

0290.02.0638

"Kafr Kassem and Eichmann Trial", a Newspaper Clipping from the Jerusalem Post, 1950-1960

Published between 1950 and 1960, this newspaper clipping from the Jerusalem Post is a letter penned by Sam Salem under the title "Kafr Kassem and Eichmann Trial." In his letter, Salem wonders how the Israeli Attorney-General can condemn Eichmann's excuse who pleaded that he was merely following the orders of his Nazi superiors while approving that same excuse to justify the crimes committed at Kafr Qasim.

Kafr Kassem and Eichmann Trial

Editor, The Jerusalem Post

Sir, — World opinion will undoubtedly sympathize with Israel Attorney-General Gideon Hausner in scolding Adolf Eichmann's feeble plea that "orders by his Nazi superiors inexorably bound him to ship Jews to death camps" (reported in "The New York Times" by Homer Bigart on August 10, 1961). Common decency alone would not allow Eichmann to hide behind such a flimsy excuse for his role in the crime of the ages.

Yet one must question Mr. Hausner's sincerity and wisdom when he tried to support his argument by citing the case of the Israel border police who were convicted in Israel courts for the massacre of 43 Arab villagers in Kafr Kassem on October 29, 1956. In a sense, he gave implicit aid and comfort to the Eichmann defence.

As reported in "The New York Times," Mr. Hausner pointed out that the judges at the Kafr Kassem trial rejected the pleas of the accused Israel soldiers to the effect that the "orders to shoot" had come from higher echelons. But Mr. Hausner failed to mention three aspects of the Kafr Kassem story which shed an entirely new light on the question:

First, the sentences imposed on the Israel soldiers were very light. One officer was given 17 years and an-

other 15 years. Five non-commissioned constables were sentenced to 7 years each, and three others were acquitted.

Second, all the offenders were set free, by Presidential amnesty, slightly more than a year after the sentencing. These pardons were strongly criticized by many Israelis, and loud protests were lodged by various newspapers and journals.

Third, although Judge Halevi described the act as "deliberate murder," and al-

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though he noted that a life sentence was mandatory in Israel for such a crime, he went on to qualify his earlier judgment that the laws of humanity transcended the orders of a superior officer. According to "The New York Times" report of October 17, 1958, Judge Halevi explained that "the defendants had not initiated the orders that led later to the massacre."

A paradox is posed by these considerations. Since Eichmann did not actually initiate the orders which specified mass murder as a "final solution to the Jewish problem," his defence can now cite the Kafr Kassem case as a precedent for giving Eichmann a light jail term and for releasing him after a nominal confinement.

Such a development, of course, would be ridiculous. But the point is — as certainly Mr. Hausner must know — that Israel's questionable handling of the Kafr Kassem trial hardly dignifies her moral position and tends to weaken her legal case against Eichmann.

Perhaps Mr. Hausner's dramatic argument was convincing to casual readers of the press outside of Israel. But to any close observer, and even more clear to the Israel public whose conscience is still troubled by the memory of Kafr Kassem and its aftermath, Mr. Hausner would have been wise to "let sleeping dogs lie."

Yours, etc.,

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Cleveland, Ohio, September 12.

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Replies

In answer to Mr. Salem's letter, I wish to point out that the Attorney-General has to confine his arguments to the

courtroom and is not free to embark upon a public discussion of his legal arguments and their merits.

It should, however, be observed, that it is the professional duty of any lawyer, certainly of the Attorney-General, to bring before the court references which may contain an analogy of the legal principle involved or which may otherwise help to guide the court. In the subject of superior orders, the judgments of the Military District Court and the Military Appeals Court in the Kafr Kassem case are of such value.

Surely it would be naive, as well as improper, for a lawyer to presume that by refraining from quoting a certain authority he thereby causes it to be deleted from the law-book.

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Jerusalem, October 15.

The Jerusalem Post
Oct. 23. 1961