25166-3
Quesnel Registry

In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MR. JUSTICE BUTLER AND JURY)

Quesnel, B.C.
November 6, 2015

REGINA

v.

ROY ARTHUR TOPHAM

PROCEEDINGS AT TRIAL
(DAY 10)

COPY

Crown Counsel:	**J. Johnston**
Defence Counsel:	**B. Johnson**

INDEX

EXHIBITS
NIL

RULINGS
NIL

Quesnel, B.C.
November 6, 2015

THE CLERK: In the Supreme Court of British Columbia, the 6th day of November, 2015. Continuing with the matter of Roy Arthur Topham, 25166-3.
MS. JOHNSTON: Thank you, My Lord. Jennifer Johnston appearing for the Provincial Crown.
THE COURT: Ms. Johnston.
MR. JOHNSON: Barclay Johnson appearing for Mr. Topham.
THE COURT: Mr. Johnson.

Now a couple of things before we get started.

First of all, I'd ask that each of you give your email address to Madam Registrar at the break so that I can have a way to send you the draft charge on the weekend so that we can deal with that.

Secondly, I would like to have the conference to discuss the charge on Monday morning at 9 o'clock. So that's when we will schedule that. I'm thinking that I'll ask the jury to come back -- or to come at 11 on Monday because that will give the opportunity to revise it, print it out and have it available for them. So that's the schedule for Monday.

Next thing is, I don't think we've given them 3(a) and 3(b), the big binders? Have they been given?
MS. JOHNSTON: No, they have not.
THE COURT: They're not --
MS. JOHNSTON: They're all in a pile, 12 of them, right there.
THE COURT: All right. So do we need to do that formally or not, before the --
MR. JOHNSON: I -- My Lord, I am going to be referring to one document. I think it'll be easier for them to read and follow along.
THE COURT: So -- and it's in the big binder?
MS. JOHNSTON: Yes. It would be 2(l) at page 514.
THE COURT: All right. Well then perhaps we will do that. We'll give them 3(a) and 3(b) before we start.

And then the final thing I wanted to raise is, I have changed my mind about the -- my comment yesterday at the end of the day about Exhibit 10. I was going to instruct the jury not to refer to it. I don't think I should -- we should give it to them because they haven't

received it.
MR. JOHNSON: I think that takes care of our order of business. My friend and I were going to talk to you about that this morning.
THE COURT: All right. All right.
Well then, let's bring in the jury.

(JURY IN)

THE COURT: Good morning. We've finally reached the point where counsel will give their final addresses to you.
Before we do that, you will recall that we marked Exhibits 3(a) and 3(b), which was a different version of Exhibits 3 and 4 with much larger print. I'm going to ask that those be handed out to you. I understand they -- it may be referred to during the address this morning, so if we could do that.
All right, Mr. Johnson.

CLOSING ADDRESS TO JURY FOR ACCUSED:

MR. JOHNSON: Thank you, My Lord.
Ladies and gentlemen of the jury, I'd like to first of all let you know that Mr. Topham stands here before you --
THE COURT: Mr. Johnson, can I just ask you to wait til we get the microphone over. Thank you.
MR. JOHNSON: Do you need me to repeat that? Okay.
Ladies and gentlemen of the jury, I'm standing before you today as counsel for Mr. Topham, who has been charged, as you know, with trying to promote hatred under the -- or promoting hatred under section 319(2) of the *Criminal Code*. The charge is that he has wilfully promoted hatred against an identifiable group, namely Jews.
You've sat through a lot of evidence here, a lot of it documentary. You've had binders passed to you. I think that, in some part, the process has been a bit longer than anticipated. Certainly, it's been a bit more confusing to have different documents to have to refer to because of the clarity of the documents. But I think we've ironed that out. I'm satisfied, and Mr. Topham is as well, that you should be able to piece together the evidence that's been put before you in binders 1, 2, 3 and 4, and also 3(a) and 3(b).
THE COURT: Mr. Johnson, can I just ask you to raise your voice a bit. I gather we're having a bit of trouble picking it up, and I'm actually having a bit of trouble hearing you too, so --
MR. JOHNSON: Okay. I wonder if it would help if I put this up here. Is that any better?
THE CLERK: Probably. I just --
MR. JOHNSON: Okay? There.
I'm going to refer you, first and foremost, to an article that was published by Mr. Topham, and that is Exhibit 10, and if I could have Madam Registrar make that document available.
THE COURT: Sorry --
MR. JOHNSON: Exhibit 10.
THE COURT: Can I just ask the jury to step out for a moment?
MR. JOHNSON: Sure.

(JURY OUT)

THE COURT: I'm sorry, I just indicated that, just before we started, that Exhibit 10 was not going to be handed out to the jury.
MR. JOHNSON: Oh. I didn't get that. I thought it was going to be part -- [indiscernible] it was marked as an exhibit to these proceedings. My friend and I have agreed that that should be put to the jury, and --
THE COURT: And -- I'm sorry, I just said that, before we started, and maybe you misunderstood me --
MR. JOHNSON: I think we did.
THE COURT: -- but I had just said that I was of the view that, because it's irrelevant and I was going to tell the jury they couldn't refer to it that it shouldn't be handed out to them.
MR. JOHNSON: Oh. I thought you said you'd changed your mind. I'm sorry if I misunderstood that. I thought you'd changed your mind about the relevancy of the document.
THE COURT: No. I changed my mind about handing it out to them, even though it was irrelevant. And I guess you -- you obviously didn't understand that. Now -- now I'll hear from the Crown on this point, and -- because obviously you -- am I correct in understanding you've agreed that they should have it and that it can be part of the case?
MR. JOHNSON: Yes.
THE COURT: All right. And can you explain that for me?
MS. JOHNSTON: My Lord, my friend asked if we would be willing -- if the Crown would be willing to enter an additional document that is purported to be written by Mr. Topham. We have an admission already that documents signed by Mr. Topham are written by Mr. Topham. Certainly that was a concession on the part of the Crown.
But concessions between defence and Crown are not uncommon in criminal trials.
THE COURT: No. They certainly aren't.
MS. JOHNSTON: And certainly my friend, Mr. Johnson, has made several concessions at my request during the period of time.
Your Lordship had the document marked -- when Your Lordship first made submissions, I had wrongly understood Your Lordship. I thought Your Lordship had said that it wasn't to be marked. Yesterday Your Lordship clarified that the document was to be marked, but Your Lordship was going to instruct the jury as to relevance.
When Your Lordship came in this morning, I have to confess that I thought, as my friend Mr. Johnson did, that what Your Lordship had done is reconsider your direction to the jury as to relevance on --
THE COURT: No, it was just handing it out was what I had reconsidered. It strikes me that if it's not relevant, then regardless of the concessions that have been made, in my role as gatekeeper, it shouldn't be before the jury. And that was my rationale.
But if you're telling me that -- and maybe you could -- and I just have difficulty understanding how the document can be properly referred to, and for what purpose. I just have trouble with that.
MS. JOHNSTON: Well, My Lord, I understand that my friend has included it as part of his closing submissions, and I have as well. In terms of relevance, I do think it does have some relevance.
Now Your Lordship's concern about lack of relevance, my understanding is, is the date of the document. There are --

THE COURT: The date, and also the fact that it relates to materials that we don't know what they are, and the jury won't from the basis of that. But --
MS. JOHNSTON: I haven't put my mind to that aspect of it. I thought Your Lordship's consideration -- concern was solely on the issue of date. So --
THE COURT: But if the Crown is prepared to concede that it is properly admissible as a document written by Mr. Topham and can be referred to by Mr. Johnson, then I will permit that to go in. I have some trouble with it, but it strikes me that it's put Mr. Johnson in a difficult position this morning when you have said, yes, you were going to make submissions on this issue in this way, that the Crown was prepared to let him refer to it in his argument, or in his address to the jury. So it puts him in a difficult position.
MS. JOHNSTON: It does. It does. And what I had said to my friend this morning is, since Your Lordship had marked it as an exhibit, and since Your Lordship plans to refer to it, specifically to the jury that it's irrelevant -- the Crown's submission, this is already a very complex trial. That is a complex instruction. If Your Lordship --
THE COURT: Which is why I decided that they shouldn't have the document.
MS. JOHNSTON: Yes. And that wasn't my understanding this morning as to what Your Lordship's intention was.

My original position was that I was content for this document to go before the jury. My friend had asked me if I was content. I am content.

The only thing that is concerning me is Your Lordship's concern about references to other documents and, to be blunt, I had not fully put my mind to that aspect of this -- of this writing.
THE COURT: Well, I --
MS. JOHNSTON: I am not concerned about Mr. Topham -- an earlier writing of Mr. Topham going before the jury on the same basis as the other -- of the other documents. I'm not concerned.
THE COURT: Well, I think what we have to do is proceed as the two of you have agreed upon, but I will still have some comments for the jury about the relevance and what they can use it for.
MR. JOHNSON: My Lord, I don't know if this assuages your concerns, but I think the purpose of referring to this document is to put some background, not with respect to the Human Rights Commission matter, because I can say to the jury that this is a different issue.

But insofar as it relates to personal information contained in those documents, that's what I want to refer to. I want to show Mr. Topham's character as set out in those documents, as he describes them, and that's it.

I think we -- I don't think the concern over it being a prior document is such to make it irrelevant to these proceedings. I think it's highly relevant. His personal character is in issue. If Your Lordship were to make a direction, for example, or to put us on notice that you're going to make a direction, and it's not relevant, I would reopen my case and put Mr. Topham on the stand to get that same information.

That was the reason for this in the first place, was to avoid an even lengthier trial and, I mean, I can't see any other way around it. We're trying to use the documents that were in these binders, and I think once Mr. Topham wants to use them to his advantage, to try and set his position, I think that should be respected.
THE COURT: Well, and I was quite content to do that for the documents that were in the binders. But not for new ones that weren't proved --
MR. JOHNSON: Okay.
THE COURT: -- in the usual way, and that's why I have difficulty with it, is -- you know, normally before a document can be put in evidence, it has to be proven and --
MR. JOHNSON: I understand, but --
THE COURT: -- it just strikes me as very odd. But as I say, Crown has made its concession and so I will permit it to be handed out to the jury, and depending on what use is made of it in your submissions and in the Crown's submissions, I may have some instruction to the jury about it.
MR. JOHNSON: In my opening, I'm planning on saying to them, you can disregard any reference to the Human Rights Commission, period. Please pay attention to the personal remarks that are made about his integrity, his character -- that's where I'm going with this, My Lord. And otherwise, I've got to put him on the stand. I've got to reopen my case.
THE COURT: And the Crown has no objection to those --
MS. JOHNSTON: Well, My Lord, when the defence puts character into an issue, the Crown is entitled to go after it.
THE COURT: But, which again is why I have difficulty with the way this is being done, because it seems to me trying to prove character without -- and I appreciate the difficulty and what's gone back and forth, but -- so why are you -- what are you agreeing can be taken from Exhibit 10?
MR. JOHNSON: Oh My Lord, we've made admissions concerning the authorship of the -- whoops, I'm sorry, I've got your document there. That's not going to help me.
THE CLERK: [inaudible]
MR. JOHNSON: I think I've got the admissions in a separate binder.
THE COURT: They're Exhibits 5 and 9, and I'm --
MR. JOHNSON: Yeah, and [inaudible] -- I'll just remind Your Lordship that the -- part of the admissions were that Arthur Topham's -- under 4 -- Arthur Topham is the author of some of the postings on radicalpress.com and identifies himself as the author by using his own name. And, that to the extent that he does that, I want to tell the jury that that's his document.
THE COURT: And I don't think there's anything --
MR. JOHNSON: And I'm not suggesting it's for the proof of the contents --
THE COURT: All right.
MR. JOHNSON: -- it's simply that he wrote this.
THE COURT: All right.
MR. JOHNSON: Okay.
MS. JOHNSTON: Is Your Lordship -- would Your Lordship be -- would it address at least some of Your Lordship's concern if we simply took out the portion from the response that directly -- directly repeats Ms. Kozak's letter to Mr. Topham, which you see at the bottom of page 4 of 17 through to the top of page 5 of 17?
MR. JOHNSON: Let me get my [inaudible]
THE COURT: Sorry, so you're suggesting taking out -- which part?
MS. JOHNSTON: From Sandy Kozak on the bottom of page 4 of 17 to the end of Canadian Human Rights Commission at the top of page 5.
MR. JOHNSON: I'm sorry, could you repeat that? I didn't hear that.
MS. JOHNSTON: To take out from Sandy Kozak, bottom of page 4 of 17, and top of 5 of 17, Canadian Human Rights Commission.
THE COURT: I see. So the point is it takes out the specific references to the *Canadian Human Rights Act*, essentially.
MS. JOHNSTON: I think that partially addresses Your Lordship's concern.
THE COURT: It does, but if we're going to do that, it would take some time.
MS. JOHNSTON: It wouldn't take that long. There's 12 photocopies. I'll have somebody come down and get it and they will blot it out.

Another option is my friend -- there isn't another option. That is the option. If Your Lordship wants it out, we have to take it out. And it wouldn't take that long.
THE COURT: Or alternatively, if you could make your -- start your address and read from it, and then we could hand it out at -- after lunch.
MR. JOHNSON: This is what I plan to refer to, My Lord. If you're --
THE COURT: Yes.
MR. JOHNSON: -- if you don't mind, I'll read it to you.

Page 2 of 17, in the middle of the page, starting with the words, "the reality as I understand it", and ending with "military forces".

THE COURT: All right. That's kind of highlighted in mine.
MR. JOHNSON: Pardon me?
THE COURT: That is highlighted in mine so I guess --
MR. JOHNSON: Okay.
MS. JOHNSTON: I'm sorry. What page -- around 2 of 17?
THE COURT: Two.
MR. JOHNSON: Two of 17. Um --
THE COURT: And are there other parts of it that --
MR. JOHNSON: I was going to refer to the bottom paragraph, but again, that's to the Commission, isn't it? I was also planning to read, on page 8 of 17, starting at the second paragraph.
THE COURT: Oh I see. Yes, that's again -- I can see your highlighting on this from --
MR. JOHNSON: Can you see that?
THE COURT: -- from my -- all the way down -- all the way up to -- to page 9.
MR. JOHNSON: That's right. It sets out personal information relating to his occupation and age. Those are the portions I plan on highlighting for the jury. And I think a direction from you with regard to, don't pay any attention to references specifically to the Human Rights Commission or their legislation, it has no part, I'm happy with that.
THE COURT: Well, I think I have to go further and say that this is not in for the truth of it. This is a statement by Mr. Topham.
MR. JOHNSON: As is the rest of the document for the Crown.
THE COURT: As is the rest of the documents in the --
MR. JOHNSON: Yeah.
THE COURT: -- in the binder.
MR. JOHNSON: I think I'd be happy with that as long as the -- you know, the same was said of the documents that were referred to by my friend. That they're none of them -- none of the documents in those binders are proof of the truth of the contents. I'm happy and ready to go.
THE COURT: I think -- I think we know that.
MR. JOHNSON: Yeah, we're ready to go. I think the jury has to understand that.
MS. JOHNSTON: I'm sorry, My Lord. So do we have a final verdict on whether or not we're going to take out that portion? Does it --
THE COURT: Well, I -- are you content with reading it and --
MR. JOHNSON: I'll read it.
THE COURT: -- then handing it out at --
MR. JOHNSON: I'll read it and then don't distribute it. How's that? And then they can take it from --
THE COURT: Well, no. I think if you're going to read it, we're going to distribute it, but we'll take out that one part and we'll do that at -- after lunch.
MR. JOHNSON: Okay. And redact it?
THE COURT: We'll redact it and take it [indiscernible].
MR. JOHNSON: Okay.
THE COURT: All right.

All right, we'll bring in the jury.

(JURY IN)

THE COURT: Mr. Johnson.

CLOSING ADDRESS TO JURY FOR ACCUSED, CONTINUING:

MR. JOHNSON: Thank you, My Lord.

Who's Mr. Topham? You haven't heard from him. We have, however, through consent between counsel, agreed to put certain information to you. One document which we've agreed upon sets out some of the personal information that I'd like to draw to your attention when reading through with the binders and paying attention to the evidence.

In other words, this is -- this is information I think that's pertinent to understanding who Mr. Topham is and why he does what he does.

My Lord, I would like a statement with respect to Exhibit 10 being redacted at this point. Or do you want me to do that?
THE COURT: No, I don't think you need do that. Exhibit 10 is going to have a certain portion of it removed from it, but -- and Mr. Johnson's going to tell you about other parts of it. And that'll be handed out to you at 2 o'clock today.
MR. JOHNSON: Would you prefer that I wait until that's done before I launch into this?
THE COURT: No. No, you should go ahead.
MR. JOHNSON: Okay. All right.

I'm going to read some direct lines out of an email that he wrote. Now this goes back to January 3rd, 2008. This goes back before the charges were laid against him. It goes back to a different proceeding.

So there was some issue concerning context, but I don't think that the basic facts, as they relate to him personally, have changed. But I'm going to read them to you. At page 8 of 17, he writes in this statement:

This is all I have to say at this time regarding the contentions of Mr. Harvey Smarba and the League for Human Rights of B'nai Brith Canada and would like to now say a few words in my own defense as to who I am, what efforts I have devoted my life to and, finally, why I consider this whole affair to be one politically motivated (and by definition in this case, religiously as well) and not, in any sense of the

word, having to do with any “hatred” toward Jews on my part or on the part of my website that publishes information on this topic.
Like Mr. Harvey Smarba, I too am a Canadian citizen, born in Saskatchewan in 1947 to a Ukrainian Mother and an English Father, prior, I might add, to the birth of the present state of Israel. In that same year I was Baptized a Christian and at this point in my life consider myself to be a person of “Christian faith”. As such I have attempted throughout my lifetime to actualize the teachings of Christ insofar as they pertain to treating others as one might like to be treated and to help build a world where the precepts of Christ – Peace, Love, Brotherhood and Sisterhood for All – would be a guide to harmony on a global scale. My efforts in this regard have been published and are on public record since the year 1968 when, at the young age of 21 I first began penning letters to newspapers in British Columbia voicing my opinion on matters related to politics, religion, human rights and social justice issues. A record of these writings exists and will corroborate all such material that I intend to further use should this matter go beyond this preliminary investigation.

And he's referring to a different investigation here, not a criminal investigation.

I have lived, uninterruptedly, in the province of British Columbia since December of 1956. After leaving high school I attended university (SFU) in 1965 and there obtained a Professional Teaching Certificate. I worked for a short number of years in this capacity both in the public school system and for First Nations school districts, all of which were located in the province of B.C., and taught grades ranging from Kindergarten to Grade 5. I left the profession in 1978 and worked for the Provincial Parks Branch for 8 years where I was a Supervisor and Park Ranger in the Quesnel District of the Cariboo region of the province. After losing that profession to government restructuring in the late 1980’s I returned to teaching for a couple of years and worked for the Nuxalk Education Authority out of Bella Coola, B.C. in 1991 – 1992 where I taught on reserve Grades 2 and 3. From there I returned to Quesnel and worked in a substitute capacity for the local School District (#28) until I resigned in September of 1998. It was also during the year 1998 that I established my publishing business known as The Radical Press. From June of 1998 until June of 2002 I published a monthly, 24-page tabloid called The Radical which sold in retail outlets throughout B.C. and across Canada and by subscription around the world. Due to financial challenges the hard copy edition of the newspaper ceased in June of 2002 and from that date I carried on publishing online with my website known as http://www.radicalpress.com. In 2005, using my lifetime of personal experience in the log building trades and construction industry which I had developed in conjunction with my tenure as a school teacher I formed a carpentry business and have been operating said business up to this point in time.
I have lived out [of] the country for the vast majority of my life ...

"I have lived out in the country" -- I'm sorry -- there's a big difference there:

-- "and have built my own home".

I'm sorry, I'm going to have to put my other glasses on. I'm afraid I'm getting to that age where I need my readers.
That's better. I'll repeat that:

I have lived out in the country for the vast majority of my life, have build my own home, grown my own garden, and maintained a philosophy of independence both in thought and deed. Throughout the course of my life I have fathered four children and now, along with my dear wife of thirty years, also have been blessed with seven grandchildren.

In many respects my life has been an open book to the community in which I have resided since 1970. I began writing letters to the local Quesnel newspaper known as The Cariboo Observer, newsroom@quesnelobserver.com beginning in 1976 and have steadily contributed to that publication over the ensuing years both as a regular columnist and an inveterate contributor on matters of public concern. While I would describe myself as a very controversial writer (and most, if not all of my readers would agree) I nonetheless need to stress the fact that throughout all the years of presenting my ideas to the general public on a number of issues ranging from politics to religion to social justice and environmental issues, I have never made any racist, hate-filled remarks against any person of Jewish or any other religious or ethic grouping. All this I state with respect to the present allegations made against me by Mr. Harvey Smarba and the League for Human Rights of B’nai Brith Canada; charges that they would fain convey to the public that insinuate I am a person who promotes hatred toward others, in this case Jews. The records of my writings would not, I suggest, indicate this to be the case.

Now there's also another document which is in your binders. It's in binder number 4, and it is found at page number 514. I'm not going to read everything that's in there, but I would urge you, please, to have a look at it.
THE COURT: Sorry, that page number?
MR. JOHNSON: At page number 514, My Lord.
This is an article -- has everybody got it? Okay. I'll just wait here for a moment. 514. Do you have it now? Everybody have it? Okay.
The article is entitled, "*Killing the Hundredth Monkey*". It's an article that's written by Mr. Topham, and I'd like to turn to page number 518. I'm going to get you to back up one page to 517. There's a paragraph, third one down from the top, starting with the words, "synonymous with", and I'll just read that to you:

Synonymous with current criticism of Israel and the Zionist Jews by such notable Gentile internet authors as John Kaminski, Curt Maynard, Wendy Campbell, Texe Marrs, Alex James, Paul Fromm, Michael A. Hoffman II, James Petras, Edgar J. Steele, Mark Glenn and others are the writings and speeches of some of the most fervent and impassioned critics of the Zionist Israeli state who are themselves ethnic Jews. Canadian internet writer Dr. Henry Makow http://www.henrymakow.com is a good example of what I am referring to. Due to the fact that these harsh critics of Zionist Israeli policies are *bona fide* Jews, the fanatical element itself, i.e. the Zionists, cannot with any credibility, accuse them of promoting [...] "hatred" toward Jews. It therefore creates a conundrum for the Zionist Jews as well as for the Christian Zionist elements within our own western society who have been deceived by the false Messiah (Zionism) and fallen into the trap of believing that the state of Israel, because of its Biblical ramifications, is above and beyond criticism and/or fault. As a result, and true to the fallacious and indefensibly dogmatic tenets upon which the Zionist ideology is constructed, their only method [...] and willful, malicious hatred that they can muster onto these ethnic Jews who they deem traitorous to the Zionist Israeli government. Thus, the brave and courageous Jews who have broken away from the pack of perfidious, self-chosen zealots and have displayed the audacity to criticize the Zionist agenda now are forced to bear the brunt of what is likely some of the most scathing, vitriolic, hate-related messaging on the net today. For anyone who doubts the veracity of the above statement[s] they need only go to the following website [the website is] http://www.masada2000.org/list-A.html, and read for themselves the long list created by these fanatical proponents of Zionism.
Blatant examples such as this beg the question as to why the League for Human Rights of B’nai Brith Canada are not raising a public outcry and pushing to have this site shut down for promoting “hatred” toward Jews?

I'd like you also to turn to the following page, if I could. Much of what goes on in this document, like the last one, deals with a

proceeding involving the Human Rights Commission, and what I'd like to point out for you is on -- I'm going to have to get my bearings here with your book.

I think there's just a marker, My Lord, as to that reference.

THE COURT: All right. And that -- sorry, that was at --

MR. JOHNSON: At page 523, if you could turn there.

I want to refer you to the second paragraph from the bottom please. And that's the last sentence in that paragraph.

You'll recall that Mr. Atzmon indicated that Mr. Topham was married to a Jew, and I just want to have that clarified, where he says, at the bottom of that paragraph:

For me to either admit to or accept that I am promoting hatred toward Jews would be tantamount to saying that I hate, rather than love and cherish beyond description, the one person in my life who has been wife and friend and companion to me over the last thirty years. For she too is Jewish.

THE COURT: Sorry, that was 520?

MR. JOHNSON: It's at 523. It's just a very short passage. Okay. I knew these binders were going to be a little bit difficult to work with, but I'm pretty much finished with the binders.

Now the government of this province, represented by my learned friend in the name of Her Majesty The Queen, seeks to make Mr. Topham a criminal, and they want you to do that for them. Before you leave here, you will have made that decision. You will say yes or no to this injustice, as I suggest it is, and you have the duty to find Mr. Topham guilty or not guilty, according to your conscience and according to the law.

The wording of the *Criminal Code* that sets out this charge -- I'll read to you now. You're going to hear this again, obviously from my friend, and from His Lordship. But it's found at section 319 of the *Criminal Code*, and it just states:

> Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such indictment is likely to lead to a breach of the peace is guilty of
>
> (a) an indictable offence and is liable...

I don't know if I need to read the balance of that.

THE COURT: I think that was not the correct subparagraph, was it?

MR. JOHNSON: No, you're right; I'm under two -- it's paragraph 2:

> Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of
>
> (a) an indictable offence ...

And I'm going to leave it at that. I don't think I can refer you further. But it does relate to punishment as well.

But the key part here is under paragraph 3 of that section, which reads as follows:

> No person shall be convicted of an offence under subsection (2)...

... which is the one we're proceeding under:

> (a) if he establishes that the statements communicated were true;

Let that sink in, "if they were true"--

> (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;

Also, it's a defence -- the third defence:

> (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

And finally, under:

> (d) if, in good faith ...

Good faith --

> ... he intended to point out, for the purpose of removal, matters producing or intending to produce feelings of hatred toward an identifiable group in Canada.

That's the section of the *Code* with the defences. And I'm going to talk to you about, in my view, how those should be viewed.

Now His Lordship has already stated that you are the triers of fact and that he will explain the law to you, and I have to defer to whatever it is that he tells you the law is. But I'm going to ask you to listen, because it's part of the defence to understand the nature of these defences and [indiscernible] obviously, the charge itself.

THE COURT: And I see the time. I think I'd like to break now for lunch, and we'll come back at 1:45 so with that I'm going excuse the jury for the lunch recess.

(JURY OUT)

MR. JOHNSON: Thank you, My Lord.

THE COURT: Mr. Johnson, you've moved into an area that I had asked you to talk to me about before doing this. You've told me that you're raising (c) and (d) as defences, not (a) and (b).
MR. JOHNSON: I'm going to explain that to the jury. I'm going to read them the sections and I'm going to explain to them where our defence is.
THE COURT: Which subsection --
MR. JOHNSON: I think I'm entitled to do that.
THE COURT: No, you're not entitled to explain ones that you're not relying on, because it's only defences that have an air of reality that go to the jury, and so if you're not relying on some of those subsections, there is absolutely no reason to put it to the jury.

Now I'd asked you to tell me which ones you are relying on, and I'd like to know.

MR. JOHNSON: (3) and (4).
THE COURT: (3) and (4). All right. Well then you shouldn't be referring to (1) and (2). And having done so, I think you should say, "I'm not referring to them".
MR. JOHNSON: That's where I was going with this, My Lord.
THE COURT: All right.
MR. JOHNSON: Exactly where I was going with this.
THE COURT: Well, that's unnecessary and not helpful to the jury to have defences raised that aren't being put to them.
MR. JOHNSON: Okay. I mean, I would assume that the law as set out in the *Criminal Code* is -- is just there to be read. And I was planning on telling them where I was raising my defence, My Lord. I don't think there's any --
THE COURT: Well, and that's fine, and you can do that. But you shouldn't talk about defences that aren't being raised --
MR. JOHNSON: Yeah. It's just that --
THE COURT: -- and that's something that we deal with, with juries. The Court of Appeal tells us all the time --
MR. JOHNSON: I understand.
THE COURT: -- that defences that don't have an air of reality and aren't relied on shouldn't be put to juries. And there's no doubt about that.
MR. JOHNSON: I understand.
THE COURT: So that was my concern --
MR. JOHNSON: And I've --
THE COURT: -- and I'm pleased to hear that -- that you are going to simply rely on (c) and (d).
MR. JOHNSON: That's right.
THE COURT: And I think all you should say to the jury is, "I'm not relying on the first two, it's only --
MR. JOHNSON: I can say, "please disregard (1) and (2)". But I wanted to make comments about it, and why they -- why we're not going there. I think I'm entitled to say that. How can you prove the truth of something. I think I'm entitled to say that.
THE COURT: But why raise a defence that --
MR. JOHNSON: Because --
THE COURT: -- that you've -- it's irrelevant. I mean, it's completely irrelevant.
MR. JOHNSON: No.
THE COURT: It directs us away from where we're supposed to be.
MR. JOHNSON: I disagree.
THE COURT: And it's not something that the jury is going to be asked to consider. It's -- the Court of Appeal tells us all the time that you shouldn't put before a jury defences which are not being raised and there's no air of reality. And so that's why you shouldn't refer to them in your submissions.
MR. JOHNSON: I think that that reference would be to Your Lordship and not to me -- in that respect. That's the way I read those cases.
THE COURT: No.
MR. JOHNSON: Because my plan was simply to say that there's a reason why I'm not doing those first two. I'm not going there. Don't rely on them. I can't prove the truth of any of this stuff.
THE COURT: Well, I -- because of what you had told me -- and this is what courts do all the time -- is we put before the jury defences which are being raised, and not the other defences. And that's the way you're going to do it here. You're not going to explain why you're not raising other defences.
MR. JOHNSON: Okay.
THE COURT: All right?
MR. JOHNSON: Understood.
THE COURT: Adjourned to 1:45.
THE CLERK: Order in court. The court is down till 1:45.

(PROCEEDINGS ADJOURNED FOR NOON RECESS)
(PROCEEDINGS RECONVENED)

THE CLERK: All right, we're on record.
THE COURT: Good. We're ready to go?
MR. JOHNSON: My Lord, before proceeding, I've had discussions with my client about what took place just prior to the break. He's insisting now that I raise every single defence set out in that section.
THE COURT: Well, the difficulty with that, of course, is that we should have raised that before your addressing the jury.
MR. JOHNSON: Well, I was actually doing that at this point. I can raise it with him --
THE COURT: No, I mean we should have raised that in --
MR. JOHNSON: In the opening?
THE COURT: -- in -- no, in -- between counsel and me so that we would have that issue considered. Now if you want to go ahead and do this, I'll have to ask Ms. Johnston what her view is.
MR. JOHNSON: It may be that we don't succeed on those defences, but he wants them raised.
THE COURT: Well, the issue then is, I would have to rule on whether or not it's something that should go to the jury.
MR. JOHNSON: Okay.
THE COURT: And that may put us back another day.
MR. JOHNSON: All right.
THE COURT: I expect it would, but -- Ms. Johnston?
MS. JOHNSTON: My Lord, 319(3)(a), the defence of truth. In the *Keegstra* decision, the 1990 decision which I will actually be bringing down to Your Lordship prior to the close of court today, starting at paragraph 130, it says that if defence wishes to use the defence of truth -- Your Lordship is familiar with this -- they have to prove it on the balance of probabilities.

At section 794 is the section that refers to exceptions, that defence must establish exceptions when exceptions are a defence to the *Criminal Code*.

In the course of my research for this matter, I did extensive Boolean searches because I wanted to find a section 319 case that specifically considered 794 of the *Criminal Code*. I was unable to do so and I note that in the passages I've described from *Keegstra*, it does not specifically address 394, nor does it address (b), (c) and (d) from section 319.

Nonetheless, My Lord, I think the juxtaposition between 794 of the *Criminal Code* and the paragraphs I've referred to from the *Keegstra* decision establish that, if defence wishes to raise one of the elements contained in 319(3)(a) to (d), that they have to establish it on the balance of probabilities and it could allow the Crown to call some rebuttal evidence.

I have no intention of calling rebuttal evidence on (c) and (d) -- obviously I was put on proper notice. In terms of (a) and -- I can't -- I would have to know exactly what it is that he's claiming was true before I could give Your Lordship a reasonable answer on that.
THE COURT: Well, but it also strikes me that I would have to rule on that so that Mr. Johnson would know whether he could address the jury about that.
MS. JOHNSTON: Yes. Yes. Based --
THE COURT: And I guess, Mr. Johnson, what I'm -- what I'm hearing from Ms. Johnston, and perhaps you would like to respond to her argument. If you do, then I think we need to have it fleshed out a little bit more. But it seems to me that you're raising these defences too late in order to have them put before the jury. And so it's simply inappropriate to do so.
MR. JOHNSON: I haven't -- I've raised them already with the jury, My Lord. I've already set them out. But the question is --
THE COURT: No, no. You don't -- you're not understanding me. You said --
MR. JOHNSON: I understand what you're saying, but the jury's --
THE COURT: -- you told me you weren't going to raise them.
MR. JOHNSON: But -- but the fact is --
THE COURT: You mentioned them, but you said you weren't going to raise them.
MR. JOHNSON: You know, the --
THE COURT: And so it's not until two minutes ago you said you were going to raise them. And so the Crown would have needed to have notice of that, to have an opportunity to present rebuttal evidence.

But I think more significantly, I would have had to rule on whether or not it's a defence that should go to the jury before you started to make submissions -- you know, address the jury on it.
MR. JOHNSON: I don't read the section that way at all, My Lord. I read the section as saying that those are the defences that are available. The question is --
THE COURT: It's not the --
MR. JOHNSON: -- when are they to be raised, I think is the issue. And I think that's the only real issue. And I'm suggesting to you that they can be raised at any time during the course of this trial. I --
THE COURT: And you're -- do you have authority for that? Because --
MR. JOHNSON: I haven't had to do this before. I mean, I'm here right on the spot. I don't think my friend's got a brief on this either.
THE COURT: But I think -- I think the point, Mr. Johnson, is this. We're always told by the Court of Appeal that we have to be very careful about matters that are raised before a jury. And that we have to do that in a way that allows proper procedure, proper evidence to be led. And I can't have you making submissions about a defence where the Crown takes a position (a) that they were given late notice, or (b) that there was -- there's no air of reality to the defence, so there's no, in the case of (a), no evidence to support it. So -- and those are matters that should be presented to the court -- argued to the court before you stand up to make your submissions. And that --
MR. JOHNSON: Yeah.
THE COURT: -- that was why I was asking you as we went through this week, what are the defences, and you said (c) and (d), (c) and (d), and didn't say anything otherwise.
MR. JOHNSON: My Lord, my client's instructions, as I indicated, are that he would like each defence explored to the fullest. I have provided the court with Exhibit 10 which sets out the background for the truth defence, in my view. I think that there's enough information in there. And it's not like this is brand new.
THE COURT: But that document doesn't go in for the truth, as we've already discussed. So what we're going do is, we're going to stand down for a moment and consider the issue about what -- and this is a legal issue --
MR. JOHNSON: Sure.
THE COURT: -- about what's -- when you can raise, and we're really just talking about (a) and (b), and what -- when you'll need to give notice of it and whether it can be put to a jury without a determination of whether or not there's evidence to support or an air of reality to it.

And so I'd like you to sort of deal with --
MR. JOHNSON: Isn't that for the jury to decide though, My Lord?
THE COURT: No, no.
MR. JOHNSON: I mean, if --
THE COURT: No, no. There's a question that has to be decided by me, as the judge of the law, whether there's an air of reality to it. And you can't just dump it on the jury without having passed that by the court. And I understood (c) and (d), and I understand the rationale for (c) and (d), and that there is sufficient to put those to the jury. I don't for (a) and (b). And so that's something that you should have raised, you should have raised it with your friend, and dealt with before we got to this point in the trial.
MR. JOHNSON: My position is, My Lord, that the trial, even at this stage, is a fluid matter.
THE COURT: I don't want to know your position. I want to know what the law is.
MR. JOHNSON: Okay.
THE COURT: So we're going to stand down for a half hour, and you're going to come back and make submissions on that legal issue -- not on what --
MR. JOHNSON: I understand.
THE COURT: -- your client's position is but on the legal issue about, what's the proper way to run a trial for the jury. It's a different thing than "these are my instructions". And it's a matter of law. All right?

So let's stand down. And I'll ask that the jury just be advised that we'll be another half hour or so before we get going.
THE CLERK: Order in court. Court is down for a half hour.

(PROCEEDINGS ADJOURNED)
(PROCEEDINGS RECONVENED)

THE CLERK: All right. We're back on record.
MR. JOHNSON: My Lord, the only case that I found in this library was the B.C. Court of Appeal decision, 2004, in *R. v. Corbett*. And, if I could pass up a copy of that decision.
THE COURT: Certainly.

MR. JOHNSON: I have provided my friend with a copy.

One of the difficulties I had is that I can't find anything relating to this particular type of charge, My Lord.

THE COURT: Well, we're not going to find something related necessarily.

MR. JOHNSON: I mean I went back to *Keegstra*, and that's 1984, so.

This case, I believe, deals with the issue that you raised, at paragraph number -- just a second here -- I think paragraph 13 of the decision, where the court says:

That case was very different from this case because there the court was considering whether or not a defence of mental disorder, automatism, ought to be left to the jury. The Supreme Court of Canada ultimately concluded that the defence should have been left by the trial judge because there was a basis in the evidence for it to be considered. However, what I take from the above passage is that where there is not an evidentiary foundation of any substance to permit an issue to be left to the jury, then that issue ought not to be left. A jury should not be asked to consider matters when there is no realistic basis in the evidence to support a proposition.

That kind of seals my fate, doesn't it?

THE COURT: Well, I mean I think life just got a -- I don't have a copy for you here but this is just from the headnote of *R. v. Cinous*, 2002 SCC 29. It says, "A defence should be put to a jury if, and only if, there is an evidential foundation for it."

MS. JOHNSTON: Tab 2.

THE COURT: Sorry, tab 2. Yes.

The court goes on to say -- where are we --

MR. JOHNSON: My Lord, unfortunately, this case does not deal with when it can be raised.

THE COURT: No, but I guess the point that I'm making, I think, is for the benefit of your client. If you were to argue for a defence that I --

MR. JOHNSON: It's going to fail.

THE COURT: -- then tell the jury has no air of reality, not only would we have wasted the time on that, it would, I think, perhaps reflect badly on you, and perhaps on Mr. Topham. And so my --

MR. JOHNSON: Well, it may reflect badly on the rest of his defences.

THE COURT: And it may reflect badly on the rest of his defences.

MR. JOHNSON: I think that's what I'm concerned about.

THE COURT: And so that's why I've been concerned about this and didn't want you to get into those.

MR. JOHNSON: If I could just have one more word with Mr. Topham.

That's fine.

THE COURT: All right.

MR. JOHNSON: Ready to go.

THE COURT: We're ready to go? We'll bring in the jury.

MR. JOHNSON: I am but I expect this may not be the last --

(JURY IN)

CLOSING ADDRESS TO JURY FOR ACCUSED, CONTINUING:

MR. JOHNSON: Back again.

As you consider what is reasonable belief and what's in the public interest, I'd like you to consider what the matters are of discussion that you will be saying yes or no to in this case regarding Mr. Topham's right to communicate through writing and recording things that he believes are reasonable and in the public interest.

This trial is a case where you really have to decide what is basically, his legitimate belief in what he was doing.

The underlying theme for me in this case is one of freedom. Now, I'm not speaking about a right on a *Charter of Rights and Freedoms* but just to be able to speak freely in our society, and to voice your opinions. And I say that the freedom to do that, and I'm sure my friend will say it's not -- this case is not about that issue, not about freedom -- but I say that freedom is never an issue until it is lost.

And to a large extent, Mr. Topham is being tried for what he believed according to his own religious beliefs, his ethical standards and values. That's what he put on his website. That's why he was motivated to do what he did according to his outline that I read to you.

Mr. Topham has been called an anti-Semite or worse. We've seen reference to that with the witnesses saying that editorials that he has -- and articles that he has written on his website were anti-Semitic. But we had some problem with the definition of that word. You'll recall that I put the Oxford English Dictionary definition of that word to Mr. Wilson, as he now is. He used to be a detective, of course, with the B.C. Hate Crime section out of Vancouver.

But that Oxford English Dictionary definition that I put to him was as follows, "Theory, action or practice directed against the Jews, hence anti-Semite; one who is hostile or opposed to the Jews." I'm going to come back to that definition because Mr. Atzmon also referred to that in his opinion, which you have a copy of, or will have read, while he was speaking.

Getting back to Mr. Wilson, in fact Mr. Wilson believed that the word "anti-Semitism" had a much stronger meaning, to include hatred against the Jews. And while hatred was a component to Mr. Wilson's definition, it suited his non-expert description of the text of Mr. Topham's Radical Press only -- and this is how he offered the definition to you, that it included hatred.

The Crown's expert, Mr. Rudner, also prepared an opinion to try and help you understand many concepts, including anti-Semitism. It was clear that, like Mr. Wilson, Mr. Rudner tried to define anti-Semitism as hatred against the Jews. You'll recall that, when he was asked about the standard Oxford English Dictionary definition of anti-Semitism that was put to him during cross-examination, he said that he favoured a combination of the definition of anti-Semitism found in the on-line Merriam-Webster Dictionary and that of one Wilhelm Marr, who he had a footnote reference to by way of, I believe a Wikipedia footnote, to include hatred.

This of course was Mr. Rudner's expert opinion, but for the reasons that I am about to suggest to you, like those of Mr. Wilson, their view of anti-Semitism is hardly unbiased.

Unfortunately, bias was clearly evidenced from both of the only two witnesses called by the Crown and, from what you've heard, on the stand, and I'm going to ask you to allow me to elaborate on what I mean by bias. Let's deal first of all with Mr. Wilson.

First of all, you heard Mr. Wilson testify that Mr. Topham's website, in his words, “massive and was set up in the form of a blog”. As members of the jury, you're not allowed to see the entire website. You weren't supposed to be able to go back and look at it. You're simply to look at the evidence binders that were prepared for this case.

Mr. Wilson authenticated a large number of passages, found in Exhibits 1 to 4, through a long, and I submit, a rather tedious reading

by both himself and Crown counsel. The purpose was to establish those passages found in the binders as a replica of what Mr. Wilson found to support a charge on Mr. Topham's website, radicalpress.com.

Now, of course, there was some extraneous material found in Exhibits 1 and 4. An example of that was, as mentioned before, the BC Hydro Smart Meters article, for example. So there's a lot of stuff in that website that really has very little, or nothing whatsoever, to do with this case.

But for the most part you are asked to consider only the information from the website that Mr. Wilson thought was supportive of a criminal charge of promoting hatred to an identifiable -- against an identifiable group, namely Jews.

It's important to understand that, in not only selecting the material found in Exhibits 1 to 4, Mr. Wilson was also acting as an editor by summarizing the books that he had read, the articles and editorial comments found on Mr. Topham's website. He did that for you. In some cases, the summaries were quite short of books that spanned almost an entire binder. I speak in particular of Mr. Douglas Reed's book.

That being the case, it's safe to say that it involved Mr. Wilson expressing his opinion about the material that was in front of you. He wanted to help you to come to the conclusion that much of the material was, in fact, hateful according to what he said was a Supreme Court of Canada definition that he referred to in his evidence. However I must advise that only His Lordship can advise you on the state of the law. Whatever Mr. Wilson had to say about definitions of hatred are beside the point. It may have helped you understand where he was going with an investigation and why he laid charges but it is up to you to listen to His Lordship as to what the definition of hatred is. The -- and I'm not going to try. I'm not going to try here and establish that for you.

On the surface, it sounded like Mr. Wilson was simply performing his duty to investigate Mr. Topham and radicalpress.com. He was given a great deal of freedom to use his judgment regarding his investigation to enforce the hate sections found in the *Criminal Code of Canada*, section 319(2).

It was Mr. Wilson who received the initial complaint against Mr. Topham from Harry Abrams. That's a person who we learned was with the B'nai Brith Canada, an organization that operates, as Mr. Rudner stated, as a lobby group for the foreign government of Israel. Mr. Wilson travelled from Vancouver to Victoria, B.C. to meet with Mr. Abrams and to take a statement from him.

During cross-examination, we learned that the other Crown witness, Mr. Rudner [indiscernible] from Mr. Rudner that Mr. Abrams had been actively involved in complaining about Mr. Topham for quite some time, especially because of the Canadian Human Rights Tribunal. That was long before this meeting took place in Victoria.

We also learned that Mr. Rudner himself had complained to the RCMP, B.C. Hate Crimes, Major Team Crime Section in 2007, and demanded a criminal investigation at that time. At that time, Mr. Rudner was a regional director of the Canadian Jewish Congress which, like the B'nai Brith, Mr. Rudner identified as a lobby group in Canada for the foreign government of Israel.

So we are left with a couple of conclusions about this information that I can safely advise you of. Firstly, a foreign government lobby group was trying to shut down Mr. Topham's website for years through the Canadian government agencies of the Human Rights Commission and the RCMP for criticism of the State of Israel and Jews. Secondly, that it was only after receiving the complaint from the first complainant -- do you remember Mr. Warman; and the second complainant, who was Mr. Abrams, that the present charges were laid by Mr. Wilson. Until then, Mr. Topham had not been charged.

After Mr. Wilson charged Mr. Topham, the charges were subsequently approved by Crown acting independently of the police function. You have heard your -- My Lordship advise you that this required the responsibility of this charge being taken by the Attorney General, although the Attorney General was not directly involved. But that is where the ultimate responsibility for this prosecution lies under the *Criminal Code*.

That's not to say that this case is a political decision to commence criminal charges. I'm not saying that at all. I'm just telling you where the ultimate responsibility lies.

You will recall that when I cross-examined Mr. Wilson about his meeting with Mr. Abrams, I asked him if the book *Germany Must Perish!*, and Mr. Topham's article Israel Must Perish!, were discussed. He said that they were. I asked Mr. Wilson if Mr. Abrams brought up the subject of satire during that conversation and during that meeting, and he seemed to recall him doing that. He didn't know what was in Mr. Abrams's mind when he might have made that comment, but confirmed that there was a discussion about that. I then suggested to Mr. Wilson that it was Mr. Topham's, *Israel Must Perish!*, article that was the tipping point that led to the present charges, but he denied that.

However I'm going to suggest to you that Mr. Abrams finally had the evidence he needed to strongly influence Mr. Wilson's decision to prosecute. The, *Israel Must Perish!*, article, even if it was satire, was evidence of Mr. Topham communicating hatred against Jews because, and I'm sure my friend will argue in her closing, that because this satirical article called for the extermination of Israel and all Jews. It is my submission that there was a tipping point, and that it was the call for genocide of the Jews in Mr. Topham's satire of *Germany Must Perish!*.

It was soon after this meeting with Mr. Abrams that Mr. Wilson charged Mr. Topham under section 319(2) of the *Criminal Code*.

To summarize, I would like you to remember the following. One, the B.C. Hate Crimes team had received a complaint about Mr. Topham from Mr. Rudner in 2007, and it appears that nothing happened following that complaint. Secondly, it was only after Mr. Abrams complained and mentioned the satirical article of Mr. Topham that Mr. Wilson charged Mr. Topham. And at all material times, both Mr. Rudner and Mr. Abrams were representative of a Jewish lobby group operating in Canada that promoted the interests of Israel -- again, a foreign government.

As mentioned, Mr. Wilson was given a great deal of freedom to use his judgment regarding the enforcement of section 319 against Mr. Topham and he exercised that judgment. However, his authority to investigate and to charge Mr. Topham with a crime lead to an abuse of power as a police officer.

During his cross-examination, Mr. Wilson read a document that he had prepared when a member of the B.C. Hate Crimes team -- when, as a member of the B.C. Hate Crimes team of the Royal Canadian Mounted Police. The document was sent to Mr. Topham's internet service provider, November 21st, 2012. A copy of the document is filed in these proceedings as Exhibit 7.

I just want to read that document to you as I had Mr. Wilson read it:

Dear Sir or Madame, I am Detective Terry Wilson of the BC Hate Crime Team of the Royal Canadian Mounted Police E Division Major Crime. I am the lead investigator into a Hate Propaganda investigation involving the above internet site.

I understand that on May 31, 12, we have requested, through the US Department of Justice, to preserve this website as we were working on a Mutual Legal Assistance Treaty (MLAT). I wish to confirm that this website is still being preserved as the MLAT process has taken longer than anticipated.

This is the meat of it:

Secondly I would like to advise you that the administrator/owner of the website Mr. Roy Arthur Topham, has been now charged criminally with section 319(2) of the *Canadian Criminal Code* of Canada for Wilful[ly] Promoting Hatred, over his website, www.radicalpress.com. I

see by your website policy that this may in fact contravene your policy, section 4(b)(i) by using the website for "Hate Speech or other offensive speech or content." ...

And he says:

> If you have any questions please don't hesitate to contact me at the above email or at ...

And he provides his phone number. And that goes out on his RCMP email. What are we to make of that? Well, it might have been appropriate for Mr. Abrams and Mr. Warman to send a letter like that, but -- and to complain about the internet service provider. We know that somehow he got a copy -- it's obvious -- he got a copy of the policy that the internet provider had. I don't know how he came into it. It wasn't brought up in evidence, but he had it because he referred to it.

But I am going to suggest to you strongly that it was totally inappropriate for Mr. Wilson to take this step that he did in contacting the internet service provider. It is my submission to you that Mr. Wilson's abusive conduct is not simply overzealousness on his part. His letter is evidence of a personal bias against Mr. Topham that coloured his testimony on the witness stand whenever he expressed any view as a police officer.

Mr. Wilson has proven that in this case he was not able to separate his career life from his personal life. Mr. Wilson acted outside of the court system to try to stop Mr. Topham from operating his website. In fact, Mr. Wilson acknowledged that Mr. Topham continued to operate radicalpress.com after Exhibit 6 had been sent. He also acknowledged that the proper procedure would have been to go to court and have Mr. -- make an application to have Mr. Topham's bail conditions changed: to shut down his website; to modify or restrict the people coming onto the website.

The bias by the other Crown witness is much, much more problematic. It's, in my view, a very serious matter and I'm going to tell you why.

You heard from two expert witnesses during this trial. One was Mr. Len Rudner for the Crown. He was paid by the Crown. I think we originally got the numbers incorrect. He finally admitted to being paid more than what was originally asked of him by my friend. But it was correct. It was close to $200 an hour. I think it was $190 per hour.

The other witness was Mr. Gilad Atzmon for the defence.

Now let me tell you about the role of an expert witness and what they're expected to do. They're called not to testify with respect to factual background material of the prosecution against Mr. Topham. That's the job of Mr. Wilson. That's his function; presenting you with the facts. Instead the experts were called to provide an opinion with respect to those facts and to help you, as members of the jury, to reach your conclusion about Mr. Topham's guilt or innocence.

Well, what did he do? Here are the salient facts. One, as previously stated, Mr. Rudner, while acting in his capacity as regional director of the Canadian Jewish Congress, acknowledged on the stand during cross-examination of making a complaint against Mr. Topham and Radical Press in 2007 to the B.C. Hate Crimes team; the same team that Mr. Wilson eventually became a member of.

We also learned from him on cross-examination that he used the same methods or the same methodology to assess or analyze whether Mr. Topham was engaging in hate laws against Jews when he came up with the complaint originally in 2007. But he used that same methodology in the preparation of his expert report that he gave here in this courtroom. He expressed an opinion about the content of Mr. Topham's website and, in particular, certain passages put to him by Crown counsel primarily found in Exhibits 3 and 4, the binders.

On cross-examination Mr. Rudner said that he had collaborated with one Bernie Farber who was originally going to provide expert testimony at this trial. So it wasn't even his opinion. It was a collaborative effort with him and somebody else.

It's my submission that Mr. Rudder was completely biased. He took part in a criminal complaint against Mr. Topham, radicalpress.com, in 2007. Why would Crown counsel call Mr. Rudner when he had a proven bias? He wasn't the first choice but he was called to testify as an expert.

Now I'd agreed with my friend that he was qualified to give expert testimony. However, and this is important, I did not agree that Mr. Rudner was a credible expert. And I explored that on a cross-examination as to why he wasn't credible.

He shows you under cross-examination that he was not trustworthy to express his opinions because to use the colloquial expression, he had a horse in this race. In other words, Mr. Rudner clearly had a vested interest in the outcome of this trial. His impartiality led to bias because he analyzed Mr. Topham's website, as an expert, in exactly the same way he did as a complainant against Mr. Topham, in 2007.

Furthermore, we also heard from him that he had made a complaint to one of Mr. Topham's former ISPs, MagNet, to remove his site, Radical Press, from that ISP. He knew that this would not stop Mr. Topham, is what he said, but remember his words. It would inconvenience him.

Mr. Rudner may be a part of an inquisition in the year 2007, but he is not entitled to be part of an actual prosecution against Mr. Topham in this courtroom, masquerading as an expert witness. This was the danger of Crown counsel calling a purported expert witness who was closely aligned with and committed to his own agenda.

In short, having substantially damaged Mr. Rudner's credibility, the overall value of his evidence is worthless. I'm not only asking you to ignore what he had to say on the witness stand and what he wrote in his opinion, but to also ignore all reference that Crown counsel made of it during her cross-examination of Mr. Gilad Atzmon. That opinion doesn't get better because of the bias. That's the problem.

I'm going to get in now to some general comments about this prosecution in particular. These types of cases don't come along very often in our jurisprudence, and maybe fortunately for Canadians, that's the case. But they do crop up. They do happen.

Consider the section of the *Criminal Code* that Mr. Topham has been charged with. You can ask a lot of questions. Who's behind this section of the *Criminal Code* and the prosecution? Those people may say, for example, that in effect, to be tolerant, we have to have standards. Mainstream views. And if you don't have those mainstream views, we are going to put you into court and charge you as a criminal, and jail is a possibility. That is much like saying make peace or I'll blow you up.

Such is not tolerance. It's not intelligence. Such is not the service of mankind and such is not, I suggest, in the benefit and interests of the public.

It's been repeatedly challenged that Mr. Topham did not follow mainstream thought about the Jews. Well, he ran a website that was called Alternative News. Something that's not mainstream. You'd expect when you go there to find something different from what you're getting elsewhere, possibly.

But the people who insist that he should not deviate from the main stream cannot tolerate criticism of their views. They insist on conformity. They wish to entrench their own views as the law of the land and eliminate opposition. They wish you to do it for them to legitimize what they're doing by finding Mr. Topham and his views unreasonable, not in good faith, not for the public benefit, and not in the public interest. Therefore the state will define the boundaries of legitimate discussion.

That will be the result if you convict and legitimize their power to do so in this particular case. They wish you to find Mr. Topham guilty so that they can stop his views and other views of people similar to his. If his views were untruthful, why should they be stopped? They can be defeated by truth and reason and, most importantly, by freedom.

You'll notice that they did not want to discuss the contents of his views or defend against them. They attacked the background of his authors, his books, the scope of his ideas and others whom he has published on his website. Now you have the choice in how you define the public interest and public benefit and your understanding of that. His Lordship will help you with that, again. But, you're going to keep coming back to the issue of public interest, public benefit, reasonable grounds and good faith in these proceedings.

As a jury you must now decide what's in the public benefit in a debate, because my submission is that that's what Mr. Topham was involved with; a very long-standing, running, blog debate.

However I say to you that juries really shouldn't be put in this position. No man should be stuck with an inquisition into his life's work and writings in this country and have to spend as much time and effort, as Mr. Topham has had to spend, trying to defend himself against the massive power, wealth and enormous abilities of the state.

You couldn't do it. I couldn't do it. And I suggest to you it's a minor miracle that Mr. Topham [indiscernible] it either.

What do the words good faith, reasonable grounds, public benefit, public interest, really mean? Why do they have to be so seriously debated in this country and in this venue in particular? You will be considering those terms when you retire to consider your verdict.

The context of the debate over what these words mean should be within the context of an honest man's world view and belief. Do you have a world view? Do you have any beliefs? I don't know I've never met any of you. And I've never talked to you. But I suspect, like me, you probably do.

How do you think you could verify the things in which you believe? If you were attacked for something you said or something you wrote, what reasons would you be able to give? How many sources could you quote? How many books could you refer to on your website?

Now I suppose the Crown will say freedom really is not an issue in this lawsuit. This trial could have been longer and more complex and more difficult because of the amount of material that has been presented to you as set out in the exhibits, and especially those contained in Exhibits 1 through 4. It probably would have taken you at least a month to fully read and absorb all of the writings contained in those exhibits, a very daunting task indeed. But that's the context within which those individual pieces of quotes have been taken.

Do you need to read the entire article in order to understand that one quote? You probably do. How do you look at a book at a bookstore? You go in and you flip through it. You might read the first page. You might scan page 99 to get an idea of what's going on. But you try and determine what you're looking at. What we're being asked to do is accept a very short summary by Mr. Wilson of each one of these articles and editorials, and then get right into taking words either spoken by Mr. Topham or expressed in the books and articles that he had published on his website.

So we're actually whittling down the evidence that is here for you to look at. I've said that Mr. Wilson's comments about the introductions should be taken with his own biases, the one that he exhibited when he contacted the website. None of what Mr. Rudner had to say should be taken into account whatsoever. In my view his testimony is worthless.

We have Mr. Rudner and we have Mr. Atzmon, both saying that these books that are referred to by the Crown in this case are available on the internet if you want to go and buy them; Amazon.com; AbeBooks. You can buy these books. Yet Mr. Topham, by publishing them for free on his website, is guilty of hatred? And is to be punished for repeating something that somebody else is publishing and selling on the internet? Think about that.

Mr. Topham has been put on trial for a kind of thought process and communication that he has tried to make with members of the public through radicalpress.com. In my submission, by the end of the day, if you look at all the circumstances that have happened in this case, you'll consider, as I do, the ultimate insult to freedom and the biggest waste of time and taxpayers' money that anybody can be -- can be inflicted on anybody is occurring here in this courtroom. It's a waste of time.

These matters are best suited for an inquisition. An inquisition is really what this trial has turned out to be, in my view. Not by the will of anyone here necessarily but by the complex nature of the charge and the Crown's unreliable witnesses.

How does this happen? Well, here's how it happens, in my opinion. It's not by his choice, or really by mine either, that it happens. To show an honest belief, you have to place character in issue because you have to show to you, the jury, that Mr. Topham is an honest character. That's why I read out what I did at the beginning of this submission to you.

I've agreed with Crown counsel that the things that Arthur Topham wrote about on his website, he agrees with. That includes the articles entitled *The Hundredth Monkey*, and Exhibit 10. I understand both of those now we can track back to actual documents in binders 3 and 4. I had some difficulty when I first tried to do that because of the degradation of those initial exhibit books -- hard to read. They didn't get any better, so we've had to work around it. We were given a thumb drive to look at and then we were given a larger binder where tops of pages had been cut off. It was very difficult to sort through things and read things in context.

His Lordship will remind you that Mr. Topham not taking the witness stand in his own defence is not something that you can take into account in assessing his guilt or innocence. Not on the charge that comes under section 319(2). But he stands before you as an honest man, and I submit to you that I have -- that you have no reason to disbelieve that Mr. Topham has his faults, as we all do, but dishonesty is not one of them, and neither is hate. Neither is hate.

Where is hate? How do we measure it? Where is it? Is it in a word by a reckless statement written by Mr. Topham or by somebody else whom he publishes on his website? Do we find hate there? If you find hate in the documents lifted from his website, then you could probably find hate anywhere on a website that spans years of communication.

The evidence has shown Mr. Topham did not promote hate. So therefore the Crown says it doesn't matter whether he succeeded or not. The evidence shows that he didn't intend to promote hate. The Crown says it doesn't matter whether he intended to promote hate or not. The evidence shows that the documents taken from his website are confusing and complex and contradictory and conflicting. But there, they must find some hate.

So they've picked and sifted and looked and dodged to see if they can find some hate and intention to promote hatred against an identifiable group, to wit, the Jewish people.

Who are the Jewish people? That is what this trial in part has been about.

You heard from the expert witness, Mr. Atzmon, that Mr. Topham was not attacking the Jewish religion or Jewish heritage. However he was certainly criticizing Jewish political identity. And according to Mr. Atzmon, that is fair game. In contrast, the Crown expert witness, Mr. Rudner, gave evidence on a biased and in an accusatory manner. Anti-Semitism equals hatred. His analysis was centred around that concept.

Mr. Atzmon was a little bit different in his approach, you'll recall. We learned from Mr. Atzmon that there was a religion called Judaism, but Mr. Topham did not attack that religion in a hateful manner. Some of the authors, and in particular Elizabeth Dilling, wrote about the horrendous sections of the Talmud to support what she ultimately explores within the context of Jewishness to better explain a political identity. This isn't hatred. If anything, it's an attempt to expose hatred against non-Jews, and for Jews to have a good look at their own identity.

It's only through courageous individuals of integrity that freedom has developed to the point that it has in Canada. It's only through courageous individuals of integrity, such as you can be, that freedom will be preserved. You're really the only judges, in case -- of the facts and the major issues, in this case, to decide what is a reasonable opinion of the accused held in good faith for the public benefit and public interest.

Whether he, in good faith, was endeavouring to remove hatred against Christians, Arabs and others through stereotyping as it

occurred and does not occur -- and it does occur every day, is up to you to decide.

The fact that you have become jurors, a decision over which Mr. Topham only through me as his counsel, has had any hand in whatsoever, is an indication that the government, with all its superior knowledge and ability, has confidence that it need not worry about your intelligence or your integrity, but that they will find that you will agree with them and that you will convict.

We hope that you will have the intelligence to realize the integrity to give -- to live up to your realization that where you cannot, in good conscience, impose blame, you cannot, in good conscience, allow punishment.

If you find somebody a criminal, you've inflicted upon any man or woman the most serious indictment society can give. The punishment's irrelevant. If you label a man a criminal, you've put him into a category outside society and condemn him.

There was once a saying, said by someone, that he who is without sin among you, cast the first stone. Who among you, if you were on the stand or charged, could give more reasons, better reasons or reasons for matters in the public interest and public benefit than he has demonstrated in his materials.

Which can only mean that -- eventually that you cannot find yourself in good conscience able to convict. Regardless of that, of what anyone may say to the contrary, you must acquit and bring in a verdict of not guilty.

This case has five points. I've read them to you. The issues that we will be proceeding with will be on the basis of the public interest, what's in the public benefit.

You will hear his Lordship explain in better detail what those defences involve, being raised by the defence in this case. And only those defences.

THE COURT: Well, you see the time.
MR. JOHNSON: Oh.
THE COURT: How much longer do you expect to be?
MR. JOHNSON: I'm thinking probably 20 minutes.
THE COURT: Well, then I think we'll take the afternoon recess at this point.
MR. JOHNSON: Okay.

(JURY OUT)

MR. JOHNSON: My Lord, I apologize for not looking at the time. I understood that we were to go till 3:30 and [indiscernible] without a break.
THE COURT: Well, I wasn't going to break up your address to the jury today. I mean I wasn't going to do part today and part some other day. So I think we have to finish it today.
MR. JOHNSON: Okay.
THE COURT: Now do you wish -- do you have any comments to make or do you want to wait till it's done?
MS. JOHNSTON: Honestly, I'd like to wait until it's done, My Lord. I think that would be best, I do.
THE CLERK: Order in court. [inaudible]

(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
(PROCEEDINGS RECONVENED)

THE CLERK: And I'm back on record, My Lord.
THE COURT: Thank you.

(JURY IN)

THE COURT: Mr. Johnson?

CLOSING ADDRESS TO JURY FOR ACCUSED, CONTINUING:

MR. JOHNSON: I left off with my comment about statements that are relevant to any subject of public interest, the discussion of which is for the public benefit.

There's another category that I wanted to raise by way of a defence, and that is, if in good faith, he intended to point out for the purpose of removal matters producing or tending to produce feelings of hatred towards an identifiable group in Canada. All very beautiful legalese, hard to sit down and think your way through, but you're going to have to do that. They may be the biggest words you have to think about for quite a while.

What's an opinion or discussion relevant to the public interest? What's in the public interest to discuss? Well, if the state has its way, it certainly won't include what Mr. Topham was discussing. If you define those things which are for the public interest to discuss narrowly, then a lot of your discussions and mine can become illegal. What you do here will be interpreted to mean the public interest and public benefit can be defined as narrowly as the Crown desires.

How many things has he said? Thousands of things on his website; just read through his binders, there's thousands of words. Any one of those could be said to be, if you were to convict contrary to the public interest, not in the public benefit, not on reasonable grounds. How do you think that you can decide what is legitimate discussion for the public benefit? I couldn't. I wouldn't dare decide that question.

But you see, they put the onus on the accused to prove that it is, and they'll say, well, he hasn't proved it. He hasn't proved it's in the public benefit. They want you to define the public benefit as only the things that the Crown says are not hate. That will give the state the power to define the limits of discussion in Canada. And very narrow limits it will be.

You must realize that whether you like it or not, whether I like it or not, you've been entrusted with a very serious decision that will affect Mr. Topham, and others.

I will have a far broader application -- this case will have a far broader application than what Mr. Topham is going through here today.

I say to you that all this discussion, short of advocating violence, is in the public benefit. That's what I say, because right or wrong, every opinion creates an opportunity for further debate and discussion, and the information and communication of ideas. That is what Mr. Atzmon has expressed on the witness stand, to help you better understand how ideas need to flourish and not to be suppressed. New ideas challenge you. New ideas create awareness and stimulate the mind. New ideas distinguish us from animals. And create human progress towards the truth.

It doesn't have -- he doesn't have the truth. You don't have the truth. I don't have the truth. But if we're all truth seekers, we're all

going to come a lot closer to finding it.

If what Arthur Topham puts on radicalpress.com becomes illegal to say because it creates hate, and if you say, well, that's not in the public benefit, then what I say -- we'd all better conform to what the state says, they being the authority. Because I'll tell you a lot more -- I'll tell you a lot more can be done through fear of prosecution than prosecution itself. A lot more damage too.

If there's to be a criterion of objectivity at all attached to the subject of public interest or the public benefit, one might consider the expert opinion of Gilad Atzmon, set out in his opinion document, which was marked as Exhibit 13. I'm not going to summarize that for you, we're running very close to the end here. But please, remember the three things that he had you look at in that slide.

Who can identify themselves as a Jew can be divided into three main categories: those who follow Judaism, the religion; those who happen to be of Jewish ethnic origin, being born a Jew because your mother is a Jew, for example, which is what Mr. Atzmon was. In Israel -- he grew up as a -- in Israel. And then he's -- the third category, those who put their Jewishness as an ideology over all their other traits. Because it's that category where we can truthfully say it's in the public interest and public benefit to discuss. And he encourages us to. He encourages everybody to talk within that category.

Jewish political identity, it could be any other type of identity as well, but we're talking about Jewish political identity in this trial.

He states, in a free society every ideology and political standpoint must be subject to political criticism and intellectual scrutiny. You heard him say that on the witness stand.

He stated that there is a blurred distinction between Judaism as a religion and eth -- pardon me -- sorry, too late in the day here -- ethnicity and Jewishness as an ideology, as a symptom of Jewish political culture. For example, during his years in Europe, he said, that he came across people who called themselves Jews for peace, Jews for justice in Palestine, Jews against Zionism. He wondered to himself what's at the core of that ethnocentric separatist peace-loving endeavour.

And basically what he keeps coming back to is chosen-ness, the idea of chosen-ness, the idea of Jewishness. That's fair game, for comment, in all its forms, because Jews who identify politically as Jews tend to associate their religious and racial belonging with their political activities. Those Jews seem to attribute racism, bigotry and racial hatred to those who criticize their politics.

The truth of the matter is that -- as he says, that hardly anyone criticizes Jews as a race. Think about that -- their ethnicity or their biology. You heard one example of that during the trial, and that was Eustace Mullins' book, *Biological Jew*, and you heard Mr. Atzmon talk about that and how originally the Labour or Socialist Zionists, like Mr. Herzl, and some of the other authors that he cites in his index and his work, pretty much said the same thing. You'll remember that, at that time, Mr. Atzmon was saying that the Jews were trying to be better people and they thought that they could do that by returning home, by going to -- by creating the State of Israel -- going home and being better people. And you saw him make that inverted finger motion.

Whereas our societies generally have a proletariat at the bottom of the middle class and bourgeoisie of the top, the Jewish model, at least back at the time that these early Zionists were writing, was inverted. There weren't enough labourers on the bottom. And it was hoped that by having their own country, they could join the community of nations in the world. And that is why some people were referred to as parasites by the very writers who were hopeful that Jews would change.

So, Mr. Eustace Mullins is creating what Mr. Atzmon claimed was a metaphor. When we start talking about satires, metaphors -- those are techniques that are used to try and get people to think about things. I don't think it results necessarily in hatred. To do that, it is a discussion of their political identity.

My friend might say, well Jews can't express hatred against Jews any more than non-Jews like Mr. Topham. She may be right. But is this hatred when you start looking at what's being the context, what's being discussed. It's a big, big topic: Jewish political identity.

Mr. Atzmon came here on his own dime, with the exception of travel and accommodation expenses. He did it because he's been studying this area for a long time. He does it because he believes that we have to move forward as a society of people, as humanists, so that we can all discuss the universal things that are important to all of us, and that's being a human being. Humanist values. Not the values of a tribe, not the values of an inward-looking society. It doesn't work. It's doomed to failure. It creates holocausts when that happens.

So he's motivated out of a concern for the well-being, and so is Mr. Topham. Please look at it through those eyes. I think you'll understand why he's posting some of the things that he posts, that that book from Eustace Mullins starts to make sense when you do that.

You'll notice, as well, that Mr. Atzmon said that we need to continually look back in the past because we're moving forward, and we have to completely revise our feelings and our thoughts about where we came from. He said that in reference to the Holocaust.

Are we allowed to challenge figures numerically? He wasn't interested in that. He's a mathematician but he wasn't interested in numbers. Mr. Rudner seem to set the goal post. If you say that only -- say between six million and five point two million people were murdered, that's okay, but if you drop it down to a hundred thousand or two hundred thousand, that's anti-Semitism. We're not talking about that in this trial. We're certainly not talking about Mr. Rudner's testimony.

Again, there is an attempt made to try and set an objective standard for what is anti-Semitism. And I suggest to you to disregard Mr. Rudner's testimony. It is of no value.

In the short time that I have left here, I'm going to leave you with some things to think about. First of all, I wanted to repeat what I'd said earlier this morning in, *The Hundredth Monkey*. He is married to a woman, has been for some 30 -- 37 years, and she's a Jew. And I can't imagine there being hatred in his heart towards his wife because she's a Jew. For the same reason that you probably wouldn't expect to see somebody who's full of hate like an Islamophobist marrying somebody who's wearing a burqa. It's not going to happen. Or a white supremacist marrying someone who is black, coloured. It's not going to happen.

I just want to say that those who want to censor ideas are never satisfied. They want the best of their views always heard but no one else's. They insist that Mr. Topham and others like him be silenced, and this is a form of hysteria which is popular today. Those who exploit it are anxious to silence all views which they don't like. There will always be people who, powerful or otherwise, will like to silence views that offend them.

But, it's not the individual's perception of what is bad and what should be applied. It's not any particular identifiable group's perception of what they don't like. It is the public benefit as a whole which must be regarded. Please keep that in mind.

Even if hatred was promoted in some peripheral way against the identifiable group, all those exceptions I mentioned, the good faith, the reasonable grounds for belief, the public benefit and the purpose of removing hatred, are things that would mean that if they exist, they'd raise the reasonable doubt about Mr. Topham's guilt, and I'm asking you to acquit if you find those defences are applicable.

And I suggest that Mr. Atzmon has really helped you to understand how to apply those terms. Despite the jurisprudence, despite anything else, the -- he was a person who made a lot of sense, and I hope he was able to instruct you on his work that he has conducted over the last 20 years in the area of Jewish political identity to understand who is a Jew and what you can talk about fairly without being charged or being called a racist, or a hater.

Now if you convict Mr. Topham, I think in some ways you would honour him in that respect, in some ways that you will condemn him, not really as a criminal but because of his beliefs. There's no doubt he honestly believes what he does. He's written extensively over a number of years. He's a follower of his own idea. He's an agitator, according to his conscience and for the ideals he believes in. Nobody can deny his sincerity in that. He will not fail to stand by his beliefs, whatever the outcome.

If this prosecution succeeds, those who have the power to prosecute people or their opinions will take sustenance from it and others will probably suffer the same consequences.

If you acquit him, I can suggest he can return to the sanity in which different ideas are tolerated, and a wider range of legitimate

dispute through reasoned argument will occur.

It will be a travesty and an injustice to allow his conviction when you cannot deny his honesty. Who among you, if you were required to show your own reasonable beliefs, could do better? Who among you can claim to have a better foundation than perhaps even the Bible, or in any other form of research for what you believe.

Nobody believes one source only. Some of the cross-examination was directed to saying, well, this one source doesn't agree with you, not one-hundred per cent. It may even be outright contradictory to what you believe in.

But in the final result, I want you to consider Mr. Topham's ideas and why he's doing what he is doing. And I'm going to ask you to acquit.

Thank you.

THE COURT: Now, we've obviously gone much further today -- or taken much longer today then I thought we were going to, so you're going to be excused today. Obviously, we're not going to hear the Crown's address to you today.

So, what I want to tell you and I told you this at the start of the trial as well, is that you've just heard Mr. Johnson's address today. Before you start considering the matters in this case and deliberating the issues, you must first hear from Ms. Johnston and from me, because I'm the one who will instruct you on the law and what the law is and how you should approach these things.

So don't start considering until you've heard the rest of the matters and, of course, keep your minds open for the argument of the Crown and also, of course, for the instruction of the law which I am going to give you.

And with that, I will excuse you today. However, I also want to ask you another thing.

Because of the delay that we have, I am not going to be able to give you my charge on Monday, and now we have Wednesday next week which is a holiday. If I charge you on Tuesday, then it seems likely that you'll be sequestered through Wednesday, and I don't want you to answer me, I want you to go back into the jury room and have a discussion, and then you can let our Sheriff know. But if you would rather have the instruction on Thursday, rather than Tuesday, we'll do it that way.

So those are the choices right now. You'll either get my charge to you on Tuesday or you'll get it on Thursday. The choice is yours. So we'll wait here til you've had that -- and we'll stand down for ten minutes and wait here, and you can just let the Sheriff know.

(JURY OUT)

THE COURT: Now, obviously we're not going to have a charge conference on Monday morning. I suggest what we do is start at 10:00 with your address to the jury, and then we can deal with matters relating to the charge after that.
MS. JOHNSTON: My Lord, I think it's fair to say there may have been some legal difficulties with some of the comments made by Mr. Johnson.

There may have been some legal difficulties with some of the comments made by Mr. Johnson in the course of his closing.
THE COURT: Yes.
MS. JOHNSTON: It is simply too late in the day to get into it now.
THE COURT: I agree.
MS. JOHNSTON: Yes. My only concern, and I was in favour of Mr. Johnson being allowed to finish so Your Lordship could deal with everything at once, but prior to the jury being excused for the weekend, I am requesting that Your Lordship inform them that you will be giving them a limiting instruction as to Mr. Johnson's closing.

I am concerned about -- Your Lordship was obviously very clear that you have to give instructions, but --
THE COURT: And frankly, I thought -- I've thought about this, and I think that's the best way to deal with it.
MS. JOHNSTON: The way --
THE COURT: The way I propose, which is, I'll include it in my final charge. My comments about the incorrect statements about the law will be specifically highlighted in my final charge to the jury rather than trying to do it now because we'd have to have the jury waiting around for quite some time to go through it and pick them all out.
MS. JOHNSTON: Absolutely. Does Your Lordship wish to meet earlier on? Or just simply do it after Crown's closing? My closing is written and it won't be that long.
THE COURT: All right. And -- I mean, I'd appreciate it, certainly, if you each -- if you had your comments or your criticisms of the charge, if you could have something in writing on that and provide it to Mr. Johnson and myself at the start of the day on Monday, then we can discuss that after the -- after your address to the jury.
MS. JOHNSTON: Thank you.
THE COURT: All right?

So we'll wait to hear what the preference is, and I guess we'll just stand down. Oh, we may have an answer.
UNIDENTIFIED SPEAKER: [inaudible]
THE COURT: Just one moment.

I think we'll just stand down for a moment and -- let me know.
THE CLERK: Order in court. Court is adjourned briefly.

(PROCEEDINGS ADJOURNED)
(PROCEEDINGS RECONVENED)

THE CLERK: Okay, we're back on record, My Lord.
THE COURT: Thank you. Yes, Mr. Foreman.
JURY FOREMAN: We'd like to hear your charge on Tuesday.
THE COURT: On Tuesday, all right. Well then we'll do it Tuesday morning, and we can start at -- we'll start 10 o'clock on Monday.
JURY FOREMAN: Okay. Thank you.
THE COURT: All right. Thank you for considering that.

And we'll adjourn for the day.
THE CLERK: Order in court. The court is now closed.

(PROCEEDINGS ADJOURNED TO NOVEMBER 9, 2015, AT 10:00 A.M., FOR CROWN'S CLOSING ADDRESS TO THE JURY)

Transcriber: L. Jamieson