

A Transdisciplinary Approach to Refereal¹

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ABSTRACT

The paper studies best practices for refereal by a trans-disciplinary approach. Jewish Slander laws, governing best practices for communications with potentially adverse consequences, has developed a *checklist* to use prior to any such communication. We review the checklist and show its applicability to academic refereal. The paper closes with four actual case studies of refereal, representing typical situations that occur.

Keywords: referee, Jewish Slander laws, checklist,

1. OVERVIEW

This paper provides advice, tips, and guidance for the refereal process. It accomplishes this by using a trans-disciplinary approach. The efficacy of this approach is provided by Table 1 which reviews the needs and goals of two distinct disciplines: *refereal* and the *Jewish Slander laws*.

Issue /Need	Refereal	Jewish Slander Laws
Need to criticize	Present	Present
Need not to cause unnecessary harm	Present	Present
Need to be objective	Present	Present
Need not to exaggerate	Present	Present
Need for kind delivery	Present	Present

Table 1: Commonalities of refereal and Jewish Slander laws

Table 1 highlights the delicate balance needed in both refereal and Jewish slander laws: Criticism may be needed albeit without causing unnecessary harm; objectivity is needed without exaggeration; delivery must be executed with kindness.

An outline of this paper is as follows. Section 2 presents necessary background on Jewish Slander laws. Sections 3 – 9 apply guidelines advocated by Jewish Slander laws, to refereal. Sections 10-13 provide four case studies integrating the various guidelines.

There is no section providing background on refereal since the issues are well known: A referee is asked to review a paper

submitted to a journal and produce a report recommending dismissal, needed modifications, or publication. Publication of papers may be a pre-requisite, at the author's institution or industry job, for retention, promotion, pay-raises, or tenure. Thus, the referee's decision seriously affects the author. Nevertheless, there are times when a possibly harsh communication must be delivered.

2. JEWISH SLANDER LAWS

2.1 Overview: *Jewish slander laws* is an umbrella term encompassing the following wide variety of phenomena: the prohibition of fabricating bad stories about a person; the prohibition of unnecessarily advertising true bad stories about a person; the prohibition of idly gossiping about traits of a person in a context that could lead to social, or other, harm; the requirements of proper rebuke; and the requirements of warning people about harmful partnerships. The Jewish slander laws not only cover the binary issue of whether certain communications are prohibited; the laws also cover *how* to deliver when delivery must be made. For example, if a friend is partnering with a business partner that you know has undesirable traits, something *should* be said to the friend; the Jewish slander laws govern *how* the communication is made, that is, the delivery of the communication.

As can be seen, naming this diverse collection as *Jewish Slander Laws*, may be misleading, but historically, that is the name that evolved in Jewish law. We will continue to use it in this paper.

2.2 Sources: Jewish slander laws have their origin in a variety of biblical commandments. These biblical sources are further discussed, analyzed, amplified, and reformulated in the Talmud, a compendium of legal discussions on all aspects of Jewish laws finalized in the first few centuries of the common era.

Starting and continuing in the first half of the second millennium, the diverse set of laws found in the Talmud were codified by various authorities. However, these codes were technical and often required familiarity with Talmudic sources for proper understanding.

In the second half of the second millennium various authors, some general and some specific, clarified these highly technical laws. Of relevance to this article is the book *Chofetz Chaim*

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written by Rabbi Yisrael Meir Kagan in the 19th century. This book collected all Jewish Slander laws, compiled them, and presented them in a clear lucid manner comprehensible to a first-time reader of the book [11].

2.3 Chofetz Chaim: The name of the book *Chofetz Chaim* has an interesting origin. Rabbi Kagan, like all authors, sought a catchy punchy title to his book, so it would sell. Such a marketable phrase is derived from Ps. 34:13-14 [9], “*Who is the person who wants life? Who wants days on which good can be seen? Guard your tongue from evil, and your lips from speaking deceitfully*” The Hebrew for the underlined phrase wants life is *Chofetz Chaim* and hence the name of the book.

Interestingly, and consistent with the fate of many authors and books, Rabbi Yisrael Meir Kagan was nicknamed the *Chofetz Chaim*. Even more interesting is that despite Rabbi Kagan’s vast output of books, including many major legal works which are regularly consulted to determine Jewish law, the *Chofetz Chaim* is one of the names most associated with him.

2.4 Importance and Significance of Jewish Slander Laws: Before proceeding, we present illustrative examples clarifying the importance and significance of Jewish slander laws. Table 2 presents three key slander incidents found in the Bible and their harmful consequences

Biblical Source	Slander Incident	Consequence
Genesis 3 [1]	Snake slanders God, “God prohibited forbidden fruit to prevent you from increasing your intelligence”	Adam and Eve believed the snake, ate the forbidden fruit, and <u>lost paradise</u>
Number (13), 14 [5]	Spies slander the land of Israel and God, arguing that the land hurts its inhabitants, and God is unable to conquer the land for the Jewish people.	The Jewish people accept the slander; they threaten to rebel against Moses and return to Egypt. God swears that that generation <u>will not acquire Israel</u>
Nu20 [7]	Moses slanders the Jewish people by calling them rebellors when all they did is legitimately ask for water.	Moses <u>loses his right to leadership of the Jews.</u>

Table 2: Significant of slander illustrated in three key incidents.

As can be seen, Moses lost his leadership; the Jews lost Israel; and Adam lost Paradise because of slander. This diverse list shows the seriousness of slander as a sin and as well as the significant impact that can result from violation of these laws.

3. THE CHECKLIST: PERSONAL KNOWLEDGE

Because of the seriousness and comprehensiveness of the Slander Laws it might seem challenging to summarize them in a non-technical manner in the few pages of this article. The approach of this paper is twofold.

First, the paper reviews the *checklist* of the Chofetz Chaim. While the book, *Chofetz Chaim*, has many chapters abounding with technical discussions, the book presents a checklist, seven items that a person should always use prior to disclosures. In a certain sense, this checklist *summarizes* the book which itself summarizes the laws pertaining to disclosures scattered throughout the various Jewish sources.

Second, we follow an approach to presenting technical legal laws advocated by Hendel [10]. Hendel argues that although Jewish law evolved over several centuries and is presented in legally technical discussions in the Talmud and other Jewish sources, they have their roots in biblical stories. [10] discusses the slander laws by directly examining these biblical stories which suffice to illustrate key principles in an informal manner without technicalities.

Since the checklist has seven items, we devote a brief section, starting with this one, to each checklist item. We also apply each principle to refereeal.

3.1 Personal Knowledge: The checklist advocates personal knowledge when performing a disclosure with possible adverse consequences. Second-hand information should not be presented as something known.

3.2 Illustrative Biblical Story: Numbers 32 [8] presents the following interaction between Moses and several Jewish tribes.

Background: The dialog takes place while the Jewish people were still in the desert, prior to their entering the Land of Canaan which then became the Land of Israel. During the journey in the wilderness, there were several military confrontations between the Jewish people and other nations resulting in Jewish acquisition of territory outside the land of Israel.

Dialogue: 2 ½ tribes approach Moses stating as follows: Our main business is cattle and shepherding. The lands we just conquered are good pastureland. Therefore, we prefer not to go to Israel, but to settle in these lands.

Moses’ response to the 2 ½ tribes: You are setting a precedent not to settle in the land God is giving us, but rather to settle in the most economically advantageous land. Such a precedent might influence other Jewish tribes to do the same.

Moses continues: This is what the last generation did when I sent them to spy out the land and report on it. Their report was negative; the Jewish people accepted their bad report, and lost interest in entering Israel. God, in response, severely punished the nation including a 40-year delay to enter the land.

Moses concludes: Your request would have a similar effect on the current Jewish people leading to more delay.

Counter-response of the 2 ½ tribes: We will assist with the military conquest of Israel. We will not return to these lands outside of Israel which we requested until the other Jewish tribes have conquered the land of Israel.

3.3 Key Feature: When discussing the previous generation, Moses emphasizes that he personally sent the spies (*when I sent*

spies). Moses' rebuke is based on personal knowledge not on hearsay.

3.3 Application to Refereal: Suppose you are refereeing a paper. It is sloppy and appears to be hastily put together. You would like to say, "*This person probably needs some publications for purposes of retention, promotion, or tenure and put together something at the last minute. This is most unprofessional.*" Such psychologizing on the part of the referee can happen in refereal. However, the referee does not personally know the author's situation. The point of this first checklist item, *personal knowledge*, is to refrain from such speculative evaluative comments. The referee should report on what he/she personally knows, namely, the content of the paper or book being refereed. Speculating on why the author wrote such a sloppy paper is beyond the purview of the referee.

Certainly, adherence to such advice gives refereal a more professional atmosphere.

4. THE CHECKLIST: DOUBT NOT SURETY

4.1 Doubt, not Surety: The second item examined by this paper from the checklist is the requirement that accusations, as appropriate, be explicitly stated with doubt, not with surety.

4.2 Illustrative Biblical Story: The Biblical Chapter, Numbers 5 [3], presents the suspected adulteress ordeal.

Background: The chapter begins with the case of a wife who behaved frivolously, trespassing her marriage. Jewish law, as presented in the Talmud, interprets this to refer to a husband who forbade his wife, in the presence of witnesses, from seclusion with another man, but the wife went ahead and secluded with the man (an act of marital trespass). The husband has the right to require his wife go through the suspected adulteress ordeal, which if she passes, allows the couple to reunite.

What we expect: We expect the husband to stormily report to the priests, "I have witnesses of her seclusion after a prior warning. We all know what she did"

The Biblical Text: But the Bible modestly states, "The husband enters a state of possessiveness towards his wife if she did defile herself, or, the husband enters a state of possessiveness towards his wife if she did not defile herself."

4.3 Key Feature: Two key features emerge from this illustrative biblical text: i) While the husband is allowed to be possessive, he must refrain from statements of surety; his possessiveness is based on reasonable doubt; ii) the husband, despite his possessiveness, may not exaggerate.

4.4 Applications to Refereal: Perhaps easiest, is an application in mathematical refereal. A referee is reading a math paper presenting an exciting theorem, a new discovery, but the proof appears to have many gaps.

The referee is obligated to voice his/her concerns with doubt not surety. Thus, "The author has not proven his point," is incorrect

while "The author while sketching keys steps in the proof appears to have omitted some necessary detail," is preferable.

The preferable language *while having the same content as the incorrect language* nevertheless creates a more professional atmosphere, in fact, an atmosphere, where the author may be more likely to respond positively to the referee's objections.

This mathematical example is paradigmatic of similar examples in language, history, and the arts. While the concept of proof is distinct to mathematics, the idea of defense and support is the same. Of course, if an author does not provide any support, by all means say so (just as in the illustrative biblical example, if the husband has witnesses to actual adultery the suspected adulteress ordeal is not done). However, in many cases, the issue is not existence of support, but adequacy of support; in such cases, language of doubt vs. surety is preferable.

5. THE CHECKLIST: NO EXAGGERATION

5.1 Prohibition of Exaggeration: The third item examined by this paper from the checklist is the prohibition of exaggeration.

Since this may seem obvious, we present a reasonable motivation to exaggerate in a court setting.

Suppose Abe lends \$100 to Bob. Bob is evasive in paying back the \$100. Abe drags Bob into (small claims) court and states, "Bob owes me \$200."

His motivation in so claiming is to provoke Bob into countering under impulse, "That is a lie. I only owe him \$100 and have every intention of paying him back."

Although this motivation is reasonable and with good motivation, it is a prohibited court practice falling under the authority of the Biblical prohibition, *Distance yourself from false claims* ([2,12]).

5.2 Illustrative Biblical Story: The suspected adulteress ordeal, Numbers 5 [3], presented in Section 3, motivates the prohibition of exaggeration. As presented there, the husband is only allowed to claim that his wife improperly secluded with another man as evidenced by witnesses. The husband is neither allowed to accuse her of adultery nor to use innuendoes (e.g., "We know what she did") indicating adultery.

5.3 Key Feature: Very often we have proof of some adverse action (for example, seclusion with another man); we would like to clinch our case by exaggerating the proof as showing a more serious adverse event. This however is not allowed. The listeners are all aware of the possibility of something more serious. However, the disclosure must stick to facts.

5.4 Applications to Refereal: A typical referee reaction to a bad paper might be any of the following: *The author should not retain his job; the author should not be promoted; the author should not be given tenure; the author should go back to graduate school to learn basics.* Such statements are inflammatory and do not belong in a professional refereal. The atmosphere of the referee report is in fact enhanced by sticking to the facts and letting the readers (which might include supervisors of the author) come to such a conclusion themselves.

6. THE CHECKLIST: USE OF DISCRETION

6.1 Discretion: When there is a problem, and a requirement of addressing it, discretion is preferable to explicit communication if possible. Such an approach is less confrontational and less embarrassing to the person being spoken to; hence, it is more likely to achieve results.

6.2 Illustrative Biblical Story: We use the dialogue, presented in Section 3, between Moses and the 2 ½ tribes who did not want to enter Israel because they had found adequate pastureland outside of Israel [8]. In this section, we focus on another aspect of the story.

Background: Recall that Moses criticized the 2 ½ tribes for setting a precedent that could deter other tribes from wanting to enter Israel. The 2 ½ tribes countered that that was not their intention. They offered to participate in the military conquest of Israel, *for the remaining tribes*, and only occupy the land they wanted outside of Israel, after the military conquest was complete. In discussing their offer the following dialogue ensued.

Biblical Text: We will participate in the military conquest of Israel for the other tribes. (i) We will build penned places for our livestock and (ii) cities for our small children. They will wait there till we return after the conquest of Israel is complete.

Moses noted the order in the underlined sentence; the tribes indicated protecting their livestock prior to indicating protecting their small children. This reflected their underlying attitude that *business* was the top priority; business took precedence over spiritual and family values. This attitude is consistent with their desire to inhabit a land outside of Israel which was suitable for their livestock and forego living in the spiritually superior Israel. However, Moses responds to this with discretion.

Biblical Text: Your request not to live in Israel is acceptable if you participate in the military conquest for the remaining tribes. Therefore, (i) build cities for your small children, and (ii) penned places for your livestock; keep your word [about the military participation].

6.3 Key Feature: As can be seen from the underlined words, Moses was concerned about the attitude that business (protecting livestock) took precedence over family values (protecting small children). However, he didn't explicitly state this. He rather communicated discretely by reversing their original order – *protect livestock, build cities for children* – to the correct order – *build cities for children, protect livestock*.

6.4 Applications to Refereal: A simple application to refereal occurs if an author of a paper used a passive vs. an active construction. The referee has several options to address this: i) "The author used a passive construction vs. an active construction. Please correct." ii) Please replace "...," with "...," (where the citations refer to the original passive construction of the author and the suggested active construction of the referee). iii) Please replace "...," with "...," to improve clarity.

Of these three methods, ii) is superior. It addresses the problem discretely without explicitly identifying the error (active vs. passive) or the goal (greater clarity). Furthermore, method ii) in effect shares the refereal process with the author by tacitly assuming the author's awareness of the active vs. passive issue. Such a sharing facilitates both the author's desire to correct as well as the quality of that correction.

7. THE CHECKLIST: HELPFUL vs. MALICIOUS

7.1 Alternative Solutions: Prior to criticism, helpful tips and approaches should be provided.

7.2 Illustrative Biblical Story: The Korax insurrection [6] against Moses' authority presents techniques for dealing with hostile conflict.

Background: Moses was the established leader of the Jewish people. He had led them, with God's help, out of the slavery of Egypt; he brought them, with God's help, the laws of God; and he regularly resolved legitimate disputes that arose. Aaron regularly helped Moses.

Nevertheless, Korax along with some colleagues, challenged the authority of Moses and Aaron. Korax argued that the entire nation received God's word (at the Decalogue) and therefore he, Moses, wasn't needed. This was an outright rebellion; it was ended by God miraculously killing Korax and his followers. But Moses did not initially approach critically.

Biblical Text: Moses spoke to Korax and his followers: Sleep it off (lit. in the morning) and then God will let His choice be known.

7.3 Key Feature: As can be seen, rather than initially confront Korax with attacks of improper behavior, Moses suggests helpful tips; Moses suggests that Korax is drunk and that sleeping it off (lit. waiting till morning) would resolve the conflict,

7.4 Application to Refereal: A simple application would occur if an author wrote a paper ignoring major findings in the field. It is easy to be dismissive and attack the author for incompetence. But a more professional atmosphere is achieved by providing helpful tips, for example, "Please review so and so's seminal paper on this subject and modify your paper accordingly."

8. THE CHECKLIST: ALTERNATIVE APPROACHES

8.1 Alternatives: If the desired goal can be achieved with an alternative to attacking the person, that should be tried first.

8.2 Illustrative Biblical Story: We use the Korax rebellion [6], studied in Section 7.

Background: Korax questioned Moses' and Aaron's authority. In fact, since Korax was a Levite like Aaron, Korax thought he should have Aaron's job.

It would have been straightforward to perform a

qualification comparison; Aaron always pursued peace and harmonious resolution of conflict, while Korax, as evidenced by his rebellion, pursued conflict. Moses chose a different route to accomplish his goals

Biblical Text: Korax, you, Aaron, and anyone else competing for Aaron's position can lay incense before God; God will then show whom he has selected.

8.3. Key Feature: Rather than approach the selection of Aaron through a qualification comparison, through content, Moses chose a process approach: Let us see who God picks. This would have the same effect as stopping the rebellion without however having to criticize Korax's personality.

8.4 Application to Refereal: A possible application could arise if one rejects a very sloppy paper by appealing to process issues, for example, it was not submitted on time, it exceeded recommended lengths, it did not follow required formatting, etc.

9. THE CHECKLIST: NOT EXCESSIVE

9.1 Not Excessive: The damage from the accusations should not exceed the damage that would arise if there was an actual court case with conviction.

9.2. Illustrative Biblical Story: We use Numbers 12 [4] presenting the discussion of Miriam and Aaron about Moses' marriage.

Background: Numbers 12 relates how Miriam and Aaron spoke about actions to reunite Moses with his wife. Moses had separated from his wife due to his special requirements of prophecy. During the conversation Miriam accuses Moses of applying standards to prophecy that are not acceptable. This interpretation of Moses' action was slanderous. God appears to them, requests an account of their actions, and then punishes Miriam for the slander. The punishment consisted of leprosy resulting in Miriam's isolation.

Biblical Text: Moses prayed to God to forgive her.

9.3. Key Feature: Miriam's sin was social in nature, not legal. Her remarks were made with the intention of reuniting a husband and wife. Had she been convicted in a court of law, she would not have been sentenced to isolation. Therefore, Moses argued that she should be forgiven.

9.4 Applications to Refereal: When a paper is very sloppy, a referee may be tempted to make comments such as: "This person should not be at an academic institution;" "This person does not know how to write;" "This person is ignorant of his field;" "This person deserves neither promotion nor tenure;" etc. Such statements would exaggerate the consequences of the bad writing of a paper beyond what would happen if the person had been convicted of writing a bad paper in a formal setting. The most appropriate actions for the referee are simply to focus on the paper and its adequacy.

10. CASE STUDY #1: POOR ENGLISH

Having reviewed the seven items of the *checklist* we now

examine several case studies. These case studies reflect refereal problems the author frequently encounters when reviewing papers for EISTA and similar conferences.

10.1 Poor English: In this first case study we discuss reviewing a paper whose English is particularly poor.

10.2 Temptation: It is very tempting to react strongly against such a paper. Typical comments might be, "This paper is a piece of trash;" "This paper is of such poor quality that it can't be refereed;" or "Papers like this should have been screened and never allowed to arrive at the refereal stage."

10.3 Relevant Checklist Rules: Jewish Slander laws prohibit exaggeration (e.g., the paper (as a whole) is a piece of trash). They also require helpful tips prior to criticism. Finally, consequences of refereeing should not be more excessive than would happen in a formal setting (why reject the entire paper?).

10.4 Recommended Refereal: The author typically, in his refereal, responds as follows: *The paper made the following excellent points. However, the English and grammar of the paper are unsuitable for publication. Perhaps the author's native tongue is not English. I recommend the author have a colleague, whose native tongue is English, look over the paper prior to submission.*

11. CASE STUDY #2: TOO COMPLEX

11.1 Paper too complex: Another frequent theme encountered by the author is a paper that is very complicated with too many details.

11.2 Temptation: It is tempting to simply dismiss the paper: *This paper can't be read. The author overly complicates the paper with excessive detail, making it impossible for a reader to see main themes and arguments.*

11.3 Relevant Checklist Rules: One should always start with helpful tips prior to criticism. Additionally, consequences of any communication should not be excessive (the entire paper should not be rejected).

11.4 Recommended Refereal: *The research in this paper is extremely rich and nuanced. The main points of the author would therefore be greatly enhanced by the addition of several summarizing tables, charts, and figures.*

12. CASE STUDY #3: INADEQUATE LITERATURE

12.1 Inadequate Literature Citation: Another frequent theme in paper refereals, is a paper with good ideas which however already occur in the literature. The lack of citation gives a sloppy appearance, that the author(s) have not done adequate work.

12.2 Temptation: It is very tempting to simply reject the paper. *The ideas cited are well-known; the author(s) cite almost no literature; The paper apparently was put together on the fly without much work.*

12.3 Relevant Checklist Rules: Damage from communications should not be excessive. One should always start with helpful tips. Use of innuendoes is preferred over explicit confrontation.

12.4 Recommended Refereeal: *There are many nice ideas in this paper. It is well written and organized. The paper would benefit from similar studies found in the literature such as the following. The author should indicate, i) what is new in this paper not yet mentioned in the literature, ii) what ideas from the literature have been modified and why, iii) what ideas have been omitted from the literature and why.*

13. CASE STUDY #4: FRAUD

13.1 The Actual Incident: A colleague reminisced to the author on his first paper. Unbeknown to him, the result had been discovered about 100 years earlier. Let us see how the referee handled it.

13.2 The Refereeal: *What a delightful paper. Good results, crisp proofs, and nice applications. My only regret is that the author neglected to mention that this result had been discovered in 1887 in the following book.*

13.3 Relevant Checklist Rules: Undoubtedly, the referee sensed that the author was unaware that his result was previously published. The referee did not exaggerate by claiming the paper worthless; on the contrary: the result, the exposition, and applications were nice. The referee stuck to observed facts personally known to him as evidenced in the paper: It was *the paper* that lacked a reference; attacks on the author's knowledge of the literature are not present. The referee used innuendoes, *my only regret*, rather than state hostility. The referee, probably being aware that this author had not previously published, did not want the damage of his refereeal to be excessive; he did not discourage the author; he just stated his regrets.

14. CONCLUSION

This paper has explored best refereeal practices by employing a trans-disciplinary approach. Using the checklist presented in Jewish Slander laws, we have explored a variety of approaches to commenting on faults in a refereed paper. We have supplemented this theoretical background with actual case studies. It is hoped that the ideas, approaches, and methods presented will be useful to other referees.

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