

# A Lonely Lawyer

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**B**Y NOW EVERY ISRAELI has seen the TV clip several times—showing a 14-year old Arab girl being shot dead near the central market of Jewish Jerusalem.

The story is well known: two sisters, 14 and 16 years old, have decided to attack Israelis. The clip, taken by a security camera, shows one of them, clad in traditional Arab garb, jumping around on the sidewalk, brandishing a pair of scissors.

The whole thing looks almost like a dance. She is jumping around aimlessly, waving the scissors, threatening no one in particular. Then a soldier aims a pistol at her and shoots her. He runs to the girl and kills her while she is lying helplessly on the ground. The other girl is grievously wounded.

The soldier was lauded for his bravery by the Minister of Defense, a former army Chief of Staff, and by his present successor. Throughout the political establishment, not a single voice was raised against the killing. Even the opposition was silent.

THIS WEEK one person raised his voice. Avigdor Feldman, a lawyer, informed the Attorney General that he was going to apply to the Supreme Court, asking it to open a criminal investigation against the soldier. He wants the court to order the authorities to investigate all cases in which soldiers and civilians have shot and killed “terrorists” after they had already become unable to act.

In today's Israel, this is an act of incredible courage. Advocate Feldman is no crackpot. He is a well-known lawyer, prominent especially in the field of civil rights.

I got to know him when he was still at the start of his career. He was still a “stageur”—a lawyer who has finished his studies but is not yet a fully licensed advocate—working in a friend's office. He represented me in several minor court cases, and even then I was struck by his sharp mind.

Since then, Feldman has become a prominent civil-rights lawyer. I have seen him several times pleading in the Supreme Court, and noticed the reactions of the court. When Feldman speaks, the judges stop their day-dreaming and doodling and follow his arguments with rapt attention, interrupting him with sharp questions, obviously enjoying the judicial jousting.

Now Feldman has done what nobody else has dared to do: taking the army by the horns and challenging the high command.

In Israel, that is close to *lèse majesté*.

SINCE THE beginning of October, Israel has been experiencing a wave of violence that has not yet acquired an official name. Newspapers call it a “wave of terrorism”, some speak of “the intifada of the individuals”.

Its outstanding characteristic is that it lacks any organization. It is not planned by a group, no orders are transmitted from above, no coordination between cells is necessary.

Some Arab teenager takes a knife from his mother's kitchen, looks for a uniformed person in the street and stabs him. If no

soldier or policeman is available, he stabs a settler. If he sees no settler around, he stabs any Israel he can find.

If he drives a car, he just looks for a group of soldiers or civilians waiting by the road and runs them over.

Many others just throw stones at a passing Israeli car, hoping to cause a fatal accident.

Against such acts, the army (in the occupied territories) and the police (in Israel proper or in annexed East Jerusalem) is almost helpless. In the two earlier intifadas and in between, the security organs incredibly caught almost all perpetrators. This was achieved because the acts were committed by groups and organizations. Almost all of these were sooner or later infiltrated by Israeli agents. Once one of the perpetrators had been caught, he or she was induced to inform on the others—either by bribes, “moderate physical pressure” (as our courts call torture) and such.

All these proven measures are quite useless, when a deed is carried out by a single person, or by two brothers, acting on the spur of the moment. No spies. No traitors. No prior signs. Nothing to work on.

The Israeli security services have tried to work out a typical profile of such perpetrators. To no avail. There is nothing common to all or most of them. There were several 14 year old teenagers, but also a grandfather with children and grandchildren. Most did not appear in any anti-terrorist database. Some were religious radicals, but many others were not religious at all. Some were females, one a mother.

What pushed them? The official Israeli stock answer is: sedition. Mahmud Abbas incites them. Hamas incites them. The Arab media incite them. Almost all these “incitements” are routine reactions to Israeli actions. And anyway, a young Arab does not need “incitement”. He sees what's going on around him. He sees terrifying nightly arrests, Israeli troops invading towns and villages. He does not need the lure of the virgins awaiting the martyr in paradise.

SINCE THERE is no immediate remedy, politicians and other “experts” fall back on “deterrence”. Foremost method: summary execution.

This was first discovered in April 1974, when an Israeli bus was hijacked by four inexperienced Arab youngsters. It was stopped near Ashkelon and stormed. Two of the four were killed in the shooting, but two were captured alive. Three photographers took their pictures alive, but later the army announced that they were also killed in the fighting.

This was a blatant lie, protected by army censorship. As the editor of Haolam Hazeh magazine, I threatened to go to the Supreme Court. I was allowed to publish the photos, and a giant storm erupted. The chief of the Security Service (Shin Bet or Shabak) and his assistants were indicted, but pardoned without a trial.

In the course of the scandal, a secret directive came to light: the then Prime Minister, Yitzhak Shamir, had issued an oral directive saying that “no terrorist should remain alive after committing a terrorist act”.

Something like that must be in force now. Soldiers, policemen and armed civilians believe that this is an order: terrorists must be killed on the spot.

Officially, of course, soldiers and others are allowed to kill only when their own lives or the lives of others are in direct and immediate danger. According to the laws of war, as well as Israeli law, it is a crime to kill enemies when they are wounded, handcuffed or otherwise unable to endanger lives.

Yet almost all Arab perpetrators—including the wounded and the captured—are shot on the spot. How is this to be explained?

Most frequently, the facts are simply denied. But with the proliferation of security cameras, this becomes more and more impossible.

An argument often used is that a soldier has no time to think. He has to act quickly. A battlefield is no courtroom. A soldier often acts instinctively.

Yes and no. Very often indeed there is no time to think. He who shoots first stays alive. A soldier has the right—indeed, the duty—to defend his life. When in doubt, he should act. No one needs to tell me that. I have been there.

But there are situations when there is no doubt at all. If a handcuffed prisoner is shot, it is clearly a crime. To shoot a wounded enemy, lying helplessly on the ground, like the girl with the scissors, is disgusting.

These are clearcut cases. If the Minister of Police (now called Minister for Interior Security) says in the Knesset that the girl-killer had no time to think—he lies.

I dare to say that this minister, Gilad Ardan, an aggressive he-man who did his glorious army service as a desk officer in the army personnel department, has a bit less battle experience than I. What he said in the Knesset is rubbish.

The soldiers shoot and kill because they think that their superiors want them to. Probably they have been told to do so. The logic behind this is “deterrence”—if the perpetrator knows that he is going to be killed for sure, he may think twice before doing it.

There is absolutely no evidence for this. On the contrary, the knowledge that he or she, the perpetrators, are probably going to be shot on the spot, just pushes them on. Becoming a shahid, a martyr, will make their family and the entire neighborhood proud.

Ah, say the deterrers, but if we also destroy the house of the perpetrator's family, they will think twice. Their family will beg them to abstain. Sounds logical?

Not at all. There is absolutely no evidence for this, either. Quite the contrary. Becoming the parents of a shahid is such an honor, that it overrides the loss of the family home. Especially if funds provided by Saudi Arabia and the other Gulf states will pay indemnities.

It is the clearcut opinion of the security experts that this kind of collective punishment does not work. On the contrary, it creates more hatred, which will create more shahids. In short, counter-productive.

The top army and security service commanders do not hide their opposition to these measures. They are overruled by politicians and commentators who seek popularity.

SUMMARY EXECUTIONS and collective punishments

are, of course, diametrically opposed to the international Laws of Warfare. Many Israelis despise these laws and ignore them. They believe that such naive laws should not hinder our army in the defense of our country and us.

This argument is based on ignorance.

The laws of warfare were initiated after the 30-year war, in the first half of the 17<sup>th</sup> century, which brought untold misery to central Europe. When it was finished, two thirds of Germany was destroyed and the one third of the German population wiped out.

The originators of the laws, in particular a Dutchman called Grotius, started from the sensible assumption that no law will hold if it prevents the prosecution of war. A nation fighting for its life will not observe any law that hinders it doing so. But in wars, a lot of atrocities are committed which serve no military purpose at all, just out of hatred or sadism.

It is these acts—acts that serve no military purpose—that are forbidden by the international laws of war. Both sides suffer from them. Killing prisoners, letting the wounded perish, destroying civilian property, collective punishments and such help no side. They just satisfy sadistic impulses and senseless hatred.

Such acts are not just immoral and ugly. They are also counterproductive. Atrocities create hatred, which creates more shahids. Dead prisoners cannot be interrogated and provide no information, which may be essential for forming new strategies and tactics. Cruelty is just another form of stupidity.

Our army knows all this. They are against. But they are overruled by politicians of the more detestable kind, which we have in abundance.

CONNECTED WITH this subject is the persecution of an organization called “Breaking the Silence”.

This was formed by soldiers who, upon their release, started to publicize their experience in the occupied territories, things they did and things they saw. This has become a big operation. Their meticulous adherence to the truth has gained the respect of the army, and testimony given by them is respected by the army General Attorney's office and often acted upon.

This has now led to a furious incitement campaign against the group by the demagogues of the extreme Right. It has been accused of treason, of “besmirching our boys”, of aiding and abetting the terrorists and such. Many of the accusers are former office soldiers and shirkers, who accuse former combatants.

This week the Rightist demagogues furiously attacked the President of Israel, Reuben Rivlin, for committing treason. His crime: he appeared at a political conference organized in New York by the liberal Israeli newspaper Haaretz, where Breaking the Silence was also invited.

Rivlin is a very nice, very humane person. As President he is insisting on full equality for Arab citizens. But he also entertains very right-wing opinions and objects to giving up an inch of “Eretz Israel” territory for peace. Yet no right-wing politician has come to his aid against the wild accusations.

Breaking the Silence does not stand alone. Fascist groups—I use the term with some hesitation—accuse many peace and human rights organizations of “treason”, citing the fact that several of them do receive donations from European governments and organizations. The fact that Israeli right-wing and downright fascist organization receive vastly more money from Jewish and Christian Evangelist organizations abroad does not matter.

ALL THIS shows how courageous Advocate Feldman is in his efforts.

As we say in Hebrew: All honor to him.