

Can't Stand: Witness Incompetence in Halacha

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Adapted from the writings of Dayan Yitzhak Grossman

Reason Magazine reports:

Justice Ketanji Brown Jackson released her first opinion since taking office this June—a dissent, arguing in favor of an Ohio death row inmate.

In her dissent, Jackson argued that the court should grant a writ of certiorari in the case of Davel Chinn, an Ohio man convicted of a 1989 murder and sentenced to death. Chinn's lawyers argued that, during Chinn's trial, the state suppressed the fact that a key witness to the crime was severely intellectually disabled. By suppressing this information, they claim that the jury had an overinflated view of the witness's credibility...

While seven members of the Court agreed to deny Chinn's petition, Jackson, joined by Justice Sonia Sotomayor, dissented the denial. Jackson argued that several lower courts pinned the outcome of the case on the testimony of Marvin Washington—whose IQ was estimated at only 48...

Further, Jackson argued that the suppression of information about Washington's disability, which "may have affected Washington's ability to remember, perceive fact from fiction, and testify accurately," constitutes a due process violation. To Jackson, this failure is significant enough to grant Chinn's petition—and for Chinn's loss at the Cincinnati-based 6th U.S. Circuit Court of Appeals to be reversed.

"Because Chinn's life is on the line, and given the substantial likelihood that the suppressed records would have changed the outcome at trial based on the Ohio courts' own representations...I would summarily reverse to ensure that the Sixth Circuit conducts its materiality analysis under the proper standard," Jackson concluded.[1]

The halachic rules of testimony

The halachic framework governing the validity of testimony in a legal proceeding is fundamentally different from its counterpart in the secular law. In the latter, almost anyone can give testimony as an eyewitness, and it is up to the judge or jury to evaluate his credibility and determine how much weight to give his testimony. In halacha, however, there are a number of classes of people who are categorically disqualified from testifying (e.g., women, certain close relatives of the litigants, and individuals with an interest in the litigation), regardless of any assessment of the witness's

credibility in a particular case.

The *shoteh*

One class of people that is summarily disqualified from testifying is the intellectually disabled. The Rambam and Shulchan Aruch rule:

A *shoteh* is Biblically invalid as a witness, for he is not obligated in mitzvos. Not only a *shoteh* who walks about naked, destroys utensils, and throws stones, but anyone whose mind is disturbed and continually confused in a certain matter, even though he can speak and ask appropriate questions in other matters, is invalid...

Those who are exceptionally feeble-minded (*psa'im beyoseir*), who do not understand when things contradict each other and cannot comprehend a concept as people generally would...are included among the *shotim*. This matter depends on the perception of the judge, because it is impossible to describe it precisely in words.[2]

The Rambam's rationale for the ineligibility of a *shoteh* to testify, that he is not obligated in the mitzvos, is curious; an apparently simpler reason would be that his intellectual disability renders his testimony unreliable. The Bais Yosef indeed asserts that the ineligibility of a *shoteh* to testify is obvious, due to this latter reason,[3] and in his Kessef Mishneh he wonders what the Rambam's source is.[4]

Defining the *shoteh*

The Sma explains the difference between a *shoteh* and a *pessi* as follows:

The *shoteh's* mind is completely distorted and deranged regarding one particular matter, whereas the *pessi* is not entirely deranged regarding any matter; but on the other hand, he is worse than the *shoteh*, for the *shoteh* in all other matters is as sane as ordinary people, whereas the *pessi* does not have a totally sound mind and does not understand anything the way that ordinary people do...[5]

Halachic authorities point out that the Gemara actually gives specific diagnostic criteria for the *shoteh*:

Who is considered a *shoteh*? One who goes out alone at night, and one who sleeps in a cemetery, and one who rends his garment...Who is a *shoteh*? This is one who destroys whatever is given to him.[6]

The Rambam and Shulchan Aruch, who omit these specific criteria, apparently understand them to be mere examples, and in actuality any behavior common to the mentally disabled is evidence of such disability.[7] There is, however, a dissenting opinion that only the behaviors specified by the Gemara constitute valid diagnostic criteria.[8]

(There is a vast literature on the application of the halachic definition and criteria of *shoteh* to various forms of mental illness and derangement, a detailed survey of which is beyond the scope of this article.[9])

[1]Emma Camp. Jackson, in First Supreme Court Opinion, Defends Death Row Inmate. Reason.com.

<https://reason.com/2022/11/08/jackson-in-first-supreme-court-opinion-defen>

ds-death-row-inmate/.

[2]Hilchos *Eidus* 9:9-10; Shulchan Aruch C.M. 35:8,10.

[3]Bais Yosef C.M. *siman* 35. Radvaz to Rambam *ibid.* suggests this reason as well.

[4]Kessef Mishneh *Eidus* 9:9. Cf. Lechem Mishneh *ibid.*; Nesivos Chaim *ibid.*, and see the sources compiled in the Sefer Hamafteiach of the Frankel edition of the Rambam.

[5]Sma *ibid.* s.k. 21.

[6]Chagigah 3b-4a.

[7]Kessef Mishneh *ibid.* and Bais Yosef E.H. *siman* 121. Cf. Shu"t Mahari Weil *siman* 52 (cited in Darchei Moshe E.H. *siman* 119 os 5).

[8]R' Simcha of Speyer, cited in Shu"t Maharam *dfus* Prague *siman* 455 (cited in Bais Yosef E.H. *siman* 119) and R' Avigdor Cohen, cited in Mordechai Gittin *remez* 421 (cited in Bais Yosef E.H. *siman* 121). Cf. Shu"t Maharik *shoresh* 19 (cited in Bais Yosef *ibid.*).

[9]In addition to the sources cited in the preceding notes, see Shu"t Bais Efraim E.H. *cheilek* 3 *siman* 89; Shu"t Divrei Chaim *cheilek* 2 E.H. *simanim* 74-76; Pis'chei Teshuvah E.H. *siman* 121 s.k. 2, among many others.