

**Responses from Kach, Kahane Chai, Kahane.org**  
(Final Version\*)

Responses from Petitioners Kach, Kahane Chai, and Kahane.org to the "Redacted Version" of the 2003 Administrative Record for Redesignation as Foreign Terrorist Organizations under 8 U.S.C. Section 1189

**OVERVIEW**

Petitioners learned in a January 16, 2004 letter from Cofer Black, The Coordinator for Counterterrorism, that the record they received "incorporate[d] by reference" administrative records from 1997, 1999, and 2001. Thus Petitioners have not received the complete unclassified portion of the record required in violation of National Council of Resistance of Iran v. Department of State, 251 F.3rd 192 (D.C. Cir. 2001). Therefore, Petitioners assert that their responses are not required until after receiving the complete record. Furthermore, the State Department has not acted in accordance with law, which by itself are grounds for setting aside the Petitioners' designations (hereby "designation" also includes redesignation), pursuant to 8 U.S.C. Section 1189(b)(3) (A) and (E).

Nonetheless, without conceding the legality of the State Department's actions, Petitioners below do respond to the 2003 "Redacted Version" of the administrative record. In sum, said record contains so many contradictions, inaccuracies, and vague assertions that Petitioners' designations lack substantial support in the administrative record taken as a whole or in classified information submitted to this Court. As well the designations are arbitrary, capricious, and an abuse of discretion. Thus, we request that the Secretary of State revoke Petitioners' designations. If the Secretary fails to do so, then the United States Court of Appeals for the District of Columbia Circuit should set aside the designations pursuant to 8 U.S.C. Section 1189(b)(3)(A), (D).

**INTRODUCTION**

Pursuant to 8 U.S.C. Section 1189(a), to designate Petitioners as Foreign Terrorist Organizations, the Secretary of the State Department must find from the administrative record that Petitioners are (A) foreign organizations (B) that engage in terrorist activity (C) and whose terrorist activities threaten the national security of the United States. As the Court held in People's Mojahedin Organization v. Department of State, 182 F.3d 17 (D.C. Cir. 1999), the Court lacked authority to review whether a designated organization's activities threatened national security. Thus Petitioners will not address their responses to this issue.

Petitioners will show that the State Department's material fails to show by substantial support in the administrative record (or by any other legal standard) that Petitioners engaged in terrorism. Petitioners have organized their responses to address the six acts of terror that are repeated throughout the State Department's material and form the basis for the designations. Specifically, the State Department material refers to

(1) the 1994 shootings at the al-Ibrahimi Mosque in Hebron; (2) the April 2002 planting of a bomb near a girls' school and hospital; (3) the March 2002 detonation of a bomb at a boys' school and planting of three other bombs; (4) the shootings of Palestinians in the West Bank that left seven dead and nineteen injured; (5) several shooting murders in 1993 in the West Bank; and (6) assorted demonstrations, alleged threats, door-to-door campaigning, and similar activities.

In attempting to lay the responsibility of the above actual or alleged terrorist activities on Petitioners, the State Department proffered approximately twenty records (the remainder were classified records not provided or were the designation notices themselves). Petitioners will use these same records to show that the State Department's material is contradictory, inaccurate, and vague as to each of the alleged acts of terror, as well as to the proposition that Petitioners are aliases of each other and other organizations.

Petitioners proffer two records. Verbal responses from Petitioners will be denoted as Petitioners "state", or "say", or similar words. Documents denoted as "Summary of the Redacted Version (hereinafter "Summary") or "KAH03" refers to the State Department's documents.

Petitioners provide the following documents in support of their responses:

Exhibit 1- "Commission Of Inquiry Into the Massacre At The Tomb Of The Patriarchs In Hebron. Excerpts From The Report". [Israeli] Government Press Office, Jerusalem, 5754-1994, pages 1-3.

Exhibit 2- "Kahane.org. Statement of Principles and Philosophy". From the website of Kahane.org accessed February 23, 2004.

## **RESPONSES**

A. (1) Petitioners were not involved with, responsible for, accused of, or in any way connected to the February 1994 massacre at the Tomb of the Patriarchs in Hebron.

Following the February 1994 massacre at the Tomb of the Patriarchs in Hebron, the Israeli government appointed a commission of inquiry, known as the "Shamgar Commission" to investigate all aspects of the incident (please see Exhibit 1, page 1). The President of the Supreme Court, Justice Meir Shamgar, served as Chairman of the Commission. Other members included two more judges, a professor, and a lieutenant general. The Commission held 31 sessions and heard evidence from 106 witnesses (Id.).

The commission concluded beyond any doubt that the gunman, Dr. Baruch Goldstein, acted alone and alone was responsible: "Dr. Baruch Goldstein bears direct responsibility for the massacre because the evidence unequivocally indicates that he carried it out" (Id., page 2). No one else was involved or knew what was to transpire: We were not presented with credible proof that he was helped, while carrying out the

killing or prior to that time, by another individual acting as an accomplice, nor was it proven to us that he had secret partners" (Id., pages 2-3). Furthermore, he acted independently and without anyone else's knowledge: "The complete secrecy and the decisiveness of his **independent** act also match the character and behavior of this assailant...." (Id., page 3- holding added).

In "Patterns of Global Terrorism 2002", the State Department writes that the Israeli Government declared both Kach and Kahane Chai to be terrorist organizations under Israeli law because members of Kach or Kahane Chai allegedly made **statements** supportive of Goldstein's actions and **verbally** attacked the Israeli Government (KAH03-1, page 111. Also see Introduction to the "Summary", page 1). Yet the State Department's documents fail to include any mention of the Shamgar Commission.

In KAH03-1 (page 111), the State Department adds that Goldstein was affiliated with Kach. But again, the State Department fails to point out, as the Shamgar Commission did, that Goldstein was a doctor and reserve officer in the Israeli Defense Force (IDF) (Exhibit 1, page 3). That when he committed the killings he was dressed in the IDF uniform and bearing the insignia of his rank (Id.). Yet of course the State Department would never allege that Goldstein committed the act on behalf of the IDF because he was affiliated with the IDF. Furthermore, based on belief and information, even if Goldstein was affiliated with Kach, Goldstein never made any statements that he was acting on behalf of anyone or any organization. Thus the findings of the Shamgar Commission that Goldstein acted alone, had no accomplices, and acted independently.

(2) Petitioners were not involved with or responsible for the April 2002 attempted planting of a bomb near a girls' school and hospital in East Jerusalem. State Department's documents are contradictory, vague and fail to substantiate any complicity.

The State Department attempts to hold Petitioners responsible for the attempted April 2002 bombing of a girls' school on the basis of the arrest of Noam Federman, allegedly affiliated with Kach. But each document the State Department proffered in support is either so vague or contradictory that these same documents completely undo the State Department's case.

First of all, the documents proffered cannot even agree whether Noam Federman, arrested two weeks after the incident, was affiliated with Kach at the time of the incident. Supposedly, Mr. Federman was arrested because he was contacted about weapons by those who planted the bomb and suspected of illegal weapons possession (KAH03-9, page 1). According to the Center for Defense Information (CDI) report, dated October 1, 2002, [Federman-not actually named] was a "former Kach spokesman" (KAH03-2, page 2). In fact the CDI report makes clear that Federman was not connected to Petitioners but some other unidentified group: "...but [Federman] was found to have ties with another extremist group **unaffiliated with Kach or Kahane Chai.**" (Id., page 2, holding added). A May 16, 2002, Foreign Broadcast Information Service (FBIS) report also reported that Noam Federman was a "former Kach activist" (KAH03-12, page 2). Yet the Summary (page 5) and a May 15, 2002 cable from the U.S. Consulate Jerusalem (KAH03-9, page

1) both describe Noam Federman as a "Kach leader" and another FBIS report dated May 14, 2002 describes Federman as a "Kach activist" (KAH03-13, page 1).

Though the State Department's documents are contradictory as to whether Federman was associated with Kach at the time of the attempted bombing, the arrest of Federman is the only link the State Department proffers as to the Petitioners' involvement. None of the other arrestees were identified as associated with Petitioners. A U.S. Consulate Jerusalem cable, dated May 3, 2002 (KAH03-10) and the Summary (page 5) both state that "two members of a suspected Jewish terror cell" were arrested while attempting to plant a car bomb (KAH03-10). The Summary adds that one of the people arrested lived in the same community as Federman. There is no mention of what the Jewish Terror Cell is called. But in an April 11, 2003 FBIS report, the organization whose members allegedly planted the bomb was identified as the "Bat Ayin" terror cell (KAH03-14, page 1). This group is not affiliated with any of the Petitioners and the State Department does not list the organization as being aliases of Petitioners.

A cable from the Consulate on May 15, 2002, reported the arrest of Menashe Levinger, as well as Federman; as with Federman, Levinger was suspected of being contacted about weapons by the two that attempted to plant the bomb (KAH03-9). The cable reports that Mr. Levinger founded the "Jewish Settlement in Hebron" and "the Gush Emunim Movement" (Id.). Neither movement is affiliated with any of the Petitioners and the State Department does not list either organization as being aliases of Petitioners. Similarly, documents KAH03-12, 13, and 14 do not mention anyone else having any connection to Petitioners, but Federman.

In the end, Federman was never charged with any crime. One indictment of someone else was brought about a year after the alleged planting of the bomb, according to an FBIS report dated April 11, 2003 (KAH03-14, page 1). Yet the documents provided by the State Department do not allege, or even mention that the person indicted, Tzuriel Amiur, was affiliated with any of the Petitioners. Furthermore, the FBIS reports that with the indictment the case was closed, "investigators have virtually 'given up'" (Id., page 2). Thus the State Department has failed to substantially support that Petitioners were involved in an alleged terror attack.

(3) Petitioners were not involved with or responsible for the March 2002 detonation of a bomb at a boys' school or planting of three other bombs; State Department's documents are vague and fail to substantiate any complicity.

Other than mentioning that there were similar characteristics to the April 29, 2002 attempted planting of a bomb near the girls' school, the State Department offers no evidence that Petitioners were involved with the March 2002 detonation of a bomb at a boy's school or planting of three other bombs:

According to the U.S. Consulate Jerusalem, the police were trying to determine whether there was any connection between the suspects in the April 29th attempted bombing and the detonation of a bomb on March 5th at a boy's school in a Palestinian

neighborhood (KAH03-10). In fact, a group not connected to any of the Petitioners, "A presumably Jewish group calling itself the 'Angels Of The Oppressed' claimed responsibility for that attack." (Id.). Said organization is unaffiliated with any of the Petitioners and the State Department does not list the organization as being an alias of Petitioners. Concerning the planting of three other bombs, the Summary (page 5) and an FBIS report dated April 11, 2003 reported that the planting of three other bombs have similar characteristics to the attempted planting of the bomb on April 29th (KAH03-14).

(4) Petitioners were not involved with or responsible for the shootings of Palestinians in the West Bank that left seven dead and nineteen injured: State Department's documents are vague and fail to substantiate any complicity.

Other than mentioning that "Jewish extremists" were suspected of fatal shootings of Palestinians in Ramallah and Hebron, the State Department offers no evidence that Petitioners or even Jews were involved. According to the Summary (page 5-bolding added), "In the last two years, seven Palestinians have been killed and 19 wounded in shooting attacks in the Ramallah and Hebron areas **believed** to have been carried out by Jewish extremists. Israeli police are **attempting to determine** if the same organization which carried out the April 29, 2002 attack is also responsible for the other attacks." Nothing more is added by documents KAH03-10 and 14.

(5) Petitioners deny several shooting murders of Palestinians in the West Bank in the early 1990's; State Department's documents fail to substantiate the allegations.

One allegation that is not repeated throughout the State Department material is that Petitioners took responsibility for murdering several Palestinians in the West Bank in 1993. The allegation is found in the Summary (page 1) and in one sentence in one document, the CDI report of October 1, 2002 (KAH03-2, page 1). Petitioners deny committing any shooting murders. Petitioners do not engage in nor advocate terror. Petitioners are strictly advocates of certain ideological views based in Judaism.

(6) Activities such as demonstrations, door-to-door campaigning, and similar activities are protected by the First Amendment; State Department's documents are vague and fail to substantiate that Petitioners engaged in threats.

The Summary (pages 6-8), and the State Department's "Patterns of Global Terrorism 2002" (KAH03-1, pages 56, 111, and 112), which itself is a summary, report that Petitioners engaged in protests, threats, incitement and related activities. But once the actual reports are scrutinized it is clear that most of the activity mentioned is protected free speech. As to the alleged threats, the State Department makes vague allegations that Petitioners are responsible or that any illegalities happened at all.

An FBIS report dated May 28, 2003, states "a group of extreme right-wing activists has decided to launch a 'personal incitement campaign' against Prime Minister Sharon." (KAH03-17, page 1). The report then details the activities planned: "mass demonstration in Jerusalem" .. sending "people door to door to convince Israelis of the

rightness of the settlers' cause" (Id., page 1).... raising "placards bearing the inscription 'Sharon is a Traitor' and handing "out pictures of Sharon clad in a keffiyeh." (Id., pages 1-2). A "radical right-wing" activist even said that in an attempted evacuation of his settlement he could not rule out the use of firearms being used, but that most likely it would not happen: "I'm not saying that weapons will be aimed against soldiers and policemen, but I do no longer rule out such a possibility." (Id., page 2).

The report further states that even members of the Likud planned on protesting Sharon (Id. page 2). At a rally in Haifa a demonstrator wore a T-shirt that said, "Ari'el Sharon is Destroying the Country" (Id.). Other demonstrators put up posters with similar sentiments. This counsel feels further comment is unnecessary.

A July 12, 2002 FBIS report states that authorities are investigating a Kakh summer camp for inciting murder of foreign Minister Shim'on Peres (KAH03-4). Activities include visiting the grave of Barukh Goldstein and conducting "a mock trial of Peres for his part in the Oslo Accords" (Id.). Also see KAH03-5, another FBIS report on the summer camp. -No information is provided about the results of the investigation. Certainly not only is a "mock trial" protected activity but it seems to be a creative and intelligent way to conduit discontent.

In a November 3, 2002 report, the FBIS states that Kakh activists have been demonstrating outside a Shin Bet officer's home to protest the detention conditions of Bat Ayin members who were arrested for attempting to blow up a school (KAH03-20, page 1). Family members of the Bat Ayin detainees distributed a letter with "harsh accusations against the senior officer." (Id.). The wife of the officer published her own open letter telling her neighbors that her family felt threatened and harassed. An alleged Kakh spokesman said he empathized with the wife but the protests were continuing (Id., page 2). This counsel believes that the whole purpose of a protest in a free country is to make people feel uncomfortable to bring about change.

An FBIS report on Kahane.org and newkach.org describes both websites as "vehemently anti-Muslim and anti-Arab." (KAH03-8, page 1). Petitioner Kahane.org cannot speak of newkach.org, but denies the description of itself as stated. As Kahane.org makes clear in its principles and philosophy, non-Jews are free to live in Israel, "...with full social, economic and civil rights...." (Exhibit 2, page 2, item 6). Yet non-Jews are not allowed to change the character of the state and its citizens. Thus Arabs that commit terrorist attacks must leave Israel (Id. Also see KAH03-7, page 1).

The FBIS report also states that in December 2001, Kahane.org had an online poll asking people whether **Israel** should kill only Arafat or his "henchmen" as well (KAH03-8). Kahane.org cannot presently answer if that was so. But if it was it certainly was legitimate free speech. Counsel believes that, as many rational, non-violent people in this country called for our administration to kill Saddam Hussein, many rational people call for Israel to kill Arafat. Arafat has conducted and been behind the horrendous murder of hundreds of innocent people. A free people have the right to voice their opinion that someone like that should be killed.

An FBIS report dated July 1, 2002 states that Israeli police received death threats demanding they drop their investigation of a "Jewish terrorist squad" (KAH03-21). The police detained five suspects. Petitioners were not mentioned in this report. Thus, as to the above allegations, the administrative record lacks substantial support that Petitioners engaged in terrorist acts.

B. Petitioners are not aliases of each other or any of the other organizations listed as aliases of Petitioners; the administrative lacks substantial support and is contradictory.

The State Department's own records refute their allegation that Petitioners are aliases of each other or any of the other organizations listed as aliases. In the very first line of the Summary, page 1, the State Department said that Kahane Chai was the "successor to the original Kach organization..." That Rabbi Meir Kahane founded Kach in 1974, but after he was murdered in 1990 Kach split into two branches with the second branch calling itself Kahane Chai (Id.). Yet the Summary then says Rabbi Kahane's son, Binyamin Ze'ev Kahane, created Kahane Chai on December 22, 1990 (Id.). The question is then, if an organization is one and the same, why would that organization then have to found itself again sixteen years later.

Furthermore the Secretary of State treated Kach and Kahane Chai as separate organizations in 1997 and in 1999 (Id.). Not until 2001 did the Secretary designate them as a single organization (Id., pages 1-2). As the Secretary had the administrative records for each group, one would think the Secretary would not have needed four years to discover that the groups were one and the same. Petitioners submit that it seems the State Department acted arbitrarily in 2001.

According to the FBI affidavit of July 31, 2003, each group differed as to leadership and attitude (KAH03-30). Kach was lead by Baruch Marzel and its members mainly resided in specific Israeli settlements (Id., page 5). Kahane Chai was ultimately lead by Michael Guzofsky and others in the U.S., Israel, and elsewhere (Id., page 6). More so, the members of Kahane Chai believed that Kach "was not taking a strong enough stand against the Arabs." (Id.) In addition, the great majority of the documents proffered above clearly referred to Kach or "Kach", not Kahane Chai. Petitioners submit that the administrative record lacks substantial support for the proposition that Petitioners are aliases of one another.

The State Department then looked at the similarities of two of the alias websites to show that the websites and Kach, Kahane Chai, and all the rest of the aliases are one and the same. In an FBIS memorandum of 2002, the author described that the websites newkach.org and Kahane.org share and promote similar ideologies and share many of the same links (KAH03-8). Petitioners submit this proves little. Many organizations share similar goals and ideologies. For instance, a lawyer may belong to the District of Columbia and Maryland Bars. Both promote the integrity of the profession, lend support to its members, and serve the public. Yet no one would claim that the Bars were one and the same and aliases of each other.

Furthermore, many websites share intended and unintended links. Though Kahane.org links to other sites with similar ideologies, Kahane.org also links to HinduUnity.com, Israelfaxx.com, Jpost and Haaretz, among many others (KAH03-7, page 2). Of course these organizations are not one and the same. The State Department did not provide sample pages from newkach.org., but Petitioners have no grounds to doubt the links mentioned.

Finally, the author presents information that documents the operational and ownership differences between the two websites. Kahane.org seeks donations and sells various merchandise to raise funds (KAH03-8, page 2), while newkach.org seeks the donation of volunteer web services, as opposed to monetary donations (Id.). Kahane.org is registered to Yeshivat HaRav Meir, in Brooklyn, and lists Michael Guzofsky as the billing contact (Id.). Newkach.org is registered to NKM in Montreal and lists Eft-aim Hershkovits as the contact (Id.). These differences alone show that the websites are not aliases of each other or Kach or Kahane Chai.

C. The FBI-Classified declaration of July 31, 2003, fails to substantiate the record in that it is an overview of the documents submitted.

Kenneth R. Piernick is the Acting Section Chief of the Counterterrorism Division's International Terrorism Operations Section II at FBI Headquarters in Washington, D.C. (KAH03-30, page 1). In that capacity, as detailed in his affidavit of July 31, 2003 Mr. Piernick essentially oversees the FBI's international terrorism program and analyzes data collected (Id., pages 1-2).

A number of points indicate that Mr. Piernick's affidavit is a general overview of the material presented. For instance, the affidavit states that "...Israel arrested several members of KACH, including well-known KACH activist, Noam Federman..." for the attempted planting of the bomb at the girls' school (Id., page 17, item No. 31). Yet, as analyzed above, the documents contradict each other as to whether Federman was affiliated with Kach at the time of the incident. More important, no other members of Kach were arrested.

Item No. 30 states that "...Marzel was prevented from running in the Israeli elections in December of 2002 due to his involvement in the KACH movement." (Id.). Petitioner states that this is not true. In fact Marzel ran for Knesset on the Herut list, though he did not secure enough votes for a seat.

Item No. 18 (U), the affidavit states that "Guzofsky was arrested (though never convicted) in Israel in 1983 for participating in a machine gun attack on an Arab bus." (Id., page 10). But Petitioner states that Guzofsky was never charged in the attack, or even arrested. But Guzofsky was charged with arson, but acquitted.

Item No. 12 (U) states that Rabbi Kahane formed the Kach Part to ..."facilitate the expulsion or **eradication** of all Arabs from greater Israel." (Id., page 5-bolding added). Item No. 14 (U) states that Kahane Chai espouses violence against anyone who

supports trading land for peace and that these views have been widely espoused by Kahane Chai and Kach leaders in speeches and on affiliated web sites (Id., page 6). A quick review of Rabbi Kahane's "Principles and Philosophy" on Kahane.org's website shows this to be patently false (Exhibit 2).

Neither Rabbi Kahane nor Petitioners believe in any violence other than self defense. Neither believe in or advocate "eradication" of Arabs (Id., page 2, item No. 6). This is against Judaism and the ideals of Petitioners. In fact, Petitioners believe that Arabs who abide by the laws of Israel and do not try to change its nature are welcome to stay (Id.). But it is the "hostile Arabs" who must be relocated from Israel (Id.). This notion is the same any civilized society adheres to. Civilized societies remove dangerous and hostile people from their community.

Much of the affidavit concerns Michael Guzofsky. As he is the target of a grand jury investigation, he has been advised not to make statements. But on belief and knowledge, Mr. Guzofsky never said the statement attributed to him espousing violence.

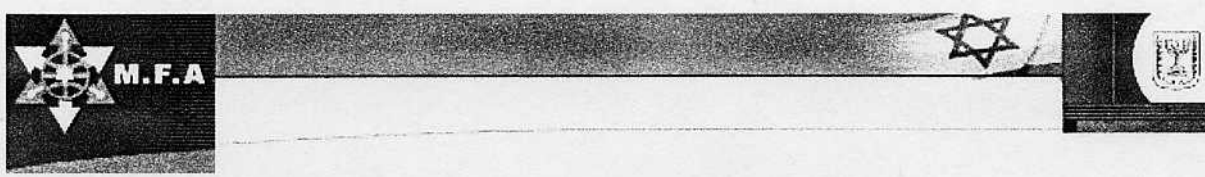
**D. Petitioners are advocacy groups which should be removed from the FTP list.**

Though Petitioners espouse views not held by all and reviled by some, they are merely non-violent, ideological views. As such Petitioners are not terrorist organizations and should be removed from the FTO list. An FBIS report of January 3, 2003 quotes the late Professor Ehud Sprinzak, dean of the Lauder School of Government, Diplomacy, and Strategy at the Interdisciplinary Center in Herzliyya (KAH03-26, page 2-3). Professor Sprinzak made clear he vehemently opposed the ideas of Rabbi Kahane (Id., page 3).

Yet the Professor felt that Kach was not a terrorist, but an advocacy group whose views should be heard in Israel (Id., page 2). In fact the Professor felt that the continued outlawing of the group tainted Israel's democracy (Id., page 3): "I should like to add my support to the move to abolish classifying the Kach movement as a terrorist organization and to make it into an ideological political movement permitted to operate in accordance with **Israeli** custom." (Id., page 2). The same principle should be applied by the Secretary, and if not him then the Court, to revoke Petitioners' designations.

\* typographical and grammatical corrections were made.

# **EXHIBIT 1**



QUICK NAV  
 ADD QUICKLINK

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Facts About Israel  
 Foreign Relations  
 Israel at 50 & Beyond  
 Government  
 Law  
 Personalities  
 Peace Process  
 Culture  
 Economy  
 Religion

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HOME  
 PERSONALIZE  
 MAP  
 INDEX  
 FEEDBACK  
 INFO/HELP

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Quicksearch

Powersearch  
 SiteSearch

## COMMISSION OF INQUIRY INTO THE MASSACRE AT THE TOMB OF THE PATRIARCHS IN HEBRON

### EXCERPTS FROM THE REPORT

The excerpts from the Report were translated by the Government Press Office. They include the Introduction (chapter 1); the Conclusions

(chapter 8); and the Recommendations (chapter 9) of the official Report of the Commission of Inquiry written originally in Hebrew.

This is not an official version of the Report.

Government Press Office

Jerusalem, 5754-1994

Chapter 1. Introduction

Following the massacre in the Tomb of the Patriarchs in Hebron which occurred on 14 Adar, 5754 - 25.2.94, the Government decided on 16 Adar, 5754 - 27.2.94 to appoint a Commission of Inquiry. On 17 Adar, 5754 - 28.2.94, after consultation with the President of the Supreme Court, it was decided that the Commission would consist of five members. On 17 Adar, 5754 - 28.2.94, the President of the Supreme Court, Justice Meir Shamgar, decided that he would serve as Chairman of the Commission, and that its other members would be: Justice Eliezer Goldberg, Judge Abed el-Rahman Zouabi, Professor Menachem Ya'ari and Lieutenant General (res.) Moshe Levy. The Commission began hearing evidence on 25 Adar, 5754 - 8.3.94. Judge Alon Gillon was appointed as the Commission's Coordinator. In accordance with section 13 of the Commission of Inquiry Law, 5729 - 1969, the Chairman of the Commission appointed investigators to collect information; Attorney 'Michael Shaked of the Attorney General's office served as the coordinator of the investigators. Attorney Dafna Beinwall of the Attorney General's office and Deputy Commander Anton Iyov, Inspector Armand Edri and Inspector Daniel Israel of the Israel Police worked with him.

The Commission heard most of the testimony in sessions that were open to the public.

The Commission held 31 sessions and heard evidence from 106 witnesses, some of them at the Commission's initiative and some at their own request. The complete or partial testimony of 16 witnesses was heard behind closed doors. During one of the first days of its activities, the Commission engaged in a thorough and detailed examination of the Tomb of the Patriarchs and the surrounding area.

The Commission made a public announcement requesting that anyone who wished to testify before the Commission or present it with documents or

exhibits, make their intention known to it in writing, for that purpose. Each of the 167 requests was discussed and the appropriate procedure to be followed concerning it was determined.

The Commission received 1,140 exhibits, 37 of them written testimony collected by the investigators and the rest orders, documents, files, books, findings from the scene of the crime, expert opinions, photographs, etc. All of this material has been catalogued in files according to a filing number which appears in the full contents.

After the hearing of testimony was concluded, the Commission considered whether it was required to provide notices in accordance with section 15 of the Commission of Inquiry Law, 5729 - 1969. After deciding that it was not required to do so, and that the material which was before it, was sufficient to allow the findings to be summarized, conclusions to be drawn and recommendations made, this report was prepared.

The Commission wishes to thank those who testified before it, as well as the government authorities who provided it with all of the information which it requested.

It is also important to note the outstanding and extremely valuable assistance that the Commission received from the investigators mentioned above, led by Attorney Michael Shaked and Attorney Dafna Beinwall. They should be commended for their efforts. Our thanks also go to Judge Gillon, the Commission's Coordinator who worked diligently on all of the organizational arrangements; Ms. Dina Zohari, who typed the report and Mr. Yaakov Hasson who typeset and proofread the report.

Jerusalem, Tamuz 1994 June 1994

## Chapter 8. Conclusions

### 1. Order of Contents

The Commission's conclusions will primarily follow the order in which the findings were presented, in addition to an overview of the different issues which it discussed. Therefore, we will refrain from repeating all of the reasoning for our conclusions which was covered in earlier chapters. The conclusions will be presented in the following order: responsibility for the killings and whether the assailant had an accomplice; deployment of the security forces and the actions of those directly involved in overseeing the Tomb of the Patriarchs; medical treatment of the injured; Border Police and Police actions; initial assessment of the situation; carrying weapons inside the Tomb; procedures for prayer services; regulations governing opening fire; application of the law.

The recommendations will be based on the lessons drawn from our conclusions presented below.

### 2. Responsibility for the Killing and Whether the Assailant Had an Accomplice

(a) Dr. Baruch Goldstein bears direct responsibility for the massacre because the evidence unequivocally indicates that he carried it out. Furthermore, all stages of the event, including his preparations and behavior on the morning of February 25, 1994, as well as both general, and specifically ideological conversations which he conducted with others, such as the arguments with Mr. Meir Lapid (exhibit 1088), and an interview with a foreign correspondent early in February 1994 (exhibit 1092), indicate that his actions were premeditated.

The evidence presented to us indicates that he acted alone. We were not presented with credible proof that he was helped, while carrying out the killing or prior to that time, by another individual acting as an accomplice, nor was it

proven to us that he had secret partners. According to the evidence before us, his wife also was not aware of the matter. The complete secrecy and the decisiveness of his independent act also match the character and behavior of this assailant, as it emerged from the evidence before us, the gist of which appears in Chapter 2.4 [in the full Report, in Hebrew]. In order to achieve his goal, he took full advantage of the prestige and trust he had acquired while serving as a doctor and reserve officer. His appearance at the Tomb, in uniform, bearing the insignia of his rank, created an impression designed to remove all obstacles from his path. Most of those present were also used to seeing Goldstein occasionally when he came for early morning prayer services. Consequently, his presence at the Tomb did not raise any suspicion or concern, nor draw any particular notice. In that connection, it must be emphasized that those guarding the Tomb did not receive any warning regarding an expected attack by Jews against Moslem worshipers at the Tomb. In contrast to this, warnings were issued regarding an expected attack by Hamas following the distribution of its leaflets in Hebron.

(b) As mentioned, we have no evidence before us indicating the existence of an accomplice who knowingly provided backing or cover for Goldstein's actions in the Tomb.

Mention was made of an anonymous individual, carrying a Glilon rifle, whom the two soldiers on guard duty next to the East Gate, Kobi and Niv, testified to having seen, as he approached the Tomb via the Jawalya corridor. According to them, the anonymous individual arrived after Goldstein and before Eli Ganon, the driver of the "garbage truck". Since he was an unfamiliar face, the suspicion arose in retrospect, that this may have been Goldstein's accomplice, who carried a Glilon for him or perhaps assisted him in some other way. However, other than these two soldiers, the questioning of the other witnesses did not reveal that they saw an individual carrying a weapon as Kobi and Niv had described: the individual was not seen by those guarding the main gate, by Lieut. Ravivi, or by anyone else who was at the Tomb that morning, including the waqf guards - who know most of the members of the early morning prayer group or at least recognize their faces - and those praying in the Abraham Hall. Furthermore, the statement that perhaps the person described above was seen sometime close to the arrival of Eli Ganon at the Tomb and after Goldstein's arrival, contradicts the information given that Eli Ganon arrived around 4:45, while Goldstein only arrived at 5:20 in the Abraham Hall. After the massacre, a list of the names of all those present in the Abraham Hall was made; all were known to the military personnel, and all testified before us and none of them was carrying either a Glilon or an M-16 rifle on that morning.

Neither did anyone see the person described above as he left the Tomb; none of the Moslem worshipers testified that there was a Jewish worshiper carrying an M-16 rifle (assuming that he had handed the Glilon to Goldstein and received the M-16) in the stream of those exiting via the Jawalya corridor. In contrast, there were those who saw a worshiper from the early morning prayer service (Shaul Kandy) who entered the Tomb, on his way from the rest room, while the stream of Moslem worshipers was rushing forth to get outside. No one found an M-16 rifle in the Tomb, but had it been replaced with Goldstein's Glilon and not been taken out of the Tomb, it would have had to turn up inside. As was mentioned, the evidence showed that the reports communicated via walkie-talkie regarding an M-16 and a pistol which were supposed to be next to Goldstein's body and which disappeared, ostensibly, were also based on the statements by Kobi and Niv in which Goldstein, in their opinion, was carrying an M-16 rifle and not a Glilon.

The point is that no one saw an unknown individual, as described above, engaged in any act which can be understood as aiding Goldstein, nor were any shell casings found to indicate the possibility that shots were fired from an additional weapon in the Isaac Hall. On the steps outside the Tomb next to the main gate, a single shell casing was found and mistakenly put in with the shell casings gathered from the Isaac Hall. In Chapter 2 [in the full Report, in Hebrew] above, we discussed the reasons for the mixing of this casing with the other casings in one bag. Indeed, all of the casings gathered were identified by

# **EXHIBIT 2**



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### Kahane.org - Principles and Philosophy

The Kahane movement continues to spread the authentic Jewish Idea through the Kahane.org website, radio and email transmissions, through our publications and through speeches given by our spokespeople.

Here you will find an abridged version of the key principles and philosophy of Kahane.org:

#### 1- Chosen people - Chosen land - Chosen destiny

The Jewish nation is a special, chosen nation. Indeed, a chosen nation, given a chosen land with a chosen destiny.

#### 2- Torah Makes Jews Special

The acceptance of the Torah by our ancestors and by the entire Jewish nation at Sinai is what separates Jews from all of the others who rejected G-d's Torah. Our strength, success and continuity as a distinct nation is directly linked to the level of our connection and adherence to Torah.

#### 3- Love of Jews - Don't Stand Idly By...

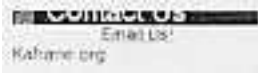
Love of Israel and fellow Jews is the most fundamental principle of Torah. All Jews, regardless of racial features, views, appearance or geographical location are brothers and sisters. Their joy is our joy. Their pain is our pain. Their problems are ours to be resolved as if they were our own. The Biblical verse, "Don't stand Idly by your brother's blood", in Leviticus obligates all Jews to come to the rescue of a fellow Jew by any and all means necessary.

This can manifest itself on the local and personal level of doing acts of kindness to fellow Jews, or to saving a drowning Jew in the sea and this could be exhibited on the national level by taking action to save a Jewish hostage/prisoner or a nation of oppressed Jews, or fighting for the safety and security of Jews in Israel, who have been targeted because they are Jews.

#### 4- Persecution of Jews is a Degradation of G-d's name!

Oppression and persecution of Jews is a desecration and degradation to the name of the Almighty, as Rashi, the famous commentator states in Yeheskel, Chapter 36. Most of the prayers in the daily prayer book call upon G-d to redeem the Jewish people and return all Jews to their land and rebuild the Holy Temple.. Not because we are worthy, but for G-d's name sake, that has been defiled by the Jewish presence and persecution in the Exile.. Why should the Gentiles say there is no G-d of Israel or that G-d is too weak or unable to save His chosen people?"

On the other hand, Jewish power and victory is a sanctification of G-d's name. The famous Michilta states in beshalach...When G-d pays back the nations (with revenge) His name is elevated and sanctified in this world. Indeed, this is the underlining theme throughout the first books in Exodus that explain the plagues against the Egyptians and the redemption of the Jews.



When Abraham went out to battle the mightiest empires in the world to rescue his nephew Lot, who in the same sense, represented G-d because of his likeness and closeness to Abraham, Abraham said, "I will go, and I will fall to sanctify G-d's name. (Midrash Rabah)

### **5- Faith and Barzel - Strength**

Faith in G-d, combined with Jewish action is the best prescription for victory and redemption. Faith in the Gentiles and fear of their response will only lead to defeat and agony. David went out to battle Goliath with only a slingshot, just as Abraham challenged the mightiest armies in the world, with only 318 unarmed slaves. The Jewish way is to have faith and to do one's utmost with the best weapons at their disposal. In both cases, the Jews of faith and of action were victorious. The Bible and Jewish history is rich with thousands of Jewish heroes in the mold of Abraham and King David, who held the Torah in one hand and a sword in the other, leading the Jewish people to victory.

### **6- Israel Belongs To The Jews**

Israel is the exclusive homeland of the Jews. Non-Jews can only live in the Jewish state if they fully accept Jewish sovereignty and the basic Torah conditions of "Ger Toshah" - a resident stranger, with full social, economic and civil rights, but without national rights or the ability to change the Jewish character of the state and its citizens. This is why the hostile Arabs, must go!

### **7- Exile Is A Curse = Immigration To Israel Is A Must!**

As the Talmud in Tract. Sukkot states: The Exile is a curse that G-d was sorry he created. The Jewish existence in the Exile always comes to a violent end. America will be no different, G-d forbid. The future for all Jews is in Israel. Ultimately, the Exile is phased out to usher in the coming of Moshiach and the engathering of the Jews from the four corners of the earth. The beginning of this process has already happened, with millions of Jews returning to Israel from Russia, Ethiopia, America, Western Europe, South America, Yemen, Iraq, etc. Indeed, the time to come home is now!

Let us all Return To Our Roots and To Our Land, with faith and with pride. Naturally, those who remain should be vigilant in their own physical and spiritual defense.

### **8- No Surrender of Jewish Land to Arabs**

Israel is not a piece of real estate that can be sold to the highest bidder or surrendered to the most violent terrorist. It is the Biblical and Historic homeland of all Jews. No Jew has the right to relinquish that G-d given birthright that belongs to all Jews and to all future generations of Jews.

This law is only highlighted and accented all the more in view of the fraudulent "peace" that has been offered to Israel, and in view of the international pressure on Israel to betray their covenant with the G-d of Israel, who promised us the land and peace and security if only we follow His statutes. In addition to the clear violation of Torah by surrendering

Jewish Land, and in addition to the clear additional security risks surrendering the highground entails, it is also the ultimate desecration to G-d's name to surrender the land G-d promised us as a result of fear of the Gentile or pressure in Washington. Who is stronger, the G-d of Israel or the President of America?

### **9 - The Temple Mount Is Jewish**

The Temple Mount is the holiest site in Judaism. It was there that the Temple stood. The Temple was the spiritual, judicial and political center of the Jewish nation. It is the heart of Israel. All Jews, anywhere in the world, face Zion and direct all of their prayers and soul to the Temple Mount, with the hope and the aspiration that we will soon all be reunited in Jerusalem, with the Temple rebuilt. The existence of a mosque that serves as the center for Arab incitement against Jews and the G-d of Israel is a desecration which must be reversed. The discrimination against Jews who wish to visit and pray on the mount is a further desecration which must be erased.

### **10 - Religious Ritual and Government in Israel**

While we work to bring about a complete revamping of the Israeli political, Judicial and Educational systems to be based upon Jewish law and values, on the personal level, no Jew will be forced to change their lifestyle.

Any public manifestation of the state or government will maintain a wholesome Jewish character, in the full sense of the word, without any self-hating embarrassment or compromise. The educational system will begin to include Torah education, so that every Jewish child can be taught the beauty of their heritage, rather than anti-Jewish values that are promoted in many Israeli institutions.

Rather than force anyone to be adherent to Torah, Rabbi Meir Kahane always said he would introduce Judaism to those who were never exposed to Torah so that, for the first time, they could make up their own mind.

However, the code of law in the court-system would no longer favor secular law before Torah law. Now, when there is a contradiction between the two, the secular anti-religious judges who control Israel, will always prefer their personal view and reject G-d's Torah view. New judges with respect for Torah, Jewish history and Jewish values would now replace the present anti-Torah judges in the High Court of Israel.

Rabbi Kahane was always highly offended by people who would ask him if he would discriminate against secular Jews, when he would achieve a position of power. Some would ask, "After you are done throwing out the Arabs will you get to the secular Jews? He would answer, "I risked my life and freedom to save Soviet Jewry and to fight for their right to emigrate to Israel. They were secular Jews. And I fought for them to come to Israel, because they were Jews. All Jews have a right to Israel. We must love all Jews like brothers."

Most of Rabbi Kahane's supporters were secular Jews. They understood that Rabbi Kahane's way was the only way to bring safety, security and salvation to Israel.

Stay tuned to our [www.kahane.org](http://www.kahane.org) website to keep updated on the pulse of Kahane.org views and commentary on current issues and events and to find out more about Kahane programs and activities, around the world.