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3 Mar Cheshvan, 5764  
October 29, 2003

To: Rabbinical Board, Torah Umesorah: Rabbi Yitzchok Feigelstock, Rabbi Dovid Feinstein, Rabbi Aharon Feldman, Rabbi Shmuel Kamenetsky, Rabbi Aryeh Malkiel Kotler, Rabbi Avrohom Chaim Levin, Rabbi Yaakov Perlow, and Rabbi Aaron Schechter; Rabbi Joshua Fishman, Executive Vice President

Agudath Israel of America: Rabbi Shmuel Bloom, Executive Vice President; Mordecai Biser, Esq., Associate General Counsel

Rabbinical Council of America: Rabbi Kenneth Auman, President; Rabbi Mordecai Willig; Rabbi Basil Herring, Executive Vice President

Orthodox Union: Harvey Blitz, President; Rabbi Dr. Tzvi Hersh Weinreb, Executive Vice President

National Council of Young Israel: Shlomo Z. Mostofsky, President; Rabbi Pesach Lerner, Executive Vice President

Richard Joel, President, Yeshiva University, and Chair, NCSY Special Commission

From: Elliot B. Pasik

Dear Rabbis and Friends, shlita:

The genesis of this unusual letter is a civil child abuse case in which I represented the plaintiff, Alvin Melendez, seeking money damages against a Catholic school. In *Melendez v. Roman Catholic Archdiocese of New York*, an 8 year-old child was molested by an adult volunteer teacher's aide who was supposed to be escorting him to the bathroom. After the aide was arrested, it was learned that this man had, seven years earlier, been convicted of a similar crime. The church did not know this, having never performed any criminal background check on him. The church did not even require a basic employment application, which would have asked for his employment history, education, and references. The lawsuit against the church pleaded claims for negligent hiring, retention, and supervision.

As I was handling this case, I originally asked myself the following questions: What are we, in the Jewish world, doing about this issue? Many employees in our yeshivos, camps, and other mosdos are drawn from the general population. Who, exactly, is my child's bus driver? Who is the hallway janitor? The kitchen workers? Do they have a criminal record? Are they citizens, or legal residents?

After I listened to the tapes of the May 2003 Torah Umesorah and RCA Conventions dealing with the subject of sex abuse and pedophilia, I had to add one more question: Who is my child's teacher?

Over the course of the past several months, I have had a written dialogue on this issue with, first, Associate General Counsel Mordecai Biser, of Agudath Israel, and subsequently, Rabbi Fishman, Torah Umesorah Executive Vice President, and more recently, Rav Shmuel Kamenetsky, Torah Umesorah Rabbinical Board Member and the Philadelphia Rosh Yeshiva. I originally advocated that criminal background checks be conducted on all employees and volunteers in yeshivos, day schools, camps, and all youth settings. More recently, as I learned more facts about the abuse issue, I have advocated the establishment of a private registry listing names of individuals who, after beis din or arbitration panel adjudication, are deemed totally inappropriate for youth setting employment, and are permanently banished therefrom.

My reasoning is as follows:

## CRIMINAL BACKGROUND CHECKS

### a. Who is doing them?

We live in a dangerous world, and this is easily evidenced by the growing number of public and private institutions that are now performing criminal background checks. I have discovered the following in my personal research:

1. All public schools in New York State are required to perform criminal background checks on their employees. This has been the legal requirement for all New York City public schools since 1974, pursuant to New York Education Law Section 2590-h(20). It is the law for all New York State public schools since July 1, 2001. See, Education Law Section 305(30)(part of a legislative package popularly known as Project Save, Schools Against Violence in Education).

Demonstrating the seriousness of the employee crime problem, the New York City Department of Education reported that in 2002, there were arrests of 1,340 of its employees for crimes that included sex abuse, narcotics, robbery, assault, and weapons possession. That is more than one arrest for each of New York City's 1,200 public schools. The State Division of Criminal Justice Services notifies the City whenever a school employee is arrested, and the employee is then suspended or terminated.

In October 1994, the New York City Board of Education issued a special report entitled, "The Final Report of the Joint Commission of the Chancellor and the Special Commissioner for the Prevention of Child Sexual Abuse". This report contains much valuable information about the child abuse problem in the New York City public schools, and the Commission's mandate to "develop a comprehensive program to attack every facet of the problem" (p.1). Of particular note is the Commission statement that it favors a committed effort to prevent child abusers from entering the school system, to be accomplished through vigilant screening of all prospective employees, which must include criminal background checks and vigorous checking of references (pp.1,8,9).

In August 1999, the Special Commissioner of Investigation for the New York City School District issued a report entitled, "Blind Faith: An Investigation into the Hiring Practices for Non-Board of Education Personnel Working in Schools". The report documents the failure of public school personnel to perform criminal background checks on non-Board of Education workers (i.e., independent contractors), and volunteers, and the consequences that follow. On one occasion, a twice-convicted felon, working in an after-school program, molested a 12-year-old girl. Another felon, working as a custodian, demonstrated his violent tendencies during an argument with a teacher. The report concludes with the recommendation that "the Board (of Education) improve its security clearance procedures for individuals who enter the schools through outside organizations" (p.28).

2. All licensed child care providers are required to undergo criminal background checks in New York State, pursuant to Social Services Law Section 390-b, first effective December 5, 2000.
3. On July 9, 2003, New York's Governor George Pataki announced the forthcoming enactment of regulations which will newly require that all non-licensed staff employed in nursing homes and health agencies be screened for criminal records. Those convicted of serious felonies will be permanently barred from health care employment. Those convicted of less serious felonies will be barred for ten years. Initially, about 70,000 people will be screened. The regulations were partly inspired by a New York Daily News expose revealing that more than 450 nurse's aides, many with convictions for assault, sex offenses, and illegal drug dealing, were working in New York City nursing homes ([www.state.ny.us/governor/press/year03/july9\\_2\\_03](http://www.state.ny.us/governor/press/year03/july9_2_03)).
4. The United States Transportation Security Administration has disclosed that it has terminated more than 1,200 screeners at airports nationwide, after performing criminal background checks on them (Washington Post, June 4, 2003, p. E3).
5. In March 2003, the Boy Scouts of America announced that it will be performing criminal background checks on all of its one million volunteers and employees ([www.scouting.org/media/press/030317a/index](http://www.scouting.org/media/press/030317a/index)).
6. In 2002, the national Little League organization announced that it is requiring that all of its volunteers and employees be subject to convicted sex offender and/or criminal background

checks ([www.littleleague.org/childprotect/rapsheets](http://www.littleleague.org/childprotect/rapsheets)).

7. The New York Stock Exchange is performing criminal background checks on all of its employees, service providers and contractors (N.Y. Daily News, June 10, 2003, p.66).
8. The United States Conference of Catholic Bishops has required that by June 20, 2003, "Safe Environment Programs" be established in all churches, schools, and youth settings to prevent sex abuse, including the performing of criminal background checks on all employees and volunteers (National Catholic Reporter, April 18, 2003, p.1).
9. A December 2002 Associated Press article reported that private shopping malls were performing criminal background checks on all "Santas". Out of about 1,000 job applicants, about 10% had criminal records, including sex abuse.

b. Some crime statistics and stories which should concern us.

I think we all have a general awareness that the crime rate has somewhat receded, at least in some parts of the country, including New York City. This is not true, however, for sex crimes, and overall, our national crime statistics still far surpass all other Western nations.

In January 2003, New York City Mayor Michael Bloomberg announced the establishment of the Specially Targeted Offenders Project (STOP)(N.Y. Times, January 28, 2003, p.B3). Various city and State law enforcement agencies will work together to scrutinize the worst of the City's convicted sex offenders after their release from prison. The project will be overseen by the Mayor's criminal justice coordinator, John Feinblatt, who stated that while most crime categories are dropping, sex crimes are increasing. Mr. Feinblatt stated, "We know two things about sex offenders: one is that they have a high rate of recidivism, and the second is that when they do harm, the harm is catastrophic." The Times story reported that there are about 4,000 Level 3 sex offenders in New York City, marking them as those who are most likely to commit another offense. A criminology professor who has studied sex offender registration laws praised the mayor's new program, inasmuch as studies in about a dozen states have shown that registration laws alone are ineffective in reducing recidivism because of low compliance, which ranges from 30 to 70%.

An October 2002 Times story compared the U.S. prison population with that of other Western nations. The U.S. has 702 prisoners per 100,000 inhabitants. Russia is next at 664. Fifteen countries in Europe range from 52 to 131. The U.S. has a population of about 300 million. About 1%, or 3 million, are either incarcerated, or on parole or probation. Two million are in prison, and one million on parole or probation.

There is no New York State statute, rule, or regulation requiring private organizations such as yeshivos, synagogues, community centers, camps or youth groups to perform criminal

background checks. One very troubling thought I have is that if we continue not to perform criminal background checks on our employees, we may actually hire the convicted criminals rejected for employment by those institutions that do perform such checks.

Recent media-reported examples of the consequences of private schools not being required to perform criminal background checks include the New York Post of March 30, 2003 (p. 29). A 25-year-old man employed by a janitorial company hired by the Roman Catholic Archdiocese raped a 13-year-old girl in a closet at the Immaculate Conception Elementary School in Manhattan. The man had a history of heroin convictions and criminally reckless behavior.

The New York Daily News of September 19, 2003 reported that a school janitor with a past rape conviction molested an 11-year-old girl at the Park Slope Christian Academy in Brooklyn.

### c. Abuse in Jewish institutions.

Shockingly, in our own Jewish world, sex abuse of children is taking place, being committed by both Jews and non-Jews. From the tapes of the May 2003 Torah Umesorah and RCA Conventions, I learned from David Mandel, the Project OHEL executive director, that about six years ago, he was approached by the Brooklyn District Attorney's Office and asked to begin a pedophile treatment program. The D.A.'s office was becoming increasingly disturbed by the number of orthodox Jewish pedophiles. Prison time had mostly not been sought by the D.A. in the past, but Mr. Mandel was told that unless a treatment program was begun, incarceration would be the only option.

In six years, OHEL has treated approximately 100 "frum" pedophiles, most of them from the New York area, and a few from other states and cities. Forty per-cent have abused 5 or more children. Forty per-cent prefer children under 11.

Rabbi Gedalia Schwartz of Chicago, Rabbi Steven Weil of Los Angeles, and Dr. David Pelcovitz of New York told their stories of sexual abuse committed against children in yeshivos, shuls, and other youth settings.

Rabbi Schwartz told of an incident where a newcomer to a kollel was seen inappropriately touching young children on Simchas Torah. An alert lady hired an investigator to perform a criminal background check on this man, who was a university professor. The check revealed an out-of-state conviction for sex abuse.

The psychologist, Dr. David Pelcovitz of New York, told of an incident where a rebbe giving shiur in a yeshiva came to a part of the gemara which was inappropriate for his talmidim. He said he would skip over it. The boys laughed, and one called out, "Rebbe, we know more about that subject than you'll ever know in your lifetime." The alert rebbe privately interviewed the boy, and learned that a school janitor was abusing boys in the yeshiva. The police confiscated a

computer containing obscene photographs. The criminal background check performed by the police on this man revealed a prior conviction for sex abuse.

Obviously, the incidents described by Rabbi Schwartz and Dr. Pelcovitz could have been prevented through the performance of background checks.

d. Potential criminal and civil liability.

Professor Aaron Twerski of Brooklyn Law School spoke at the Torah Umesorah Convention. He is a national expert on tort law. He gave very appropriate warning of the legal consequences of sex abuse in our mosdos. The failure of a New York State school official to report an incident of child sex abuse to the New York Central Register of Child Abuse and Maltreatment can be a class A misdemeanor, punishable by up to one year imprisonment (New York Social Services Law Section 413). Other state laws vary.

There are also civil damage consequences. In writing appellate briefs on the issue, I have probably read every reported New York decision in this area of the law. I agree with Prof. Twerski who warned that if the abuse problem is left unchecked, yeshivos can and will be civilly sued for acts of sex abuse committed by its employees against children (and perhaps this has occurred already), just as the Catholic church has been sued. I would add that insurance, if the yeshiva has it, may or may not cover such a claim. Insurance companies can disclaim coverage for various reasons, including, "late notice", e.g., the abuse occurred in 2001, the yeshiva was sued two years later in 2003, and only when the yeshiva was sued did it notify the insurance company of the claim. The insurance company may argue that since the yeshiva knew about the abuse in 2001, it was required, by the terms of the insurance policy, to immediately inform the insurance company of the abuse occurrence, and the failure of the yeshiva to do this constitutes a breach of the insurance contract, with resulting non-coverage. (Some state courts have required insurance companies to prove that the late notice actually prejudiced its investigation of the claim; other courts do not require proof of prejudice for upholding a late notice disclaimer.) Incidentally, in a routine personal injury case brought against a yeshiva, I saw an insurance company disclaim coverage based on late notice. There have also been many news articles reporting that insurers have disclaimed coverage for the Catholic church.

Finally, I am not suggesting that a prior conviction should automatically disqualify every person from employment or volunteer work in a yeshiva, camp or shul. Just as we believe in t'shuva, so too does the State of New York, in the form of Correction Law Sections 752, 753, and Executive Law Section 296(15). These statutes provide that an employer may not deny employment to an individual previously convicted of a crime which does not bear upon his fitness and ability to perform the applied-for job. On the one hand, an old conviction for Driving While Intoxicated would not necessarily disqualify a person from employment or volunteer work in a school, but a sex abuse or other serious conviction would.

In sum, criminal background checks on all employees and volunteers in Jewish youth settings are simply an indispensable and essential tool for defeating and eradicating the problem of sex abuse of children.

## PRIVATE REGISTRY

Criminal background checks will not screen out those abusers who have eluded criminal prosecution and conviction. Their numbers are far more than those actually convicted. How do we avoid having these non-convicted anshei S'dom gaining access to our mosdos?

We must police ourselves, and just as essential as criminal background checks, is the establishment of a private registry, possibly under the aegis of Torah Umesorah, which lists those non-convicted anshei S'dom who, after beis din or arbitration panel adjudication, are deemed permanently unfit for any type of youth setting employment.

Going on-line, I found some troubling stories in various weekly American Jewish newspapers. A Jewish Telegraphic Agency article, "Orthodox World Begins to Grapple with Sexual Abuse" (August 10, 2001), reports that, ".....the greatest challenge is that most Orthodox institutions lack a formal system for preventing or reporting abuse.....In her RCA speech, (Dr. Susan) Shulman (a Brooklyn pediatrician) told of an anonymous rabbi who impregnated a student while he was principal of a school for Jewish girls with learning disabilities. When he was fired, he moved to another community where he is 'still a prominent rabbi'."

In the Forward, I found, "Orthodox Rabbi Issues Warning on Sexual Abuse" (May 3, 2002). I there read that Rabbi Ari Berman, spiritual leader of the Jewish Center, the large shul on West 86<sup>th</sup> Street in Manhattan, and Rabbi Yosef Blau of RIETS, are both advocating the establishment of a "national registry" for schools, camps and youth groups to check before hiring staffers. The article states, "Blau said that even when rabbis are dismissed or leave their job under suspicion, they often manage to find educational work in another city."

In the (New York) Jewish Week, I read the article, "Rabbis' Addictions Coming to Light" (April 11, 2003), quoting Rabbi Benzion Twerski, a Brooklyn psychotherapist. "Kids are molested continually", he said. "These are not things that hit the media, and it's not a raging epidemic, but it happens within the yeshivas. These incidents happen in the finest of places. The perpetrators are more often than not faculty. When these things happen, they get shushed up real quick and the rebbe or faculty member gets moved around to different jobs. They get shuffled around, not moved out of town, because people think it will go away. The majority of cases get swept under the rug. The people doing this have a problem of molesting, and it's an addiction, but it's seen as an aberration, as misbehavior."

In the Jewish Journal of Greater Los Angeles, I read the article, "Child Molester Sent to Treatment Center" (February 7, 2003). A "frum" ish S'dom was convicted of molesting a 4-year old child at a summer camp, and there was evidence that he molested other boys also, but most of

the children were too young to coherently testify. This molester once brought a bird into class and cut off its head in front of the children, telling them that if they told anyone about what happened, he would do the same to them and their parents. One father present at the sentencing said, "This guy is extremely dangerous. He is going to be walking out and getting a job, and with his beard and kippah on his head, nobody would think of checking his background."

Other educational systems possess employee "blacklists", including the New York City Department of Education ("ineligible inquiry list"), and the Catholic Church.

In sum, I believe that a private registry is just as essential for protecting children against sex abuse as are criminal background checks.

## CONCLUSION

Listening to one Torah Umesorah tape, I took some comfort in the words of Prof. Aaron Twerski who described a meeting between Rabbi Shach, and a rav who was excitedly telling the rosh Yeshiva that he was about to open his own yeshiva. Rabbi Shach asked him, Nu, who is going to be your meshuganah? The rav answered, What do you mean? What are you talking about? Rabbi Shach answered, Every yeshiva needs a meshuganah to raise the money, to get the building built, to order the supplies, and to stay up all night until the job gets done. If you want to succeed, you need a meshuganah. Prof. Twerski said, Every yeshiva needs a meshuganah to deal with the abuse issue. In writing this and my previous letters, I think I fit the profile, but I also think this issue deserves such a response.

I also listened carefully to Rav Shmuel Kamenetsky's words in answering a chinuch sheilah. The Rosh Yeshiva said that a certain type of new teaching method may be used (and in fact, the method may not even be "new" at all). The Rosh Yeshiva quoted the Chazon Ish who was once asked the same sheilah, and also approved of using the "new" method, and used a moshel to explain his reasoning. Generals in a war, he said, need to use new weapons, not old weapons, because otherwise, they will lose the war. Rav Kamenetsky cited the Maginot Line, which the French built along its border with Germany. The Germans, at the beginning of World War II, cut through Belgium and went around the line. May I very humbly add to this moshel by saying the Torah records that Avrohom Aveinu was sure to put a fair distance between himself and Lot. Today, it is no longer possible to put even one minute's distance between us, the bnei Avrohom, and the anshei S'dom. We live alongside them, and we usually do not even know who they are, may G-d help us. A few of our people are even foolish enough to put the instruments of the anshei S'dom in their homes, including television, and other media products, where they are seen by children. In his sefer, Darchei Noam, The Pleasant Way, Rav Avrohom Pam observed that some people compare today's world to the dor hamabol, the Generation of the Flood. Rav Pam asked, Why insult that dor?

Today, we need to use new weapons to fight the anshei S'dom who we now confront.



Rabbi Fishman was kind enough to send me a confidential copy of the Guidelines for Principals, issued last month. This is an important new weapon to be utilized in our fight. NCSY also has similar guidelines.

We now need to zealously continue to develop and use new weapons. We need to emulate the zeal of Yosef HaTsaddik and Pinchos in the manner that they responded to z'nus. In the humble opinion of this lawyer, father of six children, blei ayin horah, four in yeshiva and a toddler and infant who will be, the best method for fighting, defeating, and eradicating our problem is to establish a well-funded Office for Child Protection and Advocacy, possibly under the aegis of Torah Umesorah. The Office will be responsible for establishing a nationwide, comprehensive program for conducting criminal background checks on all employees and volunteers; and establishing the private registry, and a system of adjudication. The Office can develop standard job application forms, and assist in aggressive checking of references. The Office can act as a liaison with local police departments, when necessary. The Office can also serve in an ombudsman capacity for parents and children, particularly "at-risk" children, and be involved in yeshiva discipline and placement. The Office can also be involved in educating teachers and parents in the prevention, detection, and reporting of abuse, and the securing of therapy for abuse victims. The Office can also serve in an important educational capacity in educating parents and children about the physically and spiritually damaging effects of smutty media products, such as television, movies, magazines, and improper Internet use. The establishment of such an Office would, in and of itself, serve as a deterrent to abusers. A Joint Task Force of some type, formed by the major orthodox Jewish organizations, needs to be formed to address our problem, and establish such an Office, in my humble opinion.

I don't recall exactly where, but I believe I read it somewhere, that, baruch Hashem, and blei ayin horah, there are some 130,000 Jewish children in U.S. yeshivos and day schools today. I want to express my own appreciation to all of you who are being moser nefesh in confronting the abuse problem, and seeking solutions. The 130,000 children, and all of the pre-school children, deserve no less. Just as the sick and injured of klal Yisroel deserve a Hatzolah ambulance corps, so too do the bnei and bnos yeshiva deserve a "Hatzolah" to protect them.

I hope and pray to the Ribbono Shel Olam that this project takes fruition, and that all of us, together, can fulfill the mitzvah of, Lo s'amod al dam raecha, Do not stand idly by your brother's blood. B'ezras Hashem, we can succeed.

Very truly yours,

Elliot B. Pasik

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28 Mar Cheshvan, 5764  
November 23, 2003

To: Rabbinical Board, Torah Umesorah: Rabbi Yitzchok Feigelstock, Rabbi Dovid Feinstein,  
Rabbi Aharon Feldman, Rabbi Shmuel Kamenetsky, Rabbi Aryeh Malkiel Kotler,  
Rabbi Avrohom Chaim Levin, Rabbi Yaakov Perlow, and Rabbi Aaron Schechter;  
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President

National Council of Young Israel: Shlomo Z. Mostofsky, Esq., President;  
Rabbi Pesach Lerner, Executive Vice President

Richard Joel, President, Yeshiva University, and Chair, NCSY Special Commission

From: Elliot B. Pasik

Dear Rabbis and Friends, shlita:

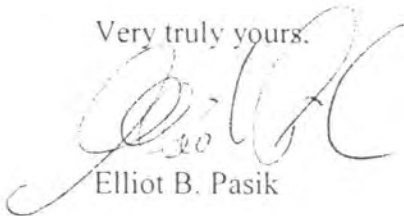
I am very pleased to enclose a copy of a letter from Rabbi Basil Herring, Executive Vice  
President of the Rabbinical Council of America, dated November 18, 2003. Rabbi Herring states  
that the RCA would look "most favorably" on the establishment of the registry that I and others  
have proposed, as recited in my letter dated October 29, 2003.

I was recently asked, in a telephone call, about the mechanics of performing criminal background checks. I had discussed this issue in my earlier letters to Agudath Israel. In this day and age of computerized judicial records, there are numerous companies that perform criminal background checks for a relatively modest per-person fee. Some of the larger ones include ChoicePoint, Inc., a New York Stock Exchange publicly traded company, whose clients include the Catholic Archdiocese of New York (choicepoint.com); First Advantage, Inc., a NASDAQ traded company (fadv.com); and, Rapsheets Criminal Records, a company that appears to be private, whose clients include the Little League of America, the YMCA/YWCA, and the Salvation Army (rapsheets.com). The prices I've seen are as low as \$10.00 to \$20.00 per individual, and results are available in as fast as one hour. This is, in my humble opinion, a small price to pay for assuring that a janitor or teacher with a serious criminal record is not walking the hallways of our mosdos.

My October 29, 2003 letter made three specific suggestions: (1) criminal background checks; (2) a registry; (3) Office of Child Protection and Advocacy, under the aegis of Torah Umesorah, which would perform the background checks, establish and operate the registry, and perform all related functions.

Written comments to these proposals would be very welcome. I believe that your written support, either individually or on an organizational basis, would help get this project "off the drawing board". Certainly, telephone calls with any questions or comments would also be welcome.

Very truly yours,

A handwritten signature in cursive script, appearing to read "E. Pasik", written in dark ink. The signature is fluid and somewhat stylized, with a large initial "E" and a long, sweeping tail that extends to the left and under the name.

Elliot B. Pasik

Enclosure  
EBP/



November 18, 2003

Mr. Elliot Pasik  
145 West Olive Street  
Long Beach NY 11561

Dear Mr. Pasik:

Thank you for your letter dated October 29 2003.

While the Executive Board of the RCA has not discussed your proposal, I feel confident in saying that as an organization committed to eradicating the problem of abuse from our communities, (see our most recent convention resolution on the matter), we would in principle look most favorably on the establishment of a register such as the one you are proposing. This of course would assume that all appropriate legal safeguards and halachic guidelines would be responsibly instituted and followed in implementation of such a registry.

With best wishes for success,

Basil Herring  
Executive Vice President

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15 Iyar, 5764  
May 5, 2004

To: Rabbinical Board, Torah Umesorah: Rabbi Yitzchok Feigelstock, Rabbi Dovid Feinstein, Rabbi Aharon Feldman, Rabbi Shmuel Kamenetsky, Rabbi Aryeh Malkiel Kotler, Rabbi Avrohom Chaim Levin, Rabbi Yaakov Perlow, Rabbi Aaron Schechter; Rabbi Joshua Fishman, Executive Vice President

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National Council of Young Israel: Shlomo Mostofsky, President; Rabbi Yaakov Feitman, President, Council of Rabbis; Rabbi Peretz Steinberg, Yoshev Rosh, Vaad Halacha; Rabbi Pesach Lerner, Executive Vice President

From: Elliot B. Pasik

Dear Rabbis and Friends, shlita:

The compelling need for background checks, and a private Torah Umesorah-based registry of unfit employees, continues to be manifest. I respectfully call your attention to the following issues:

### 1. Convicted Sex Offender, Working at Catholic School, Again Arrested on Pornography Charges

Notwithstanding that all Catholic schools in the United States are now performing criminal background checks on their employees, a convicted sex offender was just discovered working as a math teacher at Xaverian High School in Brooklyn.

The discovery was made after he was arrested for possession of child pornography. He had been convicted, in 1999, of similar charges. Prior to that, he worked for 28 years as a public school teacher. Articles from the N.Y. Daily News and the N.Y. Post, of March 9, 2004, are Exhibit A herewith.

Trying to discover how a convicted sex offender managed to find work at a Catholic school, I conducted my own Internet-based company search on Cotreneo. The \$20.00 search produced a clean record. I e-mailed the company, stating that the clean record had to be wrong, since the newspapers had unambiguously reported that this man had been previously convicted of a sex crime. The company responded that the N.Y.S. Department of Corrections is their data base for New York convictions. The Corrections Department operates the New York prison system. An individual convicted of a crime, but not incarcerated (e.g., receiving probation), will not enter the Corrections Department data base. All other Internet background check companies that I have investigated also use the Corrections Department as their data base. Notably, the newspapers reported that Cotreneo received three years probation for his 1999 child pornography conviction. He never went through the Corrections Department system, and therefore, the Internet background check companies cannot pick up his name - unless he gets convicted and sentenced to prison on his current charges.

### 2. Bellevue Hospital Health Care Worker Found Selling Drugs and Guns in Hospital - Hospital Not Aware of His Extensive Criminal Record

The above caption was also news in recent weeks. An article from the N.Y. Times of April 14, 2004 is annexed herewith as Exhibit B. The man involved, Samuel Perez, a patient-care technician, had previous convictions for grand larceny and narcotics possession, and had twice been incarcerated. The articles reported that all New York City municipal (city-government owned) hospitals are supposed to perform background checks on their employees, but in this case, neglected to.

### 3. How Do We, in the Jewish World, Avoid the Above Problems?

We avoid the above problems by zealously conducting criminal background searches, utilizing a combination of private Internet-based companies, State Government and FBI resources, and common sense employment screening measures.

In my November 23, 2003 letter, I identified two large companies, Choice Point and Rapsheets, which many Fortune 500 corporations and non-profit groups utilize to perform criminal background checks on prospective and existing employees. A national 50-state search costs about \$25.00 per search.

Relevant Choice Point documents are available at [www.choicepoint.com](http://www.choicepoint.com). On this website is a section entitled, "Success Stories", containing client comments, which includes the following:

“(W)e have uncovered criminal history that we did not previously know about,’ Darell Hailey, Children’s Pastor, Timberline Church in Fort Collins, Colorado”;

“‘We have uncovered minor misdemeanor infractions (and) prospective employees have been more truthful and upfront about themselves when they know that they are subject to a background check,’ Church and Private School in Suwanee, Georgia”;

“(W)e discovered child molestation charges for a volunteer who had applied to work around children,’ Church in Indianapolis, Indiana”;

“‘We found out...that one employee had a previous arrest and incarceration,’ Church in San Francisco, California”;

“‘We found an applicant didn’t give us one of their other names that had some prosecution information,’ Church in St. Louis, Missouri.”

The Choice Point documents also include a good primer on the need for employers to comply with the notice requirements of the Federal Fair Credit Reporting Act of 1971 (FCRA). A criminal background check is considered a consumer report, and as stated in the company literature, “Any time a Consumer Report is ordered for employment purposes..., you must notify the consumer (prospective or existing employee) that such a report may be made and will include information as to his/her character, general reputation, personal characteristics and mode of living.” Some Internet companies provide standardized forms; alternatively, the employer can utilize its own FCRA-compliant forms.

Relevant Rapsheets documents are available at [www.rapsheets.com](http://www.rapsheets.com). Of interest is the detail given as to the nature and extent of the criminal background search conducted in each State (i.e., identifying the data base, the categories of crimes covered, and the years covered).

Criminal background checks can also be conducted utilizing State Government resources, examples of which are described as follows:

Many State Governments, including New York, now offer easily accessible criminal background checks. This wasn't always the case. Until recently, a State-wide search was a tedious, expensive process. New York's Office of Court Administration (OCA) could only check for convictions in 13 of New York's 62 counties, at a cost of \$5.00 per county. For checks in other counties, a person (or typically, his paid investigator) would have to personally visit the county courthouse, and comb through paper records.

As of July 14, 2003, the New York OCA web site now offers a State-wide search at a cost of \$52.00 per person. Fingerprints are not required, and in fact, New York Labor Law Section 201-a, a 1937 statute, bars most private employers from fingerprinting employees as a condition of employment (this is not true for many other States). As a result of this anachronistic statute, which should probably be repealed or substantially amended, New York private schools may not fingerprint.

Examples of other States offering background searches include, New Jersey, through its Division of State Police. The cost ranges from \$10.00 to \$54.00, depending upon the identity of the requester (e.g., non-profit schools, youth groups); for an enhanced search, fingerprints may be submitted. The Connecticut Department of Public Safety charges \$25.00 per search, and fingerprint-based searches are available. The Pennsylvania State Police charges \$10 per search. The Maryland Department of Public Safety charges \$18.00 to \$42.00 per search. The Illinois State Police charges \$12.00 for non-fingerprint searches, and \$14.00 for fingerprint searches. All of the relevant State documents, separated by State, are together annexed herewith as Exhibit C.

Finally, federal conviction information is available through the FBI. Many drug and sex offenses are now federal crimes. The subject of the FBI Identification Record can request a copy of his own record. Fingerprints must be submitted. The cost is \$18.00. The relevant FBI documents are Exhibit D herewith.

There are several benefits to Government-conducted searches.. Unlike private company searches, a Government search should yield names of those who were convicted and not incarcerated (e.g., receiving probation). Internet company-conducted searches may also not reveal all misdemeanor convictions, which can be quite serious (including sex crimes); they also will not reveal federal convictions, which now include many categories of crimes (including sex and drug crimes), once mostly in the province of the States.

Government-conducted fingerprint searches are even more accurate, since there is less opportunity for errors resulting from misspelled names and wrong birth dates. Also, non-fingerprint searches do not pick up aliases.



To avoid hiring the Anthony Cotreneos and others like him, a sensible plan of action is required. First, a standardized job form and rules are recommended. Each existing and prospective employee should be asked, in writing, "Have you ever been convicted, or have you ever pled guilty, to a crime (felony or misdemeanor)? If so, explain, and annex relevant documents."

A positive answer may invite further investigation. Criminal defendants often plea down. You may be shown a very valid court document indicating that years ago, your janitor was convicted of simple assault, accompanied by your janitor's explanation that he was in a bar fight, and was simply defending himself, but couldn't afford legal fees and run the risk of losing at trial and going to prison for a very long time. At that point, you may want to hire an investigator to copy the actual court file (not that expensive to do), and there you will find the indictment (original charges), which may include more serious allegations, e.g., sex assault. Or you may find that your janitor was telling you the truth. In either event, you can make a reasoned decision whether to continue to employ your janitor (or social studies teacher, bus driver, etc.), consistent with your State law that governs the situation. As I pointed out in my first October 29, 2003 letter, New York State, as one example, is governed by Corrections Law Sections 752 and 753, which generally provide that an employer may not deny employment to an individual previously convicted of a crime which does not bear upon his fitness and ability to perform the applied-for job. It seems to me that schools would have a wide latitude in this area. By virtue of the custodial relationship between a school (or, e.g., camp, nursery, youth group) and a child, schools have always been held by the courts to owe a heightened, special duty of care to its students. The legal doctrine is known as, "in loco parentis" - in place of the parent. By virtue of this legal duty, I seriously doubt whether any rejected job applicant or discharged employee with a criminal record could ever mount a successful court action challenging a yeshiva's decision not to employ him, where the yeshiva's decision had some logical basis.

As to the actual performing of the criminal background searches, it is my humble opinion that a private Internet-based company 50-state search should be performed for every employee (and independent contractors and volunteers who have access to children), accompanied by a State Government search in the State(s) where the school and the employee reside; and an FBI search. Possibly, also, State Government searches should be conducted for those employees who have resided in other States - thus, employees should also be asked for their prior out-of-State residences.

It is also my humble advice that one Internet company should be contacted and retained for this purpose, to conduct searches on an "industry-wide" basis for all of the yeshivas and day schools in the U.S. and Canada. I would have to think that there is an administrative advantage in doing this, and possibly also, a financial one, i.e., some reduced pricing.

In addition, a written condition-of-employment rule should be clearly enacted which provides that any employee's arrest must be immediately reported to the yeshiva administration.

Of course, there is no guarantee that all current yeshiva employees will abide by the mandatory reporting rule. Thus, after a yeshiva has conducted background checks on all of its employees, it would be a good idea for the yeshiva to re-perform such checks after a reasonable period of time - say, every 3 to 5 years.

On the subject of expense, there are various ways for yeshivas to defray the expense: passing on some or all of the search expense to the prospective and actual employees; and making a public appeal for money for the self-evidently important cause of child security.

I also believe that Jewish organization and yeshiva lawyers and advocates would stand on very strong ground in asking State Governors and/or agency Commissioners to waive or sharply reduce the criminal background search fees. Public schools conduct their searches either for free, or at reduced cost. In this area of child security, there should be no logical distinction between public school and private school children. They should both have the benefit of free or reduced-cost State Government-conducted criminal background searches. New York State is particularly expensive at \$52 per search. Someone should contact Governor Pataki and ask him for a waiver or reduced fee.

Hiring foreign-born workers is also obviously an issue. In a sense, foreign workers who are relatively new arrivals do not have a background to check up on, because it is probably not administratively feasible and convenient for a yeshiva to go to great lengths to contact legal authorities in Poland, Ireland, Ukraine, Mexico, El Salvador, Dominican Republic, Cuba, Israel, etc. so as to determine whether the janitor or teacher has a criminal conviction. Undoubtedly, also, there are countries that do not have mechanisms, as we do, for determining prior convictions. Great care needs to be exercised. A foreign worker may have a bad reason for leaving his native country. With respect to Israel, however, possibly some Government and private individuals should be contacted there, for finding a mechanism for avoiding the hiring of Israeli criminals here.

Further, the old-fashioned method of personally checking an employee's job and educational references should not be discounted. A few phone calls can save a child's life.

Finally, as discussed in my original October 29, 2003 letter, the need for a Torah Umesorah-based private registry of unfit employees is needed more than ever. Those rashaim who have eluded arrest and conviction should obviously not be rewarded with the opportunity to move out of the town and region where they are known, find employment elsewhere, and commit the same crimes. We need to have a list of names, and again, Israeli authorities should be contacted for this purpose also. Israel also has a child sex abuse problem. I know of one organization that is fighting the problem, E.L.I., the Israel Association for Child Protection ([www.eliusa.org/](http://www.eliusa.org/)).

#### 4. Conclusion

In 2000, Rav Avraham Pam, ztl, and Rav Shmuel Kamenetsky, shlita, led the first widespread public gathering that addressed this long-simmering problem. It was sponsored by Project OHEL. I have listened to the tape. Numerous additional gatherings and seminars followed. Probably the most significant took place precisely last year, in May 2003, when Torah Umesorah and the RCA devoted major sessions to the problem. I have listened to these tapes also. Resolutions were passed.

In my humble opinion, and as outlined here and in my October 29 and November 23, 2003 letters (copies enclosed for your convenience), additional action is required. Emulating the zeal of Yosef HaTsadik and Pinchos in the manner that they responded to z'nus, I believe we need to pull out all stops in enacting the following measures: (1) Under the Torah Umesorah umbrella, memoranda sent to all yeshivas and day schools in the U.S. and Canada outlining the necessity for criminal background checks, and how they should be conducted; (2) Similar memoranda should be sent by all other Jewish organizations to all synagogues, camps, and youth groups; (3) A single company needs to be retained for conducting the national, 50 State searches; (4) A workshop for yeshivas and day schools (and synagogues, camps, youth groups) would be a good idea; (5) A private registry needs to be developed, under the aegis of Torah Umesorah, with all Jewish organizations cooperating.

In today's environment, the above measures are, in my humble opinion, basic security measures to which every Jewish child attending a yeshiva, day school, synagogue, camp, nursery or youth group is entitled. These children are also entitled to have their adult caretakers zealously enact these measures. Legally, all children are considered to be under "disability", by virtue of their small and developing physical status, emotional immaturity, and limited and developing intellect. Persons under disability require extra care. A school's duty, and any adult caretaker's duty, is, "in loco parentis", in place of the parent. A child is simply too weak at every level, emotionally, intellectually, and physically, to fight an ish S'dom. The pasuk demands, Lo sa'amod al dam ra'echa. How much more so does the fulfillment of this mitzva apply to children! I hope and pray that we can zealously fulfill this mitzva, b'ezras HaShem.

Very truly yours,

Elliot B. Pasik

Enclosures  
EBP/