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**English Section:**  
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Moshe Or

**Designer:**  
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**Administration:**  
Yardena Bar-Uryan

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**English Cover:** The poet Uri Zvi Greenberg shortly after he immigrated to Eretz Yisrael in the 1920s, as painted by Reuven Rubin. An article on Greenberg by Yohanan Arnon appears on page 42e.

**Hebrew Cover:** Cover of the first issue of *Rimon* magazine, 1922, by artist A. Boehm. An article on this unique periodical by Dr. Menuha Gilboa appears on page 44e.

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**Editorial and Administrative Offices:** Journalism Studies Program, Tel Aviv University, Ramat Aviv 69978. Tel: (03)6413404, 6408665. Fax: (03)6422318

## IS A JOURNALIST LIKE ANY OTHER EMPLOYEE?

Prime Minister David Ben-Gurion, in one of his bitter debates in the Knesset with opposition leader Menahem Begin, in the spring of 1951, following Begin's quoting from the newspaper *Ha'aretz* (published and edited by Gershom Schocken), made a sarcastic remark that angered not only journalists but many members of Knesset as well, including those in his own party. "What is a newspaper?" he called out to Begin. "A person who has money hires workers who write what he wants them to write." Reacting to this, the editor in chief of *Ma'ariv* then, Dr. Ezriel Carlebach, wrote an emotional editorial, "What is a Newspaper?" (reproduced in *Qesher* No. 11, May 1992), in which he set out his professional and his Zionist credo on the essence of the ideological newspaper for the Jewish people and the task of the journalist. Forty-two years after that exchange in the Knesset, Judge Elisheva Barak of the Jerusalem Regional Labor Court issued a judgment in the matter of a claim by Joanna Yehiḡl, a journalist, vs. the *Jerusalem Post*, which begins with the words: "Is a journalist like any other employee?" and deals with the rights of the journalist vis-a-vis, or alongside, the rights of the owner and publisher.

This judgment is reproduced in full in English translation in this issue. Not only has the space of a generation that has elapsed between the two episodes failed to dull the impact of this philosophic and professional debate, but in fact it has made it more vital, primarily because of the profound changes that have occurred and continue to occur in all facets of the mass media, especially in the print media. "Is a journalist like any other employee" is only the first question that Judge Barak asks herself and the litigants. Integral in this issue are several other questions that occupy both publishers and workers in the Israeli press, as in most of the newspapers in the free world. They are: Is the managerial prerogative the employer's absolute right? If not, what are its limits? What is the appropriate balance between the owner's and publisher's rights vis-a-vis the journalist's right to freedom of expression in a free press? What is the owner's or publisher's right vis-a-vis that of the editor of the newspaper, and what are the editor's rights within his realm? What is the readership's right and that of the public in general in a free country where the media is purported to be a "marketplace of ideas,"

vis-a-vis the rights of the owners of a newspaper and its employees?

The journalist's claim against the paper where she worked is, on the face of it, a professional claim that must address the question of whether in new circumstances created at her workplace the letter of resignation she sent to the management of the newspaper is to be regarded as a notice of dismissal. If so, not only is she entitled to dismissal compensation, but to the same increased compensation that management regularly paid in cases similar to hers. However, this is "on the face of it," for in order to address these two questions, the judge had to also address a third question that derived from them, namely to what extent are the owners and publisher of a newspaper entitled to interfere in the work of journalists. The judgment thus revolved around the entire series of political, social and vocational problems raised by the takeover by investors and corporations of a growing number of newspapers in more and more countries. Populations are caught up in political disputes, social conflicts and ethnic and religious struggles resulting in situations in which a newspaper is expected to take a stand and guide the public. The judge's decision, that "the owners and publisher are protected by the basic right of freedom of expression, but that this right is balanced by the rights of editors and journalists to freedom of the press and to the expression of their own opinions," as well as her other judgment, that a situation "where the individual who controlled the press financially would also control public opinion" must be prevented, elicited lively reaction in the journalistic community in Israel and among newspaper owners and publishers.

A radically opposite view was published in *Otot* ("Indications," July 1992), the Israel Advertisers' Association organ, by Prof. Samuel Lehman-Wilzig, head of the Division of Journalism and Public Communication at Bar-Ilan University's Political Science Department, who claims that the judgment contains an element that negates the newspaper owner's right of possession. The writer includes within this right not only the newspaper's material possessions (the press, the building, etc.), but the newspaper's editorial content as well, and therefore proposes that the defendant (the *Post*) appeal the judgment and

possibly even turn to the High Court of Justice. Indeed, an appeal against Judge Barak's decision was submitted to the National Labor Court, but no doubt a great deal of ink will be spilled, or rather, many words will yet spew out of the word-processors, before the case comes up before the National Court.

Prof. Lehman-Wilzig goes so far as to state that "a journalist employed by a newspaper owner does not enjoy the right of freedom of speech" since "his situation is no different from any employee in any business enterprise." According to Prof. Lehman-Wilzig, the journalist's status is the same as that of a spokesman in a private firm. "Is it conceivable that a spokesman would act independently and say whatever he pleases?" Moreover, Prof. Lehman-Wilzig is of the opinion that "if this judgment becomes a precedent that sets a new norm in the Israeli media, the editors in chief, etc., will begin showing a preference for obedient and less independent journalists for fear of losing control over their employees and their newspaper, and all of us will be the losers."

I do not accept this approach and I am convinced that I am not alone in my opinion. I do not agree that the journalist's status is the same as that of a spokesman in a private firm, nor do I accept that as a consequence of the so-called "new norms," newspaper editors will start hiring only obedient and less independent journalists. We may have "obedient" journalists in our midst, in the sense implied by the writer, but on the whole, journalists in Israel — especially those assigned to what is left of editorial commentary on public affairs and to opinion columns, and I am acquainted with many of them — are not of this kind. Their journalistic freedom and independence is very important to them and they would fight for it to the end. Moreover, if we are dealing with possession, there is also a debate between journalists (including caricaturists and photographers) and newspaper owners or publishers as to who holds the copyright on the creator's work, or, more precisely, which part of the "possession" belongs to the publisher and which to the creator. Wherever journalists are bound to a workplace by a collective contract in which the topic of copyright has not been clarified thoroughly, "constructive ambiguity" reigns, to paraphrase Kissinger's successful term, and both sides (publishers and journalists) behave according to unwritten codes or according to precedents. Otherwise, many dozens of important books of reportage, essays and articles, caricatures and photographs would not

grace the shelves of our libraries. This applies to all the Israeli newspapers except two, the *Jerusalem Post* and *Davar*, where the rights of the relevant parties — the right of possession, on the one hand, and copyrights, on the other — were recently spelled out in a special section of each newspaper's collective contract according to each paper's specific conditions.

\* \* \*

There is more than a touch of irony in the fact that four years after the *Jerusalem Post* underwent a commercial, managerial and political-editorial revolution, following which a large group of senior journalists, headed by editors Ari Rath and Erwin Frenkel and including the plaintiff in the compensation case we are dealing with, resigned, the new owner of the paper, Mr. Conrad Black, finds himself in a political controversy on the pages of the very same paper with the persons that he himself appointed (through the Hollinger Group of Canada, of which he is board chairman). And who are they? The president and publisher, Mr. Yehuda Levy, and the person who inherited the position of the departing editors, Mr. N. David Gross. The subject of the debate is the position taken by the *Jerusalem Post* on the agreement between Israel and the PLO (this past September), with Mr. Black fully supporting the agreement, and the publisher and the former editor opposing it in the spirit of the new political line of his paper — or, in the present context, should I say: their paper? I shall not go into the content or the details of this debate, but I think that the Hebrew reader who doesn't peruse the *Post* will find the first lines of Mr. Black's article of interest. Its title indicates its content: "Israel's Only Practical Option" (September 10, 1993). Mr. Black writes:

In the four years of my association with *The Jerusalem Post*, as principal shareholder of its parent company, I have generally agreed with the paper's editorial policy. I shared the wish of Yitzhak Rabin, who expressed the hope when my associates and I bought control of the *Post* in 1989, that it would cease to be a "pro-PLO" newspaper. It did and I am proud of that fact, despite the strains variations of this policy have sometimes caused with friends in Israel and in the international Jewish community.

With regret, I must dissent from the position

adopted by the *Post* over the impending Israel-PLO agreement.

In his article the owner of the *Post* enumerates various points on which he disagrees with his editors. Four days after his article appeared, the publisher of the paper, Yehuda Levy, published a response under the heading: "Too Great a Risk" (September 14, 1993), refuting Mr. Black's arguments one by one. On September 19, Mr. N. David Gross, who had edited the paper following the takeover, joined the debate as well in an article titled "Panicky Run for Peace" in which he too rejected Mr. Black's approach. Mr. Gross presents himself at the start of the piece as the person privileged and honored to turn the newspaper from what Yitzhak Rabin once described as a "pro-PLO" paper (as quoted by Mr. Black) into a pro-Zionist one. Yehuda Levy too took the credit, to a large extent, for the changeover in the paper's editorial policy. By all indications, Mr. Black, the owner, did not like these two articles, and on September 29th he responded to both, this time not in an article but in a letter to the editor. Again, I shall not go into the content of the response, but, as I have quoted the opening lines of his previous article, which I viewed as having a certain relevance to the topic dealt with by the judge in her decision, I shall quote several closing lines from his letter to the editor which are especially interesting:

Mr. Gross, Mr. Levy and I have all written that we were proud of our roles in causing the *Post* to cease to be a pro-PLO newspaper. There is room for legitimate dissent from the Israel-PLO agreement, and I had hoped that a former editor would have used more constructively than Mr. Gross did the platform the owners of the *Jerusalem Post* have provided him.

Inasmuch as Mr. Gross is by now a retired editor, he probably won't "give a damn" about this jab by the owner, to use a common expression of Mr. Yitzhak Rabin's, who, by the logic of political developments, might yet request Mr. Black to act so that his paper will cease being so anti-PLO.

\* \* \*

Having concluded this interlude, let us return to the judgment. The issue around which Judge Barak's

decision revolves is relevant not only to the press in Israel. The commercial enterprises that continue to take control over the media and over the journalists who work in it in nearly all the free countries debate this issue on an ongoing basis. Had Robert Maxwell been alive today, he might have contributed a great deal to this debate on the basis of his experience. He was familiar with the issue not only through the British papers which he controlled single-handedly but also through *Ma'ariv* when he acquired a sizable block of shares and before he gained a majority of them. At that time he had to assent to a "charter" that was drawn up specifically for this purpose. The charter guaranteed the independence of the editorial staff and the method of choosing the editor in chief by senior members of the staff. I would imagine that Rupert Murdoch too, whose campaign to control the media throughout the world is apparently unstoppable, has found himself in a situation similar to that of the *Jerusalem Post* more than once, forced to balance his rights as an owner with those of the journalists, or at least with those of the senior editors whom he appoints, fires or causes to resign. The judgment recognizes this right of the owner to fire an editor and journalists and to choose an editor whose views are compatible with his own. All this relates to the owners' freedom of expression. The question is, if a publisher does not fire the editor and journalists, and continues to retain them, can he legitimately interfere with their work, and if so, what are the limits to his interference? The judge's reply is explicit: "From the moment that the publisher has made up his mind not to dismiss the editor, he is no longer at liberty to interfere with the editor's work unrestrictedly." However, "obviously, he would have the right to dismiss him if the manner of his writing does not satisfy him." With this:

From the point of view of the public interest and the public's right to know, it is important that an editor and journalists gathering information from various sources, and who are trained for that purpose, be given maximum freedom of expression, and that the owner not be allowed to turn the newspaper into a mouthpiece for his own ideas. His only role is to take care that the ideas be balanced and the information imparted to the public be complete.

In his memoirs published three years ago (*As I*

*Saw It*), Dean Rusk, who was secretary of state in President Kennedy's administration, included a passage that could have been written especially for this debate:

And who in the media possesses these freedoms [i.e., freedom of the press]? Is it the reporter or the publisher and editor? There is no question that Katharine Graham and Ben Bradlee had the final word for the *Washington Post*. Did their reporters have any freedom of the press except as Graham and Bradlee permitted them to have? Arthur Hays Sulzberger, a trustee of the Rockefeller Foundation and for many years publisher of the *New York Times*, over a highball once told me, "As long as I can keep my wife's vote on the board of directors, the policy of the *New York Times* will be my policy. If anybody wants another policy, they can publish another newspaper."

I will close with one of 38 recommendations made by the Parliamentary Assembly of the Council of Europe — Recommendation 1215 on the topic of the ethics of journalism — in its sitting on July 1, 1993. Paragraph 32 of this proposal states:

Within the newspaper business, publishers, proprietors and journalists must live side by side. To that end, rules must be drawn up for editorial staff in order to regulate professional relations between the journalists and the publishers and proprietors within the media, separately from the normal requirements of labour relations. Such rules might provide for the setting up of editorial boards.

I have no illusions. I know how many frustrated efforts have been made by national and international bodies, whether in our profession or in other organizations, to settle the problems that have troubled us ever since the first newspaper came to light. I say "troubled us" as if this were our problem alone — that of the journalists or the newspaper publishers. The truth is, these are problems that trouble the entire political and social establishment, and most especially our reading public, whose right to freedom of expression and a free press is also addressed by Judge Barak's decision. I do not see very much chance that the fate of these or other recommendations made by the Council of Europe on the topic of the press will differ from that of the resolutions adopted almost every year by national and international federations of journalists and publishers. Nevertheless, inasmuch as at least one very significant aspect of the topic has reached the court in special circumstances, there is room to hope that perhaps the particular facet addressed by Judge Elisheva Barak's decision will serve as a landmark in this area of owner-journalist relations, or publishers' and journalists' relations with the public. The public, in fact, generally benefits from the productive tension between the sides but sometimes pays a price for the built-in conflict between business and the exercise of opinion.



Head of the Journalism Studies Program  
and Institute for Research of the Jewish Press

# WHOSE NEWSPAPER IS IT:



## JOURNALISTS-PUBLISHER RELATIONS

# Judgment in the Case of Joanna Yehiel vs. The Palestine Post Ltd.

In the District Labor Court, Jerusalem  
Before Judge Elisheva Barak  
Labor Representative: Mr. Joseph Hadani.  
PLAINTIFF Joanna Yehiel  
DEFENDANT Palestine Post, Ltd.

On behalf of the Plaintiff: Adv. A. Sheer, Adv. Grebel  
On behalf of the Defendant: Adv. J. Arnon

## JUDGMENT

Is a journalist like any other worker? Is an administrative prerogative the absolute right of the employer, and, if not, what are its limits? What is the desirable balance between the administrative prerogative, the right to free expression on the part of the owner and publisher of a newspaper, and the journalist's right to freedom of expression and a free press? What is the limit upon the right of the owner of a newspaper to interfere with the content and direction of articles written by journalists working for him?

The solution to these and other questions is necessary in order to clarify whether the plaintiff, a journalist by profession, is entitled to severance pay even if it should be established that the plaintiff resigned from employment by a newspaper owned by the defendant — this, in light of Section 11(a) of Severance Pay Law 5723 — 1963. This section lays down that in exceptional circumstances, not only is a person who is dismissed from work entitled to severance pay, but so is one who resigns from work. Such circumstances exist where there is a substantial deterioration in work conditions, or where circumstances have been created at the place of work which preclude the employee from continuing working. This question arose after the plaintiff sent a letter to the publisher of the newspaper where she worked, the Jerusalem Post, owned by the defendant, Palestine Post Ltd. (letter dated 2.1.90; Annexure A to plaintiff's declaration, which is Exhibit N/1). In her letter she stated that she wished to terminate her employment in light of various

circumstances that had been created, and that she desired to curtail the period of advance notice as much as possible. This happened a short while after the ownership of the paper was changed and consequently the publisher of the paper, who is the owners' representative, was also replaced.

## Let us briefly unfold the canvas of facts as set out before us.

Let us commence with a description of the period prior to the cessation of the employee—employer relationship and the events that ultimately brought about the severance of relations between the plaintiff, who was the editor of the weekly supplement of the paper, and the defendant. Toward the end of 1989, control over the defendant passed to new shareholders. Control had previously been in the hands of Israel Investors Co. Ltd. — I.I.C. Ltd. — which became a subsidiary company of the Koor concern and Bank Hapoalim Ltd., with the majority of shares in the hands of the Koor concern and the minority in the hands of Bank Hapoalim. The two said bodies were managed by Hevrat Ha-ovdim. The first editors of the paper had been Mr. Gershon Agron, sometime mayor of Jerusalem, and after him, Mr. Ted Lurie. In 1989 negotiations took place for the sale of the defendant's company owing to financial difficulties. Mr. Ari Rath, one of the newspaper's editors, participated in the efforts and searches to find a purchaser, seeing that the editors and the journalists were very worried about a change in the atmosphere of the paper and wanted to ensure that the purchaser would be someone who would preserve the existing situation. In 1989 control over the defendant's company passed from Israel Investors Co. Ltd. to the Hollinger Group of Canada, whose chairman of the board of directors was Conrad Black. The new owners appointed Mr. David Radler as chairman of the board of directors of the defendant's company, and Mr. Yehuda Levy as president and publisher of the paper. On the eve of the acquisition of the paper by the Hollinger company, the paper had two editors: Mr. Ari Rath, who was publisher and editor until Mr. Levy's appointment as publisher, when he became editor only, and Mr.



Erwin Frenkel. Upon the purchase of the paper and the appointment of Mr. Levy as president and publisher, Mr. Levy expressed his wish to continue working in collaboration with the existing editors and journalists. At the same time Mr. Levy announced that cutbacks had to be carried out.

### **Yehuda Levy's Past and His Experience**

Mr. Yehuda Levy served in the Israel Defense Forces (I.D.F.) with the rank of colonel. In 1978 he was seconded from the army to the Jewish National Fund (J.N.F.), on whose behalf he was sent as an emissary to Canada where he directed the J.N.F. office in western Canada. There he had two workers under his management, in addition to which he operated an extensive volunteer organization. Mr. Levy returned from his mission in Canada in 1981 and submitted his final resignation from the I.D.F. He established a tourist company called Gur Arye Yehuda which dealt mainly with bringing groups of tourists, both Jewish and non-Jewish, to Israel. In the summer of 1982 Mr. Levy served as army spokesman in Lebanon. From time to time Mr. Levy was invited to lecture on behalf of the Ministry of Foreign Affairs. The first occasion was when he was army spokesman in Beirut. Following a series of forest fires, Mr. Levy was summoned by the chairman of the J.N.F. in the summer of 1988 to conduct a campaign entitled "A Tree in Place of a Tree." In 1989 he was appointed to his present post as president and publisher of the newspaper *The Jerusalem Post*. Mr. Levy had not had any journalistic experience prior to his beginning to work at the *Jerusalem Post*, but he contended that the tasks that he had executed both in the I.D.F. and in civilian life in Canada and Israel provided him with ample administrative experience. Furthermore, Mr. Levy maintained that journalism was not foreign to him, since during the period he spent in Canada he wrote dozens of articles, principally for the Jewish press in western Canada. During this period, according to what he said, he also held dozens of meetings, interviews and lectures in a manner that enabled him to combine his professional occupation with his military knowledge.

### **The Events Prior to the Breach of the Employee-Employer Relationship in a Nutshell**

Differences of opinion emerged on the eve of the transfer of control to the defendant between a group of journalists who worked on the paper and Mr. Yehuda Levy, arising out of differing points of view

by the two sides and their opposing conception of the role of the publisher — the owner's representative — as against the role of the editor, who was responsible for the journalists. In consequence of these differences of opinion, one of the editors, Mr. Ari Rath, was asked to resign from his job about the time he reached the age of 65 — in contradiction to an earlier promise according to which he would continue to serve despite his age. After a short time, the second editor, Erwin Frenkel, who originally had requested to carry on working in collaboration with Mr. Levy, also resigned. After Mr. Frenkel's resignation, which had been made without consulting the other journalists, a group of thirty journalists, including the plaintiff, sent a letter (which is Annexure A to plaintiff's declaration N/1), according to which they had been forced to cease working, and asking for the period of advance notice to be curtailed as much as possible. We shall deal with the significance of this letter — as to whether it constitutes resignation or not — at a later stage. Here we should like only to briefly indicate the basis of the dispute. It



The plaintiff, Joanna Yehiel

revolves around the question of the extent to which the owners and the publisher appointed by them are entitled to interfere in the work of the editorial staff, to instruct the journalists on the manner of their writing, and whether the journalists are subject to the authority of the editor only or whether they are required to follow the directions conveyed to them directly from the publisher, bypassing the editor, or also through him as an intermediary.

The question is to what extent a change in the ownership of a paper differs from a change in the ownership of any other enterprise: to what extent do a different approach, and different personal viewpoints of a new owner of a newspaper, in themselves constitute a tangible deterioration in working conditions or in the circumstances of working relations of journalists, under which they cannot be expected to continue in their jobs, as provided in Section 11(a) of the Law of Severance Pay.

### The Reported Events Relevant to the Dispute

The plaintiff and her colleagues who, together with her, sent the letter which was taken to be the letter of resignation, worked on the paper for relatively long periods, some less and some more. The plaintiff herself worked on the paper from 9.11.70 to 4.1.90, that is to say close to 20 years. Complete harmony between the views of the editors and journalists and those of the newspaper owners had prevailed amongst the editorial staff. With the change in the control of the paper and the appointment of Mr. Yehuda Levy as president and publisher, the editors and the workers began to be fearful of their journalistic independence. Their fears grew after a number of clashes with Mr. Levy over the manner of writing and over the contents of the material written by the journalists. As the plaintiff declared in her main evidence, the direction of the paper in the eyes of the "resigning" journalists was, "since its foundation, liberal Zionist, while maintaining a total independence of any party identification, although with a leaning toward the labor movement." If there had been interference by the establishment of those days, it generally conformed with the views of the editors and the journalists. The editorial staff did not hesitate to criticize even the establishment. For example, it criticized Bank Hapoalim. There had been no reaction or criticism on the part of the newspaper's owners on this issue. In the same way, there had been a recommendation to vote for the Party for Democratic Change in certain elections, and on this, too, there had not been any reaction on the part of the then owners. Hence, according to the plaintiff, concern arose on the part of the

paper's workers, the two editors — Mr. Rath and Mr. Frenkel — and the journalists, with regard to the continuation of the method of operation of the paper. They were afraid of intervention in the work of the editorial staff and the journalists, as well as in their journalistic authority. The plaintiff pointed to several indications that gave rise to their fears. On 14.7.89, two interviews were published intended to allay their fears. One interview was with Mr. Radler, which was published in the local Jerusalem paper *Kol Ha-ir*. The interview dealt with the question as to whether the *Jerusalem Post* would retain its independence after its acquisition by Mr. Radler. Mr. Radler insisted that the editors would remain at their posts and that they would continue to lay down editorial policy. He insisted that the paper ought to represent all trends in society. At the same time, the workers were concerned at Mr. Radler's statement that there was no dividing line between his involvement as employer and that of the workers. Mr. Radler further pointed out that while it was true that he was not interested in editorial involvement and that he would not write lead articles, there were subjects that "undeniably had direct effects on the nature of any paper" (p. 31, first column of the interview). Even greater concern was aroused, according to the plaintiff, by an interview with the publisher and president, Mr. Yehuda Levy. This interview was published on the same day that the interview with Mr. Radler appeared — 14.7.89 — in another local Jerusalem paper, *Jerusalem*. In his interview Mr. Levy said that while Mr. Radler had promised to preserve the full autonomy of the editorial staff, in his (Mr. Levy's) opinion:

The publisher (the beneficiary) has the right to dictate the direction in which the newspaper functions. If the editor should act contrary to the publisher's opinion, it should be possible to replace him. In general, it seems to me that the whole idea of editorial independence is deceptive. Who fixes the direction of the paper? The editor. And who lays down that this is the right direction? If A1 Hamishmar represents Mapam (the United Workers' Party) and the editor represents an anti-party line, they would replace him (extract marked with the letters A and B — Y/2).

In contrast to the views of the members of the editorial staff and the journalists, which leaned, as we have said, toward the orientation of the Labor Party, the views of the new owners and the publishers were more right-wing and, according to Mr. Levy, while not of the Likud, were of a similar orientation. With the purchase of the paper by the Hollinger Group and the appointment of Mr. Yehuda Levy as publisher, Mr. Levy sought to guide the journalists



The judge,  
Elisheva Barak

in certain areas in regard to the manner of their writing. In his view the paper, up to that stage, had not been balanced. His contention was that the journalistic articles reporting on the news, whose purpose was to reflect the facts and nothing more, included, to their detriment, expressions of opinion, and these opinions were not balanced. He stated that a newspaper was only supposed to present facts and not interpret them, and, to his regret, the role of the news was very tendentious. Therefore Mr. Levy insisted that should the editor adopt an unbalanced line, it was the publisher's right and duty to correct him. He added that he was not opposed to criticism, but it had to be balanced and logical. "In all, this is the paper of the people of Israel, and not of the other side." The workers' concern arose out of the sense of the statement by Mr. Levy that if he came to the conclusion that the paper was not advancing in the proper direction, he would intervene. If he should receive reactions that the paper was representing the P.L.O. — although he did not believe this was the case — he would examine the matter. Mr. Radler, according to the affidavit of Yoram Kessler (the sports editor), in one of his conversations with the editorial staff, actually raised the point that he and his colleagues had heard that "the paper was a P.L.O. paper." In the words of the plaintiff, Mr. Levy's remark to the effect that during the period of the war in Lebanon when he was serving in the army he "discovered the manipulative power of the media" aroused further anxiety on the part of the journalists. Mr. Levy, in his interview, repeated his insistence that a balanced attitude had to be presented in affairs both locally and abroad. An additional concern arose on the part of the journalists from a series of interviews which Mr. Levy gave to foreign journalists and the rumor that Mr. Levy was receiving reports from a political source. With regard to the manpower employed on the paper, Mr. Levy said that cuts had to be carried out since there was a surplus of manpower, but that there was no reason at all for Rath or Frenkel to

leave the paper. Despite the fact that Mr. Rath was approaching retirement age, Mr. Levy said, he was not sure that Mr. Rath would leave on pension. The employees conveyed their disquiet to Mr. Levy, and in view of these anxieties they concluded with him that Mr. Levy would publish a clarification. This was done in the following document (Annexure Y/3 to plaintiff's declaration):

I wish to make it clear that I have full confidence in the editors of the paper and in the manner in which they manage the editorial department despite everything that has been published. I hereby give notice unequivocally that I shall respect the freedom and the autonomy of the editorial staff. The editor has absolute discretion with respect to the paper's contents.

This document was not signed by Mr. Levy, but, as agreed between the parties, it was published in the press.

### **Mr. Ari Rath's Retirement**

Mr. Rath was editor of the paper from 1975. As has been stated, Mr. Levy announced that he intended to continue Mr. Rath's employment and that he saw no reason why Mr. Rath should retire at the age of 65. Mr. Levy repeated this in his evidence under cross-examination. He pointed out that he had had no intention of replacing either one of the editors. Both Mr. Rath and Mr. Levy testified that at a meeting of the workers, after Mr. Levy's taking up his appointment, Mr. Rath announced that he was turning over his authority to Mr. Levy since he was the individual located at the top of the pyramid. Mr. Levy indicated that he had had no reason to believe that Mr. Rath was obliged to leave (p. 93, ll. 4—10). From the evidence, it emerges that there had been persons working for the defendant at various periods who had continued working beyond the age of 65, and there were some who were working even after turning 80. The new editor of the paper, Mr. David Gross, was invited to return to work at the paper after Mr. Frenkel's retirement, at a time when he was aged 66. According to Mr. Rath's contention, this fact was known to Mr. Radler. Mr. Rath maintained that the Hollinger company was accustomed to employing editors and publishers much above age 65 in the papers which it had acquired (Mr. Rath's affidavit, Section 18). Furthermore, in an interview given by Mr. Radler on 14.3.89 to a correspondent of *Kol Ha-ir*, Mr. Radler stated that there was no reason to replace the editors. The editors would remain at their posts and would continue to determine policy (Annexure Y/1 to the plaintiff's affidavit on p. 2, col. 1). According to Mr. Levy, the tension between Mr. Rath and himself began when Mr. Rath demonstratively kept silent at meetings of the newspaper's senior management and took no part in

the discussions. But, in his words, this fact did not affect Mr. Levy's attitude to Mr. Rath. The crisis between them came to the surface when Mr. Rath became aware that Mr. Levy had held a meeting on 2.8.89 with a person named Hirsh Goodman. This anger erupted against the background of Mr. Rath's subjective feeling that Mr. Levy had begun to ignore him. After the said meeting, which, according to Mr. Levy, was initiated by Mr. Hirsh Goodman, whom he had not previously met, Mr. Rath called in Mr. Levy for a conversation in his office, rebuked him loudly, and maintained that the holding of the meeting was like sticking a knife in his (Rath's) back. Mr. Levy's spontaneous reply was that they could not go on working together, and he asked Mr. Rath to speed up the process of his retirement on pension in light of the fact that he was in any case approaching the age of 65. The next day a further conversation took place between them, which was quiet and calm. On 12.10.89 Mr. Levy wrote Mr. Rath letter T/13, to the effect that Mr. Rath would have to retire on 6.1.90 on reaching the age of 65. Mr. Levy stated, at the end of his letter:

Ari, even though the period we worked together on the paper has been very short and in fact I have not had an opportunity to become properly acquainted with you, permit me to say that I am aware of the fact that you have been part of the paper and that the paper has been part of you for many long years. It has not escaped me that many people identify you with the paper and vice versa, as a single entity, and it is not easy to part from such a "workplace" after such a lifetime occupation. Nevertheless, I am convinced that ways will be found whereby you will be able to make a contribution to the paper even after the date of your retirement.

These facts emerge from of Mr. Levy's own evidence (p. 93), and hence we cannot accept Mr. Levy's version according to which Mr. Rath was not dismissed. Mr. Levy testified that the reason for terminating Mr. Rath's services was that very "degrading" conversation. In September 1989 Mr. Radler paid a visit to Israel, and the staff affixed a letter to the notice board addressed to Mr. Radler (Annexure Y/4 of plaintiff's affidavit) protesting the dismissal of Mr. Rath, who in their opinion personified the special character of the paper, and arguing that there was a contradiction between Mr. Radler's statement about editorial integrity and the actions of the publisher in the dismissal of one of the paper's veteran editors who had represented the paper for many years. According to the plaintiff's contention, Mr. Radler reproached her for participating in the writing of this letter and said that from then on, the paper would have only one editor, Mr. Frenkel, since all that interested Mr. Rath was to attend cocktail parties.

## **Relations Between the Plaintiff and Mr. Levy**

### **A. Staff Cuts and Increase in the Plaintiff's Work Load**

The plaintiff served as editor of the weekly supplement during the last phase of her employment on the paper. Following the change of ownership, an increased work load was imposed upon the plaintiff for two reasons: Firstly, the new owners made staff cuts in the course of which five of the nine employees who worked with the plaintiff on the weekly supplement were discharged. Secondly, Mr. Levy wanted to change the format of the weekly so that it could be printed in color. Since at the time issuing a color weekly from the editorial offices of the *Jerusalem Post* was not possible, the weekly was sent out to be printed at the *Ma'ariv* editorial offices. This procedure necessitated a smaller format because of the technical limitations at *Ma'ariv*. The plaintiff did everything she could to cooperate with Mr. Levy in changing the paper's format. This required many hours of work on her part, in addition to the fact, as stated, that the number of the plaintiff's workers was reduced and she was compelled to fulfill many tasks by herself, such as graphic work, editing photographs and writing articles. At the time, the plaintiff made a request to engage a woman named Toby who had previously worked at the printing press. Owing to the staff cuts, Ms. Toby's superior had approached the plaintiff with a request that she find a solution for Ms. Toby. As this request suited the plaintiff's needs, she began employing Ms. Toby herself.

### **B. Causes of the Friction Which Arose Between the Plaintiff and Mr. Levy**

The plaintiff's anger mounted when Mr. Levy began proposing subjects for articles to her. All of these subjects, contended the plaintiff, revolved around military personnel or former officers who were Mr. Levy's friends. Mr. Levy explained this as follows: he had wanted to improve the paper by utilizing his good connections with public personages whom he had known well, inter alia, from his service in the army (Section 42 of his affidavit). He also suggested the names of correspondents to her who were able to write articles. The plaintiff refused to write on subjects that in her opinion were not newsworthy at that time, or about people who had been written about in the past. In this connection, Mr. Levy had asked the plaintiff to write articles about the mayor of Ramat Gan, Mr. Zvi Bar, and about

General Yitzhak Mordecai. With regard to Zvi Bar, in the plaintiff's view an article about him had no news interest at that time, and as far as Yitzhak Mordecai was concerned, the plaintiff recalled that a profile on him had already appeared. She rejected these two suggestions. It should be pointed out that all this was within the context of suggestions, and there were no threats to the plaintiff should she not publish the articles as proposed. At the same time, the plaintiff became aware of rumors that the engagement of Ms. Toby, at a time when Mr. Levy was making staff cuts, had angered Mr. Levy. In November, Mr. Levy called the plaintiff into his office and asked her whether she was "for him or against him." He explained that he had three complaints against the plaintiff:

(1) Letter Y/4 that the plaintiff had written to Mr. Radler in connection with Ari Rath.

(2) The question of the employment of Toby, the secretary, on the staff of the weekly.

(3) The matter of advertising agents. A meeting had been scheduled between Mr. Frenkel, Mr. Levy and the advertising agents — employees who worked outside the office in order to obtain advertisements. On the night preceding the meeting, Mr. Frenkel telephoned the plaintiff, telling her he was not going to the meeting and asking her not to attend as well. In fact, the plaintiff did not attend the meeting.

Over and above these tensions which developed between the plaintiff and Mr. Levy, a number of occurrences took place which gave rise to anxieties on the part of the plaintiff and her colleagues, namely that the atmosphere in the paper's editorial office had changed and that management was directing the journalists on what they should write about and how to write their articles, in such a way that she could not continue working there. Let us deal with these events.

### **Michal Sela, Journalist**

Michal Sela was a correspondent on Gaza Strip affairs. The editor in charge was Mr. Yehuda Litani.

Before she got to know Mr. Levy personally, Michal Sela wrote an article on the tax revolt in the Arab village of Beit Sahur, a civilian insurrection in the context of the Intifada. The article reflected the sentiments of the residents of the village and in the opinion of the paper's editors it was balanced and fair, while also purporting to describe what had taken place (Mr. Yoram Kessel's

affidavit). This article was the subject of a letter sent to Mr. Levy by a person named David Badyan. The letter (Annexure Y/5 to the plaintiff's declaration) severely attacked Michal Sela's article. Let us detail how this letter came into the plaintiff's possession. Mr. David Badyan was the manager of a company for press relations and communications that constituted an information center ("Israel Resource") which, according to Mr. Rath's evidence, used to report mainly on the West Bank settlers. From the evidence, it transpires that a large amount of mail reached Mr. Yehuda Levy from this office and it was always marked "Personal and Top Secret." Mr. Rath, who saw the mail when he passed by the secretariat, testified on this point. One of the letters was not sealed — the letter which is Annexure Y/5 to the plaintiff's declaration. In this letter Mr. Badyan, as stated, criticized Michal Sela's article, which, according to Mr. Rath, dealt with human rights in the territories. Mr. Badyan, in this letter, wrote that Michal Sela's article seemed more like a paid advertisement for the group about which Ms. Sela reported, and not like a newspaper report. The workers — the journalists — argued that a conspiracy existed between Mr. Badyan and Mr. Levy and even contended that Mr. Levy was paying Mr. Badyan. This fact was not proved to us, and Mr. Levy denied all knowledge thereof. Mr. Levy's version on this point is acceptable to us, especially as the journalists' contention is no more than a supposition. At the time, Ms. Sela was on leave, and when she returned she was informed that Mr. Levy wanted her articles to be more balanced. In light of this message, and in view of the fact that Mr. Levy did not know Michal Sela personally at all, she took the initiative of seeking a meeting with him. Ms. Sela met Mr. Levy by chance in the corridor and asked to talk to him. According to her, Mr. Levy exerted pressure upon her which was not within the scope of the profession. He defined himself as an extreme rightist. Amongst other things, Mr. Levy asked Ms. Sela not to use the expression "gunman" and instead to use the expression "terrorist" when referring to the residents of the territories of Judea, Samaria and Gaza who were causing casualties. Ms. Sela saw in this interference in her journalistic duties by a person who was not the editor of the paper.

### **Hemi Shalev, Journalist, and his Article on the Deputy Minister for Foreign Affairs, Bibi Netanyahu**

Mr. Shalev, in an article, reported on remarks made, as he maintained, by Mr. Netanyahu. As a result of this article, Mr. Levy approached Mr. Hemi Shalev saying that Mr. Netanyahu contended that the report concerning his remarks was false. In reply, Mr. Shalev told Mr. Levy that he had in his possession a tape recording

authenticating the statements which he reported as having been uttered by Mr. Netanyahu. He suggested to Mr. Levy that he listen to the tape, but Mr. Levy said this would not be necessary. At the same time, Mr. Levy observed that it would be desirable for Mr. Shalev to talk to Mr. Netanyahu's spokesman and, should it be necessary, to apologize to him. He also said to Mr. Shalev that in his opinion the remarks and the sensitivities of public figures must be taken into account. All these are statements to which Mr. Levy himself testified in his affidavit. In his words, he added, everything was subject to truthful reporting. The direct approach to Mr. Shalev, without using the editor as an intermediary, the statement that the susceptibilities of public figures had to be borne in mind, and the suggestion that Mr. Shalev apologize to Mr. Netanyahu's spokesman, added fuel to the fire of the journalists' wrath. Mr. Rath pointed out in his evidence that in the past, in similar circumstances, when there were complaints by public figures about articles, he listened to the correspondents' version and gave them full backing.

### **Attempt to Give Directives to Ms. Eileen Ruth Fletcher on the Subjects of Articles**

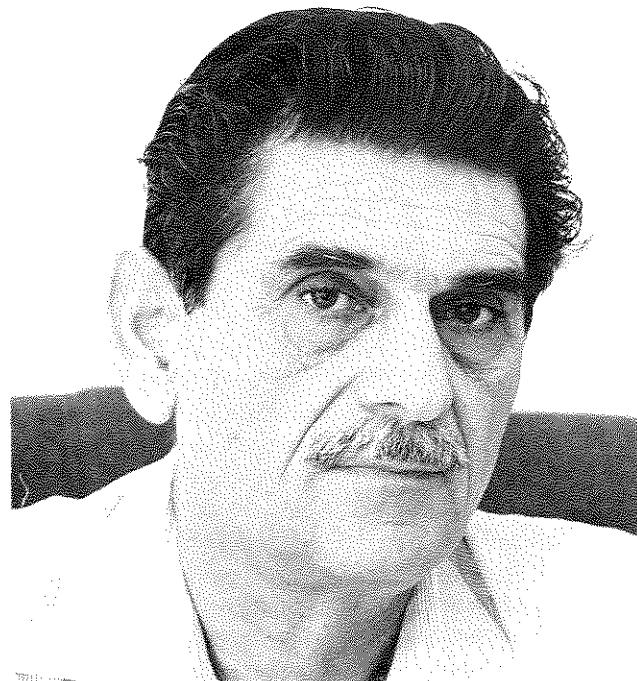
Eileen Ruth Fletcher was a correspondent for Arab affairs at the *Jerusalem Post*. She maintained that she had been required to write on topics which in her view did not represent news. Thus, for example, Ms. Fletcher participated on 6.11.89 in the annual conference on the subject "Jordan is Palestine," in which Lord Balfour, a descendant of the famous Lord Arthur Balfour, appeared. Ms. Fletcher was invited by the organizers of the conference to a lunch, with Mr. Levy's approval, while her own request to pay for the lunch was rejected. Her object was to listen to the then deputy minister for foreign affairs, Mr. Benjamin Netanyahu. Before the luncheon, Mr. Levy introduced her to Mr. Ted Beckett, founder of the "Israel Institute," a fundamentalist Christian group that wished to establish a communications network in Israel in order to disseminate information on the Holy Land to Christians in the United States. Mr. Levy asked Ms. Fletcher to interview Mr. Beckett. Despite the fact, as mentioned, that Ms. Fletcher's purpose was to report on Mr. Netanyahu's address, she felt obliged to interview Mr. Beckett because of Mr. Levy's status on the paper and the fact that he had requested this of her. Subsequently, it became known to Ms. Fletcher from a newspaper report which her grandmother sent her from Florida (Annexure P/A to her affidavit) that Mr. Levy had guided and led groups of tourists who were members of a Christian fundamentalist group on a tour called "Support

Israel." The article stated, inter alia, that Mr. Levy had been appointed as the publisher of one of the most important newspapers in the world, the *Jerusalem Post*, and that they were hoping that henceforth the paper would contain a column of news and other subjects about Christians (p. 2 of the article). In Ms. Fletcher's interview with Mr. Beckett he said that the idea of a Greater Israel stemmed from the Bible (The Book of Genesis — the giving to Abraham of the land between the Euphrates River and the Nile), and that many Christians believed that a Greater Israel, as it had existed in the days of David and Solomon, would be revived. Ms. Fletcher went through with the interview as she had been requested to do, but, in consultation with the night editor, she decided not to run the interview in the paper. There was a feeling that the publisher was seeking to promote groups such as the one headed by Mr. Beckett. The next day, Ms. Fletcher was invited to go and listen to the address by Lord Balfour, who was supposed to "announce a second Balfour Declaration," and to report thereon in the paper. Since Ms. Fletcher was expecting an important telephone call from the captain of an Israeli vessel that had been detained in Egypt (the ship *Noita*), and as a wide-ranging appreciation of Lord Balfour had already appeared in the paper two days previously by correspondent David Rudge, Ms. Fletcher consulted the news editor, who, in turn, consulted Mr. Frenkel, editor at the time, and they instructed her to disregard Mr. Levy's instructions. It seemed to her more important to report on the Israelis detained at that moment on the ship in Egypt. Ms. Fletcher testified that interferences such as these on the part of someone who was not a member of the editorial management had not occurred in the past.

### **Events Prior to Mr. Frenkel's Retirement and the Causes Leading to It**

#### **A. Mr. Frenkel's Article on the then Prime Minister**

In November 1989, the *Jerusalem Post* reported on the trip made by the then prime minister, Mr. Yitzhak Shamir, to the United States. The article, written by Mr. Frenkel, described the trip as a failed mission. The prime minister, in a speech to his party caucus in the Knesset, attacked the *Jerusalem Post*, claiming that the paper was ruining Israel's name abroad. To this Mr. Frenkel responded in a lead article (Annexure Y/6 to plaintiff's declaration), dwelling on the importance of a free press and arguing that Mr. Shamir had little patience for the independent course of the press. The writer criticized attaching stigmas to the press, which was done



Chairman of the newspaper's board of directors, Conrad Black. Publisher and President of the newspaper, Yehuda Levy



Two of the newspaper's editors during its long history: (R.) Gershon Agron, founder and first editor. (L.) Ari Rath, who was forced to end his tenure at the start of 1990

principally by the prime minister's party, with the *Jerusalem Post* constituting an especially good target because of its circulation abroad. He referred to the meeting of the Likud parliamentary caucus in the Knesset where the prime minister denounced the article which described his trip to the United States as a "failure." In the view of the writer, Mr. Frenkel, the reason for the attack on the paper by the prime minister was the attitude expressed in the paper's lead articles favoring territorial compromise. The function of the paper, Mr. Frenkel went on, as was the case for every newspaper in Israel and in the free world, was to address the nation and not the party in power. A democratic government should support this attitude and not attack it. The day after the publication of the article, Mr. Levy invited Mr. Frenkel for a discussion, and according to his version he told Mr. Frenkel that in his view, it was erroneous for a lead article to present a narrow political stand reflecting a proportionately small section of a particular political trend — namely the left-wing movements — which believed that a political solution between Arabs and Jews in the Land of Israel could only be achieved under certain circumstances. Mr. Levy did not mean to imply that this group was the Labor Party. In his opinion this approach did not reflect the national consensus. Mr. Levy stated that he preferred to see an article of this kind with a signature below it (p. 103, bottom, and p. 104 of the court record). He was referring to the articulation of political opinions contained in the article. According to Mr. Levy, Mr. Frenkel justified his (Mr. Levy's) approach and said that he too guided the journalists under his control in this spirit. At the same time, Mr. Levy regarded as legitimate that portion of the article which attacked Mr. Shamir's criticism of the paper. According to the contention of the plaintiff, which was not contradicted in Mr. Levy's evidence, Mr. Levy demanded of Mr. Frenkel not to publish the article in the international edition. Mr. Frenkel gave evidence to the effect that this was not a demand, only a suggestion, but Mr. Frenkel's subjective feeling was that this suggestion contained some form of instruction. According to the plaintiff's evidence, Mr. Levy asked him to write a lead article, which Mr. Frenkel refused to do. On the other hand, Mr. Frenkel suggested that Mr. Levy write an article bearing his name. Mr. Levy did not agree to this.

#### **B. Mr. Levy's Joining the Editors' Committee and Mr. Frenkel's Withdrawal**

After the event which has been described, Mr. Levy wrote a letter on 12.12.89 (Annexure Y/7 to defendant's declaration) to the body called "the Editors' Committee," in which he stated:

I, at the present time, fill the post of publisher and president of the paper of which I am in charge. By virtue of this role I

intend as well to be very deeply involved in the editorial aspect, with everything that this implies. Nevertheless, I have decided at this stage to refrain from appointing myself as the editor in charge, so as not to harm the status of the editor, Erwin Frenkel.

In any event it would appear that my membership in the Editors' Committee would be essential for the proper discharge of my duties, and, notwithstanding the apparent contradiction implied in the foregoing, I ask you to put my application to serve as a member of the committee before the appropriate authorities.

Should further explanations be required of me, I shall be happy to furnish you with them.

This letter was written following a telephone conversation between the secretary-general of the Editors' Committee and Mr. Levy. The secretary-general of the Editors' Committee told Mr. Levy that according to the Editors' Committee constitution it was not possible, in his opinion, to comply with Mr. Levy's request. The secretary-general referred Mr. Levy to Ms. Hanna Zemer, who advised Mr. Levy that the request for membership in the Editors' Committee had to come from the editor. Mr. Levy explained to Ms. Zemer that this was not possible in light of the existing hierarchy in the *Jerusalem Post*. The editor, from the point of view of that hierarchy, was situated in a position subservient to Mr. Levy, and therefore, as he put it, it was impossible that he recommend Mr. Levy as a member of the Editors' Committee. Ms. Zemer proposed that Mr. Levy write a letter. Accordingly, Letter Y/7 was written. It is not known whether a reply to this letter was received, but the outcome was that Mr. Levy was accepted as a member of the Editors' Committee.

Both the conversations and Letter Y/7 eventuated without consultation with, or the knowledge of, Mr. Frenkel. All that Mr. Levy maintained was that he did not conceal the matter but that he did not do anything to disclose it to Mr. Frenkel, who was then serving as the editor of the paper. Both Mr. Frenkel and Mr. Levy served on the Editors' Committee for a number of days.

Mr. Frenkel's resignation came about after he learned about the aforementioned letter by Mr. Levy (No. Y/7) and after Mr. Levy had joined the Editors' Committee. Mr. Frenkel made this clear in a conversation with Mr. Levy, as did other employees (evidence of Mr. Levy on p. 201, bottom). Mr. Frenkel explained to Mr. Levy that he had been hurt particularly by Letter Y/7 to the Editors' Committee. He also made this clear in a letter to Mr. Levy and to Mr. Radler (Letters Y/8 and Y/9). Mr. Frenkel was hurt by the fact that Mr. Levy had indicated that he was refraining "at this stage" from appointing himself as editor in chief, for he saw therein





a future intention. It should be pointed out that Mr. Levy explained to the Hollinger management that Mr. Frenkel had resigned because he had become fatigued. Indeed, Mr. Black, chairman of the board of directors, had written a letter to the editorial staff (Annexure Y/13 to plaintiff's declaration), which constituted a reply to a letter attacking the paper published in the *Jewish Chronicle* (Annexure Y/12 to plaintiff's declaration), in which he stated that Mr. Rath had resigned upon reaching the customary age of retirement and that Mr. Frenkel had resigned on account of fatigue as well as by reason of fear, which he now acknowledged to be exaggerated, in regard to the publisher's political leanings. Mr. Frenkel took exception to the explanation of his resignation as having been due to fatigue, as well as to the statement by Mr. Black to the effect that Mr. Frenkel acknowledged that his fears in regard to Mr. Levy's political leanings were exaggerated (Y/14).

### **Circumstances of the Termination of Employment of the Plaintiff and of 29 Other Journalists**

Mr. Frenkel's letters of resignation, which were addressed to Messrs. Radler and Levy (Y/8 and Y/9), were written on 25.12.89. The plaintiff contacted Mr. Radler, complaining of the disintegration of the newspaper's efficient and experienced team and asking Mr. Radler to intervene. To this she did not receive any reply. After these occurrences, the plaintiff and her colleagues, a total of 30 journalists in all, each one individually sent an identically worded letter which had been drafted by their lawyer (Annexure A to plaintiff's declaration N/1) as follows:

Dear Mr. Radler and Mr. Levy,

It is with great regret that I am compelled after ..... years of service on the editorial staff of the Jerusalem Post to advise you that as a result of a substantial deterioration in the conditions of my employment I have no alternative but to request you to release me from my employment on the paper.

Contrary to all the undertakings that were given since the question of the sale of the shares of the Palestine Post Ltd. was first discussed, according to which editorial autonomy would be preserved and there would be no effect on the character of the paper, there has, in fact, been in recent months a gradual and increasing whittling away of editorial independence by means of attacks on the outlook which the paper has reflected since its foundation in 1932.

In the atmosphere that has been created I do not see any possibility of performing my job properly, and in fact I have been deprived of that freedom of action as well as freedom of thought which are essential for the faithful execution of my duties to the paper, to its readers and to the principles of the profession.

If you insist upon it, I shall, of course, not terminate my work before the end of a period of notice of 30 days, but it seems to me that it would be possible to reduce the actual period up to my resignation to a minimum.

I do not suppose that any problems will arise in connection with implementing the terms of retirement which are customary with the paper and with which I am prepared to be satisfied. Kindly acknowledge this.

Each of the journalists filled in the number of years of his employment and signed the letter. These letters were delivered to Mr. Levy on 2.1.90. The plaintiff received a reply to this letter (Annexure B to the amended plaintiff's declaration) in which Mr. Levy assented to the request to release the journalists from their employment. Mr. Levy also indicated that he assented to the request to curtail the transition period to a minimum and would inform her of the precise date of the termination of her work after a discussion. Some of the journalists who wrote the letter received notice to leave the building by 5:00 p.m. the same day, namely within 15 to 45 minutes. To these persons Mr. Levy sent Letter T/10 in which he accepted their request to shorten the transition period to a minimum and wrote:

I would request you to vacate your post on the editorial staff immediately upon receipt of this letter; to liquidate all your administrative affairs in the building (including completion of the circuit release form, as is customary with this company); and to refrain absolutely from any activity connected with the paper or with the material published therein or from any action in its name or on its behalf, commencing today at 5:00 p.m. In this manner we shall, today, put an end to the employee-employer relationship between you and the above-mentioned companies.

As mentioned, no such letter to leave the building that day was written to the plaintiff. Mr. Levy suggested to her, according to what she said, to remain at her post for a further number of days in order to transfer her duties, but after Letter Annexure B had been received, she felt that she could not remain any longer. The next morning, another woman was sitting in her seat, having been told that she had received her (the plaintiff's) job. This woman was already working on the plaintiff's computer under her secret code. In addition, Mr. Levy accused the plaintiff of having incited the others. On 3.1.90, namely the day after the dispatch of Letter Annexure A to the plaintiff's declaration, the plaintiff wrote Letter Annexure C to plaintiff's declaration to Messrs. Radler and Levy contending that an error had occurred in the interpretation of her Letter Annexure A (see above). She argued that an examination of her letter shows that she had not resigned, but rather:

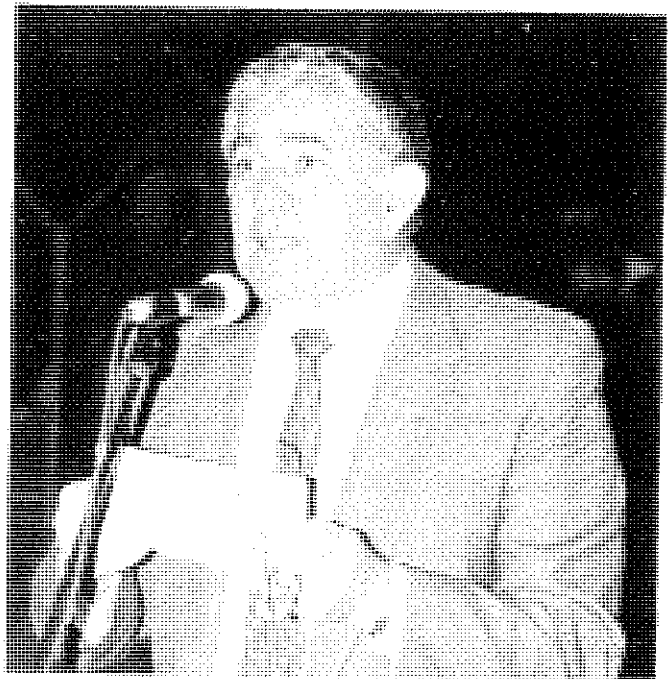
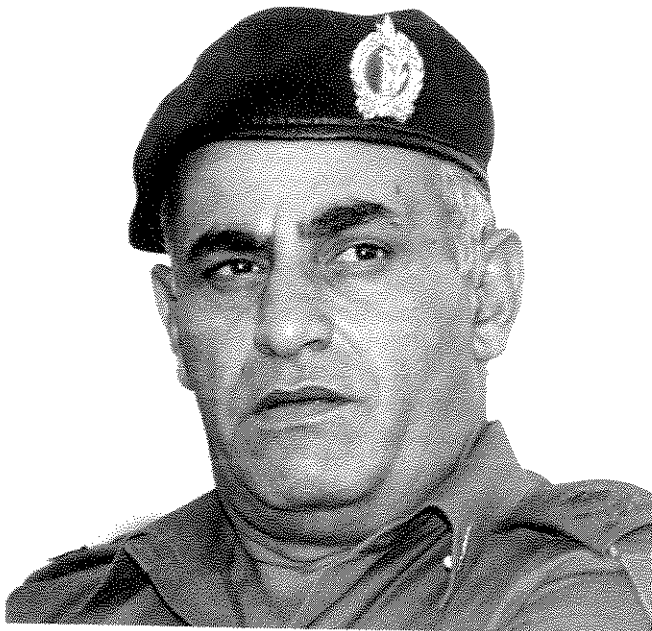
I explained that far-reaching changes in the conditions of my work, and the continually increasing interference therein, prevented me from carrying out my duties. If my employers would be ready to alter the situation and to restore the working arrangements to what they were previously, I would be glad to continue working.

At the same time, I must point out that the tone of your

letter and the fact that it transpired that, even prior to my letter, you had prepared a substitute team for the editorial staff, point to the fact that it had actually been your intention for some time to prevent the continuation of my work.

To sum up, I continue to be at the disposal of my job under the conditions as they were over a period of many years. If you do not wish to operate any longer under those conditions, then, even bearing in mind the contents of your letter and your actions, I must be seen as a veteran worker who was dismissed without reasonable cause, and it is clear that in such a case I shall expect to realize all those rights which, for many years, have been provided for veteran workers leaving the paper, and where these are not honored, also compensation in respect of the manner of the discontinuation of my work.

On 4.1.90 the plaintiff received a letter in which Mr. Levy accepted her written and oral request to resign and leave her work, and confirmed that from 4.1.90 the employee-employer relationship between the parties would be ended. The plaintiff was requested to complete the circuit release form.



The two figures about whom Publisher Yehuda Levy asked Joanna Yehiel to write: Yitzhak Mordecai (l.) and Zvi Bar

## Was it Customary for the Defendant to Pay Severance Pay at the Rate of 180%?

The plaintiff and her colleagues maintained that if they are entitled to severance pay, they have the right to compensation at the rate of 180%. They did not mention this fact in their letter (Annexure A) since they did not intend to regard this letter as a letter of resignation, but merely as a letter of warning.

Let us now examine the facts upon which this demand is based. Upon the change in ownership, the new owners notified all the employees by means of a notice affixed to the notice board that anyone who was dismissed or who resigned voluntarily would receive 180% severance pay. This was done with the object of making staff cuts as part of a rehabilitation plan. The plaintiff, together with the two editors at the time and other colleagues, decided to make an attempt to continue working in collaboration with the new owners and the publisher acting on their behalf. Beyond this, it has been proven to the court that payment of 180% severance pay instead of 100% was an existing norm of the defendant's for a number of years previous to the change of ownership. According to the material produced in evidence, this practice had begun in 1980. Both a person who resigned on his own initiative and a person who was dismissed received 180% severance pay from then (evidence of Mr. Rath on p. 66 and following pages of the record). This fact emerges from the many testimonies and letters of retirement attached as annexures to the plaintiff's declaration. Thus, for example, Mr. Alvin Hofmann received a letter from Mr. Yehuda Levy on 19.12.89 (Annexure Y/34 to plaintiff's declaration) according to which management responded positively on this issue when requested to terminate his employment. The letter stated that he would receive the conditions of the other recently dismissed and resigning persons. Mr. Hofmann was a journalist. He resigned contrary to the interests of management, who preferred that he not resign. Notwithstanding this, severance pay was authorized for him at the rate of 180%. Another example was the case of a worker, Mr. David Tal, who was not a journalist. Mr. Tal resigned in protest against the operation of a time clock by the new publisher. He contended that the operation of a time clock was not appropriate for every worker and every task, and consequently, on 17.1.90, he asked to be released from his job. Severance pay of 180% was approved for him (Letter Y/35a, h, and c). A similar situation occurred with other workers who resigned on account of the operation of the time clock. Their letters of resignation and the defendant's notifications to them are annexed to the plaintiff's declaration. The same applied to employees who resigned for other reasons. Thus, for example, the personnel manager wrote to one of the workers on 1.4.90 that at his request, his duties would come to an end and severance pay of



Former Prime Minister Yitzhak Shamir attacked the "Jerusalem Post"



Coverage of appearances by Bibi Netanyahu also caused tension in the staff

180% would be paid to him (Annexure Y/37). There was, however, one employee who did not receive more than 100% compensation despite the fact that he was dismissed. He was Mr. Kirschen who was a cartoonist. In light of the announcement by the new management to the effect that it wanted to reduce the number of workers, Mr. Kirschen requested retirement. He sought to improve his financial situation and hence wanted to leave and work under a personal contract so as to receive 180% compensation. This was

approved, but the next day Mr. Kirschen began publishing cartoons in a competing newspaper. The management of the *Jerusalem Post* was most enraged at this and consequently froze the 180% severance pay rate, paying him compensation at the rate of 100% only. According to Mr. Rath's evidence (p. 67 of the record), this action was taken because the management was offended having assumed that Mr. Kirschen had deceived the paper when he informed them that he simply wanted to change his status in order to improve his financial situation, when in fact he immediately went over to work for a rival paper:

In April 1990, that is to say after the plaintiff and her colleagues had stopped working, management decided to change its policy concerning payment of 180% severance pay. On 6.5.90 Mr. Levy wrote Letter Y/33 to the employees, in which he explained that the policy had been to pay workers ceasing to work, whether due to dismissal or resignation, 180% severance pay in order to achieve greater efficiency and to improve the financial position of the paper:

This policy came to an end a few weeks ago, and at a meeting of the inner executive of the paper it was resolved that severance pay at the rate of 180% would not be paid except in a case where the worker *is dismissed on the initiative of the management.* (italics in the original)

From this it transpires that the defendant itself indicates that this was its practice until canceled by itself.

We are thus satisfied that the defendant had an existing custom of paying 180% compensation to resigning and dismissed personnel alike, subject to exceptional cases where circumstances existed such as those where the defendant presumed that increased compensation should not be paid to a person resigning. The custom of paying 180% compensation as well to resigning personnel emerges from the many testimonies and letters similar to Letter Y/33 giving notice of the termination of this practice. Enlarged compensation was also paid to a person voluntarily resigning after he had expressed his desire to do so and management confirmed it. And it would appear that there were no cases where the management rejected such an application except in special circumstances. No doubts arose at all, and the personnel manager automatically confirmed 180% severance pay to anyone with whom the employee-employer relationship was sundered.

### Entitlement to Cash Value of Sabbatical Pay

There is no dispute that the defendant's practice was to allow journalists to take a sabbatical of three months' duration every five

years. There was no obligation to pursue extension studies during the period of this sabbatical. As far as the plaintiff was concerned, the last time she left on a sabbatical was in 1982. When a further sabbatical was due to her, she did not take it in view of the fact that this was the time when the paper was about to be sold, and negotiations thereon were proceeding. The employees were requested to wait and not take their sabbaticals at that time. The plaintiff approached the editor, Mr. Frenkel, with a request to take her sabbatical, and was asked by him to wait and not take her sabbatical at that stage. In view of the relationship that prevailed between the workers and the management of the paper before the change in ownership, she did not make this request in writing.

### General Atmosphere Following the Change in Ownership

We have endeavored to show that it emerged from the substance of the evidence that the general atmosphere in the management of the *Jerusalem Post* changed with the transfer of control to the Hollinger company. We are not called upon to express an opinion as to whether the atmosphere changed for the better or the worse. From the point of view of daily administration, Mr. Levy brought with him a new conception of management. He wanted to operate a time clock. He wanted to be involved in the subject and content of the articles. He objected to reports that appeared in his view to be too severely critical of the government and of public personalities. This stance was completely different from the way the paper had functioned prior to the transfer of control thereof, for better or worse. For example, Mr. Gideon Raphael, who used to write op-ed features for the *Jerusalem Post*, wrote a letter criticizing the paper. The new editor of the paper responded with a caustic letter in which he stated that the paper did not print stupid articles. Mr. Radler justified the editor's position, although not his style.

It follows, therefore, that the atmosphere altered with the change of ownership both in regard to the manner of daily administration and in regard to the degree of interference by the owner and publisher in the content of the articles and the journalistic freedom of the editors and the journalists.

### The Matters in Dispute

Before discussing the theoretical aspect, let us review the principal issues in dispute.

A. The main question which arises is whether the plaintiff is entitled to severance pay. To this question there are secondary questions:

# THE JERUSALEM POST

(1) Was the plaintiff dismissed by her employer or did she leave of her own volition? It is clear that this question is bound up with the interpretation of the letter written by the plaintiff and her colleagues, which is Annexure A (Exhibit N/1) to the plaintiff's declaration.

(2) If we arrive at the conclusion that the plaintiff resigned, would she be entitled to severance pay despite her resignation?

(3) This question flows from the question as to what extent the owner and publisher of a paper is entitled to intervene in the work of the journalists, and whether, even if it is legitimate for the publisher to interfere in their work, that would constitute a change of circumstances under which the plaintiff could not be expected to continue to work in the new circumstances. This is a question of balance between the right to freedom of expression of the owner and publisher as against the right to freedom of expression of the editor and the journalists, and the right of all these as against the public's right to freedom of expression and to a free press.

B. If the plaintiff was entitled to severance pay, was she entitled to severance pay of 180% in view of the custom that prevailed? Was she entitled to it because she did not leave upon the change of ownership and agreed to try to continue working in cooperation with the new owner?

C. Is it possible to convert sabbatical pay into cash, since the plaintiff did not take her sabbatical?

D. In the last salary for purposes of calculating severance pay, must the extra pay received by the plaintiff on account of the 13th month also be taken into account?

## Was the Plaintiff Dismissed or Did She Resign: Interpretation of Annexure A

The plaintiff and her colleagues sought to convince us that the letter which is Annexure A to the plaintiff's declaration was not intended to be a letter of resignation but a warning concerning the situation that had been created, and opened the way to negotiate an improvement in the atmosphere. They argued that its purpose was to warn of the difficult atmosphere, mainly after Mr. Frenkel's resignation in protest against the co-option of Mr. Levy to the Editors' Committee without consultation with him. Its object was — at least so she maintained — to begin negotiating for an improvement in the atmosphere and the correction of distortions. This argument cannot be accepted. The language of the letter which is Annexure A is clear. The plaintiff wrote that with great regret she was compelled, after 20 years' service, to advise that, as a consequence of the substantial deterioration in her conditions of work, she had no alternative but to request to be released from her work on the paper. She gave details in her letter of what in her view constituted a concrete deterioration and ended her letter by saying that, in the atmosphere that had been created, she did not see any possibility of properly fulfilling her duties. She went on to point out that if Messrs. Radler and Levy insisted upon it, "I shall, of course, not terminate my work before the end of a period of notice of 30 days but it seems to me that it would be possible to reduce the actual period up to my resignation to a minimum." Likewise, she wrote that she did not suppose that any problems would arise in connection with the carrying out of the terms of retirement which were customary with the paper, and ended with the words: "Kindly acknowledge this." This letter was written after the editor, Mr. Frenkel, had resigned on the grounds that he could no longer work under the conditions that had been created.

The letter which is Annexure A was written immediately after his resignation. There is no room for concluding from this letter that all that the plaintiff and her colleagues wanted was to issue a warning about the situation. They expressed warnings about the situation in conversations and in letters, and the language of the letter does not convey any willingness to enter into negotiations. The matter resembles what happened in the *Elko* case (High Court of Justice 566/76, "*Elko*" *Electro-Mechanic Industry Ltd. v. National Labor Court and 20 Others*. Judgment 31 [2] 197). There the High Court of Justice, as pronounced by Judges Berenson and Shamgar, laid down that an individual letter of resignation submitted by a large number of workers, the wording of which was similar to the wording of the letter in the case before us, constituted an individual resignation of a large number of workers and not a protest for the purpose of entering into negotiations. This was not a collective resignation, which, in actual fact, was not a resignation as

he plaintiff had argued. In that case the resigning workers had hoped that management would request them not to resign and would enter into negotiations with them. In the words of Judge Berenson, management had not fulfilled their expectations and had not played the game they wanted them to play. But there was nothing therein to influence the legal consequences stemming from the documents which, according to their language and their contents, constituted a clear and specific letter of resignation which brought to an end the relationship between the parties. Such a resignation, said Judge Berenson, took effect upon the delivery of the letter of resignation to the employer and there was no necessity to receive agreement or approval on the part of the employer (p. 203 opposite letters f and g). Similarly, Judge Shamgar observed:

The resignation is the upshot of the wish of the employee, which is concretely expressed by means of an overt act in writing or verbally. The employee's intention cannot be understood except by its outward expression, and hence it follows that while the beginning of the decision regarding the resignation, which takes shape in the inner recesses of the employee's heart, is, in fact, subjective in motives and principles, its accountability, namely its overt expression, is tested by an objective measure of its truth. If from the words of an employee addressed to an employer it emerges that he wishes to sever his working relationship, his intentions will be deduced from this and he will not be listened to when he comes after the event and asks for the words to be separated from their plain significance and ascribes to himself other and different intentions which were in no way expressed at the time of giving notice of resignation. That is to say, when the words are clear and plain in themselves, there is no need to examine a person's conscience and heart in order to determine whether he has made up his mind to resign. That test will be objective, namely what a reasonable man would conclude in the circumstances of the case from the words that were uttered or written by the employee or from his conduct. Incidentally, in similar fashion, principles have been outlined for a test as to whether someone had made up his mind to establish contractual relations: "The test of the intention to enter into a contract is objective and not subjective. The decisive factor is not what passed through the minds of the parties but what are the conclusions which reasonable people would draw from their words or actions" (Cheshire and Fifoot, 6th ed. [1964], p. 94, and compare with Civil Appeal 445/75, *Wendbank and Others v. Danziger and Others*, Judgment 30 [2] 260, 268, also on p. 211 opposite letters a—f).

In the case before us, each one of the employees wrote a separate letter, as was done by the plaintiff appearing before us. She was not told to leave immediately, although the next day she found another person in her place. Hence we have concluded that the plaintiff resigned from her work.

### **Is the Plaintiff Entitled to Severance Pay Despite Having Resigned from Her Work?**

The question that arises is whether we can apply to the plaintiff's case Paragraph 11(a) of the Law of Severance Pay 5723–1963, which says:

11. Another type of resignation which is the same as dismissal.

(a) Where a worker resigns because of a substantial deterioration in work conditions, or because of other circumstances in work relations concerning that worker, where it cannot be expected of him that he continue working, the resignation for purposes of this law is deemed to be a dismissal.

The plaintiff worked on the paper for close to 20 years. She developed and advanced in her duties and in the course of time became the editor of the weekly supplement. We have seen that the general viewpoint of the paper, as well as the atmosphere created in work relationships, changed substantially with the transfer of ownership. Nothing herein is meant to convey any opinion as to whether the change was for the better or the worse. The facts speak for themselves. The change was made by the new owner. The question is whether we must regard this as a change of circumstances in which it could not be expected of a reasonable journalist to continue working. For this purpose we must examine whether the managerial prerogative in a case where we are talking of a place of work which issues a newspaper is similar to cases applying to other places of work.

### **Is a Journalist Like Every Other Worker? What Are the Parameters of the Administrative Prerogative When the Reference is to a Newspaper? Does He Who Pays the Piper Call the Tune?**

We regard the owner and manager of the workplace as having the prerogative to administer the workplace as he wishes. It is his right to try to alter the course and nature of the work. It is the right of the

# THE PALESTINE POST

INCORPORATING *The Palestine Bulletin*

Weather Report  
Meteorological Station  
Jerusalem.  
(Situated 757 m.  
above sea level)  
Thur. Dec. 1. 8 a.m.  
Temperature 8.5  
Prev. Maximum 18.7  
24 hrs. Min. 8.4  
Atmos. Press 1002.2  
Wind Direction N. W.

No. 2292.

JERUSALEM, FRIDAY, DECEMBER 2, 1932.

(Kislev 3 — Shaban 3.)

Price: 10 Mils.

## W PETROL ARTHREAT AH'S DEMANDS

### Iranian Government Cancellation Causes Fall In Shares

London, Tuesday.—The Anglo-Persian Oil Company's shares have suffered a heavy fall owing to the Persian Government's cancellation of the d'Arcy Concession; and the Board of Directors have decided to withhold payment of dividends. The position of the Company has always been a subject of dispute with the Persian Government, and the British Government, holding a majority of the shares, is very closely concerned. The concession was secured for sixty years beginning 1901, and during the War the British Government bought up the majority of shares to ensure its supplies of petrol. The Persian Government has never been satisfied with the terms of the duration of the Concession, and the recent Press campaign in Teheran urged its cancellation.

### Against Modification

The Company's answer to the announcement about cancellation is simply that the contract contains no clause concerning modification or amendment. The Shah is taking a personal interest in the matter. The concession gave the Persian Government 16 per cent of the net profits; the Shah demands 25 per cent pro rata, control of the company's accounts by the Persian Government, a right to tax further the company's profits when they exceed a certain limit, and a share in the profits made by the Company's bankers.

Persia also complains that its royalties, which had been allowed to accumulate in London to a total of over five million pounds as a result of the Persian currency, have recently depreciated owing to that Britain's going off the gold standard. Moreover the royalties have fallen in recent years from six and a half dollars a year to one and a half.

Other Bidders understood that either Germany would like to be concession, and that America also a bidder. B.P.O.

of 500,000 Square Miles don, Tuesday.—Negotiations had as "very delicate" are being between the Anglo-Persian Oil Company and the Persian Government with regard to latter's cancellation of the recent concession covering half-a-million square miles.

Drop In Shares Anglo-Persian shares fell 11/32 to 15/16 at the opening of the London exchange to-day. The company has decided to defer payment of the interim dividend on the ordinary shares.

London, Wednesday.—It is understood that if Persia persists in unilateral denunciation of the Anglo-Persian oil concession, the British Government will give serious consideration to the matter. The cancellation would be considered ultra vires. It is hoped, however, that discussions with the Persian Government will end amicably.

## MATCH TRUST BOARD SWEDISH MORATORIUM EXPIRES

Stockholm, Wednesday.—A scheme for the reorganization of the Swedish Match Company, drawn up by the reconstruction committee, provides for the establishment of a control board of twelve members, of which six to be nominated by the creditors, two by British, one by Continental and three by Swedish shareholders. The company will pay interest at six per cent on its debts. The creditors have agreed that a small part of the profits may be devoted to dividends, provided each creditor's claims be reduced by thirty per cent. The shareholders have agreed to the reduction of the share capital to ninety million crowns. The moratorium which expires on November 30 will not be prolonged. Reuter/T.T.A.

## FRENCH AIR FORCE SCHEME

Asked whether the questions involved by such a development of international air force, as is proposed by the French Government at the Geneva Disarmament Conference, was being considered, the Prime Minister stated in the House of Commons that His Majesty's Ministers were duly considering these and the related questions. B.O.W.P.

## THE SPANISH REPUBLIC PRESS BAN RAISED

Madrid, Wednesday.—The Cabinet has decided to withdraw the decree of August 10, which, issued after the attempted Monarchist revival, suppressed certain Monarchist and Communist newspapers. Only the extreme conservative organ, "Correspondencia," is still barred. B.O.W.P.

## KING AND QUEEN LEAVE LONDON

The King and Queen will leave London for Sandringham on Saturday and will remain at their Norfolk residence for about a week.

## NEW G. O. C. LONDON

The War Office announces that Major General Grant has been appointed General Officer Commanding London District, in succession to the late Major General Cator. B.O.W.P.

## MOSLEM LEADERS

El Tahatobal, the General Secretary of the Moslem Congress headquarters at Jerusalem, has left for Switzerland in connection, it is said, with the plans for the next session of this Congress. The Emir Asad Arslan is expected to leave Jerusalem for Baghdad travelling by way of Amman. The Emir was at the head of the Druse rebels and is a leader of the Irtakhiyas.

The Palestine Post  
Offices  
ARE IN THE  
Hassolel Building

## BRITISH REPLY IN FINAL FORM

### NOTE TO U.S.A.

### Cabinet Meeting Prepares Most Important Document Since War

London, Wednesday.—The British reply to the United States' note on War Debts received its final form at the meeting of the Cabinet today. The meeting lasted two hours and all the ministers were present with the exception of Mr. Baldwin and Sir John Gilmour who left early today for Scotland where they had to fulfil platform engagements.

This note, it is realized, will constitute one of the most important official pronouncements issued since the War. It is a lengthy document in which there are exhaustively set out and examined all the reasons, primarily economic, which led to Great Britain's original request to the United States for the postponement of December's instalment of War Debt. B.O.W.P.

### THE EFFECTS ON STOCK EXCHANGE

London, Wednesday.—Stock markets to-day presented generally a firm appearance. There was a good demand for investments in gilt-edged securities. Government loans registered a further sharp recovery and finished with advances up to nearly two points.

War Loan Accepted was finally quoted at 97.75. In the foreign exchange market sterling displayed an uncertain tendency at the outset; the opening rate on New York being 3.165. Later it rose sharply to 3.2075 closing at 3.1925. Reuter / P.T.A.

## ELLERMAN LINES SHARES

London, Wednesday.—The London Gazette gives notice of the petition confirming the reduction of the capital of the Ellerman Lines from £5,450,000 to £2,130,000, presented to the High Court on November, to be effected by returning 25 to the shareholders, and reducing the nominal amount of the shares from £10 to £4. Reuter / P.T.A.

## DJAFOR PASHA FOR LONDON

Djafor Pasha El Ashkar, the Iraqi Minister in London passed through Beirut on his way from Baghdad. Djafor Pasha, who was Minister of Defense in Nuri Pasha's Cabinet, had flown to Beirut in an Iraqi Air Force plane, accompanied by Nazid Bek El Djocha, the War Minister.

## HEDJAZ PILGRIMS EXPECTED

According to Sout El Hedjaz (The Voice of the Hedjaz) published at Jeddah, the first party of pilgrims of this season was expected at Jeddah on the first of Shaban, or November 23. The party is made up of pilgrims from Singapore and numbers 140.

## INDIA ROUND TABLE THE GOVERNOR GENERAL'S POWERS

London, Wednesday.—At today's meeting of the Indian Round Table Conference the discussion was continued of the powers that might be vested in the Governor General and Governors. The question will probably be completed during to-morrow's sessions.

Attention was drawn to the resolutions passed by the "Chamber of Princes" in February last, and particularly to the necessity for providing adequate safeguards in the Constitution. Generally it was agreed that certain powers must inevitably be given to the Governor General to make it possible for him to carry out effectively the responsibilities laid upon him, and these powers should include the duty of taking immediate action to meet any emergency that might occur. B.O.W.P.

## THE ASSIR RISING "EXAGGERATED REPORTS"

People with a weakness for "fishing in murky waters" are responsible for the exaggerated reports of the uprising in Assir, says the Umm el Kureh of Mecca, deprecating the attempts of enemies of the Wahabis to make it appear that the disturbance was anything but a slight incident.

El Idrissi, the ruler of Assir, has in the meantime notified his submission to the Wahabi mormarch, according to this source.

## Interview In Damascus

An interview with Khalid-Bek El-Hakim, advisor of King Ibn Saud now resident in Damascus, appeared yesterday in nearly all Arab newspapers in Palestine. From this interview it would appear that the Idrissi has most reasonably kicked over the traces after King Ibn Saud had acceded to his petition to extend his protection over the small Emirate.

## JEWISH SCHOOLS TRANSFER AGREEMENT TO BE SIGNED TO-DAY

The transfer of the Jewish public schools from the Jewish Agency to the "Vaad Leumi" will be formally consummated today when the agreement will be signed in Jerusalem.

The agreement will provide for the payment by the Agency to the National Council of some £20,000 a year towards the schools budget, over which the Vaad Leumi will henceforth have charge.

## PROPOSED MOSLEM UNIVERSITY

### A L. P. 25. Contribution

The announcement that the Moslem Supreme Council has decided to use the building formerly occupied by the Palace Hotel for a Moslem University has evoked a response from Saad Eddin Mahomed Tah, a Moslem notable, who has sent a contribution of the L.P. 25 to the Murfi of Jerusalem.

## RATES OF EXCHANGE

	December 1.
PARIS	81 3/4
NEW YORK	3.19 3/4
ZURICH	16.90
TRIESTE	62 7/8
ANTWERP	22.92
PRAGUE	186
BERLIN	13.45

(By courtesy of the Anglo-Palestine Bank.)

## OPPOSITION TO NEW BILL MAYORS UNITING

### Statement Of Observations On Local Government Bill Prepared

The sub-committee appointed by the Mayors' Conference held on Monday, to submit observations and suggestions for transmission to the High Commissioner, concluded its work on Wednesday night, after a three-day session, a statement by the Conference Secretary, Fakhri Bey Nashashibi, yesterday said.

As a result of the Conference, a detailed memorandum on the Local Government Bill is to be drafted giving the Mayors' views on the authority vested by the Bill in the High Commissioner, in the matters of constituting Municipal Councils, Municipal movable and immovable property, the functions and competence of Municipal Councils, the manner in which duties imposed on Municipal Councils are to be carried out, constitution and by-laws of Councils, and the general question of taxation.

Besides dealing with these seven points, the committee decided that each municipality or township is to submit separately its observations to the High Commissioner.

### Mayors Of All Towns Unite

Copies of the resolutions of the Mayors' Conference are to be sent to all Municipal Councils in advance of the Mayors' Conference to be resumed on December 12 in the offices of Ragheb Bey Nashashibi; Mayor of Jerusalem. At this meeting it is proposed to draft the final Memorandum to be sent to the High Commissioner after signature by all mayors.

On the ground that it was "inconsistent with the dignity and interest of the people of Palestine," the sixteen Mayors unanimously rejected the Local Government Bill at their conference on Monday.

The meeting had been summoned by the Mayor of Jerusalem to determine the attitude of Municipal Councils throughout the country towards changes proposed by Government in the present system of municipal administration.

## RECEPTION TO DR. SOKOLOV

### Notable Gathering in Jerusalem

Some 200 persons, including leading members of the Jewish Community, the Consular Corps, Senior Government Officials, and representatives of Jewish institutions of Tel Aviv and the colonies were present at the reception held yesterday in honour of Dr. Nahum Sokolow, President of the Jewish Agency, in the Hall of the Eveltina de Rothschild School.

Among those present were the Chief Justice, Sir Michael MacDonnell; Attorney General, Mr. Trustees; the Treasurer, Mr. Johnson, Judge de Freitas, Judge Webb, Mr. Hyamson, Colonel Hudson, Director of Health; Colonel Hudson, Postmaster; Mr. Abramson, Director of Lands; Mr. Andrews, Director of Development; and Dr. Dulcham.

Mr. Sokolow will spend the week-end in Tel Aviv and on Saturday evening will be the guest at a dinner in his honour by the Township.

owner of a factory to decide to change the manufacturing process and to give orders to the workers that instead of inserting the screw from the right-hand side, to begin inserting it from below. To the extent that this does not affect the conditions of work in any appreciable manner, and does not create a difficulty greater to an unreasonable degree than the difficulty which the employee dealt with previously, there is nothing to prevent the employer from issuing new instructions, and it will not be acceptable for a worker to maintain that the conditions of his work cannot be changed. This is the managerial prerogative of the manager. It is also legitimate for the employer to demand from his workers that they clock in on a time clock. But it is conceivable that a situation will arise where a change of conditions which the employer wishes to introduce will be so substantial that the matter constitutes a qualitative alteration in work conditions, to the extent that it would not be reasonable to expect of the worker that he continue working. Thus, as far as the time clock is concerned, it is possible that at a place of work where the hours of employment are flexible and the type of labor is such as to require the workers to work outside the building of the enterprise for part of the time, a new demand requiring the employees to clock in on a time clock, which would be legitimate in other instances, constitutes a substantial change of circumstances.

The legislature indirectly recognized the administrative prerogative of the manager in Section 11(a) of the Law of Severance Pay. It started off with the assumption that the employer had the right to change the conditions of work in order to make the place of work more efficient. But it recognized the fact that such a right had its limitations. The employer is not entitled to change the conditions of work in such a way as to create a qualitative worsening thereof or create circumstances in which a reasonable worker could not be demanded to continue his work. This prerogative stems from the employer's right to concern himself with the efficiency of his place of work. We regard this as one of the basic rights of the employer. In the same way as the employee has a right to his place of work, from which it follows, *inter alia*, that he has a right to optimal conditions of work, so the employer has the right to ensure that his place of work shall be in an optimal state. But this right of the manager's is not an absolute right. It is a basic right, a freedom, such as the freedom to work and other freedoms — freedom of expression, the autonomy of free will which includes a person's right to enter voluntarily into contracts, the right to freedom of occupation, and the like. Over and above these freedoms, however, the employer has the right of managerial prerogative to derogate from other rights pertaining to the worker or the public. Certainly, therefore, in the context of this prerogative, the owner and publisher of a newspaper has the right to intervene in what is happening in his paper, and a right to give directives to his

employees, including the editor and the journalists. The question is: what are the limitations of this right of a newspaper publisher? We are not talking about an ordinary worker, a worker in a factory, in an office, in agriculture and the like. We are talking about a newspaper. A newspaper's employees and its journalists have additional rights over and above the right to a place of work and the right that their work conditions not be worsened in a concrete way. They have the right of free expression, of journalistic freedom. The question is: how far is the employer and publisher of a paper entitled to exercise his managerial prerogative as against the right to freedom of expression and freedom of the press by the editor and the journalists?

On a newspaper, the one category operates in juxtaposition to the other — the owners and the publisher appointed by them, on the one hand, and the editor, with the journalists working under him, on the other. Both these groups, in a democratic society, have the protection of the basic right of freedom of expression, one of the corollaries of which is freedom of the press. Moreover, these are not the only interests operating against one another. The press in a democratic state functions for the sake of the public, whose right to know and to obtain varied information must be balanced against the aforementioned rights as well.

All these spring from the right to freedom of expression. It is not necessary for us to recapitulate and stress the value of the right to freedom of expression in a democratic society in general and in the State of Israel in particular. The High Court of Justice, in a far-reaching judgment, reasserted the validity of this basic right. Until then, this right had been a "right which had not been written in the book," to quote Judge Landau, and was recognized as such by the judgment. Possibly today this right is of secondary validity, an assessment that arises from a reading of the Basic Law: The Dignity and Freedom of Man. The government is prohibited from harming the basic rights of the individual. The government is prohibited from interfering with the individual's freedom of expression. The learned jurist A. V. Dicey defined this prohibition on the basis of the narrow approach that there can be no punishment except in conformity with the law: "The so-called liberty of the press is a mere application of the general principle that no man is punishable except for a distinct breach of the law" (A. V. Dicey, *The Law of Constitution*, 8th ed., 1923, p. 244). Today we view this right as a freedom, in such a way that the press is not obliged to coordinate what it is about to publish with the government, while the government is not entitled to interfere in the work of the press except in exceptional cases — libel, protection of privacy, the near certainty of harm to the security of the country, or disturbing public order. As a result thereof, the licensing of the press, which existed from the seventeenth century onward, was abolished. Since we regard this right to be a constitutional right, in





light of the Basic Law: The Dignity and Freedom of Man, it applies to a civil case via the principle of innocent intent and the public norm. (See on the matter of the application of the basic laws to private law: Aharon Barak, *The Protected Rights of Man in Private Law*; the Klinghoffer book *On Public Law* edited by Yitzhak Zamir, Jerusalem, 5753 – 1993, p. 163; Civil Appeal 294/91, *The Chevra Kadisha G.H.S.A. "Kehillat Yerushalayim" v. Kestenbaum* (not yet published); and more lately, Judgment of the National Labor Court in Labor Case N9/3–17, *Tuma v. Techno Gumi Lisitzki Ltd.* (not yet published.) Just as the government is prohibited from infringing on the freedom of the press, so, in view of the fact that the basic law also applies to private law, no single individual is permitted to violate the rights of his neighbor either by virtue of the principle of innocent intent, or, as in the case before us where we are speaking of two parties to a labor contract, by virtue of the public norm.

In the case of a newspaper, this freedom applies to a number of groups of people. It is possible for the right of one of these groups to conflict with the right of another group. Hence we must strike a balance between the rights, or liberties, of the various groups and freedom of expression. The first liberty is the freedom of the owner and publisher of the paper to decide on the political direction and the image which he conceives for his paper. The second liberty is

the freedom of the editor and the journalists to guard their freedom of expression and the freedom of the press, which, as has been mentioned, is a projection of freedom of expression. The third liberty is the public's right to know. This right, too, is a projection of freedom of expression, and essentially includes the right of the public to obtain information and be exposed as well to a wide range of ideas, both political and otherwise, in such a manner as to enable it to formulate an opinion of its own. This liberty is the obverse of freedom of the press, with the other side consisting of freedom of the press from the owner's and the editor's vantage point. Since these projections of freedom of expression are likely to conflict with each other, we must strike a balance at the outset between the right to freedom of expression by the owner and the publisher, on the one hand, as against the right to freedom of expression by the editor and the journalists, on the other. In striking this balance, the relative weight of these two liberties must be examined against each other. To what extent is the owner and publisher of the paper entitled to implement his right of freedom of expression if his opinions are forced upon the editor and the journalists? At what point does the freedom of expression of the owner and publisher end and the freedom of expression of the editor and the journalists commence? When this balance has been achieved, we must address the other balance, namely that between the owner's and publisher's,

From one day to the next: The editor's name changed from January 8th to the 9th, 1990, from Erwin Frenkel to N. David Gross

<p>Ychuda Levy <i>President and Publisher</i></p>		<p>Erwin Frenkel <i>Editor</i></p>
<p>Avi Golan <i>Marketing, Advertising Manager</i> Ronnie Friedmann <i>Treasurer</i> Yosef Horn <i>Press Manager</i> Ray Lewis <i>Circulation Manager</i> Daphne Raz <i>Manager, North America</i></p>	<p>Yaakov Reuel <i>Editorials Editor</i> Shalom Cohen <i>Op-ed Editor</i> Hanan Sher <i>Supplements Editor</i> Ronnie Hope <i>Editor, International Edition</i></p>	
<p>F. David Radler <i>Chairman, Board of Directors</i></p>		
<p>Ychuda Levy <i>President and Publisher</i></p>		<p>N. David Gross <i>Managing Editor</i></p>
<p>Avi Golan <i>Marketing, Advertising Manager</i> Ronnie Friedmann <i>Treasurer</i> Yosef Horn <i>Press Manager</i> Ray Lewis <i>Circulation Manager</i> Daphne Raz <i>Manager, North America</i></p>	<p>Yaakov Reuel <i>Editorials Editor</i> Shalom Cohen <i>Op-ed Editor</i> Hanan Sher <i>Supplements Editor</i> Ronnie Hope <i>Editor, International Edition</i> Matt Nesvisky <i>Magazine Editor</i></p>	
<p>F. David Radler <i>Chairman, Board of Directors</i></p>		

# THE JERUSALEM POST

together with the editor's and journalists', freedom of press, as against the freedom of expression of the public, namely the public's right to know. This question of necessity includes the issue of the permissibility of monopolization of the press which is likely to lead to joint ownership of the greater part of the press, so that the public would obtain one-sided and unbalanced information. Let us examine these various balances.

## The First Balance: The Balance Between the Owner's and the Editor's Freedom of Expression

It is important to bear in mind that the owner of a newspaper has the right to exercise his managerial prerogative. This right is doubly valid when the reference is to an employer who is the owner of a paper, since in addition to his right to exercise his managerial prerogative, he is protected by the right to freedom of expression. It is his right to decide that he would like to publish balanced articles or features expressing support for one or another viewpoint on the political map, and that he would not want to publish articles partial to one side of the political map. Consequently, where a publisher of a paper engages an editor or a journalist to work for him, he is entitled to instruct the editor as to the general line he wishes to adopt. This could be either a balanced attitude or a line supporting a particular trend on the political map. In this matter we accept the remarks of Mr. Yehuda Levy in the interview quoted above, according to which:

The publisher (or beneficiary) has the right to dictate the way in which the paper should function. If the editor should act against the publisher's opinion, it should be possible to replace him.... Who lays down the paper's line? The editor. And who determines that this is the correct line? If *Al Hamishmar* represents Mapam (the United Workers' Party) and the editor adopts an anti-party line, he would be replaced" (extract marked with the letters A—B Y/2).

We do not accept the statement that the whole issue is deception. But it is clear that the owner of the newspaper *Al Hamishmar*

would want its editor to represent the paper's political line. It is also clear that, as part of the publisher's freedom of expression, he is entitled to replace the editor should he act in a way contrary to the views of the publisher. It follows that the publisher (henceforth we shall refer to the owner and the publisher together as the publisher alone, since he is the representative of the paper's owner) is definitely entitled to select an editor whose outlook will conform to his own. Hence, an owner and publisher who purchases a newspaper and encounters an editor and journalists who have worked under the former owner is entitled to dismiss both the editor and the journalists. All these steps are within the context of the owner's and publisher's freedom of expression. The question is whether, if the publisher does not dismiss the editor and the journalists and continues employing them, it would be legitimate for him to interfere with their work and dictate to them, or even advise them, as to the spirit in which they should write, and, if this is legitimate, to what extent he is entitled to interfere and what are the legitimate limits of his intervention. Is daily interference with journalistic work included as well in the publisher's freedom of expression and managerial prerogative?

On the surface, such intervention is legitimate. There is no doubt that it is included in the concept of the protection of the publisher's freedom of expression. Is it an absolute right and does it not have any limitations? This, indeed, was the traditional attitude and is the prevailing viewpoint to this day in the United States and Britain, although differing opinions, on which we shall dwell, are beginning to be voiced thereon. According to this approach, if any owner of a place of work has the right to change the nature of that work, why should not the publisher of a newspaper be able to do so, especially as he would be doing so by virtue of the protection of his basic right to freedom of expression? The owner is all-powerful, especially in the context of a newspaper. The traditional attitude is that freedom of the press is no more than the freedom to express views without the interference of the state. Ownership of a newspaper entails an obligation on the part of the owner to provide his journalists with this freedom from state interference. Hence it follows that, according to the traditional approach, freedom of the press means the freedom to publish a newspaper without the intervention of the state and without discrimination. Consequently, freedom of the press also includes the freedom from having to register [the newspaper with the authorities] as well as freedom from censorship. This traditional attitude recognizes the right of the owner to select the editor. He can choose the candidate who in his view is suitable, with the editor's political views usually of no lesser importance than his journalistic and administrative ability. According to this approach, the editor's autonomy is determined entirely by the freedom which the owner accords him. Hence, if there is an absence of basic agreement between the two,

the editor shall have to determine whether to continue in his post or not. This approach is reinforced by the fact that the owner bears [legal] responsibility on the civil level and sometimes also on the criminal level. His liability on the civil level is vicarious. For example, the owner's liability for libel has led to the conclusion that he must be permitted to control the editor's activities so as to ensure that items that could be libelous are not published. All that remains for the editor to do is merely to see to it that information reaches the paper properly. It is in the owner's interest to ensure that nothing is written in the paper that is libellous, or that could be interpreted as contempt of court, breach of privacy or breach of public security and safety — a situation that prevails in most of the countries of the West. Thomas Gibbons summed this up in his article "Freedom of the Press: Ownership and Editorial Values" (in *Public Law*, Summer 1992, pp. 279-82). These considerations give absolute validity to the administrative prerogative. They are not limited by any restrictions and stem, like considerations relating to the administrative prerogative generally, from economic considerations. According to this approach, the owner pays the piper and therefore also calls the tune. His interest, like that of the owner in any place of work, is that the enterprise function properly, in conformity with his own conception of the efficiency of the enterprise. Where it is a newspaper that is his business, the owner considers the line the paper should adopt as well as its external image, in order that the paper be economically profitable. Beyond this, we have maintained that the interest of the owner of the paper is not merely economic, but is a concern that his ideas and his outlook be expressed therein. This approach prevails in most of the countries of the West. In the United States, for example, the editor has the right to resign if the viewpoint of the paper is not to his liking, but the owner enjoys the strong defense of the First Amendment.

This approach seems to us to be anachronistic today when the liberty of the press has acquired an unshakable status in democratic society. We certainly recognize the right of the owner and publisher of a newspaper to freedom of expression and to the desire that the paper reflect his point of view. But the journalist is not, in our opinion, an ordinary worker. In addition to the rights that every worker enjoys — that his workplace provide him with conditions in which he can work in a reasonable manner, and the rights arising out of his right to work and to a place of work — the journalist has an additional liberty: the liberty of freedom of expression, which is a journalistic freedom. We have stated that, in its narrow sense the liberty of journalistic freedom means that no one may interfere with the expression of the journalist's opinion. But journalistic freedom is not merely freedom from interference, or from prior restraint. The U.S. Supreme Court insisted that journalistic freedom is nothing less than immunity from prior restraint, or from prior

censorship (Leonard W. Levy, *A Free Press*, Oxford University Press, New York and Oxford, 1985). Journalism received a special status, and was designated the Fourth Estate of governmental authority, alongside the legislative, executive and judicial authorities. This liberty may not be denied to the journalist, for whom the supply of information and the expression of opinion is his daily bread. Thus, in the course of time the approach developed that more weight had to be given to the editor's and journalists' right to freedom of the press.

It seems to us, upon examination of the appropriate balance, that the publisher of the paper has the right, protected by his freedom of expression, to choose his editor and journalists as he wishes. This applies to dismissals as well. It is his right to dismiss them if their method of writing, their style, the extent and nature of their criticism of the governmental authorities, their political opinions, their sense of balance — their inclination to favor the side opposite his own preference — are not to his satisfaction. However, from the moment that the publisher has made up his mind not to dismiss the editor, he is no longer at liberty to interfere with the editor's work unrestrictedly. He is certainly entitled to guide him along general lines; he is entitled to ask him to ensure that articles are more balanced; and obviously he would have the right to dismiss him if the manner of his writing does not satisfy him. But he cannot be allowed to deny or illegally restrict the editor's journalistic freedom by interfering daily with the manner of writing or commenting on the opinions expressed by the editor and the journalists.

Furthermore, we have dwelt on the fact that the press has an immunity from government interference. This immunity, too, is not absolute. But the freedom of the press to enjoy immunity from interference in its affairs must be given substantial weight. Consequently, in the balance between freedom of the press and interference by the government, the latter is permissible only in exceptional cases such as near certainty of a security risk or the disclosure of security secrets in time of war. (For an analysis of these balances, see T. Barton Carter, M. A. Franklin, J. B. Wright, "The First Amendment and the Fourth Estate," in *The Law of the Mass Media*, 4th ed., New York, 1988, p. 95 and ff.) A straightforward criticism of the government that might be aimed at damaging its prestige cannot serve as grounds for the government intervening in the freedom of the press. In the same way, interference in the publisher's freedom of the press cannot be allowed if its object is to defend the establishment, including its various branches, against criticism. This would constitute a kind of indirect interference by the government and, in any case, a breach of freedom of the press. An editor of a paper or a journalist working under the editor's authority is entitled to criticize the governmental authorities and officials as well as their method of operation. The

government is not entitled to interfere therewith, even if it has been proved, as stated, that there is a clear and present danger, and the publisher is not entitled to interfere therein to limit the freedom of expression of an editor or journalist where the government is forbidden to do so, except within the parameters of general guidelines concerning policy. Intervention in the details of articles, even if it takes place in the form of directives or advice alone, is likely to inflict a serious blow on the editor's and journalists' freedom of the press.

Thomas Gibbons dealt with this in the article referred to above:

If freedom of the press has any significance, other than the owner's economic right to start a newspaper or his liberty to speak, it is in its identity with editorial autonomy conceived in this sense of serving a public interest in communication. Preserving freedom of the press entails, then, the protection of freedom to make editorial judgments on the basis of values that are independent of the partisan views of particular, powerful individuals. It does not imply the broader view that the media (as an institution) should be privileged, but it does suggest the value of finding some method of distinguishing the editor's function from the owner's interests. (*Op. cit.*, p. 289)

### **The Second Balance: The Balance Between the Owner's and the Editor's Freedom of Expression as Against the Public's Right to Know**

This approach of ours, according to which journalists have a right to work without frequent interference by the publisher, gained twofold validity in the Western world during the World War II period, when fewer small newspapers were published while the large papers were monopolized by financially well-established companies. Previously, various small papers had been published in every town or village in several countries, especially the major ones. This facilitated the articulation of a wide range of opinions so that readers could choose a newspaper closest to their heart. In the course of time, large companies took over the control of newspapers, so that the ownership of the newspapers began to be concentrated in a small number of hands. This change created a situation which jeopardized the public's right to receive wide-ranging and balanced information if the owners' freedom of expression and freedom of the press were honored exclusively or even partially.

The publisher's nonintervention has a number of advantages from the point of view of the public. Firstly, the object of granting

the editor freedom of expression with only minimal interference from the publisher was to avoid a situation where the individual who controlled the press financially would also control public opinion. Freedom of the press, from the public point of view, does not mean the freedom of the individual to express his opinion even if that individual is the owner of a newspaper. Freedom of the press, from the point of view of the public interest, means obtaining information and exposure to as wide a range of views as possible. The ability to finance should not determine the ideas to be conveyed to the public. Freedom of the press, from the public point of view, means that the public should not receive information exclusively from, or hear only the views of, he who pays the piper — the individual who has the financial ability to run a paper. Secondly, there is a certain importance in the editor serving as an intermediary between the publisher and the public, since the editor and the journalists have been selected for their jobs because of their journalistic talents and not because of their financial capability (which is the case with the owner) or their administrative ability (which is the case with the publisher). Furthermore, editors obtain their information from many journalists and from various sources. They assemble and collate this material and utilize it for the purpose of passing on information to the public. In this way a multiplicity and variety of sources of information are created, whereas the publisher does not gather information but merely conveys his own opinion or that of the paper's owner.

The importance of the public's right to know originated in the teachings of John Milton and John Stuart Mill and was given modern validity by Judges Holmes and Brandeis. The press, according to Judge Holmes, is "a marketplace of ideas." In his words:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe in the very foundations of their own conduct, that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the thought to get itself accepted in the competition of the market." (*Abrams v. United States*, 250 U.S. 616, 630 [1919; dissent]. See also L. A. Powe, Jr., *The Fourth Estate and the Constitution: Freedom of the Press in America*, University of California Press, Berkeley, Los Angeles and Oxford, 1991, p. 237.)

If the object, from the point of view of the public's right to know, is to supply the public with a variety of opinions, a "marketplace of ideas" according to Holmes' metaphor, this cannot be implemented when the person determining the point of view of the paper is the publisher. He has only one

# A letter from the publisher

Dear Reader,

Six months after Hollinger Inc. of Canada assumed ownership of *The Jerusalem Post*, we are privileged to present the first significant improvement in the design of one of our publications: *The Weekend Magazine*.

The new and colourful *Weekend Magazine* is a first step towards a better designed newspaper, illustrating some of the new technologies we are planning to adopt as we enter the 1990s. Other parts of *The Post* are also undergoing renovation and redesign. But, of course, our main efforts are still directed towards producing a quality daily newspaper with a full range of news reporting on the one hand, and with a wide spectrum of comment and features, on the other.

This colour magazine is the result of the skill and dedication of our staff members. I hope that it brightens your Shabbat each and every week.

Wishing you a peaceful and successful 1990,

Inside cover page of the Jerusalem Post Weekly Magazine on January 5, 1990. Joanna Yehiel's name is still listed (for the last time). At left, Publisher Yehuda Levy announces an improvement in the format of the magazine. "This colour magazine is the result of the skill and dedication of our staff members," Levy noted. Ms. Yehiel headed this staff

Friday, January 5, 1990

## 6 The private world of the private eye

After years on the trail of philandering husbands, can paid snoops rest easy at night? By Larry Derfner

## 10 The decade of Dalia

If Dalia Shimko is Israel's 'film actress of the decade,' how come we haven't seen more of her? Calev Ben-David explains

## 14 Graceland, Jerusalem

Yes, it's the King himself – Elvis – amid the rolling Jerusalem hills, writes Carl Schrag

## 18 'The Veggie Philanthropist'

Tom Tugend finds a Los Angeles millionaire who's become the Jewish patron saint of the hungry and deprived

## 20 Fifty glorious years

Director Leonard Schach is celebrating a double anniversary, writes Helen Kaye

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Rick Hardiman spent three years on China's remote Loess Plateau. He told Pamela Kidron that 'We were the first foreigners there since Marco Polo'

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What does a sporting carp do on a Friday morning? Try to steal the bait from footballer David Pisante, writes Michael Eilan

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Matt Nesvisky

Cover photograph: On the detective trail, see story on page 6. Photo by Hanoah Guthmann

Editor: Joanna Yehiel  
Art Director: Mike Horton  
Advertising Director: Avi Golan

opinion — his own. An assessment [of current events] can be made only when a large number of journalists assemble information and report thereon or express their opinions on events freely. A free press, in which journalists are given a free hand to publish a wide selection of ideas, improves the level of public discussion. However, it must be borne in mind that a free, autonomous press has a price, from the point of view of the public interest. A situation may be created in which a free press, instead of provoking public debate and decisions, is liable, in fact, to constitute a threat to the adoption of qualitative decisions and in this way a threat to those very democratic values represented by freedom of expression. Lee C. Bollinger dealt with this point in his book *Images of a Free Press* (Chicago, 1991) on pp. 26-27:

There is no guarantee that the press will not abuse the freedom it possesses under the autonomy model. And there are many ways in which it might do so. The press can exclude important points of view, operating as a bottleneck in the marketplace of ideas. It can distort knowledge of public issues, not just by omission, but also through active misrepresentations and lies. It can also exert an adverse influence over the tone and character of public debate in subtle ways, by playing to personal biases and prejudices or by making people fearful and, therefore, desirous of strong authority. It can fuel ignorance and pettiness by avoiding public issues altogether, favoring simple-minded fare or cheap entertainment over serious discussion. Even if the pressures for low-quality discussion come from the people themselves, as to some extent they do, the press acts harmfully by responding to those demands, and hence satisfying and reinforcing them. It matters not whether the press is the instigator of what is bad or the satisfier of inappropriate demands originating in the people. In either case the press can be an appropriate locus for reform.

Hence we arrive at the importance of balance between the owner's freedom of expression as against that of the journalists. The owner has the authority to avoid the situation depicted by Bollinger, according to which freedom changes into chaos, harming the public instead of protecting it. A publisher is entitled, for example, to demand that before an article is published, the party about whom it is written should be heard. But this authority is a general one and applies only to extreme cases such as these, for if this is not so — if the owner and publisher had broad authority — the single-minded intention of the owner to present one-sided information to the public would harm the public by creating a "bottleneck" in the

marketplace of ideas.

Thus it follows that from the point of view of the public interest and the public's right to know, it is important that an editor and journalists gathering information from various sources, and who are trained for that purpose, be given maximum freedom of expression, and that the owner not be allowed to turn the paper into a mouthpiece for his own ideas. His only role is to take care that the ideas be balanced and the information imparted to the public be complete.

Freedom of the press, therefore, rests upon two pillars. One is the autonomy of the individual, which creates the strongest established claim against the intervention of the state or any other interference in the freedom of expression, and the other is the principle of public debate and discussion. The learned Owen Fiss sees the two as an impetus for the advancement of the democratic purpose of the principle of freedom of expression (Owen Fiss, "Why the Press," *Harvard Law Review* [1987], p. 781). The point he dwelt on was:

Autonomy may be protected, but only when it enriches public debate. It might well have to be sacrificed when, for example, the speech of some drowns out the voices of others or systematically distorts the public agenda. (p. 786)

We have stressed that an editor and a journalist are not like other workers. We emphasized that great weight has to be attached to the editors' and journalists' freedom of expression and freedom of press, both from the point of view of the interest of journalists in their freedom of expression within the context of the autonomy of the individual, which differs from the interest of the ordinary worker in what happens in his workplace, and from the point of view of the interest of the public in a public debate and discussion and its right to know.

The words of Judge Frankfurter are most apt in this context:

To be sure, the Associated Press is a co-operative organization "engaged in a commercial business for profit." But in addition to being a commercial enterprise, it has a relation to the public interest unlike that of any other enterprise pursued for profit. A free press is indispensable to the workings of our democratic society. The business of the press...is the promotion of truth regarding public matters by furnishing the basis for an understanding of them. *Truth and understanding are not wares like peanuts or potatoes.* And so, the incidence of restraints upon the promotion of truth through denial of access to the basis for understanding calls into play considerations very different from comparable restraints in a co-operative enterprise having

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merely a commercial aspect" (*Associated Press v. United States*, 326 U.S.1 [1945]).

Judge Frankfurter quotes the remarks of Judge Learned Hand on 52 F Supp 362, 372 with approval, stating:

Neither exclusively, nor even primarily, are the interests of the newspaper industry conclusive; for that industry serves one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many, this is, and always will be, folly; but we have staked upon it our all." (See also T. Barton Carter et al., *op. cit.*, p. 498.)

Arising out of the public interest to provide for re-assessments of sources of information and ideas there flows the importance of enforcing the laws of business restrictions on the ownership of newspapers.

## **Enforcement of the Laws of Business Restrictions vis-a-vis Newspaper Ownership — Increase in Multi-faceted Information**

Enforcing the laws of business restrictions vis-a-vis the press negates the freedom of the press. At the same time, if we allow the unrestricted and uncontrolled acquisition of newspapers, a situation is likely to be created in which a company or an individual with substantial assets might dominate the majority of newspapers in a particular locality. This would prevent the presentation of a wide variety of ideas and thus impair the public's right to obtain multi-faceted information and choose for itself that which it prefers. Hence a blow, on the one hand, to freedom of the press by the

enforcement of the laws of business restrictions leads, on the other hand, to the protection of the public's right to know, an extension of freedom of expression. Thus the principles of variability of ownership were applied in the United States to television companies so that the ownership of various newspapers should not be concentrated in a few hands, but a many-sided ownership should be created — the "multiple ownership rules." In addition, the committee regulating television activity in the United States adopted principles for the encouragement of the ownership of communications media by minorities. (See D. H. Ginsburg, M. H. Botein & M. D. Director, *Regulation of the Electronic Mass Media Law and Policy for Radio, Television, Cable and the New Video Technologies* [2nd ed., St. Paul, 1991].) All these are measures taken in democratic countries in order to ensure variation in the communications media, so as to avoid a situation in which the public receives one-sided information. The object is to avoid a state of affairs in which a single individual's view dominates the communications media. The same rationale underlies the notion of limiting the authority of a newspaper owner and publisher so he cannot exert too great an influence on the content of the articles. Most apposite here are remarks by Judge Musmano in his judgment *In re Mack* 386 Pa. 251; 126A 2nd 679 (1956) which was quoted with approval in the judgment given by President of the Court Shamgar in *Sundry Applications 298/86, 368 Citron and Others v. the Disciplinary Court of the Law Society in the District of Tel Aviv and Others*, Judgments 41 (2) 337, 362 opposite letters e and f. Judge Shamgar stated:

It is right to recall, once again, in summing up, that the absence of a refuge leads to a recoil from disclosing information, and this recoil withholds information from the public. A press without sources of information is like a failing stream whose waters have dried up, and the freedom to publish then becomes meaningless.

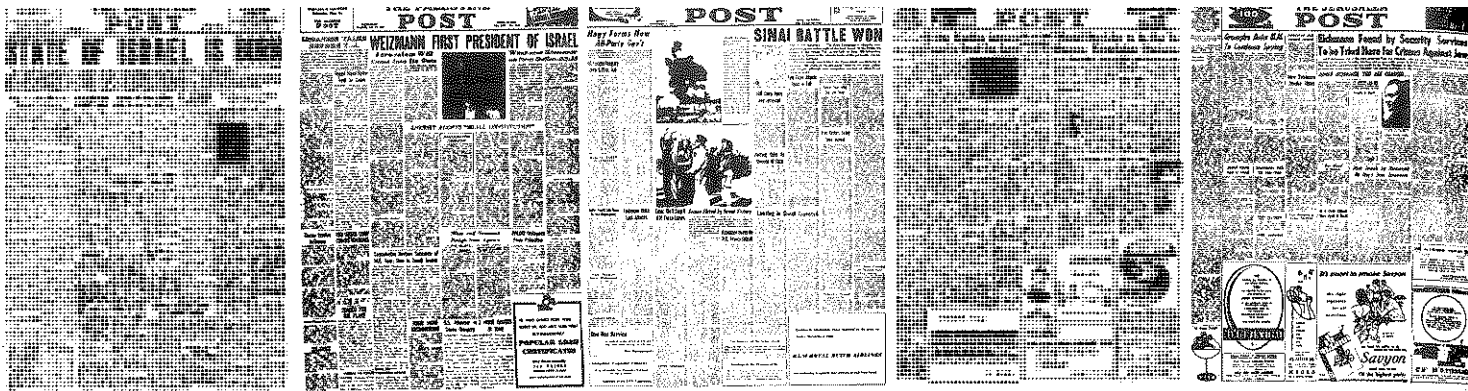
To sum up, an owner and publisher has the protection of the basic right of freedom of expression, but this right is balanced against the right of the editor and the journalists to freedom of the press in order to express their own ideas, a freedom of the first magnitude in a democratic society. This freedom gives the profession of journalism its special character, on the one hand, and also protects the public's right to know by precluding it from being supplied with one-sided information by the paper's owner, who generally speaking does not have experience with the press and whose special attribute is his economic capability to purchase the paper and the administrative ability to publish it. A balance must be struck between these two freedoms in a way which neither impairs the publisher's right to freedom of expression nor harms the rights of

the journalists and of the public. This balance must be effected in such a manner as to enable the owner and publisher to determine the general direction of the newspaper without interfering in the daily functioning of the editor and the journalists. Where the gap between these two, the owner and publisher on the one hand, and the editor and the journalists on the other, is so wide that it cannot be bridged, the owner and publisher has the right to dismiss the editor and the journalists, bearing the consequences of the dismissals as required by law. Where a publisher does not do so, he must give the journalists a substantially free hand in their work. His administrative prerogative does not permit him to infringe on the press freedom of the journalists. We are not talking only of the prohibition against the publisher to threaten the journalists, but even to indicate to them what is worthwhile reporting and what is not, what style is desirable, or whether it is fitting to censure public personalities, members of the government and the like. The intervention of the publisher would be legitimate only where the journalists write reports in which there is a near certainty that security will be affected, for example, or which will invade privacy to a greater degree than is reasonable. Invasion of privacy however, must also be balanced against freedom of expression in all its manifestations. (See, in the matter of balancing between the protection of privacy and the freedom of expression and of the press, the article by a judge of the Conseil d'Etat — the French Supreme Administrative Court — Roger Errera, "Sur les justes limites de la liberte d'expression" in *Esprit*, December 1990, p. 82, and his article "Balancing Legitimate Rights: Freedom of the Press and Other Rights in French Law" in *Communications Lawyer*, Spring 1991, p. 14.) Together with this, the privacy of the injured party must be examined. Damage to the privacy of an unknown person differs from injury to the privacy of a public figure. The harm to the privacy of a public figure is more injurious since he is known to many people and his reputation is likely to be damaged, but on the other hand we must remember that the purpose of the liberty of the press is precisely and mainly to permit criticism of public personalities. The public is interested in such people, and furthermore, the absence of criticism of public figures is likely to harm the authority of the law and democracy as it shows an absence of surveillance of their activities. Public figures must be prepared for the fact that, by virtue of their office, they will be more exposed to attacks on their privacy. In fact, to a great extent they waive their privacy by electing to be active in public life. If criticism of such individuals were not permitted, an important value of democracy would be harmed.

In testing the one right against the other, applying all the criteria we have dealt with, we arrive at the conclusion that it is most reasonable to assume that the publisher, according to his assessment of the function of the press in general and of the publisher in particular, as well as in light of the approach

of the journalists who worked on the *Jerusalem Post* prior to the change in ownership, which was substantially different from the approach and outlook of the publisher, could not continue working with the editors and the journalists. From an administrative point of view, he wanted to impose new arrangements, such as operating a time clock. These arrangements, legitimate in themselves, were a harassment to the staff, since they had been accustomed to freedom of movement and work on their own volition without coercion in terms of the nature of their journalistic work and freedom of expression and of the press. Their ideas, and the criticism which they wanted to express of the government, its policy, its leader, members and officials, was like a thorn in the side of the publisher, and he did not allow the journalists the liberty to write reports without his supervision and his interference. While not making threats or ultimative demands, he nevertheless gave advice and indicated guidelines repeatedly. A journalist possibly ought to become accustomed to a change of discipline in a newspaper, but he is not bound to compromise in regard to interference with his journalistic discretion. From the time that the parties decided to try to work as a team, the appropriate balance was that the publisher should define general policy but not intervene in the daily life of journalistic reporting. His interference, albeit not by threats but only through queries and directives, must be deemed to be a change of circumstances in the context of an employee who is a journalist, where it is not reasonable to demand that the journalist continue working under these conditions. The National Labour Court dealt with this issue in the matter of *Shlomo Shamli and Others v. the Israel Communist Party (Maki) the Ottoman Society Kol Ha-am Ltd.* (Appeals Report 34/3-54, Appeal judgment f' 42 and ff: the case of "Kol Ha-am"), which involved work for a particular political party (Maki) where some of the plaintiffs also worked as reporters for the party newspaper, *Kol Ha-am*. Ideological identification was a basic condition for establishing employee-employer relations. At a certain stage, the party adopted a new political line. The workers wrote to the central committee of the party that they were leaving the party because they were unable to reconcile themselves to the new line it had adopted, and in consequence thereof those workers who had worked on the paper *Kol Ha-am* stopped working for it as well. The court, in dealing with the question of whether a change of circumstances had been constituted, which would grant entitlement to severance pay as stated in the aforementioned Section 11(a), laid down that generally speaking, where the resignation of a worker is on ideological grounds — his outlook on matters of state, society, religion or economics — these are not to be deemed





# “UP FRONT”

News flashes from the  
State of Israel's first forty years.

A reader from the pages of The Jerusalem Post.

Text selected and teacher's guide prepared by Natalie Hess.



A review of Israel's first forty years from the pages of the "Jerusalem Post" — cover page. The newspaper changed ownership shortly thereafter



circumstances... in labor relations for the purpose of Section 11(a) of the law where the term "labor relations" comes close to the term "conditions of work." But in this specific instance the court decided:

The position is different when the worker is accepted for his job and agrees to work precisely because he has a particular religious, party or political outlook, and the particular ideological identification constitutes one of the prior conditions, if not the main one, for the establishment of employee-employer relations. In such cases, political affiliation and identity are part of the mutually operable qualifications....

...This work does not resemble the work of those employed in the service of the party in posts such as accountant, driver, janitor, filing clerk, etc. Ongoing ideological identity need not be demanded of these latter persons as a condition for their continuing to work, and they are not entitled to link the continuation of the work to such identity.

This is not the case in the work of those who are engaged in ensuring the ideological and organizational existence of the party, operating the party's central institutions, managing branches and departments, or engaging in formation and propaganda — in all of these no person will work unless out of full political identity with the party. Where that identity disappears, the case is dealt with by Section 11(a) (at the end) where a person cannot be made to continue working and serving faithfully for a political party after an ideological barrier has been created between it and himself. In the same way as Maki was entitled to dismiss workers because of the political line of the party without breaching the ban: "Thou shalt not discriminate," so there were no grounds for demanding that the employees continue working when the basis which had led to their consent to work had been changed. Where the situation of an ideological split has been created, the question...of which of the parties strayed from the ideological path — the party or the worker — is no longer relevant, for in either event labor relations circumstances had been created in which the worker could no longer be demanded to continue in his work. If he should resign, the resignation shall be treated as a dismissal, and he is entitled to compensation. (p. 45)

It should be noted that the sixth part of the French Code du Travail of 25 March 1935 deals with journalists in its first chapter, with subchapter 2 dealing with the cancellation of a labor contract for journalists. Section L 761-5 fixes the amount of severance pay where a journalist is dismissed by the employer. Section L 761-7 of the same law indicates in which cases the journalist shall be entitled

to severance pay and to rights under the above-mentioned Section 761-5. The first two cases deal with the cessation of publication of a newspaper. The third case in which the journalist shall be entitled to severance pay involves a substantive change in the nature or the orientation of a newspaper, and whether this change creates a situation likely to injure the worker's honor, his good name in general, his principles, or his conscience.

"Changement notable dans le caractere ou l'orientation du journal ou periodique di ce changement cree, pour la personne employee, situation de nature a porter atteinte a son honneur, a sa reputation d'une maniere general, a ses interets moraux."

Freely translated, the relevant paragraph lays down:

A substantive change in the character or the orientation of a newspaper or a monthly, where this change creates for the worker a state of affairs of a nature which, according to his understanding, damages his honor, his general reputation or his moral interests.

This section is known as "*la clause de conscience*" — "the conscience clause." In his book *Libertas publique et droits de l'homme* (Paris, 1988), Jacques Robert points out (p. 487 and ff.) that this paragraph permits the journalist, in the instances cited therein, to put an end to his work contract without giving advance notice to his employer, and that he is entitled to severance pay as if he had been dismissed. In the case of a change of ownership of the paper, where the change in ownership results in a basic, principle change, the operation of the "conscience clause" does not give rise to any problems. As regards a change in the political orientation of the paper, in order that it may be possible to put the "conscience clause" into effect, the change would have to be substantial or "notable" — that is to say that the change should be discernible not only by the journalists themselves but by the readers of the paper and the public at large (*ibid.*, p. 488). Raymond Lindon, in his article "La 'Clause de Conscience' dans le statut des Journalistes" (*J. C. P.*, 1962, I), indicates that the above-mentioned paragraph defends those journalists whose newspaper has undergone a change in character or in orientation to such an extent as to force the journalists to write against their consciences. The writer insists that the legislator recognized the supreme importance of giving free rein to the journalist to write according to his conscience, and consequently deemed it right to legislate a special paragraph on this subject. This stems from a recognition of the journalist's responsibility and independence: His work must not be interfered with.

This is how the National Labor Court viewed the issue

# THE JERUSALEM POST

in the matter of *Kol Ha-am*. The special character of the journalist as a worker is such that a substantial deviation from the newspaper's policy by the owner gives rise to circumstances in which a journalist who resigns is deemed entitled to the same conditions as if he had been dismissed. This marks the limit of a newspaper publisher's administrative prerogative, which stops at the point where the editor's right to journalistic freedom begins.

The plaintiff tried to continue working with the new publisher. Moreover, the publisher, Mr. Levy, tried to work with the existing team. Because of differences of outlook — both qualitative views representing different political attitudes and views on the degree of legitimacy of interference by the publisher in the work of the journalists — new circumstances were created in the course of time. Each time, a further layer was added on to the differences of opinion regarding the legitimacy and the extent of the publisher's interference. The plaintiff sounded a warning on this — she spoke to Mr. Levy — but the conception of the nature of the publisher's work differed greatly between them. The straw that broke the camel's back was Mr. Levy's joining the Editors' Committee in such a way as to turn him, at least de facto, into the editor in chief.

It follows, therefore, that the plaintiff is entitled to severance pay under the terms of the concluding part of Section 11(a) as quoted above.

## **The Right of the Plaintiff to Severance Pay at the Rate of 180%**

As we have stated, proof has been submitted to us to the effect that severance pay of 180% has been paid in recent years to a resigning and a dismissed employee alike. Several letters of dismissal to other workers, and the evidence, substantiated this. The letters refer to the receipt of severance pay "as customary" — 180%. No evidence to contradict this was brought before us. What is more, when the ownership changed, the new owner and publisher announced that anyone wishing to resign, if this was

accepted by management, would receive 180% severance pay. The purpose was to cut down on the number of employees with the object of improving the economic situation of the defendant company. The editors, the plaintiff and her journalist colleagues decided to try to continue working in cooperation with the new management. Messrs. Radler and Levy promised that they would enable them to continue working under the same conditions. The period up to the resignation of the group of journalists (amongst them the plaintiff) must be viewed as a period of mutual experiment prompted by mutual goodwill. As has been stated, journalistic work is not ordinary work. The two sides must be allowed an experimental period of working together after a change of publisher and owner. For this reason, too, the promise to pay 180% to anyone resigning after the change of ownership must be seen to apply as well to the plaintiff and to her colleagues who resigned with her. The plaintiff is entitled, accordingly, to severance pay at the rate of 180%, deducting the amount accumulated in the pension fund on account of severance pay exclusively, and we declare our finding as such. We do not mention the specific amount to which she is entitled, since in her declaration she included the thirteenth salary in her calculation. We shall deal with that forthwith, because she is not entitled to include this sum in calculating her severance pay.

## **The Calculation of the Last Salary Constitutes the Basis for Arriving at Severance Pay**

The plaintiff argues that she is entitled to calculate her salary as including the thirteenth salary as well. This contention is not acceptable. This amount is not part of the salary that serves as a basis for calculating severance pay. This is because Section 31 of the Law of Severance Pay provides that the constituent parts to be taken into account for assessing severance pay shall be laid down in the regulations. The National Labor Court has insisted:

that the Knesset was alert to the fact that not the "overall salary" but only the constituent parts to be laid down in the regulations for that purpose "shall be taken into account for the sake of severance pay." The legislator used compulsory terms both in regard to the provision of the regulations and also to the question of the constituent parts which had to be taken into account. (Labor Report 32/3—21, *Shmuel Margalit v. Bank Igud Le-Israel Ltd.* Labor Judgment D.7, 11, opposite the letter e)

Regulation 1 sets out these constituent parts in detail, and they contain three items additional to the basic salary supplement for seniority, cost-of-living allowance, and family supplement. Other supplements which are included in the salary, including the salary for the thirteenth month, are not included in the regulation and consequently it was decided that this is not a determining element for the purpose of calculating severance pay.

The claim to include the thirteenth salary in calculating the basis of the payment of severance pay is dismissed.

### **The Cash Value of Sabbatical Pay**

The defendant acknowledges that the plaintiff was, in fact, entitled to a sabbatical of three months, but it maintains that she was not entitled to redeem the salary in respect of a sabbatical after the termination of the employee-employer relationship. The plaintiff approached the editor, Mr. Frenkel, with a request that she take advantage of her right to take a sabbatical. He asked her to continue at her post and postpone taking the sabbatical since he wanted to establish proper working relations with the new publisher. Furthermore, Mr. Levy, the new publisher, asked her to change the format of the weekly supplement which she edited, and he did so after reducing her team of workers as part of the recovery program. The plaintiff acted to the best of her ability in order to meet the demand for a change in format, and worked many hours over and above the norm. This was done out of a positive desire to cooperate with the publisher. During this period she was precluded from taking her sabbatical. The resignation was sudden, occurring in light of the circumstances that had been created and the harm done to the editor, Mr. Frenkel. The resignation was almost unavoidable in light of the circumstances that had arisen and, as we have stated, it must be viewed as a dismissal. The argument that the plaintiff should have taken her sabbatical during the period of her employment is invalid and hence made in bad faith. The defendant should have appreciated the plaintiff's waiver of the opportunity to take her sabbatical. She is, therefore, entitled to the cash value of her sabbatical pay.

To sum up, the plaintiff is entitled to severance pay at the rate of 180%, deducting the amount that stood to her credit or that was paid to her from the pension fund on account of severance pay exclusively. However, the plaintiff, in her amended declaration,

stipulated the amount of severance pay due her on the basis of the last salary including the thirteenth salary. We have come to the conclusion that the basis of the salary for the purpose of severance pay must be calculated without taking into account the thirteenth salary. The plaintiff is also entitled to the cash value of three months' salary in respect of the sabbatical, amounting to NS13,017.

### **Compensation for Deferment**

The plaintiff is not entitled to compensation for deferment of the payment of the conversion of the sabbatical. This amount would be payable as compensation in respect of a breach of contract by virtue of the fact that the right to a sabbatical was infringed upon, and in respect of wages for work. The effect is the same as the conversion of leave into pay on advance notice, payable after the termination of the employee-employer relationship. The plaintiff, however, is not entitled to compensation for deferment of severance pay. The plaintiff received 100% of her severance pay, that is to say she received severance pay according to the law. The amount that was deferred was the addition which is paid by virtue of an agreement or a promise. This is not severance pay according to the law and, therefore, it is not subject to compensation for deferment of severance pay. At the same time, it constitutes an obligation that has accumulated and hence must be paid at its real value, namely together with differences of linkage and interest at the legal rate from the date 9.1.90 (We order linkage from this date only and not from the date of the termination of the employee-employer relationship, since this is what was claimed in the amended declaration.)

The defendant must pay the plaintiff court charges of NS3,500 within 30 days of the date of the handing down of this judgment.

Given today 4 Iyar 5753 (25.4.93).

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Elisheva Barak,  
Judge

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Mr. Joseph Hadani,  
Labor Representative

Translated by Sam Levin

## PEACE HAS 20 FACES: ISRAELI AND ARAB NEWSPAPERS THE DAY AFTER THE SIGNING OF THE ISRAEL-PLO AGREEMENT / Menachem Michelson

A survey of the Israeli press on September 14, 1993, the day after the signing of the Israel-PLO agreement in Washington, reveals a distinct absence of euphoria, in contrast to the reaction after the Begin-Sadat ceremony, possibly because events happened so quickly, leaving more questions than answers.

The press that day reflected the major debate dividing the Israeli public between the right, which denounced the agreement, and the left, which supported it. Significantly, *Ha'aretz*, which had always advocated direct contact between Israel and the PLO, ran a businesslike headline across the front page in a type size that, while larger than usual, did not signal celebration: "Israel and PLO Sign Agreement. Rabin Likely to Visit Morocco en Route From Washington." The rest of its coverage was equally sober.

The Labor Party's *Davar*, by contrast, used an oversized color headline (blue, as for holidays) across the front page announcing, in a play on words on the traditional Yom Kippur blessing: "May You Be Signed and Sealed With Happiness," and ran a full-page photo of the Rabin-Arafat handshake together with Clinton, with no caption — for who, after all, did not know what the photo conveyed? Mapam's *Al Hamishmar* similarly emphasized the importance of the event both visually and editorially, with a front-page headline quoting Rabin: "Enough Tears and Blood."

On the other side of the political map, the National Religious Party's *Hazofeh* ran a modest-size front-page photo of the event. A subhead warned: "Arafat Did Not Reject Terror," while a statement issued by the NRP denounced the move as a degrading submission by Israel to terror. In a special article, the editor related that he had rejected an invitation to travel to Washington along with the other newspaper editors for the ceremony, as he did not regard the event as a day of celebration. Rather, he wrote, it was a day of deep concern for the Jewish people and the State of Israel. The editorial accused Rabin and Peres of deceiving the public by declaring their opposition to a Palestinian state, as this development was clearly inevitable. Another columnist labeled the event a black day for the State of Israel.

Another paper critical of the agreement was Rabbi

Schach's ultra-Orthodox *Yated Ne'eman*, whose front page was more or less the same as usual except for a modest headline in white on black pertaining to the event. The reports on the topic took up only a third of the upper part of the front page, the rest of the page consisting of engagement and other communal notices. The paper's editorial labeled the agreement the "death of Zionism" in that Israel's historic claim to the territories was being relinquished. The lead headline in Agudat Yisrael's *Hamodia* took up only five of the paper's nine columns, printed in ordinary-size type, while the rest of the page was devoted to everyday notices. A lead article on page two termed the signing in Washington a "ceremony of surrender" on Israel's part. The ultra-Orthodox *Yom Leyom*, sponsored by the Shas movement, devoted over half a page to the event a day later, due to its early closing time. Shas, a member of the government coalition, had to contend with sharp opposition to the agreement within its ranks, and ran a cautious editorial that termed the event a "turning point" in relations with the Palestinians but not yet an end to terror or the start of "true peace."

The *Jerusalem Post*, viewing itself primarily as a conveyor of news, not ideology, despite its rightist leanings, ran a large color photo of the handshake on page one, a format reserved for Fridays, holiday eves and special events. The editorial, and a letter by the publisher, however, criticized the agreement as ill-conceived and dangerous.

Pride of place in graphic ingenuity went to the three afternoon dailies — *Ma'ariv*, *Yediot Aharonot* and *Hadashot* — which devoted most of their issues to the event, leading off with dramatic first pages. Catering to broad readerships, however, they avoided adopting an explicit position on the agreement and presented varied opinions by prominent public figures.

All four Russian dailies in Israel — *Vesti*, *Novosti*, *Nasha Strana* and *Vremia* — devoted their lead articles to the event. *Nasha Strana*, identified with Labor, praised the agreement, while *Vesti* and *Novosti* reflected the rightist position.

The three Arabic dailies — *Al-Quds* (Jerusalem), *An-Nahar* (Jerusalem) and *Al-Ittihad* (Haifa) — all supported the agreement, especially *Al-Ittihad*.

## A FREELANCER IS NOT CONSIDERED AN EMPLOYEE: Judgment in an Appeal by Eli Cohen vs. Yediot Aharonot

A judgment handed down in Israel's National Labor Court on June 17, 1993, dealt with the question of whether a freelance journalist could be considered an employee of the daily *Yediot Aharonot*. The facts established by the Tel Aviv Regional Court in a prior judgment were that the appellant, Eli Cohen, who had resided in Copenhagen during the relevant period, had sent articles to the respondent, *Yediot Aharonot*, as well as to other newspapers, mostly at his own initiative. *Yediot* paid him only for the articles it published. Nevertheless, the appellant was listed in the Journalists' Yearbook as a member of *Yediot's staff* and held a press card issued by the paper for part of the period in question. The Tel Aviv court, however, decided that Cohen had acted purely as an independent agent, especially as he had freelanced for two other papers and had also worked part time in another field entirely.

The appellant claimed that his association with two

other newspapers did not invalidate his status as an employee of *Yediot*, inasmuch as the latter had used him to cover certain events, sometimes at its own initiative and for a fixed fee.

The national court pointed out the difficulty in differentiating between an employee or an independent contractor, on the one hand, and a freelancer, on the other. The latter category of employment is relegated entirely to the fields of entertainment, the arts and the press, where it is customary that outside workers receive assignments and what is termed "salaries" but are not considered employees. The court emphasized that a formal agreement must exist between the two sides in order to establish a legal employer-employee relationship, and any other factors, such as ongoing payments, the issuing of a press card, or listing in a yearbook, cannot determine this status. The appellant, therefore, could not be considered an employee of the newspaper.

## ON COMMUNICATION AND AUDIO CASSETTES IN "HAREDI" SOCIETY / Menahem Blondheim and Kimmy Caplan

Discourse based on oral communication parallels the importance of the written word in *haredi* (ultra-Orthodox) society in Israel. Numerous sermons, lessons and speeches are delivered weekly in the ultra-Orthodox community, a phenomenon which has been virtually ignored in academic research.

The audio cassette has become a particularly popular medium in *haredi* society, used mainly to reproduce sermons and lessons. A stock of over 6,000 titles at any given time is available for purchase or borrowing at an affordable price. This material is essential to any attempt to understand ultra-Orthodox society and religious beliefs as well as the community's problems and how they are addressed.

One feature of this society is its total rejection of the

secular media, including the press, radio and television, justified by the following arguments:

- (1) The Israeli media is politically affiliated with the left wing and therefore associated with the PLO.
- (2) Journalists and reporters have low moral standards and, according to certain preachers, are interested only in publishing sensationalist articles. They do not hesitate, therefore, to block efforts to save people or to disclose valuable information to Israel's enemies. Their low moral standards have a negative influence on society, especially on youth.
- (3) Spending hours on watching television, listening to the radio or reading newspapers is a waste of precious time which could be better utilized. Essentially, the media belittles the value of time by focusing on

insignificant topics.

(4) Religious and secular interpretations of reality differ so greatly, that by definition the secular approach cannot apply to a religious person.

Most preachers, aware that technology has created

new and threatening access to unknown ideologies through the media, are seeking to utilize one particular medium to their own advantage, a phenomenon which may aid in fostering an even more closely knit society within the *haredi* world.

## A MILLION READERS AS AGAINST 2,000 WORDS / Hayim Baltzan

Approximately a quarter of the adult population of Israel — nearly a million people — do not read the Hebrew press, but rather continue reading foreign-language newspapers long after their arrival in Israel, although they speak Hebrew. Of them, some half-million read Russian, while the others read English, Yiddish, French, German, Hungarian, Amharic, Rumanian and so on. The existence of an alternative foreign-language press perpetuates this habit, resulting in a permanently minimal command of the Hebrew language on the part of immigrants, since their vocabulary is never enriched by reading. By contrast, most new immigrants in Israel begin speaking Hebrew, however haltingly, a month or two after they arrive, and within one to three years can make themselves understood regardless of their accent.

The problem with reading the language is the difficulty of reading unvoiced Hebrew. Voiced Hebrew, by contrast, is easily learned, but is used only in children's books, prayerbooks, the Bible and books of poetry. Otherwise, it is totally absent in everyday Israeli life, although the obligation to vowel Hebrew printed matter is contained in a law dating back to the period of the founding of the state in 1948. Had the law been enforced, thousands of Hebrew words would not be homonyms necessitating guesswork or reliance on a grasp of the context for word comprehension. Instead of investing large sums in promotional gimmicks, newspaper publishers could attract thousands of additional readers with a relatively small investment in voiced printing.

The existing situation demands a rich Hebrew

vocabulary on the part of the reader so that he can guess the correct meaning of the printed word in context. However, the vocabulary of news reportage is fairly limited, and a list of commonly used words could easily be drawn up. Back in 1935, a list of some 2,000 words that accounted for 95% of the vocabulary of student texts was drawn up for the purpose of devising school curricula. In 1938, the newspaper *Ha'aretz* undertook a similar project, motivated by the large immigration from Germany, and assigned one of its senior reporters, Barukh Krupnik (later Karoh), a linguist, to prepare a listing of the most frequently used words in the paper. Titled "2,000 Words in the Newspaper Vocabulary," with translations into German, this pocket dictionary was indeed used by many immigrants from Germany, who trained themselves to read *Ha'aretz*.

More recently, in 1970, research on "Basic Words in Newspapers and Periodicals" was published by Dr. Raphael Belgur, listing 3,785 frequently used words. However, this does not address the needs of the beginner reader whose primary interest is front-page news and not literary, technical or analytic terminology.

Today, in the word-processing age, the process of locating a particular kind of vocabulary in various newspapers and compiling a frequency list is simple. Thus, if a beginner reader with a vocabulary of 500-1,000 words which he knows by sound or in voiced print could acquire a booklet of 2,000-3,000 frequently used words, with translations, phonetic pronunciation and rate of frequency, he could be motivated to begin reading the Hebrew press.

## "THE JEW" — THE FIRST JEWISH PERIODICAL IN AMERICA / Gad Nahshon

The separation of church and state led to the perception of the United States during the first half of the eighteenth century as a liberal society offering hope to all. The small Jewish community (4,000 of a total population of 9.6 million in 1820) put great faith in the Constitution and in the spirit of democracy, championing the principle of tolerance. Originating in 1654 with the immigration of a small group of Jews from Recife, Brazil, to New Amsterdam, the Jewish population centered primarily in New York (approximately 1,000 of a total population of about 250,000), with communities as well in Philadelphia, Savannah, Charleston and Boston.

The early Jewish community integrated well into the county's commercial as well as cultural life and had great expectations for full acceptance. Having no rabbinic establishment, the community embraced religious liberalism, although mixed marriage was shunned and meant automatic communal exclusion. Yet, to their disappointment, anti-Semitism did exist and political equality for Jews was not complete. This bitter truth was reflected in the political career of New York's Mordecai Emanuel Noah (1785-1851), the unofficial "spokesman of the Jews." An unusual figure, Noah was active in the Spanish-Portuguese She'arith Yisrael synagogue while also pursuing careers as a politician, editor of the *National Advocate*, a diplomat who experienced discrimination, thinker and playwright. A passionate advocate of change in the Jewish persona, and especially the productivization of the Jew, he attempted in 1825 to establish a Jewish state near Buffalo, N.Y., which he called Ararat.

The development of religious pluralism in the new continent stimulated the imagination of various Christian churches and sects, especially during the 1820s. These groups focused on knowledge of the Bible, leading to increased interest in the Jews and an emphasis on the mission to convert, or evangelize, them. This phenomenon came as a shock to the Jewish population, mostly of Spanish-Portuguese descent, who had inherited the trauma of the "Marrano syndrome" of flight from the threat of the Inquisition which had hounded their forefathers not only in Europe but in Latin America as well. The prospect of a Christian

mission in America evoked dread in them.

The evangelical mission to the Jews was spearheaded by a well-oiled and multi-branched organization called the American Society for Meliorating the Condition of the Jews, founded in 1820 in Albany, N.Y., and active until 1860. Its aim was to "evangelize" the Jews and "settle" them in agricultural colonies in an effort to make them "productive" — an idea that, ironically, paralleled the Jewish Enlightenment and that proved influential in church circles. One of the leaders of the movement was John Quincy Adams, the sixth president of the U.S., which gave cause for concern to the Jewish community. The moving force behind the society was a preacher named Joseph Frey, formerly Joseph Samuel Levy, a convert to Christianity, as was his wife, Hanna Cohen. The society's greatest public relations success was a monthly titled, misleadingly, *Israel Advocate*, which had a subscription of 20,000. Masquerading as a Jewish periodical, it featured information on converts to Christianity. It soon elicited a response in the form of *The Jew* (1823-25), the first Jewish periodical in the new continent, born out of a fear of the influence of the mission on the American Jewish community. Its publisher was Samuel Henry Jackson, a little-known figure who was born in England and immigrated to New York in 1787. Moving to Pennsylvania, he married a Christian woman, was widowed, and returned to New York where he raised his five children as Jews. He immersed himself in Jewish studies and became the official printer for Congregation She'arith Yisrael and possibly the first Jewish printer in America to print both in Hebrew and English. He himself later bound all the issues of *The Jew* into two volumes, which are housed in the Rare Books Section of the New York Public Library on 42nd Street.

*The Jew*, according to the masthead statement, was "a defence of Judaism against all adversaries and particularly against the insidious attacks of the 'Israel Advocate.'" Disregarding current events from the Jewish world, the periodical, true to its stated aim, was a response to the *Israel Advocate* and as such filled the needs of the She'arith Yisrael membership. Jackson combatted the missionary challenge as an American imbued with the new democratic values.



“The right of defense is a natural right,” he wrote. Pursuing a theological approach reminiscent of the Talmudic debates of the Middle Ages, he quoted extensively from both the Old and New Testaments, displayed a keen knowledge of Jewish history and the Jewish Enlightenment movement, and above all reflected Jewish pride. He researched each and every report on conversions to Christianity that appeared in the *Israel Advocate*, exposing a portion of them as having taken place in Europe as well as other falsifications. Jackson utilized sources of information on the topic of the mission impressively, for example detailing attempts in America to evangelize by means of kidnapping Jewish children, which ultimately failed because the courts

would not recognize such conversions, in contrast to the reality in Europe at that time.

In detailing the activities of the mission, including widespread anti-Semitic sloganeering, Jackson shed light on the strong pressures that were exerted on the Jewish community at the time. He established a precedent by demonstrating to the Jews of his time that they must not submit to any authority that negated their faith. The pioneer of the Jewish ethnic press in the U.S., he established the basis for subsequent periodicals: Isaac Leeser's *Occident* (1843), Isidor Bush's German-language *Israels Herold* (1849), Robert Lyon's *Asmonean* (1849), and eventually the highly successful weekly *The Jewish Messenger* (1857) edited by Rabbi Samuel Myer Isaacs.

## THE FIRST GENERAL NEWSPAPER IN JERUSALEM AND ITS ANONYMOUS EDITOR: DID A. M. LUNCZ EDIT A PRO-MISSIONARY NEWSPAPER? / Joseph Lang

The 1882-84 period witnessed lively journalistic activity in Eretz Yisrael, especially in Jerusalem, although the duration of the periodicals that were launched proved to be brief. Among these was a unique multilingual weekly titled *Jerusalemmer Anzeiger* in German and *Gazette de Jerusalem* in French, which began appearing in January 1882. The paper's aim, as stated by the anonymous editor, was to provide up-to-date, reliable information to all Jerusalem residents and not just to those who read Hebrew (who were served by the extant Hebrew-language *Sha'arei Zion* and *Havazelet*).

The first issue ran some 100 copies, for subscribers only, while the population of the city then was some 30,000. It soon became clear to the management that additional subscriptions would be necessary. The paper was printed in a double-column format in English and German, with occasional items appearing in French and in Hebrew. Its content ranged far beyond the narrow confines of Jewish Jerusalem, reporting on travelers to and from the city, train and ship schedules, weather forecasts and weekly schedules of events within the various communities in the city — Greek, Jewish and Moslem. A column on social and cultural events included mainly news of the Anglican community in

Jerusalem and Jaffa, then marking 40 years since its establishment in Jerusalem. Another body that received coverage was the German Exploration Society for Palestine (Deutscher Verein für Erforschung Palestina). Significantly, although over half the population of Jerusalem was Jewish — some 16,000 residents — hardly any news on the Jewish community was included.

Little is known about the newspaper or its editors. Researchers have assumed that the publication was Jewish because the acting editor, listed inconspicuously on an inside page, was Avraham Moshe Luncz, a noted Hebrew journalist. Yet, based on the contents, that assumption is questionable. An important clue in this context is a statement that appeared in the contemporary newspaper *Warte*, published by the Templer community, pointing to the importance of the appearance of a general newspaper catering to all religions in Jerusalem. Several individuals joined forces for this purpose, the statement continued, including A. M. Luncz, with the writer expressing the hope that “the rabbis” would not place obstacles in the way of the publication.

Based on the contents of *Anzeiger*, the backers were probably German- and English-speaking missionaries and merchants affiliated with Christ Church, known

as העבירים המשיחיים, who were interested in having their own communications organ but were aware of the necessity of widening out the potential audience by addressing the periodical as well to European consular personnel, European settlers, including the Templers, and especially European pilgrims and tourists. Luncz was taken on as acting editor probably in order to attract a Jewish readership, but the real editor, or at least one of the initiators, was the controversial Wilhelm Moshe Shapira, a dealer in antiquities, books and souvenirs and a convert to Christianity. He was interested in utilizing the paper in his war against the French archeologist Charles Clermont-Ganneau, who had exposed Shapira's merchandise as fake.

Luncz probably joined the paper out of financial

necessity rather than a conviction in the need for a general newspaper in Jerusalem, since a book of articles on Jerusalem that he had recently edited and published had left him deeply in debt. In any event, his name disappeared from the newspaper after the fourth issue.

Thereafter, *Anzeiger*, which had not yet managed to obtain a license from the authorities, continued publication as a "supplement" of the established Hebrew-language weekly *Havazelet*, a common ploy at the time. However, in March 1882, *Anzeiger's* application for a license was officially rejected, whereupon the newspaper ceased publication. The extant eight issues serve as a singular source of information on little-known aspects of Jerusalem on the eve of the First Aliyah.

## "HADASHOT MEHA'ARETZ": A BRITISH ARMY HEBREW WEEKLY (1918-19) AND PRECURSOR OF "HA'ARETZ" / Mordecai Naor

By 1917, three years after the outbreak of World War I, all the newspapers in Eretz Yisrael had closed down, marking an end to a 50-year period of Hebrew journalism there. A new journalistic period began a year later, in April 1918, with the appearance of *Hadashot Meha'aretz* ("News of the Land"), a Hebrew weekly published by the British army, which by then had captured the southern part of Eretz Yisrael, including Jerusalem. The weekly, which lasted for a year, constituted the only Hebrew-language periodical then, and contributors included the leading journalists and writers of the time, such as Moshe Smilansky and Mordecai Ben-Hillel Hacoheh.

*Hadashot Meha'aretz* was in fact one of a series of six interrelated weeklies published by the British from their headquarters in Cairo, led by *The Palestine News* in English, and including *Jaridat Falastin* ("Palestine Newspaper") in Arabic, as well as three Indian-language papers aimed at the large contingent of Indian soldiers serving with the British.

The British apparently had two motivations for publishing these newspapers: communicating certain messages to the various contingents of soldiers serving

under them, and gaining accessibility to the civilian population. Both aims were reflected in the Hebrew edition, as a portion of the thousands of Jewish soldiers were fluent in Hebrew (especially the Jewish Legion), while the British attached importance to reaching the Jewish population of Eretz Yisrael. Another target audience may have been Jewish refugees from Eretz Yisrael who fled or were exiled to Egypt with the outbreak of the war.

The editor in chief of the series was Lt.-Col. Harry Peary-Gordon, a London *Times* editor who had been drafted into the wartime information effort. The first managing editor of the Hebrew edition was Joshua Kanterovitch, a Jerusalemite with some journalistic experience, who was soon replaced by his assistant, Barukh Bina, an exile in Egypt. Five issues were published in Jerusalem, and from no. 6, the paper was published in Cairo. An important addition was a literary supplement which appeared 20 times from July 1918 onward. Although *Hadashot Meha'aretz* was formally an army periodical and ran a column of military commentary on page one of every issue, it functioned as a civilian paper in every

respect, carrying general and local news, information, editorial commentary and advertisements. It also ran an occasional supplement titled "The Gazette" which was a Hebrew translation of the official British newspaper and featured government notices. The importance of *Hadashot Meha'aretz* undoubtedly lay in the very fact that it appeared at all in that difficult, dramatic period when the country was still undergoing conquest and the beginning of postwar rehabilitation. Moreover, it received a subsidy of 20 Egyptian pounds per issue from the Zionist Executive in Jerusalem. The only newspaper in the country for a certain period, it constitutes an invaluable historical source on the Jewish *yishuv*, Palestine and the Jewish Legion.

Although the newspaper expanded from eight to twelve pages and later even to sixteen at the start of 1919, *The Palestine News* and all its affiliates were put up for sale by the British at that time as part of their effort to phase out all extraneous military bodies with the war's end.

Dr. Chaim Weizmann, anxious to transfer ownership of *Hadashot Meha'aretz* to the Zionist leadership, contacted a well-known Jewish philanthropist in Russia, Isaac Leib Goldberg, and persuaded him to acquire it. Goldberg soon immigrated to Palestine, bringing with him an experienced publisher from Russia, Solomon Salzman, who oversaw the transfer of the paper from Cairo to Jerusalem. The new publisher decided to turn the periodical into a daily and change its name to *Ha'aretz* ("The Land"), for which he needed permission from the military government. While the authorities agreed to approve the newspaper becoming a daily, they insisted that the original Hebrew title be retained. In the event, a small change was made in the title with the renewal of publication in June 1919 under the editorship of Dr. Nissan Turov — to *Hadashot Ha'aretz* — and in December of that year it became *Ha'aretz*, a daily that was and remains a mainstay of the Hebrew and Israeli press to this day.

## URI ZVI GREENBERG'S "ALBATROS" / Yohanan Arnon

*Albatros*, a short-lived avant-garde Yiddish periodical (1922-23) edited in Warsaw and Berlin by Uri Zvi Greenberg, the Hebrew and Yiddish poet, was one of the vehicles for the outburst of Yiddish expressionist poetry following the horror of World War I and the accompanying pogroms against the Jews. Other periodicals in a similar vein were edited by poets Peretz Markish, Melekh Ravitch and Michael Weichert. The importance of the new literary genre created by Greenberg and his colleagues — Yiddish expressionism — lies in the linguistic innovations they introduced, which drastically changed literary Yiddish from that of such previous writers as Peretz and Mendele.

A statement of purpose in the first issue of *Albatros* in September 1922 referred to the exterritoriality of the Jewish people, the wounds of an entire generation and the terrible suffering as accounting for the cruelty of the poetry and of the illustrations contained in the magazine.

Greenberg, in an opening piece, criticized negative aspects of modern Yiddish poetry — banality, absurdity, alien, borrowed elements, an absence of talent — but hastened to reassure the reader that criticism was

not the purpose of the magazine, and that cultural deficiency stemmed from the absence of a Jewish home and the ejection of the population from the shtetl to the sterile cities. The first issue of the magazine contained four chapters from his poem "World in Decline" (other chapters appeared in Markish's *Khaliastre* and in other magazines), a pessimistic work on the hopelessness of the world in general and the fate of the Jew specifically, with repeated references to Christianity and the crucifixion. All is naked — the world, humanity, religion. Poetry, therefore, is naked too.

Of the ten pieces in the second issue, which appeared in November 1922, five were by Greenberg, beginning with his prose poem "Man Cries Out," an expressionist protest that suggests Edvard Munch's contemporary painting "Scream" and other contemporary art. In another prose poem, Greenberg addressed Jesus as his brother, declaring that although they were not crucified on a cross together, they were united as one entity. Greenberg's identification with Jesus, as well as with other rebels such as Shlomo Molkho and Shabtai Zvi, was ongoing, and was reflected in his later Hebrew poetry as well.

In a similar vein, Ber Horowitz's "From the Book of Jesus the Nazarene" portrayed a vision of the end of days in which all messiahs would be released from their crosses, and the long-awaited last messiah, son of David, would await them beneath the Arch of Titus, whereupon the other messiahs would set up an endless forest of crosses and mankind would come to a gruesome end.

Greenberg, in a poem titled "The Cry of the Land" (one of two he wrote by that title), depicted a sorrowful landscape of barren women and men coming to the marriage alter but begetting no children, only snakes and owls, just as Jesus was begotten from the holy ghost. Another poem by him, "Red Apples From Trees of Sorrow," was written under a pseudonym — Mustafa Zahib — testimony to an initially romantic view that he, as many other Europeans, held of the East and its inhabitants, which was to change as a result of the hostile attitude of the Arabs to Zionism and the State of Israel. This work, written in a colorful style reminiscent of Isaac Babel's, was filled with allusions to Christianity as well. "Holy mother, are you a Bethlehemite? And perhaps my name is Jesus." And: "Why do they still carry Mother Mary of gold in the middle of the procession...and white snow covers the ground. Why do lamps still burn and candles illuminate the wakening eyes of my naked brothers, the Galileans? Ha ha...." Describing a soldier coming to a house, and to a woman, he wrote: "Receive my seed for the sake of the existence of the world, woman! Jesus will be born, don't be frightened, Jesus will be born.... Someone else will sleep with my wife at home, probably some priest with a bald pate (priests don't go to war)."

This provocative material elicited confiscation of the issue of the magazine and notice of a judicial suit against the editors by the Polish censor. Greenberg did not wait for the suit to be initiated, and left Warsaw for Berlin, a more enlightened and liberal literary center, where he used the name Ure Hirsch (a translation of "Zvi")-Landmann (his mother's maiden name). There he came into contact with other immigrant writers from Galicia and Warsaw, as well as with major German

writers and poets such as Else Lasker-Schueler, who had a great influence on him and introduced him to leading literary and artistic personalities.

It was a period of unprecedented runaway inflation. In November 1923 Hitler staged his *putsch* in Munich, for which he was jailed. The final issue of *Albatros* (No. 3-4), launched in this agitated environment, contained 30 pages rather than the previous 20, and was more esthetic as well, with ten illustrations. Greenberg may have managed to acquire contributions for his literary effort from his colleagues in Berlin.

Max Erich, lamenting the loss of indigenous Jewish culture in "A Letter to Uri Zvi Greenberg," described Greenberg as a wandering Jewish Mephisto who had acquired alien metaphors, an alien language and even the figure with the cross.

Greenberg's "In the Kingdom of the Cross," which subsequently became famous, appeared in this issue as well. A long work of 425 columns divided into 19 chapters, it contains graphic, surrealistic depictions of the destruction of Europe. The tone is set at the beginning with images of a dark forest, valleys of sorrow and terror, and corpses hanging from trees with wounds still bleeding. Greenberg identifies himself as an owl, bird of elegy in the European forest of sorrow, prophesying "a black prophecy: You will not know the terror in your flesh when the poisonous gases come to end all...."

Despite his ties with cosmopolitan and even communist circles, Greenberg reached the conclusion that leaving Europe was the only possible step for the Jewish people. In the closing piece of the magazine, "The House of Sorrow on Slavic Land," he acknowledged the difficulty of leaving home — even a house of sorrow — and setting out for a far place, yet the "house of sorrow on Slavic land vomits up its Jewish inhabitants." Most go to America, he wrote, but a small convoy, himself included, makes its way toward the sun. He confesses that he wants to live in Europe, where he was born, but that this is impossible. Perhaps, he says, the East will take him back....

A year later, Greenberg immigrated to Eretz Yisrael.

## **“RIMON” = “MILGROYM”: AN UNUSUAL ARTS MAGAZINE IN HEBREW AND YIDDISH 70 YEARS AGO / Menuha Gilboa**

*Rimon* (“Pomegranate”) was a unique Hebrew periodical devoted to the arts and literature published in Berlin every few months during 1922-24 in parallel with a Yiddish version, *Milgroym* — a title with the same meaning. While the same drawings — some in color — were used in both versions, and reviews and reports on the arts were identical translations — probably from German — the literary segments in each magazine were original and untranslated.

The first half of each issue was devoted to painting, with the opening article of the first dual issue consisting of a comprehensive discussion of modern art by art editor Rachel Wischnitzer-Bernstein. Other articles in various issues were on Cezanne, with reproductions of his work; da Vinci; a comparison between the philosophy of art of the Middle Ages and contemporary art; an analysis of contemporary portrait painting; and aspects of graphic art. Illustrated articles on Jewish artistic themes included “The Synagogue in Mohelev” and “Jews in the New Art” on the occasion of an exhibition of Russian art in Berlin in 1922.

All the articles were written by Jewish art experts, and where the subject-matter was general, the illustrative drawings were nevertheless mostly by Jewish artists and on Jewish themes.

The literary section included poetry, short stories and essays. Such poets as S. Ben-Zion, Jacob Fichmann, Jacob Koplewitz, Itzhak Katzenelson, Avigdor Hameiri-Feuerstein and Uri Zvi Greenberg were represented. Writers whose stories were published included Jacob Steinberg and S. Y. Agnon.

Of particular interest are the literary analyses, for example Micha Yosef Berdyczewski on “Ethics and Beauty” and Zvi Wislawsky on Y. L. Pinsker. There is also an analysis by A. L. Patkin of the plays staged by Habimah; an article by Moses Gaster on the shield of David as a Jewish symbol; memoir segments by Samuel Joseph Ish-Horowitz from the late 1870s and the 1880s on the influence of the Enlightenment and the Zionist movement on him; a letter by Bialik on “the holy Yisrael Wexer” and two works by Wexer; a homage to Bialik by Shaul Tchernichowsky; and articles on Jewish history by Simon Dubnow. An article on the state of the Jewish theater in Russia illuminates the crisis it was undergoing as a result of Communist influence.

The dual magazine was exceptional for its time in its esthetic presentation as well as in the breadth of its artistic and literary scope, free of ideology yet with a decisive Jewish point of view. Six issues of each version appeared.

## **THE KISCH-SCHWARTZ DUEL: AN EARLY CHAPTER IN THE STRUGGLE FOR A FREE PRESS IN ERETZ YISRAEL / Shimon Rubinstein**

The Hebrew press in Eretz Yisrael viewed itself as having a special obligation in the upbuilding of the Jewish national homeland during the pre-state period, a view shared by the Zionist leadership and the establishment in the Jewish *yishuv*. This sense of mission resulted in self-imposed limitations on what was publishable in the interest of the national good, a conception that was to serve as the basis for the voluntary self-censorship press authority — the “Editors’ Committee” — established after the formation of the state.

This concept developed gradually, with the boundary between professional journalistic integrity and “Zionist discipline” largely undefined, until a major crisis in 1924 sharpened the issue. The protagonists were Col. Frederick Kisch, chairman of the Zionist Executive in Jerusalem and head of its Political Department, and Shalom Schwartz (later Ben-Barukh), manager of the STA news agency, a branch of the Jewish Telegraphic Agency (JTA). Kisch, a lieutenant-colonel in the British Army with a promising military and diplomatic career,

had been persuaded to move to Jerusalem by Dr. Chaim Weizmann in order to represent the Zionist Federation in its dealings with the British Mandate as well as to act as spokesman to the Arabs in an effort to attain peaceful coexistence. Kisch regarded the Zionist Executive as a provisional government in every sense, in contrast to the Va'ad Leumi ("National Committee"), which, while created to conduct Jewish communal affairs in Eretz Yisrael, did not set policy vis-a-vis the Mandatory authorities or any other international body. Similarly, he believed that, inasmuch as the Hebrew press was defined as a national press, it was obliged to coordinate editorial policy with the Zionist Executive, especially on sensitive issues, so as to avoid causing damage to the Jewish national cause.

Schwartz at that time issued an English-language daily in Jerusalem, *The Palestine Bulletin*, which became an important communications vehicle as it was read by the senior Mandatory officials as well as by the Arab leadership in Eretz Yisrael. In January 1924 the *Bulletin* ran an article on a sensitive subject from the Zionist point of view — the Citizenship Law, which until then had not been published because of anti-Semitic sentiment by the British Mandatory authorities as well as fear of Arab opposition to the right of veteran Jewish residents, and especially Jewish immigrants to the country, to be granted citizenship. The *yishuv* leadership took a grave view of what they perceived as evasion on the part of the Mandate government on this issue, inasmuch as one of the stated purposes of the Mandate was to facilitate the granting of citizenship to immigrant Jews as future citizens of the Jewish "national home."

Still, Kisch felt that because the issue was so sensitive, Schwartz should have shown him the article before publication. Moreover, it was not the first time that Schwartz had used journalistic license daringly: sometime beforehand, he had been asked to extricate Schwartz from a run-in with the Mandate authorities for publishing a letter from one of the government departments to the Zionist leadership without authorization.

Kisch reprimanded Schwartz severely for publishing the article on the Citizenship Law, and threatened to complain to Schwartz's superior, Meir Grossman, one of the owners of the JTA in New York, whereupon Schwartz retorted by letter that Kisch's reprimand, besides being insulting, was pointless, as he (Schwartz)

had been given sole authority as editor of the *Bulletin*. In addition, Schwartz asserted, as a good Zionist he had attempted to cooperate with Kisch, but drew the line at being treated as if he were a functionary of the Zionist Executive. He was an independent journalist, he emphasized, and proud of his profession. The STA, he further noted, was not a propaganda office for the Zionist Executive. He himself would always be sensitive to the interests of the Jewish national cause, but this consideration would reflect the dictates of his own conscience and he would reject censorship from any establishment source out of hand. In order to establish an ongoing working relationship with the Jewish press, he suggested that Kisch invite the leading Jewish editors for a briefing and an exchange of views from time to time, which would facilitate overall agreement on how best to present the Zionist cause in the press. Schwartz also proposed that in order to improve the relationship between the two of them specifically, Kisch arrange that Schwartz receive the daily information that was conveyed by the Zionist Executive to other major editors, and that Kisch brief Schwartz periodically on major issue so that together they could review what was suitable for publication.

Not only was Kisch unmoved by Schwartz's statement of position, he dispatched a complaint about him to the Zionist Executive in London to the effect that Schwartz, as the local representative of the JTA, refused to accede to any of the instructions issued by Kisch, even on the most sensitive political issues, and, moreover, had attacked Kisch in a letter on this subject. Schwartz, learning of the dispatch of this complaint, sent a letter of his own to the Zionist Executive in London in March 1924, asserting that while he had always assented to requests by Kisch and other Zionist officials regarding publication or withholding of specific items that were important from the Zionist perspective, he rejected Kisch's demand in principle to impose a priori censorship, and had therefore suggested periodic meetings with the leading journalists in the interest of coordination.

No conclusive resolution to this flare-up is on record, although clearly both parties were aware that a symbiosis between the press and the Zionist establishment was essential in the interest of the Jewish national cause. Had this episode taken place after the establishment of the state, it would not have had particular significance, as conflicts

between journalists and governmental authorities are commonplace everywhere. But during the pre-state period, the national struggle waged by the Jewish population in Eretz Yisrael against a foreign, hostile government outweighed the consideration of freedom of the press in the public mind. For an independent journalist such as Shalom Schwartz, however, the danger of subverting the basic norm of freedom of the press in the heat of the struggle for nationhood was of primary concern both for the present and for the future character of society, and he was resolved not

to submit to the dictates of the establishment on this issue.

In the event, Kisch in fact struck a blow for the freedom of the Hebrew press in the *yishuv* when he lodged his complaint with the Zionist Executive in London. That body, in sidestepping the conflict, signaled its recognition that for all the importance of the Zionist issue, there were limits to the pressure that could be put on the press, and, moreover, that the Zionist press constituted a prime asset in advancing Zionist goals and must be respected as such.

## **A JEWISH BROADCASTER IN THE SERVICE OF NAZI RADIO / Eytan Almog**

Nazi radio broadcasts in Afrikaans were directed toward the Union of South Africa from April 1939 onward with the aim of provoking racial tension as well as anti-Jewish and anti-British sentiment there, and ultimately the disintegration of the country, thereby jeopardizing British, and later Allied, interests.

The prime minister, General Smuts, favored supporting the British war effort, and at a Union Party convention in early September 1939 proposed adopting such a policy. Meanwhile, however, South African appeals to the British Ministry of Information and the BBC to initiate special jamming procedures against German propaganda in Afrikaans were rejected in line with an official no-jamming policy. The South African government then took the extreme step of investigating the background of the Afrikaans announcer for the

Nazis, disclosing that he was Sydney Erich Holm, age 32, a native of South Africa whose mother was Jewish and the daughter of a German Jewish rabbi. The zealous Afrikaans announcer for the Nazis, therefore, was a Jew, which was unacceptable to the Germans, in addition to his being a traitor both to his own country — South Africa — and to his Jewish roots.

Nevertheless, the British propaganda authorities apparently “censored” the South African report on him, and a Reuters report of October 30, 1939, quoting the South African press, referred simply to “an Afrikaans employee” without mentioning his name or his background, probably in order to avoid anti-Semitic backlash in South Africa or elsewhere. By early November 1939, Smuts gained his party’s support for South Africa to join the Allied war effort.

## **IMPORTING AN EDITOR FOR “DAVAR”: A LITTLE-KNOWN CHAPTER IN THE HISTORY OF THE ISRAELI PRESS / Mordecai Naor**

With the accession of Israel’s first elected government in the spring of 1949, Zalman Rubashov-Shazar, editor of the labor movement daily, *Davar*, took up the post of minister of education and culture, leaving the country’s most popular morning paper, which was

considered the government’s mouthpiece, without an editor. Following a discussion held on April 3, 1949, the leadership of Mapai, then the ruling party, decided to “import” Hayim Greenberg, a distinguished editor, publicist and leader of the socialist Zionist movement

in the United States, then 60 years of age, as editor of *Davar*. The discussion, on record in the Labor Party archive at Beit Berl, Israel, reflects various topics that were typically of concern to the political party press then, as well as the sharp rivalry between the Mapai and Mapam parties. Some of the participants in the discussion are no longer well known, while others, such as Joseph Sprinzak, Pinhas Lubianiker (later, Lavon) and Elizer Liebenstein (later, Livneh), held prominent positions then and later on.

The possibility of a five-member editorial board running the paper, rather than a single editor, was considered. Ben-Gurion's opinion on the question of bringing in a newcomer to the country to fill the vital position of editor was equivocal. He advocated allowing Greenberg a period of adjustment to the

Israeli environment before assuming this position. But his view was overruled by the rest of the leadership, which approved the decision regarding the new editor. In addition, they decided to invite Gershon Agronsky, editor of the *Palestine Post*, as managing editor. The question of a possible conflict for Greenberg between the *Davar* offer and his position as a member of the Jewish Agency Executive in Jerusalem with responsibility for its Education and Culture Department was also considered, but the prevailing view was that the pressing needs of the state, the Histadrut and the party superceded any others.

In the event, Greenberg did not accept the offer, and *Davar* was managed by a "collegium" of editors until 1954, when Hayim Shurer was appointed editor in chief.

## SMOKE GETS IN YOUR EYES: THE CIGARETTE WAR OF 1930 / Nehama Baroukh

A look at newspapers of 60 years ago or more shows that press campaigns conducted by advertising and public relations persons on behalf of their clients did not originate in our day. One example is the "cigarette war" that was waged in a newspaper in Eretz Yisrael, *Do'ar Hayom* ("The Daily Mail"), in 1930.

The two main protagonists were Maspero Brothers and Moses & Vaskavitch (later, Dubek). The latter repeatedly emphasized that their products were made in Israel, while the former, Jerusalem Sephardim who also catered to the Arab market, gave Arabic names to some of their brands. The campaign began in late 1929 with standard ads praising the quality of the tobacco and touting the manufacture's popularity, but these soon made way for more creative efforts, such as a page one Maspero ad on January, 28, 1930, in newsflash style:

THE SOUTH POLE  
(telegram)

Patagonia, 28 December

A report from the Sandwich Islands announces that

Admiral Byrd spotted a box of Amir cigarettes through his telescope when he passed over the South Pole.

And:

### WHEN THE MESSIAH COMES

everyone will get Maspero cigarettes free. Meanwhile, the prices are:

Amir 27	40 mills
Malukhi 27	15 mills
Latif 27	25 mills
Aviv 27	20 mills

The war was resumed several months later, although it did not reach the creative heights attained previously. Maspero continued to lead in this area, even drawing upon the Bible for inspiration on August 13, 1930:

The righteous will flourish like a palm tree (TAMAR) and grow like a cedar of Lebanon...

Which means:

The soul of a single righteous man outweighs the whole world, and a single Tamar cigarette outweighs all the other cigarettes in the world.



### מחברי המאמרים

- שלום רזנפלד: ראש התוכנית ללימודי עתונאות והמכון לחקר העתונות היהודית בעולם, אוניברסיטת תל אביב. ממיסדי "מעריב" ועורכו הראשי, 1974-1980.
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- דני רובינשטיין: חבר מערכת "הארץ". כותב מאז 1967 על נושאי השטחים ויחסי יהודים-ערבים.
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- גד נחשון: עתונאי וחוקר המתמחה בנושאים אמריקנים.
- יוסף לנג: דוקטורנט במחלקה לתולדות ישראל, אוניברסיטת בר אילן.
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- שמעון רובינשטיין: חוקר תולדות ארץ ישראל. מנהל הארכיון של יד יצחק בן צבי, ירושלים.
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- גבריאל צפדוני: כתב ב"דואר היום". כתב חרץ במשך עשרות שנים ("דיילי טלגרף", "ניו יורק הרלר טריביון"). עורך "הבוקר".

### CONTRIBUTORS TO THIS ISSUE

- Shalom Rosenfeld:** head of Journalism Studies Program and the Institute for Research of the Jewish Press, Tel Aviv University; a founder of *Ma'ariv* and its editor in chief, 1974-80.
- Manechem Michelson:** member of the staff of *Yediot Aharonot*.
- Dov Kontorar:** reporter for the Russian-language *Vesti*.
- Danny Rubinstein:** member of the staff of *Ha'aretz*, specializing, from 1967, on the territories and Jewish-Arab relations.
- Dr. Menahem Blondheim:** lecturer, Hebrew University, Jerusalem; researcher on the history of communications and the relationship between communication technologies and society.
- Kimmy Caplan:** research student, Department of Jewish Thought, Hebrew University, Jerusalem; researcher on the modern Hebrew sermon; at work on a doctorate on Orthodox American rabbinic sermons during the period of large-scale immigration (1881-1924).
- Hayim Baltzan:** veteran Israeli journalist; founder, director and editor in chief of the Itim news agency; compiler of the Webster's Hebrew dictionary; compiler of a Hebrew-Russian dictionary to be published soon.
- Gad Nahshon:** journalist and researcher specializing in American topics.
- Joseph Lang:** Department of Jewish History, Bar-Ilan University.
- Dr. Mordecai Naor:** lecturer in journalism, Tel Aviv University; author and editor of books on the history of Eretz Yisrael; editor of *Qesher*.
- Yohanan Arnon:** researcher of Uri Zvi Greenberg's poetry; director, Ahad Ha'am Library in the Sha'ar Zion-Beit Ariella Library, Tel Aviv.
- Dr. Menuha Gilboa:** senior lecturer, Department of Hebrew Literature, Tel Aviv University; specializes in research on the history of the Hebrew press.
- Shimon Rubinstein:** researcher of the history of Eretz Yisrael; director, Yad Yitzhak Ben-Zvi Archive, Jerusalem.
- Eytan Almog:** broadcaster and journalist, Kol Yisrael; recipient of the Sokolov Prize for Broadcast Journalism; engaged in comprehensive research on the history of the radio in Eretz Yisrael, under the direction of Prof. Yitzhak Galnur, Hebrew University.
- Nehama Baroukh:** organizational consultant; M.A., business administration; graduate of the Journalism Studies Program, Tel Aviv University.
- Gabriel Tsifroni:** former reporter, *Do'ar Hayom*; longtime foreign correspondent for the *Daily Telegraph* and the *New York Herald Tribune*; editor, *Haboker*.