

Perhaps You Have Attained Your Position for Just This Moment

Planned Remarks to the Court, March 22nd, 2005

Rabbi Arik Ascherman

I have two requests. I firstly apologize to Omer. I don't want to take from him the credit he deserves for acting according to his conscience against wrongdoing and on behalf of justice. However, I remind the court that I am the "serial criminal." Not only that I am on trial on two counts (Omer on one), but I am the one who organized the action where Omer was arrested. I am also the one who made the decision for everybody and without consultation that we would not move at the critical moment in which the police officer did not allow me to call the owner of the home in order to find out whether they in fact wanted us to come down from the roof. The officers immediately began to remove us and there was no opportunity for Omer or Shai to decide differently. Therefore, also in the matter of sentencing I request that Omer was acting according to my directions and his sentence should be lessened.

Now I will ask forgiveness from our two wonderful lawyers. They told us all along that from a legal standpoint we can't ask from you to rule on the matter of the home demolition policy. Nevertheless Omer Uri, my NGO and I are definitely asking you to relate to the demolition policy when you write our sentence. By finding us guilty you have done what you decided that you were obligated to do in terms of the more narrow legal question. We have never denied that we lay down when the bulldozers came to destroy the world of families whose only crime was that they did not succeed in legally providing a roof for their families due to a system designed to prevent them from doing so.

There are many examples, including an all too small number of home demolition cases, in which a judge has made the ruling that s/he felt obligated to make, but then looked at the broader picture. For example, the president of the Israeli High Court Aharon Barak stated at conference on May 19th 2003 "I often feel forced to act according to the law in spite of the fact that my subjective feelings dictate otherwise. One clear example of this is home demolitions. The rulings are legal, but I would be very happy were the legislature decide differently and forbid home demolitions" (Maariv 20.5.03). There have also been judges who have decided to act even more boldly. Nobody required the Orr commission (Set up to investigate the events of October 2000) to highlight the connection between discrimination against the Arab population and home demolitions. Certainly nobody expected from senior police officers to be so bold as to act to prevent demolition orders from being carried out. (As cited in the Orr report.) Unfortunately, nobody would think twice had Judge Haim Luhovitsky, in Alkarir Amran vs. the State of Israel (8143/04 in the Jerusalem Court for Local Affairs) done what so many did before him and merely confirmed that a demolition order was technically "legal." He chose to cancel it because of discrimination which cried out to the

heavens. There are all too few examples such as that of judges Mosia Arad, Ouni Khabash and Boaz Okon who ruled as they did but expressed trenchant criticism in a side observation within their ruling, "In this context we must comment that the time has come to examine the enforcement policy as connected to building violations...As usual, the root of the problem is found at the beginning. The responsible authorities must create a permit process which is simple and equal for all." (Jerusalem Local Court Hassan Sawakhreh vs. the Regional Planning and Building Committee (Criminal case 7437/03, 14.9.03). In another case which I dealt with in the village of Kattaneh, the judge expressed his anger with being forced to reach an unjust conclusion by giving a symbolic fine of NIS 500 and 10 years to obtain a building permit (as opposed to the more usual granting of several months.)

The clear discrimination ensconced in the home demolition policy cries out to us. This is the reason that, with the diversity of opinions among the rabbis of my organization (RHR), there is near consensus on this issue. This is the reason that almost 500 Diaspora rabbis, normally loath to express private criticism publicly, published an open letter to Prime Minister Sharon. This is the reason that from September 1998 until June 2001 successive Israeli governments drastically reduced the use of this policy increasingly understood as unjust.

Without a doubt it is no simple matter to act boldly. But we are on the eve of Purim. I remind you of the words of the Scroll of Esther, "Mordechai had this message delivered to Esther....if you keep silent at this time, relief and deliverance will come to the Jews from another quarter...And who knows, perhaps you have attained to royal position for just this moment." (Esther 4:13-14) If you and others keep silent, relief and deliverance will come from another quarter. We drastically reduced the number of demolitions for almost three years and we will do it again. In the end justice will prevail. However, perhaps you have obtained your position as judge for just this moment. I believe that this is what you aspired to when you chose your profession and when you attained your judgeship. I am convinced that you attained your position believing that the law must be above our national conflicts and that discrimination such as that which we have laid out before you is unacceptable. I am sure you believe that, as it is in Biblical Hebrew, "law" and "justice" must be one and the same.

This trial gives you the opportunity – for in all modesty this trial is being followed by many around the world, especially among those Diaspora rabbis on the forefront of the public relations struggle on behalf of Israel – to save the honor of the State and the Israeli legal system, so that people will say, "Yes, there are judges in Israel."

I have nothing to ask for myself. I am not a martyr and certainly don't believe that we deserve heavy sentences for actions devoid of both physical and verbal violence designed to honor God's image in others and in ourselves. However, I am also not a victim. Were I to receive the maximum sentence, with all of the

suffering to my family and myself, it would nevertheless be true that I chose my path; and I would return to a home. The real victims are those who are caught up in a situation they did not choose and suffer from an oppressive system that they are not party to and which is almost impossible for them to influence. Many of them are denied the basic right of a home. Because of them we stand here today. Because of them this court is being put to the test. I request that you think of them as you write the sentence. It would be better were they able to stand here and speak on their own behalf. However, in the name of those who have no voice, I ask you to act boldly. In some small way, in the words of the Book of Esther, transform the grief of those with whom we share this land to joy, (Esther 9:22), so that all of us will merit light and gladness, happiness and honor. (Esther 8:16, the blessing Yotzer Or in the prayer book).