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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SANTA CLARA

15 MORDECHAI TENDLER,

16 Plaintiff,

17 v.

18 JOHN DOE,

19 Defendant.

20 No. 1 06 cv 064507

21 **AFFIDAVIT OF MARK S. DRATCH**

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1. My name is Mark S. Dratch. I make this affidavit to explain why members of the Jewish community may be afraid to be publicly identified as having engaged in discussion and criticism of rabbis accused of sexual or other abuse, and to show that charges made by some of his congregants against Rabbi Morechai Tendler have become a genuine and legitimate subject of controversy both within the Jewish community and within the larger community.

2. I believe that I am well qualified to explain these things. I spent twenty-two years as a congregational rabbi, serving in synagogues in Boca Raton, FL; Schenectady, NY; New York, NY; Toronto, Canada; and Stamford, Connecticut, and teach Jewish Studies at Yeshiva University. I have been both Vice-President and Recording Secretary of the Rabbinical Council of America (“RCA”), where I serve as the chairman of the Task Force on Rabbinic Improprieties, and was responsible for spearheading and formulating its policy guidelines for responding to allegations of sexual improprieties against member rabbis.

3. I am the founder of JSafe, an organization devoted to creating an environment in which every institution and organization across the entire spectrum of the Jewish community conducts itself responsibly and effectively in addressing the wrongs of domestic violence, child abuse and professional improprieties— whenever and by whomever they are perpetrated. JSafe aims to develop standards and protocol for certification of training and policies to prevent abuse and provide for their responsible investigation in a manner that protects both the accuser and the accused. I have spoken widely on the problems and written several articles on the halachic implications of

reporting examples of rabbinical abuse to the secular authorities and of discussing such charges both within the Jewish community and in the broader community. Such articles include *The 411 on 911: Reporting Jewish Abusers to the Civil Authorities*, available at <http://www.jsafe.org/pdfs/mesirah.pdf>, and *Let Them Talk: The Mitzvah to Speak Lashon Hara*, available at <http://www.jsafe.org/pdfs/Lashon%20Hara%20and%20Abuse.pdf>.

4. I have examined the affidavit of Yosef Blau and I am in general agreement with his observations about the impact of the community norms against speaking ill of others and against reporting on Jews to the secular authorities and the broader community. As Rabbi Blau explains, “Jews properly worry not only about behaving improperly in violation of these norms, but also about the possible enforcement of such norms at the hands of allies of the accused. Such concerns can easily affect the willingness of members of the Orthodox Jewish community to be publicly identified as having spoken about alleged abuse by powerful or well-connected rabbis.” I also agree with Rabbi Blau’s statement that members of the community have a duty to speak out when the established mechanisms of our community are not equal to the task of prevention of abuse and protection of its victims.

5. I have personally spoken with too many victims of abuse who were afraid to come forward publicly because they feared such repercussions and how they could impact on them personally, as well as fearing the consequences to their children and families. This counterattack often comes in the form of social ostracism and ad hominem attacks. It may even, at times, come from the organized community in the form of cherem or excommunication.

6. But the sort of more formal sanctions and exclusion from institutions such as

schools, businesses or places of employment that Rabbi Blau discusses are not the only ways in which members of our community may feel threatened for speaking publicly about the problems of abuse. Equally intimidating are the campaigns of personal harassment that are conducted anonymously and directed at those whose public expressions the harassers disapprove. It is, sad to say, all too common for members of our community to be the targets of anonymous phone calls, knocking on one's door late at night or in the small hours of the morning, campaigns to discredit the speaker, and the like.

7. This is not a worry that only unimportant individuals in our community may have. For example, I recently had the opportunity to consult with four very prominent rabbis, major figures in the Orthodox Jewish community, whose religious and Jewish legal opinions are often sought and always well respected. My question dealt with an issue in an ongoing abuse scandal. While each one had a specific opinion regarding the matter, one that would be of tremendous help to the victims, each of them was unwilling to have his name made public. They feared reprisal and retaliation.

8. I agree with Rabbi Blau's observations about the prominence of Mordechai Tandler's family and about the legitimacy of an anonymous critic's worry that being identified as someone who criticized a member of such a prominent family would make the critic especially subject to abusive reactions. But even Tandler's own family has been known to complain about being harassed for expressing opinions that others in the community do not approve. Mordechai Tandler's father, Moshe Tandler, recently expressed the view that a common practice following circumcision in some ultra-Orthodox communities, whereby the mohel collects some of the infant's blood by

sucking directly on the wound, should be altered in light of the danger of infection, and instead the suction should be performed using a sterile tube. He has been quoted in the Jewish press as charging that “prank callers have inundated his home phone and vandals have struck at the synagogue in Monsey, N.Y., where he serves as religious leader.” *Rabbi Targeted After Call for Bris Change*, Forward, March 18, 2005, available at <http://www.forward.com/main/article.php?ref=weiss200503161045>.

Similarly, some supporters of Mordechai Tendler in the debate over the charges against him have suggested that the accusations were in retaliation for his being too supportive of feminist issues within the community. *Israeli Chief Rabbinate Tells RCA: Reinstate Rabbi Tender A Tale of Lies and Midwives*, The Jewish Voice and Opinion, April 14, 2005, available at http://www.theawarenesscenter.org/Tendler_Mordecai.html#Shul. I do not intend to comment on whether these defenses are true; but if even powerful individuals must worry about such harassment, then it is completely understandable that an anonymous blogger might worry about the personal consequences of being identified.

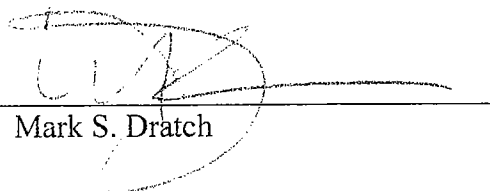
9. I firmly believe that bloggers have a legitimate role to play in bringing cases of abuse to light and generating community interest and outrage, although, at the same time there is a need for bloggers to behave responsibly and not disseminate every rumor that they hear without regard to the innocence or guilt of the accused. I wrote on this subject in *Are Blogs Kosher*, The Jewish Week, May 25, 2006, available at <http://www.jsafe.org/pdfs/052506.pdf>. But bloggers should not have to fear being identified simply because they repeat accusations against powerful individuals within our community, because the result will be to suppress.

10. The case of Mordechai Tendler has become a legitimate subject of debate

within the Jewish community and within the broader community. Several members or former members of his congregation in New Hempstead, New York, came forward with serious and indeed shocking accusations of sexual harassment and abuse which, if true, demanded prompt and firm action. Some accusers related their charges to me personally, after which I referred the matter to the Rabbinical Council of America. The charges were investigated at great length by an internal ethics community, or "Vaad Hakavod," of the RCA. I did not serve on the Vaad Hakavod. This group subsequently investigated the allegations through Praesidium, Inc., a risk management and investigation firm, and conducted its own investigation as well. It then issued a detailed report that led the Council's Executive Committee to vote unanimously to expel Rabbi Tendler from membership. Eventually, Rabbi Tendler's congregation removed him from his position. At least one of Rabbi Tendler's accusers has filed suit against him for his actions in New York State Court; Rabbi Tendler has sued for libel in a rabbinical court in Israel. Rabbi Tendler has sought other relief against the RCA from other community authorities, alleging that fair or proper process was not followed. Both Rabbi Tendler's supporters, and supporters of the RCA's decision, have debated back and forth for more than two years. The charges, counter charges, and debate have been widely reported in Jewish media sources, as well as in the secular press in the broader community. These publications have included the Forward, The Jewish Press, the New York Post, and television stations. I attach to this affidavit a collection of such stories.

11. I strongly support the protection of the anonymity on the Internet of whistle blowers and victims of abuse. My experience in combating all types of abuse and corruption in the Jewish community, especially clergy abuse, has taught me just how

important this protection is. While innocents need to be protected from unaccountable and anonymous slander and character assassination, innocent victims of abuse and their advocates need the protection of this anonymity to seek justice as well as to help other innocents from being victimized.



Mark S. Dratch

Subscribed and sworn before me this 14 day of June, 2006

HOWARD FRIEDMAN
Notary Public, State of New York
No. 4781800
Qualified in New York County
Term Expires 9/30/06

