

25166-3		
Quesnel Registry		
In the Supreme Court of British Columbia		
(BEFORE THE HONOURABLE MR. JUSTICE BUTLER AND JURY)		
Quesnel, B.C.		
November 3, 2015		
REGINA		
v.		
ROY ARTHUR TOPHAM		
PROCEEDINGS AT TRIAL		
(DAY 7)		
COPY		
Crown Counsel:		J. Johnston
Defence Counsel:		B. Johnson

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RULINGS

Quesnel, B.C.
November 3, 2015

THE CLERK: In the Supreme Court of British Columbia, this 3rd day of November, 2015, continuing with the matter of Roy Arthur Topham, 25166-3.

MS. JOHNSTON: Thank you, My Lord.

Jennifer Johnston, appearing on behalf of the Provincial Crown.

MR. JOHNSON: Barclay Johnson, appearing on behalf of Mr. Topham.

THE COURT: All right. So, are we set to go?

MS. JOHNSTON: Yes. What I anticipate, My Lord, is that we'll close the Crown's case and then we will proceed, obviously, to the defence case, if they so choose to call some one. Sorry.

THE COURT: All right. And the Crown's case is being closed on the agreement that you can reopen assuming the defence calls some evidence, that you can reopen to deal with the large exhibit the binder?

MS. JOHNSTON: The binder? No. I have my witness I have some admissions I need to read to the jury and then Constable Blount will be there. He will authenticate a copy for the exhibit. It's not particularly unusual. I mean, it's not usual to authenticate every single copy handed out to the jury.

So, I'll have him here and then I won't have to bring him back.

THE COURT: Yes. So we're going to do that this morning, are we?

MS. JOHNSTON: Yes.

THE COURT: Oh, all right. All right.

MS. JOHNSTON: I'll call him and he'll authenticate the large binder.

Now on that subject, My Lord, we do have a price for the copies \$2,000. Now obviously we can I mean, we can obviously do that. Well, the RCMP can obviously do that, I assume.

THE COURT: Well, if it can be done I'd like it to be done.

MS. JOHNSTON: Thank you.

THE COURT: All right. Well, let's bring in the jury.

(JURY IN)

THE COURT: Ms. Johnston?

MS. JOHNSTON: Thank you, My Lord.

We have some admissions which have been previously filed in this court. I have a copy for Your Lordship. I would ask that the original filed copy I think I would ask that the original filed copy be made an exhibit in this matter.

THE COURT: Yes, it will be an exhibit.

MS. JOHNSTON: I think we're at 9.

THE COURT: The next exhibit?

MR. JOHNSON: That's agreeable.

THE CLERK: Exhibit 9.

MS. JOHNSTON: And I'll double check my counting but I believe I have copies for the jury, if it would please Your Lordship to have those distributed.

THE COURT: Yes.

THE CLERK: I'm not sure I have that, My Lord.

THE COURT: That's fine. If it with my friend's consent, if we just simply file one of the photocopies as an exhibit.

THE CLERK: That's fine.

THE COURT: Yes, we can do that.

MS. JOHNSTON: Thank you.

MR. JOHNSON: No objection.

MS. JOHNSTON: Thank you, My Lord. If it can be marked as the next exhibit?

THE CLERK: Exhibit 9.

MS. JOHNSTON: Thank you.

EXHIBIT 9: One-Page Admissions, Signed November 2, 2015

MS. JOHNSTON: And if it would please the court, I'll read these out loud into the record.

THE COURT: Yes.

MS. JOHNSTON: Thank you, My Lord. [As read in]:

Pursuant to s. 655 of the *Criminal Code* the accused herein, Roy Arthur Topham, by his counsel, Barclay Johnson, hereby admit the following facts alleged for the purpose of dispensing with proof thereof:

1. Roy Arthur Topham ("Arthur Topham") operates a website, radicalpress.com, from his home near Quesnel, British Columbia. As such, jurisdiction is admitted for both counts 1 and 2 on Indictment 26166-3.
2. The Arthur Topham present in the courtroom is the same Arthur Topham referred to in radicalpress.com. As such, identity is admitted for both counts 1 and 2 on Indictment 25166-3.

Dated at the City of Quesnel, Province of British Columbia, this 30th day of October, 2015.

Signed by Mr. Johnson and dated the same day by Jennifer Johnston, counsel for the Crown.

THE COURT: Thank you.

MS. JOHNSTON: Thank you, My Lord.

My Lord, if I could please be given Exhibit 5? Those were the admissions that were filed previously in this matter.

THE COURT: Yes.

MS. JOHNSTON: My Lord, the Crown is applying for an amendment and it is entirely my mistake. I apologize to my friend.

MR. JOHNSON: Right.

MS. JOHNSTON: Your Lordship will see in the first paragraph, it says, "Charged in Indictment

25166-2". That, My Lord, should read, "25166-3". So I am respectfully requesting that that change on Exhibit Number 5 be made.

THE COURT: All right. And

MR. JOHNSON: No objection.

THE COURT: No objection? That change will be made.

MS. JOHNSTON: Thank you.

MR. JOHNSON: We're just talking about one digit.

THE COURT: Yeah.

MS. JOHNSTON: We're talking thank you, My Lord.

THE COURT: Yes.

Madam Registrar.

MS. JOHNSTON: Now, My Lord, the

THE COURT: Madam just one moment. Madam Registrar? I don't have a pen. Can you hand me a pen? I need a pen.

Thank you.

MS. JOHNSTON: Thank you, My Lord.

We have a binder, a larger binder with a better printout which I don't know if my friend is asking that it be authenticated. I'm prepared to call a witness at this time to authenticate the binder, if that's defence's wish. And of course, he's entitled to ask that it be authenticated.

THE COURT: I understand that's the situation.

MR. JOHNSON: Yes.

THE COURT: Yes.

MR. JOHNSON: I would like to see the binder first, if I could?

MS. JOHNSTON: Thank you. The witness is here in the courtroom, Constable Blount. If I could just collect if from Constable Blount, please, My Lord?

THE COURT: Certainly.

MS. JOHNSTON: Thank you.

MR. JOHNSON: And if I might have one word with Constable Blount?

THE COURT: Certainly.

MS. JOHNSTON: Thank you, My Lord.

As Your Lordship knows, we are in the process of making a number of copies. Constable Blount has the binder at the printer so it can be the copies can be made. I apologize to the court. I'm not in a position to authenticate it right now. I am requesting permission

THE COURT: I do I do have this copy.

MS. JOHNSTON: I think he can authenticate that one.

THE COURT: And I I don't believe I've done anything to it. I don't think I've marked anything in it, so

MS. JOHNSTON: Thank you. I can call him on that basis.

THE COURT: All right.

MS. JOHNSTON: One moment, please, My Lord?

THE CLERK: For the record, I need the spelling of Blount.

MS. JOHNSTON: I don't recall it. I'm sure he'll give it when he's sworn in.

THE COURT: Mr. Johnson, would you like another couple of minutes to look at it, or

MR. JOHNSON: No. I saw this yesterday, briefly.

I just want to make sure perhaps to save some time without having to call Constable Blount, that the page numbers that appear at the top of page 140 for example, I'm looking at page 145 correspond with the documents that are already in as exhibits. And I note that we had that one issue with regard to the one page being off. And if that's the case, maybe we should have some explanation about the page numbering, for sure, so that the jury can find the right text.

THE COURT: All right. Well, I'm sure Constable Blount can provide that for us.

MR. JOHNSON: Okay. Well, I guess

THE COURT: I would hope.

MR. JOHNSON: -- that's my only concern.

MS. JOHNSTON: Thank you.

Thank you, My Lord. The Crown will call Constable Gareth Blount to the stand, please.

THE COURT: All right.

GARETH BLOUNT

a witness called for the Crown, affirmed.

THE CLERK: Please state your full name for the court, sir, and then spell your last name?

A My name is Constable Gareth Blount, B-l-o-u-n-t.

EXAMINATION IN CHIEF BY MS. JOHNSTON:

Q Constable, I understand that you are currently assigned to the B.C. Hate Crimes Section; is that correct?

A That is correct, yes.

Q And you are aware that, in the matter that is proceeding, *R. v. Topham*, the Crown created some binders of evidence; is that correct?

A I am aware that they produced them, yes.

Q Now, I understand that you were requested to look through a larger copy of the binder to see whether or not it was authenticated, in terms of whether or not it was a proper copy of binders 3 and 4 that have been previously marked as exhibits in this matter; is that correct?

A That is correct. However, I haven't done that yet simply because it's still at the printers.

Q I see. So you haven't done it at all?

A I haven't yet, no.

Q All right. We discussed this last night and you were going to do it last night?

A Yeah. Unfortunately the printers hadn't scanned it.

Q I see. I see.

A There were sufficient copies, though.

MS. JOHNSTON: I apologize for this, My Lord.

However, what I can do is I'm going to attempt to fix it. My Lord, if I could please be permitted to approach the witness with the binder?

THE COURT: Well, I think he would obviously need a bit of time to do that. So, I mean, do you want to stand down and have him do that right now?

MS. JOHNSTON: Thank you.

THE COURT: It seems to me

MS. JOHNSTON: I can. Thank you.

THE COURT: -- that's the best way to do it and probably the most efficient way, rather than having to recall Constable Blount later.

MS. JOHNSTON: Thank you.

THE COURT: So we'll excuse the jury.

(JURY OUT)

THE CLERK: Order in court. Court is adjourned briefly.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

THE CLERK: And we're back on the record.

THE COURT: All right. Let's call in the jury.

(JURY IN)

THE COURT: All right.

MS. JOHNSTON: My Lord, the Crown calls Constable Gareth Blount to the stand. We were just stood down earlier.

THE COURT: Yes.

GARETH BLOUNT, recalled.

EXAMINATION IN CHIEF BY MS. JOHNSTON, Continuing:

Q Constable Blount, I understand you went by the printers yesterday to get the binder and there was a problem; is that right?

A That is correct, yes.

Q What was the issue?

A I provided the binder to the printers. However, when they scanned the document in the clarity wasn't what they expected it to be. So they wished to try again overnight.

Q I see. So, can you tell me whether or not that's why you couldn't pick up the binder yesterday?

A That is correct, yes.

Q And is that the difficulty in comparing the binders?

A That is correct, yes.

Q All right. So, thank you for that, Constable. I apologize for having drawn it to your attention before.

I understand, however, that you had the opportunity to sit down with a copy of the larger binder, which we haven't yet entered as an exhibit, and Binders 3 and 4, which we have entered as exhibits?

A That is correct, yes.

Q Did you have an opportunity to compare binders 3 and 4 to the new binder that we're seeking to have admitted?

A I have, yes.

Q And can you tell me whether or not the page numbers are the same in both binders?

A The page numbers correspond, yes.

Q Yes. Now you say they correspond. We have discussed previously the missing of page 294?

A That is correct, and page 294 on the larger binder is missing.

Q All right. So in both I think it's Binder 4 that has 294 in both the binder that's already an exhibit

A Yes.

Q -- and the brand new binder that we're hoping to have made an exhibit, page 294 simply doesn't exist?

A That is correct, yes.

Q All right. Now we also described discovered, which is 539 doesn't exist in either binder; is that correct?

A That is correct, yes.

Q Did you physically check both binders, Binder 4, which is already an exhibit, and the new binder we hope to have made an exhibit?

A I did, yes. And neither contained 539.

Q All right. So in both binders it goes from 538 to 540?

A That is correct, yes.

Q All right. Now sir, we've already looked at Binders 3 and 4 in some detail, and some of the pages are sideways in the original binders.

Now when you look at the new, improved binder, is the content of those sideways pages the same in both binders?

A The content is the same. However, the orientation has switched around, so it becomes portrait instead of landscape, which it is in the original binders, which are exhibits.

Q All right. So in other words, the orientation of every single page is now consistent in the new binder?

A That is correct, yes.

Q Now in addition to this, Constable, did you also do a number of spot checks to make sure that the content on the new and improved binder and the old binders are the same?

A I did, yes.

Q And what was the result of having made those comparisons?
A On every spot check it was identical to how it was in the exhibit binders.
Q Did you go through both Binders 3 and 4 to do a number of spot checks with the new and improved binder?
A I did, yes.
Q Now sir, what arrangements have you made to try and get a full set of new and improved binders for this court?
A They are beginning to print now and they're hoping to have it by Thursday.
Q All right. My understanding is that they scanned they scanned the new and improved binder and then they're going to create multiple copies for all of us; is that correct?
A That's correct. They're going to print from the original scanned copy.
Q Thank you. And that was a scan that had a problem, which was what prevented you from doing the spot check last night?
A That is correct, yes.
Q Okay. Thank you very much.
MS. JOHNSTON: My Lord Constable Blount, please answer any friends [sic] my friend, Mr. Johnson, may have for you. Sorry.
My Lord, I'm not asking to enter the exhibit yet, simply because this is the only issue, so presumably if my friend has any cross-examination it would be best to ask that after cross-examination.
THE COURT: All right.
MS. JOHNSTON: Thank you.
MR. JOHNSON: I just have one question.

CROSS-EXAMINATION BY MR. JOHNSON:

Q In your review of the documents, to compare them, did you notice any problems at all in the comparison? Did anything stick out, any anomalies?
A Nothing aside from, as I said, the orientation is changed around. So it's gone from landscape in the original exhibit binders and it's turned around to portrait. Aside from that and obviously the amendments that have been made and stuck onto the page. I didn't notice any other differences.
Q Okay. Just following up on what you've said about the landscape
A Yes?
A -- is that the way these binders probably should have been prepared in the first place?
A Um
Q So that the text wasn't all broken up?
A I don't know if that would have made a different to the text. I believe that when and it's my opinion. I'm not an expert.
Q Right.
A When you pdf a document it takes the document and it may cut off on a certain line. And unfortunately, without being a computer expert, I don't know how to change that problem.
Q But it appears that in this binder we have no difficulties with that problem?
A Purely with the orientation, yes.
Q Yeah. So my question, my original question was if the binders had been prepared in that fashion to begin with, would we have saved some time here?
A Um
Q Likely?
A I don't know if it would have saved time. It would have changed the orientation. I don't know if it would have changed the line breaks.
MR. JOHNSON: No further questions.
I'm satisfied, My Lord.
THE COURT: All right. And so you have no objection to having this document entered as the next exhibit?
MR. JOHNSON: None.
THE COURT: What I would do then is I'll we'll mark we'll mark it as two exhibits. The half of it, which is Exhibit 3, will be marked Exhibit 3-A, and the half of it which refers to Exhibit 4, will be Exhibit 4-A.

EXHIBIT 3-A: Binder containing copies of Documents Contained in Exhibit 3

EXHIBIT 4-A: Binder containing copies of Documents Contained in Exhibit 4 (In Landscape Size)

MS. JOHNSTON: Thank you.
With that, My Lord, would you permit the Crown to provide on the break tab dividers so that we can see a new exhibit?
THE COURT: Yes.
MS. JOHNSTON: Thank you.
And My Lord, I forgot to ask one question which I think will be good for explanation, if it would please the court to allow me to ask one question.
THE COURT: Yes.
MS. JOHNSTON: Thank you.
THE COURT: Subject to, of course, cross-examination if anything arises.
MS. JOHNSTON: Thank you.
MR. JOHNSON: Not that no, I don't believe I would have any cross.
MS. JOHNSTON: Thank you.

RE-EXAMINATION BY MS. JOHNSTON:

Q Constable Blount, and I apologize because I forgot to cover this. You knew about the problem with some of the lines cut off, in the original binders?
A I was aware prior to today, yes.
Q What, if anything, has happened in the new and improved binder to rectify that problem?
A In the new binder there are it's a text document or a text a text that's stuck onto the piece of paper that explains what is said on each of

the lines that are kind of cut in half, so to speak.

Q So in other words, the line, as it should read, is physically taped on the piece of paper so you can see what it's supposed to read?

A That is correct, yes.

Q Now I understand, Constable, in some of these, if it's the bottom page or the top page, if you see the top page top line cut off, you may have to flip one back and see the bottom of the next page to actually find where the new quote has been taped on?

A That is correct, yes.

MS. JOHNSTON: Thank you.

Thank you, My Lord.

THE COURT: Anything arising, Mr. Johnson?

MR. JOHNSON: Nothing.

THE COURT: Very well.

MR. JOHNSON: Thank you, My Lord.

THE COURT: Thank you.

Constable Blount, you're excused from the witness stand. Thank you.

A Thank you, My Lord.

(WITNESS EXCUSED)

MS. JOHNSTON: That's the case for the Crown, My Lord.

THE COURT: Thank you.

Mr. Johnson, do you wish to open?

MR. JOHNSON: My Lord, I'd like to have a brief opening, if I could?

THE COURT: Yes.

MR. JOHNSON: I'm not sure if I can make my way over I'd like to use that podium over there if the microphone is set up properly,

Madam Registrar?

THE CLERK: It's there.

MR. JOHNSON: Thank you.

THE COURT: And before you start, Mr. Johnson, I'll just give a brief reminder to the jury of the instruction I gave earlier, that when counsel present their openings and later at the end of the trial when they present their final statements or submissions to you, it's not evidence. It's their view of things. They counsel are permitted to give openings to assist you in understanding the case of in this case, the case of Mr. Topham, and to allow you to, if the defence chooses to call evidence, allow you to understand what evidence you may expect to receive. Thank you.

Mr. Johnson?

MR. JOHNSON: Thank you, My Lord.

OPENING FOR ACCUSED BY MR. JOHNSON:

MR. JOHNSON: Members of the jury, it's my pleasure to be able to finally get a chance to speak to you. I don't get very many chances. I'll have this opportunity in my opening to let you know what the defence is going to be for Mr. Topham. It's my opportunity to tell you how we're planning on dealing with these charges, going forward from this point.

At the end of the trial I'll also, as will my friend, the Crown counsel, be given an opportunity to sum things up. And although I promise to be short and to the point right now, I can't make that same promise at the end of this case. You've sat through a lot already. I'm not going to hold you up much longer. We're going to get on with this.

So what is it that brings us here to court today? Well, you've read the indictment, I suppose, of Mr. Topham. He's charged with two counts. The dates are set out in the indictments.

But it's that he's communicated by statements, other than in private conversation, willfully and willfully promoted hatred against an identifiable group, people of the Jewish religion or ethnic origin, contrary to s. 319(2) of the *Criminal Code*. And there's a second charge, which is pretty much identical to that, except for the dates.

The *Criminal Code* offers some built-in defences to this charge. I'll get to those in a moment. I first of all want to let you know that Mr. Topham does reside here in Quessnel, on a farm with his wife, and he's a grandfather. He's 68 years old. That's all I can tell you.

He has and to this day continues to operate Radical Press. And, as you know by now, he's used the terminology "an alternative news service", which operates on the internet web on the internet, which is a website. That means that people can access Radical Press if they're interested and read whatever he's got.

What you've been given today are some changes to the binders that were provided. It's a difficult and long process to sift through every single part of those binders. I believe that a lot of the material has been pointed out to you that is of importance, but it's still important, in my view, to understand the context. And Mr. Atzmon, whom I'll calling as an expert, is going to help you, I suppose, with giving you a template, giving you something through which his optics and his expert opinion on Jewish political identity, will help you understand what you're looking at when you go through the documentation.

The documentation is something that's there for you to read. You can read it all and I think if you've got a desire to fully understand what Mr. Topham's website is about, I encourage you to do that. That's a big job. That may not be possible.

This is essentially a paper case. It's a documentary case that's been put together by the Crown. And you're probably waiting to hear from Mr. Topham. Mr. Topham sits in this box here. He's be patiently watching the proceedings, as you have.

But I'm afraid I'm going to disappoint you. I'm not calling Mr. Topham. Mr. Topham has said what he's had to say on his website. There will be one additional document which my friend, Crown counsel, and I have agreed upon, which was an answer to a complaint made in 2007 about his press, Radical Press. And it sets out pretty much who he is. And I think it's going to be enough for you to judge him, based on his own words, keeping in mind that Crown counsel won't be able to cross-examine him.

But remember this, that in this country we don't have to be cross-examined on our opinions. We don't have to if it's not necessary. And in this particular case, especially, it's not necessary that he take the stand, in my view.

However, having said that, you heard from Crown's expert. In my submission, I believe that when you fully understand the issues that are at stake here, from the perspective of the defence, I encourage you to weigh the evidence between the two, and most importantly, obviously, follow the direction of the court on this issue. But I'm going to suggest to you that it's much preferable to listen and look at the expert opinion, through the eyes of Mr. Atzmon.

Who is he? Mr. Atzmon is a very, in my own words, very talented and in some cases a very frenetic individual. He is driven. He started off as a jazz musician in England. I back that up. He was actually born in Israel. He went through the usual parts of his life

growing up in that country, and ended up moving to England. You'll hear from him why he did that, why he made those personal choices in his life.

He's a gifted jazz musician. He's opened with and he's played with Paul McCartney. He's played with some other groups that I don't really know. I guess I'm kind of old to follow stuff like that, but certainly he'll let you know.

His analysis is something that will bring some clarity to why we have problems with this charge. One of the biggest issues we have is who is a Jew? It's a big question. And it occupies much of this trial. Your perspective on how to read and how to understand Mr. Topham's website very much depends on the answer to that question. Mr. Atzmon will hopefully help you understand that question because it's multilayered and it's also very dense in some places.

We've asked him to keep it simple as much as possible. But he's lived this, as well. As a Jew, he's lived this, as well as written about it. He's a person who is who believes what he's doing and wants to do the right thing by coming here. Unlike Mr. Rudner, he's not being paid for this. He's coming on his own.

That doesn't mean that his evidence should be preferred to Mr. Rudner because of that fact alone. I just want you to know that there is a deep-seated need on his part to explain who is a Jew, especially in the context of a criminal prosecution where ultimately Mr. Topham's freedom of expression is at stake.

Now the Crown probably will say that in this trial freedom of expression is not an issue, that it's very tightly put together into the *Criminal Code*, where you're not supposed to look beyond that. But, it was Mr. Topham's freedom of expression that has given rise to these problems, and his exercise of that freedom of expression. I only ask that when you hear the evidence that you're about to hear, that you have an open mind, that you analyze, use that as a tool to analyzing the comments and the graphics and the information found in those binders.

I hope it will help you because that is the role of an expert, to help you arrive at a decision. Mr. Atzmon is not making this decision for you. Unfortunately that is a responsibility which is squarely and solely on your shoulders and your shoulders alone. All that Mr. Atzmon can do, in presenting this evidence, is to help you understand your role, but most importantly understand why Mr. Topham wrote the things that he did in the binders that are here, and we'll hear from him.

I mentioned that there are some defences that are available under the *Criminal Code* and I would only say that I'm going to save much of that for argument. This isn't the proper time to really get into that. But certainly a couple of things that might focus you somewhat is public interest, public benefit, acting in good faith. These are some of the things that I'm going to ask you to think about as you hear Mr. Atzmon's evidence and as you read the binders.

Mr. Atzmon's evidence may fall short of the things that you would like to talk to him about, unfortunately. This is not a conversation. It's not something where you can sit down over a Starbuck's coffee and ask him what he meant by that. That's the role of the prosecutor and the justice.

In my view, the material that you're about to hear is novel. This is not mainstream in the least. And there's a reason for that. It's because he's the only person in the world who's written extensively on this matter. You are about to hear his theories.

When you listen to Mr. Atzmon I want you to really ask yourself a basic question. Does he have a horse in this race? Does he come here representing Mr. Topham or does he come here representing his own expertise and helping you clarify matters so that you can come to your own decision on things? I'm going to suggest it's the latter. That's why he's here, to help you. So just to summarize, in my view again, freedom is definitely an issue for Mr. Topham.

There's a massive amount of detail. You've only been given a portion of it in the evidence you've heard from now Mr. Wilson. But this is a huge website and it's been going on for a long time. You can understand that from having heard that it was subject of a complaint in 2007, eight years ago.

So with that in mind I would like to now have Mr. Atzmon qualified as an expert. And

THE COURT: And we'll excuse the jury

MR. JOHNSON: Yes.

THE COURT: -- for the morning recess and I expect we'll be a little longer than the usual 15 minutes. So ...

(JURY OUT)

SUBMISSIONS FOR CROWN BY MS. JOHNSTON:

MS. JOHNSTON: My Lord, I have some issues I wish to address with the court and I had previously given permission for Mr. Atzmon to be in the courtroom and I stand behind that. At this time, however, My Lord, I would request that Mr. Atzmon be allowed be requested to please leave the courtroom.

THE COURT: All right. Mr. Atzmon, could you please step outside?

MR. JOHNSON: I've asked him to step outside prior.

THE COURT: Oh, all right.

Yes, Ms. Johnston?

MS. JOHNSTON: I'm concerned about the content of my friend's opening statement.

Opening statement is not the place for argument. Opening statement is the place to tell the court what evidence we're going to hear from the witnesses that we see next. I decided it was inappropriate to stand in my friend's opening and I

THE COURT: Well, I have to say I have I have exactly the same concerns and I didn't say anything for the same reason. But can you please tell me what you say are were improper improper use of the opening?

MS. JOHNSTON: My Lord, and I appreciate with a lot of these points it may be, at the end of the day,

very little turns on it. So I don't wish to taken to prejudging the effect.

THE COURT: Well, obviously what I'm concerned about is whether or not I have to give some kind of instruction to the jury. That's my only concern at this point, and so I'd like you to say what you say there needs to be some corrective instruction about.

MS. JOHNSTON: Well, for example, he is describing Mr. Topham as 68 years old and a grandfather who continues to operate Radical Press. Now I may very well be willing to admit all of that, Your Honour sorry, My Lord. But he's also told us that Mr. Topham is not taking the stand. He hasn't mentioned any witness who's going to be able to offer that evidence as non-hearsay evidence.

He also says that freedom of expression is important to Mr. Topham. Now, absolutely he is allowed, in closing statement, to go through the documents that have been placed before the court and make that argument to the jury. But it is not, in the Crown's submission, for him to make that argument now and have the jury it's not that is an argument, freedom of expression is important to Mr. Topham.

Problems with the charge I mean, he's certainly entitled, in closing, to say that he has problems with the charge. There may be legal flaws with the charge. Fair enough. But that's not this isn't the place.

"Wants to do the right thing" that's a judgment call.

"He has lived this as well as written about it." Is he being called as an expert or is he being called as having some sort of first-hand experience?

He also gave out some defences under s. 319(3) of the *Criminal Code*, but they're in a vacuum. There's no explanation from Your Lordship as to what as to what as to what they mean.

And "the only person in the world who has written extensively on this"? I don't know if it's even possible for the Crown to be able to prove or disprove that statement in the four corners of the trial that we have now.

"Freedom of expression is an issue for Mr. Topham". It may well be in closing argument that there's many things he can point to in Mr. Topham's writing that allows him to make this argument, but now is not the time.

Also, My Lord, I'm concerned about I mean, as Your Lordship knows, there are defences under 319 for this. Freedom of expression is a *Charter* value. It has been litigated more than once by the Supreme Court of Canada. And I don't rule out that Mr. Johnson may have further *Charter* applications before this court, depending on the totality of the proceedings.

But freedom of expression whether or not 319 draws the proper line, that's not an issue before the jury. And to leave the jury with the impression that the that the freedom of expression line is something that they have to determine as part of their determination of Mr. Topham is, in the Crown's submission, not appropriate. The same can't be said for 319.

And I do concede, My Lord, that I did set out a bit of the test from the *Whatcott* decision in my opening statement. I gave the court a written copy of that and I gave the references and I did that, My Lord, in part so if I made any mistakes it would assist the court in correcting.

And I do concede it's not unusual to say something about the law in an opening statement, and depending how it's done, it could be very appropriate. But I do have some I do have some concerns. I do have some concerns in this case.

He also spoke of eight years ago and the human rights tribunal. Now, it may well be that something about the human rights tribunal is relevant to the jury's determination. But to simply allude to it in a vacuum presumably Mr. Atzmon is going to say absolutely nothing about this because I can't see that Mr. Atzmon would have any direct knowledge of it, not do I see that Mr. Atzmon's expertise would put him in a position to comment on any human rights matter. So, in the Crown's submission, that has no place in defence's opening statement.

If I might just review my notes, please, My Lord?

I'm also concerned about the template, and this might

THE COURT: Sorry. Concerned about the template?

MS. JOHNSTON: He talked about Mr. Atzmon giving the jury a template to follow. I am concerned about templates to follow. Your Lordship presumably is going to give very detailed and sadly, in a case like this, probably quite complicated instructions about how it is that the jury is to arrive at their verdict of guilty or not guilty, in the case of Mr. Topham. I doubt if Your Lordship is going to provide a template.

Now, I appreciate it's a slang expression and I could perhaps go too far. But I nevertheless, at this point, have some concerns that it gives the jury, aah, I'm going to have a template. I appreciate it might not be problematic. I do see that. But I am very concerned about it at this juncture.

Thank you, My Lord.

THE COURT: Mr. Johnson?

MR. JOHNSON: Yes, My Lord.

REPLY SUBMISSIONS FOR ACCUSED BY MR. JOHNSON:

MR. JOHNSON: I think that this document provides an answer to most of the objections that my friend has raised here and I'm actually quite

THE COURT: Sorry. What what is this document?

MR. JOHNSON: I'm actually quite surprised that we're talking about a lot of this because we had agreed that I would be able to put in, as part of my case, the response to Canadian Human Rights Commission by Radical Press. That was the reference to the Human Rights Commission. And in this document Mr. Topham sets out who he is, sets out why he ran his website. It gives a background for what he's been doing. I'll give you an example [as read in]:

I would like to now say a few words in my own defence as to who I am, what efforts I've 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 published information on this topic

It goes on for two more pages like this, My Lord. It's not a *mea culpa*. It's an explanation of the charge that was being brought against him. But it does give personal information, it does explain why he wrote the website, or wrote and published matters on the website.

It says that he's it give his employment background. It says that he was a university student at Simon Fraser University, in 1965. It's got the fact that he was a professional teaching has a professional teaching certificate.

This information, My Lord, is in keeping with what I described in my opening. And if I

THE COURT: Yeah. But it's not going in for the truth of that. It's going in as a statement he published. And so and that's not the point of the opening

MR. JOHNSON: No.

THE COURT: -- to personalize the accused. That's not the issue in the case. The issue is a charge under the *Criminal Code*.

MR. JOHNSON: I understand.

THE COURT: And we tell juries, whether it's civil juries or criminal juries, that in openings and indeed in closings, that personalization of it, in saying you're grandparents or, and is completely irrelevant and it's not proper in those statements.

MR. JOHNSON: Well, as I okay, My Lord. I understand.

In this document, everything that I've said in that opening appears in Mr. Topham's own words and I would have hoped

THE COURT: But the point is, is it a proper subject of the opening?

MR. JOHNSON: I think it's going to be introduced as evidence, My Lord. And for

THE COURT: It's introduced as evidence of something published.

MR. JOHNSON: Yes. Yes. Just as my

THE COURT: It's not introduced as evidence of who he is and the facts contained in there.

MR. JOHNSON: Well

THE COURT: And so and but the point is, we don't let lawyers do this to juries in openings.

MR. JOHNSON: I know.

THE COURT: It's completely improper.

MR. JOHNSON: My Lord, with respect to the issue of freedom, it's Mr. Topham's words and I said "he believes". And I was referring to

the document that I've given my friend in advance. Those words were Mr. Topham's words. This document backs up what I've said in my opening.

THE COURT: But do you have a legal response as to why that should be permitted in an opening, when it when these things are not you're supposed to simply describe what

MR. JOHNSON: I know.

THE COURT: -- what the defence is and what it's about, and that isn't what you did.

MR. JOHNSON: I pushed further than I should have.

THE COURT: Which means I have to give some form of direction to the jury.

And what I'm going to do is I will sit down and look at my notes and I'll decide what things I need to give a correcting instruction about. I'll let you know before I do that.

MR. JOHNSON: Sure.

THE COURT: It will take a bit of time to do that.

What I want to do beforehand is deal with the issue that we were going to have to deal with anyways, which is Mr. Atzmon's qualifications. I need to know that. We have this discussion with so let's turn to that now, rather than

MR. JOHNSON: I'm like to.

THE COURT: -- deal with the opening.

MR. JOHNSON: Do you want any statement from me at this point?

THE COURT: On?

MR. JOHNSON: On the opening?

THE COURT: Yes, yes. No, I thought you had finished. You said that the basis for what you did was 'cause in that document.

MR. JOHNSON: Right, which is not before the jury. But it is part of my case. But and I understand that I perhaps went too far in describing inferentially what was in that document.

My friend did not go through and describe the four binders and summarize the evidence when she had her opening statement, but there was, in my view, an allusion to an awful lot of evidence that hadn't come forward. And in effect, that's the case. That's what's happened.

Mr. Topham has had nothing to say so far and I think it's important for the jury to understand that there are two sides to this story and that that will be explained to them. And I think that that's as far as I'd like to go. I don't mean to personalize the opening. I didn't mean to do that.

THE COURT: And you did that. But what you're supposed to do in an opening is say that the defence is going to present evidence on these issues, the defence is going to call this witness. I anticipate that

MR. JOHNSON: Right.

THE COURT: -- this will be shown. And that's not what you did.

MR. JOHNSON: I've done these openings many times before and I don't think I've done quite an opening quite like this one. And I apologize to you, My Lord, especially if I've put you in a position where you've had to make corrections.

THE COURT: Well, I'm going to have to consider that. I'm going to look at my notes and then I'll tell you what I think

MR. JOHNSON: Right.

THE COURT: -- I need say.

But can we turn and I don't want to

MR. JOHNSON: Let's.

THE COURT: -- if there's anything else you wish to say about it?

MR. JOHNSON: Nothing else.

THE COURT: All right.

What are the has there been some discussion between you as to what the areas of expertise are?

MR. JOHNSON: Yes. My friend and I have agreed that Mr. Atzmon's area of expertise is Jewish identity politics. And that is based upon his most recent, and I say most recent because he's written extensively, on the *Wandering Who*. And Mr. Atzmon is the sole author of this book.

I believe that my friend has some concerns about, as I say, with most books, that there are some, for want of any better explanation, some I suppose some flattering reviews of the book. You'd normally expect to find that in the in a book like this for publishers do it all the time. But it's in his CV. We've got some of these individuals who have recommended the reading of this book as being an important work. People who I considered to be Mr. Atzmon's peers they're scholarly individuals. These are not newspapers.

THE COURT: Okay. I'm having I'm just having trouble understanding

MR. JOHNSON: I know.

THE COURT: -- why that's irrelevant?

MR. JOHNSON: Where we're going with that.

THE COURT: Where we're going with that, because I mean, he's you're wanting to qualify him as an expert in Jewish identity politics.

MR. JOHNSON: Right.

THE COURT: And I gather the Crown is content with that field of expertise?

MS. JOHNSTON: Yes. The way my friend described it to me was essentially Mr. Atzmon is being qualified as an expert in his own book. He has a political view and he's entitled to have his political view. So, yes.

THE COURT: Do we have any report that was prepared? I thought I heard something to that suggestion.

MS. JOHNSTON: Yes, there was. Now, my friend and I don't fault my friend and he said did you have it, and I think he thought he gave it to me, and I'm not complaining about that at all. But I do have some concerns about some of the lines in the report itself.

I had been previously provided by my friend with a shorter expert's report. I do have a couple of concerns about this report. I don't know whether or not Your Lordship thinks that now is the appropriate time to go through that. And I also don't know

THE COURT: Well, obviously we need to do it before we call him.

MS. JOHNSTON: We absolutely do.

And in terms of the curriculum vitae, the vitae and my friend has made copies. I don't know if he would mind if I borrowed one so I could hand it up to His

MR. JOHNSON: That's fine.

MS. JOHNSTON: Thank you.

So My Lord, I'm just going to hand up a copy so that Your Lordship can follow around. I thought that might be of assistance.

Now My Lord, I don't I don't have any concern about Your Lordship seeing that the book was reviewed because of I have no concerns about Your Lordship's use of the information. But just to take a just to take an example, if Your Lordship flips three pages in and at the bottom we have [as read in]:

Gilad Atzmon is the Moses of our time, calling on all of us out of Egypt and our bone-headed nationalism and racialisms and exceptionalisms and chosen people-isms towards some form of humanistic universalism.

Dr. Kevin Farrett [phonetic].

I don't mind the court knowing that the book has been reviewed, but I don't want this going to the jury because it would be, in the Crown's submission, a very complicated instruction to explain to the jury that they can't take this is like, this isn't authenticated.

THE COURT: I that's not something that's properly part of a CV, I mean, the reviews of the book. I mean, you there's a list of his publications. That's what we'd normally see in a CV

MR. JOHNSON: Yes.

THE COURT: -- and that's quite fine.

MR. JOHNSON: Mr. Atzmon prepared this CV on my instruction. I have had an opportunity of reviewing it, My Lord. Most of it is taken right from his website.

He's a lecturer, as well. He's lectures in this area of Jewish identity politics, around the world. He's used this CV before and he puts it out there on his web.

THE COURT: Well, that's fine. I but but certainly the reviews can't be part of a CV that goes to the jury.

MR. JOHNSON: All right.

Are you suggesting then, My Lord, that we start with the

THE COURT: No. Well, were you proposing that the CV go to the jury?

MR. JOHNSON: Yes.

THE COURT: Yes. All right. So then, the those portions that

MR. JOHNSON: You want those redacted?

THE COURT: Yes.

MR. JOHNSON: All right. Or taken out?

THE COURT: Well, it would be better if they were taken out.

MR. JOHNSON: That's fine.

THE COURT: Rather than having the three blank pages and

MS. JOHNSTON: We'll assist my friend with getting that done, My Lord.

I'd also ask that the review on amazon.com be taken out. I mean, it may well be that Mr. Atzmon can say it himself, but by bringing in we haven't authenticated amazon.com as being an institution that can provide a hearsay opinion to this court.

THE COURT: Well, no, that that isn't proper at all. The CV is to give information about what the individual has done, not what kind of reviews they've got for their scholarly works or other works. I mean, that's not

MR. JOHNSON: I understand.

THE COURT: -- what's put in. So

MR. JOHNSON: Had I known about my friend's objections ahead of time, I would have spoken to Mr. Atzmon about changing his CV. It was hard to catch up with him. He's I brought him here from Indonesia actually, where he was speaking.

THE COURT: Yes. Yes, I understand that.

MR. JOHNSON: So he's he's had very limited time to try and put this together.

MS. JOHNSTON: Thank you.

MR. JOHNSON: I think I think in terms of the curriculum vitae, then, what I will do is take out everything starting with *The Wandering Who* and amazon.com, down through to page number well, there's no page number, but

THE COURT: Where it says "Atzmon is also the author"

MR. JOHNSON: "Atzmon is also the author of"

THE COURT: -- "various articles".

MR. JOHNSON: Yeah.

THE COURT: Yes.

MR. JOHNSON: If my friend is happy with that, then we can proceed.

THE COURT: Well, I can tell you, I'm content with that.

MR. JOHNSON: Okay. That's good.

THE COURT: Which is more important than your friend being content with it.

MR. JOHNSON: But I may be waving this book around with those reviews on it.

No, I won't be doing that. I won't be getting that information in through the back door. I don't plan on having his book made an exhibit.

THE COURT: Now you said there's a report, or

MS. JOHNSTON: There is a report and my friend has made photocopies of it.

And My Lord, I must apologize to my friend. He gave me a copy of the curriculum vitae in advance and I did not properly put my mind to the impact of the reviews. I should have I should have warned him of this in advance, and I apologize for not having done so.

THE COURT: All right.

MS. JOHNSTON: Thank you, My Lord.

And if I could just, with my friend's position, because he's already made photocopies, if I could hand one up to Your Lordship?

THE COURT: Certainly.

MS. JOHNSTON: Thank you.

Now My Lord, I just I just I may have additional comments. I started reading it this morning and I do accept that my friend thought I already had it. I'm not complaining about the notice.

All right. Page 4, under "Zionism". [As read in]:

Early Zionists were driven by a deep hatred of the Jew and their language was often vehemently anti-Semitic.

I think that might go beyond his theory of Jewish identity politics. I'm concerned about that.

Page 7, under "Holocaust" [as read in]:

Since 1945 Jewish institutions have worked relentlessly to restrict research of the holocaust and its historicity.

That's a very sweeping statement and I don't know how the Crown could even begin to deal with it, nor do I think I think it's outside of Mr. Atzmon's range.

My Lord, I'm concerned about page 9, *Germany Must Perish!, Israel Must Perish!*, before Mr. Topham made it into a satire. It may well be that Mr. Atzmon I mean without deciding that point yet it may well be that Mr. Atzmon can provide evidence that, in his opinion, the book is a satire. But he doesn't do that here. He simply accepts that it is a satire. And then that becomes the unspoken basis upon which he builds his next argument.

And I'm very concerned about this [as read in]:

In his documentation to the court, Mr. Rudner stated that *Germany Must Perish!* is a hateful text. Did it really take a Jewish official more than seven decades to admit that the call to eradicate the German people

THE COURT: Sorry. Just a moment.

MS. JOHNSTON: I'm sorry.

THE COURT: I'm not with you there. I was still looking at page 9. Where are you at now?

MS. JOHNSTON: I'm still at page 9, My Lord. I'm at the bottom paragraph of page 9 now.

THE COURT: The bottom paragraph? All right.

MS. JOHNSTON: Do you want me to re-read it?

THE COURT: Yes.

MS. JOHNSTON: I'll re-read it. The second sentence [as read in]:

Did it really take a Jewish official more than seven decades to admit that the call to eradicate the German people is unacceptable? It is not Mr. Rudner's long delayed denunciation

My Lord, I don't know I don't know if it's proper to characterize Mr. Rudner as a Jewish official. And I also don't know that there's any evidence that it took more than seven decades to admit the call to eradicate the German people is unacceptable. I think that's beyond what Mr. Atzmon can say.

And even if it wasn't beyond what Mr. Atzmon can say, let's say for the sake of argument that was true, what value would that have to the jury in deciding what they're going to need to decide here?

And I'm also concerned about and My Lord, to some I do appreciate, obviously, that experts can offer an opinion. But I'm nevertheless concerned about conclusory language. "Mr. Rudner's well-deserved denunciation". That's a value judgement. I'm concerned about that sort of wording.

And My Lord, I'm afraid when I just got here this morning, that's as far as I was able to get, but I can scan quickly.

You see, I'm concerned about this language. If you go to page 10 [as read in]:

In 2006 the procedures and superlative American academics.

I'm just simply not in a position to I'm not complaining about the lack of notice in terms of the *Criminal Code*, but one, I'm not sure Mr. Atzmon can substantiate that. And I can also certainly tell Your Lordship that I can't I can't prove or deny that. I'm not even saying it's not true, but there's just no way I'm going to know that this morning. I'm concerned about that sort of language.

And again paragraph 3 [as read in]:

A Jewish journalist, Joel Stein, wrote a large article published in the LA Times, *Is Hollywood Run by Jew? You Bet*.

Okay, fair enough. He may have done so. And he and Mr. Stein may well be Jewish. And it may even be that Mr. Stein is correct when he says and I'm not saying he is. I'm just saying I don't know if he is or not. But that's not how that information goes.

I mean, my friend is entitled, if he thinks it has some relevance to his case I mean, presumably Your Lordship would have to decide on the relevance to bring forth evidence of that fact. But the mere fact that Mr. Stein wrote it and it was published does not mean does not make it so.

THE COURT: Well, but that's the kind of thing that was throughout to Mr. Rudner, is where he referred to other articles and unfortunately in this area we're not always sure whether the references are widely accepted amongst an area of study. It's unfortunate. So I don't see anything wrong with that statement.

MS. JOHNSTON: Thank you, My Lord.

THE COURT: It's the kind of statement that was made by Mr. Rudner, as well.

All right.

MS. JOHNSTON: I'm concerned at the bottom of page 11, the last paragraph. It might be beyond what Mr. Atzmon is able to say. It's [as read in]:

I tend to believe that the endless Jewish and Zionist attempts to refer to the protocols as an anti-Semitic forgery, is a tactical move that is intended to divert attention from the reality of forceful Jewish lobby groups such as the AIPAC, CFIJA

Your Lordship can see them because there's nothing, and I'm flipping back a page here. There's absolutely nothing in the balance of the text that established that they're a forceful Jewish lobby group. What establishes that?

And the bottom of page [as read in]:

Rather than killing the messenger, in this case Mr. Arthur Topham in this case Mr. Arthur Topham, we might be better advised to deal with the problem he had brought to our attention.

THE COURT: Sorry. I'm where are you now?

MS. JOHNSTON: I'm sorry, My Lord. Page 12, bottom of page 12.

THE COURT: "Rather than killing the messenger"?

Oh, no. Is that is that where you're at?

MS. JOHNSTON: Yes, I am.

THE COURT: Oh. And that's certainly not proper.

MS. JOHNSTON: And really that kind of goes to thank you.

And the bottom sentence at page 13, for the same reason just the last sentence.

MR. JOHNSON: Which paragraph?

MS. JOHNSTON: Page 13, the last

MR. JOHNSON: Okay.

MS. JOHNSTON: Page 14, My Lord [as read in]:

If we find Mullin's writing disturbing or even hateful we may, as well, have to get rid of the history of the first decades of the Zionist movement.

I think that goes to a conclusion beyond his expertise. And furthermore it's a conclusion.
THE COURT: Well, but that's isn't that the something he's stated throughout, that there's disturbing things written by people in the Zionist movement?

MS. JOHNSTON: I can certainly see that and I would agree with Your Lordship. I am, however, concerned about the implication, because if ultimately the jury is going to have to decide whether or not there's a violation of 319. So, I'm concerned and I'm wondering if this implies that sort of a legal test. Like at some point in Your Lordship's charge I would anticipate Your Lordship may have to deal with the question of whether or not the availability of the documents previously published what, if anything, that means in terms of the jury's analysis. And I think this implies that if there is other hateful material published, that somehow provides a legal defence for Mr. Topham.

THE COURT: I see.

MS. JOHNSTON: Page 15 [as read in]:

Mr. Topham is a thinking, honest person, as well as a humanist.

I think that goes beyond the expertise for
THE COURT: That's certainly not something an expert can say.
MS. JOHNSTON: [As read in]:

I cannot find a single statement he made that expresses hatred of any kind.

The whole paragraph, really.
THE COURT: I mean, that's all argument, Mr. Johnson. That's not opinion.
MR. JOHNSON: That portion is, yes.

MS. JOHNSTON: Thank you, My Lord.

MR. JOHNSON: My Lord, I think that part of the problem here is accepting Mr. Atzmon as an expert, in the first place, on Jewish identity politics. That's a pretty big area. It covers and I'm going to read from his book, just the chapters, so that you get an idea of how much ground Mr. Atzmon does cover.

The Right to Elaborate; Credit Crunch or Zio Punch; Zionism and Other Marginal Thoughts; The Sabra, the Settler and the Daispora Jew; Begin versus Einstein; Think Tribal, Speak Universal; the Dialectic of Negation. It talks about unconsciousness is the discourse of the Goyim; One hundred years of Jewish solitude; Jewish Unconsciousness is the discourse of the Goyim; The Righteous Jew; Sex and anti-Semitism; Eretz Yisrael versus Galut; The right to

Self-determination; a Fake Exercise in Universalism; Milton Friedman Revisited; Swindler's list; Trauma Queen; The Wandering Who; From Purim to AIPAC; The book of Esther.

We're talking about the Bible.
THE COURT: I mean, I'm getting the sense of it but I don't know how that helps me decide on what's proper. I mean, there are certainly things in this document that go beyond what should be in an expert report because it's argument and personalized statements about Mr. Topham, which shouldn't be in there.

MR. JOHNSON: I agree that those shouldn't be in.

THE COURT: And I mean, I'm not even sure what Jewish identity politics is, but maybe I'll learn.

MR. JOHNSON: I hope so.

THE COURT: But at the same point, I think that some of the things your friend said were valid and that there are it should be taken out of the document that goes to the jury.

MR. JOHNSON: Well, My Lord, I mean, I can only suggest that if my friend has these types of criticisms, that she can put them to Mr. Atzmon and cross-examine him. I mean, that's what I did with her witness.

THE COURT: Well, I certainly. And for some of the ones she's highlighted, I think that's appropriate. But some of them, I don't think are appropriate in this document and I assume there may be a wide ranging examination and cross-examination.

MR. JOHNSON: Well, I guess I

THE COURT: But

MR. JOHNSON: Well, My Lord, I guess I've got a huge problem with that. I really do, because if we're going to be putting shackles on Mr. Atzmon on the witness stand, that he can't properly explain his theses, then I think this is an exercise that is not going to go anywhere.

If my friend keeps standing up and objecting to whatever it is that he says, moving the jury in and out of this room and arguing that he has every right to say those things, I think we should just listen to him, cross-examine him as you do with any expert, make him make him prove what he's saying. Have him explain his theses.

If he says something in here that's of a personal nature regarding Mr. Topham

THE COURT: Well, but that shouldn't

MR. JOHNSON: -- that's fine. But we heard from Mr.

THE COURT: That shouldn't be in here.

MR. JOHNSON: Yeah. Right. But we heard from Mr. Rudner, who I think we can pretty well sum up in the absence of the jury, as a paid I won't go any further than that.

THE COURT: Well, I think you're getting into

MR. JOHNSON: No, I'm getting into argument. But

THE COURT: -- argument, not what we can properly have in the report

MR. JOHNSON: Yeah.

THE COURT: -- that goes to the jury. And that's what I'd like to hear.

MR. JOHNSON: He related almost everything that he did, in terms of Mr. Topham and gave an opinion about Mr. Topham.

THE COURT: He didn't give an opinion about Mr. Topham. He gave an opinion about

MR. JOHNSON: What he was representing.

THE COURT: -- what the documents on the website, in his view, were. He didn't say, you know, as this does, that it's clear to me that Mr. Topham is a thinking honest person, as well as a humanist. I mean, the

MR. JOHNSON: No, I agree. I agree. Okay. That's a fair comment.

THE COURT: And there's other things in here that and you know, I do have some problem with it and I'm going to look at it because I think I'm not going to get a great deal of assistance from you. You generalize rather than go specifically to the points that your friend

pointed out. I mean, if you'd like to go through each one of them and tell me why it's proper, I would appreciate that.

MR. JOHNSON: Sure. Sure. I mean if but again, I get back to this. And it's just, my friend is a capable counsel and is able to address these issues with Mr. Atzmon on the witness stand. I think as we I think we can agree that if his statements about Mr. Topham are personalized in this particular fashion, that they should be taken out. I agree with that.

But that's as far as I want to go. I think in terms of looking at his expertise and saying, well, he can't say this, he can't say that unless my friend has read his book and knows what it is that he's about to say and by the way

THE COURT: Well, but I

MR. JOHNSON: -- his views go beyond that.

THE COURT: That's that's not what we're talking about here. I'm talking about the admissibility of a document to the jury.

MR. JOHNSON: Okay.

THE COURT: And whether it's proper, whether it be opinion contained as something that

MR. JOHNSON: Okay.

THE COURT: -- is within the field of expertise and is a proper opinion to go to the jury. And that's my concern.

MR. JOHNSON: Well, I think with the and due to the fact that Mr. Atzmon is supposed to be on a plane at sometime on Thursday, what I'm going to suggest is that we simply do away with the index completely, in terms of giving it to the jury. I'm going to bring this up in direct evidence. If my friend has objections, so be it. That's the way I'm going to handle this.

I can't see it being done any other way. Otherwise we're going to be sitting here until the cows come home, talking about his qualifications and whether he can say this, whether he can say that.

THE COURT: Well, I thought I thought you said he has to go on Thursday. What time is he flying out on Thursday?

MR. JOHNSON: You know, I don't have his itinerary handy but it's in the I think it's in the afternoon he's got to catch a flight.

THE COURT: And how long do you expect to be in chief with him?

MR. JOHNSON: At least the balance of today.

THE COURT: All right. Well, it sounds to me like timing is not a huge issue then, if he could appear Thursday morning, as well, if things go a little bit longer.

MR. JOHNSON: Well, this index was designed to try and speed up his testimony, My Lord.

THE COURT: Exactly.

MR. JOHNSON: And I that's how I that's how I based my estimate. If we have to slug it out and go through this stuff line by line

THE COURT: That's why I'm saying we should

MR. JOHNSON: Fine. I don't care.

THE COURT: -- try to deal with the specific objections, which I can then rule on and then redact it, give it to the jury, then that should be faster.

MR. JOHNSON: Okay.

As I say, Mr. this is Mr. Topham or, pardon me, Mr. Atzmon has prepared these materials and he hasn't addressed the issues that my friend is raising, obviously. I'm going to have to go back with him and tell him that we've got to take out anything that personalizes his opinion regarding Mr. Topham. I will do my best to redact and talk to my friend ahead of time. Maybe you won't have to make rulings on this document.

But that should have been done that should have been done.

THE COURT: Well, it should have been done before.

MR. JOHNSON: Yeah.

THE COURT: I mean, your friend should have

MR. JOHNSON: Sorry.

THE COURT: -- let you know what she objected to ahead of time.

MR. JOHNSON: But in part, this is a response to what Mr. Rudner prepared.

THE COURT: But I gather this result was prepared very recently, as well.

MR. JOHNSON: Yeah. I mean, it's a it's a response to one of the reasons I asked him to be able to sit through the evidence was to have him get a better understanding of what Mr. Rudner had to say. And I think references to Mr. Rudner's position, I think, are appropriate in this document.

THE COURT: And I'm not suggesting otherwise.

Why don't I got through to assist you on this, in terms of what I think

MR. JOHNSON: Okay.

THE COURT: -- may or may not have or, may not be proper.

First of all at page I guess I should start at the start.

At page 9

MR. JOHNSON: Yes?

THE COURT: -- the comment that Mr. Topham made it into a satire is not something that he's qualified to give. He's not here as an expert on literature.

MR. JOHNSON: But he's certainly entitled to look at the juxtaposition between *Germany Must Perish!*

THE COURT: Certainly. Certainly.

MR. JOHNSON: -- and *Israel Must Perish!*

THE COURT: That's what he's that's what he can do.

MR. JOHNSON: -- for what it is.

THE COURT: But he can't say he made it into a satire.

MR. JOHNSON: Yes. Okay.

THE COURT: I mean, that's and the comment at the bottom of the page, "Did it really take a Jewish official more than seven decades to admit"

MR. JOHNSON: Okay. I agree.

THE COURT: -- is not acceptable. That's again, that's a personalized

MR. JOHNSON: Let's take that out so that it

THE COURT: And the next sentence as well is argument, not opinion.

MR. JOHNSON: Sure.

THE COURT: And he may want to restate that slightly. But

MR. JOHNSON: So then

MS. JOHNSTON: I'm sorry, My Lord. What page are we on?

THE COURT: That was page 9.

MS. JOHNSTON: Thank you.

MR. JOHNSON: So it ends at page 9 with [as read in]:

In his documentation to the court, Mr. Rudner stated that *Germany Must Perish!* is a hateful text.

THE COURT: No. And then the last sentence [as read in]:

I believe, that Mr. Rudner's well-deserved denunciation proves the necessity of satire, and essentially in my view, it's a contribution to genre.

In other words, he's not saying he made it into satire. He's saying, in my view, it's a contribution to that that genre.

I think he can say that, but he can't say, it is satire. He can say in my view it is.

MR. JOHNSON: So the words are "it is it appears to be"

THE COURT: It appears to be, yeah.

MR. JOHNSON: -- that Mr. Topham has made a contribution to satire"?

THE COURT: Yes. And I think that's what he's trying to say without going beyond what's proper.

At page 10

MR. JOHNSON: Okay.

THE COURT: Page 10, where it says "in 2006, prestigious and superlative" should not be there.

MR. JOHNSON: Where is that? Okay.

THE COURT: Second paragraph down.

MR. JOHNSON: Second paragraph?

THE COURT: [As read in]:

In 2006 the American academics

MR. JOHNSON: Okay. I'll take out "prestigious and superlative", and just leave in American academics?

THE COURT: Yes.

MR. JOHNSON: Okay.

THE COURT: And then "rather than killing the messenger", again that's not proper language in an expert report.

MR. JOHNSON: And that is on which page, sir?

THE COURT: Page 12. Sorry.

MR. JOHNSON: Yes? Can we rephrase that?

THE COURT: Rephrase that sentence so he's really saying, "Mr. Arthur Topham has"

MR. JOHNSON: "Brought this important issue to our attention".

THE COURT: "Brought this important issue to our attention".

MR. JOHNSON: Okay.

THE COURT: And then at page 14, the one sentence should probably come out [as read in]:

if we find Mullin's writing disturbing or even hateful.

We will have to get rid of

MR. JOHNSON: I'm sorry, what

THE COURT: Page 14, the bottom paragraph.

MR. JOHNSON: Yes.

THE COURT: [As read in]:

If we find Mullin's writing disturbing or even hateful, we may as well have to get rid of the history of the first eight decades of the Zionist movement.

MR. JOHNSON: Okay.

THE COURT: I think he's saying something different than that, but that does

MR. JOHNSON: Sure. That can come out.

THE COURT: -- cross a legal line.

MR. JOHNSON: Yeah.

THE COURT: And then

MR. JOHNSON: That's a speculation.

THE COURT: And then the last one is the one at the top of page 15.

MR. JOHNSON: And you want that entire paragraph to come out? Otherwise, I think what we've got to do is go through all of the quotes with that Mr. Rudner was addressing. And I can tell you right now that Mr. Atzmon doesn't believe that any of them contain hatred.

THE COURT: Yeah.

MR. JOHNSON: I thought we were saving some time by having him say that.

THE COURT: Well, I think the first two sentences there that your friend said should probably come out, I maybe the last sentence remains in [as read in]:

I found no instance in which Mr. Topham made a call for any action that might lead to any form of violence or incite hatred.

Although I

MR. JOHNSON: I would like to have [as read in]

I cannot find any statements made by Mr. Topham that express hatred.

THE COURT: But once again, that gets into I think you had some objections to Mr. Rudner

MR. JOHNSON: Sure.

THE COURT: -- about that very matter

MR. JOHNSON: Well, that was Mr. Rudner.

THE COURT: -- which is

MR. JOHNSON: Okay.

THE COURT: -- that very issue, which is

MR. JOHNSON: Yeah. Okay.

THE COURT: -- dealing with, if you will, the issue that has to be decided as a

MR. JOHNSON: So simply, the paragraph will start and end [as read in]:

I found no instance in which Mr. Topham made a call for any action that might lead to any form of violence or incite hatred.

Correct?

THE COURT: Yes.

MR. JOHNSON: Thank you, My Lord.

With those revisions I can, over the lunch hour, make the changes and what I'd like if I could, I'd like to get into the first part of Mr. Atzmon's presentation because we are under some time issues here.

THE COURT: No, we're not going to get into it until I've determined what I have to say to the jury about the opening.

MR. JOHNSON: About my yeah.

THE COURT: So I'm going to look at that and I'm going to excuse the jury till 2:00 o'clock.

MR. JOHNSON: Okay.

THE COURT: And we'll start at 2:00 o'clock. Hopefully I'll be able to give a brief instruction to the jury and I'll ask that counsel come back at quarter to 2:00.

MR. JOHNSON: Right.

THE COURT: And I'll tell you what it is I intend to say.

MR. JOHNSON: My Lord, I would like to deal with this document that I spoke of, a response to the Canadian Human Rights Commission by the Radical Press, which my friend agreed would be part of my case.

I'd like to be able to refer to that document, and I think in terms of if there's inappropriateness in my opening regarding facts that are set out in this document, they should simply read it for themselves. I think that that's part of my case and it's part of the evidence.

THE COURT: Well, maybe you can give that to me and I'll have a look at that.

MR. JOHNSON: Sure.

THE COURT: And consider that while I decide what form of

MR. JOHNSON: Yeah.

THE COURT: -- instruction is appropriate.

MR. JOHNSON: I think if you read that a little, it should help the I don't know if it's going to help with my opening, but it's going to show you why I said the things I did.

THE COURT: All right.

MR. JOHNSON: Thank you, My Lord.

THE COURT: We'll bring in the jury.

(JURY IN)

THE COURT: All right.

Now, I don't want you to get too comfortable because I'm going to excuse you till 2:00 o'clock. We will get started at 2:00 o'clock and get on to the defence's expert witness at 2:00 o'clock. So you're excused till 2:00.

(JURY OUT)

THE COURT: So we'll adjourn till 1:45.

MR. JOHNSON: Thank you, My Lord.

MS. JOHNSTON: Thank you, My Lord.

THE CLERK: Order in court. Court is adjourned till 1:45.

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

THE CLERK: We're back on the record.

THE COURT: Okay.

So have you sorted out the CV?

MR. JOHNSON: Yes. I've got the CV upstairs, My Lord, being printed.

THE COURT: Okay. So it should be ready to go?

MR. JOHNSON: Yes. And the index.

THE COURT: All right.

MR. JOHNSON: With the deletions as you've

THE COURT: Now, I'll show you what I'm proposing to say to the jury.

Madam Registrar, can you hand that I'm not going to say anything about the personalization of Mr. Topham, because it strikes me that if I was to do so now, it would come off really as just being a bit of a criticism of Mr. Johnson, which as opposed to anything substantive, and I don't want to do that.

MR. JOHNSON: Right.

THE COURT: So what I propose to say is, to the jury, before we start this afternoon I want to give you a brief instruction regarding Mr. Johnson's opening this morning. There are a few things he said that I would like to give you some guidance about.

First, Mr. Johnson advised that he would not be calling Mr. Topham to give evidence. In doing so, Mr. Johnson has told me that in his view it was not necessary for Mr. Topham to take the

witness stand and give evidence. And of course, Mr. Johnson's view of whether or not it was necessary for Mr. Topham to take the witness stand is irrelevant. At the end of the case I will give you full instructions about the burden of proof which rests on the Crown and the essential elements that the Crown must prove beyond a reasonable doubt.

I will also remind you that Mr. Topham had no obligation to testify in this case. Whether or not the Crown has proved the case is entirely up to you to decide.

Second, with regard to the proposed evidence of Mr. Atzmon, Mr. Johnson suggested that Mr. Atzmon would provide you with a template which you should use to examine the documentary evidence. That is not an accurate description about the role of an expert

witness. It is not an accurate description of Mr. Atzmon's role in this court.

He is here to provide an opinion, which may assist you in resolving some of the issues before the court. An expert is permitted to give an opinion because of specialized training, education or experience. An expert is not permitted to provide a template for consideration of the evidence.

It is entirely up to you to decide how to approach and consider that evidence. Once you have done so, it is up to you to decide whether or not to accept the expert's opinion.

Third, Mr. Johnson said in his opening words, or in his opening, words to the effect that Mr. Atzmon believes what he is doing. He is not being paid. He's doing it on his own. He has a deep-seated need to explain who is a Jew. And I should say my the quotes there are just from my notes.

I must tell you that Mr. Atzmon's personal beliefs and deep-seated needs are irrelevant to the issues you must decide in this case. He's here to offer an opinion based on facts which you decide to accept. If you decide to accept his opinion it may be useful to you in arriving at your decision. Before he gives his evidence I will remind you once again of the way to approach an expert's opinion, just as I did before Mr. Rudner gave evidence. I will do so again at the end of the trial.

Fourth, Mr. Johnson said that Mr. Atzmon is the only person in the world who has written extensively on this subject. We do not and cannot know if that is so. However, I must remind you that what counsel say in an opening statement is not evidence.

Finally, Mr. Johnson said that freedom of expression is at stake. He also said that Mr. Topham would say that his freedom of expression is at stake. I want to give you two brief instructions about these comments. First, freedom of expression, as a concept or a right, is not an issue that you have to consider in this case. It is not, to use Mr. Johnson's language, "at stake".

Second, Mr. Topham's view as to whether his freedom of expression is at stake is not relevant. While freedom of expression and Mr. Topham's view about that are not relevant, I can say this about the law in relation to the charges you will have to consider. As you know, Mr. Topham has been charged with two counts under a particular section of the *Criminal Code*, s. 319(2). Mr. Johnson, in his opening, also made reference to defences to the charge, which are included in s. 319 of the *Criminal Code*.

When I provide you with my instructions and the law that relates to that section, at the end of the trial, my instructions will describe all the matters you have to consider in order to determine whether or not the Crown has proved the charges beyond a reasonable doubt. In doing so I will refer to both the essential ingredients or elements of the offence and to the ingredients of the defences which are available under that section.

So that's what I propose to say.

MR. JOHNSON: Thank you, My Lord.

THE COURT: Any views?

MS. JOHNSTON: Thank you, My Lord. I'm very content.

My friend redid the index over the lunch hour. I haven't actually had a chance to see it. I appreciate that the Crown has already made submissions and I also appreciate that the Crown that the court may not wish to hear any further submissions, but I would at least ask that I have a chance to read it before it goes to the jury, and I would also request that Your Lordship read it, just as a double check to make sure that all Your Lordship's views are properly reflected in the document in terms of Your Lordship's concerns.

THE COURT: Right. It's almost ready?

MS. JOHNSTON: My Lord, I'm also going to ask I know that Ms. Tilsner [phonetic] had it. I am not a hundred percent sure that she realized that she was supposed to bring it down to the courtroom. And if she doesn't realize that, she clearly won't bring it down to the courtroom.

THE COURT: Well, perhaps we should call in the jury and I could give them this instruction, and then we can stand down to get ready for Mr. Atzmon.

MS. JOHNSTON: Thank you.

MR. JOHNSON: Well, My Lord, if I might speak to one other matter? I'd mentioned and I'd handed up to you

THE COURT: I didn't hear you, actually, about my proposed instruction.

MR. JOHNSON: Oh. Yeah. My Lord, I'm content with the document

THE COURT: You're content with

MR. JOHNSON: -- the document that you've prepared. I don't know that I have much in the way of objecting to it.

THE COURT: Oh, you can object to it.

MR. JOHNSON: If I could.

THE COURT: I give instructions

MR. JOHNSON: No, I think it was well put.

THE COURT: -- to counsel for the purpose of getting input before I actually tell the jury.

MR. JOHNSON: No, it was well put.

I did bring this document to your attention.

THE COURT: Yes, I

MR. JOHNSON: I'd planned to have it marked as an exhibit. I just want to make sure that that there's no objections, that we don't have to have the jury going back and forth again. My plan is to say to the jury that this is part of Mr. Topham's defence, part of our case.

THE COURT: Well, it's part of the materials that's published on I gather it was on his site?

MR. JOHNSON: Yeah. Yeah.

THE COURT: And that's no, I think that's [indiscernible/overlapping voices].

MR. JOHNSON: Just like everything else. It's in the binders.

THE COURT: It's part of the evidence in the case. Yes.

MR. JOHNSON: Right.

THE COURT: All right.

MR. JOHNSON: Thank you.

THE COURT: And I understand that's the position of the Crown?

MS. JOHNSTON: Yes, that's correct. I told my friend I would admit that as one of the other documents in the case. Yes, I did.

MR. JOHNSON: So my plan

MS. JOHNSTON: And yes, I will.

MR. JOHNSON: My plan is to have this marked first, before we have Mr. Atzmon giving evidence.

THE COURT: All right.

MR. JOHNSON: Thank you, My Lord.

THE COURT: All right. Well, then I propose that I call the jury in for this limited purpose, tell them that we still have a couple of minutes before we're ready to call Mr. Atzmon. We'll do that.

MR. JOHNSON: Sorry. Sorry, My Lord.

THE COURT: So let's bring in the jury.

(JURY IN)

THE COURT: Okay.

Now, members of the jury, before we start the evidence this afternoon, before we start the defence case, I want to give you a brief instruction regarding Mr. Johnson's opening this morning. There are a few things he said that I would like to give you some guidance about.

First, Mr. Johnson advised you that he would not be calling Mr. Topham to give evidence. In doing so, Mr. Johnson told you that in his view it was not necessary for Mr. Topham to take the witness stand and give evidence. Of course, Mr. Johnson's view of whether or not it was necessary for Mr. Topham to take the witness stand is irrelevant. At the end of the case I will give you full instructions about the burden of proof which rests on the Crown and the essential elements that the Crown must prove beyond a reasonable doubt. I will also remind you that Mr. Topham had no obligation to testify in this case. Whether or not the Crown has proved the case is entirely up to you to decide, based on all of the evidence that is presented.

Second, with regard to the proposed evidence of Mr. Atzmon, Mr. Johnson suggested that Mr. Atzmon would provide you with a template which you should use to examine the documentary evidence. That's not an accurate description about the role of an expert witness and is not an accurate description of Mr. Atzmon's role in this court. He is here to provide an opinion which may assist you in resolving some of the issues before the court. An expert is permitted to give an opinion because of specialized training, education or experience.

An expert is not permitted to provide a template for consideration of the evidence. It is entirely up to you to decide how to approach and consider the evidence. Once you have done so, it's up to you to decide whether or not to accept the expert's opinion.

Third, Mr. Johnson said in his opening words to the effect of Mr. Atzmon believes what he is doing. He's not being paid. He's doing it on his own. He has a deep-seated need to explain who is a Jew.

I must tell you that Mr. Atzmon's personal beliefs and deep-seated needs are irrelevant to the issues you must decide in this case, and are irrelevant to the opinion. He's here to offer an opinion based on facts which you decide to accept. If you decide to accept his opinion, it may or may not be useful to you at arriving at that decision.

Now, before he gives his evidence, I will remind you again of the way to approach an expert's opinion, just as I did before Mr. Rudner gave evidence. And I will do so again at the end of the trial.

Fourth, Mr. Johnson said that Mr. Atzmon is the only person in the world who has written extensively on this subject. We do not know and cannot know if that is so. However, I must remind you that what counsel say in an opening statement is not evidence.

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First, freedom of expression as a concept or a right is not an issue that you have to consider in this case. It is not, to use Mr. Johnson's language, "at stake".

Second, Mr. Topham's view as to whether his freedom of expression is at stake is not relevant. While freedom of expression and Mr. Topham's view about that are not relevant, I can say this about the law in relation to the charges you will have to consider. As you know, Mr. Topham has been charged with two counts under a particular section of the *Criminal Code*, section 319(2). Mr. Johnson, in his opening, also made reference to defences to the charge, which are available in s. 319 of the *Criminal Code*.

When I provide you with my instructions on the law that relates to that section at the end of the trial, my instructions will describe all of the matters that you have to consider in order to determine whether or not the Crown has proved the charges beyond a reasonable doubt. In doing so, I will refer to both the essential ingredients or elements of the offences and to the ingredients of the defences which are available under that section.

And so that's those are the comments I wanted to give you before we start with the evidence. I understand we're not quite ready to do that but we will be very shortly. So I'm going to ask that you be excused to the jury room for another few minutes. I don't anticipate it will very long.

(JURY OUT)

THE COURT: All right. And I'll let you take a few minutes, counsel, to look at that and

MR. JOHNSON: My Lord, I don't see that the revised

THE COURT: That's just the CV, is it?

MR. JOHNSON: The revised CV doesn't appear to be here.

MS. JOHNSTON: My Lord, I don't I my friend gave it directly to Ms. Tilsner. I personally didn't see it. I think it would be prudent to make sure if she, in fact, got it and saw it, and realized she was being asked to please photocopy it.

THE COURT: Right. Well, I'll let you look into that.

MR. JOHNSON: I hope she's got it.

MS. JOHNSTON: Thank you.

THE COURT: We'll take a break.

MS. JOHNSTON: Thank you, My Lord.

THE CLERK: Order in court. Court is adjourned briefly.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

THE CLERK: And we're on the record.

THE COURT: Thank you.

So have you had an opportunity to review the material?

MS. JOHNSTON: I did, My Lord.

My Lord, under page at page 12, *The Jewish Religions, Its Influence Today*, a final comment [as read in]:

Mr. Arthur Topham has brought this important issue to our attention.

THE COURT: Where is that now?

MS. JOHNSTON: Page 12, last paragraph.

THE COURT: Page 12? Yes.

MS. JOHNSTON: I'm concerned about that because it's a conclusion and states an opinion, which I think is well outside well outside well outside his scheme. And My Lord, I appreciate that there may be things in the document anyway, which the Crown can cross-examine him on, on part of his expert qualifications. But I don't see how I mean, that's essentially the ultimate issue.

The Crown did not have Mr. Rudner talk about the ultimate issue in these kinds of tones. So, in the Crown's submission it's inappropriate for Mr. Atzmon to do so, as well.

THE COURT: Well, I'm not quite sure it does that.

MS. JOHNSTON: Okay.

THE COURT: I don't think it does.

MS. JOHNSTON: Thank you.

THE COURT: But, I mean, "Mr. Topham has brought this important issue to our attention" isn't the way it should have been said. I mean, it should have been said, mind you, this is an important issue.

And also, I have trouble again with the language and I hadn't read all of this before. But you know, in the middle of that page, "If the court is interested". I mean, it's not a question of what the court's interested in. It's there's supposed to be an opinion offered, not you know, it's just very badly worded. I mean, it's

MR. JOHNSON: My Lord, could I speak to that?

THE COURT: Yes.

MR. JOHNSON: I think we're going to be here all day doing this, wordsmithing this document. We've already gone over this. I used exactly the same

THE COURT: Well, but this is your task to do. You're counsel

MR. JOHNSON: I know.

THE COURT: -- presenting it.

MR. JOHNSON: I know. But we've gone over this exact phrasing, which you suggested, and that's what I put down. And I think if we're going to sit here and argue about the text, we could be here all day. My witness is

THE COURT: We could, but to put it to the jury, we have to have it in a form that's that doesn't cross the line.

MR. JOHNSON: Well, it's I'm going to ask this then.

Is there anything else that my friend wishes to raise

THE COURT: Well, that's

MR. JOHNSON: -- except on a piecemeal basis?

THE COURT: -- that's what I'm that's what I'm hearing from her right now on this.

MS. JOHNSTON: Page 15, My Lord, the middle paragraph of the conclusion.

THE COURT: Sorry. Yes?

MS. JOHNSTON: It brings out the issue of freedom of expression. And given that freedom of expression is not before the jury in any way in this trial, in the Crown's submission it would be inappropriate to have the expert give an opinion on freedom of expression.

THE COURT: I mean, I think that's right. We're not that's not the issue that he's offering an opinion on.

MR. JOHNSON: Okay. Let's just take the last page off of that, page 15, My Lord. I'd like to move on, please.

THE COURT: Well, I'm and but I, I mean, we can you can change it, can't you?

MR. JOHNSON: My Lord, I'm sorry if I'm showing my frustration but the minutes are winding away and we could have dealt with this when my friend first rose and spoke to these matters. We're

THE COURT: Well, I think she spoke to a lot of them and we're working our way through it.

MR. JOHNSON: Understandable.

THE COURT: And we're trying to do that.

MR. JOHNSON: Understandable, My Lord.

Let's just scrap the last page and get rid of it. I will I'll ask Mr. Atzmon on the stand for his own conclusions on this matter. This will not go to the jury.

THE COURT: All right. But I do want some other changes made. I and this wasn't brought to my attention before, but at page 9, the second to last paragraph, Mr. Atzmon says [as read in]:

I cannot imagine life without satire but I guess that perhaps some people in Canada are determined to abolish this genre.

I mean, that's not something that he's asked to give an opinion on. He can say, I cannot imagine life without satire.

MR. JOHNSON: Period.

THE COURT: That's fine. But, "I guess that some people in Canada" that's obviously not proper.

MR. JOHNSON: Yeah. And I think, My Lord is there anything else?

THE COURT: Well, I mean, I'm assuming that just as I was able to prepare a document very quickly over lunch, that you're able to do this very quickly.

I would like, at page 12, say "if the court is interested in" that should say there is a Jewish genocidal text for Hamelach, The King's Torah, a new book by Rabbi Yitzhak Shapira. It shouldn't say if the court is interested then this is the place to go.

I mean, that's that's not what experts are supposed to be saying.

MR. JOHNSON: My Lord, would you be happy with "these works are Jewish genocidal texts"?

THE COURT: Sorry, I'm not sure what "these works are"

MR. JOHNSON: Oh.

THE COURT: -- are referring to.

MR. JOHNSON: I think what he's saying is that there are other

THE COURT: I thought this was a reference to

MR. JOHNSON: -- there are other texts out there. Let's just delete that sentence.

MS. JOHNSTON: I'm sorry. What page are we on?

THE COURT: But I thought it was a reference to the following paragraph?

MR. JOHNSON: Well, here we are. We're starting to change my expert's opinion.

THE COURT: Well, no. I was just trying to keep the same sentence in there but phrase it in a way that's not improper.

MR. JOHNSON: "Jewish genocidal texts such as Torat", and I can't pronounce the Hebrew, "is the place to go". So I say, "For Jewish genocidal texts"

THE COURT: No, and I'm it shouldn't say "is the place to go". That's not the kind of thing an expert says.

MR. JOHNSON: Okay.

THE COURT: What I suggested was that

MR. JOHNSON: Okay. How about if we do this?

THE COURT: -- the title of the book is a by Rabbi Shapira, is a Jewish genocidal text. The book contains includes 230 pages. And then take out the last sentence on that page and then I would not have any difficulty with that.

MR. JOHNSON: "Mr. Arthur Topham"

THE COURT: Yes.

MR. JOHNSON: "has brought this important issue to our attention"?

THE COURT: Yes.

MR. JOHNSON: All right.

So I'm going to make the following change, that I cite that book, "a new book by Rabbi Shapira is a Jewish genocidal text", full stop.
THE COURT: And well then it goes into, "the book includes 230 pages". I understand that's what it is.

MR. JOHNSON: Yes.

THE COURT: But all right?

MR. JOHNSON: Is there anything else, My Lord?

THE COURT: Ms. Johnston, was and then you've said you are taking out the last the last page?

MR. JOHNSON: Well, I I think the whole last page appears to be references to Mr. Topham and I can't keep redrafting things here. I I'm going to have him make his own conclusions on the witness stand. If my client if my friend wants to object, she can object then.

THE COURT: All right. Well, then and the CV?

MS. JOHNSTON: My friend had it photocopied. I believe it corresponds with Your Lordship's wishes.

THE COURT: It looks like it it took out the reviews.

MR. JOHNSON: Right.

THE COURT: All right. We'll stand down until that's ready.

THE CLERK: Order in court. Court is adjourned briefly.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

THE CLERK: And we're on the record, My Lord.

THE COURT: All right. Just a moment.

All right. Are we ready to proceed?

MS. JOHNSTON: Just one issue on *The Jewish Religions, Its Influence Today*, on page 12. And I'm not asking for a change to the text. I just want to clarify what is intended.

I'm looking at the bottom paragraph on page 12 about the Jewish genocidal text, *The killing of Non-Jews*. Now, as Your Lordship knows from the 1990 Supreme Court of Canada *Keegstra* decision, in paragraph 130, and I apologize, I should have thought to bring another copy to Your Lordship.

Defence is entitled to pursue the defence of truth. That's 319(3)(a). But in order to do that they have to establish it on the balance of probabilities.

Now this is a copy of the original expert opinion of Mr. Atzmon that I received from my friend and it occurs to me, in reading the bottom paragraph under this, that he may be attempting to establish for the truth of its contents, that Jews, as a group, really do want to kill non-Jews, as part of that is a true statement. I'm just simply not prepared for this.

I'm not I'm not I'm not asking for anything right now. I'm simply putting the court on notice that if that is where my friend is going, and it might not be where he my friend is going, but if this is where my friend is going, it may well be that there is more Crown submissions and a request from the Crown to call rebuttal evidence.

THE COURT: All right.

Let's bring in the jury.

MS. JOHNSTON: Oh, I'm sorry, My Lord.

THE COURT: Oh, sorry.

MS. JOHNSTON: Was it Your Lordship's intention to do the qualification of the witness outside the presence of the jury?

THE COURT: What's counsel's view of that?

MS. JOHNSTON: I thought that's what Your Lordship had already said. That was my understanding. That's what I was expecting.

THE COURT: No, I don't think I had said that.

MS. JOHNSTON: I thought Your Lordship had.

My Lord, the expert opinion goes somewhat it goes beyond what I was expecting. I was expecting something along the lines of the ten paragraphs. I mean, obviously I wasn't under the impression he was only going to give those ten paragraphs and nothing more. But certainly the scope of this is beyond what I was expecting.

I think I would like at least the at least my friend to go through some evidence outside of the jury before bringing the jury in to hear the curriculum vitae.

THE COURT: All right. I mean, that's the way we usually do it, but then we'll have to repeat the qualifications for the jury.

MS. JOHNSTON: I'm content with that, My Lord. Thank you.

THE COURT: All right.

MR. JOHNSON: My Lord, I'd like to have the jury in and start the matter. I think that this could have been dealt with earlier. I've been very patient with my friend. She's been essentially bringing things up on an ad hoc, piecemeal basis. This could have been done earlier.

Certainly there are some issues that she has correctly addressed, or wanted to address. But at this point, My Lord, she's entitled to cross-examination on the information. I might point out to you, My Lord, that this document was prepared in response to Mr. Rudner's index and it was prepared, as well, by a person whose second language is English, probably his third language. His first language is Hebrew.

If he has some problems with expressing himself in the English language, he has an editor. Usually that's me.

THE COURT: That should be you.

MR. JOHNSON: That's me. But again, I'm not about to change his text.

THE COURT: But I guess the point here is simple, and that is normally we have a voir dire to admit an expert witness.

MR. JOHNSON: Yeah.

THE COURT: And that's normally done in the absence of the jury. I did it with Mr. Rudner in the presence of the jury because both counsel agreed and with the idea that it would save a bit of time. If both counsel aren't agreeing, I think it has to be done the way that it's normally done. And then repeated for the jury.

MR. JOHNSON: All right.

THE COURT: So let's do that and then we'll go through the qualifications again for the jury, after. But if your friend wants to do it in the absence, I don't think I have any alternative. That's the way we always do it.

MR. JOHNSON: Agreed.

THE COURT: Or usually do it.

MR. JOHNSON: And I'm starting to wonder at this point what is agreed and what isn't agreed. But that's another matter for another day.

THE COURT: Well, I guess I look at the I've just had a quick read of what you drafted.

MR. JOHNSON: I know.

THE COURT: I wish we'd had that. It would have made our life a lot simpler, if that was what was

MR. JOHNSON: Sure.

THE COURT: -- going to be put to the jury. But in any event

MR. JOHNSON: So at this point what would you like me to do, My Lord? I'm completely in your hands.
THE COURT: Well, we're going to we're going to start a voir dire. It will be voir dire number 2, for the expert witness, Mr. Atzmon.
MR. JOHNSON: Right.
THE COURT: And that will be in the absence of the jury.
MR. JOHNSON: But I'm assuming that his he's qualified in the area that my friend has agreed on and that is a study the study of Jewish identity politics.
THE COURT: That's what I've been told.
MR. JOHNSON: Okay. Thank you, My Lord.

GILAD ATZMON

a witness called for the Accused, sworn.

THE CLERK: Please state your full name for the court, sir, and if you wouldn't mind spelling both your first and last name?
A My name is Gilad Atzmon, G-i-l-a-d, A-t-z-m-o-n.
THE CLERK: Thank you.
MR. JOHNSON: Mr. Atzmon, I understand
THE COURT: Mr. Atzmon, you can be seated, if you would like.
A It's okay. I've been sitting all day.

EXAMINATION IN CHIEF RE QUALIFICATIONS ON VOIR DIRE #2 BY MR. JOHNSON:

Q Mr. Atzmon, I understand that you have written a book called *The Wandering Who*?
A Yeah.
Q And when did this book come out?
A 2011.
Q All right. And you understand that you're being brought here to testify as an expert as to Jewish identity politics?
A Yes.
Q Can you briefly describe to the court
A Yeah.
Q -- what that area is?
A In the case of Jewish identity politics, instead of asking who are the Jews or what are the Jews, we try to understand what identifying as a Jew stands for.
Q Okay.
A And this is a common procedure in identity studies in general. Rather than asking what things are, we ask what identifying everything means.
Q Sir, I'm showing you your CV.
A Yeah.
Q Does that CV properly set out the qualifications that you have in this area of expertise?
A I guess so. Yeah. Yeah.
Q Okay.
MR. JOHNSON: I don't know if we mark that at this point or not, My Lord.
THE COURT: It should be marked as an exhibit for identification
MR. JOHNSON: We can do that.
THE COURT: -- at this point.
MR. JOHNSON: Yes.
A Yeah.
THE CLERK: Exhibit C then.

EXHIBIT C for Identification (on voir dire #2): Curriculum Vitae of Gilad Atzmon

MR. JOHNSON:
Q Sir, you also sat through the testimony of the Crown's expert, Mr. Rudner?
A Yeah.
Q And I take it that you have prepared an index and topics
A Mm-hmm.
Q -- in response, to cover off some of the things that were brought out during his testimony?
A Yeah. I read the documentation. I also read the documentation that was produced initially by Mr. Farber, actually. And I commented on their project.
Q Okay. I wonder if you could have a look at the document I'm showing you, please?
A Yeah.
Q Have you prepared that, sir?
A Yeah.
Q With the revisions from the original?
A Yeah.
Q Okay.
MR. JOHNSON: Might that be marked, as well, My Lord?
THE COURT: Yes. That will be the next exhibit for identification.
THE CLERK: And that's D, My Lord.

EXHIBIT D for Identification (on voir dire #2): Fourteen-page Index and Topics

MR. JOHNSON:
Q Finally, I'm also showing you a document which appears to be a printout of a power point presentation. Have you seen that document

before, sir?

A Yeah. I prepared it myself. Yeah.

Q Yes. And what's the purpose of the presentation that you're holding in your hands?

A I think that it will make it very easy to explain to the court the fundamental issues and terminology that are involved in this topic. I think that it will make things very clear, and

THE COURT: Sorry, the topic of Jewish identity politics?

A I think that it is the topic of Jewish identity politics, but what is, for instance, the meaning of history. Rather than what is history, what is the meaning of hatred as how hatred is realized in terms of Jewish identity politics. It is it will help us to review pretty much everything that is related to this to this whole case and the Jew and the topic related to Jewish politics.

THE COURT: All right. Now, I'm not aware of this document.

Ms. Johnston, are you?

A Okay. It's a very simple document. It's basically we hope to have a presentation on the screen.

MR. JOHNSON: Yes. That is a that is a document that faithfully sets out what the jury will be seeing on the screen. We have a power point set up on this computer.

THE COURT: All right. No, I was just wondering what the Crown's position is on that.

MR. JOHNSON: Right.

MS. JOHNSTON: At this point it's being marked for identification. I understand it's supposed to be a visual identification for the a visual followalong. Is that am I correct on that.

A Yeah. I could have also just write it on a it's very basic.

THE COURT: But it seems to me it's not really part of the qualifications. It's something that you want to use for to explain your evidence, in part?

MR. JOHNSON: That's right.

A Yeah. Correct.

THE COURT: So it's not really qualification matter.

MR. JOHNSON: I just thought we could do that at this point to save some time, My Lord.

MS. JOHNSTON: My Lord, I was the one

THE COURT: But I just wondered what the Crown's position was.

MS. JOHNSTON: I don't have an opinion on it, vis a vis the expert qualifications. In terms of it being a visual aid for the jury, it may well have some value.

THE COURT: All right.

MS. JOHNSTON: I don't really have an opinion as to whether or not it contributes to Your Lordship's understanding of whether or not he qualifies as an expert.

My Lord, I was the one that requested the voir outside of the eyes of the jury. I really just have a few questions in cross-examination.

THE COURT: All right.

MS. JOHNSTON: I don't know if that might speed things up.

THE COURT: Well, if Mr. Johnson is finished.

MR. JOHNSON: I'm finished.

THE COURT: All right. And we're not going to mark the printout because I don't think that's part of the voir dire.

CROSS-EXAMINATION RE QUALIFICATIONS ON VOIR DIRE #2 BY MS. JOHNSTON:

Q Mr. Atzmon

A That's me.

Q -- you said something which I didn't quite catch. You said something about studies of studies of identification identity politics?

A Yeah.

Q What are you referring to when you say that, sir, studies of identity politics?

A Instead of asking who are the Jews or what are the Jews, what I'm going to do is to ask those people who identify as Jews what do they mean by it.

Q I'm just going to pause you because my question is somewhat different.

A All right.

Q What I want to know, sir, is where the where the methodology comes from? I'm wondering if you're borrowing it from some other academic discipline?

A For sure.

Q And that's what I want to pursue.

A For sure. This topic of identity politics delves into psychoanalysis, cultural criticism, philosophy, metaphysics. And these are my academic qualifications. I studied philosophy in Tel Aviv. I studied philosophy, German philosophy, in England, as well as psychoanalysis.

I'm writing about this topic for 20 years. I'm a commentator on some of the largest outlets in the world, wrote for the Guardian, for commented on it on BBC, Russia Today, Press TV, and so on and so on. And actually, also, maybe it's important for the court to know, I give seminars on the topic in quite a few universities around the world.

Q Is this something a methodology that you authored, sir, or you or the identity politics you discuss is this borrowed from other academic disciplines and you applied it to Jewish people? Do you understand what I'm asking you?

A I'm not sure, I must admit. Identity politics

Q Do you want me to give it another shot?

A Identity politics, in general

Q Mm-hmm?

A -- it is a pretty large domain.

Q Mm-hmm?

A If you visit a large book shop you will probably find an identity politics section. It's a it's a recognized domain. And you know, we are very familiar with LGBT [indiscernible] identity politics, gay identity studies, female identity studies. I am probably the first person to produce an extended study of Jewish identity politics. And now, recently, there was another book published by actually Zionists that presents some different views than mine. But it's definitely a recognized domain.

And as I mentioned, we borrow quite a few methodological tactics from different domains. I can repeat them if you want. I probably would be able to add a few more. But it in terms of methodology, I didn't invent anything.

Q All right. So this is a methodology that has derived from other academic sources?

A Mm-hmm.
Q Applied by you, obviously?
A And
Q I'm not saying it's not.
A No, and as you're surely aware, this book and my work is endorsed by some of the leading academics around. So who praise this work and until now, there wasn't a single attempt to criticize my work. I've been subject to a lot of fair criticism but until now, as far as I'm aware, nobody stood up and said, Mr. Atzmon, there is a problem with your methodology, or Mr. Atzmon, you are wrong on page 220. You are wrong on facts or the way you elaborate on the matter in the matter.
Q All right. Sir, you understand that are you trying to tell us you're insulted? Is that your point?
A The what?
Q Are you saying you're insulted?
A Insulted?
Q Okay. That's not your point?
A I don't
MR. JOHNSON: I didn't hear those words, My Lord.
A I may be insulted later, but not yet.
MS. JOHNSTON: Not yet. All right. Thank you.
A I like to be insulted, if you know, [indiscernible].
MS. JOHNSTON: Thank you. Thank you.
My Lord, that's really what I wanted to know, and the Crown is content.
THE COURT: I just have one quick question.

QUESTIONS BY THE COURT RE QUALIFICATIONS ON VOIR DIRE #2:

Q You said until now you had not been criticized for your work.
A No, no.
Q And I don't understand what you mean by now?
A To date. I mean to date.
Q To date?
A This book this book is out for probably almost four years. It was subject to controversy. Some people were offended by it, which is reasonable. But not a single person stood up and pointed at a mistake or a methodological mistake in my book.
THE COURT: All right.
A Thank you.
THE COURT: I think I understand that.
All right. Well, then I'm prepared to accept Mr. Atzmon as an expert in I'd better get this right in Jewish political
A Jewish identity politics.
THE COURT: Jewish identity politics. And he can give opinion in that field.
So let's bring in the jury.
And what I'll before we do that, Mr. Johnson, you can go through the qualification examination at that time.
A And can we just make sure that the power point is working?
MR. JOHNSON: Yeah. It will be on.
A Thank you so much. And what I will also need is something to point -- how do I use it?
MS. JOHNSTON: Squeeze it. Relax.
A Wow. This is this is I'm not going to
MR. JOHNSON: Can you see the screen.
A It will no, actually. But is there anything on the screen? Ah, not yet.

(INDISCERNIBLE DISCUSSION BETWEEN WITNESS
AND COUNSEL)

(JURY IN)

THE COURT: Mr. Johnson?
MR. JOHNSON: My Lord, my friend is getting into her computer right now so that we can start at some point.
I wonder if my friend would agree to have this marked as an exhibit as part of the defence case, which is the document we've referred to in the past, the response to Canadian Human Rights Commission by Radical Press, authored by Arthur Topham?
MS. JOHNSTON: Yes. Thank you, My Lord. My friend discussed that with me in advance. He'd like it marked as an exhibit. I am content for it to be marked as an exhibit.
THE COURT: All right. That will be the next exhibit in the case
MR. JOHNSON: Thank you.
THE COURT: -- which is, Madam Registrar?
THE CLERK: It would be 10.

EXHIBIT 10: Seventeen-page Response to Canadian Human Rights Commission by Radical Press

THE COURT: Sorry. What's the date of that?
Sorry. Is there a date on that document?
MR. JOHNSON: Yes, there should be. I'm sorry, My Lord. I
THE COURT: January 3rd, 2008.
MR. JOHNSON: Yes. Thank you.
My Lord, if I'm permitted to, first of all, move this microphone?
THE CLERK: It's Exhibit 9, My Lord.
THE COURT: Oh.
THE CLERK: Sorry about that.
THE COURT: No, it's Exhibit 10. The admissions were Exhibit 9.

THE CLERK: Oh, that's correct. Pardon me. Yeah, that's today.

MR. JOHNSON: Thank you.

My Lord, for the purpose of establishing Mr. Atzmon as an expert, I plan to ask him a couple of questions, first of all.

THE COURT: Certainly.

MR. JOHNSON: In the presence of the jury.

EXAMINATION IN CHIEF RE QUALIFICATIONS BY MR. JOHNSON:

Q Mr. Atzmon, can you please advise the jury what your area of expertise is?

A I have been writing for the last 20 years on Jewish matters, and at large, Jewish identity politics. I came to realize that in order to understand this complex matter, what we have to do is rather than asking who are the Jews, which is a very complicated question, as you probably realize by now, I ask what the people who identify as Jews mean by that, which is slightly easier to understand and I guess that very soon we will be able to follow it up.

Q Sir, I understand that you have some academic qualifications. Could you advise the court, please?

A Yes. I have a BA in Philosophy and Philosophy of Science from Tel Aviv University, Master in Special Program of Philosophy and Psychoanalysis from Essex University. In England I was also doing my on the verge of completing my PhD in the same university, but I'm also a musician. My music career took off and I had to pursue with that.

Q Okay.

MR. JOHNSON: My Lord, I wonder if there's any further need to pursue this further?

THE COURT: Any questions on qualifications?

MS. JOHNSTON: No, thank you, My Lord. I'm content.

THE COURT: All right.

Well, I'll accept Mr. Atzmon as an expert in Jewish identity politics and accordingly he can give opinion evidence in that area.

And before we start that, M. Johnson, I want to go through the instructions that I gave prior to Mr. Rudner's evidence and just go through them again for you.

Normally witnesses are only permitted to testify about what they've seen or heard and may not testify about their opinions. In the case of Mr. Atzmon, because of his special education and experience, he's being permitted to give an opinion in the his area of expertise, which is Jewish identity politics. He'll be permitted to give that opinion but it's up to you to decide the extent to which you will rely upon it. And as I advised you with Mr. Rudner, and I'll tell you know, there are a number of things you may want to consider as you listen to the expert's evidence.

First of all, what are his qualifications and experience, what are the reasons given for the opinion, what is the suitability of the methods used, whether the expert is impartial, and all of the other evidence in the case. Of course, at the end of the day it's up to you to decide how much or little to rely on Mr. Atzmon's opinion. And in giving his opinion he may be asked to assume or rely on certain facts about his opinion. Those facts may be the same or different from what you find as facts on the basis of the evidence in this case, but the closer the facts assumed or relied on by Mr. Atzmon are to the facts that you find, the more helpful his opinion may be to you.

The extent to which he relies on facts that you do not find supported by the evidence, you may find his opinion less helpful.

So those are my general comments on expert witnesses in relation to Mr. Atzmon and I'll remind you of these again, at the end of the trial.

MR. JOHNSON: Thank you, My Lord.

I'll now proceed with Mr. Atzmon's evidence.

EXAMINATION IN CHIEF BY MR. JOHNSON:

Q Mr. Atzmon, I'm going to ask you if you could please elaborate on the notion of Jewish identity politics?

A Yeah. As I already mentioned, when it comes to Jewish issues we find

MR. JOHNSON: My Lord, I wonder if we can get the monitor working over here?

A Can I continue?

MR. JOHNSON: Yes.

A Yeah. When we deal with Jewish issues we usually come across a lot of terminology. You heard some of this terminology in the last week. Race, hate, Judaism, Jewishness, Talmud it is quite complicated. Yet, the issues that I do, dealing with Jewish identity politics, I try to differentiate between three main terms Judaism, the religion; the Jews, the people; Jewishness, the ideology.

In order to grasp these notions, what we are doing, what I am doing, and a few more are doing it now, as well, I ask, those a very simple question. Those who identify as Jews what do they mean by that? In order to understand that we will move to the next slide.

Jewish Identification what it means. I came to the conclusion that we are talking about three categories that are non-exclusive.

Category one, the religion people who identify as Jews because they follow the Torah and the Talmud. They say, I'm a Jew because I am religion. Believe it or not, according to my study, this category is totally innocent. If you identify as a Jew, you are innocent, totally innocent. And the way I support it, people who follow the Talmud for hundreds of years have never been engaged engaged in any criminal collective act against another people. We will talk about it later, I hope.

Category two, the second category, ethnicity, people who identify as Jews due to ethnicity, ancestry. I'm a Jew because my mother is a Jew. My grandmother is a Jew. My cousin is, my neighbour is a Jew. No, this doesn't work.

This is also a totally innocent category. The fact that you have a Jewish mother is not a problem. It doesn't make you into a war criminal, into a Talmudist, a racist, or whatsoever.

The most interesting category is the third category, politics, people who identify politically as Jews. Now I'm sure that you heard about Zionism by now, you know. I, myself, heard the word mentioned and defined a few times in this court. But Zionism is not the only problem. Every person who identifies politically as a Jew to a certain extent subscribes to a racially oriented political identity.

So for instance, there are a lot of very positive groups, Jews for Peace, Jews For Jews again For Animal Rights, and so on and so on. Unless you are Jewish, you are not racially qualified to join this group. Now what is very interesting about it is while we would feel very uncomfortable with some racists group, let's say Aryans for Human Rights, or White People For Palestine. But we don't feel that bad when we see Jews For Peace. But from a categorical point of view, these groups are as racially driven.

So we will deal with these three categories, I guess, in the next in the next 20, 30 minutes. But they are important for the understanding of our of my approach to the topic.

Q Thank you, Mr. Atzmon. I wonder if I understand you correctly. Are Jews a race?

A Certainly not. Certainly not. But Jewish politics is racist. This is a very, very important distinction. Now I was lucky enough to be here yesterday and this question came along. I'll make it very clear to you.

Whether Jews are a race or not, I'm not going to comment, but I would believe that there is a debate about it. So there is a debate whether the Jews are a race or not, and if someone wants to know about it, I will provide you with the scholarship. However, Jewish politics is always racist.

Q How does this model that you've sketched, or have up on the screen here, help to understand Israeli politics, Jewish identity, or progress in this court case?

A In fact, it is very, very helpful. As I mentioned, these categories are not exclusive. So if, for instance, we talk about a Jewish settler living in the West Bank, coming from Brooklyn, they're usually in most cases, not all, subscribing to category 1. They're usually religious. They usually subscribe also to category 2. They are Jews by ancestry, by descent. But they are definitely category number 3. They identify politically as Jews.

What about anti-Zionist Jews, pro-peace Jews, many cases, left Jews, usually they are not religious at all. But they are Jews by ancestry and they will definitely they definitely identify politically as a Jew, as Jews. Noam Chomsky, if for instance, if the name is familiar to you, subscribed to this second and third categories. Albert Einstein he wasn't a religious Jew. He is not identifying politically as a Jew but he's certainly identifying as a Jew by ancestry. And this is totally innocent.

Q Okay. Can you explain Torah Jews for us, please?

A Yeah. Torah Jews are a very small sect of rabbinical Talmudic Jews. Rabbinical Talmudic Jews they definitely subscribe to the first category. They're not that concerned by the way, by ethnicity. They actually argue that you can become a Jew just by conversion. It is very interesting. And they definitely don't identify politically as Jews.

So, we can see some Jews to be specific Torah Jews, in the Tura Carpa, [phonetic], if you heard the name before, or Satna Jews, who just subscribe to category 1 and they are totally innocent. In fact, they are also against all forms of Jewish Zionist politics.

Q Okay.

THE COURT: Can I just ask the jury to step out for a moment?

(JURY OUT)

THE COURT: I'll ask Mr. Atzmon to step out of the court, as well.

A Okay. It's okay.

(WITNESS STOOD DOWN)

THE COURT: All right. I have a sorry. I have a concern and it may just be a language issue. But this concept of innocence and saying these are innocent.

MR. JOHNSON: Oh.

THE COURT: I don't see how that's an opinion that has anything to do with anything that is before the court, whether someone else is innocent or not. And I suspect it's a language issue.

MR. JOHNSON: It is.

THE COURT: But it's not in the materials and it's just it strikes me as an unhelpful use of phrase, and not

MR. JOHNSON: I can ask him, My Lord, not to refer to people as being innocent, if you'd like.

THE COURT: Why don't why don't you have a brief discussion with him and just indicate that and see if there's another term that could be used.

MR. JOHNSON: Why don't I do that. I'll be right back, My Lord.

THE COURT: All right. Thank you.

MR. JOHNSON: I'll just be a matter of moments

THE COURT: All right.

MR. JOHNSON: -- so I don't think we have to stand down, but ...

My Lord, I think we're just I think we're just one question premature. He's going to explain that in the next question.

THE COURT: All right.

MR. JOHNSON: Okay? Thank you.

THE COURT: Thank you.

THE COURT: And the other question I have, is what are we going to do with this power point? Again it's I'm uncomfortable with having a power point exposed to the jury that I haven't seen and hasn't been marked as an exhibit.

MR. JOHNSON: Well, I'd planned on having it marked as an exhibit.

MS. JOHNSTON: I'm sorry, My Lord. I thought you said a category. I thought

MR. JOHNSON: I thought we were

MS. JOHNSTON: I thought my friend had marked it as Exhibit 3. But, yes, we should discuss it.

THE COURT: No. It was handed up for when we were doing the

MR. JOHNSON: Oh, on the yes. Okay.

THE COURT: -- on the qualifications. But I haven't seen it and I think

MR. JOHNSON: My apologies, My Lord. That's

THE COURT: -- what properly should be done is you should ask if he prepared the power point

MR. JOHNSON: Yeah.

THE COURT: -- and if it's his power point.

MR. JOHNSON: Okay.

THE COURT: And then we'll mark it as an exhibit

MR. JOHNSON: Sure.

THE COURT: -- and we'll continue with it.

MR. JOHNSON: Sorry, My Lord. I had marked it off on my check list

THE COURT: All right.

MR. JOHNSON: -- as having done that. But ...

THE COURT: And in addition oh, I guess you haven't got to the report yet, but we'll mark it when you get to the report. We should probably mark his CV, though, as an exhibit at this point.

MR. JOHNSON: Yes.

THE COURT: All right.

MR. JOHNSON: Do you have the CV?

THE CLERK: I have the CV marked as Exhibit C.

MR. JOHNSON: Good.

THE COURT: And do you have a copy of the power point for me?

THE CLERK: This one?

THE COURT: Right. I don't.

Thank you.

MR. JOHNSON: Sorry for the bent corner.

THE COURT: That's fine.

MR. JOHNSON: Okay.

THE COURT: All right. Let's call the jury in and Mr. Atzmon.

(JURY IN)

GILAD ATZMON

recalled.

THE COURT: All right.

MR. JOHNSON: My Lord, if we could have the power point printout marked as the next exhibit?

THE COURT: Do you I think you should show it to the witness and ask him if he prepared it, and if it's his printout. Yes.

MR. JOHNSON: Yes. Thank you, Madam Registrar.

Q Okay. Did you prepare the document that's in your hands?

A Yeah. Yeah. I prepared it as [indiscernible].

MR. JOHNSON: Okay.

THE COURT: All right. We'll mark that as the next exhibit.

MR. JOHNSON: Thank you, My Lord.

THE CLERK: Exhibit 11.

EXHIBIT 11: Power Point Printout Prepared by Gilad Atzmon

MR. JOHNSON: And the CV has also been marked as an exhibit. No?

THE COURT: No, it hasn't. So we should also mark the

MR. JOHNSON: If we could if we could mark the CV, as well?

THE COURT: -- Mr. Atzmon's CV as an exhibit.

THE CLERK: That would be 12.

THE COURT: Thank you.

EXHIBIT 12: Curriculum Vitae of Gilad Atzmon (was C for Identification)

MR. JOHNSON: Now if the CV now if the CV could also be handed out to the jury?

THE COURT: Okay.

MR. JOHNSON: Okay. Thank you.

THE CLERK: That one?

MR. JOHNSON: Yes, that one. Thank you.

Okay. Are we ready to proceed?

THE COURT: Now just wait a second till we get all the clicks done with.

MR. JOHNSON: Okay.

THE COURT: All right.

EXAMINATION IN CHIEF BY MR. JOHNSON, Continuing:

Q Now Mr. Atzmon, you had mentioned in reference to your power point presentation and these categories, that category 1 and 2 involved people who were completely innocent. Could you elaborate on that, please?

A Yeah. We when we are talking about innocent, we are talking about the category being innocent rather than people being innocent. So, for instance, being a religious Jew can be interpreted in the most peaceful manner. And as I mentioned, we know about Satmar and the Tura Carpa [phonetic], that are very peaceful communities. We know about Jewish rabbinical communities that were peaceful for hundreds of years. And this is what I mean by innocent.

However, this is not to say that the that Jewish religion is free of some very problematic segments. I think that this court already saw some of the problematic issues I saw yesterday, that Mr. Rudner had to comment on those issues. The fact and this, we can elaborate it more and I'm sure that we will, but there is a difference between a category being innocent and people being innocent.

Some people are innocent. Some people are not. It's very, very simple.

Q Okay. How can this model then, that you've shown, help us further understand the case against Mr. Topham with respect to the charges that are before this court?

A I think that this is this is the gist of the matter, as far as I'm concerned. If category 1 is innocent and category 2 is innocent, then category 3, the politics, the Jewish politics and Jewish ideology are the only categories that we have to deal with. And as far as I'm aware, politics and ideology should be subject to political criticism and ideological criticism.

As far as I can see, Mr. Topham doesn't, in his work, criticize Jews as a race, as a biology, as a blood. He doesn't also criticize the Jewish religion. He criticized some aspects, some very specific aspects of the Jewish religion. Most of his work is not the I can't say that I've seen all his work, but the thing that I came across and the thing that we are examining here, are mainly concerned with criticism of the politics and the ideology.

And as far as I'm concerned, I'm not commenting here on your Canadian law as far as I'm concerned, as a philosopher, politics and ideology must be subject to criticism.

Q But it appears that, from what you're saying, Mr. Atzmon, that Jews are often, well, I suppose, feel hated if their politics are criticized?

A Yeah. Very often Jews feel offended when their politics is criticized. They see it as a racial a form of racial hatred. But this doesn't really mean that anyone there hate them for those reasons hate them as a race or hate them as a religion. As far as I can see, and believe me, I'm writing a lot, I am a commentator on these topics on many media outlets all over the world, it is always Jewish politics ideology, in most cases, by the way, Israeli politics and Jewish lobbying, that are subject to criticism. As far as I can say, I see it as a legitimate

criticism.

Q It appears that what we're dealing with, I suppose, is a sophisticated, multilayered identity, if I'm permitted to say that?

A Yeah. If you can move to the next slide, I believe that here I managed to explain what we are seeing here. We are dealing with a kind of a triangle, as you can see, with three corners religion, politics, race. When we criticize Jewish politics, Israel, Jewish lobby, or whatever, many Jews, some Jews are offended as a race, in spite of the fact that nobody mentioned race. Nobody mentioned biology or blood.

When we start to say, all right, race I didn't really mean to talk about your race, once we look into those, let's say racist elements that are associated with Jewish religion or whatever, and we can talk about it later, they are actually offended as a religion. When we try to talk about religion, they tell us that actually most Jews are not religions. What happened is that we are in a that we are all the time chasing an argument. It is very confusing and the whole idea is that there is an institutional attempt to keep this discourse very confusing. Why? Because if it is so confusing, you basically neither you nor anyone else can really criticize Jewish politics.

Now, in terms of kind of to talk about the physical metaphor, we are basically dealing with kind of an identity that has existed everywhere and nowhere simultaneously in terms of physics, is something like kind of a tri-polar field. It's kind of like quantum mechanics. They are everywhere and nowhere at the same time.

This is very dangerous. This is very dangerous for Jews. This is very dangerous for Jews because it stifles the attempt to criticize their politics and it leads toward impunity.

Q In the past number of days, Mr. Atzmon, in this court, we learned that there were some very problematic segments within the Talmud and the Torah. Yet you actually insist here that the religion is innocent.

A Right.

Q And I wonder if you could please enlighten us about the role of religion?

A Yeah. I will partially repeat what I said.

Judaism as a religion is an innocent category. However, Judaism, maybe you can say, like other religions, contains some very problematic elements. The Talmud. You heard about the Talmud. The Talmud was defined for you by Mr. Rudner.

Jews were following the Talmud for hundreds of years. And as I mentioned before, they never found themselves engaging in any criminal act against any people as a collective. I was for many years inspired by one of the greatest Israeli philosophers, probably the greatest, Professor Yeshayahu Leibowitz, if you want to put it on record. Don't ask me to spell it. If you insist I can give it to you, but yeah, it's complicated.

Yeshayahu Leibowitz said he was an orthodox Jew he said, yes, our Talmud contains a lot of problematic segments. However, the fact that we were not involved in any collective attempt, like Israel he coined the word

"Judeo-Nazis". An Israeli philosopher coined the notion Judeo-Nazis in reference to Israel. The fact that we, orthodox Jews, were never involved in any such crime like Israeli state, is because the Talmud, in spite of all the problems, actually restrained us. But here is the problem.

The problem is that in the last 30, 40, some people would even say 50 years, we see a rise of Jewish orthodox [indiscernible] ideologists. And in fact, in Israel nowadays, the most radical right-wing, violent groups are actually orthodox Jewish groups. And here is the question. If the Talmud was so forceful in restraining the Jews, how come it stopped doing it?

I brought with me one, actually two quotes that were made this is quotes taken from a sermon of the most important Talmudic expert in Israeli, Chief Rabbi Chief Rabbi Ovadia Yosef. You cannot get any higher than that. And this guy is dead now. This rabbi is regarded as a top Talmudist scholar. This is what is said in 2010 [as read in]:

Goyim [basically us] were born only to serve us. Without that they have no place in the world, only to serve the people of Israel.

The same rabbi, Ovadia Yosef, said about Muslims [as read in]:

They are stupid. Their religion is as ugly as they are.

This is very embarrassing.

Now the question is how how is it possible that if the Talmud was there to restrain the Jews, the most important Talmudist in Israeli is exploring some very embarrassing graces to premise his views? One of the answers, and I don't tell you that this is the answers, but one of the answers that is offered by people who delve into this matter I'm talking about scholars is that it wasn't actually the Talmud that restrained the Jews. It was actually hundreds of years of anti-Semitic church that restrained the Jews. I won't be able to deliver an answer but at least I hope that I tried to open your eyes to the template of the discussion on this issue.

But the most important thing is that this is exactly the questions that we have to ask. Now, if I may, if I'm allowed, as far as I'm concerned, this is exactly what Arthur Topham and Rodney Calpress [phonetic] are doing. They open the scope of our understanding of these very complicated issues, and more than anything else, I argue and I don't know how important it is to you as Canadians. I think that what he's doing is mostly important for the Jews, because they must be criticized in order to reflect on their politics and ideology. Simple. MR. JOHNSON: Okay. Well, I'm looking at the time.

THE COURT: Now, I see the time. We're going to we're going to break for the day.

Thus the jury is excused till 10:00 o'clock tomorrow morning.

(JURY OUT)

THE COURT: And you're excused

A Was it interesting?

THE COURT: You're excused from the courtroom.

A Yeah. Thank you.

THE COURT: And I'll speak to counsel.

(WITNESS STOOD DOWN)

MR. JOHNSON: I'll just get this out of here, if I don't if I can, My Lord. I don't want to lose data.

Okay. I think we're done.

THE COURT: Right.

For tomorrow, Mr. Johnson, it would be much more helpful if we had questions and answers. That's how this process is supposed to work, rather than speeches.

MR. JOHNSON: We're getting into that.

THE COURT: So, I would like you to try and direct that a little better. All right?

MR. JOHNSON: Yeah.

THE COURT: So 10:00 o'clock tomorrow morning?

MR. JOHNSON: Thank you, My Lord.

THE CLERK: Order in court. Court is adjourned till 10:00 a.m. tomorrow morning.

(PROCEEDINGS ADJOURNED TO NOVEMBER 4TH, 2015, AT 10:00 A.M. FOR CONTINUATION)

Transcriber: M. Pedersen