of the more memorable demonstrations of cognitive dissonance I have witnessed came from a rabbi who learned that one of his *shul*'s youth employees had been dismissed from previous institutions for inappropriate boundary crossings with youth. The rabbi described the employee's behavior in his own institution and asked for my opinion. Behavior by behavior, I explained how this employee was engaging in textbook "grooming"⁶ of potential victims in the model of a classic child predator. The rabbi listened and responded, "I'm hearing everything you have to say, and I know you must be right. And yet, I cannot believe this wonderful person would ever harm a child. Even now, if I needed to teach a *shiur* at *shul* and my wife wasn't home, I wouldn't hesitate for a moment to ask this man to babysit and leave him alone with my children." To this rabbi's credit, he was able to articulate his own cognitive dissonance and his irrational urge to disregard the evidence before him. Wisely, the rabbi recused himself from the case and turned it over to more objective parties.

These examples demonstrate how well entrenched offenders often are in the community. They may be the very last people one would ever

⁶ Grooming refers to a set of seemingly innocent behaviors, or sometimes red-flag behaviors, that a sexual abuser might use to gain the trust and cooperation of a victim, the victim's family, and even an entire community, for his or her own eventual sexual gratification. For an in-depth discussion of grooming, particularly as applied to institutional contexts, see: O'Leary, P., Koh, E., & Dare, A. (2017). *Grooming and child sexual abuse in institutional contexts*. Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. Retrieved from: www.childabuseroyalcommission.gov.au/getattachment/14cd286a-ce6b-460a-bd31-b1d73c9f887c/Grooming-and-child-sexual-abuse-in-institutional-c.

imagine harming another. This is not an accident; it is an image offenders work hard to cultivate and one that enables their abuse. The cognitive dissonance individuals and institutions then face in acknowledging allegations of abuse against these beloved members is often too much to accept, leading to a fundamental tension for those charged with the pursuit of justice and protection of the vulnerable.

2) *Cognitive Distortions*

Because most people are deeply unsettled by the thought of having a sexual abuser in their midst, approaches tend to be stark and lack nuance. Community members may find themselves engaging in two common cognitive distortions: a) *all or nothing thinking* and b) the need to *label* a person before being able to take steps to respond to concerning behavior. Exploring ways in which community members can add nuance to their thinking may help to alleviate some of the distorted thinking that can lead to divisiveness and distract from the pursuit of truth.

a) All or Nothing Thinking

Sexual abuse of another is among the most heinous of crimes, and people thus tend to view such perpetrators as monsters. Unfortunately, this perception does not reflect the public persona of the average sex offender. As discussed above, those who sexually abuse others are often exemplary community members in every other respect. If we persist in portraying sex offenders as *all* bad, we will overlook most sex offenders, and institutions will be unable to react responsibly when confronted with allegations of abuse against a person who has clearly done much good.

For example, an assistant rabbi who engaged in voyeuristic and exhibitionistic behaviors with children also served numerous families in times of need, waking in the middle of the night to sit with those who lost loved ones, visiting the ill, and teaching exciting, brilliant *shiurim*. Disregarding this rabbi's positive behaviors would discount his community's very real experience. Instead, community leaders can validate positive interactions with the accused while still holding him or her accountable. By acknowledging a nuanced approach – a person can do good things without *being* all good – perception moves beyond the archetypal “monstrous” abuser and we can search out the truth in a person's sometimes bifurcated existence. Just as individual victims may continue to love and hate their abusers simultaneously, so too a community may recognize the existence of both beneficence and malevolence within a particular community member.

TRADITION

In a similar vein, when deciding upon levels of access for potentially threatening individuals, nuanced integration rarely exists. Instead, communities are likely to provide either plenty of social support and access but no accountability, or intensive monitoring and restrictions but no social support. Too often, institutions opt for the former by minimizing or dismissing a potential threat, permitting the concerning individual limitless access to the institution's grounds, events, and constituents. At the same time, certain institutions are beginning to understand the dangers posed by serial offenders and consequently make the decision to exclude potentially threatening individuals from community institutions completely and cut off all communal supports.

These binary options overlook subtler possibilities that prioritize both protecting constituents and supporting individuals in their efforts to prevent offending behavior. Clearly, allowing limitless access to an individual who has demonstrated abusive behavior is not an acceptable course of action. At the same time, though excluding a given individual might be the correct and necessary course of action,⁷ paradoxically, it may also increase the individual's risk of offending in the community.⁸ As such, any

⁷ This is particularly true in the case of a clergy offender who wishes to reintegrate into the communal institution in which the offense was committed. For more on the role faith communities can play in integrating offenders, and the limitations of such integration, see: Kewley, S., Beech, A. R., & Harkins, L. (2015). Examining the role of faith community groups with sexual offenders: A systematic review. *Aggression and Violent Behavior*, 25, 1-8, stating “[N]ot all individuals convicted of sexual offending might be appropriately targeted to return to a religious or spiritual community. In particular, those where the faith environment was directly linked to their offending [such as priests or church leaders] might be unsuitable candidates for such a reintegration strategy.”

⁸ Supporting an individual's efforts to curb offending behavior and live a healthy life is in everyone's best interest. Some studies have found that a supportive environment, regular check-ins with a sponsor (e.g., rabbi, mental health professional, or lay leader), and monitoring are associated with lower levels of recidivism in sex offenders, in part because they reduce the offender's isolation – a risk factor for offending – and increase accountability. See: Tabachnick, J. & Klein, A. (2011). *A reasoned approach: Reshaping sex offender policy to prevent child sexual abuse*. Association for the Treatment of Sexual Abusers. Retrieved from www.atsa.com/pdfs/ppReasonedApproach.pdf; Kewley, S., Beech, A. R., & Harkins, L. (2015). Examining the role of faith community groups with sexual offenders: A systematic review. *Aggression and Violent Behavior*, 25, 1-8; Appelbaum, P. S. (2008). Sex offenders in the community: Are current approaches counterproductive? *Law & Psychiatry*, 59, 352-354. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/18378829; Finkelhor, D. (2009). *The prevention of childhood sexual abuse. The Future of Children*, 2, 169-194, retrieved from www.unh.edu/ccrc/pdf/CV192.pdf; and Friedman, M. (2016). *How to handle convicted molesters in our communities?* Blogs: Times of Israel. Retrieved from: <http://blogs.timesofisrael.com/how-to-handle-convicted-molesters-in-our-communities/>. It

time an institution makes the difficult decision to deny an individual access, it must take additional steps to protect individuals beyond the *shul*. Such action might include alerting others in the community and beyond who need to know about the concerning behavior in order to keep their own constituents safe, as well as implementing support and accountability measures for the excluded individual. These additional steps are not optional “extra credit,” but a moral imperative to keep *all* individuals, not just those who belong to a given institution, safe from abuse.

“All-or-nothing thinking” can also be found in our reactions to disclosures and allegations of sexual abuse. All too often, recipients of such information discount or downplay the abuse if it did not include penetration. Non-penetrative abuse is instead seen as inappropriate, wrong, or lacking in *tsniut*, and the offender will often get away with a simple warning or “talking to.” Those who insist on distinguishing based upon the mechanics of the physical act of abuse itself often point to textual legal or *halakhic* distinctions. The problem with such distinctions is that research has consistently demonstrated the adverse and long-term impact sexual abuse can wreak on a victim, whether or not the abuse included penetration.⁹ Individuals who persist in this “penetration fallacy”¹⁰ often intrusively question a victim about the particulars of the abuse in order to determine whether it “counts.” As a community, we would do far better to focus on the victim’s experience and the harm done than on pressing for technical details of the assault.

b) Labeling

Too often when allegations of impropriety arise, institutions attempt to discern whether a particular individual should be labeled “a perpetrator.” Conversations center around whether ambiguous behavior was committed with nefarious intent or merely poor judgment. The board of directors splits, people pick sides, and members of the community are

should be noted though, that a precondition for considering the suggestions in these articles for community integration, is implementing safeguards to prevent offending and working with an individual who welcomes such measures for accountability (see the *Teshuva* section below).

⁹ See for instance: Dube, S. R. et al. (2005). Long-term consequences of childhood sexual abuse by gender of victim. *American Journal of Preventive Medicine*, 28, 430-438.

¹⁰ The term “penetration fallacy” was coined by blogger Yerachmiel Lopin (pseudonym). In his post on this topic he discusses the misguided *halakhic* understandings that can lead to this kind of all-or-nothing thinking. See: Lopin, Y. (2017). *Enough with the penetration fallacy*. Frum Follies. Retrieved from: <https://frumfollies.wordpress.com/2017/02/27/enough-with-the-penetration-fallacy/>.

TRADITION

either “for” or “against” the accused. This is the wrong approach for a community to take. An institution should not ask whether an individual is a perpetrator or has been wrongly accused – a question the institution is likely ill-equipped to answer – but whether the individual can be relied upon to keep constituents safe, to model safe behavior, and to be an exemplar of Jewish values and institutional policies.

If an individual has violated policies, engaged in concerning behavior, or disregarded widely accepted halakhot or norms for a given institution, community members need not identify whether the behavior itself is or is not *technically* abusive. By focusing on what role models and leaders should look like, we can sidestep unanswerable questions and discord, and free ourselves to take the necessary steps. An insistence on applying the labels familiar to us from pop psychology or the nightly news (e.g., such as the term “pedophilia” which is actually a clinical diagnosis applicable to only a subset of individuals who sexually abuse children), impedes the decision-making process. Instead, asking a limited set of questions related to specific violations of communal norms, values, and policies enables communities to employ shared language, avoid labels that can be divisive, and take the steps necessary to protect constituents.

3) *Discounting of Victims’ Disclosures*

In discussing disclosures and allegations of sexual abuse, it is almost inevitable that the issue of victims’ (and their families’) integrity will be raised. As discussed in *Cognitive Dissonance* above, people struggle to accept the possibility that a beloved, respected member of the community could have committed sexual abuse, especially when the accused vigorously protests the allegations. In her definitive text on *Trauma and Recovery*, psychiatrist Dr. Judith Herman writes:¹¹

After every atrocity one can expect to hear the same predictable apologies: it never happened; the victim lies; the victim exaggerates; the victim brought it upon herself; and in any case it is time to forget the past and move on. The more powerful the perpetrator, the greater is his prerogative to name and define reality, and the more completely his arguments prevail. (p.8)

In cases of child sexual abuse, children are far less articulate, possess fewer civil and social rights and are not nearly as powerful as their perpetrators; as such, they may be even less likely to be believed when they disclose than adult victims. Frequently, children hesitate to disclose abuse,

¹¹ Herman, J. (1997). *Trauma and Recovery*. Basic Books, New York City.

in many instances delaying disclosure until well into adulthood.¹² In fact, not only do most children conceal their abuse, but when questioned they will deny its occurrence. When children do disclose, they often do so accidentally or tentatively and may later recant the disclosure even though the abuse happened.¹³ Research shows that when a child makes the difficult decision to disclose their abuse, almost always it is the child who is telling the truth and the defendant who is lying.¹⁴

¹² The Australian Royal Commission into Institutional Responses to Child Sexual Abuse noted that a number of factors impact a child's time to disclosure, including age, gender, relationship to the perpetrator, and nature of the sexual abuse. By far, though, the longest delays occurred when the perpetrator was in a position of power, responsibility, or authority over the victim, such as a rabbi or teacher. When the sexual abuse was classified as "institutional abuse," the majority of victims kept their silence for at least 10 years, often well into adulthood. Cashmore, J., Taylor, A., Shackel, R. & Parkinson, P., (2016). *The impact of delayed reporting on the prosecution and outcomes of child sexual abuse cases*. Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. Retrieved from: www.childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/the-impact-of-delayed-reporting-on-the-prosecution; also see: Section 5.1, especially footnote 1, of the John Jay Report: John Jay College of Criminal Justice, City University of New York (2004). The nature and scope of sexual abuse of minors by Catholic priests and deacons in the United States 1950-2002. United States Conference of Catholic Bishops. Retrieved from www.bishop-accountability.org/reports/2004_02_27_JohnJay_original/response1.pdf; one unpublished survey of male survivors of child sexual abuse found that on average it took survivors more than 20 years to disclose. For a copy of the survey results email: canderson@malesurvivor.org. Easton, S. D. (2012). *Summary of Results of the 2010 Health and Well-being Survey*. Male Survivor.

¹³ In a study of 116 cases of confirmed sexual abuse, almost 80% of the children initially denied the abuse or tentatively disclosed, 75% of those who disclosed did so by accident, and over 20% of the children ultimately recanted their disclosure even though the abuse had occurred. See: Sorensen, T. & Snow, B. (1991). How children tell: The process of disclosure in child sexual abuse. *Child Welfare League of America*, 70, 3-15.

¹⁴ See Table 3-3 of *Child Maltreatment 2012*. Children's Bureau (Administration on Children, Youth and Families, Administration for Children and Families) of the U.S. Department of Health and Human Services, retrieved from: www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf, indicating that in only 0.2% of the 3.8 million cases of child abuse reported to Child Protective Services in 2012 did children make intentionally false reports. Also see Oates, R.K., Jones, D.P., Denson, D., Sirotnak, A., Gary, N., & Krugman, R.D. (2000). Erroneous concerns about child sexual abuse. *Child Abuse and Neglect*, 24, 149-57, retrieved from www.ncbi.nlm.nih.gov/pubmed/10660017, reporting that only 1.5% of the 551 cases of child sexual abuse reported to Denver Department of Social Services in a 12 month period included false allegations. Other studies have found higher rates of false allegations, ranging from 2-10%, but some of these higher percentages include collusion with a caregiver in custody battles or misinterpretation of behavior rather than lying. For more information, see: Myers, E. B. (2011). *Myers on Evidence of Interpersonal Violence: Child Maltreatment, Intimate Partner Violence, Rape, Stalking, and Elder Abuse*. Aspen Publishers,

TRADITION

The overwhelming truthfulness of children can be explained by the dynamics of the abuse itself; it is far easier for a child to lie by denying the occurrence of sexual abuse than to lie by providing the intimate details necessary to allege sexual abuse. Additionally, in order to disclose, children must overcome tremendous pressure, and even threats from their abuser or other individuals, whom – especially in close-knit Jewish communities – they are likely to encounter on a regular basis. Most children will deny their abuse and protect their abusers, for fear of not being believed, of getting into trouble, of being harmed, or of losing someone – often the perpetrator – whom they love. Abusers, on the other hand, have nothing to lose and everything to gain by denying the abuse and painting the children as liars. Children understand these dynamics; in a study of children with a sexually transmitted disease – proof of their having been sexually abused – more than half denied that they were abused and instead protected their abuser.¹⁵

Like children, adults who disclose abuse must overcome tremendous internal and external pressures to do so. If they do eventually disclose, their many years of silence are often taken as evidence that the disclosure is untrue. Those who receive an adult's disclosure of historic abuse often respond by asking the adult, "why are you telling me this now?" or "why can't you just move on?" Sometimes they are outright skeptical, pointing to the absence of other allegations or the offender's many years of dedicated service to the community as supposed proof of the victim's untrustworthiness. But research shows that, like children, adults who disclose sexual assault are overwhelmingly truthful,¹⁶ and, like children, most

New York; Everson, M. & Boat, B. W. (1989). False allegations of sexual abuse by children and adolescents. *Journal of the American Academy of Child and Adolescent Psychiatry*, 28, 230-235; p. 42-44 of Finkelhor, D. (1994). Current information on the scope and nature of child sexual abuse. *The Future of Children*, 31-53, retrieved from: www.unh.edu/ccrc/pdf/VS75.pdf; and Trocmé, N., & Bala N. (2005). False allegations of abuse and neglect when parents separate. *Child Abuse & Neglect*, 29, 1333-1345.

¹⁵ See: Lawson, L., & Chaffin, M. (1992). False negatives in sexual abuse interviews. *Journal of Interpersonal Violence*, 7, 532-542; and *id* at 14.

¹⁶ Lisak et al. reviewed the available methodologically sound studies and found the prevalence of false allegations to be between 2 and 11 percent. Results were as follows: 2.1% N=850 (Heenan & Murray, 2006); 2.5% N= 2,643 (Kelly et al., 2005); 3.0% N= 1,401 (McCahill et al., 1979); 5.9% N=136 (Lisak et al. 2010); 6.8% N=2,059 (Lonsway & Archambault, 2008); 8.3% N= 302 (Grace et al., 1992); 10.3% N = 116 (Clark & Lewis, 1977); 10.9% N=483 (Harris & Grace, 1999). The authors conclude: "It is notable that in general the greater the scrutiny applied to police classifications [in the reviewed studies], the lower the rate of false reporting detected. Cumulatively, these findings contradict the still widely promulgated stereotype that

adults do not report their abuse,¹⁷ fearing that if they do, they will not be believed.

In discussing the overwhelming truthfulness of victims, it is important to acknowledge that false allegations of sexual assault, like false allegations of other crimes, do in rare instances occur, and when they do, the result can be devastating for the wrongfully accused. But such instances must be determined by the proper authorities and cannot be determined by the recipient of the disclosure or the average rabbi or institutional head. Those within Jewish institutions charged with receiving reports of misconduct or abuse must understand that the vast majority of reports they receive will be true and that victims may not act the way they expect them to. The fact is that there is no “right” way to be a victim, and every victim reacts to the trauma of abuse differently. Some exhibit behaviors and emotions that are easy to understand, such as fighting back, crying, anger, or fear, while others exhibit behaviors that are harder to understand, such as freezing, defending the perpetrator, justifying the assault, or even making contact with and spending time with the perpetrator following the assault. These behaviors may seem like clear evidence that the assault never occurred, and so it is important to know that these behaviors are in fact common responses as victims struggle to make sense of an event, perpetrated by someone they know or care for, that they desperately wish hadn’t happened.¹⁸

false rape allegations are a common occurrence. Lisak, D. Gardinier, L., Nicksa, S. C., & Colt, A. M. (2010). False allegations of sexual assault: An analysis of ten years of reported cases. *Violence Against Women*, 16, 1318–1334 Retrieved from: <http://journals.sagepub.com/doi/pdf/10.1177/1077801210387747>. For an excellent overview of false reports, see: National Sexual Violence Resource Center. (2012). *False Reporting*. Retrieved from: www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_False-Reporting.pdf.

¹⁷ The Bureau of Justice Statistics found that only 34% of sexual assaults were reported to police in 2014. Truman, J. L., & Langton, L. (2015). *Criminal victimization, 2014*. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice. Retrieved from: www.bjs.gov/content/pub/pdf/cv14.pdf.

¹⁸ Psychologist and forensic expert Dr. David Lisak explains that “victims often deny or minimize what they’ve been through. “That victims try to make everything appear normal after a rape. That self-blame is common, and while the event is occurring, in the presence of the perceived threat, that victims often freeze” (p. 258). In fact, “one of the first reactions for many people is to try and undo it, to try to pretend like it didn’t happen... it’s common in the aftermath of a rape to see the victim have ‘quite extensive interaction with the person who’s alleged to have committed the assault’ as an ‘attempt to try to undo it...you know, if I interact with this person normally, then I can tell myself that...what I feared just happened to me didn’t really happen...Self-blame becomes an irrational strategy for regaining a sense of control, because to accept that what happened was beyond one’s control is ‘far scarier’ than

TRADITION

In the moment of a disclosure, the recipient's only concern must be to believe and support the individual;¹⁹ to do otherwise is to place the constituents of Jewish organizations at great risk.²⁰ Moreover, research tells us that being believed and supported at the moment of disclosure is a protective factor for victims that helps them develop greater resiliency in the long-run.²¹ Receiving an abuse disclosure is a sign that the victim trusts the recipient enough to share some of his or her darkest, most painful experiences. By understanding the facts and myths regarding sexual abuse allegations, institutions will be better prepared to receive disclosures, support victims, and protect constituents.

4) *Mishandling of Clinical Evaluations*

Increasingly, Jewish communities recognize the need for expert guidance in managing convicted sex offenders and others who have engaged in concerning or abusive behaviors. They might turn to the individual's mental health provider or send the individual for a risk assessment to lead to the development of a safe-engagement plan. Assessing an individual's risk of reoffending requires specialized skills, and interpreting a clinical report requires at least a basic understanding of sexual offending. Communities face challenges in seeking outside help, though, because the individual retained may not be sufficiently qualified or the institution may

blaming oneself." (p. 281). As qtd. in Krakauer, J. (2015). *Missonla: Rape and the justice system in a college town*. Anchor Books, Penguin Random House, NYC.

¹⁹ Independent, objective investigations into the veracity of the allegations may very well be the next step, but such inquiries are rarely the job of the disclosure recipient, and in any event are inappropriate at the moment of disclosure.

²⁰ In summarizing twenty years of work with child molesters, psychologist Dr. Anna Salter laments: "In the interviews I have done, they (the perpetrators) have admitted to roughly 10 to 1,250 victims. What was truly frightening was that all the offenders had been reported before by children, and the reports had been ignored." p. 57, Salter, A. (2003). *Predators, pedophiles, rapists, and other sex offenders: Who they are, how they operate, and how we can protect ourselves and our children*. New York: Basic Books.

²¹ Victims and clinicians tell us that the first step to healing from the trauma of sexual abuse is to speak about what happened, and that a supportive reception to the disclosure can make all the difference in a victim's treatment. As Chris Anderson, former director of Male Survivor, explains: "When a man discloses this secret, oftentimes that he has ...hidden within for decades, the fear that he may be struggling with cannot be underestimated. A loving and supportive response that honors a man's courage for coming forward, and says to him "we believe you," can be transformative and spiritually reparative. See: Tchividjian, B. (2016). *Heroes in our midst: Chris Anderson & Male Survivor (Part II)*. Religion News Service. Retrieved from: <http://religionnews.com/2014/10/31/heroes-midst-chris-anderson-malesurvivor-part-ii/>; and Ullman, S.E. (2003). Social reactions to child sexual abuse disclosures: A critical review. *Journal of Child Sexual Abuse*, 12, 89-121.

lack experience in interpreting clinical reports. This process must involve knowing three things: a) who the clinician is and his or her relationship to the assessed individual, b) the purpose and limitations of clinical evaluations, and c) how to interpret a clinical report.

a) The Clinician and the Patient-Clinician Relationship

Any clinician opining on an individual's risk of sexually reoffending must specialize in the assessment or treatment of sex offenders, or otherwise have extensive experience in issues relating to sex offender risk. A mental health provider inexperienced in this sort of assessment may unintentionally provide incomplete or inaccurate information. One well-respected general clinician told a Jewish institution that the concerning behavior they had observed a congregant exhibiting should be of no concern, as he had treated this man for decades, and during this time the congregant had on numerous occasions expressed guilty feelings about "innocent" interactions with children. The clinician was so invested in his relationship with the client that he overlooked the possibility that his client's repeated attempts to discuss these guilty feelings might have been indicative of a more significant problem, and instead determined them to be artifacts of depression and an indication of how severely his client suffered. Even clinics specializing in the treatment of sex offenders can be overconfident about their client's clinical progress.²² Clinicians who have worked closely with a client may have a vested interest in reporting that the treatment has been "successful." Similarly, clinicians who provide risk assessments may be retained directly by the individual being evaluated, which can at times lead to a conflict of interest. These issues are not presented here to cast aspersions on the many dedicated and trustworthy individuals who undertake the difficult task of assessing and treating sex offenders. Instead, they are meant simply to name potential concerns to which institutions should be attuned.

b) Purpose and Limitations of Clinical Evaluations

A risk assessment is a clinical tool that considers a variety of factors associated with increased statistical likelihood of reoffending, but it

²² "Even treatment centers that specialize in treating sex offenders can be astonishingly naïve". See Dr. Salter's description of one of the priest cases for which she testified, on page 21 of Salter, A. (2003). *Predators, pedophiles, rapists, and other sex offenders: Who they are, how they operate, and how we can protect ourselves and our children*. New York: Basic Books.

TRADITION

cannot predict whether a given individual will reoffend.²³ Clinical interviews and tests to assess risk often rely heavily on self-report and may include only minimal information gained from collateral sources. This means that the evaluation can be only as good as the information the evaluator has; if the information is limited or incorrect, the assessment and recommendations may be as well. In fact, standardized actuarial tools used in assessing sex offender risk caution against overreliance on the exams' predictive accuracy and advise clinicians to consider external factors that may influence risk.²⁴ Such external factors include victims' or witnesses' version of events, any additional undisclosed offenses or allegations, the individual's record of compliance, any acknowledgement of wrongdoing, participation and success in long-term evidence-based therapy, and other collateral information. Finally, a number of actuarial tools for assessing re-offense risk are normed on convicted offenders and only meant to be conducted within the criminal justice system where individuals are subject to a level of investigation, consequences, and monitoring that those managed by Jewish institutions are not. Too often, though, reports from risk assessments given to Jewish institutions use tools meant for convicted offenders on those without convictions or rely entirely on the alleged perpetrator's account of events. Additionally, Jewish institutions, which are not trained in interpreting risk assessments, may read a report of "low risk" as a predictor of that individual's future behavior.

c) Interpreting a Clinical Report

At times Jewish institutions receive concerning clinical reports by individuals assessing or treating sex offenders. Perhaps the most common red flag present in these reports is a tone of strong advocacy. In such cases, the clinical evaluators offer subjective presentations, expressing their opinions that the individuals should be fully integrated into communal institutions with no limitations placed on access or behavior. Such reports tend to be vague on the details of treatment or risk assessment, for example stating, "excellent adherence to treatment" without clarification,

²³ For a discussion of recidivism and risk see: *Recidivism of Sex Offenders* (2001). Center for Sex Offender Management. Retrieved from: www.csom.org/pubs/recidsexof.pdf.

²⁴ For instance, on p. 7 of the introduction to the revised Coding Rules for the STATIC-99 – an actuarial assessment tool for male sex offenders over 18 years of age – the authors advise "prudent evaluator[s]" to "always consider other external factors... that may influence risk in either direction." Phenix, A., Fernandez, Y., Harris, A. J.R., Helmus, M., Hanson, R. K., & Thornton, D. (2016). *STATIC-99 Coding Rules Revised*.

or “determined to be of low risk” without explaining the measures that resulted in this determination.

Consistent with such advocacy, these letters tend to minimize the seriousness of the individual’s offense or neglect to mention the offense at all. Instead, they may emphasize all of the *hessed* and assistance the individual provided to the victim or use passive language, thus removing any mention of the offender’s role in the abuse and subtly shifting blame to the victim. Some letters speak extensively about the difficulties the offender has experienced throughout life or treatment the offender has undergone for other conditions, such as depression or ADHD. None of these issues would “cause” someone to sexually offend but may be used to excuse or justify such behavior. Similarly, reputable mental health providers will not assert that an offender is at zero risk to reoffend or has been “cured.” Instead, one of the primary statements we would expect to see in a low-risk report is an indication of the individual’s remorse, a commitment to never again reoffend, and the embrace of supports to help prevent relapse.

II. LEGAL ISSUES AND OTHER PRACTICAL CONCERNS

This section details three legal and practical reasons that institutions may defend perpetrators or deny wrongdoing: 1) lack of transparency, 2) governmental involvement, and 3) fear of law suits and bad publicity.²⁵ Although these issues are often more straightforward and less deeply embedded in psychology than those discussed above, they frequently figure in institutional decisions and therefore must be named and examined.

1) *Lack of Transparency*

When allegations of abuse or concerning behavior are made, they are usually communicated privately to a trusted member of the institution, most often a rabbi. Because of its sensitive nature, the information is generally guarded closely, discussed only verbally, and handled by as few people as possible. Though well-intentioned, this manner of handling allegations is ripe for cover-ups, even if unintentional.

²⁵ Numerous other legal issues – such as statutes of limitations, mandatory reporting, and sex offender laws, to name just a few – have relevance to communal responses to sexual abuse and victim advocacy, but are covered extensively by others and are not addressed here.

TRADITION

It is rare for an institution to receive an explicit allegation of abuse. More commonly, institutions hear about vague concerns or low-level infractions. On their own, these reports may be unremarkable, but over time and when considered collectively, they become more concerning. In the moment, those receiving reports may feel certain that they will remember every reported detail, but research has repeatedly shown that memories are far less reliable than people believe.²⁶ If an institution is not documenting each concern, especially in these low-level cases, it will easily miss patterns of concerning behavior, a problem that is heightened when the behavior spans years or decades, or if the reports are made to different institutional leaders who do not communicate with each other.²⁷

At the heart of sexual abuse is an abuse of power. The resolution of an abuse of power cannot be an insistence that communities trust a single person in a position of power to handle the complaint correctly. Such concentration of power can easily lead to a mishandling of complaints. Constituents deserve to know the exact process that will be followed for receiving, handling, and following up on a complaint.²⁸

The institution too benefits from establishing an explicit and transparent process.²⁹ Often, institutional leaders will meet with the subject of

²⁶ See *Documenting the Interview* on page 181 in Savino, J. O. & Turvey, B. E. (2011). *Rape Investigation Handbook*. Elsevier, San Diego.

²⁷ See for instance, the allegations reported over the span of decades to various institutional heads at Yeshiva Centre in Australia and the significant damage caused by failure to properly document and follow a formal system in responding to these allegations. Coate, J., Fitzgerald, R., & Murray A. (2016). *Report of Case Study No. 22: Response of Yeshiva Bondi and Yeshivah Melbourne to allegations of child sexual abuse made against people associated with those institutions*. Australian Royal Commission into Institutional Responses to Child Sexual Abuse. Retrieved from: www.childabuseroyalcommission.gov.au/getattachment/e8136521-df46-4082-97ba-a9c474df5272/Report-of-Case-Study-No-22; or the “bits and pieces of various Lanner incidents” that were communicated to lay leaders at the Orthodox Union, without full documentation or a complete report providing an aggregate picture of the many complaints received throughout the years. Joel, R., et. Al. (2000). Public Summary of the Report of the NCSY Special Commission, 22. Retrieved from: http://failedmessiah.typepad.com/failed_messiahcom/Lanner%20Report.pdf.

²⁸ These, together with safeguards to prevent abuse from occurring in the first place, are critical components of a responsible anti-abuse policy. For an overview on child-protection policies in Jewish youth-serving organizations, see my previous article: Berkovits, S. M. (2016). *Preventing abuse in Jewish organizations that serve youth: Ten policies to create safer environments*. e-Jewish Philanthropy. Retrieved from: <http://ejewishphilanthropy.com/preventing-abuse-in-jewish-organizations-that-serve-youth-ten-policies-to-create-safer-environments>.

²⁹ In its report on record keeping, the Australian Royal Commission emphasizes the importance of documentation. They state: “The creation of accurate records and

a complaint to express concerns and set limits, only for the individual to later claim that the institutional leader said no such thing, or that he or she understood different limitations. To avoid giving anyone the opportunity to rewrite history, institutions must ensure that multiple leaders are involved in handling cases and that private meetings with an alleged abuser or concerning individual do not take place with only one institutional representative present. In addition, every step of the case must be documented and stored in a secure file, beginning with the initial complaint and continuing through each step taken to address the complaint.³⁰

Setting up a formal, transparent, well-communicated process for handling complaints that includes documentation and communication between multiple institutional leaders may seem obvious. But even institutions with robust anti-abuse policies tend to have relatively weak response policies, which may include only boilerplate language requiring compliance with the law and a vague statement that the institution will take “serious” or “immediate action.” What such action is, the process for ensuring it, and what events will trigger these actions are generally unclear. Jewish institutions frequently default to the rabbi or other institutional head to handle cases based on individual discretion and to make them go away as quickly as possible. This is a recipe for disaster. Instituting a process that includes documentation and oversight³¹ does not mean

the exercise of good recordkeeping practices by institutions that care for or provide services to children play a critical role in addressing, identifying, preventing and responding to child sexual abuse. They are also significant in alleviating the impact of child sexual abuse for victims and survivors... [They are] critical to child protection and institutional accountability.” These principles apply to protecting adults from abuse too. For guidance on developing responsible record keeping procedures see: Royal Commission into Institutional Responses to Sexual Abuse (2016). *Consultation paper: Records and record keeping practices*. Retrieved from: www.childabuseroyalcommission.gov.au/getattachment/f7289d7c-52e7-4143-a6ed-1aa149263eaf/Consultation-Paper.

³⁰ For a sample form to document concerns regarding child safety in an institution, see the Victorian Department of Human Services Child Safe Standards Toolkit: *Resource 7: Sample Incident Report*. Retrieved from: www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/child-safe-standards-resources. This form can be adapted for concerns regarding the safety of both children and adults.

³¹ A discussion on oversight is beyond the scope of this article, but must be mentioned here. There are multiple components to creating a culture of safety, transparency and accountability. The development of policies – including policies on documentation and record keeping – is a critical first step of this process. However, for a policy to be effective it must also be widely disseminated, implemented, and adhered to. Unfortunately, without oversight, too many institutions end up with an official policy “on the books”, that isn’t implemented in daily operations. In an excellent article, law

TRADITION

that we do not trust our institutional heads. It means only that we understand the nature of cover-ups and want our institutions to be as inoculated from this occurrence as possible.

2) *Governmental Involvement*

Sir William Blackstone, an eighteenth century English jurist, famously said “the law holds it better that ten guilty persons escape, than that one innocent suffer.”³² The high standard required to criminally convict “beyond a reasonable doubt” and the many protections enumerated in the Sixth Amendment mean that Blackstone’s statement is in fact a reality. This is a price most of us are willing to pay, for removing a person’s freedom is a weighty matter and protecting the constitutional rights of the accused is critical to a just society. But access, participation, and employment in a private institution are not constitutional rights or civil liberties; they are privileges that can be revoked. Jewish institutions are not courts of law and thus are not limited by the rules and burdens of proof that bind the criminal justice system. When institutions wait for proof or the results of governmental investigations or adjudication before taking action to protect the constituents in their care, they have waited too long. In fact, a 2011 *Dear Colleague* letter from the Department of Education to schools makes clear that an institution should “take immediate steps to protect” and “should not delay conducting its own investigation”³³ or

professor Marci Hamilton calls on the United States (U.S.) government to develop regulation and oversight, arguing that “when discrete organizations are left to their own devices, no matter how good their intentions... unaccountable organizations (and that is what an organization governing itself is) will devolve into scenarios of self-protection and adult preferentialism.” See: Hamilton, M. (2017). *The child sex abuse scandals are all the same and they demand the government to act*. Verdict. Retrieved from <https://verdict.justia.com/2017/03/22/child-sex-abuse-scandals-demand-government-act>. Until, and if, the U.S. government implements such regulation, organizations must themselves consider the importance of oversight in ensuring that their abuse-prevention and response efforts are effective. To this end, Sacred Spaces (see author’s bio) is in the process of developing an accreditation system that will assist Jewish organizations in preventing and responding to abuse, and includes a mechanism for compliance.

³² Editors (2006). Sir William Blackstone. Encyclopedia Britannica. Retrieved from: www.britannica.com/biography/William-Blackstone.

³³ Whenever possible institutions should hire trained, independent investigators to conduct these investigations. In addition, though institutions may need to launch an investigation without waiting for the results of a governmental investigation, as stated in the *Dear Colleague* letter, the institution should communicate regularly with the involved governmental agencies in order not to interfere or hinder the government’s investigation. For more on both of these issues see *Rabbinic Roles* below.

taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime” or because it wants to wait “for the conclusion of a criminal investigation or... proceeding.”³⁴

The *Dear Colleague* letter, which is meant to guide schools in applying Title IX to instances of sexual harassment, assault, or violence, does not govern non-educational settings.³⁵ Yet the values articulated in the letter apply equally to *shuls*, camps, community centers, and other Jewish institutions. Too often, though, when dealing with allegations of sexual abuse, Jewish institutions conflate evidentiary standards and other legal requirements of the criminal justice system with their own institutional procedures. Moreover, it is common for Jewish institutions to misunderstand the technical terms used in civil or criminal records and to ascribe meaning to them that was never intended.

In one troubling case, a dance teacher was accused of sexually abusing a six-year-old girl, but the district attorney’s office declined to prosecute, the police closed the case, and child protective services (CPS)³⁶ returned a finding of “unsubstantiated.” The dance teacher pointed to these outcomes as evidence of her exoneration and proof that she had been the victim of a false accusation, effectively turning the entire community against the young girl and her family. The school accepted the dance teacher’s explanation at face value and continued her employment, thus providing her with unlimited access to hundreds of children.

Indeed, a case may not proceed to trial or conviction for any number of reasons unrelated to innocence,³⁷ including but not limited to:

³⁴ See page 10 of Ali, R. (2011). *Dear Colleague Letter*. United States Department of Education: Office for Civil Rights. Retrieved from www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf.

³⁵ See the United States Department of Education’s *Questions and Answers on Title IX and Sexual Violence*, retrieved from www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf. For application of Title IX outside of traditional educational settings see the United States Department of Justice’s *Title IX Legal Manual*, retrieved from: www.justice.gov/crt/title-ix.

³⁶ In many states Child Protective Services (CPS) is the name of the governmental agency in charge of child protection, and it is the term I use in this article. Some states use other names – such as the Department of Children and Family Services (DCFS) or Office of Children and Family Services (OCFS) etc.

³⁷ The International Association of Chiefs of Police (IACP) clarifies the distinction between false reports of sexual assaults and unsubstantiated reports as follows: “The determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted. This determination can be made only after a thorough investigation. This should not be confused with an investigation that fails to prove a sexual assault occurred. In that case the investigation would be labeled unsubstantiated. The determination that a report is false must be supported by evidence that the assault did not happen” (p. 12-13). IACP, National

TRADITION

technicalities such as an expired statute of limitations; contaminated evidence or lack of evidence, which is common in non-stranger and non-egulatory sexual abuse cases, or in instances where institutions cover-up abuse, destroy evidence, or otherwise hinder investigations; heavy caseloads, inadequate trainings, poor departmental policies or practices, and political considerations; a young, nonverbal, unconvincing, intoxicated or “non-credible” victim (for example, a sex worker who alleges assault); instances in which a victim provides apparently inconsistent statements (common following traumatic events) or lies about certain details (out of shame or fear); and uncooperative victims or witnesses – common in close-knit communities, where witnesses are fearful of testifying against fellow community members, particularly powerful ones, and where witness-intimidation is all too common.³⁸ Similarly, depending on the state, an “inconclusive”, “unfounded” or “unsubstantiated” finding from CPS may not indicate that abuse did not occur, but only that CPS was unable to find sufficient evidence to indicate that it had.³⁹

In the case of the dance teacher, unbeknownst to the school, multiple girls alleged sexual abuse – this was documented in the police reports, and in any event could have easily been uncovered with minimal inquiry – but the school claimed that since the authorities had not proceeded, it could not either. This reasoning is flawed. Following the law is our community’s minimum obligation. Our moral and halakhic responsibilities do

Law Enforcement Policy Center. (2005). *Investigating sexual assaults: Concepts and issues paper*. Alexandria, VA. Retrieved from: www.iacp.org/Portals/0/pdfs/RCD/InvestigatingSexualAssaultsPaper.pdf.

³⁸ Lisak, D. Gardinier, L., Nicksa, S. C., & Colt, A. M. (2010). False allegations of sexual assault: An analysis of ten years of reported cases. *Violence Against Women*, 16, 1318–1334 Retrieved from: <http://journals.sagepub.com/doi/pdf/10.1177/1077801210387747>.

³⁹ For instance: “In a sample of 35,000 CPS cases in Missouri, three-quarters of the children who were referred to CPS two or more times – including child fatalities – had cases that were initially unsubstantiated. The decision to unsubstantiate a referral does not guarantee a child’s safety from future harm... The meaning and use of the terms “substantiated” and ‘unsubstantiated’ vary by State. For the purposes of this synthesis... ‘Unsubstantiated’ means an investigation determined no maltreatment occurred, *or there was insufficient evidence* under State law or agency policy to conclude that the child was maltreated (emphasis added).” Child Welfare Information Gateway. (2003). *Decision-Making in Unsubstantiated Child Protective Services Cases: Synthesis of Recent Research*. Washington, DC: U.S. Department of Health and Human Services. CPS administrative law is complex; institutions require guidance in interpreting findings as terminology varies from state to state (i.e., the same word can have two very different meanings depending on the state), and words that may seem like plain English may actually have technical, legal, or safety implications.

not end simply because the court cannot proceed.⁴⁰ If we turn a blind eye every time an action is not prosecutable, we will miss the vast majority of offenders, fail to protect the vulnerable, deny victims the support they desperately need, and expose ourselves to civil liability.⁴¹ This is because most victims never report their abuse, and even when they do, most sexual offenses never result in a conviction.⁴²

⁴⁰ In fact, page 11 of the *Dear Colleague* letter states this clearly, requiring schools to use a lower burden of proof in adjudicating sexual assault and harassment cases than the one used in criminal cases:

In order for a school's grievance procedures to be consistent with Title IX standards, the school *must* use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violation of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Jon Krakauer, author of *Missoula* explains that this decision is necessarily correct:

school officials, must be allowed to expel students who pose a threat to other students, without waiting many months, or even years for the criminal justice system to run its course- a course that often fails to convict individuals who are guilty of rape, or even charge them with a crime. There is nothing inherently wrong with university systems relying on a lower evidentiary standard – "a preponderance of the evidence" – for the burden of proof. A preponderance of the evidence is all that is required of plaintiffs to prevail in most civil litigation, even when the defendant has been accused of a wrongful act that violates criminal law. See: Krakauer, J. (2015). *Missoula: Rape and the justice system in a college town*. Anchor Books, Penguin Random House, NYC.

Surely, if the United States government appreciates the necessity of taking action beyond the criminal justice system in order to protect students, Jewish communities which respond to a higher moral authority should be guided by similar values.

⁴¹ In fact, one leader at a youth-serving organization shared with this author that his organization had been sued for abuse that was argued to have been foreseeable, because previous allegations against that employee were known. This despite the fact that the former allegations were investigated by the authorities who declined to prosecute. However, as noted above, just because the authorities could not legally proceed, sufficient concerning information existed to put the institution on notice that this employee posed a threat to children. The institution settled out of court.

⁴² Telephone interviews with 2,000 children aged 10-16, revealed that only 3% of sexual abuse against children was reported to the police. Finkelhor, D. & Dziuba-Leatherman (1984). Children as victims of violence: A National Survey. *Pediatrics*, 84, 413-420; Lonsway and Archambault estimate that only 5-20% of

TRADITION

Furthermore, institutions are far more likely to receive allegations of misconduct (e.g., a college *madrikh* flirting or using lewd language with high school students) or policy violations (e.g., a rabbi meeting with women alone at night to offer “marriage counseling”) than they are to receive allegations of outright abuse. Yet these lower-level allegations might be an institution’s only indicator that something is wrong. This is why institutional anti-abuse policies are so important: they highlight potentially concerning behavior and give leadership license to intervene before the behavior escalates. Of course, institutions without policies can, and must, also take action, but without clearly defined boundaries these institutions often face difficulty when attempting to discern whether a given behavior reflects nefarious intent or merely poor judgment. Just as an institution need not demand a criminal conviction before denying someone access to power, children, or other vulnerable populations, it also need not wait for outright allegations of abuse. If individuals violate policies (e.g., seclude themselves with a child in a room without windows), cross boundaries (e.g., ask intimate questions of others), disregard *halakhot* in a community that is careful about their observance (e.g., a *rebbe* in a girls’ yeshiva high school who violates *shomer negi’a*), engage in grooming behaviors (e.g., frequently volunteering free babysitting or overnight trips to families with children of a specific age and gender), or otherwise generate concerns (e.g., demand physical affection from *shul* children in exchange for candy), they have indicated that they are not individuals we should rely upon to keep our constituents safe.

3) *Fear of Lawsuits and Bad Publicity*

Institutions understandably fear the repercussions of legal suits and negative public perception, but when these fears, rather than the protection of constituents, guide an institution’s actions, the institution may make poor decisions which place constituents at risk and may actually

forcible rapes in the United States are reported to police, 0.4%-5.4% are ever prosecuted, and just 0.2%-2.8% result in a conviction that includes any incarceration for the perpetrator. Lonsway, K. A. & Archambault, A. (2012). The ‘Justice Gap’ for sexual assault cases: Future directions for research and reform. *Violence Against Women*, 18, 145-168. Retrieved from: <http://journals.sagepub.com/doi/pdf/10.1177/1077801212440017>; Summarizing data from the FBI’s 2015 National Incident-Based Reporting System, 2012-2014, RAINN reports that only 0.6% of rapes will result in incarceration for the perpetrator. See *The Criminal Justice System: Statistics*, retrieved from www.rainn.org/statistics/criminal-justice-system.

increase the institution's liability. For instance, one camp was concerned about drafting a policy requiring that reasonable suspicions of abuse be reported to the authorities because they could not find a statute guaranteeing them immunity in the event the alleged perpetrator sued.⁴³ An aversion to legal suits is, of course, understandable, but the camp's resistance to adopting a reporting policy placed children at risk and raised moral and halakhic questions about their priorities. Interestingly, the camp seemed to have overlooked the possibility that by not implementing a reporting policy, they could be sued for *failing* to report reasonable suspicions of abuse and protect the children in their care.

When a beloved institution is exposed for cover-ups or abuse, members may be tempted to rally behind the institution. They may feel that a pillar of the community, to which significant time, effort, and communal funds have been donated, is being discounted for a single misstep that may have happened many years prior. These reactions are understandable, but the damage done to victims, the Jewish community, and the institution itself by this reversal of victimization can be even more damaging than the accusation. By acknowledging a mistake, even a distant one, institutions can begin to regain the trust they have lost and, perhaps counterintuitively, avoid costly and damaging lawsuits. Trust needs to be rebuilt whether the institution admits to the allegation or not, and denial seldom, if ever, is the road to that rebuilding.

In one case, a group of victims asked their congregation to create a rock garden memorializing the abuse they suffered there as children at the hands of an abusive clergyman. The board of the congregation balked, knowing that such a memorial site would publicly acknowledge

⁴³ This resistance isn't reserved for policies on reporting. One of the first questions institutions ask before embarking on a comprehensive policy development project is whether the policy will increase their liability. This is indeed a possibility, and to this end the Centers for Disease Control state "it is very important that organizations abide by their youth protection policies and procedures to avoid being criticized for not adhering to them if a youth is sexually abused." Centers for Disease Control. (2007) *Preventing child sexual abuse within youth-serving organizations: Getting started on policies and procedures*. United States Department for Health and Human Services, retrieved from <https://www.cdc.gov/violenceprevention/pdf/preventingchildsexualabuse-a.pdf>. At the same time, institutions that create responsible, practical policies (not a "pie in the sky"), and adhere to these policies, protect constituents and avoid liability exposure for *not* having a policy. In fact, numerous lawsuits have been brought against churches for failing to have proper policies in place. Understanding this, some insurers require that congregations implement policies to reduce clergy sexual abuse as a condition of coverage. See pages 56-58 in Lytton, T. D. (2008). *Holding Bishops accountable: How lawsuits helped the Catholic Church confront clergy sexual abuse*. Harvard University Press, Cambridge.

TRADITION

the wrongdoing that had occurred. Like many victims, these petitioners initially hoped only for validation, not money.⁴⁴ But when the institution refused to acknowledge their pain publicly or even discuss alternatives, the victims instead pursued legal options, filing, and winning, a multi-million-dollar lawsuit. Had the institution admitted fault, apologized, and aimed to rectify the wrong to the extent possible, they may have fared better financially and in the realm of public opinion.⁴⁵ As demonstrated here, victims often turn to lawsuits as a last resort, after they have tried numerous other angles and feel as though they have no other options.

The late Kelly Clark, a renowned plaintiff's attorney for victims of institutional sexual abuse, explains this well:⁴⁶

The defendants in child sex abuse cases can do the smart thing, protect themselves, and do the right thing, take care of the victims, at the same

⁴⁴ "In many instances, victims wanted most of all to have their claims aired publicly and vindicated by a court and to hold ... [institutional] officials accountable for their role in facilitating and covering up abuse." Victims additionally report seeking redemption, healing, and institutional reform as their primary motive in filing lawsuits, sometimes foregoing lucrative secret settlements in favor of discovery and legal suit, in order to achieve these goals. Balboni, J. M. (2006) *It's not about the money: Truth, consequences, and the real meaning of litigation for clergy sexual abuse survivors*. PhD dissertation, Northeastern University, qtd. in Lytton, T. D. (2008). *Holding Bishops accountable: How lawsuits helped the Catholic Church confront clergy sexual abuse*. Harvard University Press, Cambridge.

⁴⁵ "[w]here liability is clear and the damages sought are reasonable, resistance for the sake of intimidation of both present and future plaintiffs is unworthy of and dangerous for a religious institution that must seek the moral high ground." Sargent, M. A. (2002). *Legal defense: When sued, how should the church behave?* Commonweal, 13, as qtd. in Lytton; "a church must act like a church, and it is morally questionable for an attorney representing a church... to take advantage of the damage caused by one of the church's pastors... from a tactical perspective, if the defense attorney is too aggressive ... then he risks having the jury dislike him for attacking - 're-victimizing' - the plaintiff [and risks losing the case]." Schiltz, P.J. (2003). *Defending the church, Litigation*, 29 (3), American Bar Association, as quoted. in Lytton; "while vigorously defending clergy abuse lawsuits has served diocese well in the litigation arena, it has damaged the Church's public image... [Moreover] the Church's efforts to defend itself in litigation - by invoking statute of limitation and charitable immunity, asserting constitutional and common-law privileges, [thus avoiding responsibility on technicalities], alleging comparative negligence and assumption of the risk [legal arguments that blame the victim], and employing aggressive litigation tactics [such as countersuits] - have angered victims and plaintiff's attorneys, many of whom cite anger at the Church as a key motivation for filing lawsuits in the first place (p.71)". Lytton, T. D. (2008). *Holding Bishops accountable: How lawsuits helped the Catholic Church confront clergy sexual abuse*. Harvard University Press, Cambridge.

⁴⁶ Clark, K. (2009). Institutional child sexual abuse: Not just a Catholic thing. *William Mitchell Law Review*, 36, 220-240. Retrieved from: <http://open.mitchellhamline.edu/wmlr/vol36/iss1/7>.

time. Doing the smart thing and doing the right thing *is the same thing*. Generally, I would tell them to completely take care of the victim first, and they will find that it goes better for them after that.

As Clark clarifies, when an institution listens to concerns or allegations and responds swiftly to address them, victims are less likely to turn to the media or the courts. As in most relationships, focusing on one's own victimization inevitably escalates the problem, and shifting blame to the victim is a typical neutralization technique.⁴⁷ It is normal to feel as though the institution is being attacked when allegations of abuse surface, but institutions that aim to make amends rather than shift the blame fare better in their long-term success and in public relations.⁴⁸ More importantly, they also adhere to their espoused values and engage in the important Jewish acts of truth-seeking and the pursuit of justice.

Clearly, a fear of liability is the wrong focus for a Jewish institution meant to be an ethical, guiding light of good in the community. There are many instances in life where we do the right thing simply because it is the right thing to do, or because it is the *halakhic* thing to do, without a guarantee of immunity.⁴⁹ Jewish institutions must recognize this principle and display the moral courage necessary to enforce it, despite fears of legal ramifications, by refocusing attention on their moral purpose as an institution.⁵⁰

⁴⁷ For a discussion of neutralization techniques and other factors that silence victims in Jewish institutions, see: Benchimol, G. (2016). *Sacrificing victims on the altars of silence and power*. Jewish Week. Retrieved from: <http://jewishweek.timesofisrael.com/sacrificing-victims-on-the-altars-of-silence-and-power/>.

⁴⁸ *Id* at 47.

⁴⁹ For instance, when gratuitous individuals rescue strangers in need, they are then liable for any ensuing carelessness that causes injury. To encourage rescue many states have enacted *Good Samaritan* laws that provide some level of immunity for rescue. (These laws vary from state to state: e.g., some cover all rescuers, some only professional rescuers). Yet the average rescuer doesn't pause to determine if the state has a *Good Samaritan* law and what it covers before rescuing. The rescue is provided not because of the guarantee of immunity, but because it is the right thing to do to save another's life.

⁵⁰ Institutions must always remember that their primary goal is to protect constituents and their secondary goal is to limit liability; introductions to anti-abuse policies should emphasize this priority. See for examples: "As you implement this... program, remember that the main objective is to provide a safe and secure environment for the children who are entrusted to your parish. In seeking to accomplish this objective, you will be accomplishing another very important objective – reducing the legal risk and liability exposure of your parish." Orthodox Church in America (2002). *Reducing the risk of child sexual abuse guidelines for parishes and institutions*. Guidelines for parishes and institutions as approved by the Holy Synod of Bishops of the Orthodox Church in America. Retrieved from: <https://oca.org/Documents/OfficialDocumentsPDF/>

III. HALAKHIC AND HASHKAFIC ISSUES

The final category of error in considering responses to sexual abuse, and one that applies uniquely to the Jewish community, is an understanding of halakha and *hashkafa*. Principles of 1) *teshuva*, 2) *tsniut*, 3) *leshon ha-ra* and 4) the role of the rabbi are frequently invoked when discussing allegations and communal handling of abuse, and therefore deserve attention in any discussion of institutional best practices or policy development.

1) *Teshuva*

Earlier this year, a rabbi called me because one of his congregants had been severely abused by her ex-husband, who had recently begun attending services at her *shul* after years of maintaining distance and *davening* elsewhere. The congregant intensely feared her ex-husband's presence, but the ex-husband professed to the rabbi that he had repented from his abusive ways and now wanted to return to the *shul* he loved. Repentance was a theme that featured prominently in the rabbi's *Shabbos Shuva derasha*. He found himself torn between wanting to protect the woman and wishing to accept the man's repentance. "What am I to do?" he asked me. "Don't we believe in *teshuva*?"

The answer is, of course, a resounding yes. But Judaism professes that repentance is determined by God alone, not by a clergy person or community member.⁵¹ Humans cannot know what is in another's heart, but we can attend to signs that the *teshuva* is insincere, incomplete, or being used as a manipulative tool to gain sympathy or access.

Rambam in *Hilkhos Teshuva* 2:4 describes the behavior we can expect to see from one who has repented:

Among the ways of *teshuva* are for the penitent to constantly shout before God with crying and pleading; and to do *tseddaka* according to his ability; and to distance himself very far from the thing in which he sinned; and to change his name, meaning to say "I am someone else and I am not

ocaguidelines.pdf; and "A camp has significant potential for legal exposure for claims involving child abuse. Although a camp must anticipate and prepare for the protection of its reputation and resources in the event of a claim against the camp involving child abuse, a camp's priority is its efforts to protect the well-being of children in its care." Gregg, C. R. & Hansen-Stamp, C. (2012). *Child Sexual Abuse: Liability Issues Revisited*. American Camping Association. Retrieved from: www.acacamps.org/resource-library/articles/child-sexual-abuse-liability-issues-revisited.

⁵¹ *Hilkhos Teshuva* 2:2: "And the One Who Knows Hidden Things testifies about him that he will never return to this sin."

the same person who did those things;” and to change all of his actions for good and onto the straight path; and to go into exile, because exile atones for sins since it forces him to bow and to *be humble and of low spirit* (emphasis added).⁵²

In the case of the rabbi’s congregant, far from exiling himself, the congregant decided that he needed to be in the very *shul* where his former victim *davened* – despite residing in a large city with dozens of other *shuls*. If the man were truly repentant, he would understand just how devastating his presence was to his ex-wife and do everything in his power to avoid places she frequents, not seek them out. The rabbi may trust that the man has done *teshuva* if he wishes to, but he should not accept the man’s presence in *shul*.

In the following halakha, 2:5, Rambam goes one step further, describing behavior that indicates true repentance and behavior that signals anything but:

It is very praiseworthy for the penitent to confess in public and disclose his sins, and reveal interpersonal sins to others and tell them: “I surely sinned against so-and-so and did such-and-such to him; but today, behold, I return and regret.” But anyone who is prideful and does not disclose, but rather hides his sins – his *teshuva* is not complete, as it says: “One who covers his transgressions shall not prosper.” (Proverbs 28:13).

These principles of admission and accountability articulated by the Rambam are at the core of sex offender treatment.⁵³ True repentance and

⁵² It should be noted that some sex offenders engage in the very behaviors enumerated here – changing their names and relocating to other communities – in order to mask their criminal history, and gain the ability to move about freely within a community without constraints or accountability, and thus potentially access additional victims. The intentions underlying such behavior are in direct contradiction to the message of the *Rambam*, even as the behavior itself might be the same. My inclusion of this text here is obviously not meant to condone or encourage such actions. Rather, this text is provided as an example of the general demeanor we might expect to see from one who is truly repentant: humbleness of spirit, shame and regret, to such an extent that one places oneself in exile.

⁵³ “According to many traditions in sex offender treatment, until they [the offenders] are able to stop making ... excuses and accept that their offending was a matter of personal choice, they remain at a high risk of recidivism and are essentially unreformed. For example, in an influential treatment handbook for working with sex offenders, Salter (1988) wrote, ‘Careful listening to their descriptions of the abuse will detect constant externalization. Blame is placed on their wife’s nagging, their wives’ lack of interest in sex, their own problems at work, provocation by the child, lack of attention and care from the world in general, excessive care and attention from the

TRADITION

relapse prevention⁵⁴ in cases of abuse means taking full responsibility for one's actions, which may include: turning oneself in to authorities, apologizing to victims, and seeking qualified assistance to prevent relapse; a private apology to a clergy person or a perfunctory declaration of *teshuvva* is simply insufficient. If individuals minimize prior actions, blame the victim, or otherwise justify the abuse, they have not accepted responsibility.⁵⁵ If individuals are arrogant in discussions of their sexual offenses, disparage

child... and on their own emotional loneliness... These excuses have the cumulative effect of reducing offender responsibility.' Farmer, M., McAlinden, A., & Maruna, S. (2016). Sex offending and situational motivation: Findings from a qualitative analysis of desistance from sexual offending. *International Journal of Offender Therapy and Comparative Criminology* 60, 1756–1775, quoting p. 107-108 in Salter, A. C. (1988). *Treating child sex offenders and victims*. Thousand Oaks, CA: Sage.

⁵⁴ It is important to note the distinction between the term “relapse prevention” used in this article and “cure”. Most sex offender treatment providers agree that there is no known “cure” for sex offending. However, there are evidence-based treatments that have been shown to be effective for some sex offenders, and there are additional interventions that are associated with reduced risk. The discussion about relapse prevention in this article relies on the assumption that we should utilize the evidence-based clinical tools available to us to help prevent re-offenses, with the understanding that such prevention may in the case of some offenders save others from ever becoming victims. At the same time, we must recognize that such treatment is not a cure, and treated individual should never be given access to opportunities that would encourage or allow offending. The discussion in this text is provided only to suggest signs that the individual has not sincerely or completely engaged in the requisite relapse prevention measures.

⁵⁵ It should be noted that alternative theories for denial of responsibility exist, which do not view accountability of the past as a necessary precondition for preventing relapse in the future. See for instance, Farmer, M., McAlinden, A., & Maruna, S. (2016). Sex Offending and Situational Motivation: Findings from a Qualitative Analysis of Desistance from Sexual Offending. *International Journal of Offender Therapy and Comparative Criminology* 60, 1756–1775, who posit: “Rather than focusing on getting people who are desisting from sexual offending to take more responsibility for things they have done in the past, it may be that the aims of rehabilitation and public protection would be better served by encouraging them to take responsibility for things they will do in the future... In this way, practitioners might help develop and reinforce non-offending identities rather than risking undermining them” and later in the same article, “it is still possible that the... de-emphasis of internal responsibility... serves, at least partially, as a post hoc, revisionist (self-) history intended to shield the individuals from the considerable guilt involved with sexual offending. Furthermore, rather than being a criminogenic or cognitive distortion that facilitates future offending, the situational nature of the narratives collected for this research may be a key ‘shame management’ technique critical to the process of social reintegration... and, relatedly, to desistance from crime” However, even these authors emphasize the need for offenders to “take responsibility for things they will do in the future.” Regardless of which theory of accountability Jewish leaders ascribe to, all should insist that current and future behaviors be consistent with the *Rambam*’s admonishment that the offender “distance himself very far from the thing in which he

those with legitimate safety concerns, attempt to lie or otherwise hide their crimes, or balk at limitations on access to children or other potential victims, they are not on the professed road to recovery, for if they were, they would be the ones advocating for safeguards and support to help ensure that they never again harm another victim.

We must encourage and support individuals in their efforts to do *teshuvva*. But when we talk about supporting an offender's repentance or preventing relapse, we are talking about supporting healthy adult relationships and a non-offending lifestyle. We are not talking about cures, trust, or access to vulnerable populations. The offender may have engaged in substantial therapeutic work and repented. We welcome such efforts and commend the offender on a changed trajectory, but it is God alone, not mortals, who can judge an offender's sincerity. No matter how reformed, one who has abused another should never be provided access to former victims or potential new victims (e.g., we must never trust an individual who has sexually abused children to work with children in our communal institutions again).

These limitations are not meant to be punitive, but are simply the necessary consequences of offending behavior. This concept – that certain sins lead to a removal of rights independent of *teshuvva* – is found in our Jewish tradition. For instance, “a *kohen* who has killed a person, even unintentionally, may not perform the priestly blessing, even if he has repented.”⁵⁶ Likewise, even allowing for the possibility of *teshuvva*, there are times when no amount of *teshuvva* can compensate for the harm done. The *Mishna* in *Hagiga* 9a discusses that one who neglects to bring the *chagigah* on the first day of *hag* – the preferred time for doing so – may compensate by bringing it any day thereafter until *Shemini Atseret*. However, after this point the individual has missed his opportunity because “a crooked thing cannot be straightened.” R. Shimon ben Menasya asks “what is a crooked thing that cannot be straightened?” He answers that the verse cannot be referring to robbery, since a robber is able to return the stolen item, or otherwise make restitution, and “thus make the matter straight” again. Instead, he explains that the verse refers to one who cohabits with another man's wife, for such an act produces a result that cannot be undone – either the birth of a *mamzer*, or more simply, the irreparable harm of the woman being forbidden to her husband. On this,

sinned”, including welcoming limited access and other safeguards placed upon him or her to prevent reoffending.

⁵⁶ *Shulhan Arukh, Orach Hayim*: 128:35. Note that the *Rema* holds differently than the *Mehaber*: “Some say that if he has repented, he may perform the blessing.”

TRADITION

Rashi explains that “repentance is not (completely) effective for such a sin, because it produced a result that cannot be undone.”⁵⁷ The *Me’iri* extends this concept more broadly, explaining that “the transgression of cohabitation with an *ervah* is cited only as an example. The same applies to any sin that has an outcome that cannot be reversed.” Sexual abuse can result in lifelong consequences for victims. Though these consequences may be overcome, they can never be undone.

2) *Tsniut*

The Centers for Disease Control report that in a retrospective study of more than 17,000 adults, 1 in 4 girls and 1 in 6 boys were sexually abused before the age of 18.⁵⁸ Despite the implications of such findings, Jewish institutions seldom broach this topic.⁵⁹ People hesitate even to consider the possibility that a grandparent might sexually

⁵⁷ The *Maharal* on the other hand argues that repentance is always possible.

⁵⁸ Centers for Disease Control and Prevention. (2006). Adverse Childhood Experiences (ACE) Study: Major Findings. Retrieved from: www.cdc.gov/violenceprevention/acestudy/about.html. These staggering statistics were initially met with skepticism by the public. Jewish communal leaders were similarly dismissive, certain that such numbers didn’t apply to “us”. Yet in a survey of over 10,000 children, the National Council for the Child found that approximately 1 in 6 Jewish children in Israel are sexually abused. Today, we know that child sexual abuse occurs across religions, cultures, and socioeconomic status. (Note: While these two studies are methodologically dissimilar and the prevalence rates cannot be compared, they are both included here to provide readers with a sense of the scope of the problem. The original report, authored by Haifa University professors Zvi Eisikovits and Rachel Lev-Wiesel in 2013, is available in Hebrew at <http://society.haifa.ac.il/images/Traina%20findings.pdf>. For an English article summarizing the results see: Skop, Y. (2013). Nearly half of Israel’s children suffer physical, sexual or emotional abuse, study finds. Ha’aretz retrieved from www.haaretz.com/news/national/.premium-1.557668. No comparable studies have been done on Jewish populations outside of Israel.

⁵⁹ The tide – especially in right and centrist Orthodox institutions – is turning, thanks in large part to the tireless efforts of Jewish anti-abuse professionals, educators, and advocates, who are implementing abuse-prevention training. However, despite these significant strides, such prevention efforts: are still only implemented in a minority of Jewish institutions; may be one-off awareness events rather than ongoing conversations; only cover sexual abuse against children, rather than across the lifespan; may put the onus of prevention on potential victims to protect themselves from the abusive advances of those who are more powerful, rather than placing responsibility with the institution; and may focus on stranger danger – despite the *arayot* prohibitions specifically enumerating kinship abuse, and the United States Department of Justice reporting that 93% of sexual abuse against children is perpetrated by someone the child knows and trusts. For details on relationships between offenders and child victims, see Table 6 in Snyder, H. N. (2000). *Sexual assault of young children as reported to law enforcement: Victim, incident, and offender characteristics*. Department

abuse

a

grandchild, or a brother might sexually abuse his sister. But the Torah does not shy away from this topic, listing these and other prohibited *arayot* in Leviticus 18, one by one. Far from a topic meant to be kept silent, this chapter is publicly *leyned* at *minha* on Yom Kippur – the holiest day of the Jewish calendar year. Even with its notable place in Torah, institutions often hesitate to discuss sexual abuse, or do so only in the vaguest of terms, out of a misguided concern for modesty.

Offenders report specifically seeking out those children who are uneducated about their bodies, sex and abuse, in order to “teach” them themselves, suggesting that frank education can help prevent abuse.⁶⁰ Yet parents are often reluctant to have these conversations with their children. One parent articulated the tension between education and ignorance: “If I teach my son about this and he teaches the other kids at school, he will be the child who is ‘corrupting others’ with *pritsadik* ideas. He’ll get kicked out and our family will be ostracized.” In combatting sexual abuse, Jewish institutions must find a way to uphold the important value of *tsniut* while speaking about these issues directly. This forthrightness is an inherently Jewish approach, and neither modern notions of taboo topics nor misunderstandings of *tsniut* should muzzle institutions that aim for communal safety and adherence to a tradition that encourages discussion of these issues.⁶¹

Beyond prevention, many institutions become suddenly reticent when responding to cases of abuse. In numerous instances when individuals were arrested or convicted of abusing children, the Jewish institutions where they worked sent letters to their constituents reassuring them that no abuse was found to have occurred in the institution. But these letters beg the question – how do the institutions know this? Did they ask? While a reticence to broach the topic with constituents may not be a direct result of *tsniut* concerns, a general sensibility surrounding issues of “modesty” suggests that certain topics may be discussed and others may not.

of Justice, National Center for Juvenile Justice. Washington, D.C. U.S. Retrieved from www.bjs.gov/content/pub/pdf/saycrle.pdf.

⁶⁰ As one offender states “Parents shouldn’t be embarrassed to talk about things like this – it’s harder to abuse or trick a child who knows what you’re up to”, while another advises: “Teach children about sex, different parts of the body, and ‘right’ and ‘wrong touches’... parents ... if they don’t tell their children about these things (sexual matters) – I used this to my advantage by teaching the child myself.” Elliot, M., Browne, K., & Kilcoyne, J. (1995). Child sexual abuse prevention: What offenders tell us. *Child Abuse & Neglect*, 19, 579-594.

⁶¹ See the public *leyning* of Leviticus 18 referenced above, *Yevamos* 97a, *Keritut* 14a, and the direct language used in numerous instances throughout the *gemara*.

TRADITION

One father relates that his son was sexually propositioned by a rabbi at his camp, and, because he escaped the rabbi's advances, he felt emboldened to disclose the incident, which led to disclosures about the abuse of two fellow campers. "Their abuse likely would have gone undisclosed until adulthood without their parents knowing to ask, as each of these boys blamed themselves for their 'participation.'" One might imagine that these revelations would lead to greater disclosure and discussion on the parts of the institutions where the rabbi worked, but in fact, none of these institutions sent a letter alerting parents. By adhering to a false sense of modesty – of topics that should be "off limits" in polite company – the institutions with which this abuser was associated may have, through omission, led directly to the pain or abuse of other boys.

Given that so few victims disclose abuse, institutions have a moral responsibility when faced with knowledge of abuse to communicate with their constituents so that those who might have been victimized can receive the therapeutic and institutional support they need in a timely fashion. Moreover, when institutions have knowledge of abuse, they must communicate with other institutions where that individual works. *Tzniut* is not a value that conflicts with that of protecting victims, but rather one that should inform our process for doing so.

3) *Leshon ha-Ra*

The Book of Jeremiah relates the events leading up to the death of Gedaliah ben Ahikam, stating that Gedaliah was warned that Ishmael, son of Nethaniah, was sent to kill him. Repeatedly, Gedaliah denies this claim, stating "for you are speaking falsely about Ishmael!" (40:16). But the intelligence he received was in fact accurate and Ishmael did assassinate Gedaliah, as well as the Judeans and Chaldeans who accompanied him. The final verse of this passage discusses "the pit into which Ishmael threw all the corpses of the men he had killed *at the hands of Gedaliah...*" (41:9) about which the Beraita in *Nidda* 61a asks:

But did Gedaliah kill them? Why, Ishmael killed them! Rather, since he should have heeded the advice of Yochanan ben Karei'ach, and he did not heed it, Scripture reckons it as though he had killed them.

According to this *beraita*, Gedaliah was wrong for refusing to be suspicious of Ishmael, but it goes one step further too, faulting Gedaliah for the deaths of the others as well. Because Gedaliah neglected to take steps to prevent the killings when he was given ample warning, he is faulted with the preventable harm that befell the others.

The *Gemara* uses this narrative to further a point about *leshon ha-ra* made by *Rava*: “although one should not accept it, one should nevertheless be mindful of it.” The *Gemara* goes on to tell a story of a group of Jewish men who were rumored to have committed murder and asked Rabbi Tarfon to hide them from the authorities. Rabbi Tarfon considers the scenario, using the same principles applied by *Rava* years later: “this is *leshon ha-ra*, and although one should not accept it, one should be mindful of it. You go hide yourselves.”

Believing *leshon ha-ra* and taking protective action are distinct and unrelated. One can decide not to accept *leshon ha-ra* as fact, but there is still a halakhic imperative to take every step possible to protect oneself and those in one’s care from harm. Yet too often institutional heads refuse to hear concerns or allegations because they fear speaking *leshon ha-ra* that may possibly ruin another’s life or *parnassa*. More often than most would believe, we encounter institutional heads who cover up allegations of abuse. The cover-ups do not usually begin as intentional dissimulation but are initiated by well-intentioned leaders who believe they are protecting a beloved employee from a false accusation. These leaders may instruct others to lie to the authorities or omit seemingly “minor details” that would “unnecessarily” make the accused look bad. If Rabbi Tarfon understood the concept of “*meihush lae*,” “don’t accept, do suspect,” in a time when the authorities were far less just, why can’t we?

It bears noting here that when reporting reasonable suspicions of abuse to the authorities, one is not making an accusation. One is simply relaying concerning information and asking the authorities to examine it further. If the authorities choose to proceed, they do so because they have uncovered sufficient evidence to move forward. More often than not, the authorities won’t proceed, not necessarily because the abuse didn’t happen but because they have insufficient evidence.

Finally, the person who files a report is never the one ruining a life; instead, the person who acted abusively harmed his own life and the lives of those he victimized. A misunderstanding of the intricate laws of *leshon ha-ra* and their exceptions has silenced victims of abuse and often led those who might report abuse to protect abusers rather than victims. For instance, a woman relates that when she was a child, a boy in the congregation accused her father, the rabbi, of sexually abusing him. Using *leshon ha-ra* as a defense, the community accused the victim of slander and cautioned him and his parents that the rabbi had a family – including daughters who would need

TRADITION

shiddukhim – to be considered.⁶² The woman explains that those supposed defenders of the rabbi's family did not know “that my father was abusing his own children too. They were so worried about *leshon ha-ra* ruining our lives, but it was their silence that ensured that my siblings and I endured many years more of abuse at the hands of our father.” Here we see clearly that these misunderstandings of *leshon ha-ra* prohibitions, while well-intentioned, use the *halakha* in error and can lead to significant harm.

4) Rabbinic Roles

The Rabbinical Council of America (RCA) and numerous respected *rabbonim* have *paskened* again and again that when it comes to sexual abuse, the laws prohibiting *mesirah* (reporting crimes to the civil authorities) and *arka'ot* (adjudication in civil courts) do not apply and reasonable suspicions must be reported without delay.⁶³ “Without delay” means

⁶² Ironically, those who are most concerned about *leshon ha-ra* when speaking of the perpetrator do not always extend such concerns to talk about the victim. For instance: “The royal commission found there was considerable evidence that some members of the ... community in both Melbourne and Sydney believed that alleging another Jewish person may have sexually abused a child is engaging in ‘loshon horo’, unlawful gossip, and that such conduct is against Jewish law... In some cases victims and their families experienced such severe ostracism and shunning that they felt unable to remain in their community.” Percy, K. & MacMillan, J. (2017). *Child sex abuse royal commission: Jewish victims ‘shunned after making allegations’*. ABC News, Australia. Retrieved from: www.abc.net.au/news/2017-03-23/jewish-leaders-thought-it-was-a-sin-to-report-child-abuse/8380574.

⁶³ For an in-depth discussion on the *halakhic* issues of reporting to the authorities, see: Rabbi Sharaga Feivel Zimmerman, Gateshead Rav Hair (2016). *The Halakhic Obligation of Reporting Abuse to the Authorities*. Kollel Beth HaTalmud. Retrieved from: <https://vimeo.com/196992520>; For official statements of rabbinic leadership on the inapplicability of the prohibition of *mesira* to cases of child abuse see: A proclamation signed by 300 Orthodox rabbis, stating that “The reporting of reasonable suspicions of all forms of child abuse and neglect *directly* and *promptly* to the civil authorities is a requirement of Jewish Law. *There is no need for people acting responsibly to seek rabbinic approval prior to reporting*” Nyer, D. (2016). Proclamation Regarding Child Safety in the Orthodox Jewish Community. Retrieved from: https://drive.google.com/file/d/0Bz4A_l7qN61RX1lW3p2RUK2TXc/view; A Kol Koreh signed by 100 Haredi rabbis in 2015 affirming that “any individual with firsthand knowledge or reasonable basis to suspect child abuse has a religious obligation to promptly notify the secular law enforcement of that information. *These individuals have the experience, expertise and training to thoroughly and responsibly investigate the matter...* every individual with firsthand knowledge or reasonable cause for suspicion of child abuse has a Torah obligation to *promptly* notify the proper civil authorities.”; Moss, A., Gourarie, M., Milecki, B., Kastel, M. & Wolff, L. (2015). *Video: Child Sexual Abuse – A Message from Your Rabbis*. Retrieved from: www.youtube.com/watch?v=71wKpMW821c; Rabbinical Council of America (2010). *Convention Resolution: Condemning and Combating Child Abuse*. Retrieved from: www.rabbis.org/news/article.cfm?id=105544 stating that “the

TRADITION

without checking with a rabbi first. When rabbis are consulted first, reporting is necessarily delayed, and sometimes rabbis begin to take matters into their own hands. When this happens, lay leaders who rightly value a rabbi's wisdom and experience may feel compelled to defer to the rabbi.

The RCA and the *rabbonim* referenced above clearly recognize that responding to sexual abuse requires training and expertise, and that rabbis, communal leaders, and institutional heads are not experts in abuse. In certain areas of expertise, communities feel comfortable calling in an expert: most shuls would not ask a rabbi to fix the roof in place of a roofer, nor would a rabbi dictate to surgeons how and when to operate on a congregant. There is an understanding that the rabbi's role is to support the congregation and congregants, and the specialist's role is to complete the job according to his or her training, skill, and knowledge of best practices. Abuse cases are no different, except that too many institutions – of all denominations – think that their leaders know enough to handle them. In a beloved institution facing upsetting allegations, lay leaders may resist turning to outsiders for help. But understanding the way a predator operates requires expertise. Interviewing victims – especially children – requires expertise. Managing risk requires expertise. There are many individuals, some within the Orthodox community, who have training in this area. But institutional heads and rabbis, as a general rule, do not.

Internal investigations, conducted under the auspices of a rabbinic leader or other untrained lay leader, often interfere with the pursuit of justice.⁶⁴ Just

org/leading-charedi-rabbi-chaim-kanievsky-rabbinic-permission-is-not-needed-before-reporting-abuse/.

⁶⁴ See for instance the recent alleged internal investigation and mismanagement of men accused of sexually abusing children and women in several Israeli communities. The individuals overseeing the internal management “allegedly received their rabbis’ blessing to seek and collect information on sexual predators in the community, without involving the police. They did so, even maintaining written records of attacks and the people involved. At the end of the process, the perpetrators were forced to agree to undergo therapy within the ultra-Orthodox world... Tens of alleged attackers were documented, some of whom had committed serial offenses, including against children...the police said that the ultra-Orthodox community had been handling the matter internally, collecting information and conducting some form of internal procedure, culminating in a sort of punishment... The statement said... the suspects could continue to live their lives without paying a penalty, and dozens of victims were left without help... The records on the alleged sexual predators were kept by a single person [who]... operates under the imprimatur of a Jerusalem-based body known as the “purification commission” of the community.” Hasson, N. & Ettinger, Y. (2017). *Israel police arrest 22 Ultra-Orthodox Jews for sex crimes against minors and women*. Haaretz. Retrieved from: www.haaretz.com/israel-news/.premium-1.779763. Though documenting complaints, concerns, and abuse is critical to protecting the community from concerning individuals

as a Jewish judge must be impartial,⁶⁵ so too must investigators of abuse in Jewish institutions be impartial. When an institution investigates one of its own, it is by definition partial.⁶⁶ For instance, in one institution with a child safety committee, the committee had made a decision, in consultation with an independent child protection expert, to ban a particular member from the *shul*. A few months later, members of the committee found the individual back in the *shul*. Seeking to understand what happened, they approached the *shul*'s rabbi who explained that he had taken the committee's concerns into account and warned the individual not to speak to children. A rabbi, who has Torah and pastoral experience but not child protection training, should not override the decision of a child protection expert or committee tasked and trained with handling these issues. Giving leaders without proper training authority over something as complicated and important as preventing and responding to abuse misapplies the concept of *kavod ha-rav* or *da'as torah* in deeply problematic ways.

It is important to note that communicating with authorities and retaining independent external experts to manage abuse cases should in no way sideline the rabbi. On the contrary, rabbis have a critical role to play in supporting victims who may be grappling with spiritual injuries by facilitating healing, generating communal support for the victim and the victim's family, and generally modeling a Torah approach to responding to abuse. A kind and encouraging clergy member can be a lifeline to a victimized child or adult whose spiritual injuries may require pastoral

(see *Lack of Transparency* above), such documentation must always supplement, and never supplant, reports and cooperation with governmental authorities.

⁶⁵ See for instance: *Ketubot* 105b; *Hoshen Mishpat* 22:1; *Sanhedrin* 24a.

⁶⁶ Institutional investigations are a complex issue. As a general rule, institutions should not investigate themselves for the reasons stated here. However, as noted earlier in *Governmental Involvement*, institutions have a responsibility to respond to allegations of abuse or otherwise concerning behavior, and are not absolved of responsibility simply because a governmental agency may be involved. Institutions facing such allegations should take the following steps: 1) report all reasonable suspicions of abuse to the relevant governmental authority, 2) communicate with that agency to determine what steps the institution may take to protect constituents that will not interfere with the agency's investigation, and 3) hire external, independent, trained investigators from outside of the community to conduct an investigation. Understandably, an institution may not have the financial means to hire such investigators whenever an issue arises – particularly with low level concerns (e.g., an individual who makes parents and children “uncomfortable” but is not accused of any specific abusive behaviors or boundary violations). In these instances, the institution should follow a set of predetermined, transparent, policies to inquire into the issue and take further action as needed. Should additional concerning information be uncovered, the steps listed above should be followed, and independent experts retained. Those seeking assistance in these instances, may contact *Sacred Spaces* for guidance (see author's bio).

TRADITION

counseling that a mental health expert is not able to provide. Research has shown that victims of sexual abuse who maintain some connection to their faith or receive pastoral support from their rabbis experience better mental health outcomes in the long-run than those who do not.⁶⁷ As Rabbi Yosef Blau explains:⁶⁸

Above all, it is the rabbi who must send the message that covering up an incident of abuse is not protecting the community. Judaism, when understood properly, is about imitating God's mercy on all and His concern for the weak and vulnerable. A major step is pursuing justice, and we will only bring ourselves to prevent further suffering when we see those victims brave enough to confront their abusers as heroes, rather than traitors. The layperson looks to his or her rabbi to set this tone. The message sent from the pulpit can determine if attitudes will change and if the scourge of abusers will stop. As true leaders, rabbis have much to offer. As protectors of the image of the community, rabbis are part of the problem. If rabbis show moral courage (as some already do), others will follow. Rabbinic authority is critical when the authority is earned and demonstrates that a Torah leader is a model of justice and compassion.

Increasingly, multidisciplinary response teams (MDTs) are including rabbis in their group,⁶⁹ and child advocacy centers (CACs) report the notable progress they are able to make in treating victims and pursuing

⁶⁷ Lawson, R., Drebing, B., Berg, G., Vincelette, A. & Penk W. (1998). The long term impact of child abuse on religious behavior and spirituality in men. *Child Abuse & Neglect*, 22, 369-380; Chandy, J. M., Blum, R. W., & Resnick, M. D. (1996). Female adolescents with a history of sexual abuse. Risk outcome and protective factors. *Journal of Interpersonal Violence*, 11, 503-518; Gall, T. L., Basque, V., Damasceno-Scott, M., & Vardy, G. (2007). Spirituality and the current adjustment of adult survivors of childhood sexual abuse. *Journal for the Scientific Study of Religion*, 46, 101-117; Veith, V.I., Tchividjian, D.F.W., & Knodel, K.R. (2012). Child Abuse and the Church: A Call for Prevention, Treatment and Training. *Journal of Psychology and Theology*, 40, 323-330. Conversely, those who do not receive this support from their communities or lay leaders may experience further victimization. In the words of one survivor describing the shunning she experienced by her community's leaders, "the trauma of the abuse is nothing, absolutely nothing... compared to the trauma of not being believed." Krevsky, R. (2015). Speaking at a Jewish Community Watch event in Montreal. Retrieved from: www.youtube.com/watch?v=XEjrha4Qglc.

⁶⁸ Blau, Y. (20). *The role of rabbis in combatting abuse in the Orthodox community*. Jerusalem Post. Retrieved from: www.jpost.com/Opinion/The-role-of-rabbis-in-combating-abuse-in-the-Orthodox-community-381976

⁶⁹ Vieth, V. I., Everson, M. D., Vaughan-Eden, V. & Tiapula, S. Chaplains for children: Twelve potential roles for a theologian on the MDT. *CenterPiece*, 3, 1-5. Retrieved from <https://secure.gundersenhealth.org/app/files/public/1438/CenterPiece-Vol-3-Issue-6.pdf>.

justice when rabbis take active roles (e.g., accompanying victims to the CAC or court hearings),⁷⁰ both with the formal proceedings and by supporting the victim within their own communities.

CONCLUSION

The primary principle guiding the actions of the Jewish community must be to protect the vulnerable among us. As God teaches in *Isaiah* 1, God has no need for empty sacrifices:

(13) Bringing oblations is futile, incense is offensive to Me, new moon and Sabbath, proclaiming of solemnities, assemblies with iniquity, I cannot abide. (14) Your new moons and fixed seasons fill Me with loathing; they have become a burden to Me, I cannot endure them.

Instead, God says:

(16) Wash yourselves clean; put your evil doings away from My sight. Cease to do evil; (17) Learn to do good. Devote yourselves to justice; *aid the victim*; uphold the rights of the orphan; defend the cause of the widow. (Emphasis added).

In this passage, God clearly emphasizes helping others above sacrifices; God does not desire our *tefillot* or the beating of breasts if we remain oblivious to the pain of the vulnerable amongst us. If we want to come close to God, we are offered a simple but explicit prescription: we must stand up for the vulnerable among us and support the victim. This value, while hardly unique to Judaism, takes on a uniquely Jewish quality when viewed through the lens of Isaiah's teaching: God tells us that though piety can adopt misguided forms, it can also be rectified through a focus on justice and righteousness. Sexual abuse victims are among the most vulnerable individuals in our community today. If we support them through transparency, pursuit of truth, and a willingness to confront the darkness among us, then we can stand tall and unashamed before God.

⁷⁰ Tishelman, A. C. & Fontes L. A. (2017). Religion in child sexual abuse forensic interviews. *Child Abuse & Neglect*, 63, 120-130.