The Link

Published by Americans for Middle East Understanding, Inc.

Vol. 18, No. 3, September 1985

The Palestine-Israel Conflict In The U.S. Courtroom

By Rex B. Wingerter

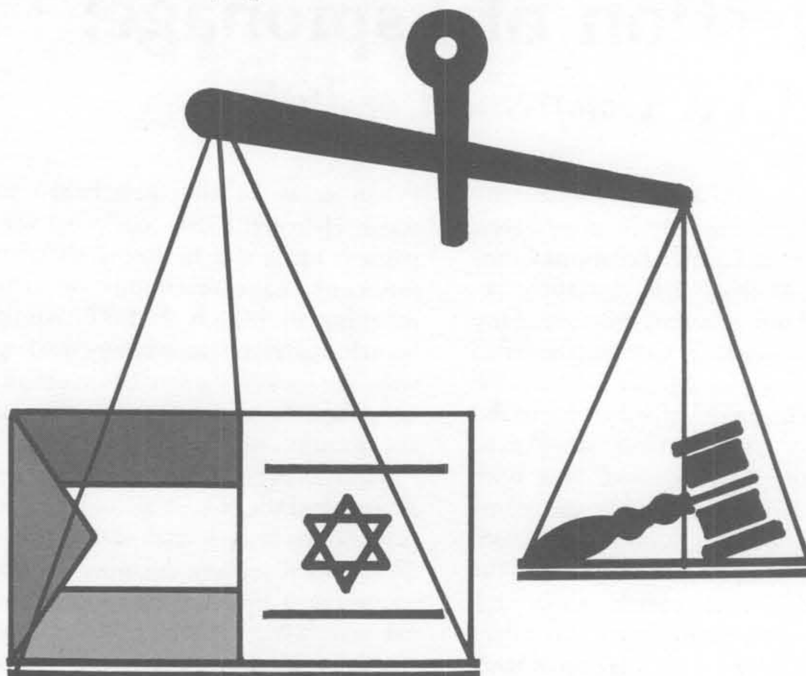
From the long lines at the gas stations in 1974 to the death of U.S. Marines in Beirut in 1983, the Palestine-Israel conflict clearly has become the primary foreign policy issue to influence U.S. domestic politics.

At times the conflict has even been fought in U.S. courtrooms. In 1980, for example, the American Anti-Defamation League sought to prevent the estate of a New York City man from bequeathing money to the PLO. A few years later, a federal court dismissed a suit brought by Israeli citizens against five Arab-American organizations alleging that they somehow were responsible for the 1978 PLO attack against an Israeli bus in which 34 people died. During Israel's invasion of Lebanon, the Palestine Congress of North America unsuccessfully sought a court injunction against Secretary of State Alexander Haig ordering him to halt all further U.S. weapons transfers to Israel. Yet a New York court held that imports from the occupied West Bank did not have to carry the label "made in Israel."

It's not surprising that the Middle East conflict finds expression in U.S. courtrooms. The emotional crosscurrents inherent in the Palestine-Israel conflict make it ripe for judicial sounding.

Litigation in U.S. courtrooms on the Palestine-Israel conflict often has impacted on American law and justice, due in part to the manner in which judicial decision-making takes place. Judges, when confronted with a dispute, look to precedents for direction and advice. Rarely do they try to break new judicial ground. One legal scholar has described the process like the creation of a novel whose narrative has been developed by a series of authors: "Each judge is then like a novelist in the chain. He or she must read through what other judges in the past have written not simply to discover what these judges have said, or their state of mind when they said it, but to reach an opinion about what these judges have collectively done..."[1]

Consequently, litigation arising from the Palestine-Israel conflict concerning the right of free expression, protection from government surveillance or any other Constitutional right is not limited to those people or groups directly involved in the case. A decision by a court in New York can be relied upon by a court in Michigan. The reasoning that justified a court order to tap the telephones of Palestinian activists in Colorado can be used by a New Hampshire court to do the same to local environmentalists. Simply, when a freedom is revoked from any one person, the rights of all Americans have been narrowed.



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About This Issue

"A passionate attachment of one Nation for another produces a variety of evils," President George Washington warned in his Farewell Address; and he explained: "It leads also to concessions to the favorite Nation of privileges denied to others . . . and it gives to ambitious, corrupted or deluded citizens (who devote themselves to the favorite Nation) facility to betray, or sacrifice the interests of their own country, without odium, sometimes even with popularity."

The attachment between the United States and Israel has been described most often as a "special relationship," and, as Middle East specialist Rex Wingerter points out in this issue, that attachment—as passionate as any in our country's history—has found expression in the United States courtroom. Wingerter, also a lawyer, looks at six legal cases whose significance goes to the heart of our Constitution.

All are significant because our system of jurisprudence is such that every legal decision carries with it a precedent setting authority. As Wingerter notes, legal decisions arising from the Palestine/Israel conflict involving any Constitutional right extend well beyond the litigants in the particular suit, and ultimately affect all citizens.

Washington, in the same address, spoke of those who may resist the intrigues of the favorite Nation supporters. These, the real patriots, he said, "are liable to become suspected and odious while its (the favorite Nation's) tools and dupes usurp the applause and confidence of the people to surrender their interest." To expose such intrigues is the aim of former Congressman Paul Findley, in his book *They Dare To Speak Out*, reviewed on page 14. This and other current books on the Middle East are offered at substantial discount prices on page 15.

The feature topic of our October-November issue will be "The Holy Qur'an: What it says, and what it doesn't say."

John F. Mahoney,
Executive Director

Stephen Bryen and the Question of Espionage:

NAAA v. Department of Justice

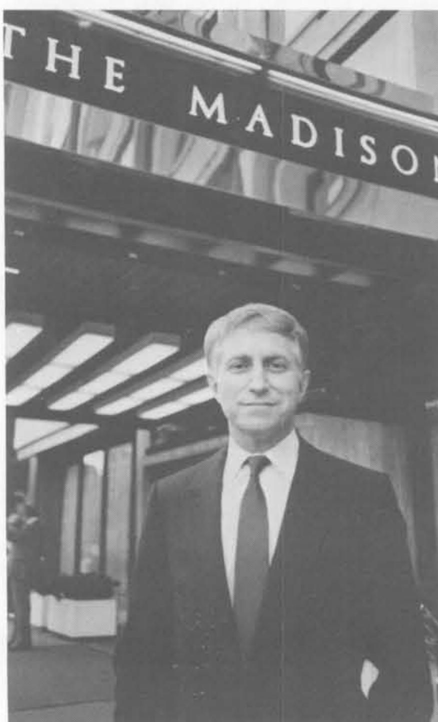
When the man with the moustache was introduced as "Mr. Stephen Bryen of the Senate Foreign Relations Committee," Michael Saba instantly recognized him as a staff member of the Foreign Relations Committee with responsibility for Middle East affairs. Saba, former executive director of the National Association of Arab-Americans (NAAA), had dealt with Bryen on Capitol Hill on some political issues. Now in private business, Saba was seated in the Madison Hotel coffee shop and waiting for a client. Just a few tables away sat Bryen with a group of men. When some of the men began to speak Hebrew, Saba's curiosity was piqued. Little did he know that his innocent eavesdropping on the morning of March 9, 1978, would launch a seven-year odyssey dealing with the Federal Bureau of Investigation, the U.S. Justice Department and the question of espionage.

Moreover, Saba's chance encounter also pushed the NAAA into a long and contentious lawsuit against the Justice Department seeking documents from its espionage investigation of Bryen. In February 1985 a federal judge ordered Justice to release to the NAAA some of the requested material. Those documents and others previously gathered offered disturbing evidence of the extent of Bryen's dealing with Israel and possibly how political and personal forces thwarted a full investigation of the former Senate Foreign Relations aide.

The investigations revealed that the men with Bryen were Israeli defense officials waiting for Israeli Defense Minister Ezer Weizman to finish his interview with the *Washington Post* across the street. For a half hour Saba overheard the group discussing how Israel could best maintain control in the U.S. Congress and what to do concerning the National Security Council. According to the affidavit Saba later gave to the FBI, the conversation focused on "devising a strategy of how this Israeli delegation could affect United States foreign policy determinations. Bryen quite clearly, to me, was outlining what their policy and strategy should be."

Prime Minister Begin's insistence on a religious and historical justification for maintaining Israel's possession of the West Bank was undercutting Israel's credibility in Congress, Bryen warned. His recommendation: Press the security argument.

When one man mentioned that President Carter had criticized Israel's West Bank policies, Bryen told him, "Never let the President of the United States get away with these kinds of statements." He added, "This administration is so pig-headed that we have to deal with it differently." Bryen implored them to get Weizman to issue a statement on suspending the construction of further settlements as a way to shift public opinion in the U.S. Finally, when the discussion turned to proposed arms sales to Saudi Arabia, Egypt and Israel, the Senate Foreign Relations aide advised that the Egyptian sale couldn't be stopped. He then offered to provide the Israelis classified Pentagon documents on Saudi Arabian military bases.



Paula Stinson

Michael Saba

The Defense Intelligence Agency later concluded that the information on the Saudi military bases would have been of "high intelligence value" to the Israelis. Moreover, the DIA held that the disclosure would seriously hurt U.S. relations "with several Middle East nations, U.S. intelligence collection activities, future U.S. arms sales negotiations, the course of battle in future Middle Eastern wars, and authorized U.S. intelligence exchanges with foreign governments."

If proven true, Saba's allegations would have been clear evidence that Bryen had broken the Espionage Act, the Foreign Agents Registration Act and the Neutrality Act. The FBI's 18-month probe into Bryen, and Saba's history as well, included a polygraph exam that showed Saba was telling the truth about what he saw and heard at the Madison Hotel coffee shop.

Bryen admitted to the FBI that he had met with some Israelis that morning of March 9, but denied all of Saba's accusations and refused to take a polygraph test. Moreover, he hired an aggressive lawyer, Nathan Lewin, partner in a prestigious Washington law firm which represented President Nixon following his resignation. Lewin characterized the Justice Department's investigation as preventing a "law-abiding public servant from highly important duties" and repeatedly charged that Justice "is willing to be used as a tool of Arab interests which wish to keep this kettle boiling." An active supporter in American Jewish and Israeli causes, Lewin had represented members of the Jewish Defense League. More importantly, however, he held a 20-year friendship with Philip Heymann, the man who made many Justice Department key decisions in the Bryen investigation. According to an inside source, a few in Justice who knew of their relationship did "not appreciate the depth of their friendship."[2]

Bryen also was supported by a host of powerful senators and influential private citizens. Close friends included New Jersey Senator Clifford Case, who hired Bryen in 1971 and assigned him to the Senate Foreign Relations Committee, as well as Senators Henry Jackson, John Sparkman and Richard Stone. All were known pro-Israeli advocates and counseled Bryen during the investigation. When Bryen took a job at the Coalition for a Democratic Majority, a conservative group of Democrats advocating tougher military policies, his circle of associates widened to include author-columnist Ben Wattenberg, Jeanne Kirkpatrick, President Reagan's future Ambassador to the United Nations, and Norman Podhoretz, editor of the "neo-liberal" magazine *Commentary*, published by the American Jewish Committee.

After an 18-month investigation, the Justice Department decided not to prosecute Bryen. Neither the investigation nor its termination went smoothly, however. When the chief of Justice's Internal Security Section concluded that, based on FBI evidence, a grand jury probe of Bryen was in order, it took his supervisor, Philip Heymann, four months to respond, by ordering that all FBI witnesses be reinterviewed. When the Foreign Relations staff members were questioned, however, the committee counsel was present. "It had a chilling effect," admitted one investigator. "They weren't as helpful as they'd been with the FBI." Moreover, two senators, Bryen and his attorney, Lewin, had the opportunity to review committee documents before Justice had read them. "They could have culled some of the documents." exclaimed one Justice investigator. "I still can't fathom the idea of making evidence available to a prime suspect before the prosecutors see it."[3]

But FBI and Justice information also included testimony from Bryen's co-workers. According to a Justice Department memorandum, a Congressional staff aide told a Justice attorney that Bryen may have been disclosing classified information to the Israelis "over a period of years." The aide gave the names of a number of individuals who would verify the allegations against Bryen.

The FBI's investigation soon expanded well beyond Saba's original accusation. Particular attention was paid to Bryen's close relationship with Zvi Rafiah, counselor at the Israeli Embassy. Rafiah visited Bryen in his Senate staff office as often as three times a week. According to one staff aide, the committee's safe, often containing classified documents, was wide open when Rafiah was present. The two men frequently spoke

Hebrew and, related another aide, "at times they gave you the impression that Rafiah was in charge and Bryen was a good soldier." FBI concern for the Bryen-Rafiah connection centered upon Bryen's reportedly energetic efforts to get a classified Pentagon map detailing the location of I-Hawk missiles in Jordan, in addition to other information involving the missiles. The FBI implied that Rafiah was the key in coordinating Congressional opposition to the sale of the missiles to Jordan and that Bryen acted as his agent.

The Justice Department, based on Heymann's recommendation, decided to terminate the investigation of Bryen and not go forward with a grand jury probe. At first Heymann had agreed to the grand jury but then, after two telephone calls from his friend Lewin, concluded that there was insufficient evidence to pursue the case. According to Heymann's prior arrangement with Lewin, Bryen would agree to being deposed by the Justice Department, if Justice did not ask any questions about Bryen's relations with Israeli officials or domestic lobbyists. This would preclude Justice from learning if Bryen actually had turned over classified U.S. Government documents to the Israelis. And without that fact, the allegations could not be proven. The case was closed.

Bryen left the Senate Foreign Relations Committee less than a year after the investigation ended and became executive director of the Jewish Institute for National Security Affairs. The institute coupled pro-Israeli militarism and anti-Soviet defense policies into strong arguments for close U.S.-Israeli economic and strategic cooperation. In 1981, the Reagan Administration appointed Bryen to the position of Deputy Secretary of Defense for International Security Policy with the responsibility of insuring that advanced U.S. technology was not getting into the hands of the Soviet Union. In 1985, however, Deputy Secretary of Defense Stephen Bryen gave a seminar for Israeli businessmen at the Israeli Embassy on the topic of security and technology transfer from the U.S. to Israel.[4]

The NAAA recently has brought another lawsuit against the Justice Department in an attempt to force it to release other pertinent documents, still labelled as classified, on Bryen.

Partners in Repression:

Ziad Abu Eain v. Wilkes

Two years of sitting in a Chicago prison cell abruptly ended late one Saturday afternoon for Ziad Abu Eain, a 21-year-old Palestinian, when U.S. marshals and prison guards secreted him to a plane and into the hands of Israeli authorities waiting in New York. Ziad's American defense lawyers learned of his removal hours later.

Ziad was beaten on his way back to Israel. In the week that followed, an injunction had to be secured forbidding the Israeli military from demolishing the Abu Eain family home—a form of collective punishment routinely practiced in the occupied West Bank and Gaza. In the months that followed, Ziad was tried and found guilty—solely on the confession of another Palestinian who had recanted his testimony—of a crime he persistently denied committing. He was sentenced to life in prison.

In April 1985, Ziad returned to his home town of Ramallah as part of a prisoner exchange between Israel and PLO forces. In a similar exchange, under International Red Cross auspices two years prior, Israel had broken its promise and refused to release Ziad with the other prisoners.

Even though Ziad now resides at home, U.S. extradition law remains irreparably altered. Prior to Ziad's case, U.S. courts firmly had abided by the "political offense exception" doctrine of extradition law. That canon held that governments would extradite individuals wanted for common criminal crimes, not political activities. The distinction reflected a philosophical compromise, arising from the wake of the French Revolution, between a government's interest in self-preservation and the people's right to resist an unjust regime. The doctrine's underlying policy rationale was that an individual should not be returned to his native land to undergo a trial prejudiced by political considerations. Moreover, the exception allowed nations to avoid entanglements in the internal affairs of other states and prevented them from indirectly aiding and supporting repression in another country.[5] It has been a hallmark of Western jurisprudence.

The United States Government affirmed its historic commitment to human rights and liberty by adhering to the political offense exception doctrine in its extradition treaties. But as political violence by national liberation groups in the early 1970's surged, the U.S. State Department eased its support for the doctrine. Opposition crystallized when a federal court in California refused to extradite an admitted member of the Irish Republican Army (IRA) to face charges of attempted murder in connection with the bombing of a military barracks in England.[6] The San Francisco magistrate considered the offense political and therefore nonextraditable. The State Department decried the decision, publicly warning that the U.S. would become a haven for terrorists, and claimed that, overseas, the decision appeared to put the stamp of approval on terrorist activities. Ironically, the United Nations, a few years prior, had signalled similar support for the U.S. magistrate's decision when it refused to accept a U.S. proposal to ban the political

offense exception doctrine.

Within six months, however, the U.S. Government was presented with the opportunity to overturn the California decision and erase the political exception rule from U.S. extradition law. The issue centered around Israel's request that Ziad Abu Eain be extradited to stand trial for allegedly planting a bomb in Israel, killing two people.

Arrested in Chicago by the FBI in August 1979, pursuant to Israel's extradition request, Ziad adamantly denied having any connection with the bombing. Contrary to Israel's charge that he fled to the U.S. to escape arrest, Ziad had travelled to Chicago on a non-immigrant visa at the request of his sister to help resolve some marital problems. Not only had Ziad remained in Ramallah for nearly three weeks after the bombing, but he had also successfully passed a series of security investigations by Israeli military authorities and the U.S. Consulate prior to being granted his American visa.

On May 14, the day he allegedly planted the bomb, his sister-in-law gave birth to her fourth child. With his brother visiting his wife in the hospital and his father on a business trip to the Gaza Strip, Ziad worked alone in the family's small home appliance store. Later that day when word spread that his sister-in-law had borne a healthy baby boy, friends and neighbors dropped by the store to congratulate Ziad and share the customary food and drink to celebrate the birth. Thirteen people signed affidavits swearing that Ziad had tended store in Ramallah all day or visited his sister-in-law in the hospital that evening.

The only evidence Israel gave to the State Department and the FBI was the confession of another Palestinian, Jamal Yasin, implicating Ziad in the bombing. The confession was faulty because: first, Yasin twice recanted the confession written in Hebrew, a language he neither could read nor understand; and second, Yasin's Israeli attorneys signed affidavits swearing that the confession was extracted by torture while he was under Israeli military interrogation.

Ziad's American attorneys launched a legal defense using two alternatives. First, the requisite "probable cause" to extradite a suspect to his native country was not present in Ziad's case. The uncorroborated, twice recanted confession of Yasin made under suspect circumstances was insufficient evidence indicating probable cause that Ziad did the bombing and that he should stand trial in Israel. But the magistrate who ordered Ziad's extradition and the Seventh Circuit Court which upheld that order rejected the probable cause defense.[7]

The court refused to accept into evidence testimony by Amnesty International, former State Department officials and other respected human rights organizations showing that torture frequently is invoked by Israeli interrogators to extract confessions from Palestinian detainees. The court refused to hear evidence that Yasin offered Ziad's name to his captors not because Ziad was involved with the bombing but only because he believed that Ziad was in the U.S. and beyond the reach of Israel—a tactic commonly employed by prisoners to end interrogation. Nor did the court permit into the hearing the affidavits of the Ramallah townspeople swearing that Ziad was at his store all day.

Having lost on the first theory, Ziad's lawyers argued that, if Ziad did plant the bomb, the political offense exception doctrine prohibited his extradition. The court refused to concur. In a bewildering view of history, the court declined to construe the bombing in Tiberias to be a political act. It dismissed evidence that: Tiberias was once a Palestinian city; the bombing came at a time when Israel was launching blistering bombing attacks against Palestinian positions in Lebanon; the PLO claimed responsibility for the bombing as a means of disproving Israel's claim that the PLO was "finished." Instead, the court held that the bombing was merely a random and indiscriminate act; it was not "directed in opposition to the State of Israel" and did not "further" the PLO's objectives, which the court mistakenly construed to be the expulsion of the Jewish population from Palestine. The bombing therefore fell outside the political exception doctrine.

Second, the Seventh Circuit implicitly defined those acts judged to be legitimate in a struggle for national liberation or in a fight against a repressive government. It concluded that only conventional acts taken at a time of significant civil disturbance, perhaps on the scale of a rebellion, could be protected under the political exception doctrine. No longer could the accused prevent extradition merely by proving that the act was committed in the context of a political conflict in the country.[8]

Finally, the court proceeding was imbued with Israeli and U.S. political interference. Perhaps most shocking was that a law review article written by Steve Lubet, legal advisor to the Israeli Government, was cited eight times by the Seventh Circuit in justifying and explaining its decision.[9] Moreover, the State Department's intense desire to see Ziad extradited and the law changed became obvious when the Government prosecutor introduced, as one of the first pieces of evidence, a letter to him from the State Department's head of extradition, flatly saying that Ziad was guilty of murder and that his alleged act was not of a political character. The department's assistant legal advisor and head of the department of terrorism then testified that because the individuals killed were civilians, the bombing could not have been a political act. Meanwhile, the State Department and its political allies repeatedly told the press that unless Ziad was extradited, the U.S. would become a terrorist's haven.

The legal standard established under Ziad's case essentially prevents the courts from protecting individuals coming to America from political repression at home. Only if violent acts were committed in the midst of mass revolution would the court now consider the political exception doctrine. Under the Seventh Circuit's holding, governments need only produce the shallowest of evidence that one of its national's now residing in the U.S. committed a violent act against the state and the U.S. Government would be obligated to hand him over to his government. In a world where governments carry out the most unspeakable atrocities against their own citizens, Ziad's case suggests that the U.S. has acquiesced to be a partner in repression.

Expanding Government Surveillance:

Jabara v. Webster

The Fourth Amendment's protection against warrantless searches and seizures ranks as one of this country's most precious civil liberties. The key to interpreting the amendment is that the Government can search and seize a person's property only by a court-issued warrant and only when the Government shows "probable cause." Moreover, the Supreme Court has held that a person must first have a "reasonable expectation" of privacy to fall under the protection of the Fourth Amendment. Thus, someone who keeps his window blinds up does not have a Fourth Amendment right preventing the police from looking in and arresting him for any illegal activity they may see.

Determining what is a reasonable expectation of privacy becomes more problematic as modern businesses and Government agencies demand increasing amounts of information concerning our private lives. That is because whenever a person gives up private information to a third party—such as a bank or the telephone company—the expectation of privacy is relinquished. The Government can seize such information without a warrant.

This was the type of issue that confronted Abdeen Jabara, a Michigan lawyer and second-generation American born to parents of Lebanese origin. In the wake of the 1967 Arab-Israeli war, Jabara began to travel the country, defending the rights of Arabs and condemning the Israeli occupation of Palestinian land and people. His lectures and writings sharply criticized U.S. policy toward the Middle East and supported the struggle of the Palestinians, including the PLO. Whenever he spoke before Arab students, he decried their harassment by U.S. Government agencies, such as the FBI and Immigration and Naturalization Service (INS), and frequently urged them to take legal action to publicize and stop such unlawful activities.

From 1967 to 1975, the Detroit attorney was the unsuspecting target of an intensive FBI investigation which included telephone taps, mail intercepts, and monitoring his writings and speeches. As revealed in court records, it was part of a massive surveillance campaign—code named Operation Boulder, inaugurated by the Nixon Administration in Autumn 1972 allegedly to uncover Arab "terrorist" operations in the United States. Headed by Secretary of State William Rogers, the operation was coordinated with the FBI, INS, the Central Intelligence Agency, the Internal Revenue Service and Transportation Department.

Abdeen Jabara

John Henderson Studios, Detroit

In the two months following the Palestinian assault against Israeli athletes at the Munich Olympic games in September 1972, 78 Arabs were deported from the United States. Hundreds, perhaps thousands more, were interrogated, photographed and finger-printed by FBI and INS agents. Some were jailed and forced to pay high bond for no reason, or for technical visa violations which normally are excused.[10]

Central to Operation Boulder was the gathering of political information. Clearly, U.S. authorities wanted to learn peoples' political beliefs and the political positions of the various Arab or Arab-American organizations on the Palestine conflict. As in Jabara's subsequent lawsuit against the FBI would reveal, much of this information was shared with Israeli intelligence.

Jabara first heard of the investigation when his bank advised him of a FBI request for all his past account records. Following five years of lawsuits to gain access to his government files, Jabara determined the extent of the seven-year surveillance and investigation by various U.S. Government intelligence agencies. Most surprising was that surveillance continued even after the Government concluded that he was innocent of any criminal activity. Federal Judge Ralph Freeman observed that the factual "record is devoid of any evidence linking (Jabara) to the commission or anticipated commission of any specific crime" and concluded that "the investigation was not wholly prompted by legitimate or good faith national security concerns."[11]

Once the FBI recognized that Jabara posed no threat to the U.S., it turned to the political ideas and movements of Jabara and his friends. A vast network of FBI informants and agents tracked Jabara as he travelled across the country, infiltrating the public and private meetings he attended and forwarding to FBI headquarters summaries of what he and those in attendance said.

The district court in which Jabara brought suit found the FBI "preoccupied" with Jabara's political views and his encouragement that Arabs mount legal challenges to FBI investigation. It also recognized that the Palestine conflict was central to the FBI's intelligence gathering. Observed Judge Freeman, "the presence of FBI informants at meetings and discussions attended by Jabara does not appear to have resulted solely from an investigatory interest in Jabara. Included in information regarding Jabara is data which the FBI has received from Zionist sources." Evidence outside the legal record suggests that many Jewish college and community organ-

izations spied on Jabara and other pro-Arab activists. The district court cryptically noted that the FBI shared information concerning Jabara with "17 government agencies and three foreign governments."

One aspect of this international intelligence gathering included a FBI request to the National Security Agency to target, record and transmit to the FBI all of Jabara's overseas telephone conversations. The NSA, the U.S. Government's largest and most secret intelligence agency whose principal duty is to intercept and record all worldwide electronic communications, forwarded at least six such communications.

Jabara challenged the NSA action as a violation of his Fourth Amendment rights, arguing that his right to be free from illegal searches and seizures was violated when the NSA turned over his "seized" overseas telephone conversations to the FBI without a warrant. Permitting the warrantless transfer of information concerning a private U.S. citizen by the NSA to another government agency, his attorneys reasoned, would create a loophole in Fourth Amendment protection.

District Court Judge Freeman accepted Jabara's arguments in a precedent-setting opinion, holding that the FBI and NSA violated Jabara's Fourth Amendment rights. The judge first found that Jabara had a well-based expectation of privacy when he made his overseas telephone calls. Next, the court found that because the FBI evidence failed to tie Jabara or domestic organizations he was affiliated with to a foreign agent or to collaboration with a foreign power, the FBI should have sought a warrant before asking the NSA to "seize" his telephone calls. Finally, the court held that the NSA too should have sought a warrant before it transmitted a person's telephone calls to another agency. For the first time, a federal court demanded that the NSA be held to the same Constitutional regulations that restrain America's other intelligence organizations.

The FBI and NSA immediately appealed the District Court's decision. And again, in a precedent-setting opinion, the Sixth Circuit reversed the decision, finding that the NSA did not need a warrant to "seize" and give to another U.S. agency an American citizen's overseas telephone conversations.[12] The Sixth Circuit held that the NSA in its normal intelligence gathering operations did not need a warrant to seize a citizen's telephone communications.

Second, the court concluded that even though Jabara may have had a subjective expectation of privacy when he made his telephone calls, that "expectation must be one that society is prepared to accept as reasonable." But in these circumstances, the court reasoned, Jabara did not have a reasonable expectation of privacy. He should have known that once his messages were lawfully in the hands of the NSA, it was reasonable to assume that such information would be passed, without warrant, to other government agencies. That Jabara did not know that NSA had intercepted his messages, concluded the court, was "irrelevant."

The American Civil Liberties Union who represented Jabara said in response that it was "difficult to imagine a more sweeping judicial approval of a governmental action in violation of Constitutional rights than the decision of the panel in this case." The U.S. Supreme Court refused to review Jabara's appeal.

Tax Deductible Contributions for Israel:

Kareem Khalaf, et al. v. Donald Regan, et al.

In 1982, Charles Fischbein, executive director of the Jewish National Fund regional office in Washington, D.C., launched fundraising plans for the construction of a sheltered playground for Israeli children at the kibbutz of Kiryat Shimona in northern Israel, near the Lebanese border.[13]

That year, Fischbein obtained a number of large gifts and pledges. Among the contributors were Mr. and Mrs. Morton Cohen,[14] prominent members of the Washington, D.C., Jewish community, who pledged $75,000, with approximately $20,000 donated immediately in cash. The playground, it was decided, would be named after this couple.

Other sizable gifts and pledges followed, and after 18 months, Fischbein had transferred more than $270,000 in funds earmarked for this project to the Jewish National Fund office in New York for transmittal to Israel.

In the spring of 1982, the Cohens told Fischbein that they would tour "their" playground during a visit to Israel in the summer. The previous winter, the JNF had given a dinner in their honor at which the playground project was officially dedicated to them.

But when they arrived at Kiryat Shimona, the Cohens found no playground and no construction underway. Instead what they saw was an Israel Defense Force staging area littered with garbage and beer cans.

The Cohen's story caused a storm of controversy at the JNF. Mr. Cohen suggested that the organization had acted fraudulently; another donor refused to complete his agreement. Subsequently, Fischbein learned that the money for the playground had gone into general use funds for Israel, and that there were no U.S. controls with regard to the use of monies raised in the U.S. for special projects. Once the Cohens threatened to publicly expose the misuse of their contribution, the JNF in Israel dipped into other funds and began construction on the playground.

But Fischbein's disenchantment

with the JNF did not end with the playground scandal. It merely deepened when he and other JNF leaders took a JNF-sponsored trip to southern Lebanon in the summer of 1982 to bolster U.S. Jewish support for Israel's invasion of Lebanon. The group was taken to areas in Lebanon occupied by the Israeli Army. Accompanying them were Moshe Rivlin, director of the Jewish National Fund in Israel, and Dr. Samuel Cohen, JNF executive vice-president in the United States. During the trip, Dr. Cohen bragged that JNF bulldozers, as an integral part of the military effort, had preceded the invading troops. Further, he boasted that the JNF was "up to its ears" in the development of Jewish settlements in the West Bank.

The revelations that the JNF helped to destroy Lebanon, that it did not always build hospitals, schools or playgrounds, as promoted, but instead helped purchase weapons and build settlements, were blows to Fischbein's dignity and sense of honesty. He resigned from the JNF in March 1984.

Shortly thereafter, Fischbein joined as a plaintiff in a lawsuit brought by Americans, Palestinians residing on the West Bank, and Israelis challenging the tax-exempt status of six United States-based Zionist organizations.[15] Included were the Jewish National Fund (JNF), the Jewish Agency American Section (JA), the World Zionist Organization American Section (WZO), the United Israel Appeal (UIA), the United Jewish Appeal (UJA), and a new, smaller organization, Americans for a Safe Israel. The latter group actively campaigned on Israel's behalf in the United States, promoting the purchase of West Bank land to the American Jewish community.

Being granted a tax-exempt status by the Treasury Department pursuant to Title 26 Section 501 (c) (3) of the U.S. Code is the financial lifeline for many organizations. It not only exempts recipient organizations from paying taxes, it also allows private individuals to deduct the amount donated to such organizations from their yearly income taxes.

The suit could have potentially reduced the millions of dollars transferred yearly to the State of Israel by American supporters. Attorneys for the plaintiffs estimated that the six organizations combined account for at least $750 million sent to Israel by Americans each year.[16] Total charitable transfers from the U.S. to Israel have been placed at $950 million to $1 billion for the last several years.[17] The International Monetary Fund estimated that Israel receives an annual $1 billion in private aid from Jewish organizations throughout the world. Israeli authorities guessed that more than 70 percent of that money originated in the U.S. "The principal sources," of private funds to Israel, according to a study published by the Middle East Institute, "are the prominent national Jewish charities, such as the United Jewish Appeal, but significant sums also flow through many smaller channels, especially since any charity recognized under Israeli law automatically qualifies for tax-deductible status in the United States under the Internal Revenue Code, a privilege not generally accorded other foreign states."[18]

At present, the Israeli Government annually spends $400 million on maintaining existing settlements and constructing new ones.[19] Israel can divert funds from needed projects inside Israel proper only because U.S. aid, including monies from tax-exempt U.S. charitable organizations, subsidizes the settlements.

All the organizations except for Americans for a Safe Israel can be traced to Israel's pre-state years and now in effect are components of the state. The WZO, founded by Theodor Herzl at the First Zionist Congress in 1897, helped establish and develop the State of Israel for the Jewish people. It acts as an umbrella organization that directly or indirectly oversees Zionist operations throughout the world, including the Jewish Agency American Section which is the registered agent of the WZO. The United Jewish Appeal, established in 1939, is the major Zionist fundraising organization in the United States. The United Israel Appeal, founded in 1920, operates solely to finance the Zionist movement. The UJA transmits to Israel funds raised in the U.S. through the UIA.

The Jewish National Fund, although directed by the Zionist Executive of the WZO, fundraises exclusively for the "reclamation" and development of the land of Israel and the 1967 occupied territories. According to *Land and Life*, the JNF magazine, "the United Nations drew the boundaries of the proposed Jewish State almost entirely in accordance with the land holding of the Jewish National Fund."[20] In 1961, Israel and the JNF signed a covenant making the two parties joint title owners of all the land of Israel. In this manner, the land of Israel is taken in the name of the JNF and "held as the inalienable right of the Jewish people."[21]

Most JNF land acquisitions on the West Bank are through the Hemnutah Company, a wholly owned subsidiary of the JNF.[22] According to its incorporation papers, the company's objective is to buy, lease and cultivate "land and other real properties in the West Bank and the territories controlled by the Israel Defense Forces and under their administration."[23] In 1976, JNF Director Shimon Ben-Shemesh admitted that in the past year the JNF had spent roughly $6.6 million to surreptitiously purchase West Bank land from Palestinians, including "buildings, public institutions and church property. Many of the Arab residents living on these lands are not yet aware that the lands are already owned by the JNF."

The plaintiffs contended that the six pro-Israeli fundraising organizations were in violation of U.S. laws and regulations regarding charitable organizations and that the Department of the Treasury (DOT) had failed to revoke their tax-exempt status. The plaintiff's complaint relied on three legal arguments.

First, they pointed to a Supreme Court case that denied a religious college tax-exempt status because it practiced racial discrimination.[24] The Treasury Department subsequently interpreted that case to mean that an organization's tax-exempt status must "serve a public purpose" and "must not be contrary to public policy."[25]

The plaintiffs argued that the confiscation of West Bank properties for the exclusive use of Israeli Jews, with-

out due process or just compensation, was discriminatory, a violation of basic human rights and in violation of the fundamental public policy of the United States. Construction of settlements on the occupied territories, they also contended, was in direct opposition to U.S. policy and wrecked any hope of achieving a peaceful solution to the Israeli-Palestinian conflict.

Second, the plaintiffs relied on a Section 501 (c) (3) rule prohibiting tax-exempt organizations from "carrying on propaganda, or otherwise attempting to influence legislation," participating in or intervening in (including the publishing or distributing of statements) "any political campaign on behalf of any candidate for public office." The six organizations, argued the plaintiffs, violated this rule by their extensive and well organized grass-roots campaigning in support of pro-Israeli political candidates and their support or opposition to legislation affecting Israel.

Finally, the plaintiffs pointed to Treasury Department rules prohibiting a charitable deduction for a gift to a U.S.-based charitable organization which is a "conduit" of the gift proceeds to an organization in another country. A U.S. organization is not a conduit where it has "full control of the donated funds, and discretion as to their use." The plaintiffs argued that the six organizations were merely funnels of U.S.-originated contributions to Israel and that they did not even attempt to control the use of the funds or exercise discretion over their use, as Fischbein had discovered.

The District Court of the District of Columbia, where the suit was filed, never addressed the merits of the complaint, but dismissed the case on a procedural technicality known as "standing." That concept prohibits a plaintiff from going forward on a lawsuit unless he can first show that he has been "injured in fact, that the injury was caused by the defendant's challenged action and that the relief requested by the plaintiffs would provide redress for the injuries suffered." Unless a plaintiff can overcome the "standing" threshold, the suit will be thrown out of court.[26]

It was Judge Jackson's decision that few of the plaintiffs suffered a judicially recognizable injury directly attributable to the tax-exempt status of the six organizations. For those Palestinian landowners whose land had been confiscated, the judge held that revoking the tax-exempt status of the organizations would not redress their injuries; that the Israeli Government would have committed the wrongs regardless of the six U.S. organizations' tax-exempt status. Concluded Judge Jackson: it would be "more fanciful still to assume here that the government of Israel is so responsive to changes in U.S. tax laws that the withdrawal of benefits from U.S. contributors will work any alteration whatsoever in the character of its occupation of territory it now holds by force in the Middle East."[27]

Judge Jackson ruled conservatively on the issue of standing, refusing to push the definition of injury to include the harm complained of by the plaintiffs. Judicial recognition of injury remained narrow, reinforcing a national trend excluding third parties from seeking judicial relief.

The Return of The Blacklist:

Redgrave v. Boston Symphony Orchestra

The 1950's, enveloped in anti-Communist hysteria and symbolized by the investigations of the House Committee on Un-American Activities (HUAC), deeply stained this country's commitment to the exercise of free expression. Congressional "witch-hunts" seriously undermined fundamental rights established and protected by the U.S. Constitution. In the name of protecting American security, they became forums that enforced ideological conformity, quashed meaningful dissent and debased and corrupted hundreds of people by forcing them to denounce their past, their friends and their colleagues.

Few industries were so thoroughly targeted by HUAC as Hollywood and the motion picture industry.[28] Films and plays avoided all "controversial" political and social subjects. One Hollywood studio shelved a film about Hiawatha because its message for peace might be misconstrued. New employment contracts specified suspension if the employee invoked his or her First or Fifth Amendment right to refuse to testify before Congressional investigations or was cited for contempt. The Screen Actors Guild, under the presidency of Ronald Reagan, introduced a loyalty oath for its members and required its officials to sign non-Communist affidavits.

Blacklisting—denying a person employment because he or she refused to comply with HUAC—cost about 250 people their jobs, affecting some of the most talented directors, writers and actors in Hollywood. Roughly 100 more were "graylisted"—victims of rumors or guilt by association who had great difficulty getting hired.[29]

Well-organized pressure groups also picketed or boycotted the theaters which showed movies of actors or filmmakers who had been uncooperative with HUAC. In New Jersey, the Catholic War Veterans picketed comic Charlie Chaplin's movie *Monsieur Verdoux* with banners: "Kick the Alien Out of the Country" and "Send Chaplin to Russia," while in Denver the American Legion managed to close the film. Consequently, Chaplin departed the country in 1952, refusing to return until 1972, but only to receive a special Academy Award.

Thirty years later, Academy Award winner Vanessa Redgrave fell victim to identical harassment and censorship merely because of her

unpopular political opinions—that is, her support for the Palestinians.

The world renowned Boston Symphony Orchestra (BSO) decided in 1981 to celebrate its hundredth anniversary the following year with a special program focusing on the works of the Russian composer Igor Stravinsky. One piece, *Oedipus Rex*, an opera oratoria, required a narrator, and Redgrave, widely acknowledged as one of the most exciting actresses on stage today, was asked by the symphony to narrate five concerts. Three days later, BSO proudly announced that Redgrave would perform in their celebration.

One week later BSO broke its contract with Redgrave. Although BSO later cited threats of disruption and violence aimed at Redgrave, court proceedings revealed that BSO caved into Jewish community groups that opposed the actress's political views on the Palestine conflict.

One day after BSO announced that Redgrave would give the *Oedipus Rex* performance, a BSO trustee told the symphony's general manager that he opposed the contract and asked how it could be rescinded. He indicated that major Boston Jewish groups, including B'nai B'rith and the Jewish Community Center, would protest her appearance at the symphony. During a subsequent trial, the jury found that BSO feared the "broader symphony community" (season subscribers, ticket holders, and supporters by monetary contributions) would withhold their financial support if Redgrave appeared. The jury further found that following the intervention of two trustees opposing Redgrave's narration, BSO believed it would be endorsing Redgrave's political positions on the Middle East if it went through with the contract.

BSO's director, who refused to endorse the blacklisting of Redgrave, warned that the actress would be hard pressed to find other work if BSO cancelled the concerts. Unfortunately, his warning was correct. Redgrave did not work at all for 14 months following BSO's action. Potential employers who, before the BSO blacklisting, had worked with or wanted to work with her, refused to consider hiring her. Some smaller producers were honest enough to admit that if BSO, with all its power and prestige in the art world, could not go forward with Redgrave, they certainly could not do so either.

Redgrave filed suit against BSO for unlawful breach of contract and violation of her right to free speech as protected under federal civil rights statutes and a Massachusetts state civil rights statute. Her attorneys argued that the cancellation of her performances was politically inspired discrimination and thus in violation of the federal civil rights statues, 42 USC Section 1985 and 1986. Those statutes held liable for damages any "two or more persons" who deprive another person of his or her civil rights. The laws were written as part of the Ku Klux Klan Act of 1871, which the Reconstruction Congress enacted to stop a gang of political terrorists, the KKK, from intimidating and coercing persons holding differing political beliefs. Redgrave's attorneys reasoned that political coercion and intimidation are what their client's case was all about. Clearly, they thought, Redgrave was a member of a minority class whose unpopular political beliefs were the root cause of her unfair treatment at the hands of the majority.

Unfortunately, Judge Robert Keeton, sitting in U.S. District Court in Boston, disagreed, throwing out Redgrave's federal civil rights claim in a pre-trial hearing. In a narrowly reasoned opinion, he ruled that since the federal civil rights statutes were applicable only to individuals acting in some degree of concert with the government, the claim against BSO was void because there was no allegation that the individuals who pressured BSO into blacklisting Redgrave had any tie to state action. In short, the judge held that Redgrave's injuries—at the hands of private conspirators—were not the kind that federal civil rights statues were meant to remedy.[30] It was a clear example of how procedural issues deflected substantive wrongs and injuries from judicial review and correction.

Redgrave also sought relief under a Massachusetts civil rights act which held liable any person who "interfered with or attempted to interfere with" an individual's Constitutional rights by means of "threats, intimidation, or coercion." A newly created state statute, it was not encumbered by federal "state action" procedural doctrine. Judge Keeton, therefore, permitted the issue to be tried before a jury.

After three weeks of testimony, the jury took eight and a half hours to reach a verdict. They rejected BSO's argument that it cancelled Redgrave's contract for "causes and circumstances beyond (its) reasonable control" and awarded a $100,000 judgment in addition to the $27,500 contract fee. But the hand of Judge Keeton frustrated the jury's ultimate conclusions and directives.

After each party in litigation rests its case, the judge presents to the jury a list of questions embodying the legal elements of each side's complaint and defense. The jury must answer each question yes or no and thus determine the outcome of the case. Clearly, the nature of the instructions may vitally affect the course of a jury's deliberations.

In Redgrave's case, the jury instructions so twisted the issue that the jury could not enter a verdict against the BSO even though they unanimously found that the actress's civil rights were violated. Wrote the jury members to Judge Keeton after his decision that no civil rights violation existed: "We were convinced that there indeed was an abrogation of Ms. Redgrave's civil rights by the BSO. We were convinced that . . . (in deciding to cancel the performance, BSO was) willing to cooperate with members of the broader community to fire Ms. Redgrave because, and only because, of the disagreement by that group with political views that Ms. Redgrave had publicly expressed . . . BSO knew that to accede to these demands was to violate Ms. Redgrave's civil rights." Nonetheless, the court found no civil rights violation against BSO.

This Orwellian legal feat was achieved through a narrow construction of the Massachusetts civil rights act. The judge demanded that the jury declare BSO had violated Redgrave's civil rights if it first found that

the symphony had rescinded Redgrave's contract because it disagreed with her political views. This the jury could not do because the evidence clearly showed that BSO management was responding to outside, third party pressure when it cancelled the contract. The judge refused to find that discrimination induced by third party threats or disapproval was actionable under Massachusetts law. "Although cancellation because of acquiescence when confronted with the public pressure of a vocal minority may be a breach of contract," Judge Keeton wrote, "it is not a violation of the Massachusetts Civil Rights Act."[31]

The court further turned civil rights ideals on their heads when he reduced the jury's award from $100,000 to the mere contract damage award of $27,500, reasoning that it was the symphony's free speech that was at stake! This intellectual legal somersault was performed by construing BSO's announcement rescinding Redgrave's invitation as a form of protected free speech.

Redgrave, along with civil rights and liberties organizations in Boston, are appealing the court's decision. On July 1, 1985, Attorney Daniel Kornstein, Redgrave's lawyer, in a brief submitted to U.S. District Court in Boston, argued for reversal of the federal court finding that the BSO had not violated her civil rights. He said that, without the reversal, the case "expressly encourages political coercion."[32]

Dual Citizens/Split Allegiances:

Afroyim v. Rusk

Fanny Weisblatt, of Silver Springs, Maryland, was fixing the engine of an Israeli tank; Shirley Benson, of Fresno, California, was washing dishes in the mess hall of the Emanuel Israeli Army base; Monty Crisp, of Mountiville, South Carolina, was working with an Israeli team reconditioning a captured Soviet-made tank. They were not getting paid for their labors. Instead, they were part of the Volunteers for Israel program, which has allowed in the past two years some 3,600 foreigners—mostly Americans from 18 to 65 years old—to spend at least a month working on an Israeli Army base.[33]

Each volunteer, after paying his or her way to Israel, is given an Israeli Army uniform, boots, hat, field jacket and socks, then assigned to live in one of 20 army bases in either Israel or the occupied West Bank or Golan Heights. To avoid questions of dual citizenship, each must sign a release form saying they have no intention of serving in the actual combat army or of pledging allegiance to it.

That release form may be sufficient to keep such individuals out of trouble with the U.S. citizenship laws. But what about the countless Americans who permanently reside in Israel, especially those violence-prone religious extremists settling in the West Bank? What about individuals such as Harry Goodman, of Baltimore, Maryland, who joined the Israeli Army and was arrested for attempting to blow up the Al-Aqsa mosque in Jerusalem? Or about James Mahon, a Vietnam vet, who converted to Judaism, became an Israeli citizen, and was killed while reportedly on a secret mission to kill Yasser Arafat? Earlier the Israelis had jailed him for breaking into Palestinian homes, smashing furniture and clubbing men, women and children.

Finally, the most unnerving example is Rabbi Meir Kahane. Born in Brooklyn, New York, and founder of the militant Jewish Defense League, Kahane took Israeli citizenship, moved to Israel, started "Kach," the political party that calls for the expulsion of the Palestinians from Israel, the West Bank and Gaza. In 1984 he won a seat in the Israeli parliament. He has been arrested at least 62 times for violent attacks on Palestinians, while some of his followers have been arrested for planning to blow up mosques, churches and Arab-owned businesses. Yet Kahane maintains his American passport and U.S. citizenship.

Why Kahane and other Americans living and working in Israel have not lost their U.S. citizenship stems from a 1967 Supreme Court case dealing with another American-Israeli that fundamentally changed U.S. expatriation law.[34] Prior to 1967, U.S. law did not permit U.S. citizens to vote in foreign elections under the penalty of loss of citizenship. The controlling case was *Perez v. Brown,* decided by the Supreme Court in 1958, which upheld a federal statute permitting the U.S. State Department to revoke the citizenship of a Mexican-American who had voted in a political election in Mexico. Judge Frankfurter reasoned that the State Department had such power pursuant to the necessity to conduct U.S. foreign policy.[35] But nine years later, in *Afroyim v. Rusk,* a new majority in the Court expressed a different view.[36]

Beys Afroyim, born in Poland in 1895, immigrated to the United States in 1912 and became a naturalized U.S. citizen in 1926. In 1950, at age 55, he went to Israel and under the Law of Return became an Israeli citizen. He voted in the Israeli election of 1951. After ten years, Afroyim decided to visit the United States, but upon asking the U.S. Consulate in Haifa for a new passport, found that the State Department had revoked his citizenship. The Department cited his voting in the 1951 election and relied on *Perez v. Brown* to defend their decision.

Afroyim's lawyers fought the ruling, taking the case to federal district court and the Court of Appeals. Each judicial body affirmed the State Department's decision.

But on May 29, 1967, the Supreme Court, in a 5 to 4 decision, reversed the Perez decision and ruled that it

was permissible for a U.S. citizen to vote in foreign elections. Moreover, the Court, with an entirely different approach to the loss of citizenship issue, rejected the presumption that the U.S. Government had the power of involuntary expatriation. No longer could the State Department revoke an American's citizenship against an individual's wishes. Instead, U.S. citizenship could be lost only if the individual voluntarily surrendered or abandoned it. The Court justified its decision by reasoning that the U.S. Constitution provided Congress with no specific authority to deprive a citizen of citizenship and that the 14th Amendment plainly stated all persons born or naturalized in the United States were U. S. citizens.

In 1980, the Supreme Court reaffirmed and elaborated *Afroyim*, ruling that not only must an individual voluntarily relinquish his or her citizenship but that the relinquishment must be intended by the individual. However, the Court added that intent can be either expressed, e.g., words or oath, or implied, e.g., by "proven conduct."[37]

Factors inferring but not concluding that an individual had voluntarily given up his citizenship would be: naturalization by a foreign government, taking an oath of allegiance to a foreign government, or serving in another country's military government service, especially if such action was voluntarily. However, obligatory military service mitigates against the inference that a person voluntarily relinquished his citizenship.

Israel presents a more perplexing legal problem because military service for its citizenry is mandatory and that, under the Law of Return, any Jew taking up residence in Israel automatically becomes an Israeli citizen. No oath or pledge of allegiance is required. Moreover, under Zionist ideology, the concept "Jewish people" constitutes a distinct and unique national entity regardless of where the Jewish person may reside. In other words, Zionism theoretically makes every Jew in the world a citizen of Israel.[38] The U.S. Government and international law, however, has rejected Zionism's supranational "Jewish people" argument.

Whether or not Rabbi Kahane's activities should be construed to mean that he has implicitly given up his U.S. citizenship is a determination still pending before the State Department. And because the situation of each individual is judged on a case-by-case basis, the outcome is unclear. Although participation in a foreign legislature has weighed heavily against the claimant in past cases, the fact that Moshe Arens had U.S. citizenship while serving as Israel's ambassador to the United States never became a problem for the State Department. Either the department will have to discard the implicit relinquishment rule or carve out an exception for U.S.-Israeli citizens under expatriation procedures. Already, admitted former Immigration and Naturalization Service Commissioner Castillo, "this U.S.-Israel relationship is a special situation."[39]

The underlying political reality is that the protection of the rights, freedoms and privileges mandated by the U.S. Constitution is only onion-skin thin. Every court decision or legislative enactment empowering a government agency or a corporate entity to impinge upon an individual liberty strips away a protective membrane.

Perhaps like war and the generals, democracy is too important to be left to the courts. The spirited willingness of the public to fight to protect their rights has long been recognized as the real mainstay of liberty and freedom. Said Judge Learned Hand: "Liberty lies in the hearts of men and women. When it dies there, no Constitution, no law, no court can save it." Indeed, in a real sense the Constitution is what the people make it.

This unfortunately has the seeds of disaster for groups out of favor with the majority, such as those opposing present Israeli and U.S. policies toward the Middle East and/or who happen to be of Arab ethnic origin. In the short run, their only protection will be those courts willing to play their vital and historic role to uphold the freedoms embodied in the Constitution. The cases just discussed suggest that some courts have been reluctant to play that role in relation to Middle East conflict. But in the long run, the defense of political rights is a political, not a legal, problem that must—like the Palestine/Israel conflict itself—be solved by political means.

Notes

1. Ronald Dworkin, "Law as Interpretation," *Texas Law Review* (March 1982),pp. 542-543.
2. See Michael Saba, *The Armageddon Network* (Brattleboro, VT: Amana Books, (984), p. 90.
3. *Defense Week*, June 20, 1985.
4. *Aviation Week and Space Technology*, April 29, 1985.
5. Cindy Schlaefer, "American Courts and Modern Terrorism: The Politics of Extradition," *Journal of International Law and Politics* (Winter 1981).
6. Re *Peter Gabriel John McMullen* (No. 3-78-1899 M.G. N.D. Cal. memorandum decision filed May 11, 1979).
7. Eain v. Wilkes, 641 F2d 504 (7th. Cir. 1981).
8. Dean K. Bouffard, "Extradition," *Suffolk Transnational Law Journal* (Spring 1982).
9. Lubet and Czaczkes, "The Role of the American Judiciary in the Extradition of American Terrorists," *Journal of American Law and Criminology* (Fall 1980).
10. Discussion of Operation Boulder is from MERIP Report No. 14 (February 1973). See also Michael R. Fischblach, "Government Pressure Against Arabs in the United States," *Journal of Palestine Studies* (Spring, 1985).
11. Jabara v. Kelley (E. D. Mich. 1979).
12. Jabara v. Webster, 691 F2d. 272 (1982).
13. Discussion of Fischbein's experience with the JNF is drawn from his affidavit submitted in support of the lawsuit.
14. Mr. and Mrs. Cohen are not their real names.
15. In addition to Fischbein, the plaintiffs included: Karim Khalaf, Bassam Shaka'a, Ibrahim Tawil, Fahd Qawasmeh and Wahid Hamdallah, the elected mayors of Ramallah, Nablus, al-Bireh, Hebron and Anabta, respectively, located on the Israeli occupied West Bank, who were dismissed from their offices by the Israeli military authorities; Mustafa Sbeih, the mukhtar of the West Bank village of Aqraba; Seif al-Rahman Moustafa, Jawdat Redu Hamad, Yousef Abed al-Karim Abdallah, and Abed al-Haq Mousah Hasa, land owners on the West Bank; Charlie Bation, Israeli Knesset member; Moshe Hirsh, Rabbi of Neturi Karta; John Davis, former Commissioner General of UNRWA; Edward L. Keenan, professor at UCLA; and Subhi Widdi, naturalized U.S. citizen whose family lost land in the West Bank to Israeli confiscation.

16. Plaintiff's attorneys were Linda Huber and Mark Lane, 105 Second Street, N.E., Washington, D.C. 20002.
17. Thomas Stauffer, *U.S. Aid to Israel: The Vital Link,* Middle East Problem Paper No. 24 (Washington, D.C.: Middle East Institute, 1983).
18. *Ibid.,* p. 5.
19. *Christian Science Monitor,* December 19, 1984.
20. *Land and Life,* Summer 1981.
21. Uri Davis and Walter Lehn, "And the Fund Still Lives," *Journal of Palestine Studies,* Summer 1978, p. 7.
22. *Land and Life,* Summer 1981.
23. Davis and Lehn, op. cit., p. 25.
24. Bob Jones University v. United States 103 S.Ct. 1027 (1983).
25. Synanon Church v. United States, CA No. 82-2303 (D.D.C.), Memorandum for the United States in Reply to Synanon's Opposition to the Government's Second Motion for Summary Judgement, p. 45, 47 (Dec. 15, 1983).
26. The two parties involved in the tax-exempt agreement were the IRS and the six organizations. The plaintiffs became a third party when they intervened to challenge the IRS's decision to continue to grant the 501 (c) (3) status to the six organizations.
27. Kareem Khalaf, et al. v. Donald Regan, et al, CA. No. 83-2963 (D.D.C.), Memorandum and Order, January 7, 1985.
28. The following discussion on Hollywood blacklisting is drawn from David Caute, *The Great Fear* (New York: Simon and Schuster, 1978), chapter 26, and Victor S. Navasky, *Naming Names* (New York: Viking Press, 1980), chapter 4.
29. What made backlisting particularly pernicious was that few industry leaders ever admitted its existence. Ronald Reagan, then president of the Screen Actor's Guild, announced that "We will not be a party to a blacklist," but then banned Communists and noncooperative witnesses from membership. As Navasky observed, "getting off the blacklist soon became as ritualized as getting on: the principal distinction between the two enterprises was that one got onto the list against one's will as punishment for adhering to one's values, whereas one got off as a reward for violating them." Navasky, *ibid.,* p. 87.
30. Order. February 1, 1983. CA No. 82-3193-K.
31. Redgrave v. Boston Symphony Orchestra, Inc. 602 F. Supp 1189 (1985).
32. *Boston Globe,* July 2, 1985.
33. *New York Times,* March 20, 1985.
34. Denaturalization relates only to naturalized citizens and entails a judicial process premised on an impropriety in naturalization. Expatriation relates to any citizen, born or naturalized in the U.S., presupposes the citizenship was acquired properly, entails no judicial process but rather a finding that loss of citizenship occurred as the result of a citizen's voluntary action.
35. Perez v. Brown, 356 U.S. 44 (1958).
36. Afroyim v. Rusk, 387 U.S. 253 (1967).
37. Vance v. Terrazas, 444 U.S. 252 (1980).
38. W. T. Mallison, "The Zionist-Israel Juridical Claims to Constitute the 'The Jewish People' Nationality Entity and to Confer Membership In It: Appraisal in Public International Law," *George Washington Law Review* (June 1964).
39. *Arabia,* December 1984.

Notice

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Book Views

They Dare to Speak Out: People and Institutions Confront Israel's Lobby
By Paul Findley
362 pp., $16.95.

By Michael W. Suleiman

This is a most welcome book, well-written and thoroughly researched. It chronicles and documents the repeated attempts by the Zionist lobby in the United States to silence any and all critics or even potential critics of Israeli policies or actions. The first nine chapters detail a very large number of instances when the Zionist lobby (spearheaded and carefully coordinated by AIPAC, the American Israel Public Affairs Committee) used political pressure and sometimes ethically questionable tactics to produce the desired support for Israel in Congress, the White House, the Pentagon (and the overall American Defense establishment), the universities and research institutes, and the American churches. Throughout all of this, Findley is careful to check his stories and to quote correctly from his numerous interviews as well as the available literature.

After twenty-two years in Congress, Findley was defeated in his 1982 re-election bid, in part as a result of a concerted Zionist campaign to oust him because he "dared to speak out" on Middle East issues in a manner that was not 100 percent pro-Israeli. In their campaign, the Zionists marshalled national support for Findley's opponent, providing him with large amounts of money as well as organizational and electioneering assistance. Their aim was to make an example of Findley so that other Congressmen refrain in the future from asserting their independence from Zionist views and instructions. The same methods were used in defeating other politicians, including Charles Percy and Adlai Stevenson III.

The exceptionally large number of instances of pro-Israeli harassment and intimidation in all areas of social and political life is a sad commentary on the state of American policies and actions concerning the Middle East as well as Arabs in the United States. What is even more distressing is the total silence on the part of most people and their refusal to challenge the offenders or to come to the aid of the victims. To me, one of the saddest and most cruel of all the instances recorded relates to a Palestinian-American who operated a restaurant in Chicago and who, as a result of attacks by the "militant part of the Jewish community" (p. 292), completely lost his multi-million dollar business.

Findley's presentation of Israel's lobbying and harassment activities is masterful as well as comprehensive. However, even more valuable is his "Epilogue" entitled "Repairing the Damage". Here we have a clear and excellent discussion of why the Zionists often speak and act rather irrationally when it comes to Israel and Jewish-related issues. Findley says the answer is that many Jews are motivated by fear, i.e. they believe "another holocaust is entirely possible, especially if criticism of Israel goes unpunished." (p. 317). When this is combined with the strong attachment of many Jews to Israel and the belief that Israel is insecure, it "produces in many Israelis (and much of the U.S. Jewish community) a siege mentality and causes them to accept restrictions on civil liberties that they would consider anathema in other circumstances . . . Driven by deep-rooted fears, activists for Israel create fear in others." (pp. 318-19).

However, Findley's conclusions, which I believe should be read first in order to avoid a feeling of hopelessness about the whole matter, provide a very useful assessment of the relative strength of the Zionist lobby—and how to counteract it. First and most important, perhaps, is the realization that the lobby presents itself and wishes others to view it as more powerful than it really is—since that increases its power of intimidation. In Findley's own case, for instance, there were many ancillary factors which adversely affected his campaign. The intensive and extensive activity against him by the Zionist lobby might have failed (and almost did, anyway) if it were not for other factors. Therefore, Findley offers a few salient points to reduce the power of the Zionist lobby by exposing and removing some misconceptions and mythologies. Among these are the following: (1) The lobby is not able to deliver the Jewish constituency on election day; it is critical "only in extremely close races." (p.323). (2) Americans should be informed of the magnitude of aid to Israel; and should generally become more knowledgeable about U.S. policy in the Middle East. (3) The Israeli lobby is strong because many American Jews are large contributors to charity and political causes. If this is matched by contributions and support for opposing views by Arab-Americans and others, the Zionist lobby will lose much of its influence. (4) The "conspiracy of silence" by public officials, the clergy of established church groups, intellectuals and the general public must be shattered—in order to enable us to regain the freedom of speech on the Arab-Israeli question. For "when a lobby stifles free speech nationally on one controversial topic—the Middle East—all free speech is threatened." (p.332).

This is a daring book about many courageous people, many of whom paid a price for their forthright opposition to Zionist intimidation. However, many Americans, Jews and non-Jews, are already realizing the need for action. Also, the Middle East Studies Association last year reasserted the principle of academic freedom and condemned "black listing" of professors for allegedly anti-Israeli views. Findley has performed a great service by producing an informative and thoughtful book valuable to all Americans, public officials as well as the general public.

Dr. Michael W. Suleiman is professor of political science at Kansas State University.

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☐ Paul Findley, *They Dare To Speak Out: People and Institutions Confront Israel's Lobby,* Westport, CT: Lawrence Hill and Company, 1985, 362 pp., $16.95. The former eleven-term Congressman from Illinois, through documentation and case studies, shows how Americans are victimized for putting their own country's interest before Israel's, and how coordinated efforts are made throughout the country to control open debate on Middle East issues. Our price, $9.95. *See review, page 14.*

☐ Naseer Aruri, ed. *Occupation: Israel Over Palestine,* Belmont, MA: Association of Arab-American University Graduates, 1983, 467 pp., $13.50. Analyzes the political, social, economic, legal and cultural dimensions within the context of overall Zionist policy toward the Palestinian people and their land. Our price, $8.50.

☐ George W. Ball, *Error and Betrayal in Lebanon,* Washington: Foundation for Middle East Peace, 1984, 158 pp., $7.95. The former Undersecretary of State analyzes the confused American Middle East policy that took shape during the Israeli invasion of Lebanon in 1982 and continued, in changing form, until the withdrawal of U.S. Marines from Beirut. Our price, $5.95.

☐ Colin Chapman, *Whose Promised Land?* Herts, England: Lion Publishing, 1983, 253 pp., $3.95. Outlines the conflicting claims to the Holy Land from the time of the Bible on. Discusses the relevance of biblical promises to the modern age. Our price, $2.75.

☐ Isaak Diqs, *A Bedouin Boyhood,* New York: Universe Books, 1983, 176 pp., $10.40. A vivid portrait of a vanishing and misunderstood culture by a man who began his life as a Palestinian Bedouin at the edge of the Neqab Desert. Diqs relates colorfully such events as weddings, Bedouin legal proceedings, and Ramadan festivities. A gifted storyteller, Diqs can also weave the routine of the daily life of his semi-sedentary tribe into unforgettable episodes, and contrast those peaceful times with the shock of 1948 and the exile of his people from their land. Our price, $7.00.

☐ David Gilmour, *Lebanon: The Fractured Country,* New York: St. Martin's Press, 1984, 225 pp., $8.95. A balanced and reflective account of modern Lebanese history, the Civil War, and the reconciliation talks in Geneva through September 1983. Our price, $6.50.

☐ Peter Gubser, *Jordan: Crossroads of Middle Eastern Events,* Boulder: Westview Press, 1983, 139 pp., $12.95. The author describes and analyzes Jordan's unique role in the Middle East, and focuses on its attempts, and successes, at developing its economy and society in the face of a dearth of natural resources and a large influx of refugees. Our price, $7.50.

☐ Y. Haddad, B. Haines, and E. Findly, eds., *The Islamic Impact,* Syracuse University Press, 1984, 264 pp., $12.95. Ten noted authors analyze the manner in which Muslims in the past have attempted to nurture, synthesize and implement the prescriptions of their faith in fashioning their world, and current efforts to recapture the impetus and dynamism of Islam to create a new Islamic civilization. Informative texts on Islamic music, law, mysticism and other subjects are neither esoteric nor opaquely technical. Our price, $7.00.

☐ Christine Moss Helms, *Iraq: Eastern Flank of the Arab World,* Washington: Brookings Institution, 1984, 215 pp., $9.95. Examines the evolution of modern Iraq, the Arab Ba'ath party, and the war with Iran. The author focuses on the forces that influence policy formulation within the Iraqi Government and the concerns of Iraqi leadership over the last three decades. Our price, $7.50.

☐ David Hirst, *The Gun and the Olive Branch,* London: Futura Publications, 1978, first edition reprinted 1983, 367 pp., $7.95. Chronological history of the Palestinian/Zionist relations from the Aliyah movements of the 1880's to Arafat's U.N. speech in 1974. Excellent historical sourcebook which dispels a number of myths about the subjects. Our price, $2.75.

☐ Ammon Kapeliouk, *Sabra and Shatila: Inquiry into a Massacre,* Belmont, MA: Association of Arab-American University Graduates, 1983, 89 pp., $5.95. Documentary of the massacre which has come to symbolize the total horror of the 1982 Israeli invasion of Lebanon. Our price, $4.00.

☐ Mohamed el-Khawas and Samir Abed-Rabbo, *American Aid to Israel: Nature and Impact.* Brattleboro, VT: Amana Books, 1984, 191 pp., $8.95. Historical review of U.S. aid to Israel, public and private, since 1949. The book also reproduces the full uncensored version of the U.S. General Accounting Office's 1983 report, "U.S. Assistance to the State of Israel." Our price, $5.95.

☐ Sally V. Mallison and W. Thomas Mallison, *Armed Conflict in Lebanon 1982: Humanitarian Law in a Real World Setting,* revised and enlarged second edition, Washington: American Educational Trust, 1983, 92 pp., $8.95. The authors believe that if a minimum order system is to be achieved in the world community, it must be based on the customary and treaty laws which states have developed through the centuries to protect human and material values. Applying this principle to a factual situation, they set forth the applicable laws involved when Israel invaded Lebanon in June 1982, and began its occupation of that country. Our price, $5.95.

☐ Jan Metzger, M. Orth, and C. Sterzing, *This Land Is Our Land: The West Bank Under Israeli Occupation,* London: Zed Press, 1980, 288 pp., $10.25. An eyewitness account, illustrated profusely with maps and photographs, of the everyday reality of life for Palestinians in the West Bank and Gaza Strip. Examines the Israeli strategy of Judaization through settlement and economic annexation, and the Palestinian resistance to it. Our price. $7.00.

☐ Edward Mortimer, *Faith and Power: The Politics of Islam,* New York: Random House, 1982, 432 pp., $6.95. A Middle East specialist for the London Times puts Islamic politics in the context of historical, regional and cultural experience. A well-organized, readable background on a complex subject. Includes excellent chapters on Egypt, Iran, and Saudi Arabia. Our price, $3.50.

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