

COURT RESUMES ON 5 NOVEMBER 2016 (at 14:46)**EVIDENCE FOR THE PLAINTIFF (CONTINUED)****DAVID ROBERT LEWIS:** (s.u.o.)

MR KAHANOVITZ: M'Lord, Mr Lewis has indicated to me that
5 he feels that he did not have sufficient opportunity in his
evidence-in-chief to testify about certain issues that he feels
he needs to have mentioned during his evidence-in-chief and
maybe he can just address you directly on that. I indicated to
him that if that was indeed the case, then it would be better for
10 him to – for the cross-examination to be briefly stopped so that
he can speak about whatever it is that he feels. But it's
obviously up to Your Lordship to decide.

COURT: H'm, you have no objection if we revert back into
evidence-in-chief?

15 MR KAHANOVITZ: No M'Lord.

COURT: And then you continue cross-examination?

MR KAHANOVITZ: No M'Lord.

COURT: Okay. This is irregular, Mr Lewis. --- H'm right.

And now I'm going to give you an opportunity to lead
20 evidence, but this is the last occasion. --- Alright.

Right. --- Sorry...

Well, what issues do you want to raise? --- H'm, it's just
the letter from Rashid Lombard to – to myself and corre-
spondence with Annelien Dean with regard to my meeting with
25 Rashid Lombard.

Just wait. --- And there's, sorry, there's just some housekeeping. I neglected to – there was a page missing from the second bundle. I just realised it was incorrectly paginated. I didn't include the page so this would be the, h'm...

5 Just... --- Missing page 5, 5 and 6 actually the – of the same, similar issue. So if you – if you just attach this to the back I suppose, of the second bundle.

So this would be... --- “Human Resources gets religion, January 2009”.

10 And you say this was inadvertently...? --- It was left out of the...

It's mentioned as page 5. --- It's mentioned in the bundle.

But... --- I believe so.

15 But it's not page 5? --- H'm... Where's my bundle?

The letter from Cape Beth Din is now 5. --- Yeah h'm, that's right, that's right.

MR KAHANOVITZ: M'Lord, might I suggest then let's make the letter from the Beth Din page 5A.

20 COURT: Ja.

MR KAHANOVITZ: But then I think the index...

COURT: No then everything changes, you see. So why don't we just leave it as it is?

MR KAHANOVITZ: Yes.

25 COURT: And we know that it's one page less and...

MR KAHANOVITZ: Let, okay.

COURT: Let's just insert it as..., this letter as 5A.

MR KAHANOVITZ: I think the problem is the index is not right.

COURT: Ja we'll...

5 MR KAHANOVITZ: But let's not worry about that.

COURT: About it. --- So M'Lord, may I proceed with my...?

Just... Yes in a moment. Just let me just sort this out.

--- Alright.

MR KAHANOVITZ: M'Lord, if you hand us the document we'll
10 get it punched.

COURT: Oh excellent, thank you.

MR KAHANOVITZ: So that you can put it in the file. Thanks.

COURT: Alright what...? Sorry, the two issues that you want
to address? --- H'm, the first issue is with regard to the
15 correspondence between myself and Rashid Lombard and
Annelien Dean.

Correspondence between... --- Correspondence ja.

Ja Lombard and Dean, okay. --- And the second issue is
with regard to the religious environment at – at Media 24,
20 specifically with regard to the membership of certain
employees of the organisation and their affiliation with the NG
Kerk.

Okay. Alright let's proceed. --- Alright. The – the
two..., there're two letters. The one is in the applicant's
25 bundle of documents. Where is it? Alright in applicant's

bundle of documents.

Whose bundle? --- My – my bundle.

First or second? --- First, first bundle on page 3. Page 3, it's dated Wednesday May 24 2006 at 2:28 p.m.

5 Right, we can see that. This is the letter. --- Right.

What do you want to – are you – who wrote this letter?
--- I wrote this letter to Annelien, basically saying I'd met with
Rashid Lombard, CEO of espAfrika and that he'd like to know
more about People's Post and especially the jazz coverage
10 and that he was keen to support possible jazz, "Cape Jazz
Great series in conjunction with a corporate sponsor.
EspAfrika have an archive of jazz ...(intervention)"

You don't have to read the letter. --- Alright. Right.

We can read the letter. --- Sorry?

15 We can read the letter. --- You, right.

What is the importance of the letter? And... --- The
importance of this is with regard to this whole issue of the
rejection of the Robbie – Robbie story and the allegations
made by Dean with regard to the, you know, the plagiarism or
20 whatever; that this occurred in the context of a meeting that
occurred with Rashid Lombard. I've got a letter in my second
bundle of documents, page 4, from – from Mr Lombard.

Page 4? --- Right. He specifically notes that he –
according to his research the jazz festival says that the
25 ...(intervention)

Sorry, I'm – you know, you've lost me. --- Sorry.

Page 4. --- Page 4 of the...

On my bundle is the Press Code of Ethics. --- Sorry the
– my second bundle of documents.

5 Well you must be – you must be specific. --- Yes, no
sorry.

Otherwise it's just very difficult for me to follow. --- Yes.

I'm finding it difficult enough as it is. --- Alright.

Now what's this letter? This is a letter from? --- From
10 Mr Lombard.

Okay and what's the significance of this letter? --- H'm
the, well first of all the – my meeting with Mr Lombard did
actually occur and he specifically raised this issue of the fact
that the majority of festival..., the people who go to the festival
15 come from Retreat than Athlone, Grassy Park and
Landsdowne. So there was a correspondence between the
target market of the People's Post and the audience of the
Cape Town Jazz Festival. He also mentions that he – this
would be targeting... See right, ja, he mentions that Winston
20 Mankuku Ngozi, Robbie Jansen, Alvin(?) Andrew, Tony and
Hilton Schilder had agreed to a feature article, individual
features at the People's Post and that he would avail archives
of his jazz photography, spanning the past 28 years, at a fee.
And he also mentions the...

25 That's what the letter says. --- Right. This...

But just tell me, I... --- The significance of this is that, because of my relationship with Mr Lombaard and my background at South Press, this opportunity arose. I don't think it would have arisen with – if someone just out of – out of
5 journalism school for instance. Annelien Dean had requested that I deliver the heart and soul of the community to the People's Post and we had both spoken at length at – with regards to the demographics and how best to tackle the demographics at People's Post and I'd suggested that the best
10 way in terms of national reconciliation and – and transformation and creating some kind of healing, that if we covered the jazz that this would be a very good opportunity. It will also attract advertising to the People's Post. This letter is an example of Mr Lombard actually offering advertising to the
15 company and – and some kind of a... He's also offering his own photography at a fee. I was given access to the jazz, the – the Cape Town Jazz Festival jazz players, the, you know across the board I was given telephone numbers, contacts, basically anyone I wished to contact. It's quite unfortunate
20 that I didn't get an opportunity to interview Winston Mankuku who is no longer with us. So this whole thing actually occurred in the context of a discussion about the demographics and the – the Cape Town Jazz Festival. Alright, so that's my point with regard to the jazz issue. In my first bundle of documents on
25 page 100 to 101 and 102 to 103 and I bring this up because of
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the – the – there's been an issue of religion in this – in this case. I've been attacked for my – for being Jewish. I've been questioned as to my – my Jewishness. I've been – I've been – I haven't been... At no point did anyone ask me that it was an
5 inherent requirement of the job that I – that I work on the Sabbath. I was directly attacked by Warren Charles with regard to my religious beliefs and I just wanted to point out the – that during our discussions Ms Dean indicated that she was or had been a member of the NG Kerk. I don't think this is at
10 all surprising. I think a lot of members of the Media 24 are – are members of the NG Kerk. Now this wouldn't be significant in a normal society. This is significant in terms of our abnormal experience in South Africa. The NG Kerk until quite recently had a doctrine that apartheid essentially was given
15 divine sanction. The...

MR KAHANOVITZ: M'Lord... --- Sorry.

I think the time has now come for me to object on the grounds of relevance. You will note that there are several pages here which contain an exposition of the history of the
20 Nederduitse Gereformeerde Kerk and its relationship to the policy of apartheid. I don't think we need the witness to explain that history to us. We are able to read what is in the document ourselves and in either event, I will be submitting at the end of the case that that history is of absolutely no
25 relevance to these proceedings. --- Sorry M'Lord, if I may.

The relevance, I – I am tasked with proving that there was disparate treatment. This is a discrimination case in terms of the Equality Act. The – the – these facts are very relevant and essentially I'm saying that the members of the NG Kerk were
5 given different treatment to – to Jews at Media 24. I would like to ask Shelagh Goodwin similar questions.

M'Lord, I draw your attention to the fact that that is not a pleaded cause of action in this case. --- Sorry M'Lord, the – it's specifically mentioned that the respondent discriminated
10 against me according to my religious beliefs. I – I'm tasked with proving that there was disparate treatment. I realise that the filing sheet could have been filed a lot – in a lot better way. If that is the case I would ask to amend my filing sheet, the – the facts of the – of before...

15 COURT: No, you've... Really, you've, I'm going to allow you to continue. The question of relevance can be raised later. I want to give you the widest possible opportunity to put your case. You're not assisted by counsel. --- Right.

And but I certainly, as far as I understand it your
20 argument is that sofar you've said that you had been questioned for your Jewishness. You've been directly attacked by Mr Warren Charles and you've said that Ms Dean has said to you that she is a member of the NG Kerk and you say that the NG Kerk, which – has this history. Now we certainly don't
25 need you to read this material out. --- No.

Is there anything further you want to say? --- Just two points. The – that the World Alliance of Reformed Churches in 1982 declared apartheid a heresy. So actually it will be three points. The second point would be that until this day there are
5 actually congregations of the NG Kerk which have not yet been accepted back into the international reform movement and thirdly that the – according to the – there was an (indistinct) in the meeting where there was – where the heresy, this whole thing where they – where a party was declared a heresy,
10 apartheid is not just a heresy, it's – it's now considered, according to the NG Kerk as a *status confessionis*. In other words the – apartheid is not something that is up for discussion. It affects the confession on the cross, it affects the confession of the – of the entire church as a – as a whole.
15 So if Ms Dean was in fact a member of the NG Kerk she would be then, if she for instance persevered with the view that apartheid was given divine sanction and that...

Did she or didn't she? --- Well, she appears to have very strange beliefs with regard to the demographics of
20 People's Post.

Okay, anything further? --- H'm, I would just like to add that I'm of the same opinion. I agree that – that one could say a similar – the similar thing with regard to Judaism, that I think belief in apartheid in any way, that it's given any divine
25 sanction according to any holy book, whether it's the Old
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Testament or the New Testament, affects one's moral and ethical standing in the community and there's absolutely no basis in any gospel, whether it's a Judaic gospel or a Christian gospel, to motivate for racial profiling or racial segregation or essentially defining other people in terms of racial identity. I think this is really the crux of the matter. The respondent has brought up my belief in – that I'm a philo-Semite, in other words I'm self-defined or other people define me as – as Jewish. This is – this belief is with regard to my ethnicity as a Jew. It's not a religious belief or religious doctrine. It's an attempt to deal with my ethnicity as – as an individual. I – I don't – I don't subscribe to the notion that people should be defined according to race, according to some kind of legislation. I – I believe it's something between oneself and one's Maker. So ethnicity is – is essentially something that needs to be varied according to a philosophical paradigm and I'm just suggesting that there are philosophical paradigms available to us in which we can deal with ethnicity and race – racialism in our society. So the fact that I have these beliefs, I've actually been discriminated against by the respondent because the respondent has adhered essentially to a racialized view of – of South Africa. I've made these allegations in my – in my filing sheet. The Media 24, I've – I've yet to hear any – anyone actually apologise for the – the legislation that was rolled out as a result of Naspers's policies.

Naspers and the National Party were one and the same organisation until quite recently.

I've given you an opportunity to deal with the issues that you said you haven't covered yesterday. --- Right, yes.

5 You have covered this yesterday. --- Right.

Now is there anything else you want to add? --- H'm there was something. It's just a – it's just to respond to the respondent that this claim that it's inherent, inherent to the job that I would essentially have to work on the Sabbath. May I?

10 Well I... You know, yes just go ahead. --- I certainly don't believe that it was an inherent requirement of – of my job. At no time was I actually told that it was an inherent requirement and I, when this issue was – arose, that wasn't the argument. The argument was basically I'm contradicting
15 myself as a Jew. Who am I essentially to question authority and – and you've actually gone and attacked my Jewishness in various documents before this Court. Now only today – yesterday you've changed your – your tune. So I take exception to the – the manner in which – in which your
20 argument has been raised and framed. If you had actually come with the – the inherent performance, inherent requirements of duty to begin with I might have accepted your arguments. Thank you.

Mr Kahanovitz.

25 **CROSS-EXAMINATION BY MR KAHANOVITZ (CONTINUED):**

Thank you, M'Lord. Mr Lewis, I want to take you then back to an earlier part of your testimony where you were asked by the Judge to identify the amendment which you made to the contract which you said were missing and what you said was
5 there was an additional paragraph which said that, "Anything that they requested, I would be obliged to comply with that demand". This clause is missing. Did I get it correctly? ---
H'm, if I hear you correctly the document which you are claiming to be a contract of employment, you haven't managed
10 to show me a valid document so this is all hearsay and, you know, it's – it's a hypothetical...

Can you answer the question? --- The document which I signed had a – a – was amended.

No, no I'm not asking you that. I'm asking you whether it
15 was your evidence yesterday. --- Yes.

That you told the Judge that when he, when the Judge asked you... --- Right.

...what was missing, what was in the other contract... ---
Right, the other – the other contract yes.

20 The one that I think you are suggesting is being deliberately hidden. --- Right, the one which is hidden and would in any event have been invalid precisely because that clause was included.

A clause that said that whatever you were
25 ...(intervention) --- It was an outrageous, it was an

outrageous demand. You know, to put that in any contract I think is evidence of – of *mala fides*.

Oh alright. The job description in your contract says and this is the one that we're not hiding, that:

5 “The employer appoints the employee to the post of layout sub. However, the parties agreed that the job description is not exclusive and that work of a similar nature may be expected from the employee.”

--- Right.

10 Is that the clause that you're talking about maybe? ---
No, h'm no.

No. --- There – there is a problem with the interpretation of that clause. The respondent was of the view that “similar work” meant anything, including delivery of
15 newspapers, writings, you know, submissions et cetera, et cetera.

Well, what the evidence will be is that you were told at the interview that it was a small newspaper; everybody was expected to pitch in to do extra tasks when it was required. ---
20 (Witness chuckles).

And apparently you didn't have a problem with it. --- I have worked on small newspapers where people do pitch in. I am an all-rounder. The – the problem is, is that that is not actually reflected in the contract.

25 I also want to put it to you something quite obvious. You

weren't hired to decide how the People's Post should be run.
Do you agree with that? --- H'm, I wasn't hires as an editor,
but I was given some kind of position as an Arts and
Entertainment sub at some point. I would presume that if – if
5 Arts and Entertainment was under my purview I would have
some kind of responsibility for the content or at least to
engage the editor in such discussions.

But Mr Lewis, whatever you may think, you weren't hired
to decide on what editorial policy would be. It appears to me
10 that you seem to believe that you most certainly had an
important role to play in that regard, but you weren't hired to
do that. --- H'm if, if your question is is it the editor's
prerogative or the prerogative of the subeditor to decide what
the content of the newspaper is, the – it is the editor's role
15 essentially, the final – the buck stops at the editor. However, I
do have a right as a citizen of this country to object to
discriminatory or prejudice anywhere. If – if – for instance
there were actually a number of articles which could be
construed as anti-Zionist or anti-Semitic, published by the
20 People's Post. I haven't actually included those in my
documents. I don't have a problem with people being anti-
Zionist. I've got a problem with people being anti-Jewish.

What in heavens' name has that got to do with what goes
into the People's Post? --- H'm, sorry what is your question?

25 What has that got to do with the determination of the

editorial policy of the People's Post? --- H'm, right.

And how much jazz or... --- I – right, I don't – I don't have to... I don't have – there's no inherent requirement for me to abide by an unethical practice or you know, to
5 discriminate against a particular group of people. I don't have to comply with – with that decision.

Now you accept this was a business venture. The aim of the exercise is to make money. That's what Media 24 does. --- Right, but money is not my god.

10 It may not be your god, but that's how they stay in business. They make money. --- Right.

And they make money by developing titles that people want to buy. Do you agree with me? --- No, this was a free – a freebie. It was a knock-and-drop, and no-one actually
15 bought the – the People's Post. It was a – it was a... Right, right.

Yes, but that's... Alright. Very good point. How do they make money from the People's Post? --- You tell me.

From advertising, do you agree? --- H'm, I believe that
20 the – it is a vehicle for advertising. However, the People's Post actually has an editorial. There's an editorial page. There's also up-edge(?) material. There are news – newsworthy stories, community news in – in the paper. So it's – it's not essentially just an advertiser.

25 Yes but what are advertising, what is ...(intervention) ---

And the Cape Times was also, is also an advertiser. If you want to look at the history of newspapers in South Africa the Argus was also an, you know, the... What is journalism essentially? I think that would be a better question.

5 I just have a simple point to make. To sell advertising you need readers? --- H'm sorry, if you've asked – if you ask me a question on what is journalism I believe I could answer that question.

I'm not asking you what is journalism. I'm asking you
10 how you run a newspaper that makes a profit. --- Right I'm – I didn't – oh right. I didn't apply – I didn't apply for a job at an advertising agency. I am a journalist. I'm not an advertiser.

So why would you take a job with this profit driven enterprise if you are so at odds with their fundamental
15 philosophy? --- I've asked myself the same question considering their lack of submissions before the TRC. The truth is that I sought employment. I was under the impression that the organisation was a legitimate media practice, it was a legitimate – there were legitimate journalists. As it turns out
20 many of the journalists hired by the People's Post come from cram colleges that are actually owned by the company.

Now you said that you weren't aware that you would have to submit copy and you – and the end result you said that although duress had been placed on you to write copy, your
25 words were, "It wasn't a problem to me". --- Right.

Because eventually you kindly agreed. --- Yes, I – I was assured that there was a press code – there was actually a code of conduct governing journalists at the People's Post. It's actually part of my documents, item 4 indexed to
5 applicant's bundle of documents:

“Ethical code for reporters, photographers and graphic artists of Die Burger.”

And one of the factors that you said that induced you to be so kind as to agree to write articles was the attractiveness
10 of Annelien Dean. --- Under the overtures, ja. She – she made quite – quite a number of promises.

What exactly are you suggesting? --- H'm...

Are you suggesting that she was offering you some sort of romantic or sexual enticement to...? --- (Witness laughs).
15 Gosh.

What are you suggesting? --- No, I – I just accepted it as God's will, that this is what God intended, that – that this would – that this was an – these obstacles that were in my mind were – were actually... You know, it was an opportunity
20 to – for growth in a – in a global company where there were – that I was assured that – that we were tackling transformation in the workplace.

Sorry, you've gone off the point entirely. I was asking you... --- H'm Annelien Dean's attractiveness or not should
25 actually have – is of no relevance.

Well, you're the one that mentioned it, which is why I raised it. --- Right. H'm...

I didn't raise it. You raised it yesterday in your evidence. --- Ja, but you've got to admit that she is attractive.

5 Doesn't the statements that you've made, have made, something tell us a lot about the views that you have about your colleagues and the basis on which you stereotype yourself. --- H'm I – I don't see your point.

Ja you wouldn't. I want you to please explain what some
10 of the statements in your pleadings actually mean. If you could go to the pleadings bundle, page... It's page 21. The document which you've headed: Applicant's notice of cause. --- Sorry. I'm looking at the notice of exception.

No, page 21 of the pleadings bundle. --- Oh this is 21.
15 The document drafted by you. --- Alright.

The – you notice you introduce various things by talking about a political climate at Media 24 and you purport to tell us a lot about Media 24 in your evidence. --- H'm.

But the only component/part of Media 24 that you have
20 any direct knowledge of is the People's Post? --- H'm, that wouldn't be correct.

It wouldn't be correct? --- No.

Well, what other parts of Media 24 have you worked in?
--- I've worked for Metro-Burger. I've subbed copy for City
25 Vision.

Sorry, was this before you came...? --- Yes, before the move to the – Tokai.

Sorry, is this during your training period that you did this subbing or was this a different job that you ...(intervention) ---

5 No, there was no training. I didn't need to train. I – I'm already – have ample experience. I don't need to be retrained to sub. The only retraining that occurred was with regard to retraining my skills for the – the layout computer system.

COURT: Sorry. You said that you worked for City Burger, is
10 that right? --- H'm, the – the Metro-Burger.

Oh sorry Metro-Burger. --- Metro-Burger in Mitchell's Plain.

And the other one? --- City Vision I subbed – I subbed copy for City Vision.

15 And just to clarify, that was before...? --- Before – this was before the move to the new premises at – at Tokai.

No, the question is just is it before this contract? The one that we're dealing with now. --- No, no this was the same contract.

20 Oh.

MR KAHANOVITZ: Or what, we call it a training period. You can call it what you want to. What you're saying is during what we call the training period on our systems you were given articles from other ...(intervention) --- Excuse me, the
25 training was a – over a five days I believe. One of the reasons

I wanted to call Hanlie Gouws was just to clarify some of the facts. Ja.

Just let's work on a term that I can use that you're happy with to refer to the period that you were learning to use the
5 systems before you actually moved. --- No, no you're talking about my – the first month that I was there.

An induction. Could we call it your induction period? ---
You're welcome to.

Alright, during your induction period you say you subbed
10 for other publications. --- Correct.

And this gave you knowledge about the way in which racism is perpetuated in these other publications as well? ---
Yes, yes I believe I would be party to such knowledge.

Right so what do you want the Judge to find at the end of
15 the case? Must he find the whole Media 24 Group or must he make a finding about People's Post or which other? --- H'm...

Because as you know this is a very large organisation.
--- Right yes, it's a very large organisation. I believe WP Koerante as a – as a division. I have no experience working in
20 any other divisions at Media 24. I would posit that a company of that, of the size of Media 24 has probably quite a range of political expression and that the political expressions at the division were of a tenacious and vehement nature, last remnants of – of the old order.

25 Right. What does that – at the bottom of page 21 of the
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pleadings it's the letter C. --- H'm.

You say:

“Media 24 as a corporation has not complied with the
basic requirements of truth and reconciliation under the
5 TRC Act and its status as a legal entity in terms of the
Act is still pending.”

What status as a legal entity under the...? --- H'm.

You're referring to the Truth and Reconciliation
Commission legislation? --- Yes the – the problem with the
10 mandate, the mandate for the Commission I think extended to
individuals. It wasn't ostensibly a requirement of the
Commission to investigate – investigate corporations.
However, there was a media commission at which for example
the Independent Group make – made extensive submissions to
15 the commission, as did for instance Moegsien Williams and –
on behalf of the Alternative Press.

Can I just tell you what my question is? --- Sorry, yes.

I get the impression from your evidence that there's some
sort of legal process that you are referring to that happened at
20 the TRC where if you went along and apologised for what
happened in the past in some or other way, you got some sort
of piece of paper from the Truth And Reconciliation
Commission which now said that you are accept – you are now
– you may now publish newspapers or you're an acceptable
25 newspaper group. Because I am not aware of any such

process. --- There was a media commission. It's referred to in my – my bundle.

Yes but Mr Lewis, there was no legal process at the TRC besides there was amnesty. You know what amnesty was?
5 People who applied for amnesty for ...(intervention) --- Right, but the – the – you see, the thing is you're getting confused. The TRC wasn't just about giving people amnesty or giving people opportunity to apologise. It was also about gathering evidence so that the evidence of apartheid wouldn't dissipate
10 and be destroyed. There's a huge body of – of writing with – on this particular problem of the evidence. So essentially, you know, I'm tasked with proving that – that there was ever such a thing as an unjust system in this country because all the documents referring to apartheid have been destroyed. The –
15 there's been, you know, attempts to essentially pull the wool over people's eyes.

I'm trying to understand the basic point which you appear to have made, is that ...(intervention) --- I've been – I've been told by Cobus van Bosch that the view of Media 24 is that
20 the – the papers are – are public record so the papers produced by the company essentially at the South – they're available for the public to read at the South African Library.

But you've made some ...(intervention) --- However that doesn't – that doesn't, you know, that doesn't make the
25 failure... It's a – it's a question of omission. There's huge

omissions in the – in the evidence. They're huge...

Sorry, can I just stop you short? --- Right.

COURT: Yes, can I just...? I'd like you just to answer the question, alright? And you must allow Mr Kahanovitz to finish
5 his question and then to answer it and please just restrain yourself to answer the question. I think that's really important. Thank you.

MR KAHANOVITZ: You seem to suggest that unlike some other media organisations or individuals or companies, I don't
10 know what you're talking about, but that some, that Naspers did not a “clean bill of health” from the Truth and Reconciliation Commission and that if you'd known that you would never have applied for a job there. Have I got that right? --- Right, you – you're 100% correct.

15 But you couldn't get a clean bill of health from the Truth and Reconciliation Commission, so what are you talking about? --- No I – I'm talking about the omission. If – if Media 24 had actually made a submission, a – an adequate and proper submission before the Commission I think this question
20 wouldn't have – have arisen. I wouldn't be here. There would be I think, you know, this is a issue of the negation of transformation. They – they directly opposed the Commission and they continue, they continue to oppose the – the transformation in this country.

25 But Mr Lewis, before you applied for your job at Media

24, the TRC process was part of public record. The report which you now annexed to your bundle has been published.

--- I – I've – my problem was I was familiar with Antjie Krog's version of events. I hadn't actually taken the time to go and
5 wade through the TRC report. It's in I think five volumes. It's quite – quite a lot of reading. I don't think a lot of South Africans have actually bothered.

But you were a person... --- It would be an interest – it's an interesting question. Sorry.

10 Yes, but you are a person who purports to have this value system which would prevent you from going to ...(intervention) --- Yes if, right so...

Sorry, could you listen to my question? --- Right.

COURT: Please. --- Sorry, sorry.

15 MR KAHANOVITZ: You say you have a value system that would stop you from going to work for a racist organisation. --- Right.

Right. So now you're applying for a job at an organisation which you know is part of the Naspers Group,
20 right? --- Yes.

How much research do you actually need to go and do, having been a journalist yourself for some years, to know what the history of Naspers was? You didn't need to go and read anything to know that. --- H'm... It – did I bother to research
25 the history of the company before I joined it? H'm... Look it –

it was, I think everyone knew that there – that there were these links. I – I was under the impression, because of the prospectus of their company, that there were some kind of ethical management. It's directly referred to in the prospectus.

5 Mr Lewis, I'm going argue at the end of the case that this version that you've invented about the relationship between what happened or didn't happen at the TRC and your decision to join Media 24, is a concoction. It's something you've invented for purposes of this case. It just makes no sense. ---
10 It's – it's – you're entitled to your opinion. I – I hold... I continue to – to hold that belief that – that had I known, had I – had I read the TRC report, in particular the media commission and the findings made by Archbishop Tutu, I – I don't believe I would have sought employment. So ja. It's –
15 it's in hindsight.

Oh. Then on many occasions you tell us about something called the Half-holiday Act of 1905 and for example one example of that is that at page 22 you say, this next to the letter F:

20 “Suffice to say that the applicant was forced to enter into a prejudicial agreement. The respondent acted in bad faith and the conditions under which the Half-holiday Act of 1905 was implemented no longer exist.”

--- H'm that..., right.

25 Well how did you find this piece of legislation? What has

it got to do with this case? --- Well this is the – the – it's just an indication of the status quo that I – the country that I grew up no longer exists. I mean that would be correct. The problem is, is that it's still on the statute. It's the first time
5 that the Jewish Sabbath was actually recognised under the statute.

Who told you that? --- I did some research at the, h'm, is it the Gitlin Library or the Kaplan Library, one of the libraries.

10 Just can I briefly show you the – what is in that Act? --- Right.

It's at page 58 of your bundle. --- Yes.

Who told you it's still on the statute books? Was that something that you...? --- H'm... That's in terms of legal
15 precedent.

Oh I see. --- I don't think there's been any law contradicting the Half-holiday Act.

I see. Well, just look what it says there:

“Be it enacted by the governor of the colony of the Cape
20 of Good Hope.”

--- Right.

Do you remember what happened in 1910 in South Africa? --- H'm...

Did you read about that at university? --- Would, that
25 would have been the Union or...

Yes. So why is the – why is 1905 Cape legislation still on our statute books? --- H'm, for the same reason we've got, some laws are going, in terms of precedent going back to Roman-Dutch, the Dutch occupation.

5 Oh I see, alright. Now the Act says it's to secure a half-holiday for shop assistants. --- Precisely.

Yes. What in heavens' name has that got to do with your case? --- There's a clause... I'll find it. On page 59:

“Kosher meat, butchers exempt.

10 9. Butchers who deal in kosher meat and who satisfy the local authorities that they keep their shops *bona fide* closed from sunset on Friday to sunset on Saturday and who are duly registered by such local authorities, shall be exempt from the provisions of
15 this Act, as long as their shops are closed as aforesaid and their employees are not employed on that day.”

And what is the relationship between that and the work that journalists do at People's Post? --- H'm, I was asked to
20 work on a Saturday morning. I grew up in the context in which Jewish shopkeepers for some reason kept their shops open on Saturday morning, but closed them on Saturday afternoon. So it's a – it's an interesting, you know, the interpretation of the Act, the practice, you know, how – how the law has actually
25 created a certain practice or a certain element in – in South
05.11.2009/14:46-16:00/EdB /...

Africa. You know it's – it's – I just think it's an interesting benchmark. I'm not contesting whether or not, you know, it's lawful or not for me to be working on a Saturday morning.

Right, I want to talk about your interview. As I – I think
5 we've already been here. You don't dispute that you mentioned your religious status at the interview and in fact what you told the Judge yesterday was that somehow or other the organisation should have realised that you were Jewish. That – that was your evidence. --- It's a well-known fact that I
10 am a Jew.

Now if my clients testify that they would – one of the reasons they wouldn't ask you about your religion at an interview is because quite frankly it's irrelevant to the decision that they make about whether or not somebody should be
15 employed, do you have a problem with that? --- H'm I – I would say that ignorance is no defence.

Oh I see, alright. Do you want us to have a form that people fill in when they apply for their jobs with a question that says: Are you Jewish? --- No: Do you require any special
20 leeway? Or whatever.

Alright. --- “Do you need any assistance... – What are your preferences?”

People with university degrees can't bring that up themselves? --- H'm it's – it's actually a topic, the item, the
25 missing page: Human Resources gets religion/religious
05.11.2009/14:46-16:00/EdB /...

diversity in the workplace. It's just a factor of – of globalisation, so as we become more diverse these issues and you know, it's – you can't actually say anymore – the Human Resources person could be Taiwanese or from DRC. I've got
5 no way of knowing, you know, reasonable accommodation on my views in a global company to – to accept that people know what traditions and practices, what – what is considered normal for a Jew in South Africa.

Are you finished? --- Right.

10 Thank you. You were hired to assist in the launch of an extended version of People's Post, involving an extra five geographical regions. I don't know if you know that, but that's why you were hired. Do you wish to comment? --- There wasn't... Right, right that wasn't the basis of my appointment.
15 It became apparent after I was appointed.

Well, they needed extra staff because they were expanding. --- Right, yes.

You spent your first month in Cape Town and Bellville in an induction process. --- Right.

20 Correct? --- Right.

The first edition of People's Post was scheduled for 23 May, correct? --- I believe so. Right.

Now I want to deal with your claim. Go into the pleadings file page 4, paragraph 4.4.1. --- Right.

25 And you say your right to cultural life et cetera, et cetera

were denied and then:

"...in that he was forced to work seven-day weeks."

--- Yes, yes.

Now you've already conceded in the evidence which
5 you've given that... Wait, before I go there, this document, did
your attorney show it to you before it was given to the
respondent? --- Not really, not...

Did he ask you whether you agree with what is in this
document and whether the contents are true? --- H'm, I'm
10 quite happy with the contents of the document as – as it
stands. I would...

Alright, so as you look at it now, there's nothing in there
that's false? --- H'm, if you want to talk about 100% accurate,
h'm... I will – I will probably change 4.4.3.1. It's not entirely
15 accurate.

Right, I'll get there in a minute but so but do you agree
with me, your attorney wasn't there, so the only way he could
have found out that Sedrick Taljaard harassed you by making
an appointment with you at four o'clock in the morning was
20 because you told him that? --- (Indistinct). No that was the –
the effect of Sedrick's bully – bullyboy tactics. He basically
bulldozed me into waking up at four o'clock in the morning and
being responsible for the dispatch at 4:00 a.m.

Please answer the question. The – I'm not interested in
25 what the effect of Sedrick Taljaard's conduct was. I'm

interested in where your attorney got this information from and common sense will tell us that he could only have got it from you. --- Right. He got it, right, he – he got... No he got it out of my, h'm, he requested a – that I write a document, my
5 experience of discrimination at Media 24.

Alright. --- It is part of the... It's in my bundle of documents.

So let's, so you gave him some written instructions, he put it into a document and you – this document started the ball
10 rolling and at no stage since this was filed at court have you filed any other piece of paper which was said that what is contained in here is inaccurate? --- H'm no.

Alright, so let's look at the accuracy of it. I go back to what's at 4.4.1. You claim that you were forced to work a
15 seven-day week. --- Yes.

Well, it follows from what is in 4.1 that that is something that you experienced during your employment. The period didn't, it doesn't – the statement doesn't say that: On one occasion or two occasions I was forced. It says that that was
20 your work regime. This is what the document says. --- Right yes.

But you've already pointed out yesterday ...(intervention)
--- Oh right. I was – I was beholden to the company 24/7.

No, no. --- According to the clause that – that...

25 No. --- Right.

You don't get out of it that easily. The Judge asked you yesterday. He asked you when did you end up working the seven-day week and your case now is that you ended up “working a seven-day week in the last two weeks that I was
5 there”. --- Right, you're splitting hairs.

No it's not about splitting hairs, it's about what's true and what's false. --- The – no the fact – the fact of the matter is, is that the contract I signed reflected essentially whatever the company tells me to do I should do. I was beholden to the
10 company 24/7.

But Mr Lewis, this contract which you or I don't know, whichever version you wish to talk about, whichever way you look at it, says that you work a 40-hour week and that is not... --- Well this is the problem. The contract, you don't have a
15 valid contract in front of you.

Alright, okay fine. And you also seem to know about the Basic Conditions of Employment Act which also stipulates what the maximum number of working hours are in any week. --- But to tell you the truth, I actually never saw such a – the
20 poster at – at WP Koerante.

Alright fine. --- I don't believe the – the manager was even aware that the basic conditions existed.

Then 4 – page 5, 4.4.3.1 your claim is:

“Sedrick Taljaard, manager for WP Koerante/Newspapers
25 harassed applicant by making an appointment with
05.11.2009/14:46-16:00/EdB /...

"applicant at 4:00 a.m. in the morning."

--- Right.

Now the first part of that which is false is that Mr Taljaard never made any appointment. --- Sorry can I – can I
5 point you to a document in my bundle of documents? "Page from applicant's diary", page 26.

Yes. --- It says here: 4:00 a.m. dispatch.

Yes, but you were asked to explain. --- The, right the newspapers were delivered to Retreat at 5:00 a.m. I was the –
10 appointed as production ...(intervention)

You see, what does "make an appointment"...? Mr Taljaard is the publisher of – he's the – he is in fact the man in charge of WP Koerante. --- Right.

What does the expression "made an appointment with
15 me" mean? --- H'm, to be more accurate, the – that clause in my filing sheet should reflect that the – Taljaard made an appointment with the dispatch and that because of the chain of command because of the production, that would mean that the production was responsible..., I was the responsible person at
20 that point. The person getting up at 4:00, 4:00 a.m. would have been – I would have been responsible for, in some way...

May I have a quick look in this bundle of mine? Here. Yesterday you were asked to explain where you'd got to this time of 4:00 a.m. and what this was all about and what you did
25 was you directed us to page 19 of the respondent's bundle. ---

Right. It says there 5:30 I think.

Well before we get to the time... --- Right.

Is this Mr Taljaard making an appointment with you?
Never mind about the time. --- Call it what you want. He – he
5 could have signed me up for the Media 24 rugby team on a
Saturday morning. It's just a issue of term – terminology.

Don't you want – do you want to maybe read the email?

--- Let's read it. H'm... Sorry.

“Dear colleague. You are hereby invited to join us in the
10 excitement when we launch the new People's Post edition
in the Southern Suburbs.”

--- Oh ja, yes. Right.

“On Tuesday morning, 23 May, from 6:00 to 8:00 we are
going to dish out the routes(?) of the new publication
15 together with a giveaway fridge magnet to motorists and
keychain at intersections...”

--- Yes.

“...in the Southern Suburbs. Those of you that are going
to join us will each receive a red People's Post ‘Telling it
20 as it is’ T-shirt and peak cap.”

--- Right. Wonderful.

“We need as many hands as possible for the promotion
and would like to see all of you there. We will finish at
08:00 so you will be back at the office in time. As soon
25 as we have all the names of the volunteers we will do the

“planning regarding who, what and where.”

--- (Witness laughs).

“Pool cars will be made available for those teams coming from Bellville.”

5 Et cetera, et cetera.

“You are welcome to bring along friends or family who would like to participate.”

--- Yes, hear it.

“Everybody will receive the necessary promotional
10 clothing.”

So... --- Alright, so – so right.

I think the document speaks for itself, Mr Lewis. --- No it doesn't because it's – it's – how do you define “invitation”?

What is a volunteer, for a start? --- H'm, what is a
15 bully?

COURT: Answer the question. --- Strictly speaking, h'm, Mr Taljaard's version of events is that it was by invitation and voluntary. The fact of the matter is, is that Mr Taljaard is a bully and that he intimidated me and intimidated his staff and
20 then when I didn't arrive for the second session he fired me.

MR KAHANOVITZ: So the real reason that you lost your job is in fact that you didn't volunteer for the second launch? That's the real reason? --- H'm that's one of the many reasons that I can, I can imagine.

25 Oh I see. Alright. Now you can look at what happened in

a number of different ways, but none of them come even close to sustaining the truth of what you claimed in your statement of claim. Firstly, I put it to you Mr Taljaard didn't make an "appointment with the applicant" at any time. --- H'm... It's a
5 – it's a problem of the – the terms. Are you saying that he made an invitation, he volunteered me?

It's not with you. It is a memo that went out to the entire staff. --- Right he...

If you are – do you know – do you understand what the
10 word "harass" – what does "harass" mean? --- Yes. Harassment, h'm when someone is victimised or – or intimidated and Mr Taljaard was an exceptionally aggressive person.

So he, on your thesis he must be..., this is a process
15 where in terms of which he sought to harass the entire staff? --- Yes if you don't do, if you don't volunteer your time, fire. Fire the individual, yes and I'm sure everyone else at – at..., huh, you know.

Okay so it wasn't directed at David Lewis specifically or
20 individually. There's no email or telephone call to David Lewis, saying: David Lewis, you must meet with me. --- No you're wrong. There's – I was put on a team with Annelien Dean. It's on the second page.

On the second page of what? --- H'm, this...

25 Page 21? --- Sorry.

"Dear colleagues. Thank you very much for volunteering."

That one? --- No hang on. Let's have a look. Let's have a look. I just need to find it. Applicant...

5 Page... --- Sorry, I was going to find the...

I think what you're looking for is at page 21 of the respondent's bundle. --- (Indistinct – speaking in an undertone). There's a... 25.

So can I maybe help you? What are you looking for? ---
10 Sorry it's, right on page 25. It says there: V11...7(?). Should be:

"Annelien, Fatima(?), Vatiswa, David and Nina. Prince George Drive and Fifth Avenue. 16:30 Retreat."

So what is the point you're making? --- So 4:30. So this
15 is this is... What is 16:30? 4:30?

Yes. --- That's 4:30 in the – in the morning in Retreat.

No, 16:30 is not 4:30 in the morning, it's 4:30 in the afternoon. --- Oh sorry.

Alright well, let's move on to the next point. The word
20 "harassment" means something that happens to you repeatedly. Do you agree with me? Repeated badgering, repeated pestering. It's not something that happens once. --- Right.

And at least here you don't suggest that the reason why
25 you were required, together with the rest of the staff or asked

together with the rest of the staff, to participate had anything to do with discrimination. --- H'm... The reason I was asked to participate, I'm -- I'm trying -- I was trying to prove the disparate treatment which occurred, the... You know, it's sort of a, h'm... Essentially the company took -- took my time carte blanche, that...

Yes but I haven't heard you... I haven't heard you suggest that members of the Jewish faith for instance, only members of the Jewish faith were required to be there at four o'clock in the morning. --- Right, right. So the thing is essentially I'm trying to show the Court that the -- when it came to the Friday night issue the exact same modus existed that essentially my time on a Friday night was volunteered by the company. It -- it was just to take. There was absolutely no say-so on -- on managing my own time.

Mr Lewis... --- So that's essentially what I've been trying to prove.

I'm going to argue at the end of the case that whether or not asking employees to volunteer or not volunteer or even forcing them to come and hand out newspapers at four or five or six o'clock in the morning is not a claim that's got anything to do with the Employment Equity Act. --- Yes if -- if -- if it, you see if it continues as -- as a modus and it starts to affect issues like religious issues and -- and so on, then it -- it definitely is covered by the -- the Act.

But it didn't... --- It's a modus, it's a modus and – and the issue is the – my Friday night.

What has that got to do with handing out newspapers in the morning? --- H'm right, if – if you volunteer your
5 employees' time without even bothering to consult them and if you intimidate them into essentially complying with your command, your, you know, your – basically it's like a direct order and Sedrick actually, he said no this is the – this is like the South African Defence Force. We must – this is how he
10 wants to run the – run everything. So if you do that and then when it comes to a sort of when there's crunch sort of issues like my observance of the Sabbath versus your observance of the Sabbath and now you continue to force compliance and obedience and slavishness, you're bound to get into trouble.

15 Alright so this was the thin edge of the wedge is what you're saying? --- Right.

 If let – if allowed to continue it would no doubt lead to discrimination? --- Indeed it did.

 It did? --- Ja it...

20 Oh I see, alright. And what policy, what employment policy do you say was applicable here? --- Sorry?

 Employment policy. --- In terms of the Act?

 Is there a policy... --- In terms...

 Well, is there a policy regarding distributing newspapers
25 early in the morning, that you're aware of? --- H'm... Today?

No at the time. --- Or then.

Was there some – was there a policy that dealt, a WP
Koerante policy about what happens... --- There was a, right
there was a h'm... Sedrick – Sedrick, okay the truth is Sedrick
5 Taljaard issued a directive. He directed members of the
organisation to distribute newspapers. I can accept it as a
teambuilding exercise, but to continue week after week, is that
is the modus of the organisation and to essentially result in a
clash with my Sabbath.

10 Yes well, but the facts are that on one occasion you
participated, the total of one. --- H'm right and he volunteered
my time on a second occasion...

Yes and you didn't go. --- ...on the same day that I was
fired.

15 And you didn't go so you did it once. --- Right and I –
and that's why I'm here.

Alright.

COURT: Mr Kahanovitz, would this be an appropriate moment
to take a short adjournment?

20 MR KAHANOVITZ: Thank you, M'Lord.

COURT ADJOURNS (at 16:00)

COURT RESUMES (at 14:43)

DAVID ROBERT LEWIS: (s.u.o.)

COURT: Mr Kahanovitz.

25 MR KAHANOVITZ: M'Lord.

CROSS-EXAMINATION BY MR KAHANOVITZ (CONTINUED):

Mr Lewis, we were on page 5 of the pleadings. We've dealt with the 4:00 a.m. in the morning appointment allegation. The next allegation is:

5 “Requiring applicant to distribute newspapers every Tuesday morning from 5:00 a.m. to 7:30 a.m.”

And you've already conceded that that statement is an exaggeration. --- H'm sorry, if I may. I had no way of knowing. It's – it's hypothetical. We're both assuming that if I
10 hadn't been fired, that the course of action would have stopped. So it's a bit, it's a conjecture.

Well I can, I can put it to you... It's not a conjecture, Mr Lewis. I can put it to you that Mr Taljaard or Annelien Dean or anyone else for that matter who – if they need to come and
15 testify in this case they will point out that the distribution of newspapers is not an editorial or journalistic function. --- Yes.

They have people who are, I don't know what the English word is but in Afrikaans they call them “roete opsieners”. ---
20 Yes. H'm but the same time you – you seem or appear to argue that an inherent – there was an inherent requirement of the job to do all manner of things. So it's – I don't believe it's an exaggeration.

Mr Lewis, you are quite clearly clutching at straws. You
25 know that it was an exceptional event where everybody was

asked to participate in the launch. --- Right.

And you know that journalists and subeditors are not, outside of such exceptional circumstances would never be involved in distributing newspapers. --- Right but at the same
5 – same token I – I don't believe it's an inherent requirement of the job of a sub to submit articles for publication.

But it is ridiculous to suggest that at some stage in the future, if you had stayed on, that you would be required to on a weekly basis be involved in the distribution of newspapers. ---
10 Right, I – I yes I – I believe Mr Taljaard was trying to point out, h'm, sort of a – a *fait accompli*. He was – he was trying to essentially prove that: Ja no, at – at Media 24, you know, we'll – we do everything here. He was – it was his sort of view that – that prevailed. However, I had no way of knowing at the time
15 whether the course of action would have continued. It's hearsay.

Then:

“...harass the applicant by requiring the applicant to work 14-hour days.”

20 Your evidence yesterday when you were asked about this by the Judge, I think you could recall one day on which you claimed that you worked 14 hours. --- H'm, h'm Fridays as – would have – Fridays and Mondays would have...

No, you were asked... We know now, we know you only
25 ever worked on two editions of the People's Post. --- Right

and – and then those two editions the – the Friday was an issue and the Monday.

Yes but you were asked to tell us specifically about actual occasions. --- Yes.

5 On which you were required to work a 14-hour day. ---
What – what did I say?

And my recollection was that you were able to mention one day. --- H'm that's – that's incorrect. It – the – the Monday was – was a 14-hour day and the Friday was a 14-hour
10 day.

So you worked twice? --- Two days out of, two...

There're two occasions on which you say you worked 14 hours? --- No, no two days..., that would have been four days in that – the – those two problematic production cycles.

15 Yes and this constitutes, you already admitted that this was a highly exceptional period. --- H'm...

But it's still harassment. --- It's harassment if there're no steps to rectify. There were – there were no steps made by the company to rectify. This is the ...(intervention)

20 What must they rectify? --- To rectify the – the problem – problem areas in the production. I was – I was attempting to deliver a report to the effect.

Are you talking about the speed of the data line? Because that was one of the reasons... --- Well this, this also
25 had a problem with the..., with the lateness of the – the whole

production process. There was a lateness with the..., with the editorial process.

Then "By stating", 4.4.3.3:

5 "By stating that in the event that the applicant is dissatisfied with working in terms of the above work parameters, he can attend the terminus and go home."

--- Ja, ja.

So Mr Taljaard actually said to you if you're unhappy about coming in... --- Ja.

10 ...at four o'clock in the morning and distributing newspapers every Tuesday from 5:00 a.m. to 7:30 a.m. and if you're unhappy about working 14 hours a day... --- Ja.

Then you can attend the terminus and go home. --- Ja.
Hy't vir my gesê ek kan die *terminus* bywoon of by die hel toe
15 gaan.

When did you have this discussion with Mr Taljaard? ---
H'm, I was called into his office at WP Koerante in Bellville.

Yes but when? --- The date, it's an interesting one.
H'm, I didn't take note in my diary so it was one of the – it
20 would have been in response to the correspondence and the issue, contractual issues which I raised. So it would have been in the first or second week.

What correspondence are you talking about? --- With regard to my submission of stories in terms of the contract
25 under duress.

Either your first or second week of working for...? ---

Yes, right.

But your version then is completely implausible because
the events that you describe... --- I just want to make sure of
5 the dates...

The having to work at 4:00 a.m. in the morning and the
distribution of newspapers only occurred after this meeting.
--- Yes well this, this was in – these events occurred in terms
of that contract which Sedrick bullied me into signing.

10 But even you must concede that your version then
doesn't make any sense. --- No, it's just a problem of the
summation, the summary of – of events. It's all contracted into
one document. The – the person who drew up this document
didn't really make any attempt to extricate the exact time.
15 There's no chronology in the filing document.

Well it's not high legalese this, it's by stating that in the
event. --- Right.

It's simply he's going on... --- That – that was the
directive that, right.

20 What you told him Mr Taljaard said. --- Right, yes. Yes
he said if – if I don't operate with – in terms of the parameters
of the contract which basically says I can – I must comply with
any of his orders, I can go to the terminus or I can go to hell.

Now it's go to hell. --- I – I didn't put that in the
25 document. It's – I find the...

Why not? --- H'm, it's something I didn't actually share with Dale Stevens.

Why would you not share it with your attorney? --- I – I don't know Dale Stevens very well.

5 Is there some sensitivity about telling somebody else that somebody told you to go to hell? --- H'm...

Would you be embarrassed to tell Mr Dale Stevens? --- No, to tell you the truth I'm afraid I might just end up in hell because I worked on Saturday morning.

10 Well Mr Taljaard denies that he told you anything along the lines of you having to attend the terminus. He says it's not an expression that he uses. It's a... --- The implication is that I can fall in line with all the other Africans in the newsroom. They sjambokked black employees at the SABC
15 until 19 – 1994 if... Instead of a disciplinary you could actually choose to be sjambokked. I would have expected nothing less.

Alright let's talk about your attitude towards the editor, Annelien Dean, some of the things that you said yesterday. Well let's start off with your claim that she is a member of the
20 Nederduitse Gereformeerde Kerk. Really? --- I believe so. I'm not sure exactly which congregation or it could even be a splinter movement. But that, that is the impression I got.

Really? Where would you have found this out from? --- She h'm..., what did she? She shared the information with me.

25 Why would she tell you that if she's Catholic? --- That

would be news to me.

I see and is she Afrikaans-speaking? --- Annelien Dean,
sy – sy is Afrikaanse meisie van Bloemfontein af.

Well you're wrong, you know, she's not Afrikaans-
5 speaking. It's not her home language. --- Rêrig(?).

You made assumptions. --- I actually don't believe that
and I think you're – you're casting aspersions and I – I really...
You know, if – if Annelien is a member of the Catholic Church I
don't believe that they would accept her at communion. I don't
10 – I don't believe – I don't believe that she, that is in fact the
case.

Well... --- I – I'd like her to – to share documents with
this Court if she's going to – if she's going to make that
statement.

15 Well maybe I'm... I don't know if she's a... She grew up
as a Catholic. I haven't asked her whether she is a... --- I
don't think so.

You don't think she is? --- No.

Alright, well you're welcome to cross-examine her about
20 how she grew up and what, whether she is, as you describe so
derogatorily. You say she is part of the “Boerevolk” is the
word you used yesterday. --- Did I say that?

Yes. --- Could you repeat my words, please?

You said when you were discussion your story and its
25 rejection. --- Right.

You said well one of the things that she could have done instead of spiking the story was that she could have removed the quotation. This was an indication that the “Boerevolk” were rigid is what you said. --- Did I say that?

5 Yes. Yes you did. --- Those are my – my exact words?

Those were your words. --- Sy is 'n boerie – Boere-meisie. Ek – ek is ook 'n boer – Boer. Ek is 'n Boerejood. My oupa was 'n Boer.

You said Annelien Dean had no experience of publishing
10 in the former Coloured areas. --- Right.

Why did you tell us that? --- H'm, just because I – I believe there was a – a lot of misunderstanding with regards to the requirements of the – the issues in the communication and the obstacles that are faced with publishing in such
15 communities.

And luckily enough you offered yourself as the link you tell us to the Coloured community. --- I was trying to assist her.

Yes because you understand how coloured people think?
20 --- H'm, that's probably because I am a coloured.

Oh I see, alright. Your evidence was that:

“Annelien Dean wanted me to help her fake it. She was put out by my relationships with the community.”

--- Right.

25 “With Robbie Jansen. She was ‘ostensibly the editor’.

"She had no experience."

Was that your evidence yesterday? --- Yes, she – she asked me to – to help her fake an editor in the know.

Yes. --- Someone who has contacts in the community et
5 cetera.

So the person that you were reporting to whose instructions you were supposed to adhere to, you regarded her as actually not having the competence or the capacity to be the editor of this newspaper? --- Not. She was..., I don't
10 believe that she – she's very competent in terms of editorial. I think she has an ability to – to manage a newspaper.

How long had she been a journalist with...? --- I have absolutely no idea.

Were you ...(intervention) --- All I – all I know is that
15 she had worked at the Dispatch and then at the People's Post.

Yes. --- She hasn't worked for any daily. She's...

Do you know about what university degree she has? --- I've got absolutely no clue.

Do you know whether she worked on what you would call
20 "Black' or "White" newspapers in the past? --- No idea.

And in terms of your racial profiling thesis... --- H'm.

And the fact that this was now going to be a newspaper targeted at coloured people, why would Media 24 in terms of your thesis go and appoint this white woman to edit this
25 newspaper... --- (Witness chuckles).

Who would then require you to help her to fake the legitimacy? --- I've got absolutely no idea. I can only presume.

Well you will agree with me that that fact is somewhat
5 destructive of your thesis about how they go about only using
people of particular racial groups to write for other people? ---
H'm no, I think – no, no I think it's a issue of racial superiority,
precisely, you know, the ideologies articulated by the National
– former National Party espoused by Naspers until quite
10 recently; espoused by the NG Kerk until quite recently. It's an
issue of racial superiority. Annelien Dean is cast in a superior
position because of her race. She is from a privileged White
upper-class Afrikaner community et cetera, et cetera. She has
been given an opportunity to – to be editor of a – of papers in
15 former Coloured communities.

But you've told us that the way in which Media 24 works
is that coloureds are hired to write for Coloured newspapers,
Africans for African newspapers and Whites for White
newspapers. --- Right.

20 So why would they appoint a white woman to edit a
coloured title if your thesis was correct? --- Oh you're saying
this, oh right. H'm, it's an interesting point that you raise.

H'm. Right, I want to move on to the question of the
various articles that you wrote and the evaluation meetings.
25 Now yesterday you testified that you had prepared a document
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in preparation for the evaluation meeting, that document with your own notes. --- Right.

It's at page 27 of your bundle, the document headed: Problems encountered with second production cycle. You're
5 with me? --- Yes.

And you explained that this was you gathering your thoughts about the things that you actually intended to say at the meeting or the issues that you intended to raise at the meeting. --- (No audible answer).

10 That was your evidence. --- H'm, this – this was the document that I prepared for the evaluation meeting. I attempted to raise these issues and I was essentially sub – subject to abuse.

Now, I mean logically, those issues that were most
15 important to you at the time would have been the issues that you would have referred to in your preparatory note. --- H'm:

“Copy coming in after deadlines slowed the subbing process. We were subbing copy late Friday and into the evening.”

20 Well I mean, I'm just asking you. I'm putting a simple proposition. If you're going to go into a meeting and you want to make a set of notes as to the issues that you wish to raise... --- Right. Yes.

...you're going to note down those issues. --- Right.

25 What you've told the Court is that the big issues for you

at that time concerned racial profiling. --- Right.

And the link between that and the rejection of your articles. That was your evidence. --- H'm...

Don't look at the document. Just... --- I'm just reading
5 it.

That was your evidence. --- H'm yes.

Yes well... --- Yes.

You will see there's absolutely nothing in this document about racial profiling. --- Right. There's also absolutely
10 nothing in this document, there's no thesis about Judaism either.

Well that's another point because I'm going to argue there's nothing in here about excessive hours and how they affect you as a Jew, correct? You've just pointed that out. ---
15 Right, right and I don't believe it's reasonable to expect me to deliver a thesis at a – at a evaluation meeting.

Well... I'm going to argue that this document supports the argument that we're going to raise that the issues that you've now come up with are a subsequent fabrication. ---
20 (Witness chuckles).

Your comment? Because if... --- It's completely ridiculous.

Oh I see, alright. And we – there are now, there're two meetings that I want to deal with. The one is a meeting that
25 you had with Annelien Dean on the 29th and the next is... ---

29th.

The meeting at the 30th at which you say you were dismissed. You... --- Did we have a meeting on the 29th?

What was the...? --- Sorry.

5 There was a discussion between you and Annelien. I don't know if I've got the date correct. There was a discussion between you and Annelien Dean when you discussed... Let me take you through it sequentially and... --- Right.

At page 52 you deal with the ...(intervention) --- Sorry,
10 sorry which...?

Of your bundle. --- My bundle.

Third paragraph. --- Right.

This is you setting out a note under the heading: My experience of discrimination at Media 24. --- 23...

15 About the discussion between you and Annelien Dean about the article that you wrote about Jimmy Dluclu. --- Sorry which para – which paragraph?

Third from the top. I'll just read it into the record. --- Read it.

20 "My discussion with Annelien centred on the fact that jazz was universal."

--- No, no that's not the third.

"More than that..." Are you with me? --- No I'm looking for – I can't find the para...

25 Page 52 on... --- 52, oh sorry, right. Yes.

“More than that, it was the heart and soul of the Cape Flats and could be used to help us both cross some boundaries that were presenting themselves as obstacles to future growth in editorial and content. Perhaps a story about a black musician in a newspaper ostensibly targeted at people of colour was too bold a step for Annelien Dean? The fact that she rejected the story,” sorry, “the fact is that she rejected the story for reasons that are perhaps only understandable to a shrink. So I rewrote the story and interviewed Robbie Jansen.”

--- H'm, h'm.

“This way there was no denying the link or the community angle. Robbie had a special relationship to those living in the Cape Flats and his comments helped to solidify an otherwise vapid,” v-a-p-i-d, “piece hastily put together from music industry bumph,” b-u-m-p-h, “promo material that had begun to flow into the newsroom at an incredible rate as a result of my own request for newsworthy stories.”

20 That's what you wrote, correct? --- H'm.

Now your argument is that Annelien Dean didn't write – didn't run the story that you wrote about an African jazz musician because this was a newspaper targeting a coloured market. That's your version. --- Well, that's one of the objections that she raised.

No, she didn't. Your case is... --- No, you're putting words in my mouth.

Your case is that the real reason she didn't run that story was because it was about an African jazz musician in a newspaper targeted at the Coloured readership. That's where
5 the discrimination comes in. --- The – that, right, right that is one of the – one of the reasons.

Yes. So I think it follows that what you're saying is the People's Post will only publish stories about African musicians
10 in titles that are directed towards an African demographic? --- Right, like City Vision – City Vision ja.

Alright. So and the reaction on that thesis then would have had nothing to do with the quality of the journalism? --- Sorry, if I may, there's a confusion here between the two
15 stories. So I think you're conflating the events. There was a – they're two completely different stories.

No there's the, let's call it the Jimmy Dlodlu story which dealt with him by himself and then there's your reworking of it. --- Then there's Robbie – then there's Robbie's views about
20 Jimmy.

Yes, which for shorthand I'll call the one the Dlodlu story and the other one the Jansen story, alright? --- Alright, right.

We're now talking about the Dlodlu story and your claim that it was rejected because of the policy of racial profiling and
25 I'm asking you whether it is indeed your claim that the

rejection of your story did not have maybe to do with the quality of the journalism. --- Sorry, you are saying that the issue hadn't – had nothing to do with the quality?

No, I'm asking you. --- Which...

5 Is your case... --- Ja?

...that the quality, the poor quality of the piece was not the real reason for its rejection? --- No. No there's – there was... There's nothing wrong with the – the quality of the – of the article. It had to go through a subbing process in any
10 event. H'm, the issue had to do with the demographics.

Well Annelien Dean says and I think you've already mentioned this in your evidence, she raised with you concerns about you cutting and pasting articles written by other people into your article and then presenting it as original material. ---
15 They were clearly attributed.

Well let's look at page... Just before we debate about whether or not it was clearly attributed, you don't disagree with me that when Annelien Dean discussed the Dlodlu article with you she said she had a problem with the notion of cutting and
20 pasting material written by other people from the internet? --- H'm, she had a problem with online journalism. She...

Please answer the question. --- That's what she said and then she, you know, then she, what did she do? She then accused me of plagiarism.

25 Well look at page, look at page 24 which is the – of the –
05.11.2009/14:43-16:05/EdB /...

this is respondent's bundle. Sorry, it's not. Page 23. That's the article that you wrote as you presented it to her. --- Documents... Right.

You'll look in the fourth column there's a long quote. ---

5 H'm...

Starts:

"Jimmy was 13 years old when he picked up a cousin's homemade guitar."

--- So... So I'm looking for that where?

10 Fourth column from the left. --- Yes. So...

You'll see there it's scratched out with pen, with squiggles through it. ---

"Dludlu's online... Dludlu's biography illustrates a career rich in metaphor."

15 Yes and then there's a quote. --- Quotation.

Quotation. --- Quotation.

Which... --- "Jimmy was 13 year old when...", ja right.

Yes. --- Right.

20 And if you look... --- It's an extract. It's in quotation marks.

That, that is cut and paste from the internet site: music.org... --- It's called... Yes it's called "fair use". I – I'm quite entitled to make use of that paragraph. In fact, I was given permission by the author of the biography to use it.

25 I'm not going to debate with you your standards and but

if... --- The... In other words you're trying to, you're trying to make some kind of allegation that – that quoting an online biography is – there's something wrong with this.

I'm not even going to debate that with you. The point is
5 that the editor has a standard that she believes needs to be adhered to in the way in which stories appearing in her newspaper are going to appear. She does not want stories in her newspaper which have large tracts of copied material from other people's ...(intervention) --- The issue, the issue is fair
10 use and I'm not prepared into any discussion as to – as to that. It's a fair use argument.

So where do we get ...(intervention) --- You're telling me – you're telling me... You're telling me that – that a journalist isn't allowed to quote material in a – in an article.

15 But what... --- This is a piece, this is a...

You know, you and I can debate until the cows go home what is plagiarism. --- Well I mean you're trying to invent, you're trying to invent rules for – for journalism.

COURT: Please... --- Can I point you to the...? There's a
20 guideline issued.

The question is ...(intervention) --- There's a guideline...

Mr Lewis. --- Sorry.

Mr Lewis, you are not arguing. You just need to answer
25 the question. The question was put to you very simply that did

the editor, that she had a standard that she believed in. ---
Alright.

That she did not want extensive quotations and the
question is did – and then she, as I understand it, took this
5 particular piece out, that that was the reason for the refusal of
the article. Is that correct or not correct? --- The – that was
one of the reasons that was put to me.

MR KAHANOVITZ: But you say that's not the real reason. ---
No, not.

10 You say the true reason... --- Yes.

...is the subject matter of the article. --- Right, it's a
psychological problem that Annelien has.

What exactly is her psychological problem? --- She –
she has a problem with the complexion of Jimmy Dluclu.

15 But you yourself said the following and I quote your own
words about your article.

“A vapid piece, hastily put together from music industry
bumph and promo material.”

Those are your own words and I put it to you on your own
20 version the article should have been spiked. --- Right excuse
me. Excuse me, I could say the same thing about most of the
content in the Argus, Cape Argus Tonight. It's an opinion that
I hold.

If that's your own opinion... --- Right.

25 ...of your own piece of work, why do you even begin to

suggest that the spiking of your article was not legitimate? ---
H'm, their – there are – I'm prepared to accept that the – the
piece wasn't ready for publication. I was prepared to retract
the – the piece. I rewrote the piece and resubmitted it.

5 You're not prepared to accept that you've come to,
you've actually come to suggest that the only real reason that
she could have had for rejecting your piece is that she's a
racist. --- No that's not the only reason. No, no that's not the
only reason, it's the context in which the rejection occurred.

10 That was the context.

 So she can't be a... --- It was in the context.

 She can't be a ...(intervention) --- It was in the context
of a discussion about the demographics of the – of the target
market.

15 She can't be a true professional editor who does not
allow articles of this quality to appear in the newspaper. No,
that can't be the case. The real reason ...(intervention) ---
H'm, ja compared... The thing is...

 Can you please allow me to finish the question? ---

20 Sorry.

 The real reason must be because she's a racist. ---
H'm, Ms Dean is holding me to a higher standard than she
holds her other journalists, you know. She – this is a
community paper, the People's Post. People's Post doesn't
25 have a very good reputation in terms of journalism. It is not

the New York Times that I'm writing for.

Mr Lewis, you've uploaded, I can't remember the exact number but approximately I think it's 12 videos about your life onto the internet on a site called Zoopy, I think Z-o-o-p-y. Is
5 that correct? --- (Witness chuckles). Yes.

And I don't know what the total time they take up, maybe you yourself know but I would say it runs into several hours.
--- About an hour.

In video 4 where you felt the need to tell the world at
10 large about this incident, you mentioned that because the editor was from Bloemfontein you in that context added that she must have thought that a story about a black person was of no interest to the Coloured market. That's what you said.
--- Right.

15 Isn't that ridiculous? --- I think...

Because somebody comes from Bloemfontein. --- Right.

First stereotype. --- Yes.

Second stereotype is that because of that she would think that a story about a black person would be of no interest
20 to the Coloured market. --- Her – her views became incredibly clear when she rejected the – Robbie's views of Jimmy. You know, it's just this idea that there's still the Group Areas Act, still own affairs, still – still segregation in – in her mind of how people are.

25 Your decision to rewrite the story and to bring Robbie

Jansen... The decision, excuse me, to rewrite the story and bring Robbie Jansen into it, it was yours, it wasn't the editor's, correct? --- H'm, I – I did take that decision. I also tried to prove that – that there was no basis for the rejection of the
5 story in terms of the target market.

It was your perception that you needed to bring a coloured musician into the article... --- No.

Excuse me, can I finish? --- Sorry.

Because you – this is what you say. Your perception was
10 that in order to get the editorial – the editor to accept your story you had to introduce a link to the Cape Flats. --- H'm, it's a – it's an editorial conceit. It's the same ...(intervention)

But I have understood it correctly that you put it
...(intervention) --- It's a conceit.

15 A conceit. What's a conceit? --- H'm, it's the same, the same argument using Ms Dean is a white, so-called white person in a – in a so-called Coloured area. Why am I objecting. It's – it's... (Witness sighs). It's an editorial conceit. I interviewed Robbie because he was in the target
20 market, not because he was a coloured.

No but your perception of the way in which Annelien Dean's mind worked was that you believed that in order to get your story accepted you now needed to introduce somebody into the story who fitted the demographic of the readership. ---
25 Yes, yes.

That was your logic. --- Yes, yes that's my logic.

Yes. But lo and behold, it still wasn't published.
Remarkable. --- It's amazing.

It is amazing. Just again for sake of the record, your –
5 you claim that Annelien Dean came to ask you to help her fake
it. Well she denies that. --- (Witness chuckles).

And she says it's ridiculous. --- I also thought it was
ridiculous.

Are you seriously suggesting that Annelien Dean would
10 think that somehow you could confer credibility on her? ---
Ja. She thought that I could somehow make my contacts in
the community somehow..., through some kind of operation
those contacts would become her contacts. I – I can't change
the material conditions. I can't make Rashid Lombard
15 Annelien Dean's friend. She – she refused to take a phone
call from – from Mr Lombard.

Alright. Your response which and I'm just going to read
it. You don't need to go there. In the pleadings file page 88
you said that when she made these overtures to you on 22
20 May, asking you to help her fake it:

“Applicant bluntly refused and suggested his contacts in
the area of the target market, which has been
accumulated over a process of many years and in part as
a result of his relationship with the struggle...”

25 --- Right.

"...as well as the music industry, were not up for sale."

--- Full stop.

Okay. So you actually, you said that to her? --- Yes.

"My struggle history and my struggle contacts, they're not
5 up for sale."

--- My – my struggle is not necessarily her struggle.

Alright. And if I understand your views about your
credibility in the Black community, in one of your videos you
explain that you'd crossed this racial divide because of your
10 role in the liberation struggle and you used this phrase, "I
don't consider myself white". Correct? --- Right. H'm...,
right.

Can you explain briefly to us how you transformed
yourself? --- Oh. H'm, well firstly I don't consider myself
15 beholden to the categorical imperative of racism. Secondly
during 1986/1987 I was a member of the End Conscription
Campaign and the alternative – we had an alternative
education programme.

No, I don't want to know about... I'll get to your history
20 in the liberation struggle later. What I'm trying to understand
is how you ceased to be a white person; if you can just
explain that. --- H'm, Dr Neville Alexander actually explained
this to me in my Political Studies 101. It's the concept of non-
racialism as opposed to multiracialism.

25 If you don't consider yourself to be white, why are you

bringing a claim in which you say that you have been
discriminated against as a white person? --- I've been
discriminated because of the – the – I've been forced into –
into a racial category. I've been discriminated as a result of
5 the material conditions that – that have informed the new
South Africa and which continue to prevail in this country.

Well aren't you embarrassed to come to court to assert
your right as a white person? --- H'm, I don't believe that that
is what I was asserting. H'm, it's – it's a misreading of...
10 Perhaps I wasn't clear enough.

H'm. Annelien Dean says in planning meetings that were
held she encouraged you to write about jazz because she
thought that jazz, articles about jazz might be of interest to the
target market. --- Right.

15 Do you agree with that? --- She, well she demanded the
heart and soul of the community.

Yes, if you could just leave out the jargon. Did she say
to you that she would be interested in running articles about
jazz because they would interest the target market? --- That's
20 what I thought she said.

Yes. How does one actually write about jazz in terms of
your racial profiling theory? --- Sorry?

I'm just trying to understand how one would ever write
about jazz under your thesis of racial profiling. --- H'm, have
25 you – have you tried dancing about architecture?

Excuse me? --- Writing about jazz is like dancing about architecture. It's quite a tricky thing.

Are there no white jazz fans in Cape Town? --- Are you trying to turn my own argument against me? I don't think it will
5 hold.

Isn't it so that almost every jazz group in South Africa consists of people from different racial groups in it? --- Who knows.

Well you, you're an expert. --- H'm... To tell you the
10 truth, Abdullah Ibrahim, Riana(?) Abrahams actually introduced me to Abdullah. I've got photographs of...

No, no I don't want to know that whether you know about... --- When – Dollar Brand when he came back from exile. The day he arrived.

15 If you go on the internet and you do a search of Media 24 papers, I want to put it to you that you're going to find hundreds of articles about jazz, about Miriam Makeba, about Hugh Masekela and they are printed in newspapers of all sorts. Do you dispute that? --- H'm you'd have to give me – you'd
20 have to give me the years, the dates.

Why? --- Because I believe editorial policies have changed considerably over the last three years as a result, in part – in part because of such – this case. There's been...

Because of this case? --- Yes. Francois Groepe for
25 instance was appointed after I – I left. He's..., you know

there's been an attempt. Ferial Haffajee was appointed to – to City Press. There's been an attempt to essentially reconstruct.

Because of this case? --- One of many attacks against the corporation. I'm not the only person to – to be launching
5 these attacks.

Alright. Let's go on to the Robbie Jansen article. Where did you interview him? --- H'm, I interviewed him over the phone.

Well, did you interview him...? I thought you interviewed
10 him at West End. --- No, he invited me to the West End and in order to pay my respects I went.

Sorry you've lost me. I mean, where you interview a man is not a difficult issue to deal with. --- H'm, it's not an issue.

So I would just like a fairly straightforward answer. --- I,
15 I...

Did you interview him at West End or not? --- I tracked him down. I – I – how did I track him down? I called the UCT College of Jazz. They put me in touch with Pastor Glen Robertson. I called Glen and then Glen gave me his telephone
20 number. Rashid Lombard also offered me the telephone number after – afterwards.

I ask the question again. Did you...? --- So you want to know where, where did I interview him? I interviewed him over the telephone.

25 Well, I take it then that you didn't interview him in his
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home. --- No.

And you didn't interview him at West End? --- I went to pay my respects. I was...

What does that mean? --- He invited me to come and
5 listen to – to his music. (Witness chuckles). I felt obliged to go.

Well look at what – look at your notes of the evaluation meeting, page 27. --- Sorry, evaluation...

Of your bundle. --- My bundle.

10 Last paragraph. "This week...", are you with me? --- H'm.

"This week I got an exclusive interview with Robbie Jansen on amongst other things Jimmy Dluolu SAMA award, in itself no mean feat. After going through a
15 variety of channels, His People's Church Pastor Glen, I eventually met with the old saxophonist at the West End in Rylands, one of our target areas in Athlone."

--- Right.

Now does that sentence not mean that you got an
20 exclusive interview with Robbie Jansen at the West End in Rylands? --- No, no. No, no I eventually managed to meet him personally. It – it doesn't say anything about that I interviewed him there.

You, at this meeting you were asked. --- Right.

25 Where you had interviewed Robbie Jansen and you said

it was West End and you were challenged about whether you knew where West End was. Do you recognise that conversation? --- I've got absolutely no recollection.

Now I want you to look at the article that you wrote;
5 page 37 of the respondent's bundle. At page 37 your sentence reads the following:

“However, speaking from his Cape Town home, local Goema king Robbie Jansen criticised the industry celebration.”

10 That means? How do you – why do you say he was speaking from his home? --- Because he was at home at the time. (Witness chuckles).

So you interviewed him by telephone at home? --- Yes.

And then you went to pay your respects at West End? ---
15 Precisely.

And you say just down from the top of page 38:

“‘Dludlu, however, was in Mozambique and unavailable for comment, but he spoke to the press via his record label.’”

20 --- Yes.

Who are you in fact quoting there? --- H'm, Chris Syren.

But that's not Dludlu then. --- H'm, this is the problem with the music industry. This is – this is essentially the problem that Annelien identified, but she attributed
25 maliciousness.

But Chris, how can Chris Syren...? Who – is this Chris Syren? --- Ja, agent for Jimmy Dludlu.

“To me, winning the SA Music Awards means a lot.”

--- This is precisely what is in the press release. --- I didn't
5 write the press release.

But “he spoke” means somebody spoke to somebody else. --- Ja I know, so it's a conceit.

So these are not Jimmy Dludlu's words? --- H'm, I believe they are.

10 Oh you, right. --- You're asking me is this Jimmy Dludlu's music? I can also play the same song.

Page 39, about 10 lines from the bottom you quote Robbie Jansen as saying the following. Well, before we get there, you say that Robbie Jansen said to you that all these
15 people who had won these jazz awards were a bunch of pretenders. --- Sorry?

The quote is... --- Where?

Page 39. --- Hmm.

You say Robbie's album Nomad Jez was nominated for a
20 SAMA; didn't make it. --- Right.

And then you say what he says is... --- Oh.

“I went up there. Everybody is pretending to be somebody else. I didn't see any artists, just a whole lot of pretenders.”

25 --- Right.

“A (indistinct) I guess. It's not who you are but who are you wearing.’”

--- Yes.

And then:

5 “It's unfortunate I didn't get the award.’”

--- Right.

“If I did I would have gotten it. Cheap words I guess. The prize money would have been welcome.’ After some encouragement and despite warnings by his producer not
10 to talk to the press...”

--- Right.

“...Jansen commented on Dlodlu's prize feat.”

So who is his producer? --- Chris, h'm... Sorry, who... Gosh, I'd have to look in my... H'm... (Witness sighs). I've – I've
15 got a – he's a contact in my Rolodex(?). My....

You see, would you blame me if I had to read this to imagine a situation of here's David Roberts(sic) sitting, here's Robbie Jansen sitting, here's Robbie Jansen's producer. David Roberts is attempting to interview Robbie Jansen and
20 the producer.

COURT: David Lewis.

MR KAHANOVITZ: Sorry, David Lewis and the producer is warning him to keep quiet. --- H'm... That's another conceit. It's Robbie's own concern about not talking to the press, so if
25 he didn't want to talk to the press he would have ended the

interview. He would have said it's off record.

So the sentence, "Despite warnings by the producer not to talk to the press", is your invention? --- It's Robbie's invention.

5 Robbie's invention? --- Yes he's a musician, not a..., not a reporter. I – I'm just reporting the – what – exactly what he said and I'm trying to provide some context in which he said it.

I'm just going to give you Annelien Dean's version as to
10 what the problems were, the problems that she noticed with this article and why she did not want to put it into the newspaper. You'll agree with me it records Robbie Jansen as making disparaging remarks about the music industry in general and about Jimmy Dludlu? --- H'm, Robbie is entitled
15 to his opinion. I think he's lived through enough ...(intervention)

I'm not arguing with you about whether he's entitled to his opinion. --- Well...

Sure he's entitled to his opinion. --- Right.

20 That's what it says that his opinion is. --- I don't think they're disparaging. I think, you know, it's industry talk. It's not something... (Witness chuckles). This is not uncommon. It's – it's – most musicians in South Africa would probably have similar opinions.

25 Well rightly or wrongly, she was concerned about

whether these controversial quotations were indeed Robbie Jansen's words and she asked you to please give her his telephone number so that she could check. --- Right.

Correct? --- Yes.

5 Yes. She said that until it was double-checked she did not want to run with the story. --- Right.

She says that you responded by screaming and shouting. You continuously used the "F" word. --- No.

She says that what you shouted, words to the effect of
10 that you would not write another thing for "this fucking newspaper". You held your head in your hands and you would not give her Jansen's telephone number. --- It's a complete fabrication. I gave Annelien Glen Robertson's telephone number.

15 There was no outburst from you? --- I don't recall.

You don't recall? Can you think of any reason why Annelien Dean would invent a version where you started screaming and shouting? --- Ja.

Ja, what's it? --- H'm, Pastor Glen Robertson is a pastor
20 at His People's Church and Annelien seems to have a problem with religion. She has a problem with my religion; she's got a problem with Jimmy – Jimmy's religion (witness chuckles); she's got a problem with everyone.

Alright. She says you flew into a rage and you stormed
25 out of the office. She then contacted the Human Resources

manager and asked for a meeting to be convened. --- No, not.

With... --- Sorry.

So you weren't there, so you wouldn't really know this.

--- Wasn't I there? Alright.

5 No. She phoned the Human Resources manager and asked for a meeting to be convened which then led to the meeting, what you would – you call the evaluation meeting of 30 May where she, Mr Charles and Mr Taljaard were all present. --- Tsh.

10 Well you can't dispute that. --- No, I think it's a fabrication.

Oh. --- Her attempt to actually create some kind of a – a backstory to back up her own story which – it doesn't, never happened.

15 What never happened? --- I don't actually believe in – it was a busy, on a busy paper – that she even had time to – to invent what she... She has created an... She singlehandedly complained Taljaard has got another meeting. No, the only meeting which occurred was the evaluation meeting. I don't
20 think Warren Charles would have had time to – to meet with her personally on some (indistinct).

Well she was somewhat perturbed she had a member of staff screaming and shouting in her office and telling her to F off. --- No, (inaudible). I didn't.

25 You didn't? --- No.

Alright. I'm told the following things happened at that meeting. You claimed that you had street ...(intervention)

COURT: Sorry, is this the evaluation meeting?

MR KAHANOVITZ: This is the..., yes. Well, what he calls the
5 evaluation meeting. Our version is that the meeting was called
to discuss his performance and his behaviour, his
unacceptable behaviour. You told management that you had
street credibility and that you are the rainbow nation in one
person. Is that a phrase that you use? --- No it wasn't.

10 Not, okay. Mr Taljaard told you that your behaviour was
unacceptable, but you couldn't control yourself at the meeting
and you started shouting and screaming abuse. --- No.

At the three members of the management team. --- No,
no the issue was my performance. It wasn't – the issue wasn't
15 my behaviour. It was a performance evaluation.

Did you scream and shout at the meeting? --- No I did
not.

Did not. You warned the management team that they
should be aware of or careful who they were messing with.
20 You said that you had contacts in Qiblah. --- H'm, Warren
Charles, h'm (witness chuckles), brought up this issue. He
said, this was after the – the discussion about Sabbath
observance. He then brought up this issue. He said no, he's a
member of MK.

25 Why would he have brought this up? --- I've got

absolutely no idea. There was an attempt to intimidate me into slavish obedience to the company.

Just can you explain the logic here? The man told you he was a member of a disbanded military wing of the African
5 National Congress. --- Right.

With the view to getting you to commit yourself to slavish obedience to Naspers? --- Right, I haven't had the opportunity to verify whether Warren Charles is in fact indeed a – a former member of a disbanded organisation.

10 You shouted at them that they weren't qualified to judge your work as you were a seasoned journalist. --- H'm, I didn't actually have time. It would have been an interesting..., to actually go through that but my – I didn't have time to even vouch for anything. I was just *skopped uit*, like a dog.

15 Warren Charles said he did mention to you that you should not talk about Qiblah, because you don't know what you're talking about. --- I actually do have contacts with Qiblah. Moulana Ihsaan Hendricks does know me. Rabbi Greg Alexander also knows me. I do.

20 Didn't you point out somewhere that at some stage you say you were engaged to a Muslim woman? --- H'm..., ja no.

Whose family was involved in Qiblah. --- Yes, her father was.

Yes. So... --- (Witness chuckles). But it didn't work
25 out. It...

It's not that strange then that you might be shouting at a meeting... --- No.

...that you have contacts in Qiblah and that... --- Are you saying, are you alleging that I was announcing the call of
5 Islam during a evaluation meeting? I think it's completely absurd.

I'm not alleging anything. I'm telling you what my client said you said at the meeting and that they say that... Mr Charles says you ...(intervention) --- You're asking me do I –
10 do I have Muslim friends? Yes. I have intimate relations – relations with people of the Muslim faith. It doesn't make me a Muslim.

I'm not asking you whether you're a Muslim or... I'm telling you that Mr Charles says that you told them at the
15 meeting, sorry you told him that you had contacts in Qiblah and that they must be careful who they're messing with. --- No it was a response to Warren Charles's absurd... (Witness chuckles). You know, the most absurd – absurd attempt to intimidate me. You know, he was like sort of...

20 What did he do? --- Well I think it was an enquiry as to, you know, my – my historical background in the freedom – freedom struggle. I don't have to divulge my relationships with, h'm, Walter Sisulu.

You don't have to divulge them? --- I – I don't have to
25 divulge my – that kind of information.

Oh. Oh were you an underground operative? --- I – I'm not at liberty to tell you.

Why would you not be at liberty to tell us? --- How would I know?

5 They also say that after you lost your temper and appeared to, if I can use the common expression, “be off your head”... --- (Witness chuckles).

...you were escorted off the premises because you were out of control. --- Yes, I – I was – I was completely, h'm, not
10 in line. I wasn't towing the line. I – I wasn't slavishly obeying authority. Ek het nie “Ja baas” gesê nie.

Ja. Well the editor will say, if she needs to testify, that your conduct was that of an unbalanced person. You were raving and out of control. Management became concerned
15 about your continued presence and you were asked to leave immediately and you were told that you should not come back to work but that you would be paid for the balance of your contract. Comment? --- H'm, I do dance on Friday nights occasionally.

20 Alright. Later that evening you phoned Annelien Dean. You'd been drink... You said you'd been drinking wine. --- (Witness makes soft sound).

You said that you were not angry with her, but with the “White *dominee*”. --- H'm...

25 Remember this conversation? --- I'm sure I remember

this and there – I had scheduled an appointment to meet Gabeba Baderoon which I had to cancel and then she said no, let's – let's meet on the Thursday. So I actually met with Gabeba in Athlone on Thursday and then what happened was I
5 actually walked. My – my motorbike broke down. I had to leave it somewhere and I – I walked home and I – I – from Athlone. I came under the bridge at Observatory and there was a gallery opening.

Sorry, why are you telling us this? What has this got to
10 do...? --- The – the conversation, I called Annelien. I – I plucked up enough courage. This is... I went to an – a gallery function and I called Annelien and I said: Annelien, you're going to remember me. You know, I don't hold anything against her. I might have said something about “die – die
15 groot dominee of die grootbaas”, I don't know. There might be some veracity.

Are you prepared to at least concede that there was some shouting at this meeting? --- H'm, I don't believe tempers were raised.

20 Nobody's tempers were raised? --- No, no it was a... No. There were hardly...

It's just, it was a normal conversation and then you were escorted off the premises? --- No it wasn't normal. It – it was just, no it was just a very cruel, hurtful situation where I
25 couldn't... H'm you know, just to comprehend the – the amount

of abuse that was being – which was thrown at me. They were abusive.

Well surely you would have reacted then? --- H'm...

You don't sound like a man who is prepared to put up
5 with that abuse. --- Well, what am I supposed...? No, what
am I supposed to do? There're three people ganging up
against me. Ah..., there's nothing I can do.

Well you told them where to get off. --- H'm, I might
have said: Jou ma se poes.

10 Alright well... I just want to ask you. I need to deal
briefly with your claim that racial profiling exists as an editorial
policy. You claim that you were prevented from writing for
African titles. Which African titles were you prevented from
writing for? --- Well this is the weird thing: City Vision. It's
15 more accurate to say it's... I submitted stories to – there was
a common pool. All editors from the WP Koerante could
actually make use of the stories and photographs that were
submitted to that common pool. The fact is, is that no-one at
City Vision used any of my material. I remember the – the – I
20 took a photograph and this is also quite weird in terms of the
contract, is in terms of the contract any photography that I –
any pictures that I took are owned by the company. I took
some pictures of some – of some young black musicians
playing accordion on Long Street and I thought it was quite an
25 interesting image. So I submitted that and I actually called
05.11.2009/14:43-16:05/EdB /...

City Vision. I said: Here's an interesting pic you might...
Khayelitsha kids in Cape Town, playing accordion. Needless
to say the – it wasn't used. Bellville Metro-Burger also didn't
make use of my material. The only – the only publication to
5 use my material was the Mitchell's Plain Metro-Burger under
Mandy King.

But how does this, I mean you've already made the point
that Annelien Dean would make, that the copy goes onto a
system. --- Right.

10 And anyone of the titles can draw from that copy. ---
Right.

So how would they prevent an African title as you would
call it, from using an article that was written by you? It would
need to have some sort of stamp on it, saying: Written by a
15 white journalist. Do not use. --- Ja it's a result of the taboos
that have and the stigma that is – is resulted from apartheid.
There's this perception if your name is such – if your... If
there's a perception that you are one of some kind of racial –
fall into a racial category, that's where you're put. It's – it's
20 completely... Segregation is a – actually natural, if you follow
the logic of Media 24. It's a natural course of ...(intervention)

Are you seriously suggesting that all the editors of these
various titles who need material to put into their newspapers,
whether it's fillers, features, whatever it is... --- (Indistinct –
25 speaking in an undertone).

Actually sit there and say to themselves... --- No.

"Let's look at who wrote this article." --- (Witness chuckles). It's – it's not even so extensive. It's – it's they've – they've already been taught this at nursery school.

5 Now another very strange feature of your case is that you explain your selection as a reporter, sorry as a subeditor and staff member on the basis that Media 24 were prepared to presume you to be coloured because you were writing for coloureds and... --- It's bizarre.

10 It is bizarre. --- I can only – I can only (indistinct).

Because another possible explanation, besides being bizarre, is that what you have to say is just nonsense. --- H'm, I believe it's a – it's a logical statement in the light of the – the manner in which Media 24 has evolved over time. So
15 there's extensive differentiation caused as a result of apartheid.

The only reason you've invented this version is that you needed to come up with some sort of explanation for your racial profiling thesis as to why you got chosen to work on a
20 Coloured newspaper. --- No, no. No, no I believe there is actually a concerted effort to – to profile people in terms of race. It's – it's just an inability to deal with issues of race in the – in the company. This should be some kind of a either re-education programme or a sensitivity, racial sensitivity training
25 in – in the company.

I just want to read what you had to say into the record.
It's pleadings file page 23, paragraph 1.2.1. --- Sorry,
pleadings.

Pleadings file page 23, paragraph 1.2.1. --- Ja. Sorry,
5 what – what's the page?

Pleadings file page 23. --- Ja.

Paragraph 1.2.1. --- Right. 2.1, ja.

“Black employees sit at their desks, working on titles
geared towards an exclusively black target market.”

10 --- Ja.

“White employees also sit at their desks, working on
titles geared towards an exclusively White target market.
Coloured employees are given a modicum of support and
leeway for breaching their status as coloured by working
15 for a White market and vice versa and there may be
exceptions. The racial exclusivity may also have ended,
but the segregation remains, since Blacks are prevented
from supplying copy for whites and vice versa. In fact,
the applicant is of the opinion that the only reason that
20 he was allowed to supply a copy for a coloured market is
that he was already presumed to be coloured by the
rationalisations and classifications of his employer.
Furthermore, he was allowed to sub copy for a black title
but was not allowed to supply the title with the story.”

25 Mr Lewis, that is – I can't think of any other expression than to

say it's a load of rubbish. --- H'm, I beg to disagree.

Yes okay. You also used the expression that you were –
no need to go to the page. I'll just give you the quote. It's in
your bundle at page 53. You said you were “cast as some kind
5 of coloured in a racist parable”. --- Ja. Sorry where? My
bundle?

We don't need to go there. That's your expression. You
were cast as some sort of coloured. Sorry, you were cast...
I'll give you the exact quote:

10 “...cast as some kind of coloured in a racist parable.”

--- Right. It's sad. It's sad.

Could you briefly... H'm? --- It's – it's very sad.

It's very sad, alright.

COURT: Sorry, this is respondent's bundle 53?

15 MR KAHANOVITZ: Applicant, sorry, applicant's bundle.

COURT: Ja.

MR KAHANOVITZ: Page 53.

COURT: Oh okay. --- Ja if I can just perhaps remind you.

MR KAHANOVITZ: Sorry is that...? --- Sorry, can I just
20 perhaps remind you? “Other coloured”.

Excuse me? --- Sorry, there was a category called
“Other coloured”.

Yes. --- You could, if you were white, classified white
you could be reclassified coloured, as in other – “Other
25 coloured”.

H'm? --- The – the results of racial... If you cross that – that line. I suffered because of the system of apartheid in this country articulated by Naspers.

I just want to put it to you that it is you that are obsessed
5 with racial, cultural and religious stereotypes. You are the person who is obsessed with identity. --- Right. Right.

I just want to tell you... --- No I want to see this.

H'm? --- I want to see – I want to see where this goes.

Alright. --- I'm...

10 When it comes to the Jews you are obsessed with who is orthodox, progressive, secular, liberal. You want to tell us about the Boers. You want to tell us that Taljaard is a *dominee*. You want to tell us that Annelien Dean is from Bloemfontein. You tell us that Zulpha Khan who testified
15 against you in your intimidation case has a servant mentality. You tell us that Tony O'Reilly is the lying Irishman. You tell us that Media 24 is the D F Malan organisation. Those are your obsessions. --- H'm, I put it to you I actually spent two years in the USA and none of these issues were a problem. They're
20 a progressive country with democratic tradition. If you're a black person you can become President. Doesn't matter actually what your ethnic... Ethnicity in the country, it's... South Africa I find it – it's a... We haven't overcome race, ethnicity and class. We still blink at... I don't see any, any
25 progression forward. It's just more of the same old shit,

excuse my French.

COURT: Ja please. I don't mind you quoting what people have said and what you said, but you will not use abuse language. --- Sorry.

5 In answering a question. Do you understand that? ---
(No audible answer).

MR KAHANOVITZ: I want to put it to you that what you do and what you're doing in this trial is you explain the conduct and motives of others to yourself through the prism of race and
10 religion. You relieve yourself of the obligation to examine your own conduct. --- Right, right.

And you use these phrases as an excuse for your own antisocial behaviour. --- Right well, on the one – you see, on the one hand you – you're saying I'm the creator of this racial
15 parable; on the other hand you're saying well, I'm just seeing it through a prism. So there's a contradiction in your – in your line of argument. There is a – a prism of racial, you know, racialized history. It's something that is – that you are confronted with directly on a day-to-day basis in any newsroom
20 in South Africa. The problem is – is if you – if you lack the capacity, the tools to deal with that prism, essentially what happens is you end up reflecting back that – that history. We – we don't go forward. There's no progress. Essentially what happens is that the – the publishing industry, the media
25 becomes a conservative force so we're trying to conserve our
05.11.2009/14:43-16:05/EdB /...

and – and protect, you know the essential... Media 24 is looking for protection for the – that absurd, abnormal society that was created as a result of – of racialization. We need to move forward and – and my attempts to – to indicate a means
5 forward were met at Media 24 with resistance.

M'Lord, just for purposes of the record, the reference to Zulpha Khan and describing her as having a servant mentality is at page..., respondent's... --- Sorry, I'd like to object. The respondent's attempting to raise an issue that was brought
10 before a court. He's entitled to bring the judgment and the proceedings of that court, but to – he wants to raise issues that are just hearsay.

Mr Lewis, I'm just quoting your own words in one of your own online postings. If you want the exact language it's your
15 own... --- The truth is Zulpha Khan lied in her affidavit and she lied in court. Explain that.

M'Lord, do you wish to take the lunch break now?

COURT: No. Ja we're not, we're not going into argument. Please just give me the reference there in the...

20 MR KAHANOVITZ: That's page 67 under the “Graphical(?) Pinocchio”. Then the reference ...(intervention)

COURT: The page 67 of what?

MR KAHANOVITZ: Of the respondent's bundle. Page 68 is about the “lying Irishman, O'Reilly & Associates”, which is
25 what he calls Independent...

COURT: Yes.

MR KAHANOVITZ: It's his description of Independent Newspapers and then on the same page is the, that we are the "D F Malan organisation", alternatively known as "Lobotomedia
5 24". --- It's supposed to be "Mediocrity 24".

COURT: Alright, we will take the adjournment. You remain under oath.

COURT ADJOURNS (at 16:05)

COURT RESUMES (at 14:42)

10 COURT: Mr Lewis, you're still under oath.

DAVID ROBERT LEWIS: (s.u.o.)

CROSS-EXAMINATION BY MR KAHANOVITZ (CONTINUED):

Alright, I want to move on to your contention that you were discriminated against as a Jew and you claim that you were
15 prevented from observing the Jewish Sabbath. --- Right (speaking in an undertone).

Correct? --- Right.

Okay. Now you agree with me that if one actually applies Jewish law, the Orthodox Jews have to observe the Sabbath in
20 a particular way? --- H'm...

There are actually rules? --- Yes, there are rules.

Ja and there's a distinction made between those Jews who are observant Jews and those who are not and... ---
Excuse me, it's – it's a bit of an oxymoron.

25 Really? --- H'm, the practice of Judaism is not solely

bound up with law. It's also bound up with customs and traditions.

No I don't disagree with you. --- Right.

But... --- So the – the general practices are actually
5 customs of the community as such.

But there are, if you are Orthodox, then there is a particular set of views about how... --- Right.

...an observant Orthodox Jew would observe the Sabbath. --- Right, h'm I – I don't maintain that I'm an
10 observant Orthodox Jew. My views are more in line with Reform or Progressive Judaism. I come from an Orthodox background.

But I'm assuming you're not going to disagree with me that when it comes to people claiming that working on the
15 Sabbath would offend a central pillar or tenant of their religious belief... --- Right.

Then the kind of Jew that would have..., a basis were made in that claim, is one who is indeed observant? ---
H'm..., not.

20 If you don't observe the Sabbath... --- Sorry? If I..., what are you saying?

If you don't observe the Sabbath you cannot come along... --- No.

And claim that it would discriminate ...(intervention) ---
25 No you see, no. Sorry, sorry.

COURT: Just wait. Mr Lewis, please let him finish his question. --- Sorry, alright.

MR KAHANOVITZ: If you come along and say, "I do not observe the Sabbath, but if – you're discriminating against me
5 by not allowing me to observe the Sabbath", all you are is a hypocrite. --- H'm, I don't believe I'm saying that I'm – that I'm not observant.

No, no I'm not asking you about you. --- Ja if...

I'm asking you as a general proposition. --- I dis...

10 Do you disagree with my general proposition? --- H'm, I guess so. I – I... I would probably seek guidance on that, on that issue.

And also just as a general proposition, if a non-observant Jew trades on the genuine beliefs of observant Jews for their
15 own personal gain, then that would be fundamentally immoral. --- H'm, you're making an assumption as to what Judaism is.

I'm just asking you. I'm not asking you about you, I'm just, I mean... --- No, I – I hear you.

Just assess the moral... --- I – I – as a general
20 principle...

As a general principle. --- You're assuming that all Jews are the same?

No, I'm not assuming anything. --- Well...

In fact, I'm assuming the contrary. All Jews are not the
25 same. --- You... You see the – you're assuming that there's

only one way in which to observe *Shabbat*.

No, I'm not assuming that either. What I'm putting to you is there are Jews who have genuine beliefs about observing the Sabbath in a particular way. --- H'm.

5 If you are not one of those Jews... --- Right.

...you should not latch onto the beliefs of those Jews if you don't actually observe their beliefs and claim that you are being discriminated against if you are not being given the latitude. Let's put it that way. --- I actually, right, I – I don't –
10 I don't actually see your point.

You don't see the point? --- No.

Alright. Well it would boil down to something fairly, I mean fairly simple. If you go to your employer and say, "I need to have Saturday mornings off because I'm Jewish",
15 surely your employer could ask you: Are you an observant Jew? --- H'm right and the...

Because not every Jew, you've already pointed out not every Jew needs to take Saturday morning off. --- Right, and the – and the problem that I have is – is that that answer has
20 already been given by yourselves. You've already determined that I'm not Jewish, according to some weird system that you have that discriminates against me.

I don't understand what you're talking about that... --- You've – you've – your – the... Your client has already on – by
25 his own standards or his own systems has already excluded

me from the – from the community. He's already excommunicated me from my own religion. There was no attempt to – to get a – some kind of expert or Human Resources didn't even bother to do any research.

5 Well my client has, on the facts my client has a very simple answer to your case, is that there was never any discussion with you in which you ever raised a problem that you had about your working hours and claim that it impacted on your ability to practice your Judaism. --- We – we had a,
10 right. We had a conversation at length at the evaluation meeting as to whether or not I might be contradicting myself as a Jew.

Well, I just need to put it to you that they say that there's no such conversation ever took place. --- Was...

15 Why would it take place at the evaluation meeting, Mr Lewis? --- You've made a whole bunch of spurious allegations. You've – you've even gone so far as to allege that my Judaism is an invention. You've gone so far as to allege that Robbie Jansen, the article is an invention. I mean, how
20 far do you – are you really, expect me to – to even believe you?

It's not about me, Mr Lewis. I just put what my client tells me to you, to test the truth of your version. --- Well, I'll put it to you that – that your client has an authoritarian dogma
25 that is for some reason a result of the N G Kerk and so forth.

I know that..., yes.

COURT: Well let him answer, Mr Kahanovitz.

MR KAHANOVITZ: Sorry, sorry M'Lord. --- So your – your client has an authoritarian dogma. It's a dogmatic discourse
5 that – that stems from an oppressive, h'm, system. It's – it's a heretical form of – of what is known as the, as the Reformed Protestant belief. The *Afrikanervolk*, you know, you obey the *Afrika* – *Afrikaner* is above everyone else.

Would you agree with me that if they were going to
10 discriminate against you as a Jew by insisting that you worked hours that conflicted with your religious beliefs, I mean logically it seems to me there would need to be a discussion.
--- Right and I – I don't have any conflict with working on a Saturday morning. I've – I've – that has been the status quo.
15 That is the custom and tradition in this country.

But you've already..., sorry. --- I'm not an ultra-Orthodox Jew. The ultra-Orthodox Jews would have a problem.

You've already conceded yesterday... --- Right.

20 That there was never a discussion where you actually sat down and said to them: The hours that I am required to work on a Friday night detract from my ability to practice my faith.
--- Right. The – the problem with this is that you don't actually have a – a *bona fide* contract setting out those
25 working hours. It hasn't – there's been no agreement as such.

On your – on the version that you're putting up now you're saying that the time that this issue was in fact discussed was at the meeting where you say you were dismissed. --- Yes and – and it seems to be your contention
5 that since I didn't bring up that matter with regard to the Saturday and – and the one-on-one meeting, that since I – I seem to have now, I've given carte blanche to the company that – that's..., ja. If – if I don't work on a Saturday morning, sorry if I work on a Saturday morning that somehow excludes
10 me from *Shabbat*. I'm not... I don't see the logic.

Well I'm just also – I need to point out to you that your version made your claim illogical because what happens on now on your version is you have a discussion about the hours conflicting with your faith and that's your last day of work. So
15 how...? You didn't work after that. --- (Witness chuckles).

So your hours could not have been conflicted with your faith. --- Right I got, ja. Well I, this – I – I really seek protection from the Court from this kind of discrimination. It's – it is so prejudicial.

20 H'm...

COURT: Sorry, I didn't understand your answer. --- H'm...

The question was put to you that your ...(intervention)
--- The, about the... The question is being put to me that since the discussion resulted in my dismissal, that I've got no
25 grounds for questioning the dismissal.

No, no on the contrary, I thought the question was the discussion at which the issue of your Jewish, your conflict with the *Shabbat*... --- Right.

Was on your last day which was the day 30 May. ---
5 Right.

Which was the day of the evaluation meeting. Now... ---
It – it doesn't seem to follow that – that since the – the company reaction or policy to *Shabbat* on a Friday conflicts for some reason with the policies of the company and I was let go,
10 that that sort of derogates from my own beliefs. I don't see the logic.

MR KAHANOVITZ: The logic is simple, Mr Lewis. If such a policy existed, which we deny and we also deny that there was any such discussion, but be that as it may, even on your own
15 version it could never have impacted upon you because you weren't working there anymore. --- H'm, there were two occasions in which the deadline was extended by Annelien Dean from twelve o'clock to 4:30 in the – p.m.

Yes in circum ...(intervention) --- And as a result...
20 Sorry. --- Yes and as a result I was forced to – to work into the Sabbath. I have a problem with working into the – into Friday night *Shabbat*.

You describe yourself, page 55 of the respondent's bundle, your referral to the CCMA. You say:

25 “Although I am from an Orthodox background I consider

"myself a secular Jew."

--- Right.

COURT: Sorry, 55 of...?

MR KAHANOVITZ: 55...

5 COURT: Of what bundle?

MR KAHANOVITZ: Of the respondent's bundle. It's the annexure to the 7/11(?) (indistinct – not close to microphone).

--- H'm... Can I respond to that?

COURT: Yes, yes of course.

10 MR KAHANOVITZ: Please, that's why I'm putting it to you. --- Yes. It's in point 3.3 of my response to amendment. It should be in the pleadings. I can find the page.

I have just a simple and now my understand... --- It's a simple response. No, this is a simple response.

15 Yes. --- Justice Dennis Davis at a recent Limmud conference in Johannesburg quoted Rabbi Zvi Yehuda Kook, the first chief rabbi of Israel who believed that Judaism rests on three pillars.

Sorry, what page are you on now? --- H'm, this was –
20 where is the pleadings? H'm... Response to amend..., 81 to 114.

COURT: Of the pleadings? --- Yes.

MR KAHANOVITZ: Ah, you're at page 93? --- 93, ja.

Of the pleadings by paragraph 33.3. --- Right.

25 "Judaism rests on three pillars, the Orthodox, the secular

“and the Reform. Remove one of the pillars and the whole ecology is disturbed. In a sense Judaism is an ecosystem, not a code of laws.”

Well, one of my understandings of the difference between
5 secular and what some people call observant is that secular Jews do not require synagogue attendance for observance of the Orthodox laws about the Sabbath as being an intrinsic part of their faith. --- H'm, that's – that's your opinion.

No it's not my opinion, it's... --- You're not an expert.

10 It's what distinguishes the secular from the observant.
--- It doesn't make them not Jewish.

I'm not even beginning to suggest that it makes them not Jewish. They practice their religion in a different way. --- And the issue – the issue isn't the *halakhah* as such, it's the
15 customs and traditions of the Jewish faith.

But Mr Lewis... --- The same way you're saying you would – you're arguing that if a Christian for instance doesn't go to a service, a Christmas service that – and that they attend Christmas, that they're not Christian.

20 No, all I'm putting to you is that for certain kinds of Jews, whether they do or don't for example work on the Sabbath or whether they do or don't light Friday night candles or whether they do or don't eat crayfish is not for them a central pillar of their faith. --- Sorry, excuse me, it's not up to you to decide.

25 It's not something I am deciding, Mr Lewis. --- It's...

It's general knowledge about..., it's a point you make yourself in your documentation. --- It's a recommended, it's a question of the recommended course of action versus the obligations according to the *halakhah* in terms of the 613
5 *mitzvot*. There're 39, h'm, *melacha* – *melachot*, 39 *melachot*. The Judaism looks at the *melacha* in terms of *gezerot* and *toledot*. So you would need an expert.

Are you suggesting that it discriminates against every kind of Jew if they have to work on a Friday night? --- H'm,
10 I'm... Every kind of Jew?

Yes. --- God.

Well you've already pointed out that you don't feel that it would discriminate against you as a Jew to work on a Saturday. You could live with that. --- I can live with that.

15 Okay. Well, you must then accept that there are Jews who can live with working on a Friday night as well. --- H'm...

They don't regard it as discrimination. --- Yes but they – those Jews aren't me, are they? The – Judaism is not a monolithic religion. There's no essential dogma or... I can
20 find...

Mr Lewis, there may not be monolithic and it may not be dogmatic, but whatever it is, you can't just make it up as you go along. --- Right and I can prove to the Court that my views are pretty – very much in – in the same vein as Progressive
25 Judaism.

Are you a member of the Progressive Jewish community?
Do you attend their synagogue? --- H'm yes, I do. I also
attend Orthodox Gardens Shul just for sake of convenience.

Because elsewhere in the documentation you describe
5 yourself as being a "multi-faith" person. --- H'm, I don't think
that's what I said, did I?

Well, you did. --- I come from – my mother was an
Anglican and she converted, so there is an issue of multi-faith.

The letter that you wrote... --- What's the faith...
10 ...to the Cape Jewish Board of Deputies, page 66 of
respondent's bundle. --- Right, right.

Maybe you should just read that letter into the record.
--- Sorry, perhaps we can just sort of for the record, the – it's
the Cape, sorry, Board of Jewish Deputies...

15 Sorry, the South African Jewish Board of Deputies. ---
Just they..., they're not a religious organisation. They're a
community-based organisation. They service the community
on various issues.

I'm not having a ...(intervention) --- It's not a..., you
20 know if this was a letter of correspondence between me and
the Beth Din I would – it would be a different – of a different
order.

I just want you to read ...(intervention) --- This is not a
– this is not correspondence between for instance myself and –
25 and a rabbi, it's correspondence between me and a Jewish

community organisation.

Now what difference would that make as to the way in which you presented your views? --- It's just you're trying to raise an issue as if this is a – some kind of letter with a religious structure. It's not the Beth Din.

COURT: Just what page is it?

MR KAHANOVITZ: M'Lord, it's pages 61 to 62 of the bundle. Or maybe I can read the...

COURT: 2... --- Sorry which? Your bundle?

10 61 to – which bundle?

MR KAHANOVITZ: Of respondent's bundle.

COURT: I've got a letter addressed to Gwynne Robins.

MR KAHANOVITZ: Yes.

COURT: Is that...?

15 MR KAHANOVITZ: That is the, she is... --- Right h'm..., and it's in response to a letter that I received from Gwynne.

You'll see there's a ...(intervention) --- So there – there is a – you can't just read one letter. It's the response to a letter.

20 COURT: Well you can... --- There are letters in my – in my bundle.

Mr Lewis, if you wanted the other letters to be read in, then all you need to do is just say so. --- Alright.

And will you just wait for the question? There's a letter. It's going to be read into the record and then you might say it's

out of context, in which case then you can put it in context.
You will be given an opportunity, but please stop interrupting
like this. --- (Inaudible).

Mr Kahanovitz.

- 5 MR KAHANOVITZ: Mr Lewis, this is a letter that was in your
possession which you did not discover for purposes of these
proceedings, correct? --- Sorry, this letter was...?

You had this letter in your possession and it pertains
directly to this case. You did not make it available as one of
10 the documents. --- It's confidential. It's a confidential letter.

Confidential doesn't apply, Mr Lewis. You're supposed to
make available all documents that are relevant for the
determination of the truth. --- I don't see it as any – having
any relevance.

- 15 You're still now, you're even prepared to point fingers
and say: Well, where is the – where is the letter that I was
replying to? --- Right.

You have that letter. --- Well it's...

- You want to make it available, make it available. ---
20 Well I – I think I should. It's on page..., page 40 of my bundle,
letter from Jewish Board of Deputies.

COURT: Page 40? --- 40 ja.

Of your bundle? --- That's right.

And..., the first bundle.

- 25 MR KAHANOVITZ: For purposes of the record, M'Lord, then
05.11.2009/14:42-15:46/EdB /...

this is part 1 of the applicant's bundle. It's a letter from the South African Jewish Board of Deputies, a deputy director Gwynne Robins to David Lewis, dated 24 April 2007. Now Mr Lewis, the fact that you have that letter in your bundle that you
5 didn't make available, your reply, to the Court... --- What? Now you make, no.

You've selectively chosen which documents you wish to show to the Court. --- No. I've – I've made it available because you – you've gone and taken the trouble to make my
10 documents available to the Court. I don't see any need to reproduce the information.

Mr Lewis... --- You've assisted me, thank you very much.

Well, you are no doubt aware that there's an offence
15 called perjury. You understand what perjury is? --- I don't see the relevance.

Well the relevance is, is if you come to court and tell lies it's a criminal offence. --- Are you accusing me of lying?

Yes. --- Why?

20 Because in the letter which you withheld from the Court... --- Excuse me, I didn't withhold any letter. I presented it.

No, the letter which you withheld is at our bundle page 61. --- Yes, you assisted me in providing. I didn't have – it was an email document that you dug up somehow, right? And
25 you're presenting it as evidence. I've presented the – the
05.11.2009/14:42-15:46/EdB /...

corresponding letter, the document.

Now well let's move on then to... --- Ja no it's...

I hear what you have to say. Let's move on to what you
said in the letter. For purposes of the record the word
5 *Shabbat* is spelt S-h-a-b-b-a-t. Page 62 you say the following
in your letter to Gwynne Robins:

“While I have great affinity with my fellow co-religionists,
I find it difficult to maintain a Jewish identity since I have
a multi-faith family and relatives drawn from various
10 faiths. Furthermore, as a student of comparative religion
I find truth in all of the earth's major faiths. I am
however what one could call a philo-Semite...”

And it's spelt p-h-i-l-o S-e-m-i-t-e.

“...as Milton Shain,” S-h-i-n(sic), “would have it, some-
15 body who either self-identifies or is identified by others
as a Jew. Furthermore, my case is strictly speaking not
about the Sabbath, but rather aspects of labour law that
involve discrimination across the board by a company
which has failed to make submissions to the TRC and
20 which continues to maintain a form of racial segregation
in its newsrooms while advocating racial profiling and
conformation to racial stereotypes. I am not so much
asserting my religious or racial identity here as my ethnic
heritage in the context of a career in which I crossed the
25 colour line under apartheid, worked for various struggle

“newspapers and have contract from across the spectrum of society.”

That's what you wrote. --- Right.

Well, your case as you so eloquently put it in your letter,
5 is not about the Sabbath, it's about looking for a platform to launch an attack against Media 24. --- H'm... If it pleases the Court, I have a problem with the – there's a dual purpose here because on the one hand Jews are an ethnic minority. On the other hand Judaism is a – is one of the world's major religions.
10 So I believe we – we're talking at cross-purposes. The respondent is bringing up a – a correspondence between me and a Jewish community organisation, not a religious body. I was grappling with this issue because there was this presumption by Gwynne Robins that the issue was that I'd
15 been forced to work on Saturdays and clearly that is not the case. So you know, it's a question of my due rights. The case is about my due rights as a Jew.

It's not. --- Oh please.

In fact, you (indistinct). You went to the Jewish Board of
20 Deputies demanding that they take up the cudgels on your behalf. --- Right and they don't...

(Indistinct). --- Yes and they don't act *pro deo*.

Would you have a problem with them not thinking that your case was a genuine one? --- No I've got a problem with
25 them not acting *pro deo*.

I want to...

COURT: Mr Kahanovitz, before you, just sorry, I seem to have lost the letter that's... The page 62 letter....

MR KAHANOVITZ: Yes.

5 COURT: Is a response to this...

MR KAHANOVITZ: To the letter from, there's a letter from the deputy director at page 40 of the first part of applicant's bundle.

COURT: Ah, yes thank you, of applicant's bundle.

10 MR KAHANOVITZ: Yes.

COURT: Then just hold a second.

MR KAHANOVITZ: It's, I think what the witness is referring to may be something in the first sentence.

15 "Dear David. We believe that you are fighting a case in the Labour Court on the grounds of discrimination because you have been forced to work on Saturdays."

--- Right, which is clearly not the case.

Well it's not strange that they might mention Saturdays because that is in fact the major part of the Jewish Sabbath is Saturday. --- Right. In fact it's from a Friday evening until Saturday, Saturday evening sunset.

Yes you're right, but most of the hours of the Sabbath fall on the Saturday. --- But it begins on a Friday.

You are a 100% correct. Just to also state the obvious. 25 You do not wear a *yarmulke*. --- Right, I don't wear a *kippot*.

And in fact your hairstyle appears to indicate that you have..., I don't know is it Buddhist or Hare Krishna or is it a fashion statement? What is it? --- What would you do if you were a bald – balding 40-year old? Do you...?

5 I don't know, Mr Lewis. The only reason I ask you is you can say that it has no reference to any religious affiliation and then I will... --- My hair, no my hairstyle has no relevance to any religious anything.

You made various claims about discriminations against
10 Muslims and Islamic culture. If I understand it correctly you're not proceeding with those claims? Because when the Judge asked you... --- H'm they've kind of been subsumed. It's just the general problems that I had with the content management. These are just some of the issues that arose in the newsroom.

15 M'Lord, I'm going to assume that they are not part of this case anymore. If I can't make such assumption, unfortunately I'll need to cross-examine the witness. --- No it's..., whatever. It – it doesn't seem that there's any point in pursuing them.

COURT: So I take that you're not pursuing it? --- H'm...

20 For the purposes of this case. --- I'm not pursuing the issue. It's just a – the – the – those events did actually occur. It's just an example of some of the problems encountered on a – on a community newspaper.

MR KAHANOVITZ: Well M'Lord, so I'm not sure what to do
25 now because they didn't...

COURT: He says that he's...,he says that he's not. It's no point. No...

MR KAHANOVITZ: He's not pursuing that. I just place it on record that we dispute his entire version about the – whatever
5 events he said occur in relation to whether it's a history of slavery or refusal or – to publish, what's it, material dealing with Islamic art exhibitions. I want to then proceed to deal with your... No sorry, before I do so I need to correct something that I put to you earlier. Apparently I put it to you
10 that Annelien Dean phoned Sedrick Taljaard after you had sworn at her when you had had the discussion about the Robbie Jansen. --- H'm.

Her version is that she phoned Mr Charles, not Mr Taljaard. Is that right? Sorry, the other way round?

15 **DISCUSSION ASIDE**

MR KAHANOVITZ: Oh sorry, apparently I put it to you that she contacted both Mr Taljaard and Mr Charles. The correct version is that she contacted Mr Taljaard. Look, I just must put that to you and you can comment. You weren't there. ---
20 So are you asking me where – where I was when Annelien phoned Taljaard?

No, I'm just – need to correct something that I put to you because what I put to you was factually inaccurate. --- H'm, I've got absolutely no way of knowing what had transpired
25 between the two of them.

And the other thing I need to put to you is that Annelien Dean doesn't come from Bloemfontein. --- H'm... The, all I had is – is what she told me at the time. I've got – I don't have any prior knowledge. It's between her and her own god
5 (indistinct).

Well, why would she tell you she comes from Bloemfontein if she doesn't come from Bloemfontein? --- I've got absolutely no idea why she would change her testimony.

Alright, now you claim that you were dismissed without a
10 hearing on 30 June and... Sorry, not the 30th... You were dismissed on 30 May. Why do you say you were dismissed?
--- (Witness sighs). Well...

And I ask you that in the context that we know you had a contract that was expiring a month later. --- Oh Jesus no,
15 h'm, it's just a – a problem with term – terminology. The law makes provision for a dismissal. The problem with the law as it stands is that you – you're supposed to make an application within one month. The respondent took such a long time complying with my – the correspondence and requests for the
20 contract that that term actually expired and I wasn't prepared to risk a – a lengthy condonation procedure with – with the respondent raising objections.

I've got absolutely no idea what you're talking about. ---
So the – the – what I'm saying is, is that the case, however
25 way you look at it the – whether it was a unfair dismissal or

failure to renew contract of employment for a – a prohibited reason, the issue is, is that there was discrimination.

I just want to put it to you that you were actually never dismissed. All that happened was you were told that you
5 would be paid out until your contract expired and you must not come to work. --- Right and you don't have a – there's no legitimate contract.

That too, okay, but why is it that you pleaded... --- So how do you, how are you – how is... How is it, sorry how is it
10 possible to even make any of these spurious allegations and claims without the presence of a – of a *bona fide* contract of employment? You're presuming that there's actually a *bona fide* contract. There was an employment relationship between me and the respondent.

15 Alright. I don't intend to argue with you about that. I'll argue about it at the end of the case if need be. What I do need to deal with is your claim that you had an expectation that the contract would be renewed. --- Right.

I find that very difficult to believe because your own
20 testimony is that at the evaluation meeting they told you or you understood that they were extremely unhappy with your performance. You recall your evidence yesterday? --- H'm, so what is your point?

Well how...? You know they're not happy with your work.
25 You know that the editor has now spiked two of your articles.

--- Right.

You know there's been a complaint about your ability to subedit copy. --- H'm, right.

How could you have a realistic expectation that they're
5 going to offer you a new contract? --- H'm, I would have
thought that there would have been some kind of disciplinary
process. We're talking about my – my, you know, my ability to
earn a living, my future prospects, my career as a journalist.
This is not just a – selling ice-cream cones. The – the...

10 Yes, can you answer the question that I put to you? --- I
– I believe there was a reasonable prospect of a renewal of the
contract. I was – I was made promises by Warren Charles with
regard to the renewal of the contract. In fact I think there was
a – a reasonable assumption that there would be actually a
15 valid contract between me and the – the company and that the
company wouldn't expect me to do anything contrary to the
Labour Relations Act.

But you yourself are, let's assume that you arrived on
day 1 and on day 1 you thought that there was a chance or a
20 good chance or a fantastic chance, whatever, that your
contract was going to be renewed. --- Right. I would be
faced with a similar problem if I arrived...

Sorry, can I finish the question? --- Yes.

And then it becomes clear that the relationship is not
25 going to work out. How can you have a reasonable

expectation of renewal in circumstances where fairly shortly into the contract the relationship between the parties has broken down? --- H'm, no I – I actually don't see that. The – I was what...

5 But you your... Sorry, sorry I've interrupted you. --- So you're saying that there was a breakdown of – in terms of the relationship, between me and the company?

Well there clearly was a breakdown in the relationship. --- I don't believe that because I don't think I would have
10 made an appointment to see Rashid Lombard if I didn't think that there were reasonable prospects.

But even on your own, forget about what my clients have to say, on your own version you've said that if you had known... --- Right that's in...

15 Excuse me... --- Right, hindsight ja.

If you had known that they engage in racial profiling and if you had known that they had not been to the Truth and Reconciliation Commission you would never want to work for these people? --- H'm, if I had known that when these
20 obstacles such as racial profiling were encountered in the workplace and that there were – would be no opportunity to rectify the issues through some kind of a editorial process or even a disciplinary, even you know, basic – basic conditions. Had I known that I don't believe I would have sought
25 employment at such a company.

Well by the time you say you had this expectation of renewal you knew all these things. I can't see how even on your own version... --- No you are, no, no it's a – it's a problem with the way the case is laid out. It doesn't reflect the
5 true chronology of the course of events.

Well, when did you have this expectation? --- I had the reasonable expectation on day 1. I was...

And did you still have this reasonable expectation on the day of your evaluation meeting? --- I – I thought that the –
10 there was ample experience in the company to deal with any conflicts that might arise. I don't think anyone was, what's the word? I don't think anyone was, h'm..., not aware of that – that there would be such obstacles, that such obstacles would present themselves. This was a process of nation building,
15 reconciliation and so on. That was the – the general gist of the propaganda issues by the company itself.

Any reasonable person though, if they went to a meeting which terminated with them swearing at the employer, would hardly think that... --- H'm, I don't believe I actually swore
20 at... I didn't have much of an opportunity to – to really respond, you know. (Witness chuckles). It's a presumption that you're making.

The anti-Semitic cartoons that you've put into the bundle, what do you want the Court to do with them? I mean, why
25 have you included them? --- There're two – two cartoons.

One ...(intervention)

No, please don't take me through the cartoons. ---
Alright.

I just want to know the general proposition or what
5 they're doing there. --- Yes, they are evidence of the
company's disreputable past and a fail – their failure to deal
with – with the fact that they continue to oppose nation
building and reconciliation. They...

But they're from a publication called The Owl. --- Sorry?
10 You photocopied them from Milton Shain's book on anti-
Semitism. --- Oh no, no it's the other... Hang on, hang on
you're – there're two sets of – of cartoons.

Yes, the one's from The Owl. --- Right.

From – about the turn of the century. --- Yes.

15 What are they doing in your bundle? --- H'm, they're
evidence of the anti-Semitism in this country. There's a also a
article by I think it's Colin Bunting or Brian Bunting about the
rise of the South African Reich.

Yes? --- Which details the, essentially the ties that D F
20 Malan and various Naspers employees had with the Nazi
Germany and the Nazi Party.

So... --- There's a history of...

Now what must the Court do with those cartoons? ---
H'm, it's – they should assume that there's a history of racial
25 exploitation and racial – theories of racial superiority on the

part of the corporation and that those theories and ideologies are still prevalent.

I suppose I must put this to you. If one had to follow your logic one would need to draw a line from D F Malan, the
5 Nazis, Hendrik Verwoerd, the Transvaler to for example whoever edits the Sowetan today? Is that a...? --- It's a – it's a very interesting hypothesis.

Yes well it's your – it's what you want the Court to accept? --- Yes, I – I believe it should be accepted by the
10 Court.

Right, at least we now understand that. Another issue that I must put to you that came up was that, and also as to why you couldn't possibly have had any expectation of renewal. The editor adopted the view that you couldn't lay out
15 properly. Page 29 of respondent's bundle is an example. Do you want to look at page 29? --- It's a fantastic proposition but the fact is that I – I've got extensive experience in publishing.

Well so you claim. --- Ja.

20 But they were very surprised that given your claim of experience at the level that you claim, that you would produce work of... --- It was an isolate... Right, we've been here before in my testimony under oath. It was an isolated example wherein which late advertising held up production of the – of
25 the page. It is also an example of lack of content. So it's an

issue of content management.

Alright. --- The data line wasn't fast enough.

But if you were an editor and this is the kind or quality of work being produced by a member of your staff you too would
5 be concerned with what is at page 29? --- H'm, sorry the – the... Are we speaking about the right – same article?

COURT: It's page 29 in the respondent's bundle.

MR KAHANOVITZ: Respondent's bundle. --- So the – sorry, the question again?

10 If you were the editor and this landed up on your screen as completed work, you would have reason to be concerned to say the least. --- H'm right. If – if this was something that continued to – to occur I might have reason for concern.

Well, even if it occurred once you would have reason for
15 concern because whoever is supposed to be doing this is supposed to be a professional. --- H'm, it's in – within the context of a – the launch of four new editions. The rollout of a brand new newsroom in which the mechanics, the – the actual systems weren't functioning properly. So the – the systems
20 weren't in place. The – I – my evaluation report actually brings up the problem of proofing, various issues.

Alright page 32 is an article that you uploaded onto the system. --- 33, 34...

About Hotep Idris Galeta (H-o-t-e-p I-d-r-i-s G-a-l-e-t-a).
25 --- Excuse me? H'm, the author of the page is A Dean.

No but she's not... That reflects who was on the system when it was printed out. --- The – the problem...

You were the author of this article. --- I'm not the author of the article. It – it clearly says there:

5 “Author: A Dean. Date: 5/27/2006. 2:46:40 a.m.”

The top you will see it says:

“Document: People's Post; Reporter Entertainment:
DRL.”

10 Stands for David Robert Lewis. --- Ja, h'm, ja that's the data line.

Oh, so you deny that you wrote this article? --- I'm – I'm denying. I did – no, not in a million years. (Witness chuckles).

15 Tell us about this... You say there was a directive issued not to what, talk about the struggle? --- Ja.

Who issued this directive? --- Sedrick Taljaard.

In what form was it issued? --- He said: Don't bring up the struggle. Don't bring any of that negativity in the newsroom.

20 Is this to you or to staff? --- I must – this is just to me and I must just do whatever Annelien tells me to do.

Oh and in what context did this conversation occur? --- H'm, in the context, there was a..., we'd just arrived at People's Post and I requested some kind of editorial direction
25 with regard to the – the content.

Moving on to deal with your claim that you were a struggle journalist and the claims that you make about your roll in the liberation struggle, because one of the initial claims that you brought was that because of the roll that you played in the
5 liberation struggle your salary was discriminatory. --- H'm.

I'll just show you. It's at page... M'Lord, it's page 50...
It's respondent's bundle page 55. I'll read it to you.

"Discrimination against anti-apartheid activists and struggle journalists.

10 I believe I am being unfairly discriminated against, not only because of my religious background, but because of my history in the anti-apartheid struggle and work for the struggle press. Although I edited supplements for South, managed the production for an education supplement in
15 the New Nation, a written copy for Grassroots, Vrye Weekblad, Cape Times and Thisday, I received an entry level salary in a junior position."

Just explain the logic in that. --- It's roughly the same salary that I would have received working for South, if there hadn't
20 been civil unrest.

So because you are, I don't know if you cast yourself as a hero of the liberation struggle or someone who played a major role in liberating South Africa from oppression, but your salary should have been higher in consequence? --- I would
25 have thought that it would have been more than what I would

have received at South.

So why didn't you reject the salary that was offered to you then if it was beneath your dignity? --- H'm gosh... They're – they're very... Media 24 is an extremely large
5 organisation. It was an entry – entry into the organisation. I – I didn't have that entry point during the struggle because of the discrimination that I experienced during the struggle, so it was an opportunity that presented itself as a result of national reconciliation. Had I known that national reconciliation had in
10 effect failed I wouldn't have sought such employment.

You say you were a member of the United Democratic Front. --- Right.

How did one become a member of the United Democratic Front? --- By joining anyone of the sister organisations or
15 affiliates.

Yes and which affiliates were you involved in? --- Oh gosh, End Conscription Campaign, Congress of South African Writers, h'm that's about it.

How were you involved in the End Conscription
20 Campaign? --- H'm...

Were you on an organising committee? --- I wasn't on a – on a committee. I was a close associate of Jonathan Handler who was one of the CEOs.

Were you actually involved in the End Conscription
25 Campaign? --- I personally knew Cameron Dugmore and –

and Cameron ...(intervention)

You personally knew Cameron Dugmore? --- Cameron Dugmore is actually a personal friend of mine.

Does that make you involved in the End Conscription
5 Campaign? --- Yes I was also, I actually paid my dues and I
also – I was a member of the South African Union of Jewish –
Jewish Students.

Because I must put it to you that the people in the End
Conscription Campaign don't seem to have heard of you. ---
10 Gosh. --- Well you're talking rubbish.

COURT: Are you going to lead evidence on that, Mr...?

MR KAHANOVITZ: H'm?

COURT: You're not going to lead evidence of...?

MR KAHANOVITZ: I'm not going to lead evidence on that. We
15 know his comment.

COURT: Oh well let's... --- You're talking rubbish.

MR KAHANOVITZ: Yes alright. Now you list Aziz Hartley as a
reference on your CV. --- Right.

Are you not currently facing assault charges involving...?
20 --- No, no. Sorry.

No? --- No.

Were you facing assault charges? --- H'm, there was a
– an incident between me and Aziz, actually as a result of this
whole incident.

25 At page 69...

COURT: Of what?

MR KAHANOVITZ: Of the respondent's bundle one of your
blog entries you say, the first paragraph, last line:

5 “Members of the Cape Bar have chosen to strip me of
any protection afforded by the law.”

--- Right.

Where did the members of the Cape Bar come into this?

--- That's Andrew Caiger.

Yes? --- Because of his opinion I've been denied legal
10 insurance.

Oh I see, alright. And then you say at the end of the last
one:

“I therefore intend suing the people of South Africa.”

I might just do that.

15 Oh, alright. Another, a theme in your collective works is
that – collected works is that everybody seems to have sold
out in the liberation struggle except for you, including Nelson
Mandela. --- Sure. Where is this?

This, page 72. --- (Indistinct) documents.

20 The fourth paragraph from the top. --- Sorry,
respondent's bundle documents?

Yes. --- Which page?

Page 72.

COURT: What is this document, Mr Kahanovitz?

25 MR KAHANOVITZ: This is one of his blog postings in which he

says, I've just read...

COURT: But this is clear, so and RB69 is also a blog posting, is it?

MR KAHANOVITZ: Yes. --- Sorry, what page?

5 M'Lord, you'll see at the bottom...

COURT: It's RB72. --- RB? I don't have that.

MR KAHANOVITZ: The URL is:

"davidrobertlewis.wordpress.com."

--- Sorry in which, respondent's bundle of documents?

10 Yes, page 72. --- I believe I was referring to the policy on... Where was it?

Well the fourth paragraph is the sentence I'm interested in. You refer to Nelson Mandela's autobiography, the Long Walk to Freedom. --- Ja.

15 And you say, I quote:

"The Long Walk to Freedom might as well be a history of the NNP..."

--- No that's...

20 "...for all it exposes is the manner in which isolation created a parallel universe in which Mandela was literally(?) brainwashed into identifying with his jailers."

--- Right.

25 So he is also a sell-out? --- No it's – it's h'm, the problem is it's the theory of history is created by big – big people. From my experience the transition occurred as a

result of a mass democratic struggle. It wasn't just one or two politicians. It's very easy to fall into the hero worship.

Yes but that's not what your sentence says. --- Oh.

You say Mandela was literally brainwashed into
5 identifying. --- Ja well he has, hasn't he? He's identified with
the – the National Party to the degree that P W Botha was
given a State, literally given a State funeral. I'd also like to
raise the issue of the – this country's policies towards
Myanmar and – and Tibet and various other places and China
10 for instance, our China policy.

You wish to do so in this courtroom? --- It's just in the –
the context of that remark about Mandela. He's – he's very
vocal about issues when it suits him, but when it comes to
atrocities it's – the same thing is articulated by Bishop
15 Desmond Tutu. I'm not the only one.

M'Lord, I don't have any further questions.

COURT: Mr Lewis, I don't have any further questions. You
may, unless you have anything additional to say... --- No.

I think then your testimony is over and I think if you
20 would go through... You can now leave the stand. --- H'm.

And then address me on what further evidence you wish
to... --- Alright.

NO FURTHER QUESTIONS

MR KAHANOVITZ: M'Lord, maybe we should just indicate to
25 Mr Lewis that he does have an opportunity now should he wish

to add anything extra to clarify anything that he had previously said.

COURT: I did ask him that.

MR KAHANOVITZ: Oh you did ask him? I'm sorry, I didn't
5 hear that.

COURT: I did ask him.

MR LEWIS: Can I just take a moment? I just want to gather my thoughts.

MR KAHANOVITZ: M'Lord, might I ask to meet with you in
10 chambers together with Mr Lewis?

COURT: Yes, certainly. We'll adjourn.

COURT ADJOURNS (at 15:46)