



Recent media headlines have made us realize that for all the progress our community has made in upholding standards of ethical and legal probity, **there is a need for raised communal awareness** when it comes to staying on the right side of the law and not winding up behind bars, even for what one might consider a “small infraction.”

A FORUM OF SOME EXPERT ADVICE

BY *Eytan Kobre*



Although high-profile criminal cases involving Orthodox Jews generate charged emotions and controversy both inside and outside the frum community, many people aren't aware that even far lesser offenses — like driving with an expired license, a little fib on a tax return, or even running an unauthorized private gemach — could mean jail time.

UOrthodox Jews who've gotten into trouble with law enforcement or are already incarcerated have learned that there are dedicated community members who can help them. They work under the banner of Dror, an eight-year-old organization founded with a mission to assist people in navigating the legal maze, advocate for rights a person might not know he has, provide basic religious necessities, and help soften the blow for the families of those in prison. Of course, avoiding jail to begin with is incomparably better than being helped out once you're there. The "system," say community *askanim* dealing with incarceration, is unbearably tough — demeaning and destructive and never worth the risk. Some people can withstand it and some break.

Dror would prefer people don't find themselves on the wrong side of the law in the first place. Recent media headlines have made us realize that for all the progress our community has made in ensuring that we uphold high standards of ethical and legal probity, there always remains a need for educational programs to raise communal awareness. To that end, Dror has recently held a number of events in different Jewish communities that have brought together a group of highly regarded judges, leading attorneys, and financial experts to address a wide array of fiscal and legal issues, ranging from mortgages and foreclosure to how to respond to subpoenas and police investigations to the parameters of governmental benefits like Medicaid and food stamps. What follows is based on one such event, which featured a frank discussion of what the average person needs to know about the real-life legal implications of everyday financial dealings.

Listen to Your Wife



ABRAHAM BACKENROTH is a highly regarded Manhattan-based attorney who has specialized in the area of bankruptcy and insolvency law for almost 40 years. He is also the *rosh hakahal* of Kehal Premishlan in Flatbush. One of the major pitfalls facing well-intentioned people dreaming of a fast, high return on their investment is falling prey to schemers — many of them seemingly upstanding citizens and *erliche* Yidden. "We are *maaminim*, and that means we also believe in our precious fellow Jews," says Backenroth. So how can a person remain trusting and still protect himself from Ponzi schemes and con artists?

Some in our community fall prey to fraudulent schemes due to a positive characteristic we Jews possess: Our *emunah* is a trait embedded in our metaphysical DNA. We believe in Hashem and we also believe in our peers. Those are good things and they have helped carry us through a very difficult national history.

But every positive trait has its limits. Although we have a mitzvah of *b'tzedek tishpot amisecha*, requiring us to judge our brethren favorably, it still involves a judgment of whether or not a particular person in a given circumstance merits being given the benefit of the doubt. Here, then, are four basic rules to follow in making that judgment when someone approaches you with a financial opportunity:

First, give the proposal the same level of scrutiny you would give it if it had been made by someone from outside the community. Although you may ultimately decide that a particular risk is worth taking, your starting point should be analysis of the proposal to see if it makes sense, not blind faith.

Second, do not assume that because a person is a generous *baal tzedakah*, he must also be a person of honesty and integrity in his business dealings. Nor should one assume that his association with a particular yeshivah or other *mosad* is a guarantee of his personal or professional integrity.

One of my clients was in the midst of doing a deal with someone who, unbeknownst to him, was a con artist. In the middle of the negotiations, a rosh yeshivah came in and made an impassioned plea for a contribution, whereupon the con

artist immediately wrote him a check for \$25,000. My client took this as evidence of his counterpart's high integrity, but it had all been a setup — this con artist had told the rosh yeshivah to come to him at the precise time the negotiations were taking place. This charade cost my client \$40 million dollars.

Third, discuss the proposal with your wife, whom Hashem has given *binah yeseirah*, a greater clarity and intuition. Hashem gives every man a special gift — a wife who is an *ezer k'negdo*, and sometimes her help takes the form of opposing her husband when he's about to do something he shouldn't be doing. In my 40 years of practice, I've had to listen to some very silly things people have done for which they've come to me to straighten out, and I ask them all the same question: "Did you discuss this with your wife before doing it?" Unfortunately, the answer is always the same — they did not.

Also, discuss the proposal with parents and parents-in-law who have life experience, even if they're not lawyers or accountants, while of course ensuring that confidentiality is maintained.

Fourth, always get it in writing. Not properly documenting a transaction immediately puts you outside the protection of the law and makes you easy prey for scammers. If the person you're dealing with won't put things in writing, you know all there is to know about this transaction. Also, be sure to put into the agreement the name of a rav whom both parties trust to adjudicate any disputes that may arise. Indeed, the very knowledge that a wronged party will have resort to immediate resolution of his claims, which will be enforceable under state law, will be a disincentive to deal dishonestly.

Housing Bubble



BENJAMIN EPSTEIN has been a Brooklyn-based attorney for almost 20 years, specializing in landlord-tenant law. He handles all areas of Housing Court litigation and negotiates with city and state agencies on his clients' behalf. He's not lacking for work, though, because "the fraud that is perpetrated upon Section 8 by both landlords and tenants alike, whether intentional or from ignorance, is out of control." To date, he has prosecuted and defended both landlords and tenants in more than 15,000 cases.

The New York City agency dealing with Section 8 housing subsidies is one of the largest and most complex yet disorganized agencies to deal with. Landlords love it and hate it, tenants love it and hate it, and so do we attorneys — that's about the only thing on which we all agree.

The fraud that is perpetrated upon Section 8 by both landlords and tenants alike, whether intentional or from ignorance, is out of control. Not only can it lead to civil suits by the city demanding that landlords discovered to have entered into side deals with their tenants reimburse the funds they received, but it can result in criminal prosecution as well.

Here are two common scenarios:

1) A landlord wants \$2,000 for his apartment, but Section 8 is willing to pay only \$1,000 and the tenant's legal share is \$500. The landlord provides documentation under oath to Section 8 that the rent is \$1,500, but enters into an off-the-record side deal with the tenant for the other \$500. The landlord has committed fraud, and it will come back to haunt him in the event the tenant stops paying his legal share of \$500 per month, for whatever reason. If the landlord brings him to court, the tenant can threaten to reveal their illegal side deal in open court.

2) The landlord agrees to rent his apartment to a tenant, but the latter never actually moves in, but instead subleases it to a third party, who pays the tenant each month. If the landlord gets paid his monthly rent from Section 8, this "double dipping" constitutes criminal fraud.

I have more than a few such cases going on now, in which Section 8 has demanded tens of thousands in back monies from my clients, and resulting in judgments and liens against them personally and their properties. In two instances, my clients were referred to the Kings County District Attorney's office for criminal prosecution.

I can't tell you how many times over the years people have told me, "A police officer called me and said, 'Come down to the station and we'll work this out.'" What that really means is "Come down so you can be arrested"

Zip Your Lip



MURRAY RICHMAN, a Bronx, New York-based criminal defense attorney with over 50 years' experience, has been described by one New York newspaper as "the best lawyer to call when the DA indicts you." A former president of the New York State Association of Criminal Defense Lawyers, he received the American Bar Association's Thurgood Marshall Award for his contributions to civil liberties in the United States. His advice when facing an officer? "*Redt nisht.*"

Whenever confronted by a representative of the government, you have a right to remain silent and you should exercise it. Whether it is the police who stop your car or the FBI that comes knocking at your door, your response should be the same: *Redt nisht*. Don't talk, just take their card, thank them, and say your lawyer will contact them. Don't say to yourself that if you don't speak with them, they'll think you have something to hide. We've all got something to hide – that's life.

I have a friend who's an FBI agent, and he told me that whenever someone he's questioning starts talking to him, he thinks to himself one word – "Gotcha." That's because there's a federal statute that makes it a crime to lie to a federal agent, even when not under oath, and if you start talking to a federal agent and explaining things, you're likely to say something that isn't true.

In a case called *United States v. Brogan*, which went all the way up to the US Supreme Court, the defendant had been out of his job as a union official for seven years. The FBI asked him whether he had

received any bribes, to which he answered "No," although that wasn't true. That was the worst possible answer he could have given, because had he said, "Yes, I took bribes," he would have walked free, since he did so more than seven years earlier and was now beyond the five-year statute of limitation for bribery. Saying nothing would also have been okay. But by saying "No," he committed the serious crime of lying to a federal agent (in violation of USC Title 18 § 1001), and the Supreme Court upheld his conviction.

We are a community where everyone knows everyone else, and we talk to each other, and yes, sometimes we say a little too much, but not everything has to be said. The government isn't your worst enemy – you are. And by talking out of turn, by trying to impress, by saying things you shouldn't say, you're likely to get into real trouble – 87 percent of criminal convictions are based on things people said rather than on things they've done.

Remember: The two great lies in life are "the check is in the mail" and "I'm from the government, and I'm here to help you." The bottom line? *Zug gornisht.*

Know Your Rights



JUDGE BARRY KAMINS, a partner at the law firm of Aidala, Bertune & Kamins, is a former New York State Supreme Court judge. He was chief of policy and planning for the entire New York State court system and is a past president of the Association of the Bar of the City of New York. Judge Kamins is the author of the seminal work *New York Search and Seizure* and is a *New York Law Journal* columnist. He speaks from many decades of experience on the bench and at the bar when he says that "most people out there lack a fundamental understanding of basic rights."

It's been my experience, as both a judge and attorney, that the public lacks a certain fundamental understanding of certain basic rights under the Fourth, Fifth, and Sixth Amendments to the United States Constitution. The result is distrust of governmental authorities, anxiety about the loss of privacy, and a misunderstanding of our legal process.

Under the Fourth Amendment, people need to know that the police must have a legal justification for certain actions they take. For example, a police officer cannot stop a person and detain him, or chase an individual, unless the officer meets certain legal criteria. A police officer cannot walk into a citizen's house without a warrant unless the citizen consents. Likewise, a police officer must meet certain requirements before he can pull over a motorist.

Under the Fifth Amendment, many people do not understand that a citizen has no obligation to speak to an investigating police officer. The citizen's silence cannot be used against him to build a case, nor is there any penalty for refusing to speak to the officer.

I can't tell you how many times over the years people have told me, "A police officer called me and said, 'Come down to the station and we'll work this out.'" What that really means is "Come down so you can be arrested." You can't talk your way out of that situation if the officer has made up his mind to arrest you; he will write down everything you say and it will become part of the file.

So what you need to do get a lawyer and have him contact the officer. One of the rights the Sixth Amendment provides is the right of a citizen accused of a crime to have an attorney and to have an attorney provided to him by the court if he cannot afford to retain one.

Don't Hesitate to Ask



ZACHARIA WAXLER, CPA, is a partner at Roth & Company LLP, New York's largest *shomer Shabbos* accounting firm. He leads the assurance division of his firm and is a sought-after consultant to businesses and organizations. With our lives so full of paperwork, even for seemingly small business maneuvers, his sage advice for protecting yourself: **Don't sign it unless you understand it.**

Recently, someone approached me in need of advice because, he said, "someone stole a property from me." I asked him to explain how that was possible, and he said that he had hired this person to help him with a loan modification, meaning that he couldn't afford his mortgage payments, so he had requested from his bank a revision of either the payments or the balance of the mortgage. The individual gave him a handful of forms to sign, and without reading through the documents, he signed them.

Only later did he find out that one of the documents he had signed was a deed transfer authorizing the individual to transfer title of the property to himself. It's now an uphill court battle for this person to regain his property, since he actually did sign those documents.

Whatever a person does, whether it's in business or otherwise, he should never hesitate to ask questions and understand what he's doing and what his responsibilities are. If someone asks you to join the board of your local shul or an organization, make sure you understand that responsibility. Once you understand it clearly, make sure that you join on the condition that you have the ability to meet those responsibilities.

The same thing goes for business. Don't open a business without knowing your responsibilities. Read the documents,

contracts, and agreements that are presented to you thoroughly, and sign only after you know exactly what is it you're signing.

The concept of *aseh lecha rav* pertains to this as much as it pertains to anything else. Have a knowledgeable advisor guide you through anything you may not understand. Value the advice, because it's really invaluable. Sometimes it may cost a bit of money — but I often hear feedback from people that the money they spent on advisors was the best money they've spent. Just this week, I was driving in Monsey and saw an advertisement from the local electric company that said "Call 811 before you dig or call 911 after." That says it all.

If someone approaches you and wants you to invest in his business venture with the promise of a big return on your money without any risk, remember the rule: If it's too good to be true, it probably isn't. That's not to say it isn't possible to make a large return on your money, but it comes along with an equivalent amount of risk.

Do your research before you invest. Don't just trust the individual even if you've known him for years. It doesn't mean he's scamming you — he may be just as clueless. I know many people who lost a fortune of money because they just invested based merely on a relationship, rather than on the facts. ●