

Israeli Government Violations of Disengagement Opponents' Civil Rights

Atty. Itzhak Bam
Dr. Yitzhak Klein
Shmuel Meidad



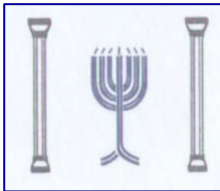
The Israel Policy Center



Honenu Legal Defense Association

Israeli Government Violations of Disengagement Opponents' Civil Rights

Atty. Itzhak Bam¹
Dr. Yitzhak Klein²
Shmuel Meidad³



The Israel Policy Center
P.O.Box 24433
Mount Scopus
Jerusalem 91240
Tel: 972-2-5827908
Fax: 972-2-5817460
info@merkazmedini.org



Honenu Legal Defense
Association
67 Hanevi'im Street
Jerusalem 94702
Tel: 972-2-9605558
Fax: 972-3-7256213
honenu@honenu.org.il

sponsored by:



Norsk Israelsenter (NIS)
For Israel og mot antisemittisme
Norwegian Center for Israel and Against Antisemitism
Seljeveien 18, 1825 Tomter
Tel: 69 92 14 22
Faks: 69 92 19 09
Mob: 91 70 61 46
post@norskisraelsenter.no

¹ Israel Policy Center.

² Israel Policy Center. Address correspondence to this author: Cell 972-54-5743391,
yklein@merkazmedini.org.

³ Honenu Legal Defense Association

© 2005 The Israel Policy Center
All Rights Reserved.

Israeli Government Violations of Disengagement Opponents' Civil Rights

CONTENTS

Executive Summary	7
Part I: Introduction	9
Part II: Policies and Judicial Practice Toward Opponents of Disengagement	12
Part III: Individual Cases	19
1. Extended Detention and Police Brutality Against Minors	20
2. Police Brutality	28
3. False Arrest, Violation of Prisoners' Rights and Due Process	35
4. GSS Cases	41
5. Suppression of Legal Dissent	46
IV. Conclusion	49

Acknowledgements. This work was supported in part by a generous grant from The Norwegian Israel Center Against Anti-Semitism. Much of the work was based on access to open sources in Honenu's copious legal files, and we wish to thank E. Rosenstein for his indispensable assistance in producing this report. Production costs for the final report were supported by the Union of Orthodox Jewish Congregations of America. The authors gratefully acknowledge the indispensable assistance of The Organization for Human Rights in Judaea, Samaria and Gaza and its director, Ms. Orit Struk, and of numerous attorneys, witnesses and victims of civil rights violations who gave of their time.

Israeli Government Violations of Disengagement Opponents' Civil Rights

Atty. Itzhak Bam
Dr. Yitzhak Klein
Shmuel Meidad

EXECUTIVE SUMMARY

Since the passage of the Law on Evacuation and Compensation (“The Disengagement Law”) by the Knesset in February 2005, the civil rights of opponents of disengagement have been subject to extensive violations. These include the suppression of legal dissent, widespread police brutality, false arrest and the harsh use of punitive detention to deter and intimidate. These measures were taken against people who enjoy the presumption of innocence and starkly violate the Israeli justice system’s own longstanding norms.

These civil rights violations are not the exception. They are the inevitable outcome of the policies Israel’s legal system adopted to deal with protest against disengagement. The state prosecution service and the judiciary chose to see protest against disengagement as a form of rebellion, and authorized harsh measures against those taking part in it. Police were all but promised immunity from punishment for violations of the rights of disengagement’s opponents, and accordingly gave those rights little respect.

Unwilling to acknowledge that they confronted a genuine movement of nonviolent civil disobedience, Israeli legal and judicial authorities countered one phenomenon of mass illegal action with another of their own creation. Such behavior on the part of the authorities of a state supposedly under the rule of law is completely unacceptable. Its damages rather than upholds the rule of law and the prestige of democratic government.

Justices of the Supreme Court conflated nonviolent civil disobedience with insurrection and sedition. They viewed the *opinions* of protesters, rather than anything they may have done, as a threat to state security justifying inflated criminal charges and pre-trial detention. The views of the Supreme Court became the guideline used by inferior courts in their treatment of protesters. The theme of viewing the opinions of defendants as an element of their criminality recurs again and again in court opinions and prosecutors’ briefs.

Pre-trial detention was used for purposes not authorized by law: As a deterrent to others, to intimidate defendants and coerce them to compromise their legal rights and their defense, and to erode the legal guarantee of the right to remain silent. **We have documented at least 97 cases of indictments filed against minors and 68 against adults in which pre-trial detention or other limitations on the liberty of defendants appeared to be unwarranted by law.**

The General Security Service (GSS) was perverted from its brief to counter armed conspiracy against the state, to investigating ordinary crimes and nonviolent civil disobedience connected with disengagement. GSS involvement led to the unwarranted suspension of the civil rights and due process rights of those it investigated, and to the infliction of cruel and inhumane treatment in violation of international treaties. The GSS was also used to harass opponents of the Prime Minister engaged in legal protest.

This report examines in detail 24 cases of civil rights violations, falling under five headings:

1. Treatment of minor detainees;
2. Police brutality;
3. Violations of due process and the rights of the accused, including false arrest and punitive and coercive pre-trial detention;
4. GSS activity;
5. Suppression of legal dissent.

Although some of the cases included here have been selected to illustrate issues of principle, readers' attention is drawn especially to the following examples:

- The radical and dogmatic application of the standards set by prosecutors and judges for dealing with political opposition to the government's policies led to the extended and cruel abuse of three young girls. A particularly disturbing theme in prosecutors' briefs and even judicial decisions in this case is the notion that *the opinions of these teenagers and their parents might constitute an obstacle to their release on bail.* (Case 1).
- Shocking examples of gratuitous police brutality on one day and in one locality: Ramat-Gan and its police station (Cases 4 and 5).
- The abuse of pre-trial detention and the deliberate denial of due process caused a man to confess to a crime he may well not have committed (Case 10).
- The use of the General Security Service (GSS) to harass the Prime Minister's political opponents (Cases 18 and 19).
- Suppression of perfectly legal dissent by the police (Cases 20-24).

Among our recommendations:

1. All special directives regarding the treatment of opponents of disengagement should be rescinded immediately. Pre-trial detention should be used strictly in accordance with the nature of the offenses defendants are suspected of committing.

2. The GSS should be withdrawn entirely from dealing with nonviolent civil disobedience.

3. The Police Investigative Unit requires strong leadership committed to defending the rights of ordinary citizens.

4. Israel's legal and judicial systems are responsible for a great professional and moral failure. A Parliamentary commission should investigate the nature of these bodies, how their personnel are appointed, and the legal culture cultivated within them.

Israel's legal and judicial establishment have chosen to regard the struggle over disengagement as a kind of civil war to be fought by other, legal and quasi-legal, means. To win this kind of war is to lose it. The damage done to the legitimacy of the State of Israel by those appointed to defend it may prove greater than the worst they feared from the opponents of government policy.

Israeli Government Violations of Disengagement Opponents' Civil Rights

Atty. Itzhak Bam
Dr. Yitzhak Klein
Shmuel Meidad

I. Introduction.

In February 2005 the Knesset passed the “Law on Evacuation and Compensation” (“The Disengagement Law”), authorizing the forced evacuation of the Jewish communities in Gaza and North Samaria. The passage of the law gave rise to mass civil disobedience, as opponents of disengagement occasionally blocked roads and infiltrated into the communities slated for destruction in violation of the law. Protests continued until the completion of disengagement on August 24, 2005.

During the months leading up to disengagement Israeli law enforcement authorities engaged in widespread and systematic abuses of the civil rights of opponents of disengagement and of due process in prosecuting those accused of violating the law. Israeli police suppressed legal dissent and employed widespread, systematic and brutal violence against demonstrators and people engaged in nonviolent civil disobedience. The legal system, in the form of the state prosecution service and the judiciary, made extensive use of pre-trial detention and other restrictions on liberty as an instrument of punishment and deterrence against people presumed innocent, including minors. A frequent practice was to charge individuals who commit relatively minor offenses with more serious charges, and to use the more serious charge as an excuse to impose severe pre-trial limitations on the liberties of the accused. Other violations of due process and the rights of the accused are recorded in these pages.

The term “systematic” used above was chosen advisedly. **The phenomena documented in this report did not occur in a vacuum, were not the acts of rogue cops, rogue prosecutors, or rogue judges, but were the consequence of the *policy* of Israel’s law-enforcement and judicial systems.** We do not know of direct instructions by the Attorney General, the Justice Minister or the Supreme Court to silence legal dissent or to beat people up. However official directives, judgments of the Supreme Court, and public statements by the heads of the legal system have been such as to encourage the view that the civil and due process rights of opponents of the government’s policy deserved short shrift, and to signal to the police that these rights might be violated with impunity.

A key cause of the behavior of police and legal authorities has been their unwillingness to acknowledge that they were, indeed, confronting a phenomenon of mass nonviolent civil disobedience. Instead, legal and judicial authorities decided to treat nonviolent civil disobedience as a threat to the existence of the state, the equivalent of armed insurrection. This approach was explicitly justified by reference to the *ideological motivation* of protestors, that is, their opinions. What made them allegedly so dangerous to the state,

more dangerous than drug dealing or some kinds of violent crime, was not what they *did* but what they *thought*.

In response, courts, prosecutors and police countered one phenomenon of mass illegal action with mass, state-sponsored violence against Israel's own citizens and the abuse of pre-trial detention for purposes of deterrence and coercion, in violation of the law. Such behavior on the part of the authorities of a state supposedly under the rule of law is completely unacceptable. It harms rather than upholds the rule of law and the prestige of democratic government.

Part II of this report presents a brief analysis of the policy of Israeli legal authorities, based on such evidence as has come to light so far and indicating the directions in which we are searching for further evidence. Part III presents 24 specific cases, substantiated by direct testimony and the examination of court transcripts. These cases are only a small proportion of the hundreds of alleged cases of violence, false arrest, curtailment of rights and punitive use of pre-trial detention that have come to our attention. Our conclusions are summarized in Part IV.

A Comment on Sources and Records. This report deals chiefly, though not exclusively, with two kinds of cases. The first kind consists of cases relating to the *police*. Police cases fall under three heads: 1. *Violence and brutality* inflicted on victims, either during or after arrest; 2. *Other civil rights violations* relating to arrest, such as false arrest on trumped-up charges; and 3. *Suppression of legal dissent*, which may have involved neither arrest nor violence to persons, but rather the prevention, without legal sanction, of the free expression of opinion.

The second kind of case deals with *violations of due process by the legal system*, meaning the courts and the state prosecution service (including prosecutors in the employ of the police). These cases deal mainly with the unwarranted use of pre-trial detention. Israel has a "law on arrests" which sets forth when pre-trial detention may be used, and this law was to a considerable extent ignored by courts and prosecutors where opponents of disengagement were concerned. Another form of violation, but one difficult to document, was the filing of severe charges unwarranted by the evidence. Pre-trial detention depends on the severity of the charges against a defendant, and unwarrantedly severe charges can of course lead to unwarranted pre-trial detention.

22 of the 24 cases reported in detail in part III were substantiated by the direct testimony of the victims to the authors. Cases #4 and 5 are based on the testimony of eyewitnesses; case #4 was videotaped. With regard to verifying government policy, we have taken a somewhat looser approach than with individual cases in that we rely on reports in newspapers of record. Where reports refer to official documents we note this and are filing requests, under Israel's Freedom of Information law, to obtain the relevant documents

A few words should be said here about the larger body of case material from which the 24 cases examined in detail were drawn. The sources at our disposal are more than ample to substantiate our claim that civil rights and due process violations against opponents of disengagement were systematic and endemic. However, the full record is sadly incomplete. This is because the organizations dealing with violations of civil rights were mainly concerned to provide real-time aid to citizens who were under arrest or had been brutalized.

Record keeping, except as required by the immediate demands of each case, was distinctly a secondary priority.

While police brutality and false arrest were recognized immediately as violations of civil rights, the legal system's abuse of pre-trial detention became clear only in retrospect. The records of Honenu, the legal defense organization that provided legal aid for people arrested during the disengagement crisis, list hundreds of cases of people who were detained and then released without indictment, and hundreds more in which indictments were filed. In the former, records are significantly less complete than the latter. Time and our resources enabled us to examine in detail only those cases in which indictments were actually filed. In 97 of 167 indictments filed against minors and 68 of 136 indictments filed against adults, we found that pre-trial detention or other limitations on the liberty of defendants appeared to be unwarranted by law.

**Unwarranted Restrictions on Liberty
In Cases Where Indictments Were Presented**

	Minors	Adults	Total	Of which: Detention until end of trial	
				Minors:	Adults:
Limitations on Freedom of Movement*	167	136	303	6	30
Of which: Unwarranted**	97	68	165	6	25

*Arrest or other restrictions, such as house arrest

**According to the law on arrests

In many other cases it was impossible to establish from the record whether or not the limitations on liberty imposed upon the defendants were warranted; in some they did indeed appear to be warranted.

A good many cases, including several investigated in detail in this report (e.g. Case #9, the Vovnobi case) were not reported to Honenu.

Another organization, the Organization for Human Rights in Judaea, Samaria, and Gaza, gathered information on police brutality and false arrest; but the public only gradually became aware that someone was assembling information on violations of this nature and prosecuting them, and many cases no doubt went unreported. Both Honenu and the Organization for Human Rights in Judaea, Samaria and Gaza are based in the Jerusalem area and, for cases in the north of the country, relied on assistance from the Haifa-based Land of Israel Staff, but this organization keeps maintains no organized statistics at all on the cases it treats. Nobody at all maintained organized records of cases of the suppression of legal dissent, and only anecdotal evidence exists, mainly from newspaper records.

The Organization for Human Rights in Judaea, Samaria and Gaza records 236 cases of police brutality and/or false arrest that have come to its attention—chiefly the former. Many of these cases refer to multiple complaints by more than one person. Of these, 138 formal complaints have been filed and are being pursued with the Police Investigative Unit in the Ministry of Justice, which investigates complaints of violence or misconduct against the police. Many cases rely on the testimony of witnesses who were not victims; in order for a case to be accepted by the Police Investigative Unit the victim must file a formal complaint in

person, but in many cases traumatized victims, fearful of police retaliation, have refused to do so. The Haifa-based Land of Israel Staff, as reported by its head, Mr. Aviad Visoly, is dealing with approximately 50 additional cases and was not able to be more specific.

II. Policies and Judicial Practice Toward Opponents of Disengagement

1. **The Judicial System and ‘Ideological Crime.’** A key to the attitude of the judicial system came in a Supreme Court decision in the *Namburg* case in March, in which some residents of Gush Katif were tried for demonstrating against perceived government neglect of their security.⁴ Offenses such as “disturbing the peace” rarely result in extensive pre-trial arrest in Israel, so the local Magistrate’s Court (the lowest rank of Israeli court) released the suspects pending trial. The state appealed and the District Court imposed restrictions house arrest or confinement to place of residence. The defendants appealed to the Supreme Court, which rejected their petition, with these words by Justice Ayala Procaccia:

There is a high probability that further events will take place in the context of foreign policy that will ignite an ideological reaction by the appellants, which will encourage them to participate in violent protest The law enforcement system must defend itself against this dangerous phenomenon and employ appropriate *preventive measures* [emphasis added].

The court here defined the protesters as dangerous to the public because their *ideology* threatened violence to the public and the authorities, even though none had been convicted (to this day) of violent offenses.

The phrase “ideological crime” (*avaryanut ideologit*) pops up again and again in court decisions regarding opponents of disengagement. Here is Justice Procaccia again, in a different case (*Tavger vs. State*), denying a petition for release from detention:

The petitioner devoted himself to ideological crime, and in his interrogation maintained silence and so made it impossible to assess his future intentions.

Supreme Court Justice Salim Joubran also determined that the ideology of the accused determines whether he is to be considered a danger to the public safety:

I am convinced that in light of the fact that the plaintiffs prepared, planned and together committed their acts together, as a team, from ideological motives, there is therefore reason to prolong their detention, evidence of their dangerousness.⁵

In a case that came before him after the Disengagement Law passed, regarding extending the detention of two organizers of mass road-blocking, the President of the Supreme Court, Aharon Barak, made clear his view that the issue before him was an attempt at insurrection rather than protest (*Malaka vs. Israel*, petition 5934/05): Referring to the petitioners’ claim that they were engaged in nonviolent civil disobedience, Barak rejected the claim:

Freedom of speech is not a license for sedition;⁶ freedom of speech is not a license for insurrection. Freedom of speech, wrote Justice Holmes, is not the freedom to shout “fire” in a crowded theater By

⁴ The events in *Namburg* took place in January, before the disengagement law passed, but this particular hearing and decision in the case took place after the law’s passage.

⁵ Supreme Court, 6989/05, ‘Abadi vs State.

the acts they are alleged to have committed, the accused are not only shouting “fire” in a crowded theater, they are themselves lighting a fire next to barrels of petrol . . . their alleged actions lit the fire. . . . There is no similarity between the petitioners’ alleged actions and nonviolent civil disobedience. The defendants are alleged to have engaged, not in civil disobedience, but insurrection.

Here Justice Barak takes Holmes’ common-sense, practical test of the misuse of speech and makes it the rhetorical basis for a diatribe against the accused, whom one might be excused for thinking were charged with incendiarism. The court insisted in defining what the defendants did passively, with no arms in their hands, offering no active resistance to arrest, as the equivalent of an attempt against the institutions of the state. This approach reflects the attitude of the state prosecution service and the courts throughout the period under investigation.

Procaccia’s standard of “ideological crime” became the guide for lower courts, as in this decision by Judge Yael Henig, Tel Aviv Magistrate’s Court (*State vs. Bakhtinzan*):

When we are dealing with respondents who act out of ideological fervor, the relevant court decisions set a different standard for assessing the danger to the public and the conditions for release.

And Judge Miriam Diskin, Tel Aviv Magistrate’s Court (*State vs. Rosenberg*):

In my opinion one cannot detach the suspicions against the defendant from the reality we live in as well as his *ideological motives* . . . [emphasis added]

By choosing to reclassify nonviolent offenses such as blocking roads or passively resisting arrest -- usually accounted as misdemeanors -- as *crimes against public security*, and by invoking *what the accused thought while performing them*, Israeli courts justified Draconian measures of pre-trial detention against adults and minors alike. In the case of three minors detained for lengthy periods of time, summarized below, the presumed ideological tendency of the minors’ parents was used as justification for refusing to return the minors to their parents’ custody. The conflation of the parents’ presumed ideology with their evident religious lifestyle is hard to miss.

Unlawful Use of Pre-trial Detention. Since the legislation of Israel’s basic Civil Rights legislation in 1992, the rules of arrest and detention in Israel have undergone substantial revision. According to the law on arrests, passed in 1996, the prosecution must establish that three conditions exist to substantiate pre-trial detention:

1. There is a reasonable supposition that a crime has been committed (or actual evidence, once an indictment has been presented);
2. One of three conditions holds: either
 - a. The accused is likely to flee, tamper with the evidence, or otherwise use his liberty to interfere with the course of justice; or
 - b. The accused is likely to endanger an individual, the public, or state security;
 - c. The accused has been charged with a crime which creates a *prima facie* presumption that he is dangerous, i.e. capital offenses, crimes against

⁶ Note here Barak’s reference to “sedition,” an offense of *speech* against the regime that Israeli law inherited from the British Mandatory regime. Its continued existence in the Israeli law code is a matter of controversy and few democratic countries have an equivalent law.

national security, drug dealing, aggravated violence, or the use of any kind of weapon.

3. No alternative limitations on the prisoner's freedom of movement (such as house arrest) will attain the object of detention.

The purpose of pre-trial detention is to protect legal proceedings against the detainee or protect the public from likely harm. It is emphatically not intended to serve as a down-payment on an eventual sentence, as a deterrent to the defendant or to others,⁷ still less as a tool of coercion to get the defendant to surrender his rights or compromise his defense as the price of going free.

The terms of the law on arrests were to a large degree set aside by Israeli courts during the struggle over disengagement. To the list of serious crimes constituting *prima facie* justification for pre-trial detention, judges added one that legislators never considered: nonviolent civil disobedience. Pre-trial detention was imposed, not in a few or in exceptional cases, but massively and systematically. To be sure, after the passage of time judges frequently exchanged prison detention for less restrictive forms of confinement, such as house arrest or confinement to one's locale of residence. However, those arrested did not know at the time of their detention when, if ever, this exchange might take place. And the fact remains that the initial detention, for days and sometimes for weeks, took place without warrant of law, for precisely the legally inadmissible purposes mentioned above: as a deterrent to others, or as a tool to coerce the defendant to compromise on his rights or his legal defense.

We have already noted above the decision of Justice Ayala Procaccia, justifying preventive detention for those engaged in nonviolent civil disobedience. Thus also Judge Uri Shoham of the Tel-Aviv District Court:

I believe in this case, as in other cases of road-blocking to advance a political agenda there is an inherent danger that these young offenders [sic] will repeat such actions, thus disturbing the peace and *endangering public security* [emphasis added].⁸

Judicial decisions record the use of pre-trial detention for purposes that the law of arrests does not sanction: as a deterrent to others, at the personal expense of detainees presumed innocent, and to exert pressure on detainees to compromise their defense. Thus Judge Avraham Yaakov of the Beer-Sheva Magistrate's Court, in his decision regarding the detention of minors who had been removed from the roof of the Synagogue at Kfar Darom:

When the constituted authorities of the state make a decision, public order requires the execution of that decision and anyone who attempts to prevent this execution by unlawful means assaults the sovereign. Young people like these minors . . . are a much greater threat to the state than drug addicts . . . They seek to undermine the institutions of state, and therein lies the danger . . . This court is permitted, even required, to *send the public a message* that anyone

⁷ See D. Bein, "The New Arrest Laws: Ideological, Constitutional and Practical Aspects," in *Tendencies in Criminal Law: Studies in Criminal Responsibility* [Hebrew], 2001, pp. 337, 353-55.

⁸ Tel Aviv District Court, 60059/05, Anonymous vs State, decision of the court, June 23, p. 13. See also Judge Heiman in Rishon LeZion Juvenile Court 311/05, State vs. Anonymous, decision of July 3, p. 18: "In my view, in the circumstances of disorderly conduct during these difficult times . . . blocking roads by those who believe that this is the way to express their views, and thereby endanger human life, is sufficient, without the presence of an additional offense besides illegal assembly, to create a presumption in favor of detention."

trying to prevent the execution of the legal decisions of the institutions of state is undeserving of absolution. [emphasis added]⁹

Such rhetoric might be justified in supporting a sentence imposed upon the offenders *after conviction*; but in this case it was used to justify the *pre-trial detention* of those presumed innocent, as a warning to others. Note also the decision of Judge Heiman of the Rishon LeZion Magistrate's Court:

Let these respondents *and others like them* know that the hand of the judicial system is not weak, and that its reaction to lawlessness and the endangering of public safety will be severe [emphasis added].¹⁰

Where Judge Heiman was somewhat circumspect, Judge Reich-Shapira of the Tel Aviv Magistrate's Court was blunt:

This court is required to take all actions necessary to make clear to these particular scofflaws *and their like* that measures will be taken to deal with criminal phenomena. The fact that in the distant and very recent past the courts adopted a lenient attitude means that the methods used until now *were an inadequate deterrent*. [emphasis added]¹¹

In addition to the use of pre-trial detention as a deterrent, the courts also used it to erode detainees' right to remain silent. The right to remain silent can be used to thwart an investigation, and—if there is adequate justification to detain a suspect—lengthen his period of detention. However many opponents of disengagement maintained silence under investigation as a matter of principle and as a form of protest. On occasion the courts viewed the use of this right as in itself a reason to prolong arrest, implying that the accused could go free if they talked. Thus Justice Procaccia in *Tavger*, cited above:

[The accused's] determination, grounded in his ideology, the nature and severity of the crimes attributed to him, his hostile attitude under investigation and his refusal to provide any explanation of his actions—all reflect on the inappropriateness of an alternative to detention.¹²

The detainee's insistence on his legal right to remain silent under interrogation caused Justice Procaccia to penalize him with extended detention—irrespective of the offenses he was suspected of or the objective danger his actions presented to the public. Had the detainee cooperated, *had he consented to waive his right to remain silent*, he might have gone free.

Thus also Judge Shalev-Gertel of the Jerusalem Magistrate's Court:

Noting the nature of the offenses and the circumstances in which they were committed, there are reasonable grounds to suspect that his release at this stage, before the investigation is completed, will endanger public security or even prejudice the investigation. . . . This suspicion arises primarily from the *attitude* [sic] of the suspect to the investigation. Perhaps his decision just now to identify himself indicates a change of attitude and can neutralize the

⁹ Beer-Sheva Magistrate's Court, *State vs Anonymous*, verdict of the court, August 19, p. 11.

¹⁰ Rishon LeZion Juvenile Court, 299/05, *State vs Anonymous*, decision of the court, June 9, p. 22.

¹¹ Tel Aviv Magistrate's Court, *State vs Katz et al.*, 17 February, pp. 3-4. This decision concerning minors arrested at a demonstration predates by a few days the actual passage of the disengagement law, but must be considered, like Justice Procaccia's decision in *Namburg*, as part of the pattern of judicial behavior established for dealing with nonviolent civil disobedience.

¹² *Tavger vs State*

suspicions that form the justification for further detention. His cooperation with the investigation will be the test.¹³

In other words, waiving the right to remain silent is the price of the prisoner's liberty. Most extreme however is the decision of Judge Penina Argaman of the Hadera Magistrate's Court, who states that maintaining silence and refusing to cooperate in an investigation constitutes obstruction of the course of justice:

The defendants' refusal to identify themselves, their behavior while being photographed . . . and their gross insistence on the right to remain silent, all indicate a desire to obstruct the course of justice However since I now understand that these minors now comprehend the importance of cooperating with the investigation and intend to do so, I will extend their detention for less than the period requested.¹⁴

The equation is clear: Cooperate with the investigation, and you can walk; maintain your legal right to keep silent, and you stay behind bars. The quicker you speak up, the sooner you'll get out. This is the coercive message Judge Argaman directed to minors appearing before her. If Judge Argaman's doctrine becomes the norm in Israel, a citizen's legal right not to incriminate himself in a court of law will become a dead letter.

Judges are supposed to hold the balance between the citizen and the state. In a court of law, ideological differences are supposed to be left at the door. The judge is supposed to consider the issues dispassionately, based on facts, and to ensure to the accused before him—assuming the state and the prosecutor have not done so—all the rights and privileges due him by law. The law, and not anyone's ideological agenda, is supposed to govern the court's view of the severity of the offense being considered before it.

In the disengagement crisis Israel's court system did not behave in this manner. The court system, from the Supreme Court on down, treated nonviolent civil disobedience as a form of armed insurrection, and applied the severities of that crime to citizens engaged in peaceful, passive protest. **Defendants' political opinions, rather than what they may have done, were considered main determinants of the severity of their alleged crimes. The limitations placed by law upon the use of pre-trial detention were observed in the breach, and people were jailed for purposes of coercion and to deter others.** In all, the episode is one that the Israeli judicial system, and Israeli society as a whole, cannot view with pride.

2. The Attorney General and the Justice Ministry. The Attorney General, Menahem Mazuz, is Israel's highest law enforcement official, empowered to issue legal directives to the state prosecution service, the police, and the government bureaucracy generally.

Attorney General Mazuz joined the justices of the Supreme Court in defining nonviolent civil disobedience as "sedition." At a hearing before the Knesset Constitution and Law Committee, Mazuz declared, "We are dealing with a hard core of sedition. Intentional use of violence, used to close roads violently, is sedition."¹⁵ It is not at all clear why Mazuz was justified in characterizing nonviolent civil disobedience as "violence." Inaccurate as his

¹³ Jerusalem Magistrate's Court, 9598/05, State vs anonymous, decision of July 4.

¹⁴ Hadera Magistrate's Court, 634/05, State vs Anonymous, decision of Aug. 23, p. 8.

¹⁵ NRG *Ma'ariv* internet news, July 5 2005.

description was, his use of the term “violence” was utilized to justify instituting a legal regime against opponents of disengagement equivalent to what might have been justified had the state actually been faced with a violent uprising. In fact, the charge of “sedition” was levied against the heads of the “National Home” movement who organized road-blockings.

In the early days of the protest movement the state prosecution acted reasonably against illegal gatherings or demonstrations and demanded relatively light conditions for the release of individuals apprehended at such events. However, as time went on the prosecution found that this reasonable approach did not have a *deterrent effect*. As Atty. Beni Doron explained to the court in *State vs Bakhtinzan*:

Originally the state made do with requests to confine defendants to their places of residence, which the courts granted . . . The problem, as is daily evident, is that this practice has no effect, and the situation only gets worse . . .¹⁶

By “effect” the prosecutor clearly means *deterrent effect*, which is an illegitimate objective for pre-trial detention. To redress matters the prosecutor proposed to erase the difference between passive, nonviolent civil disobedience and violent protest:

The court is requested to establish a precedent, but not so original a one; until now many people have been detained until the end of court proceedings, even with no prior criminal record, when accused of violent and disorderly conduct, particularly stone-throwing. Now the court is requested to detain people with no criminal record until the end of legal proceedings for nonviolent disorderly conduct. . .¹⁷

Early road-blockings were accompanied by the placing of burning tires on the blocked road, which the prosecutors reacted to by charging offenders with misdemeanors such as irresponsible use of fire or creating a road hazard.¹⁸ On March 21 the Attorney General, in consultation with the State Prosecutor, announced that road-blockers would be charged with endangering human life in a roadway,¹⁹ a felony punishable by up to 20 years’ imprisonment, parallel to attempted murder. This felony applies to people who intentionally and with malice attempt to *harm* people traveling on a roadway and was quite inappropriate to the offenses road-blockers were committing. A serious charge such as this generally justifies detention until the end of legal proceedings. Only a few protesters charged under this article were released to house arrest after the passage of a considerable amount of time.²⁰ The deterrent effect of a felony charge, and its accompanying lengthy pre-trial detention, was apparently what the Attorney General intended to achieve by artificially inflating the seriousness of the charge against nonviolent road-blockers.

The right of the accused to remain silent in order not to incriminate himself is recognized by law and detainees must as a rule be informed of this right, though the court may take cognizance of a defendant’s refusal to respond to interrogation in determining guilt.

¹⁶ Tel-Aviv Magistrate’s Court, *State vs Bakhtinzan*, protocol of April 14, p. 2 at 6-11.

¹⁷ *Ibid*, p. 1, at 8-13.

¹⁸ See e.g. Tel Aviv Juvenile Court, Indictment 1313/05, *State vs. Anonymous et al.*, Tel Aviv Juvenile Court, Indictment 1361/05, *State vs Anonymous et al.*, Haifa Magistrate’s Court Indictment 775/05 *State vs. Anonymous et al.*, and Kiryat Gat Magistrate’s Court indictment 675/05, *State vs Banisan et al.*

¹⁹ See Ynet, “Mazuz Threatens” Up to 20 Years’ Imprisonment for Road-blockers” [Hebrew], 22 March 2005, www.ynet.co.il/articles/0.7340.L-3061119.00/html .

²⁰ See e.g. Tel Aviv Magistrate’s Court, 92293/05 *State vs Schreiber*, Rishon LeZion Magistrate’s Court 4651/05 *State vs Herbst*, Tel Aviv Magistrate’s Court 91700/05 *State vs Eliezer*.

Many of those arrested refused to cooperate with their interrogators or to identify themselves. Even though they had been informed of their right to remain silent, those who took availed themselves of this right usually found themselves charged with obstructing a police officer in the line of duty—the state prosecution’s contribution to the erosion of the right to remain silent.

Immunity for the Police. In June the Attorney General issued a directive regarding operations against opponents of disengagement saying that “the state will take full responsibility for all actions of security forces while on duty. The justice system will . . . represent security forces personnel who are sued” and take responsibility for their actions (Yuval Yoaz and Amos Harel, *Ha’aretz*, 12 June 2005). The Attorney General’s statement meant that the state would defend policemen and pay damages assessed against them in civil suits pressed by their victims.

As for criminal charges, these would have to be pressed by the Police Investigative Unit, a unit within the Justice Ministry that investigates and prosecutes criminal charges and complaints of misconduct filed against police. A recent report produced by the Office of the State Ombudsman found that this unfortunate body is almost ineffective; understaffed, under-motivated, and essentially incapable of fulfilling its mission.²¹ This unit moreover, like all enforcement units, is under the legal authority of the Attorney General.

The Attorney General’s policy effectively, if not formally, relieved security forces personnel of responsibility, civil or criminal, for violations of the law they may commit while acting against opponents of the government’s policy, and is tantamount to a license to break the law. **This immunity extended specifically to actions against opponents of the government’s disengagement policy.** For the consequences of this directive see the case of Deputy Police Chief Niso Shaham, below.

It was reported in the press that the Attorney General issued a directive to the section of the Ministry of Welfare concerned with delinquent youth that a special regime is to be implemented against youth protesting the government’s policy, with an emphasis on preventive detention until the end of trial (*Makor Rishon*, 11 March 2005). Attorneys within the Ministry have confirmed the existence of this directive and we are trying to obtain the text. In June, the Attorney General’s Office directed prosecutors to demand extensive detention for youths arrested in the course of demonstrations against the government’s policy (*Makor Rishon*, 10 June 2005).

In the aftermath of the statewide road-blocking incident of June 29, several juvenile prisoners, detained before trial and presumed innocent, petitioned to be allowed to take the math matriculation exam in prison—the same exam Palestinian terrorists then due to be released were to take. At the annual meeting of the Israel Bar Association, Attorney General Mazuz stated, “There can be no deluxe criminal activity . . . had I known in advance, I would have prohibited [the Jewish prisoners] from taking the exam.” [The Education Ministry refused to administer the exam to the detainees in prison.] In one sentence the country’s chief law enforcement officer tried and convicted the “criminals” before the press. **In presuming**

²¹ In any case the Police Investigative Unit, responsible for investigating charges of police criminal activity and misconduct, is ineffective and nearly moribund, prosecuting very few cases and not even informing the police of policemen against whom serious or multiple complaints have been filed. See the recent study by the Comptroller-General of the Government of Israel, *Annual Report of the Comptroller General*, #56 Vol. 1 (5765-2005) [Hebrew], pp. 355-379.

the guilt of people the law presumes innocent, whose merits and demerits before the law he is charged with presenting fairly, **Attorney General Mazuz committed a grave impropriety while sending a strong signal to his subordinates as to how the accused were to be treated.**

3. GSS Involvement. One aspect of the Israeli legal system's conflation of nonviolent civil disobedience with action against state security is that participation in or planning civil disobedience becomes a security offense within the jurisdiction of the General Security Service (GSS), which is charged with "averting unlawful activity directed against the security of the State, the democratic regime or its institutions."

The GSS has special privileges of arrest and interrogation, it can conceal from the defense information it has about a suspect until a case comes to trial, and even then need not present the full record. In practice even the court often relies for its decisions on a precis of the GSS's evidence rather than the original evidence itself. Turning protestors into offenders against state security misrepresents the nature of their activities and seriously curtails their civil rights. Moreover, the GSS's prerogatives can be abused to falsely implicate opponents of the government's policy in conspiracies against the security of the state or its leaders. Press reports indicate that the GSS has been given the role of investigating groups planning nonviolent civil disobedience, as if this activity were tantamount to insurrection.²² Several of the cases we present record GSS involvement in the suppression of unarmed civil disobedience or non-security-related crime, as well as curious incidents involving the leaders of open, legal opposition to the Sharon government's policies.

4. The Niso Shaham Incident. One consequence of this deliberately harsh attitude to opponents of the government's policy was recorded on camera. On Wednesday, July 13, during the mass demonstration in Kfar Maimon, a cameraman employed by Israel's Channel 10 recorded Deputy Police Chief Niso Shaham, Commander of the police' Southern District, giving oral instructions to the commander of the local Special Scout Unit ("Yassam"), to beat demonstrators and perform mass arrests (in the event, no arrests were performed because the demonstrators employed no physical force whatsoever). "Here's your oral authorization in advance, you do your work," Shaham is recorded as saying:

You want arrests? I want arrests. Paddywagons, arrests . . . I tell you now, use water cannon unconditionally! Don't call on me [for authorization], use water cannon on them, the s__ts, they should burn! Don't hesitate, use water cannon and nightsticks, hit them in the lower body, work the way you know how to work. I know, I'm an expert on these *Haredim* (ultrareligious) . . . I've told you all this to save you the necessity of getting authorization [for violent means of suppressing unrest].

Deputy Chief Shaham was "punished" with six days' suspension from duty.

III. Individual Cases

We present here 24 detailed cases, arranged according to type. All but case #4 and 5 are based on the testimony of the victims themselves, as conveyed to the authors, or upon trial transcripts where relevant. Case #4 is based on the testimony of eyewitnesses and a video recording of the event described, and case #5 is based on the testimony of an eyewitness.

²² See Amir Oren, *Haaretz*, 22 July 2005.

List of Cases:

- I. Extended Detention and Police Brutality Toward Minors
 1. The Case of P. A., M.G., and C.B..
 2. The Case of Seven Minors Detained for 5 weeks
 3. The Case of A. A.

- II. Police Brutality
 4. The Case of Akiva Vitkin
 5. Ramat-Gan Police Station
 6. Violence Against Prisoners in Maasiyahu Prison
 7. The Sela Case
 8. The Hildesheimer Case
 9. The Vovnoboï Case

- III. False Arrest, Violations of Prisoners' Rights and of Due Process
 10. The Zaksh Case
 11. The Arad Case
 12. The Fuah Case
 13. The Kardashov Case
 14. The Rosen Case
 15. The Rabinovitch Case

- IV. GSS Cases
 16. The Vudka Case
 17. The Ben-Shochat/Binyamin Case
 18. The Sderot case
 19. The Engelsmann Case

- V. Suppression of Legal Dissent
 20. Arrest of 4 minors for hanging posters at the side of the road
 21. Seizure of a bus on the way to Pesagot
 22. Preventing a group of youths from entering the Kotel Plaza
 23. Suppressing dissent at the annual Jabotinsky memorial
 24. Suppressing dissent at a concert in Netanya

I. Extended Detention and Police Brutality Toward Minors

1. The detention of three minors for over 40 days: P.A., M.G., and C.B.

We present this case first because it illustrates all the ill effects of the judicial system's decision to treat nonviolent protest, as well as *the belief system of the accused and their parents*, as a threat to state security.

On June 29, 2005 a demonstration against the Disengagement Plan took place at Morasha Junction. During the demonstration, the expressway was blocked by the protesters. Among the demonstrators were three girls: P.A. (17), C.B. (14), and M.G. (13). P.A. and M.G. took part in blocking the road, while C.B. was standing on the roadside.

According to the indictment, P.A. and M.G. were arrested while blocking the road. The prosecution claims that P.A. assaulted a police officer by scratching her. While P.A. and M.G. were taken to the police car, C.B. approached the car, according to the indictment, “in order to obstruct the arrest.” A police officer ordered C.B. to identify herself, and C.B. answered, “Just be quiet and arrest me.” This was, according to the indictment, “insulting the public servant.” The three girls violated conditions of the house arrest imposed on them after the participation in a previous “illegal demonstration.”

The crimes that C.B. and M.G. were charged with are misdemeanor crimes, and under ordinary circumstances would not lead to prison sentence. P.A.’s indictment, assault of a police officer, is graver, and alleges violence. However when one reads the indictment, one gets the impression that the assault was minor (scratching).

On June 30, the day after the incident, the prosecution requested that the girls be remanded in custody until the presentation of the indictment. This quite unusual request was not a whim of an officer or a local initiative, but a result of the policy of the Justice Ministry. When the representative of the police was asked why the girls couldn’t be interrogated without being held in custody, he responded: “There is a policy of the Indictment Division of the Police Department, and of the State Prosecution, to be stricter and to complete the indictment while the person is in jail. Therefore, this is one of the reasons we request the court to rule so in this case.” It means that there is a pre-planned stringent policy towards those who participate in actions against the Disengagement Plan, denying them equality under the law.

The indictment against the girls was presented to the court on July 4, and along with it, the renewed request for detention until the ending of the legal proceedings.

Towards the hearing regarding their detention, the Probation Services prepared an “arrest resume” for the girls. An “arrest resume” is meant to examine the level of threat that the person in custody presents to the public, and possible alternatives to prison. The “arrest resume” was unequivocally favorable, and recommended setting the girls free. However, **the representative of the State prosecution** wasn’t impressed by the resume, and **stated that unauthorized demonstrations are more dangerous to the public safety than the drug trade** or an unauthorized operation of a motor vehicle:

“We are not discussing here the drug trade or all kinds of unauthorized operation of vehicle, [but we are discussing] youth who are suspected of having committed crimes on ideological grounds, which, according to claims of the prosecution and the State, make the threat they present especially grave.”

The court accepted the stance of the State, and the judge commented in her ruling that the resume was not complete on this particular matter:

“Despite the fact that we are dealing with basically normative girls... it appears that they present a clear and present danger, i.e. the potential threat to safety of a person or the public, in face of the possibility of future upheaval when we deal with a challenging topic, in challenging times in a challenging place.”

According to Judge Keren, the girls were dangerous due to the subject of their protest to such an extent that their liberty should be denied.

At this point, the judge was required to examine whether an alternative to prison was viable, in order to reconcile the alleged danger the girls presented to the public with the harm

imprisonment was causing them. Judge Keren ruled that since the girls previously broke conditions of release, they no longer merited the trust of the court. She also claimed that the interrogation of the parents and the girls in the courtroom during the previous hearing brought up “a clear and sharp picture of a group of people who will prefer, when the time comes, their ideology over the law.” The parents, due to their *political views* were found unfit to oversee their children’s behavior.

“Statements made by the parents did not convince me that they were capable of preventing violations of the law, in view of their position that ideology overrides the law of the State and decisions of the court.”

Judge Keren’s opinion is questionable in light of a statement made by Moshe B., father of C.B., in court that “fighting against disengagement by blocking roads does not make sense.”

At the end of the hearing, the judge ruled that the homes of the parents were not a legitimate alternative to prison, and the girls should stay imprisoned:

“The alternatives that were suggested would have brought the respondents back to the place where every day disturbances take place, and new plans are formed. Parents that were unable to control the behavior of the respondents until now, will not be able to do so if the respondents return to their natural habitat and are challenged by the same temptations and influences they were subject to until now.”

Of the three girls, the situation of C.B. was the simplest one. She was not charged with violence crimes, she only once broke the conditions of her previous detention release, and she didn’t obstruct the road. Therefore, C.B. appealed to the District Court against the decision of Judge Keren.

During the hearing at the District Court, the prosecution claimed that since Moshe B, C.B.’s father, was indicted in the mid-nineties (following the Oslo accord) and 2001 (beginning of the Temple Mount war) on charges of disturbing the peace, “he was not fit to serve as an alternative to detention, because this is his ideology.” Nevertheless, the District Court ruled that the alleged crime C.B. was charged with, and her violation of her previous terms of release, did not justify detention. Thus, the District Court ruled that C.B. should be released.

The state prosecution appealed to the Supreme Court. Justice Procaccia upheld the appeal of the State and ruled that the girl should not be released to house arrest at her parents’ home. The Justice stressed the “notoriety” of the crimes the girl was charged with, the systematic manner in which she committed crimes, as she was abrogating the conditions of release and “mocking the law enforcement system.” Even though the girl was not indicted for any crimes of violence, and only with “an illegal form of protest,” the Justice chose to comment on the “anti-democratic,” as she put it, form of protest:

“The democratic expression of opinion is restricted to obedience to the law. If not, it takes form of an anti-democratic expression, one that makes use of force and violence to impose a course of action that is inconsistent with the rule of the law.”

And having determined that C.B.’s protest was undemocratic, Procaccia went on to convey a message to the general public at the girl’s expense:

“It should be made clear so that the message will reach out, that no legitimacy will be accorded to actions that break the law, which are undertaken to convey a social or political agenda. Within the

framework of democratic proceedings and keeping the law, the public order will be observed, and norms of right and wrong will be enforced, at times of crisis as at times of calm; with regards to adults as well as minors, as long as they will be involved in breaking the law.”

Justice Procaccia refuses to recognize that a category of activity such as nonviolent civil disobedience exists. For the last ten years, since the spirit of the constitutional legislation of 1992 began to affect detention regulations in Israel, there has been consensus that no messages should be conveyed to the general public at the expense of indicted individuals before they were found guilty, due to the presumption of their innocence. Justice Procaccia violated that principle. Deterrence is a component of punishment. Detention as a deterrent to others before the person is convicted violates the presumption of innocence and serves as punishment prior to trial.

Following the comment made by judge Keren regarding the “arrest resume,” a reviewed and amended resume was presented. This time, resumes were prepared for each girl separately. In the amended resumes, the Probation Officer reiterated the previous recommendation to set the girls free. A new hearing was set.

At the hearings regarding the request for the renewed examination of the case, the representative of the State emphasized that the girls were dangerous due to the fact that they denied the charges against them. This statement implies that according to the opinion of the State, detention is aimed to bring the detainee to confess to the charges against him. The representative also stated that the very presence of the girls in their hometown, Shilo, might present a threat to public safety:

“These girls... will continue their protest from their homes... Their presence in the place, the declarations that they will make, the stories that they will tell, and the speeches that they will make, either at home or outside of it, might have an impact. They still present a threat even when they are at home...”

In other words, their *speech* is a threat to public order.

At the hearing, the option was raised of placing the girls in a religious Kibbutz as an alternative to detention. The girls were unenthusiastic about the idea, since the religious level and social standards in the Kibbutz were considered to be distinctively lower than those of the girls and their hometown. To this, **the prosecutor suggested that the girls should compromise on their religious demands, and hinted that “reeducation” should be considered:**

“These girls have to choose between staying at the Ma’asiyahu Prison or the Kibbutz. They should prefer staying at the Kibbutz even if it means that they have to exercise greater “discretion and responsibility” [sic] regarding their religious needs. It seems important for them to show more responsibility in these areas, than that they should stay at home and focus on what is allowed and what is not regarding the conditions of house arrest. It won’t hurt them and may even be of educational value. If they can keep up their moral and religious standards, and their dietary [Kosher] requirements, we could find an appropriate framework for them that would answer the requirements.”

By words “discretion and responsibility” in fulfilling their religious needs, it seems, the representative of the State means compromising on those needs. It is not clear, though, how the attorney reaches the conclusion that compromising on religious needs will be of educational value.

The Deputy of the Chief Judge of the Tel Aviv Juvenile Court Galit Vygotsky-Mor rejected the petition of the girls to review the conditions of their detention. The court founded its decision mostly on the ruling of the Justice Procaccia, and relegated to the parents the responsibility to find alternatives outside their homes.

The girls were held in substandard conditions. During the first week of detention, they were not allowed to take a shower, nor were they allowed to contact their parents, and no change of clothes was provided for them. At the court decision on July 4, on the seventh day of their arrest, the court ordered prison officials to allow the girls to call their parents and to take a shower. During the first week, the girls were kept in solitary confinement in separate cells. Later, they were all put in one cell. I [attorney-at-law Itzhak Bam] met the girls on July 24. They complained that they suffered from heat and boredom. Books were allowed, but no visits to the prison library, and visits to the canteen were allowed once every two weeks. No food packages from home were allowed. The girls were confined to their cell most of the day, and only allowed out to wander the high security “closed” ward for four hours a day. They were not allowed to walk in the open yard, which in itself is an abrogation of human rights. They were allowed to call their parents while out of their cell, but were restricted to only half an hour weekly of family visits, the same as that allowed to adult convicts.

The prolonged detention of the girls is a stark example of the “hard line” policy of the prosecution and the court system towards the protesters against the Disengagement Plan. Theoretically, in Israel the arrest is not aimed to prevent a potential crime, but only felonies that endanger safety of a public, of an individual, or the security of the State. It is not clear how nonviolent demonstrations, even unauthorized ones, endanger the safety of the public. Most protesters don’t act violently. Even though protests and blocking roads interfere with the routine life of a general population, just as car accidents and rush hours interfere with smooth traffic flow, it is still not clear what the “public safety” hazard in protest is. It should be noted that **road-blocking is a common form of protest in Israel, used by unions seeking higher wages or indigent families seeking aid from the State, and never incurs the severity of treatment meted out to these three minors.**

Moreover, arresting the girls for crimes against the public order doesn’t comply with the principle of the proportionality between the benefit derived by the means applied, and the harm that they cause. In order to prevent girls from perpetrating comparatively minor offenses, the State resorted to severe infringements on their liberties and rights by keeping them behind bars prior to their conviction. With every day spent in detention, the lack of proportionality between the evil that the State is interested in preventing and the evil that the State inflicts, grows.

We deal here with comparatively minor offenses against public order, and in all probability the girls, even if convicted, would not be sentenced to prison. By their prolonged incarceration, the State punished them prior to trial, and caused them greater suffering than would be inflicted upon them were they found guilty.

2. Seven Minors Imprisoned for Five Weeks

On May 16, in the context of a nationwide road-blocking demonstration, 8 minor girls were arrested among many others at Geha Junction in Petach Tikva. The police alleged that they had engaged in illegal assembly, disorderly conduct, obstruction of the police in the line

of duty and assault on the police. They were alleged to have pushed policemen who came to remove them from the junction.

All the arrested minors but one refused to identify themselves. Though most of the many demonstrators in these demonstrations were released soon after with minimal conditions, such as prohibition to approach the area where the alleged crime took place or to participate in demonstrations, these girls were indicted within two days and the prosecution requested that they be remanded in custody until the end of their trial.

According to the protocol of the custody hearing on May 18 before Judge Nira Diskin, the evidence against the girls consisted of a film showing them sitting on the highway and grasping each other to prevent their easy removal; no evidence of assault against policemen was recorded, other than the testimony of the police themselves that the minors “were kicking.” Whether the kicks were aimed at the police or were part of their efforts to resist being removed from the highway is not clear from the testimony.

The focus of judicial proceeding on May 18 had little to do with the alleged charge of assault, however. When asked if there was sufficient evidence to justify keeping the girls in custody, the prosecutor, Atty. Goretski, replied that “the fact that [the minors] engaged in a demonstration motivated by a political opinion is the foremost piece of evidence.”²³

The court, too, considered the detainees dangerous to themselves and to the public, dilating on the dangers arising from blocking a major intersection and stopping traffic, including an ambulance bearing a pregnant woman.²⁴ To strengthen her argument about the danger the minors presented to the public, Judge Diskin cited the decision of Justice Procaccia of the Supreme Court to keep under arrest until the end of their trial Palestinian youths demonstrating at A-Tur Junction in Jerusalem, who had rolled garbage dumpsters into the intersection, set them afire, and stoned the police and passing traffic with rocks and bottles.²⁵ Diskin attempted to establish a parallel between a violent demonstration motivated by political separatism and nonviolent civil disobedience.²⁶

Judge Diskin agreed to free the minors on NIS 1,000 bail each and confinement to their settlements of residence until the end of proceedings, conditional on their agreeing to identify themselves and be fingerprinted. All but one refused. In the words of one, most of her social and educational activity took place beyond the confines of her small settlement and therefore the proposed limitations were extreme, the equivalent of months of house arrest. Furthermore,

These conditions are too difficult to accept, a struggle for Eretz Yisrael is going on, we can't do this when our homes and our way of life is at stake, we can't just sit at home and do nothing . . .
²⁷

²³ Petah Tikva Juvenile Court 5054/05, State vs. Anonymous, Protocol of 18 May, p. 34 line 13.

²⁴ Ibid. p. 40 at 20-22. The point about the ambulance was disputed by the defendants at their appeal to the Tel Aviv District Court, Anonymous vs. State (6051/05), p/ 9 at 12-13, where the defendants claimed they let the ambulance through.

²⁵ Israel Supreme Court, 3838/04 State vs. Anonymous. Interestingly, in this case the State declined to ask for the detention of two defendants aged 14.5, due to their youth. 6 of the defendants in the case we are analyzing were below the age of 14.5.

²⁶ Petah Tikva Juvenile Court 5054/05, p. 41 at 1-3.

²⁷ Tel Aviv District Court 60051/05, Anonymous vs. State, 5 June, p. 6 at 20-p. 7 at 7.

At this Judge Diskin made clear that the girls would continue in detention until they agreed to the conditions she had set. The minors' continued detention was their fault and their parents' who, in solidarity with their daughters' position, refused to come to the court sessions or identify their children for the court. The key to the girls' cells, said Judge Diskin, was in their own and their parents' hands.

At their appeal before Tel Aviv District Court the girls agreed to identify themselves but not to accept the other conditions imposed on them as a condition of their release. The District Court retained them in custody. Only on June 20, after 35 days' confinement, did the state prosecution unbend and agree to free the girls on bail, as long as they stayed away from Tel Aviv and its environs and refrained from participating in demonstrations.

At her arrest the youngest minor, N. S. aged 12.5, was not taken to Maasiyahu prison. According to the testimony of Atty. Weig in court,

Yesterday [May 17-ed.] my colleague and I came to the Petah Tikva police station to visit prisoners held on another matter. There, in public view, all the defendant were seated on the floor. We immediately noticed [N. S.], the youngest. We spoke to her and she confessed herself fearful, hungry, filthy, she hadn't washed in two days. All the other defendants were taken to Maasiyahu, except for [N. S.] who stayed at the police station, in a room, on the floor, on a thin mattress, without sheet or blanket.²⁸

While the state prosecutor, Atty. Yaakobi, insisted that the "the girl was given a mattress with a blanket,"²⁹ the girl testified that during her first night at the station she slept for one hour – on a wooden bench.³⁰ Though the facts were brought to Judge Diskin's attention she ignored them and made no reference to the conditions under which N. S. was to be held in her decision.

Neither the law nor any other consideration justified holding seven minors, most not yet 15 years old, in prison for five weeks. Their release under much relaxed terms after 35 days indicates that the conditions originally imposed upon them, and their entire detention, was unnecessary. The purpose of the penalties so imposed was to deter the minors and others—an unacceptable objective unwarranted by law. The girls were released when the state prosecutors observed that the girls' continued arrest was damaging the reputation of the legal system.

3. The Case of A. A.

A.A. is 14.5 years old. She was very active in demonstrations against the prime minister's disengagement plan, and was arrested a number of times. She was charged with taking part in blocking an intersection, for which she was imprisoned for over a month, having refused to agree with release under very restrictive conditions (See Case 2, the case of seven minors).

On Aug. 23 a group of girls demonstrated at the entrance to Kedumim. A.A. participated in the demonstration. Her previous terms of release, relating to two different

²⁸ Petah Tikva Juvenile Court, 5054/05, 18 May, p. 17 at 12-18.

²⁹ Ibid. p. 20 at 1.

³⁰ Ibid. p. 21 at 20-21.

incidents, prohibited her participation in any large group of protestors, and she was restricted to her own settlement, Yitzhar.³¹

According to the charge sheet,³² the police accuse the girls of throwing paint bombs at the police barricade that was set up at the entrance to Kedumim, and resisting police and soldiers who attempted to remove them from the area. The police also accused A. A. of puncturing the tire an army jeep. However, the prosecution did not charge A.A. with assault against the police, nor did it raise assault charges against the three other girls (minors) who were arrested together with her.

On the other hand, eyewitnesses maintain that the police used excessive violence against the demonstrators. A.A. was beaten by police and soldiers all over her body – hands, legs, torso and head. When she was ordered to enter the police van, she said she could not move. A medic examined her there and insisted on her removal to hospital.

When A.A. arrived at the emergency room, she was examined by a doctor. Her body showed no outward signs of a beating, but she complained of pain, and could not flex her arm.³³ The girl was sent for X rays of her hand and hip, and after the X ray was retained for observation.

At first the girl refused to identify herself, but afterwards gave her name to the medical staff. The head of the emergency room contacted her father and asked him to come to the hospital. According to hospital rules, a minor cannot be released except in the presence of a legal guardian. The father immediately set out for the hospital.

At that time, police officer Golan Yefet arrived and ordered that the girl be surrendered into his custody for interrogation. The director of the emergency room at first refused to release the girl, explaining that a minor cannot be discharged except in the presence of a legal guardian. The officer presented the director with a fax from Deputy Chief Chaim Padlon, charging the girl with having attacked policemen after refusing to identify herself. She was under arrest and would be required to undergo interrogation as soon as she was released from hospital. The police officer further contended that since she was under arrest, the girl's welfare was now the responsibility of the police and she could therefore be released into their hands. The director then phoned the girl's father, to explain what was happening, and let the father speak directly with the officer. The police officer informed the girl's father that as she had not identified herself, she would be arrested. The father offered to give his daughter's name and the father's ID number, whereupon the police officer replied that he would consider releasing her from arrest while she was still in hospital. The father gave his daughter's name and his own ID number, and continued his journey to the hospital under the impression that he would find her there.

Officer Yefet immediately approached the girl and told her to accompany him, persuading her that that was the agreement he had made with her father. He explained to the director of the emergency room, on the other hand, that the police now acted as guardian to a girl under arrest, since she had refused to identify herself. After checking with the hospital

³¹ The Petah Tikva Magistrate's Court on 20 June prohibited A.A. from joining any demonstration. On 19 August Petah Tikva Juvenile Court (1245/05) remanded A. A. to house arrest 31 August on suspicion of violating a military order and entering the Kissufim area.

³² (2) Rishon LeZion Magistrate's Court file number 1105/05

³³ Schneider Hosp. Report 05-34891

administration, the director of the emergency room released the girl to police custody, recording in the release form that he had done so because the police claimed that because the girl had not identified herself, they were her legal guardians.³⁴ However, at that point, the girl had already been identified and her name already appeared on the emergency room medical report.³⁵

Thus, police officer Golan Yefet whisked the girl out of the emergency room, although she had already been identified by her father. The girl was taken to the police station in Ariel and from there to Maasiyahu prison. Disregarding the emergency room medical report, recommending rest and pain killers for the girl, the police interrogated her throughout the night and only allowed her to go to sleep the following morning at 6 am.

The father arrived at the hospital, and tried to find his daughter. He received a beeper message that his daughter had been released into police custody, but he was unable to locate his daughter until 4 am, when she called him from the interrogation room at Maasiyahu prison.

The girl was incarcerated that weekend and on Aug. 28 released to house arrest.

The police charge sheet accuses the girl of disorderly conduct and vandalizing a vehicle. A.A. is not charged with assault. It remains unclear why such force was used against her that she needed to be removed by ambulance to the hospital.

The police's behavior after A.A. was hospitalized is still more irregular. **It is not clear why it was considered necessary to deceitfully remove a traumatized 14 year-old from the emergency room, after her father had already identified her, and to take her from the police station to a prison for an all-night interrogation, after the doctors had recommended rest care.** A.A's participation in a demonstration did violate the conditions imposed upon her by two court decisions. However, considering that the disengagement process had already been completed that day, it remains unclear what danger to the public was averted by the arrest of a 14-year-old girl who had been hospitalized for the beating she had received

II. Police Brutality

Our first two cases took place on the same day in Ramat-Gan. The case of Akiva Vitkin is the most serious case of brutality that has come to light. The second case is an eyewitness account of brutality to detainees within Ramat-Gan police station. The commander of Ramat-Gan police station apparently tolerated this situation, and provides a classic instance of how the Israeli legal system's signal that the rights of disengagement opponents could be taken lightly were interpreted by a senior police officer.

4. The Case of Akiva Vitkin

Note: A video of this incident is in our possession.

³⁴ Shneider Hospital Report 05-34891

³⁵ Ibid.

On June 29, 2005 a demonstration against the Disengagement Plan was held in Ramat-Gan. Akiva Vitkin (19) participated in the demonstration. The indictment against him does not allege that he blocked the road at any point.

At some point during the demonstration several policemen knocked Vitkin onto the pavement. The policemen choked him, pushed their fingers into his eyes, and beat him repeatedly. While Vitkin was on the ground with policemen sitting on top of him, Inspector Eran Nayim, a patrol officer in Ramat-Gan police department, appeared, stuck his fingers Vitkin's nostrils and abruptly pulled Vitkin's head back.

Vitkin was arrested and taken to Ramat-Gan police station. There, while still handcuffed, he was beaten by a number of policemen, who slapped his face, hit him on his head and punched him with their fists. During the beating, Vitkin's kippah fell off. **When Vitkin asked for his kippah to be restored, a police officer slapped him in the face. When he demanded that the officer identify himself, his head was pounded against the wall.**

Only public pressure induced the Police Investigative Unit (which investigates complaints against the police) to open an investigation against two of the policemen who were involved in the battering. The indictment mentions only the two most lenient counts of violence that can be found in the criminal law: 1. Assault (with up to 2 years in prison); 2. Assault that causes injury (up to 3 years in prison). This despite the fact that according to facts described in the indictment, this incident involved many policemen. This would mean that at least one felony count is justified – mass assault. This felony may lead to double the time in prison.

According to Israeli criminal law, someone suspected of an especially violent crime may be detained until the end of his trial. Even though the violence and brutality is clearly evident from the testimony and video documentary, no request for the detention or other restriction against the policemen charged was made.

Appendix A:

Testimony of Tuvia Lerner, journalist from the National News Network

On June 29, 2005, at 18:00 or around that time, I drove on Jabotinsky St. in Ramat-Gan in my car when I encountered a road-blocking incident initiated by opponents of the disengagement plan. I parked my car and approached the crowd with a video camera and a photo camera in order to document the incident for the National News Network (www.INN.com), where I work.

While I was recording the event I noticed a strange phenomenon. Three riot police officers sat on top of one of the demonstrators. Instead of arresting him or dragging him to the sidewalk, they were playing some odd game, and called for reinforcements. This incident appeared to me to be very suspicious, and I focused on documenting this particular case with my video camera. The incident unfolded as follows: The riot policemen moved the victim's hands back and forth, making as if to handcuff him but never actually doing so. In the meantime reinforcements arrived, with blue uniformed (patrol) officers, one of them wearing an ID tag with the name Eliran Avraham. He first joined the pile of the policemen on top of the protester, but when he saw me videotaping, started pushing me and threatening me with arrest if I didn't move to the sidewalk, which evoked in me even more suspicion regarding the

incident. From that moment I focused on videotaping the face of the victim, as once in a while my camera flew off the focus being pushed by Eliran Avraham.

Another police officer approached Akiva from behind, leaned toward his head, stuck his fingers in Akiva's nostrils and pulled violently upwards and backwards. The whole action was performed with great precision as a well trained team. I would say – like a basketball team when the captain gives a sign and everybody takes his place and performs his role quickly and efficiently. The whole thing took just few seconds. Then Akiva was dragged to a police car while he was bleeding from his mouth, nose and eyes.

The police officer who pulled Akiva's nostrils with his fingers, was a police inspector and wore an ID tag with a name Eran Nayim. The highest ranking officer in that incident was Meir Nayim, the commander of Riot Police Unit at Ramat-Gan Police Station. According to what I saw, he was managing the incident, and was among the first three who picked up Akiva and attacked him.

I testify here that there was no violence on behalf of the protesters, only part of them were sitting on the road, and some were standing on the sidewalk and shouting slogans. Some of those arrested were dragged from the sidewalk, and didn't even obstruct the road.

5. Inside Ramat-Gan Police Station

On June 29 Amit Halevi was one of those demonstrating at Jabotinsky Street, Ramat-Gan's main thoroughfare. During the demonstration Halevi remonstrated with a policeman who was beating minors. The policeman accused Halevi of attacking him and he was forcibly put into a police van. With other arrestees, Halevi was taken to Ramat-Gan police station. Some 80 prisoners were held in the courtyard. Halevi witnessed two instances of police brutality.

The first case arose when the mother of one of the minors arrested arrived to release her son. A policeman, addressing her rudely, demanded to know what she was doing within the station precincts. One of the prisoners, Dov Friedman, rebuked the policeman and told him to speak respectfully to the woman. At that, two policemen, one in plainclothes and another in uniform wearing the nametag "Eliran Avraham," took Friedman into a nearby room. Through the open door Halevi witnessed Eliran Avraham strike the prisoner twice in the face and beat his head against the wall. Another police investigator and a secretary who were in the room at the time made no attempt to interfere.

The second case witnessed by Halevi was the beating (this time in the station) of Akiva Vitkin. A plainclothes policeman told Vitkin to shut up. Vitkin replied that he possessed the right of free speech. At this the plainclothesman called over Eliran Avraham and together the policemen took Vitkin into the room where the previously had beaten Dov Friedman. **Halevi was able to observe four policemen beating Vitkin with their fists and knocking him to the floor before the door of the room was closed.** Afterward he observed Vitkin emerge with his face swollen and bloody, barely able to walk.

Halevi complained about the violence freely tolerated at the station **to a senior police officer** with the rank of Inspector, **who replied, "So they gave a few lickings, why are you making such a big deal out of it?"**

6. Violence against Prisoners in Ma'asiyahu Prison

A. Beating of a minor who broke a disciplinary rule

Y., a minor, was arrested for his participation in protests against the Disengagement Plan. Held in custody in Ma'asiyahu due to his refusal to accept restrictions as a condition of his release from detention.

On June 15, Y. was held in a waiting room, pending a disciplinary trial before the Prison Commander. While Y. was waiting, the Prison Commander, Rami Ovadyah, entered followed by other officers. The Prison Commander spoke to Y. in a rude and hostile way. Among other things, he asked him, "Do you want me to bang your head into the wall? You want me to hang you?" During the conversation, the Prison Commander punched Y. in face.

B. Beating of a prisoner for smiling and refusing to "wipe off his smile."

Y.K. was arrested and held in custody at the Ma'asiyahu Prison for participating in protests against the disengagement, and refusing to accept release under restrictive conditions.

On June 21, two of the prisoners were taken to a separate cell for not getting up for roll call. Other prisoners, among them Y.K., started singing as a form of protest. They were removed to a cell in the Punishment Wing. Next morning the Prison Commander entered the cell, accompanied by another officer, and asked something regarding the incident of yesterday. The Prison Commander told Y.K. that he was to remain in Punishment Wing until the end of his detention. Y.K. smiled, and the Prison Commander shouted that he would wipe the smile off Y.K.'s face. "My smile is the last thing you can take from me," answered Y.K. Following this response, Prison Commander slapped Y.K. across the face, hit him in his lip with a fist, and hit him in his groin. The beating caused a swelling of Y.K.'s lower lip. Later, Y.K. was brought to disciplinary trial. During the trial, the Prison Commander threatened to strike Y.K. again. Y.K. demanded that the Prison Commander record in the transcript why he beat him. The Prison Commander answered that he no longer remembered the reason.

C. Brutalization of a detainee and attempted cover-up

Eli Herbst, 53 years old, from Arad, spent over two months as a detainee in the "Disengagement Wing" in Ma'asiyahu Prison. He was arrested on charges of participating in an illegal assembly, and was held in custody due to his refusal to accept release on restrictive conditions, including a prohibition to participate in further demonstrations.

On Thursday, June 30, Eli Herbst was taken to the Supreme Court for a hearing regarding his appeal for release. During transportation, the detainee was ordered to move from one Prison Service vehicle to another. During the transfer, an officer of the Nachshon unit (which specializes in transportation of dangerous inmates) held Eli Herbst by his handcuffs and together with two or three other wardens pulled him out of the car with such force that the detainee thrown out of the car and hit the pavement. While still lying on the pavement, three or four wardens got hold of him by his handcuffs and foot shackles, dragged him to the vehicle, and flung him inside.

When the detainees arrived to the Supreme Court before Justice Miriam Naor, the detainee attempted to complain about the brutalization that he sustained on his way. The Justice turned a deaf ear to his complaint, and stated that it should be addressed through the accepted channels.

When he returned from the hearing, Herbst was taken to the waiting room. There he was approached by some wardens and officers who tried to ask him how he was doing and inquire about the morning's incident. The detainee refused to tell them and responded that all the details would be delivered to the Unit for Warden Interrogations [an organization, parallel to the Police Investigative Unit, that investigates complaints against prison officers]. Herbst was taken from the waiting room to the Punishment Wing and placed with one more inmate, a minor being punished for a disciplinary offense (the abovementioned Y.). Incarcerating a minor in the same cell as an adult is a violation of prison regulations. The next day the detainee was informed that he was no longer allowed to make phone calls or to receive visits. He was held in his cell most of the day, and wardens refused to bring him his belongings from the cell he was held in before the incident. They demanded that he specify what particular item he needed, and that they would bring it to him. Herbst refused to comply.

The detainee, whose wrists were injured as a result of his having been dragged by his handcuffs, requested to see a doctor. This was not permitted until July 5, five days after the incident.

On July 4, Herbst washed his clothes. Since no belongings were brought to him from his original cell, he was almost naked. At that moment he was rushed to the Prison Commander for a disciplinary trial, allegedly for "refusing" to be taken to the Supreme Court hearing. Herbst wrapped himself in a blanket, and in this humiliating manner he faced the Prison Commander.

In reaction to this humiliation, Herbst declared a hunger strike. He was on hunger strike for 15 days, until July 19, when he was brought before the Magistrate's Court of Be'er Sheva, which ruled that there was no evidence against him. He was released without any restrictions.

7. The Sela Case: Police Brutality and False Arrest

Yakov Sela is a Nachliel Yeshivah student from Jerusalem, 18 years old.

On June 27, 2005 the Yesha Council launched a campaign called "Stop and Rethink." As part of this campaign many drivers stopped their cars in concert at the roadside across the country, in order to mobilize public opinion in against the Disengagement Plan. Yakov participated in the campaign, and stood on a curbside at the entrance to Jerusalem.

A police officer later identified as Sharon Sharabani, threatened to arrest one of the protesters if he stepped down to the road. The police officer was dressed in plain clothes and wore no ID tag. Yakov commented on this saying that the man was not a police officer, since there was no way to identify him as such. In response, the man ordered Yakov to "get out of here." **Yakov requested to see a badge that would prove that the man was a police**

officer. The plainclothesman threatened Yakov with arrest, and Yakov again demanded that the man identify himself. In response, **Sharabani held Yakov by testicles, pinched him in the chest, threw him on the ground and beat him, while commenting repeatedly “this is my badge.”** As a result of this brutality, a cast on Yakov’s previously fractured hand was broken.

Two days later, on June 29, around 16:30 Yakov found himself again at the same spot and was walking toward the bus stop. He had no intention of take part in the demonstration that was to be held at the same location around 17:00. As he was walking toward the bus stop, police officer Sharabani, again in plain clothes, approached Yakov and ordered him not to cross the street. Yakov again asked Sharabani to identify himself. In response, the police officer said, “You wanted me to arrest you, here you got it, I arrest you.” He arrested Yakov, put cuffs on his feet, this without identifying himself and without informing Yakov of the grounds for arrest.

Yakov was held in the police car for an hour; afterwards he was taken to police station and interrogated on charges in assaulting the police officer. Interrogators refused to notify Yakov’s family of his arrest. A day later, after 28 hours in detention, more than the 24 allowed by law, Yakov was released on bail.

The police officer was identified by an arrest report that Yakov saw in his file.

8. The Hildesheimer Case

Yitzhak Hildesheimer is a journalist. On May 16 the bus he was travelling in halted on an intercity highway on the outskirts of Beer Sheva, stopped by a demonstration. True to his profession, Hildesheimer got out of the bus, flashed his press card, and began to cover the event. After police cleared the road of demonstrators and traffic began to move again, Hildesheimer headed back to his bus.

To do this he had to cross the highway. Two policemen saw him. As Hildesheimer reached the shoulder of the highway and prepared to get on the bus, two policeman intercepted him, struck him, knocked him down and began beating him. His injuries required treatment in the emergency room of Soroka Hospital in Beer Sheva.

9. The Vovnoboï Case

Vitali Vovnoboï is a computer engineer, a resident of Karnei Shomron, a member of the Likud Central Committee and an opponent of the disengagement plan. On July 4 Vovnoboï and his wife, Asya Entova were awakened by loud noises in their home. They opened their eyes to find five plainclothes policemen armed with M-16 assault rifles in their bedroom. The police had a warrant to search the house for “seditious material.” Vovnoboï was suspected of “sedition and distributing seditious material,” i.e. operating the internet site of the “National Home” movement, which called for civil disobedience including nationwide road-blockings.

The policemen who broke into Vovnoboï's home did not permit Ms. Entova the privacy to get dressed. When Vovnoboï protested, the policemen reacted with derision and mimicked his Russian accent.

Vovnoboï was then stricken ill, with sharp pains in his chest. He fell to the floor. Approximately at this point the police handcuffed him. Neighbors who heard the tumult in the house summoned Dr. Yevgenii Merzon, who lives nearby. Arriving in his white doctor's jacket, Merzon found Vovnoboï unable to rise, pale and covered with perspiration, suffering from hypertension and a racing heartbeat. As Vovnoboï complained of pain the police mocked Dr. Merzon: "Medic, why are you hurting your patient?"

Merzon summoned an ambulance and told the police that he needed an EKG to determine whether Vovnoboï could be taken to prison. The police officer in charge, Asher Lazimi, ordered his men not to wait for the ambulance but to put Vovnoboï in their police van. When Merzon insisted that they wait for the ambulance he was told, "What's the big deal? You bought your [medical] license in Russia for a couple of rubles and now you think you're going to tell us what to do?" Merzon has been a licensed physician in Israel for 10 years and does reserve duty in the medical section of a combat unit.

As Vovnoboï could not walk, he was seized by his arms and legs and slung into the police van. He overheard the the police receiving orders from a higher officer over the radio to evade contact with the ambulance, which had now arrived at the gates of Karnei Shomron. Dr. Merzon's professional opinion, expressed to us, is that in doing so the police endangered Vovnoboï's life.

Vovnoboï was not notified that he was under arrest, nor on what charges. Two computers and two cellphones were seized from his house. In addition, **the plainclothed officers seized forms for gathering the signatures of Likud Central Committee members on a petition to convene the Central Committee to set a date for primary elections for the head of the party.** These forms refer to normal, public political activity. Neither Vovnoboï nor his wife were asked to sign a protocol of items seized as required by law.

Vovnoboï lay on the back seat of the police van until it reached the Russian Compound police station in Jerusalem, where he was carried inside by his arms and legs while the police beat him in the ribs. He was then deposited on the floor. He again asked for a doctor, as his chest pains had not abated, and was told to get up and look for one himself. Only after the intervention of an attorney from the public defender's office was Vovnoboï carried on a stretcher into the presence of a doctor, who performed an EKG and medicated Vovnoboï.

Vovnoboï was charged with establishing and operating the website of the "National Home" movement, including the publication of "seditious material."³⁶ The court agreed to extend his arrest by three days to prevent tampering with the evidence, "since we are dealing with computers and the internet,"³⁷ at the end of which he was released without charge.

Apart from the personal insults the police directed at Vovnoboï and the prejudice exhibited towards Russian immigrants in general, the police arrested Vovnoboï while

³⁶ Jerusalem Magistrate's Court, 9610/05, State vs Vovnoboï, 4 July, p. 2 at 16-17.

³⁷ Ibid. p. 6 at 23.

intentionally preventing him from receiving possibly critical medical attention in circumstances that could be life-threatening. Police burst into Vovnoboi's home while wearing plainclothes, which is forbidden by law unless necessary to apprehend armed and dangerous criminals.

A comment is in order about the crime of "sedition" for which Vovnoboi was arrested. Vovnoboi was not suspected of any crime recognized by Israeli law, other than "sedition." He did not block a road, did not tell anyone else to block a road, and did not enter into a conspiracy to block roads as the term "conspiracy" is used in Israeli law. The crime of "sedition" does not exist in democracies like the United States or Britain; it is a legacy from the British colonial regime in Palestine. "Sedition" refers to political speech and the law as written can be interpreted to prohibit political protest as such.

III. False Arrest, Violation of Prisoners' Rights and Due Process

10. The Zaksh Case: Extended Detention and Denial of Due Process as a Means of Coercion

In this case, extended detention was inflicted on a prisoner while due process was denied him, thus inducing him to confess to a crime he probably did not commit.

On June 29 there was widespread unrest in Jerusalem. About 6:40 pm Mr. Alem Chageb drove from Beit Shemesh into Jerusalem. At the Sakharov Gardens light he noted a log placed in the opposite side of the highway, blocking two lanes of traffic. He saw two men next to the log. Chageb stopped his car and drew the attention of a police officer to the obstruction. The officer arrested the men. One was Chaim Yehuda Zaksh, age 30 and father of five, a student at the Merkaz Harav Seminary.

Zaksh was arrested on suspicion of endangering lives in a motorway and obstructing a police officer in the execution of his duty. At his interrogation he initially chose to remain silent. The next day he was brought before Judge Noam Solberg. The prosecution requested four days' extension of arrest to allow the preparation of an indictment for serious crimes. Judge Solberg noted for the record that a log in the road was likely to obstruct traffic but not endanger lives. Nevertheless he stated that the prisoner's silence cast doubt on his motives and granted the prosecution's request.

When Zaksh heard he was to be incarcerated for four more days, he requested to be interrogated and to be allowed to state his case. The judge ordered the interrogation to proceed while upholding the state's request for extended detention.

During the ensuing four days nobody interrogated Zaksh and he was not allowed to state his case. When the indictment against him was formulated, the prosecution cited his silence as a reason for keeping him in custody until the end of his trial, even though his request to be interrogated was on record.

Zaksh appealed to the District Court to reverse the extension of his arrest. Ignoring the opinion of Judge Solberg and the prisoner's desire to be interrogated, Judge Inbar ruled that Zaksh represented a danger to the public and ordered him incarcerated until the indictment against him was filed, at which point the case was to be reviewed.

Zaksh's indictment listed two charges: Disorderly conduct and obstructing a police officer. The serious charge of endangering life in a public thoroughfare, the reason for his detention, had disappeared. The indictment states that at the time of the arrest "stones and burning cans were hurled," but does not associate Zaksh with these actions. The article of disorderly conduct under which Zaksh was charged specifies misconduct as part of a *group* of three or more, but only Zaksh and one other person were present when he was arrested. The prosecution requested that Zaksh be detained until the end of his trial because Zaksh participated in stone-throwing, though he was not charged with this in the charge sheet. The prosecution in its argument before the court called Zaksh a danger to the public—though no charge justifying such a description was on the charge sheet and no evidence substantiated it.

Citing Zaksh's initial silence, and ignoring the fact that he requested to be interrogated, Judge Milanoff ruled that Zaksh represented a danger to the public and remanded him in custody until the end of his trial.

Zaksh's appeal to the district court against this ruling was withdrawn when the judge noted that Zaksh had yet to be interrogated!

The following day Zaksh pled guilty to the charges on the indictment in a plea bargain that sentenced him to three months' imprisonment, with the part of his sentence not already served to be commuted to community service. Zaksh stated for the court record:

"I have a wife and five children, the youngest 2 months old. I asked to be interrogated after I was arrested. I was interrogated only today [12 days after his arrest and 11 days after Judge Solberg ordered an interrogation]. I accept the plea bargain in order to get back to my wife and children."

With this plea bargain Zaksh' threat to the public promptly evaporated and he was released.

Curious aspects of the record:

The statement of the Deputy Chief of Intelligence of the Jerusalem Police mentions "disturbances" in the city on the day of the arrest but makes no mention of Zaksh participating in them in any way.

The statement of Mr. Chageb places Zaksh near the log in the road, but Chageb did not see who placed the log in the road and does not say whether the men arrested were in the road or on the sidewalk. The arresting officer stated he arrested Zaksh "under the trees," which do not grow in the middle of the road. Nobody saw Zaksh place the log in the road.

The person accompanying Zaksh was arrested but released without interrogation, and his identity is not known.

11. The Arad Case: Suppression of Legal Dissent and False Arrest

On March 1, Meir Arad and four friends demonstrated at the entrance to the city of Rehovot. They held signs protesting the disengagement plan, and one of them distributed flyers to drivers stopping for the light.

A police van arrived and without any warning or discussion two policemen ordered the demonstrators to get into the van and informed them they were under arrest, without giving any reason for this arrest. All were taken to the police station and interrogated. Afterward the prisoners were handcuffed and placed in the detention area. A police officer was nearby and one of the prisoners asked him why they were under arrest, demonstrations at the intersection being a common occurrence. "Demonstrations are over with," he replied.

After a few hours the prisoners were offered release to house arrest. All but one refused. After four hours the police released three others, including Arad; one who refused to answer questions in his interrogation was kept in custody.

Within a day an indictment was presented against Arad and his companions on the charge of illegal assembly. **The following night policemen arrived at Arad's home at 1:30 am to serve a summons on him, waking the entire family including 13 children. The charge in the indictment: "the protesters . . . acted in a way that could give those nearby reason to believe that the protesters contemplated disturbing the peace or causing others to disturb the peace."** No less disturbing than the actions of the police is the fact that a prosecutor could be induced to issue an indictment of this nature.

12. The Fuah Case

On the 29th of May, Rabbi Michael Fuah, together with his wife and seven children, arrived at the *Hof Dekalim* hotel in Gush Katif. The family brought along a great deal of property, as they planned to remain at the premises for some time. Next morning, following clashes that occurred in the Muassi district, the Sector Commander issued an injunction declaring the hotel premises a closed military zone. An IDF officer, Vassim Ashkar, who arrived at the family's rooms, informed them that they must vacate the premises. The family made clear that they did not intend to leave unless arrested and declared that if evicted, the army would then be responsible for their property. The officer informed the family that they were under arrest and gave them fifteen minutes to make a list of their property remaining in the hotel. At the end of the allotted time, Rabbi Fuah and his family entered a bus that drove them to Kissufim junction outside the Gaza Strip.

At Kissufim junction, the policemen who had escorted those evicted from the hotel informed them that they were free and demanded that they get off the bus. Rabbi Fuah told the policemen that he and his family were not willing to be set down in the middle of nowhere, and that he would alight either at a police detention center or else back where his property was. The family was thereupon put into a police vehicle. The trip took a long time, due to heavy traffic and demonstrations on the way. During this whole time the family members and others who were with them in the car did not receive water from the policemen. Demonstrators and soldiers by the roadside provided them with their needs.

Finally, the vehicle arrived at Gilat junction and the 'detainees' were again ordered to get off. R. Fuah and his family again explained to the policemen that they would get out either at the detention center or by their property. At this point a police officer, identified as Eran Ben Zion, entered the vehicle together with a number of police officers. Yelling and threatening, Ben Zion demanded that the family leave the vehicle, and when he was not obeyed, the policemen fell upon the family. They forcefully pulled two children, aged 3 and 5½, out of their parents' arms, and beat the couple and their older children. Bruise marks

remained upon the bodies of the older girls, aged 12 and 14, and the youngest boy's shirt was torn following the tug-of-war. Within several moments the family was abandoned in the parking lot and the police vehicle left the scene.

Although the results of the violence in this case are not serious, and even though the family eventually succeeded in recovering their property, this case is of special severity, as here **a whole family fell victim to police violence and children were beaten by the policemen**. If the family was under arrest, it is not clear how they were released without undergoing any formal procedure and were cast by the roadside. If they were not under arrest, it is not clear by what right the police transported them to Kissufim junction and subsequently to Gilat junction. It is also unclear why it was necessary to beat up the family in order to remove them from the police vehicle.

13. The Kardashov Case

Engineer Vitali Kardashov's hobby is photography. On Aug. 23 Kardashov arrived in Kedumim with camera in hand. There was a demonstration taking place there against the disengagement. At the entrance to the settlement, he saw a demonstration of several score teenage girls and about 15 – 20 boys, who were in the road. Two policemen stood among the boys, looking down at something. Kardashov photographed the demonstration and when he moved closer, he saw two girls lying on the ground, with the police trying to drag them away, while they cried out in pain. Kardashov took a zoom shot of the incident, in which other teens were trying to prevent their friends' arrest. Kardashov then left the scene and called a friend to come pick him up in his car.

When Kardashov came back to the scene of the demonstration, he saw about 20 girls standing at the entrance to the settlement, hesitating whether to enter the roadway or not. A squad of riot police ("Yassam") ran towards them, evidently in order to disperse them, and the girls turned in flight towards Kardashov. Kardashov, interested in saving his film, ran in the direction of his friend's car, which was waiting for him. He got to the car and at that same moment the riot police reached him and arrested him together with his friend. The police refused to say on what grounds they were arresting him, though he specifically asked them to tell him.

Kardashov was taken to grassy field where a group of arrestees was being held under arrest. Among them were several youngsters, lying on the grass and crying. Kardashov attempted to talk with the police, telling them he was just a photographer. Policeman Mani Nahum, who arrested him, asked if Kardashov had a newsmen's permit. On being informed that Kardashov had none, Nahum told his colleagues that "it's all right" and then told Kardashov he was arrested on suspicion of assaulting a policeman. This accusation in no way agrees with the eyewitness reports of Kardashov's behavior and subsequent arrest. Their testimony claims that Kardashov only photographed the events, but in no way did he assault any policeman. In court, the police demanded Kardashov's further detention, accusing him of attacking a military officer. The army for its part has been unable to produce the name of the officer Kardashov allegedly attacked.

Kardashov attempted to remove the film from his camera to preserve it. Someone shouted, "who allowed him to keep his camera?" at which Policeman Mani Nahum came up

and demanded the camera. He gave it back to Kardashov after removing the film. Asked where the film now was, the policeman said it would be returned to him later.

Kardashov was brought to Maasiyahu prison for interrogation. The interrogator asked why Kardashov had filmed the demonstration, learned Kardashov was an engineer rather than a professional photographer, and demanded to know if Kardashov had taken the film for “ideological reasons.” The interrogator specifically demanded to know if the film was to be used “against the disengagement.”

The police requested Kardashov’s continued detention for another 48 hours. At the hearing, the representative of the police declared that Kardashov was suspected of obstructing a policeman in the fulfillment of his duty and assaulting an IDF officer.³⁸ The police representative declared that in the interrogator’s report made no mention of the confiscation of a camera or of a film³⁹ The law requires police who make an arrest to report the confiscation of any article taken from the detainee. The protocol of the hearing shows that the court (presided over by Judge Shira ben Shelomo) kept the defendant’s lawyer from cross examining the policeman at length, and after a few questions about Kardashov’s actions as a photographer, limited the summary of the interrogation to two minutes.⁴⁰

In what seemed a laconic and hasty decision, the Judge Shira ben Shelomo extended Kardashov’s arrest, opining that “there is a certain danger inherent in the acts they have been charged with.” However, that night Kardashov was released on bail with restrictions on his movement. These restricting conditions prevented Kardashov from testifying before the Knesset Constitution and Law Committee.

Kardashov’s arrest violated his civil rights as well as his freedom of expression. His film documenting police misconduct was confiscated without being registered as required by law, and has since disappeared. The confiscation and disappearance of the film may itself be a criminal act, the destruction of evidence that could be used to prosecute criminal activity by the police.

While Kardashov carried no press card, his photos are regularly reproduced in the Russian-language Israeli media. The confiscation of Kardashov’s film prevented the Russian-reading public from a visual report of events in Kedumim and impaired Kardashov’s right to freedom of expression on the one hand and the right of the public to be informed. In this case the representatives of the State of Israel acted to protect themselves by suppressing information critical of their behavior that the public had a right to know

14. The Rosen Case

Debi Rosen, who resided in Neve Dekalim in Gush Katif before disengagement, was assistant to the spokesman of Gaza Coast District Council (“Gush Katif”) in charge of contacts with the foreign press. On Tuesday August 9 Rosen returned home and was stopped at the Kissufim Junction roadblock for an identification check. An argument developed between Rosen and the officer commanding the roadblock and Rosen demanded to see his

³⁸ Rishon LeZion Magistrate’s Court, 1044/05, p. 1 at 5-6.

³⁹ Ibid., p. 10 at 10.

⁴⁰ Ibid. p. 2 at 22.

identification, which by law is required to produce upon demand. The officer refused to identify himself and Rosen took out her camera to film the officer in the act of refusal.

Rosen's actions did not suit two policemen who were also on the spot. They attacked Rosen, shoved her and knocked her camera out of her grasp. When Rosen tried to remove one policeman's hand from her camera the policemen (later identified in an official complaint as Tal Zarhin and Rodion Gromov), twisted her arms and held her to the ground under their knees. The camera was damaged.

Rosen was arrested, delivered to a policewoman and taken for interrogation on the charge of assaulting the police officers. During her interrogation Rosen complained of ill health and asked to see a doctor. She was taken to Soroka Hospital in Beer Sheva. After her release she was again summoned for interrogation on the charge of assaulting the police officers.

15. The Rabinovitch case.

While not a serious miscarriage of justice, this case is included as an example of the police' attitude to those arrested.

On the night of July 14/15 several hundred people marched from Kfar Maimon in the direction of Gush Katif. Some 250 were apprehended about a kilometer from Kissufim Junction, the entrance to the Gaza Strip, in an area open to the public. Most of them were yeshiva students, among them Zecharia Rabinovitch.

Rabinovitch was picked up about 4 am. From this point on he was never informed that he was under arrest, or on what charge. The army Battalion Commander in charge (soldiers were among those performing arrest) promised that if the detainees entered nearby buses voluntarily, they would be driven to the nearby town of Netivot and released. The group, including Rabinovitch, agreed, whereupon some were released in Netivot while four busloads were taken to the Beer Sheva police station for interrogation.

Rabinovitch's bus was parked outside the police station. There, without food, water or air conditioning, in the heat of Beer Sheva's summer day, 70 people remained from 6:30 am to about 9 am (this after the ride to Beer Sheva). The group was not allowed to go the bathroom or engage in prayer; a handful were permitted to alight and urinate by the side of the road. Members of the group repeatedly asked to be allowed to relieve themselves, drink, and make a *minyán*.

After 9 am Rabinovitch was let into the police station proper. A single toilet was provided for 200 detainees, water was produced, and prayers were allowed (but no *torah* provided for Thursday's reading).

At his interrogation Rabinovitch was charged with "violating the order of OC Southern Command prohibiting entry to Gush Katif." Rabinovitch never came within five kilometers of Gush Katif.

IV. GSS Cases

The involvement of the General Security Services (GSS) in cases of protest against disengagement was one consequence of the legal and judicial system's decision to treat such protest as if it were a threat to state security. The involvement of the GSS had several consequences: First, GSS methods were applied to ordinary criminal cases, including those in which no violence at all was anticipated, resulting in totally unnecessary and unjustified suspensions of the civil and due process rights of those involved. All of the cases that have come to our attention could have been dealt with through ordinary police investigative methods while preserving the rights of the detained. Second, the GSS repeatedly violated the regulations that supposedly govern its own activities and are meant to protect the rights of those it arrests. Third, the GSS was used to harass the Prime Minister's political opponents engaged in legitimate political protest.

16. The Vudka Case

On the night of July 12, 2005 night, approximately ten men – some of them in police uniform – knocked on the door of the Vudka family in Bat Yam. They demanded to enter without a court warrant. After a call to the police, who recommended letting the men in, Asher Vudka opened the door. Police officers accompanied by a GSS agent searched the house, seized a computer and two cellphones, and arrested Vudka without a warrant.

The same night, in a different place four more men were arrested by police in collaboration with the GSS: Yedidya Leibovitz, Moshe Gutman, Betzalel Smotritz, and Eden Geniram. They were taken to Petach Tikvah police quarters, and transferred to the GSS facility in Shikma Prison.

The five were accused of conspiracy to endanger human life on a roadway, conspiracy to commit a crime by sabotaging vital infrastructure, and membership in an illegal organization. An "illegal organization" is one that aims is to bring down the regime, to overthrow by force or by violence the legal government, destroy or sabotage governmental property, or whose explicit or implicit aim is to cause rebellion.

During their interrogation, they were confronted with no specific allegations, nor asked to explain any specific actions. They were only told which articles from the criminal law they were alleged to have violated. According to the explanation offered by the GSS attorney, this behavior was due to "considerations regarding the progress of the interrogation and of when to expose information" in the GSS' hands.

Courts, in all instances from local Magistrate's Court all the way up to the Supreme Court, extended the arrest of the five from time to time, for a number of days each time, until July 31, when the Court was asked to release the five to house arrest for 30 days. The GSS representatives arrived to every hearing with numerous folders of files, which time did not allow the judges to inspect. The judges based their judgment, as it appears, on synopses made for them by the GSS.

The definition of the detainees in the indictment as members of an "illegal organization," usually used in connection with terror organizations, is consonant with the policy of Attorney General Mazuz, who has defined road-blocking, usually considered an act

of civil disobedience, as an act of rebellion against the state *when performed by opponents of the government's policy* (the definition would not apply to workers blocking roads as part of their demand for higher wages, as sometimes happens in Israel). The accused, who were allegedly engaged in organizing the blocking of roads, clearly had no intention of overthrowing Israel's democratic regime. They were engaged in protest, and the Attorney General chooses to define their protest as rebellion, thus involving the GSS and using the latter organization to suppress nonviolent civil disobedience.

17. The Ben-Shochat/Binyamin Case

Unlike our other cases, this is not a case of nonviolent civil disobedience. The accused are suspected of manufacturing caltrops, sharp steel "stars" that, if strewn on a roadway, can puncture the tires of vehicles passing at speed. If so used, caltrops can be a life-threatening weapon, and therefore we are talking about a serious offense. Nevertheless even serious offenses must be investigated and prosecuted according to law. The point of interest here is the involvement of the GSS, and the unwarranted suspension of due process and the civil rights of the accused that its involvement naturally drew in its course.

On June 20 Israeli police raided a shack at Moshav Bet Gamliel, detaining nine young men, who are accused in the charge sheet of preparing caltrops. Another person, Ephraim ben Shochat, escaped and was arrested six days later in Safed. The following is based on court documents and the testimony of two defendants, Ephraim Ben-Shochat and Avraham Binyamin, currently detained in Maasiyahu Prison.

The detainees are accused of conspiracy to carry out acts that would endanger lives on a roadway, and of illegally manufacturing a blade. Three of the detainees, Ephraim ben Shochat, Avraham Binyamin, and Matanya Olami, were interrogated by the GSS at its detention center at Shikma prison. The protocol of the first court session on extending their arrest indicates that the detainees were not suspected of any acts against state security as defined in the law of arrests.⁴¹ The detainees merited, at least at that stage, to be dealt with according to ordinary regulations regarding prisoners under investigation.

The interrogators did not beat the prisoners, but used more sophisticated methods, which caused the detainees pain and physical suffering. The detainees were kept handcuffed to the backs of their chairs. Iron bars in the form of a ladder made up the back of the chairs, enabling the interrogators to handcuff the detainees' hands to higher rungs, thus forcing the detainee to maintain a stiff and straight posture at all times. Alternately, the interrogators could handcuff the prisoner to the lower rungs at the chair's back, causing the detainee discomfort, as his spine was bent backwards over the back of the chair. The prisoners' hands could be handcuffed with palms inward, so that the chain between the cuffs was loose, or

⁴¹ I.e. Par. 35 of the Code of Criminal Procedure (Enforcement-Arrest). The relevant offense in this case is Par. 147 of the Criminal Code (5737-1977), Illegal Organization. This paragraph was mentioned as one under which the State intended to prepare an indictment in the prosecution's request for the extension of arrest till the end of the trial. However, in the end no indictment under this paragraph was presented. In the first rehearing on the extension of the defendants' arrest (Ramle District Court 1472/05, State vs. Olami et al), Judge Leora Fraenkel noted that the accused were suspected of conspiracy to commit a crime and illegal possession of a blade. The security charge had by then evaporated and no legal basis any longer existed for restraining the accused under the severe conditions reserved for security prisoners.

palms out, with the chain between cuffs tense, and with tightened cuffs, causing extreme suffering to the detainee.

During the interrogations, the detainees were chained to their chairs for several hours. The handcuffs exerted severe pressure, so that their hands swelled up and turned blue. Ben Shochat's hands were usually tied to the lower rungs of the chair, with his palms placed outwards and the handcuffs tightened. Binyamin was also tied thus to the chair, which caused him excessive back pain, but from time to time, his hands were handcuffed before him. According to Binyamin, throughout the period of his GSS interrogation he was not given a bed and had to sleep on a mattress on the floor without any sheets or blankets.

On the first day of his detention, Ben Shochat complained about the tight handcuffs and asked that they be loosened somewhat. The GSS interrogator, named Kace, examined the detainee's hands to ensure they were tightly handcuffed and then stepped on the chain of the handcuffs.

Binyamin, a tall man, complained to the doctor at the detention center of back pains caused by his being handcuffed to the chair, in such a way that his back was bent over at all times. The doctor replied that he could do nothing.

During the interrogations, which continued the entire day, with a short break at noon, Ben Shochat was not allowed to go to the bathroom or to drink. The interrogators and prison guards responsible for him did not allow him sufficient time for prayers. Mr. Binyamin was regularly taken to the interrogation room in the midst of morning prayers.

The interrogators used the air conditioning system as a further way to cause physical suffering. The interrogators would turn the air conditioning down to a very low temperature. According to Binyamin, he shivered from the cold, but the interrogators would not adjust the temperature. At one of the first interrogations, Ben Shochat requested that the temperature setting be raised. The interrogator turned it down even further.

On the first day of his detention, his interrogators deprived Ben Shochat of sleep. Every time he dozed off, they would awaken him with shouts. One time, when his head fell on his chest, the interrogator grasped his chin, raised his head and shook it, knocking it against the wall.

Sometimes the interrogator would move from his position opposite Ben Shochat, and sit at his side. Moving his chair next to the prisoner, the interrogator would "unintentionally" hit the detainee's knees with the chair.

Another form of physical abuse was to spit on the accused. On the first day of his detention, Ben Shochat spat into a nearby dustbin, when he was left alone in the interrogation room. From then on, his interrogators would not stop reminding him of this incident. One of the interrogators would enter in the middle of questioning, scream, carry on wildly, and spit on Ben Shochat and say as if to apologize – "Oops" and then another interrogator would say something like "don't apologize, he spit on us as well."

Detainees questioned by the GSS are led from their cells to the interrogation rooms blindfolded. When the guards brought Ben Shochat to the interrogations, he was not warned

of any walls, doors, or steps, and not infrequently, he fell on the steps, or walked into a wall or door.

During the hearings to determine extension of detention, Atty. Uri Kenan, legal counsel for Ben Shochat and Binyamin, brought to the attention of the court the abusive treatment his clients received at the hands of the GSS. The GSS's representative denied that any form of violence was used against the detainees.⁴²

Nevertheless, Judge Heiman accepted the arguments of counsel for the defense and ordered the file to be turned over to the department within the Justice Ministry responsible for reviewing complaints against the GSS.⁴³ Members of this unit debriefed Ben-Shochat after his GSS interrogation ended. After the court order the GSS' treatment of the detainees improved marginally, but the handcuffing, use of the air conditioner, and interference with prayer continued. Access to a doctor was permitted whenever the detainees requested it, however.

After his interrogation by the GSS ended, Ben Shochat was then interrogated by representatives of the special unit within the Ministry of Justice that investigates complaints against the GSS. His treatment improved marginally after this, but the handcuffing, the use of the air conditioner, and interference with prayers continued. It may be noted that detainees were allowed to see a doctor whenever they wished.

In this case the detainees were intentionally subjected to severe and ongoing physical discomfort, amounting to cruel and inhuman punishment. Such treatment of prisoners under interrogation is prohibited by Article 16 of the International Convention Against Torture and Article 7 of the International Convention on Civil and Political Rights, to which Israel is signatory.⁴⁴ A ruling of the Supreme Court prohibits the imposition of physical distress on prisoners under investigation,⁴⁵ except in extreme cases required to forestall a terrorist act in progress. The present case deals with an investigation of ordinary criminal offenses; no actual threat to the public safety was at that point anticipated.

18. The Sderot Case

Moshe Shahor and Michael Simantov are prominent activists against the Disengagement Plan in the town of Sderot. Michael Simantov's friend A.P. (henceforth – "Anonymous") was a guard at Sycamore Farm, belonging to the Sharon family. Anonymous was interrogated by the GSS at length on allegations that he leaked information pertaining to the security arrangements at the Farm. Even though Anonymous was friendly with Michael Simantov and Moshe Shachor, the topic of security arrangements at the Farm never came up in their conversations.

⁴² Rishon le Zion Magistrate's Court 269/05, 2389/05 and 2388/05, State vs. Halfon et al, June 27, page 4. Tel Aviv Juvenile Court, 60064/05, Shalom et al. vs State, 30 June, p. 3 at 1-6, 12-15. The defendants' counsel mentioned in court that his clients had also been beaten, but the defendants did not confirm this.

⁴³ State vs. Anonymous et.al., decision of the court, 27 June, p.6.

⁴⁴ Cruel and inhumane treatment, while distinguished from actual torture, is also prohibited by the treaties.

⁴⁵ HCJ 5100/94, Public Committee Against Torture vs. Minister of Defense, Supreme Court Verdicts v. 53 #4, p. 817.

One day at about 8:00 AM, as Shahor was dropping his daughter off at her kindergarten, two (or possibly, three) police cars drove up, and at least four plain clothed detectives surged out of the cars and demanded that Shahor accompany them. The policemen presented IDs when asked to but did not inform Shahor why he was being detained and presented no arrest warrant. Shahor was taken to Ashkelon Police Station. Interrogators there informed him that this was not a regular interrogation but an interrogation of the GSS. They also explained that the GSS does not deal with regular cases, but with activity against the security of the State, and suspected attempts to assault public figures.

Simantov was arrested the same day at the yeshiva in Sderot where he works. He was ordered to accompany the men who came to summon him, again without them presenting an arrest warrant or explaining the grounds for the arrest.

Shahor and Simantov were interrogated for nine hours by the GSS. No specific allegations were made against them. They were confronted with one another and with Anonymous, the former guard at Sycamore Farm. After nine hours of interrogation Shahor was transferred to police interrogation, where he was notified that he was being interrogated regarding the allegation that he had conspired to harm Prime Minister Sharon or his property. The interrogation led to nothing. Shahor was warned that “now the spotlight is focused on him,” and that therefore he should stay away from the Farm, “not even think about it.” He was made to sign a document that restricted him from coming closer than 100 meters from to Farm during the next fifteen days.

After fifteen days, the police requested an extension of this restriction. The local Magistrate’s Court rejected the request in its entirety, since there was no inkling of any information that would substantiate the allegation that Shahor was a danger to the Prime Minister. The court ruled that the police should pay 1,000 NIS in fines to Shahor for summoning him to the hearing. The police appealed against the decision to the District Court, and Shahor was banned from the Farm area until October 1.

Shahor’s detention was illegal since he was never informed of the charges against him and he was never served with an arrest warrant. Moreover, summoning someone to a GSS interrogation is intimidating and, if the incident is reported in the press, damaging to one’s reputation. If the people in question were not religious, and active against the Disengagement, it is doubtful whether they would have been interrogated.

19. Case of Natan Engelsmann

Natan Engelsmann is a prominent member of the Likud Central Committee, and one of the leaders of the opposition to the Disengagement Plan. He customarily voices his opinions loudly in Likud forums.

On May 4, as part of the National Holocaust Memorial ceremony taking place at Yad Vashem, Engelsmann’s mother, Sofia Engelsmann, was given the honor of lighting a memorial beacon. At some point during the ceremony, Mrs. Engelsmann refused to shake P.A. Sharon’s hand in protest against his policies.

Natan Engelsmann and his family arrived at the ceremony armed with a special invitation, underwent a meticulous security check, and took their places far away from the

Prime Minister at a convenient place to view the video screen on which the ceremony was shown. Engelsmann photographed parts of the ceremony. One of Engelsmann's nephews brought orange ribbons (symbols of Gush Katif) to the ceremony, and Engelsmann distributed them to his family. Throughout the whole ceremony, a police officer and a security man in civilian dress attached themselves to Engelsmann and supervised his movements.

A few days after the ceremony, Engelsmann was summoned to an interrogation at the Kefar Saba police station. On the morning of May 10 he arrived at the police station. Upon his arrival he was ushered into a small room behind a steel door. Once the door closed behind him, three men in civilian clothing surrounded Engelsmann. One of the men declared himself a GSS interrogator and demanded that Engelsmann present identification papers. Engelsmann agreed to identify himself and requested that the others do likewise. The interrogator identified himself as Meir Avni, another named himself "Gadi" and did not give a surname. Shortly thereafter Engelsmann was ordered to empty his pockets and was checked with a metal detector.

The interrogator informed Engelsmann that his behavior at Yad Vashem had been suspicious, that he had taken many pictures, and wished to know what he had planned to do. Engelsmann explained that he had photographed his mother lighting a beacon and that there had been nothing further to photograph. Thereafter Engelsmann refused to cooperate and declared the interrogation politically motivated and illegitimate. The GSS man softened and tried to induce Engelsmann to speak, but also said "you should know that provocations are also illegitimate" and made clear to Engelsmann that "we have our eye on you."

The interrogation lasted 45 minutes.

Some days later, Engelsmann came to a session of the Knesset Constitution, Law and Justice Committee to recount his tale. Due to car trouble, he could not start his engine, and was delayed in the parking lot for longer than he intended. A police sapper examined his car, and the security men who arrived at the scene told Engelsmann they remembered him as the troublemaker from Yad Vashem.

No crime was ascribed to Engelsmann and no concrete suspicions were leveled against him. It is not clear why he became the subject of the investigation and supervision of the GSS. Lacking any other visible explanation, **it is likely that were he not actively opposed to the Prime Minister's policies he would not have been summoned to a GSS interrogation.**

V. Suppression of Legal Dissent.

In these cases we refer not to the suppression of *legitimate* dissent— notions of legitimacy differ—but of *legal* dissent—peaceful and in violation of no law.

20. Four Minors Arrested for Hanging Signs

On the night of June 10, 14 year-old Y. and her two friends, aged 15 and 16, were hanging posters bearing the legend: 'Jews Do Not Evict Jews' at a major intersection in Jerusalem. A police patrol car appeared at the scene, and the police officers told the girls to desist, which the girls refused to do. The officers alighted from the car and again demanded

that the girls stop hanging the posters. The girls replied to the police officers that they were not doing anything illegal. At this point the policemen seized the girls' bags, put them in the patrol car, and ordered the girls to enter the car, at the same time informing them they were being detained.

Upon their arrival at the police station, the girls were interrogated on the charge of destruction of property. In addition, the girls were informed at the station that they were now under arrest. After their interrogation, the girls were confined in detention cells. Only upon the intervention of an attorney, in the afternoon of the following day, after approximately 12 hours of arrest, were the girls released, without the imposition of bail or any other conditions. During their arrest the girls managed to catch no more than one hour of light sleep and the police supplied them with neither food nor water.

According to Israeli law, drawing graffiti or pasting objects on a wall may be considered destruction of property. Hanging posters without pasting them is not a criminal offense. Even were it such, it does not justify arrest, as there is nothing in such "destruction" of property that can endanger the public. It seems that were the girls carrying posters bearing a different message, they would not have been arrested and held for over 12 hours.

21. Seizure of a bus on the way home to Pesagot.

On July 31, a group of people from Pesagot set out on a mission called "Face to Face" to Herzliyah. The purpose of this campaign is to strengthen the link between the settlers and the residents of the central part of Israel. The mission was arranged with a chartered bus. At 10:00 PM, members of the group rendezvoused at Weizmann Street in the city and got back on the bus.

The bus advanced some 50 meters when a police patrol car cut it off and ordered the bus driver to stop. The police officer demanded from the bus driver a "shipping certificate." After the bus driver and the police officer figured out that a "shipping certificate" is required for transporting cargo and livestock, the officer demanded a "transportation certificate" instead. The driver responded by saying that in 15 years behind the wheel of his bus he had never heard of a "transportation certificate." After a long debate **the officer explained: "We have a directive from the Chief Commissioner to stop any bus that has people with kippot in it."**

The bus riders convinced the officer that they were on their way home to Pesagot, and did not intend to go southward (in direction of Gush Katif). At the end the officer relented and let the bus go on its way.

22. Preventing a Group of Youths from Entering the Kotel Plaza.

Yiscah Levi served this year as a counselor in a religious high school in the town of Beit El. According to her testimony, while leading her group of girls on a class trip, they decided to end a week's trip with a visit the Kotel (May 10), where a military swearing-in ceremony, open to the public, was being held. Her group arrived with personal luggage, all wearing white dress blouses. She had a Gush Katif key ring in her possession, which the guard at the entrance told her to remove. She said "Are you serious?" At this point the guard

opened her luggage with all her personal effects, including an orange “Gush Katif” shirt in her laundry bag. The guard said, “Do you really think you’ll be allowed in with this?” and gave instructions to open all the girls’ bags. Five had orange shirts in their laundry bags. At this point the guards summoned the GSS. A GSS agent arrived and said “Unbelievable—everywhere you go you engage in political propaganda.” The girls were forbidden entry and left in tears.

The girls had no demonstration in mind when they were turned away.

23. Suppressing Dissent at the Annual Jabotinsky Memorial Service

For this event we have an eyewitness account by someone who did not participate in the attempted arrest and was not led away by police.

At the service held on August 7 this year, a group of young people from the Betar youth movement were, as usual, present. In the middle of the ceremony four youths removed their “Betar” shirts to reveal orange tee-shirts, each bearing a single printed word that together spelled out “A Jew does not evict another Jew.” The demonstration was completely silent and attracted almost no attention, except for that of the police, who seized the youths and evicted them.

24. Preventing Freedom of Expression at a Concert

Testimony of Mr. Yoni Kahana, producer, of the town of Netanya.

“Every summer I organize a Hasidic song festival for the national-religious and Haredi (ultra-orthodox) public in Netanya and its environs. The police generally authorize the event with no problems or special requirements.

“This year, when I went through the formality of applying for a police permit for the event, which took place July 21 and was attended by 4,000 people, I encountered a complex and inexplicable bureaucratic wall. It came to the point that only three hours were left until the event was due to start, with the audience already on its way, the stage and sound equipment were in place, and after many inexplicable delays I received the desired permit with one condition: That during the event the disengagement plan not be mentioned or even hinted at. On the permit application I had to warrant that if I disobeyed this injunction I was to go to jail!

“I signed the form because I had no choice and the show had to go on. Unfortunately, I had to stand by my signature.

“It is clear that this demand by the police was beyond the bounds acceptable in a democracy and was a shameful and unworthy suppression of free speech.”

IV. Conclusion.

Decisions by Israel's legal and judicial systems during the disengagement crisis created an environment in which the actions of law enforcement authorities against opponents of disengagement violated basic norms of a free society's legal system.

Decisions by the Attorney General's Office and the Supreme Court equated nonviolent protest with sedition, applying a harsh regime of pre-trial investigation and arrest appropriate to serious crimes to what are actually minor misdemeanors. The treatment of disengagement opponents by prosecutors and courts was often cruel, brutal, and dismissive of due process rights (as we have seen in the cases of Eli Herbst, Moshe Zaksh, Meir Arad, the three minors held for over 40 days, and other cases), as if the defendants were terrorists who attempted to blow up a bus. On occasion, **extremely disturbing nuances have appeared in the briefs and decisions of prosecutors and judges, as if the ideologies and religious beliefs of detainees were elements of criminality that needed correction**, including by means of pre-trial detention of those presumed innocent. Guided by the Attorney General, the State Prosecutor, and Supreme Court decisions, prosecutors inflated charges against the accused, creating paper justification for the serious pre-trial detention regime courts applied to the accused.

For opponents of disengagement, the liberal and judicious provisions of the law on arrests were essentially suspended. Pre-trial detention was imposed categorically and systematically, as tool of deterrence and coercion, without reference to the law and often with no connection to the facts of the case.

The GSS has been involved, in a totally unnecessary fashion, in the investigation of "conspiracies" to engage in nonviolent civil disobedience. Involving the GSS inflicts on people suspected of such activities a special regime of extended incarceration and suspended rights totally inappropriate to the offenses involved. Anything that Asher Vudka and his co-defendants allegedly did could have been dealt with by ordinary police methods while according them ordinary due process. Of course, "ordinary" opponents of disengagement in Israel do not always enjoy ordinary due process.

The atmosphere evinced in some court cases and prosecutors' briefs is also reflected in directives addressed to the police, who were sent a strong signal that they need not be too concerned with the rights of opponents of the government's disengagement policy. The police have acted accordingly. **Violations of the right of legal, free expression have been widespread as has been physical brutality against demonstrators.**

Several recommendations flow from our investigation and analysis:

1. All special directives regarding civil disobedience against the disengagement plan should be rescinded immediately. They add nothing to the authorities' efforts to deal with mass civil disobedience, impose harsh and unnecessary conditions on those accused of crime, and frequently serve as means of pre-trial coercion and punishment. Ordinary police methods and standard due process is enough. Pre-trial detention should be used strictly in accordance with the nature of the offenses defendants are suspected of committing.

2. The GSS should be forbidden to deal with nonviolent civil disobedience. Their involvement violates their charter and involves unwarranted infringements of the rights of the people they investigate.

3. It should be made clear to the police that they no longer enjoy immunity from prosecution or civil penalties for crimes they commit against protesters, and directives hinting at this immunity should be withdrawn. The Police Investigative Unit needs strong leadership that believes in its mission of defending the rights of the ordinary citizen and pursues it with vigor.

4. Israel's legal and judicial systems are responsible for a great professional and moral failure. This merits a thoroughgoing public inquiry into the nature of these bodies, how their personnel are appointed, and the legal culture cultivated within them, but this goes beyond the scope of this report.

The Disengagement Plan raises grave questions of how different parts of the Jewish community in Israel can continue to view themselves as part of a common social compact with a common allegiance. This is a subject of debate in Israel that will continue long beyond the disengagement episode itself. It was always clear that disengagement was going to generate immense protest, including nonviolent civil disobedience. The great question was how the authorities of the state, representing the social and political forces that have imposed disengagement, were going to handle this protest.

It would seem imperative for authorities to convey to a large, distraught and sorely wounded minority that they remain equal citizens, that their rights will be defended by the state even while they protest against it, and that the desire of the state to reintegrate them into one body politic is genuine. This would be desirable even if it meant the streets were cleared less efficiently or more people were able to infiltrate into Gush Katif.

Instead, Israel's legal and judicial system, supported by the current government, girded themselves to fight the equivalent of a civil war by legalistic means, perverting the tools of law and of law enforcement to this purpose. Naturally, with all the coercive tools of the state at their disposal, they won hands down. It was a Pyrrhic victory, nonetheless. Coercion does not add one iota to the legitimacy of the coercer in the eyes of his victim. It can only reinforce the perception, now widespread among many citizens, that they are not full partners in the state. The damage done to the legitimacy of the State of Israel and its institutions by those appointed to defend them may prove greater in the end than anything the opponents of the Sharon government's policies could have done.