

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

le plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

la Commission

and/et

MARC LEMIRE

Respondent

l'intimé

and/et

ATTORNEY GENERAL OF CANADA;
CANADIAN ASSOCIATION FOR FREE EXPRESSION;
CANADIAN FREE SPEECH LEAGUE;
CANADIAN JEWISH CONGRESS;
FRIENDS OF SIMON WIESENTHAL CENTER
FOR HOLOCAUST STUDIES;
LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH

Interested Parties

les parties intéressées

BEFORE/DEVANT:

ATHANASIOS D. HADJIS

CHAIRPERSON/
PRÉSIDENT

LINE JOYAL

REGISTRY OFFICER/
L'AGENTE DU GREFFE

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CANADIAN HUMAN RIGHTS TRIBUNAL/
TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

HEARING HELD AT THE DAYS INN, 1677 WILSON AVENUE, TORONTO,
ONTARIO, ON THURSDAY, FEBRUARY 1, 2007 AT 10:08 A.M. LOCAL TIME

CASE FOR HEARING

IN THE MATTER of the complaint filed by Richard Warman dated November 23rd, 2003 pursuant to section 13(1) of Canadian Human Rights Act against Marc Lemire. The complainant alleges that the respondent has engaged in a discriminatory practice on the grounds of religion, sexual orientation, race, colour and national or ethnic origin in a matter related to the usage of telecommunication undertakings.

APPEARANCES/COMPARUTIONS

Richard Warman	On his own behalf
Giacomo Vigna	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill	For the Attorney General of Canada
Paul Fromm	For the Canadian Association for Free Expression

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1 Toronto, Ontario

2 --- Upon resuming on Thursday, February 1, 2007

3 at 10:08 a.m.

4 THE CHAIRPERSON: Did you have the
5 chance to review your evidence?

6 MR. VIGNA: Yes, Mr. Chair. We don't
7 have much more. As I say, I just wanted to repeat
8 again that I'm waiting for the fax. I checked again
9 this morning, but that shouldn't impede us from
10 continuing. It will just be a little bit -- in a
11 different chronology. I would submit the facts dealing
12 with David Duke, and the fact that it may be a
13 prohibited book in Canada.

14 THE CHAIRPERSON: When do you want to
15 submit this document?

16 MR. VIGNA: As soon as I get it. But
17 I should -- we can start the cross-examination. It's
18 just that --

19 THE CHAIRPERSON: Okay.

20 MR. VIGNA: -- it would be in a
21 different order than usual. I don't think it has any
22 impact.

23 THE CHAIRPERSON: Okay, okay.

24 MR. VIGNA: I don't think my
25 colleague has any objection --

1 THE CHAIRPERSON: Okay. If a
2 question is required then, you know, we could perhaps
3 recall Mr. Warman, if we can -- Mr. Fromm?

4 MR. FROMM: Sir, just on a
5 housekeeping matter. The matter that I raised a couple
6 days ago about the transcripts for the second week.
7 Have you --

8 THE CHAIRPERSON: Yes, I've reached a
9 decision on that. Yes, I think we'd have it -- did we
10 say it in order? But certainly, it's my opinion that I
11 would like to obtain them by --

12 THE REGISTRAR: The first week will
13 be in 10 days. The second week will be in five, and
14 the rest of the weeks will be in five.

15 THE CHAIRPERSON: The normal process
16 is 10 days. Using the 10-day formula, you will have
17 them by the time that the second round occurs. And
18 we've asked for accelerated for the second week, next
19 week.

20 So all will be in least a couple days
21 before the end of the week of the week preceding the
22 next set of hearings.

23 MR. WARMAN: Sorry. Mr. Chair?

24 THE CHAIRPERSON: Yes.

25 MR. WARMAN: Can I just ask a quick

1 question?

2 THE CHAIRPERSON: Sure.

3 MR. WARMAN: Is that on a rolling
4 basis or is that ten days after the end of the first
5 week we'll get the entire first week, just out of
6 curiosity?

7 THE CHAIRPERSON: Ten days after the
8 end of the first week, I believe, is how it works.

9 MR. WARMAN: We'll get the entire
10 unit?

11 THE CHAIRPERSON: Yes.

12 MR. WARMAN: Thank you.

13 THE CHAIRPERSON: I think you are
14 looking at only couple days' lead time, business days
15 before the next --

16 MR. WARMAN: Sure.

17 THE CHAIRPERSON: But it's still --
18 it's electronic, you can scroll through it.

19 MR. WARMAN: Yes.

20 THE CHAIRPERSON: Mr. Vigna?

21 PREVIOUSLY AFFIRMED: RICHARD WARMAN

22 EXAMINATION-IN-CHIEF BY MR. VIGNA (Cont'd)

23 MR. VIGNA: Mr. Warman, under the
24 same oath, just before we go further, we are about to
25 close the evidence as far as the Commission. Is there

1 anything else that you've thought overnight which you
2 would like to add, and in terms of what evidence you
3 would like the Tribunal to rely on in terms of the
4 substantiative complaint? Would you like to make any
5 statement?

6 MR. WARMAN: Well, I guess first off,
7 no, there's nothing else that I wish to add in relation
8 to the evidence itself.

9 The only thing in terms of the
10 evidence that we're relying on is that -- the material
11 that has been submitted pursuant to the message board,
12 so only the materials that have been submitted pursuant
13 to the message board as evidence are being relied on.

14 I will be relying on only the
15 evidence that was actually submitted in relation to the
16 freedomsite.org, JRBooksOnline, and the single
17 Stormfront posting. I believe Mr. Vigna may take a
18 slightly different position, and he can clarify if it's
19 his intention to rely on the entirety of the main body
20 of the freedomsite.org, excluding the message board.

21 MR. VIGNA: Mr. Chair, I've revised
22 my position. I'm going to rely on the same thing as
23 the complainant in terms of the evidence that the
24 Tribunal should determine on in terms of the hate
25 messages.

1 THE CHAIRPERSON: Okay.

2 MR. WARMAN: So just for the purposes
3 of clarification.

4 THE CHAIRPERSON: Well, that's all
5 that's in evidence anyways. I'm not going to -- I
6 don't have it in front of me, in any event, so --

7 MR. VIGNA: So other than the -- what
8 I just mentioned about the --

9 THE CHAIRPERSON: Yes?

10 MR. VIGNA: -- the facts we're going
11 to get, I don't have any other evidence.

12 THE CHAIRPERSON: Okay. And
13 Mr. Warman, you have nothing else to add?

14 MR. WARMAN: No, thank you.

15 THE CHAIRPERSON: Okay. Ms Kulaszka,
16 your turn.

17 MS KULASZKA: I wonder if Mr. Vigna
18 was able to find the disclosure of those messages.

19 THE CHAIRPERSON: After questions?

20 MS KULASZKA: We couldn't find it and
21 he was going to look for it, and he couldn't find it.
22 Up to this point, I wonder if he --

23 MR. VIGNA: I haven't been able to
24 locate it yet and if I locate it eventually, I'll give
25 it. But, as I said yesterday, it's not -- documents

1 that were not in the possession of the respondent.
2 They're from the FreedomSite so -- but as -- if I find
3 it, when it was sent, I will provide it.

4 I looked in the main list that was
5 sent with the -- I believe in November. I didn't seem
6 to locate it there. And I looked through the files,
7 which are pretty numerous, and I haven't been able to
8 locate the --

9 THE CHAIRPERSON: Excuse me for
10 asking again. I just wanted to know, which tabs are we
11 are talking about, is it 7-G and onwards ones?

12 MR. VIGNA: I think it's 13 but I
13 am -- is that 13? I believe it's 13 and --

14 THE CHAIRPERSON: Page 13 and 14?

15 MR. VIGNA: Yes.

16 MS KULASZKA: I think --

17 MR. WARMAN: Thirteen --

18 MS KULASZKA: -- 14, I think 15 and
19 16 --

20 MR. VIGNA: All the way to --

21 MS KULASZKA: -- into 17. It's on
22 this funny paper, 18.

23 THE CHAIRPERSON: Am I looking at the
24 wrong item?

25 MS KULASZKA: It's tab 13.

1 MR. VIGNA: Tab 13, on the --

2 THE CHAIRPERSON: One of the things
3 you mentioned just now is at tab 15, and that's your
4 letter.

5 MR. VIGNA: No, it's 13.

6 MR. WARMAN: No, tab 13, pages 14 to
7 the end.

8 THE CHAIRPERSON: Oh, I'm sorry, tab
9 13, pages 14 to 16. Is that it?

10 MS KULASZKA: No.

11 MR. WARMAN: To 23.

12 THE CHAIRPERSON: Just to 23?

13 MS KULASZKA: Maybe we can just make
14 that clear so Mr. Vigna can have a look at it. We just
15 can't find it. Tab 13, pages 14 to 23. And we will
16 have -- try and find -- find them again as well. Could
17 we leave it at that?

18 THE CHAIRPERSON: Yes, leave it
19 there. Keep trying. I do find it rather odd, but I
20 suppose it's possible. It's -- it seems striking, we
21 have a similar document from just a day earlier here
22 that was disclosed and the other one wasn't. But it's
23 a different topic though, I can see that. But anyways,
24 keep looking and keep me advised. That needle is
25 somewhere in the haystack, or maybe not.

1 CROSS-EXAMINATION BY MS KULASZKA

2 MS KULASZKA: Mr. Warman, let's start
3 with JRBooksOnline, and the issue of who owns
4 JRBooksOnline.

5 If you look at the website
6 JRBooksOnline, is there any name associated with it on
7 the website?

8 MR. WARMAN: I'm not sure. Would you
9 like to -- me to go through the exhibits? Like, in the
10 entirety of the website?

11 MS KULASZKA: Yes, did you ever
12 look -- to be more specific, did you ever look for Marc
13 Lemire's name on the website?

14 MR. WARMAN: On the website itself I
15 don't believe there is direct mention of Mr. Lemire's
16 name on it.

17 MS KULASZKA: So you did a search?

18 MR. WARMAN: No, but just in my
19 review of the website, going through the various pages
20 that I did, I don't believe I saw Mr. Lemire's name.

21 MS KULASKZA: Would you agree it's an
22 absolutely huge website?

23 MR. WARMAN: You know, the devil is
24 in the details, which is an absolutely huge theme.
25 It's a big website. It's an exhibit on --

1 MS KULASZKA: Very big website.
2 Would you agree there are a lot of books on the
3 website, whole books?

4 MR. WARMAN: At the very least, there
5 are a lot of articles. I don't know whether they're
6 books or articles or -- I can state that I have seen
7 personally a lot of articles on the website.

8 MS KULASKZA: Is anybody identified
9 on the website as being the owner?

10 MR. WARMAN: Off the top of my head,
11 I can't say.

12 MS KULASKZA: Maybe we should have a
13 look at -- that's my book. I think we should have had
14 different coloured binders.

15 THE CHAIRPERSON: I'll work around
16 it, don't worry. Let me just complete that last answer
17 in my notes. Okay, so your binder -- this binder that
18 I have placed on my desk here? Okay.

19 MS KULASKZA: Let's look at that
20 Commission's binder, and it would be tab 1.

21 THE CHAIRPERSON: Do you want to
22 refer to your binder at this moment or --

23 MS KULASZKA: No, the Commission's
24 binder.

25 THE CHAIRPERSON: Okay.

1 MS KULASKZA: The big black binder of
2 the Commission, the first binder, tab 1.

3 THE CHAIRPERSON: Yes. The first
4 binder is HR-2, I believe. Yes. Tab 1, yes.

5 MS KULASKZA: Would you agree,
6 Mr. Warman, tab 1 represents -- you cut and paste this
7 but essentially it's the index page of JRBooksOnline?

8 MR. WARMAN: Well, not exactly. I
9 mean, this is a print off of the electronic version
10 that I took of the home page. But apart from that,
11 yes, it is the -- sort of the home page.

12 MS KULASKZA: So it's the home page
13 of JRBooksOnline? This is where you would start off
14 when you went to the URL?

15 MR. WARMAN: At the time when I
16 looked at it and saved that particular home page, yes.

17 MS KULASKZA: Now, if we look at page
18 11, just under, "Just A Few Interesting Links", You can
19 see there is a paragraph that says:

20 "Constructive e-mail may be sent
21 to info"

22 -- and then there's a few characters --

23 "JRBooksOnline"

24 -- then more funny characters --

25 "dot.com."

1 And then:

2 "Convert to standard format
3 e-mail address with no crazy
4 characters.

5 I'm forced to show it this
6 way because of the
7 spambot-generated unsolicited
8 e-mail which intrudes on my
9 in-box."

10 Did you ever try that e-mail?

11 MR. WARMAN: No, I did not ever send
12 an e-mail to that address.

13 MS KULASKZA: You never sent one
14 there?

15 MR. WARMAN: No, I did not.

16 MS KULASKZA: On page 12, you can see
17 "Copyright webmaster jrbooksonline.com", and it's
18 underlined. Do you know, was that a link of some sort?

19 MR. WARMAN: I'm sorry, I don't know.

20 MS KULASKZA: So you would agree
21 there's nothing actually on the website that names Marc
22 Lemire or indicates he owns it?

23 MR. WARMAN: On the website itself,
24 not that I personally saw.

25 MS KULASKZA: Now, you said you

1 initially learned of JRBooksOnline by a post. How did
2 you learn of this?

3 MR. WARMAN: I'm one of the Canadian
4 members of a group called the International Network
5 Against Cyber Hate, and to the best of my recollection,
6 there had been some mention of this website having been
7 registered, or being registered to Mr. Lemire. So I
8 then went --

9 MS KULASKZA: Was this in an article
10 or --

11 MR. WARMAN: No, it would have been
12 in a circular e-mail.

13 MS KULASKZA: And did you keep that
14 e-mail?

15 MR. WARMAN: No, I did not.

16 MS KULASKZA: And who would have sent
17 that around?

18 MR. WARMAN: One of the other members
19 of the group.

20 MS KULASKZA: Do you know what date
21 that would be?

22 MR. WARMAN: Prior to my having
23 located at the website.

24 MS KULASKZA: And when did you first
25 look at the website?

1 MR. WARMAN: Well, the screen shots,
2 I believe, if I recall correctly, were from 19/10/'04.
3 So the -- the dates -- well, at any rate, before -- in
4 September or October of 2004. Because I submitted the
5 JRBooksOnline disk to the Commission on the 11th of
6 October, 2004.

7 MS KULASKZA: So you learned of this
8 website. So what did you do next to check that out?

9 MR. WARMAN: Well, in what order I
10 did it I can't remember, but I did two things. The
11 first one is, is I reviewed content on the website,
12 and the second one is that I conducted an independent
13 WHOIS search to ascertain whether that information that
14 had been forwarded was accurate.

15 MS KULASKZA: And is this your
16 exhibit at tab 17, at HR-1?

17 MR. WARMAN: Yes, it is.

18 MS KULASKZA: So you went to
19 checkdomain.com, you entered jrbooksonline.com, and you
20 did the search?

21 MR. WARMAN: Just to make sure I'm as
22 accurate as possible, I probably entered
23 "www.jrbooksonline", but I believe that the website
24 just shortens it.

25 MS KULASKZA: I see at the top,

1 there's two pages to this, but you've only entered one
2 page. What was on the second page?

3 MR. WARMAN: Nothing that I believe
4 is relevant to the complaint.

5 MS KULASKZA: What does this page
6 mean to you? What does the WHOIS search mean to you?
7 Do you believe this proves that Marc Lemire owns and
8 operates, and is responsible for the content of
9 JRBooksOnline?

10 MR. WARMAN: I believe that this
11 tells me that the information that was filed to
12 register the website indicated that the person
13 registering it was Marc Lemire at that address; that
14 the domain name was as it's listed; that Mr. Lemire was
15 listed as the administrative contact, along with the
16 additional contact information there; the address,
17 telephone number, and the e-mail address.

18 MS KULASKZA: Yes, that's obvious
19 from the document. But you -- you have an onus to
20 prove that Marc Lemire didn't just register a domain
21 name. You have to prove he owns and operates, and is
22 responsible for the content of the website. Is this
23 what you are relying upon to prove that?

24 MR. WARMAN: This and any other
25 documents that have been entered into evidence in

1 relation to the website.

2 MS KULASKZA: Such as?

3 MR. WARMAN: Well, I can go through
4 the tabs and list them all. But I mean, this is the
5 WHOIS lookup that I conducted on the website.

6 MS KULASKZA: Yes, you just admitted
7 there is nothing on the website that indicates Marc
8 Lemire owns it.

9 MR. WARMAN: Not exactly. What I
10 said was nothing that I saw.

11 MS KULASKZA: Well, the onus is on
12 you, and so you haven't shown us anything. That's
13 correct, is it not?

14 MR. WARMAN: Well, the onus is of
15 course to establish a prima facie case that would lead
16 one to reasonably believe that Mr. Lemire was involved
17 in the communication, or involved in a group of persons
18 responsible for the communication of hate messages.

19 MS KULASKZA: So if I understand you
20 correctly, you're not alleging the WHOIS search
21 actually proves that he is responsible for the content
22 and actually owns the site? You are not going to go
23 that far?

24 MR. WARMAN: I'm alleging that it's
25 prima facie evidence that Mr. Lemire, when the website

1 was registered, was listed as the registrant and as the
2 administrative contact for the website, along with all
3 of his personal contact information.

4 MS KULASKZA: So it's a little piece
5 of evidence?

6 MR. WARMAN: It is a piece of
7 evidence.

8 MS KULASKZA: Mr. Warman, do you have
9 any websites yourself?

10 MR. WARMAN: No, I do not.

11 MS KULASKZA: Are you sure?

12 MR. WARMAN: I'm pretty sure.

13 MS KULASKZA: I would like you to go
14 to tab 20 of the respondent's book.

15 THE CHAIRPERSON: Okay, so we should
16 produce the book.

17 MS KULASKZA: Yes, I would like to
18 produce the binder of the respondent.

19 THE REGISTRAR: Binder entitled,
20 "Materials of Cross-Examination of Richard Warman" will
21 be filed as respondent Exhibit R-1.

22 EXHIBIT NO. R-1: Binder
23 entitled Materials of
24 Cross-Examination of Richard
25 Warman

1 THE CHAIRPERSON: And I'll ask you to
2 proceed in the same manner as Mr. Vigna did. I'll ask
3 you to go through each tab.

4 MS KULASKZA: Have you got tab 20?

5 MR. WARMAN: Not yet. If you could
6 perhaps just wait a moment. Yes, it's in front of me.

7 MS KULASKZA: Mr. Warman, there is a
8 WHOIS search result done at "Go Daddy". It's for a
9 website called "Ihatethehaters.com" and you're the
10 registrant. And you'll see that "Richard Warman" is
11 the registrant. Your address is 123 Cares Boulevard,
12 you live in Utopia, Ontario, Ho Ho Ho, Canada.
13 Registered through godaddy.com. Your domain name is
14 ihatethehaters.com and it was created yesterday. You
15 are given as the administrative contact at the same
16 address. You are also the technical contact. Can you
17 explain this?

18 MR. WARMAN: I'm sorry, I can't
19 identify the document. I've never seen it before.

20 MR. VIGNA: I'd point out that it was
21 created yesterday, Mr. Chair. I just got it this
22 morning. And it's late disclose.

23 THE CHAIRPERSON: Yes, it is but it
24 was created -- ongoing duty to disclose. And I -- what
25 I'm guessing is we're getting into contemporary

1 situations, just as we were looking at websites as they
2 appeared on January 28th, with the evidence that you
3 lead.

4 MR. VIGNA: I'll --

5 THE CHAIRPERSON: I think that's
6 where it is, in my opinion.

7 MR. VIGNA: I'll let --

8 THE CHAIRPERSON: And I'll let the
9 questioning proceed.

10 MS KULASKZA: I think you understand
11 what happened.

12 MR. WARMAN: I indicated that I can't
13 identify the document, having never seen it before.

14 MS KULASKZA: That's right. The
15 document will be identified by our expert and the
16 internet can -- Bernard Klatt next week.

17 THE CHAIRPERSON: So then I'll just
18 say it's been identified for the moment. I won't
19 consider it produced at this time.

20 MS KULASKZA: Do you know how you
21 could have appeared on a WHOIS search as the owner
22 of -- sorry, I should also be accurate -- the
23 registrant of the URL is ihatethehaters.com.

24 MR. WARMAN: With any degree of
25 certainty, no, having never seen this document before.

1 MS KULASKZA: And I think it would be
2 fair to say you don't really know how WHOIS works,
3 enough to know how this could have happened.

4 MR. WARMAN: Well, my belief is is
5 that the information is provided by the person
6 registering the website.

7 MS KULASKZA: Did you provide this
8 information?

9 MR. WARMAN: No, I did not.

10 MS KULASKZA: Is that your address?

11 MR. WARMAN: I'm not going to answer
12 that.

13 MS KULASKZA: I don't think this
14 would hurt your security, Mr. Warman. There is no such
15 place as Cares Avenue, Utopia, Ontario, Ho Ho Ho.

16 MR. WARMAN: You have my answer.

17 THE CHAIRPERSON: My understanding of
18 "Ho Ho Ho" is it's Santa Claus's website, North Pole,
19 isn't it?

20 MS KULASKZA: Well, we don't want to
21 endanger Santa here.

22 MR. VIGNA: Mr. Chair?

23 THE CHAIRPERSON: Mr. Vigna?

24 MR. VIGNA: I would like to make a
25 disclosure request in regards to the -- how this came

1 about, the knowledge of the respondent, the source that
2 brought this to the knowledge of the respondent. I
3 would like to get it eventually. I would like to know
4 how we were able to find this document so quickly.

5 THE CHAIRPERSON: Okay, Mr. Vigna,
6 there will be another witness who will testify, I
7 understand, as to -- as to the creation of this
8 document. That's why -- I actually -- I misspoke
9 because I said "it's been identified".

10 It's not even been identified by
11 Mr. Warman. But you know, if it wasn't in a binder, we
12 would have identified it with a letter. I'll just
13 leave it at tab 20 as is, and subject to another
14 witness producing this document at a later point,
15 failing which, we will remove --

16 MS KULASZKA: It will come out.

17 THE CHAIRPERSON: -- any evidence
18 related thereto will not --

19 MR. VIGNA: Even if it's not produced
20 at this point, Mr. Chair, I would just like to make a
21 request to have disclosure on everything surrounding
22 the obtaintion of this document.

23 THE CHAIRPERSON: Well, okay, of
24 documents.

25 MR. VIGNA: Of documents --

1 THE CHAIRPERSON: Any other documents
2 relating to the obtaintion of this document.

3 MR. VIGNA: Correct. My knowledge
4 of --

5 THE CHAIRPERSON: Well, were there
6 any documents, electronic or printed, related to the
7 creation of this document, Ms Kulaszka?

8 MS KULASZKA: Bernard Klatt is going
9 to be giving expert testimony about how it was created.

10 THE CHAIRPERSON: All right, but are
11 you in possession of other documents related to the
12 creation of this document?

13 MS KULASZKA: No, I'm not.

14 MR. VIGNA: Do I understand that
15 Mr. Klatt created the document?

16 THE CHAIRPERSON: Mr. Vigna, don't
17 you see -- I mean, do I have to exclude the witness?
18 Don't you see where this -- the name -- where the
19 questioning is going on this point?

20 MR. WARMAN: Mr. Chair, the duty to
21 disclose is not just -- it extends also to the expert
22 witness, so if Mr. Klatt was involved in the -- the
23 creation of it and he's going to be testifying to this,
24 then or course, there's some obligation to provide the
25 evidence surrounding the actual evidence that is going

1 to be tendered. I mean, you can't just turn a document
2 in and you say: "I created this this morning. I don't
3 have to tell you how I got it or what I did, or whether
4 I was involved in the creation of it.

5 THE CHAIRPERSON: The document's in
6 possession of the respondent. But of course, it should
7 include documents that the respondent is in possession
8 of through their expert witness or any other witness.

9 Are there any documents, Ms Kulaszka?
10 Well, if --

11 MS KULASZKA: I can --

12 THE CHAIRPERSON: I think I have a
13 sense where it's going. If there was a form that was
14 filled out to do this, where is the form? It should be
15 disclosed to Mr. Vigna and Mr. Warman.

16 MS KULASZKA: Yes, this was created
17 yesterday in response, basically to the -- to the
18 evidence of Mr. Warman.

19 THE CHAIRPERSON: I understand. I
20 know where you're going with this. I understand.

21 MS KULASKZA: And I will -- I will
22 ask Mr. Klatt to preserve everything that he did and --

23 THE CHAIRPERSON: More than that.
24 You'll ask Mr. Klatt to preserve and --

25 MS KULASZKA: And disclose the --

1 THE CHAIRPERSON: -- communicate it
2 to you today.

3 MS KULASZKA: As soon as we -- as
4 soon as we can, we will.

5 THE CHAIRPERSON: And then it will be
6 forwarded immediately --

7 MS KULASZKA: At the lunch break or
8 sooner.

9 THE CHAIRPERSON: -- to the other
10 parties, okay? Okay.

11 MS KULASKZA: Mr. Warman, looking at
12 this GoDaddy WHOIS search, if you look at the top, it
13 says:

14 "The data contained
15 ingodaddy.com Inc. WHOIS
16 database, while believed by the
17 company to be reliable, is
18 provided 'as is', with no
19 guarantee or warranties
20 regarding its accuracy."

21 Have you seen this type of warning
22 before on WHOIS searches you've done?

23 MR. WARMAN: I have seen generic sort
24 of, exclusionary clauses or that -- no warranty
25 clauses.

1 MS KULASKZA: Did you understand the
2 meaning of those clauses?

3 MR. WARMAN: In what sense? Do I
4 understand what they mean in the broadest legal --

5 MS KULASKZA: Yes.

6 MR. WARMAN: -- sense of an exclusion
7 or a -- no warranties --

8 MS KULASKZA: They are not
9 guaranteeing the accuracy of the information.

10 MR. WARMAN: Well, I understand that
11 it's a standard legal principle that you try and
12 absolve yourself of any and all responsibility for
13 anything, and that such, sort of, exclusionary clauses
14 are similar to parking lot things that say "This is not
15 a bailment."

16 MS KULASKZA: If we go back to HR-1,
17 tab 17, which is checkdomain.com, you'll see at the
18 top, it says "Page 1 of 2". That's why I asked you
19 what was on the second page, and you said, "Nothing
20 important".

21 MR. WARMAN: No, I said nothing that
22 I had believed to be relevant.

23 MS KULASKZA: Is it possible that
24 what was on the second page was that type of clause,
25 where they didn't -- they stated that they could not

1 guarantee the accuracy of the result.

2 MR. WARMAN: I'm not sure, I'm sorry.

3 MS KULASKZA: Do you still have page
4 2?

5 MR. WARMAN: No, I do not, I'm sorry
6 .

7 MS KULASKZA: I would ask you to go
8 to the respondent's binder, tab 21. This is another
9 WHOIS search result for warmanbooksonline.com. You are
10 given as the registrant, address 123 Cares Boulevard,
11 Utopia, Ontario, Ho Ho Ho, Canada. It was registered
12 through godaddy.com.

13 The domain name registered was
14 warmanbooksonline.com. It was created today. The
15 administrative contact is given as "Mahone Pogue" at
16 pogue.mahone@stormfront.org, 123 Stormfront Street,
17 Stormfront, Ontario, K0K 1H0, Canada, telephone number
18 416-999-1212. Your technical contact is Cool Senator
19 Anne, senator@cools.com. 123 Parliament Avenue,
20 Ottawa, Ontario, Canada, K0K 1H0, Canada, telephone
21 number, 613-555-1212.

22 Do you -- are you the registrant of a
23 website called warmanbooksonline.com?

24 MR. WARMAN: No, I'm not.

25 MS KULASKZA: Is that your address?

1 MR. WARMAN: Again, I'm not going to
2 answer this.

3 MS KULASKZA: Is any of the
4 information on this page accurate?

5 MR. WARMAN: Again, I'm not going to
6 answer that.

7 MS KULASKZA: Why not?

8 MR. WARMAN: Because you are asking
9 me questions in relation to personal information
10 regarding my address, my telephone number and various
11 other information. And again, I've never seen this
12 document, I can't identify it.

13 THE CHAIRPERSON: Whether or not the
14 witness answers, I'm not aware again, of any town
15 called Utopia or of that postal code.

16 MS KULASKZA: Mr. Warman, can you
17 turn to tab 22, the next tab? This is also a document
18 you have not seen.

19 THE CHAIRPERSON: Let me just back
20 up. I'll treat tab 21 in the same manner as tab 20.

21 MS KULASKZA: Yes, well --

22 THE CHAIRPERSON: It will have to be
23 proven by another witness.

24 MS KULASKZA: Yes.

25 THE CHAIRPERSON: And any

1 disclosure -- any documents related to the creation of
2 that document have to be disclosed.

3 MS KULASKZA: They will be produced.

4 At tab 22, if you flip through this
5 document, does this look like the home page of
6 JRBooksOnline? Would you look at the bottom of the
7 page? Can you read the URL that this came from?

8 MR. WARMAN: Again, I can't identify
9 this document. I've never seen it before.

10 MS KULASKZA: I'm not asking you to
11 identify it, just to read the URL that appears on it.

12 MR. WARMAN: Well, then, I'm
13 objecting to the questions on the basis that the
14 document hasn't been identified. If you can't even
15 identify a document, obviously it extends that you
16 can't ask questions on it. If you can't tender it, you
17 can't enter it.

18 THE CHAIRPERSON: It will be later
19 identified, Mr. Warman. The question is being asked,
20 as it was with the others ones. Because -- I can just
21 mark it for the purpose of identification, and
22 questions can still be asked of you.

23 What does it say at the bottom? If
24 you don't wish to answer, I'll read it. It says
25 "www" --

1 MR. WARMAN: Okay,
2 "warmanbooksonline.com".

3 MS KULASKZA: Can you explain how
4 that could happen?

5 MR. WARMAN: No. I presume the
6 material that you will disclose to us will identify
7 that.

8 MS KULASKZA: Yes, I'm not trying to
9 trick you, Mr. Warman. The truth is, you're a lawyer
10 and you don't know anything about computers, or what
11 can be done on the Internet, or with these WHOIS
12 searches; isn't that true?

13 MR. WARMAN: No, I don't believe
14 that's correct.

15 MS KULASKZA: But you can't explain
16 how these documents could be created.

17 MR. WARMAN: Well, I can refer you to
18 tab 7-F of HR-1. You are hypothesizing about who
19 created or registered or how JRBooksOnline came into
20 existence, I can answer that in the third paragraph, it
21 states:

22 "In December of 2000, Mr. Lemire
23 assisted an individual that he
24 had met in the United States to
25 register this domain."

1 "This domain", referring to
2 JRBooksOnline. So rather than hypothesizing, sometimes
3 it's just best to go to the source and accept
4 admissions.

5 MS KULASKZA: Well, that didn't
6 answer the question. I was actually asking about your
7 computer ability, your knowledge of WHOIS searches and
8 what they really represent.

9 And so why these documents were
10 created, Mr. Warman, was just to show you that these
11 WHOIS search results really are inaccurate and cannot
12 be guaranteed. They are meaningless, aren't they?

13 MR. WARMAN: No, and that sounded
14 suspiciously like argument but -- and not really a
15 question. But my answer is no.

16 MS KULASKZA: So you're telling me
17 you do have a knowledge of how this was all done?

18 MR. WARMAN: No, madam, that was not
19 my answer.

20 MS KULASKZA: Can you admit you don't
21 have that kind of computer knowledge?

22 MR. WARMAN: Can you identify what
23 kind of computer knowledge you are asking me to admit
24 that I don't have?

25 MS KULASKZA: I can be very specific.

1 Do you have the computer knowledge to explain how
2 someone, not you, could register you with godaddy.com,
3 as in tab 20, as the registrant of ihatethehaters.com?
4 Do you know how that was done, how it could be done?

5 MR. WARMAN: Well, if you were the
6 registrant and you put in false information, then that
7 could be the case, if it wasn't verified and no one
8 checked it.

9 However, in the case of
10 JRBooksOnline, there's an admission from you in your
11 letter of June 3rd, 2005, that:

12 "Mr. Lemire, in --" "In December
13 of 2000, Mr. Lemire assisted an
14 individual that he had met in
15 the United States to register
16 this domain."

17 MS KULASKZA: Do you accept what's
18 said in that letter in its totality?

19 MR. WARMAN: No, obviously I do not.

20 MS KULASKZA: So you're only
21 accepting part of it?

22 MR. WARMAN: I'm accepting the
23 portion of it that is clearly an admission.

24 MS KULASKZA: Do you have a hard time
25 admitting things -- admitting that you don't know

1 certain things?

2 MR. VIGNA: Objection, Mr. Chair, on
3 the nature of the question. Mr. Warman is under oath.
4 He knows he has to say the truth, and the question is
5 badgering the witness.

6 THE CHAIRPERSON: Not quite
7 badgering, but I don't think it gets us anywhere.

8 Can you advance to the next question,
9 Ms Kulaszka?

10 MS KULASKZA: Well, go back to HR-1,
11 tab 7, sub (F). This was my letter of June 3rd, 2005.
12 We'll read that whole paragraph.

13 "In December of 2000, Mr. Lemire
14 assisted an individual that he
15 had met in the United States, to
16 register this domain. Upon
17 receiving the updated complaint
18 from the Commission, where it
19 was alleged that his name
20 appeared as the owner. Mr.
21 Lemire followed the standard
22 process to correct inaccurate
23 WHOIS data through ICANN,
24 Internet Corporation For
25 Assigned Names and Numbers. The

1 industry standard process should
2 have been followed by Mr. Warman
3 before submitting any additional
4 information to the Commission.
5 Enclosed is the correct WHOIS'
6 registration, which shows the
7 owner of the domain as Jonathan
8 Richardson of Orlando, Florida.
9 This evidence is prima facie
10 proof of the ownership of the
11 site."

12 Did you approach ICANN? Do you know
13 what ICANN is?

14 MR. WARMAN: Yes, I do.

15 MS KULASKZA: What is it?

16 MR. WARMAN: It is the Internet
17 Corporation For Assigned Names and Numbers.

18 MS KULASKZA: And what do they do?

19 MR. WARMAN: To the best of my
20 knowledge, they are the rough sort of U.S.-based
21 organization responsible for the administration of
22 things related to the Internet in general.

23 MS KULASKZA: And in the hierarchy of
24 domain names, where are they?

25 MR. WARMAN: I'm sorry, I don't

1 understand.

2 MS KULASKZA: In the hierarchy of
3 registration of domain names and control of domain
4 names, where are they in the hierarchy?

5 THE CHAIRPERSON: Hierarchy. I think
6 it's what I --

7 MS KULASKZA: I think I -- I haven't
8 had my second coffee yet.

9 MR. WARMAN: I believe ICANN is sort
10 of at the top of the pyramid, if you will.

11 MS KULASKZA: Have you ever made a
12 complaint to ICANN concerning this site?

13 MR. WARMAN: No, I have not.

14 MS KULASKZA: Why not?

15 MR. WARMAN: Because I didn't have
16 cause to.

17 MS KULASKZA: Okay. You get this
18 letter of June 3rd, 2005. We just read the relevant
19 parts. A new WHOIS search is attached. It shows the
20 contact as Jonathan Richardson. What did you do after
21 you got this?

22 MR. WARMAN: I proceeded to attempt
23 to verify whether that information was accurate or not.

24 MS KULASKZA: And how did you do
25 that?

1 MR. WARMAN: I believe that's in
2 evidence through tab 7-G, H, I, J, K, L, M, N and O.

3 MS KULASKZA: And you got no
4 satisfaction, did you?

5 MR. WARMAN: Well, I had enough
6 satisfaction for me to believe that the subsequent
7 information that you had provided was incorrect.

8 MS KULASKZA: Then why did you make
9 these inquiries?

10 MR. WARMAN: I believe I've answered,
11 to determine whether the information you provided was
12 correct or not.

13 MS KULASKZA: And you determined it
14 wasn't?

15 MR. WARMAN: Well, that was my
16 belief, after having followed the steps that I did,
17 yes.

18 MS KULASKZA: Now, I see you copied
19 tab I. To be accurate, we'll call it 7-I. This is the
20 Yahoo mail of July 23rd, 2005. You copied that to Dean
21 Steacy of the Canadian Human Rights Commission. Why
22 did you do that?

23 MR. WARMAN: Because Mr. Steacy is an
24 investigator at the Canadian Human Rights Commission,
25 and had involvement with the investigation of this

1 complaint in relation to Mr. Lemire.

2 MS KULASKZA: So there were two
3 investigators involved; is that correct?

4 MR. WARMAN: I'm sorry, that's beyond
5 my knowledge.

6 MS KULASKZA: Well, Hannya Rysk was
7 also involved, was she not?

8 MR. WARMAN: As I understand it, yes.

9 MS KULASKZA: And Mr. Steacy?

10 MR. WARMAN: Yes.

11 MS KULASKZA: Did they carry out any
12 kind investigations themselves into who really owned
13 JRBooksOnline?

14 MR. WARMAN: I'm sorry, I'm not aware
15 of that.

16 MS KULASKZA: Why did you not
17 disclose these documents until just before the hearing?

18 MR. WARMAN: I've indicated
19 previously that based on your -- the newsletter
20 insisting that Mr. Lemire had nothing to do with
21 JRBooksOnline, and asking whether we were prepared to
22 drop it. I again went through my file, discovered that
23 there were further documents that had not in fact been
24 disclosed, and based on my ongoing duty of disclosure,
25 disclosed them to you.

1 MS KULASKZA: What you did disclose
2 were some trace route evidence. But you didn't rely on
3 that at the hearing. Why did you decide to drop it?

4 MR. WARMAN: In fact, that's
5 incorrect. I did not disclose any trace route search
6 evidence.

7 MS KULASKZA: Was it the Commission
8 that disclosed that?

9 MR. WARMAN: You would have to ask
10 the Commission.

11 MS KULASKZA: So you did not do any
12 kind of searches at all on that kind of investigation
13 of trace routes?

14 MR. WARMAN: I didn't do any trace
15 searches or -- excuse me, that I recall.

16 MS KULASKZA: When you got no
17 satisfaction from Network Solutions, why did you not go
18 to ICANN, since that is the standard industry process?

19 MR. WARMAN: Because I believed
20 that -- well, A, I didn't think about going to ICANN
21 and, B, given the fact that they had simply taken the
22 phone number private, and secondly, had then switched
23 domain name registrars, I felt that it was essentially
24 going to be a wild goose chase. And I had enough
25 information to satisfy me that the information provided

1 was false.

2 MS KULASKZA: I'm sorry, I missed
3 that answer, I apologize. What was that?

4 MR. WARMAN: I had enough information
5 to satisfy me that the information that was provided
6 was false.

7 MS KULASKZA: So you were satisfied
8 with what you had, and you decided not to follow the
9 industry standard process?

10 MR. WARMAN: Well, you are describing
11 industry standard process. I'm not sure that I know
12 that to be the case.

13 MS KULASKZA: How did you know ICANN
14 was at the top of the pyramid then? When did you learn
15 that?

16 MR. WARMAN: Just from general
17 knowledge. And I'm sorry, I don't have an exact date.

18 MS KULASKZA: Would you have that
19 knowledge in 2005?

20 MR. WARMAN: Yes.

21 MS KULASKZA: I would like to go to
22 the respondent's binder, tab 19, that's a memo to file
23 by Hannya Rizk, dated September 13th, 2004. This was
24 disclosed by the Canadian Human Rights Commission to
25 the respondent in the case. It states:

1 "The complainant called today to
2 inform me that he came across a
3 website, jrbooksonline.com, that
4 is operated by the respondent,
5 and includes subject matters
6 such as Jewish ritual-murder and
7 blood libel. The complainant
8 asked that we include this as
9 additional evidence against the
10 respondent. The complainant
11 asked that we hold off on
12 informing the respondent that we
13 know of this website until the
14 police take a good look at it."

15 Did I read that correctly?

16 MR. WARMAN: As far as I can tell,
17 yes.

18 THE CHAIRPERSON: As far as what,
19 sorry?

20 MR. WARMAN: As far as I can tell,
21 it appears to have been read, what's stated there.

22 MS KULASKZA: Could we mark that as
23 an exhibit? It was disclosed by the Commission.

24 THE CHAIRPERSON: Yes.

25 MS KULASKZA: I would like to produce

1 that document.

2 MS KULASKZA: So the date given here
3 is the 2004. That's about how long after the complaint
4 was laid? Just a little over a year, is that correct,
5 or less than a year? About a year, when the initial
6 complaint was laid?

7 MR. WARMAN: Well, the original
8 complaint was laid in -- 23 September, 2003. So --

9 MS KULASKZA: Just about a year.

10 MR. WARMAN: Ten months, a year.

11 MS KULASKZA: So JRBooksOnline
12 obviously wasn't included in your initial complaint?

13 MR. WARMAN: In the original
14 three-page document, no. Five-page document or
15 six-page document, yes.

16 MS KULASKZA: So why did you ask the
17 Commission not to tell the respondent about this
18 website?

19 MR. WARMAN: I think that's a
20 misinterpretation of what I told the -- or what I asked
21 the Commission. What I actually asked them to do was
22 permit the police to conduct an adequate investigation,
23 because I felt that the material contained therein was
24 likely to violate section 319 of the Criminal Code.

25 MS KULASKZA: Well, she obviously

1 understood, according to her memo, that you asked the
2 Commission to hold off on informing Mr. Lemire. Do you
3 think you said that to her? Can you remember?

4 MR. WARMAN: To the best of my
5 recollection, what I asked was that she permit the
6 police to conduct an investigation.

7 MS KULASKZA: Did you ask the police
8 to conduct an investigation?

9 MR. WARMAN: Yes, I did.

10 MS KULASKZA: What police force did
11 you approach?

12 MR. WARMAN: The Toronto Police
13 Force.

14 MS KULASKZA: Metro Toronto?

15 MR. WARMAN: Well, I believe it's
16 called the Toronto Police Service.

17 MS KULASKZA: And did you deal with a
18 specific police officer?

19 MR. WARMAN: If you can give me a
20 second, I can look at the letter that I sent to them
21 and I can tell you, but I believe I did.

22 MS KULASKZA: Yes, I would appreciate
23 that.

24 THE CHAIRPERSON: Any chance of
25 finding it?

1 MR. WARMAN: I think it's probably
2 easiest if I just say that to the best of my
3 recollection, it was probably Detective James Hogan. I
4 can't find it right now. But the document has been
5 disclosed, in any event, so...

6 THE CHAIRPERSON: Maybe at a break
7 later on you can confirm through your paperwork.
8 Because it's been -- it's been quite a few minutes now,
9 Mr. Warman. You don't seem to be able to find it in
10 your materials at this time.

11 MS KULASKZA: Are you quite certain
12 you wrote a letter that was disclosed concerning
13 JRBooksOnline, to the police?

14 MR. WARMAN: No, it's possible it was
15 an e-mail.

16 MS KULASKZA: What was disclosed to
17 us was a letter dated November 27, 2003 to a Mr. James
18 Hogan, concerning the FreedomSite. You can see that at
19 tab 1 of the respondent's binder, if you have a look,
20 at page 35, and it's the numbers on the bottom.

21 MR. WARMAN: Sorry, I stand
22 corrected. That is the letter.

23 THE CHAIRPERSON: That was what,
24 sorry?

25 MR. WARMAN: That was the letter that

1 I had sent to Detective James Hogan.

2 MS KULASKZA: If you look at the page
3 before, page 34, you can see an e-mail that was sent to
4 Marc Lemire from Line Joyal of the Tribunal. Do you
5 recognize that e-mail?

6 MR. WARMAN: Yes, I do. It's an
7 e-mail from me regarding the police complaint, and it
8 says:

9 "Please find attached a copy of
10 the complaint I filed with the
11 Toronto Police in 2003."

12 MS KULASKZA: And on page 35 is the
13 letter; is that correct?

14 MR. WARMAN: Yes, that's the letter I
15 was referring to.

16 MS KULASKZA: And so I would like to
17 produce those two documents.

18 THE CHAIRPERSON: Well, now, it's
19 part of a larger batch.

20 MS KULASKZA: I wonder if we could
21 keep a list. They are pretty -- they are fairly clear.
22 It's tab 1, page 34 and 35.

23 THE CHAIRPERSON: Can we do that?
24 Okay, we'll do that. I want to avoid that. This is
25 one of the problems we run into when we have large

1 tabs. Is the rest of the tab unrelated to this?

2 MS KULASKZA: What it is is -- it's a
3 correspondence file of -- on the case from the
4 beginning. So it's all -- it's all related post --
5 it's all post-complaint correspondence? I see there's
6 your letterhead on a lot of the material.

7 MS KULASZKA: I would say Mr. Warman
8 would recognize all of it.

9 THE CHAIRPERSON: Why don't we do
10 that quickly?

11 MS KULASZKA: But it can't be assumed
12 right now, until I go through it.

13 THE CHAIRPERSON: Because my thought
14 was maybe we could do this quickly so that we don't
15 have that confusion but...

16 All right, let's go this way. If you
17 can, Miss Joyal, just keep track of the individual
18 pages. So remind me again, it was pages 35 and 34.

19 MS KULASZKA: Tab 1, page 34 and 35.
20 How did you contact the police regarding JRBooksOnline?

21 MR. WARMAN: So I apologize. My
22 confusion was in relation to this letter that was sent.
23 So with regard to JRBooksOnline, I probably just called
24 them and said -- gave them the URL address and gave
25 them my reasons for believing that Mr. Lemire was

1 involved with the website.

2 MS KULASKZA: So you didn't lay a
3 written complaint?

4 MR. WARMAN: No, I had already done
5 that, not -- well, I --- it was simply further material
6 related to the original complaint that had already been
7 laid.

8 MS KULASKZA: Regarding the
9 FreedomSite?

10 MR. WARMAN: Yes. Well, against
11 Mr. Lemire in general, but regarding the FreedomSite
12 originally.

13 MS KULASKZA: And did you ever
14 hear --

15 MR. WARMAN: And -- sorry, and I
16 should add, just to be specific -- and a Mr. Craig
17 Harrison. Sorry, that's not in relation to this so...

18 MS KULASKZA: So you also complained
19 about Craig Harrison?

20 MR. WARMAN: No, I'm sorry, the first
21 page of the first paragraph, it's just that I saw
22 Mr. Harrison's name there.

23 So it says:

24 "Please find a copy of a federal
25 human rights complaint filed

1 recently against Mr. Marc Lemire
2 and Mr. Craig Harrison".

3 So it was the human rights complaint
4 that was filed against them. The complaint to the
5 Toronto Police was in relation to Mr. Lemire, and it
6 states:

7 "Because I believe that this
8 individual lives within your
9 jurisdiction."

10 MS KULASKZA: So you phoned the
11 police? Who did you talk to?

12 MR. WARMAN: To the best of my
13 recollection, it would have been James Hogan.

14 MS KULASKZA: And he didn't request
15 anything in writing?

16 MR. WARMAN: Not to my recollection,
17 no.

18 MS KULASKZA: Did they do an
19 investigation?

20 MR. WARMAN: I'm not sure. You'd
21 have to ask them that.

22 THE CHAIRPERSON: The question --
23 investigation, with regard to JRBooksOnline?

24 MS KULASKZA: With respect to
25 JRBooksOnline, at this point.

1 MR. WARMAN: My answer is, I'm not
2 sure. You would have to ask them.

3 MS KULASKZA: Did you ever follow up
4 with Mr. Hogan?

5 MR. WARMAN: I called him or one of
6 his colleagues once or twice afterwards to ask them
7 what -- how things were going, I guess. I never really
8 got a clear answer.

9 MS KULASKZA: They were working on
10 it?

11 MR. WARMAN: No, like I said, I never
12 really got a clear answer as to what was happening, if
13 anything.

14 MS KULASKZA: So what happened?

15 MR. WARMAN: Well, ultimately, I
16 don't know.

17 MS KULASKZA: You never heard back,
18 really?

19 MR. WARMAN: Exactly.

20 MS KULASKZA: They never gave you a
21 report saying, we investigated?

22 MR. WARMAN: No, I would remember
23 that.

24 MS KULASKZA: Can you remember the
25 date you called Metro Police?

1 MR. WARMAN: Well, it would have
2 been --

3 MS KULASKZA: Toronto Police
4 Services.

5 MR. WARMAN: It would have been
6 shortly before or shortly -- well, shortly after I
7 learned of JRBooksOnline and had reviewed it, and
8 shortly before Ms. Rysk's telephone message or
9 telephone conversation note.

10 MS KULASKZA: Do you know, did the
11 Commission take any kind of action to try and get
12 criminal charges laid against Mr. Lemire with respect
13 to JRBooksOnline?

14 MR. WARMAN: I'm not sure.

15 MS KULASKZA: Well, do you know or
16 don't know?

17 MR. WARMAN: My answer is, I'm not
18 sure. I don't know.

19 MS KULASKZA: Mr. Warman, I would
20 like you to go to tab 1 of HR-1. This is the home page
21 of JRBooksOnline, that you entered into evidence.
22 Would you agree with me that this cut and paste exhibit
23 doesn't really show what the website really looked
24 like?

25 MR. WARMAN: Again, this is a -- what

1 I believe to be a print-off of the electronic version,
2 or a print-off of the electronic version that was
3 saved, or just a print-off of the page, as it saw -- as
4 it was displayed on my computer.

5 So again, I'm not sure that the "cut
6 and paste" is an accurate description, and if I used
7 that previously, then I correct myself.

8 But does this display exactly
9 pictures and so forth? No. But does it display the
10 content that was what I witnessed? Yes.

11 MS KULASKZA: So as far as the text
12 goes, this is what would appear on the home page. But
13 as far as the style of the website goes, its look and
14 feel and photographs, graphics; none of that comes
15 across in this exhibit, does it?

16 MR. WARMAN: That's correct.

17 MS KULASKZA: I wonder if you could
18 go back to the respondent's binder, to tab 22. If you
19 just have a look through that tab, do you think you can
20 say that this is an accurate representation of what you
21 would see on the home page of JRBooksOnline, except for
22 the URL at the bottom, which says
23 "warmanbooksonline.com"?

24 MR. WARMAN: As of what period?

25 MS KULASKZA: It would be as of

1 January 31st, 2007, yesterday. I think we had a look
2 at it yesterday on the screen.

3 MR. WARMAN: Well, I mean, in
4 general, yes. But in terms of the exact content or the
5 exact pictures or the exact -- entirety of the format,
6 no.

7 MS KULASKZA: Yes, I realize, but
8 looking at it, this pretty well is an accurate
9 representation, would you say so? We're going to have
10 this proven later. This is what you would see on the
11 screen.

12 MR. WARMAN: Well, it may be. I
13 didn't look -- well, I only looked at a little bit of
14 the front page yesterday. But again, you know, I can
15 say generally that that's what it looks like, but I
16 can't specify that it's -- exactly what is there.

17 MS KULASKZA: Would you say this is a
18 sophisticated website in its look and feel?

19 MR. WARMAN: Perhaps you can give me
20 some assistance in terms of what you would mean by
21 "sophisticated"?

22 MS KULASKZA: I would call the Globe
23 & Mail website a very sophisticated website. It's got
24 a lot of graphics, a lot on the page, it's very nicely
25 organized.

1 JRBooksOnline is not in that
2 category, is it? It's a very simple website. It's got
3 a few graphics, and basically he just lists things. He
4 lists books, lists titles, and you click on the title.
5 He's got a few little graphics.

6 MR. WARMAN: Well, would I compare it
7 to the Globe & Mail, no, probably not -- excuse me, the
8 Globe & Mail's website, probably not. As to whether
9 it's -- you know, what level of complexity, it has
10 graphics, it has hyperlinks, it has --

11 MS KULASKZA: It has the basic
12 components of most websites, correct? It's got some
13 graphics, it's got some links, some simple text.
14 Agreed?

15 MR. WARMAN: Well, again, it's -- you
16 know, it has what it has. It's a fairly
17 straightforward website.

18 MS KULASKZA: Yes, it's just a
19 straightforward website. There's no fancy animation or
20 flashes. Are there any audio tapes on there?

21 MR. WARMAN: Not that I recall.

22 MS KULASKZA: Any video?

23 MR. WARMAN: Again, not that I
24 recall.

25 MS KULASKZA: Did you investigate

1 what kind of topics were dealt with on JRBooksOnline?

2 Did you have a good look at what was on the site?

3 MR. WARMAN: Portions of it. Not the
4 entire --

5 MS KULASKZA: What portions can you
6 say that you looked at, just on the home page here?

7 MR. WARMAN: Well, I can tell you
8 that I looked at the entirety of the disk that has been
9 disclosed to you, as having been submitted by me to the
10 Commission on 11th of October, 2004. All of the
11 material that was submitted pursuant to my evidence, I
12 can say that for certainty, that I looked at all that
13 material.

14 MS KULASKZA: So primarily, The
15 International Jew and Jewish Ritual-Murder?

16 MR. WARMAN: Well, there were a
17 number of articles by Leese.

18 THE CHAIRPERSON: Sorry, by whom?

19 MR. WARMAN: A.J. Leese. Sorry, and
20 where was his name? That's the sort of "Bolshevism is
21 Jewish", "Fascism" -- it was those articles. I looked
22 at the -- to my English and Afrikaans speaking brothers
23 so that I -- didn't even have the slightly different
24 name on the home page. Excuse me, I believe his name
25 is Arnold S. Leese.

1 THE CHAIRPERSON: L-E-E-S-E?

2 MR. WARMAN: Yes. So for instance;
3 Bolshevism is Jewish, the Era of World Ruin, Fascism
4 and Jewry By William Joyce, and the assorted materials
5 contained in the Jewish Ritual-Murder material, and The
6 International Jew.

7 MS KULASKZA: Let's go to page 10 of
8 tab 22. Are you content with using this version of the
9 home page or would you be more comfortable using the
10 exhibit you put in?

11 MR. WARMAN: Well, because I can't
12 say that they were the same websites. Obviously one is
13 several years later.

14 MS KULASKZA: So you would feel more
15 comfortable looking at tab 1 on your own in HR-1.

16 MR. WARMAN: Well, in relation to
17 this hearing, yes.

18 MS KULASKZA: Okay, let's go back to
19 it. Let's go to your page 10 on that tab 1. Did you
20 look at "Pics From Haxan (A Lesson in the Effects of
21 Graphic Media)"?

22 MR. WARMAN: Not to the best of my
23 recollection.

24 MS KULASKZA: It seems to deal with
25 "Illustrations about cultist practices from a leftist

1 filmmaker (Christensen, 1922)".

2 So you never looked at that?

3 MR. WARMAN: Not to the best of my
4 recollection.

5 MS KULASKZA: The next topic is "The
6 Heavier-Than-Air Flying Machine - How We Were in 1907.
7 Whole Spec Fits on a Page".

8 Did you look at that?

9 MR. WARMAN: Not that I recall.

10 MS KULASKZA: Eric Thomson is the
11 next topic, "Just 3 favorites: "The Awakening" (of the
12 Wodanist sort), "The Hitler We Loved and Why" (text
13 only) and "Rudolf Vrba": The Holohoax in Person. Large
14 archive at ERIC THOMSON (outside link)".

15 And you included just "The Hitler We
16 Loved and Why". You referred to it.

17 MR. WARMAN: Yes.

18 MS KULASKZA: You didn't enter it
19 as -- add it as an exhibit?

20 MR. WARMAN: No.

21 MS KULASKZA: Next topic is:
22 "Carleton" -- do you know, just roughly, is Eric
23 Thomson a Canadian? Do you know anything about him?

24 MR. WARMAN: I believe that -- I'm
25 not even sure that it's a real person. It could, in

1 fact, be a pseudonym.

2 MS KULASKZA: You don't know who he
3 is or --

4 MR. WARMAN: Well, I know that
5 Mr. Zundel was involved in some capacity in the making
6 of "The Hitler We Loved and Why", but beyond that, in
7 terms of the actual -- Eric Thomson, no.

8 MS KULASKZA: Okay, next topic is
9 "Carleton Putnam - Race and Reality, an important book
10 that exposes the lying, deceit and chicanery that went
11 behind all those Supreme Court decisions on race".

12 Do you know who he is?

13 MR. WARMAN: Not off the top of my
14 head, no.

15 MS KULASKZA: Do you know what
16 Supreme Court they're talking about?

17 MR. WARMAN: I would presume that
18 it's the Supreme Court of the United States.

19 MS KULASKZA: I don't think the
20 Canadian supreme courts had any kind of decisions like
21 that, correct?

22 MR. WARMAN: Well, I don't believe
23 the Supreme Court of the United States has been
24 involved in "lying, deceit and chicanery" either
25 but....

1 MS KULASKZA: Well, I wasn't
2 referring to that. I was just referring to the Supreme
3 Court decisions on race. I think it must be the United
4 States, correct?

5 MR. WARMAN: Well, that's your
6 supposition.

7 MS KULASKZA: You don't know?

8 MR. WARMAN: No. I've already
9 indicated that my presumption is that it's referring to
10 the United States Supreme Court.

11 MS KULASKZA: The next topic is
12 "Benjamin Disraeli - Those infamous quotes of his in
13 Coningsby and Life of Lord George Bentinck. Just the
14 basics for archive".

15 Did you have a look at that?

16 MR. WARMAN: Not that I recall.

17 MS KULASKZA: Do you know who
18 Benjamin Disraeli is?

19 MR. WARMAN: I know him to be a
20 famous author.

21 MS KULASKZA: From what time period?

22 MR. WARMAN: I'm sorry, I'm not
23 aware.

24 MS KULASKZA: Let's go back one page,
25 to page 9. We'll start with the second paragraph,

1 "L.A. Waddell - Selections from The Phoenician Origin
2 of Britons, Scots & Anglo-Saxons. Pan-Aryan info, even
3 if Waddell himself didn't think so."

4 Do you know who he is?

5 MR. WARMAN: No, I do not.

6 MS KULASKZA: You didn't look at that
7 section?

8 MR. WARMAN: Not that I recall.

9 MS KULASKZA: We'll skip "The
10 International Jew". You have included that and
11 referred to it.

12 "The Jewish version of freedom
13 of speech" - ADL letter, 1933".

14 Did you look at that?

15 MR. WARMAN: Not that I recall.

16 MS KULASKZA: Thomas Jefferson. Did
17 you look at that section?

18 MR. WARMAN: Not that I recall.

19 MS KULASKZA: And is Thomas Jefferson
20 referring to one of the presidents of the United
21 States?

22 MR. WARMAN: I would presume.

23 MS KULASKZA: "Norma Cox", she did
24 "conspiracy research and information on Christianity,
25 Islam, Mormonism and Freemasonry".

1 Did you look at that section?

2 MR. WARMAN: Not that I recall.

3 MS KULASKZA: Do you know who she is?

4 MR. WARMAN: No, I do not.

5 MS KULASKZA: Go back to page 8.

6 First paragraph is, "Germans Abused Minority! An odd
7 concept you may never have heard of".

8 Did you look at that portion?

9 MR. WARMAN: Not that I recall.

10 MS KULASKZA: It states -- at the end
11 of that it says, "complete book from 1940".

12 So would you agree he seems to have
13 scanned a book or included a PDF of a book.

14 MR. WARMAN: I would agree that
15 states "complete book from 1940".

16 MS KULASKZA: Next section, "Cecile
17 Tormay - An Outlaw's Diary, selections of pics and
18 text".

19 Did you look at that section.

20 MR. WARMAN: No, I did not -- sorry,
21 again, not to the best of my recollection.

22 MS KULASKZA: Have you ever heard of
23 the author?

24 MR. WARMAN: No.

25 MS KULASKZA: The book?

1 MR. WARMAN: Mel Torme, but not
2 Cecile.

3 MS KULASKZA: Have you ever heard of
4 an "Outlaw's Diary"?

5 MR. WARMAN: No, I have not.

6 MS KULASKZA: The next section,
7 "Which Way Am I Spinning?" -- Debunking Nazi "Backwards
8 Swastika" Myth".

9 Did you look at that section?

10 MR. WARMAN: Not that I recall.

11 MS KULASKZA: You did look at "J.M.
12 Spaight - Bombing Vindicated", did you?

13 MR. WARMAN: Not that I recall.

14 MS KULASKZA: You just refer to the
15 heading here?

16 MR. WARMAN: Yes, that's correct.

17 MS KULASKZA: "The Belgian People's
18 War - Poles and Jews aren't the only world's
19 professional victims. The Belgians made a good stab at
20 this theme during WWI."

21 Did you have a look at that link?

22 MR. WARMAN: Not that I recall.

23 MS KULASKZA: But you are relying on
24 the heading?

25 MR. WARMAN: Yes.

1 MS KULASKZA: And what is wrong with
2 that heading?

3 MR. WARMAN: Well, it describes Poles
4 and Jews as being not the only world -- not the only
5 world's professional victims, but then infers that
6 Belgians made a good stab at -- it states that
7 "Belgians made a good stab at this theme".

8 MS KULASKZA: And who did you include
9 in your complaint? I don't remember Poles and Belgians
10 being included. Are they included?

11 MR. WARMAN: I believe that religion
12 and national or ethnic origin are included, although I
13 would defer to the complaint itself.

14 MS KULASKZA: Maybe we can look at
15 the complaint.

16 MR. WARMAN: It does in fact say "the
17 basis of religion, race, colour and national or ethnic
18 origin".

19 MS KULASKZA: And it exposes which
20 groups to hatred? If you could just read from it.

21 MR. WARMAN: "Italians, Mexicans,
22 Puerto Ricans, Haitians, Francophones, Blacks, First
23 Nations persons, East Asians, Non-Whites and Jews".

24 MS KULASKZA: So you didn't include
25 Poles or Belgians, correct?

1 MR. WARMAN: I believe that they are
2 included under the broader heading of "national or
3 ethnic origin".

4 MS KULASKZA: Let's go back to Tab 1
5 and we'll go back one page to page 7. It's hard to
6 tell whether this is a separate one, or it comes from
7 the other page. I guess it must be a separate heading.
8 "A real case against the Jews".

9 Did you look at that?

10 MR. WARMAN: Not that I recall.

11 MS KULASKZA: But it does indicate
12 there's an HTML version -- in fact, "two HTML versions,
13 facsimiles of the above", of -- "PDF facsimiles of the
14 above as PDF".

15 What does that indicate to you?

16 MR. WARMAN: That there was both an
17 HTML version and a PDF version of the document above
18 it.

19 MS KULASKZA: So you could click on
20 those and get the document?

21 MR. WARMAN: That is what it would
22 indicate to me.

23 MS KULASKZA: Next paragraph, "James
24 K. Hosmer - A Jew-worshipping exercise from the
25 19th-Century. A telling exposition".

1 Did you look at that?

2 MR. WARMAN: Not that I recall.

3 MS KULASKZA: Do you know who he is?

4 MR. WARMAN: No, I do not.

5 MS KULASKZA: But it indicates it's
6 some sort of writing -- we don't know, a book or
7 article, from the 19th century; is that correct?

8 MR. WARMAN: It states it is a "Jew
9 worshipping exercise from the 19th century".

10 MS KULASKZA: And it's an exposition
11 of some sort?

12 MR. WARMAN: It states, in fact, that
13 it is a "telling exposition".

14 MS KULASKZA: The next heading, "The
15 Godless - What the Nazis were fighting against."

16 Did you look at that?

17 MR. WARMAN: Not that I recall.

18 MS KULASKZA: "Slaves and Masters -
19 Jewish role in Communism and agit-prop via Negroes.
20 Has selections from R. M. Whitney's Reds in America."

21 Did you click on that?

22 MR. WARMAN: Not that I recall.

23 MS KULASKZA: You are simply relying
24 on this heading?

25 MR. WARMAN: That's correct.

1 MS KULASKZA: Do you know who R.M.
2 Whitney is?

3 MR. WARMAN: No, I do not.

4 MS KULASKZA: Have you heard of the
5 book, "Reds in America"?

6 MR. WARMAN: I don't believe that I
7 have.

8 MS KULASKZA: Next section, "Louis K.
9 Birinyi - Why the Treaty of Trianon is Void and The
10 Tragedy of Hungary. Read and weep."

11 Did you have a look at that?

12 MR. WARMAN: Not that I recall.

13 MS KULASKZA: So these appear to be
14 either books or essays, something like that? You could
15 click on there and you would see what they were,
16 correct? They were --

17 MR. WARMAN: I can state it was a
18 link. As I indicated, I didn't actually look at it.

19 MS KULASKZA: The next topic,
20 "Franciszek Bujak - The Jewish Question in Poland",
21 published in Paris, 1919. It says:

22 "It looks good but be wary. It
23 was a Polish nationalist with an
24 axe to grind. Poles were
25 wonderful, golden beams who

1 never did anything bad to
2 anybody, were professional
3 victims, et cetera. Okay as
4 long as it is read with an
5 essay, such as 'The Image of the
6 Germans' and Polish literature
7 to give some context. English
8 translation, direct link to DOC
9 file."

10 Did you have a look at that?

11 MR. WARMAN: Not that I recall.

12 MS KULASKZA: Do you know who that
13 author is?

14 MR. WARMAN: No, I do not.

15 MS KULASKZA: But from the looks of
16 the heading, it must be a book published in 1919 in
17 Paris. That's what it states, right? But you didn't
18 check it.

19 MR. WARMAN: I don't believe that's
20 what it states. It states, "Paris: Imprimerie Levé,
21 1919."

22 That's what I know it to say, because
23 it's in front of me.

24 MS KULASKZA: Right. It's some sort
25 of publication. That seems to be the citation, and

1 the year of publication is 1919, correct?

2 MR. WARMAN: That's what it appears
3 as.

4 MS KULASKZA: Let's go back one page
5 to page 6. "William T. Walsh - Isabella of Spain
6 (extracts re. Jews). Repudiates Lea and Loeb".

7 Did you have a look at that?

8 MR. WARMAN: No, I did not. And if
9 it's of any assistance, I don't believe that I looked
10 at any of the materials on this page.

11 MS KULASKZA: Have you heard of that
12 author?

13 MR. WARMAN: Mr. Walsh? No.

14 MS KULASKZA: Have you heard of a
15 book or essay, "Isabella of Spain"?

16 MR. WARMAN: No, I have not.

17 THE CHAIRPERSON: Ms Kulaszka, I'm
18 getting the message in terms of -- the answers have
19 been quite repetitious here. If we are able to just
20 look at a whole page, and we can advance. Unless it's
21 very significant that we go through every single title.

22 MS KULASKZA: Well, in some ways, it
23 is important for me to go through it. If you don't
24 mind, I don't think we have too much more.

25 THE CHAIRPERSON: Okay. It's

1 precious; time is precious.

2 MS KULASKZA: The next title is
3 "American Indian Studies". And this dealt with "Dutch
4 settlers of America and the Green Mountain Boys"
5 generally.

6 You didn't have a look at that?

7 MR. WARMAN: Not that I recall.

8 MS KULASKZA: And you are not
9 familiar with it?

10 MR. WARMAN: No, I am not.

11 MS KULASKZA: The next title,
12 there's a direct link to a DOC file, "Racial Biology of
13 the Jews. See "The Genetics of Jewish Populations".
14 It's for the research archive".

15 You didn't have a look at that?

16 MR. WARMAN: Not that I recall.

17 MS KULASKZA: The next title, the
18 German author, "German Law and Legislation", the NS
19 Viewpoint. Direct link to a DOC file".

20 Did you have a look at that?

21 MR. WARMAN: Not that I recall.

22 MS KULASKZA: Have you ever heard of
23 that book?

24 MR. WARMAN: Not that I'm aware of.

25 MS KULASKZA: The next title, "The

1 Jewish State", Theodor Herzl, 1943 edition. Direct
2 link to a DOC file."

3 Did you have a look at that?

4 MR. WARMAN: Not that I recall.

5 MS KULASKZA: Do you know who Theodor
6 Herzl was?

7 MR. WARMAN: I know him to have been
8 involved in the Zionist movement.

9 MS KULASKZA: You haven't read "The
10 Jewish State"?

11 MR. WARMAN: I have not.

12 MS KULASKZA: You haven't?

13 MR. WARMAN: Have not.

14 MS KULASKZA: Oh, you have? Oh, you
15 have not? Sorry.

16 Next title is an author named Ravage,
17 "Direct link to DOC and PDF files. Straight from the
18 horse's mouth. Read 'em. These have been corrected to
19 facsimiles (see PDFs) of the original articles in The
20 Century Magazine."

21 Did you have a look at that?

22 MR. WARMAN: Not that I recall.

23 MS KULASKZA: Back to page 5. Do you
24 know who Sir Richard F. Burton is? He's another
25 heading.

1 MR. WARMAN: Well, I know him to be
2 the historical Burton, the historical figure.

3 MS KULASKZA: He was a great
4 explorer, linguist and that -- ethnographer. Do you
5 know what time period he lived in?

6 MR. WARMAN: Not off the top of my
7 head, no, not with any exactitude.

8 MS KULASKZA: I believe you've
9 included some of Arnold S. Leese's works, Jewish
10 ritual-murder resources, books and references. And you
11 downloaded those and made some exhibits, correct?

12 MR. WARMAN: There were specific
13 articles by Leese, yes.

14 MS KULASKZA: Next heading, Samuel
15 Roth, "Expurgated chapters from the important and
16 revealing Jews Must Live. If you have only the 163 page
17 version, you don't have the whole thing! Text and
18 graphics. Also Now and Forever."

19 Did you have a look at that?

20 MR. WARMAN: Not that I recall.

21 MS KULASKZA: Do you know who Samuel
22 Roth is?

23 MR. WARMAN: Not off the top of my
24 head.

25 MS KULASKZA: But apparently, you can

1 click and get a very large file, probably two?

2 MR. WARMAN: It describes it as "a
3 one-hundred and" -- well, it looks to be describing as
4 more than 163 pages.

5 MS KULASKZA: Okay, the next title,
6 Ekhart, "Bolshevism from Moses to Lenin."

7 You didn't look at that?

8 MR. WARMAN: Not that I recall.

9 MS KULASKZA: Okay, let's go back to
10 page 4 of tab 1, the statement of purpose of the
11 website. You'll agree the stated purpose of the site
12 was:

13 "...to bring to the fore many
14 old works of literature you may
15 not be aware of".

16 Is that correct?

17 MR. WARMAN: That's what it states.

18 MS KULASKZA: And in fact, if we look
19 through those titles, a lot of them seem to be very
20 old, don't they?

21 MR. WARMAN: Well, a lot of them I
22 haven't seen so, I mean, some of them appear to be
23 dealing with historical topics, but as to their exact
24 dates of publication, I couldn't say.

25 MS KULASKZA: And you've highlighted

1 words:

2 "These books and essays all deal
3 in some way with white
4 solidarity and white
5 nationalism, if mentioned at all
6 (ie. In a classroom, or written
7 in an article, these books), had
8 short passages quoted out of
9 context to make the authors
10 appear ridiculous. And then it
11 was 'on to the next subject'.
12 Haven't you ever wondered why
13 they never showed you the whole
14 thing so that you could decide
15 for yourself."

16 Is that what it says?

17 MR. WARMAN: That's not what I
18 highlighted. In fact, I just highlighted the first
19 sentence, but that is what that paragraph states.

20 MS KULASKZA: "Many deal with
21 specially coddled minorities or uniquely powerful
22 religious groups that have legions of brainwashed
23 lackeys at-the-ready to protect them from all
24 criticism."

25 It's obvious the author doesn't like

1 that, correct.

2 MR. WARMAN: The "coddled minorities
3 or uniquely powerful religious groups", I certainly
4 would infer that.

5 MS KULASKZA: So the next paragraph:
6 "The establishment has taken
7 great pains to ensure that you
8 never look at these books,
9 articles and essays. Many old
10 books disappear off library
11 shelves, conveniently lost or
12 misplaced. Some are brought out
13 for the sole purpose of -- are
14 bought out for the sole purpose
15 of destruction. Many are now
16 quite rare."

17 He goes on, the last sentence:

18 "They are presented here as an
19 act of preservation and in
20 defiance of political
21 correctness, so now reaching
22 down into the memory hole."

23 So you would agree whoever runs
24 JRBooksOnline, this is basically seen by him as an
25 archive? He's trying to preserve certain old books

1 that have gone down the memory hole, are no longer
2 available, or quite rare. Would you agree that's his
3 stated purpose?

4 MR. WARMAN: Well, I believe it's a
5 very specific type of material, rather than just a
6 generic historical archive, but that is what his stated
7 purchase is.

8 MS KULASKZA: So JRBooksOnline is
9 seen by the author as an electronic archive, correct?

10 MR. WARMAN: An electronic archive of
11 a very specific type, in my opinion.

12 MS KULASKZA: Let's go to the first
13 page. He's got -- appears to be additions to the
14 website as of 14 April, '04, that was "Jewish
15 Ritual-Murder".

16 And then on 8 February '04, he posts
17 "An Aid in the Study of United States History: A High
18 School Primer From 1910"; is that correct?

19 MR. WARMAN: That appears to be what
20 it says, yes.

21 MS KULASKZA: And you didn't have a
22 look at that to confirm that?

23 MR. WARMAN: Not that I recall, no.

24 THE CHAIRPERSON: I just want to make
25 sure I found that. Okay, yes, the second line.

1 MS KULASKZA: So a high school primer
2 would be something like a -- a little history book that
3 the kids would have in their classroom. That's
4 generally how it's understood, is it not?

5 MR. WARMAN: Well, you know, sort of
6 a short work, a primer, as it were.

7 MS KULASKZA: Okay, maybe we could go
8 to HR-2, which is your second binder.

9 THE CHAIRPERSON: No. Oh, no, that's
10 right. 3 is the second binder. HR-1 was the complaint
11 as a loose --

12 MS KULASKZA: Oh, okay.

13 THE CHAIRPERSON: Was it not?

14 THE REGISTRAR: Yes.

15 THE CHAIRPERSON: So the green
16 binder.

17 MS KULASKZA: So would you agree in
18 this binder --

19 THE CHAIRPERSON: What tab are you
20 at?

21 MS KULASKZA: Actually, I'm referring
22 to the whole binder at this point. All the tabs in
23 here are printouts from the FreedomSite; is that
24 correct?

25 MR. WARMAN: To the best of my

1 knowledge.

2 MS KULASKZA: Would you agree that
3 FreedomSite has a very, very different look and feel
4 from JRBooksOnline?

5 MR. WARMAN: It has a different look
6 and feel, but would I describe it as "a very
7 different" -- I mean, that depends on what your
8 definition of "very different" is.

9 MS KULASKZA: The -- by look and feel
10 and complexity, level of sophistication, it's of a
11 much, much higher level, isn't it?

12 MR. WARMAN: It has different things
13 involved in it. More things, if you will.

14 MS KULASKZA: Yes, it's got a lot of
15 graphics, would you agree with that?

16 MR. WARMAN: It has graphics, yes.

17 MS KULASKZA: It's got -- on the
18 right-hand side, it's got lists of things you can
19 click, it's very organized?

20 MR. WARMAN: Well, similar to the
21 JRBooksOnline, it has lists of things that you can
22 click and be taken to or linked to -- or by link to.

23 MS KULASKZA: Yes, but the webpage
24 itself is divided, I would say, into three portions;
25 it's the left, the right and the middle, correct? You

1 can go to the left and there's the content, you can
2 click on "home page", "news files", "organization",
3 "on-line store". There's graphics, where as in the
4 middle, there's a big graphic, big title?

5 MR. WARMAN: I would agree it's very
6 cluttered.

7 MS KULASKZA: Are there audio files
8 on the FreedomSite?

9 MR. WARMAN: Yes, I believe so.

10 MS KULASKZA: Are there video files?

11 MR. WARMAN: I believe so.

12 MS KULASKZA: Can you make donations
13 on-line?

14 MR. WARMAN: I've never done so.
15 There is a box on tab A of HR-3.

16 The second page of it, that indicates
17 you can -- there is a box that says "Visa, MasterCard,
18 donate".

19 MS KULASKZA: Yes, "your donations
20 ensure our survival" and there's a -- it looks like a
21 little graphic of the Visa and Mastercard, it says
22 "donate"? Did you click on that? Did you ever do so?

23 MR. WARMAN: No, I never had the
24 urge, I must admit.

25 MS KULASKZA: You weren't even

1 curious to see what would happen?

2 MR. WARMAN: I knew I wasn't going to
3 take that second step, so I was quite comfortable
4 leaving that up to my imagination.

5 MS KULASKZA: There was also a store
6 on the site, was there not?

7 MR. WARMAN: Yes.

8 MS KULASKZA: And I think you went
9 through that. Let's have a little look at it. That's
10 tab C, I think. You can buy T-shirts, correct?

11 MR. WARMAN: Yes, Heritage Front
12 T-shirts, I believe, yes.

13 MS KULASKZA: You went through the
14 books, you could order cards. Were there cards for
15 sale?

16 MR. WARMAN: Yes, again, Heritage
17 Front cards.

18 MS KULASKZA: Did you know who owned
19 Freedomsite?

20 MR. WARMAN: Well, I believe it to be
21 Mr. Lemire.

22 MS KULASKZA: When did you learn
23 that?

24 MR. WARMAN: I'm sorry, I don't know
25 exactly when. Prior to my filing the complaint.

1 MS KULASKZA: Two days before?

2 MR. WARMAN: No, I would say that --
3 well, I mean, I can say I have known, or I have been
4 lead to believe by materials that I have read, that
5 Mr. Lemire has been involved with the FreedomSite for a
6 long period of time, but when exactly that came to my
7 knowledge, I can't say with any certainty.

8 MS KULASKZA: So a long period of
9 time, years probably, correct?

10 MR. WARMAN: Oh, certainly, yes.

11 MS KULASKZA: How long has the
12 FreedomSite been up?

13 MR. WARMAN: I believe the materials
14 indicated it was 1996, but again I would refer to that
15 in its own little history section of --

16 MS KULASKZA: I think it says
17 somewhere. Oh, yes, here it is, on tab A, page 2. It
18 says, "the FreedomSite has been constantly on-line
19 since 1996", according to the web page itself?

20 MR. WARMAN: Yes. My memory served
21 correct.

22 MS KULASKZA: And you filed your
23 complaint in 2003?

24 MR. WARMAN: That's correct.

25 MS KULASKZA: So your evidence is,

1 you knew for years who owned it?

2 MR. WARMAN: Well, I knew for quite a
3 period of time that -- or it was my belief for quite a
4 period of time that Mr. Lemire was associated with the
5 website, yes.

6 MS KULASKZA: If we look at that same
7 page, that's tab A, page 2, right at the top, there's a
8 graphic, "Wear yours with pride. T-shirts, \$20."

9 There's a model there with the --
10 modelling this t-shirt that's for sale. Do you know
11 who that is?

12 MR. WARMAN: Given the image, I
13 believe it to be Mr. Lemire.

14 MS KULASKZA: And right next to it is
15 another graphic, "In Defense of Freedom. Marc Lemire
16 versus the Canadian Human Rights Enforcers". Do you
17 know whose image that is, on that graphic?

18 MR. WARMAN: Again, I believe it to
19 be Mr. Lemire.

20 MS KULASKZA: Would you agree that
21 in -- on almost every exhibit you filed from the
22 Freedomsite, almost every page ended with:

23 "The Freedomsite has been
24 constantly on-line since 1996.
25 Your donations equal our

1 survival. 152 Carlton Street,
2 P.O. Box 92545, Toronto,
3 Ontario, M5A 2K1. Please send
4 what you can to help keep our
5 website operational."

6 Is that a real -- a real address, do
7 you know?

8 MR. WARMAN: Well, I have never sent
9 material to it. I have never attempted to mail
10 anything to it.

11 MS KULASKZA: Did you check it?

12 MR. WARMAN: I think --

13 MS KULASKZA: I think with
14 JRBooksOnline, you checked UPS or something to see if
15 the --

16 MR. WARMAN: I checked the U.S.
17 Postal Service website. I've never done that with this
18 address.

19 MS KULASKZA: So I think you assumed
20 it was a real address, since people would send money to
21 it?

22 MR. WARMAN: Well, people have done
23 dumb things in the past, but I would presume you would
24 put the real address if you wanted people to send you
25 money.

1 MS KULASKZA: Could you go to tab A,
2 page 1? This depicts the home page, the Freedom site,
3 on the date it was -- it was printed off; is that
4 correct?

5 MR. WARMAN: To the best of my
6 knowledge, yes.

7 MS KULASKZA: If you look on the
8 left-hand side, it says, "Contact us, 152 Carlton
9 Street", and it gives the same P.O. box and Toronto
10 address.

11 Could you click on "Contact us", or
12 was that just -- just text? Was it a hyperlink.

13 MR. WARMAN: I'm sorry, I don't know.

14 MS KULASKZA: And just under the
15 address, it says "e-mail us". Was that a link?

16 MR. WARMAN: Again, I never e-mailed
17 them, so I'm not sure.

18 MS KULASKZA: Now, you filed an
19 on-line petition. Maybe we'll have a look at that. It
20 should be HR-2.

21 THE CHAIRPERSON: At some point soon,
22 I would like us to take our break. The practice that
23 we seem to be developing, which I think is effective,
24 is that we take an early break for lunch, come back
25 fairly promptly, and we can run the length of the

1 afternoon with one coffee break.

2 So at some point soon -- if you are
3 getting into a new area, it might be helpful -- I'm
4 kind of concerned for the court reporter here.

5 MS KULASZKA: If I could just go
6 through a couple more things. That would be --

7 THE CHAIRPERSON: Okay. Five
8 minutes?

9 MS KULASZKA: That would be fine.

10 THE CHAIRPERSON: Okay. Five
11 minutes.

12 MS KULASKZA: I think it's tab 17.
13 No, it's not. What I'm looking for is the on-line
14 petition.

15 THE CHAIRPERSON: Mr. Vigna, do you
16 remember it?

17 MS KULASKZA: There it is. It's at
18 the very back, its tab 26, tab B. Do you have that,
19 Mr. Warman?

20 MR. WARMAN: I do, yes.

21 MS KULASKZA: Now, you pointed out on
22 this -- this petition, I believe it was on page -- I'm
23 finding everybody except Marc Lemire. Here it is, it's
24 on page 11. You pointed out the fact that Marc Lemire
25 had signed this petition?

1 MR. WARMAN: That's correct.

2 MS KULASKZA: And he signed his own
3 name?

4 MR. WARMAN: He did, yes.

5 MS KULASKZA: And he gave an e-mail;
6 is that correct?

7 MR. WARMAN: That is.

8 MS KULASKZA: Of
9 webmaster@freedomsite.org, correct?

10 MR. WARMAN: Indeed.

11 MS KULASKZA: At the end of that
12 petition, on the last page, which would be page 16, you
13 pointed out that at the bottom of the petition, it
14 said, "Scripts created by Matt Wright and edited by
15 Marc Lemire", correct?

16 MR. WARMAN: Mr. Vigna brought that
17 to my attention and I read it into the record, yes.

18 MS KULASKZA: So Marc Lemire signed
19 his name to that and took credit for the scripts,
20 correct?

21 MR. WARMAN: Well, with another
22 individual, yes.

23 MS KULASKZA: He didn't hide the fact
24 that he wrote the script? He didn't hide the fact that
25 he signed the petition, correct?

1 MR. WARMAN: No.

2 MS KULASKZA: Now, the last thing I
3 want to look at just before the break is tab 16 of
4 HR-2. And you'll agree this is what you say is the
5 posting of Marc Lemire on stormfront.org, on their
6 message board? They have a message board on
7 Stormfront; is that true?

8 MR. WARMAN: Yes, and yes.

9 MS KULASKZA: And this is -- you say
10 this is a posting by Marc Lemire?

11 MR. WARMAN: That's my belief, yes,
12 and that's what it indicates.

13 MS KULASKZA: How do you know that?

14 MR. WARMAN: Well, it says "Marc
15 Lemire" on it. It indicates that he's a forum member.
16 It gives a picture of him, gives his location, being
17 Toronto, Canada, and it is consistent with what I
18 understand to be other posts by Mr. Lemire on
19 Stormfront.

20 MS KULASKZA: Would you agree that
21 Marc Lemire is very open on the Internet? He does not
22 hide his identity. When he posts on Stormfront, he
23 uses his real name, he has his image. When he signs
24 on-line petitions, he uses his real name, a real
25 e-mail? And on the Freedom site, he has graphics of

1 himself, he has a means of e-mailing the web page, he
2 has mailing addresses. He's a very, very open person.
3 Would you agree?

4 MR. WARMAN: I would agree that
5 Mr. Lemire uses his image on Stormfront and on the
6 Freedomsite, that he puts his name on both Stormfront
7 and on the Freedomsite, and that the Freedomsite
8 solicits donations to specific addresses and provides
9 what I can only presume is an e-mail address.

10 MS KULASKZA: You're on message
11 boards a lot. How many people use their real names on
12 message boards?

13 MR. WARMAN: It depends on whether
14 they are, I guess, known individually to be involved
15 with neo-Nazi or white supremacist movements. Sorry,
16 in the terms of specific websites that I tend to look
17 at.

18 MS KULASKZA: So you tend to inhabit
19 those type of websites; is that correct?

20 MR. WARMAN: I believe "monitor"
21 would be a better term than "inhabit" but --

22 MS KULASKZA: Did you ever look at
23 any other kinds of message boards?

24 MR. WARMAN: Oh, I have, yes.

25 MS KULASKZA: Would you agree most

1 people don't use their real name? They use a handle of
2 some sort; isn't that correct?

3 MR. WARMAN: Well, many people use a
4 pseudonym, yes.

5 MS KULASZKA: And you do that
6 yourself?

7 MR. WARMAN: I have in the past, yes.

8 MS KULASKZA: Do you ever sign on --
9 up on message boards of any kind using your real name?

10 MR. WARMAN: That's a very broad
11 question, but not -- not to the best of my
12 recollection.

13 MS KULASZKA: If we could break
14 there.

15 THE CHAIRPERSON: Okay, that's very
16 good. So again, we'll follow the same practice as we
17 have done the other days, so we'll be back 1:30. Is
18 that good?

19 MS KULASZKA: That's fine. 1:30.

20 THE CHAIRPERSON: And I was going to
21 say -- I don't know if that's what was being discussed
22 there, but of course, Mr. Warman, as you are familiar,
23 you are in the middle of your cross-examination, so
24 you'll have to avoid discussing the case -- I'm not
25 saying you can't say hellos or goodbyes to people, but

1 avoid discussing the case during the break. Thank you,
2 sir.

3 Is there anything else?

4 --- Recessed at 11:58 a.m.

5 --- Resumed at 1:30 p.m.

6 MS KULASZKA: If I could, I would
7 like to raise the matter of what Mr. Warman and
8 Mr. Vigna stated this morning about the case. I just
9 want to confirm what was said.

10 Apparently the position now is that
11 only the materials they have been entered into evidence
12 at this hearing are to be considered and not the two
13 websites in their entirety.

14 THE CHAIRPERSON: The two websites
15 were not put in evidence, so how could I possibly
16 consider the entire websites? They are not in
17 evidence.

18 MS KULASZKA: Because that was the
19 case of both Mr. Warman and the Commission.

20 If I could -- this is very important.
21 Last year on May 17th, 2006 the respondent made a
22 motion for particulars, you'll remember.

23 The response of the Commission and
24 Mr. Warman was that they took the position that the
25 entire websites and their content violated section 13.

1 In a letter to me dated October 2nd,
2 2006 Mr. Vigna wrote:

3 "The Commission has been very
4 clear in stating that the entire
5 site associated with Marc Lemire
6 should be considered object of
7 the litigation and not just
8 single, dissected parts as the
9 respondent wishes."

10 Because of course my motion stated
11 the entire websites can't be considered hate messages,
12 "What parts are you alleging to be hate messages?"

13 And that letter also -- the
14 Commission took the position -- it stated:

15 "The Commission takes the
16 position that the entire
17 website"

18 -- and in this case it was referring to the
19 Freedomsite --

20 "and its content, since this
21 website has only one common
22 theme, should be ordered to be
23 shut down by the Tribunal order
24 sought."

25 THE CHAIRPERSON: All right.

1 MS KULASZKA: A fine was also
2 requested in their statement of particulars.

3 A lot of work went into that motion
4 for particulars and then going back and forth, and in
5 the end in your ruling you said to them, surely, a 130
6 messages is too much but if you, in good faith, are
7 going to put in every single one then that's the way it
8 is.

9 And in the end their reply to your
10 ruling was, the entire websites, both of them, were the
11 subject of this hearing. And so since then that's how
12 we have proceeded, and we have done a lot of work.

13 We come to the hearing now. Nothing
14 was said. Their case basically is that in respect of
15 the FreedomSite there's one common theme, it can't be
16 considered in little parts and they want the whole
17 thing shut down.

18 THE CHAIRPERSON: Right. I see two
19 components emerging. One is the evidence as its
20 introduced into the hearing and what you expect to see
21 coming in the preparation you were involved with.

22 The second issue that seems to be
23 developing is one of remedy in the sense that they are
24 speaking of the entire website being shut down, in that
25 letter at least. But you're alluding to the fact that

1 only certain components --

2 MS KULASZKA: There are two things.
3 Number one, it was a total abuse of process, our time.
4 They were asked to come up with a particular messages
5 they wanted to go forward with. They didn't. They
6 insisted both websites -- so they put us to tremendous
7 money, time and expense.

8 And number two, you're correct, the
9 remedy.

10 Their whole case is changed. I mean,
11 first the whole FreedomSite has a common theme. You
12 can't look at one little bit here and there. Now that
13 their case has closed --

14 THE CHAIRPERSON: Well, he hasn't
15 closed his case. Just Mr. Warman's examination
16 in-chief is. I didn't hear he closed his case. But
17 it's getting there.

18 MS KULASZKA: It's getting there.

19 THE CHAIRPERSON: I just want to be
20 specific on the point.

21 MS KULASZKA: What they have put in
22 are some messages from the message board which no
23 longer -- it didn't exist even when Mr. Lemire learned
24 about -- taken down three months before, even before he
25 knew about the complaint. The message board doesn't

1 exist. It hasn't existed for years now.

2 So if there's an order to take down
3 the message board, the message board was gone even
4 before he knew about the complaint.

5 And about the website. What is
6 Mr. Vigna's position now? His position before is this
7 website has only one common theme and should be ordered
8 to be shut down and you can't look at little teeny bits
9 here and there.

10 But what they put is a binder.
11 They've run off a few pages. This is HR-3. Mr. Warman
12 went through it. He read little bits here and there.

13 I mean, what is their position? If
14 Mr. Lemire takes away these little bits is that enough
15 for them? Do they want the Freedom site still shut
16 down? Do they just want these pages removed? What is
17 it that they want?

18 THE CHAIRPERSON: Okay. I see the
19 issues that have come up in your view. What do you
20 want me to do about them at this stage? We're in the
21 middle of cross-examination. Some of the later points
22 certainly look like strong arguments to be made, or
23 important arguments to be made with regard to the
24 remedy. That's why I alerted you to that. On the
25 other issue, what can be done at this point?

1 MS KULASZKA: If their position was,
2 as they stated, that to violate section 13 this website
3 had to be considered in its entirety, and that's why
4 they would not particularize -- give particulars, and
5 now they are saying something very different. They are
6 saying exactly what I said, that I think the case
7 should be dismissed, just right now.

8 THE CHAIRPERSON: Basically, the case
9 isn't closed yet and you can't make a motion to dismiss
10 at this point. That develops a whole issue about
11 election, well, whether to lead evidence or not.

12 I don't know where you would stand on
13 that. The authorities have gone a little bit in both
14 ways at the Tribunal. I would urge you to not make any
15 rash decisions on motions to dismiss at that point.

16 MS KULASZKA: But you can
17 understand --

18 THE CHAIRPERSON: I understand your
19 frustration. Now that you bring it up, I'm a little
20 surprised, Mr. Vigna and Mr. Warman, because I fully
21 expected based on your responses to my two rulings on
22 this point that you were in effect -- and don't try to
23 do it now -- but I fully expected you to drop me DVDs
24 or CDs of that entire website and make allegations
25 about all of it. That's sure how it looked.

1 And it sounds that's the expectation
2 they had on the other side and they prepared that way.
3 Then you went and selected items fewer than what appear
4 in the complaint, and not as examples. Don't tell me
5 it's examples, because how can I know if they're
6 examples or not when I haven't -- excuse me -- when I
7 haven't even seen the rest of it? Am I going to go on
8 your faith that it's an example?

9 MR. VIGNA: Mr. Chair, the website in
10 question has been constantly updated. There's been
11 modifications all the way along the road.

12 When I said the entire website, I
13 wanted to make sure that anything in the website could
14 be put in evidence because it's been constantly updated
15 and I didn't want to freeze myself to a certain part of
16 the website which would not be able to be put in
17 evidence because I would have simply said, this is all
18 we're relying on.

19 So what I simply said -- is that
20 because of the fact that the website was continuously
21 being updated and is active, we wanted to reserve the
22 right to be able to put anything in the website that
23 constitutes a violation of section 13.

24 The website, as it is today, has been
25 put in evidence primarily in tab number 2 and other

1 than the section 13 aspect of it, we will be arguing
2 also that for the issue of remedy and in terms of the
3 section regarding special -- maliciousness and the
4 amount, it's important to also know the behavior of the
5 respondent in light of all the website content.

6 So if there's only certain parts of
7 the website that have been put in evidence, it surely
8 does not prejudice the respondent because basically
9 we've focused on the main aspects of the website which,
10 at a certain period in time, were on the message board
11 were, we are alleging, violations of section 13.

12 Now, in terms of the present day
13 content of the website, my colleague is saying that
14 they are not necessarily section 13 violations.

15 What I'm submitting to you,
16 Mr. Chair, is you should be able to also rely, for
17 example, on the tab with the green binder, which is
18 primarily the entire website today. Because there's
19 not only the issue of the hate message aspect, there is
20 the issue of the behavior of the respondent in light of
21 these proceedings. There's the issue of the remedy
22 which eventually will be having to take into account,
23 the fact that certain caricatures of certain
24 anticipated witnesses put on the website.

25 I believe it's important that we

1 don't limit ourself in saying we are only going to rely
2 on excerpts, those excerpts don't exist anymore so
3 there's no need to have any case. Those messages were
4 on the website.

5 THE CHAIRPERSON: The current website
6 is in evidence. You're right, HR-3, I think, is in
7 evidence. It's not the entire website, it's the table
8 of contents and those other sections that's in
9 evidence. Okay.

10 MR. VIGNA: So what is -- the
11 argument being put by the respondent, to my
12 understanding, is that basically we should have not --
13 what I understand the respondent's argument is that we
14 shouldn't have a hearing simply because these message
15 postings were there at one point, they don't exist
16 anymore, therefore, there's no point to have a hearing.

17 THE CHAIRPERSON: If that's her
18 argument -- there have been other cases involved where
19 it doesn't make a difference if the conduct has ceased.
20 It's still -- certainly the fall that I was involved
21 with, Mr. Kulbashian, the website was down at the time
22 my decision was issued.

23 MR. VIGNA: I understand the
24 arguments of the respondent. When I looked at the
25 letter of particulars, the arguments have been put.

1 That's basically when she constantly refers to the
2 issue of settlement. That's the argument she wants to
3 put today because the website has been sort of
4 revamped. There's no more problem.

5 What I'm submitting to you,
6 Mr. Chair, is there has been a problem particularly at
7 one point in time with the message board. The website
8 is in existence, it's constantly being added, revamped,
9 and if I were to say in November we were only going to
10 limit to the website at one point in time, I would not
11 have been able to rely on evidence that would have been
12 put subsequently on the website.

13 So it's to the respondent's advantage
14 to say we are going to rely on the website as a whole
15 because we're not depriving them -- there is no element
16 of surprise. If there's less than expected, it's
17 better than have been more than anticipated, Mr. Chair.

18 So out of caution, it would be unfair
19 for me to say we're just going to rely on certain
20 portions of the website and if the additions, yesterday
21 or last week, we can't rely on that any more.

22 What we're doing now at the hearing
23 is -- we have to obviously look at the evidence and
24 we're going to be putting in specifically in evidence,
25 and that's what we've done.

1 I don't see where the prejudice is
2 and where is the abuse. There's certain content in the
3 website today that is perhaps debatable and we're
4 taking a reasonable approach on that in the sense that
5 some of the elements of the website might be
6 controversial but not necessarily a violation of
7 section 13.

8 But, overall, I think it's important
9 that we be able to put the website as a whole to you
10 for consideration, not only for the strict violations
11 of section 13 but to understand the general context, to
12 understand --

13 THE CHAIRPERSON: That last part is
14 troubling because has the whole website been put to me?
15 What do I have? I have a table of contents in HR-3 and
16 a few of these other sections here. I don't know if I
17 have the whole website. That's going to go to remedy
18 so I'm not --

19 MR. VIGNA: In the binder --

20 THE CHAIRPERSON: That's an argument
21 you are going to have make at the remedies page at this
22 point.

23 MR. VIGNA: In the binder --

24 THE CHAIRPERSON: I do have a concern
25 because -- this kind of specificity may have been more

1 helpful to the respondent. And what I wrote in
2 paragraph 6 of my ruling, number 2006 CHRT 58 on
3 December 6th, 2006 -- I guess I'm paraphrasing the
4 position that you had adopted on that motion to dismiss
5 the case, I guess, that was filed by the respondent.

6 I wrote:

7 "The Commission and Mr. Warman
8 explicitly stated that in their
9 opinion the entire
10 freedomsite.org website
11 constitutes matter that is in
12 violation of section 13 of the
13 Act. Prior to this
14 particularization the Commission
15 and Mr. Warman had simply
16 produced 133 pages of messages
17 as part of their documentary
18 disclosure without specifying
19 which of those messages they
20 allege constitute hate messages
21 under the Act. The Commission
22 and Mr. Warman have now
23 specified that they consider
24 each of these messages to be in
25 violation of section 13. These

1 are just their allegations."

2 I made that clear:

3 "It is incumbent upon them to
4 prove these allegations at the
5 hearing."

6 The question that arises is since you
7 have not alluded to what I gather to be the majority of
8 these messages, was it ever your intention to do? You
9 didn't even introduce them as in evidence front of me.

10 I don't know. That's the unfairness
11 issue that I see coming up from the respondent. They
12 saw this huge target coming at them and they are having
13 to figure out what they are going to have to defend
14 themselves against. And you said everything and then
15 only brought up very few points. You reserved
16 yourselves the right, but that's quite a reservation.

17 MR. VIGNA: Mr. Chair, the green
18 binder is pretty much the entire website that's there
19 today and I --

20 THE CHAIRPERSON: If that's your
21 position then I guess we'll have to -- I'm not going to
22 rule on that because I don't know whether that is the
23 whole website. I suppose I would have to see from the
24 other side, too, what they produce.

25 MR. VIGNA: If my colleague wants to

1 say otherwise, she's welcome to challenge my assertion
2 that the website is pretty much the entire website in
3 the green binder. But we recently went on the website
4 and we printed everything that's on the website and we
5 put it in evidence.

6 In terms of the messages. The
7 argument that's being made is, for example, if you look
8 at even today's website, just to illustrate, tab C in
9 the green binder.

10 If you look at the column where you
11 can actually go on the different parts of the website.
12 The message board, for example, today doesn't exist any
13 more but the heading is still there.

14 THE CHAIRPERSON: So it is your
15 opinion that this reflects sufficiently that the state
16 of the website today, such that the Tribunal is
17 sufficiently informed of your position on this website
18 and for which you will be making argument's ultimately.

19 MR. VIGNA: Correct. And just for
20 example, where it says "message board," it's still
21 there. There's nothing in it. But if they want to put
22 stuff in it there's still that ability.

23 Now, if I would have said October,
24 September we're not going to rely on anything other
25 than three elements of the disclosure and other stuff

1 is added in the website, for example, the message
2 board, I would be depriving myself the ability to
3 present anything that would have been added to the
4 website. And at the website when -- even particularly
5 with the message board at the time, it was the view
6 that it was a violation of section 13.

7 We're refining our position because
8 there's been a refinement of the website. But,
9 nevertheless, I think the order ultimately that we'll
10 be asking from you is to make sure that this website --
11 there's no other additions that would be of the ones
12 that we put in evidence which would be hateful.

13 THE CHAIRPERSON: I'll leave it to
14 you to make your final submissions on the remedy.

15 You know, Ms Kulaszka, I understand
16 where you are coming from. But we're here now. What
17 do you want to do at this point?

18 You're progressing very well through
19 the evidence. Your cross-examination is -- your points
20 are being made. I realize you were given a broad
21 target, but now your target has been narrowed.

22 Are you unable to -- in fact, has it
23 not in some way eased your ability to present the
24 defence that you intend to present?

25 MS KULASZKA: I suppose the best

1 thing is to quote your ruling from -- it would be July
2 16 -- or August 16th.

3 THE CHAIRPERSON: Let me find it.
4 Ruling in regard to what?

5 MS KULASZKA: Number 2006, CHRT,
6 number 32.

7 THE CHAIRPERSON: Give me the subject
8 matter.

9 MS KULASZKA: This was the Notice of
10 Motion for Further Particulars and Disclosure. In the
11 second part was a motion for production of documents.

12 THE CHAIRPERSON: I have November
13 29th on that one.

14 MS KULASZKA: I would be look at
15 paragraph 26.

16 THE CHAIRPERSON: Just a moment.
17 August 16, is that the one?

18 MS KULASZKA: Yes. We're right back
19 to -- my argument has always been this section is about
20 messages.

21 When John Ross Taylor was brought up
22 before a tribunal there were little messages on a
23 telephone and the Commission had them transcribed, they
24 recorded them, transcribed them and the message was put
25 in and everybody knew what it was about.

1 And now we're into the Internet. And
2 the Commission seems to want to take entire websites
3 down that -- they are going to point to a few little
4 examples then they want the website shut down.

5 Well, there could be -- 99 percent of
6 the material could be very valuable material. News,
7 information that has nothing to do with section 13.

8 So that has always been my point.
9 And we were given 133 pages of messages off the message
10 board. And I asked, well, which ones are you going
11 after? And they would not say.

12 Your ruling at paragraph 26, you
13 said:

14 "I disagree to put forth over
15 100 pages of messages and then
16 reserve the right to pick out
17 any one of these messages and
18 argue at the hearing that it
19 constitutes a violation of
20 section 13(1) of the Act denies
21 them a true and effective
22 opportunity to know the case
23 that he must meet.

24 If the Commission and
25 Mr. Warman take the position

1 that each message found on each
2 of the disclosed pages
3 constitutes a hate message then
4 they should so indicate
5 explicitly. Mr. Lemire can then
6 consider himself forewarned and
7 can prepare himself
8 accordingly."

9 So Mr. Lemire was told they were
10 going to go after every single message and he --

11 THE CHAIRPERSON: I was talking about
12 websites. It's more about the message board. So my
13 statement there relates --

14 MS KULASZKA: Well, in this case it
15 was about the message board.

16 THE CHAIRPERSON: So their position
17 was all messages are subject to attack.

18 MS KULASZKA: The whole website,
19 everything on JRBooksOnline -- yes.

20 THE CHAIRPERSON: That's what they
21 said afterwards. What you just read to me here was
22 about message board.

23 MS KULASZKA: Yes. That was in your
24 ruling where I said there were 133 pages. I think that
25 was more like an example.

1 So after that Mr. Vigna in his letter
2 of October 22 and in his response to those motions,
3 made it clear that he wasn't going to be pinned down to
4 anything; it was the whole message board. And
5 Mr. Warman did the same thing and it was the whole
6 Freedomsite. It couldn't be considered in little bits
7 and pieces. The whole thing had to be considered and
8 JRBooksOnline also had to come down.

9 And so -- the way you prepare a case
10 is very different if you think you're defending an
11 entire website and you really don't know what they are
12 going after. It's very different if they say, you have
13 four articles on here, they contravene section 13.

14 At that point it's the way it was
15 with a telephone. You know exactly what the essay or
16 article is. You know what they object to. And at
17 least if this is a remedial provision -- this is
18 supposed to be remedial. It's not supposed to be a
19 prosecution. Then at that point you have the
20 opportunity to take the message down and undertake not
21 to put it back up again, which Mr. Lemire did right at
22 the very beginning with a couple of these articles.
23 And the message board was already down. Nothing helps.
24 Nothing.

25 So now we're here and all of a sudden

1 we're reduced to what? They have fundamentally changed
2 their case.

3 First, they said you had to look at
4 the whole website. Now, all of a sudden, it's good
5 enough just to show what, a few little headings of
6 articles they are not even putting the articles in?
7 Mr. Warman doesn't like the heading of some link? What
8 is this?

9 I would say in paragraph 26 you've
10 set it out. He has been denied the right to a true and
11 effective opportunity to know the case. He's been
12 denied natural justice. The work we have done on this
13 case....

14 As for whether this binder
15 constitutes the entire Freedomsite, Mr. Warman gave no
16 such testimony. He just went through and read some
17 headings. He read History of the Freedomsite. Now, is
18 that a hate message? Am I supposed to sit here and you
19 are supposed to listen to this?

20 Mr. Warman, is History of the
21 Freedomsite a hate message? What is this? You see
22 what mean?

23 THE CHAIRPERSON: I see what you
24 mean. When did you receive copies of these binders?

25 MS KULASZKA: The first day of the

1 hearing. Actually, I don't know when I received this.
2 I think I got this maybe the second day.

3 MR. VIGNA: Mr. Chair, the binder, in
4 terms of the contents of the FreedomSite, I asked for
5 the contents of the website from the respondent and it
6 was for them to disclose it to me. I did not get it
7 disclosed. I had to get it myself.

8 So if there's nobody had anything to
9 disclose in regards to the contents of the respondent's
10 website, I respectfully submit to you it should have
11 been --

12 THE CHAIRPERSON: Mr. Vigna, this is
13 fundamental here. I don't know if I can deal with it
14 at this time. We may have to put it off to another
15 moment.

16 This is fundamental. If you are
17 going to pursue something, the other side has the right
18 to know what is being filed against. If we were in a
19 civil action -- you and I are both members of the
20 Quebec bar -- and you file your declaration for an
21 action, you invoke the exhibits that you intend to use
22 in the declaration, do you not, and then you put a list
23 of exhibits and the other person knows which exhibits
24 are coming at them. And any ones that don't get shown
25 that way, you use an article 403 of the Code of Civil

1 Procedure and you disclose them to the other side.

2 In this case, what you -- you did the
3 full disclosure of the file and they are expected to
4 figure out what of all that binder -- I don't even know
5 how big it is -- is going to be used against them.
6 It's not specified at all.

7 And I asked -- and because of the
8 nature of the material, I asked for that here. It is
9 what I wrote here.

10 And then you said, you replied,
11 everything is going to be brought up. And you are not
12 bringing up anything. You are bringing up the message
13 board and a few pages. I don't know what the pages
14 are. In any event --

15 MR. VIGNA: Mr. Chair, the entire
16 website is in the binder, the green binder. It's not
17 just a few pages.

18 THE CHAIRPERSON: Your position is
19 that it's the entire website?

20 MR. VIGNA: To this day it's the
21 entire website.

22 MS KULASZKA: I would like to point
23 out tab C then. Tab C on page -- it looks like -- hard
24 to know what page this is.

25 THE CHAIRPERSON: Look, you know --

1 we're talking about links here. I know what it is.

2 We're talking about links here.

3 There's nothing wrong with someone
4 making allegations and then deciding to withdraw. We
5 saw Mr. Warman and Mr. Vigna did that a number of
6 times. That's normal.

7 My concern here is the good faith
8 involved in this process on the part of the parties. I
9 mean, it's starting to look to me like you had every
10 intention to proceed in the way you did proceed, and in
11 response to that request in the motion of last fall
12 when you took the position that every single page will
13 form a part of the complaint, at least the way it was
14 drafted, it was interpreted by the respondent, and
15 perhaps by myself, as meaning something more specific;
16 that you intended to bring all of this material in
17 front of me.

18 My problem right now is this is
19 coming up in a rather informal fashion in the middle of
20 a cross-examination.

21 I don't know if it's the appropriate
22 time for this to be addressed. Perhaps it forms part
23 of your final submissions on the merits of the
24 complaint, Ms Kulaszka, if it prevents you from being
25 able to -- if you say this is grounds to dismiss the

1 complaint, or at least reduce the remedies in a
2 significant way if there is a finding under section 13,
3 then perhaps that's the best way to treat it at this
4 point.

5 MS KULASZKA: I would say it's
6 violation of natural justice.

7 THE CHAIRPERSON: Yes. That would be
8 your argument. I understand the foundation of your
9 argument, but are you not prepared to proceed in
10 this --

11 MS KULASZKA: If you heard this
12 motion, as you said it's fundamental, then this case
13 wouldn't proceed, no. It would be -- it would be
14 dismissed on the grounds of a failure of natural
15 justice.

16 THE CHAIRPERSON: We don't even
17 know -- although, as you say, it looks like their case
18 is approaching its end on the Commission side. I
19 cannot say for a fact the case is closed at this point.
20 Maybe the most appropriate time for you to bring your
21 motion is when the case is closed.

22 MS KULASZKA: Is Mr. Vigna ready to
23 close his case? He just handed me some customs papers.
24 Is that --

25 THE CHAIRPERSON: I don't know.

1 Mr. Vigna? Perhaps, go ahead. Do you have an answer?
2 Are you prepared to answer that question at this time?

3 MR. VIGNA: Mr. Chair, I was going to
4 still produce the document which I said I was going to
5 produce. There's still the -- I don't know if you want
6 to consider it closing the case. We still have the
7 constitutional argument.

8 THE CHAIRPERSON: Yes, that's an
9 additional argument.

10 MR. VIGNA: There was no additional
11 witnesses that were anticipated and I'm not going to
12 announce now additional witnesses.

13 But what I'm trying to say basically
14 in regards to this issue that's being raised is, it's
15 not uncommon that when we prepare for the hearing we
16 basically look at the evidence and we put the exhibits
17 we need to prove the case in a book of documents close
18 to the hearing.

19 We've provided everything we've had.
20 And as far as we're concerned, the website in question,
21 like I said, was not frozen in time. It was
22 continuously being modified. We have issues in the
23 course of the proceedings about even witnesses being
24 put on the website, being, I will say respectfully,
25 intimidated in a certain sense when we see, for

1 example, the caricature of Dr. Karen Mock in a
2 puppet-type of thing, called Zelot. I mean, it was not
3 appropriate for --

4 THE CHAIRPERSON: Why couldn't the
5 answer have been that, we take the position that
6 messages found on pages 15, 19, 25, 37, whatever it is,
7 the individual ones that you take the position are in
8 violation of section 13, and that given the presence,
9 the number of messages found on this entire website,
10 then we take the position the entire website should be
11 shut down and that the general -- because of the nature
12 of this entire website should be shut down. Those are
13 arguments you could make.

14 The specific questions that had been
15 asked of you is, which specific pages do you put forth
16 as being -- which specific messages do you put forth as
17 being in violation of section 13? That's what was at
18 issue in the summertime when I issued my order. And
19 your reply was, every single page.

20 MR. VIGNA: Mr. Chair, when we talk
21 about messages are you referring to only what's on the
22 message board?

23 THE CHAIRPERSON: That isn't clear
24 right now, because when I read my ruling it's true that
25 I speak of the message board, and then we had the other

1 item which dealt with -- well, you know, we've taken
2 this a bit more broad than what I said in my ruling, to
3 be fair, Ms Kulaszka. We have to look at the details
4 here.

5 In my second ruling, at paragraph 6,
6 I was again alluding to the messages. So the messages,
7 I gather, form which tabs of HR-2, Mr. Vigna? Which
8 were the 133 pages of messages?

9 MR. VIGNA: Talking about the message
10 board.

11 THE CHAIRPERSON: Is it tab 12?

12 MR. VIGNA: 12, 13; I would say 16
13 also is s message.

14 THE CHAIRPERSON: Stormfront.org?

15 MR. VIGNA: Correct.

16 THE CHAIRPERSON: Now we're getting a
17 bit more specific.

18 MR. VIGNA: 20.

19 THE CHAIRPERSON: Sorry? 20?

20 MR. VIGNA: 21. I would also say 22,
21 even though it's a listing of --

22 THE CHAIRPERSON: So these tabs you
23 are mentioning here form part of the 133 pages that
24 were referenced in my ruling? Let's be clear about
25 this.

1 When I wrote these rulings, of
2 course, this was with regard to disclosure of which the
3 Tribunal was not in receipt. The Tribunal does not
4 receive the disclosure documents. This was based on
5 submissions made by the parties.

6 MR. VIGNA: I don't know if it was
7 133 pages in what's been referred to, 133 pages.

8 All I can say is that the fundamental
9 point that has to be how it's taken into account, is
10 that the globality of the evidence has to be able to be
11 put forth before the Tribunal. If we look at the
12 website itself, it doesn't talk about sports, it
13 doesn't talk about --

14 THE CHAIRPERSON: I know what the
15 ultimate argument will be.

16 MR. VIGNA: My distinguished friend
17 was trying to straitjacket me in terms of what possible
18 evidence I could produce at the hearing, and I refuse
19 to freeze the evidence onto only certain particular
20 message postings that didn't exist any more after a
21 certain period of time and not be able to produce
22 relevant evidence that came up afterwards and was
23 continuously being put on the website and which could
24 be put at any point in time.

25 In order for an order to have any

1 significance at the end of the day, it's important that
2 the order prohibit hate message on the website. Even
3 if the website is not shut down, it's important that we
4 look at the globality of the website.

5 THE CHAIRPERSON: Mr. Warman, I'll
6 give you a chance. Let me make a point here, an
7 observation.

8 Ms Kulaszka, when we were referring
9 to the 133 pages of messages we were talking about the
10 message boards, weren't we?

11 MS KULASZKA: Those were the messages
12 on the message board they disclosed to us.

13 THE CHAIRPERSON: And that's been the
14 focus of the evidence they have introduced here. They
15 selected -- I don't know, quickly, by eye, I would say
16 about 50, 60 pages worth of that in those tabs that
17 Mr. Vigna just indicated.

18 MS KULASZKA: Some of them actually
19 don't seem to have been disclosed.

20 THE CHAIRPERSON: Not disclosed, I
21 mean -- tabs have been entered into evidence.

22 MS KULASZKA: I have to count up.

23 THE CHAIRPERSON: In 13 and 14 I
24 have -- just that alone, 14 plus 23, that's 37 and then
25 he said -- which one, 20, tab 20 has another 22 pages,

1 so we're up to 50 something. Then another couple of
2 pages there. So they've selected half of the messages,
3 or a third or -- half of the messages.

4 I'm not quite sure that demonstrates
5 a kind of unfairness. That's something you can prepare
6 for. That's not out of the ordinary.

7 My concern was that -- the impression
8 I had, based on your discussion earlier, is that we
9 were really supposed to be looking at the entire web
10 page, website with regard to my motion.

11 But my motion is more focused than
12 that. My motion dealt with 133 of messages. They have
13 introduced half, or a third to half of them.

14 I'm not quite sure that demonstrates
15 bad faith on their part or something that is not
16 unheard of to occur in the context of any litigation.
17 I mean, you know, you set out making 10 allegations and
18 then you re-focus on five. You see people making
19 appeals before appeal courts, the supreme court.
20 They'll submit five arguments and focus on two. I'm
21 not quite sure we're there.

22 You've got loads of arguments on the
23 defence of -- in terms of remedy on the large website.
24 Mr. Vigna says I have the whole website. You are going
25 to argue all I have is table of contents with titles,

1 and those are great arguments on both sides. We'll
2 hear them when the end comes.

3 I'm not quite sure, based on what
4 I've just realized here on my ruling, that we're at a
5 point where there is a gross breach of fairness here to
6 warrant some sort of drastic measure at this point.

7 MS KULASZKA: We had Mr. Vigna's
8 statement that what they have given you is the whole
9 website basically, but we don't have any evidence under
10 oath on that.

11 THE CHAIRPERSON: I know. So that's
12 a strong argument that you can raise at the end. But
13 that's not what I'm focused on.

14 My concern was this: My concern was
15 that my ruling was not followed in a way that was
16 unfair, created such unfairness that we can't proceed
17 any further. I think that's what we're coming down to,
18 Ms Kulaszka.

19 What I'm reading here right now is
20 that we were talking about the messages in all the that
21 discussion. And that's your figure of 133. I don't
22 know exactly how many pages there were. Was there more
23 or less? I don't know. But the figure here is 133.
24 And I see that we have 50, 60 pages of messages in
25 here.

1 I don't know if that means that you
2 were given a target that was too wide for you to be
3 able to prepare for, or that it was re-focused in a
4 manner that creates such a gross injustice that you
5 cannot -- that your case cannot proceed, that you
6 didn't know what case you had to meet and so on, the
7 typical questions that need to be asked.

8 MR. VIGNA: Mr. Chair, if I can give
9 another example in HR-2, tab 11. It hasn't been
10 produced, I just want to illustrate a point.

11 THE CHAIRPERSON: HR-2 tab 11 hasn't
12 been produced?

13 MR. VIGNA: No, but I just want to
14 illustrate a point. It's not to produce it.

15 THE CHAIRPERSON: Okay.

16 MR. VIGNA: As far as I'm concerned,
17 we could have produced that also but we have to focus
18 the evidence on a concern point. There's no point in
19 overloading evidence that's repetitious. That posting,
20 for example, at the time the question was asked I could
21 have considered I wanted to put it in evidence. But in
22 my view, as I am master of the evidence, I put forth
23 before --

24 THE CHAIRPERSON: Yes, you are, but
25 not in a way that misleads the others. And I was under

1 the mistaken impression, reading back to my ruling,
2 that you had suggested something broader would be the
3 focus of your case. But now I see that what we were
4 talking about here were the messages, and that was the
5 core of the case you lead.

6 Ms Kulaszka, that's where my
7 sentiments are on this. I leave it to you to make a
8 more formal motion. I know that sort of came up -- I
9 guess you had an opportunity to review your material
10 over the break and you have introduced this issue.

11 I'm not denying you the opportunity
12 to bring it up, but perhaps in a more organized fashion
13 at a later point. But at this point, given what I've
14 just read in paragraph 6 of that ruling in 2006, CFRT
15 58, read with the other ruling we alluded to earlier, I
16 don't think that the Commission -- did not abide by the
17 terms of what the Tribunal's ruling was; that they
18 focus their attention on a few of those messages,
19 something around 50 percent or 40 percent is not out of
20 the ordinary and not a situation that would create such
21 a level of unfairness that you couldn't proceed at this
22 point. Okay?

23 MS KULASZKA: I would ask the
24 Commission and Mr. Warman to clarify what remedies they
25 are now seeking, because that affects the

1 cross-examination.

2 And are they sticking by this entire
3 website as hate? Are they alleging everything they
4 have put in is hate?

5 THE CHAIRPERSON: Okay. Do you wish
6 to address that, Mr. Warman, Mr. Vigna?

7 MR. WARMAN: If I could. Just in
8 relation to what has just preceded us, I do have a
9 couple of small items.

10 The first one is that there was some
11 back and forth about the nature of the responsibility
12 of the website, about what constitutes hate messages on
13 that. And it is, of course, every citizen's duty to
14 ensure that they are the ones obeying the law and not
15 that someone else comes along and says, oh, by the way,
16 out of a massive website, that someone else has an
17 obligation to ensure someone is obeying the law. Each
18 citizen has that inherent duty to obey the law.

19 That said, there is a standing offer
20 to discuss with regard to settlement, if Ms Kulaszka
21 and Marc Lemire wished to take -- wish to end 15
22 minutes early today, or 20 minutes early, or whatever
23 they think will be appropriate, I'm quite happy to take
24 that up.

25 The existence of that offer was,

1 again, brought to their attention in recent
2 correspondence that I sent through the Tribunal.

3 So if there's a good faith desire to
4 discuss that possibility, I'm quite happy to end early
5 this afternoon, within reason, and discuss the matter.

6 MS KULASZKA: The offer I received
7 from Mr. Vigna was always conditional that Mr. Lemire
8 sign a cease and desist order and take down the
9 Freedomsite, and so --

10 THE CHAIRPERSON: I'd rather you
11 don't get into the details of settlement discussions.

12 MS KULASZKA: -- negotiations.

13 MR. WARMAN: Certainly that was
14 without --

15 THE CHAIRPERSON: You know what? The
16 Tribunal likes settlements.

17 MS KULASZKA: Marc Lemire has always
18 wanted a settlement. If we could take 20 minutes now,
19 we could talk.

20 THE CHAIRPERSON: I don't mind. I
21 have nothing against that. Go ahead, think openly.
22 It's too bad now, I'm already involved in the file,
23 otherwise I'd say let me sit down as a mediator. I
24 have a great track record. Last week I did a mediation
25 with Mr. Vigna and while we were here on Tuesday I got

1 word from my office that even that one settled. It
2 hadn't settled when we were at mediation. So you never
3 know.

4 Think openly and look into that. So
5 then if you would like to take a break at this time, we
6 could do that.

7 Do you wish to take a position at
8 this point on the request of Ms Kulaszka?

9 Honestly, I think -- before I hear
10 your positions, I don't see why that wouldn't be set
11 out. In the statement of particulars -- let me back up
12 a moment. I believe it's required under rule 6 that
13 the parties set out what remedies they seek.

14 MR. WARMAN: They were --

15 THE CHAIRPERSON: Were they set out?

16 MR. WARMAN: Yes, indeed. If you are
17 looking for a specific remedy it is, as has always been
18 stated, a cease and desist order and a penalty. If you
19 are looking for a specific monetary amount I'm quite
20 happy to state it's \$9,000 from my perspective.

21 THE CHAIRPERSON: So in accordance
22 with rule 6. So that's required. It struck me a
23 little odd that we were discussing this, it's in our
24 rules. But let's take a break. Would you like to sit
25 down? Do you need a room?

1 MR. WARMAN: I think it would be
2 preferable to have at least the room cleared, other
3 than --

4 MR. VIGNA: I don't know if the
5 representative of the Attorney General wants to be
6 there or not. He's more involved with the
7 constitutional issue.

8 THE CHAIRPERSON: No, I think the
9 fewer the better maybe. You're looking out for the
10 public interest, aren't you, Mr. Vigna, that's your
11 role under the Act?

12 MS KULASZKA: I don't think any
13 interveners should be --

14 THE CHAIRPERSON: No, no, I think it
15 should just be the people sitting in the front tables.

16 I'll take a break and come back. You
17 know, if something else can be resolved in the course
18 of your discussions, if it's not the entire case, if
19 there's any particular issues or points that could be
20 agreed to, that would be fine, too.

21 --- Recessed at 2:20 p.m.

22 --- Resumed at 3:00 p.m.

23 THE CHAIRPERSON: So I gather there's
24 no settlement?

25 MS KULASZKA: Not yet.

1 THE CHAIRPERSON: Maybe you needed my
2 presence.

3 MR. VIGNA: Before we get onto this
4 debate, I wanted to just follow-up on the issue of the
5 document from customs. I had provided a copy to my
6 colleague, and for the time being make it clear right
7 away, for the time being I am about it laid the name of
8 the public official. I call the called the public
9 official and I'm waiting her name being made as part of
10 the public record. Upon her response I will either
11 give the document in its integrity, or might want to
12 raise a section 37 for the part of the name. But for
13 the time being, I still haven't made that decision. I
14 want to at least speak to the public official.

15 THE CHAIRPERSON: You are going to
16 invoke section 37 for that?

17 MR. VIGNA: I said I just want to
18 discuss with the public official. I just want to just
19 be cautious.

20 THE CHAIRPERSON: Privacy issue is
21 another up with. Section 27 -- in any event.

22 MR. VIGNA: Or section 52. Maybe
23 there won't be a need.

24 THE CHAIRPERSON: I remember it was
25 said explicitly at one point by Ms Kulaszka, she not

1 only will go by the implied undertaking rule that
2 applies between counsel and -- you are all members of
3 the bar, respective provinces, more than one,
4 Mr. Vigna. And she would be prepared the to do an
5 explicit undertaking. So keep that in mind on some of
6 these things.

7 MR. VIGNA: I keep it in mind.

8 THE CHAIRPERSON: If it's entered
9 into evidence then I can utilize section 52. The
10 provisions are there. You are familiar with the
11 process. Perhaps the others are not, but under section
12 52 of our Act there is a fairly large flexibility on
13 the part of the Tribunal how it could protect
14 information which qualifies under the provisions of
15 that. We have a whole policy in place, exhibits are
16 stored in separate files, different coloured files, and
17 even the transcript can be with regard to the
18 information that is the object of 52 request can be
19 stored in a different way. So we have that available
20 to us, if it's privacy concerns.

21 MR. VIGNA: But there might not be a
22 need if the public servant reassures me I will not need
23 to make in question.

24 MS KULASZKA: Mr. Lemire tells me
25 it's a non-issue.

1 THE CHAIRPERSON: There we go. So we
2 were in cross-examination.

3 MS KULASZKA: Mr. Warman, if --

4 MR. WARMAN: I don't believe the
5 documents have actually been entered.

6 THE CHAIRPERSON: HR-2.

7 MR. VIGNA: The fax that was just
8 received from Canada Customs.

9 THE CHAIRPERSON: I thought it was
10 going to go in at some point later on.

11 MR. VIGNA: It could be tomorrow, but
12 if we're willing to put it in without the name, I could
13 do it today.

14 THE CHAIRPERSON: Do you think you'll
15 be cross-examining on this document?

16 MS KULASZKA: If Mr. Warman just
17 wants to regular the document, we can do it right now.

18 THE CHAIRPERSON: That means you can
19 ask question on it.

20 MR. VIGNA: Without the name?

21 THE CHAIRPERSON: Without the name.

22 Our reporter seems to be having some
23 technical difficulties.

24 --- Off-record discussion

25 MR. VIGNA: Mr. Chair, the document

1 was provided to me by Mr. Warman. It was Mr. Warman
2 that made the request, and it's Mr. Warman's
3 position -- and I'm not taking any position on that --
4 that it's only the parties that are entitled to the
5 document. So that's why when you see Paul Fromm come
6 to me, I didn't provide him a copy. He's here only for
7 the constitutional issue. I will leave that to your
8 discretion.

9 THE CHAIRPERSON: Can somebody just
10 find a photocopier later on?

11 The reason I made my ruling in
12 advance about the two different levels of this
13 disclosure of exhibit books is because of the volume
14 involved. I think that's the big concern. In an ideal
15 world everyone would be able to share everything. It
16 was very problematic and we made that distinction. If
17 we're in the hearing, it's five pages --

18 MR. VIGNA: I have a copy.
19 Mr. Warman takes the position --

20 THE CHAIRPERSON: Mr. Warman,
21 they're participants at the hearing, so I'm not going
22 to prevent him from seeing this document.

23 MR. VIGNA: I misunderstood
24 Mr. Warman's concern. I blacked it out but he would
25 like me to simply black it out and photocopy.

1 THE CHAIRPERSON: I know, I know the
2 technique.

3 MR. VIGNA: So I would like to
4 perhaps give it to him after the break or tonight.

5 THE CHAIRPERSON: You'll get it after
6 the break, sir. In the meantime, can you share?

7 MR. VIGNA: It was my
8 misunderstanding.

9 THE CHAIRPERSON: Have you given him
10 a copy?

11 MR. VIGNA: I'll give him a copy.

12 THE CHAIRPERSON: And the others are
13 not here today.

14 MR. VIGNA: He will be getting a
15 copy.

16 THE CHAIRPERSON: Can I ask a
17 question? Mr. Christie hasn't shown up. I understand
18 it's -- the constitutional issue has not come up yet,
19 but what's his understanding?

20 MS KULASZKA: I spoke to
21 Mr. Christie. He's going to be here for the last two
22 weeks of the constitutional issues.

23 THE CHAIRPERSON: So even if the
24 constitutional issue begins next week, to whatever
25 extent, we said if we got one witness in maybe. He

1 just won't be here. He can have the transcript.

2 MS KULASZKA: Mr. Klatt's on a
3 constitutional issue. I think it's going to be for the
4 witnesses in the last two weeks.

5 THE CHAIRPERSON: That's fine. So
6 let's enter this into evidence. I can see Mr. Vigna's
7 asking someone from his team to go out and make a
8 photocopy, right.

9 MR. VIGNA: Yes.

10 THE CHAIRPERSON: So everyone will
11 have copies shortly.

12 So we'll put it as an HR exhibit.

13 THE REGISTRAR: The letter dated
14 February 1st, 2007 addressed to Mr. Warman from an
15 undisclosed manager, Prohibited Importations Unit with
16 Attached Memorandum, will be filed as Commission
17 Exhibit HR-5.

18 EXHIBIT NO. HR-5: Letter dated
19 February 1st, 2007 to Mr. Warman
20 from the Prohibited Importations
21 Unit

22 THE CHAIRPERSON: Dated February 1st,
23 2007.

24 MS KULASZKA: Can I ask what HR-4 is?

25 THE REGISTRAR: The CD.

1 MR. VIGNA: I haven't asked any
2 questions on the document, but it speaks for itself.

3 THE CHAIRPERSON: Let's do this in a
4 more practical way. If you want to ask any questions
5 you can do it as part of your re-direct. And then if
6 anything comes out of those questions you'll be able to
7 question him, Ms Kulaszka. I just want to get you
8 going again.

9 MS KULASZKA: Mr. Warman, if you can
10 go to HR-2, I want tab 7, looks like M?

11 THE CHAIRPERSON: You said M?

12 MS KULASZKA: It's a WHOIS search
13 result.

14 THE CHAIRPERSON: "M" as in Mary.

15 MS KULASZKA: We're just back to
16 JRBooksOnline. Network Solutions told you to go to Go
17 Daddy. Did you do a search on Go Daddy for the owner
18 of JRBooksOnline?

19 MR. WARMAN: After that, no. After
20 the final correspondence from Network Solutions, no, I
21 did not.

22 MS KULASZKA: And I think they closed
23 the file because they no longer had the domain name,
24 was that it?

25 MR. WARMAN: Yes. They indicated

1 that they could not do anything further with relation
2 to the domain name account because it had been
3 transferred to Go Daddy.

4 MS KULASZKA: They told you that in
5 an e-mail of 24th of October, 2005, correct?

6 MR. WARMAN: Yes.

7 MS KULASZKA: So they gave you that
8 information but you never went to Go Daddy?

9 MR. WARMAN: That's what I've said.

10 THE CHAIRPERSON: I can -- we're
11 looking at tab N, right?

12 MS KULASZKA: "M" as in Mary.

13 THE CHAIRPERSON: Is it the latter,
14 the one that looks like an e-mail? What are we looking
15 at here? Is it the one that has the WHOIS search? I
16 see. Well --

17 MS KULASZKA: Maybe I should direct
18 you to the final e-mail.

19 THE CHAIRPERSON: I see. So your
20 question related to that, sort of, general comment.

21 MS KULASZKA: Actually, it related to
22 tab 7-0. This is the final e-mail Mr. Warman that gets
23 back from Network Solutions and they say the domain has
24 been transferred to Go Daddy.

25 THE CHAIRPERSON: That's what I was

1 looking for.

2 So, again, your answer is the same,
3 Mr. Warman, after you received this e-mail on October
4 24th, 2005 from Network Solutions. You did not go off
5 to verify it, Go Daddy software?

6 MR. WARMAN: No.

7 MS KULASZKA: One of the books
8 complained about on JRBooksOnline -- but was The
9 International Jew. And you said, you read the entire
10 book. Did you say that in your testimony?

11 MR. WARMAN: I've read the book, yes.

12 MS KULASZKA: Did you become
13 anti-Semitic because of reading it?

14 MR. WARMAN: I would object to the
15 question on the grounds of relevance. How is it --
16 excuse me, maybe if you want me to elaborate.

17 How is it relevant whether I, as an
18 individual, became anti-Semitic as a result of reading
19 a book? The question here is whether -- and the
20 Tribunal has long held the question is not the ultimate
21 result of it, it's whether it's likely to expose people
22 to hatred or contempt.

23 THE CHAIRPERSON: Hang on,
24 Mr. Warman. If we keep having these objections on
25 these minor points -- I know that's your position. But

1 perhaps a different argument will be made. We have a
2 constitutional issue arising as well. I think it goes
3 without saying you do not consider yourself an
4 anti-Semite.

5 MR. WARMAN: I do not.

6 MS KULASZKA: The International Jew
7 is a historical type of document. Is very well known,
8 it's a very well known part of history. Henry Ford
9 published it. He was a very major manufacturer. Would
10 you agree that's true, it's a type of important
11 historical document?

12 MR. WARMAN: It's an example, it's an
13 historical example of anti-Semitic writing, yes.

14 MS KULASZKA: In your opinion.

15 THE CHAIRPERSON: Every answer I
16 expect to be his opinion, Ms Kulaszka.

17 MS KULASZKA: I would like you to
18 look at the respondent's binder, tab 17.

19 THE CHAIRPERSON: HR-2.

20 MS KULASZKA: This would respondent's
21 the binder.

22 THE CHAIRPERSON: Respondent's.
23 Sorry.

24 MS KULASZKA: Tab 17. This is a
25 document that you have not seen but it will be

1 identified later. It's the catalog of the library at
2 Harvard University. I would just like you to comment
3 on it. It will show that The International Jew author
4 Ford, Henry -- do you have an objection?

5 THE CHAIRPERSON: I didn't get a
6 question.

7 MR. WARMAN: I do. This is the exact
8 same conduct that has been attempted on a number of
9 occasions in the past at these hearings.

10 In the Winnicki case it was attempted
11 to show there were other things out in the world that
12 were as bad or worse.

13 In the Winnicki case it was also
14 attempted to show that certain documents that were
15 available on-line were available, and I could be
16 mistaken, whether it's the Winnicki case -- so there
17 have been a number of cases where the respondents,
18 associates of Marc Lemire have attempted to say, oh,
19 look, but this work is anti-Semitic horrific work like
20 the Turner Diaries or The International Jew is
21 available in the public library.

22 So the objection is to relevance.
23 The fact that these materials may exist somewhere else
24 in the world is not relevant to whether they are in
25 fact hateful and whether or not they were present on a

1 website that were cause to be communicated, either in
2 whole or in part, by Mr. Lemire acting on his own or as
3 part of a group of persons responsible for their
4 communication.

5 MS KULASZKA: Yes, I believe in those
6 cases there was no constitutional issue, so this goes
7 strictly to the constitutional issue, not simply, well,
8 is it somewhere else.

9 The book, The International Jew, is
10 considered a very important document in history and as
11 we go through here we'll see it's in such universities
12 as Harvard University. The website makes it available
13 on-line.

14 What is the effect of a law that
15 takes down what are essentially historical documents
16 when someone who goes to university has clear access to
17 these documents, or any major library would have this
18 book?

19 THE CHAIRPERSON: Well, I think the
20 constitutional component changes things somewhat in
21 this hearing. I don't know about other hearings.

22 My one thought is we were dealing
23 with the facts, the merits of the complaint at this
24 stage. There's no reason to be very formal in dividing
25 the case up. I don't mind if you were going to put

1 questions to Mr. Warman which relate more to the
2 constitutional issue rather than the factual issue that
3 this take place now.

4 But I don't want to unnecessarily
5 complicate the process. Will Mr. Fothergill then want
6 to ask questions? That wasn't my intention. I was
7 intending just to proceed with the parties on the facts
8 of the complaint at this stage. But if it poses a
9 problem for you to hive off your evidence that way --

10 MS KULASZKA: I would prefer to
11 cross-examine him on everything.

12 THE CHAIRPERSON: I can see that.
13 For instance, Mr. Christie and the people who are
14 sitting at the last table, have opted not to show up at
15 theses at the hearing I guess in the expectation that
16 we wouldn't be broaching that part of the evidence.

17 MS KULASZKA: Are they allowed to
18 cross-examine Mr. Warman on the constitutional issues
19 like Mr. Fothergill?

20 THE CHAIRPERSON: It was not my
21 intention to do that. We didn't really go into that
22 detail, I don't think, in our previous discussions on
23 the case management conference calls.

24 MR. VIGNA: I don't think Mr. Warman
25 would be relevant to the constitutional issue. That

1 wasn't my understanding.

2 THE CHAIRPERSON: No. Facts will be
3 alluded to in the constitutional question, and some of
4 these facts may be elicited from this witness or any
5 other. I certainly saw that as happening. I thought
6 in fact that some of the parties on this side of the
7 room, your side of the room, would have been doing that
8 as well.

9 MR. VIGNA: I don't know if -- as far
10 as the Commission is concerned, we don't intend to call
11 Mr. Warman on the constitutional issue. I don't know
12 if the respondent intends to call Mr. Warman on the
13 constitutional issue.

14 My understanding is that Mr. Warman
15 would testify, as far as I'm concerned --

16 THE CHAIRPERSON: I would like it to
17 be one knowledge. I don't want Mr. Warman to be
18 splitting -- to go through this twice. I have an idea.

19 Mr. Fothergill, was it your intention
20 to ever ask questions of Mr. Warman?

21 MR. FOTHERGILL: I should say the
22 reason I'm here this week and next is in the
23 expectation that some of the evidence may be relevant
24 to constitutional issue. And, in fact, if I were
25 confident that the issue were easily severable, I

1 assure you I wouldn't be here. So --

2 THE CHAIRPERSON: To a draw upon it.
3 Did you plan on requesting to cross-examine this
4 witness or any other?

5 MR. FOTHERGILL: It's a little early
6 for me to say. I would like to reserve the right to
7 ask leave to cross-examine as the case may be. At this
8 stage I don't have questions for Mr. Warman. It's
9 possible at the conclusion of Ms Kulaszka's
10 cross-examination I might. But I expect that they will
11 be kept to a minimum.

12 From my perspective, I don't object
13 to Ms Kulaszka raising this document with the witness,
14 if that's of any assistance to you.

15 THE CHAIRPERSON: Because I don't
16 want at this stage with even this witness to end up
17 having a situation where we're having three, four, five
18 cross-examinations.

19 We're trying to limit the number of
20 times that occurs, and I know Mr. Christie is not here.
21 I see Mr. Fromm is here.

22 Is there any possibility, Ms
23 Kulaszka, you and Mr. Fromm, at the last, could discuss
24 amongst yourselves -- perhaps if Mr. Fromm had any
25 questions that he may want to direct on the

1 constitutional issue to this witness, that you direct
2 them in your examination?

3 MS KULASZKA: I don't know whether
4 he's got any questions.

5 THE CHAIRPERSON: I don't either. In
6 the same sense, I would ask you, Mr. Fothergill --
7 well, let's play it by ear then.

8 I'll let you deal with the
9 constitutional questions at this time with Mr. Warman
10 and that way it would be great. If we would end with
11 Mr. Warman entirely and not have to go through this
12 again next week or in three weeks.

13 So in that regard, I accept your
14 explanation, Ms Kulaszka. You can proceed with your
15 question.

16 MS KULASZKA: Mr. Warman, this will
17 be proven later, but I put to you it's from the catalog
18 of the library of Harvard University and it shows that
19 this particular book, The International Jew by Henry
20 Ford, is kept at Harvard University. Why should this
21 book be freely available to people in a university
22 library such as Harvard, but not on the Internet?

23 MR. VIGNA: Mr. Chair, I object.

24 THE CHAIRPERSON: You know what, I
25 didn't hear the question because at that moment I was

1 just discussing with Ms. Joyal about noting this
2 exhibit. Would you repeat your question again, Ms
3 Kulaszka?

4 MS KULASZKA: Yes. I would like to
5 ask Mr. Warman, why should this book be freely
6 available at a university library but not on the
7 Internet?

8 MR. VIGNA: I object on the basis
9 that it's argumentative, one; and, two, I don't think
10 it's within the knowledge of -- we haven't called
11 Mr. Warman as an expert so I don't see how Mr. Warman
12 can answer such a question.

13 THE CHAIRPERSON: Ms Kulaszka, it is
14 somewhat argumentative in nature. That is an excellent
15 rhetorical or argumentative question at the end. But
16 your point is that this is -- this material is
17 available on -- in Harvard, correct?

18 MS KULASZKA: Correct.

19 Do you believe that this book should
20 be available at Harvard University or any other
21 university?

22 MR. WARMAN: Well, first off, Harvard
23 University is in the United States and is, of course,
24 not subject to the Canadian Human Rights Act.

25 MS KULASZKA: So that answers the

1 question for you.

2 THE CHAIRPERSON: Ms Kulaszka,
3 overall I would say -- you can pursue these things with
4 this witness, but I don't know how that -- if you are
5 going to bleed evidence with regard to --

6 MS KULASZKA: I was essentially just
7 asking did that close the matter for him. He just had
8 to say yes.

9 THE CHAIRPERSON: There's not much
10 point to argue here. You'll have an opportunity to
11 argue, Mr. Warman and Mr. Vigna, at the end when we do
12 final submissions. I think what is important is that
13 if you are going to take this approach on this
14 material, so we don't waste time here, you enter it
15 into evidence properly, as I gather you will at some
16 point later on, and draw -- draw those strings together
17 and make the conclusions you wish to draw.

18 MS KULASZKA: Mr. Warman, can you
19 just turn the page. This is another document you
20 haven't seen. It will be identified as coming from the
21 University of Toronto library catalog. It shows that
22 University of Toronto holds the same book, The
23 International Jew, by Henry Ford, abridged from the
24 original.

25 This is in Canada. You have taken

1 the position that it does expose Jews to hatred and yet
2 it is freely available.

3 Do you not think it affects freedom
4 of expression when, simply because it's put on the
5 Internet, it becomes illegal?

6 MR. WARMAN: No, not personally. No,
7 I don't.

8 MS KULASZKA: If you could turn the
9 page. This will be identified by a subsequent witness.
10 It is from the Toronto Public Library catalog. It also
11 shows The International Jew by Henry Ford, it is
12 maintained in the Toronto Public Library.

13 THE CHAIRPERSON: I must've missed
14 something. Which page are you looking at?

15 MS KULASZKA: The next page, tab 17.

16 THE CHAIRPERSON: Oh, 17.

17 MS KULASZKA: Do you recognize any
18 kind of exemption in section 13 from historical works?

19 MR. WARMAN: Being on the Internet as
20 in this book, this work?

21 MS KULASZKA: Yes. We'll take The
22 International Jew as an example.

23 MR. WARMAN: I don't recognize any in
24 the Act.

25 MS KULASZKA: And obviously you've

1 brought a complaint based on this book. So even though
2 it is a historical document probably studied at
3 universities, you still believe it should be banned
4 from the Internet under section 13?

5 MR. WARMAN: Oh, I don't believe
6 that's the context in which it was put forward on
7 JRBooksOnline by any means.

8 MS KULASZKA: So if it was on another
9 kind of website that said this is anti-Semitic
10 material, you would approve of it being put on the
11 Internet in whole?

12 MR. WARMAN: Not necessarily, no.

13 MS KULASZKA: It would all depend on
14 context for you?

15 MR. WARMAN: Well, it would depend on
16 where the material was or who was putting it on in
17 terms of whether it would be subject to section 13 of
18 the Canadian Human Rights Act in the first place.

19 And, secondly, if it was blankedly
20 open to anyone on the Internet in terms of access to it
21 and there would be further questions of context as
22 well.

23 MS KULASZKA: Would you agree that
24 that shows an elitist attitude?

25 MR. WARMAN: No.

1 MS KULASZKA: Do you believe that
2 people at universities have the wherewithal to handle
3 the material where other people don't?

4 MR. WARMAN: I believe that's too
5 broad a question for me to answer.

6 THE CHAIRPERSON: So you are
7 objecting. It is kind of broad. Can you be more
8 specific, Ms Kulaszka?

9 MS KULASZKA: Do you believe only
10 certain people with a certain education have the
11 ability to handle The International Jew without
12 becoming anti-Semitic?

13 MR. WARMAN: No, I don't.

14 MS KULASZKA: Just to be clear, what
15 is your position on JRBooksOnline? Do you want the
16 entire website taken down?

17 MR. WARMAN: What I'm seeking is a
18 section 13 order against Mr. Lemire that he -- the
19 standard cease and desist order.

20 MS KULASZKA: I just would like to
21 obtain a copy our book of authorities. I can be
22 more -- in terms of the cease and desist order being
23 sought.

24 MR. VIGNA: I believe we provided you
25 a copy the other day, Mr. Chair.

1 THE CHAIRPERSON: I see Volume 2 of 2
2 it says here. Is that the case you are referring to?

3 MR. VIGNA: I think so. Is that the
4 case, Mr. Warman?

5 MR. WARMAN: So if you are asking
6 about the nature of the order it would be something
7 similar to tab 12, paragraph 113 sub (1), minus the
8 last sentence and adjusted accordingly, of course.

9 MS KULASZKA: Let's go to tab 22 of
10 HR-2. These are the search results for "craig" and
11 "harrison"?

12 MR. WARMAN: That's correct.

13 MS KULASZKA: When did you first
14 become aware of Mr. Harrison?

15 MR. WARMAN: It would have been some
16 point prior to my filing the complaint which was 23
17 November, 2003.

18 MS KULASZKA: I'm going to ask you to
19 look at the respondent's binder. It would be tab 11.
20 I'm going to get my exercise lugging these big binders
21 around.

22 THE CHAIRPERSON: We all will.

23 MS KULASZKA: Do you recognize that
24 document?

25 MR. WARMAN: I believe I do, yes.

1 MS KULASZKA: Can you tell me what it
2 is.

3 MR. WARMAN: There's two different
4 documents. The first one --

5 THE CHAIRPERSON: Two documents?

6 MR. WARMAN: It was my
7 misunderstanding. Well, it appears to be an e-mail
8 sent to my e-mail address -- sorry, there's two
9 different documents. The first one --

10 THE CHAIRPERSON: Two documents?

11 MR. WARMAN: Because there are two
12 pages here and there are two different things.

13 THE CHAIRPERSON: You are right. It
14 says page 1 or 1 on each. So the first page?

15 MR. WARMAN: The first page is an
16 e-mail that appears to have been sent to me.

17 THE CHAIRPERSON: Is there a date?

18 MR. WARMAN: Yes, dated Wednesday, 4
19 December, 2002.

20 MS KULASZKA: Who was it sent to you
21 by?

22 MR. WARMAN: It's not listed there.
23 But if I recall correctly, it might have been Matt
24 Lauder, Matthew Lauder.

25 MS KULASZKA: This was faxed an as an

1 exhibit, was it not, in the Harrison case?

2 MR. WARMAN: It's possible. I'm
3 sorry, I don't recall off the top of my head. But if I
4 reviewed it, it's quite possible.

5 MS KULASZKA: The subject says, "In
6 your dreams it was never this easy". Did you write
7 that?

8 MR. WARMAN: No, I'm the recipient of
9 the e-mail.

10 MS KULASZKA: So it was Matt Lauder
11 that wrote that?

12 THE CHAIRPERSON: Please inform me
13 who is Matt Lauder?

14 MR. VIGNA: I believe he wrote some
15 literature.

16 THE CHAIRPERSON: Was it in evidence?

17 MR. WARMAN: No, but I know from.

18 MS KULASZKA: Maybe Mr. Warman can
19 answer the question. Who is Matt Lauder?

20 MR. WARMAN: Matthew Lauder is a
21 human rights activist who worked for the Guelph and
22 District Multi-Cultural centre. He infiltrated the
23 neo-Nazi movement in Canada and successfully wrote up a
24 number of works on it in terms of their activities. I
25 believe that Mr. Lemire was one of the individuals he

1 had contact with during that period.

2 MS KULASZKA: In fact, many of his
3 writings are on the Freedom site, are they not?

4 MR. WARMAN: I'm sorry?

5 MS KULASZKA: Many of Matt Lauder's
6 writings were on the Freedom site?

7 MR. WARMAN: I'm not sure. If you
8 have something specific and can show me, I might be
9 able to answer but --

10 MS KULASZKA: I gather this is part
11 of the case, is the writings of Matt Lauder. If you
12 look at the small green binder, gather this is part of
13 the case, is the writings of Matt Lauder. If you look
14 at the small green binder, tab C. HR-3 tab C. It's
15 right in the middle. Pages aren't numbered.

16 THE CHAIRPERSON: No, we didn't
17 number these. I can see where the Freedom Store
18 begins. Is it before or after?

19 MS KULASZKA: Freedom Store
20 miscellaneous. Keep going, keep going, then the
21 History of the Freedom site. You keep going.
22 Freedom site mailing list. Keep going. Then there's a
23 page that says "Articles and Opinions from
24 thought-provoking Canadians."

25 THE CHAIRPERSON: Yes, I have that.

1 MS KULASZKA: Do you see that?

2 MR. WARMAN: I have.

3 THE CHAIRPERSON: I have that.

4 MS KULASZKA: Matthew Lauder is
5 listed and quite a number of articles are listed on
6 that page and also on the next page right beside the
7 Columnists Columns.

8 Have these articles been included in
9 your case.

10 MR. WARMAN: No, they have not been.

11 MS KULASZKA: What is included in
12 your case concerning the FreedomSite? If you didn't
13 mention it, then it's not included?

14 MR. WARMAN: The material that I
15 submitted that has been entered as exhibits is the case
16 that I personally am advancing against the FreedomSite.

17 MS KULASZKA: So a number of articles
18 and some messages from the message board and this
19 Stormfront posting.

20 MR. WARMAN: Well, that's against
21 Mr. Lemire as opposed to FreedomSite. He's using them
22 interchangeably. The exhibits that I have entered are
23 the exhibits that I intend to rely on in arguing that
24 Mr. Lemire has violated section 13 of the Act.

25 MS KULASZKA: What are you relying on

1 in this exhibit book? On that page, for instance, the
2 only thing you really pointed out was the Collins
3 column. Are you saying that every article listed there
4 is included in the case?

5 MR. WARMAN: No, there were specific
6 examples that were pointed out as being indicia that
7 the material was likely problematic in terms of a
8 violation of section 13, just from the very titles.

9 MS KULASZKA: Now, are you relying on
10 the Collins columns that you produced to say that all
11 the rest of the columns must also violate section 13?
12 Is that what's happening?

13 MR. WARMAN: No.

14 MS KULASZKA: So you're looking at
15 some of the names of the columns and you are saying
16 that looks like it violates section 13 so they all must
17 all violate section 13?

18 MR. WARMAN: No.

19 MS KULASZKA: So what are you saying?

20 MR. WARMAN: I believe it may be more
21 helpful if you understand it that they are indicia that
22 are intended to be used.

23 MS KULASZKA: What is, the titles?

24 MR. WARMAN: Yes. That the knowledge
25 that Mr. Lemire had of the website in general goes to

1 the question of his liability under section 13, that
2 there can be no argument of willful blindness.

3 MS KULASZKA: Okay. We'll do this
4 the slow way, I guess.

5 You're not going to include any of
6 the articles from Matthew Lauder in this case, so the
7 Tribunal doesn't need to consider them?

8 MR. WARMAN: I personally am not.

9 MS KULASZKA: Is the Commission?

10 MR. VIGNA: No, Mr. Chair. What's
11 been put so far is pretty much the evidence for the
12 Commission.

13 But if the question is being asked of
14 me, the purpose of this particular exhibit, it has to
15 be taken into context with the entire website in order
16 to give an understanding to the Tribunal, which is
17 undertaking the inquiry of everything that's on the
18 website.

19 Now, at the end of the day when
20 analysis will be made, the Tribunal will have the
21 global picture and will be able to make the particular
22 determinations in regard to the website and aspects of
23 the websites that are problematic. But it's hard not
24 to have the entire website and just rely on bits and
25 pieces to understand what team is on the website as a

1 whole and what's at play.

2 THE CHAIRPERSON: I understand your
3 position, and I understand the questions that are being
4 asked. Proceed, please.

5 MS KULASZKA: Okay, Mr. Warman, look
6 at the Collins column. They start on that page, they
7 go onto the next page. Which one of those columns do
8 you say violates section 13?

9 MR. WARMAN: I intend to rely not on
10 them individually, except for the ones that have been
11 entered as a whole, as being a violation in particular
12 of section 13, but merely they are indicia that
13 Mr. Lemire knew full well what type of columns they
14 were, what type of material was contained on the
15 FreedomSite, what type of material he was putting there
16 and that if there were other people who were putting
17 material there, what kind of material that was or was
18 likely to be.

19 MS KULASZKA: So in other words, as
20 far as Doug Collins' columns goes, you are only relying
21 on those columns you produced in their entirety?

22 MR. WARMAN: I believe my answer
23 adequately responded. It's that the columns that have
24 been produced in their entirety are being relied on in
25 their entirety, and the ones that have been pointed out

1 as examples are being relied on as evidence that the
2 type of material contained on the FreedomSite was well
3 known to Mr. Lemire and that there is no question that
4 Mr. Lemire thought he had a website about puppies but
5 suddenly woke up one morning to find out it was all
6 about neo-Nazis and white supremacists.

7 MS KULASZKA: Are you saying Doug
8 Collins was a neo-Nazi?

9 MR. WARMAN: I'm saying the material
10 put forward by Mr. Collins has been found by a human
11 rights tribunal in British Columbia to have been likely
12 to expose the Jewish community to hatred or contempt.

13 MS KULASZKA: You see Doug Collins
14 was a decorated war hero in World War II.

15 MR. WARMAN: I realize that doesn't
16 prevent someone for promoting hatred of Jews.

17 MS KULASZKA: Why would you call him
18 a neo-Nazi then?

19 MR. WARMAN: You called him a
20 neo-Nazi, not me.

21 MR. VIGNA: -- not a statement that
22 was being made.

23 THE CHAIRPERSON: Move on.

24 MS KULASZKA: Just for the record, I
25 never called Doug Collins a neo-Nazi.

1 THE CHAIRPERSON: Who called him a
2 neo-Nazi? I don't remember either right now.

3 MS KULASZKA: Look at the first
4 column. "Here We Go Again, Counting the Lies." Is
5 that included in this case?

6 MR. WARMAN: The examples that I
7 highlighted are the ones that I will be relying on in
8 terms of the information that I've just given.

9 MS KULASZKA: Could you tell me again
10 which ones you highlighted? Because I don't seem to
11 have highlighted them.

12 THE CHAIRPERSON: Are we just talking
13 about the 2001 columns at this page?

14 MS KULASZKA: Yes, 2000 then it goes
15 over to the next page to 2000. It /SAOEPLSZ to go
16 over -- hard to tell.

17 THE CHAIRPERSON: Going down
18 vertically?

19 MS KULASZKA: Yes, going vertically.
20 I think for three pages --

21 THE CHAIRPERSON: Three or two?

22 MS KULASZKA: Three. Seems to go
23 over to the next page as well.

24 THE CHAIRPERSON: Right. Okay.

25 MS KULASZKA: Could you tell me again

1 which ones you are relying on?

2 MR. WARMAN: No, I'm sorry, I don't
3 have the examples in front of me that I indicated in my
4 testimony.

5 THE CHAIRPERSON: I was circling
6 some. I saw that one had been circled.

7 MS KULASZKA: I seem to have just
8 one, "An Eye For An Eye - Jewish Revenge On Germans".

9 THE CHAIRPERSON: That's the only one
10 I circled as well, on the third page.

11 MS KULASZKA: Can you just confirm
12 that? You are relying on that one?

13 MR. WARMAN: As being an example of
14 the kind of material, that made it self-evident that
15 material is likely to be problematic in terms of
16 section 13.

17 No, I mean, if you look below on
18 March 1st, you've got "Sikh Power Triumphs in B.C.
19 Race."

20 MS KULASZKA: You are relying on that
21 as well?

22 MR. WARMAN: I'm relying on all of
23 them as examples. Specifically the ones that I've
24 mentioned as examples of material that makes it
25 self-evident that the material is likely to be

1 problematic in terms of a violation of section 13 of
2 the Act. The ones that I've just highlighted, let's
3 say the two of them, that's fine.

4 MS KULASZKA: Do you think that's
5 enough before this Tribunal to point to a title for an
6 essay and say just because one or two might allegedly
7 violate section 13 they must all violate section 13?

8 MR. WARMAN: I believe that's a
9 mischaracterization of my evidence.

10 MS KULASZKA: Then what are you
11 saying? You are asking the Tribunal basically for a
12 cease and desist that would take all these columns down
13 after you just pointed to one or two?

14 MR. WARMAN: That's not what I've
15 asked for.

16 MS KULASZKA: What order do you want
17 with respect to the Collins column?

18 MR. WARMAN: Just to be clear, I
19 don't have to specify. What I can do is ask for a
20 permanent cease and desist order in the manner of
21 paragraph 113 sub (1) of the Kyburz decision, modified
22 accordingly.

23 It's not up to me. It's up to
24 Mr. Lemire to obey his responsibilities under the
25 Canadian Human Rights Act to ensure he does not place

1 hate messages on the Internet.

2 MS KULASZKA: If a cease and desist
3 order is given for the entire website that would
4 include this page, then Mr. Lemire could be brought to
5 Federal Court if he didn't take down something like,
6 "Here We Go Again, Counting the Lies", or "Sergeant
7 Pepper Forever."

8 MR. WARMAN: I have not been asking
9 for the entire website to be closed down. What I have
10 said is that I am seeking an order, a cease and desist
11 order, comparable on the one contained in paragraph 113
12 sub (1) of the Kyburz decision, modified accordingly.

13 THE CHAIRPERSON: We're approaching
14 two different types of discussions here, Ms Kulaszka.
15 One is argument; second, settlement negotiations. So I
16 would rather we stop at that point. It's not getting
17 us anywhere. That's what it's developing into. I
18 would hope perhaps the second would occur, but it's
19 not. So let's just move on.

20 MS KULASZKA: I've just been handed
21 that decision that Mr. Warman is referring to.

22 THE CHAIRPERSON: It was the Kyburz
23 decision, it was in tab 12 of their list of
24 authorities, paragraph 113 is what he alluded, sub (I),
25 minus the last four -- three or four lines, the last

1 sentence.

2 MS KULASZKA: So it did include
3 matters of the type contained in Exhibits HR-1 and HR-2
4 or any other messages of a substantial content.

5 These headings of the columns, at
6 least, are included. Would you consider it a violation
7 of a cease and desist order, if one was made, that
8 included these headings and Mr. Lemire did keep the
9 website up but kept up Sergeant Pepper Forever?

10 Would you do what you did with
11 Mr. Winnicki in an attempt to get a prison sentence?

12 MR. VIGNA: Mr. Chair, I think the
13 question as objectionable in terms of its relevance,
14 and I would like to have some specificity in terms of
15 the relevance of the question.

16 MS KULASZKA: I'm trying to
17 understand whether he's just going after the headings
18 or the actual text that it links to.

19 MR. WARMAN: I explained repeatedly,
20 I don't know, four or five times now that the headings
21 are simply indicia that the material is quite likely to
22 be problematic in terms of section 13 and that it goes
23 to the question of whether Mr. Lemire can claim some
24 sort of willful blindness defence that he mistakenly
25 thought his website was all about something nice and

1 pleasant -- his garden, petunias, I don't know,
2 something normal. But instead, he suddenly woke up one
3 day and found out there was hate propaganda on it.

4 THE CHAIRPERSON: Ms Kulaszka, it
5 is -- as I indicated to you earlier, I think you are
6 getting into argument. It's the type of thing where
7 you and Mr. Warman and Mr. Vigna and the other
8 participants will engage in this discussion at the end.

9 This is the kind of thing you will be
10 saying, that all that has been represented before the
11 Tribunal are these titles and the remainder are not in
12 breach of section 13 and should not be subject to the
13 order.

14 I understand where you are going with
15 this. It doesn't help us at all at this point to
16 engage in that argument that will occur at the end.

17 MS KULASZKA: I apologize if it seems
18 like an argument. Actually, I really don't know what
19 their case is. I'm trying to understand it actually.

20 Mr. Warman, what --

21 THE CHAIRPERSON: That's normal in
22 any case. In any case, you are going to get pieces of
23 evidence and final submissions will be made, and you
24 will address them at the time.

25 Any case is made up of a bunch of

1 pies that somebody tries to build into slices that one
2 tries to build into a pie. The slices that Mr. Warman
3 has put in are what he's alluded to. I thought he made
4 that clear. If you don't think that makes a pie,
5 that's the argument you are going to make at the end.

6 MS KULASZKA: I would just like to
7 make him what Sergeant Pepper Forever, the column
8 written for August 10th, was about?

9 MR. WARMAN: I don't know.

10 MS KULASZKA: How about March 29th,
11 "Got A Light Anyone? "

12 MR. WARMAN: No.

13 MS KULASZKA: Don't know what it's
14 about?

15 MR. WARMAN: No, I do not.

16 MS KULASZKA: How many of these do
17 you know what are about?

18 MR. WARMAN: The two specifically
19 that I've entered as evidence.

20 MS KULASZKA: Why don't you include
21 Matthew Lauder's materials in this case?

22 MR. WARMAN: Because there's ample
23 evidence that has been put before the Tribunal, I
24 believe, to make a finding of the section 13 violation
25 on the part of Mr. Lemire, on top of the fact I don't

1 even know if I've read any of them.

2 MS KULASZKA: Have you read any of
3 them?

4 MR. WARMAN: Not that I recall, no.

5 MS KULASZKA: He's also your friend,
6 right?

7 MR. WARMAN: Yes, I would describe
8 him as a friend, yes.

9 MS KULASZKA: On the second page
10 something called "Promajority." I believe you
11 highlighted "The New World Order". Did you read that?

12 MR. WARMAN: No, I believe that was
13 pointed out to me by Mr. Vigna, and I indicated
14 subsequently that the definition of new world order
15 wasn't really all that relevant here.

16 MS KULASZKA: Have you read any of
17 those on that page under "Promajority"?

18 THE CHAIRPERSON: To be fair, it
19 continued -- well, okay, it doesn't. Mindful of the
20 way the columns are going, right? So if there was a
21 continuation of Promajority, would go to the next page.
22 But I notice there is another heading there. I guess
23 one can assume everything under Promajority is on this
24 page.

25 MR. WARMAN: If it's already been

1 entered as evidence then I've read it. If not, I may
2 have looked at one or two of the articles. I certainly
3 don't recall having read them in any great detail.

4 MS KULASZKA: Did you read on that
5 same page on the right? This would be near the end of
6 Doug Collins' columns. It's dated March 1st, "Sikh
7 Power Triumphs in B.C. Race." Did you read that one?

8 MR. WARMAN: Not that I recall.

9 MS KULASZKA: That was one of the
10 ones you highlighted. Why did you highlight it?

11 MR. WARMAN: Because I believe the
12 title makes it self-evident, that the material
13 contained within is likely to be problematic in terms
14 of section 13 given who Mr. Collins was.

15 MS KULASZKA: Would you agree that --
16 I can vaguely recall there was a race where they seemed
17 to pack a nomination -- I don't know what this article
18 is about either. The newspapers were taking about it.
19 So if a newspaper talks about it it's okay, but it's
20 not okay if Doug Collins does?

21 MR. WARMAN: A, I'm not sure what you
22 are talking about; and B, it depends on what is said,
23 of course.

24 MS KULASZKA: Have you ever laid a
25 complaint against a newspaper or columnist in a

1 newspaper?

2 MR. WARMAN: Not that I'm aware of.

3 MS KULASZKA: If you turn the next
4 page, you highlighted:

5 "Are you a writer? Submit your
6 pieces to be included on the
7 Controversial Columnists page."

8 MR. WARMAN: Because I believe it
9 points to the solicitation by Mr. Lemire of what he
10 self-evidently described as "Controversial Columnists".

11 MS KULASZKA: Is there something
12 wrong with controversy?

13 MR. WARMAN: In the context of
14 Mr. Lemire's website I believe it is self-evident that
15 the kind of content that Mr. Lemire believed to be
16 "controversial" would be problematic from the aspect of
17 section 13 of the Canadian Human Rights Act.

18 MS KULASZKA: And yet you've only
19 highlighted one, two, three, four -- four of these
20 columns. That's it. I don't know what percent that
21 would be, but I assume it would be very, very small
22 percentage. Would you agree?

23 MR. WARMAN: I think you are
24 confusing something. I think you are confusing the
25 question of sufficiency and totality. I do not have to

1 read all of the material on the FreedomSite website to
2 form the opinion that Mr. Lemire is likely to have
3 violated section 13 of the Act.

4 It is quite adequate for me to take
5 what I consider to be sufficient information to file
6 that information with the Canadian Human Rights
7 Commission, they will then conduct an investigation and
8 refer it to Tribunal, if they feel it's appropriate, if
9 they feel there is -- that the question or the
10 complaint bears further investigation.

11 MS KULASZKA: But you'll agree the
12 legislation is to be remedial, do you not?

13 MR. WARMAN: I believe that is
14 Parliament's intent, yes.

15 MS KULASZKA: And you'll agree that
16 after you laid the complaint Mr. Lemire voluntarily
17 removed one of the first articles you complained of
18 which was "AIDS: SECRETS"; is that correct?

19 MR. WARMAN: I believe that is
20 correct, yes.

21 MS KULASZKA: In fact, the message
22 board was already gone. He removed, I believe, about
23 two or three articles that you complained about
24 voluntarily. Why didn't you just settle the matter
25 then?

1 MR. VIGNA: Mr. Chair, again, we are
2 getting into settlement discussions. I don't know if
3 that's relevant to ask why he didn't settle the issue
4 then.

5 MS KULASZKA: I believe it's a
6 constitutional issue as to how the legislation is being
7 used and the effect it has on freedom of expression.

8 As I pointed out, there are many,
9 many articles here. He's only pointed to a very small
10 number, and one that he initially complained about was
11 removed voluntarily. In fact, nothing was left that he
12 had complained about in the complaint and yet it went
13 forward.

14 THE CHAIRPERSON: I'll allow the
15 question because it was preceded by the previous
16 question on the remedial nature of this legislation.

17 Go ahead.

18 MR. FOTHERGILL: Mr. Hadjis, I
19 appreciate you've said you are going allow the
20 question, but to the extent this is said to be relevant
21 to the constitutional issue, I must respectfully
22 disagree.

23 What this appears to be is an inquiry
24 into the manner in which the complainant conducted
25 himself in relation to the complaint and perhaps the

1 manner in which the Commission conducted itself in
2 light of the complaint.

3 And you've heard me say previously
4 that while it may be possible that the manner in which
5 the Commission handles a particular complaint raised
6 constitutional issues, they are not within the
7 jurisdiction of this Tribunal to adjudicate.

8 This Tribunal has a limited
9 jurisdiction to consider the constitutionality of the
10 provisions of the Act that it is responsible for
11 applying. This is to do with the manner in which the
12 Commission processed Mr. Warman's complaint.

13 THE CHAIRPERSON: Your point is well
14 taken. I understand.

15 As I've indicated earlier, that is
16 something that we should bring up at the end. However,
17 I think that, as you indicated yourself in your
18 objection, it could be -- there are two approaches to
19 take. There is a fine line between the two.

20 I'll allow the question for the
21 purposes of that side of the line and not the other
22 side of the line. I do not propose to usurp the power
23 of the Federal Court here.

24 Go ahead, Ms Kulaszka.

25 MS KULASZKA: Do you remember the

1 question, Mr. Warman?

2 MR. WARMAN: I believe I do. And the
3 reason why the complaint hasn't been settled is because
4 we have been unable to agree to terms that would be an
5 appropriate settlement.

6 MS KULASZKA: But you do agree that
7 everything was taken down after the initial complaint
8 that was included in your complaint?

9 MR. WARMAN: I would have to go back
10 and review the complaint. But even if that were the
11 case, the question remains as to going forward and as
12 to whether there is a -- any good faith commitment to
13 respecting the provisions of the Act.

14 And, furthermore, even if there were
15 a question of someone having temporarily ceased, there
16 is no -- A, that doesn't mean they stopped or that they
17 should be held blameless -- blameless isn't perhaps the
18 best word, that they should be completely absolved of
19 their illegal conduct; and, B, the main question though
20 for me is ensuring that there is forward-going respect
21 for the provisions of the Act.

22 MS KULASZKA: So in other words, you
23 wanted him punished.

24 MR. WARMAN: No. In fact, I don't.
25 Held responsible for his actions, perhaps. But

1 punished, no.

2 MS KULASZKA: Let's go back to that
3 e-mail, the one you got from Matthew Lauder.

4 THE CHAIRPERSON: Remind me where
5 that was?

6 MS KULASZKA: That was in --

7 THE CHAIRPERSON: I have it.

8 MS KULASZKA: Tab 11 of the
9 respondent's. What was this e-mail about?

10 MR. WARMAN: It provides a link to
11 the canadianheritagealliance.com guest book and the
12 name Craig Harrison, along with a posting.

13 MS KULASZKA: So this helps you
14 identify who Craig Harrison was?

15 MR. WARMAN: If I recall correctly,
16 yes.

17 MS KULASZKA: Is that why Mr. Lauder
18 writes, "In your dreams it was never this easy"?

19 MR. WARMAN: You would have to ask
20 Mr. Lauder that.

21 MS KULASZKA: Is that how you
22 understood it?

23 MR. WARMAN: I'm sorry, this is an
24 e-mail from five years ago now. I presume it was
25 related to the fact of identifying Mr. Harrison.

1 MS KULASZKA: Why did he send you
2 this e-mail?

3 MR. WARMAN: To help with the
4 identity of Mr. Harrison.

5 MS KULASZKA: So he knew that you
6 were trying to find out who was writing these e-mails
7 on the FreedomSite message board?

8 MR. WARMAN: I don't recall exactly.
9 But I think it's likely, given the e-mail.

10 MS KULASZKA: How long had you been
11 visiting the FreedomSite message board?

12 MR. WARMAN: I'm sorry, I don't
13 recall exactly.

14 MS KULASZKA: When did you notice the
15 e-mails that you would eventually find out had been
16 written by Craig Harrison?

17 MR. WARMAN: Well, I think it's
18 self- -- well --

19 THE CHAIRPERSON: Back up a minute.
20 Is it e-mails or postings?

21 MS KULASZKA: Sorry, postings,
22 postings on the message board.

23 MR. WARMAN: Well, at the very least
24 the postings were known to me by November of 2003 when
25 I conducted the search. But it's possible that I knew

1 about them much earlier than that. But I don't recall
2 exactly when I first noticed them, I'm sorry.

3 MS KULASZKA: Is this e-mail about
4 the postings on the FreedomSite message board or about
5 something else?

6 MR. WARMAN: It's about a
7 canadianheritagealliance.com guest book posting.

8 MS KULASZKA: This was a posting you
9 used to identify who Craig Harrison was?

10 MR. WARMAN: Ultimately I believe it
11 contributed to that, yes.

12 MS KULASZKA: And it was through his
13 e-mail. Did he give his e-mail?

14 MR. WARMAN: I believe it may have
15 used similar e-mail that was contained in postings on
16 the FreedomSite. It's possible. I don't remember
17 exactly, but if I recall correctly, that would be what
18 it was.

19 MS KULASZKA: Was that
20 susen@sympatico.ca? Susen with an "e" at the end,
21 "en"?

22 MR. WARMAN: I believe that would
23 have been the e-mail, yes.

24 MS KULASZKA: So it would be correct
25 to say that you were monitoring the FreedomSite for

1 quite a long time before you laid a complaint.

2 MR. WARMAN: As I've indicated, I
3 don't recall how long it was that, or when I first
4 started looking at the FreedomSite. But had I known
5 about it for sometime? Yes.

6 MS KULASZKA: So it was at least by
7 December 4 of 2002?

8 MR. WARMAN: That I was aware of the
9 FreedomSite, sure, yeah, easily.

10 MS KULASZKA: And Craig Harrison's
11 postings?

12 MR. WARMAN: As I've indicated, I
13 don't recall exactly, but this e-mail is in reference
14 to Mr. Harrison and his identity, and whether it was
15 prior we were looking for that information or whether
16 it was subsequent and this contributed to me being able
17 to identify Mr. Harrison, I don't recall exactly.

18 MS KULASZKA: Did you work for the
19 Commission at the time?

20 MR. WARMAN: In 2002?

21 MR. VIGNA: Mr. Chair, I don't know
22 the relevance of the question and I object to the
23 question itself. I would like to have the relevance
24 explained.

25 MS KULASZKA: I wonder, is this part

1 of his work at the Commission was to monitor the
2 FreedomSite message board and try and find out the
3 identities of people? Was this part of his work, or
4 was this something he did at night?

5 THE CHAIRPERSON: Okay.

6 MR. WARMAN: I'm quite happy to
7 answer. All of the complaints that I filed have been
8 on my own time.

9 MS KULASZKA: So you did no
10 investigative work at all at the Commission?

11 MR. WARMAN: Oh, I did investigative
12 work, yes.

13 MS KULASZKA: But not on the
14 FreedomSite?

15 MR. WARMAN: No.

16 MS KULASZKA: Was Marc Lemire under
17 regular monitoring by investigators at the FreedomSite?

18 MR. WARMAN: I was not given access
19 to, for the most part, the Internet hate files. So I
20 would not have, no, and, in fact, I do not know.

21 MS KULASZKA: Were you aware that the
22 Commission released a CD in disclosure entitled
23 "Stormfront", dated August 5th, 2002. And these were
24 postings by Marc Lemire on Stormfront. They were
25 copied apparently by an investigator, Hannya Rizk.

1 Did you obtain a copy of that also
2 from the Commission?

3 MR. WARMAN: It's possible, but if I
4 did I'm not aware of it.

5 MS KULASZKA: So you were not aware
6 of that while you worked there, that Hannya Rizk was
7 monitoring Marc Lemire?

8 MR. WARMAN: As I've indicated, I'm
9 not aware of any monitoring of Mr. Lemire by the
10 Commission. Sorry, I should revise that. Except for
11 the fact, obviously, pursuant my complaint.

12 THE CHAIRPERSON: Sorry?

13 MR. WARMAN: Apart from what is
14 self-evident in pursuing the investigation of my
15 complaint.

16 MS KULASZKA: Once you had determined
17 who Craig Harrison was, why didn't you lay a complaint
18 in December of 2002?

19 MR. WARMAN: Because I wasn't ready
20 to file a complaint. I was still gathering evidence, I
21 would imagine. I may have had other priorities.

22 MS KULASZKA: Would it be fair to say
23 that the majority of the postings you are relying upon
24 with respect to the FreedomSite message board to hold
25 Mr. Lemire responsible under section 13 are, in fact,

1 the Craig Harrison postings?

2 MR. WARMAN: A number of them are. I
3 don't know in terms of the exact number, or the exact
4 equation thereof.

5 MS KULASZKA: And you brought a
6 separate case against Mr. Harrison?

7 MR. WARMAN: Originally the complaint
8 was filed against both, but it was ultimately
9 separated.

10 MS KULASZKA: And you obtained a
11 Tribunal ruling against him?

12 MR. WARMAN: Against Mr. Harrison?
13 Yes, the Tribunal handed down a decision against him.

14 MS KULASZKA: Was he represented by
15 counsel?

16 MR. WARMAN: Not at any point that
17 I'm aware.

18 MS KULASZKA: Did he attend the
19 hearing?

20 MR. WARMAN: Yes, he did.

21 MS KULASZKA: When?

22 MR. WARMAN: Whenever the hearing was
23 held. He attended for I believe the first day or a
24 portion thereof.

25 MS KULASZKA: Do you remember how he

1 left the room?

2 MR. WARMAN: Oh, I do, yes.

3 MS KULASZKA: What did he do?

4 MR. WARMAN: I believe he got up,
5 uttered some homophobic and other epithets and left the
6 room.

7 MS KULASZKA: Yes. He was very
8 angry, wasn't he?

9 MR. WARMAN: He appeared to be rather
10 upset, yes.

11 MS KULASZKA: How was he dressed, do
12 you remember?

13 MR. WARMAN: No, I'm sorry, I didn't
14 really take notice of what he was wearing.

15 MS KULASZKA: Did he come with his
16 wife?

17 MR. WARMAN: He came with a woman
18 that I don't know exactly whether it's his
19 girlfriend/wife, what. I have no idea what
20 relationship exist between them.

21 THE CHAIRPERSON: Was it not reported
22 in the decision? I believe what occurred that first
23 day was reported in the decision that the member
24 drafted, was it not?

25 MR. WARMAN: I believe it was.

1 MR. VIGNA: What's the question,
2 Mr. Chair?

3 THE CHAIRPERSON: I'm not looking at
4 you directly. I'm recalling having read the decision,
5 it's been a while, that the member recorded or reported
6 in -- who was the member?

7 MR. VIGNA: It was Michelle Doucette.
8 I can recall the incident, Mr. Chair. There was a
9 part, with your permission I can --

10 THE CHAIRPERSON: I'm just saying
11 it's reported in the decision itself. The details ring
12 a bell to me because I think I read them.

13 MR. VIGNA: What happened is that
14 Mr. Warman was testifying. At one point he was reading
15 a newspaper article for the issue of identity and there
16 was mention of the reasons why there was an assault,
17 and at that point Mr. Craig Harrison got up and
18 mentioned a certain -- words.

19 THE CHAIRPERSON: Used a foul word,
20 okay.

21 MR. VIGNA: They were more than foul,
22 as a matter of fact. And stormed out of the room, and
23 the woman that was accompanying him, which we can
24 assume to be his companion, followed him, never came
25 back. There was an adjournment and there was even, I

1 believe, a subpoena served for him to come back the
2 next day.

3 His chances were given in terms of
4 coming back, but he opted not to come back.

5 THE CHAIRPERSON: I think it is
6 reported in the decision itself.

7 MS KULASZKA: In that case you
8 subpoenaed Marc Lemire for certain information?

9 MR. WARMAN: That's correct, yes.

10 MS KULASZKA: Did you ever have any
11 trouble getting that information from him?

12 MR. WARMAN: Yes, in that the
13 subpoena was opposed with you as his counsel.

14 MS KULASZKA: Well, I didn't exactly
15 mean that. Yes, I represented Mr. Lemire, and came to
16 the hearing and opposed the subpoena on various legal
17 grounds; is that correct?

18 MR. WARMAN: Yes.

19 MS KULASZKA: After that are you
20 alleging Mr. Lemire was in contempt of the Tribunal?

21 MR. WARMAN: Oh, no. No, no.

22 MS KULASZKA: You had no trouble
23 whatsoever, did you?

24 MR. WARMAN: Well, there was a
25 mutually satisfactory agreement that he would simply

1 submit the information via an affidavit. That would be
2 acceptable to myself and the Commission.

3 THE CHAIRPERSON: That would be the
4 affidavit that's been entered into evidence, right, the
5 one I saw earlier?

6 MS KULASZKA: Yes, that's at tab 25.

7 THE CHAIRPERSON: Of HR-2.

8 MR. WARMAN: In fact, if I recall
9 correctly, there was an attempt, a previous attempt --
10 sorry, I may be getting the facts wrong. There was an
11 attempt to summon or to call Mr. Lemire as a witness.

12 At any rate, there was a previous
13 incident where there was an attempt to secure the
14 information from Mr. Lemire that he was unwilling to
15 provide it, and I guess crowed about it on the
16 FreedomSite website when the initial attempt through
17 the Tribunal was unsuccessful. But then he
18 subsequently provided the information pursuant to the
19 Tribunal issuing a subpoena.

20 MS KULASZKA: Mr. Warman, you and the
21 Commission applied to the Tribunal for an order for a
22 subpoena of Mr. Lemire. You requested permission to
23 serve me. Did you not do that by fax?

24 MR. WARMAN: I'm sorry, I don't
25 recall. As I've indicated, this was a number of years

1 ago.

2 MS KULASZKA: You seemed to recall
3 just a minute ago when you could besmirch Mr. Lemire's
4 name. Maybe I can remind you. You faxed me. The
5 Tribunal gave you that order. I was faxed. And
6 Mr. Lemire cooperated completely with you.

7 I attended on the first day of the
8 hearing to oppose to subpoena, but once the Tribunal
9 ordered Mr. Lemire to give the information, you had
10 that information within hours.

11 MR. WARMAN: Well, because the
12 alternative was that Mr. Lemire would be summoned to
13 appear at the hearing, and we reached, as I've
14 indicated, a mutually agreeable compromise, that we
15 would accept the evidence by affidavit.

16 MS KULASZKA: You really don't like
17 Mr. Lemire, do you?

18 MR. WARMAN: I actually have no
19 animus towards Mr. Lemire at all, other than I would
20 hope he obeys the Canadian Human Rights Act.

21 MS KULASZKA: Anyway, I'm glad that I
22 was able to set the record straight because I don't
23 know where you're getting this, that he did not
24 cooperate with you. Maybe you are getting your cases
25 mixed up, Mr. Warman.

1 Let's go back to tab 22. These are
2 the message search results for "craig" and "harrison".
3 Mr. Harrison made his postings, would you agree, over a
4 two-year period?

5 MR. WARMAN: Using this pseudonyms,
6 yes.

7 MS KULASZKA: In fact, he seems to
8 sit down at the computer and he'll send out a very
9 large number of postings in one city. Would you agree?

10 MR. WARMAN: There are given days
11 where he posts multiple messages. Whether they are at
12 one sitting or more, I'm not sure.

13 MS KULASZKA: Let's just count those
14 up for January -- that would be January 21st, 2003.
15 One, two, three, four, five, six, seven, eight nine,
16 10, 11, 12, 13, 14 messages. Would you agree with
17 that?

18 MR. WARMAN: I believe there are 14,
19 yes.

20 MS KULASZKA: January 20th, the day
21 before, he puts two messages. January 19th he puts
22 one, two, three, four, five, six messages. We're back
23 into 2002.

24 In November he seems to put three
25 messages down in one day.

1 Go over to the next page. We're
2 looking at May 21st. He puts down nine messages on
3 that one day.

4 On May 16th, five messages.

5 On May 15th, the day before, five
6 messages. Would you agree?

7 MR. WARMAN: I'm sorry, on the 15th?

8 MS KULASZKA: The 15th, it seems to
9 be five messages.

10 MR. WARMAN: I think there's six
11 there.

12 MS KULASZKA: Right, six. On May
13 14th looks like 24 messages. Would you agree?

14 MR. WARMAN: Appears to be, yes.

15 MS KULASZKA: And the last is May
16 13th he posts two messages. So for the whole of 2002
17 he posted on six days.

18 MR. WARMAN: Yes, that appears to be
19 correct. Using the pseudonym either "rump" or
20 "realcanadianson".

21 MS KULASZKA: Now, just a look at the
22 web board, welcome page. That would be in the
23 complainant's book of authorities, I think it's tab 3.

24 THE CHAIRPERSON: Never actually
25 produced it. Tab 11 of your book of documents, Ms

1 Kulaszka.

2 MS KULASZKA: Yes, I do want to
3 include that. Mr. Warman recognizes that document. I
4 would like to produce it. Tab 11.

5 THE CHAIRPERSON: Okay. So where did
6 you redirect me now?

7 MS KULASZKA: It would be tab 3, the
8 respondent's binder. Right at the back of the last
9 three pages, no -- sorry about that. Five pages from
10 the back.

11 MR. WARMAN: Go to Exhibit 11 is that
12 now R --

13 THE CHAIRPERSON: It's not an R. Did
14 I say R?

15 MR. WARMAN: I just didn't hear.

16 THE CHAIRPERSON: Tab 11 is produced
17 of R-1. It says "HRA" at the top but that was a number
18 from the previous case. Go on, sorry. So we're at tab
19 3?

20 MS KULASZKA: Tab 3 of the
21 respondent's binder, so five pages from the back. What
22 is --

23 THE CHAIRPERSON: What is tab 3? I
24 just want to look at only those pages?

25 MS KULASZKA: Yes, it's the

1 FreedomSite Interactive Web Board Welcome Page.

2 THE CHAIRPERSON: I will to have ask
3 Ms Joyal to keep track of that, too.

4 MR. WARMAN: It's got a number 294 at
5 the top.

6 THE CHAIRPERSON: No, I have 295.
7 Oh, okay.

8 MS KULASZKA: It should have 294 at
9 the top.

10 THE CHAIRPERSON: Let me ask you
11 something, Ms Kulaszka. My last page in tab 3 looks
12 kind of different, colour sheet. Says "Conference".

13 MS KULASZKA: Yes, it's about five
14 pages in front of that.

15 THE CHAIRPERSON: So it's been
16 misfiled.

17 MS KULASZKA: No, we just kind of put
18 it in there. No, that's correct.

19 THE CHAIRPERSON: When I counted
20 three or four back, whatever you said, I didn't have
21 the same page as you did. I'm wondering if this does
22 not belong there. If it does, fine.

23 MS KULASZKA: I apologize, it should
24 be five back. 294 at the back, handwritten, says,
25 "Welcome".

1 THE CHAIRPERSON: Five back.
2 "Freedomsite Interactive" 294 at the top handwritten,
3 says, "Welcome"

4 MS KULASZKA: Mr. Warman, if you
5 could look at that page.

6 MR. WARMAN: Sorry, if you could give
7 me one second here. Five pages back?

8 MS KULASZKA: Five pages back.

9 MR. WARMAN: 294. Yes.

10 MS KULASZKA: Do you recognize that
11 at all?

12 MR. WARMAN: It appears to be the
13 log-in page from the Freedomsite web board.

14 MS KULASZKA: And the next page, what
15 is that? Did you recognize it?

16 MR. WARMAN: It appears to request
17 information for signing up for the
18 webboard.freedomsite.org.

19 MS KULASZKA: Have you ever seen that
20 page before?

21 MR. WARMAN: I'm not sure if this is
22 the same as the sign-in sheet for the
23 chat.freedomsite.org, so I can't say for certainty
24 whether I've seen this.

25 MS KULASZKA: But you've seen the

1 page that has the number 294 at the top?

2 MR. WARMAN: No. Again, I can't say
3 with any certainty.

4 THE CHAIRPERSON: It looks like
5 something you would have seen?

6 MR. WARMAN: I mean, it says
7 "webboard.freedomsite.org". Whether that's the same as
8 the "chat.freedomsite.org" --

9 THE CHAIRPERSON: Well, Ms Kulaszka,
10 then for the purposes -- will you be having someone
11 else testify who could identify this?

12 MS KULASZKA: Yes. Bernard Klatt
13 will be giving testimony that this is actually the
14 welcome page to the message board.

15 THE CHAIRPERSON: So then we'll just
16 identify, keep track of that, Ms Joyal, for those two
17 pages. You can still put questions to the witness.

18 MS KULASZKA: How often did you visit
19 the Freedomsite over the years? Message board.

20 MR. WARMAN: I'm sorry, I don't
21 really have any recollection. I visited it at least
22 three times, I can state that, in preparation for the
23 filing of the complaint.

24 MS KULASZKA: So you really weren't
25 very interested in the message board?

1 MR. WARMAN: Oh, I was interested in
2 it as soon as I found out the nature of the content.

3 MS KULASZKA: Which was in 2002?

4 MR. WARMAN: Well, it would have been
5 prior to the filing of my complaint in November of
6 2003.

7 MS KULASZKA: But I think you agree
8 you were monitoring it in 2002, correct?

9 MR. WARMAN: I'm sorry, but I can't
10 say that with any certainty.

11 MS KULASZKA: Does this indicate that
12 you really didn't think it was such a bad message
13 board?

14 MR. WARMAN: These two documents?

15 MS KULASZKA: No, the fact you can't
16 remember the message board, you can't remember how
17 often you went there, you can't remember when you first
18 started going to it.

19 MR. WARMAN: No. It means that I
20 obtained the information that I needed to file my
21 complaint and apart from that, I let the system run its
22 course. It's not something that I -- I'll leave it at
23 that.

24 MS KULASZKA: When you went to the
25 message board, what conferences would you visit?

1 MR. WARMAN: Well, I can state for
2 certainty that at the very least I visited the Canadian
3 Heritage Alliance, the Freedomsite Canada, the news,
4 the media propaganda, singles, companionship, general
5 messages, religion, free speech, movement activists
6 chat, immigration, CHA, political debates, free speech,
7 Freedomsite Canada, Heritage Front, jokes and trivia.
8 At least those ones.

9 MS KULASZKA: So, in other words, you
10 visited most of the sites -- or the conferences, to be
11 exact? You visited most of the conferences?

12 MR. WARMAN: Just give me a sec. I
13 can take a look here. There was a tab that had the --
14 there. A large number of them, at the very least.

15 MS KULASZKA: If you look at the last
16 page of tab 3, that page shows the conferences. Do you
17 recognize that page?

18 MR. WARMAN: I'm sorry, I have
19 something listed as "90sAREover".

20 THE CHAIRPERSON: I'm sorry?

21 MS KULASZKA: On the last page of tab
22 3.

23 MR. WARMAN: Yes.

24 THE CHAIRPERSON: No, it's a
25 different page.

1 MR. WARMAN: It's the last page
2 contained in my tab 3.

3 MS KULASZKA: We'll leave that and --
4 yes, that's the one.

5 THE CHAIRPERSON: Confusion.

6 MS KULASZKA: We'll have to get you
7 that page.

8 MR. WARMAN: If it's of any
9 assistance, the same document -- and correct me if I'm
10 wrong -- may be found at page 1 of tab 20 of HR-2, I
11 believe.

12 THE CHAIRPERSON: Looks very similar,
13 minus the expansion of "jokes and trivia".

14 MS KULASZKA: I'm going to give you a
15 page so he can insert it in your binder. It should be
16 the last page of tab 3. We inadvertently left it out
17 of your binder.

18 I'm directing you to it. Do you
19 recognize the page?

20 MR. WARMAN: Not off the top of my
21 head, but I recognize certainly conferences which
22 appear to be parallel to the conferences that I
23 downloaded on the 11th of November, 2003.

24 MS KULASZKA: Do you remember the
25 rules?

1 "Our rules are simple: Keep
2 discussions civil, post only to
3 appropriate conferences, do not
4 advocate or suggest any activity
5 which is illegal under Canadian
6 law. If you have any complaints
7 or to report issues, please
8 e-mail Freedomsite web board
9 admin."

10 MR. WARMAN: I certainly don't, no.

11 THE CHAIRPERSON: Add it to your list
12 of things you will have to produce, Ms Kulaszka.

13 Are you keeping tabs? I asked Ms
14 Joyal to do that.

15 MS KULASZKA: I asked Mr. Lemire to
16 keep tabs.

17 THE CHAIRPERSON: Okay, somebody.
18 I'm advising you now, so if you would like you can ask
19 Ms Joyal. I don't know if they can provide that
20 information to the parties immediately or later on.

21 Given the number of documents we are
22 putting off to another witness, you should keep track
23 of these things.

24 MS KULASZKA: Looking at your
25 disclosure, or your exhibit, in HR-2, tab 20. This is

1 where the conferences are listed?

2 MR. WARMAN: Yes.

3 MS KULASZKA: How did you cut that
4 off?

5 MR. WARMAN: By printing -- by
6 hitting the "print" button on my computer.

7 MS KULASZKA: And that was the only
8 thing you saw on your page?

9 MR. WARMAN: As I recall, yes.
10 Certainly it's the only thing that was printed off.

11 MS KULASZKA: Do you remember a
12 welcome page at all once you signed into the message
13 board?

14 MR. WARMAN: It's possible, but I
15 don't remember its content, if there was one.

16 MS KULASZKA: How did you get into
17 the message board?

18 MR. WARMAN: By clicking on the
19 message board from the Freedom site or by -- its
20 possible I may have -- if there was the possibility of
21 going to it directly. I may have bookmarked it.

22 MS KULASZKA: Could you be more
23 specific? Was it on the home page? Was there a link?

24 MR. WARMAN: Yes. If I turn to tab
25 19 of HR-2.

1 MS KULASZKA: "Ottawa Is Dangerous"?

2 MR. WARMAN: Yes. If you look at the
3 top left corner there, one of the links that is
4 provided is message board.

5 MS KULASZKA: Okay. Once you clicked
6 on that what happened?

7 MR. WARMAN: As I've indicated, I
8 can't recall exactly but I was taken to the message
9 board and was able to access the materials in question.

10 MS KULASZKA: Did you have to do
11 anything further to see the messages?

12 MR. WARMAN: I know I certainly did
13 not need to sign in to see them.

14 MS KULASZKA: Did you have to enter
15 as a guest?

16 MR. WARMAN: That's possible.

17 MS KULASZKA: What was the point of
18 conferences? Why was the message board divided into
19 conferences?

20 MR. WARMAN: I didn't make the
21 divisions on the conferences, but I would presume
22 because they were intended to divide up a variety of
23 topics.

24 MS KULASZKA: And which conference
25 was a primary interest to you?

1 MR. WARMAN: They were all of
2 interest to me. Well, excuse me.

3 MS KULASZKA: Singles?
4 Companionship?

5 MR. WARMAN: I did go there because
6 there were postings by I believe Mr. Harrison on that
7 one. Yes.

8 MS KULASZKA: What would be on
9 Freedomsite-Canada? What kind of messages were there?

10 MR. WARMAN: If I recall, it would
11 have been messages with regard to the actual
12 Freedomsite for discussion among people from Canada.

13 MS KULASZKA: What was the Zgram
14 mailing list?

15 MR. WARMAN: The Zgram was an
16 electronic newsletter put out by Mr. Zundel, although I
17 believe it also had a paper form as well.

18 MS KULASZKA: Then he signed all
19 those?

20 MR. WARMAN: I'm sorry, I don't
21 recall.

22 MS KULASZKA: What was the
23 Freedomsite mailing list?

24 MR. WARMAN: The Freedomsite mailing
25 list was an electronic sort of newsletter that you

1 could receive from the FreedomSite in relation to
2 material.

3 MS KULASZKA: Did you sign up for any
4 kind of mailing list on the FreedomSite?

5 MR. WARMAN: I believe I may have at
6 one point.

7 MS KULASZKA: How did you do that?

8 MR. WARMAN: I'm hypothesizing, but I
9 presume I provided an e-mail list.

10 MS KULASZKA: You did what?

11 MR. WARMAN: Provided an e-mail
12 address.

13 MS KULASZKA: What e-mail was that?

14 MR. WARMAN: I'm sorry, I don't
15 recall off the top of my head.

16 MS KULASZKA: But you would make up a
17 fake e-mail, something from Hot Mail, something like
18 that? You wouldn't use your personal e-mail.

19 MR. WARMAN: Not as in my personal --
20 the e-mail that I use for the most part, no.

21 MS KULASZKA: So you would disguise
22 your identity?

23 MR. WARMAN: Meaning would I provide
24 a pseudonym? Yes.

25 MS KULASZKA: What kind of pseudonym

1 would you provide?

2 MR. WARMAN: I've already indicated
3 that I can't recall.

4 MS KULASZKA: You never kept a
5 record?

6 MR. WARMAN: No. If I had, I would
7 have disclosed it.

8 MS KULASZKA: How long were you on
9 these mailing lists? Did you sign up with the Zgrams?

10 MR. WARMAN: The Zgrams, yes, I
11 believe as well.

12 MS KULASZKA: When did you sign up?

13 MR. WARMAN: I don't recall. Whether
14 I did it through the Freedom site or through the Zundel
15 site, I don't actually recall.

16 MS KULASZKA: Did you use your real
17 name to sign up for those Zgrams?

18 MR. WARMAN: No, I don't believe that
19 I did.

20 MS KULASZKA: When did you sign up
21 for the Freedom site mailing list?

22 MR. WARMAN: Again, I don't recall.

23 MS KULASZKA: Would you say you would
24 have it for years?

25 MR. WARMAN: No. Well, again, I

1 don't recall so it's impossible for me to say. I have
2 no record of it. If I did, I would have given it.

3 Sorry, just to be sure that I'm
4 absolutely correct. There may be FreedomSite mailing
5 list materials that are in the possession of my counsel
6 in a defamation suit against Mr. Fromm, and I don't
7 remember off the top of my head but they may in fact be
8 there. If they were related to material that Mr. Fromm
9 stated on the -- as part of the FreedomSite
10 newsletters.

11 MS KULASZKA: Did you disclose that
12 to us?

13 MR. WARMAN: No, because you just
14 reminded me of it now.

15 MS KULASZKA: Maybe you could
16 disclose that to us.

17 MR. WARMAN: I could make appropriate
18 inquiries.

19 MR. VIGNA: Just repeat what's being
20 asked. I didn't quite get it fully. It's an e-mail
21 that was used, is that what you said, Ms Kulaszka?

22 MS KULASZKA: I think Mr. Warman can
23 explain. He signs up to a FreedomSite mailing list.
24 He gets e-mails from the FreedomSite.

25 THE CHAIRPERSON: Mr. Warman, you are

1 saying some of this information may be in material that
2 you have provided in another matter to your lawyer?

3 MR. WARMAN: Yes.

4 THE CHAIRPERSON: And you will make
5 some inquiries with your lawyer.

6 MR. WARMAN: I will, yes. Now --
7 yes.

8 MS KULASZKA: Did you ever sign up a
9 user account at the message board?

10 MR. WARMAN: No, I don't believe I
11 did.

12 THE CHAIRPERSON: I want to be clear
13 I understand that. Did he sign up a user account?

14 MS KULASZKA: A user account at the
15 message board.

16 THE CHAIRPERSON: That would enable
17 you to participate in the messaging. Is that what that
18 would do?

19 MR. WARMAN: Yes. No, I didn't need
20 to. I could access everything that I needed to as a
21 guest.

22 THE CHAIRPERSON: As a guest, so only
23 to view. But you did not sign up in order to add
24 material to it?

25 MR. WARMAN: No, I did not.

1 MS KULASZKA: If you could go to tab
2 3, the respondent's binder. Three pages from the back.
3 Do you recognize this user account called Lucy?

4 MR. WARMAN: Sorry, I stand
5 corrected. Yes, I do. That is an e-mail address that
6 I used.

7 MS KULASZKA: When did you use it?

8 MR. WARMAN: It indicates on
9 Saturday, November 15th, 2003, at 1:03 p.m., and on
10 Saturday November, 15th, 2003 at 3:03 p.m.

11 MS KULASZKA: You made two log-ins?

12 MR. WARMAN: That's what it states
13 here.

14 MS KULASZKA: Why do you use the name
15 Lucy?

16 MR. WARMAN: Well, it's taken off of
17 a French resistance fighter whose name was Lucie
18 Aubrac.

19 MS KULASZKA: So this is a new user,
20 correct? You signed in as a new user with this
21 profile; is that correct?

22 MR. WARMAN: Well, yes.

23 MS KULASZKA: Could I produce this
24 document?

25 THE CHAIRPERSON: Yes. So because

1 your tabs are large, we will do this: We will note
2 individual documents.

3 MS KULASZKA: Mr. Warman, can you go
4 to the next page. Another user profile, "90sAREover".
5 Did you sign in as a new user, you are using that
6 handle?

7 MR. WARMAN: No, I did not.

8 MS KULASZKA: Did you ever use that
9 e-mail?

10 MR. WARMAN: No, I did not.

11 THE CHAIRPERSON: So I will treat
12 this as produced?

13 MS KULASZKA: No. It's my
14 understanding tab 11 of HR-2 is not being relied upon;
15 is that correct? I was wondering if Mr. Vigna could --

16 THE CHAIRPERSON: It's not produced.

17 MS KULASZKA: Okay.

18 THE CHAIRPERSON: Unless somebody
19 introduces it at some later point, it's going to be
20 removed from my binder.

21 I would like the complainant and the
22 Commission to be clear if they intend to enter it at a
23 later point, thereby enabling the respondent to know
24 whether --

25 MR. VIGNA: I don't have any other

1 witnesses to enter it. I didn't enter it for purposes
2 of repetition, but it could also be entered by my view
3 by the complainant.

4 THE CHAIRPERSON: Well, the
5 complainant, he's right here.

6 MR. WARMAN: What tab is that?

7 THE CHAIRPERSON: I recall you making
8 a statement that you had no intention of filing this.

9 MR. VIGNA: I skipped it, simply for
10 redundancy. Tab 11, you have it in the --

11 MR. WARMAN: I do. It's not my
12 intention to rely on it.

13 THE CHAIRPERSON: So it's not being
14 relied upon. The complainant says he will not rely
15 upon it. The Commission?

16 MR. VIGNA: I won't rely on it.

17 THE CHAIRPERSON: Will not rely upon
18 it.

19 MS KULASZKA: Is it going to be
20 removed?

21 THE CHAIRPERSON: Ultimately, I'm
22 trying to avoid doing that. We did it before because
23 there was some documents that were superfluous. I
24 don't want to get into doing this every time.

25 MS KULASZKA: I wonder if we could

1 end at that point?

2 THE CHAIRPERSON: That's fine. We've
3 lost some time during the day. I want the fact case to
4 be done by next week. So that was the intention.

5 MS KULASZKA: Could we start at 9:30?

6 THE CHAIRPERSON: Tomorrow? I have
7 no objection. Does anyone else?

8 MR. VIGNA: I want to consult on this
9 timing issue. I want to consult because we're --

10 MS KULASZKA: Mr. Lemire has advised
11 me that 9:30 was no good for him. Maybe I would
12 retract that.

13 THE CHAIRPERSON: All right. But you
14 know, I'm going to hold everybody to this time frame.
15 I did accommodate the parties, and I guess particularly
16 you, Ms Kulaszka. I gave you some time to prepare. We
17 lost two very good hours yesterday for that. And then
18 we had a bit of fits and starts today at lunch hour, a
19 little after lunch hour.

20 This is a good time to break, I'll
21 agree, but I don't want us to fall behind. So what do
22 you think, Ms Kulaszka?

23 MS KULASZKA: I think we'll be okay.

24 THE CHAIRPERSON: In a way I'm going
25 to ask you to really finish up with the

1 cross-examination tomorrow, and was hoping -- you've
2 got how many witnesses that were fact-based?

3 MS KULASZKA: Three.

4 THE CHAIRPERSON: Is it three?

5 MS KULASZKA: It's three.

6 THE CHAIRPERSON: Okay. So if it's
7 three then we are going to have to do them next week.
8 I don't want to run into the next area. We've got time
9 constraints on all fronts.

10 It's so difficult to schedule dates
11 with so many parties. We've got these two weeks, I
12 want to utilize them. I don't intend to set our dates
13 other than for those exceptional circumstances we
14 talked about.

15 MR. VIGNA: 10:00 o'clock then?

16 THE CHAIRPERSON: I'm told 10:00 is
17 the preferred time. I'm trying to target 9:30 for when
18 we go to Mississauga next month, or in three weeks. My
19 understanding was without knowing any details, that the
20 respondent lives in that direction.

21 MS KULASZKA: I think 9:30 would be
22 appropriate then, because a lot of these witnesses
23 really want to get -- at least my witnesses want to get
24 started early.

25 THE CHAIRPERSON: Well, I did the

1 accomodation this week, although as I say we sort of
2 shifted things. We were running sometimes longer than
3 we normally run by going to 5:00, five minutes after
4 5:00.

5 But when we come back in the second
6 round, we'll try 9:30 target time, normal hearing
7 times.

8 MR. WARMAN: Mr. Chair, I just want
9 to make sure that it's clear on the record that the
10 questions in relation to this page entitled
11 "90sAREover" --

12 THE CHAIRPERSON: Yes.

13 MR. WARMAN: That I consider them to
14 have been irrelevant to the materials that are pursuant
15 to the complaint and going solely to the question of
16 bad character evidence.

17 For the record, I just want to make
18 sure that's clear.

19 THE CHAIRPERSON: I'm not quite sure
20 I understood your clarification. I'm sorry. Repeat
21 yourself.

22 MR. WARMAN: Because what the
23 respondents are attempting to state is that there is a
24 certain posting made by an individual using the
25 pseudonym that is not the subject of either the case of

1 the Commission or myself, and that, therefore, it is
2 irrelevant to the matters that are before the Tribunal
3 and that on that basis the only relevance is as a
4 question relating to bad character of the complainant,
5 ergo, me.

6 So just for the record, I want to
7 make absolutely clear.

8 THE CHAIRPERSON: Okay, you've made
9 your point. I had totally ignored that entire
10 document, as far as I'm concerned. It's not produced.
11 It's not there. And you say it's not an e-mail address
12 that's related to you. End of story as far as I'm
13 concerned.

14 MR. WARMAN: I solely wish to make
15 sure that that is on the record.

16 THE CHAIRPERSON: We will withdraw
17 this document unless it's proven for some other reason.

18 MS KULASZKA: No. He didn't
19 recognize it so it's not produced.

20 I would ask --

21 THE CHAIRPERSON: I did overhear
22 this, so everyone heard it. It is your intention
23 perhaps to bring -- to have Mr. Klatt produce that
24 document?

25 MS KULASZKA: Correct. I would like

1 to ask Mr. Warman's position then on the Rogers cable
2 evidence, given his position that he just stated.

3 MR. WARMAN: I will be making
4 objections to any further attempt to introduce any
5 evidence in regard to this material, and I will reserve
6 simply the right to make --

7 THE CHAIRPERSON: I hear what you are
8 saying, but I have no understanding what you are
9 saying, either of you. I don't know where you are
10 taking all this --

11 MR. WARMAN: I will -- perhaps it's
12 easiest if I will make it clear at the point of my
13 objection. But I have put counsel on notice and it's
14 on the record.

15 THE CHAIRPERSON: You know what? As
16 long as you understand each other, that's fine. I
17 don't know what's going on.

18 MS KULASZKA: Would you like the
19 explanation?

20 MR. LEMIRE: I don't know if it's
21 going to help me.

22 MS KULASZKA: Maybe we should put it
23 on the record, what we're talking about.

24 THE CHAIRPERSON: Go ahead.

25 MS KULASZKA: Up until this morning

1 the entire FreedomSite message board was part -- was
2 the case for the Commission and Mr. Warman. Then --

3 MR. WARMAN: No, in fact -- sorry.
4 I'll explain after.

5 THE CHAIRPERSON: The case is the
6 evidence. Arguments thereafter. That's what the case
7 is. I have books of exhibits in front of me and that's
8 the written evidence and I have a CD-ROM. That's the
9 evidence. Okay.

10 MS KULASZKA: On that basis, we
11 applied for a subpoena to Rogers.

12 THE CHAIRPERSON: Right. I think I
13 approved that. I didn't know where it was going
14 exactly.

15 MS KULASZKA: And that pertains to
16 who wrote a message which Mr. Lemire alleges Mr. Warman
17 wrote on the message board. They have now restricted
18 their case very severely to exactly what's before you,
19 and so that posting is no -- their position is that
20 that posting is no longer part of the case. That's
21 what is going on here.

22 THE CHAIRPERSON: Okay.

23 MS KULASZKA: So Mr. Warman made the
24 statement that posting went to good character, doesn't
25 go to the case. And I asked if he could clarify his

1 position on the Rogers evidence, and he is going to
2 object to it. I think that is what's going to happen.

3 THE CHAIRPERSON: When this came
4 up -- I don't know how we dealt with it. Didn't it
5 come up a bit in some discussions on the case
6 management calls? There is some sort of a
7 constitutional argument being made that anyone can
8 access the website? Isn't that what you were sort of
9 alluding to?

10 MS KULASZKA: That's right. Anyone
11 with make up a false name, use an e-mail using a false
12 name, from Hot Mail, from anywhere, and post messages.

13 What has happened in this case is an
14 attempt, obviously, for the webmaster to be held
15 liable.

16 THE CHAIRPERSON: For material
17 that --

18 MS KULASZKA: He didn't write.

19 THE CHAIRPERSON: Okay. And the
20 suggestion was that at some point, and I guess you are
21 now pointing it's not been invoked by the Commission or
22 complainant, but the suggestion was at some point that
23 one of the items that was being alleged to be
24 discriminatory had been actually placed by the
25 complainant himself, that was the allegation.

1 MS KULASZKA: Right.

2 THE CHAIRPERSON: Now it's not
3 included in the list of examples that were given to me
4 of problematic material as per section 13.

5 MS KULASZKA: I suppose we can argue
6 it at the time.

7 THE CHAIRPERSON: That's where it's
8 going. Okay. Fine.

9 So we'll continue tomorrow at 10.

10 --- Adjourned at 5:00 p.m.

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16 I hereby certify the foregoing to be
17 the Canadian Human Rights Tribunal
18 hearing taken before me to the best
19 of my skill and ability on the 1st
20 day of February, 2007.

21

22

23

Sandra Brereton

24

Certified Shorthand Reporter

25

Registered Professional Reporter