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⁹ *Id.*

¹⁰ *Topless Dancer Wins on TV's "Court,"* ASSOCIATED PRESS, July 09, 1998, LexisNexis Academic.

¹¹ *Id.* at 7.

¹² *The Actual Facts About the Mcdonald's Coffee Case,* 'LECTRIC LAW LIBRARY, lectlaw.com at <http://www.lectlaw.com/files/cur78.htm> accessed June 18, 2009.

¹³ *Angry Anna Fans Sue Penthouse for \$8.99,* CHICAGO SUN-TIMES, August 28, 2002, at 12, LexisNexis Academic.

¹⁴ See, e.g., Martha Neil, *Suit Seeks Damages in Electrocution Allegedly Resulting from Wired Window,* CHICAGO DAILY LAW BULLETIN, Nov. 26, 1997, LexisNexis Academic., (describing a lawsuit based on a would be burglar's electrocution at the hands of a booby-trapping bar owner).

¹⁵ Larry Neumeister, *Judge Lets Naked Cowboy Suit Go On,* ASSOCIATED PRESS, June 23, 2008, LexisNexis Academic.

¹⁶ *Nakedcowboy.com* at <http://www.nakedcowboy.com/index.html> accessed June 18, 2009.

¹⁷ *Overton v Anheuser-Busch Co,* 205 Mich. App. 259, 261; 517 NW2d 308 (1994).

¹⁸ John Branch and Greg Bishop, *Suit Could Shed Light on Actions of Patriots,* NY TIMES, Feb. 16, 2008, at <http://www.nytimes.com/2008/02/16/sports/football/16nfl.html?ref=sports> accessed June 18, 2009.

¹⁹ *Names and Faces,* WASHINGTON POST, Jan. 2, 2003. LexisNexis Academic.

REBUKING: A JEWISH ALTERNATIVE TO WHISTLE-BLOWING

by Robert S. Wiener*

I. INTRODUCTION

Whistle-blowing is in the news again.¹ Bernard L. Madoff is behind bars for securities fraud, reported to federal prosecutors by his own sons.² The resume of Danny Pang, head of Private Equity Management Group (PEMGroup), was under scrutiny due to allegations by a former president of his firm³ before Pang committed suicide at 42.⁴

If you want to do the right thing, is whistle-blowing the right thing to do?⁵ Business ethicists have written extensively on the theme of blowing the whistle on corporations, but little on alternatives.⁶ And there is an alternative that might result in better communication, esprit de corps, and more ethical (and legal) behavior in businesses. Greater profitability through enhanced morale, greater efficiency, reduced legal costs, and a positive perception in the marketplace may follow. It's a Jewish alternative called rebuking.

II. BLOWING THE WHISTLE

The English language tells us much about our society's attitude toward whistle-blowing. Synonyms for whistle-blowing are negative: rat, snitch, fink, inform, squeal, and tattletale.⁷ Whistle-blowing is often seen as a betrayal of

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confidence, even a breach of one's duty of loyalty.⁸ Why then would anyone blow the whistle? Is it even ethical?⁹ Is there no other way; perhaps an alternative would avoid the need for whistle-blowing. "Alternative dispute resolution" (ADR) has garnered a great deal of attention as a means of avoiding litigation.¹⁰ If avoiding litigation is a good idea, might not the same be true of avoiding whistle-blowing?

Jewish law discourages reporting another's behavior to third parties. The transparency achieved by truthful whistle-blowing is not seen as a good in itself. In fact, the principle of *lashon hara*,¹¹ a rule against gossip, is based on a passage from the Torah,¹² "You must not carry false rumors."¹³ This proscription extends to the listener as well as to the speaker.¹⁴ What then is a Jew to do when confronted with actions perceived as wrongdoing? Avoid whistle-blowing by doing nothing? No. In fact, under Jewish law, one is obligated to take direct action.

III. HOKHE'ACH TOHKI'ACH – REBUKING AS A LEGAL DUTY

The Hebrew Scriptures instruct, "Reprove (*hokhe'ach tokhi'ach*) your neighbor, but incur no guilt because of him."¹⁵ Others translate it as "rebuke your neighbor".¹⁶ Rashi¹⁷ did not comment on the statement "Reprove your neighbor," perhaps because the commandment is clear and needs no interpretation to establish its basic intent. Under Jewish Biblical law, one is obligated to bring it to the attention of others when they miss the mark. This is a positive commandment, a legal duty, a *mitzvah* that occupies a central place in the Torah.¹⁸

A. What is Rebuking?

"It is a mitzvah for a person who sees that his fellow Jew has sinned or is following an improper path [to attempt] to correct his behavior...."¹⁹ This corrective action is rebuking.

B. Why Rebuke?

Why rebuke another? The answer comes from understanding the Biblical obligation to rebuke. For a Jew who accepts the Torah as containing the legally binding commandments of God, it is enough, without further explanation, that the text requires one to reprove one's neighbor. And Maimonides²⁰ makes it clear that this is a commandment -- "It is a mitzvah..."²¹

Is there a justification for this commandment, even if none is theologically needed? According to Maimonides, the purpose of rebuking another is "to inform him [the sinner] that he is causing himself a loss by his evil deeds...."²² The objective is not to affect the future behavior of the sinner by deterrence or education. The goal is to give the sinner the opportunity to repent,²³ to do *t'shuvah*.²⁴ This rationale is not the self-interest of the rebuker, but altruism for the rebuked. Rebuking is in the interest of the rebuked party. Repentance is key and can have powerful positive implications.²⁵ One would be "making these statements for his colleague's own welfare, to allow him to merit the life of the world to come."²⁶

On the other hand, J.H. Hertz²⁷ understands the commandment to rebuke in the context of the following phrase, "[thou shalt] not bear sin because of him" and concludes that the reason for the commandment is self-interest, to keep the rebuking party from future sin. "Unless there is a frank statement from the aggrieved party, the hatred or dislike smouldering in his heart may lead him into sin."²⁸ Recent commentators have agreed with this psychological explanation. "The context suggests the interpretation that an individual should not allow ill feelings to fester; rather, he should confront his kinsman and admonish him directly, in this way avoiding grudges and vengeance that breed

hatred.”²⁹ Jacob Neusner puts it this way, “The important point is not repressing one’s viewpoint.”³⁰

Commentary on this passage focuses on one-on-one rather than on group relationships. However, Maimonides observed that a person “causes real loss to himself and the entire world [by sinning].”³¹

C. Whom Should One Rebuke?

Should one rebuke both Jews and non-Jews? According to Maimonides, one is commanded only to rebuke a fellow Jew.³² This is probably because, according to Jewish law, a non-Jew is not obligated to obey the commandments of the Torah and, therefore, cannot be said to have sinned.³³

Should one rebuke superiors? It is not obvious to the rabbis of the Talmud that any Jew who sins should be rebuked. Interpretation of the double verb helps to answer the question. Rava³⁴ says that the use of the term *hokhe'ach* alone would simply teach that teachers must rebuke students when they sin. The additional *tokhi'ach* is there to teach us that students must also rebuke teachers when they sin. According to Rava, therefore, sinning should be rebuked in all cases.³⁵ Thus this commandment to rebuke does not distinguish between teacher and student, superior and inferior, although perhaps it does in the manner of rebuke.

Should one rebuke only those who have committed wrongs against other people? Maimonides states that one also has a duty to rebuke one who commits a wrong against God.³⁶ In other words, we cannot even leave it to God to right all wrongs.

Should one rebuke only friends or strangers too? According to a later codification of Jewish law,³⁷ one is required only to rebuke a close friend. The reason for not having to rebuke

others is that such rebuke is unlikely to be effective.³⁸ Jewish law seems to have become increasingly practical as the centuries passed.³⁹ However, perhaps even the rebuking of strangers can be effective.

D. How Often Should One Rebuke?

Should one rebuke just once, or repeatedly? The generally accepted rabbinic answer is that one should rebuke multiple times if necessary. This response is based again on the use of the double verb *hokhe'ach tokhi'ach*. There are several different interpretations as to the significance of the repetition.

One unnamed Talmudic rabbi argued that the doubling of the verb means that one should rebuke not once, but twice.⁴⁰ Rava responded that the doubling of this verb was not necessary to teach one to rebuke as often as necessary – that a single statement of the verb *hokhe'ach* would suffice.⁴¹ On the other hand, Sifra⁴² says,

A. And how do we know that if one has rebuked him four or five times, he should still go out and rebuke him again?

B. Scripture says, “reasoning, you shall reason with your neighbor.”⁴³

Thus, the general rule is that one should rebuke repeatedly when necessary.⁴⁴ The proof text is again the repetition of the term for rebuke in the verse.⁴⁵

Maimonides states the principle in the most persistent manner. “If one sees one’s fellowman sinning, one must rebuke him. If he [the sinner] accepts the rebuke, it is well. If not, he must be rebuked again, even a hundred times, until the sinner strikes the rebuker and says, “I do not wish to hear another word.”⁴⁶

Elsewhere in the Gemara,⁴⁷ Ramban⁴⁸ and Ran⁴⁹ question whether the obligation is to rebuke multiple times for a single

sin or for multiple sins. They reason that the single verb *hokhe'ach* establishes the principle that one must rebuke repeatedly those who sin repeatedly. But the second verb, *tokhi'ach*, establishes that one must rebuke repeatedly for a single sin for which there has not yet been repentance.⁵⁰

E. How Should One Rebuke?

In Jewish law it matters how one rebukes. To rebuke in the wrong way may be a sin itself. Rashi interpreted "but incur no guilt because of him" at the end of the *hokhe'ach tokhiach* verse as meaning "i.e. though rebuking him thou shalt not expose him to shame (lit., make his face grow pale) in public, in which case you will bear sin on account of him."⁵¹ Sifra says,

A. Might one suppose that that is the case even if one rebukes him and his countenance blanches?

B. Scripture says, 'lest you bear sin.'⁵²

Jacob Neusner understands this as a limitation on rebuking. One's rebuke should not cause the recipient embarrassment.⁵³

A rebuke should be discrete. According to Maimonides "A person who rebukes a colleague – whether because of a [wrong committed] against him or because of a matter between his colleague and God – should rebuke him privately." Maimonides is also concerned with the content of rebuking. He believes that the primary objective of rebuking is to convince the sinning party to change their behavior and that the most effective method of achieving success is to show that repentance is in the sinner's best interest.⁵⁴ Maimonides writes, "He should speak to him patiently and gently, informing him that he is only making these statements for his colleague's own welfare, to allow him to merit the life of the world to come."⁵⁵ Jacob Neusner comes to a similar conclusion based on the Torah text itself. He translates the Biblical Hebrew of

the passage, "but reasoning, you shall reason with your neighbor...."⁵⁶

Although one has an obligation to rebuke even one's own teacher, the manner of the rebuke should be respectful. According to Maimonides, a student would accomplish this by "phrasing his rebuke in such a way that it sounds like an ordinary question."⁵⁷ "[A student who] saw his teacher transgress the words of the Torah should tell him: 'Master, you have taught us such and such....'"⁵⁸ The advice is to rebuke by asking a question of the teacher designed to elicit a response of repentance. This approach is identical to that used by God with Cain. "Why does He who knows everything ask of the fratricide [Cain], 'Where is Abel your brother?'" He wishes that man himself shall confess of his own free will....⁵⁹

J.H. Hertz comments,⁶⁰ "A precept extremely difficult of fulfilment; it is as difficult to administer reproof with delicacy and tact, as it is to receive reproof. Reproof must, of course, be offered in all kindness, otherwise it fails of its purpose; and if it entails putting a man to shame in public, it is mortal sin. No matter how much learning and good works the man who commits such a sin may possess, he has no share in the world to come – says a great Mishnah teacher."⁶¹

This is an essential difference between Biblical rebuking and whistle-blowing. Whereas whistle-blowing is public, bringing matters out in the open, rebuking is private, focused on achieving proper actions without shaming the wrongdoer.

F. When Should One Rebuke?

In the Jewish community at Qumran,⁶² rebuking was a prerequisite to litigation. In fact, reproof must occur before witnesses. "Moreover, let a man not bring against his fellow a matter before the 'Many' [a quasi-judicial body] which had no

reproach before witnesses.”⁶³ Another text states the matter even more explicitly. “Any man from the members of the covenant [of the Qumran sect] who brings against his fellow a charge which has had no reproach before witness, but brings it out of anger, or tells it to his elders in order to shame him, he is guilty of taking revenge and holding a grudge.... His sin is upon him insofar as he did not carry out the commandment of God who said to him, ‘You shall surely reproach your fellow and bear no sin because of him’”⁶⁴

Perhaps witnesses were intended to preserve evidence of an attempted negotiation.⁶⁵ Or they may have served as conciliators or mediators. By the time of Maimonides, any practice of rebuking in front of witnesses had disappeared and it was took place in private. But in Qumran, rebuking appears to have been a form of alternative dispute resolution where it may have been practical and possible to preserve a relationship between in a small community with limited judicial resources.⁶⁶

G. What If One Doesn't Rebuke?

Although Jewish law requires one to rebuke a fellow Jew who sins, no punishment is stated for not doing so. However, to ignore a Biblical commandment, according to Maimonides, makes one responsible for the sin committed. “Whoever has the possibility of rebuking [sinners] and fails to do so is considered responsible for that sin, for he had the opportunity to rebuke the [sinners].”⁶⁷ This may be a sin punished by God, not man.

IV. REBUKING IN THE WORKPLACE

The business world, an arena in which doing the right thing is often equated with making a profit, has more than its share of unethical behavior.⁷¹ In business codes of conduct, internal

reporting is often the recommended first step.⁷⁴ A confidential ethics/fraud hotline or ethics officer might stave off whistleblowing, but it does not have the advantages that come from creating a community of shared ethical values and trust.⁷⁵

Although the principle of rebuking derives from Jewish and then Christian law it is not an essentially religious concept. Even if profitability is not the objective of observing the precept of *hokhe'ach tokhi'ach*, encouraging employees to encourage each other to do the right thing could be in the best interest of business organizations. In a communitarian corporate culture, possible wrongdoing can be confronted effectively before great harm is caused. Starbucks expresses its concern for its corporate image in case problems are made public.⁷⁹ Those of us whose workplace is the academy can attempt to create such communities and serve as a role model for other industries.⁸⁰

Is it reasonable to expect effective rebuking in the workplace? Perhaps. Direct appeal to a colleague may achieve positive results, especially when peer pressure is collective.⁷² In fact, a university ethics handbook proposes rebuking a superior as the initial method of resolution of ethical issues.

Discuss your concerns with your immediate supervisor, even if your supervisor is the one presenting the ethical problem. Sometimes when presented with a subordinate who questions the ethical nature of a situation, the supervisor will rethink the situation and step back from the unethical action. If, however, this does not provide a satisfactory solution, you will need to find an alternative course of action. Don't think it is okay to just do what you are told to do!”⁷³

Is this proposal naïve? The rebuker's option of subsequent whistle-blowing may deter retaliation, but their work environment may be made so uncomfortable as to amount to implied discharge. A common perception is that ethical behavior is not rewarded and "No good deed goes unpunished."⁷⁶ Defensive and threatened superiors may retaliate when they think their own actions are challenged.

The greatest practical obstacle to rebuking may be that if it does not achieve the desired result a rebuker might be ostracized without even the legal protections against retaliation afforded whistle-blowers. They may have no alternative to resignation, if they are not fired first. For rebuking to succeed in practice, a rebuking-friendly workplace is necessary.

Change to a rebuking community will not happen by itself. Such a workplace would have to be created by management. If a business is committed to this approach, it must get all of its members to buy into the process. Deeds matter far more than words, but these words from a corporate ethics document at Texas Instruments may be a start in that direction:

- We encourage open, honest and candid communications....
- We respect all Tiers without regard to their position or level within the organization.⁷⁸

Superiors must be prepared to educate others and to lead by example. Workers would have to be assured that they would not be punished, if not in fact rewarded, if they rebuke fellow employees, and even superiors. As Texas Instruments claims, "We respect the right and obligation of every Tier to resolve concerns relating to ethics questions without retribution and retaliation."⁷⁷

V. CONCLUSION

Over the development of Jewish law there has been a variety of perspectives on what to do when confronted with wrongdoing. The prevailing position is that Jews are their "brothers' keepers,"⁶⁸ responsible to urge other Jews to do the right thing, preferably through rebuking under the principle of *hokhe'ach tokhi'ach* and not whistle-blowing.⁶⁹ Jewish biblical and rabbinic law arose in self-policing Jewish communities; therefore there is no discussion of reporting fellow Jews to non-Jewish authorities or whether a Jew should report a non-Jew for wrongdoing. Based on Jewish sources a persuasive case could be made that now we are all responsible to each other to make the world a better place through *tikkun olam*, repairing the world,⁷⁰ and that we should all encourage others to act ethically, to do the right thing.

This ancient Jewish principle of rebuking can provide an effective and practical alternative to whistle-blowing in the modern workplace, achieving its benefit of avoiding wrongdoing without its costs. Whether institutionalizing *hokhe'ach tokhi'ach* succeeds would depend, as so much does in business organizations, on the leadership of those on the top.

But what is one to do if rebuking has no positive effect, if this quiet diplomacy fails? In the most difficult cases, such as those of Madoff and Pang, the wrongdoing is by a business organization's leadership itself. Rebuking by insiders, for example by Madoff's sons or by Pang's president, might be effective – but they might have been in on it too. Even if Jewish law commands rebuking in the face of sinful behavior, would the end of ethical behavior justify other means? What does Jewish law say about whistle-blowing if rebuking fails? That is a topic for another paper.

ENDNOTES

- ¹ The term “blow the whistle” is slang – “To expose a wrongdoing in the hope of bringing it to a halt: *an attorney who blew the whistle on governmental corruption.*” “Whistle blower ... *Slang.* One who reveals wrongdoing within an organization to the public or to those in positions of authority: “*The Pentagon’s most famous whistleblower is ... hoping to get another chance to search for government waste*” (Washington Post).” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992).
- ² Alex Berenson & Diana B. Henriques, *Inquiry Finds No Signs Family Aided Madoff*, N.Y. TIMES, December 15, 2008.
- ³ Mark Maremont, *Highflying Financier Faces Questions Over Fund Empire*, THE WALL STREET JOURNAL, April 15, 2008.
- ⁴ *Danny Pang, Financier Under Investigation, Is Dead at 42*, THE ASSOCIATED PRESS, September 12, 2009. Danny Pang’s death has been ruled a suicide. *Death of Accused Financier Ruled a Suicide*, N.Y. TIMES, January 12, 2010.
- ⁵ Baltimore has seen both anti and pro snitching campaigns. Rick Hampson, *Anti-snitch campaign riles police, prosecutors*, USA TODAY, March 28, 2006.
- ⁶ Sissela Bok, *Whistleblowing and Professional Responsibility*, N.Y.U. EDUC. Q., 11, 2-7 (1980); NORMAN BOWIE, BUSINESS ETHICS (1982); Ronald Duska, *Whistleblowing and Employee Loyalty*, in CONTEMPORARY ISSUES IN BUSINESS ETHICS 142-46 (Joseph R. Des Jardins & John J. McCall eds., 2d ed. 1990).
- ⁷ The same is true in other cultures; for example, the Spanish term *chota* is used to label one who has committed a betrayal. Urban Dictionary, <http://www.urbandictionary.com>.
- ⁸ “[W]histleblowing ... violate(s) a *prima facie* duty of loyalty to one’s employer.” Duska, *supra* note 6.
- ⁹ Several articles have addressed the moral issues concerning whistle-blowing, e.g., Gene G. James, *Whistle-blowing: Its*

Moral Justification, in ESSENTIALS OF BUSINESS ETHICS (Peter Madsen & Jay Sfaritz, eds., 1990).

¹⁰ A Wikipedia entry, http://en.wikipedia.org/wiki/Alternative_dispute_resolution and 2,550,000 Google hits for “alternative dispute resolution,” <http://www.google.com/search?client=safari&rls=en&q=alternative+dispute+resolution&ie=UTF-8&oe=UTF-8>

¹¹ NACHUM AMSEL, THE JEWISH ENCYCLOPEDIA OF MORAL AND ETHICAL ISSUES, 64 Speech 279-80 (1994).

¹² Torah. Name applied to the five books of Moses, Genesis, Exodus, Leviticus, Numbers, and Deuteronomy, <http://www.jewishencyclopedia.com/view.jsp?artid=265&letter=T&search=torah#ixzz0S5wwMjGE>

¹³ Exodus 23:1. ETZ HAIM: TORAH AND COMMENTARY 470 (2001).

¹⁴ 1. You must not carry. A *midrash* interprets this to prohibit receiving as well as spreading false and damaging rumors. Even to listen to such a rumor is to participate in its circulation and thereby participate in hurting another human being. *Id.*

¹⁵ The entire verse reads, “[You shall not hate your kinsman in your heart.] Reprove (*hokhe’ach tokhi’ach*) your neighbor, but (exact force of *we-uncertain*) incur no guilt because of him.” Leviticus 19:17. THE TORAH: THE FIVE BOOKS OF MOSES 217 (1962).

¹⁶ “[T]hou shalt surely rebuke thy neighbour, and not bear sin because of him.” THE PENTATEUCH AND HAFTORAHS 501 (J.H. Hertz ed., 2d ed. 1961).

¹⁷ Rashi (Solomon bar Isaac) French commentator on Bible and Talmud; born at Troyes in 1040; died there July 13, 1105, <http://www.jewishencyclopedia.com/view.jsp?artid=121&letter=R&search=rashi#ixzz0S5g9ozxP>

¹⁸ “Chapter 19 may be characterized as a brief *torah* (instruction). It states the duties incumbent on the Israelites as a people and includes a wide range of laws and commandments that are representative of the basic teachings of the

Torah.” BARUCH A. LEVINE, *THE JPS TORAH COMMENTARY: LEVITICUS 124* (1989). The rabbis of the Talmud consider this commandment in the tractate *Bava Metzia*. The Talmud is “The collection of ancient Rabbinic writings consisting of the Mishnah and Gemara, constituting the basis of religious authority in Orthodox Judaism.” *AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1832* (3d ed. 1992). It also constitutes the basis of religious authority in Conservative Judaism. See JOEL ROTH, *THE HALAKHIC PROCESS: A SYSTEMIC ANALYSIS* (1986). ADIN STEINSALTZ, *THE TALMUD, VOL.II, TRACTATE BAVA METZIA, PART II, 31A 167*. *Bava Mezia* “(Aram. “middle gate”), tractate of Mishnah, with *gemara* in Jerusalem and Babylonian Talmuds; second of three sections of original large tractate *Nezikin*. Deals with laws of chattels, lost and found property, the four types of caretakers, embezzlement, fraud, interest, rights of hired labor and partnership.” *ENCYCLOPEDIA OF JUDAICA 67* (GEOFFREY WIGODER ed. 1974). The problem of the rabbis of the Talmud with this passage is that a verb is repeated, with a slight variation, in *hokhe'ach tokhi'ach*. They argue over how to interpret the many double verbs in the Torah. Torah is used here in a limited manner, “3. The first five books of the Hebrew Scriptures.” *AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1890* (3d ed. 1992). Some rabbis expect God to follow William Strunk’s principle of omitting needless words. “Elementary Principles of Composition 17. Omit needless words.” WILLIAM STRUNK & E.B. WHITE, *ELEMENTS OF STYLE* (4th ed. 2000). Any repetition of words requires rabbinic commentary. “[T]he Sages analyzed every word and letter of the Torah, and derived important laws from the slightest case of seeming superfluity....” STEINSALTZ, *supra* note 18, AT PART II, 31A 163. The assumption is that every word must have significance. These rabbis do not see repetition as intended merely for emphasis or dramatic effect. Therefore, the second

use of a word must have a meaning that adds to the meaning of the first use of the word. Other rabbis see the use of double verbs as simply stylistic without legal importance. “[T]here is an opinion that the use of a double verb is no more than a stylistic matter with no specific Halakhic significance.” STEINSALTZ, *supra* note 18, AT PART II, 31A 163. These rabbis understand that even if God would not waste words, the objective is to communicate to human beings. Therefore, “The Torah speaks in the ordinary language of human beings,” at least when double verbs, and occasionally double pronouns, are used. STEINSALTZ, *supra* note 18, at 31B 173. The duplication of the verb in this passage, *hokhe'ach tokhi'ach*, is one of several double verbs that many rabbis of the Talmud interpret as having importance. And their interpretations of the phrase have important implications as to the meaning of the commandment, for example, as to how often and whom one should rebuke.

¹⁹ “[A]s [Leviticus 19:17 states: “You shall surely admonish your colleague.” MAIMONIDES, *MISHNEH TORAH, HILCHOT DE’OT, THE LAWS OF PERSONALITY DEVELOPMENT 126-27* (Za’ev Abrahamson & Eliyahu Touger trans., 1989).

²⁰ Moses ben Maimon, Talmudist, philosopher, astronomer, and physician; born at Cordova March 30, 1135; died at Cairo Dec. 13, 1204,

<http://www.jewishencyclopedia.com/view.jsp?artid=905&letter=M&search=maimonides#ixzz0S60FArJw>

²¹ “Mitzvah (Heb.), ‘precept’ or religious duty.... Traditionally there are 613 precepts – 248 positive and 365 prohibitive.” This commandment is categorized under Mandatory Commandments as #205 (not ordered by verse) as a Social commandment. WIGODER, *supra* note 18, at 133.

²² “[A]s [Leviticus 19:17 states: “You shall surely admonish your colleague.” MAIMONIDES, *supra* note 19.

²³ Repentance. The noun occurs only in post-Biblical literature, but it is derived from the vocabulary of the Bible. Maimonides’

dictum, "All the prophets preach repentance" ("Yad," Teshubah, vii. 5), echoes the opinion of Talmudic authority (Berakhot 34b)

<http://www.jewishencyclopedia.com/view.jsp?artid=216&letter=R&search=repentance#ixzz0S614b5SI>

²⁴ MAIMONIDES, *supra* note 19, at 126-29.

²⁵ In fact, the Jewish concept of repentance (*t'shuva*), includes a commitment to change one's behavior in the future.

²⁶ MAIMONIDES, *supra* note 19.

²⁷ "Joseph Herman Hertz (1872-1946), chief rabbi of British Commonwealth 1913-46..." WIGODER, *supra* note 18, at 254.

²⁸ HERTZ, *supra* note 16.

²⁹ "Moreover, a proper attitude promotes love for one's neighbor. The opening statement (v.17) contrasts with the conclusion (v.18) as hate contrasts with love." This contextual argument refers to the passage in Leviticus 19:18, "Love your fellow as yourself." BARUCH A. LEVINE, *THE JPS TORAH COMMENTARY: LEVITICUS 129* (1989).

³⁰ JACOB NEUSNER, *SIFRA: AN ANALYTICAL TRANSLATION, Parashat Qedoshim Perek 4 CC:III 2.A*, 109 (1988).

³¹ Compare this concept to the approach of communitarianism. "It is entirely appropriate, therefore, for my fellow countrymen to ask of me some kind of service to the common cause." T.A. Spragens Jr., *The Limitations of Libertarianism, Part II*; *THE ESSENTIAL COMMUNITARIAN READER* 33 (Amitai Etzioni ed., 1998).

³² MAIMONIDES, *supra* note 19.

³³ According to Jewish rabbinic law, only seven laws are applicable to all people. They are the Noachide Laws, given to Noah and do not include the commandment of *hokhe'ach tokhi'ach*. WIGODER, *supra* note 18, at 455.

³⁴ "Rava (Abba bar Joseph bar Hama; d.352), Babylonian *amora*; colleague of Abbaye." WIGODER, *supra* note 18, at 500. *Amora*... [U]sed for Jewish scholars who taught in Erez Israel and especially Babylonia 3rd-6th c. in period after

conclusion of Mishnah, their work being comprised in the *Gemara*." *Id.* at 26.

³⁵ STEINSALTZ, *supra* note 18, AT PART II, 31A 165.

³⁶ MAIMONIDES, *supra* note 19.

³⁷ SHULCHAN ARUCH HARAV 156:7, according to MAIMONIDES, *supra* note 19, at Commentary, Halachah 7. Shulchan Arukh "name given by Joseph Caro to code of Jewish law compiled by him." WIGODER, *supra* note 18, at 552. Joseph ben Ephraim (1488-1575) codifier, mystic, author of Shulchan Arukh. *Id.* at 116.

³⁸ MAIMONIDES, *supra* note 19, at Commentary, Halachah 7.

³⁹ Compare to the philosophy of the king in *The Little Prince*. "If I ordered a general," he would say, by way of example, "if I ordered a general to change himself into a sea bird, and if the general did not obey me, that would not be the fault of the general. It would be my fault." ... "One must require from each one the duty which each one can perform..." ANTOINE DE SAINT-EXUPERY, *THE LITTLE PRINCE* 42-45 (K.Woods, trans. 1943).

⁴⁰ STEINSALTZ, *supra* note 19, at 165.

⁴¹ *Id.*

⁴² Sifra is Aramaic for book. "[T]annaitic halakhic Midrash to Leviticus. Probably compiled in Erez Israel in late 4th c. CE." WIGODER, *supra* note 18, at 500.

⁴³ Leviticus 19:17.

⁴⁴ NEUSNER, *supra* note 30, at 4 CC:III 2.B.

⁴⁵ Translated here as "reasoning, you shall reason." *Id.*

⁴⁶ MAIMONIDES, *MISHNEH TORAH, HILKHOT TALMUD TORAH* 5:9, STEINSALTZ, trans., *supra* note 19, AT PART II, 31A 165.

⁴⁷ TALMUD, TRACTATE ARAKHIN 16B.

⁴⁸ Nahmanides (Moses b. Nahman; Ramban; 1194-1270), Spanish rabbi, talmudist, philosopher, kabbalist, exegete, poet, communal leader..." WIGODER, *supra* note 18, at 440.

⁴⁹ "Nissim ben Reuben Gerondi (Ran; ?1310--?1375), Spanish talmudist, authoritative *posek*, yeshivah head in Barc Menachem Elona." WIGODER, *supra* note 18, at 455.

⁵⁰ STEINSALTZ, *supra* note 19, at PART II, 31A 165.

⁵¹ "Notes: According to Rashi, [*v'lo taseh alav*] is not an independent statement, it merely expresses a condition: Rebuke thy fellow man but in such a manner that you do not thereby bring upon yourself sin. The sin would be to rebuke him in public." PENTATEUCH WITH RASHI'S COMMENTARY, M. Rosenbaum & A.M. Silbermann, trans., Vol. 3, 87b (1929).

⁵² NEUSNER, *supra* note 30.

⁵³ "No. 2 then sets limits to this process of rebuke or reasoning with the other. *Id.*

⁵⁴ Although "The Torah, the most important Jewish text, has no clear reference to afterlife at all," by the time of Maimonides, belief in an afterlife was generally accepted in Judaism. JOSEPH TELUSHKIN, JEWISH LITERACY (1991).

<http://www.jewishvirtuallibrary.org/jsourc/Judaism/afterlife.html>

⁵⁵ MAIMONIDES, *supra* note 19, at 126-29.

⁵⁶ NEUSNER, *supra* note 30.

⁵⁷ MAIMONIDES, MISHNEH TORAH, HILKHOT TALMUD TORAH 5:9, STEINSALTZ, trans. *supra* note 19, at PART II, 31A 166.

⁵⁸ MAIMONIDES, *supra* note 57, at 242-43.

⁵⁹ JAMES L. KUGEL, THE BIBLE AS IT WAS 93 (1997).

⁶⁰ On the passage "rebuke thy neighbour." HERTZ, *supra* note 16.

⁶¹ *Id.*

⁶² Home to a Jewish community near the Dead Sea that existed around the start of the Common Era.

⁶³ (1QS) *Community Rule* 6:1, KUGEL, *supra* note 59 at 454.

"*Community Rule*: a translation of the Hebrew name *Serekh ha-Yahad*; also called the *Manual of Discipline*." This document is one of the Dead Sea Scrolls at Qumran. James L. Kugel, *On Hidden Hatred and Open Reproach: Early Exegesis*

of Leviticus 19:17," 80 Harvard Theological Review 52-55 (1987).

⁶⁴ *Damascus Document* 9:3-8, KUGEL, *supra* note 59 at 454.

⁶⁵ This seems to be the gist of this Gospel passage, "If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained a brother. But if he does not listen, take one or two others along with you, so that every word may be confirmed by the evidence of two or three witnesses." Matt. 18:15-16, KUGEL, *supra* note 59 at 454-55; Dennis C. Duling, "Matthew 18:15-17: Conflict, Confrontation, and Conflict Resolution in a "Fictive Kin" Association," Biblical Theology Bulletin, Vol. 29, No. 1, 4-22 (1999).

⁶⁶ Christian law observed this positive result of reproving.

"For when such people are corrected and reproached, you will not have many lawsuits." *Didascalia Apostolorum* ch.11, KUGEL, *supra* note 59 at 455.

⁶⁷ MAIMONIDES, *supra* note 19, at 128.

⁶⁸ "Am I my brother's keeper?" Genesis 4:9, ETZ HAIM: TORAH AND COMMENTARY 26 (2001).

⁶⁹ "*Kol Yisrael arevim ze bazeh*," all Jews are responsible one for the other. TALMUD, SHAVUOT 39a.

⁷⁰ NATHAN J. DIAMENT, TIKKUN OLAM: SOCIAL RESPONSIBILITY IN JEWISH THOUGHT AND LAW (1997).

⁷¹ Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES, Sept. 13, 1970, at 122.

⁷² Peer pressure can change behavior. One example is New York City mayor Ed Koch's "Where's your pooper scooper" campaign. "Both Mr. Schneider and Mr. Bornstein cited former Mayor Edward I. Koch's promotion of the pooper-scooper law. 'He created an awareness, and it's worked,' Mr. Bornstein said." Jake Mooney, *Neighborhood Report: Upper East Side; Fed Up With Cars That Travel on Giant Cat Feet*, N.Y. TIMES, May 8, 2005.

⁷³ C. Whistle-blowing

You have identified the ethical dilemma and evaluated the situation using the decision-making tool. However, your supervisor has asked you to take an action that makes you uncomfortable. You have examined the situation, identified the stakeholders, determined and tested the options. You are firmly convinced that if you take the action your superior has asked, the act would be unethical. What do you do now? You need this job to pay your bills and simply walking away from your job is not a course of action you want to take. Going against what a superior has asked or ordered is never easy, but you need to decide what to do.

Following the directions or orders of the boss is not an ethical or legal defense for wrongdoing. You must be prepared to think and act in a way that is beneficial to you and that of the organization for which you work. Are there alternatives for you to follow short of quitting? Fortunately, in most organizations the answer is "yes." Here are some possible courses of action if you find yourself in this type of ethical dilemma: 1....

HANDBOOK: BUILDING ETHICAL LEADERS (Northern Illinois University College of Business) 22-23 (2006), Association to Advance Collegiate Schools of Business Ethics Education Resource Center.

http://www.aacsb.edu/resource_centers/EthicsEdu/EthicsHandbook.pdf

⁷⁴ Such as directives to "report," "notify," or "contact" various offices. BellSouth's Code of Conduct (2005)

http://www.ethics.bellsouth.com/OVIA_K00801W.02.pdf

⁷⁵ *Supra* note 73, at 23.

"...Guardsmark maintains an ethics committee and a dedicated ethics officer who can be reached through a toll-free number. We take every ethics concern or issue seriously and provide assistance about applying principles to any given situation." Guardsmark, Ethics.

http://www.guardsmark.com/approach/approach_sec.asp?nav=1&subnav=3&content_id=8; "Providing a means to report

exceptions (i.e., possible misconduct). We maintain an Ethics Line (1-800-455-1996) to receive reports from anyone who is aware of a violation of our Code of Conduct or Policies and Procedures. This line is answered at all times." HCA Healthcare Company

<http://ec.hcahealthcare.com/CustomPage.asp?guidCustomContentID={0C97D70A-C35D-4E02-B1A8-CB335070158B}>;

"The TI Ethics Office has three primary functions: ...

3. To provide multiple channels for feedback through which people can ask questions, voice concerns and seek resolution to ethical issues." Texas Instruments, Ethics

<http://www.ti.com/corp/docs/csr/corpgov/ethics/index.shtml>

⁷⁶ Attributed to Clare Booth Luce.

<http://www.answers.com/topic/luce-clare-boothe>

⁷⁷ Texas Instruments, Values and ethics of TI: Integrity

<http://www.ti.com/corp/docs/csr/corpgov/ethics/integrity.shtml>

⁷⁸ *Id.*

⁷⁹ Ethical Decision-Making Framework 4. Determine the best approach (what should you do?).... • Would your approach embarrass you or Starbucks? • How would your approach look published in the newspaper?...Starbucks Business Ethics and Compliance: Standards of Business Conduct.

http://www.starbucks.com/aboutus/SoBC_FY09_eng.pdf

⁸⁰ Perhaps that process can begin in the business school classroom. "So business school students, when your ethics professors greet you with careworn faces and an exasperation unbecoming of anyone with a guarantee of lifetime employment, be patient with them. They don't have the weight of the world on their shoulders, just the fate of your chosen profession. Listen to them. They can't solve this moral crisis in capitalism, but they can convince you to give it a try." John Paul Rollert, "Bernard Madoff, Adam Smith, and capitalism's moral crisis," CHRISTIAN SCIENCE MONITOR, September 21, 2009.