



## The Divider

When Alan Dershowitz was a teenager he was not a good student, nor for that matter a well-behaved one. In fact, he drew F-minuses in conduct from the Jewish Orthodox high school that he attended in Brooklyn. But then somehow he got his act together, and at the age of 28 he became the youngest full professor in the history of Harvard University's law school. In October he published his 30th book, a novel entitled *The Trials of Zion*. Early that month Dershowitz spoke with *California Lawyer* Editor Martin Lasden.



Alan Dershowitz

To watch video of the interview, go to [www.callawyer.com](http://www.callawyer.com).

**Q.** You've described yourself as a divider, not a uniter—someone who alienates the left, right, and center. Most people are terrified by the idea of making enemies. Did you ever feel that way?

I love my enemies list. I look at it all the time, and I'm so proud of the people who hate me because those are people I'd like to have hate me. People on the extremes. People who distort.

**Which enemies are you're most proud of?**

Oh, people like Noam Chomsky and Pat Buchanan. Bishop Tutu. You know, people get very upset when I tell the truth about Bishop Tutu, that he's an absolute bigot and that he only cares about himself and his own people and calls Israel a criminal state.

**When you were an adolescent you belonged to a gang called the Shields.**

Well, it was a Jewish gang. It wasn't like Murder Inc. We wore our T-shirts rolled up with a pack of cigarettes, and we pretended to be what we called "hard guys." Our jackets were chartreuse and black. We got into some street fights. Mostly it was pretty innocent stuff.

**You write about what you call the preventive state, which has been in**

**ascendance since 9/11. Can the country carry out a prolonged preventive war against terrorism without gutting fundamental rights?**

I think that's a great risk, and I worry very much about the role that prevention plays. I understand it, I'm sympathetic to it, but I want to make sure that there is a jurisprudence that constrains it.

**But no matter how carefully you construct these constraints, won't there be an inevitable erosion of the rights you've spent your life defending?**

I think there will be some erosion. The question is how much, and the question is of what kind. I'm not the one who was pushing for the preventive state. The terrorists are the ones who are creating the need for preventive states. It's going to happen no matter who the president is. So the question is not whether it's going to happen, but whether it happens with or without constraints, whether it happens above the radar or below the radar. The Bush Administration wanted it below the radar. I want to see it above the radar.

**In the area of security, you talk about torture warrants. The idea is that rather than have whatever torture is done under the table without government sanction, let's have a more open treatment ...**

You're an honest man. You understand

what I'm saying. Most people who have commented on my procedure have just lied about it. I'm not in favor of torture. I'm against torture.

**But weren't you saying that in rare, ticking-time-bomb situations torture is not morally impermissible?**

Well, I think it probably is morally impermissible. I can understand the moral argument in favor of it. If I had to vote I would vote against it. But if I can't stop it as an academic, I'm going to try to create a situation under which it's visible, constrained, limited—and perhaps the public would get so upset with it they would eventually abolish it.

**You've argued that religion has thrived in this country because we have separation of church and state. By that logic, did Israel do harm to Judaism when in 1953 it passed a law that put the authority of the state behind a small group of rabbis?**

Yes. It was a violation of everything that Zionism stood for. Theodor Herzl in his book on the Jewish state said "[L]et the rabbis be kept in their synagogues, let the priests be kept in their churches." It was a tragic compromise that has had effects not only on freedom of religion in Israel, primarily for Jews, but also on politics, because it's given the religious parties undue power. God is not a very

Continued on page 57

Continued from page 32

good facilitator of peace, unfortunately.

**What do you say to the Arab-Israeli citizen who asks, "Can I ever realistically hope to be a first-class citizen of Israel when the country explicitly identifies itself as a Jewish state? Can I ever be seen as an asset rather than just part of a demographic time bomb?"**

Yes. I think the answer is yes. I think with peace, that will come. The culture minister of Israel is an Israeli Arab, there are many in the Knesset, on the supreme court, there are professors, musicians.

**Both Ehud Barak and Ehud Olmert have said if there isn't a peace agreement soon, Israel will descend into an apartheid state.**

I don't think they understand apartheid. I understand apartheid. I was one of the lawyers who worked on behalf of Nelson Mandela. It is a disservice to those who fought against apartheid and died to use analogies like that. They're simple. They're sloppy. They're wrong.

**Even when former Israeli prime ministers do it?**

Former Israeli prime ministers are often wrong, and they're wrong in this case.

**Is Benjamin Netanyahu the guy to make peace? The guy who promised just before his election that he wouldn't dismantle a single settlement?**

Israel is a democratic state. It selected Benjamin Netanyahu. I've known him for 30 years now. I think he can bring about peace. He's a pragmatist. I spent a long, long evening with him recently when he offered me the job of being Israel's ambassador to the United Nations—a job that I could not accept because I'm an American. We had long, long talks, and I came away believing that he really wants to be the man who brings about a realistic peace with real security for Israel. Whether or not he has a partner, whether or not he can do it ...

**Are you optimistic?**

I am cautiously optimistic, but realistic. I think a lot of things have to come together for there to be peace. 🌍