

**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/
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HEARING HELD IN THE PARIS ROOM OF NOVOTEL HOTEL
3670 HURONTARIO STREET, MISSISSAUGA, ONTARIO
ON TUESDAY, FEBRUARY 20, 2007

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

Giacomo Vigna	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill Alicia Davies	For the Attorney General of Canada
Paul Fromm	For the Canadian Association for Free Expression
Douglas Christie	For the Canadian Free Speech League

TABLE OF CONTENTS / TABLES DES MATIÈRES

	PAGE
PREVIOUSLY SWORN: DR. KAREN MOCK	2264
Cross-examination by Mr. Christie	2264
Examination-in-chief by Mr. Vigna	2306

LIST OF EXHIBITS / PIÈCES JUSTICATIVES

NO.	DESCRIPTION	PAGE
R-5	Dr. Persinger's Report	2341

1 Toronto, Ontario

2 --- Upon resuming on Tuesday, February 20, 2007

3 at 9:10 a.m.

4 THE CHAIRPERSON: I will tell
5 everyone that overnight I had the opportunity to review
6 both reports of this witness and the report of Dr.
7 Persinger. I found it enlightening. I think it helps
8 me understand it a little better.

9 I know I haven't heard your
10 submissions on the point, Mr. Christie, but I think I
11 know where you're going with it. I must tell you,
12 having reviewed the material I have a better
13 understanding of what the Commission was trying to say
14 with the definition of her expertise.

15 I've seen the report. Perhaps I
16 think -- a poor choice of the last component of the
17 expertise, the line used perhaps mislead me into
18 thinking something different. Having seen the report,
19 I see where they were directing it.

20 Quite frankly -- look, I don't want
21 to waste a lot of time. We've been referring to Mohan.
22 If you intend to rely on Mohan, a lot in terms of the
23 arguments on the expertise -- we have to keep in mind
24 that Mohan is a criminal authority from the area of
25 criminal law. And while we do use Mohan occasionally

1 to -- in our proceedings, our guidance is derived
2 principally from the Canadian Human Rights Act itself.

3 And under section 50 sub (3)(c):

4 "The Tribunal may receive and
5 accept any evidence and other
6 information, whether on oath or
7 by affidavit or otherwise, that
8 the member or panel sees fit
9 whether or not that evidence or
10 information is or would be
11 admissible in a court of law."

12 Now, we regularly allow hearsay
13 evidence, even double hearsay evidence to be presented
14 before the Tribunal.

15 Now, in this case, having looked at
16 the material, what I see going on here -- I was sort of
17 reading through material and I had a sense of what was
18 going on. We had -- perhaps would you step out for a
19 moment, please?

20 The first report, as I saw it, seems
21 to be an overview of the effect of hate on individuals.
22 It's a lot of review of literature. It seems to go
23 back to what Mr. Fothergill had indicated at one point
24 during his argument. It's acceptable for an expert to
25 be able to review some of the literature in the area of

1 their expertise.

2 I think it's been quite established,
3 and I indicated this at the end of the long day
4 yesterday, but in my view this person is clearly an
5 expert in race relations and multiculturalism, I would
6 even say applied psychology, including psychology and
7 race relation, and certainly impact of hate propaganda
8 on victims.

9 Now, getting into the fine line of
10 what's crime and not crime. That's all part of what
11 you can do in the course of the cross-examination of
12 the witness on her evidence. Clearly, she means hate
13 in a broader sense. We are right now only at the point
14 of determining her expertise.

15 The last component, that's what's
16 troubled me, the phenomenon of hate propaganda on the
17 Internet. What was meant by that?

18 Well, with her -- I think comes out
19 in the second report which came in reply to Dr.
20 Persinger's report. And in that report she seems to
21 be -- with her knowledge of -- in the area of "hate and
22 hate propaganda" reviews a lot of the material,
23 including from the realm of applied psychology, to
24 address one by one the points raised by Dr. Persinger.

25 So I don't know if the Commission

1 wants to perhaps modify what they mean or explain what
2 they mean by phenomenon of hate propaganda on the
3 Internet. I see it as an analysis of -- I saw her
4 report as an analysis of consequences of hate through
5 various forms -- or hate literature. In any event,
6 these are my thoughts as I read through the material.

7 Mr. Christie, with that in mind, I'll
8 leave it to you to decide the course you would like to
9 follow at this point.

10 You know, this is -- it's not meant
11 to be a criminal court here. This is administrative
12 Tribunal. We function with rules that are more
13 flexible and it works both ways. I read Dr.
14 Persinger's report, and watch out for the glass houses
15 there because we are going to hear the same kind of
16 stuff that's going to be thrown in the other direction.
17 There's hardly one authority cited by that expert in
18 his report.

19 So I think the approach that I
20 followed from the first two weeks in this hearing until
21 now has been one of openness, one where we just get it
22 all out there and let it work its way.

23 At this point, three of the
24 components have been clearly established in my mind of
25 the expertise of this witness, and on the fourth I

1 think it's been just a question of how it's been set
2 out. Now I have a better understanding of what was
3 meant by that fourth component.

4 MR. CHRISTIE: First of all, we're
5 engaged here not in only an issue of the application of
6 the Act. We're here to determine the constitutional
7 validity of the enabling legislation. The courts have
8 endowed this Tribunal with the capacity and the duty at
9 first instance to hear the evidence relevant to that
10 issue. So its function is quite different than merely
11 applying the Act to the said facts, which determines
12 what is the appropriate remedy.

13 What occurs through you and in this
14 event is the determination of constitutional validity
15 of enabling legislation.

16 So, therefore, I question whether the
17 attitude should be that we simply disregard the level
18 of qualification necessary to speak about
19 constitutional issues. Because that's the purpose of
20 this evidence, is to address what is to be a section 1
21 justification, which Taylor considered, and I might say
22 Taylor considered on the Cohen Commission evidence
23 without any opportunity to cross-examine Cohen.

24 So we're here in a very interesting
25 situation. We're here for the first instance of the

1 real consideration of what is a pressing and subsistent
2 need. And, after all, that's a question of some
3 universal consequence. It's not just the application
4 of the Act to a specific set of facts.

5 So I raise the suggestion it's quite
6 legitimate to attack qualification at this point in a
7 somewhat more strenuous manner than what might occur if
8 all were we were doing is just determining the facts
9 and the opinions for a specific case.

10 So I had to address what I was given
11 on the issue of qualification. And that was this very
12 strange phrase, "the phenomenon of hate propaganda on
13 the Internet". After all these other first three, seem
14 really quite irrelevant, if I may, to --

15 THE CHAIRPERSON: No. My point is
16 this, because I really want to get the crux of this.
17 It appears to me that the third -- the last component
18 here of the four appears to relate to this very last
19 report that wasn't applied to Dr. Persinger. And I
20 don't read the report as being necessarily what the
21 last statement is there. It's drawing upon her
22 knowledge in the domain of "hate". I know some people
23 may take issue with that word.

24 She addresses Dr. Persinger's
25 comments, which are really more structured along the

1 issue of psychology and social psychology, the effect
2 on society as a whole. I don't see it as being any
3 detailed analysis of the Internet in the way both you
4 and I seem to have been thinking in our questioning
5 yesterday.

6 MR. CHRISTIE: Because we have to
7 address --

8 THE CHAIRPERSON: That's an open
9 discussion. Perhaps Mr. Vigna would like to refine
10 what he's trying --

11 MR. CHRISTIE: Before we go any
12 further, somebody should tell me what it is she's being
13 qualified to address. I've been dealing with what I
14 was told in writing and now I'm told maybe not. Let's
15 get that clear before we go any further.

16 THE CHAIRPERSON: I think it's clear.
17 I think we're going around in circles perhaps for
18 nothing. It would helpful perhaps if Mr. Vigna could
19 clarify what he means. I wasn't even sure what this
20 meant, this last statement, "the phenomenon of hate
21 propaganda on the Internet". So that's where both
22 Mr. Christie and I seem to have gotten stuck.

23 MR. CHRISTIE: Surely. Let me help
24 with what I understand is really quite relevant. And
25 maybe I'm wrong, but correct me if I'm wrong.

1 It seems to me that the effect of
2 hate propaganda on the Internet on society at large
3 surely is what's relevant a section 1 justification.
4 What else?

5 THE CHAIRPERSON: What she was doing
6 was she was addressing what Dr. Persinger said. So
7 what was Dr. Persinger --

8 MR. CHRISTIE: That doesn't matter.
9 If Dr. Persinger had said something -- whatever his
10 name is pronounced, however.

11 If Dr. Persinger and Dr. Mock are
12 both giving us a little academic dissertation on
13 something that's not relevant, then it shouldn't be
14 admitted. It's not helpful. We've had many
15 demonstrated examples of that throughout legal history.
16 And the Courts have taken the view in Mohan that we
17 don't engage in irrelevant academic discussions.

18 THE CHAIRPERSON: Well, the relevance
19 here is as you've described it; it's the impact on
20 society and individuals in society of hate propaganda,
21 whether -- in any manner but, in particular, the
22 Internet.

23 MR. CHRISTIE: And we are addressing
24 a new piece of legislation, so that sort of opens it up
25 a little bit. New by that I mean certainly modified

1 from Taylor. So what I would suggest is relevant.
2 What I was hoping to be enabled to know for sure is the
3 cause and effect of hate propoganda on the Internet.
4 That certainly is relevant.

5 Indeed, there is a challenge raised
6 by the respondent to the conclusions of the Cohen
7 report itself, which at no time to my knowledge
8 certainly in Taylor, was it ever challenged.

9 THE CHAIRPERSON: And that's a large
10 part of what that third report and what Dr. Persinger's
11 report is. You can see that debate going on between
12 the two experts, and I think she does have the
13 qualifications to address issues of hate in the large
14 sense. She's devoted most of her a career to that
15 domain.

16 MR. CHRISTIE: What I've heard so far
17 is she's devoted most of her career to the advocacy of
18 a particular position on that issue.

19 THE CHAIRPERSON: Advocacy is one
20 thing.

21 MR. CHRISTIE: Yes.

22 THE CHAIRPERSON: Just because she is
23 an advocate doesn't deny her the possibility to be an
24 expert.

25 MR. CHRISTIE: It doesn't deny the

1 possibility, but it denies the possibility usually of
2 being qualified as an expert for the benefit of the
3 court and to be given the right to express her
4 opinions.

5 THE CHAIRPERSON: I asked you to give
6 me an authority for that.

7 MR. CHRISTIE: I have it.
8 Impartiality is an indicia and an element of
9 reliability.

10 THE CHAIRPERSON: And that goes to
11 the --

12 MR. CHRISTIE: Qualified expert.

13 THE CHAIRPERSON: It certainly goes
14 to the weight to be given to the evidence of that
15 expert. In this realm, inevitably someone will have
16 points of view. Is it not the case in this area?

17 MR. CHRISTIE: Everybody has points
18 of view. We're all welcome to have them. But whether
19 we become court qualified experts after Mohan, it's
20 just not automatic. And I might say this Tribunal, and
21 in the very, I suppose, first instance of one of these
22 Internet cases, disqualified all the respondents'
23 experts.

24 THE CHAIRPERSON: I'm not bound by
25 the decisions of my --

1 MR. CHRISTIE: No. But I have to
2 confront the possibility that there is consistency.

3 THE CHAIRPERSON: Well, it's been
4 quite a while. There's been an evolution.

5 MR. CHRISTIE: Actually if there's
6 been an evolution, it seems to have gone the other way
7 because experts are not readily as qualified as they
8 once were.

9 THE CHAIRPERSON: The big reason
10 being, quite often all they do is provide us with their
11 views on the ultimate conclusion.

12 MR. CHRISTIE: That, too, is the
13 problem.

14 THE CHAIRPERSON: I don't see that
15 happening here with any of the experts.

16 MR. VIGNA: Mr. Chair, with respect
17 to point 4 where the wording is "the phenomenon of hate
18 propaganda on the Internet". As a matter of fact, it
19 is in relation to the response to Dr. Persinger. But
20 perhaps we can consider phrasing it differently.

21 It would be expert on the presence of
22 hate on the Internet and strategies for combatting hate
23 on the Internet. It could be --

24 THE CHAIRPERSON: Could you repeat
25 that, please.

1 MR. VIGNA: The presence of hate on
2 the Internet and strategies for combatting hate on the
3 Internet.

4 The way I had initially drafted it
5 was more broad than perhaps less detailed, but it was
6 in the thinking of the response of the Dr. Persinger
7 report.

8 THE CHAIRPERSON: As an aside, how is
9 the strategies for combatting hate on the Internet
10 relevant to this complaint?

11 MR. VIGNA: It's relevant to the
12 section 1 argument of the Charter. It's relevant to
13 see whether it's important to have legislative-only
14 strategies or combination of various strategies.
15 There's a section 1 evidence that's required to
16 rebuttal an attack on the Charter, and in that sense
17 it's relevant to the complaint because of the
18 constitutional issue.

19 THE CHAIRPERSON: So you're revising
20 your request to --

21 MR. VIGNA: For number 4.

22 THE CHAIRPERSON: -- item number 4 to
23 this. You know what? Look, I may have sent this thing
24 in all different directions. So perhaps instead of
25 going straight to argument, I should allow you to

1 proceed with your questioning, Mr. Christie, on that
2 basis, and let's do it in a more organized fashion,
3 with the knowledge now they have withdrawn their
4 original definition and amended it to this.

5 MR. CHRISTIE: Thank you.

6 THE CHAIRPERSON: So would somebody
7 recall the witness, please?

8 PREVIOUSLY SWORN: DR. KAREN MOCK

9 CROSS-EXAMINATION BY MR. CHRISTIE (Cont'd)

10 MR. CHRISTIE: Would you tell me if
11 there such a thing as a correlational study?

12 DR. MOCK: Sorry?

13 MR. CHRISTIE: Is there such a thing
14 as a correlational study?

15 DR. MOCK: There are studies in which
16 correlations are found between different variables. So
17 one might just call it that, although it wouldn't be an
18 official kind of a term. You might just call it a
19 study in which correlations were found.

20 MR. CHRISTIE: There's no such thing
21 as a correlational study then?

22 DR. MOCK: I've heard the term used.
23 I've probably used it myself.

24 MR. CHRISTIE: What does it mean?

25 DR. MOCK: It means that rather than

1 one variable causing another, or one phenomenon causing
2 another, there would be relationship between them. So
3 a positive correlation is one in which both
4 variables --

5 MR. CHRISTIE: Can move.

6 DR. MOCK: -- are high. Let's say,
7 you know, positive correlation between height and
8 weight. Okay. They're both high. They would go up
9 that way. There would be a negative correlation, I
10 don't know, between -- there was one study where they
11 were trying -- just for a joke someone showed how
12 people can make cause and effect when it isn't and said
13 there's a correlation between shoe size and church
14 attendance, a negative correlation between shoe size
15 and church attendance. And that means, as shoe size is
16 down church attendance is up. It's because the effect
17 or the actual underlying factor was gender.

18 So that's an example of correlation
19 as opposed to cause and effect.

20 MR. CHRISTIE: So there's a
21 difference between a correlational study and a cause
22 and effect study?

23 DR. MOCK: There's a difference
24 between a correlational finding and a finding of cause
25 and effect, yes.

1 MR. CHRISTIE: Can you prove
2 causation in a correlational or association analysis?

3 DR. MOCK: Not causation, not in the
4 absolute sense. But in common study and in the
5 scientific world, consistently when there is a
6 correlation that is evidence that there could
7 potentially be a greater evidence that there is a
8 causal factor involved.

9 MR. CHRISTIE: Potentially be, but
10 you don't prove probability by potentiality, do you?

11 DR. MOCK: No.

12 MR. CHRISTIE: You look for cause and
13 effect studies to prove probability?

14 DR. MOCK: No, not only because we
15 are looking at the likelihood of something occurring,
16 and if two variables are consistently in sync then the
17 likely of something happening when the other variable
18 is present is greater. So we can say there is a strong
19 positive correlation between. And that's enough
20 evidence to suggest that a finding of -- well, the fact
21 is that the only fact you've got is there is
22 consistently a strong positive correlation, therefore,
23 one would want to limit the factors that would lead to
24 that.

25 MR. CHRISTIE: Would a cause and

1 effect study do that?

2 DR. MOCK: Well, what it is, if you
3 are going to reject your null hypothesis,
4 so-to-speak --

5 MR. CHRISTIE: Would a cause and
6 effect study accomplish that?

7 DR. MOCK: Would an experiment --

8 MR. CHRISTIE: Would a cause and
9 effect --

10 THE CHAIRPERSON: I heard the
11 question. Let's hear her answer.

12 MR. CHRISTIE: She rephrases the
13 question.

14 THE CHAIRPERSON: It's her right.

15 MR. CHRISTIE: No, it's not her
16 right. If I phrase the question, she either says --

17 THE CHAIRPERSON: Maybe she will get
18 to her answer.

19 MR. CHRISTIE: Well, if she rephrases
20 it --

21 THE CHAIRPERSON: You are making a
22 good attempt at a leading question to get one answer.
23 Let's see how the answer comes out.

24 DR. MOCK: It's hard for me to answer
25 some questions --

1 THE CHAIRPERSON: I'm tired of
2 hearing the interruptions. Answer his question. Would
3 a cause and effect study --

4 DR. MOCK: What?

5 MR. CHRISTIE: Prove the correlation.

6 DR. MOCK: The cause and effect
7 doesn't prove a correlation. They are two different
8 phenomena. But if X causes Y, then that can in fact be
9 proved if you use certain experimental principles, and
10 prove your effect to a significant level of finding.

11 So, yes, you could prove that X
12 causes Y if you have a controlled enough study and you
13 can replicate the findings over and over again. That's
14 accepted scientific principal.

15 MR. CHRISTIE: Have you done that?

16 DR. MOCK: In days gone by with other
17 phenomenon, yes.

18 MR. CHRISTIE: With this phenomenon,
19 that is, the presence of hate on the Internet and
20 strategies for combatting hate on the Internet, have
21 you done that?

22 DR. MOCK: Done what?

23 MR. CHRISTIE: I thought we were just
24 discussing a cause and effect and effect study?

25 DR. MOCK: No, I have not.

1 MR. CHRISTIE: Is it true all of your
2 studies and all of your references and your opinions
3 are correlational, or otherwise known as association
4 studies, and not experimental studies? Is that true?

5 DR. MOCK: It is true that they are
6 not experimental studies. People would not
7 characterize them as correlational studies either.

8 MR. CHRISTIE: Which of your
9 references are not correlational studies?

10 DR. MOCK: References where? In my
11 CV or in the articles that I've provided with extensive
12 footnotes?

13 MR. CHRISTIE: In your research and
14 your study of the relationship between hate propaganda
15 on the Internet and any effect it might have, any
16 opinions you've expressed in that regard or want to
17 express here, can you give me any of those opinions
18 that are not based on correlational or association
19 studies?

20 DR. MOCK: My opinions -- they are
21 based on my extensive study of the material. Have I
22 done an experiment to --

23 MR. CHRISTIE: No, that's not my
24 question. You've rephrased my question again. I'll
25 make my question very clear and if you don't understand

1 it I would ask you to ask me to clarify it.

2 Can you show me any of the opinions
3 you expressed in any of your reports that is not based
4 on correlational or association studies?

5 DR. MOCK: Yes. Your question, as I
6 understood it, he was asking in any of my reports.

7 THE CHAIRPERSON: The two reports.

8 DR. MOCK: Are my opinions on
9 non-correlational studies, and I would say yes.

10 MR. CHRISTIE: What?

11 DR. MOCK: I'm perhaps challenged
12 here I was looking at my studies and my CVs. But if it
13 includes a careful examination of quality controlled
14 studies that others have done --

15 MR. CHRISTIE: Maybe my question is
16 not clear.

17 DR. MOCK: -- footnotes to the
18 reports? Are we dealing with the reports now, just for
19 clarification?

20 THE CHAIRPERSON: My understanding of
21 the question is that with regard to the two reports
22 that you have filed here, one from 2006 and one from
23 February 2007, right?

24 MR. CHRISTIE: Yes.

25 THE CHAIRPERSON: Are there any

1 studies that are not correlational or that are
2 correlational?

3 MR. CHRISTIE: Any opinions you seek
4 to express here. Not studies.

5 THE CHAIRPERSON: I thought you were
6 talking about studies that are referenced therein?

7 MR. CHRISTIE: No, I'm asking for any
8 reference to any of her opinion that is not based on
9 correlational studies.

10 DR. MOCK: And I will have to review
11 that now to examine my report again. Look at the
12 footnotes and cite for you which ones are based, for
13 example, in the second report on the impact of the
14 receipt of hate speech and how that impacts trauma and
15 the extensive case studies that have been done and the
16 experiments and quality controlled studies. I have
17 referenced those.

18 I would need some time now to look at
19 my report and look to the footnotes to see which ones,
20 and I would be happy to -- and I have some of them
21 appended as well.

22 MR. CHRISTIE: Have you done --

23 DR. MOCK: So there are several that
24 I've used that are done on other people's correlational
25 studies and well-run case studies as well as

1 experimental research, and there are several that are
2 cited.

3 MS KULASZKA: I would ask -- I would
4 be very interested in her listing those. Just before
5 we go on, if I could just --

6 MR. CHRISTIE: If you would, we'll
7 ask you to list what ones are not correlational studies
8 but are really experimental studies.

9 THE CHAIRPERSON: We're looking
10 principally at the second report or both?

11 MR. CHRISTIE: I don't know. I'm not
12 the expert.

13 THE CHAIRPERSON: The question is
14 relating to both.

15 MR. CHRISTIE: Yes, it relates to
16 both. No question it relates to both.

17 DR. MOCK: I would have to say that
18 most of them are highly significant correlations that
19 have been found which make them certainly significant
20 findings, and nonetheless valid than if the
21 experiments, if --

22 MR. CHRISTIE: I didn't ask you for
23 your opinion. I asked a specific question.
24 Specifically, which of the studies upon which you rely,
25 or any of your opinions, are not correlational but are

1 actually experimental studies? And I'm sticking with
2 that question. Please answer that. As to what of your
3 references are experimental studies?

4 DR. MOCK: The only ones I would have
5 referred to in the first report, there were none. In
6 the --

7 MR. CHRISTIE: Just let me get this
8 down. The first report there are no experimental
9 studies, correct?

10 DR. MOCK: No, I didn't say -- well,
11 okay. If you were using the term -- no, there are no
12 specific experimental studies where purposely the
13 behavior was -- the variable was manipulated, no.

14 And in the second one the body of
15 work that I referred to on punishment from the
16 behaviourist era where one could actually control how
17 much shock was given, whatever, would be experimental.
18 But none of the --

19 MR. CHRISTIE: Where was --

20 THE CHAIRPERSON: Let her finish.

21 MR. CHRISTIE: I need to know where
22 you are referring to in your second report? What
23 study -- is it in a footnote or in an opinion or a test
24 you've done?

25 DR. MOCK: Well, remember the

1 second -- if I might.

2 THE CHAIRPERSON: Please finish.

3 Don't interrupt again, please. Go ahead.

4 DR. MOCK: Thank you. This second
5 report, the aspect of it was I was to have commented on
6 Professor Persinger's report. And as there were no
7 references in his. I did not know how to evaluate some
8 of the pieces that he might have been looking at.

9 So what I did, I did not specifically
10 go after a specific body of research on experimental
11 punishment and so on. So I allude to on page 2:

12 "The research on generalization
13 of aversive stimuli appear to
14 stem from early animal and
15 pigeon research by Skinner and
16 other behaviorists."

17 That early work on punishment where
18 you would actually control the aversive stimulus and
19 measure the response would be experimental research.
20 And the reason that there is no -- of what Mr. Christie
21 is calling experimental research, is that it would be
22 unethical in research practices, for example, to
23 control or manipulate the amount of hate that someone
24 would have to watch on the Internet and then see how
25 their reaction or their stress level related to that.

1 So one wouldn't manipulate that
2 variable. So, therefore, one would examine the
3 correlation. And I have to review my own report to
4 show, for example, one of the studies on page 4.

5 MR. CHRISTIE: Is that an
6 experimental study on page 4?

7 DR. MOCK: Actually, there were
8 aspects of it that controlled because --

9 MR. CHRISTIE: Which one are we
10 talking about?

11 DR. MOCK: I'm talking about a couple
12 of studies. In fact, I do think I appended those to
13 the report and they're available. I think there were a
14 couple of ones I've highlighted.

15 MR. CHRISTIE: Tell me which ones?

16 DR. MOCK: Bryant-Davis and Ocampo,
17 "Incident-Based Trauma" --

18 MR. CHRISTIE: Okay. Is that --

19 DR. MOCK: Footnote number 7.

20 MR. CHRISTIE: Footnote number 7.

21 Let me be --

22 DR. MOCK: Beckman.

23 MR. CHRISTIE: Just slow down --

24 DR. MOCK: Hate speech --

25 MR. CHRISTIE: Let me be very

1 clear --

2 DR. MOCK: -- judgment and
3 psychological responses.

4 MR. CHRISTIE: You are going too fast
5 for me.

6 DR. MOCK: Sorry.

7 MR. CHRISTIE: Now, you are saying
8 footnote number 7, Bryant-Davis, Thema Ocampo, Racist
9 Based -- "Racist Incident-based Traumas". That you say
10 is an experimental study?

11 DR. MOCK: I need to review it, just
12 to see if this is the one meant. I'm afraid,
13 Mr. Chair, I haven't memorized the whole report and all
14 of the data, and I examined several studies in -- and
15 just added -- just included a couple of these as
16 examples.

17 MR. FOTHERGILL: While the witness
18 does that, I wonder if I could express a concern about
19 relevance along the lines as I did yesterday.

20 I think this line of questioning
21 might very well be appropriate in the course of
22 cross-examination on the merits and I can see we're
23 going to have a spirited argument about whether
24 correlation will allow us to infer anything about cause
25 and effect.

1 With respect, I don't think it really
2 helps us with the qualifications of the witness. She's
3 already explained that for ethical and other reasons
4 correlative studies are what you are likely to see and
5 it's simply open to the respondents to argue that
6 that's not good enough. But it doesn't really help us
7 whether the witness is qualified to give the opinion or
8 not. It's a ripe area for cross-examination on the
9 merits and for closing argument.

10 MR. CHRISTIE: I must say, I'm very
11 grateful to my learned friend for conceding we might
12 argue about this if qualification is allowed. But I'm
13 not here exercising my right to cross-examine for
14 academic reasons, but, rather because it's very
15 important to know whether this area of purported
16 sciences is, A, is novel science, B, a qualified expert
17 or, C, in any way admissible. Not just of whatever
18 weight it might be, but admissible as opinion evidence.
19 And that's a matter that's not concluded. We haven't
20 even had a right to either apply or debate the issue,
21 and I'm here just cross-examining.

22 So, unless there's a strenuous
23 argument that it's not proper cross-examination to test
24 this, I would appreciate my learned friend allowing me
25 to conduct what he would be allowed to conduct if the

1 shoe were on the other foot.

2 THE CHAIRPERSON: If what was on?

3 MR. CHRISTIE: If the shoe was on the
4 other foot.

5 THE CHAIRPERSON: If I would allow
6 the cross-examination. Repeat your last --

7 MR. CHRISTIE: I would like him to
8 allow me to cross-examine as I would allow him to
9 cross-examine if he were conducting a testing of the
10 qualification of an expert that I was tendering, as of
11 course he would be entitled to do.

12 THE CHAIRPERSON: But it does appear
13 to me that a lot of these questions relate more to the
14 quality of the opinion that is being expressed here.

15 MR. CHRISTIE: We have not yet argued
16 the point, and I've produced a large volume of
17 reference derived from McWilliams that demonstrates
18 this isn't a matter just of weight, it's a matter of
19 qualification.

20 MS KULASZKA: Could I just say
21 something here?

22 With respect to this particular
23 question. In answer to Mr. Fothergill, this is very
24 important for me. I think we are really, really
25 getting to the nitty-gritty. This has nothing to do

1 with qualifications or anything else. It has to do
2 with the proof that they have come up with regarding
3 the causation of hate with what happens to people, so
4 therefore whether it justifies the violation of free
5 speech.

6 So I would ask that you allow this
7 question and maybe Dr. Mock can take just a little time
8 to give us the actual studies that are
9 non-correlational because I want to make sure I can get
10 the copies, and that means tonight I get them and I can
11 give them to Dr. Persinger. It means tomorrow, during
12 cross-examination we can have them for you. And so
13 it's very important that we really get these crucial
14 studies.

15 THE CHAIRPERSON: So you want this
16 more as part of disclosure to prepare for the
17 cross-examination.

18 MS KULASZKA: Well, it helps the
19 Tribunal. It really helps all of us really get to the
20 issues.

21 THE CHAIRPERSON: You know, this line
22 of question is happening. I read Dr. Persinger's
23 report. The stuff that's going on here may affect the
24 ability to get Dr. Persinger in to testify as well.

25 MR. CHRISTIE: Maybe nobody's

1 qualified to give us opinions --

2 THE CHAIRPERSON: He's not?

3 MR. CHRISTIE: I said maybe nobody is
4 qualified.

5 THE CHAIRPERSON: Maybe nobody is. I
6 don't remember seeing any experimental studies or
7 correlational studies in anything Dr. Persinger wrote.
8 So either we don't get anything in or we get it all in.
9 It's up to you.

10 MR. VIGNA: Mr. Chair, I would like
11 to make a comment on the practical aspect of things.

12 We had originally agreed that Dr.
13 Mock would testify before Dr. Persinger for practical
14 reasons.

15 THE CHAIRPERSON: Right.

16 MR. VIGNA: But we're now being
17 challenged on the report that Dr. Mock made on Dr.
18 Persinger. And if you noted on the Dr. Persinger
19 report there's not one single reference and now --

20 THE CHAIRPERSON: Not a one.

21 MR. VIGNA: Not a one. We're blaming
22 Dr. Mock for not -- she had to guess, basically, what
23 studies were being referred to.

24 MR. CHRISTIE: This is argument.
25 It's got nothing to do with the validity of my

1 question.

2 THE CHAIRPERSON: You realize that
3 the reason we are proceeding in this manner -- and you
4 weren't here last time. The reason we're proceeding in
5 this manner was -- because for practical reasons.

6 It's entirely possible that the
7 respondent may not -- the Commission may not have even
8 led this witness depending on whether or not I allowed
9 Dr. Persinger to testify as an expert, at least on the
10 second report.

11 We haven't had Dr. Persinger. We
12 don't know if he'll be qualified as an expert. It's
13 complicated, isn't it?

14 MR. CHRISTIE: Of course. Everything
15 is complicated.

16 MS KULASZKA: This is really the
17 first time we are really getting to the nitty-gritty of
18 this, because when Taylor went to the Supreme Court
19 they went with little factums like this and virtually
20 nothing.

21 THE CHAIRPERSON: In reading the
22 decision in Taylor one wonders did they ever have -- is
23 the Cohen Committee Report in front of them formally in
24 evidence? I wonder.

25 MS KULASZKA: The Cohen Committee

1 Report already at that time is, how many years old? It
2 was almost 25 years old.

3 So, I mean no disrespect to Dr. Mock.
4 What I want -- I'm trying to get at the issues. What
5 are the articles? Are they correlational? Are they
6 cause and effect? Have they ever really done these
7 studies? It's kind of like suppressed memory system.

8 THE CHAIRPERSON: My sense is that
9 there are no studies one way or the other. Dr.
10 Persinger didn't cite a single study either.

11 MS KULASZKA: I mentioned that to
12 him. I said Dr. Mock has criticized you and he sent
13 eight articles which has been disclosed to the other
14 parties.

15 THE CHAIRPERSON: Why didn't he
16 reference them in his report initially?

17 MS KULASZKA: Everybody -- I said to
18 him we're lawyers, the Tribunal member is a lawyer and
19 they like to see articles. So he sent the articles. I
20 know.

21 MR. VIGNA: Mr. Chair?

22 THE CHAIRPERSON: It's getting messy.
23 I feel there should be another case management call in
24 order to resolve this.

25 MR. CHRISTIE: Because of the

1 revolution of things and the way they have happened, we
2 had initially accepted to Dr. Mock testify before Dr.
3 Persinger because -- to be practical and the timing.

4 However, at this stage looking at the
5 way things are headed, what I'm suggesting is Dr. Mock
6 testify on her first report, and as far as the second
7 report, she testify only after hearing Dr. Persinger,
8 because she's in the vacuum in terms of what reference
9 Dr. Persinger refers to.

10 She's being asked about imperical
11 studies, about the experimental studies that relate
12 mostly to Dr. Persinger, and there's not one reference
13 by Dr. Persinger in his report.

14 So if that's the case, what I'm going
15 to suggest Dr. Mock testify at least the initial report
16 first, and that we allow her to hear, like normally
17 would be in the case, the testimony of Dr. Persinger
18 and she testify on that aspect afterwards, particularly
19 that the burden of evidence is on constitutional issue,
20 I submit, on the respondent.

21 MR. CHRISTIE: Not correct, not
22 correct. Because in this case, the Supreme Court has
23 made clear that the initial burden, which was on the
24 applicant to challenge the constitution -- this has
25 already been met. There is no doubt this constitutes a

1 limit on freedom of expression. Then it falls on the
2 government to justify that limit under section 1.
3 That's where we're at. Let's not get confused.

4 MR. FOTHERGILL: Just to add to the
5 confusion. That's true of section 2(b). It's not true
6 of section 7.

7 MR. CHRISTIE: This is a section 2(b)
8 argument.

9 MR. FOTHERGILL: Exclusively?

10 MR. CHRISTIE: Primarily.

11 MR. FOTHERGILL: Thank you.

12 THE CHAIRPERSON: I'm not going to
13 get caught up in that part of the process. No, the way
14 this was going to proceed before the rest of you were
15 involved, but when Ms Kulaszka was here on her own, is
16 that she made a motion to dismiss the complaint back
17 that 2005, the fall 2005, on the basis of
18 constitutional challenge.

19 Initially, we were going to proceed
20 just that way as a preliminary motion. We decided to
21 throw it into the hearing as a method to get to all the
22 evidence. But it's still Ms Kulaszka's motion we're
23 dealing with here. That's how we addressed it back
24 then before any of the intervenors were involved.

25 Now, Ms Kulaszka, you had something

1 to say?

2 MS KULASZKA: Well, this is my
3 position. This is the witness, really the primary
4 witness, that the government is putting forward. I
5 mean, as far as I can see, Professor Tsesis hasn't done
6 anything either. He's someone else who is an academic.

7 She's their primary witness and Dr.
8 Persinger is the primary witness and I think she should
9 reveal right now the types of studies these are. Are
10 they correlational? Are they anecdotal? Are they
11 cause and effect? And the same can be done with Dr.
12 Persinger when he's here, and if Dr. Mock needs to come
13 back, that would be fine.

14 THE CHAIRPERSON: Which brings me to
15 the point. And I'm going to address my comments to
16 you, Ms Kulaszka, because you represent Mr. Lemire, the
17 respondent, in this file. You want Dr. Persinger's
18 evidence in front of you, don't you?

19 MS KULASZKA: Oh, definitely, but I
20 wasn't the one who -- he wouldn't have normally gone
21 first.

22 THE CHAIRPERSON: That's right.

23 MS KULASZKA: But Mr. Vigna wanted
24 Dr. Mock to go first.

25 THE CHAIRPERSON: I thought she was

1 only available on certain dates.

2 MS KULASZKA: Dr. Mock was the first
3 one to make very clear she wanted these days. She was
4 the first one --

5 THE CHAIRPERSON: I'm not familiar
6 with that. That was between you. I was presented with
7 a situation that so-and-so is available such day and --

8 MS KULASZKA: Well, she claimed these
9 first three days because she's busy.

10 THE CHAIRPERSON: It's just getting
11 messy. In a way, I'm coming to the realization that
12 everyone proceeded when we were setting down the dates
13 for various experts, on the assumption that everyone
14 would be qualified as an expert and giving their
15 evidence. Why would Ms. Mock, Dr. Mock testify on some
16 of these issues if Dr. Persinger never gets qualified
17 or his evidence doesn't come in? That was the basis on
18 which we were functioning, was it not?

19 MS KULASZKA: Then I think the
20 solution is -- I think the solution is that I'm willing
21 to let her speak, but everything will go to weight then
22 and we can quit wasting time. But she should reveal
23 right now what are the studies, what type of studies
24 and --

25 MR. CHRISTIE: I don't agree with

1 that at all. I'm here because of a constitutional
2 challenge. This is not just --

3 THE CHAIRPERSON: Lemire.

4 MR. CHRISTIE: -- Lemire's interest.
5 It's a matter of national interest, of public interest
6 as to what limits this government and this country puts
7 on the Internet. All of a sudden because Ms Kulaszka
8 decides she wants to accept the qualifications of
9 someone to express an opinion, who I will be quite
10 prepared to argue is not qualified to do, we should
11 sweep aside whatever public interest there is and defer
12 to Mr. Lemire? I'm sorry --

13 MS KULASZKA: I understand. I
14 really -- she hasn't done any studies and she hasn't
15 referred really to any cause and effect studies.

16 THE CHAIRPERSON: I know there aren't
17 any. I'm aware of that, but that's not the expertise
18 that they are putting her forward on, expert on the
19 present of hate on the Internet.

20 MR. CHRISTIE: Sir, unless there is
21 some evidence from a qualified expert as to the cause
22 and effect that affects national interest here to such
23 a pressing and subsistent level that it justifies under
24 section 1, then all this is academic discussion and
25 unnecessary.

1 THE CHAIRPERSON: It may -- so what
2 you are saying is all of this discussion, all of these
3 experts are entirely irrelevant to the whole
4 discussion. Dr. Persinger's irrelevant, so is Dr.
5 Mock. I put their evidence on the same level right
6 now. To be honest with you, I've had the opportunity
7 to review both material and they are both arguing on
8 each side of the fence. One says one thing, one says
9 the other. I was going to hear them and see what
10 conclusions we could draw from that.

11 MR. CHRISTIE: The ultimate issue is
12 what do the courts of this country and perhaps the
13 Parliament of Canada think is a justifiable limit on
14 freedom of expression, and that is something upon which
15 you are just as qualified as anyone else and upon which
16 you would ultimately pronounce. And may I say that
17 obviously doesn't mean it's the end of the line for
18 anybody, but this is a matter that is not to be decided
19 by experts. We all --

20 THE CHAIRPERSON: It's a legal
21 question ultimately.

22 MR. CHRISTIE: We have to live in a
23 society where what limits are imposed are not imposed
24 by psychologists. That's a system we don't live under,
25 thankfully.

1 So I'm quite prepared to say if there
2 isn't a qualified expert, well then maybe it will fall
3 to the courts to be the arbiter of freedom of
4 expression. That's what you are here for. So it's a
5 great responsibility.

6 But I'm not here just to say because
7 it would be convenient we'll hear all these nice
8 people's opinions. They have their views, we'll hear
9 them all. Then why don't we involve everybody? Why
10 don't we bring in everybody who has an opinion on
11 freedom of speech? That would be the ultimate
12 expression of the ridiculous nature of allowing
13 unqualified opinion. Courts just don't do that. Where
14 do we stop?

15 MS KULASZKA: This is my ultimate
16 position. There's two issues here. Is there a cause
17 and effect between extreme statements and the results
18 that the Cohen Committee said, such as loss of
19 self-esteem?

20 And this was relied upon in Taylor.
21 And that's what Mr. Christie's question was really
22 getting to. Where are the studies? Are they cause and
23 effect? Are they correlational? Are they anecdotal?
24 Where exactly is this evidence and does it justify a
25 hate law, a law against hate, which of course is a

1 human emotion.

2 The second issue is what is the
3 effect of the Internet, a very dynamic and
4 participatory medium? And that's the second issue in
5 this case, the effect.

6 So is she an expert in hate? No, I
7 haven't heard anything from her that tells me she's an
8 expert in that. She seems unfamiliar with even the
9 articles she has cited. She's been sitting here. If
10 she wrote this report she should be able to sit here
11 and bang, bang, bang, show you the cause and effect
12 studies that have been done. And she's hesitating,
13 she's trying to find something and it's very important
14 that she point this out for her qualifications to give
15 this evidence. And so far, I don't hear anything that
16 makes her an expert in that area.

17 THE CHAIRPERSON: With regard to Dr.
18 Persinger? Does he have any of the expertise required
19 to provide any of this information either? Going to
20 Mr. Christie's --

21 MR. CHRISTIE: I'm not a doctor. I'm
22 not a judge either, never will be.

23 THE CHAIRPERSON: And you never make
24 cookies either.

25 MR. CHRISTIE: Occasionally.

1 THE CHAIRPERSON: Mr. Fromm, I'll
2 give you a chance in a second. Going to
3 Mr. Christie's --

4 MR. FROMM: As the discussion is
5 dealing with the testimony of the witness. It looks as
6 though it will be fairly sensitive, could the witness
7 be excluded?

8 THE CHAIRPERSON: Would you step
9 outside, please.

10 DR. MOCK: I was ready the answer the
11 other question already, maybe.

12 THE CHAIRPERSON: Maybe in the
13 meantime --

14 MR. CHRISTIE: I'm ready to start my
15 cross-exam.

16 THE CHAIRPERSON: Let me just finish
17 up with responding counsel.

18 MS KULASZKA: So my --

19 THE CHAIRPERSON: It goes both ways.

20 MS KULASZKA: Well, he's not here
21 right now and we haven't cross-examined him. So we're
22 dealing with Dr. Mock, and on the issue of hate -- no,
23 at this point I don't see that she has any
24 qualifications to say that yes, if someone says an
25 extreme statement to you of hate then you will have the

1 following psychological adverse effects. Have any
2 studies been done?

3 THE CHAIRPERSON: She cites a number
4 of studies in her second report.

5 MS KULASZKA: What kind of studies
6 are they?

7 THE CHAIRPERSON: They probably are
8 all relational -- correlational, sorry -- in the terms
9 used earlier. That's how far we've got in the
10 cross-examination.

11 MS KULASZKA: Then once -- there are
12 no experimental or cause and effect studies, then you
13 are into correlational studies, then I'm sure
14 Mr. Christie will continue the cross-examination and
15 ask how many of these are actually based on anecdotal
16 things? It all becomes this airy-fairy I feel bad,
17 maybe it was my lunch or maybe it was because someone
18 said I was a dirty pollack. I don't know which it was.
19 That's where we're at literally.

20 So I think that very important that
21 we do think she's qualified, and I don't think at this
22 point she's not qualified to say that hate causes the
23 effects of that Cohen Committee said.

24 THE CHAIRPERSON: Wait. She may be
25 qualified to review the material and bring it forth.

1 What you are telling me is the foundation upon which
2 these views have been made, that these studies have
3 been, made is all weak. It's correlational, or
4 anecdotal. There's nothing experimental demonstrating
5 this cause and effect. That's actually what really --
6 and it goes back to what your original position was,
7 that it goes to weight.

8 But on the other hand if it's all
9 junk science, if I can use the term, then it's all junk
10 science.

11 MS KULASZKA: That's an issue.
12 That's an issue. Is it all junk science?

13 MR. VIGNA: I've been hearing from
14 the left side constantly. Now it's time to hear the
15 right side.

16 MR. FOTHERGILL: May I say very
17 quickly, in fact I agree with Ms Kulaszka, at least, to
18 a penultimate position, which is that it would make
19 sense for the experts to be heard collectively. I
20 think it would be efficient. I think we could save
21 time.

22 I think we could review the
23 qualifications just to understand from perspective they
24 are bringing and then we could conduct the
25 cross-examination on the merits rather as Mr. Christie

1 is currently doing. And I don't agree with
2 Mr. Christie that it's a threshold issue of
3 admissibility. We know that in all section 1 evidence
4 social science evidence is frequently admissible.

5 I take his point that if it truly
6 were on the outer fringes of psychological study then
7 perhaps he would have a point.

8 But with respect, with respect, I
9 think it's clear these are established fields of
10 psychological inquiry and one can certainly challenge
11 the foundation for them, but I don't think it's
12 appropriate to do it on a preliminary basis like this.
13 I think we should concede -- and this is without
14 prejudice to changing the position depending on the
15 positions that my friends take, but certainly if Ms
16 Kulaszka and Mr. Christie, Mr. Fromm are prepared to
17 say that these people are qualified in their field, so
18 that we can at least hear what they have to say, and
19 leave it open to anybody to say but the fields
20 themselves don't assist you, or are not sufficiently
21 mature or scientific for you to place weight on it.

22 I think that's all quite legitimate.
23 But these people, all in their own way, do, I would
24 submit, have quite impressive CVs, qualifications.
25 They're recognized experts in their fields and we

1 should hear what they have to say and argue about
2 whether the information actually assists you, what
3 weight should be given to it, whether it's enough to
4 justify an infringement of the constitutional right.

5 But essentially we're going to end up
6 duplicating ourselves, because I can sense already that
7 at some point somebody is going to have to make an
8 application to you to apply the evidence heard on this
9 voir dire to the hearing as a whole, otherwise we are
10 going to have to hear this entire correlation of
11 experimental studies all over again.

12 It's clearly something that can
13 legitimately be explored. But in my submission, it
14 ought to be explored as part of the merits and not
15 qualification stage.

16 MR. CHRISTIE: That's on the
17 assumption if all this evidence goes in.

18 THE CHAIRPERSON: Mr. Christie, I
19 share the view of the counsel for the Attorney General
20 and the position that Ms Kulaszka took just before. I
21 think it's the most logical way for us to proceed for
22 numerous reasons, not just the narrow legal discussion
23 we're having but for the practical discussions.

24 This is a difficult animal to control
25 here, this hearing. We've had a difficult time. We've

1 managed to do so far. Quite frankly, we worked on the
2 understanding that the experts would get their evidence
3 in one way or another in the various orders that we set
4 out on the previous days' hearing. And I'm satisfied
5 already that this witness is qualified under the first
6 three headings and, quite frankly, after the fourth one
7 was amended, expert on the presence of hate on the
8 Internet, I think there's clear indication that she
9 is -- had the qualifications to review the studies in
10 order to present the report that she has in that
11 regard.

12 As for strategies for corroborating
13 hate on the Internet, quite frankly, I just do not see
14 how that is relevant.

15 MR. FOTHERGILL: I think it was
16 combatting hate on the Internet, not --

17 THE CHAIRPERSON: Strategies for
18 combatting hate on the Internet.

19 MR. FOTHERGILL: Yes. And that
20 relates to section 1, whether there is a rational
21 connection between the means chosen by Parliament and
22 meeting substantial objective.

23 THE CHAIRPERSON: Certainly she
24 demonstrated an experience on -- in both in her studies
25 and her practical work on developing such strategies so

1 I think she can be qualified for that, and that may
2 include the Internet. Then everything else will go for
3 the purposes discussed by Ms Kulaszka and
4 Mr. Fothergill.

5 Mr. Christie, I want to move on.
6 This is it.

7 MR. CHRISTIE: So, in effect, let the
8 record show you are terminating my cross-examination?

9 THE CHAIRPERSON: I am.

10 MR. CHRISTIE: You are ruling on
11 qualifications without argument.

12 THE CHAIRPERSON: This has not been
13 argument?

14 MR. CHRISTIE: No, I haven't referred
15 to the authorities.

16 THE CHAIRPERSON: Sir, no. I'm
17 ruling without argument, yes. Go on. I am because I
18 think it's time to move on. We've wasted way too much
19 time on this.

20 MR. CHRISTIE: Frankly, I didn't
21 think it was a waste of time because the qualifications
22 of people to express opinions on these issues should be
23 tested by appropriate legal principles, and apparently
24 I don't have any support in that view, but that's my
25 view.

1 THE CHAIRPERSON: Thank you. But I
2 think it's fair for the Commission to disclose those
3 articles that were requested for the purposes of -- had
4 they not been disclosed, Mr. Vigna?

5 MR. VIGNA: There's two articles, at
6 least, that were disclosed. If that's not the case I
7 hope --

8 MR. CHRISTIE: I'm not sure -- you
9 mean my last question should be answered or maybe I can
10 ask it some other time. I'm not sure what you mean.

11 THE CHAIRPERSON: Ms Kulaszka stood
12 up and said there were eight articles or something that
13 had not been disclosed. Would you elaborate, Ms
14 Kulaszka?

15 MS KULASZKA: His last question was
16 that she was to list the articles that were
17 non-correlational, or experimental. She said there
18 were none in the first report and she was starting to
19 go to the second report, and I think she should answer
20 those questions.

21 THE CHAIRPERSON: She should have or
22 should not have?

23 MS KULASZKA: She should. She should
24 answer that question. She should point them out
25 because I would like to get copies, and it really --

1 THE CHAIRPERSON: So these articles
2 have not been identified in the manner you can obtain
3 copies of?

4 MS KULASZKA: No. Mr. Christie asked
5 her to go to the footnotes of her --

6 THE CHAIRPERSON: Do you have those
7 articles already?

8 MS KULASZKA: Well, she was about to
9 identify which ones were actually cause and effect.

10 MR. VIGNA: The only articles I have
11 that have been sent are, "Hate Speech: Asian American
12 Students' Justice Judgment and Psychological
13 Responses", and "Racist Incident-based Trauma".

14 Now, the other footnoted articles
15 have not been provided but the identification has. If
16 there is specific need to have all of them --

17 THE CHAIRPERSON: So let's get an
18 answer to that question.

19 MR. VIGNA: Mr. Chair, I want to make
20 sure that the parties have these two articles I just
21 mentioned.

22 THE CHAIRPERSON: Mr. Fromm,
23 Mr. Christie, do you have copies of these articles?

24 MR. FOTHERGILL: I received them with
25 Ms Kulaszka's letter dated February 15th, 2007. They

1 were both attached to that together with the report in
2 response to Dr. Persinger.

3 MR. CHRISTIE: The article
4 Bryant-Davis, Thema Ocampo was not provided to me with
5 the copy of the report which came by fax on February
6 15th.

7 The second article that my friend
8 referred to, footnote 14, Boechmann & Leiw, Hate Speech
9 Asian American Students, likewise was not attached to
10 the fax.

11 I've got one handed to me now and I'm
12 now in receipt of the second.

13 THE CHAIRPERSON: Ms Kulaszka, do you
14 have them?

15 MS KULASZKA: I've got two articles,
16 "Racist Incident-Based Trauma" and "Hate Speech - Asian
17 American Students". We don't have the Bryant-Davis
18 article. Oh, yes, we do. Yes, that's it.

19 MR. CHRISTIE: So are they the two
20 articles -- and the witness hasn't answered this --

21 THE CHAIRPERSON: No, I'll get the
22 answer to that question when she comes in, sir. It
23 will just help the proceedings advance if everyone has
24 full information. That's way to go. Would somebody
25 please get the witness back?

1 First things first. With your
2 evidence with Mr. Vigna, there was a question asked of
3 you just before our last series of discussions with
4 regard to the studies that are experimental in nature.
5 Is that appropriate? Is that the question? Which of
6 the studies are experimental in nature as found
7 particularly now in your second report?

8 MR. CHRISTIE: My precise question,
9 sir, was which of the studies or opinions upon which
10 you rely were relational --

11 MS KULASZKA: Correlational.

12 MR. CHRISTIE: -- non-correlational
13 and which were experimental?

14 And the answer was to the first
15 report, there were no experimental studies. To the
16 second report, she was about to identify some that were
17 not correlational studies, and I wanted the
18 identification of non-correlational studies in her
19 second report.

20 DR. MOCK: The studies that I have
21 provided and on which I have based my conclusions are
22 very well designed account studies, correlational
23 studies in which some of the variables have been
24 experiment -- manipulated but in terms of social
25 psychology and behaviour -- with human subjects, there

1 is the significant correlations are -- especially in
2 areas of psychological impact such as trauma, stress,
3 they can be quantitatively measured and are considered
4 very valid scientific experimental conclusions,
5 although they are looking at highly significant
6 correlations, which in the last 40 years or more in
7 areas of social psychology, cognitive psychology,
8 especially any of these areas with human subjects is
9 considered very well designed controlled research. And
10 that's --

11 THE CHAIRPERSON: I understand
12 your --

13 DR. MOCK: -- I have no other way
14 of --

15 THE CHAIRPERSON: Still, the question
16 then -- the direct answer to the question asked by
17 Mr. Christie is, there are no "experimental" studies
18 referenced in the second report. It's not for any
19 greater depth. Don't read too much in the question.

20 DR. MOCK: I would say that
21 experiments were conducted and the findings showed
22 significant correlations. So yes, there are
23 experimental studies, but the findings show highly
24 significant correlations between stress, et cetera and
25 the impact of hate speech on --

1 THE CHAIRPERSON: As distinguished
2 from experimental studies as you defined it earlier,
3 ones where you have a control and so on, that's what
4 you explained earlier as --

5 DR. MOCK: Where subjects would be
6 randomly selected, for example. They did control it.
7 That's why I'm calling these experimental studies.

8 THE CHAIRPERSON: So which ones are
9 they? This is not for any in-depth questioning here.
10 I just want to know which studies were of that nature
11 for the purposes of disclosure.

12 DR. MOCK: Yes, for purposes of
13 disclosure the studies that I'm referring to are -- and
14 I've got to get back to my report to see the ones that
15 are highlighted, along with several others.

16 Bryant-Davis and Ocampo, "Racist
17 Incident-Based Trauma" and "Counselling Psychologist".
18 That's tab 7 -- footnote 7.

19 The various experimental studies
20 referred to by Boeckmann and Liew, and tab 14 --

21 THE CHAIRPERSON: You mean footnote
22 14?

23 DR. MOCK: Sorry, footnote 14.

24 MR. VIGNA: Those are two I just
25 provided.

1 THE CHAIRPERSON: Okay.

2 MS KULASZKA: Is footnote 14 an
3 article?

4 THE CHAIRPERSON: It's Boeckmann and
5 Liew?

6 DR. MOCK: Yes.

7 MS KULASZKA: And the next one?

8 DR. MOCK: Sorry?

9 MS KULASZKA: Was there one --

10 THE CHAIRPERSON: She has mentioned
11 Bryant-Davis, which was footnote 7, and footnote 14.
12 Do you see those at the end?

13 DR. MOCK: Yes. That's why I bolded
14 them. I appended those articles for the record just to
15 show there is a significant body of evidence. I didn't
16 want to put all the articles, but those two in
17 particular stood out as -- especially in the American
18 context. Because -- trying to show significantly by
19 manipulating the variables that there was significant
20 harm by hate speech. And I thought especially in the
21 American context it would be important for us to see
22 that because the issue of disproportionate harm and
23 effective psychologist measurements, which is
24 recognized as valid scientific research.

25 It's this use of the term scientific

1 that -- you know, I mean, I haven't done my courses in
2 scientific methodology and the nitty-gritty, but -- of
3 that kind of analysis for some time. But today the
4 body of literature is significant proving beyond --

5 THE CHAIRPERSON: Dr. Mock, the
6 question was merely for disclosure. They wanted to
7 know which of these articles are -- save a higher
8 scientific component.

9 DR. MOCK: 7 and 14, which is why I
10 had included them and why the report indicates that
11 they are appended. So they would have had those
12 articles.

13 THE CHAIRPERSON: Whereas, the
14 remainder of the articles in this second report are
15 more -- the term you used was correlational?

16 DR. MOCK: Some of them, or they
17 might have been based on significant case studies in a
18 medical context or in measuring post-traumatic stress
19 disorder as a result of hate and hate speech. But I
20 thought if I were only going to add two, I would give
21 those as opposed to submitting the entire body of
22 research.

23 THE CHAIRPERSON: I think we have the
24 answer. I'll leave the rest to cross-examination on
25 your part, Ms Kulaszka.

1 MS KULASZKA: Yes, she's listed them.

2 THE CHAIRPERSON: Dr. Mock, I'm going
3 to ask you to hear the questions that come from
4 Mr. Vigna and answer them directly. We've run a little
5 late on time now and it's important you answer the
6 questions.

7 DR. MOCK: Yes, sir, I understand.
8 I'm sorry.

9 THE CHAIRPERSON: So now you will be
10 testifying. Now we're entering the ordinary stage of
11 your evidence. We've passed the stage of the
12 qualifications.

13 DR. MOCK: Ah, okay.

14 MR. VIGNA: Just for your
15 information, Dr. Mock, in your absence you were
16 qualified as an expert. So we're going to the pit and
17 substance of your report.

18 EXAMINATION-IN-CHIEF BY MR. VIGNA

19 MR. VIGNA: So I would refer you to
20 your first report, tab 7, May 2006 and perhaps
21 everybody can look at it.

22 THE CHAIRPERSON: Tab what? 7?

23 MR. VIGNA: Tab 7. So I would like
24 you to look at the report globally for the purposes of
25 producing it, and then we'll be going into the contents

1 of the report. So look at the report and tell us if
2 you recognize the report.

3 DR. MOCK: Yes.

4 MR. VIGNA: And this is a report you
5 prepared in May 2006 for this case?

6 DR. MOCK: Yes.

7 MR. VIGNA: I would like to produce
8 it as an exhibit.

9 THE CHAIRPERSON: Yes.

10 MR. VIGNA: Now, Dr. Mock, as a
11 general introduction can you just tell us what the
12 purpose of this report was and what you undertook in
13 terms of analysis in explaining in this report as a
14 general introduction.

15 DR. MOCK: Yes. I wrote this to
16 review the background and current status of the
17 proliferation of hate on the internet; to look at how
18 in the last several years, for example, it had
19 increased exponentially; to look the origins of the
20 Canadian legislation and policies, in particular with a
21 view to seeing how they were in sync with values of
22 freedom and democracy of Canadian society, including
23 section 13 of the Human Rights Code -- Human Rights
24 Act, sorry.

25 MR. VIGNA: What tools did you use to

1 prepare this report globally? What kind of literature,
2 instruments, tools that you used to prepare your
3 report?

4 DR. MOCK: Well, I've, for the last
5 10, 12 years or so, been studying this phenomenon, and
6 I used body of literature. I've used reports, reports
7 produced by governments, examined various international
8 comments on the topic, and looking in particular of how
9 the Internet is being used to distribute hate
10 propaganda, looking at various studies and viewpoints
11 of how it crosses the line way beyond what we might
12 call freedom of speech and why it would be reasonable
13 to limit -- to limit that. Examining also the kind of
14 harm that people have reported is done by hate on the
15 Internet.

16 MR. VIGNA: Going to page 3, in terms
17 of how does hate attack the multicultural character of
18 Canada and Canadian society. Can you tell us a bit
19 more in reference to your report and where we find that
20 question answered in your report?

21 DR. MOCK: Well, in terms of the kind
22 of material that is found that promotes hatred and bias
23 and bigotry against, in particular, vulnerable groups,
24 what we find is especially because of its global reach
25 and the ease of use of the Internet, we find that

1 hateful material, material that actually promotes
2 contempt and that hatred against minority groups
3 dehumanizes them, puts up the grotesque cartoons, even
4 calls for violence threats, murder and so on.
5 Holocaust denial, spread of conspiracy theories,
6 various kinds of material that this medium is now the
7 medium of choice in which the most virulent forms of
8 hate propaganda and Holocaust denial are transmitted.

9 And so what we see is that now where
10 in the past, hate mongers might have distributed
11 pamphlets, or maybe had a meeting where 200 people
12 might be able to attend so could promote this kind of
13 hateful ideology against vulnerable groups, the
14 Internet has made that type of hate speech accessible
15 by people who otherwise never would have come in
16 contact with it.

17 It isn't just the same, old same old.
18 It's almost -- I guess it's -- David Matas called it a
19 whole new monster because of how easy it is with the
20 push of a button to reach millions of people and giving
21 hate mongers bigots, racists, people who are going to
22 dehumanize and advocate violence against people on the
23 basis of immutable characteristics, it's made that
24 available to millions and given those hate mongers an
25 influence that far outweighs their numbers in the

1 society.

2 So it really -- because there is
3 evidence that the number of hate sites in the last
4 several years has increased what you can say
5 exponentially. It creates that much more potential for
6 violence and what we would say disproportionate harm,
7 particularly in terms of those who receive it, not only
8 victims who then are impacted severely in terms of
9 their own identity, but also those who can be drawn
10 into hateful causes.

11 MR. VIGNA: A bit more on the issue
12 of multiculturalism. Can you tell us having worked in
13 the area for several years and studied different
14 literature in the area, how important multiculturalism
15 is and how messages of hate on the Internet --

16 MR. CHRISTIE: Can we deal with one
17 question at a time? The first question I object to.
18 How important multiculturalism is, is a political
19 question upon which I would like to make submissions,
20 or we don't like to have opinions. But Dr. Mock is no
21 more qualified to say how important multiculturalism is
22 than is anybody.

23 THE CHAIRPERSON: Did you see me
24 cringe when he asked the question? If you were
25 watching me then you would have to -- go ahead.

1 MR. VIGNA: I'll rephrase my question
2 then.

3 THE CHAIRPERSON: If I want to know
4 about multiculturalism I'll just look in the Charter.

5 MR. VIGNA: Can you tell us, Dr.
6 Mock, in terms of -- you mention about the Internet and
7 you didn't say the word recent, but is recent in terms
8 of history. How does it compare to other means of
9 communication that we've known traditionally before the
10 advent of Internet?

11 MR. CHRISTIE: Now Dr. Mock is being
12 asked to give opinions on the effectiveness of various
13 means of communication, and I haven't heard her being
14 qualified as an expert in communications, technology or
15 psychology or sociology for that matter. But this is a
16 problem. When an expert gets on the stand they ask
17 them any question they like, and on we go.

18 MR. VIGNA: Mr. Chair, it's a
19 question she's able to answer in terms of her
20 experience. She's testified about the fact the impact
21 that the Internet, which is pervasive and is something
22 that is common knowledge, to use the expression of my
23 distinguished colleague, common sense.

24 MR. CHRISTIE: Then if it is, then we
25 don't need experts.

1 MR. VIGNA: Mr. Chair, there's no
2 harm in asking a question on the impact this pervasive
3 tool has on society. She's an expert on societal
4 impacts, on psychological --

5 THE CHAIRPERSON: So repeat your
6 question to me.

7 MR. VIGNA: What is the impact of
8 hate on society taking into account the use of
9 Internet? How much does it affect society?

10 MR. CHRISTIE: How much does the
11 Internet affect society is an objection.

12 THE CHAIRPERSON: The use the hate on
13 the Internet on society. That's what I understood him
14 to say.

15 MR. CHRISTIE: How does the use of
16 hate affect society?

17 THE CHAIRPERSON: The use of --

18 MR. VIGNA: I'll refer to paragraph 2
19 in your report, Dr. Mock.

20 THE CHAIRPERSON: Paragraph 2?

21 MR. VIGNA: Page 3.

22 THE CHAIRPERSON: On page 2?

23 MR. VIGNA: Page 3.

24 THE CHAIRPERSON: When you refer to
25 page numbers -- okay. Are you sure the witness has

1 the same page numbers? Because yesterday we had
2 confusion about that.

3 MR. VIGNA: So page 3, paragraph 2.
4 Can you tell me about the global reach of the Internet
5 and how it's an effective tool for --

6 DR. MOCK: Yes. Well, the Internet
7 itself, it's a unique and highly effective tool for
8 promotion of anything, for promotion of human rights,
9 whatever.

10 It has -- the audiences that would
11 previously not be exposed or have access to certain
12 material now have very easy access, so when it comes to
13 promoting hatred on the Internet, exposing victims who
14 are vulnerable to it, which our laws and our policies
15 in our country have said we stand for the protection of
16 people to be free from harassment, to be free from
17 dehumanization, to be free from that kind of prejudice
18 and so on.

19 What we have here is a very efficient
20 and dangerous tool for promoting hatred against
21 identifiable minority groups, against vulnerable
22 groups, people whose rights are protected under the
23 Charter, you know, in the equality provisions, people
24 whose -- in keeping with the laws and the Multicultural
25 Act are entitled to have to live in this country.

1 MR. VIGNA: Paragraph 3 mentioned
2 David Matas and he makes certain statements about that,
3 as well as a certain individual by name Carmen later
4 on. Can you tell us about that?

5 DR. MOCK: Well, there is evidence
6 that, you know, as Carmen has indicated, that since
7 going on-line -- for example, the white Ayrans
8 resistance has had more exposure and their membership
9 is growing at a faster pace than previous hate mongers,
10 you know, had previously been able to achieve in the 20
11 years before.

12 We do have evidence from studying the
13 range of its reach that even though the
14 Multiculturalism Act and various other policies and
15 Acts have said that expression of hate should have no
16 place in Canadian society and that our commitment is to
17 diversity, to human rights, and that all Canadians
18 should live in equal dignity and have the right for
19 equal respect and dignity regardless of their ethnic,
20 racial and social differences. I'm quoting there from
21 the bolded quote there from a publication from Heritage
22 Canada Multiculturalism that --

23 MR. CHRISTIE: Can I ask for a
24 clarification of where she's referring to.

25 THE CHAIRPERSON: Right at the top.

1 MR. CHRISTIE: Of page?

2 THE CHAIRPERSON: 3.

3 MR. CHRISTIE: Thank you.

4 DR. MOCK: So in spite of all of
5 that, the Internet, as I have indicated, has allowed
6 with its far reach, oblivious to international borders.
7 But I'm focusing specifically on Canada, that material
8 prohibited by Canadian law flows freely and
9 unchallenged and is able to impact whoever receives it.

10 THE CHAIRPERSON: I'm going to
11 interrupt. Essentially, you answered that question in
12 the first sentence and you continued on saying the same
13 thing. I understand, but we really -- I would much
14 appreciate if you could just answer directly the
15 question of Mr. Vigna and we can move on.

16 MR. VIGNA: Middle page 4 of your
17 report you mention about the increase of hate and
18 Internet sites in your first paragraph. Can you tell
19 me about that phenomenon a little bit and from what
20 source you had gathered the comments you make or the
21 statements you make in paragraph 1 of page 4.

22 DR. MOCK: Well, the Simon
23 Wiesenthal, internationally and also locally, has been
24 monitoring and documenting the number of hate sites,
25 extremist sites, terrorist sites over the last -- well,

1 since the inception of the use of the Internet. And we
2 saw that from 1997 where they had documented about 600
3 of such hate sites, about 16 months later it had
4 already increased a hundred percent and by 18 months
5 there were 1400 sites, and most recently they released
6 one of their CD-ROMs that has the 206 (sic) data on
7 that, and they document over 6,000 hateful websites
8 that advocate violence and terror. It's all public
9 information, all readily available.

10 MR. VIGNA: You speak later and you
11 quote the paragraph here in bold. This comes from a
12 quote from --

13 DR. MOCK: From Don Black. Is that
14 the one?

15 MR. VIGNA: David Hoffman.

16 DR. MOCK: Yes. The one who invented
17 the Stormfront, put up the Stormfront page in 1995.
18 And he himself, and as I elaborate in my second report,
19 he described the Internet as a major breakthrough for
20 the movement where they could plant seeds for the
21 future.

22 And so at the time he described
23 himself as a white nationalist. But said hey, you
24 know, it's the Internet itself. And when I put here
25 today, that was in 1997. He says now I can link to

1 more 50 sites and extremist groups are encouraging
2 race-based and anti-government violence, and this was
3 the tool of choice and still is the tool of choice to
4 disseminate this kind of information and to try to
5 attract, in particular, young people but anyone who
6 will listen to their hateful comments.

7 MR. VIGNA: And that was on the same
8 page 4, you mention near the end, "According to
9 Hoffman", then he talks about David Duke.

10 Can you tell us what he's talking on
11 the last paragraph of page 4 where it starts, "With
12 according to Hoffman".

13 DR. MOCK: Yes. The Anti-Defamation
14 League is another organization that has done extensive
15 work in studying and documentation. And David Hoffman,
16 who was their webmaster at that time, focused on David
17 Duke's excitement that -- in fact again, as I
18 illustrate in my second report, he said, now I can take
19 my white nationalism, my calls for the white revolution
20 to the Internet to all four corners of the globe.

21 And so we began to see a
22 proliferation of hate sites from the Ku Klux Klan, from
23 the National neo-Nazi, National Alliance. There is
24 some evidence that the blueprint for the Oklahoma
25 Federal Building bombing was easily to be found in the

1 Turner Diaries that had been posted via the Internet
2 and some evidence that that in fact is where Timothy
3 McVeigh got that information.

4 So the music, you know, the racial
5 holy war kind of music calling for death by the sword
6 to all vile --

7 MR. FROMM: Dr. Mock is not being
8 qualified to discuss who may or may not have inspired
9 whoever did or did not blow up the Murrah building in
10 Oklahoma.

11 THE CHAIRPERSON: Rest assured,
12 Mr. Fromm, when I read comments like that I know it's
13 just hearsay. It doesn't -- obviously she's not in a
14 position to say that. The source for this seems to be
15 a third party in any event, David Hoffman, right, for
16 this information?

17 DR. MOCK: The book.

18 MR. FROMM: Having that on the record
19 is highly inflammatory, and yesterday did you rule that
20 a large paragraph of the second report would not be on
21 the record and -- that's essentially just being read
22 into the record.

23 THE CHAIRPERSON: Yes.

24 MS KULASZKA: I wonder if she is an
25 expert in beyond Canada? Have you recognized her

1 expertise to speak beyond Canada? I notice all these
2 websites are all American.

3 THE CHAIRPERSON: One of the websites
4 at issue in this file is American, too, right, the
5 message boards, Stormfront, was it not from the United
6 States?

7 MR. VIGNA: I think so.

8 MS KULASZKA: But she's not giving
9 testimony about the merits of the case.

10 THE CHAIRPERSON: No, no.

11 MR. FOTHERGILL: But she has been
12 recognized as an expert on the presence of hate on the
13 Internet, and I think it's common knowledge that the
14 Internet is in some respects --

15 THE CHAIRPERSON: Has no borders.

16 MR. FOTHERGILL: Thank you.

17 MR. CHRISTIE: I take it now the
18 answer to Ms Kulaszka's question is, yes, she is an
19 expert in the world and the United States and anywhere
20 else she wants to go.

21 MS KULASZKA: Yes, she's talking
22 about groups in the United States. It's a separate
23 culture. We are talking about Canada and Canadian
24 laws.

25 MR. CHRISTIE: This is turning into

1 parapsychology as opposed to psychology.

2 THE CHAIRPERSON: Make your
3 submissions at the end.

4 MR. CHRISTIE: Well, I would like to
5 object that really the problem with allowing this
6 evidence is so prejudicial. It has no probative value
7 and her opinions on various aspects of America and its
8 history is interesting and in a free and democratic
9 society we all would like to be able to attend meetings
10 where she might say such things, but this is supposed
11 to be a solemn inquiry into the --

12 THE CHAIRPERSON: It is a solemn
13 inquiry. Please, Mr. Christie, I've made my ruling.
14 Go ahead, continue with your questioning.

15 MR. VIGNA: On page 5, Dr. Mock, the
16 report, with respect, speaks for itself. We'll go to
17 the disproportionate harm and influence of the
18 Internet.

19 MR. FOTHERGILL: Can I take a page
20 from Mr. Christie's book and suggest perhaps a morning
21 break if we are changing subjects?

22 THE CHAIRPERSON: 10:40, okay, we'll
23 take our morning break now.

24 --- Recessed at 10:40 a.m.

25 --- Resumed at 10:57 a.m.

1 MR. VIGNA: Dr. Mock, for purposes of
2 brevity --

3 THE CHAIRPERSON: I'm sorry.
4 Mr. Fromm?

5 MR. FROMM: I was back not in a
6 timely fashion this morning. But we did have an
7 outstanding matter from yesterday, and that was an
8 update on Mr. Warman's situation.

9 MR. VIGNA: I didn't forget. I
10 called him last night and he called me back.
11 Unfortunately, I wasn't there when he called me. He
12 called me this morning and the line got disconnected.

13 I told him to be available for lunch
14 time, not here but on the phone. So I haven't actually
15 have a chance to talk to him. We had a bit of
16 communication problems. If you can just wait until
17 after lunch?

18 THE CHAIRPERSON: Put it off until
19 lunch. Thank you, sir.

20 MR. VIGNA: Dr. Mock, to continue
21 where we left off. Page 5 you mentioned
22 disproportionate harm and influence. I won't go
23 paragraph by paragraph, so I'll go theme by theme.

24 Can you tell us about what you speak
25 about in page 5 until page 6 on that topic of

1 disproportionate harm and influence?

2 DR. MOCK: Yes. It's because of the
3 profound impact on the victim and on -- even on the
4 whole community -- not just to the individual victim,
5 but the whole community and society that Canadian
6 Parliament and the legislators have singled out hate
7 crime and the promotion of hatred against identifiable
8 groups for special attention.

9 Now, I am going to go into that more
10 depth in my second report. But just as part of an
11 overview, it has been shown over and over again hate
12 crime and hate speech, hate -- the promotion of hatred
13 strikes at the very heart of an individual's personal
14 identity and the impact or the effect of the trauma --
15 for example, if it's a physical assault, you know, one
16 can heal from assault, but if it's hate motivated, if
17 there had been hate to be shown to be part of that, the
18 psychological impact lasts usually for the rest of a
19 person's life.

20 My experience over the last 30 years
21 has shown that even if they -- even if it's a racial
22 slur or something that attacks the identity of the
23 victim, that people remember that. If it happened when
24 they were a child in school, they remember it for the
25 rest of their lives. If they have read something that

1 degrades or demeans their personhood or their people.
2 And that's why there had been conclusions in the
3 literature that hate and the impact of it resembles no
4 other crime because it reaches beyond the immediate
5 victim or the victim's own community, but even damages
6 society itself.

7 So in my report I point out that what
8 legislators were trying to do in even crafting our
9 legislation that limits hate speech, that gives higher
10 sentencing, for example, for hate-motivated crime would
11 be to ensure there was minimal impairment of our rights
12 and freedoms but at the same time showing that the
13 obligation is also to protect the vulnerable.

14 Now, there is another aspect of the
15 disproportionality of harm. In other words, the harm
16 being even greater or heinous as has been said in the
17 courts when there is hatred behind it. When that hate
18 is proliferated via the Internet.

19 The Internet has -- you know, it's
20 been shown over and over again and undeniably
21 contributed to alliances among hate groups and hate
22 mongers who use it for recruitment, from promotional
23 purposes. There's evidence that individuals who may
24 otherwise be isolated, you know, in their basement with
25 their computer, have small cells, usually cells of

1 alienated youth who had been moved to commit violent or
2 hateful acts, even murder when they have been fed that
3 kind of hatred against marginalized or racialized
4 groups.

5 And with only a few hate mongers, as
6 I said, the technology gives access to millions of
7 people around the world.

8 I have been studying and following
9 this phenomenon since its inception and began writing
10 about it a full 10 years ago. There's no question
11 that, as has been said, and I go into this on page 7,
12 that in the Keegstra case the definition of hatred is
13 an emotion of intense and extreme nature that is
14 clearly associated with vilification or detestation.

15 Hatred thrives on insensitivity,
16 bigotry and destruction of both the target group and of
17 the values of our society. It is an emotion that, if
18 exercised against members of an identifiable group,
19 implies that those individuals are to be despised,
20 scorned, denied respect and made subject to
21 ill-treatment based on their group affiliation. Not
22 necessarily on what the person has ever done, but
23 simply their group affiliation.

24 And so the question, as I go on to
25 describe, the question of whether the Internet should

1 be regulated or not and whether Canadians should insist
2 that there is restriction and limitations put on free
3 speech in that medium, even though there are those that
4 claim -- and we know this to be true -- you know, some
5 attempts may be futile because one can attempt to
6 reinforce the law but with the technology a site can
7 pop up elsewhere but that's -- that at least will have
8 people go to some trouble.

9 Nevertheless, there have been various
10 national and international covenants and declarations
11 to balance -- most of which I think -- in fact all of
12 which Canada has become a signatory to.

13 So you've got our Charter of Rights
14 and Freedoms, you've got the Criminal Code --

15 MS KULASZKA: I would object to any
16 evidence about law. Dr. Mock has previously testified
17 she is not a lawyer, she has no expertise in law. I
18 mean, the Tribunal takes judicial notice of the law.
19 She doesn't need to give evidence about law.

20 THE CHAIRPERSON: True. Mr. Vigna,
21 and I'm asking the witness again. Your question was
22 about six minutes ago. Likely direct the answers to
23 the areas you want to cover and we would just jump
24 seven pages here, two pages. I don't know if that was
25 your intention.

1 MR. VIGNA: I'll just ask the
2 questions in relation to the report.

3 THE CHAIRPERSON: In relation to
4 report, in relation to expertise. That's a justifiable
5 response. All these matters of multiculturalism and
6 policy, that's not what she's hear to testify on.

7 MR. VIGNA: Dr. Mock, at page 7 you
8 were talking about the fact should we regulate or not,
9 and then you went on to talk about the different
10 legislative enactments. But independent of the
11 legislative enactments, can you tell us whether the
12 fact that the hate on the Internet is a phenomenon
13 which should be dealt with by legislator, by government
14 through laws, or should it be simply self-regulated.
15 Speak about that without going into the specific laws
16 that address that issue.

17 Is it important as a society that we
18 legislate on the matter?

19 DR. MOCK: In my view, and based on
20 my research, yes, it is. It's very important because
21 it sends very strong message to Canadians that hate and
22 the promotion of hatred against identifiable groups
23 will not be tolerated with the use of the law, because
24 if it's voluntary self-regulation you rely on people's
25 own opinions and biases of whether they are going to do

1 it or not. It would be ideal in the best of all
2 possible worlds that people would recognize other
3 people's rights and agree to enact codes of their own
4 of conduct on their sites and so on. But we cannot
5 only rely on that.

6 So it has been shown that with
7 effective legislation and effective implementation it
8 can stop the violence before it occurs, because there
9 is evidence of the connection between people being
10 provoked, being moved to or incited to violence with
11 words, when they see the words, when they are prompted
12 to do it.

13 So we need to -- in the interest of
14 public order and public safety, to stop the violence
15 and that connection between -- that strong correlation
16 between, if you will have it, which actually is a real
17 connection between the hatred and the violence.

18 Thirdly, because of our diverse
19 population, because it has been shown there are members
20 of our society, citizens, residents of Canada, who are
21 more vulnerable because of their minority status, their
22 religious status, what our laws need to do is show that
23 there will be a balance between everyone's fundamental
24 rights and freedoms and the prohibition of those --
25 against those who would counter their freedoms.

1 So we have said that -- and our laws
2 have said that Canadians are entitled to be free from
3 harassment, to be free from their human dignity and
4 self-worth being attacked, free to develop to the best
5 that they can develop. And, therefore, in keeping with
6 section 1 of the Charter, it would be legitimate
7 limitation --

8 THE CHAIRPERSON: Okay. Please save
9 that argument for yourselves, Mr. Vigna.

10 MR. VIGNA: I didn't ask the question
11 but --

12 THE CHAIRPERSON: If you want to
13 avoid objections -- they're not objecting, that's
14 interesting.

15 MR. VIGNA: Dr. Mock, try not to --

16 MR. CHRISTIE: I've concluded that
17 your view, sir, is that you'll hear it and argue about
18 it.

19 THE CHAIRPERSON: I will.

20 MR. CHRISTIE: I'm not objecting not
21 because I think it's admissible, but because I respect
22 your ruling and --

23 THE CHAIRPERSON: I appreciate that
24 you respect my ruling. Thank you.

25 MR. VIGNA: Dr. Mock, from a

1 psychologist perspective, what I would like to ask you
2 in colloquial terms on this same topic of
3 self-regulation and the need to have laws is simply
4 this: Does the enactment of laws have a psychological
5 impact on people's behaviour, whether they are going to
6 do certain things or not and, in our particular case,
7 participate in hate messages?

8 MR. CHRISTIE: I don't understand
9 that question.

10 MR. VIGNA: My question -- I'm asking
11 a question from a psychological perspective. You're an
12 expert in psychology. The enactment of laws in
13 society, does it have an impact or a correlation on how
14 people behave? And in our case would enactment of
15 legislation regarding Canadian Human Rights Act,
16 section 13, have an impact whether people will
17 participate in hate messages or not?

18 MR. CHRISTIE: Isn't that --

19 THE CHAIRPERSON: I understand the
20 question.

21 MR. CHRISTIE: Isn't that really --
22 all right.

23 THE CHAIRPERSON: Leading?

24 MR. CHRISTIE: No, no. Of course
25 it's leading, but beyond that my concern is that it

1 invites the witness to tell us what she thinks society
2 thinks.

3 THE CHAIRPERSON: No, I think the
4 proper, if I understood Mr. Vigna's question was, what
5 is the impact of laws on people's behaviour with regard
6 to legislation that prohibits communication of hate
7 propaganda.

8 DR. MOCK: And my answer is yes.
9 Having laws, having policies when people understand
10 those laws or when it is pointed out to most average
11 Canadian citizens that certain behaviours are against
12 the law, that would then prevent them or pre-empt them
13 from committing those behaviors again. Because they
14 would be law abiding citizens and here they would not
15 be on what we might call the extremes of society.

16 But there had been many examples.
17 You see this in work places, for example, where people
18 may have said something that inadvertently really hurt
19 someone else or damaged them. When it is pointed out
20 to them it is against the law, against the policy, they
21 apologize and they don't do it any more.

22 We have seen that laws do regulate
23 behavior, that they do limit behaviour and uphold the
24 values of society or workplace. We see that time and
25 time again.

1 MR. VIGNA: I refer you on the same
2 topic at page 8, there is a footnote, 13, and it's in
3 bold. Do you see it in the middle of the page?

4 DR. MOCK: Uh-huh.

5 MR. VIGNA: Page 8, footnote 13,
6 middle of the page, in bold.

7 DR. MOCK: Hm-mmm.

8 MR. VIGNA: There's a quote there,
9 and I'm going to ask you a question that's derived from
10 that quote. For example, if on highways we put a speed
11 limit of a hundred kilometres an hour, by legislation
12 we prohibit speeding over that speed limit, in
13 comparison to not regulating but simply saying that it
14 should be common sense not to speed on a highway. The
15 fact that there is legislation, does it have an impact
16 on how people condition their behaviour in society?

17 MR. CHRISTIE: With all due respect,
18 there's no relevance to that question. We're here
19 because of a restriction on speech. We're not dealing
20 with the legitimacy of traffic laws.

21 THE CHAIRPERSON: He drew the analogy
22 in a highly leading question.

23 MR. VIGNA: Mr. Chair, it's not --
24 I'm not contesting we're not dealing with highways. I
25 just gave an example based on the quote that's in the

1 report. And my question is the same as before but I
2 basically gave an example to better perhaps express my
3 question.

4 The question I have is simply this,
5 Dr. Mock: Do laws have an impact on how people behave
6 in societies?

7 DR. MOCK: And my answer is yes.

8 MR. VIGNA: Can you elaborate on
9 that?

10 MS KULASZKA: I think she answered
11 that question before. She just answered that question.

12 MR. VIGNA: I'll move on, Mr. Chair.

13 You mention at paragraph 9 of issue
14 of voluntary self-regulation.

15 THE CHAIRPERSON: Paragraph?

16 MR. VIGNA: Page 9 of your report.

17 You have a topic on voluntary self-regulation.

18 DR. MOCK: Uh-huh.

19 MR. VIGNA: Can you elaborate on what
20 you say with respect to voluntary self-regulation?

21 DR. MOCK: Yes. For many years there
22 has been a discussion on whether the service providers
23 should be -- first of all, they do have codes of
24 conduct and that we can and should, say some, trust
25 them --

1 MS KULASZKA: I would object to this.
2 She was never been qualified as an expert in ISPs or
3 consultations with ISPs or what's going on in the
4 Internet industry. As far as I could see, she was just
5 qualified in the area she was qualified in, race
6 relations and multiculturalism, psychology.

7 THE CHAIRPERSON: Presence of hate on
8 the Internet.

9 MS KULASZKA: Yes, but she's starting
10 to talk about what's going on with ISPs and
11 consultations.

12 THE CHAIRPERSON: What's her source?
13 What's your source for that information, Doctor?

14 DR. MOCK: The source is consultation
15 with the actual Internet service providers, with papers
16 and presentations that have been made at conferences
17 and publications as well. It was really to the matter
18 of I guess because my paper was to be on what other
19 remedies are there or impact of hate on the Internet
20 and how to counter it.

21 So it's my understanding that those
22 who suggest that we shouldn't have limits on free
23 speech say, well, look we've got other ways of
24 regulating, isn't that enough? And my --

25 THE CHAIRPERSON: Get to that part of

1 the question. Ms Kulaszka, I'm familiar with the
2 self-regulation. I've seen it in the evidence that was
3 introduced in the first two weeks with respect to the
4 ISPs. Go on. So go on. What's the later portion of
5 the answer?

6 MR. VIGNA: Continue on that same
7 vein.

8 DR. MOCK: In my view and in my
9 experience, the answer is no, that is not enough to
10 rely on even with codes of conduct, on voluntary
11 self-regulation. Because many of the Internet service
12 providers themselves may be hate mongers or they have
13 their own prejudiced attitudes towards minority groups,
14 and then we rely on the implementation of the
15 limitations of that speech, not to be -- for those who
16 are on the extreme and not interested in being law
17 abiding or regulating it in the interest of protecting
18 society, and those who can be victimized by it, we
19 need, we need something to send the strong message and
20 have the deterrent effect for those who say that they
21 are law abiding and want to be law abiding and not have
22 to have any consequences. We need to continue to have
23 other forms of regulating hate and hate speech.

24 MR. VIGNA: So what are the different
25 tools that exist in terms of countering hate speech and

1 hate messages on the Internet?

2 DR. MOCK: Well, in my view and
3 throughout all of my writings, I believe that there are
4 three main tools that we need to do -- we need to have
5 to combat hate. And one of them is of course the law,
6 to apply the existing laws to the limit that we can on
7 the Internet and on all forms of the promotion of
8 hatred.

9 A second -- and by the way, by the
10 other -- I call that protection. Protection of the law
11 and helping people through tools knowing what the law
12 is and how to report violations of the law and even
13 assisting those who do implement the laws, how to bring
14 hate mongers to justice in that regard.

15 Secondly, one of the most important
16 tools is to implement prevention. If the first is
17 protection, the second is prevention. In addition to
18 the preventative aspects of having the law, to prevent
19 violence and to prevent further promotion of hatred,
20 prevention would be massive public education and
21 raising awareness of how to recognize hate and hate
22 propaganda and using the tools of education both in the
23 formal education system but also in professional
24 education and in public education in the same way as
25 they have public education campaigns against drug abuse

1 or other harmful behaviours, public education in that
2 regard as well.

3 And thirdly, community coalitions,
4 community action. People supporting one another.
5 Better support for victims so that they can receive the
6 kinds of counseling that they need. Better community
7 coalition building so that it isn't just the targeted
8 victimized group that has to speak out for itself. For
9 example, if there's hatred being promoted against
10 Muslims, it shouldn't only be Muslims who are speaking
11 out against that, but Jewish people who believe that
12 there shouldn't be anti-semitism, the coalition
13 building with Muslims, with black, with others, help to
14 share information, build capacity within community to
15 withstand the assault of hate speech and hate
16 mongering.

17 So I think that we should use all the
18 tools available. The law is one of them, but in every
19 way we need to send a strong message so that it serves
20 as a psychological deterrent. People receive the
21 psychology help and support they need to withstand the
22 deleterious effects of hate on their own psyche, their
23 only identity and -- so that the hate mongers
24 themselves do not -- many of whom wouldn't have even
25 become hate mongers if they themselves hadn't been

1 victims of being targeted for recruitment, that their
2 ranks would not be able to be strengthened in the
3 interest of violating the rights and freedoms of other
4 people. So I believe we need all the tools.

5 MR. VIGNA: When you say "we need all
6 the tools", do we need all the tools together or do we
7 have a choice between one tool or the other tool?

8 DR. MOCK: In my view, we need all
9 the tools together. But you know, it's often -- I
10 believe that I've cited someone who suggested that, you
11 know, the law can and should be -- it's a heavy
12 instrument. It can and should be used as a last
13 resort, but when you try every other way -- voluntary
14 self-regulation, education, here's the laws of the
15 policies of our country, the values we uphold -- and
16 when people could continue to just flaunt those and
17 want to be only absolutist on one aspect to the
18 detriment, denigration and harm to others, that's when
19 the law has to come in.

20 So I say we need to use it all. One
21 can't pass the buck. You know, sometimes you get
22 police saying it's the education fault, education
23 saying we need more law enforcement. We need it all
24 and we need to make sure that the law as well is upheld
25 and that we show that there's protection for the rights

1 of all Canadians, not just those who have the power to
2 abuse others with their speech and their technology.

3 MR. VIGNA: On the last page on your
4 report you mention about education is the key. Can you
5 elaborate on that particular point a bit more? And
6 also the last paragraph where you give examples.

7 DR. MOCK: Well, I think education is
8 really the key for helping young people in particular
9 recognize when they are being lied to by propaganda and
10 by half-truths in ways that look as if they are very
11 credible and scientific.

12 So when we one reads a publication
13 and -- you know, on the Internet and, you know, or
14 somebody Googles and they go to a website that looks
15 very sophisticated, they may then think that -- whether
16 it's the Holocaust didn't happen or what have you, they
17 can be convinced.

18 So I really believe that to educate
19 people who could be drawn into by hate mongering is
20 extremely important. It's a real key to have someone
21 come on to one of those websites, say, ah, that's
22 nonsense, they are lying because I know because my
23 teacher told me this or because I read a credible
24 source.

25 Education also is very -- I call

1 that -- in a way we used to call it media literacy, we
2 can call it computer literacy, we can call it
3 recognizing hate and the tell-tale signs of hate
4 mongering.

5 I also think that there needs to be
6 good education on different religious practices so that
7 people will not believe the lies that they might be
8 reading about Jewish people, and Muslims, about others,
9 when things are presented in a propaganda kind of way.

10 Again, even so, even though I think
11 as an educator myself, as a psychologist, that that is
12 the key, it really is one of the keys. Because when
13 you cannot reach people -- because we know that even
14 though there are those who argue that there's a free
15 marketplace of ideas you have to be able to be at the
16 market, and you can't be everywhere to be able to
17 counter it.

18 So, therefore, we need to support the
19 educational initiatives by educating the population on
20 the law and what they can and should -- what they
21 shouldn't, rather, have to put up with, that would
22 denigrate their people or their dignity.

23 So, again, I conclude that it's
24 really all, all the tools to prevent the hatred and the
25 evil that leads to violence and destruction, which has

1 even been shown to lead to genocide; that we need to
2 work certainly locally and definitely nationally
3 together to prevent this. That's my thesis and it's
4 been my point from the beginning.

5 MR. VIGNA: Mr. Chair, at this point,
6 if we could go on the second report, but go for lunch,
7 maybe, unless you want to proceed with the second
8 point.

9 THE CHAIRPERSON: It's kind of early
10 for lunch. Our break was only -- does it pose a
11 problem for you to continue to the next report?

12 MR. VIGNA: No.

13 I would like you to go to the second
14 report.

15 THE CHAIRPERSON: Let me back you up
16 just a second. This report was made in reply to Dr.
17 Persinger's report?

18 MR. VIGNA: Yes.

19 THE CHAIRPERSON: Will you be
20 referencing Dr. Persinger's report?

21 DR. MOCK: Yes.

22 MR. VIGNA: We were hoping to refer
23 to it. But I'm wondering if we should put it evidence
24 because usually it would be --

25 THE CHAIRPERSON: I know. The binder

1 was handed up to the Tribunal yesterday. Ms Kulaszka,
2 this is your binder?

3 MS KULASZKA: Yes.

4 THE CHAIRPERSON: We were just tired
5 yesterday. So we were just tired yesterday. I didn't
6 have the patience to get it officially entered into
7 evidence. It will be a respondent exhibit.

8 THE REGISTRAR: The binder will be
9 filed as Exhibit R-5.

10 EXHIBIT NO. R-5:

11 Dr. Persinger's Report

12 MR. VIGNA: I understand Dr.
13 Persinger's report has been produced for the purpose of
14 reference, but he'll be coming and testifying.

15 THE CHAIRPERSON: I don't think --
16 well, the report can be identified and produced I guess
17 at this time for the purposes of your
18 cross-examination. He hasn't testified yet on content,
19 but assuming logically that we have something to
20 reference.

21 And for the record, I have looked at
22 this report. Again, I haven't accepted it into
23 evidence, per se, but I've read the report for the
24 purposes of our earlier discussions today and
25 yesterday.

1 MR. VIGNA: So after looking at Dr.
2 Persinger's report, Dr. Mock, did you draft the
3 February 2007 report?

4 DR. MOCK: Yes.

5 MR. VIGNA: This is your report,
6 twelve-page report?

7 DR. MOCK: Yes.

8 MR. VIGNA: Page 13, which includes
9 footnotes?

10 DR. MOCK: Yes.

11 MR. VIGNA: I would like to file this
12 report, Mr. Chair?

13 THE CHAIRPERSON: Yes.

14 MR. VIGNA: Now, Dr. Mock, can you
15 tell me when you read Dr. Persinger's report what
16 were -- if we can summarize then we'll go later into
17 details -- what were the main themes that were derived
18 and how many themes you derived from Dr. Persinger's
19 report?

20 DR. MOCK: I had to read Dr.
21 Persinger's report several times but it appears that --
22 and I found it somewhat difficult because -- especially
23 the first several pages. And given the absence of
24 references for me to check out some of the sources, I
25 was at a little bit of a loss. But then eventually,

1 having read it several times, I feel that there are
2 three main themes that are being emphasized.

3 One is the effects of punishment on
4 complex behaviour. And he defines, of course, speech
5 and the development of speech as a complex behaviour.

6 Secondly, the impact of hate speech
7 on those who receive it, both who are traditionally
8 called victims, meaning those who are the objects of
9 denigration and dehumanization, but also the effects on
10 potential perpetrators.

11 And three, the current relevance of
12 the work and the research that seemed to be the -- that
13 is the foundation of Canada's laws, contemporary laws
14 and policies on hate propaganda, on hate speech, the
15 Cohen report, which was published in -- or the report
16 of the Cohen -- what has been called the Cohen
17 Committee which was published 40 years ago in 1966.

18 Those were what I gleaned as the
19 three main themes to which I could respond with my
20 experience and expertise.

21 MR. VIGNA: So let's go to the first
22 theme. Can you tell us about what Dr. Persinger says
23 and what you say to Dr. Persinger. What's your
24 response to his theory on the first theme, effects of
25 punishment on hate speech?

1 DR. MOCK: My reading and
2 interpretation Dr. Persinger's thesis there is that the
3 effect of punishment on the very complex behaviour of
4 hate propaganda or extremist speech is also itself very
5 complex. According to Professor Persinger and his
6 report, punishment of hate speech either won't work at
7 all or it will completely stifle creativity and
8 spontaneity. As well, he goes on to say, as the
9 ability of hate mongers to achieve their maximum
10 potential, or it will lead to another effect on the
11 hate mongers might be -- or on society might be that it
12 would lead to oppressive homogeneity, he calls it,
13 because if you eliminate the extremes of speech or
14 behaviour, the extreme deviation from the norm, then
15 there is the risk that you would keep on eliminating
16 the extremes over and over and over until you had this
17 oppressive homogeneity behaviour.

18 It almost seemed as if -- the way one
19 might have in a totalitarian state.

20 So anything -- he's worried, or at
21 least that's what I got out of his paper, that any
22 deviation from -- any creativity might be considered
23 abhorrent and, therefore, punishable. I interpret it
24 to be his main point on the effects of punishment.

25 MR. VIGNA: Now, I understand that he

1 did not give any footnotes or sources for the theory
2 that you've expressed of Dr. Persinger. But based on
3 your knowledge as a psychologist, on what psychological
4 theory did he -- according to your guess, I guess,
5 because there's no footnote -- did he base himself to
6 come to this theory?

7 DR. MOCK: Well, you know, from my
8 own experience and study many years ago -- and I came
9 from a very experimental and behaviourist background --
10 it appears he is generally -- his ideas on the
11 generalization of the effect of punishment from
12 aversive stimuli are from early research that has been
13 conducted in the sixties and -- fifties, sixties and
14 seventies using animals, primarily. You know, where
15 you are allowed to -- within the bounds of ethical
16 behaviour and treatment of animals, implement shocks
17 for example, on rats or on pigeons and then see if they
18 generalize from the behaviour that has the strong
19 aversive stimuli to other stimuli.

20 In my view -- and also there is some
21 correlational work certainly because no one would allow
22 children deliberately to be physically abused in order
23 to control experimental variables, but there is also a
24 literature on the effects of corporal punishment on
25 children's behaviour and on verbalization, you know,

1 children who are afraid to speak or who show low
2 self-esteem or lack of confidence having been raised,
3 let's say, in authoritarian punitive environments often
4 behave in a way that I believe Dr. Persinger was
5 suggesting hate mongers might start to behave if their
6 free speech were limited.

7 So the literature, you know -- I
8 guess as they say, the jury is even out on the effects
9 of that type of punishment. Often there are
10 diametrically opposed findings. For example, one
11 researcher that I cite concluded that punishment is
12 useful when it's used appropriately to apply in
13 aversive consequence that is likely to reverse the
14 frequency of a behaviour or the probability of it
15 occurring.

16 MS KULASZKA: I see Dr. Mock is
17 simply reading her expert report. The report is in
18 evidence and I think it's wasting our time really just
19 to sit and read it.

20 THE CHAIRPERSON: I'll leave it to
21 Mr. Vigna --

22 MR. VIGNA: She's not reading it
23 verbatim. There is no prohibition --

24 THE CHAIRPERSON: No, there isn't.
25 Proceed. Perhaps you can shorten it up and elaborate

1 on many of these points.

2 DR. MOCK: I'll just conclude that in
3 my view the stretch from the research, you know, the
4 behaviourist experiments and research on children is a
5 real stretch to the extension of these theories and
6 it's unsubstantiated speculation that that would apply.

7 I haven't found any evidence that
8 adults generalize and suppress all speech when only
9 some speech is considered hateful and punishable.
10 That's my conclusion. I have found no studies that
11 have shown that when hate speech is limited it
12 restricts the creativity and speech -- you know, speech
13 in general of those who would like to proliferate hate
14 speech.

15 And also, I'll read one sentence or
16 paraphrase it:

17 "I have found no imperical
18 evidence in the literature that
19 enactment of hate propaganda
20 policies and laws have prevented
21 anyone from reaching his or her
22 maximum verbal development or
23 intellectual or social
24 potential."

25 I just go on on page 3 in the middle

1 there in that paragraph, again, to refute -- or to
2 refute that notion of by definition there must be
3 extremists that always would have to be punished.

4 The law, in my understanding -- and
5 again I'm not a lawyer but this has to do with the
6 psychological impact or the -- psychological or real
7 limit impact on people's behaviour. The law, in my
8 view, puts reasonable limits on speech or on these
9 extremes and just stops there and there isn't a risk
10 especially because of the restrictions put in laying,
11 for example, hate charges or having to go before a
12 Tribunal and recognize that section 13 is applicable or
13 not.

14 There so many restrictions on whether
15 hate speech will be limited that the existing
16 legislation does indeed put what I would call, and
17 others do, reasonable limits.

18 So contrary to Dr. Persinger's
19 conclusion, it is commonly accepted in the social,
20 psychological and cognitive and educational
21 psychological context that punishment serves to uphold
22 social norms. It signals to people, the one who are
23 developing and also adults who presumably are more
24 developed, it signals to society what are appropriate
25 and what are inappropriate behaviours in a civilized

1 society and it serves to deter misconduct, to defer
2 forms of abuse in social groups.

3 So, again, the Cohen report
4 highlights this. In my view, it is more relevant today
5 than it even was 40 years ago because the Cohen
6 report -- I know we're getting into I guess later --
7 you only asked me to talk about punishment.

8 But even the research in the sixties
9 on the nature and extent of hate propaganda at that
10 time led Cohen to say and, therefore, there should be
11 reasonable limits put on it because, even though the
12 examples were few at that time because the examples of
13 the extreme proliferation of hatred using modern
14 technology and other forms of disseminating this
15 hateful information, it becomes even more relevant
16 today that this will be limited.

17 He also makes a point, and again I
18 probably have to read it because, again, but it was a
19 bit confusing how he was trying to bring Nazi Germany
20 into this, and so on.

21 So I looked to some of the scholars
22 who have studied what happened then and in the
23 post-Nazi period. And what was indeed documented were
24 the signs of desensitization of the German society.
25 Dr. Persinger makes the point that it's okay to have

1 hatred because it desensitizes -- later on I talk about
2 that in the report -- it desensitizes the victim so
3 that they can better withstand, almost like
4 inoculation. But, in fact, other, as I've called them
5 victims, or people could be made to break the law or
6 enact murder or even genocide. It has been shown in
7 the scholarly literature that there was a
8 desensitization of some of the German people and German
9 society under the Nazi influence -- not all Germans of
10 course, but under the Nazi influence such that those
11 who were not even Nazis became desensitized and the
12 hateful anti-semitism that they kept hearing over and
13 over and over again allowed the perpetration of
14 genocide.

15 So there is in evidence the
16 literature that desensitization leads to a preference
17 for increasingly deviant behaviour.

18 MR. VIGNA: Before we move on,
19 because it's an important topic, Dr. Mock. Dr.
20 Persinger talks about when -- and you respond to it on
21 page 3 where it says:

22 "When the one percent of the
23 population at the far end of the
24 normal distribution curve that
25 he describes choose to behave in

1 a way that is deviant and
2 dangerous and has been shown to
3 undermine democracy and the
4 norms and values of society,
5 civilized societies support
6 effective law enforcement to
7 ensure and protect all members'
8 rights, freedom, safety and
9 security without violating those
10 of others."

11 DR. MOCK: That's not his point.

12 That's mine.

13 MR. VIGNA: That's your point.
14 You're responding to one of his points. This reference
15 to 1 percent. Can you tell us in the body of
16 literature if there is anything known regarding this
17 theory one percent --

18 THE CHAIRPERSON: Where did you read
19 that from? I see.

20 MR. VIGNA: Maybe you can
21 cross-reference it to where Dr. Persinger says it then
22 what you respond to it, in the green binder, Dr. Mock.
23 At page 6, Dr. Persinger's report. Second -- the first
24 paragraph.

25 DR. MOCK: So you want me to find

1 where he --

2 MR. VIGNA: It's at page 6 of his
3 report.

4 DR. MOCK: At the top of page 6. He
5 says attempting to inhibit or remove the extreme 1
6 percent of the population, simply re-defines the
7 extremes with the remaining individuals that composes
8 society and ultimately if these extreme layers of
9 individuals and their behaviours are suppressed or
10 punished the unlawful behaviours, that in themselves
11 were considered normal because more and more abhorrent
12 or extreme, their shift towards social unacceptability
13 then becomes arbitrary and contrived.

14 Then he hypothesizes that the logical
15 end point is that all verbal behaviour must become
16 homogenous or it is abhorrent and hence punishable.

17 I looked -- I looked everywhere in
18 the literature to see if there was any evidence to
19 support that notion that all verbal behaviour would
20 become punishable, and there was no evidence. And my
21 reading -- and I didn't actually put a footnote here
22 for my conclusion --

23 MR. CHRISTIE: I rise to point out
24 that the doctor, learned doctor now refuting things
25 that her opponent didn't say. He didn't say that all

1 verbal communication was abhorrent --

2 THE CHAIRPERSON: No, I think it's 1
3 percent on the fringes.

4 MR. CHRISTIE: And he then said that
5 the logical end point -- she misinterpreted.

6 DR. MOCK: He said all.

7 MR. CHRISTIE: All by non-homogenous
8 speech would become abhorrent.

9 THE CHAIRPERSON: And that was what
10 Mr. Vigna said earlier.

11 DR. MOCK: No, I quoted verbatim.

12 MR. CHRISTIE: I'm sorry, I heard you
13 quite clearly.

14 MR. VIGNA: Refer to the document
15 itself.

16 THE CHAIRPERSON: The issue is -- my
17 understanding of Dr. Persinger's report, what he is
18 saying is if you suppress what is in the outer
19 fringes -- I suppose he's drawing an analogy of
20 behaviour and science of sort of a bell curve
21 situation. You have to those 1 percent at each end.
22 If you keep suppressing that what is at each end,
23 eventually you'll get homogeneity where only the 99
24 percent will prevail and the presence of the extremes
25 will no longer be. That is my understanding.

1 So it becomes -- the shift towards
2 social unacceptability then becomes arbitrary and
3 contrived. The logical end point is that all verbal
4 behaviour must become homogeneous and it is apparent --
5 and it is abhorrent and, hence, punishable.

6 So, in response to that, what do you
7 saying exactly?

8 DR. MOCK: In response to that, I'm
9 saying that he projects that in this bell curve he's
10 worried that if we use the current definition of -- to
11 limit freedom of expression, that the law or people who
12 control -- make the laws, will start moving those
13 further and further and further inward.

14 Whereas, in my view, the law right
15 now very clearly defines what is meant by hatred, by
16 contempt, what the reasonable limits are, that even
17 bringing in, showing in fact there is such an impact
18 that there isn't the risk in this free and democratic
19 society that has worked so hard to balance the
20 freedoms, that there isn't that risk and there's no
21 literature to support that in fact that would happen,
22 that those are the reasonable limits, they have been
23 drawn and that he's saying well --

24 THE CHAIRPERSON: On what there is no
25 literature in. I don't want you to go into the areas

1 of interpretation of law and whether these are
2 reasonable limits. That's something for the courts to
3 rule on.

4 But what we need to know is, in the
5 line of your answer just before was, is there
6 literature to support the principle that the discussion
7 at the each extreme will cease to occur and, thereby,
8 be eliminated on account of these types of norms being
9 imposed?

10 "The shift towards social
11 unacceptability then becomes
12 arbitrary and contrived. The
13 logical end point is that all
14 behaviour must become homogenous
15 or it is abhorrent and hence
16 punishable."

17 And you mentioned something about
18 studies. No studies have demonstrated what exactly?
19 That --

20 DR. MOCK: That in democratic
21 societies -- this is my conclusion. In the civilized
22 societies that support effective law enforcement to
23 protect all the rights and freedoms and safety and
24 security without violating those of others, there is no
25 evidence that that happens.

1 There is evidence in totalitarian
2 regimes, in dictatorships, you know, where tighter and
3 tighter and tighter control comes until there is only,
4 you know, if you don't do it our way you can't at all.

5 Again, I don't want get into the
6 legal arguments but the --

7 THE CHAIRPERSON: I say what it boils
8 down to is this. I guess it's sort of a Pavlov type of
9 a thing. Are there studies that demonstrate that in a
10 larger context society as a whole, the constant
11 suppression of discussion at one extreme or the other,
12 at any extreme on any issue perhaps, will result in
13 people -- thereafter no longer engaging in that
14 discussion, whether or not the suppression is there or
15 not? I think that that is what it's coming down to.

16 DR. MOCK: I'm sorry, if you said if
17 there is suppression --

18 THE CHAIRPERSON: There is
19 suppression and at some point the suggestion -- I'm
20 having some difficulty understanding it too.

21 I think the suggestion is that if for
22 a period of time you suppress, you suppress, you
23 suppress, then at a certain moment whether the
24 suppression is there or not, there will cease to be any
25 discussion in that gray zone at the end.

1 DR. MOCK: There is anecdotal
2 evidence. For example, let's take workplace harassment
3 issues.

4 THE CHAIRPERSON: Okay.

5 DR. MOCK: People who want to
6 preserve the status quo and want to preserve their
7 right to tell racist, ethnic, sexist, homophobic jokes
8 will say, you know, it's political correctness here and
9 you can't even say those jokes any more and it's my
10 freedom of speech and now we can't even -- you know, we
11 feel -- we just can't say those jokes. So there --

12 THE CHAIRPERSON: So that's
13 suppression?

14 DR. MOCK: Yes, there is suppression
15 of their 1 percent. Now, would -- if they
16 themselves -- and they say I'm almost afraid to talk
17 because about these issues because what if I
18 inadvertently say something. There is also evidence --
19 and in all of the workplace harassment material that
20 you have, the policy is very clear. You can, of
21 course, discuss it and if it isn't harassment, which is
22 very well-defined, then you are not punished by it.

23 So it doesn't actually restrict it
24 but does it make people think twice? Gee, should I say
25 this or do you think maybe it's racist and so, you know

1 what, maybe if the business of the company isn't served
2 and if I may end up on the front page of the Globe
3 because I said this awful thing about somebody, then I
4 better not say it.

5 They have a freedom to speak as long
6 as it doesn't cross that line to dehumanize or
7 denigrate their colleague.

8 So if someone has racist and bigoted
9 and biased ideas -- if they are genuinely grappling
10 with it and, you know, I really don't feel this way but
11 I have to ask you a question. Is it really true that
12 Jewish people -- and then they say some awful blood
13 libel or something. That's not harassment because
14 their intention is genuine. If somebody took that as a
15 complainant in their workplace they would be told no,
16 no, this was a legitimate discussion.

17 So on the one hand, those who speak
18 out about how they want their freedom of speech because
19 they want to be free to say the racist jokes, not to
20 have a chill in the environment, they want to be free
21 to be able to say whatever they want even it in hurts
22 someone else. No, that's where we draw the line. Do
23 we draw it any further? No, there's no evidence --

24 THE CHAIRPERSON: There's no evidence
25 that people will not -- that once the suppression is

1 lifted people will -- that there will be some sort of
2 self-imposed restriction on their thinking. They may
3 continue to think that way is what you are saying.

4 DR. MOCK: We have certain policies
5 and workplaces and education so on that they don't even
6 have to enact. Because you give the education and
7 people realize, you know what, no one is coming down
8 hard on me but I know not to say that because it's
9 racist or homophobic.

10 THE CHAIRPERSON: I understand.

11 DR. MOCK: So that's the line. But
12 what he's saying is if we allow speech -- my
13 interpretation of this difficult --

14 THE CHAIRPERSON: I look forward to
15 hearing how he explains it.

16 MR. VIGNA: The question I asked you
17 to say is what he is saying, is it based on what
18 psychologist in a certain train of thought or school of
19 thought are saying, or is it something to your
20 knowledge is isolated to Dr. Persinger?

21 DR. MOCK: Well, he has -- in my
22 analysis, he has two arguments. On the one hand what
23 he's saying about the impact of punishment and aversive
24 stimuli on generalization to other behaviours, he is
25 taking from extrapolating results from animal research

1 and research on corporal punishment and so on of
2 children. He's extrapolating that. That's one
3 argument in the punishment area.

4 So, yes, there is a body of research
5 from which he's extrapolating, and in my view it is not
6 generalizable to hate speech because there is no
7 scientific evidence it limits hate mongers' creativity.

8 I think at one point I say here that
9 some of the hate mongers have found extremely creative
10 ways to get around the law or to get the messages out
11 without using hate speech. But that's another issue.

12 So there's no evidence that that
13 extrapolation from research on rats and, you know,
14 young children and the impact of authoritarian
15 parenting on speech. You know, or corporal punishment
16 on their speech or corporal punishment on their
17 behaviours.

18 Number one, there is no evidence that
19 that extrapolation is valid.

20 And the second argument is the one
21 that says that, hypothetically, if we allow there to be
22 restrictions on the extremist behaviour on that bell
23 curve on 1 percent when it's on hate speech, that the
24 logical conclusion will be that the legislators will
25 keep moving the definition of extreme closer and closer

1 in a free and democratic society that has worked very
2 hard to draw the line giving the maximum possible
3 freedom of speech, but drawing the line at the
4 violation of others' freedoms.

5 And in my view there is no literature
6 because -- and that's why even though I know that this
7 isn't an international thing I'm doing here, but this
8 is why I brought in the paper on hate on the Internet
9 the issues around what other democratic societies have
10 done, including Germany, including the UN and its views
11 and various conventions that we've signed onto,
12 including even the United States where there is a more
13 absolutist approach.

14 So there is no evidence that the free
15 and democratic societies have moved the limits further.
16 They are bending over backwards to allow maximum --

17 THE CHAIRPERSON: That's not
18 necessarily my reading of what Dr. Persinger --

19 DR. MOCK: Very confusing and very
20 difficult to understand. But that was my
21 interpretation of his saying the logical conclusion is
22 the norms are just going to be moved in and in and in
23 until everybody is just speaking in a very homogenous
24 way because the law is going to define the extremes
25 closer and closer and closer to the middle and

1 everybody will be punished.

2 THE CHAIRPERSON: I'll hear from him.

3 MR. VIGNA: In the body of
4 literature, just to be more clear on the clarification.

5 The mention of 1 percent of
6 population, is something that is defined in the
7 literature and psychology, a reference to 1 percent of
8 the population or is that an example that he seems to
9 be giving.

10 DR. MOCK: No. The bell curve as the
11 Chair described, illustrates the range of most
12 behaviours. You know, whether it's testing -- there
13 will be an intelligence, most people will be out here
14 and then there will be people at the extremes. I mean,
15 most lay people would know it in terms of the marks on
16 an exam. You know, if they're bell curved they are
17 going to make sure -- so that's all he's referring to.
18 Very common known principal in documenting behaviour
19 and analyzing it, that there are extremes and then
20 there's the whole rest of the population. So he's --
21 I'm sorry?

22 THE CHAIRPERSON: If you are done.
23 The court reporter has asked me to take our lunch
24 break. I think it's justified. So usually hour and a
25 half? Are you on track, Mr. Vigna?

1 MR. VIGNA: Yeah, 1:30 is okay with
2 me.

3 THE CHAIRPERSON: Yes. Is that fine
4 with everyone?

5 --- Recessed at 12:00 p.m.

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

7 THE CHAIRPERSON: We'll discuss
8 Mr. Warman's issue.

9 MR. VIGNA: If you want, yes. And
10 then I have another issue about the motion to quash and
11 the dates.

12 For Mr. Warman, I spoke to him and
13 I'm not here to speak on his behalf. I don't represent
14 him. He basically says if the Tribunal has an issue
15 with his absence he is saying he can be communicated by
16 correspondence and he will be responding to the fact
17 he's absent.

18 As far as I can tell, Mr. Warman will
19 not be here for the immediate but he said he will be
20 judging it, when he said when he left, on a day-by-day
21 basis. But I'm not authorized to speak on his behalf.
22 He's his own party and I'm the Commission counsel. I
23 want to make that clear.

24 Like I said, if there is a concern
25 Mr. Warman simply explained to me to rely the fact he's

1 available to be gotten in touch with to express any
2 concerns that the Tribunal might have about his
3 absence.

4 But on a legal perspective,
5 Mr. Chair, I submit to you the complaint can proceed
6 with the evidence that's going to be put forth on the
7 constitutional issue.

8 I think it was clear, to my
9 understanding, that Mr. Warman was going to be here
10 mostly for the factual element. And now we're at
11 the -- constitutionally what important contribution
12 will Mr. Warman have in this debate? I don't see it.

13 What I want to make the Tribunal
14 aware of is that Mr. Warman relayed to me -- and like I
15 said, I'm not speaking on his behalf, but he also made
16 me aware he's got a matter with Mr. Fromm on Monday and
17 he has the impression he just wants to be derailed from
18 the matter that he has on Monday, legal matter in
19 courts with Mr. Fromm. So what contribution is he
20 going to be bringing here? Why is his presence being
21 asked? I guess if these are questions that Mr. Fromm
22 has, perhaps he can put it a motion and respond in
23 writing. That's what I can suggest.

24 THE CHAIRPERSON: I have some
25 recollection of that. I think it was made clear by

1 somebody along the way that Mr. Warman would not be
2 attending on the constitutional issue. It did come up
3 in a conference call.

4 MR. VIGNA: I'm going by memory,
5 Mr. Chair. My memory is what it is. But that's what
6 my understanding was at the very beginning, and I think
7 everybody was under that understanding.

8 THE CHAIRPERSON: I think I do
9 remember that part. But Mr. Fromm --

10 MR. FROMM: It was not this week on
11 the constitutional question. He --

12 THE CHAIRPERSON: It was last week.

13 MR. FROMM: He was absent the last
14 two-and-a-half days of the last week, which was largely
15 on the merits. I do believe you've read this already
16 but in the transcript of the --

17 THE CHAIRPERSON: Did you hand up a
18 written copy to me? I have it here.

19 MR. FROMM: Mark Schnell versus Micka
20 and Machiavelli and Associates Emprize Inc., the
21 similar matter was raised. I thought it was by me, but
22 actually it was by Mr. Micka, and the Tribunal member
23 there, Mr. Sinclair, said to Mr. Schnell on 1217 --

24 THE CHAIRPERSON: 1217?

25 MR. FROMM: Page 1217 of the

1 transcript.

2 THE CHAIRPERSON: That's the end of
3 the first one, right?

4 MR. FROMM:

5 "If you unable to attend the
6 hearings, I think you can attend
7 the hearings and attend them on
8 time. If you are unable to do
9 so for legitimate reason then
10 you can advise me, the tribunal
11 officer, of your inability to
12 attend and we can deal with it
13 in that way."

14 THE CHAIRPERSON: Mr. Fromm, I can't
15 find it.

16 MR. FROMM: It's on --

17 THE CHAIRPERSON: Oh, here it is. Go
18 ahead.

19 MR. FROMM: It says -- this is Member
20 Sinclair saying to Mr. Schnell -- as you did say in
21 your recollection, he pointed out to him the Commission
22 was not there to represent his interests and he would
23 be disadvantaged if he wasn't in attendance. But he
24 went further than that.

25 He said:

1 "If you are unable to attend the
2 hearings I think you can attend
3 the hearings and attend them on
4 time. If you are unable to do
5 so for legitimate reason then
6 you can advise the Tribunal
7 officer of your inability to
8 attend and we can deal with it
9 that way. But, otherwise, I
10 think you should be in
11 attendance here as a party."

12 I think that's something of a fairly
13 clear statement.

14 THE CHAIRPERSON: As I indicated to
15 you -- there's a context here. There was a
16 conversation going on. "I think you should be in
17 attendance here as a party." I mean, he was trying to
18 tell him it's in your interest to be there as a party.

19 Mr. Warman has decided, for whatever
20 reason, that his interests do not require that he be
21 here. That's at his risk. As I indicated to you,
22 there are numerous times when I'm sure he may have
23 wanted to object or intervene on some of the items that
24 have come up over the last three days and he has not
25 been here. If a person is absent he can't complain

1 thereafter that something was not raised.

2 MR. FROMM: That certainly is true.
3 And I certainly would agree with Mr. Vigna that he
4 probably can't make much of a contribution, but that's
5 not the point.

6 The point here is that he initiated
7 the complaint. And I think you asked us yesterday,
8 well, what is the prejudice if he's not here? Well,
9 the prejudice is this: By filling out a couple of
10 pieces of paper and signing his name he initiated the
11 complaint which the Commission accepted, sent onto a
12 Tribunal.

13 Mr. Lemire has had to take a month
14 off work, legal expenses are being incurred, countless
15 expenses from the taxpayers of Canada to have this
16 Tribunal. And at the end of the day, the very best
17 Mr. Lemire can hope for is status quo.

18 The penalty for filing a vexatious
19 complaint is nothing. Mr. Warman sets the process in
20 motion, testifies, forces you and your staff to arrange
21 meeting facilities, supposedly to accommodate him, and
22 he simply absents himself and airily tells you you can
23 be in communication with him by mail, if you so choose.
24 And he will be here on a day-to-day basis. Who's in
25 charge here?

1 The Tribunal is master of its own
2 proceedings, and I think there is a precedent here with
3 Member Sinclair instructing Mr. Schnell not only that
4 it's in his best interest, but he said I expect you to
5 be here unless you are sick.

6 THE CHAIRPERSON: He said, "I think
7 you should be here." That's what he said.

8 I'll tell you my problem. I am a
9 preacher of my statute. And my statute says that I can
10 compel someone to be here to testify as a witness in
11 relation to a hearing as 50 sub(3).

12 "In relation to a hearing of the
13 inquiry the member or panel may,
14 (a), in the same manner in the
15 same extent as a superior court
16 of record, summon and enforce
17 the attendance of witnesses and
18 compel them to give oral or
19 written evidence on oath and to
20 produce any documents and things
21 that the member or panel
22 considers necessary for the full
23 hearing, consideration of the
24 complaint."

25 So he had to be here if there was a

1 subpoena issued, and in any event he showed for his
2 evidence. He's not going to testify any further, or so
3 it would appear, correct?

4 MR. VIGNA: As a matter of fact,
5 Mr. Warman told me if Mr. Fromm wants him to call him
6 as a witness he can send a subpoena.

7 THE CHAIRPERSON: That would engage
8 my authority to compel him to show up. I can make the
9 same statement that my colleague did here which is, I
10 think you should be here. That's what's going on here.
11 The man is in the room and he's telling him, I think
12 you should stay here. I don't see it going beyond
13 that. I don't see myself as having that authority to
14 compel someone.

15 There have been so many cases,
16 Mr. Fromm, where parties on all sides of opted not to
17 be at a hearing. I indicated already to you the one
18 with Mr. Kulbashian, Mr. Richardson, where they would
19 occasionally be not present. I have had other ones
20 where complainants have not shown up, at least for a
21 day or to. It does happen. As long as the process can
22 continue at the risk of those individuals.

23 My power is to compel people to show
24 up as witnesses. So I would agree, I can go this far.
25 Given all that Mr. Fromm has brought up, and especially

1 as I indicated earlier when we made those decisions on
2 where this is going to take place and under what
3 circumstances, there was an assumption, at least with
4 regard to the merits -- because of course there was
5 that discussion about merits of the complaint versus
6 the objection -- or the motion with regard to
7 constitutional issue that he would be present, and he's
8 not.

9 So I think he should be present, to
10 quote my colleague. That's as far as I'm going to go
11 with that, Mr. Fromm. I will not go any further than
12 that. I think he should be present. I think what is
13 going on here is of interest to him, and his input
14 would certainly of some help, why not, as anyone else.

15 MS KULASZKA: Well, certainly this is
16 going to be part of the constitutional argument because
17 in these cases Mr. Warman simply drops these
18 complaints, he comes for a couple of days and there's
19 no cost to --

20 THE CHAIRPERSON: Ms Kulaszka, I
21 think part of what Mr. Fromm said goes also to the big
22 picture argument that you intend --

23 MS KULASZKA: I'm just making the
24 point.

25 THE CHAIRPERSON: Yes.

1 MS KULASZKA: -- goes to the process.

2 THE CHAIRPERSON: I think it shows --
3 I know what your position is on these points. I think
4 it may be another component to that argument that you
5 intend to make of the manner in which these hearings
6 end up playing themselves out. Okay? But I still
7 don't think that that enables me to order someone to be
8 here who is not here other than the one who has to be
9 testifying as a witness.

10 Now, there was another issue on
11 dates?

12 MR. VIGNA: My colleagues in Ottawa
13 are preparing a motion which I had announced to quash
14 the subpoenas for three commissioned witnesses. The
15 difficulty we're having is that we didn't get the
16 subpoenas themselves and the particulars and Ms
17 Kulaszka said she'll provide them tomorrow.

18 But then at the same time we need
19 about a week's time to be able to write written
20 submissions in response to the particulars and the
21 issue of relevance will be determined based on the
22 particulars that will go with the subpoenas. So I
23 would like to have a bit of a sense when we can
24 expect -- how, first of all, can we plead the motion.
25 I would suggest it could be done in writing. And there

1 was also at some point in the hearing, discussion -- I
2 think it was agreed that for those witnesses it would
3 take place in Ottawa. So where and when and how would
4 be what --

5 THE CHAIRPERSON: The first step is
6 you were expecting a more detailed willsay from --

7 MR. VIGNA: From Ms Kulaszka.
8 Particulars on the --

9 THE CHAIRPERSON: On their evidence?

10 MR. VIGNA: Yeah.

11 THE CHAIRPERSON: What's your
12 recollection, Ms Kulaszka?

13 MS KULASZKA: Well, I've got it set
14 out in the statements of particulars.

15 MR. VIGNA: I'll refresh your memory,
16 Mr. Chair.

17 When I raised the issue initially you
18 had looked at the letter of January 23rd and there was
19 about three lines for each one and you kind of agreed
20 saying it was kind of brief. And there was an
21 understanding there would be further particulars with
22 the subpoenas coming up. In order to prepare the
23 motion we can't just rely on those very summary
24 particulars that have been provided so far. And we
25 would need them in order to have a well-reasoned and

1 documented motion.

2 MS KULASZKA: Maybe I should tell
3 Mr. Vigna that my position on the motion is that it is
4 res judicata. Between the parties the motion for the
5 subpoenas was argued, a ruling was made and it's not
6 like a third party is walking into here and demanding
7 that the subpoenas be quashed because they were not
8 heard.

9 Between the parties present here, it
10 is res judicata. If they want the subpoenas quashed it
11 seems they should go into Federal Court.

12 MR. VIGNA: Mr. Chair, I'll refer my
13 distinguished colleague to her own motion in the summer
14 of 2006 in the Craig Harrison case where there was a
15 subpoena issued against Mr. Lemire.

16 MS KULASZKA: Yes, exactly. We were
17 not heard.

18 MR. VIGNA: You were heard. There
19 was a motion put forth by yourself.

20 MS KULASZKA: The argument was -- or
21 the motion was made by the Commission and Mr. Warman to
22 the Tribunal. Subpoena was issued. I was served with
23 a subpoena and I appeared on behalf of Mr. Lemire who
24 was not heard at the initial motion to quash the
25 subpoena, and that's what I mean. If you were a third

1 party who was not heard at the initial motion where a
2 ruling is made that's one thing. But between the
3 parties here, it is res judicata.

4 THE CHAIRPERSON: When did I decide
5 on this?

6 MS KULASZKA: At the beginning of the
7 hearing.

8 THE CHAIRPERSON: I said subpoenas
9 can issue?

10 MR. VIGNA: First day.

11 MS KULASZKA: Yes, a motion was made
12 and the subpoenas were issued. So you made your
13 ruling, you heard from all the parties here. There is
14 no third party walking in.

15 THE CHAIRPERSON: Your position is
16 because it's three employees of the Commission that the
17 Commission was acting on their behalf, so is that why
18 it's res judicata involving those three? Are these
19 subpoenas against three individuals or Commission
20 representatives? How did you --

21 MS KULASZKA: It's Hannya Rizk, Dean
22 Steacy and Harvey Goldberg and the subpoenas are issued
23 against those three people. The Commission opposed
24 that motion. Mr. Warman opposed it. And you made your
25 ruling and the subpoenas were issued. And so my point

1 is that it is res judicata between the parties to this
2 case. And if they want subpoenas quashed they should
3 be going to Federal Court.

4 At this point they can't keep coming
5 back to you. You don't have the power -- unless they
6 are bringing in some new consideration, but I don't see
7 that. They essentially want you to consider this de
8 novo, that they should be appealing it, going to
9 judicial review.

10 THE CHAIRPERSON: I might have to go
11 back and review the transcript on exactly how -- the
12 normal process is that the subpoenas -- the Tribunal
13 here is the one side on the request for this subpoena,
14 subpoena is issued and then when the person is called
15 to testify the debate occurs. I recall that that is
16 how it's happened.

17 Again, I refer to Mr. Kulbashian's
18 case. There was a subpoena issued against the crown
19 prosecutor at that time and that's how it proceeded.
20 In this case --

21 MS KULASZKA: It was different.

22 THE CHAIRPERSON: What happened? I
23 didn't issue --

24 MS KULASZKA: It was the first day of
25 the hearing and we had argument about it back and forth

1 and you ruled that the subpoenas would issue.
2 Mr. Vigna was heard, Mr. Warman was heard on it and the
3 ruling was made.

4 MR. VIGNA: Mr. Chair, the argument I
5 would put forth, 29th of January the first thing we
6 did, or one of the first things, was discuss the whole
7 issue about subpoenas and there was a decision on the
8 bench that -- it wasn't formal, written motion put
9 forth but a discussion back and forth and you ruled --
10 you basically issued three subpoenas.

11 And I had mentioned one of them might
12 be unavailable for health reasons and you said we'll
13 deal with it when we get there. Not exactly in the
14 same words, but basically that's what you meant.

15 The point I'm making is the issuance
16 of subpoenas is one thing, but the motion to quash is
17 another thing and we don't necessarily have to go
18 directly to the Federal Court in order to present that
19 motion.

20 THE CHAIRPERSON: It depends on the
21 context. Quite frankly, with all that happened I'm not
22 entirely sure it went one way or the other. I want the
23 opportunity to review the transcript of what transpired
24 that day and then I'll --

25 MR. VIGNA: It was in the morning of

1 the 29th.

2 THE CHAIRPERSON: I'm not saying it
3 was one way or the other. I just need to review it to
4 be certain.

5 MR. VIGNA: You can get back to us
6 then.

7 THE CHAIRPERSON: I'll get back to
8 you.

9 MR. VIGNA: On the same issue,
10 without belabouring the point, in terms of timing so we
11 can adjust ourselves, if they were to be heard when can
12 we --

13 THE CHAIRPERSON: Yes, hold on.

14 MR. VIGNA: -- because there was an
15 issue of it being in Ottawa at one point.

16 THE CHAIRPERSON: Is there a date
17 that --

18 MR. VIGNA: So far I don't think we
19 really determined it clearly. It seems obvious not
20 this week, not the beginning of next week. I don't
21 know if it's going to be end of next week.

22 THE CHAIRPERSON: That would be
23 tight. We've got other witnesses. We still have
24 Mr. Fromm's evidence to go through. I can't see how we
25 can allocate any days next week.

1 MR. VIGNA: So after the 3rd.

2 THE CHAIRPERSON: Have to be after
3 next week. Was there any date you were going to
4 propose, Ms Kulaszka?

5 MS KULASZKA: Well, it seems to me
6 this could be a motion made in writing.

7 THE CHAIRPERSON: Not for the motion.
8 It's for the evidence itself, right? Whatever works
9 out with regard to the subpoenas, the question simply
10 is, on the assumption that these three people will
11 testify what would be the most convenient day? Is that
12 the question?

13 MR. VIGNA: Well, challenge for one
14 and then we'll see the result.

15 MS KULASZKA: I'm going to have to
16 consult with Mr. Lemire about dates.

17 MR. VIGNA: I understand it won't be
18 next week.

19 THE CHAIRPERSON: It can't be next
20 week. I can't see how. We've all these experts lined
21 up. So can't you discuss this amongst yourselves
22 during a break or something instead of using up the
23 time of the hearing for this?

24 MR. VIGNA: Dr. Mock, we're going to
25 continue where we left off this morning. We left off

1 on the first theme of Dr. Persinger's response that you
2 provided.

3 I'll use my own language just to
4 refresh your memory where we had left off. We left off
5 on the question of the shrinking bell curve and you had
6 motioned with your hand that it gets tighter.

7 So to continue on that first theme
8 before we move onto the second theme of Dr. Persinger's
9 report, can you tell us what else you addressed in
10 terms of your report and response of Dr. Persinger in
11 the final paragraph of page 3?

12 DR. MOCK: The paragraph in the
13 middle of page 3?

14 MR. VIGNA: The middle.

15 DR. MOCK: That currently and
16 historically it's common knowledge that civilized
17 society support effective law enforcement to ensure and
18 protect all members their rights and their freedoms and
19 their security. So that we're not -- this was the
20 notion that -- this is not an attempt in my view and in
21 the view of the literature that I have reviewed to
22 homogenize all speech but rather to protect those from
23 disproportionate harm of the impact of hate speech.

24 MR. VIGNA: Now, in third theme what
25 can you tell us about the theory of Dr. Persinger? And

1 under the title that you have, Impact of Hate Speech
2 and Propaganda, which you subdivided in two parts, can
3 you tell us what your response is to the different
4 theories advanced by Dr. Persinger?

5 DR. MOCK: Yes. In terms of the
6 victim impact of hate and hate speech on those who are
7 the targeted victims on the basis of their immutable
8 characteristics, contrary to what it appeared that he
9 was saying, that hate and the experience of it can
10 inoculate people against further hate or that it
11 doesn't really have harm, the literature is very clear,
12 the psychological literature, the social psychology and
13 others, that racist incidents in fact are traumatizing,
14 potentially traumatizing forms of victimization. And
15 it leads to -- there is copious evidence that it leads
16 to psychological stress, psychiatric issues,
17 depression, verbal or physical. These are assaults on
18 people's own identification, their identity, very -- it
19 strikes at the very core of their being.

20 We have the American Psychiatric
21 Association that lists the symptoms of trauma,
22 post-traumatic stress, in other words, and these are
23 the kinds of stressors that have been found in
24 psychological research to be the impact on victims and
25 even on observers of material that contains hateful and

1 racist assaults so that survivors of racist incidents
2 can, in fact, according to the psychological
3 literature, have been said to have been traumatized.

4 So I have summarized in this and also
5 attached a couple of samples of articles that are in
6 the literature in referee journals, which means that
7 they would have been thoroughly examined by highly
8 competent and respected psychologists in the field to
9 ensure the research methodologies, the experimental
10 methodologies of research were sound and that the
11 conclusions were valid to the -- an appropriate level
12 of significance that is accepted in scientific
13 journals.

14 So those studies have shown that
15 there is a significant positive relationship between
16 racism and stress and between the self-esteem and
17 stress.

18 MR. VIGNA: What does Bryant-Davis
19 Ocampo say about non-traumatic stress and traumatic
20 stress? What does his works and literature say that
21 you mention in your report? Page 4.

22 DR. MOCK: Well, they point out that,
23 you know, and I've paraphrased here:

24 "Unlike non-traumatic stress,
25 traumatic stress violates one's

1 existing way of making sense of
2 self in the world and creates
3 intense fear and
4 destabilization."

5 What that means -- and it has been my
6 experience from the many victims that I have dealt with
7 and who have come to me because they have received hate
8 speech or they have read some of the material that's on
9 the Internet, it means that they become extremely
10 frightened, some people, it has been found, change
11 their patterns of behaviour. Either they don't want to
12 go to work, they don't want to go outside. They begin
13 to think that -- they become in fact more vulnerable
14 feeling that they are not safe.

15 So their sense of well being, their
16 sense of safety and security is undermined. I've seen
17 people who sleep over this time and time again, and
18 this is what Bryant-Davis and Ocampo outline in their
19 2005 --

20 THE CHAIRPERSON: You mentioned these
21 people that you've seen had these effects. You said
22 after seeing hate messages, including from the Internet
23 you said?

24 DR. MOCK: Yes.

25 THE CHAIRPERSON: In the form of

1 what, e-mails being sent to them or --

2 DR. MOCK: Yes.

3 THE CHAIRPERSON: Okay, e-mails being
4 sent to them.

5 DR. MOCK: Yes. Young people, for
6 example, and I go onto describe this a little bit
7 later, who are victims of what they call now in the
8 literature cyber bullying where a message gets sent out
9 to a student in school. Tremendous fear, tremendous
10 anxiety. Students have stomach aches and they don't
11 want to go back to school because there may have been a
12 nasty e-mail calling them names, slurs, et cetera. And
13 the literature is showing when this is based on racism
14 or on some immutable characteristic like religion there
15 is even more trauma.

16 People have received, you know --
17 there had been examples of Jewish people who had
18 received anti-semitic slurs, and whether that is coming
19 through their mailbox or coming right -- or threats
20 coming through on their computer, there's that sense of
21 tremendous violation and vulnerability that this has
22 come into their own space unsolicited.

23 THE CHAIRPERSON: All right. I want
24 to understand what your experience has been. It's with
25 people who have received it in those ways.

1 Now, we have evidence in this case
2 that some of these messages are on message boards, ones
3 that are accessible on the Internet but not sent
4 directly to an individual. Have you had any experience
5 with that, where I guess there's an input required on
6 the part of the reader to access that information?
7 Doesn't end up in his in box so-to-speak. The person
8 has to find it. It may be easier or difficult to find.
9 It may come up after a Google search or something, but
10 have you had any experience with regard to that?

11 DR. MOCK: I have had experience with
12 people who have done a Google search on another topic
13 and then have come to some of these, I guess, blogging
14 sites or places where they think they may get
15 information on a particular topic and then find that
16 there are various hate messages and abusive messages
17 going back and forth.

18 And while they may not have been
19 seeking it out themselves or they may be on a bulletin
20 board or chat room, when that comes across, even though
21 they then may go back and seek it out because of the
22 anger it that implies, it still has tended to
23 exacerbate their sense of violation and anger and
24 insecurity and fear that there may be much more of this
25 out there or feeling that in fact they may actually

1 feel threatened. Somebody puts up something evaluating
2 a movie on a chat line -- I don't know.

3 Where I came across it -- I can give
4 you an example, is in some of the training that I was
5 doing with police and they wanted to use the movie
6 Crash as a training vehicle to help people understand
7 how complicated racism is.

8 So I went to some of the discussions
9 of reader reaction to Crash. Well, there was some of
10 the most vile and disgusting and hurtful information in
11 what at first I would have thought was just going to be
12 a place where the movie Crash was being discussed.

13 So it then -- you know, I mean, I
14 guess I know about this sort of thing but if someone
15 else was involved in just giving feedback to that and
16 then they have a personal attack against them because
17 they are the last reviewer who then carries on and
18 abuses them or abuses black people or others because of
19 this film -- I don't know if you are familiar with it.

20 But the language literally is so
21 hateful and hurtful that I then had people say to me,
22 who also -- it was a study group, a women's study group
23 who was interested in my coming and talking about this
24 film because they had heard about it. And one woman
25 said, I don't even -- I don't want to come and hear

1 this. I am going to sit in the room until you are
2 finished because I find it so upsetting. And she left
3 because -- and it turned out that her parents were
4 Holocaust survivors and she couldn't take even hearing
5 the vile language and information that was posted
6 there.

7 MR. VIGNA: Dr. Mock, in that same
8 perspective, that the message -- like, for example, on
9 a message board, which is not the same as an e-mail --
10 attacks a group, as a member of the group does it have
11 an equivalent impact the fact that they are not
12 personally targeted but they are just a member of that
13 group?

14 DR. MOCK: Yes. And that has been
15 shown very clearly in social psychological research,
16 and I refer that beginning at the bottom of page 4. In
17 fact, we've even appended some of those articles. Even
18 when people are reviewing -- and these were very
19 well-controlled environment studies that found that
20 psychological -- even just associating the perceived
21 racism when they were asked -- there was a study, first
22 of all, on the actual stressors but then -- sorry, I
23 just -- it's one of those tabs that I directed you to
24 earlier on hate speech.

25 "The Asian American Students'

1 Justice Judgments and
2 Psychological Responses".

3 This is Boeckmann and Liew. One of
4 the tabs -- sorry, one of the references that I used.
5 There were two studies that they did. This is in the
6 middle of page 5, two experiments using Asian American
7 university students.

8 MR. VIGNA: Dr. Mock, one second. I
9 think everybody has a copy because I gave --

10 THE CHAIRPERSON: Everybody in the
11 Tribunal?

12 MR. VIGNA: That's why I'm asking.

13 THE CHAIRPERSON: Was it included in
14 one of the books?

15 MR. VIGNA: Should have been.

16 THE CHAIRPERSON: Is it in the
17 binder? Because all I have is the binder.

18 MR. VIGNA: Maybe not, Mr. Chair.
19 Could I just produce it then? When we sent the second
20 report on Wednesday it was supposed to be with the
21 second report. Maybe it's in the binder, but it was
22 sent to the Tribunal.

23 THE CHAIRPERSON: You've prepared the
24 report with the portion that was to be deleted? Has
25 that been sent to the parties?

1 MR. VIGNA: Sorry?

2 THE CHAIRPERSON: Remember there was
3 a portion that we were supposed to delete from the
4 second report?

5 MR. VIGNA: I didn't get into that.
6 I'm not going to ask questions on that.

7 THE CHAIRPERSON: Have you changed
8 the --

9 MR. VIGNA: No, there was --

10 THE CHAIRPERSON: That's fine. I
11 just wanted to know if something had been replaced in
12 my binder. I don't seem to have it.

13 MR. VIGNA: "Hate Speech: Asian
14 American Students' Judgement and Psychological
15 Responses".

16 DR. MOCK: These are the ones I
17 referred Ms Kulaszka to and I thought that --

18 MR. VIGNA: I see Ms Joyal --

19 THE CHAIRPERSON: Do you have more
20 copies?

21 MR. VIGNA: I can get it at the
22 break. I must have it somewhere.

23 THE CHAIRPERSON: That's fine. You
24 transmitted it to us with the expert's report as part
25 of the disclosure process. However, that usually stays

1 in the official file and a report is submitted with the
2 binders typically, and it would have been attached to
3 the report that was submitted as part of the exhibits
4 package. But since you haven't done so, I've drawn the
5 one that was mailed to us earlier and I'll use that.

6 MR. VIGNA: You can insert it with
7 the report.

8 THE CHAIRPERSON: It's meant to be
9 attached to the report?

10 MR. VIGNA: Yeah.

11 THE CHAIRPERSON: Is that okay with
12 everyone?

13 MR. VIGNA: So Dr. Mock, I would like
14 you to look at the literature.

15 DR. MOCK: I've got it here.

16 MR. VIGNA: Look at whether it's the
17 one you read and would like to file as literature you
18 read in preparation of your second report.

19 DR. MOCK: Yes, these were the
20 reports I referred earlier to Mr. Christie and Ms
21 Kulaszka.

22 THE CHAIRPERSON: So everyone will
23 attach this? Is it a loose document or part of your
24 binder?

25 MS KULASZKA: We just got loose

1 documents.

2 THE CHAIRPERSON: Everyone doesn't
3 have three holes in it. We'll just file it as a
4 separate exhibit.

5 MR. FOTHERGILL: I note in Dr. Mock's
6 second report she concluded with the statement:

7 "Note to reader: Cited
8 materials that are bolded are
9 appended to the report."

10 I wonder if it might make sense then
11 to treat the document cited "footnote 7", as well as
12 the one cited at footnote 14, as the appended to the
13 report and part of the same exhibit?

14 THE CHAIRPERSON: And it's 39 as
15 well. I don't have any of these in my binder.

16 MR. FOTHERGILL: And 39 as well.

17 MR. CHRISTIE: I would like to raise
18 this, that this amounts to something we just received
19 and is now to be incorporated with the report. I have
20 a copy, but --

21 THE CHAIRPERSON: I'm told it was
22 transmitted months ago. This came February 15th. Oh,
23 I see. It's just received.

24 MR. CHRISTIE: Actually, you see the
25 problem I have is that it was never attached to

1 whatever I received. But I now have it, but it's a
2 little late, really.

3 THE CHAIRPERSON: I did -- was in
4 response to Dr. Persinger's, and I allowed the late
5 date because Dr. Persinger's report was late, as part
6 of the accomodation we did there.

7 MR. VIGNA: It was sent on Wednesday.

8 THE CHAIRPERSON: Let's work with it.
9 Dr. Persinger will be testifying next week, right?

10 MS KULASZKA: Is Dr. Mock also
11 relying on "Combatting Racism and Hate in Canada"? I
12 don't think I've got that. I just got two articles.

13 THE CHAIRPERSON: "Combatting Racism
14 and Hate in Canada", number 39.

15 MR. VIGNA: At the break I'll look
16 for it. I seem to have seen it somewhere. I misplaced
17 it for now.

18 THE CHAIRPERSON: All right. You are
19 referring to this one right now, Boeckmann, right?

20 MR. VIGNA: The first one that was
21 mentioned was "Hate Speech Asian American Students".
22 And then I will go to the other one later on.

23 THE CHAIRPERSON: So let's just work
24 with Boeckmann. It goes at the back of February 2007
25 report of this witness. Let's move on.

1 So what's your question on this
2 report, Mr. Vigna?

3 MR. VIGNA: The Bryant-Davis report,
4 do you have that, Mr. Chair?

5 THE CHAIRPERSON: No. Now I will.
6 Bryant-Davis. I have it, yes.

7 MR. VIGNA: I had left off, Dr. Mock,
8 at page 4 where you mentioned the Bryant-Davis Ocampo?

9 DR. MOCK: Yes.

10 MR. VIGNA: And I believe we just
11 presented to -- Mr. Chair, I would like to file this
12 one also.

13 THE CHAIRPERSON: These were the two
14 reports that all the parties had earlier and I've just
15 acquired.

16 MR. VIGNA: Yes.

17 THE CHAIRPERSON: They were attached
18 to the expert's report. That's fine.

19 MR. VIGNA: So in relation to what
20 you say in footnote 9 in your report, can you tell us
21 basically what, in summary, the document we just
22 produced discusses?

23 DR. MOCK: Yes. This is a report
24 that is in a well-respected journal of counselling
25 psychology, and it summarizes the literature as well as

1 reports on various scientific studies of the impact of
2 trauma and the relationship of, or the effects of
3 racism.

4 There's also a distinction between
5 traumatic and non-traumatic stressors. They have
6 reviewed the psychological literature to examine -- to
7 determine their hypothesis that racist incidents are
8 indeed traumatizing forms of victimization that can
9 lead to psychiatric and psychological symptoms in the
10 people who are targets. And their exploration defining
11 racist incidents as ambiguous, sometime covert or
12 implied, but they are experienced as emotional abuse or
13 even threats to livelihood, to security, to a sense of
14 person.

15 They find that they are also
16 considered risk factors for post-traumatic symptoms in
17 vulnerable individuals.

18 I offered this just as one example of
19 the body of literature that is available on the
20 psychological impact of hate and hate speech and how
21 it, in fact, traumatizes people and impacts on their
22 well being. They also show that there is the
23 internalization of stereotypes that lowers one's
24 positive self-evaluation. They show that there are
25 adverse changes in mental health as a result of

1 experiencing racism.

2 The indices of discrimination are
3 associated with mental health status. They report also
4 on studies that have investigated the role of racism as
5 a chronic stressor and a factor in the development of
6 psychological disease, such as hypertension and
7 diabetes that is exacerbated also by psychological
8 trauma.

9 They use well-grounded racist trauma,
10 racism trauma theory and show, in fact, that there are
11 even parallels between the psychological impact of
12 child abuse to racist incidents.

13 So that I offered this as an example
14 of how well-conducted scientific research is available,
15 well-respected in psychology. Not only in social
16 psychology but also in counselling psychology.

17 Their conclusion, if I might, and I
18 know people may want more time to read it, but the
19 conclusion that they derive not only from the
20 literature but from other scientific studies is that
21 racist incidents are prevalent and impact survivors
22 psychologically, physiologically, emotionally
23 cognitively and socially.

24 MR. CHRISTIE: Where is this being
25 quoted?

1 DR. MOCK: This is page 495 of that
2 article. And for this reason, they are advising that
3 people involved in counselling psychology must
4 acknowledge the potentially traumatizing impact of
5 racist experiences.

6 Now, racist experiences also include
7 being on the receiving end of racist speech, whether
8 it's actual verbal speech and you are within hearing
9 distance of it, or you are reading it.

10 MR. VIGNA: Does it make a difference
11 whether it's verbal, televised or on the Internet?

12 DR. MOCK: Now, this particular study
13 that I've given you doesn't address that. It concludes
14 only that one must recognize the trauma, the
15 psychological trauma and post-traumatic stress that
16 racism is a stressor on a psychological basis. And
17 that until that is recognized there can't be healing
18 and that mental health providers need to be very
19 cognizant of the literature in this area.

20 I offered -- further down in my
21 report I refer to it --

22 MR. VIGNA: On page 4?

23 THE CHAIRPERSON: We were on page 4.

24 DR. MOCK: Yes. Page 4. On page 5,
25 because I wanted to re-examine the literature on hate

1 speech and its impact done by -- experimental research
2 done in this area and so the Boeckmann and Liew
3 article, which I refer to -- when I speak about the
4 traumatizing effects again and the long-term
5 consequences of experiencing hate speech -- I'm sorry,
6 I'm going to refer first to the study just above that.

7 It's the first full paragraph on page
8 5 of my report. Professor Laura Leets. And using --
9 basing her work on work done by psychologists who
10 specialize in victimology, she found that the targets
11 of hate speech experience short-term and long-term
12 consequence psychologically. And that includes
13 depression, distress and dysfunction.

14 I found it -- it confirmed also my
15 own study and my own experience dealing with victims --
16 and it's the bottom of that paragraph, the first
17 paragraph on page 3 -- that there were passive
18 responses in most cases. And when you actually read
19 the article what that means is in most of those kinds
20 of cases most people don't report to the police or file
21 an official complaint because they are traumatized.
22 And, instead -- not only do they feel further
23 victimization but instead they seek support from their
24 family or their community. So they seek support to
25 deal with the psychological stress and impact.

1 And that is why, for example, from my
2 15 years of experience in dealing first hand with
3 victims, they would tend to come to community support
4 workers, psychologists who are based in the community
5 and who can assist them.

6 But I offered as experimental
7 evidence of the impact of hate speech two experiments
8 using Asian American students, and I offered that also,
9 which is appended to show that hate speech also results
10 in very extreme emotional responses, more extreme when
11 it's hate speech and when it attacks the person than
12 when it -- let's say it's a petty theft or something
13 about other criminal --

14 THE CHAIRPERSON: Back to the Asian
15 American experiment. Is that the Boeckmann article?

16 DR. MOCK: That's right. "Hate
17 Speech: Asian American Students' Justice Judgement and
18 Psychological Responses."

19 MR. VIGNA: The Boeckmann article,
20 Dr. Mock, if you can look at it. Just flipping
21 through, can you tell us the highlights of the study or
22 this article?

23 DR. MOCK: Yes. They conducted two
24 experiments to examine the distinctive characteristics,
25 responses to racist hate speech relative to responses

1 to other forms of offence. So they focused
2 specifically on hate speech, and the variables that
3 they looked at were self-esteem and social
4 identification. And also whether or not there were
5 views that such behaviour should receive more severe
6 punishment than other forms of speech, offensive
7 speech.

8 They also found -- and I'm first
9 reading from the abstract and then I will give you the
10 data if you want me to go into more depth. They found
11 that hate speech results in more extreme emotional
12 responses. And in the case of Asian people, reading
13 about or the actual Asian targeted speech, it had a
14 more depressing effect on collective self-esteem.

15 So these were well-controlled,
16 well-designed, experimental studies. They first
17 gave -- and this is why I offered this with my report.
18 Again, as a small sample of the body of literature in
19 referee'd psychological well-respected journals by
20 people who are involved.

21 I'm going to skip -- there were 50,
22 50 people, I think, just to anticipate a question of
23 how many subjects might have been used in the
24 experimental study.

25 MR. CHRISTIE: Which one are we

1 talking about now?

2 DR. MOCK: We're talking about the
3 Boeckmann and Liew on hate speech and the psychological
4 responses to hate speech.

5 I had an opportunity myself to
6 review -- and I've highlighted that yes, the
7 participants were randomly assigned to the order of
8 presentation of the stimuli and they used very proper
9 scientific evaluation techniques and statistical
10 techniques, the analysis of variance, factor analysis
11 of the results, and found -- they examined, thereby,
12 the effect of this racist hate and insults, hateful
13 racist insults on the impact evaluations and punishment
14 recommendations.

15 So they could see by actually
16 controlling which stimuli the subjects received, in a
17 very controlled fashion and randomly assigned, and then
18 measured with -- on these questionnaires and their
19 report of very quantified studies, they could measure
20 then whether there was a significant relationship.

21 And what they found -- the results of
22 the study -- and I now I'm on page 371. I'm trying to
23 move quickly because I'm very conscious of the time and
24 how I know I can go on. But at this stage I wanted to
25 show you what the prevailing wisdom in the

1 psychological community is on these topics and quite
2 current as well.

3 So in the middle of that page, the
4 results of the first study indicate that Asian American
5 university students respondents can and do
6 differentiate between insults directed at ethnic
7 characteristics relative to those directed as
8 individual characteristic.

9 And that in keeping with interpreting
10 the results as well, they also ratified the definition
11 of how people are interpreting what hateful speech is
12 and what it is to them. Message -- it conveys a
13 message of racial inferiority directed at historically
14 oppressed groups and is persecutory, hateful and
15 degrading.

16 MR. CHRISTIE: That was actually
17 somewhere else in the text.

18 THE CHAIRPERSON: I'm trying to find
19 that last page you read.

20 MR. VIGNA: What page?

21 DR. MOCK: I'm quoting from Matsuda
22 at the bottom of page 371 in Boeckmann and Lou's
23 article. I looked up --

24 MR. CHRISTIE: The way it was read
25 was as if it was adopted as the opinion of the authors.

1 DR. MOCK: Sorry?

2 MR. CHRISTIE: And it was read
3 without any attribution to Matsuda and it was read as
4 if that was the conclusion of the study?

5 DR. MOCK: No, no, I'm sorry if I
6 gave that impression.

7 MR. CHRISTIE: And it's not quite the
8 way it was written.

9 THE CHAIRPERSON: You are correct.

10 DR. MOCK: I'm sorry. I'm sorry if I
11 gave that impression. I am trying to move things
12 along.

13 THE CHAIRPERSON: You have to be very
14 careful about that.

15 DR. MOCK: I will.

16 THE CHAIRPERSON: I didn't follow
17 you. I didn't know where you were reading from.

18 MR. VIGNA: I understand, Dr. Mock,
19 you are stressed with time, but take your time
20 nevertheless.

21 So in relation to the same article,
22 is there anything else you would like to highlight for
23 us?

24 DR. MOCK: Well, one -- yes, at the
25 bottom -- I'm sorry. I'll direct you to the bottom of

1 page 371 in that article.

2 THE CHAIRPERSON: Yes?

3 DR. MOCK: And Matsuda -- I followed
4 some of that work as well. The present authors of the
5 article that I've given you are citing that their
6 interpretation and the way the students reacted was
7 also consistent with Matsuda's definition of hate
8 speech as consisting of messages of racial inferiority
9 directed at historically oppressed groups and
10 containing persecutory, hateful and degrading messages.

11 So that one of the defining features
12 of hate speech that is accepted in -- well, there's the
13 legal literature but also in terms of the victim impact
14 and what is considered hateful is deprecating -- or
15 depreciating speech that is directed at an entire group
16 as opposed to a specific individual.

17 And in this study, it was very clear
18 that that kind of speech had a greater emotional and
19 psychological impact on the Asian students whose group
20 was being so far targeted than did other forms of
21 offensive speech.

22 They did a second study described on
23 page 372 of that article and this was an attempt to
24 examine whether there was a different impact that
25 distinguished the reaction to hate speech, different

1 from other forms of offensive behaviour. So they
2 compared the reaction to hate speech to the reaction to
3 the responses to petty theft.

4 And they assessed Asian students'
5 emotional reactions to hate speech accounts and the
6 impact that reading these accounts had on their
7 collective self-esteem.

8 I'm just going to move forward. They
9 describe what the stimuli were, the measures were, the
10 way they used very well-respected measurements and
11 analytical techniques.

12 And I'm going to turn you to page 376
13 of that article under the graph where you look at the
14 measurement of -- in other words the psychological
15 impact of these stimuli. And you can see in the last
16 line of the first full paragraph on that page:

17 "Repeated measures, T-tests, on
18 these variables indicate that
19 hate speech scenarios evoke
20 significantly higher levels of
21 all emotions relative to reading
22 scenarios about other crime, in
23 this case theft."

24 So this was significant beyond -- we
25 used to call it beyond the .05 level of significance.

1 Well now they go beyond the .001 level of significance.
2 And it is that level of significance, I might add,
3 where even items that it might have said to be
4 correlated where the conclusion in the scientific field
5 is that there would be then a causal relation.

6 So I'll turn you to the discussion,
7 which is on page 377. And in the middle of the
8 paragraph under the section called "Discussion", their
9 study clearly indicates that Asian American university
10 students view insults directed at group characteristics
11 as unique from insults directed at individual
12 characteristics.

13 Just a couple of lines down:

14 "Offensive speech with broad
15 social consequences appears to
16 warrant more severe punishment."

17 Now, this may sound like it's an
18 opinion. It appears to warrant more severe punishment,
19 but what they did is they actually, through their
20 questionnaire data, which they were able to quantify --
21 it had to do with how severe the victimized group felt
22 about it and whether that group perceived or felt or
23 believed that it should warrant greater punishment.

24 And so there was significant
25 differences in the data that showed that the Asian

1 American students felt that that did warrant a greater
2 punishment.

3 So the conclusion there in that last
4 paragraph, studies one and two, both indicate that
5 people believe hate speech has a broad social impact.
6 Participants were emotionally affected by secondhand
7 accounts of hate speech and suffered a temporary
8 reduction, they say presumably temporary because
9 they've only measured the reduction at that moment in
10 time.

11 Counselling evidence, counselling
12 psychologists and people who measure, as I mention in
13 the earlier study, post-traumatic stress disorder show
14 that in fact the effects are long term, especially if
15 it has actually happened to the person themselves. But
16 in this case, they don't go beyond their study. And a
17 reduction in collective self-esteem as a consequence of
18 reading about their own group being disparaged.

19 If I might add, this is why in my
20 experience children of Holocaust survivors have come to
21 me in tears and actually shaking when they have read
22 some Holocaust denial material. It may not be that
23 it's about them or directed at them as individuals, but
24 they are so upset and traumatized by this kind of
25 material.

1 Direct experience with being the
2 target of hate speech would no doubt result in more
3 extreme and enduring consequences. And that's what
4 they -- their experimental study on the impact of hate
5 speech in an artificial sense. If this is affecting --
6 they are saying as psychologists, if this is affecting
7 people who themselves aren't the victims but they are
8 only reading about it in that way, then imagine if they
9 were actually on the receiving end.

10 MR. CHRISTIE: Well, this seems to
11 invite us to conclude that it's legitimate for this
12 witness to refer to studies that ask us to imagine what
13 it would be like to be on the receiving end.

14 I understand this is to be a
15 scientific opinion. She just said, "imagine what it
16 would be like to be on the receiving end" in relation
17 to the statement:

18 "Direct experience with being
19 the target of hate speech would
20 no doubt result in more extreme
21 and enduring consequences."

22 That's an opinion which is welcome in
23 a free and democratic society as an opinion but for
24 which there is no evidence, and they present
25 immediately thereafter counterevidence for

1 qualification of this view. And I simply rise to
2 question whether we are supposed to allow a qualified
3 expert to ask us to imagine, because I'm sure you and I
4 can do that. But it doesn't seem appropriate at this
5 point, sir.

6 THE CHAIRPERSON: Thank you.

7 DR. MOCK: If I may?

8 THE CHAIRPERSON: Well -- Mr. Vigna?

9 MR. VIGNA: I don't understand the
10 objection.

11 MR. CHRISTIE: I'll make it more
12 clear. There's been enormous latitude given to someone
13 to say virtually whatever they like as an expert in
14 this proceeding. I understand, I accept the ruling.
15 But the last comment just went so far beyond what I
16 accept in any legal sense.

17 THE CHAIRPERSON: It's beyond what
18 you read here.

19 MR. CHRISTIE: Her words were
20 "imagine". And then I looked at the text and, sure
21 enough, it wasn't a study or opinion of a study. It
22 was a question for which there was a counter argument.
23 And I'm just saying please, at some point let's stop
24 with imagination or with text which is not relative to
25 the study but goes beyond the study and then qualify

1 themselves. That's my objection.

2 THE CHAIRPERSON: You're directing
3 the Tribunal to the actual language of the report from
4 this journal and it doesn't use that language. I'll
5 just go by the report. Thank you.

6 MR. VIGNA: So, Dr. Mock, you can
7 pursue in your explanation, and always try to refer to
8 the actual report, and stick to the source?

9 DR. MOCK: Yes, thank you. Sorry.
10 Well, I think that I'm just going to
11 continue on page 379 of that. They point out in the
12 middle that to better understand notional and esteem
13 effects, research should also be conducted in which
14 minorities observe hate speech first hand and go onto
15 explain, as I had earlier, that obviously ethical
16 considerations call for careful, careful design
17 involving minority confederates and thorough
18 debriefing.

19 So this is why I did offer also the
20 psychological research on trauma and post-traumatic
21 stress disorder and the relationship between being a
22 victim of racism or on the receiving end of racist
23 incidents and the stressors and depression that follow
24 with the other study.

25 MR. VIGNA: Did you make a parallel

1 that's closer to home in relation to the study? And
2 I'm referring to page 5, the middle of your report.

3 DR. MOCK: Well, again, those
4 experimental studies are corroborated by findings in
5 more phenomenological kinds of research that have been
6 done here.

7 So -- for example, there were some
8 focus groups conducted, forums, public forums and focus
9 groups conducted with women here in Toronto and in
10 Mississauga, conducted by the Federation of Muslim
11 Women who revealed the women felt in the wake of
12 September 11th and in the hate mail that they began to
13 receive or things that they were reading or even in the
14 newspapers in the way their own group and their
15 identity was being affected, and being -- many has been
16 accused of, or slurs issued at school or name calling
17 in the supermarket, and they felt mixed emotions
18 ranging from confusion, shame, guilt, anger, sadness
19 and powerlessness. They described the loss of
20 identity, loss of the self-esteem, sense of fear,
21 paralysis and other high stressors associated with the
22 onset of depression.

23 And this is in direct reaction --
24 these are not people who were assaulted, they were not
25 people who were victims in that sense, but they were

1 assaulted by hate speech, by flyers, by slurs, by name
2 calling. And it just impacted on them severely.

3 MR. VIGNA: What did you observe
4 concerning the practice of cyber bullying, which you
5 described further on the same page, next paragraph?

6 DR. MOCK: Well, organizations like
7 the Kids Help Phone Line in Quebec or the Media
8 Awareness Network, as well as local community-based
9 organizations have reported incidents of when young
10 people have received hate messages either via their
11 e-mail or -- experiencing what they call cyber hate and
12 they report it causing deep emotional wounds and
13 devastating their self-esteem.

14 They have been afraid to report at
15 times, or they are afraid, they are very afraid, and so
16 they dread going to school and there someone -- these
17 organizations have reported that there had been
18 attempted suicides and the students have may even
19 dropped out of school as a result of what they have
20 seen on the Internet, not as a result of themselves
21 being assaulted in the school yard.

22 MR. VIGNA: Now, you said in your
23 testimony when you testified regarding your
24 qualifications that you belonged to the hate crime
25 community working group. Can you tell us whether you

1 observed certain findings that come out from that
2 working group and the report that was produced, or that
3 was delivered?

4 DR. MOCK: Yes. We consulted with
5 close to 700 Ontarians, including community members and
6 police, academics, victim support workers, government
7 officials and also individual interviews with victims
8 themselves. I've offered some quotes here. These are
9 quotes that I myself heard because they were victims
10 that I had actually -- I and a colleague had actually
11 interviewed. And so we found that people in
12 expressed -- at the top of the page --

13 MR. VIGNA: Page 6?

14 DR. MOCK: Yes. Participants in our
15 study who came to us, or who came to community meetings
16 were very concerned about the tactics that were being
17 used by hate groups to recruit young people on school
18 premises, but as well on the Internet, and they mention
19 the Internet specifically. Academics who came and who
20 were part of our educational consultations were
21 concerned by colleagues who indulged or felt they
22 should be able to indulge in hate speech under the
23 guise of freedom of speech or academic freedom and were
24 very concerned about that.

25 We found again that people who work

1 with victims, actually victim support workers in the
2 court system but also in community-based organizations
3 where they receive complaints or they do counselling of
4 people and try to help them protect themselves.

5 They said that the acts of hate and
6 hate speech were -- for them, they describe them as
7 profound and far-reaching, especially because people
8 felt often powerless to seek recourse. These were acts
9 of hate and stigmatization and marginalization of
10 people who were already stigmatized or marginalized and
11 feeling vulnerable.

12 So just by what way of example, and
13 this was a piece of hate mail, so hate speech. The
14 quote:

15 "I was shocked and found
16 violated. You know that racism
17 and hate are there, but this was
18 different. It was a personal
19 violation and right in my home."

20 This was receiving some hate mail.
21 And he went on to describe to me, and maybe because he
22 knew I was a psychologist, but he went on to describe
23 what he meant by personal was that he literally felt
24 attacked to the very core of his being.

25 MR. VIGNA: You have another quote

1 there?

2 DR. MOCK: Yes. A Muslim male, a
3 victim of harassment, again verbal:

4 "In Toronto since 9/11 there is
5 increased racism even among my
6 friends. They panic when they
7 see people who look dark. I
8 experience shock, anxiety and
9 fear. I have lost my sense of
10 security entirely. Above all
11 else, I am afraid for my family
12 and I do not want to see this
13 kind of treatment inflicted on
14 any other member of my
15 community."

16 And, again, this was in reaction to
17 hate speech.

18 MR. VIGNA: Now, you read a certain
19 number of authors and you mentioned them on middle of
20 page 6 then you come up to a certain number of point
21 form conclusions.

22 Can you just give us an overview of
23 which authors you looked at, who they are and what are
24 the different elements that you derive from the reading
25 of these different authors?

1 DR. MOCK: I'm just going to bring
2 out one of my lists of references.

3 MR. VIGNA: Which document are you
4 looking at?

5 DR. MOCK: I'm looking at my study
6 here and I have -- because of the scope of this, I
7 hadn't reproduced every article that I used or every
8 scholarly paper that I consulted, so I'm looking at a
9 document here which includes bibliography that I used
10 and a manual that I have used to consult, which is a
11 clinical manual based on some of the -- on the
12 scientific research. And I just provided a summary or
13 an overview of the factors that people who are victims
14 of hate crime and hate speech often feel the
15 psychological reaction of the psychological, and
16 psychological feel.

17 Garnett, for example, in 1990 -- is
18 that you are asking? Are you asking for the actual --
19 who these people are, Garnett 1990?

20 MS KULASZKA: Yes, I just wanted to
21 ask who these people are? What studies are they? They
22 are not listed, I gather, in the end notes. I just
23 want to be clear. I tried to find Janus, Dunbar(ph).
24 None of them are there.

25 DR. MOCK: Again, I apologize. It

1 would not ordinarily be my style, but given the paper I
2 was reacting to had no references whatsoever, I thought
3 I would at least include the ones and then I would just
4 give an overview. If you would like to have the
5 bibliography that I have here, I will provide an
6 extensive list of all of the documents. I have no
7 problem.

8 THE CHAIRPERSON: You cite in a
9 typical social science matter -- lawyers are not that
10 familiar or comfortable with. I always found it a
11 little surprising how things were cited in social
12 sciences just by referring to a person's name and the
13 year --

14 DR. MOCK: And I wouldn't do that
15 ordinarily. I always have the exact reference, which
16 is why I went to the length with the end notes.

17 This was really just a summary of
18 what is commonly known in the psychological literature,
19 and that's -- I'm happy -- this is not my style not to
20 have every reference, but I thought, okay, enough is
21 enough.

22 THE CHAIRPERSON: Do you have those
23 references with you today?

24 DR. MOCK: I do.

25 THE CHAIRPERSON: Maybe at the next

1 break you can -- presumably reference to the
2 publication?

3 DR. MOCK: I'm happy to provide --

4 THE CHAIRPERSON: -- to the other
5 parties?

6 MR. VIGNA: Ms Kulaszka --

7 THE CHAIRPERSON: We can take a break
8 at that point.

9 MR. VIGNA: Just before taking a
10 break, Dr. Mock, just tell us globally the different
11 items you've identified in your report, page 6, then
12 after the break we'll go and make photocopies of your
13 references.

14 DR. MOCK: Yes. It's -- the
15 psychological literature is replete with the impact of
16 hate crime and hate speech on its victims. And in
17 general, again, various studies have shown various
18 things, but people will be less secure, see other
19 people as dangerous and react to the world as being
20 unsafe. You see really high levels of an anxiety, in
21 other words, higher level of fear. They see -- in some
22 studies they cite, they report that the world is seen
23 as less orderly and less meaningful. In other words,
24 their world is turned upside down.

25 They have lower self-worth; they feel

1 less effective; personal setbacks are seen as related
2 to this prejudice because it impacts on the way they
3 behaviour; they have more special problems in
4 relationships; sometimes feel guilty and blame
5 themselves.

6 It's the blame-the-victim phenomenon
7 or the internalization of the guilt or shame that they
8 feel. They question their own ability to protect
9 themselves. Some feel they can't meet goals in life;
10 there's anger, a lot of anger at the community or
11 sub-community; increased bouts of depression; anxiety
12 or post-traumatic stress; and greater experience of
13 headaches, nightmares, crying, agitation, restlessness,
14 weight loss and even increased use of drugs or alcohol
15 as compared to populations that have not experienced
16 racism or hate. And these studies -- and again I'll
17 provide you with the references for them.

18 So contrary -- and my conclusion is
19 contrary to the views that were put forward by Dr.
20 Persinger that -- unsubstantiated by any references to
21 imperial studies I might add, that hate speech doesn't
22 have this effect.

23 Clearly, in my view -- not only in my
24 personal experience but from my extensive study of the
25 field, the victims of hate are impacted in tangible and

1 measurable ways and --

2 MR. VIGNA: We can take a break at
3 this point, Mr. Chair?

4 THE CHAIRPERSON: Yes.

5 MR. CHRISTIE: Is it the intention
6 before we break, just so I know that this is okay, to
7 just sort of read line by line the whole report which
8 goes on for a few more pages?

9 THE CHAIRPERSON: I don't know if
10 that's the intention. Is that the intention?

11 MR. CHRISTIE: That's what's going
12 on.

13 THE CHAIRPERSON: Well, she skipped
14 over a few sections.

15 MR. CHRISTIE: Yeah, there have been
16 several sentences missed but not more than what I would
17 like.

18 THE CHAIRPERSON: You can discuss
19 that amongst yourself, perhaps with Mr. Vigna and see
20 where he intends to go with it. We don't want to use
21 up too much time, however, if she is completing what's
22 in here that is not unacceptable.

23 I just would like to know just before
24 we close here. What you just indicated with regard to
25 these reactions by individuals to hate crimes and hate

1 speech, the incidents referred to here are the whole
2 gamut, right, of hate-related incidents, right?
3 There's references here to incidents that might
4 include -- I'm putting it to you -- a violent crime, a
5 violent assault with a hate component in it. That
6 would be also what has been assessed?

7 DR. MOCK: In some of the studies,
8 yes.

9 THE CHAIRPERSON: It's not uniformly
10 hate speech, for instance.

11 DR. MOCK: No, not all hate speech.
12 But many of the studies have included hate speech in --
13 whether it has been criminally found to be hate speech
14 or not in their studies in terms of the victim impact
15 on victims in a clinical sense, in a psychological
16 sense, and the impact that it has.

17 THE CHAIRPERSON: Okay. We'll take a
18 break at this point.

19 --- Recessed at 2:50 p.m.

20 --- Resumed at 3:09 p.m.

21 THE CHAIRPERSON: Did you have a
22 chance to exchange that information?

23 MR. VIGNA: I give out the article,
24 "Combatting Racism and Hate in Canada", which we
25 haven't gotten to yet in the testimony. But I gave it

1 out to the parties and the disclosure list of the
2 latest authors that were mentioned, Garnett, Mock, the
3 reference of the --

4 THE CHAIRPERSON: Yes, Garnett, Mock,
5 et cetera. So you've done that?

6 MR. VIGNA: I've done that. The
7 parties acknowledge receipt.

8 THE CHAIRPERSON: I'm not hearing
9 anything so, go ahead.

10 MR. VIGNA: I'm going to continue on,
11 Dr. Mock, with the second theme, B, of the response to
12 Dr. Persinger. And I just might want to make sure --
13 we're not going to get into the last paragraph where it
14 says, "In Canada", page 7, because it will be stricken
15 from the report. It has been agreed upon by the
16 parties in the Tribunal after the debate yesterday.

17 So can you tell us basically in terms
18 of 2(B) what you discussed in response to Dr.
19 Persinger's second theme that you have extracted from
20 his report?

21 DR. MOCK: The main theme that
22 relates to perpetrators, or potential perpetrators that
23 I could extract from Dr. Persinger's report is that,
24 you know, somehow if we -- you know, that either hate
25 on the Internet doesn't really affect the perpetrators

1 or cause them to do problematic things, either that
2 or -- but, in fact, if it were restricted it would
3 somehow limit their creativity and behavior.

4 And their -- what I did was review
5 various submissions based on evidence in various
6 countries around the world that have lead to their
7 policy development and also review material in terms of
8 the motivation of the hate mongers themselves, who have
9 made the Internet their medium of choice.

10 And that's what I've now presented
11 here, on what evidence exists that there is a
12 connection between hate speech and, in particular, hate
13 speech on the Internet, and the attitudes and
14 behaviours of perpetrators and potential perpetrators.

15 And so, the first --

16 MS KULASZKA: If I could just make
17 the point again -- I'm just reviewing this page. So
18 much of it seems American. This is Canada. This law
19 applies to Canada, applies to people in Canada. And
20 again and again she's going to the U.S. for examples,
21 and we're not in the United States. She should be
22 giving us examples from Canada, and I think limiting it
23 to Canada, especially at this point when she's talking
24 and perpetrators. These are all Americans.

25 THE CHAIRPERSON: But is it your

1 submission -- and I'm not going to the well-foundedness
2 or not of this material. But your submission that the
3 reaction of a North American, just on the other side of
4 the border, to this type of a message will be entirely
5 different than a Canadian?

6 MS KULASZKA: I think the U.S. is a
7 totally different culture from Canada, absolutely.

8 THE CHAIRPERSON: That's your
9 thought. Perhaps it's not the thought of the witness.
10 I think it's a question that can be put to DR. MOCK.
11 I'm not prepared to exclude the evidence on that basis.

12 MR. CHRISTIE: In support of that
13 proposition, may I just say this: The law recognizes
14 we're different countries. In fact, the Keegstra case
15 recognized we're different countries. And if the law
16 recognizes we are different countries, the sociological
17 research of one isn't automatically applicable.

18 I've tried to argue the American
19 jurisprudence. I argued it in Keegstra. I argued it
20 the second time in Keegstra. Didn't get leave for that
21 reason, even though the American law had now clarified
22 its position on hate speech.

23 THE CHAIRPERSON: I'm not prepared at
24 this stage to exclude any of this discussion on that
25 basis. These are perhaps very valid arguments that I'm

1 fully prepared to hear from you, or to hear from Dr.
2 Persinger, but I'm not going to exclude the evidence on
3 that basis. Perhaps you'll have a better opportunity
4 to get your evidence in this time, Mr. Christie. Go
5 ahead.

6 MR. VIGNA: So continue on, Dr. Mock,
7 on what you were saying before this debate on
8 American/Canada in relation to the psychology that is
9 involved in terms of no matter whether you are Canadian
10 or American.

11 DR. MOCK: Well, I don't want to read
12 specifically from here at all times. I'm a little
13 cautious now because I'm wanting to say some things
14 that are on my mind as well.

15 We have said many times in terms of
16 impact that hate knows no boundaries. And I'm not
17 reading this from here, but the idea that -- and the
18 catch 22 I felt from not wanting to focus too much on
19 Canada because of needing to exclude reference of
20 certain materials on the Canadian side.

21 So I want to focus here on the
22 intention of perpetrators to draw in potential
23 perpetrators who themselves would in fact be living in
24 Canada and who have access to the material.

25 So what we do is -- literally

1 worldwide there has been such a concern about the
2 explosion of websites that, they do promote hatred, and
3 there's an alarming increase and even connections to
4 violence directed at many minorities.

5 And the first quote that I've given
6 you there actually is from Michael Wine in England who
7 has said that there -- and this is corroborated here,
8 although I haven't seen a recent publication. The
9 Audit of Anti-Semitic Incidents, for example, of B'nai
10 Brith in the latest audit reflects this as well, that
11 the Jewish community is particularly targeted by this
12 hate on the Internet.

13 So examining the relationship between
14 such sites and violence on the streets has been
15 conducted in several -- in several countries. And also
16 it has been found that the groups are using -- the hate
17 groups and hate mongers are using the Internet to
18 organize themselves and their activities. They use it
19 for actually planning action, planning meetings,
20 planning, you know, demonstrations, you know, inviting
21 people to come to different events, to different court
22 cases. You know, to plan strategies or marches or what
23 have you. And they use it to recruit and introduce
24 members. They use it for racist --

25 MR. VIGNA: Wait, Dr. Mock.

1 MS KULASZKA: I would like to object
2 because this law is restricted to hate messages. We're
3 not yet at the point where it's illegal to organize a
4 meeting or talk to each other or send e-mails to each
5 other or have a party. And I don't know where this
6 evidence gets us. It's really just prejudicial.

7 This case is about -- this law is
8 about hate messages, not about outlawed groups,
9 criminal organizations, criminal conspiracies. This
10 seems to be what Dr. Mock is referring to.

11 DR. MOCK: If I might --

12 MR. CHRISTIE: Mr. Chair --

13 MR. FROMM: Could we have a witness
14 excluded at this time?

15 THE CHAIRPERSON: Is that it?

16 MR. FROMM: No, I have something else
17 but --

18 THE CHAIRPERSON: If there's going to
19 be more discussion on it.

20 MR. FROMM: There is. I want to
21 raise a point.

22 THE CHAIRPERSON: Step outside,
23 please.

24 MR. FROMM: The last number of
25 comments by Dr. Mock about the use of the Internet for

1 organizing people and getting them out to events, et
2 cetera, this is all -- just almost a word-for-word
3 regurgitation of the paragraph on page -- paragraphs on
4 page 7 that you ordered excised from the report. She's
5 backdooring the evidence that you agreed would be
6 excluded as irrelevant.

7 THE CHAIRPERSON: It was, with
8 respect, but specifically to Mr. Lemire and yourself
9 but --

10 MR. VIGNA: Freedomsite was
11 mentioned. There's no mention here of Freedomsite.

12 THE CHAIRPERSON: No mention where?
13 There's a mention in the excised portion. Okay. In
14 the her testimony she didn't mention it, but if that's
15 was being alluded to.

16 MR. FROMM: The paragraph above. It
17 helps to more effectively coordinate their activities.
18 New ways -- well, she hasn't mentioned making money
19 yet.

20 THE CHAIRPERSON: Okay. I see your
21 point on the later point, Mr. Fromm, on the bottom of
22 the page. Sir?

23 MR. CHRISTIE: Yes, thank you. There
24 has to be observed at this point, that this witness is
25 being allowed to testify in a way that dehumanizes the

1 very people about whom this inquiry is occurring.
2 People like Mr. Lemire, dehumanizes because all of a
3 sudden we're hearing from an expert that there is some
4 illegal aspect to inviting people to court cases,
5 holding parties or inviting people to meetings.

6 I can't imagine a more insidious way
7 to vilify the subject of the proceedings than to allow
8 an expert to say that that somehow indicates a threat
9 to society. These are not illegal activities.

10 The purpose of her evidence, as
11 understood it, and I realize that we should never try
12 to obstruct whatever she wants to say at this point.
13 But, really, if she's allowed to tell us that what are
14 otherwise legal activities on the part of these types
15 of people must be seen as a threat, we've gone to the
16 point of listening to the inquisitor about heresy
17 because we have now vilified the very subject of the
18 inquiry, and it really does trouble me because it's
19 subtle, it's insidious and it keeps going.

20 THE CHAIRPERSON: It certainly
21 doesn't register but it shouldn't....

22 Mr. Vigna, you would agree that
23 there's nothing -- I have no evidence that
24 Mr. Lemire -- and that's not really at issue here -- is
25 involved with one group or another. That's not what is

1 at issue in this case, correct? The issue is the
2 messages, section 13 complaint?

3 MR. VIGNA: The issue is the
4 messages, section 13 complaint, and the evidence of the
5 postings and the petition and --

6 THE CHAIRPERSON: That Mr. Lemire may
7 have chosen in the past to befriend himself or
8 associate with one person or another would not be an
9 issue. Is it an issue under section 13?

10 MR. VIGNA: As far as I'm concerned,
11 the issue is the messages and the hate messages. We're
12 not here -- nor on the royal inquiry on the Commission
13 or a royal inquiry on Mr. Lemire.

14 THE CHAIRPERSON: Let me put it
15 broadly. The Canadian Human Rights Act does not
16 prevent any individuals from getting together and
17 having common ideas. In fact, I remember this great
18 conversation we had, if you call -- you weren't the
19 lawyer involved, but it was again in the Kulbashian
20 case with Dr. Francis Henry. We had this wonderful
21 discussion during her cross-examination about if we
22 made the analogy of a cabin where three people sat down
23 in the cabin and were discussing these ideas and would
24 that be hate.

25 I remember her sort of indicating

1 well, that's not a concern for us, it's happening
2 behind closed doors. But if those individuals sent it
3 out on the Internet that was, in her view, hate.

4 I think we're getting to the same
5 analogy here. She seems to be suggesting that it's
6 incorrect for people to organize or associate with each
7 other.

8 MR. VIGNA: Mr. Chair, she's saying
9 that on the context of her experiences in relating
10 basically a narration of a report, but if you want, I
11 can basically depersonalize the testimony.

12 THE CHAIRPERSON: It's more than
13 that. Stick to the story. The story is hate messages,
14 right? It's not anything other, any other activities.
15 I'm not hear to look for, I don't know if there was an
16 organized crime group using the Internet to
17 communicate. That's not what's at issue here. What's
18 really at issue is the hate messages, right?

19 MR. VIGNA: The only thing is, and I
20 agree with what you are saying, Mr. Chair, and I don't
21 have any objection. The only thing is as a nuance I
22 would make, is that for example when we talk about
23 Stormfront and the respondent lawyer says it's United
24 States only --

25 THE CHAIRPERSON: That's not what in

1 objection is.

2 MR. VIGNA: I'm just saying, even in
3 that context there is a chapter on the Stormfront which
4 is Canadian. Everything has to be --

5 THE CHAIRPERSON: You are revisiting
6 the old story. I know that. Okay. You can continue
7 on the line of questioning.

8 MR. VIGNA: As soon as we get onto
9 mention of an individual or the United States there's
10 an objection, and I think at the end of the day you'll
11 be able to decipher what is relevant and not relevant.
12 And what's relevant is the hate messages for the merits
13 and the constitutional question for the --

14 THE CHAIRPERSON: Right. Let's not
15 get into convicting people for being of one group or
16 another. That's not what's at issue here, is it?
17 What's at issue is putting messages out that expose
18 people to hate or contempt under section 13.

19 MR. VIGNA: Correct. It's the
20 evidence in section 13.

21 MR. FROMM: My concern is that what
22 Dr. Mock is highlighting are problems. There's a lot
23 that could be said about content on the Internet even
24 on forums like Stormfront, of which I'm pretty
25 knowledgeable. There's sections there on dating,

1 there's sections there on classified, advertising, et
2 cetera.

3 I assume what's being highlighted are
4 things that are problematic. So when I hear notices
5 are put up about court meetings, efforts are made to
6 bring people to meetings or to protest, that surely is
7 way beyond the --

8 THE CHAIRPERSON: If one looks at the
9 passages from the message boards that have been
10 highlighted by the complainant and the Commission in
11 this file as allegedly being in breach of section 13
12 that we heard the other week, it did not include
13 material like that. So it's all understood. Thank
14 you.

15 So I would caution you then,
16 Mr. Vigna, to try to limit her evidence to the actual
17 items that are at issue here.

18 MR. VIGNA: I'll go call her.

19 THE CHAIRPERSON: Mr. Vigna will have
20 a new question for you.

21 MR. VIGNA: In continuing your
22 testimony, Dr. Mock, we'll just be cautious in terms of
23 not referring to specifics or names or groups and just
24 stick to basically the theories of Dr. Persinger versus
25 your response to it, and try to abstract as much as

1 possible from getting into specifics regarding such a
2 group or other group, because ultimately what we're
3 looking at is basically to confront your interpretation
4 as a psychologist versus the report of Dr. Persinger
5 and the whole phenomenon of hate, but not for a
6 particular group or a particular individual.

7 Like I said earlier, we're going to
8 definitely not refer to the paragraph which starts, "In
9 Canada". So I think --

10 DR. MOCK: I know that.

11 MR. VIGNA: So continue on your
12 explanation regarding 2(B), and your response to Dr.
13 Persinger's view that he's expressed in this second
14 theme that you've been able to extract and try to be
15 perhaps less anecdotal.

16 DR. MOCK: Okay. This section -- and
17 the reason I included information on the use that the
18 Internet is being put where there are hate sites was
19 directly to counter Dr. Persinger's point about -- he
20 tried to say -- and again it's difficult to follow the
21 argument, but why I went in this direction looking at
22 the perpetrators, or potential perpetrators.

23 On page 4 of Persinger's report where
24 he deals with --

25 THE CHAIRPERSON: Let me find it.

1 DR. MOCK: Page 4 of Dr. Persinger's
2 report.

3 THE CHAIRPERSON: Yes.

4 DR. MOCK: Where he gets into the
5 second paragraph -- first, in the first paragraph on
6 that page he seems to dismiss that hate speech had
7 anything to do with the emergence of Nazi Germany, the
8 behaviours that happened as a result of that, and the
9 stereotypes that -- so after he dismisses that hate
10 speech had nothing to do with that, he goes onto --
11 again, it's difficult to understand but makes an
12 argument that -- and it's the one, two, three, fourth
13 line down in the second paragraph:

14 "Now cognitive studies have
15 clearly shown that hate
16 behaviours are usually driven by
17 social factors that are
18 irrelevant to the statements
19 with which they are correlated."

20 So he attempts, again without
21 substantiation, to talk about the dynamics that happen
22 when people find a group or social factors to
23 contribute, and it hasn't got anything to do with hate
24 speech but the sense of group affiliation.

25 So while Ms Kulaszka was quite right,

1 there isn't a law against -- well, there are some laws
2 but not against that kind of affiliation and that's not
3 what the topic is about.

4 I directly began to go this route and
5 look at -- especially because of my experience in
6 dealing with perpetrators and students who have been
7 drawn in by -- I don't want to mention the names of the
8 groups, but some local, virulent hate groups that were
9 in Oakville and Toronto and in Brampton and so on. So
10 they had been drawn in by those groups.

11 And when we worked with them, and I
12 can only tell you from my own personal experience and
13 my studies then, they said -- when I said, what is it
14 about these groups that attract you? You have a sense
15 of belonging. You know where to go. You feel a sense
16 of power. We have a network, we share information.
17 You feel good about yourself. You feel that somebody
18 cares about you.

19 Now, of course, none of this is
20 against the law in that sense. But I was merely in
21 this section attempting to refute that argument of
22 Persinger that hate speech and speech on these Internet
23 sites don't have anything to do with their behaviours
24 and their resulting violence or the tendency to want to
25 perpetrate what it is that they are being instructed to

1 do.

2 So I won't name the names of the
3 groups. I won't name specifics here. But in terms of
4 his -- the awkward analogy that Dr. Persinger puts
5 forward, he says that -- I mean, I will admit that we
6 don't have a precise diagnosis at this stage of the
7 effect of hate speech on potential perpetrators, but
8 there are lots of examples of direct connections
9 between access to and exposure to Internet hate and
10 subsequent deviant behaviour.

11 We have seen that time and time
12 again. I'll let you read those cases in the United
13 States, and even by the way in Canada, the Taybor case
14 in Alberta, where a young man based on the things he
15 was seeing on the Internet and the copycat -- they
16 called it at times a copycat because of the Columbine,
17 because of young man who had access to the hateful
18 games and hateful hate on the Internet and the Nazi
19 propaganda, and so on, went and shot up a school in
20 Columbine because they were disaffected youth who felt
21 bad about themselves and needed a sense of belonging,
22 and they found that kind of identity and actions and
23 what to do about it on the Internet. Well, we did have
24 an example --

25 MR. VIGNA: Wait, Dr. Mock, there's

1 an objection.

2 MR. FROMM: What does the tragedy in
3 Taybor that had to do with -- heavy metal and like
4 witchcraft-type information -- what does this possibly
5 have to do with political commentary on the Internet
6 which is the subject of the accusations of so-called
7 hate?

8 THE CHAIRPERSON: I see your point.
9 I think the point being made here perhaps, if I
10 understand correctly, is that people can be influenced
11 by what they read on the Internet in one way or the
12 another.

13 DR. MOCK: I'll leave it.

14 MR. VIGNA: On that topic, I would
15 like you to give you an example, Dr. Mock. In the
16 recent news about a few months ago there was an
17 incident in Montreal regarding Dawson College. Do you
18 recall that incident?

19 DR. MOCK: Yes.

20 MR. VIGNA: Do you recall what was
21 the influence for the shooter in order to manifest the
22 actions --

23 DR. MOCK: No, I can't recall
24 specifically.

25 MR. CHRISTIE: I think it would be

1 improper to guess and --

2 THE CHAIRPERSON: She can't answer.
3 Did she do a study? Has there been a trial conducted?
4 Mr. Vigna, be careful. Where are you going with this?
5 We don't know. The man is dead.

6 MR. VIGNA: Continue on your
7 testimony.

8 DR. MOCK: So I just -- Dr. Persinger
9 was trying to say that there appears to be no
10 connection between access to exposure to Internet hate
11 and subsequent deviant behaviour, violence and even
12 murder. And he makes a very awkward analogy about if I
13 were to drop -- if he were to drop a magnet on this
14 glass, it's not the dropping of the magnet that breaks
15 the glass, it's the mass of the magnet that breaks the
16 glass.

17 And I guess just carrying Dr.
18 Persinger's argument himself to the logical conclusion,
19 if I had never dropped the magnet the mass would not
20 have been entitled to break it.

21 So similarly, it isn't just a
22 computer that causes the behavior, it is what is on
23 that computer and what the child learns, or the adult
24 learns from that computer in terms of a
25 psychological -- and learning -- remember I mentioned

1 the effects of hate propaganda that I had studied as a
2 social -- in social psychology and educational
3 psychology.

4 So I just wanted to conclude that
5 argument by suggesting that there are measurable
6 respects -- and this again from copious work and
7 research done by the Anti-Defamation League and other
8 organizations as well, that the Internet -- why is it
9 that the electronic community of hate -- again, taking
10 Persinger's notion of it's social factors that lead to
11 it and the fact that young people tell you -- and I do
12 have to say that even those who have invented these
13 hate sites have said it is because we reach our
14 community, it is because we can do our networking.

15 So that notion of the electronic
16 community of hate that strengthens the work of the
17 extremists off-line as well. So the connection between
18 the Internet hate and the speech on the Internet to the
19 behaviors, whether it's on the street or where.

20 So number one, the Internet provides
21 instant and anonymous access to propaganda that can
22 inspire and guide criminal activity. There is lots of
23 psychological evidence. The social psychological
24 literature is replete. It is just common knowledge in
25 psychology that when someone is anonymous it can lead

1 them to do more deviant behaviours. It's why criminals
2 put masks on, it's why people hide behind shawls. And
3 it's this anonymous pseudonyms that will be used on
4 the Internet. Anonymity increases boldness. And there
5 is a lot of research on that. It is commonly accepted
6 information.

7 Two. Again, the more effective
8 coordination of their activities, including violent
9 activities. And they use it also because it offers
10 ways to support the cause.

11 I'm going to skip over the next page
12 because I think you know about --

13 THE CHAIRPERSON: I just want to be
14 clear. A lot of this, "they use it". The "it" you are
15 talking about here is the Internet.

16 DR. MOCK: The web and the Internet.

17 THE CHAIRPERSON: Not necessarily
18 through hate messages. Let me just follow through with
19 what you are saying here, if I understand you
20 correctly.

21 If someone wanted to organize
22 something that's totally abhorrent, a criminal act, it
23 would be perhaps subject to the Criminal Code in other
24 ways. Think of something else, think of something
25 else. Whatever it is that may be unacceptable in our

1 society. They could do it through the Internet without
2 necessarily posting hate messages, correct?

3 DR. MOCK: That's true.

4 THE CHAIRPERSON: So the "it" you are
5 speaking of in your evidence is the Internet. People
6 can use the Internet to communicate better than they
7 could before.

8 DR. MOCK: Absolutely. And in my
9 report, the earlier one, I say they can use it for all
10 kinds of good. There's no question about that.

11 But in this case, responding to Dr.
12 Persinger's notion that speech on the Internet doesn't
13 influence people's behavior and hate speech, you know,
14 it's not the speech that causes people to do things,
15 it's the social climate or it's their association with
16 other people.

17 There's a connectiveness there, that
18 there's the notion that if there is this community
19 being created -- it's not the website itself that is
20 the problem clearly, but what is posted on it.

21 So that when this community that is
22 specifically targeted and drawn in through all kinds of
23 ways, and then -- so that they will consume the hate
24 messages and thereby be drawn to the cause and those
25 messages will be the dehumanization --

1 THE CHAIRPERSON: Stop.

2 MS KULASZKA: I just -- I think Dr.
3 Mock is referring to page 4, and to be fair she should
4 look at exactly what Dr. Persinger is talking about.
5 He's not talking about organizing on the net and using
6 it for illegal --

7 DR. MOCK: Where?

8 MS KULASZKA: This is page 4 of Dr.
9 Persinger's report. He's talking about the correlation
10 between hate statements and behaviour, and he's giving
11 the argument that in fact what is determining it is the
12 psychology of groups.

13 DR. MOCK: Yes.

14 MS KULASZKA: So he's not talking
15 about what you're saying he's saying. You should be
16 accurate and --

17 DR. MOCK: No. In fact, you've
18 corroborated exactly what I was trying to say, that in
19 fact this group, this notion of the social factors
20 created by this group and the sense of belonging in a
21 social psychological sense is created by electronic
22 community; that the community, the group becomes the
23 group that are posting on this Internet and exchanging
24 hate messages that are actually being prompted by what
25 they see and usually the leaders who have posted these

1 messages initially.

2 So that in fact what I am doing is
3 suggesting that it is exactly the case, that the
4 electronic community becomes, let's say, the virtual
5 group but in fact there's real people attached and real
6 behaviours then get perpetrated, and there's evidence
7 for that.

8 THE CHAIRPERSON: It's almost like a
9 cross-examination, Ms Kulaszka, so we'll put it off
10 until your cross-examination.

11 DR. MOCK: Now, I've got to go back
12 to where I was.

13 Okay. I'm going to not read, but
14 here I go on in my paper to describe the increase in
15 the number of sites. The reason that the most virulent
16 hate mongers and the leaders of so called white
17 supremacist, white racialist, white nationalist
18 movement use it as the vehicle of choice to post their
19 hate messages.

20 Page 8, leaving out any references to
21 Canadian material there. The first full paragraph of
22 page 8 -- I'm moving ahead from there, where I'm
23 showing that the very -- that the hate mongers, by the
24 use of the hate speech and the hate sites -- this is
25 the top of page 8 of my report.

1 And Dr. Persinger describes the
2 social factors that lead to hate behaviors. And I'm
3 suggesting that it is the Internet hateful sites that
4 provide the "peer dynamic which tend to encourage
5 cohesion through homogeneity of thought and conduct."

6 And if I'm not mistaken -- I have to
7 look up my own references. Now I know why lawyers like
8 footnotes and not end notes. It is Michael Persinger's
9 report.

10 THE CHAIRPERSON: That's what you are
11 citing there.

12 MR. VIGNA: Is that 27?

13 THE CHAIRPERSON: 26.

14 DR. MOCK: That I have footnoted. So
15 he has suggested that it's peer dynamics which tend to
16 encourage cohesion through homogeneity of thought and
17 conduct. That's what leads people to perpetrate
18 certain behaviours, and I'm suggesting in fact it has
19 been shown that it is the Internet itself and the hate
20 site and -- that creates that electronic community,
21 providing a sense of value, importance and belonging to
22 lonely and impressionable young people.

23 This, by the way, has been
24 corroborated, as I said earlier, very locally in why
25 the young people themselves who are attracted to the

1 hate sites and to the hate groups say that they are,
2 because they want that sense of belonging, that sense
3 of power. So they create a virtual group that becomes
4 the powerful determinant of hate behaviors, thereby
5 fulfilling their purpose, meaning the purpose of the
6 hate messages, the hate site, the purposes of the hate
7 mongers themselves who created these sites have said
8 that they use them for -- to create exactly that kind
9 of community for the psychological support and sense of
10 belonging and reinforcement that potential recruits and
11 converts to the hate cause can achieve.

12 THE CHAIRPERSON: I understand your
13 answer.

14 MR. VIGNA: What can we make in terms
15 of analogy between the literature and media, violence
16 and if -- we transpose it to the world of Internet?

17 DR. MOCK: Well -- and here now I'm
18 moving forward more quickly.

19 There has been more than 40 years of
20 research on media violence on groups like the LeMarsh
21 Centre on Violence up at York University, for example,
22 and others, again work reported by the Media Awareness
23 Network, work reported in the various communications,
24 schools, and so on, in psychology, that viewing
25 violence via the entertainment media can lead to

1 increases in aggressive attitudes, values and
2 behaviours.

3 Now, particularly in children, put
4 that includes youth and adolescence as well. And the
5 studies that are cited in the Journal of Personality
6 and Social Psychology -- and I refer you to some of
7 those studies on the desensitization and portrayals of
8 real life aggression as a function of exposure to
9 television violence, people who watch a large amount of
10 media violence show less physiological reactivity to
11 violent film clips, and people who viewed excessive
12 sexual violence demonstrated reduction in physiological
13 response and show less sympathy for victims of domestic
14 violence and rape.

15 Why have I included this literature
16 and its relevance? Because increasingly on the
17 different websites you have real audio, you have video
18 clips, you have -- you know, again cartoons and vicious
19 kinds of diatribes that are imploring young people to
20 take action. And the more you see the conspiracy
21 theories or dehumanization of aboriginal people, of
22 Muslim people, of Jewish people, of black people, the
23 more you would be prone to be able to commit more
24 serious acts of violence, or at least to be less
25 sympathetic to their experiencing pain and so on.

1 So there is evidence of that in the
2 literature and, of course, even speaking to young
3 people and perpetrators as I have.

4 Actually, Dr. Persinger himself said
5 that -- well, I am running ahead of myself. I'm sorry.

6 I'm going to move to page 9. Yes.
7 This is where the work that I referred to earlier is
8 relevant as well. Dr. Persinger gives the argument
9 that --

10 MR. VIGNA: Can you cross-reference
11 to the part of Dr. Persinger's reports that you are
12 going to refer to so we can follow?

13 DR. MOCK: I have it listed as page 8
14 of his report. Yes. He uses the notion -- he doesn't
15 name it, systematic desensitization, but that is a
16 psychological concept that is being referred to.

17 He advances that theory of systematic
18 desensitization on the victim, that the more the victim
19 feels -- sees hate speech directed at the victim's
20 group, then that serves almost like an inoculation so
21 they become desensitized, they won't be so vulnerable
22 to it.

23 MR. CHRISTIE: Rather than
24 paraphrase, can I be directed to where this version is
25 being asserted?

1 THE CHAIRPERSON: That is what
2 Mr. Vigna asked earlier.

3 DR. MOCK: Page 8 in the middle of
4 the page.

5 MR. VIGNA: Read the exact sentence,
6 please.

7 DR. MOCK:

8 "The concordant concept that
9 psychological distress is so
10 vague that it is meaningless.
11 Any word from any person can
12 produce in another person an
13 elevation of arousal and the
14 release of intrinsic chemical
15 reactions that they consider
16 distressful. However,
17 desensitization of the impact of
18 words by equipping the person
19 with the opportunity to express
20 opinion freely and by expressing
21 strategies that allow the person
22 to individually accommodate the
23 distress has been repeatedly
24 shown to facilitate adaptation.
25 From an operational perspective,

1 it is not the painful reaction
2 from hatred that undoubtedly
3 detracts from the individual's
4 ability to make himself or
5 herself the life he or she is
6 able or wishes to have.

7 Instead --"

8 And I'm not sure why there is a quote
9 there because I'm not sure where he is quoting from:

10 "Instead, such diminishment is
11 due to the absence of the
12 capability to respond freely and
13 the limited opportunities that
14 interfere with the full
15 development the person's
16 potential."

17 To be frank, I understood what the
18 first couple of sentences made. I saw the rest as
19 being a complete non-sequitur and I don't really
20 understand the entire paragraph, but it seemed to me
21 that he was suggesting that he uses desensitization.
22 The research is on systematic desensitization. Again,
23 earlier it was done with animals to show that painful
24 stimuli create less --

25 MR. CHRISTIE: Excuse me. I have an

1 objection here.

2 DR. MOCK: Well, I want --

3 MR. CHRISTIE: I have an objection
4 because this witness is now giving her interpretation
5 of what another witness purports to say and what she
6 claims not to be particularly sure.

7 It's as a result of her desire to go
8 first that she is going first. I think it would be
9 appropriate -- if she really wants to comment after she
10 hears what she says is inarticulate to her, explained
11 by the person who says it, then it's quite legitimate
12 for her to reply.

13 THE CHAIRPERSON: That was proposed
14 by Mr. Vigna earlier, but it didn't seem it was an
15 option that anybody was interested in.

16 MR. CHRISTIE: Well, I maintain this,
17 that we are now engaged in the most unusual practice of
18 inviting or allowing an expert to express her
19 interpretation of what another expert says for the
20 specific purpose of refuting it, which of course
21 invites the opportunity to interpret it in an absurd or
22 illogical way. Only an expert can and only an expert
23 should say what they mean, and if there is another
24 expert who wishes to comment, only after they have had
25 a fair and reasonable opportunity to explain themselves

1 should anyone be attacking what they say.

2 MR. VIGNA: Mr. Chair, this
3 morning --

4 MS KULASZKA: If I can just add
5 something. I think once Dr. Mock said she didn't
6 understand what Mr. Persinger was talking about, that
7 should have ended it. At that point she admitted she
8 didn't know what he was talking about.

9 THE CHAIRPERSON: Nor did I. I don't
10 understand what he's writing either, so the source of
11 this problem is that Dr. Persinger has not written in a
12 clear fashion.

13 MS KULASZKA: After that she's
14 speculating.

15 THE CHAIRPERSON: Because of what
16 he's given us. Yes?

17 DR. MOCK: Sir, if I may? I would
18 like only to comment on the first two sentences of that
19 paragraph and then give data that show in fact that
20 theory of desensitization that he proposes in terms of
21 the victim is, in fact, relevant in terms of the
22 desensitization by perpetrators and potential
23 perpetrators to the impact of hate on the Internet.
24 And that is, in fact, grounded in psychological
25 research.

1 THE CHAIRPERSON: You are saying what
2 Dr. Persinger says is actually grounded in
3 psychological research?

4 DR. MOCK: The concept is systematic
5 desensitization which he is applying to the victim in
6 which I have shown in other psychological studies of
7 the victim stress is not valid --

8 THE CHAIRPERSON: What they're
9 saying --

10 DR. MOCK: -- I'm looking now at what
11 is the impact --

12 THE CHAIRPERSON: Hold on a second.
13 They are saying that he doesn't say that, that Dr.
14 Persinger doesn't say that, talk about victim's
15 desensitization.

16 MR. CHRISTIE: What he does say is
17 the "concordant concept psychological distress" --
18 which I assume the taken from Ms. Mock's opinion -- "is
19 so vague that it is meaningless".

20 MR. VIGNA: Mr. Chair --

21 MR. CHRISTIE: That, of course, is
22 not particularly unclear.

23 THE CHAIRPERSON: Then the rest?

24 MR. CHRISTIE: Well, the rest is:

25 "-- any word from any person can

1 produce in another person an
2 elevation of arousal and the
3 release of intrinsic chemical
4 reactions that can be considered
5 distressful."

6 I don't find that particularly hard
7 to understand.

8 THE CHAIRPERSON: What about the
9 rest? She said there's the balance --

10 MR. CHRISTIE: She said, "I'm going
11 to comment on the first two sentences," and then she
12 attributed words to him that were never there. That's
13 why it's absurd to proceed this way.

14 MR. VIGNA: Mr. Chair, when we
15 decided initially that Dr. Mock would come before you,
16 it wasn't out of choice or out of my best preference.
17 It was simply to be practical.

18 THE CHAIRPERSON: It was to be
19 practical, and Mr. Christie, you were not there.
20 That's how it happened. Nobody raised any of these
21 objections. So that's how we did it.

22 MR. VIGNA: If there's a problem -- I
23 consulted Dr. Mock earlier. She can come back at a
24 certain point to rebuttal.

25 MR. CHRISTIE: If that's possible,

1 why are we doing this?

2 THE CHAIRPERSON: Because earlier
3 today when it was proposed by Mr. Vigna we engaged in a
4 whole other debate about whether she would testify at
5 all. Please. Now --

6 MR. CHRISTIE: Of course, once she's
7 testifying she should be restricted to what her opinion
8 is and comments legitimately directed at the report of
9 Dr. Persinger, but now she says --

10 THE CHAIRPERSON: Because we're all
11 having some difficulty interpreting what Dr. Persinger
12 is saying.

13 MR. CHRISTIE: Well, Dr. Persinger
14 will be here and she now confirms she's able to come
15 back to rebut what he says.

16 THE CHAIRPERSON: Good idea. I see
17 agreement on the part of Mr. Vigna as well on that.

18 MR. CHRISTIE: Then why are we
19 proceeding --

20 THE CHAIRPERSON: Could I hear
21 Mr. Vigna, please?

22 MR. VIGNA: Mr. Chair, two seconds.
23 With respect to my colleague, Mr. Christie, he wasn't
24 here when we had decided the manner of proceeding,
25 firstly.

1 Second of all, Mr. Christie is not
2 calling Dr. Persinger. It's respondent who is calling
3 Mr. Persinger, and he's raising most of the objections.

4 In terms of the report that Dr. Mock
5 responded to in terms of Dr. Persinger, she based to
6 the best her ability, her ability to understand the
7 language that's here which -- I'm not a psychologist
8 but it's very difficult to understand.

9 THE CHAIRPERSON: And it was pursuant
10 to my order after the request for late filing of the
11 expert's report by Ms Kulaszka.

12 MR. VIGNA: Exactly. And you allowed
13 it exceptionally because it was late and we had to
14 adjust to a certain situation.

15 Now, this morning, considering all
16 the objections on the qualifications, this and that, I
17 raised the possibility of having Dr. Persinger come
18 back to listen to -- sorry, Dr. Mock listen to Dr.
19 Persinger's report, which would have been the best way
20 of proceeding.

21 But there was an agreement to which
22 Mr. Persinger -- Mr. Christie wasn't here when we made
23 that agreement, now he's coming here and basically
24 objecting systematically to this manner of proceeding
25 when it's not even his expert that's being called.

1 It's the expert of the respondent.

2 THE CHAIRPERSON: So are you
3 proposing anything here?

4 MR. VIGNA: What I'm proposing is to
5 continue with Dr. Mock's testimony, as she had
6 projected, and if there is any problem regarding
7 certain specific paragraphs that are not clearly
8 interpreted -- first of fall, Dr. Persinger will come
9 and testify on his own and will be cross-examined. And
10 if some problem still persists, we would like to
11 reserve the right to have Dr. Mock come back to listen
12 to that part, or at least leave the transcripts where
13 he gives an explanation so that she can make any
14 nuances that she has not been able to make when she's
15 not able to hear his testimony.

16 THE CHAIRPERSON: Ms Kulaszka?

17 MS KULASZKA: Well, Dr. Persinger, I
18 may be the one calling him but, of course, the two
19 intervenors obviously can make objections because he
20 also supports their position. He's being called and
21 they support the position of the respondent.

22 To tell the truth, I don't see
23 anything too confusing what Dr. Persinger said. I
24 don't know whether I'm the only one who can read, or
25 what the problem is. It must be because I'm a

1 librarian. But obviously he's saying --

2 THE CHAIRPERSON: Hence, these lamps.
3 Now I understand why the lamps are here.

4 MS KULASZKA: I remember very well
5 how this problem arose, and Mr. Vigna was most anxious
6 to book the first two or three days this week for Dr.
7 Mock because this was the time she had and I didn't
8 object and you didn't object, and none of us objected
9 and obviously because we never saw these problems
10 coming up.

11 THE CHAIRPERSON: That's my point.
12 Nobody saw these problems coming up. That's why we
13 have to work with it.

14 Look, it seems to me this is the one
15 passage that seems to be raising the big controversy.
16 Are there any similar issues on her interpretation of
17 Dr. Persinger?

18 MS KULASZKA: I think obviously if
19 Dr. Mock can come and watch Dr. Persinger and Dr.
20 Persinger gets a chance to look over Dr. Mock's report,
21 and make comments on them, that's maybe the way to do
22 it.

23 THE CHAIRPERSON: And we're
24 approaching the end of Dr. Persinger's report. I don't
25 know if it's the end of Dr. Mock's report.

1 MR. VIGNA: Dr. Mock is only
2 available Friday, I believe.

3 MR. CHRISTIE: Page 5?

4 THE CHAIRPERSON: She's only
5 available Friday?

6 DR. MOCK: No, tomorrow.

7 MR. VIGNA: She's available tomorrow
8 but not Thursday, but she's available on Friday. Is
9 that what I understood, Dr. Mock?

10 DR. MOCK: Yes.

11 MR. VIGNA: And Dr. Persinger will
12 testify on Thursday, I believe.

13 THE CHAIRPERSON: If we fast track
14 his qualification stage, he'll be able to complete his
15 evidence on Thursday so we can -- maybe part of Friday
16 so we can get to Dr. Mock's addressing --

17 MR. VIGNA: I don't think I'll be
18 making that many objections on the qualification stage.

19 MS KULASZKA: Just to let you know,
20 Dr. Persinger does want to start early and just go as
21 long as it takes, if that is all right.

22 THE CHAIRPERSON: On both days?

23 MS KULASZKA: On Thursday.

24 THE CHAIRPERSON: He was prepared to
25 come Friday?

1 MS KULASZKA: No, only Thursday.

2 THE CHAIRPERSON: Okay.

3 MR. VIGNA: I'll continue where I
4 left off. I propose if there is a problem regarding
5 certain paragraphs in the report of Dr. Persinger, that
6 Dr. Mock was not able to hear viva voce, she can at
7 least read the transcripts, come here on Friday and try
8 to adjust in the best manner possible.

9 THE CHAIRPERSON: So, Ms Kulaszka, do
10 you see in other areas where Dr. Mock's evidence
11 appears to make an inaccurate interpretation of Dr.
12 Persinger's evidence we could -- you could highlight
13 that for us and we'll get back to it.

14 So why don't we skip over this
15 section. I mean, we have her written report. We have
16 the written report here with regard to this paragraph
17 of Dr. Persinger's report at page 8, correct? So
18 that's what's in writing, now we'll wait until we hear
19 Dr. Persinger testify on page 8 and --

20 MR. VIGNA: I spoke perhaps too
21 quickly on the issue of the transcripts, because they
22 are not that quickly available. It's better she shows
23 up, I guess, in person.

24 THE CHAIRPERSON: Yes. Would she be
25 available Thursday? No?

1 MR. VIGNA: Friday.

2 DR. MOCK: It depends at what time.
3 I'm engaged to deliver a workshop actually, not too far
4 from here, but that was done months ago.

5 THE CHAIRPERSON: At best we could
6 just -- the lawyers could perhaps come to some sort of
7 agreement as to what Dr. Persinger said -- with regard
8 to this page 8 and we'd present that to DR. MOCK, his
9 interpretation.

10 Can do you that, Ms Kulaszka,
11 something that can be worked out?

12 MS KULASZKA: I'll talk to Mr. --

13 THE CHAIRPERSON: Yes. You'll be
14 available?

15 DR. MOCK: I'll look at the schedule
16 and see.

17 THE CHAIRPERSON: If you can be here,
18 that's good; if not, this is what we'll do.

19 DR. MOCK: May I ask one point of
20 clarification of the -- when I reviewed Dr. Persinger's
21 report, while my citations reference certain key
22 concepts it isn't as if his concepts flowed one right
23 from the other.

24 So my three main themes that I
25 extracted refer to various parts of the report, and I

1 think we got -- in my view, I got distracted too. I
2 was making some points around the concept of systematic
3 desensitization as well as the impact on perpetrators,
4 and it was when I was asked exactly what point in Dr.
5 Persinger's paper are you referring to. There are
6 various threads he has put into the paper. And so I've
7 culled them into three main issues, and providing
8 psychology research and experiential evidence to refute
9 the main themes, or the main points.

10 MR. VIGNA: Thank you for the
11 clarification, Dr Mock.

12 I'll go on to the example you gave
13 about the rise of bias and crime in Germany. Can you
14 tell us about what you refer to in page 9 of your
15 report?

16 DR. MOCK: Again, there was a comment
17 in Dr. Persinger's paper that suggested that hate
18 speech had not contributed to the bias crime and --
19 sorry, I'm looking at contemporary crime here. Just a
20 sec.

21 MR. VIGNA: Footnote 37.

22 DR. MOCK: Study in the American
23 Behavioural Scientist on the rise and contemporary bias
24 crime in Germany and the significant role played by the
25 right wing skinheads and neo-Nazi groups has been

1 linked to the rise of hate on the Internet.

2 The right wing culture and the
3 political and commercial entities of skinhead behaviour
4 have been able to grow in Germany and be supported, and
5 they are suggesting that at least one-third of the
6 violent incidents coming from informal groups have been
7 influenced by the Internet.

8 And this is based on case analysis
9 and reported in The Behavioural Scientist.

10 Also in -- sorry.

11 MR. VIGNA: The next paragraph I
12 guess is more of an example for Canadian context so
13 I'll just skip over it and I'll go to page 10.

14 Can you tell us more or less if the
15 technology of Internet has made the propagation of hate
16 messages all that different? You discussed that in
17 paragraphs 1 and 2 and make a reference to Dr.
18 Persinger's report.

19 DR. MOCK: And actually the paragraph
20 at the bottom of page 9 that we skipped before, I know
21 we were not mentioning Canadian hate site. But this is
22 Canadian research on how many hate sites there are and
23 how much children are being influenced, children and
24 youth.

25 And the Media Awareness Network has

1 found that young people across Canada are being
2 influenced by the racialism and the keep Canada white
3 and the pseudoscience and intellectualism and
4 historical revisionism on the hate websites in Canada.

5 So that's why, without naming any
6 names or Stormfronts or whatever else, this is Canadian
7 research where the transferring of the hate and the
8 fear and the perpetration of hate messages and violence
9 and degradation are really influencing young people in
10 Canada.

11 So, again, the idea is that unlike
12 the mimeograph machine or the ditto machine -- I don't
13 want show my age too much -- the Gestetner I guess we
14 used to call it -- we have now the computer technology
15 that has a very easy way of affecting young people's
16 behaviour. It doesn't give them tangible feedback on
17 the consequences of their actions.

18 There is research, psychology
19 research that has been done on gang behaviour and gang
20 violence, and they find that when some young people see
21 the consequences of the behaviour of the gang and the
22 violence, it affects them so they cease and desist from
23 their behaviour. But you do not see that when the hate
24 is perpetrated via the Internet.

25 So with no actual physical contact,

1 it has been shown -- and this is a study in young
2 Canadian -- called Young Canadians in a Wired World,
3 just done in 2005 by the Media Awareness Network, that
4 the lack of feedback and having no actual physical
5 contact with their victims minimizes feelings of
6 empathy or remorse so that the perpetrators of the hate
7 on the Internet do not get that important psychological
8 feedback.

9 So we are seeing, then, through the
10 review of the literature and based on extensive
11 research that young people may be susceptible to
12 on-line racist propaganda because they don't have
13 experience or facts on hand to refute the lies and the
14 myths being fed to them.

15 So at -- I know that Dr. Persinger
16 gave a neurocognitive scientific analysis. Mine is
17 more as an educational psychologist, or registered
18 psychologist in the applied psychology of how people
19 learn and how that impacts their behavior.

20 The conclusion is, in fact, that when
21 a child, when youth don't have the cognitive support,
22 the information, the knowledge with which to evaluate
23 the lies that are being fed to them, then they accept
24 it, they believe it.

25 The social psychological research

1 shows that the more credible it looks, the more
2 believed it is. And then the evidence -- it also goes
3 with the evidence that hate and extremism on the
4 Internet leads individuals and groups to commit hateful
5 and violent acts.

6 But there is no imperical evidence
7 that I have been able to find that the repetition of
8 hate and violent simulations on the Internet provide a
9 safety valve, or what in psychology is called a
10 catharsis for hate mongers.

11 So Dr. Persinger has asserted in his
12 paper that it will decrease their hateful attitudes or
13 behaviours because they become desensitized.

14 But that, in fact, is not the case.
15 There is no evidence in the psychology literature that
16 seeing these violent simulations of hate acts or
17 receiving hate speech decreases their prejudice or
18 their stereotypes or their violent actions towards
19 minority groups.

20 On the contrary, the power of the
21 repetitive and hateful lies and propaganda is to
22 convince those who are susceptible to being drawn into
23 hateful causes of the truth about minorities and
24 victimized groups leading to the dehumanization of
25 members of targeted groups and a greater likelihood of

1 their being further victimized by hate speech and even
2 violent acts.

3 THE CHAIRPERSON: You are reading
4 again.

5 DR. MOCK: Yes, I'm sorry.

6 THE CHAIRPERSON: I see the reference
7 is footnote 39, from "Combatting Racism and Hate in
8 Canada Today".

9 MR. VIGNA: I have the article for
10 footnote 39. Perhaps I can file it.

11 DR. MOCK: And I provide the footnote
12 to the book chapter also because in that chapter there
13 are others citations of that evidence.

14 THE CHAIRPERSON: This was attached
15 to the report. This is also to be added to the back of
16 the report.

17 DR. MOCK: So my conclusion of
18 that --

19 THE CHAIRPERSON: Yes?

20 DR. MOCK: -- of that section, you
21 know, again, even -- Dr. Persinger says that this
22 didn't play a factor in Nazi Germany. University of
23 Toronto professor, who is Rebecca Whitman, very
24 recently, the last couple of years, has conducted
25 extensive research on post-war Germany -- pre-war and

1 post-war Germany and there's a quote right there from
2 her work, that --

3 MR. VIGNA: Dr. Mock, footnote 39, I
4 would just like to present you with the original.

5 DR. MOCK: I have that.

6 MR. VIGNA: You mention the footnote.
7 Put it in bold in the end notes?

8 DR. MOCK: Hmm-hmm.

9 MR. VIGNA: Is there anything in
10 particular you want to bring to our attention in
11 regards to this article that -- there's two articles
12 that you have written? First of all, I would like to
13 file them as part of the same report.

14 THE CHAIRPERSON: Yes.

15 MR. CHRISTIE: What are we filing
16 now?

17 THE CHAIRPERSON: Was it supposedly
18 included in what had been communicated by the other
19 side? I had never obtained this copy.

20 MR. CHRISTIE: Just so we know what
21 we are talking about. Are we talking about Ms Mock's
22 article?

23 THE CHAIRPERSON: Yes, that's the
24 one. I'll give that to you at the break.

25 MR. CHRISTIE: We're not talking

1 about Rebecca Whitman now.

2 THE CHAIRPERSON: No.

3 MR. CHRISTIE: That was the subject
4 that just came up.

5 THE CHAIRPERSON: You're right. And
6 Mr. Vigna, for some reason, we went back to 39. I
7 noticed that too.

8 MR. VIGNA: Mr. Christie is totally
9 right. She got ahead of me so --

10 DR. MOCK: Sorry.

11 MR. VIGNA: Dr. Mock, we're at
12 paragraph 2 of page 10 and, at the end you have
13 footnote 39. And I had a few questions because at one
14 point you mentioned the word -- I'm not sure if I
15 understood correctly -- neuropsychology in relation to
16 Dr. Persinger, then you said as far as I'm concerned
17 it's another field. I'm not sure if you can describe
18 the difference between -- you mentioned the word
19 neuropsychology.

20 DR. MOCK: Dr. Persinger cites or --
21 doesn't give the citations but speaks about
22 neurocognitive science and neurobehaviourist science,
23 and he's basing his assertions on that.

24 MR. VIGNA: What is that, first of
25 all.

1 DR. MOCK: That's his field of study
2 based on brain function. And my area of specialty is a
3 registered psychologist in applied psychology in areas
4 of cognitive development, cognitive and intellectual
5 development and learning here. So it's more the
6 application of how is it that what people see and learn
7 and what influences their behaviour to act. That's the
8 only distinction that I was making.

9 MR. VIGNA: But from a layman's
10 perspective how do we compare --

11 DR. MOCK: Pardon?

12 MR. VIGNA: From a layman's
13 perspective, what's neuropsychology versus cognitive
14 psychology? How would you distinguish both? They both
15 deal with the brain, but how do you distinguish what --

16 DR. MOCK: Cognition is another word
17 for knowing or knowledge. So how is it that knowledge
18 is acquired. And in educational psychology and
19 developmental psychology, cognitive developmental
20 theory is at what age and stage does information -- how
21 does it get learned differently. So something that a
22 young child might see on television or on the Internet
23 might impact their behavior differently.

24 If they were below the age of seven,
25 for example, and they take it very, very, very

1 literally, versus a little bit later on when older
2 people are able to understand abstract concepts.
3 That's the only difference.

4 So one would be dealing more with the
5 brain from a neurological perspective, perhaps, and the
6 other more in the application of cognitive
7 developmental principles, principles of learning and
8 knowing and how is knowledge acquired.

9 MR. VIGNA: So continue where you had
10 left off and then perhaps you can tell us if there is
11 anything you want to bring to our attention in relation
12 to the article and footnote 39.

13 DR. MOCK: I just wanted to conclude
14 that section with the concept that the connection
15 between the hate speech, the hate mongering and the
16 development of attitudes that can lead people to commit
17 violence. And then the final quote by professor from
18 the University of Toronto that here is where society's
19 complicity comes in.

20 The fear mongering and people turning
21 a blind eye, and there's a certain progression of
22 desensitization, she calls it, which makes present day
23 atrocities and genocides still possible.

24 And this is the notion, again from a
25 psychological perspective. There is tremendous

1 evidence, almost to the point of commonly understood
2 behaviour that the connection between the promotion of
3 hatred stereotypes, prejudice, dehumanization of people
4 on the basis of their immutable characteristics lead to
5 the learning and to the psychological conclusion that
6 it's okay to perpetrate violence on people who perhaps
7 are part of a conspiracy or less human than I am, might
8 say the alleged perpetrator or the potential recruit to
9 perpetration.

10 So the literature in terms of the
11 psychological impact and the tendency to commit
12 violence is very clear, and factors such as anonymity
13 contribute to that sense of belonging and community,
14 contribute to that and contribute to the greater
15 likelihood that the public peace and safety and
16 security of society is at risk. This is what the
17 literature in this field from a psychological
18 perspective is showing.

19 MR. VIGNA: Now, in terms of the
20 third theme, there's discussion by Dr. Persinger about
21 the relevance today of the conclusions of the Cohen
22 Report.

23 What can you tell us generally about
24 what Dr. Persinger thinks about the up-to-datedness of
25 the Cohen Report today and what was said at the time of

1 the Cohen Report and how do we make the link with what
2 we know from psychology?

3 DR. MOCK: On page 41 -- sorry, note
4 41 on my paper on page 10 under the title "Relevance of
5 the Cohen Report and Current Policies and Laws For
6 Speech and Hate Propaganda."

7 I'm not speaking from a legal or
8 policy or social policy perspective, but, rather, I
9 took that title directly from Dr. Persinger's paper
10 where he's looking at the relevance of policies and
11 laws and calling them anachronistic because of the --
12 in his title because of the research on which they were
13 based.

14 Even as he states, the laws on hate
15 speech and propaganda came from "theories that are now
16 almost 40 or more years old with almost no imperical
17 data".

18 And I'm paraphrasing here, but he
19 says and as I've interpreted what he said, because
20 social psychology was in its infancy and neurocognitive
21 psychology did not exist.

22 And he further pointed out that the
23 current laws are based on a report, meaning the Cohen
24 Report, the Cohen Committee Report, written within the
25 Zite Geist of a post-World War II environment to favor

1 legislative action against hate propaganda from the
2 perspective of improving the social climate.

3 So he argues that the laws that are
4 now being applied are being applied in a very different
5 climate that's dominated by the Internet and other
6 forms of technology to a population, as he says, that
7 is very different from the fifties and sixties,
8 rendering in his view the laws and policies less
9 relevant than they -- now than they were then.

10 From my point of view as a
11 psychologist and as an educator, and because the area
12 of social psychological research which he said was in
13 its infancy then, in fact has grown to maturity over
14 the last several years and studied in very scientific
15 ways these phenomena.

16 There is a body of literature in
17 psychology, as well as even some case law, in the last
18 thirty years that have more than amply validated both
19 the psychosocial and legal legislative rationale for
20 the hate propaganda laws.

21 Now, again, I'm saying this not as a
22 lawyer and not as a policy person, that's not my area,
23 but as an applied psychologist, as someone who deals
24 with victims of hate crime and also strategies to
25 counter and prevent victimization by hate crime on the

1 basis of hate speech and others.

2 So the changes in technology which
3 makes the publication and dissemination of hate
4 propaganda much easier than it was 40 years ago makes
5 the original foundation, in my view, of Canada's hate
6 laws even more relevant today than it was then.

7 The Cohen Commission, the report to
8 the Minister of Justice on the special committee on
9 hate propaganda, actually conducted research on the
10 nature and scope of hate propaganda in Canada. And it
11 concludes that even though the extent was not as
12 great --

13 MR. CHRISTIE: May I just rise to
14 point out I can actually read. I'm just from British
15 Columbia, but I can still read. And it helps me not a
16 bit -- and I don't know that it helps the Tribunal --
17 to have her read a couple words and read and -- where
18 are going with this?

19 THE CHAIRPERSON: If it was meant to
20 introduce something different or -- I don't object to
21 reading if it introduces us into some area, but just to
22 let her read, Mr. Vigna? Do you adopt what's said
23 here, especially at this late hour.

24 MR. VIGNA: I'm almost finished,
25 Mr. Chair, and it's not much longer, we have two pages.

1 MR. CHRISTIE: Single-spaced.

2 MR. VIGNA: By the way, I don't think
3 people in British Columbia can't read. My
4 distinguished colleague said he's from British Columbia
5 and he can still read. But I think in British Columbia
6 they can read.

7 THE CHAIRPERSON: Everybody can read.

8 MR. VIGNA: She's basically relating
9 what she said in the report. Now that she's reading,
10 what's the prejudice?

11 MR. CHRISTIE: Waste of time. That's
12 the problem.

13 THE CHAIRPERSON: Go quickly. See,
14 the interruption made us lose five minutes.

15 MR. CHRISTIE: If it stopped the
16 reading it wouldn't waste time.

17 MR. VIGNA: Dr. Mock, can you just
18 continue on with --

19 DR. MOCK: I'm happy not to read it.
20 I get confused when I begin to speak extemporaneously
21 and asked where am I reading by people. So I apologize
22 if I'm receiving or perceiving mixed messages.

23 In my view I could complete my
24 testimony right now by saying, as a psychologist who
25 has done extensive research for the last 35 years it's

1 been my entire professional career to look at all sides
2 of an argument and in a completely unbiased way in
3 terms of evaluating what is the impact, as well as not
4 only from my study of behaviours and my research into
5 all of the literature in this field, including the last
6 I guess it's only 12 years, 12, 15 years that there has
7 been the phenomenon of the Internet, as well as from my
8 first hand personal experience with many, many, many
9 victims, I submit that on the basis of well-conducted
10 studies, on the basis of information that is so
11 well-known as to almost be common sense -- but we do
12 need the data -- that hate speech does have a profound
13 and lasting psychological impact on any person who is
14 targeted as a victim and also has been shown to have
15 significant impact on people's behaviour in shaping
16 their prejudices and stereotypes and attitudes towards
17 minority group that then leads them to violence.

18 THE CHAIRPERSON: Could I ask a
19 specific question related to the text here?

20 DR. MOCK: Yes.

21 THE CHAIRPERSON: Towards the end of
22 page 11 you indicate:

23 "Has been shown time and time
24 again and even advocated by
25 leaders in the various white

1 supremacist, racialist and
2 nationalist movements, that the
3 purpose of Internet hate sites
4 is indeed mass distribution of
5 their propaganda in order to
6 recruit others to the fold and
7 convert them to racist,
8 anti-semitic and other hateful
9 ideology."

10 And it continues.

11 Prior to this you referenced Matas
12 and others. When I read this, at each footnote I would
13 go to the back and get it. This one doesn't seem to
14 have a citation. Are these your thoughts or is there a
15 source for this?

16 DR. MOCK: There's a citation on 45.

17 Again, David --

18 THE CHAIRPERSON: 45 was --

19 DR. MOCK: Matas. We are you now?

20 THE CHAIRPERSON: Right after that.

21 Is that also Matas?

22 DR. MOCK: No, this is my conclusion
23 as well. That is based also on the material that I
24 didn't read from because I was asked not to mention the
25 white supremacist that had said that that was exactly

1 why they were using the Internet now. People like Don
2 Black, like David Duke and others.

3 This is why the white supremacists
4 themselves and the ones that head up racialist and
5 nationalist movement. I will offer you the quotes, if
6 you would like, but right --

7 THE CHAIRPERSON: That wasn't part of
8 the text, that was not stricken.

9 MR. FROMM: That's precisely the
10 problem. That's the second time it's been backdoored
11 in.

12 DR. MOCK: No.

13 MR. CHRISTIE: Not about Duke or
14 Black.

15 THE CHAIRPERSON: No. The issue was
16 not so much that that information was there, the issue
17 at that point, Mr. Fromm, was with regard to questions
18 about the ability of people to associate or not.
19 That's where I want to draw the line. Make sure the
20 distinction is being drawn here.

21 We're not talking about ability of
22 people to associate. They are free to associate.
23 What's at issue -- anyways, now I'm returning back to
24 the comment here at the bottom.

25 You are relating this back to that

1 earlier statement about statements that have been
2 attributed to those two individuals?

3 DR. MOCK: Yes. I'm not relating it
4 to the Canadian --

5 THE CHAIRPERSON: No, you are
6 relating it to statements that have been attributed in
7 literature to Mr. Black.

8 DR. MOCK: To people like Don Black
9 or David Duke or Wolfgang Droege or others that are
10 named on page 8.

11 THE CHAIRPERSON: Fine.

12 DR. MOCK: But not the Canadian. And
13 it's -- and that's my -- there are many, many citations
14 on the hate sites themselves as well.

15 THE CHAIRPERSON: I just want to know
16 where you got it from.

17 MR. VIGNA: Dr. Mock, in relation to
18 the final report, this second report, I don't have much
19 more questions. Actually, the last page, if my
20 understanding is correct is something you testified
21 about this morning. If not, maybe you could just
22 clarify what needs to be said extra.

23 DR. MOCK: Yes. It was just in
24 answer to being asked as well what can be done, and --

25 THE CHAIRPERSON: It looks similar to

1 what you said earlier.

2 DR. MOCK: It is. This is also why I
3 added those other papers that were in referee journals.

4 MR. VIGNA: The only other thing,
5 Mr. Chair, which I would like to continue tomorrow
6 morning early, because if I'm going to get on that
7 territory it might be pretty long. I mentioned about
8 the posting of Dr. Mock on the Internet. She's on the
9 stand and I mention that I was going do bring that
10 issue.

11 THE CHAIRPERSON: What's the
12 relevance to that?

13 MR. VIGNA: The relevance, Mr. Chair,
14 is very clear. We have, by the manner of operating
15 that the respondent, certain intimidation and certain
16 defamation of announced witnesses, and ultimately I
17 will argue -- and I think I said that already -- that
18 you can consider that on the issue of the penalty in
19 terms of behaviour that was adopted in this process.
20 So that's the relevance I would like to --

21 THE CHAIRPERSON: Are you able to
22 relate that activity to the respondent?

23 MR. VIGNA: It's on the respondent's
24 website, and I don't think it's contested in terms of
25 the actual content of the website.

1 It's a posting regarding Dr. Mock,
2 which basically portrays her in a certain way, and I
3 would like to ask her questions on that. I did
4 announce it.

5 THE CHAIRPERSON: Yes, you have
6 announced earlier. Ms Kulaszka, you have a puzzled
7 look on you face.

8 MS KULASZKA: I think I missed that.
9 What is it Mr. Vigna wants to do?

10 MR. VIGNA: I mentioned earlier --
11 this has nothing to do with the report. I had
12 mentioned earlier I was going to question Dr. Mock on
13 the poster and the caricature that's on the website and
14 Mr. Marc Lemire in relation to the way she was
15 portrayed and that it -- relevant to the issue of the
16 penalty eventually.

17 THE CHAIRPERSON: She's still in the
18 room. Do you understand where it's going, Ms Kulaszka?
19 Sounds quick.

20 So we'll stop there until tomorrow
21 morning. Would you prefer we begin earlier or not?
22 9:15 perhaps?

23 MR. CHRISTIE: Perhaps we could go
24 till 5:00 o'clock and my friend can do whatever he
25 wants to do about the cartoon.

1 THE CHAIRPERSON: So you mean
2 beginning at 9:30 and going till 5:00? Oh, right now
3 till 5:00?

4 MR. VIGNA: I don't mind.

5 THE CHAIRPERSON: Finish it off.

6 MR. CHRISTIE: Let's get this done.

7 THE CHAIRPERSON: How to the others
8 feel?

9 MS KULASZKA: I agree, just go ahead.

10 THE CHAIRPERSON: Just till 5:00. I
11 gather it's only five minutes of evidence here.

12 MR. VIGNA: Very short. The binder
13 which dealt with the blue binder --

14 THE CHAIRPERSON: The binder which
15 dealt with the blue binder. Colours are helpful but...

16 MR. VIGNA: Green binder. Tab D,
17 green binder.

18 THE CHAIRPERSON: HR-3.

19 MR. VIGNA: So I refer you to HR-3.
20 Dr. Mock, the picture that I've put in front of you
21 there. If you could tell us if you recognize it and --

22 THE CHAIRPERSON: There is many
23 pages.

24 MR. VIGNA: It's the picture with Dr.
25 Mock.

1 THE CHAIRPERSON: At the end?

2 MR. VIGNA: In the lemonade stand.

3 THE CHAIRPERSON: There's pictures of
4 everyone in this room.

5 MR. VIGNA: Third to last page, I
6 believe. So you see that, Dr. Mock?

7 DR. MOCK: Yes.

8 MR. VIGNA: You can sit down.
9 Can you tell us if you've seen this
10 poster and when and in what context and what reaction
11 you had?

12 DR. MOCK: Well, the most recent time
13 that I saw it was after my first expert report and
14 curriculum vitae were filed, and a friend from across
15 the miles sent a little note saying, I think you might
16 want to see this. And sent me the link to that page.

17 And that would be I guess in -- I've
18 seen it also in the last few days, but it came again to
19 my attention I guess in the spring of 2006.

20 MR. VIGNA: That was when in May 2006
21 when you filed the report?

22 DR. MOCK: Yes, after I filed the
23 report.

24 MR. VIGNA: When you read it, what
25 was brought to your attention? How did it make you

1 feel?

2 DR. MOCK: I felt awful. I felt like
3 it was -- you know, the other witnesses in this page
4 were all presented looking very professional, and I had
5 this distorted -- I mean, the face there, I don't
6 know -- I hope I don't really look like that. But it
7 was a caricature. It was kind of funny I must admit,
8 too. But what really upset me were comments like
9 hysterical zealot and supporter of terrorist activity.
10 And I was very concerned.

11 The worst part was seeing my full
12 curriculum vitae, which I had been asked to submit. I
13 wasn't asked to submit a little resume or note, a bio
14 note. I was asked, can we have your CV, your
15 curriculum vitae, which is something that you have on
16 hand and you just submit. And I've never had this
17 happen before where it then was disseminated
18 publically.

19 My first reaction was, well, I guess
20 when you put something in the public domain that's what
21 can you expect. But it still upset me and I let the
22 Commission know, especially because all my personal
23 information was on the curriculum vitae.

24 The other thing about the
25 professional government grant catcher that -- who's

1 raked in all this money, made it sound as if I was
2 making personal gain from any of that.

3 So it was derogatory. It was
4 upsetting, you know, I started to think about -- I'm a
5 serious professional and if somebody wants to engage my
6 services, which they do and they're Googling or looking
7 for my name and they find words like zealot and
8 hysteric and terrorist, then I felt upset. I felt like
9 my work was just being trivialized, unlike the work of
10 the others that was on here, and I was fell very
11 concerned.

12 MR. VIGNA: And most recently this
13 weekend were you alerted to anything of this nature?

14 DR. MOCK: Pardon?

15 MR. VIGNA: Most recently, was there
16 another event of this nature that took place?

17 DR. MOCK: Yes, the day before I
18 appeared here, the night before, same friend from away
19 sent me a note saying good luck, and then a link. And
20 I linked up and I saw the home page, I guess it is, of
21 the Freedom site. It had very professional-looking team
22 for Mr. Lemire. And then again all this nonsense about
23 me underneath. And it's of concern.

24 It feels at times -- you know, you
25 work your whole life to establish a certain level of

1 credibility and balance and professionalism and to be
2 portrayed in this way I found to be of great concern.

3 THE CHAIRPERSON: Just to be clear,
4 the most recent page that you viewed had this exact
5 photo and --

6 DR. MOCK: On the home page not.
7 It's got picture -- I don't know if you have a copy,
8 but it's got a picture of the defence team for
9 Mr. Lemire, and then it's got "Come and hear --"
10 letting everybody know who goes onto these places into
11 the site who's up. You know, who's on first and for
12 how long and so on.

13 So the text is the same under there.
14 You can still get to this under DR. MOCK list. DR.
15 MOCK list is still there. If you go to the link right
16 on the home page to DR. MOCK list, then you see this as
17 well. The only thing that was changed after I made a
18 complaint or -- initially I didn't make a complaint. I
19 just illustrated my concern and dismay with the way
20 this whole thing was being treated.

21 And then I sent a more formal letter
22 saying how I felt, and then right after that the link
23 was dead to the actual CV.

24 So it's still there, it still says
25 "CV" and it's probably somewhere on the site but

1 there's not a hot link any more to the CV. That's the
2 only thing that's been changed as far as I know.

3 But as -- well, even right now I'm
4 assuming it's right there on the home page, and the
5 witness list also on the home page, right on the front
6 to link on. So it's there constantly.

7 MR. VIGNA: I'll produce the new one
8 tomorrow. It's basically the same, it's just a
9 refreshed version where they have a picture of the
10 defence team and invitation to the public to attend the
11 hearings. But the contents is basically the same. But
12 I have it and I can't locate right now. Tomorrow
13 morning.

14 THE CHAIRPERSON: Fine.

15 DR. MOCK: But the language of
16 supporting terrorism and a zealot and hysteric and -- I
17 mean, this is just not who I am or what I do. And I
18 found it very upsetting at this stage of my career
19 especially.

20 I think a few years ago something
21 like that was up there too, but it didn't impact as
22 much as being cited that way as a witness for the
23 Tribunal. I just felt that it trivialized me and it
24 could even potentially undermine in the thoughts of
25 some the credibility of my testimony, and I just felt

1 it wasn't fair and it was very upsetting.

2 MR. VIGNA: Were you concerned about
3 this posting in regards to the possibility of being
4 called as an expert in the future and what impact it
5 could have on the public?

6 MR. CHRISTIE: She's already said
7 that. She said she was an expert and it might be
8 something that people would Google and when --

9 MR. VIGNA: That's fine. That's
10 fine.

11 DR. MOCK: Or not even -- not just as
12 an expert, but even for employment and for other -- I'm
13 a consultant, I'm a private consultant who is often
14 hired because of my balance in this area and because I
15 can move into circles and workplaces and so on and not
16 come across at all as hysterical or an advocate or
17 whatever. But, rather, balanced and helping people
18 understand both the law and impact on people's
19 behaviour. And this is why my services have been
20 valued so much in the last many years in education and
21 training programs and in research.

22 MR. VIGNA: I don't have any further
23 questions. Tomorrow morning we can continue. I don't
24 know, perhaps Mr. Fothergill --

25 MR. FOTHERGILL: I've been wanting to

1 go address you about the order of questioning.
2 Because, of course, the Attorney General is responding
3 to the constitutional challenge. And while it's true
4 that Mr. Vigna and I are largely aligned in interest,
5 that also means that the likelihood that I would have
6 questions following his examination is relatively low.

7 But the possibility I have might
8 questions following the cross-examination is quite a
9 bit higher. And what I would like to propose, and I
10 would propose this in an even-handed way so that
11 experts generally were dealt with in this manner, is if
12 we have parties who are aligned in interest, who feel
13 that there is something new to be raised in the nature
14 of examination-in-chief then they should do so
15 immediately after the initial examination is concluded.
16 And, conversely, if parties prefer essentially to
17 exercise a right of re-examination they should have the
18 opportunity to do so, but subject to the normal
19 constraints of re-examination, which is to say the
20 re-examination would be constrained to the matters that
21 were legitimately raised for the first time in
22 cross-examination. I hope that's clear.

23 THE CHAIRPERSON: Essentially --

24 MR. FOTHERGILL: And I'm proposing
25 this be done in an even-handed way for both communities

1 of interest, if I can put it that way.

2 THE CHAIRPERSON: Going through the
3 normal process but with all individuals involved with
4 good faith understanding that no one could rise to ask
5 questions with regard to issues that have already been
6 addressed.

7 MR. FOTHERGILL: Essentially what I'm
8 proposing that -- I'm content not to examine Dr. Mock
9 at this time but I don't want to prejudice my
10 opportunity to re-examine her if new things arise as a
11 result of cross-examination.

12 THE CHAIRPERSON: On new things, not
13 on the same material.

14 MR. FOTHERGILL: Precisely, and I'm
15 acknowledging now that I will consider myself
16 constrained in that way.

17 THE CHAIRPERSON: Do you have any
18 problem with that?

19 MR. CHRISTIE: That would be quite
20 appropriate. I would like to begin, since I probably
21 will be cross-examining first, if I could, I have a
22 question.

23 THE CHAIRPERSON: You will be
24 cross-examining first?

25 MS KULASZKA: Yes, Mr. Christie is

1 going to start first, I'm second.

2 MR. CHRISTIE: Dr. Mock --

3 THE CHAIRPERSON: Question of her?

4 MR. CHRISTIE: Yes.

5 THE CHAIRPERSON: No, I'd like to
6 stop at this point. I want to continue the
7 cross-examination tomorrow. I said five, but I mean
8 five-ish. I think it's an appropriate time.

9 MR. CHRISTIE: Well, I thought it
10 would be better DR. MOCK not be allowed to discuss her
11 evidence overnight.

12 THE CHAIRPERSON: Can I have an
13 undertaking not to discuss your evidence overnight with
14 anyone else?

15 MR. VIGNA: She can read the papers
16 on her own.

17 THE CHAIRPERSON: What papers?

18 MR. FOTHERGILL: I don't understand
19 the prohibition. The prohibition of not discussing the
20 evidence once one is under cross-examination is to
21 prevent DR. MOCK from being assisted in dealing with
22 the strategy of cross-examination. If she's not under
23 cross-examination there's no prohibition on discussing
24 her evidence.

25 MR. CHRISTIE: That's why I wanted to

1 begin. It's been done a million times. It's quite
2 legitimate to ask to begin the cross so that witness
3 can't refresh or become informed. Now that's a
4 legitimate concern and I thought since you were going
5 to say that you didn't want to start that, maybe she
6 could undertake not to discuss it.

7 THE CHAIRPERSON: Have you closed
8 your evidence, Mr. Vigna, with this witness?

9 MR. VIGNA: Yes, Mr. Chair.

10 THE CHAIRPERSON: Will you be calling
11 any witness -- will you be asking any questions
12 tomorrow?

13 MR. FOTHERGILL: No. I said I would
14 prefer to wait until the cross-examination is
15 completed.

16 THE CHAIRPERSON: Without starting
17 the cross-examination -- ask you going just home, Dr.
18 Mock?

19 DR. MOCK: I stay at the hotel
20 because of how far I live and just the weather and the
21 traffic and so on and because of earliness of the hour.

22 THE CHAIRPERSON: I think it might be
23 helpful if you not communicate with any of the team
24 involved. Is that your intention to communicate with
25 them overnight?

1 DR. MOCK: No, I wouldn't if I'm not
2 to. I mean, if we were still in a stage where we --

3 THE CHAIRPERSON: Cross-examination
4 is about to again.

5 DR. MOCK: -- quite appreciated not
6 to be isolated --

7 THE CHAIRPERSON: Any problems,
8 Mr. Vigna?

9 MR. VIGNA: There's no problem. Have
10 to give her a lift. I won't communicate about the case
11 but I have to give her a lift for other purposes than
12 the case.

13 THE CHAIRPERSON: Fine.

14 MS KULASZKA: I want to bring up the
15 matter -- Dr. Mock testified about -- concerning that
16 B'nai Brith had all sort of material on Marc Lemire,
17 and I would like disclosure of that material. B'nai
18 Brith is a party to this case, and Dr. Mock has just
19 testified how upsetting it was to be Googled and to be
20 called a terrorist. Well, now she knows how it feels
21 when someone is called a Holocaust denier, a Nazi
22 sympathizer, a neo-Nazi, all over the Internet from
23 these audits.

24 And B'nai Brith is a party. Dr. Mock
25 has given this testimony and I think B'nai Brith should

1 be ordered to produce the material they had on Marc
2 Lemire.

3 THE CHAIRPERSON: To what extent has
4 there been disclosure going on between the interested
5 parties? Has Mr. Christie been disclosing? Has
6 Mr. Fromm been disclosing?

7 MS KULASZKA: In fact, I had written
8 a letter months ago to Mr. Kurz. I asked for quite a
9 bit of disclosure because they were going to call three
10 witnesses here up until literally the first day of the
11 hearing. They never informed me they weren't calling
12 witnesses. I only knew because Mr. Kurz went to up
13 Line Joyal and I heard him say that we're not calling
14 any witnesses. I think it was Mr. Kurz.

15 THE CHAIRPERSON: My question is --
16 my disclosure orders, did they extend to the interested
17 parties? The interested parties were here on the
18 constitutional issue. I don't recall having ordered
19 the interested parties or the Attorney General to
20 disclose in that manner.

21 MR. FOTHERGILL: I should acknowledge
22 that we did prepare a book of materials dealing with
23 the legislative history of the provisions which haven't
24 been put in evidence and may not be --

25 THE CHAIRPERSON: That's a book of

1 documents, not disclosure per se.

2 MS KULASZKA: B'nai Brith and the CJC
3 did provide disclosure but they did not provide any
4 material they had on Marc Lemire, which apparently they
5 do have.

6 THE CHAIRPERSON: Their intervention
7 here is on the constitutional issue, not on
8 Mr. Lemire's complaint per se, the merits of the
9 complaint.

10 MS KULASZKA: They were going to call
11 witnesses that were going to talk about their efforts
12 to stop hate and what they had done over the years and
13 their audits, and then in the end they never called
14 anybody. So I wrote them a letter asking them --
15 basically I wanted every audit and I wanted documents
16 to support the kind of activities they were involved
17 in, just the kind of testimony they were going to give.
18 And there was no reply and they have called no
19 witnesses. However --

20 THE CHAIRPERSON: I'm afraid I'm
21 opening a Pandora's box. I'm going to have to order
22 Mr. Christie to disclose anything he has in his
23 possession regarding -- I don't know -- complaint, the
24 Commission. The same for Mr. Fromm. It's just going
25 to go on and on. The disclosure order with regard to

1 that type of material was, as far as I could figure,
2 was just between the principal parties to the file.

3 MS KULASZKA: They obviously thought
4 it was relevant because they were going to call
5 witnesses to give this type of testimony. That's why I
6 asked for the material. And now Dr. Mock has given
7 testimony that in fact they were maintaining a file on
8 Marc Lemire, it's in the archives of B'nai Brith.

9 THE CHAIRPERSON: I did hear that.

10 MR. FOTHERGILL: Just as an officer
11 of the court, or Tribunal, I point out that Mr. Kurz is
12 not here. He's really not in a position to respond.
13 It seems to me given this is a somewhat unusual
14 request, perhaps it ought it to be made in a formal way
15 on notice to the party that's affected.

16 MS KULASZKA: Maybe I should just put
17 a statement on the record, that they made a motion.
18 They wanted intervention. I was forced to respond to
19 that motion. I had to prepare for three witnesses, and
20 then all of a sudden the witnesses do not appear.

21 So, again, I was put to considerable
22 time and effort and Mr. Lemire was put to considerable
23 expense because of their intervention. And, for the
24 record, I don't think anyone has appeared after the
25 first day in all of these hearing from the three

1 intervenors.

2 THE CHAIRPERSON: Right. In terms of
3 the disclosure issue, what would you like to do?

4 MS KULASZKA: It's obvious Dr. Mock
5 has given testimony now under oath that they do have
6 this material on Marc Lemire. They mentioned him
7 several years running in the audits and they should
8 have produced that material.

9 MR. VIGNA: We were talking in the
10 absence like my colleague said, or Marvin Kurz and
11 B'nai Brith. I think the best thing to do is for Ms
12 Kulaszka write to Mr. Kurz and bring the issue later
13 on.

14 THE CHAIRPERSON: Can either of you
15 communicate with Mr. Kurz and say perhaps it would be
16 appropriate for a representative to show up given
17 the --

18 MR. FOTHERGILL: I think he's
19 expecting to be here tomorrow.

20 THE CHAIRPERSON: Perfect.

21 MR. CHRISTIE: I have just one
22 observation. On the whole principle of the effect of
23 this type of legislation, it should strike any
24 reasonable person with a certain fear and apprehension
25 that organizations keep files on people with the

1 objective of bringing them into this type of
2 legislation, and that's a factor in whether or not
3 legislation of this kind is demonstrably justifiable in
4 a free and democratic society.

5 So I know it involves all the
6 emotional disagreements between the parties. As
7 someone at least who purports to stand for some issue
8 about what is demonstrably justifiable in a free
9 society, I would like to suggest that it really does go
10 to an important issue, because if organizations such as
11 B'nai Brith can make accusations and keep files to
12 support them and bring complaints, we have --

13 THE CHAIRPERSON: I can see where you
14 can make your argument. Disclosure process is a heavy
15 tool and, as I've indicated before in our conference
16 calls, it's something that the Tribunal has put in
17 place. It's not set out in our statute as a way to get
18 all the evidence out there.

19 MR. CHRISTIE: I'm just trying to put
20 on record --

21 THE CHAIRPERSON: Some components of
22 what you're arguing are already in evidence through the
23 evidence of Dr. Mock. But -- sorry. I just don't know
24 if that unwieldy tool of the disclosure is supposed to
25 extend to the tables sitting behind individuals in

1 front.

2 MR. CHRISTIE: I have no problem with
3 it. If there is any desire -- virtually nothing to
4 disclose except --

5 THE CHAIRPERSON: Very late, but I
6 see your point. Late in the process. If there was an
7 issue of failure to disclose -- why wasn't there
8 something brought to my attention over all those
9 conference calls, or was there something brought? I
10 don't remember this issue.

11 MS KULASZKA: I'm just overwhelmed
12 basically. I wrote them a later.

13 THE CHAIRPERSON: I think I was CC'd
14 on that letter. I never saw any follow up.

15 MS KULASZKA: They never replied and
16 then --

17 THE CHAIRPERSON: Now it's coming
18 back to me. Because nothing came of it, it never was
19 raised at any of the conferences calls either.

20 MS KULASZKA: I raised it with them
21 in a letter.

22 THE CHAIRPERSON: Yes, I'm familiar I
23 think with that letter.

24 MS KULASZKA: It does raise another
25 issue, to, because of Dr. Mock's credibility. She was

1 is editor of these audits where Marc Lemire was
2 repeatedly mentioned and yet nothing happened. And
3 yet, of course, it sullies his reputation. These
4 audits are sent all over the place, the Commission,
5 government officials, and then he becomes the subject.
6 They say, my goodness, he's dangerous.

7 THE CHAIRPERSON: I saw it. I'm
8 aware of what -- it just appears on its face the affect
9 it may have on Mr. Lemire.

10 MS KULASZKA: If these papers and
11 documents, whatever they have, are in the archives of
12 B'nai Brith, they are a party. She's Dr. Mock. They
13 should be produced.

14 THE CHAIRPERSON: But they are in
15 evidence, some of it at least.

16 MS KULASZKA: I asked her, why are
17 you monitoring Marc Lemire? Why was she concluded.
18 She couldn't remember but she said she was absolutely
19 certain they had information in the archives.

20 MR. FOTHERGILL: This was led on the
21 qualification stage. You will recall I said we might
22 be faced at some point with the application to transfer
23 the evidence in the voir dire to the evidence in-chief.

24 I just think I should point out to
25 the extent that it affects my client's interest, and I

1 think it does because it relates to the constitutional
2 issue, if we are going to question the legitimacy of
3 B'nai Brith gathering information on people like Marc
4 Lemire, we will inevitably have to consider whether it
5 was reasonable for them to do and whether what was
6 stated in the audit was accurate or not.

7 And that is going to bring us right
8 smack up against the other objection that we've heard,
9 which is that it's prejudicial to Mr. Lemire to hear
10 evidence in the context of the constitutional argument
11 about whether in fact his Internet website promotes
12 hatred.

13 So if I, as somebody defending the
14 constitutionality of the legislation, am asked to
15 address the issue of whether it's appropriate or an
16 abuse of the legislation for groups like B'nai Brith,
17 to collect this information, disseminate it, one of the
18 first questions I'm going to want to know well is the
19 information true? Is it accurate? Is it reasonable?
20 Is it fair comment?

21 And in order to do that you will be
22 faced with evidence, pro and con, whether Mr. Lemire's
23 website in fact could be fairly characterized as a hate
24 site. Then you've got the prejudicial issue coming up.
25 So I feel I should raise the specter that we have

1 objections that are perhaps inconsistent.

2 THE CHAIRPERSON: Let's deal with it
3 tomorrow.

4 --- Adjourned at 5:00 p.m.

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I hereby certify the foregoing
to be the Canadian Human Rights
Tribunal hearing taken before me
to the best of my skill and
ability on the 20th day of
February, 2007.

Sandra Brereton
Certified Shorthand Reporter
Registered Professional Reporter