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THE DISTRICT COURT OF
WESTERN AUSTRALIA

1767 of 2009

STATE OF WESTERN AUSTRALIA

and

BRENDON LEE O'CONNELL

WISBEY DCJ

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 21 JANUARY 2011 AT 2.18 PM

MR A.E. EYERS represented the State of Western Australia

Accused in person

(At 2.19 pm the jury returned)

WISBEY DCJ: Yes, Mr Eyers? And perhaps before we start with this witness, we talked about the report of Professor Markus - - -

EYERS, MR: Yes.

WISBEY DCJ: - - - and proceeded on the basis it was an exhibit. It was never in fact tendered.

EYERS, MR: Well, if I didn't formally exhibit it, your Honour, may I do so?

WISBEY DCJ: It will be exhibit 4.

EXHIBIT 4 State DATE
Report of Professor Andrew
Markus

EYERS, MR: Thank you.

WISBEY DCJ: Yes?

EYERS, MR: Now we're in a position to call our next and final witness, your Honour, and the gentleman's name is Rabbi David Freilich. So may he be sworn or affirmed?

WISBEY DCJ: Yes, thank you.

FREILICH, DAVID JOHN affirmed:

WISBEY DCJ: Yes, Mr Eyers?

EYERS, MR: Thank you.

Rabbi, you have in part - and in putting the question I do so, but could you just formally, please, identify yourself to the court and tell us something of your professional vocation, please?---I am the Chief Rabbi of the Perth Hebrew Congregation. I'm also the President of the Organisation of Rabbis of Australasia.

Thank you very much. Rabbi, I'd like to ask you some questions, please, both in relation to the religious aspect of Judaism and in relation to the broader - some broader questions so far as Judaism is concerned, the interrelation of religion and secular life within Judaism, please?---
Certainly.

Now, first, can I start in this way, rabbi? According to Jewish beliefs or traditions, how were the Jewish people formed?---Well, the Jewish people were formed by two covenants. Firstly, there was the covenant with Abraham, which was in fact a national covenant. That was through the promise to Abraham and his descendants to the land of Israel, and this was a covenant which we actually call an internal covenant. That covenant binds the Jewish people through a common language, through being a common race with a common culture and history and tradition. A number of years after that, in fact about 1,000 years after that, we also had another covenant at Mount Sinai, where indeed the Jewish people were given a set of laws. That was of course the 10 Commandments and 613 commandments which - which includes those 10 which were given at Mount Sinai. So they're the two covenants, one an internal one and one an external one, that actually has formed the Jewish people.

And are - or is it possible to date either precisely or approximately the age of the Jewish people? In other words, how long ago - - - ?---The Jewish people - - -

Yes?---The - the Jewish people itself, the - the - the time of Abraham was 4,500 - approximately 4,500 years ago.

And that - that represents the first of the two covenants?---Correct.

Thank you. Can I just ask you, then, something specifically in relation to religious observance and its place within the national Jewish identity? What is - what is the role and purpose of religious observance to Jews?---Well, the religious observance itself has kept the Jewish people together. As you know, Jewish people have been dispersed all around the world, and our - our keeping of certain traditions and religious laws have actually kept us together as a people, by - even though we have been dispersed throughout the world in the various countries. These traditions have also, in many ways, given us a yearning and a focus on - on the national, on the land of Israel.

Can I just ask you directly this question, please? In order to be a Jew or of the Jewish people, does such a person have to be religious

Certainly not.

We - we've heard something in this case - or from one witness in particular, a young man who described himself as a secular Jew. And - and my question again, and - and just

help us with this concept. Is this the case, rabbi; that the religious observance is but one aspect of Jewishness?---Correct. We are known as Am Israel(?) which means the nation or the race of Israel. That is the term. Am Israel. Now, whether you are observant or non-observant, whether you are a believer or a non-believer, you are still part of that race. If indeed you have a descendant from a Jewish mother, that's how it's handed down from generation to generation. Or, there is such a thing as conversion, and that of course, we believe, is really influenced by the fact that there has been somewhere in that - that person's background where they actually have been part of the Jewish race and want to return. In fact, when somebody converts to Judaism, we actually say to them, "Are you willing, again, to rejoin or join the culture, the tradition, the nation of Israel?" And if they say, "Yes," they affirm to that, they are accepted. There are certain procedures they must go through, and then they are also asked, "Are you willing to keep the laws of the Jewish people?" and they say, "Yes." Now, if after some time they no longer keep those laws, they are still part of the nation. So they can never lose, either by bloodline or by conversion to Judaism once they've accepted to be part of the nation of Israel, whether they keep the laws or not, they are then Jews for eternity.

Okay. Can I - can I help just to - to perhaps express this by way of an analogy. It - is there an analogy, in a sense, to the assumption of citizenship through naturalisation?---Correct. I've - the - the situation is, when you become an Australian, an Australian citizen, you are - you then - you pledge allegiance, as far as I - I - I know, to Australia, and you also, of course, agree to abide by the laws of Australia. Now, once you're accepted as a citizen of Australia you are an Australian, and even if you don't keep the laws, you're still an Australian citizen, albeit a non-law-abiding citizen, which isn't a very good thing. But you're still a - an Australian once you've accepted citizenship as an Australian.

Thank you. Can you help us with this please, rabbi, and help explain this? One is aware - people are aware of the fact, as you've already touched upon, that Jewish people around the world are very widely spread. And - and just to take but one example, let's say there are Jews in Ethiopia who are very dark, who are obviously from the African continent. Conversely, there may be Jews who are - just to characterise them, are very white, from Northern Europe or Eastern Europe. Now, what is - what is the - is there an irreducible common factor that would make a member of both groups Jewish? What - and if so, well, what is it?---Well,

you know, you have Jews of all different nationalities as such. They're in different places of the world and also look very different. The belief is that - that of course it goes through the Jewish mother, a person being Jewish. Well, throughout the ages there has been mixed marriage. There has been mixed marriage and therefore you could possibly have a Jewish person as part of the Jewish race but also it could be Chinese, but - but they're still part of the Jewish race. And so that has - that has occurred all round the world, so therefore, that - that would explain that difference, even in look and colour, but the truth of the matter is they're - there is - they are still part of the Jewish race, they still have a Jewish blood line.

Thank you, rabbi. Now, you've mentioned one of - one of the aspects of Jewishness being the language I believe, and - and the Hebrew language. What function has the Hebrew language and what function does the Hebrew language play as part of the sense of Jewishness?---Well, the Hebrew language, unlike other ancient languages, which really no longer - most of them - no - no - no longer are used, the Jewish - the Jewish language, which is Hebrew, still exists today, it's used as a - in - in the modern parlance, they talk in - in Hebrew, we - we have a common shared Hebrew prayer throughout the world. So Hebrew very much unites the Am Israel, the Jewish race, throughout the world.

And does - is the speaking and the - the currency of Hebrew go back to the - the beginnings of the formation of the Jewish race?---It does. Abraham was known as Abraham the Hebrew and I mean there - there was - I - I'm not - because it will take quite some time to explain the origins of these Semitic languages.

Yes?---I did a degree in this. But - but - but he - Hebrew - Hebrew was a new language which - which started with Abraham and has been handed down from generation to generation.

And - and continues in currency as you say until this day?---Correct.

Thank you. Now, another thing that we've heard touched upon but I'd just like to invite your evidence in this regard, not - not in great detail, rabbi, but perhaps just touching on - us to - to assist - touching upon it to assist the court. Can you assist the jury in respect of the place of festivals and - and life cycle events within Jewish life and as part of the Jewish identity?---Well, the various festivals both have a national significance and a

religious significance. Some are aimed at - at totally national significance and some are aimed at - at just the religious significance. For example, you have the Passover. Now, Passover actually - actually represents the - the - the going out of Egypt of the Jewish people as a nation when we were in slavery in Egypt for a few hundred years. So our - our independence as a nation going out of Egypt we actually celebrate that on our Passover. It also has a religious significance in that seven weeks later we then have a chance to accept our own laws at Mount Sinai. So most of the festivals, if you were to go through each and every one of them, have that national aspect and has the religious aspect to it. So you've got the - the - the aspect of - of Am Israel, the nation and the race of Israel and also the religion of Israel.

And with such festivals you mention Passover and we've heard something of Passover, in your experience in learning, rabbi, would Passover have a significance both to a - a religious Jew as - as - or - and as well as a secular Jew for instance?---Oh 100 per cent. To a secular Jew, Passover does have relevance because we became a free nation on that festival. I mean whether you're religious or not. We - we were under the bondage and the - we were under the slavery of - of the Egyptians for a few hundred years, so whether - whether you - you keep the Jewish laws or not, it has a great significance. It gave us our freedom.

Rabbi, for the time being, I - I have no further questions, thank you. But would you remain there, I imagine there might be some more questions?---Thank you.

Thank you.

WISBEY DCJ: Yes, Mr O'Connell?

ACCUSED: My name is Brendon Lee of the family O'Connell. I'm a sovereign subject of Queen Elizabeth II and I am a free man. I do not respect or consider this admiralty law court to have any authority. I'm here under duress.

Rabbi Freilich, thank you for attending from occupied Palestine. I appreciate your time. Rabbi, you've spoken a lot about race. Would you agree that in the 1930s for the first time ever a state, the National Socialist state under the dictator Adolf Hitler, proclaimed officially that Jews were not just simply a religious faith, but were in fact a race, and during this time Jews were well known - and there was a huge outcry stating this was simply not the case? Would you agree with that statement I just made?---To be quite frank with you, Hitler does not define our - our identity. We don't - we don't rely on Hitler to identify our identity. I would believe that at that stage, and - Jew - Jewish people would have been actually stating that we are both a religion and a race - - -

Best of both worlds?--- - - - as I have stated in my evidence.

Best of both worlds.

WISBEY DCJ: Well, is that a question or is that - - -

ACCUSED: Is that - well, that's a question. That's the - that's the - not a bad way to be, to be both.

WISBEY DCJ: Well, it still isn't a question. So far you've had two statements.

ACCUSED: Do you speak for all Jews around the world?---I believe I express the mainstream Jewish belief, yes.

As you'd know in Christianity there are many different sects, many different faiths, variations and so on. I put to you that you are actually in the minority in your view.

EYERS, MR: Your Honour, I think in fairness that will have to be refined a little, because he's expressed a number. Just out of assistance to Mr O'Connell.

ACCUSED: Would you say there are more liberal, reform, secular supposedly - or - or people that just casually call themselves Jews than there are orthodox - who - people who actually call themselves Orthodox Jews in the world?---Well, I am - I represent Orthodox Judaism. There

are progressive or liberal Jews. They have more of a link to the racial side than even the religious side. I'm Orthodox, because I do place a certain stress on the religious side of things. That's what makes me Orthodox, whereas other Jews in the world, progressive, liberal, would actually place more stress on the Am Israel factor, the national factor.

I take it, rabbi, that the Jewish history of which you speak of - you spoke about 4,500 years ago, Abraham, the land of Israel. From which books are you taking the - the history of the - the so-called - the Israelites from?---Well, from both the Bible and historical sources.

And what - could you just perhaps give me a couple of historical sources?---Well, if you - if you were to read historical books in history - you'd have to speak - speak to historians on this. I have read a number of sources where they mention Abraham, Mesopotamia and the various history of that - of that period.

Right. And what book did they refer to when they - when they quote? These historical sources you're quoting - you were mentioning, what - what do they refer to for their source?---Well, my - my expertise is in the - is in the Bible and in the - and - and those sources. You'd have to look at - look at the references behind in the index to find out what sources they quote.

Well - well, what's - what's the only source for the life of the Israelites? Because remember, there was no such word as a Jewish person or anything until I think it was roughly around the 12th or 13th century. They were known as the Israelites or the Tribe of Benjamin, Dan or so on. In each case, what I'm trying to ascertain is every source - or every source that a history book may quote from is in fact a religious book. Isn't that not - is that not so?---If one really looks at the - interestingly enough, in Egypt you will find on - on the - the various stones during the slavery time the word "Habiru". Habiru. Because Abraham was called "Abraham the Hebrew", Abram Al Ibri(?). So the word "Hebrew" was used a number of times. Now, the word "Jew" actually came - it's mentioned in the Bible, the word "Jew", already. It wasn't the 12th century. The - the word "Jew" was used, and the fact that the - the Jews of Judea, the - of - of the Tribe of Judah, were exiled, and therefore they were the only ones that were - that were really seen to be known of that particular race any more, and therefore they were called "Jews", coming from Judea.

So for which area Father Abraham, who started this all, allegedly, assuming you wish to believe a religious book, which is a matter of faith - - -

WISBEY DCJ: Well, that - there are a number of comments in that, and you're not to comment. You're to ask the witness questions.

ACCUSED: Okay. Well, Father Abraham, I understand he came from the area of North-West Iraq. Would that be correct? What is today modern North-West Iraq?--- Mesopotamia.

Right. So it wasn't - - -?---Mesopotamia.

It wasn't ancient Palestine, Judea, Samaria or what would now be called Israel by some. It was actually in ancient Iraq?---Well, he was actually told that he was to go over the river Euphrates. That's why it was called "Hebrew", because the word "Ibri" means "over the other side". And he was to go and start a country, a nation, on the other side of - of the Euphrates.

Right?---That's why he's called "Abraham Al Ibri", Abraham the Hebrew.

Are you saying when he started the country of - of what is now called Israel?---Correct.

Well, so he originally was - - - ?---Can I just say this
- - -

He was an Iraqi by today's standards then. He was born in ancient Iraq?---Well, Iraq didn't exist in those days.

Correct?---It was called Ur of Chaldees.

What I'm trying to - what - just to clarify, what I'm trying to get across to the jury is the fact that there's no single location, that - that markers for ethnicity and so on contained within the legislation speak of a common geographical location common in - in genetic stock and so on. What I'm trying to show to the jury and I will show is that so-called Jews, Israelites, the tribes of - so on come from literally all over that area. There's no one spot?---But they - they formed one nation. They got - had a common language, they had a common culture; they had a common history eventually as time went on. So no matter where one was based, the - the truth of the matter is that a - a nation and a race can be spread all round the world, but it is bound up by a common language, a common culture,

a common history. So when you're talking about geographical position, that doesn't necessarily have to define a race.

What I'm trying to get across is do - you're asking people to take, as a history, books that are up to 4,500 years old and are in fact religious books. It is as if I must make people believe that a man rising from the dead and walking on water is a matter of historical fact, whereas I know I take this on faith. Surely if you take on faith these matters that happened 4,500 years ago?---No, the - the truth is that - that there have been archaeological digs which have proven some of the matters that I'm telling you in this - - -

Could you - could you please provide detailed information on those digs and so on and so forth?---Well, I - I am not an archaeologist.

Correct?---If - if I would have known that you were going to ask such a question, I would have brought the evidence here.

Okay. I note that in the Bible or Old Testament, it states that when you came out of slavery, and you've mentioned this many, many times, when the Israelites - Moses freed the Israelites and had his showdown with Pharaoh, it states quite decisively in the Old Testament or Tanakh that the Israelites came out with a mixed multitude. They were a mixed multitude. Is that correct?---Correct. When they came out, the - those ones who wished to participate with the Jewish people had to actually convert to - to the - the Jewish - to Am Israel, to the Jewish people.

Was there any physical difference in any way, shape or form to these people? Because they were all supposedly Semitic - what we would call Arabs of today in those times. So this concept of nation or a separateness or in some way a - a distinctiveness it seems to me is just simply not - lacking, assuming you want to believe a religious book as a reliable history book?---The - when you're talking about the Arab nation, the Arab nation actually stemmed from Ishmael. The Jewish people stemmed from Abraham. The Arab nation itself will tell you that they stemmed from Ishmael.

Okay?---And we stemmed from Abraham.

Okay. Well, I guess one - - - ?---So - - -

Sorry, go on. Apologies. Go on?---So what - what I'm saying is that - that - that - that some - some - some of the Egyptians who actually joined the Jewish people when they came out of Egypt actually converted to the Jewish people, to the Am Israel.

Can I read to you just some quotes? I'll read fairly slowly. One of my - one of the - what I - I try to get across is there is a huge - huge - if people were to look up on the Internet, Google searching, they would find a huge range of views about what a Jew is. In fact, it's astounding. Because as you - I'm not sure if you're aware, but - but you would probably be aware of - - -

WISBEY DCJ: Well, you're not - you're not here to make statements to the witness. You're to ask the witness questions.

ACCUSED: Okay.

Professor Andrew Markus - I'm sure you're aware of who Professor Andrew Markus - emphatically states without hesitation there is no such thing as race. Would you comment on that?---Well, I - what - in what context did he mention this?

That race is an entirely - - -

?---I mean - - -

- - - artificial, psychological construct?

EYERS, MR: I don't (inaudible).

WISBEY DCJ: No. All right, then.

ACCUSED: He did, he quoted Jared Diamond, that's a well-known - he quoted empathically Professor Jared Diamond. It's regarded as an article - - -

EYERS, MR: Your Honour. Your Honour. I - I've absolutely no objection whatsoever to Mr O'Connell, in the context of the - the way he has to put questions, putting it, but he must do what counsel would do, which is get the transcript, look up the transcript, and accurately read the words of a witness to another witness, and then invite their view. Not summarise them or - or - for there he might risk miss-summarising them.

WISBEY DCJ: Thank you.

ACCUSED: Apologies, yes. I understand.

I'm going to give you a quote from Craig R. Prentiss, 2003, "Religion and the Creation of Race and Ethnicity: an Introduction". New York University Press. Quote:

No one confuses the Catholic faith with the ethnic culture of Italians, Poles, Austrians, Spaniards or Brazilians. Catholics all. To be a Lutheran is not necessarily also to be a Fin, Dane, Swede, Norwegian or German. Everyone understands that there is a Catholic or a Lutheran faith that is distinct from the various ethnic cultures that take shape in dialogue with that faith that transcends the particularities of circumstance. Brazilian and American Pentecostals know the difference between nationality and religion, so too Judaism is not an ethnic religion, and the opinions of an ethnic group cannot serve to define that religion.

Now, that's from Craig R. Prentiss. I have many, many, many, many, many quotes here, and most of them from Jewish sources, which completely, completely disagree with your view of Jews as a race, and in fact I will put to you that many Jews would be outraged that you would suppose to speak for them on this matter. Would you agree that there is vast, vast, vast differing views among the Jewish populations around the world of what a Jew is, and that you cannot possibly, possibly speak for them outside of the Orthodox faith?---I am telling you that as the - as the representative, actually, of - in Perth of determining who is a Jew and actually send the - the authority and the - the letters to - to Israel to confirm peoples' Jewish status, it's - it's either - it's - the - the main thing is whether they're observant or not, it is based upon the fact that they were either born Jewish, as part of the Jewish nation and race, or indeed they've converted to the Jewish nation or race. Now, unlike Catholicism or unlike other Christ - Christian groups, we do actually have a common language, Hebrew, we - we actually - I mean you can have - you can be a Catholic of any particular country. The truth of the matter is that the Jewish people have a common culture, language, history which bind us as Jews. And that is part of our culture, as part of our understanding. Now - now, everybody, every Jew would agree with that.

Every Jew?---Yes.

On Monday, I'll be presenting a vast amount of material on Orthodox Judaism, on the ultra orthodox sects of the Kahunas(?), Chabad-Lubavitch, various kinds. I'll be producing perhaps hundreds of statements made by Rabbis within the IDF, within Israel itself. This will be presented to the jury on Monday. Could you give me a clarifying quote, if it's - if I can ask this - would you consider Judaism, as you practise, a religion of peace and tolerance to all people including non-Jews?---Could I ask you what the relevance of this is to the expert evidence?

WISBEY DCJ: What - - -

ACCUSED: Can I ask you would - is my statement that Judaism is a religion of peace and tolerance to all people including non-Jews? Would that be an accurate statement?

WISBEY DCJ: I think what - what the witness is saying and perhaps he - I should say, beforehand - - -

ACCUSED: Excuse me, but shouldn't the - shouldn't counsel be providing the - providing the objection, not yourself? You're an adjudicator of the law, you shouldn't be providing objections? Surely the counsel - - -

WISBEY DCJ: Well, that's very kind of you to tell me that but the position is that it is not relevant.

ACCUSED: Excuse me - - -

EYERS, MR: Well, there are certain difficulties here of course. Mr O'Connell's made a statement in which he's foreshadowed introducing evidence which will undoubtedly be hearsay and therefore inadmissible.

WISBEY DCJ: No, let's just deal with this issue.

EYERS, MR: But in relation to this, can I just clarify from my side, just to assist, if Mr O'Connell asks questions, in other words, with a question mark and invites an opinion or response from the witness then I won't object.

But to make a statement which does not invite a response, transgresses the rules of advocacy. So he must, I'd respectfully submit, invite evidence to be given in the court and then he won't transgress the rules of advocacy. So if that assists, your Honour.

WISBEY DCJ: Proceed, Mr O'Connell.

ACCUSED: Can we just clarify, adjudicator, that it is not up to you to object but up to counsel? Is that not so? It's a very simple maximum of law.

WISBEY DCJ: Well, I haven't got the time to waste to go into that, but the High Court has made it very clear, in the High Court, that you can (indistinct) - now, I've made it very clear - - -

ACCUSED: The one that you refuse to follow?

WISBEY DCJ: - - - that a judge is in control of the trial and has an obligation to see that only relevant evidence is put before the jury. That is my task whether or not counsel wish to deal with the matter.

ACCUSED: Thank you, adjudicator.

WISBEY DCJ: And I will conduct myself in accordance with that obligation.

ACCUSED: Rabbi Freilich, it's the - the jury's watching, I'm asking a very simply question. I would consider it a very simple - you're not an expert witness I might add.

WISBEY DCJ: Just - just ask him a question.

ACCUSED: Well, hopefully I can ask it. If I was to make a statement that Judaism, as you practise it, is a religion of peace and tolerance for all peoples around the world and all peoples according to your faith are made in the image of God, would that be an accurate statement? And you may clarify, you don't have to give a simple yes and no?---Yes, we - we as Jews believe that everybody should live in harmony and peace. In fact we pray for that every day. Can I just say all - this to you also, that Judaism does not encourage conversion to - to its - to its people, because we believe that any nation or people that are - that - that teach respect for each and every human being, this is in - this is quoted many times - we teach respect for every human being, have just as much right to the Kingdom of Heaven as we do. And therefore, we do not encourage people to join us.

Rabbi, I'll ask you again. It was a - you haven't actually - asked - answered the question. I said from Judaism's perspective, is Judaism itself a religion of peace, tolerance and love and does it include that to other people via its Holy Books, its teachings, its attitudes? And does

it hold non-Jews to the same level as Jews?---Well, Mr O'Connell, let me tell you that the - the precept of "love your neighbour as yourself" is taken from what you would call the Old Testament in Leviticus. That is one of the laws of Judaism.

Am I your neighbour, Rabbi Freilich?

WISBEY DCJ: Well - - -

THE WITNESS: You are my neighbour.

ACCUSED: I am?---You are my neighbour.

Okay?---And I respect you - - -

And you would love me - - -?--- - - - as a person - yeah, I respect you as person who was created in the image of God.

Okay. Here's a quote from - are you aware of the work from Professor Shlomo Sand, "The Invention of the Jewish People"?---No.

I'll quote this for you:

For the main unifying basis for international Jewry apart from the painful memory of the Holocaust, which unfortunately grants anti-Semitism a permanent, if indirect, say in defining the Jew, remains the old depleted religious culture with the genetic demon slithering quietly behind. There has never been a secular Jewish culture common to all the Jews in the world. The well known argument of Yabbi -

Sorry, Rabbi, forgive my pronunciation:

- Rabbi Yeshaya Karelitz -

And I'll put - I'll spell that last name. K-a-r-e-l-i-t-z. Quote:

That the cart is empty.

And in brackets is:

(Secular Jewish).

And the word - the whole quote then is:

The Secular Jewish cart is empty -

- which is from the well-known argument from Rabbi - again
- Yeshaya Karelitz - was, and remains, correct:

But in his traditionalist navette(?), the great Rabbinical scholar expected the empty secular cart to make way for the loaded religious cart. He failed to see that modern nationalism had cleverly succeeded in lightening the payload of the heavy cart and diverting it to its own destination.

I merely quote that to you to point out that Rabbi Yeshaya Karelitz is an Orthodox Jewish Rabbi, I believe, in Israel, and that is there in a direct contrast to your statement that Jews are, most assuredly, a race, which I presume contains a heavy biological component?---It does contain a biological component, because as I mentioned before, it - it also contains a common culture, language and history.

That - that side of religious culture, could you explain to the jury, what is the common secular cultural traditional markers outside of religion, that link a Jew in Yemen, a Jew in Ethiopia and a Jew in Moscow, outside of religious observance, religious clothing, religious texts, religious history, religious music and so on. What, outside of the religious side of things, links all these people into an ethnic group? Or race, if you were to say that?---The - the yearning to one day return to the land of Israel rebuilt, and to see the - the - the establishment of what we know as the - the - the temple - what - in - in its full glory, which will be in the Messianic Era where peace will - will reign all around the world. Peace for every human being.

Rabbi, respectfully, that's taken from religious books. I've asked you, is there any music and - - -

WISBEY DCJ: You - you - you tell him it's taken from religious books. He's just told you - you asked him a question and he's answered it in that way, so - - -

ACCUSED: Well, he's failed to - he's just quoted back to me in religious - - -

WISBEY DCJ: He hasn't failed to.

ACCUSED: From a religious book.

WISBEY DCJ: He's given you an answer.

ACCUSED: Well, rabbi, I'll put to you; you just quoted me back a religious aspect of Judaism, which is the return to the land of the fathers - - - ?---No, a secular - a - a - a - a secular Jew would believe that.

A secular Jew would believe that?---Also.

So when are you all returning - - - ?---Correct.

- - - to occupy Palestine, which you yearn for so earnestly? Is there a time frame?

WISBEY DCJ: Well, don't - don't - don't answer that, thank you, rabbi.

ACCUSED: Well, it's a simple question. You just said there is a yearning - - -

WISBEY DCJ: No. It might be - it may be simple, but I've told him not to answer it.

ACCUSED: Does someone planning - wanting to convert to Judaism, Orthodox Judaism, would they have to take their Biblical descent from the seed of Abraham as a matter of faith? Because the simple fact is, no person can trace their lineage back that far, by any measure, at any way. So it's a matter of faith, is it not, that you're a descendant of Abraham?---Well, it - it - it's a - it's a spiritual and - and a bloodline. One - when one converts to Judaism, one takes on the spiritual and - and the national aspect of - of Judaism. Of course, nobody can - can actually trace their - their lineage right back. It just has happened through tradition that - that everybody who is Jewish today has been told their - their parents have handed it on to their parents(?), and so it's been going down from generation to generation. And - and therefore, they believe they're Jewish. The - the truth - I mean, they didn't keep records in those days either. The truth of the matter is that somebody who converts to Judaism is both join - joining, as I mentioned, the nation of Israel, the people of Israel, the religion of Israel.

So you have an identity? A group identity?---Yeah, we have an identity.

Based on religious books. A group identity based on religious books?---Based on religious books - well, it's based on the Bible, yes.

Thank you. I appreciate that. I've got a few more questions. Another quote from Professor Shlomo Sand, "The Invention of the Jewish People". I might add that the professor is Professor of History at - I think it's Bar-Ilan University in Tel Aviv. Also based - he's also based in Paris and the United States. Quote:

In a state that defines itself as Jewish, yet does not present distinguishing cultural markers that might define a worldwide secular Jewish existence, except for some depleted, secularised remnants of religious folklore, the collective identity needs a misty, promising image of an ancient, biological, common origin. Behind every act in Israel's identity politics stretches like a long black shadow the idea of an internal people and race.

That's from the secular atheistic(?) Professor Shlomo Sand, who calls himself an Israeli. Rabbi, isn't it true that there's a vast degree of difference around the world amongst Jews, vast degree?---Yes, but there - there is a commonality where I can assure you that even those who would regard themselves as secular Israelis would still call themselves Jews.

Would they call themselves an ethnic Jew?---They'd call themselves all types of Jews. But - but they are bound up by the fact that they are Jews.

I'm just interested that - - - ?---There's atheistic Jews. There's atheistic Jews.

Okay?---There's - there's national Jews, there's all types of Jews.

Indeed. Indeed. All types. Rabbi, are you aware that if I was to be convicted of the charge of racial vilification - - -

WISBEY DCJ: No, don't go any further there, thank you.

ACCUSED: Based on what?

WISBEY DCJ: Based on the direction I just gave.

ACCUSED: Are you aware, rabbi, that the current racial vilification legislation would in fact, with a successful prosecution, be the first time ever - - -

WISBEY DCJ: Don't - don't comment on that either, thank you, rabbi.

ACCUSED: - - - that National Socialist legislation would have been - - -

WISBEY DCJ: Do not proceed further with that, Mr O'Connell.

ACCUSED: - - - vindicated in the West - - -

WISBEY DCJ: It is irrelevant and improper.

ACCUSED: - - - for the first time since the Second World War? National Socialist legislation. Nazi legislation, alive and well.

WISBEY DCJ: As I said, rabbi, don't bother to address that issue. Thank you.

ACCUSED: Are you aware, rabbi - and I hope to get this ADL publication up. You're aware of course of the Anti-Defamation League of B'nai B'rith based in New York?--No.

Forgive me, rabbi. I am astounded that you, as a leader of your community - - -

WISBEY DCJ: We're not - we're not interested in whether you are astounded or not.

ACCUSED: You'll just please bear with me for a minute. I really hope the transcript doesn't get altered, your Honour. There's quite a few problems with it. I'll get on to that another time. I - I don't want to miss that doozy. Forgive me. Just one second. I should have had this ready. It's my fault. I may have to just - rabbi, in one of the - well, the Anti-Defamation League of B'nai B'rith is a very - regarded as a very large and powerful Jewish defence organisation, and they've produced a PDF document, and that PDF document was purported to point out anti-Semitic overtones in people's - actually I'm going to forget that one, because until I can get that up and show the rabbi, of course I'm - I'm slowly learning. I have to leave that out and present that to the jury on Monday. Preparation is everything. Forgive me, rabbi. Now, this is a - I'm - the judge, or the adjudicator, may step in, so I just wish to clarify very briefly what I'm about to ask, just in case counsel or the adjudicator - there's a quote here from The West Australian newspaper, a quote by a Mr Steve Lieblich, who's a Jewish community leader, and I wanted to clarify with the rabbi whether this was in

accordance - his beliefs as an Orthodox Jew. Can I begin asking the question?

WISBEY DCJ: Well, don't worry about the quote. Just put a proposition to him.

ACCUSED: Right. Your Honour, are you - - -

WISBEY DCJ: Say, "Do you - do you agree with" - - -

ACCUSED: You would no doubt be very aware of Mr Steve Lieblich, a member of the Jewish community and a Jewish community leader.

WISBEY DCJ: Well, don't worry about that. Just put the proposition that you want to put.

ACCUSED: Yes, (indistinct).

Recently, August 8, 2010, one week before the previous commencement of the trial, the trial was meant to start on August 16, there was a Friends of Israel rally held in a Christian congregation in Osborne Park. Did you attend that event?---I did.

Yes. And you would be well aware that 30 members of Federal Parliament, local, and the Israeli Ambassador to Australia also attended that event?---Yes.

And you would be aware that one of the complainants in this case, or the complainant, Mr Stanley Keyser, was the keynote speaker at that event?---I was not there for his talk, but I believe he was.

Yes. Well, in The West Australian dated - I've got it here - August 4, 2010, there's a picture of Bob Kucera, a couple of local Jewish members of parliament and Steve Lieblich, and Steve Lieblich states in this report:

'The bond between Israel and Australia is extremely long and deep, and goes back a very long way,' he said. 'It comes down to common, shared values with respect to freedom of the individual, respect for human life, democracy, orderly transition of power by the people. All of these things are common to the Judeo-Christian ethic and the basic values of Australian society.'

The key word in there is that Christians and Jews, particularly your - the Orthodox, are very much linked. The Judeo-Christian tradition. Is that a fair statement,

that the Orthodox world of Judaism and the Christian tradition are linked?---Well, Mr O'Connell, as I mentioned before, many of the values - you know, Christianity has a - has a - an Old Testament. It also has a New Testament. Judaism just has the Old Testament. Many of the traditions that - and values which pervade the New Testament are actually - that's of love and respect, and love your neighbour as yourself, as I mentioned before, they were actually taught by Jesus, who was Jewish, to - to the - the - to the Christian - His Christian followers. And therefore there is definitely - definitely that link between Judaism and Christianity, and that's called the Judeo-Christian traditions and values. Correct.

Rabbi, you mentioned his Christian followers. He was actually followed by perhaps many thousands of Jews. They - they weren't termed Christians at that time. Would that be correct?---Yes, correct.

And Jews at that time were severely persecuted by the Rabbinic elite, of which you would be regarded as one. They would be your spiritual forefathers, would they not? The Pharisees, Sadducees?---The - the Pharisees actually were the Rabbinic - were - were the - the founders of - of the Rabbinic traditions of Judaism, yes.

And you would therefore be - - - ?---But - - -

- - - a modern-day Pharisee. Would that be correct?---I - I was unaware that I was going to discuss the - the theological background to - to Christianity here.

Well, I don't mean to make you uncomfortable. I'm just trying to get the linkage here between - - - ?---I'm fine.

WISBEY DCJ: He's - he's not uncomfortable. I think he just has some difficulty appreciating what you're trying to suggest to him.

ACCUSED: Well, I thought you would have been more than happy to discuss these issues.

WISBEY DCJ: Well - - -

ACCUSED: You are a rabbi, are you not?---Well, I - I have been asked to - to give testimony at this court on the - on the issue of Judaism being a race or religion or both. This - this is particularly - this is - I don't see the relevance to - to my - to - to my - my evidence here.

Well, forgive me. Forgive me. What is the holiest book - what - what are your main books, just to clarify, the main books? Would it be the Babylonian Talmud, the books of the Mishnah, Gemara, Rabbinic Commentaries, or would it be the Tanakh or Old Testament? Which would be your favourite and most - most important books that define whether you're a race or a religion or both?---I - I - well, I - I - none of those, actually. The most importance book is the Shulchan Aruch, which is the final decisions of those particular discussions by the rabbis and from - from the - the Torah down to the Mishnah, the Gemara and then finally the Shulchan Aruch gives the final Halakha(?).

Right, so - - - ?---So if I had to have one book - - -

Right, so - - - ?---If I had to have one book to - to make this - - -

Forgive me. Sorry. I don't mean to interrupt. So - okay, so according to you, then, the Rabbinic Commentaries and so on make no final decisions whatsoever, there is no final clarification within the books?---No.

None?---The - the - the - the Torah has laws which, of course, are very - are actually very straight forward, but again, they have - they're discussed in the Talmud. And then finally, the final decisions are in the - the Shulchan Aruch. Now - now, there are many opinions by a number of the rabbis in the Talmud discussing those laws in the Torah. And in fact, you could - you could take any of those opinions out of context and say, you know, this is the opinion of Judaism, but it's not. The final - the - and as - as it is with many law books, you can have various opinions of various judges. But - but there's a - there's a - there's a final decision on a situation.

All right, well, that's a very important point?---Now, the same as with - with Judaism, the - the - the - the Shulchan Aruch is the final decision.

Yes, that's a - that's a very well-known argument from the Rabbinic authorities, that there's no actual final decisions within the Talmud and the various Rabbinic Commentaries. I'm well aware of that and we'll get back to that with the jury on Monday. Who would be - as a Catholic, or a traditional Catholic as I prefer to call myself, with strong leanings towards Orthodox Christian - Christianity and the - in particular the Russian Orthodox Church of which I've spent time at their Blue Mountain monastery. I have a - you could say a - a - I don't agree with the - several things about my particular faith, such as regarding the Pope as the final authority on scripture, but he would be regarded as the spiritual leader of - of Catholics without doubt. As an Orthodox rabbi, who would be your spiritual leader in Israel?---My - my - my spiritual leader is - is - is the Almighty himself. I don't - I - I - I don't actually have any particular rabbi in Israel who - who I defer to. Although in - in Perth, Chief Rabbi Lord Jonathan Sacks is the - is the authority if there's any particular disagreement in something which - which - which we actually consult. That's Lord - Lord Sacks, Jonathan Sacks in - in London.

Okay. So if there was any problems with defining or arguments around religion, race and so on and so forth in the books, would you refer to someone from the Shas Party, perhaps, or Rabbi Yosef? Anyone like that? Someone in good standing? Would he have the same view - view as you?---I - I just told you. I - I just told you that we do not actually consult with the rabbis in Israel from Perth.

You don't at all? Okay. Do you know if they share the same views on race and biology and so on as you do? Would they have the - exactly the same views as you?---Well, I've - I've expressed the mainstream view, and - and - the mainstream Orthodox view and that's the view which is - which is held. When I actually determine as to who is Jewish as far as the law of return and marriage in Israel is concerned, the view which is accepted here by the Rabbinate, through letters by me, is the ones which I have expressed in this court.

Well, the reason I'm asking is I just wanted to clarify that there was - there was a large degree of commonality amongst the view that Jews are a biological race, and I was just asking. Rabbi Yosef, who was recently in the paper, is regarded as one of the heads of the Sephardic - a

Sephardic rabbi in Israel, and I was just wondering, would you have complete parity with what he said? Would there be unity amongst all you Orthodox rabbis? He's Sephardic, of course. Would you have unity with him on his views? Or is there dissention, there's - - - ?---No. I - I represent the mainstream Judaic view.

Okay, does Rabbi - - - ?---As - as it - as - as recognised by the Chief Rabbinate.

Right?---The official government Chief Rabbinate of Israel.

And - okay, and who would that be in Israel?---Well, that - that today - well, actually there - there are - there are two Chief Rabbis. There - there's Rabbi Amar and - and Rabbi Metzger. Metzger.

All right. Was Rabbi Yosef the 19 - nine-year-old rabbi, was he previously one of the Chief Rabbis in Israel?---He was many - - -

He was?---Many, many years ago, yes.

Okay?---Many, many years ago.

Right. I'll get back to him on Monday. So now we're pretty much, according to yourself, your belief, that Jews are in fact a biological race?

EYERS, MR: Objection. He never said that.

ACCUSED: Would you - - -

EYERS, MR: Quite the contrary (inaudible).

ACCUSED: Would you - would you agree with my comment that you - would you agree with my statement that you have stated for - when we take into account the specifics of words, that Jews are in fact a race and a biological race at that?---No, I didn't say biological race. I said a people bound up by a common language, a common culture, a common history.

Right. Taking as a matter of faith from their religious books that they're somehow descended from a man 4,500 years ago?

WISBEY DCJ: Well, that's a statement by you, it's not what the witness - - -

ACCUSED: Is that so? Would that be correct?---Taken - taken by our Schulchan Aruch, by our code of Jewish law.

And seeing as no one could possibly ever know their true origin so far back or even back several hundred years is extremely difficult. But what I'm stating is you would have to take, as a matter of faith, as a matter - even if you were descended from a Jewish mother, you can't go that far back, you would have to take, as a matter of faith, that you were a descendant of Abraham, Isaac and so on and so forth. Is that not so?---Certainly spiritually, but I - I - I will - I will say this to you. That 4,000 or 4,500 years ago is not so far back. We - we have ancient history regarding the Egyptians. Now - now, we accept Egyptian culture and history as it's handed down and that is only - you know, we're talking about a few thousand years ago now. Judaism as 4,500 years ago, that is not so far back to actually to determine and - and to - to - to actually feel that some - some authenticity on - on what has - what has been handed down during that time.

Are you saying there's - - -?---It isn't that far back.

- - - a stone tablet somewhere in ancient Judea or Samaria with your ancestor's name on it?

WISBEY DCJ: No, he's not saying that and it's - - -

ACCUSED: Well, what relevance does that have to your descent?

WISBEY DCJ: - - - pathetic to put the proposition to him.

ACCUSED: What relevance does that have to someone's descent? That's what I'm talking about. One's blood line, you've used the term "blood line" over and over.

WISBEY DCJ: Well, he hasn't used the term - - -

ACCUSED: You've used the term "race" over and over.

EYERS, MR: Can I - - -

THE WITNESS: I - I have not actually used the term "blood line" over and over. I used it a few times, as - as one of the ways in which, one, Judaism is handed down. But I've also said that it's a common culture, history, language and - and - and - and national aspirations that bind us together.

ACCUSED: Right. How many - - -?---Which - which are the determinants of a race.

Of a race?---Correct.

Okay. And not an ethnic group - - - ?---It doesn't necessarily have to be biological.

- - - or a race? An ethnic group or a race?---Of a race.

So it's specifically not an ethnic group, a race?

EYERS, MR: No that's - - -

WISBEY DCJ: No. He just said the determinants of a race
- - -

THE WITNESS: It could be either.

WISBEY DCJ: - - - in his view.

THE WITNESS: Absolutely either.

ACCUSED: Can you clarify, because this is very important - I hear a lot of sighs in the background, but this is very important. One of the things I'm trying to ascertain, rabbi, very, very, specifically - it's very specific - it has been said a thousand times, and that is, you have yet to name one single secular, cultural marker outside of religious observance, religious books, religious themes, religious holidays, that would link you with anyone else around the world as a Jew. Can you name someone - something specifically, nothing to do with religion? I'm talking clothing, cinema, books, anything?

EYERS, MR: Well, forgive me, your Honour.

THE WITNESS: The - the - the designation - - -

EYERS, MR: Forgive - forgive me, I (inaudible).

THE WITNESS: - - - itself is the truth.

WISBEY DCJ: Yes.

EYERS, MR: With respect, just before the question was put we had the distinction. The question was put by Mr O'Connell that Jewishness was a question of biology. The witness disagreed and said it was a question of biology but in addition it was a question of other things. Now, he seemed, respectfully, to answer the question - have already

answered the question which was subsequently put. I only say that because I object through repetition. That's the foundation of my objection.

WISBEY DCJ: Yes, thank you.

ACCUSED: It's such a simple question. I can't see why it can't be answered. The jury - - -

EYERS, MR: It's been put, which is what my objection was.

WISBEY DCJ: I think the objection is it's already been answered, but if you want to put it again, I'm sure the rabbi will be happy to answer it.

ACCUSED: Okay. So, rabbi, taking on the racial aspect of your belief, can a Jew in Israel marry a non-Jew in Israel?---In Israel, according - from the Rabbinate? No.

So they would have to go outside Israel to be married?---
Correct.

Would they receive equal standing when they - when they returned among the Rabbinate and various other authorities influenced by the Rabbinate?---As - as human beings they would be accepted, not a problem.

Okay. And is marrying outside your race seen as a very bad thing amongst Jews, from your point of view?---Well, it - it is encouraged within our religion to marry with - to marry another Jew, for the simple reason that we want to ensure the handing down of the traditions of Judaism from one generation to the next. We don't want to confuse children to - to have to make choices between the various religions of their parents, so it's far better for the upbringing of the children to have some stability and some unity and - and also harmony between the spiritual teachings of their parents. And therefore it is encouraged to marry within the faith, yes.

Seeing as so many Jews claim to be secular, that wouldn't be a problem with secular Jews then, would it?---No, and many secular Jews do marry out of the faith, and even if they do, they are still regarded as Jews.

Right. Does that worry you that secular Jews are marrying outside the race?---Of course it's a concern, because you want to maintain the Jewish tradition. But if one does marry out of the faith, one is still regarded as a Jew and is totally welcomed as a Jew, because they are still a Jew.

Just very briefly, before I ask a direct question I just want to quickly clarify something. I'm about to mention a gentleman called Dr David Duke. Are you aware who Dr David Duke from Louisiana is, rabbi?---No.

He was the former member of the slate legislature in Louisiana and a former member of the Ku Klux Klan, and he has stated - - -?---I don't know him.

You don't know?

WISBEY DCJ: Well, you can't - you can't put what he stated.

ACCUSED: Well, your statements sound identical to the racial-religious laws of National Socialist Germany.

WISBEY DCJ: Well, that wasn't the question. That again was a statement.

ACCUSED: Is that not so? They're identical to the Nuremberg Laws. Identical, your racial laws?---No, they're not.

They're not identical?---No, they're not.

I'll clarify that on Monday, thanks. Moving right along, if I was to say, "I am a proud white European, and I would like to marry within my race," would that be something that would be well received in Perth, do you think?

WISBEY DCJ: Well, whether it would or whether it wouldn't is not relevant to the matter that the jury have to determine.

ACCUSED: Rabbi, in your opinion do only Jews have the right to marry amongst their own to preserve their culture, their race and their heritage, or can others also be proud of their race, their culture and their heritage and wish to marry amongst their own?

WISBEY DCJ: And don't bother to answer that, thank you, rabbi.

ACCUSED: Lucky man. Don't have to answer that one. I would also add that I'm a bleeding-heart liberal, sort of multiculturalist. If you'd just give me a couple of - 30 seconds, I shall get to my next question. I'll be wrapping up soon, rabbi. I do - I do sincerely appreciate your time. Rabbi, to do with lineage of race and - and all the other perhaps words that may come up, words such as

"biology" might come up, and "lineage". Is it not a Jewish tradition to regularly change your name?---No.

It's not? So over the years, Jews have not changed their names regularly, sometimes just simply to avoid persecution or to avoid - to fit more into the environments in which they live?---Everybody has - is given a Jewish name at birth and at the same time some people in the society in which they live do adopt an - an English name. For example, my name's Dobit(?). Sometimes when I was at school I was called David, but - but my - my Hebrew name is Dobit.

I see. So that - that is the name your mother gave you at - at birth? You've never changed your name?---Correct.

All right. I do thank you for your time, rabbi. Appreciate it. That's all the questions I have?---A pleasure. Thank you.

WISBEY DCJ: Anything arising, Mr Evers?

EYERS, MR: No, thank you, your Honour.

WISBEY DCJ: Well, thank you very much for your assistance, rabbi?---Thank you. Thank you very much.

You're now free to go.

(THE WITNESS WITHDREW)

EYERS, MR: That's the case for the State, your Honour.

WISBEY DCJ: Yes, thank you.

Well, in the circumstances, I would propose to, Madam Foreman, ladies and gentlemen, to adjourn now and ask you to retire and return in time for a 10 o'clock start on Monday, thank you.

(At 3.25 pm the jury retired)

WISBEY DCJ: Perhaps, before we adjourn, Mr Evers, you may clarify something for me. The references to Professor - or in the course of Professor Markus's evidence, he was referred to various paragraphs in his report which don't seem to coincide with the report that I have.

EYERS, MR: Yes. I haven't picked that up. I sort of sense that his report was in a slightly different pagination sequence to ours.

WISBEY DCJ: He certainly dealt with the same headings, but I just wanted to make sure that - - -

EYERS, MR: Do you recall, your Honour, when I was asking him questions I said his report was an exhibit, therefore all members of the jury had it.

WISBEY DCJ: Yes.

EYERS, MR: And I invited him to add to it or clarify or assist us further with his evidence predicated on a subheading and a particular area - - -

WISBEY DCJ: Yes.

EYERS, MR: - - - for instance, of commonality.

WISBEY DCJ: I see. It's just that there wasn't necessarily a connection between the paragraph you see there - - -

EYERS, MR: Yes.

WISBEY DCJ: - - - and in fact what - - -

EYERS, MR: Well, I approached his evidence fairly fluidly.

WISBEY DCJ: Yes.

EYERS, MR: Because I was conscious that the jury had his report.

WISBEY DCJ: But in fact he addressed every paragraph in it.

EYERS, MR: Yes. Well, I took him through it sequentially, but just invited him to add, if he could, to what the jury had already received in writing.

WISBEY DCJ: Yes, thank you.

Then we will adjourn until Monday.

Bail is extended over the weekend on the present terms.

EYERS, MR: Your Honour, I'm conscious - well, I understand Mr O'Connell's going to give evidence on Monday. I think Mr O'Connell plans to use his laptop in order to present some evidence. So it might be an idea if

he attends here, or is permitted to come up into court 45 minutes before we start at 10 am. I don't know when he's bailed to, but I think he's going need 45 minutes to set himself up.

WISBEY DCJ: He'll be bailed through to - security might tell me that. What is that?

Or my associate may know? What date? What time? 9.15?

To 9.15, security?

SECURITY OFFICER: Yes, that's fine, your Honour.

EYERS, MR: But if he attends at 9.15, it's going to take 15 or 20 minutes to process him, which may delay the start.

SECURITY OFFICER: If he attends at half past 8, we can put him through (indistinct).

WISBEY DCJ: If he attends at half past 8 he will be processed in time.

EYERS, MR: Yes.

WISBEY DCJ: Well, I'll remand him through until 8.30 on Monday morning, extending bail over the weekend with the terms that presently exist. He's not to leave the court before quarter past 4, to give the jury a chance to move away from the building.

AT 3.29 PM THE MATTER WAS ADJOURNED UNTIL
MONDAY, 24 JANUARY 2011