

**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

ROCH LEVAC

REGISTRY OFFICER/  
L'AGENT DU GREFFE

**FILE NO./N° CAUSE:**

T1073/5405

**VOLUME:**

16

**LOCATION/ENDROIT:**

TORONTO, ONTARIO

**DATE:**

2007/02/26

**PAGES:**

3295 - 3674

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

HEARING HELD IN THE PARIS ROOM OF NOVOTEL HOTEL  
3670 HURONTARIO STREET, MISSISSAUGA, ONTARIO  
ON MONDAY, FEBRUARY 26, 2007 AT 9:11 A.M. LOCAL TIME

CASE FOR HEARING

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

APPEARANCES/COMPARUTIONS

Giacomo Vigna	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill Alicia Davies	For the Attorney General of Canada
Douglas Christie	For the Canadian Free Speech League
Steven Skurka	Friends of Simon Wiesenthal Centre for Holocaust Studies

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1 Mississauga, Ontario

2 --- Upon commencing on Monday, February 26, 2007

3 at 9:11 a.m.

4 MR. SKURKA: At the outset, Steven  
5 Skurka here appearing today for the Friends of the  
6 Simon Wiesenthal Centre for Holocaust Studies.

7 THE CHAIRPERSON: Thank you. Just a  
8 moment, please.

9 MR. CHRISTIE: Good morning, sir. I  
10 recall asking at one point last week for the production  
11 of the letter of instruction and contractual request  
12 and requirements for Dr. Mock.

13 THE CHAIRPERSON: Right.

14 MR. CHRISTIE: And my understanding  
15 was that, as a result, you had ordered that it be  
16 produced for the purposes of disclosure, at least. And  
17 this morning on my desk was placed a single page item  
18 entitled, "Appendix B: Statement of Work".

19 MR. VIGNA: I produced to you what I  
20 got from Dr. Mock, but I also ordered from Ottawa  
21 whatever there is extra, so I might give you something  
22 else later this -- well, probably tomorrow, because  
23 it's going to arrive in the course of the day.

24 MR. CHRISTIE: Okay, well, in that  
25 case, I'll say nothing more. Thank you.

1 THE CHAIRPERSON: Okay. You'll  
2 recall I did point out that it was Friday afternoon,  
3 and it was not likely he was going to be able to reach  
4 anybody at the Commission office.

5 MR. CHRISTIE: I appreciate that, and  
6 in view of what's said, I'll wait.

7 THE CHAIRPERSON: Okay. So then we  
8 are proceeding with Mr. Tsesis?

9 MR. FOTHERGILL: Good morning. Yes,  
10 the next witness is called on behalf of the Attorney  
11 General of Canada, and it's Dr. Alexander Tsesis,  
12 T-S-E-S-I-S.

13 SWORN: ALEXANDER TSESIS

14 EXAMINATION BY MR. FOTHERGILL

15 MR. FOTHERGILL: Mr. Chairman, I have  
16 prepared two volumes that have blue covers, one for Dr.  
17 Tsesis and one for Dr. Downs. I will obviously be  
18 referring predominately to the Tsesis materials today,  
19 but there is one excerpt from the Downs materials that  
20 I will go to at one point.

21 So I wonder if it might make sense to  
22 mark both of them at this time, at least for the  
23 purposes of identification.

24 THE CHAIRPERSON: Certainly. Well,  
25 okay, for the purposes of identification. It will be

1 produced in short order, right?

2 MR. FOTHERGILL: That's right. Yes,  
3 we'll produce the tabs and --

4 THE CHAIRPERSON: Are we going to  
5 proceed on that -- on that basis with the tabs -- that  
6 does pose a little bit of a problem because yours are  
7 done in cirloc. So if any tab doesn't get produced, it  
8 will be a little bit of a --

9 MR. FOTHERGILL: It will have to be  
10 ruthlessly torn out.

11 THE CHAIRPERSON: Ruthlessly torn  
12 out, as you say. At this point, I note that the rest  
13 of the material seems to be articles from external  
14 sources.

15 MR. FOTHERGILL: It is my intention  
16 to have Dr. Tsesis produce each of the items in his  
17 book, and I'm confident that Dr. Downs will be able to  
18 identify all the ones in his book.

19 (DISCUSSION OFF THE RECORD)

20 THE REGISTRAR: The excerpt report  
21 for Alexander Tsesis will be filed as the interested  
22 party document AGC-1, and the expert report of Donald  
23 B. Downs will be filed as the interested party document  
24 AGC-2.

25 EXHIBIT NO. AGC-1: Excerpt

1 Report of Dr. Alexander Tsesis  
2 EXHIBIT NO. AGC-2: Excerpt  
3 Report of Dr. Donald Downs

4 THE CHAIRPERSON: Okay, it's the  
5 first time before the Tribunal that I've had to use the  
6 AG connotation for an expert.

7 MR. FOTHERGILL: An auspicious  
8 moment, I'm sure.

9 All right, Dr. Tsesis -- yes, he's  
10 been sworn. Sorry, I should address myself first of  
11 all to the Tribunal. I wish to qualify Dr. Tsesis as  
12 an expert legal historian, to address the long-term --

13 THE CHAIRPERSON: Will that be a  
14 specific expertise that you wish to go by, what you are  
15 about to say --

16 MR. FOTHERGILL: Yes, I am. Yes.

17 THE CHAIRPERSON: Let me record it  
18 slowly then.

19 MR. FOTHERGILL: Absolutely.

20 THE CHAIRPERSON: Expert --

21 MR. FOTHERGILL: Legal historian --

22 THE CHAIRPERSON: Yes.

23 MR. FOTHERGILL: -- to address the  
24 long-term harmful effects of hate speech.

25 THE CHAIRPERSON: Okay.



1 MR. FOTHERGILL: Secondly, measures  
2 to combat the long-term harmful effects of hate speech.

3 THE CHAIRPERSON: Yes.

4 MR. FOTHERGILL: Third, to apply this  
5 analysis to the context of the Internet.

6 THE CHAIRPERSON: Yes.

7 MR. FOTHERGILL: And finally, to  
8 provide a comparative law perspective on the issue.

9 Dr. Tsesis, can I ask you to turn to  
10 your curriculum vitae, which is tab 2 of AGC-1.

11 DR. TSESIS: Yes.

12 MR. FOTHERGILL: I would like to ask  
13 you a few questions about, first of all, your  
14 education. You hold a Bachelor of Arts from the  
15 University of Wisconsin-Madison, that was granted in  
16 1990; is that right?

17 DR. TSESIS: That's right.

18 MR. FOTHERGILL: And that was in  
19 philosophy?

20 DR. TSESIS: Yes.

21 MR. FOTHERGILL: You also have an MA  
22 from the University of Illinois-Chicago, granted in  
23 1992?

24 DR. TSESIS: Yes, I do.

25 MR. FOTHERGILL: And that's also in

1 philosophy?

2 DR. TSESIS: Yes.

3 MR. FOTHERGILL: And finally, you  
4 have a JD from Chicago-Kent College of Law, also the --  
5 I suppose, granted jointly with the Illinois Institute  
6 of Technology in 1996; is that right?

7 DR. TSESIS: That's right. Well, the  
8 Chicago-Kent College of Law is a part of the Illinois  
9 Institute of Technology.

10 MR. FOTHERGILL: I see. Thank you.  
11 Are you in fact licenced to practice as a lawyer?

12 DR. TSESIS: I am. Although I'm not  
13 on active status, I'm licenced in three states in the  
14 United States.

15 MR. FOTHERGILL: To keep things in  
16 chronological perspective, I would like to turn to page  
17 5 of your CV, which, at the bottom of the page, lists a  
18 number of positions you held prior to entering academic  
19 research study and teaching. Do you see the -- the  
20 heading "Other Professional Experience", and at the  
21 bottom of the page, "Legal Experience"?

22 DR. TSESIS: I do.

23 MR. FOTHERGILL: I won't ask you  
24 about the second, third and fourth items on that list,  
25 but I do want to ask you about the first item on the

1 list.

2 You were assistant corporation  
3 counsel for City of Chicago; is that right?

4 DR. TSESIS: Yes, that was my  
5 position prior to coming to the academy.

6 MR. FOTHERGILL: And you state  
7 specifically that you had some experience with First  
8 Amendment issues in that position?

9 DR. TSESIS: Yes.

10 MR. FOTHERGILL: Could you elaborate  
11 on that for us, please?

12 DR. TSESIS: It dealt with various  
13 municipal issues surrounding speech, primarily parades,  
14 advertisements, and time, place and manner restrictions  
15 on the use of speech by people in public places.

16 MR. FOTHERGILL: If we then turn to  
17 your academic experience, which we find on page one of  
18 your CV, perhaps we can proceed in reverse  
19 chronological order from -- sorry, I should rephrase  
20 that -- in chronological order, from 4 through up -- up  
21 till 1.

22 So if we start with your work at the  
23 University of Wisconsin Law School Institute for Legal  
24 Studies, beginning in 2001. Can you tell us a bit  
25 about that.

1 DR. TSEISIS: That's a think tank  
2 in -- within the law school, the Institute For Legal  
3 Studies, of which I've been a member for --  
4 continuously since 2001. And it's really a research  
5 position, and it's also a position which I gave faculty  
6 talks, sometimes on hate speech. I've done quite a bit  
7 of research with -- my first book on hate speech was  
8 researched, in large part, while I was there --  
9 starting out there. And it's really a resource for me,  
10 for research. I -- I don't -- could have taught there,  
11 but I have chosen not to teach there for various  
12 geographical reasons.

13 MR. FOTHERGILL: And you continue to  
14 be an affiliated scholar there; is that right?

15 DR. TSEISIS: Yes, I am.

16 MR. FOTHERGILL: Turning then to  
17 point three, you were a visiting professor in the fall  
18 of 2004 and the spring of 2005, at the University of  
19 Pittsburgh School of Law?

20 DR. TSEISIS: Yes, that's right.

21 MR. FOTHERGILL: Can you tell us a  
22 bit about that?

23 DR. TSEISIS: That was a visiting  
24 position in which I -- I had a year opportunity that I  
25 could commute -- I was in fact living in Chicago and

1 commuting to Pittsburgh. I did extensive research on  
2 legal history while there, specifically on the  
3 reconstruction amendments, and I -- and also faculty  
4 talks on legal history, as well as teaching.

5 MR. FOTHERGILL: If we turn to the  
6 second point, you were a visiting professor from 2002  
7 to 2006 at the Chicago-Kent College of Law. And can  
8 you comment on that, specifically with reference to the  
9 point you make in your CV about free speech and  
10 contemporary problems?

11 DR. TESISIS: That position actually  
12 came about as a result of -- well, in -- partly as a  
13 result of my writing the first book on hate speech.  
14 The dean of the Chicago-Kent College of Law took a look  
15 at the book and was interested in having me teach.  
16 My -- my faculty talk, through which I was able to get  
17 the job, was a talk that related hate to hate speech.  
18 And I taught a variety of classes there, and did  
19 extensive research in writing throughout that period of  
20 time.

21 MR. FOTHERGILL: And your present  
22 position is as a visiting assistant professor at the  
23 Marquette University Law School; is that right?

24 DR. TESISIS: That's right.

25 MR. FOTHERGILL: Can you comment on

1           that, and in particular, the -- the teaching  
2           assignments that you hold there?

3                         DR. TSESIS: Well, this is a visit in  
4           Milwaukee where my family lives. To make things a  
5           little bit easier on me in terms of commuting, and I  
6           work both -- I teach cyber law, I -- I'm a -- I'm one  
7           of the two faculty advisors on the Marquette  
8           Intellectual Property Law Review. In that capacity, I  
9           read articles dealing with intellectual property, both  
10          in terms of cyberspace, Internet articles, and  
11          copyright, patent and trademark, that come in, and  
12          determine whether or not they are appropriate for  
13          publication in that journal.

14                        MR. FOTHERGILL: So you mentioned you  
15          teach a course in cyber law, or is it cyber space law?

16                        DR. TSESIS: It's cyber law, but it's  
17          the same thing. The terms are interchangeable.

18                        MR. FOTHERGILL: Is this a recognized  
19          discipline in the United States?

20                        DR. TSESIS: It is. It's a -- it's a  
21          fairly new discipline because the Internet is so new.  
22          There are very few course books, for example, but I'm  
23          not the first to teach it. I'm -- I am teaching out of  
24          a case book, somebody -- somebody else has written.

25                        MR. FOTHERGILL: I'd like to review

1           some of your publications now. And if we begin with  
2           scholarly books, at the bottom of page one. We may as  
3           well take them in order. "Promises of Liberty", this  
4           is forthcoming from Columbia University Press. Can you  
5           tell us, in a paragraph or less, what the main themes  
6           of that book are?

7                           DR. TSESIS: Well, the theme will be  
8           the -- the historical and contemporary applications of  
9           13th Amendment, and that was the amendment that  
10          abolished slavery. But it applies, in a variety of  
11          ways, to contemporary discrimination, so that will be  
12          discussed. And it's a -- I will be the sole editor of  
13          it. It's -- it's got some excellent people that write  
14          a chapter for it in the introduction, and I've got a  
15          couple of Pulitzer Prize winners, and other really  
16          great authors.

17                          MR. FOTHERGILL: "We Shall Overcome:  
18          The Quest for Civil Rights in the U.S"., which is  
19          forthcoming from Yale University Press?

20                          DR. TSESIS: I am done with that.  
21          That's going through a peer review process. Well,  
22          "Promises of Liberty", of course, is peer-reviewed as  
23          well. And "We Shall Overcome" deals with the history  
24          of civil rights -- the legal history of civil rights in  
25          the United States, beginning with the -- the Colonial

1 period, from approximately 1765 until 2003, with a  
2 Supreme -- United States Supreme Court case, and it  
3 traces civil rights throughout that period of history.  
4 It's a monograph of about 400 -- 420 pages.

5 MR. FOTHERGILL: Next, we have "The  
6 13th Amendment: An American Freedom and Legal History",  
7 from New York University Press in 2004. Can you tell  
8 us a bit about that text?

9 DR. TESISIS: Well, that book begins  
10 again with a history of -- of the 13th Amendment, again  
11 that amendment that abolished slavery in the United  
12 States. And then I trace its contemporary  
13 implications, both through judicial precedents, as well  
14 as various civil rights related issues, contemporary  
15 issues, and how the 13th Amendment applies to them.

16 MR. FOTHERGILL: And then finally we  
17 come to the -- the text that I suspect is probably of  
18 most interest to us. This is "Destructive Messages:  
19 How Hate Speech Paved the Way to Harmful Social  
20 Movements". Can you tell us a bit about that text?

21 DR. TESISIS: The text begins with a  
22 historical analysis of -- of three different groups,  
23 and the effect of hate speech on them, and that  
24 their -- their plight in discriminatory and persecutory  
25 times. Then it also discusses contemporary issues, and



1           it moves on to some social and psychological phenomena  
2           of hate speech, and then discusses the jurisprudence,  
3           the United States jurisprudence concerning free speech  
4           in general and hate speech in particular.

5                           It then moves onto an  
6           international -- comparative international analysis of  
7           hate speech, and then concludes with both a model of  
8           statutes and an explanation about policy considerations  
9           for legislators, and what they might do as far as hate  
10          speech is concerned.

11                           MR. FOTHERGILL: Can you elaborate a  
12          little bit more on the methodology that you use in the  
13          analysis in that book?

14                           DR. TESISIS: Well, I -- the  
15          methodology is to look at societies where there has  
16          been widespread group harm, and determine whether or  
17          not hate speech had a substantial role, and -- and  
18          that's as far as the historical section.

19                           As far as the -- the psychological  
20          and sociological sections, I used -- I looked at  
21          both -- researched empirical studies and various  
22          psychological studies and sociological studies, as they  
23          related to hate speech.

24                           The United States jurisprudence, I --  
25          I'm a lawyer by training, so I analyzed cases of

1 secondary material concerning hate speech and free  
2 speech in general. And then also in my research of  
3 comparative law, comparative hate speech law, I both  
4 used the Internet for research, looking at various laws  
5 that are on-line, went through books and called  
6 embassies of various countries to make sure that in  
7 fact there was still good law, and tried to speak to  
8 the -- to the legal liaisons in as many countries as I  
9 could, to -- to make sure that everything was up to  
10 date.

11 MR. FOTHERGILL: And there's a  
12 chapter in that book that is going to be republished in  
13 another text; is that right?

14 DR. TESISIS: That's right, yes.  
15 There's a chapter -- and in fact, the chapter that will  
16 be republished -- just to refresh my mind, make sure  
17 I'm correct -- is actually just general principles,  
18 general theoretical jurisprudential principles on hate  
19 speech.

20 MR. FOTHERGILL: Can you comment on  
21 the reception that your book has received in the -- the  
22 academic press or otherwise?

23 DR. TESISIS: Well, it's received an  
24 unusually large amount of reviews, and it was also a  
25 bestseller amongst academic books for two months.

1                   MR. FOTHERGILL: I would like you to  
2 identify just to -- for the purposes of our record,  
3 some of the reviews that your book received. If I can  
4 ask you to turn to tab 7. Could you identify that for  
5 us?

6                   DR. TSESIS: That's a book review in  
7 the "Harvard Human Rights Journal".

8                   MR. FOTHERGILL: I wonder if I could  
9 produce that document?

10                  THE CHAIRPERSON: Okay, yes.

11                  MR. FOTHERGILL: Can you turn now to  
12 tab 9, please. Can you identify this document for us?

13                  DR. TSESIS: Well, that's a book  
14 review that I wrote on --

15                  MR. FOTHERGILL: I'm sorry, tab 9?

16                  DR. TSESIS: I'm sorry, I was looking  
17 at tab 8. I apologize. Yes. This is a book review  
18 that came out in a relatively obscure journal called  
19 the "Federal Communications Law Journal".

20                  MR. FOTHERGILL: And actually, before  
21 I produce this document, I noted when reviewing it that  
22 inadvertently, there are a couple of written  
23 annotations on this copy of the text that obviously  
24 don't belong there. They're -- they're commentary from  
25 my learned co-counsel, Miss Davies.

1                   This document also appears in the  
2 materials prepared by Ms Kulaszka, at tab 2 of the  
3 Downs binder. I believe you extracted the expert  
4 report. And I think it would make more sense to use  
5 that one, just because it's a clean copy.

6                   THE CHAIRPERSON: Okay, I'll have --

7                   MR. FOTHERGILL: This is quite a  
8 large black binder with eight tabs.

9                   THE CHAIRPERSON: In due course, it  
10 will be found. I see the annotation. It's very small.  
11 I'll just -- without even looking at it, I'll just --

12                   MR. CHRISTIE: We'd like to express  
13 our gratitude for the annotation.

14                   MR. FOTHERGILL: Mr. Christie can  
15 make what use of them he wishes.

16                   THE CHAIRPERSON: I have not read  
17 them, so I missed the humour there, or the sarcasm, or  
18 whatever it may be.

19                   MR. FOTHERGILL: There are a couple  
20 of comments by counsel.

21                   THE CHAIRPERSON: Well, I'm just --  
22 as you can all see, I'm just -- so what's happened  
23 is -- that's why I can't find it. We never actually  
24 produced, since the witness has not yet appeared --  
25 never actually produced the Downs binder of Ms

1           Kulaszka. I had simply removed the reports so I could  
2           make myself familiar with the report.

3                         MR. FOTHERGILL: Right.

4                         THE CHAIRPERSON: I'm now inserting  
5           Dr. Downs' report back in at tab 1. I have the  
6           document but it's not produced. You are saying at --  
7           at which tab is the same article?

8                         MR. FOTHERGILL: It's tab 2.

9                         THE CHAIRPERSON: Tab 2, okay.

10                        MR. FOTHERGILL: It does -- the same  
11           article actually appears in a third place as well,  
12           because Mr. Vigna included it in his materials.

13                        THE CHAIRPERSON: It must be a hot  
14           topic here.

15                        MR. CHRISTIE: If learned co-counsel  
16           would be able to enlighten us with disclosure of any  
17           other comments, we would very much appreciate that.

18                        MR. FOTHERGILL: We will be claiming  
19           solicitor-client privilege and any other -- any other  
20           comments -- I suppose, if I were pedantic, I would say  
21           that there was inadvertent disclosure, but it's really  
22           not worth it for these particular annotations.

23                        DR. TESIS: If I may just say, we  
24           are just on something. You just said that it was --  
25           this is a hot article. This article has in fact been

1           cited only twice, and the -- three times in the legal  
2           academy, one by Anuj Desai, once by an academic in  
3           another review of my book in the Michigan Law Review --  
4           it was just talking about that there are other reviews  
5           of my book -- and once by a person who in fact was  
6           using it. And those are all the citations that it has  
7           received, that I'm aware of, in the academic --

8                         THE CHAIRPERSON: And yet three  
9           parties in this case thought it worthwhile to -- to  
10          send it to the Tribunal.

11                        MR. FOTHERGILL: Well, we'll deal  
12          with it because it provides a critique of Dr. Tsesis's  
13          theories, and so that's why it's of some interest.

14                        THE CHAIRPERSON: Okay.

15                        MR. FOTHERGILL: Tab 10, please, Dr.  
16          Tsesis.

17                        DR. TSESIS: Yes.

18                        MR. FOTHERGILL: Can you identify  
19          that for us?

20                        DR. TSESIS: Yes. That's -- that's  
21          an article that came out in the primary journal of  
22          forensics in the United States, "Argumentation and  
23          Advocacy".

24                        MR. FOTHERGILL: Could I have that  
25          produced, please?

1 THE CHAIRPERSON: Yes.

2 MR. FOTHERGILL: Tab 11?

3 DR. TSESIS: Yes.

4 MR. FOTHERGILL: Can you identify  
5 that for us?

6 DR. TSESIS: Yes, this is a book  
7 review that came out in the Howard Law Journal, a  
8 journal that's primarily concerned with civil rights.

9 MR. FOTHERGILL: And could I have  
10 that produced as well, please?

11 THE CHAIRPERSON: Yes.

12 MR. FOTHERGILL: And finally, to  
13 conclude the discussion of reviews, tab 12?

14 DR. TSESIS: Yes.

15 MR. FOTHERGILL: Could you identify  
16 that for us?

17 DR. TSESIS: That's a book review by  
18 Ziyad Motala.

19 MR. FOTHERGILL: Where did that  
20 appear?

21 DR. TSESIS: That's also in the  
22 Howard Law Journal.

23 MR. FOTHERGILL: Could I have that  
24 produced, please?

25 THE CHAIRPERSON: Yes.

1 MR. FOTHERGILL: Are these all the  
2 reviews that appeared, or are there others?

3 DR. TSESIS: There are a number of  
4 others.

5 MR. FOTHERGILL: Returning to your  
6 CV, before I forget, I don't think we've produced that  
7 document, so perhaps we could do that. That's at tab 2  
8 of the book?

9 THE CHAIRPERSON: Right.

10 MR. FOTHERGILL: Dr. Tsesis, you  
11 recognize this document as your curriculum vitae?

12 DR. TSESIS: I do. I do, yes. This  
13 is my CV.

14 MR. FOTHERGILL: Thank you.

15 THE CHAIRPERSON: Yes, it's produced.

16 MR. FOTHERGILL: I would like to  
17 discuss with you some of the articles that you've  
18 published, under the heading "Scholarly Articles" on  
19 page 2. Do you see that?

20 DR. TSESIS: I do.

21 MR. FOTHERGILL: And the first one I  
22 would like to draw your attention to is the third on  
23 the list, "The Boundaries of Free Speech", which  
24 appeared in the Harvard Latino Law Review. Do you see  
25 that?



1 DR. TSESIS: I do.

2 MR. FOTHERGILL: Could you turn to  
3 tab 8 of your book, please?

4 DR. TSESIS: I'm there.

5 MR. FOTHERGILL: Is that the -- the  
6 article referred to in your CV?

7 DR. TSESIS: It is.

8 MR. FOTHERGILL: Could I have that  
9 produced, please?

10 THE CHAIRPERSON: Yes.

11 MR. FOTHERGILL: Next on the list we  
12 see "Regulating Intimidating Speech" in the Harvard  
13 Journal on Legislation. And can you turn to tab 6 of  
14 your book, please?

15 DR. TSESIS: I see it.

16 MR. FOTHERGILL: Is that the article?

17 DR. TSESIS: Yes, it is.

18 MR. FOTHERGILL: Could I produce  
19 that, please?

20 THE CHAIRPERSON: Yes.

21 MR. FOTHERGILL: Towards the bottom  
22 of the page, we see an article entitled "Prohibiting  
23 Incitement on the Internet". Do you see that?

24 DR. TSESIS: I do.

25 MR. FOTHERGILL: And that appeared in

1 the Virginia Journal of Law and Technology in 2002; is  
2 that correct?

3 DR. TSESIS: Yes.

4 MR. FOTHERGILL: Could you refer to  
5 page 5 of your materials, please?

6 DR. TSESIS: Yes, I see it.

7 MR. FOTHERGILL: Is that the article?

8 DR. TSESIS: It is.

9 MR. FOTHERGILL: May I have that  
10 produced, please?

11 THE CHAIRPERSON: Yes.

12 MR. FOTHERGILL: And because this  
13 article deals specifically with prohibiting incitement  
14 on the Internet, I wonder if you could give us a very  
15 brief summary of what this article deals with?

16 DR. TSESIS: Well, the article deals  
17 with the free -- free speech jurisprudence in general,  
18 and particularly, how it applies to the Internet, and  
19 discusses the proliferation of hate speech on the  
20 Internet, evaluates whether or not commercial solutions  
21 are viable or not, and discusses jurisdictional issues  
22 as well, because the Internet is so widespread.

23 It discusses what would be -- you  
24 know, what is the appropriate court where there  
25 wouldn't be unfair surprise, and also discusses the

1 sort of legal cause of action that could be developed,  
2 or modelled.

3 MR. FOTHERGILL: Your heading 4 on  
4 the table of contents says "Perspectives From Other  
5 Lands". What do you deal with in that section of the  
6 paper?

7 DR. TSESIS: That's a comparative  
8 analysis also, a comparative international analysis  
9 about hate speech in other countries.

10 MR. FOTHERGILL: And I think the  
11 final article I want to specifically highlight is the  
12 one that appears next in the list on page 3 of your CV,  
13 "Hate in Cyberspace"?

14 DR. TSESIS: Yes.

15 MR. FOTHERGILL: Can you turn to tab  
16 4, please. Is that the article?

17 DR. TSESIS: That is, yes.

18 MR. FOTHERGILL: And may I have that  
19 produced, please?

20 THE CHAIRPERSON: Yes.

21 MR. FOTHERGILL: And again, because  
22 this deals specifically with hate in cyberspace, I  
23 wonder if you could take a moment to explain to us what  
24 this article deals with?

25 DR. TSESIS: This is different from

1 the previous article, insofar as I was arguing here  
2 against a group of scholars, David Johnson and David  
3 Post primarily, who believed that the -- or at that --  
4 this point in their -- in their academic careers at  
5 least, believed that the Internet was everywhere and  
6 nowhere at the same time.

7 And I tried to use physics -- about  
8 space time to explain how the electromagnetic waves  
9 work on the Internet, in order to explain both how  
10 Internet protocol can deliver information, how people  
11 can be identified from the place where they send it,  
12 and evaluate whether or not in fact, the Internet is  
13 somewhere and should be governed by the same principles  
14 and laws that have been developed, either through  
15 statutes or the common law.

16 MR. FOTHERGILL: Is that what you  
17 deal with under the heading, "The Practicality of  
18 Regulating the Internet"?

19 DR. TESISIS: That's right, yes.

20 MR. FOTHERGILL: And I also see,  
21 again in section 4, "Hate Speech Laws in Other  
22 Democracies." Can you comment on what you do with  
23 that?

24 DR. TESISIS: That's in fact really  
25 quite similar to the other discussion of and analysis

1 and comparative analysis of other countries, as well as  
2 international conventions that deal with hate speech.

3 MR. FOTHERGILL: Now, when I  
4 introduce you, I introduce you as a legal historian,  
5 and I'm wondering if you could explain to the Tribunal  
6 the difference between a legal historian and regular  
7 historian?

8 DR. TESISIS: Well, legal historians,  
9 in the United States, are people who discuss the -- a  
10 particular portion in time. It could be something  
11 that's relatively contemporary or something quite --  
12 quite a bit older, and then exploring the -- some sort  
13 of prescriptive or normative application to the  
14 present.

15 Where historians tend to discuss a  
16 particular time period, its place, and try to bring  
17 back to life that particular time period, and that's  
18 about where it ends. You could have a normative  
19 component, but that's certainly not the critical  
20 portion of history with -- what's produced in history  
21 departments.

22 MR. FOTHERGILL: Are your published  
23 books subjected to peer review?

24 DR. TESISIS: They are. Yes, all of  
25 them are.

1 MR. FOTHERGILL: What can you tell us  
2 about the disciplines or the qualifications of the  
3 people who conduct those reviews?

4 DR. TESIS: Well, the reviewers are  
5 always anonymous, but my understanding is that -- I  
6 know at least some of the people who reviewed it, they  
7 were all constitutional academics and legal historians.  
8 And in some cases, actually, they were pure  
9 historians -- at least I can think of one -- at least  
10 one pure historian who was a peer reviewer.

11 MR. FOTHERGILL: Those are my  
12 questions on your -- I'm asked by Ms Kulaszka to  
13 clarify one thing. When I -- when I talked about "peer  
14 review", is that before or after publication?

15 DR. TESIS: This is before  
16 publication. The peer review process book in an -- the  
17 difference between an academic press and a popular  
18 press, it can go to two lines of reviews. It's  
19 reviewed by people within -- academics in -- in the  
20 particular discipline before the press even accepts the  
21 book for publication. Then after the full manuscript  
22 comes in, then it's reviewed by -- it's reviewed by  
23 academics again, it's sent out anonymously to people,  
24 they review it.

25 Then it goes through a faculty

1 committee at the actual university press. In other  
2 words, for example, in the New York University Press,  
3 the editor has to bring it before a faculty committee  
4 made up of various disciplines, for the New York  
5 University to determine that they are willing to put  
6 the New York University label on it.

7 MR. FOTHERGILL: Thank you. Those  
8 are my questions on your qualifications. It's possible  
9 that others may have questions for you as well.

10 MR. TESISIS: Yes.

11 THE CHAIRPERSON: Thank you. Do  
12 any -- either of you have --

13 MR. CHRISTIE: No, I have no  
14 questions.

15 THE CHAIRPERSON: Fine. Mr. Vigna?

16 MR. VIGNA: No.

17 THE CHAIRPERSON: No? Okay.

18 MS KULASZKA: If Mr. Christie is  
19 going to be asking some questions, I might add some  
20 questions after.

21 CROSS-EXAMINATION BY MR. CHRISTIE

22 MR. CHRISTIE: Do you have any legal  
23 training, outside of the United States?

24 DR. TESISIS: At present, do you mean,  
25 have I been trained outside of the United States?

1                   MR. CHRISTIE: I don't know that the  
2 question is that complicated. You could have been  
3 trained outside the United States in a variety of ways.  
4 My question is, do you have any legal training outside  
5 of the United States?

6                   DR. TSESIS: Again, I'm uncertain of  
7 what you mean by that question. I'll take it to mean,  
8 have I ever been trained in the laws outside of the  
9 United States. I have -- I have a Comparative Law  
10 certificate from the Chicago-Kent College of Law. I  
11 have never -- I answered both the questions that I  
12 think that you've posed. The second is that I have  
13 never been -- I have never studied outside of the  
14 United States.

15                   MR. CHRISTIE: Have you made any  
16 study outside of the United States, of the laws of the  
17 countries that you claim to comment on in your various  
18 comparisons? For example, in tab 4, part 4, hate  
19 speech laws and other democracies, page 858. Have you  
20 any expertise in the laws of Austria?

21                   DR. TSESIS: I have studied -- I am  
22 not an expert on Austrian law, but I -- but I have  
23 studied the -- from a comparative standpoint, the laws  
24 of hate speech of various countries and -- and compared  
25 them. I do have expertise in the sense that I have a



1 certificate in Comparative Law, and as well as my own  
2 individual academic study.

3 MR. CHRISTIE: In giving your  
4 evidence, you indicated that you "called the embassies  
5 of different countries"?

6 DR. TSESIS: I did.

7 MR. CHRISTIE: And you spoke to the  
8 legal liaison officers of those embassies, I assume?

9 DR. TSESIS: I did, yes.

10 MR. CHRISTIE: Does that apply to  
11 Belgium?

12 DR. TSESIS: I would have to go back  
13 and check with the individual countries, but -- from  
14 sitting -- and I can do that during the break, if you  
15 wish, I can give you the specific countries. My memory  
16 is yes, Belgium, but as I say, I would have to, if you  
17 don't mind -- there's numerous countries I called, but  
18 there are some that I did not, and I can check on that.

19 MR. CHRISTIE: Well, the "numerous"  
20 countries that you called, would that include Canada?

21 DR. TSESIS: Canada I did not call,  
22 primarily because I could speak the language and could  
23 find ready sources in the United States, in order to be  
24 able to find and determine whether it was good law.

25 The -- the only places I called

1           were -- were embassies where I was unable to determine  
2           whether or not the statutes that I found through my  
3           research were still good. In other words, where they  
4           had not been overturned.

5                       MR. CHRISTIE: So do you claim some  
6           expertise in Canadian law?

7                       DR. TSESIS: I'm not an expert in  
8           Canadian law, but in the comparative analysis on hate  
9           speech.

10                      MR. CHRISTIE: Do you have any  
11           expertise on the Canadian law regarding hate speech?

12                      DR. TSESIS: I have certainly studied  
13           the subject deeply.

14                      MR. FOTHERGILL: Studied the subject  
15           deeply?

16                      DR. TSESIS: And written about it  
17           extensively in a variety of ways.

18                      MR. CHRISTIE: Yes. How deeply did  
19           you study the subject?

20                      DR. TSESIS: I went as far as I  
21           possibly could with it, and have been -- have been  
22           studying it for the past several years.

23                      MR. CHRISTIE: What does that mean?

24                      DR. TSESIS: That means using --  
25           trying a few sources like WestLaw and Lexis, which have

1 databases of Canadian law, both jurisprudential as well  
2 as secondary sources, going through the Internet,  
3 reading both the Commission on Human Rights decisions  
4 and the Supreme Court of Canada decisions.

5 MR. CHRISTIE: Were you ever advised  
6 by any writing, what it was you were expected to  
7 testify about?

8 DR. TSEISIS: I had electronic -- I  
9 had e-mail exchange.

10 MR. CHRISTIE: Yes. So in that  
11 e-mail exchange, were you told what it was you were  
12 expected to comment on?

13 DR. TSEISIS: I was told that I would  
14 be discussing hate speech, yes.

15 MR. CHRISTIE: Were you told anything  
16 about Section 13(1) one of the Canadian Human Rights  
17 Act?

18 DR. TSEISIS: Yes, I saw the filing  
19 documents, the cause of action, and so I realized --  
20 Mr. Warman's file, so I realized that it had to do with  
21 Section 13(1). I've also studied this one.

22 MR. CHRISTIE: Pardon me?

23 DR. TSEISIS: I've also studied 13(1)  
24 from Taylor, the Supreme Court case from Canada.

25 MR. CHRISTIE: Yes. Do you have that

1 e-mail exchange?

2 DR. TSEISIS: I do not have it with  
3 me, no.

4 MR. CHRISTIE: Well, You have --

5 DR. TSEISIS: I mean, I have it --

6 MR. CHRISTIE: You would have access  
7 to it?

8 DR. TSEISIS: Yes, I do.

9 MR. FOTHERGILL: And you could have  
10 downloaded it any time?

11 DR. TSEISIS: I do not download it,  
12 but it's on the server at the University of Wisconsin.

13 MR. CHRISTIE: You could have  
14 downloaded it any time?

15 DR. TSEISIS: I think that's right. I  
16 thought -- I know I can print it. I did not know that  
17 I can download it.

18 MR. CHRISTIE: Well, how could you  
19 print it without downloading it?

20 DR. TSEISIS: You -- you have the --  
21 if you have the document on your ram, your active  
22 memory, then you can print certain things without  
23 having them on your hard drive. Downloading is a -- is  
24 a process that requires the permanent putting of  
25 something onto a drive, and that process I may be able

1 to do, but I -- I'm not certain whether I can do with  
2 it my e-mail system, but I can certainly have it in my  
3 active memory, the thing that's on my screen, and would  
4 allow me to print it.

5 THE CHAIRPERSON: I can confirm that,  
6 Mr. Christie. When I go on-line to our office server,  
7 that's how we do it. We don't download this material,  
8 but I can just print whatever is on my screen.

9 MR. CHRISTIE: Yes. So where did you  
10 go to get your expertise in the Taylor case?

11 DR. TESIS: Well, the Taylor case I  
12 studied -- the first time I came across the Taylor case  
13 was -- the earliest memory I have of coming across it,  
14 was during study either of the "Hate in Cyberspace"  
15 article or the -- or the -- my article on "Empirical  
16 Shortcomings of First Amendment Jurisprudence", I found  
17 it at the Northwestern University Library Law School in  
18 downtown Chicago.

19 MR. CHRISTIE: Well, I didn't --  
20 didn't ask you where you found, but how did you acquire  
21 your expertise in it? Just read the case?

22 DR. TESIS: I read the case and  
23 looked at secondary material on it, to make sure that I  
24 was understanding it correctly.

25 MR. CHRISTIE: What secondary

1 material?

2 DR. TSESIS: Journal articles.

3 MR. CHRISTIE: What articles?

4 DR. TSESIS: You know, the -- I  
5 cannot tell you what specific articles. I don't have a  
6 clear memory of which articles I read.

7 MR. CHRISTIE: I see. When you came  
8 here, were you aware that the section about which you  
9 were to be commenting was Section 13(1) of the Canadian  
10 Human Rights Act?

11 DR. TSESIS: Yes.

12 MR. CHRISTIE: And were you aware  
13 that under that section, truth is no defence?

14 DR. TSESIS: Yes.

15 MR. CHRISTIE: Were you aware that  
16 intent is not a required element in -- in respect of  
17 breaches of the act?

18 DR. TSESIS: Yes.

19 MR. CHRISTIE: Who told you that?

20 DR. TSESIS: I've -- I've researched  
21 it. I -- in fact, I -- I saw it in Citron versus  
22 Zundel.

23 MR. CHRISTIE: Uh-huh. And did you  
24 generate your opinion after the research you did in  
25 Citron versus Zundel, as you put it?

1 DR. TSEISIS: You know, I don't know  
2 the first time I crossed -- came across that case, but  
3 I did teach it this semester in my cyberspace class.

4 MR. CHRISTIE: Yes. You contacted  
5 the embassies and liaison officers of all the other  
6 countries, besides Canada, I suppose?

7 DR. TSEISIS: No, I did not contact  
8 the liaisons of the United States embassy, certainly.  
9 I don't think -- I have no memory of contacting the  
10 liaison of Great Britain. I'm certain -- and again, I  
11 would have to look back, but I'm certain I didn't. The  
12 reason is again --

13 MR. CHRISTIE: You speak the  
14 language?

15 DR. TSEISIS: I had read -- may I  
16 finish the answer, Your Honour?

17 THE CHAIRPERSON: Yes, go ahead.

18 DR. TSEISIS: That the -- the reason  
19 being I was -- I had resources to determine whether it  
20 was good law. And the only reason I was contacting  
21 them was -- I should clarify -- was either to check  
22 that it was good law, or because there was a -- I  
23 wasn't certain whether the translation was accurate.

24 MR. CHRISTIE: So I guess therefore,  
25 that the connections to embassies and their liaison

1 officers would apply to France, Germany, India, Israel,  
2 Italy, Netherlands and Switzerland; is that right?

3 DR. TSEISIS: Israel, again I was able  
4 to find; France, I was able -- I contacted a counsel,  
5 an expert on First Amendment speech in -- in France.

6 MR. CHRISTIE: Who was that?

7 DR. TSEISIS: I have his name, not  
8 on --

9 MR. CHRISTIE: Who was it?

10 DR. TSEISIS: -- not on me. Mark  
11 something. I don't have it on me.

12 MR. CHRISTIE: Mark something?

13 DR. TSEISIS: Yes, I don't have his  
14 name?

15 MR. CHRISTIE: You don't? How do you  
16 know he was an expert?

17 DR. TSEISIS: Well, I'm trying to  
18 think back what research I did. He was some form -- in  
19 fact, possibly -- possibly because the embassy, French  
20 embassy directed me to him, but again, I -- I don't  
21 have an entirely clear memory of it.

22 MR. CHRISTIE: How do you know that  
23 any of these liaison officers got the information from  
24 were experts?

25 DR. TSEISIS: Well, in all cases where



1 I contacted an expert, a liaison, they were always the  
2 only legal liaison in the embassy. Hence, I presume  
3 that the government, in placing -- I presume that the  
4 government, in placing a lawyer -- the only lawyer in  
5 its embassy, was placing someone who was an expert in  
6 that country's law.

7 MR. CHRISTIE: That's a presumption  
8 on your part?

9 DR. TSEISIS: I presume that  
10 governments are competent and capable of determining  
11 who is an expert, and decide -- determining whether or  
12 not to place them in an embassy, to give legal advice.

13 MR. CHRISTIE: And I take it that you  
14 don't know what, if any, training, skill of ability any  
15 of them might have had?

16 DR. TSEISIS: I presume that they've  
17 all had legal training adequate enough to make them  
18 lawyers in their country.

19 MR. FOTHERGILL: Uh-huh. Did it ever  
20 occur to you that countries would never officially  
21 declare their own laws to be offensive or  
22 unconstitutional, to their official representatives?  
23 Did that ever cross your mind?

24 DR. TSEISIS: No, because I would  
25 assume that if a court had found a law to be

1           unconstitutional, the liaison would be obligated to  
2           tell if the statute was -- had been found to be  
3           unconstitutional.  And beyond that, I did a comparative  
4           analysis, and didn't simply look at the laws, but also  
5           compared them.

6                         MR. CHRISTIE:  You did a comparative  
7           analysis by what means?

8                         DR. TESISIS:  By looking at various  
9           elements of offences in various countries, and by  
10          looking at international conventions, and analyzing  
11          them.

12                        MR. CHRISTIE:  Well, how would you  
13          study the elements of offences of countries which do  
14          not publish their legal decisions in the English  
15          language, or a language that you speak?

16                        DR. TESISIS:  Well, I would get the  
17          translation of that document.  If there -- if there was  
18          no document in the English language, then I was unable  
19          to use it.

20                        MR. CHRISTIE Well, would that apply  
21          to -- would it apply to countries, such as Brazil?

22                        DR. TESISIS:  I do not speak  
23          Portuguese.

24                        MR. CHRISTIE:  And do you speak  
25          German, or Austrian?

1 DR. TSESIS: I -- Brazil -- I do not  
2 speech German, but there are excellent translation  
3 of -- of the German code, sometimes by the U.N.  
4 Oftentimes, these laws are actually interpreted by  
5 U.N., and can be found on-line.

6 MR. CHRISTIE: Well, I just wondered  
7 if you had read any Austrian cases, applying the  
8 statutes in question, in the original text?

9 DR. TSESIS: I have not.

10 MR. CHRISTIE: And do you claim  
11 expertise as well in Belgian law, as you seem in your  
12 texts to do?

13 DR. TSESIS: I am not an expert in  
14 Belgian law. I assume that lawyers who are licenced in  
15 Belgium are experts in Belgian law, and I am not.

16 MR. CHRISTIE: And who did -- who did  
17 you refer to in Belgium?

18 DR. TSESIS: As I said earlier, I  
19 would have to look at my computer because I don't have  
20 a clear memory of it.

21 MR. CHRISTIE: And Cyprus, what legal  
22 texts and judgments did you read in that respect?

23 DR. TSESIS: There, I read no texts,  
24 but used secondary works, two -- two very recent  
25 articles. And there's just mention of that. There's

1 no analysis of that -- of that statute.

2 MR. CHRISTIE: And where did you  
3 acquire your expertise in German law?

4 DR. TSESIS: I have no expertise in  
5 German law, but I do have a -- a broad research in  
6 German law, as it pertains to hate speech.

7 MR. CHRISTIE: Where does this broad  
8 research come from?

9 DR. TSESIS: Secondary sources,  
10 primary sources, case law.

11 MR. CHRISTIE: What secondary  
12 sources?

13 DR. TSESIS: Articles -- I believe --  
14 again, you know, if -- this is something that I could  
15 take a look over the break. Possibly there's a  
16 reproduction -- I would have to take a look. The  
17 statutes are reproduced and discussed in a -- in a  
18 variety of places.

19 MR. CHRISTIE: Well, I guess as a  
20 lawyer, you recognize that statutes are only  
21 significant when they are applied? Would you agree  
22 with that?

23 DR. TSESIS: No.

24 MR. CHRISTIE: Well, isn't it  
25 important as a lawyer to know how these statutes are

1 interpreted, and the application of it?

2 DR. TSESIS: That depends -- you are  
3 absolutely right, but it also depends on whether it's a  
4 common law country, or whether it's a continental  
5 system that's being used. If -- if it's a continental  
6 system, in fact, the statutes are more important than  
7 the interpretation. If it's a common law system, of  
8 course, the courts say what the law is.

9 MR. CHRISTIE: Are you an expert in  
10 the continental system?

11 DR. TSESIS: Again, it seems to me  
12 that the court has to determine whether I'm an expert.  
13 But I have a -- I have studied comparative law, and  
14 part of my training in comparative law was on the  
15 continental system.

16 MR. CHRISTIE: Where did you -- where  
17 did you study the continental system?

18 DR. TSESIS: In the Chicago-Kent  
19 College of Law, as well as elsewhere. I've taught  
20 about the continental system in my classroom.

21 MR. CHRISTIE: And where did you  
22 learn about it?

23 DR. TSESIS: From a broad amount of  
24 sources, including in -- in teaching, for example,  
25 Conflict of Laws, which is one of the courses that I've

1           taught. I've looked -- I read cases from a variety of  
2           countries, and did a comparative analysis of them with  
3           United -- United States decisions.

4                   MR. CHRISTIE: Well, I'm speaking now  
5           about the country called Germany, and your knowledge of  
6           the cases, and the application of the law in Germany to  
7           the cases. What did you study in that regard?

8                   DR. TSEISIS: Germany, in particular  
9           or -- German law in particular, I -- I have not studied  
10          German law beyond hate speech. Maybe I've touched upon  
11          German law in other areas, but certainly my depth of  
12          study has particularly concerned hate speech.

13                   MR. CHRISTIE: Yes, well, you have  
14          claimed to write with some authority on the subject of  
15          the laws of the Weimar Republic, and you expressed  
16          views about that. I suggest you have done that; is  
17          that correct?

18                   DR. TSEISIS: I have studied the laws  
19          of the Weimar Republic extensively.

20                   MR. CHRISTIE: And where did you  
21          acquire any special training about them?

22                   DR. TSEISIS: That's just a -- a  
23          standard legal historical analysis of being able to  
24          look at books, and analyze them, and read a lot, and  
25          try to fill in the gaps of my knowledge.

1 MR. CHRISTIE: Uh-huh. And we can  
2 all read books. What books do you claim you've read  
3 that give you some special knowledge about the laws of  
4 the Weimar Republic, regarding hate speech?

5 DR. TSESIS: There are just so many.  
6 It's -- it's --

7 MR. CHRISTIE: Name one.

8 DR. TSESIS: William Shirer. There's  
9 a book about the laws of the Weimar -- William  
10 Shirer's, "The Rise and Fall of the Third Reich", he  
11 discusses it. There's also a book concerning the  
12 Weimar -- the laws of the Weimar Republic. There's a  
13 specific book, an edited book, with a variety of  
14 articles. There are articles on the --

15 MR. CHRISTIE: What's the name of  
16 that book?

17 DR. TSESIS: I can't remember the  
18 specific book.

19 MR. CHRISTIE: Who's the author?

20 DR. TSESIS: I can't remember that.  
21 I see easily find it. There is no specific author.  
22 It's a variety of authors. There's an editor.

23 MR. CHRISTIE: Does it have a title?

24 DR. TSESIS: I presume, yes. I don't  
25 remember what it is, but I remember clearly it has a

1 title, yes.

2 MR. CHRISTIE: When was it published?

3 DR. TESIS: I -- you know, I can't  
4 remember that specific detail. It's easy to find.  
5 Research is an easy thing. You don't really need to  
6 know the specific book. You can, for example --

7 MR. CHRISTIE: Excuse me. I didn't  
8 ask you anything in general about research. I asked  
9 you a specific question.

10 THE CHAIRPERSON: Neither of us can  
11 hear so --

12 DR. TESIS: Can we move onto  
13 something --

14 THE CHAIRPERSON: If you finish  
15 quickly, yes. And I will be --

16 DR. TESIS: Yes. Very often in my  
17 research, I can't remember the -- the exact title.  
18 Titles are like poems, you have to have a line that you  
19 can master and remember. So the way to do now is using  
20 the library catalogues, you just look up titles. And  
21 I'm sure that if I put in the terms "laws, Weimar  
22 Republic", I can easily find that book again.

23 MR. CHRISTIE: Well, if it's a book  
24 that is authoritative, and you are seeking to qualify  
25 yourself as an expert in the laws of the Weimar



1 Republic regarding speech, I would think you might be  
2 able to remember the name, without going through a  
3 catalogue search.

4 DR. TSESIS: I'm -- I'm unable to  
5 remember all the books that I've ever read and the  
6 titles of all of them. But I can tell you if I can --

7 MR. CHRISTIE: Excuse me. I didn't  
8 ask you about all the books you ever read. I asked you  
9 specifically about one that enables you to be a  
10 qualified expert on the laws of the Weimar Republic  
11 respecting speech, and so far I've heard William  
12 Shirer's "Rise And Fall of the Third Reich", and one  
13 other book.

14 DR. TSESIS: Well, basically, you  
15 haven't let me complete the answer. I mean, I've --

16 MR. CHRISTIE: Well, I'm -- I'm not  
17 interested in all the books you've ever read.

18 DR. TSESIS: Again, I -- I just  
19 cannot complete the -- the --

20 MR. CHRISTIE: Go ahead. Go ahead.

21 DR. TSESIS: The question is, what  
22 have I read about the laws of the Weimar Republic and  
23 I've been unable to --

24 MR. CHRISTIE: That's not the  
25 question.

1 THE CHAIRPERSON: Yes, it was the  
2 question.

3 MR. CHRISTIE: No, the question was  
4 what was the name of this book that you claim --

5 THE CHAIRPERSON: That one, he  
6 answered he couldn't remember. But then you also asked  
7 him what other books he's used.

8 MR. CHRISTIE: No, I said I would  
9 assume that if there was one book that you relied on,  
10 you would be able to remember the name.

11 DR. TESISIS: I did not only rely on  
12 one book. I never rely on one book in my research. I  
13 think that that's -- that's shoddy research. If  
14 that's --

15 MR. CHRISTIE: How many books did you  
16 rely on to be an expert -- claim expertise in the laws  
17 of the Weimar Republic?

18 DR. TESISIS: I don't count the number  
19 of books that I -- that I read. I'm not really sure of  
20 the answer to that question.

21 MR. CHRISTIE: Can you --

22 DR. TESISIS: I've also read an  
23 extensive amount of articles on that point.

24 MR. CHRISTIE: Can you refer me to  
25 any article that you recall, that stands out in your

1 memory, as enabling you to understand, and be an  
2 expert, in the laws of the Weimar Republic, any book or  
3 any article?

4 DR. TSESIS: We'll I've just referred  
5 you to -- referred to a couple there. There are a  
6 number of articles about --

7 MR. CHRISTIE: Well, one actually.

8 DR. TSESIS: There are a number of  
9 -- of articles related to Streicher -- Julius  
10 Streicher, that deal specifically about speech in the  
11 Weimar Republic as well. There are books that deal  
12 with --

13 MR. CHRISTIE: My question is about  
14 the laws of the Weimar Republic.

15 THE CHAIRPERSON: Well, you know  
16 what? You have to stop interrupting, Mr. Christie. I  
17 know you -- it's cross-examination, but I can't hear  
18 two people speak the same time. Let him come to a  
19 pause. You asked a question, let him answer it. If  
20 you think he's being unresponsive, tell me that, but  
21 let him finish. I can't stand this. Go ahead, finish  
22 your answer.

23 DR. TSESIS: There's -- there's a  
24 book by Marr that deals extensively with laws in the  
25 Weimar Republic, in the rise of -- of Nazis as well,

1 called "Rehearsal to Destruction". There are --  
2 virtually every book that deals with the rise of Nazis  
3 has something about the Weimar Republic in it. The  
4 question is simply the analyzing to -- to find, you  
5 know, the -- the discussion of laws.

6 MR. CHRISTIE: You referred to the  
7 Federal Communications Law Journal as a relatively  
8 obscure journal?

9 DR. TSESIS: That's right.

10 MR. CHRISTIE: And where is the  
11 Howard Law Journal published?

12 DR. TSESIS: It's published at the --  
13 by the Howard University Law School.

14 MR. CHRISTIE: Where is that?

15 DR. TSESIS: That is in Washington,  
16 DC.

17 MR. CHRISTIE: Yes, and just -- just  
18 how many copies of the Howard Law Journal are  
19 published, in any given issue?

20 DR. TSESIS: I do not know what the  
21 print run is.

22 MR. CHRISTIE: Do you know the size  
23 of the academic institution called the Howard Law  
24 Journal? Is it associated with a particular law  
25 school?

1 DR. TSESIS: Yes, it's Howard  
2 University, which has a law school to it.

3 MR. CHRISTIE: Yes, and how big is  
4 the Faculty of Law in Howard Law University -- or  
5 Howard University?

6 DR. TSESIS: I don't know the number  
7 of people there. I know a number of -- I know a number  
8 of professors who work there, but not the number of  
9 scholars that actually -- who are full-time faculty  
10 there.

11 MR. CHRISTIE: So you claim expertise  
12 in the interpretation of Section 13(1)?

13 DR. TSESIS: No, I'm not a Canadian  
14 constitutional law scholar. I'm not a --

15 THE CHAIRPERSON: Yes, and again,  
16 there's a couple things -- let's be clear again what  
17 was said, as the expertise that's been put forth:

18 "Expert legal historian to  
19 address the long-term harmful  
20 effects of hate speech; measures  
21 to combat the long term effects  
22 of hate speech; to apply this  
23 analysis to the context of the  
24 Internet"

25 -- in the form of a program,

1 but --

2 "to provide a comparative law  
3 perspective on the issue".

4 MR. CHRISTIE: So what I heard you  
5 say last was, I'm not a Canadian constitutional law  
6 expert; is that correct?

7 DR. TSEISIS: I'm not a lawyer in  
8 Canada, yes.

9 MR. CHRISTIE: Would you agree that  
10 you have no particular expertise in Canadian  
11 constitutional law?

12 DR. TSEISIS: I have some expertise,  
13 but not at the level of a lawyer, no.

14 MR. CHRISTIE: And when you speak of  
15 comparative law, what do you mean?

16 DR. TSEISIS: An analysis of various  
17 countries, and either a descriptive comparison of  
18 looking at what elements are present and what elements  
19 are not, in the -- in a variety of offences, or a  
20 normative analysis -- that is to say, taking a look at  
21 a particular law of one country and the law of another  
22 country, and then having some jurisprudential outcome  
23 of saying which is better and which is worse, and the  
24 reason for saying that.

25 MR. CHRISTIE: And to do that, don't

1           you have to understand and know the law of the country  
2           you are comparing?

3                         DR. TSEISIS:  That -- that's true, but  
4           you don't need to -- not at the level of expertise of  
5           a -- a lawyer of every single country.

6                         MR. CHRISTIE:  So that's your opinion  
7           as to how you can make a comparison without any expert  
8           knowledge of the law of --

9                         DR. TSEISIS:  I don't think that  
10          opinion is the right word.  That's the way -- in United  
11          States law schools, when you teach comparative law, you  
12          don't have to be licenced in every single country that  
13          you teach about.  You simply have to know comparative  
14          law.

15                        MR. CHRISTIE:  Well, don't you have  
16          to understand and know the law of the country you are  
17          comparing, to be able to make an adequate comparison?

18                        DR. TSEISIS:  That's absolutely right.

19                        MR. CHRISTIE:  Well, to know and  
20          understand the law of any country, I suggest, requires  
21          expertise in the law of every country, doesn't it?

22                        DR. TSEISIS:  That's not the way it's  
23          interpreted in American law schools.

24                        MR. CHRISTIE:  I see.  Are you  
25          endowed with any special knowledge of the operation of

1 the Internet, by means of any special training?

2 DR. TSEISIS: Well, personal research,  
3 extensive study and teaching.

4 MR. CHRISTIE: Personal research,  
5 what does that mean?

6 DR. TSEISIS: That means reading,  
7 speaking to people, asking them questions, looking  
8 at -- looking at articles, and making an evaluation of  
9 how the system works.

10 MR. CHRISTIE: Do you have any  
11 special training or study in respect to the Internet  
12 and how it works?

13 DR. TSEISIS: I've studied the  
14 Internet and how it works very extensively from -- in  
15 specialized books, yes.

16 MR. CHRISTIE: Reading specialized  
17 books? Have you taken any special training in the  
18 operation of the Internet?

19 DR. TSEISIS: I have never -- I've  
20 never been trained in the Internet but -- well I have  
21 been trained on the Internet, but never on the software  
22 applications of it. But you know, I'm qualified enough  
23 that a law school has asked me to teach the course.

24 MR. CHRISTIE: Do you teach the  
25 course from a text book?



1 DR. TSESIS: I do, yes.

2 MR. CHRISTIE: Who wrote the text  
3 book?

4 DR. TSESIS: A woman by the name of  
5 Belia. There are several authors, but Belia is one of  
6 the authors, David Post is another. There --

7 MR. CHRISTIE: I understand you teach  
8 about three hours a week; is that correct?

9 DR. TSESIS: That's right, yes.

10 MR. CHRISTIE: Yes. And of those  
11 three hours, one deals with the subject of the  
12 Internet, correct?

13 DR. TSESIS: Oh, no, no, no. The --  
14 three hours of the Internet, of cyberspace law.

15 MR. CHRISTIE: From the text book?

16 DR. TSESIS: Well, from the text  
17 book, an extensive -- each class takes about five to  
18 six hours of preparation, so it's the text book  
19 secondary sources, looking at a variety of cases,  
20 trying to go to Internet sites that relate and explain  
21 the Internet as well.

22 I don't only teach out of a textbook.  
23 Nowadays, they are smart -- what they call smart podia.  
24 So in fact, I'm able to show the students the Internet,  
25 and the workings of the Internet on the screen right

1 behind me. But primarily, it is out of a case book,  
2 and the case with their secondary sources as well as  
3 primary sources.

4 MR. CHRISTIE: On Tuesdays, between  
5 2:00 and 3:15, you teach cyber law; is that correct?

6 DR. TSEISIS: And Thursday as well.

7 MR. CHRISTIE: And Thursday as well.  
8 That -- that's an hour on Tuesday and an hour on  
9 Thursday?

10 DR. TSEISIS: No, it's an -- it's  
11 an -- that's right, yes. It runs -- so two-and-a-half,  
12 yes, from 2:00 p.m. till 3:15 p.m., both on Tuesday and  
13 Thursday.

14 MR. CHRISTIE: Tuesday and Thursday?

15 DR. TSEISIS: That's right, yes.

16 MR. CHRISTIE: So two hours a week?

17 DR. TSEISIS: Two-and-a-half hours a  
18 week, yes.

19 MR. CHRISTIE: I'm sorry. And this  
20 expertise as a legal historian, does that expertise as  
21 a legal historical extend outside of the United States?

22 DR. TSEISIS: I've certainly written  
23 about, and spoken about -- at faculty -- at faculty  
24 workshops, about legal history in the U.S. and in other  
25 countries.

1 MR. CHRISTIE: Well, what special  
2 skill training or experience do you have about the  
3 legal system outside the United States?

4 DR. TSEISIS: I've researched  
5 extensively, gotten feedback from various faculty  
6 members, spoken to various faculty members on -- on it,  
7 but I have not -- if what you mean -- and I think, what  
8 you mean is, have I taken a class in it? I have not  
9 taken a class in it.

10 MR. CHRISTIE: Have you ever studied  
11 law outside of the United States? By that, I mean have  
12 you gone to any of the countries you claim to know  
13 about, and studied their law in any university of any  
14 of those countries?

15 DR. TSEISIS: No, I have not.

16 MR. CHRISTIE: And it's claimed that  
17 you, as a legal historian, are competent to address the  
18 long-term harmful effects of hate speech. Does that  
19 apply to -- or are you seeking to express opinions  
20 about the long-term harmful effects of hate speech  
21 outside the United States?

22 DR. TSEISIS: Yes, in both U.S. and  
23 outside the United States.

24 MR. CHRISTIE: When have you had any  
25 experience of even -- were you born in the United

1 States?

2 DR. TSESIS: No, I was not.

3 MR. CHRISTIE: Where were you born?

4 DR. TSESIS: I was born in the Soviet  
5 Union.

6 MR. CHRISTIE: I see. And when were  
7 you born?

8 MR. VIGNA: Objection on the --  
9 relevance on the -- on this point?

10 MR. CHRISTIE: Well, what's wrong  
11 with that? Nothing prejudicial about being born in the  
12 Soviet Union.

13 THE CHAIRPERSON: I don't know what  
14 the relevance is, and I don't know what's prejudicial.  
15 I can see a gentleman here. He looks roughly, I guess,  
16 about my age, but I don't know. Maybe a bit younger.

17 DR. TSESIS: Should I answer the  
18 question?

19 THE CHAIRPERSON: Go ahead, if it  
20 doesn't bother you.

21 DR. TSESIS: 1967.

22 THE CHAIRPERSON: A little bit  
23 younger.

24 MR. CHRISTIE: Okay, so you were born  
25 in 1967 in the Soviet Union. Your elementary school

1 education, I suppose, would have been in the Soviet  
2 Union?

3 DR. TSEISIS: No, I -- I went to the  
4 first grade in the Soviet Union, and then by the second  
5 grade, I went to the United States.

6 MR. CHRISTIE: So you emigrated from  
7 the Soviet Union to the United States when?

8 DR. TSEISIS: 1974.

9 MR. CHRISTIE: In '74? Okay, so  
10 other than those two countries, have you lived anywhere  
11 else in the world?

12 DR. TSEISIS: That's a very difficult  
13 question to answer. I would have to tell you, in  
14 periods of time. Yes, I lived in Italy, but for a  
15 brief period of time.

16 MR. CHRISTIE: What's brief?

17 DR. TSEISIS: Two -- two months.

18 So --

19 MR. CHRISTIE: Oh, that's brief.

20 DR. TSEISIS: So I don't know what --  
21 that's the longest that I've lived in another -- let me  
22 just quickly think. Yes, that's the longest I've lived  
23 in another country.

24 MR. CHRISTIE: Okay, I'm just trying  
25 to understand how you can claim expertise on the

1 long-term harmful effects of hate speech in our  
2 countries, without either ever living in any other  
3 country, other than the Soviet Union, or going to any  
4 of those countries to study their social climate. Can  
5 you explain that to me?

6 DR. TSESIS: I -- I can try. One  
7 could certainly be an expert in legal history by doing  
8 a sort of travelogue, that are saying. That is, in  
9 other words you travel and you can describe places, and  
10 that's an excellent way of doing history. You can  
11 describe places better, you can see them. But it's  
12 certainly not essential. I've never seen a historian  
13 who said that you have to travel to a country in order  
14 to be able to discuss that country's history.

15 So it is a very important  
16 methodological method to go to the country, and to see  
17 its people, to study it and to come back and then  
18 discuss its history. But it's clearly not essential in  
19 the -- in the -- neither history nor legal history  
20 community.

21 MR. CHRISTIE: Well, is that your  
22 opinion about the origin of legal history expertise?  
23 Or what is that your opinion of?

24 DR. TSESIS: It's my opinion, because  
25 I've never seen any historian in -- discuss methodology

1 of history, and say that one has to go to the country  
2 where -- that one is discussing from a historical  
3 perspective. So I presume that -- that means that it's  
4 never considered to be an applicable need that one has  
5 to do, to travel to another country, to discuss that  
6 country.

7 MR. CHRISTIE: Well, I heard that  
8 they were trying to qualify you on the long-term  
9 harmful effects of hate speech. Do you have any  
10 training in psychology?

11 DR. TESISIS: No.

12 MR. CHRISTIE: Any training in  
13 sociology?

14 DR. TESISIS: No.

15 MR. CHRISTIE: Any training in  
16 politics, political science?

17 DR. TESISIS: No. If I may just ask  
18 you to clarify the question. Do you mean classes?  
19 Have I taken classes? Is that what you --

20 MR. CHRISTIE: Okay, I'll -- I'll  
21 clarify what I mean. You take any degree in political  
22 science, which I take is an academic -- you acknowledge  
23 you could take?

24 DR. TESISIS: Yes. No, I have no  
25 degree in political science.

1                   MR. CHRISTIE: Yes. The study of the  
2 political systems of various countries. Have you done  
3 anything in that regard, in any --

4                   DR. TSESIS: Very extensively,  
5 throughout a variety of different studies, yes.

6                   MR. CHRISTIE: I see. Well, when  
7 does any of your academic study refer to the study of  
8 the political systems of different countries?

9                   DR. TSESIS: Well, I'm not a  
10 political scientist by any means. So my use of  
11 politics is in fact, to explain the nature of law.  
12 I'm -- I'm not a pure political scientist.

13                   MR. CHRISTIE: Well, looking at your  
14 education, I don't see any reference to political  
15 science anywhere. That's correct, is it?

16                   DR. TSESIS: That's right, yes

17                   MR. CHRISTIE: Yes? So how do you  
18 acquire any knowledge of the political systems of any  
19 other countries, other than the one you live in?

20                   DR. TSESIS: Well, the way that  
21 academics typically acquire knowledge after they are  
22 done with their schooling, if there is -- that they  
23 study a breadth of subjects that they never took  
24 classes on. And then, as they learn them -- and they  
25 learn them in depth, if they have done a good job, they



1 look at both sides of the issue, and they -- they come  
2 to some sort of determination. They -- they have a  
3 thesis, they examine it through a variety -- a variety  
4 of studies, but they -- they often write and subjects  
5 that are beyond their dissertation. In fact, they are  
6 expected to do so.

7 MR. CHRISTIE: My question was, when  
8 have you ever done any study on the political systems  
9 of any country, other than the one you live in? Can  
10 you answer that?

11 DR. TSESIS: I think -- my earliest  
12 recollection of doing studies on the political system,  
13 other than the one that I lived in was in high school,  
14 on Samaria.

15 MR. CHRISTIE: On Samaria?

16 DR. TSESIS: And then since then,  
17 I've been doing studies on political systems, both in  
18 contemporary and in ancient times. I studied political  
19 systems in ancient Greece, Rome, throughout my  
20 undergraduate studies, and I studied contemporary  
21 systems, both as -- you know, as part of what I was  
22 writing. But I've never -- I can't say that I'm an  
23 expert on political science.

24 MR. CHRISTIE: Okay. I don't think  
25 we're too concerned about the political systems of

1           Samaria or Greece or Rome. But the contemporary  
2           systems of any country, I don't see you writing about  
3           that in any of your presentations, or in any article  
4           you've ever written.

5                           Is there anything in any of the  
6           articles you've ever written, that indicates study of  
7           the political system of any other country, other than  
8           the United States?

9                           DR. TSESIS: Yes, if -- in studying  
10          the -- just to -- in studying hate speech for instance,  
11          I studied elements of the German political system, I  
12          studied elements of the Mauritanian system. But not  
13          being an expert, I can't say that I had -- I was never  
14          studying them for the political science aspect at all.

15                          MR. CHRISTIE: Well, how can you  
16          comment on, or have expertise in, the long-term  
17          hateful -- hateful effect of hate speech, in any  
18          political system, outside the one you live in, if  
19          you've never had any expertise in those systems?

20                          DR. TSESIS: Well, I can have a -- I  
21          have an -- a deeply educated evaluation about the  
22          effect -- the harmful -- long-term harmful effects of  
23          hate speech, as they apply to political systems and as  
24          they -- and -- and in other ways.

25                          MR. CHRISTIE: A deeply educated

1 evaluation? Where do you get that from?

2 DR. TSEISIS: From years of study.

3 MR. CHRISTIE: Yes. Well, what study  
4 have you done of the political system of say, Italy,  
5 today?

6 DR. TSEISIS: The normal political  
7 system, the functioning of the prime minister's office  
8 and the presidency, and the multi-party system, I've  
9 never studied Italy for that purpose.

10 MR. CHRISTIE: Have you done any  
11 study on the harmful or long-term or short-term or  
12 otherwise, effects of hate speech in Canada?

13 DR. TSEISIS: Yes.

14 MR. CHRISTIE: What have you studied  
15 to do -- to acquire knowledge in that, for instance?

16 DR. TSEISIS: I've read books, I've  
17 read articles, I've read Canadian jurisprudence,  
18 Mugesera discusses the Canadian system, and is -- as  
19 well as Keegstra. I've read newspapers about it.

20 MR. CHRISTIE: Well, I guess just  
21 about anybody who is a lawyer could read Mugesera and  
22 Keegstra, right?

23 DR. TSEISIS: They can read it, but  
24 my -- their -- my ability, which is unusual, is that I  
25 have a breadth of knowledge, so I can put it into

1 perspective, and I can use it for comparative analysis.

2 MR. CHRISTIE: Uh-huh. Well, what  
3 books and articles have you read that qualifies you to  
4 express opinions on the long-term harmful effects of  
5 hate speech in Canada?

6 DR. TSESIS: Just to name a couple,  
7 there's a -- there's a great book. It's put out fairly  
8 recently, about contemporary anti-Semitism, in which  
9 former Prime Minister Mulroney has a chapter, that  
10 discusses the Canadian perspective, and -- and hate  
11 speech, particularly in Canadian life as well.

12 MR. CHRISTIE: What's the name of  
13 that book?

14 DR. TSESIS: I think it's called  
15 "Contemporary Anti-Semitism".

16 MR. CHRISTIE: Where is that  
17 published?

18 DR. TSESIS: That's University of  
19 Toronto Press.

20 MR. CHRISTIE: I see. And you read  
21 that book, eh?

22 DR. TSESIS: Yes.

23 MR. CHRISTIE: You never had  
24 citations for it anywhere?

25 DR. TSESIS: No, I -- I have never

1           cited it in my work. I -- the only way to write is,  
2           you have to read a lot more than you write about.

3                         MR. CHRISTIE: Uh-huh. Well, I take  
4           it that you then regard Professor -- not Professor --  
5           ex-Prime Minister Mulroney as some authoritative  
6           source?

7                         DR. TSESIS: Well, the faculty of the  
8           University of Toronto invited him to give a speech so  
9           there were a variety -- it's not only Mulroney, I  
10          should -- I should clarify. He's an author, one of the  
11          authors amongst a variety of authors of this book.

12                        MR. CHRISTIE: Can you remember any  
13          others, more authoritative perhaps?

14                        DR. TSESIS: I can't remember their  
15          specific names right off the --

16                        MR. CHRISTIE: And the long-term  
17          harmful effects of hate speech in any other country  
18          than the United States, I suggest, would basically rest  
19          upon newspaper articles, books and articles that are  
20          available to anybody in the country you are speaking  
21          about; isn't that right?

22                        DR. TSESIS: That's true, but that's  
23          always the case with research. I do -- it's always a  
24          case that anybody could read the material. The  
25          question is, do you -- you know, the depth that you

1 read it in, the extent to which you analyze it, the  
2 extent to which you look at it carefully. And also,  
3 looking at both sides, and making sure you get an  
4 objective perspective.

5 MR. CHRISTIE: Well, of course, that  
6 can be done by anyone with a reasonable mind, right?

7 DR. TSESIS: I'm sure that any person  
8 with a reasonable mind, whether educated or uneducated,  
9 is capable of writing books, but very few do.

10 MR. CHRISTIE: Uh-huh. Would you say  
11 that what qualifies you on this subject is that you are  
12 opinionated on it?

13 DR. TSESIS: No.

14 MR. CHRISTIE: No? When it comes to  
15 the other subjects you are supposed to be qualified in,  
16 measures to combat the long-term harmful effects of  
17 hate speech, have you ever argued a hate speech case  
18 yourself?

19 DR. TSESIS: As an attorney?

20 MR. CHRISTIE: I can't imagine any  
21 other way, but if you have in any way, just explain to  
22 me how you have.

23 DR. TSESIS: I have -- I have not,  
24 no.

25 MR. CHRISTIE: No? Have you ever

1 argued for free speech in any of your articles?

2 DR. TSESIS: Yes, I've discussed free  
3 speech extensively in numerous articles.

4 MR. CHRISTIE: Excuse me, my question  
5 was argued for free speech, not discussed free speech,  
6 but argued for it?

7 DR. TSESIS: Do you mean, have I  
8 advocated for free speech?

9 MR. CHRISTIE: Yes.

10 DR. TSESIS: Yes, I have advocated  
11 for free speech, I think, in every -- I'm not -- in  
12 many articles.

13 MR. CHRISTIE: Okay. Would you agree  
14 with me that in order to have some competence to  
15 express the value of measures to combat the long-term  
16 harmful effects of hate speech, you would have to be  
17 able to measure, through some psychological testing,  
18 the long-term harmful effects?

19 DR. TSESIS: That would be one  
20 method. That would not be the only one.

21 MR. CHRISTIE: Well, is there any  
22 expert method that you claim that you have, that nobody  
23 else could acquire by just thinking about it?

24 DR. TSESIS: Whether I'm an expert,  
25 in my opinion, is something the court is going to have

1 to decide. I have --

2 MR. CHRISTIE: I'm aware of that.

3 DR. TSESIS: I have --

4 MR. CHRISTIE: -- so is the court.

5 My question is, what expertise do you claim, that no  
6 one else could acquire by just thinking about it, to  
7 measure the long-term harmful effects of hate speech?

8 DR. TSESIS: I have written  
9 extensively on hate speech. I've given faculty --  
10 numerous faculty presentations about hate speech. I've  
11 gotten feedback from faculty members in a -- in a  
12 variety of law schools on hate speech, and I have  
13 written a book on hate speech.

14 MR. CHRISTIE: Well, what -- what  
15 does that mean, in terms of any special expertise, to  
16 identify the long-term harmful effects of hate speech?  
17 It indicates you've expressed your opinion on it a  
18 number of times, correct?

19 DR. TSESIS: I have -- I have tried  
20 to express an educated opinion, rather than something  
21 that's -- that's visceral.

22 MR. CHRISTIE: Well, I'm not saying  
23 you've -- haven't done that. I'm not saying you  
24 haven't been sincere. I've asking you to explain how  
25 you have any special expertise, more than could be



1           acquired by someone just thinking about it, in the  
2           long-term harmful effects of hate speech?

3                     DR. TESISIS:  It's very unusual for a  
4           person to have written articles about hate speech.  I  
5           have article -- I have several articles on hate speech,  
6           and I have a book, and I've taught about hate speech  
7           extensively.  I should -- I should mention, and I've  
8           gotten feedback from faculty.  All those things put me  
9           into a -- into an unusual category in the -- in the  
10          population.

11                    MR. CHRISTIE:  Oh, I agree you're in  
12          an unusual category, but the only thing you've said so  
13          far, is that that's because you have an opinion on it.

14                    DR. TESISIS:  I have an extensive  
15          study on it, about which I've written, and have  
16          formulated an opinion on it, yes.

17                    MR. CHRISTIE:  Well, your study,  
18          that's what I would like to inquire into.  What study  
19          have been done of the long-term harmful effects of hate  
20          speech?

21                    DR. TESISIS:  I've looked at the  
22          cultural effects of it, that is to say, how it's  
23          affected particular nations, and the various racist  
24          practices in a country.  And I've also studied the  
25          psychological and sociological literature on it, and

1 I've also looked at court decisions, to see what courts  
2 have said about the long-term effects of hate speech.

3 MR. CHRISTIE: Well, are you  
4 competent to comment on cultural effects and causes in  
5 other countries?

6 DR. TSEISIS: I have commented on  
7 them. I have --

8 MR. CHRISTIE: I agree. You have.  
9 I've read your comments. But I'm asking you what  
10 special knowledge do you have of the cultural effects  
11 in other cultures, and their causes, from any training  
12 or experience or special knowledge?

13 DR. TSEISIS: I guess, I'm not really  
14 even clear how to answer that question. In college --

15 MR. CHRISTIE: Okay, I'll break it  
16 down then, because I don't want it misunderstood. It's  
17 clear you have no special training in the cultural  
18 effects of other cultures, right?

19 DR. TSEISIS: I have not taken any  
20 classes on cultural effects, no.

21 MR. CHRISTIE: No. You've never  
22 visited any of the other cultures, other than the  
23 Soviet Union and the United States. Would you agree?

24 DR. TSEISIS: I have visited other  
25 countries except the Soviet Union and the United

1 States.

2 MR. CHRISTIE: Pardon?

3 DR. TSESIS: I have visited other  
4 countries except the Soviet Union and the United  
5 States.

6 MR. CHRISTIE: And we have that you  
7 were two months in Italy. Where else have you visited?

8 DR. TSESIS: Austria.

9 MR. CHRISTIE: How long were you in  
10 Austria?

11 DR. TSESIS: One week in Austria.

12 MR. CHRISTIE: One week? Anywhere  
13 else?

14 DR. TSESIS: Israel.

15 MR. CHRISTIE: How long were you in  
16 Israel?

17 DR. TSESIS: One week.

18 MR. CHRISTIE: One week?

19 DR. TSESIS: Mexico, Canada.

20 MR. CHRISTIE: Mexico, how long were  
21 you in Mexico?

22 DR. TSESIS: A variety of different  
23 visits, for short periods of time.

24 MR. CHRISTIE: Holidays, right?

25 DR. TSESIS: Holidays, or going to

1 get some food across the border. Yes, they have  
2 cheaper meat.

3 MR. CHRISTIE: Okay. Anything else?  
4 Canada, how long have you spent in Canada?

5 DR. TSEISIS: Short periods of time.

6 MR. CHRISTIE: How -- what's the  
7 longest period of time?

8 DR. TSEISIS: It goes back a number of  
9 years, maybe 15, 17 years. Probably three days or so.

10 MR. CHRISTIE: Okay. Well, surely  
11 you wouldn't claim, from any of those experiences, any  
12 special or expert cultural knowledge, from those  
13 experiences, correct?

14 DR. TSEISIS: No, not from my  
15 traveling.

16 MR. CHRISTIE: No.

17 DR. TSEISIS: I would get some  
18 cultural input --

19 MR. CHRISTIE: Yes, well we -- I  
20 think --

21 DR. TSEISIS: -- but it came -- a lot  
22 more from book.

23 MR. CHRISTIE: Yes, all right. I'm  
24 just wondering whether you really claim that, as some  
25 source of expertise. But no, you don't, do you?

1 DR. TSESIS: Not from my brief  
2 visits. I get some idea, but certainly not expertise,  
3 no.

4 MR. CHRISTIE: Okay, now, if you are  
5 going to comment on the cultural effects that relate to  
6 the long-term harmful effects of hate speech, how do  
7 you acquire that knowledge of cultural effects?  
8 It's --

9 DR. TSESIS: By culture --

10 MR. CHRISTIE: Go ahead.

11 DR. TSESIS: Okay, by -- by analyzing  
12 what happened in a particular culture after a hate  
13 speech, and seeing its use and promulgation of it.

14 MR. CHRISTIE: Analyzing what  
15 happened after hate speech. And how do you do that?

16 DR. TSESIS: You see what people say  
17 about the speech. In other words, you look at -- you  
18 see, you take a look at something that is hate speech,  
19 then you -- you take a look at who used it, and how  
20 people said it affected them.

21 MR. CHRISTIE: Yes. So you're  
22 basically relying on what other people told you about  
23 their reaction to hate speech in different cultures,  
24 right?

25 DR. TSESIS: No, no.

1 MR. CHRISTIE: Well, can you tell me  
2 what other measure of the long-term harmful effects of  
3 hate speech you rely on, as some sort of expert?

4 DR. TESIS: Well, I'll just give you  
5 one example. For example, Hoess, H-O-E-S-S, who was  
6 the Auschwitz camp director, says that he was very  
7 influenced by teachings of Julius Streicher and  
8 Rosenberg. Those are -- that's just one example, the  
9 nullification -- that's an example in Germany. So  
10 there -- it isn't that I've interviewed someone, it's  
11 just that Hoess himself said the effect that hate  
12 speech had on him, and how much it influenced him to be  
13 an -- a guard at the -- at the -- the head of  
14 Auschwitz. If you look at the nullification --

15 MR. CHRISTIE: Excuse me. Can I ask  
16 you something about that -- that statement? I doubt  
17 very much you ever spoke to him?

18 DR. TESIS: I, of course, never  
19 spoke to him. I saw what -- I analyzed what he said.

20 MR. CHRISTIE: Where did you get  
21 that?

22 DR. TESIS: That's in Gordon  
23 Allport's book on prejudice.

24 MR. CHRISTIE: And where did he get  
25 that?

1 DR. TSESIS: I do not know.

2 MR. CHRISTIE: So you're relying on  
3 somebody else's book about what somebody else is  
4 alleged to have said, the source of which you don't  
5 know, correct?

6 DR. TSESIS: I do my best to trace  
7 down primary sources. In that instance, I don't  
8 remember studying that particular primary source.  
9 There are many other examples, but that's just --

10 MR. CHRISTIE: Well, it's an example  
11 that you chose, correct?

12 DR. TSESIS: Yes.

13 MR. CHRISTIE: I see. So can you  
14 think of a better one, whereby you can tell us that  
15 you're an expert in the long-term cultural effects --  
16 or harmful effects -- I take it it must be on culture,  
17 right? The harmful effects would have to be on  
18 culture, wouldn't it?

19 DR. TSESIS: Well, culture is such a  
20 broad term.

21 MR. CHRISTIE: Okay, we won't use  
22 that term then. You used it with --

23 DR. TSESIS: We can. I'm just --

24 MR. CHRISTIE: -- the "cultural  
25 effect", so I thought we could use it but --

1 DR. TSESIS: That -- that's fine,  
2 sure.

3 MR. CHRISTIE: Okay. Now cultural  
4 effects, did you acquire any special knowledge,  
5 greater than a person who lives in that culture might  
6 have, from living there?

7 DR. TSESIS: Your Honour, I haven't  
8 answered the first question. Now, he's moved onto  
9 another one. May I answer it?

10 MR. CHRISTIE: Go ahead. Go ahead,  
11 say whatever you like.

12 DR. TSESIS: The -- the question that  
13 I -- I heard you ask is, were there other examples?  
14 There are so many. And I'll just provide one. The  
15 nullification crisis in the United States is another  
16 one in which there were -- there was teaching about  
17 pro-slavery thought, dehumanizing blacks, that then led  
18 to civil war, and statements by -- for example, the  
19 South Carolina declaration leading the Union about --  
20 that it was supporting slavery. So just to answer your  
21 question about, are there other examples.

22 MR. CHRISTIE: Okay. Now, you chose  
23 that example to demonstrate how you would have expert  
24 knowledge in the culture, and cultural effects of  
25 speech, right?



1 DR. TSESIS: I used that example to  
2 show how -- you know, if you relate it to your question  
3 of how could you use other people -- what other people  
4 said in order to determine whether or not speech, in  
5 fact, had an effect on the culture.

6 MR. CHRISTIE: Uh-huh. And I take it  
7 you're -- you're claiming that, because you have read  
8 what was said by somebody at that time, which was what,  
9 1860 something?

10 DR. TSESIS: The -- succession,  
11 succession was 1860. 1860, yeah.

12 MR. CHRISTIE: Uh-huh, and that's  
13 North Carolina?

14 DR. TSESIS: South Carolina.

15 MR. CHRISTIE: South Carolina? Where  
16 was Fort Sumter?

17 DR. TSESIS: Fort Sumter was South  
18 Carolina.

19 MR. CHRISTIE: I see. I see. And so  
20 you claim that from reading a document that existed at  
21 that time, that enables you to give an expert opinion  
22 as to the cultural effects of that speech?

23 DR. TSESIS: No, I wouldn't make such  
24 a superficial statement. My point is that by reading a  
25 variety of comments, analyzing numerous situations, of

1           which those are two examples, I was able to formulate  
2           what I think is an accurate understanding of the effect  
3           of harmful speech on social movements.

4                       MR. CHRISTIE:   Okay.   Well, my  
5           question was in relation to the speeches or statements  
6           made in any culture, and their so-called cultural or  
7           harmful effects, wouldn't you agree that anyone who  
8           lives in that culture is just as competent as you to be  
9           aware of and decide the question, using common sense?

10                      DR. TESISIS:   No.

11                      MR. CHRISTIE:   You say that, as a  
12           result of whatever knowledge you have, you're more  
13           competent to express an opinion on cultural effects and  
14           long-term harmful effects, than a person who lives in  
15           that culture?

16                      DR. TESISIS:   I did not say that.

17                      MR. CHRISTIE:   Well, I'm asking you  
18           if that's what you mean.

19                      DR. TESISIS:   No, I did not mean that.

20                      MR. CHRISTIE:   All right.

21                      DR. TESISIS:   I didn't mean that I  
22           have better knowledge than everyone in that culture --

23                      MR. CHRISTIE:   Well, how about --

24                      DR. TESISIS:   -- but I have better  
25           knowledge than some people in that culture.

1 MR. CHRISTIE: Well, that's no doubt  
2 true in any culture, right, generally?

3 DR. TSESIS: Well, your -- the  
4 formulation of your question was, do I have better --  
5 knowledge than a person living in that culture, and is  
6 every person --

7 MR. CHRISTIE: Yes, a normal  
8 rationale person living in a culture is just --

9 DR. TSESIS: You --

10 MR. CHRISTIE: -- is just -- is more  
11 competent, in fact, than you, using common sense to  
12 observe and see any cultural effects in that culture --

13 DR. TSESIS: I have --

14 MR. CHRISTIE: -- from any skill,  
15 training or ability you have.

16 DR. TSESIS: I have no idea whom you  
17 are speaking about. I cannot --

18 MR. CHRISTIE: All right, let's try  
19 it again.

20 DR. TSESIS: -- just call -- you're  
21 talking about an abstract person. Are you talking  
22 about an expert on that country, are you talking about  
23 an uneducated person without an elementary school  
24 degree? I -- honestly, I cannot answer that question,  
25 because the question is formulated in a way that seems

1 to indicate everyone in the culture.

2 And yes, there are some people who  
3 clearly will have better expertise, and I will have an  
4 expertise that many people will not have. I presume  
5 that a physicist who has never studied the cultural  
6 effect on hate speech, even if he's the leading  
7 physicist in the country, will likely not have the same  
8 knowledge about the cultural effects. On the other  
9 hand, someone else might. You know, I'm --

10 MR. CHRISTIE: But you don't have any  
11 special training, skill or ability, derived from any  
12 training or any experience in the culture of other  
13 countries, do you?

14 DR. TESISIS: I -- I have studied  
15 extensively the effects of hate speech in a variety of  
16 countries, and written about them, and taught them.

17 MR. CHRISTIE: What study? What do  
18 you -- what do you include in that study?

19 DR. TESISIS: Books, secondary  
20 sources --

21 MR. CHRISTIE: Newspapers?

22 DR. TESISIS: -- primary sources,  
23 discussions with other faculty members, discussions  
24 with students.

25 MR. CHRISTIE: Are these students who

1 live in the culture that you are commenting on or not?

2 DR. TSESIS: No, at least not that  
3 I'm aware of.

4 MR. CHRISTIE: Have you discussed  
5 anything about Canadian culture with anybody that you  
6 regard as authoritative?

7 DR. TSESIS: I have discussed  
8 Canadian culture with a variety of people throughout  
9 the course of my life.

10 MR. CHRISTIE: Your curriculum vitae  
11 claims that you're an expert witness for the Department  
12 of Justice, 2006 to the present?

13 DR. TSESIS: I'm a witness called by  
14 the Canadian Department of Justice, yes.

15 MR. CHRISTIE: Did you prepare this  
16 curriculum vitae?

17 DR. TSESIS: I did, yes.

18 MR. CHRISTIE: Yes? Well, on page 5,  
19 it refers to you as:

20 "Expert witness, Department of  
21 Justice Canada, 2006 to the  
22 present, providing expert  
23 written and oral testimony  
24 concerning Internet hate  
25 speech".

1 Did you write those words?

2 DR. TSESIS: Yes, I did.

3 MR. CHRISTIE: When were you ever  
4 qualified as an expert in Canada on that subject, by  
5 any court or Tribunal?

6 DR. TSESIS: I didn't say that I had  
7 by court. I said that I -- that I was asked to be an  
8 expert witness by the Canadian Department of Justice.

9 MR. CHRISTIE: Doesn't say that you  
10 were asked to. It says you were providing expert  
11 written and oral testimony.

12 DR. TSESIS: And I did, and I am.

13 MR. CHRISTIE: Oh. So the only case  
14 in which you claim that you are an expert witness is  
15 this one?

16 DR. TSESIS: The -- the only case  
17 where I am stating that I have provided expert  
18 testimony is in this one.

19 MR. CHRISTIE: I see. So you've  
20 never testified in any court of law in the United  
21 States, on your sociological, psychological, cultural  
22 opinions, correct?

23 DR. TSESIS: I have -- I have not  
24 testified as an expert in other courts, no.

25 MR. CHRISTIE: In the United States?

1 DR. TSESIS: In the United States or  
2 elsewhere.

3 MR. CHRISTIE: Notwithstanding all  
4 your articles and your opinions in them, you've never  
5 been qualified as an expert in any court in the United  
6 States on any subject?

7 DR. TSESIS: No, I have not.

8 MR. CHRISTIE: All right. And in  
9 Canada likewise?

10 DR. TSESIS: That's true, yes.

11 MR. CHRISTIE: Uh-huh. Are there  
12 courses of study in legal history?

13 DR. TSESIS: It depends on the law  
14 school. Some law schools have them. Usually they  
15 don't. Well, I can't say usually. I don't know  
16 whether it's more than 50 percent or not. They're --  
17 they tend to be unusual still.

18 MR. CHRISTIE: There are degree  
19 programs and post-graduate programs in legal history?

20 DR. TSESIS: No, there are -- there  
21 are Ph.D.s who are experts -- there are some experts in  
22 legal history, who go through history departments. But  
23 the -- but the norm is, legal historians are  
24 legally-trained academics.

25 MR. CHRISTIE: Did I ask you about

1 norms? Or did I ask you whether there was degree  
2 programs and post-graduate programs called "legal  
3 history"?

4 DR. TSESIS: Not that I'm aware of.

5 MR. CHRISTIE: Nowhere?

6 DR. TSESIS: Not that I'm -- they are  
7 history but they are -- their area of expertise is  
8 legal history. I know, for example, that's the case  
9 with Yale and Harvard.

10 MR. CHRISTIE: So you can get a  
11 degree in legal history from Yale?

12 DR. TSESIS: No. You can get a  
13 degree in history, with an expertise in legal history.

14 MR. CHRISTIE: How do you do that?

15 DR. TSESIS: You write a  
16 dissertation on it, you get an adviser who's an expert  
17 in legal history.

18 MR. CHRISTIE: Did you do that?

19 DR. TSESIS: I did not, no.

20 MR. CHRISTIE: And I understand  
21 you've also written, in 1990 -- I guess it's a  
22 publication called "The Myth of a Jewish-Bolshevik  
23 Conspiracy"?

24 DR. TSESIS: That's right, my first  
25 published article.



1 MR. CHRISTIE: That's your first  
2 published article?

3 DR. TSEISIS: Yes.

4 MR. CHRISTIE: Where was it  
5 published?

6 DR. TSEISIS: A journal called ELEF.

7 MR. CHRISTIE: Where's that  
8 published?

9 DR. TSEISIS: You know, I'm not sure.  
10 It has an international distribution. I do not know  
11 where it was published. I know it appeared -- well,  
12 the answer is I do not know where it's place -- origin  
13 of publication is.

14 MR. CHRISTIE: Well, where did you  
15 communicate with this publisher?

16 DR. TSEISIS: Where did I send the  
17 submission? I have no idea. I mean, it's so many  
18 years ago, I do not know.

19 MR. CHRISTIE: It's only 1990, that's  
20 just seven years ago.

21 DR. TSEISIS: I can't remember where I  
22 addressed the --

23 THE CHAIRPERSON: Seventeen, sir.

24 MR. CHRISTIE: 1790?

25 THE CHAIRPERSON: No, 1990 was

1 17 years ago, not seven.

2 MR. CHRISTIE: That's right.

3 THE CHAIRPERSON: But you just said  
4 seven.

5 MR. CHRISTIE: I know, because time  
6 flies, I have had so much fun. Yes, you're right.  
7 1990 is 17 years ago. Seems like yesterday to me.

8 THE CHAIRPERSON: Seems like  
9 yesterday to me, too, 1990. Nonetheless --

10 MR. CHRISTIE: So how old were you --

11 THE CHAIRPERSON: Speaking of time  
12 flying, it's flying right now. I mean, can you -- I  
13 know where you're going with all your questions, but  
14 can you shorten it up a little bit?

15 MR. CHRISTIE: Okay, all right. Yes.  
16 Well, actually I can.

17 THE CHAIRPERSON: And yes, we'll take  
18 a break shortly. I'm hoping -- well, if you are coming  
19 to some end soon, we can take our break.

20 MR. CHRISTIE: I think maybe what  
21 I'll do is end there.

22 THE CHAIRPERSON: Okay.

23 MR. CHRISTIE: Thank you.

24 THE CHAIRPERSON: Ms Kulaszka, will  
25 you be long? Because we're due for a break or --

1 MS KULASZKA: Well, do you want to  
2 break first then?

3 THE CHAIRPERSON: How long will you  
4 be, do you think?

5 MS KULASZKA: Maybe 15 minutes.

6 THE CHAIRPERSON: Okay, we'll take a  
7 break.

8 --- Upon recessing at 10:55 a.m.

9 --- Upon resuming at 11:14 a.m.

10 DR. TSEISIS: Five embassies, if you  
11 need the names, if that's necessary. I won't say them  
12 if the court doesn't need it to say -- if not --

13 THE CHAIRPERSON: I'm not asking for  
14 that. If Mr. Christie wants that information, he can  
15 ask --

16 MR. CHRISTIE: If it's available and  
17 not inconvenient, we would very much like to see that.

18 THE CHAIRPERSON: It's a list or it's  
19 something you can read out?

20 DR. TSEISIS: It's a list, yes. It's  
21 just a -- names of people, and which embassies. I had  
22 promised I would try to retrieve it during the break.

23 THE CHAIRPERSON: Do you need it on  
24 the record, or can you just obtain that afterwards,  
25 Mr. Christie?

1 MR. CHRISTIE: Well, if I could just  
2 look at it for a moment.

3 THE CHAIRPERSON: Okay.

4 MR. CHRISTIE: Something has come to  
5 light that I want to ask about.

6 THE CHAIRPERSON: All right, so  
7 then -- is it handwritten? Can you just hand it over?

8 DR. TESIS: Yes, sure.

9 THE CHAIRPERSON: And for the record,  
10 I like to keep things like this open. When I got into  
11 the elevator before, the witness entered the elevator  
12 too, because he was going to his room. All we did was  
13 say hello, and discuss the weather, and he said he'd  
14 dug his house out in Wisconsin. It was a 10-second  
15 elevator ride.

16 MR. CHRISTIE: Yes, well, I must say  
17 it was brought to my attention, so I'm glad you  
18 mentioned it.

19 THE CHAIRPERSON: Well, you know, I  
20 mean, it's not that it's --

21 MR. CHRISTIE: No, I -- I understand.

22 THE CHAIRPERSON: We can't avoid it.  
23 I've done hearings, you know, in places like Iqualuit  
24 and Yellowknife, where you just -- absolutely no way of  
25 avoiding each other, but now when we are all in one

1 hotel, it's -- it'll also happen. But there was no  
2 conversation of anything relating to the case. Okay?

3 MR. CHRISTIE: All right. Sir, I --  
4 I put it to you that my questioning about ELEF. ELEF  
5 is a Jewish religious organization founded by Rabbi  
6 Zalman Schacter-Shalomi.

7 DR. TSEISIS: ELEF. ELEF, I believe.

8 THE CHAIRPERSON: ELEF, I see it --  
9 not ELF?

10 MR. CHRISTIE: All right.

11 THE CHAIRPERSON: Isn't that the  
12 first letter of the Hebrew alphabet?

13 DR. TSEISIS: That's right. That's  
14 the first letter of the Hebrew alphabet. That's right.

15 MR. CHRISTIE: And it is a Jewish  
16 religious organization founded by Rabbi  
17 Schachter-Shalomi in 1962; is that right?

18 DR. TSEISIS: I was unaware of that.

19 MR. CHRISTIE: You were unaware of  
20 that?

21 DR. TSEISIS: I never knew that.  
22 That's the first time I've ever heard that.

23 MR. CHRISTIE: Really? And I suggest  
24 that you would have contacted it at 7000 Lincoln Drive,  
25 Philadelphia, and that you probably knew that?

1 DR. TSEISIS: I had no -- I knew I  
2 contacted them. I have no idea where I contacted them  
3 to this moment. I'm not sure I ever kept that letter,  
4 the -- the article was typed for me by a secretary, and  
5 I don't -- I'm not even sure I ever had the address, to  
6 be quite honest with you.

7 MR. CHRISTIE: Well, are you  
8 suggesting that you were unaware of the nature of this  
9 organization, when you published the article for them?

10 DR. TSEISIS: Never heard -- never  
11 knew anything about them, simply knew it was a  
12 Russian -- a place to place a Russian article that was  
13 distributed on an international level.

14 MR. CHRISTIE: When they communicated  
15 with you, you didn't know what I just suggested?

16 DR. TSEISIS: I -- in fact, it was a  
17 funny thing. They never communicated with me. I was  
18 at a birthday party. I appreciate you bringing up this  
19 to my memory. I was at a birthday party, and all of a  
20 sudden, someone came in and said, "Did you see? This  
21 was published."

22 I said, "I've heard nothing from  
23 them. Was it published?"

24 And they said, "Yes, here".

25 I said, "Do you have a copy?"

1                   In fact, no, no, she didn't say "Yes,  
2           here."

3                   She said -- she had a copy but not  
4           here, she had it at home.

5                   I said, "Please bring it. I haven't  
6           seen it." --

7                   MR. CHRISTIE: So you never saw it?

8                   DR. TSESIS: That's the way I found  
9           it.

10                  MR. CHRISTIE: And you never saw it?

11                  DR. TSESIS: I have a copy of it at  
12           home.

13                  MR. CHRISTIE: Yes.

14                  DR. TSESIS: She gave me a copy of  
15           it.

16                  MR. CHRISTIE: Well, if you've read  
17           what it was published in, then you would have to know  
18           that this is actually a Jewish missionary organization,  
19           dedicated to the purpose of encouraging young Jews to  
20           go to Israel, and to participate in the rabbinate and  
21           the cantorate. Is that not correct? You knew that?

22                  DR. TSESIS: I have no knowledge of  
23           that organization. I have no knowledge whether that  
24           was true of the organization in 1990, or whether that's  
25           true only now. I never -- I knew nothing about this

1 organization. I never looked them up.

2 MR. CHRISTIE: Well, do you identify  
3 with the Jewish people then?

4 MR. FOTHERGILL: I object.

5 MR. CHRISTIE: Well --

6 MR. FOTHERGILL: I was somewhat  
7 perturbed when this question was put to Karen Mock,  
8 although I had to concede that in that context, given  
9 that she had previously expressed advocacy on behalf of  
10 the Jewish organization, it was arguable that a  
11 suitable foundation had been laid.

12 In this case, I'm disturbed by the  
13 implication of where this questioning may be going,  
14 because if the suggestion is that somebody who  
15 identifies as a Jew is somehow less credible, then we  
16 raise the specter of a discriminatory practice taking  
17 place in the face of the Tribunal.

18 MR. CHRISTIE: If the issue here was  
19 the discussion of whether abortion was an acceptable  
20 practice, and the purported expert had strong  
21 attachment to the Catholic church, which has a  
22 significant interest the subject, it would be relevant  
23 on the issue of identification with that organization  
24 or that belief system, to determine whether there is a  
25 potential, either overt or covert, bias. It's not



1           unreasonable to ask. It's quite possible to argue that  
2           it has no effect at all, in which case it can be of  
3           little weight.

4                           But I'm here to say that it's not  
5           improper to ask, particularly when I suggest that the  
6           witness's assertion that he didn't know who they were  
7           or where he'd contacted them, might not be entirely  
8           credible, in view of the fact that they have a  
9           well-known address in Philadelphia, where he actually  
10          was teaching for a time. So I --

11                           THE CHAIRPERSON: I realize the tone  
12          of the question has to be -- we have to take care in  
13          the tone of the questioning, how it's posed. However,  
14          there is a context here. There's another context as  
15          well. Three of the intervening groups are of -- Jewish  
16          organizations. Hence, the example given by  
17          Mr. Christie is actually of interest here.

18                           I think this type of questioning can  
19          take place. Carefully, of course. Everyone is free to  
20          have whatever views they hold, but it is a relevant --  
21          it is relevant to the issues here.

22                           MR. CHRISTIE: And I just want to say  
23          for the record, there's absolutely nothing wrong with,  
24          or nor do I imply, there's anything wrong with  
25          identifying with Catholicism, Judaism, or any other

1 belief system. But it's fair to ask.

2 THE CHAIRPERSON: Fine, sir. Go on.

3 MR. CHRISTIE: So do you -- do you  
4 identify with the Jewish people?

5 DR. TSEISIS: What do you mean by  
6 "identify with the Jewish people"?

7 MR. CHRISTIE: Well -- well, do you  
8 consider yourself Jewish, for instance?

9 DR. TSEISIS: I am a Jew.

10 MR. CHRISTIE: Okay. And does it  
11 perhaps -- inadvertently perhaps, affect some of the  
12 ways you look at the world, and the sensitivities you  
13 might have?

14 DR. TSEISIS: About religion, yes.

15 MR. CHRISTIE: And about  
16 anti-Semitism, for instance?

17 DR. TSEISIS: While it affects my  
18 views on anti-Semitism, the fact that I'm a Jew affects  
19 my views about racism against blacks and -- and  
20 chauvinism against women, and it sensitizes me about a  
21 variety of subjects, one of which is anti-Semitism.

22 MR. CHRISTIE: That's -- thank you.  
23 You know the phrase "never again"?

24 DR. TSEISIS: That refers to the  
25 whole -- yes, I do.

1                   MR. CHRISTIE: Yes, so I -- I take it  
2 you acknowledge that you've signed a petition seeking  
3 to get Arthur Butz fired, that petition entitled  
4 "never again" and that you signed that?

5                   DR. TESIS: I was -- yes.

6                   MR. FOTHERGILL: Again, I have to  
7 rise to object. I have been asking persistently for  
8 weeks, if not months, the materials to be put to Dr.  
9 Tesis be disclosed within a reasonable time, in the  
10 interest of administrative fairness. This is a clear  
11 attempt to ambush the witness. It is most  
12 inappropriate.

13                   THE CHAIRPERSON: Well, is he not  
14 familiar at all with any of this information?

15                   MR. FOTHERGILL: Nothing at all.

16                   THE CHAIRPERSON: I have no idea who  
17 Mr. Butz is either.

18                   MR. FOTHERGILL: Nothing whatsoever.

19                   MR. CHRISTIE: Well, we just -- just  
20 got it yesterday. And there is an exception to the  
21 general rules. I didn't get it until just now. But  
22 there is something called a "solicitors brief  
23 privilege", which involves the right of counsel, in the  
24 course of preparation, to obtain information for the  
25 purpose of cross-examination, which may bear upon the

1           credibility of a witness.

2                           Generally, that privilege was  
3           maintained by the British Columbia Court of Appeal in  
4           Rodkinson versus Simm, and Chief Justice --

5                           THE CHAIRPERSON:   Right, but my  
6           rules -- or the rules of our Tribunal are that all  
7           documents be disclosed, and any claim of privilege be  
8           indicated, with a small description of the document at  
9           issue.   So if there's a letter going between a  
10          solicitor and his client, it has to be identified as a  
11          letter dated so-and-so date,   between a solicitor and  
12          client, for which solicitor-client privilege is  
13          claimed.   Those are our rules.   That's rule 6.

14                          MR. CHRISTIE:   All right.   Well, the  
15          witness has been asked the question, and it's not  
16          necessary to produce the document, but I think it's  
17          a -- it's a piece of information we could acquire  
18          anywhere.   And I gather Ms Kulaszka acquired it from  
19          the Never Again Campaign organization on the Internet,  
20          so --

21                          THE CHAIRPERSON:   So you are simply  
22          asking the question?

23                          MR. CHRISTIE:   Yeah, I'm not trying  
24          to prove it.   He admitted it.

25                          THE CHAIRPERSON:   But he signed -- I

1 don't know what it is. You signed a petition?

2 DR. TSESIS: Yes, Arthur Butz is a  
3 Holocaust denier. He's been a Holocaust denier, I  
4 think, since the last fifties. He's an engineering  
5 professor at Northwestern. And at Northwestern,  
6 because he's got tenure he can't be fired. He can't be  
7 fired because he teaches engineering, not history.

8 He -- he basically thinks that the  
9 Holocaust is a hoax, and there's some move to fire him,  
10 irrespective of his tenure, because he says false  
11 things about history, and the thought being that he  
12 doesn't fit in an academic community.

13 MR. CHRISTIE: So you have definitely  
14 got strong views that would disqualify people who have  
15 views different than your own about the Holocaust, from  
16 even holding jobs that have nothing to do with history?

17 DR. TSESIS: In -- well, I would say  
18 that's a multi-faceted question.

19 MR. CHRISTIE: Well, let me break it  
20 down.

21 DR. TSESIS: Yes, please.

22 MR. CHRISTIE: You just said that  
23 Professor Butz doesn't teach history?

24 DR. TSESIS: No, he teaches  
25 engineering.

1 MR. CHRISTIE: You've just said that  
2 he publishes opinions or expresses opinions --

3 DR. TESIS: A book, at least one  
4 book.

5 MR. CHRISTIE: Yes, a book about the  
6 Holocaust, which is what you call "Holocaust denial",  
7 right?

8 DR. TESIS: That's -- yes, that's  
9 absolutely true.

10 MR. CHRISTIE: And you said that it  
11 calls the Holocaust a hoax?

12 DR. TESIS: Yes.

13 MR. CHRISTIE: And you wanted to get  
14 him fired from Northwestern University, right?

15 DR. TESIS: I signed a petition that  
16 supported that move, yes.

17 MR. CHRISTIE: Okay. And I guess I  
18 should conclude by saying that it's your position that  
19 people who hold abhorrent, or what you call "false",  
20 views about the Holocaust should not be even allowed to  
21 have a job where they teach in another field, like  
22 Professor Butz teaches electrical engineering?

23 DR. TESIS: That's an ambiguous  
24 question.

25 MR. CHRISTIE: Oh.

1 DR. TSEISIS: But I would say, let me  
2 try to answer it as much as I can. I would say that  
3 people who teach fallacy in the guise of scholarship,  
4 do not belong in an academic community.

5 MR. CHRISTIE: Well, he doesn't teach  
6 his views on the Holocaust, does he?

7 DR. TSEISIS: Yes, he does. It's on  
8 the Northwestern site. In fact, going through  
9 Northwestern, you can specifically link to his  
10 Holocaust denial.

11 MR. CHRISTIE: But that's not --

12 DR. TSEISIS: You would begin at  
13 Northwestern University, go to "Arthur Butz", and then  
14 you can link into his Holocaust denial -- He is -- so  
15 in fact, he does teach it through the university, at  
16 least that's the way I would -- that's the way I'd  
17 perceive it.

18 MR. CHRISTIE: Okay.

19 DR. TSEISIS: He's welcome to -- to  
20 if -- to develop a forum, if that would be -- as long  
21 as it's not a form of hate speech. But it's not purely  
22 abhorrent, as you say, because abhorration, even that  
23 seems to imply a radical view that in fact has  
24 validity. This has no --

25 MR. CHRISTIE: I said abhorrent or

1 false.

2 DR. TESIS: I heard you only say  
3 abhorrent. Perhaps you said false, but clearly false  
4 is the right word for --

5 MR. CHRISTIE: Yes, that's your  
6 judgment. That's your judgment.

7 THE CHAIRPERSON: Mr. Christie, you  
8 recall how I took the approach of dealing with a  
9 person's beliefs with regard to the previous testimony  
10 of this witness. Now, this -- the first witness, where  
11 we said we would use it in -- if the person is  
12 qualified as an expert, to deal with his credibility  
13 later on.

14 MR. CHRISTIE: Oh, I appreciate it.

15 THE CHAIRPERSON: So I would like --  
16 I mean, you've had all your other questioning. I see  
17 your points here. But that's how I'll be treating it,  
18 in fairness, as similar to -- as I've done in the past.

19 MR. CHRISTIE: No, no, that's fine.  
20 Thank you for reminding me. Those are my questions.

21 CROSS-EXAMINATION BY MS KULASZKA

22 MS KULASZKA: I just want to go back  
23 to your CV, your academic experience.

24 DR. TESIS: Yes.

25 MS KULASZKA: If you look at number



1 4, "Affiliated Scholar or Visiting Scholar", what does  
2 that mean?

3 DR. TSESIS: "Visiting Scholar"  
4 specifically meant that I would spend some time at the  
5 institute, just -- and the institute is a portion of  
6 the law school. You entered the law school, you'd go  
7 in the institute, there's no other way to get there. I  
8 would spend approximately one time a week, except for  
9 vacations there, at that point in time. That's when I  
10 was a visitor.

11 Then when I began -- when it became  
12 difficult for me to travel to the institute, then I  
13 remained an affiliated scholar. It means, you know,  
14 doing research using their library extensively, using  
15 the electronic resources through the University of  
16 Wisconsin.

17 MS KULASZKA: Yes, "affiliated  
18 scholar" means you get to use their facilities, doesn't  
19 it?

20 DR. TSESIS: And -- and give  
21 presentations. I can -- I can teach if I want to. I  
22 was offered to teach at the University of Wisconsin Law  
23 School last -- this -- yes, last semester, in the fall,  
24 and I turned it down.

25 MS KULASZKA: Well, from 2001 to

1 2004, did you teach?

2 DR. TSESIS: Not at the University of  
3 Wisconsin. I've never taught there. I've never been  
4 able to travel there to -- to do so.

5 MS KULASZKA: So basically, you are  
6 just doing research and using their library?

7 DR. TSESIS: In their electronic  
8 database, communicating with their professors, and  
9 periodically, doing a presentation.

10 MS KULASZKA: To who?

11 DR. TSESIS: Faculty.

12 MS KULASZKA: Going up to three,  
13 you're a visiting professor for a couple of terms?

14 DR. TSESIS: Yes.

15 MS KULASZKA: And you taught civil  
16 procedure. What was that, U.S. civil procedure?

17 DR. TSESIS: Yes.

18 MR. CHRISTIE: For the state?

19 DR. TSESIS: Federal civil procedure.

20 MS KULASZKA: Conflict of laws.

21 Was that one course?

22 DR. TSESIS: Yes, uh-huh.

23 MS KULASZKA: Which term?

24 DR. TSESIS: Fall.

25 MS KULASZKA: And what year did you

1 teach?

2 DR. TSESIS: Fall of 2004.

3 MS KULASZKA: Yeah, but students  
4 first year, second year?

5 DR. TSESIS: Oh, I see. It was  
6 advanced, second and third years.

7 MS KULASZKA: "Visiting Assistant  
8 Professor" -- so that's -- going back to number three,  
9 that's just a contractual position right? After two  
10 terms, then the contract ended?

11 DR. TSESIS: Yes, that's right, yes.

12 MS KULASZKA: Were you asked back?

13 DR. TSESIS: I had a petition signed  
14 by a hundred -- about a -- pardon me, a hundred  
15 students asking the Provost to lift the hiring freeze.  
16 The dean hired me, Dean David Haring, with the  
17 expectation that he would hire me. He hired me in  
18 February, he resigned in May. The Provost told them  
19 that there would be a hiring freeze. As a result of  
20 the hiring freeze, they were unable to hire me.

21 MS KULASZKA: Okay, so you go on to  
22 Chicago-Kent College of Law, and you taught there  
23 for --

24 DR. TSESIS: Well, I returned. I  
25 returned to the Chicago-Kent College of Law. I was

1 given a leave of absence while I taught at the  
2 University of Pittsburgh, and then returned there.

3 MS KULASZKA: Okay, again, you're  
4 teaching conflict of laws, free speech and contemporary  
5 problems -- that's a seminar -- and legal research and  
6 writing; is that correct?

7 DR. TSEISIS: Yes, that's right.

8 MS KULASZKA: And how many hours a  
9 week would you teach?

10 DR. TSEISIS: If you would give me a  
11 minute, I really -- I'm not sure of the exact time.  
12 Let's see, two -- it varied from semester to semester.  
13 You know, rough estimate. I could give you my exact  
14 schedule if I -- but a rough estimate is approximately  
15 three-and-a-half, 4 hours of teaching a week.

16 MS KULASZKA: So during this time  
17 period you are going back and forth between Chicago and  
18 Pittsburgh?

19 DR. TSEISIS: No, we were living -- we  
20 were living in a different city, in fact, and I was  
21 commuting from that city into Chicago. Then we were  
22 living in Chicago. Only when I was at the University  
23 of Pittsburgh, and for a time when I was at the -- for  
24 one year when I was at Chicago-Kent, was I commuting  
25 from Chicago.

1 MS KULASZKA: Okay, and just --  
2 you've just started teaching at -- is it Marquette?

3 DR. TSEISIS: Yes.

4 MS KULASZKA: And is that a full-time  
5 position?

6 DR. TSEISIS: No, I just got a  
7 full-time position at the Loyola University of Chicago  
8 Jesuit School.

9 MS KULASZKA: Okay, but you admit  
10 really, you are just a very young person? You are just  
11 starting out your career, aren't you?

12 DR. TSEISIS: I think life is very  
13 short. I would qualify a 70-year-old person to be  
14 young, but yes, I'm young.

15 MS KULASZKA: And you are young in  
16 your career? You don't have tenure, right?

17 DR. TSEISIS: No, I don't have tenure.  
18 I got published when -- tenure. But I haven't -- I  
19 don't have it.

20 MS KULASZKA: And actually, you've  
21 only really been teaching since the fall of 2004?

22 DR. TSEISIS: No. I've been teaching  
23 since the fall of 2002.

24 MS KULASZKA: And where did you do  
25 that?

1 DR. TSESIS: Chicago-Kent College of  
2 Law.

3 MS KULASZKA: And what did you teach  
4 in 2002?

5 DR. TSESIS: In 2002, I taught legal  
6 writing for certain. I do not remember -- I think that  
7 semester -- yes, I only taught legal writing that first  
8 semester. In the second semester, I taught legal  
9 writing and First Amendment.

10 MS KULASZKA: Okay, most of your  
11 writing deals with the 13th Amendment; is that right?

12 DR. TSESIS: I don't think so. I'm  
13 not sure in terms of number of pages. I have a lot of  
14 pages on the 13th Amendment, also on the -- on hate  
15 speech, are probably -- I've never counted the pages.  
16 I was actually just --

17 MS KULASZKA: I'm looking at your  
18 books. The first one is about the 13th Amendment?

19 DR. TSESIS: Yes.

20 MS KULASZKA: The second one, is that  
21 not about the 13th Amendment?

22 DR. TSESIS: No, the first one is  
23 about hate speech, the second one is about the 13th  
24 Amendment, the third one is about the legal history of  
25 civil rights, which deals with a large variety of

1 issues that I --

2 MS KULASKZA: I'm looking at  
3 "Promises of Liberty: The 13th Amendment"?

4 DR. TSESIS: That's an edited volume.  
5 I have a chapter in there. There will be 18 chapters,  
6 one of which will be mine. I'll have an introduction  
7 as well. So it's an edited volume with -- what I  
8 consider to be the -- the most important scholarship on  
9 the 13th Amendment. They're all original -- all  
10 original chapters.

11 MS KULASZKA: And that's about  
12 slavery?

13 DR. TSESIS: No, it has to do -- the  
14 13th Amendment, while it abolished slavery, has been  
15 applied by the United States Supreme Court, to  
16 discrimination in real estate property. It's also --  
17 the 13th Amendment has also been applied to  
18 discrimination in -- in private schools education, and  
19 there's a proposal to make a federal law based on the  
20 13th Amendment, dealing with hate crimes.

21 MS KULASZKA: And so that is U.S.  
22 law?

23 DR. TSESIS: Yes, that is U.S. law.

24 MS KULASZKA: And the next one, "We  
25 Shall Overcome". What does this deal with, the 13th

1 Amendment too?

2 DR. TSESIS: About three to five  
3 pages of it deal with the 13th Amendment. The -- the  
4 rest of the 400 pages deal with the legal history of  
5 civil rights, beginning with approximately the Stamp  
6 Act of 1765, when Britain tried to force the Stamp Act  
7 at the beginning of the revolutionary movement, all the  
8 way through Lawrenceville, Texas, which concludes with  
9 the privacy right cases, and the gay rights case.

10 MS KULASZKA: Okay, so that's U.S.  
11 law?

12 DR. TSESIS: Yes, that's U.S. --

13 MS KULASZKA: And the next one, "The  
14 13th Amendment in American Freedom" --

15 DR. TSESIS: Both --

16 MS KULASZKA: That's about the 13th  
17 Amendment, obviously U.S. law; is that right?

18 DR. TSESIS: That's right, yes.  
19 That's U.S. law.

20 MS KULASZKA: And the next book,  
21 "Destructive Messages: How Hate Speech Paved the Way  
22 for Harmful Movements", what is that about?

23 DR. TSESIS: That's about the effect  
24 of -- of hate speech on the development of harmful  
25 social movements.



1 MS KULASZKA: And what examples did  
2 you give?

3 DR. TSEISIS: The first example is  
4 anti-Semitism in Germany, the second example is racism  
5 in the United States, the third example is racism  
6 against native -- or actually, racism against blacks in  
7 the United States. So the third example is racism  
8 against native Americans in the United States, the  
9 fourth example is racism against blacks in -- in  
10 Mauritania.

11 MS KULASZKA: And how does any of  
12 that relate to Canada?

13 DR. TSEISIS: Canada -- I have a  
14 component -- those are the examples you asked. I  
15 discuss the international law in -- comparative  
16 international law, and discuss Canada in that context.

17 MS KULASZKA: Aren't you comparing  
18 apples to oranges here? How can apply any of this to  
19 Canada?

20 DR. TSEISIS: Well, it seems -- I  
21 didn't know that I was here on -- as applied challenge.  
22 I'm just here to discuss the constitution and the --  
23 and hate speech in -- in general so. How does it apply  
24 to Canada? I'm not sure of the --

25 MS KULASZKA: You know that Canada

1 never had slavery?

2 DR. TSEISIS: In other words, how  
3 does -- do harmful social movements apply to Canada?

4 MS KULASZKA: We have -- we have a  
5 different culture here. You do know that?

6 DR. TSEISIS: Of course, yes. Yeah.

7 MS KULASZKA: And we do not have a  
8 history of slavery?

9 DR. TSEISIS: Right.

10 THE CHAIRPERSON: That's better,  
11 because I believe there is history -- there is slavery  
12 in the history of Canada. It's minor in nature, but  
13 your first statement was perhaps a little inaccurate.

14 Yes, we don't a history of slavery in  
15 Canada, as a -- in the large sense of the word. I  
16 would agree with that. I just -- I just want to be  
17 clear on one point there, Ms Kulaszka.

18 MS KULASZKA: Okay.

19 DR. TSEISIS: Well, my understanding  
20 is slavery -- Canada is a pluralistic society that's  
21 decided to ban hate speech in order to prevent the  
22 escalation of hatred towards individual groups.

23 MS KULASZKA: And do you know the  
24 circumstances in which the hate law was passed in  
25 Canada?

1 DR. TSESIS: Yes, I know some of that  
2 background. I can't say that I've done a -- an  
3 exhaustive study of it.

4 MS KULASZKA: You claim expertise  
5 about German history and German hate laws?

6 DR. TSESIS: I -- I have an expertise  
7 in German -- in -- in hate speech and legal history,  
8 that is indicative of the fact that it does have a  
9 harmful social -- long term effect on social movements.

10 MS KULASZKA: In Germany, have you  
11 studied court cases --

12 DR. TSESIS: Yes.

13 MS KULASZKA: -- concerning hate  
14 laws?

15 DR. TSESIS: I have.

16 MS KULASZKA: And have you studied  
17 their transcripts?

18 DR. TSESIS: I do not read German, or  
19 I read it extremely poorly, and hence, I have not  
20 looked at the transcripts, no.

21 MS KULASZKA: Do you know if they  
22 produce transcripts in Germany?

23 DR. TSESIS: I do not know.

24 MS KULASZKA: Does the German  
25 government publish judgments, as they do in Canada?

1 DR. TSEISIS: Yes, they do.

2 MS KULASZKA: Oh, where?

3 DR. TSEISIS: There -- there are in  
4 bound volumes, and I don't know the publisher.

5 MS KULASZKA: And have you read any  
6 of those?

7 DR. TSEISIS: I have read some German  
8 opinions, yes.

9 MS KULASZKA: Do you know the  
10 circumstances of how the various laws were -- hate laws  
11 were passed in Europe and France, for instance?

12 DR. TSEISIS: Yes. Now, again, I -- I  
13 can't say that I've done an exhaustive study, because  
14 I'm not an expert on one country. I'm an -- I studied  
15 a comparative analysis of various countries.

16 MS KULASZKA: Well, who drafted  
17 France's law?

18 DR. TSEISIS: France's law is based on  
19 the United Nations -- there are a number of laws. It's  
20 based on the United Nations Covenant for the  
21 Elimination of Genocide.

22 It's also -- so in other words, who  
23 drafted it? The U.N.. and then France predicated its  
24 law on the U.N., and then also, France's law is  
25 predicated on the United Nations International

1 Convention on the Elimination of All Forms of Racial  
2 Discrimination. As a signatory state, France had to  
3 abide by those -- by those international conventions in  
4 passing its law.

5 MS KULASZKA: Well, doesn't its law  
6 have a name? It's the -- the Gayssot law?

7 DR. TSEISIS: I do not know.

8 MS KULASZKA: It was crafted by a  
9 very famous politician in France. He was a communist?

10 DR. TSEISIS: Again, that I do not  
11 know.

12 MS KULASZKA: You studied, with  
13 respect to these laws in Europe, the effect of the --  
14 of German constitutional law?

15 DR. TSEISIS: The effect of German  
16 constitutional law?

17 MS KULASZKA: On these cases.

18 DR. TSEISIS: Oh, on these cases?

19 Yes, I have.

20 MS KULASZKA: And the German Code of  
21 Criminal Procedure?

22 DR. TSEISIS: That's right, that's  
23 where they fit in.

24 MS KULASZKA: And the European  
25 Convention of Human Rights?

1 DR. TSESIS: I have -- I have looked  
2 at that, yes.

3 MS KULASZKA: And you've done that  
4 for every single country?

5 DR. TSESIS: Not in the world, but of  
6 the ones -- you can see the ones that I've studied  
7 in -- in the -- in the book that I have.

8 MS KULASZKA: So you've drafted a  
9 draft model hate law?

10 DR. TSESIS: Yes, I did.

11 MS KULASZKA: So you're an advocate  
12 for hate laws in the U.S?

13 DR. TSESIS: Hate laws? Hate  
14 speech -- a law against hate speech?

15 MS KULASZKA: Yes.

16 DR. TSESIS: I am both an advocate  
17 for hate speech law in the United States. I have an  
18 article that deals with that. You have that in -- in  
19 the packet. It's the one -- the Harvard Journal, in  
20 legislation. And I'm also an advocate for hate crime  
21 law.

22 MS KULASZKA: And you've actually  
23 drafted a law that you want passed?

24 DR. TSESIS: I drafted a model law on  
25 hate speech, but not a model law on hate crimes.

1 MS KULASZKA: So actually, you are  
2 not in the mainstream of U.S. legal thinking, are you?

3 DR. TSEISIS: On hate speech? The  
4 mainstream, I think, would not be -- the U.S. is an  
5 outlier, so in the U.S., my view is considered to be  
6 unusual.

7 MS KULASZKA: Well, the U.S. has a  
8 guarantee to free speech that's been very strongly  
9 upheld, hasn't it?

10 DR. TSEISIS: Just as it has in  
11 Canada, that's right.

12 MS KULASZKA: Well, that's debatable,  
13 isn't it?

14 THE CHAIRPERSON: Be mindful, Ms  
15 Kulaszka, of my previous commentary to Mr. Christie  
16 on -- on that type of comment.

17 MS KULASZKA: I just want to ask, you  
18 want to give testimony about the Internet, but you  
19 don't have any special expertise in the Internet and  
20 hate speech, do you?

21 DR. TSEISIS: Well, there's a law  
22 school that has me teaching the Internet. I've  
23 published on the Internet. So I presume they must --  
24 that I would presume that somebody at the law school --  
25 that I know, not that I presume.

1                   The associate dean at the Marquette  
2                   University Law School evaluated by credentials, looked  
3                   at my publications, had discussions with me, and  
4                   determined that I was qualified to teach cyber law.  
5                   I have 39 students in the class.

6                   MS KULASZKA: And a technical  
7                   background is not required, correct?

8                   DR. TSEKIS: No, a technical  
9                   background is not required for my class. Do you mean  
10                  to take my class?

11                  MS KULASZKA: Yes.

12                  DR. TSEKIS: Yes, no technical  
13                  background is required.

14                  MS KULASZKA: And what research have  
15                  you done on hate sites on the Internet?

16                  DR. TSEKIS: I have looked at  
17                  those -- numerous hate sites on the Internet.

18                  MS KULASZKA: How many?

19                  DR. TSEKIS: I have no idea. As much  
20                  as I could figure out where they were, and I -- I  
21                  intend to continue to -- to look at them for my  
22                  research.

23                  MS KULASZKA: And you also go to the  
24                  Simon Wiesenthal Centre?

25                  THE CHAIRPERSON: I'm sorry, could



1           you repeat the question?

2                           MS KULASZKA:  A source is the Simon  
3           Wiesenthal Centre?

4                           DR. TSEISIS:  Yes, there was a study  
5           done by the Simon Wiesenthal Centre, I believe in 1995,  
6           but there are others.  There's Southern Poverty Law  
7           Centre that does it, tolerance.org does it.  They  
8           monitor -- they determine where these are, it makes  
9           it -- they have lists of them.

10                          MS KULASZKA:  Do you ever look at  
11           anything, other than so-called right wing hate sites?

12                          DR. TSEISIS:  I look at many -- I  
13           mean, I look at many different places on the Internet.  
14           I do look at right wing hate sites.  I think that there  
15           are likely left wing hate sites as well --

16                          MS KULASZKA:  Well, where are they?

17                          DR. TSEISIS:  -- that offer their  
18           opinion.

19                          MS KULASZKA:  Have you seen them?

20                          DR. TSEISIS:  I'm not aware of any.

21                          MS KULASZKA:  You don't know any?

22                          DR. TSEISIS:  No, you know, there  
23           could be, and I'm very interested in it, and certainly,  
24           it would be the subject of future study.

25                          MS KULASZKA:  Have you looked at a

1 website like the Jewish Defense League?

2 DR. TSESIS: I've never looked at  
3 their site, no. I -- I know the organization, but I  
4 have not looked at their website.

5 MS KULASZKA: Have you looked at any  
6 sites like the Jewish Defense League, where they are  
7 constantly calling for the Palestinians to be expelled?

8 DR. TSESIS: You know, I'm not sure  
9 the Jewish Defence League is left wing. My  
10 understanding is they are a right wing organization.

11 MS KULASZKA: It doesn't matter.

12 DR. TSESIS: Well, you asked whether  
13 I have looked at --

14 MS KULASZKA: Have you looked at the  
15 site?

16 DR. TSESIS: Have I looked at Sites  
17 that call for the -- no, but I did -- I have read about  
18 it. In fact, I mean, I've done some study on that  
19 point. Seems like a very discriminatory thing that  
20 Israel has prohibited.

21 MS KULASZKA: Do you look at any  
22 black sites where they have rap music lyrics that are  
23 hateful?

24 DR. TSESIS: Yes, I've written about  
25 Farrakhan and his anti-Semitism.

1 MS KULASZKA: I'm not talking about  
2 Farrakhan. I didn't know he was a rapper.

3 DR. TSEISIS: Well, you --

4 MS KULASZKA: I'm talking about rap  
5 music.

6 DR. TSEISIS: Just rap music? I  
7 haven't looked -- I'm not sure I've looked at websites,  
8 but certainly I have seen hateful use of lyrics in rap.  
9 I'm not sure that I've -- I've written about it, but  
10 I've certainly researched that problem, yes.

11 MS KULASZKA: Well, can you name some  
12 of those sites?

13 DR. TSEISIS: I have never looked at a  
14 site that I'm aware of, except -- Michael Jackson has a  
15 lyric, he said, "he Jewed me", for example. I remember  
16 that in a -- in a Michael -- yes, Michael Jackson.  
17 There are others. Queen Latifah has a very  
18 anti-Semitic thing that she -- she put out. She's a  
19 rapper.

20 MS KULASZKA: Do you have any special  
21 expertise in filtering devices?

22 DR. TSEISIS: I have studied filter --  
23 filtering devices. I have looked into them.

24 MS KULASZKA: Well, do you have any  
25 special expertise in filtering devices?

1 DR. TSESIS: Again, Your Honour, am I  
2 allowed to say that I have any expertise, or is that  
3 for you to decide. I mean, I'm not sure -- I've got  
4 this question and I'm not sure what --

5 THE CHAIRPERSON: No, no, what is the  
6 source of your knowledge?

7 DR. TSESIS: What is the source? I  
8 read about them in secondary source. I have looked at  
9 them myself, and I have studied them, both in the  
10 classroom. In fact, I've taught about filtering  
11 devices. I've read -- I've read about them, both in  
12 the library setting and the private setting, and I've  
13 looked at issues that came up with America Online with  
14 filtering devices. I've looked at other points as  
15 well.

16 MS KULASZKA: Do you know what they  
17 filter?

18 DR. TSESIS: They filter a variety of  
19 things, pornography, sometimes hate speech. Typically,  
20 their methods of filtering out content that parents  
21 don't want children to view.

22 MS KULASZKA: So I gather your  
23 opinion is going to be that there are lots of countries  
24 with hate laws, and so it must be good?

25 DR. TSESIS: My opinion is that after

1 studying hate speech and -- that those countries acted  
2 correctly. In fact, before when I began the study of  
3 hate speech, I didn't know there were any countries  
4 with hate speech laws.

5 I was just curious about the question  
6 of hate speech. And then, as I learned about it, I saw  
7 other countries so that -- the beginnings of my studies  
8 were not hate laws, but rather, just the question of  
9 does hate speech have any harmful effect? And is it  
10 appropriate under standards of free speech to -- to  
11 limit it.

12 MS KULASZKA: So you haven't really  
13 looked at the effect of free speech in each of those  
14 countries, as a result of those laws?

15 DR. TSEISIS: I've looked at some of  
16 those countries, and the effect on some of those  
17 countries, and my understanding is that it's -- it  
18 allows for greater civility.

19 MS KULASZKA: Which countries did you  
20 look at?

21 DR. TSEISIS: Germany, France,  
22 Denmark, Canada, the United States, England.

23 MS KULASZKA: Does your definition of  
24 hate include intent?

25 DR. TSEISIS: It can include intent.

1 If -- there are varieties of intent. It could be the  
2 intent to actually put out the message, or the -- could  
3 be the intent to harm.

4 It -- certainly, it's something that  
5 I've written about, and put intent into the definition  
6 yes, although I can see why there are countries that  
7 don't have that element in there.

8 MS KULASZKA: Okay, those are my  
9 questions.

10 DR. TSESIS: Thank you.

11 THE CHAIRPERSON: Okay, so you have  
12 no other questions on this point. Okay. So perhaps we  
13 should discuss the issue. I'm just wondering if the --  
14 it might be appropriate for the witness to step outside  
15 in case he is -- his expertise is reference so we --

16 DR. TSESIS: Sure. How long will  
17 it -- how long?

18 THE CHAIRPERSON: As long as it  
19 takes.

20 DR. TSESIS: Okay, so I should just  
21 wait in the hallway then?

22 THE CHAIRPERSON: Yes, please.

23 DR. TSESIS: Sure, of course.

24 (Witness retires).

25 THE CHAIRPERSON: I know we didn't do

1           it in the past, but I just -- I think it might be  
2           prudent here that we do it in this case. So who would  
3           like to begin first?

4                       MR. FOTHERGILL: Should I make some  
5           brief submissions about why --

6                       THE CHAIRPERSON: Sure.

7                       MR. FOTHERGILL: -- in my view, the  
8           expertise has been established.

9                       Most of the questions, I suggest,  
10          have been directed towards issues of methodology or  
11          historical techniques, and the simplest way to respond,  
12          in my respectful submission, is to review Professor  
13          Tsesis' publications, note where they have been  
14          published, and process whereby that publication  
15          occurred.

16                      If we focus, in particular, on his  
17          major published works, and "Destructive Messages", I  
18          think it's clear from his evidence -- is -- is  
19          essentially the -- the book that forms the basis for  
20          the opinion that he wishes to offer today.

21                      THE CHAIRPERSON: I'm sorry?

22                      MR. FOTHERGILL: "Destructive  
23          Messages: How Hate Speech Paves the Way for Harmful  
24          Social Movement". I know that you've read the expert  
25          report.

1 THE CHAIRPERSON: Yes.

2 MR. FOTHERGILL: And he's explained  
3 the thesis of the book, and it won't have surprised you  
4 that the two were very similar. That book was  
5 published by New York University Press, and he's  
6 explained the process of peer review pre-publication.  
7 He's also identified a number of -- of reviews of the  
8 book in legitimate journals.

9 And what I submit this establishes  
10 very clearly is that he working within a scholarly  
11 tradition that is recognized by reputable publishing  
12 houses, and is deemed worthy of review, whether  
13 positive or negative, in worthy publications.

14 So to the extent that somebody is  
15 attempting to criticize his methodology, essentially  
16 this is an attack on legal historians, or indeed,  
17 historians generally. We sometimes hear the expression  
18 "the past is another country", so one simple  
19 response --

20 THE CHAIRPERSON: The past is not  
21 a --

22 MR. FOTHERGILL: "The past is another  
23 country". So a simple response to Mr. Christie's line  
24 of questioning that -- that Dr. Tsesis has never lived  
25 or travelled in the countries about which he writes,



1 doesn't really establish very much. It might have some  
2 significance to the extent that he's dealing with  
3 contemporary examples, and he does on occasions.

4 But to the extent that he's dealing  
5 with historical examples, a visit to the country may be  
6 neither here nor there, a point that he made himself.

7 But I don't want to belabour the  
8 point. I think that it's clear from where he  
9 publishes, how he publishes, and how his work is  
10 received, that he can be comfortably situated within a  
11 well-established scholarly tradition.

12 There may be pointed questions to be  
13 asked about his conclusions, and indeed, some of his  
14 reviewers do ask those questions, but that doesn't  
15 impugn his qualifications. And I would submit that  
16 nothing that has been raised in the questions asked by  
17 my friends impugns, in any real way, his ability to  
18 proffer his opinion.

19 What you make of that opinion is  
20 obviously going to be a subject of argument, and there  
21 I would reference Ms Kulaszka's apples and oranges  
22 analogy. She'll obviously be free to argue that.  
23 She's obviously free to put that to him in  
24 cross-examination, and that will be a matter for you to  
25 decide. But it doesn't fundamentally impugn his

1 qualifications to offer the opinion that he has.

2 THE CHAIRPERSON: I'll hear from  
3 Mr. Christie or Ms Kulaszka?

4 MR. CHRISTIE: There's ample  
5 authority for the proposition that novel science is  
6 seldom accepted, and allowed to express expert opinion.  
7 Nothing could be more novel than a combination of two  
8 things; a soft science and someone who says, my view is  
9 considered unusual.

10 The very fact that somebody has  
11 published a book with New York University Press does  
12 not make them an expert. He's not an expert within the  
13 confines of American law. But he purports to be  
14 entitled to come to Canada and express an opinion in  
15 respect to, and in relation to, Canadian law; otherwise  
16 it wouldn't be relevant. And he claims that he is a  
17 legal historian, competent to address the long-term  
18 harmful effects of hate speech, which must be referable  
19 to Canada, to have some significance.

20 THE CHAIRPERSON: So I just want to  
21 be clear on your earlier statement, the novel -- the  
22 soft science is legal history? Is that what you are  
23 defining --

24 MR. CHRISTIE: Well --

25 THE CHAIRPERSON: -- as the soft

1 science?

2 MR. CHRISTIE: Well, certainly it is.  
3 It's not a science that empirically verifiable by any  
4 cause and effect analysis. There are no experiments  
5 that enable us -- because science generally --

6 THE CHAIRPERSON: Well, let me back  
7 you up. First thing was a historian, for some reason  
8 the history becomes an issue in a case.

9 MR. CHRISTIE: Yes.

10 THE CHAIRPERSON: How -- would a  
11 historian be denied the possibility to present his  
12 findings, having of course not lived in the era at  
13 issue, but relying of course on secondary sources --

14 MR. CHRISTIE: Well --

15 THE CHAIRPERSON: -- contemporary to  
16 the period at issue or subsequent studies --

17 MR. CHRISTIE: Actually, as someone  
18 who has had to deal with that, for instance, in the  
19 Zundel case -- Supreme Court of Canada, the general  
20 context of history, as long as it doesn't endeavor to  
21 prove the central issue in the case.

22 For example, in the Zundel case, at  
23 one point the issue became whether the Holocaust as  
24 defined was consistent with fact, let's say. That's a  
25 clear way of putting it. Mr. Zundel said it wasn't an

1 accurate representation. Other experts said it was.  
2 But they could not speak, and were not allowed to  
3 express opinions, on the central issue in the case,  
4 which dealt with factual matters supportive of one  
5 sides or the other. They could give general contexts  
6 for instance. And that was in a question about history  
7 itself, not about law.

8 THE CHAIRPERSON: Well the -- that's  
9 why I'm kind of --

10 MR. CHRISTIE: It's a difficult  
11 point.

12 THE CHAIRPERSON: Yes, I'm separating  
13 the -- they have added, that is to say, the Attorney  
14 General has -- has sort of added two concepts into one  
15 sentence here, "expert legal historian to address the  
16 long-term harmful effects of hate speech". So --

17 MR. CHRISTIE: Yes.

18 THE CHAIRPERSON: -- we're dealing  
19 with the past and the future at the same time here.

20 MR. CHRISTIE: Well, yes, and also a  
21 psychological element of effect, harmful effect. And  
22 it is laden with sociological value judgments.

23 THE CHAIRPERSON: Right. But if one  
24 were to look at the past alone.

25 MR. CHRISTIE: Yes.

1 THE CHAIRPERSON: Because I see this  
2 debate going between the two texts. I also read Dr.  
3 Downs report.

4 MR. CHRISTIE: Yes?

5 THE CHAIRPERSON: And Dr. Downs takes  
6 issue with some points that Mr. Tsesis makes on -- in a  
7 historical context. He makes some assertions on what  
8 took place in pre-war Germany --

9 MR. CHRISTIE: Yes.

10 THE CHAIRPERSON: -- this witness  
11 does. And Mr. Downs takes issue, says, you must also  
12 take into account some other factors, which he alludes  
13 to in his report.

14 That I see as a debate between two  
15 historians, and Mr. Tsesis says as a consequence of  
16 what he has seen in the material, this result  
17 occurred --

18 MR. CHRISTIE: Yes.

19 THE CHAIRPERSON: -- in terms of --  
20 well, ultimately, I suppose, it's the mass murders  
21 of -- during the war but --

22 MR. CHRISTIE: The Holocaust.

23 THE CHAIRPERSON: The Holocaust,  
24 right. So -- but --

25 MR. CHRISTIE: So there's two issues.

1 Was there the factual historical elements and two, did  
2 they have the effect? So it's a --

3 THE CHAIRPERSON: It's a still --  
4 historical -- now, the second part of what I see in the  
5 expertise is the long-term harmful effects of hate  
6 speech. I'm not entirely clear. Is that an attempt to  
7 extrapolate into our -- into contemporary society how  
8 it would work, or is the long term still addressing the  
9 past?

10 Perhaps it would be helpful for me to  
11 have that answer from -- from counsel for the Attorney  
12 General.

13 MR. FOTHERGILL: What Dr. Tsesis will  
14 do, if he's recognized as an expert, is he will provide  
15 various historical and contemporary examples of  
16 circumstances where hate speech facilitated harmful  
17 social movements, specifically talking at --

18 THE CHAIRPERSON: When you say  
19 contemporary, it's still in the past, right? I mean --

20 MR. FOTHERGILL: Not -- no, not in  
21 the case of Mauritania.

22 THE CHAIRPERSON: No? Mauritania is  
23 the one nation --

24 MR. FOTHERGILL: Mauritania is a  
25 contemporary example, contemporary slavery in

1 Mauritania. And he's got some contemporary U.S.  
2 examples that he also wishes to speak about.

3 THE CHAIRPERSON: But it's still not  
4 extrapolations to the future, which is something that I  
5 see --

6 MR. FOTHERGILL: That is -- I  
7 don't -- I don't anticipate that he will be making any  
8 sort of categorical statement about the extent to which  
9 this is applicable to Canada. That will be a matter  
10 for argument if you -- for you to decide, whether there  
11 is any particular broader extrapolation that can be  
12 made.

13 THE CHAIRPERSON: Because that's  
14 moving to the next area of the expertise that's being  
15 requested, which is "measures to combat the long-term  
16 effects of hate speech".

17 Again, that leaves me the impression  
18 that -- that is advice being provided to the Tribunal,  
19 and perhaps to Canadian society as a whole, about how  
20 to work into the future.

21 MR. FOTHERGILL: Exactly. He can --  
22 he can assist you in explaining how other countries  
23 have recognized and dealt with the problem.

24 THE CHAIRPERSON: That's the reason  
25 you bring that up.

1                   MR. FOTHERGILL: Absolutely. That's  
2 what the comparative law perspective --

3                   THE CHAIRPERSON: So really, this  
4 flows into the fourth point then, which is to provide a  
5 comparative law perspective.

6                   MR. FOTHERGILL: Very much so.

7                   THE CHAIRPERSON: So I think this is  
8 what's going on here. I'm just trying to break it down  
9 in a way that we can deal with it. And one is, looking  
10 into the past and drawing conclusions from the evidence  
11 that's out there. And again, as I say, that's a debate  
12 that I can see him and Mr. -- he and Mr. Downs  
13 engaging in. And that can be as far back as centuries  
14 ago, or yesterday, so a historical -- a context there.

15                   The other point is the comparative  
16 law discussion. So that -- I see those two -- and  
17 well, I'll deal with the Internet as a third point.  
18 But I would like to hear perhaps some discussion from  
19 Dr. -- Mr. Christie. Haven't made you a doctor yet.

20                   MR. CHRISTIE: Well, I've been in  
21 some cases referred to by the name Keegstra or Zundel,  
22 but it's the first time I've ever been mistaken for a  
23 doctor.

24                   THE CHAIRPERSON: Too many doctors in  
25 this case. You haven't had as many as I've had,



1           perhaps, in your -- but look, let's go one by one,  
2           because I want to move on, all right?

3                           MR. CHRISTIE:   Okay.

4                           THE CHAIRPERSON:   On the first one, I  
5           don't have an issue with this gentleman.  He's  
6           certainly studied history.  I don't think it's any  
7           different than any other historian we'll have done in  
8           that sense.  And it will be a very interesting  
9           discussion, I think, between -- I haven't heard from  
10          you, Ms Kulaszka, yet but I don't have -- and I don't  
11          hear an issue, at least coming from Mr. Christie on  
12          that point.  I think we can engage in that debate.  How  
13          does one interpret what happened in the era.  How about  
14          on the comparative law issue?

15                          MR. CHRISTIE:   Well, he's not a  
16          competent expert in the conflict of laws.  He teaches a  
17          course from a text book.

18                          THE CHAIRPERSON:   I thought --  
19          comparative laws may not necessary be conflict of laws.

20                          MR. CHRISTIE:   Well, it is -- the  
21          nature of the concept of conflict of laws involves  
22          comparison of laws and the opposing results from  
23          different jurisdictions.  That's what I understand to  
24          be conflict.

25                          THE CHAIRPERSON:   Well, I perhaps --

1 I come from a different tradition. We refer to  
2 conflict of laws as part of the private international  
3 law and --

4 MR. CHRISTIE: Yes.

5 THE CHAIRPERSON: -- and the ebb and  
6 flow that may occur, where two competing jurisdictions  
7 may have some role to play --

8 MR. CHRISTIE: Yes.

9 THE CHAIRPERSON: -- on a  
10 transaction. That -- that's not what we're talking  
11 about here.

12 MR. CHRISTIE: Right.

13 THE CHAIRPERSON: He -- he's done a  
14 comparative law analysis. I have something earlier --  
15 there was an institute of comparative law when I got my  
16 legal training at McGill, and this is the kind of thing  
17 they would do, where you would compare various legal  
18 systems and see how they address issues. That's what I  
19 think he's trying to present to us.

20 Are you saying that the only proper  
21 way for -- here's the thing. It would be helpful, one  
22 would think, for the Section 1 analysis, to know what's  
23 going on in the rest of the world. Is that not what  
24 the purpose of all of this is.

25 MR. CHRISTIE: Well, when I argued

1 the Zundel case or when I argued the Keegstra case,  
2 that is what I thought would be an appropriate way for  
3 the Supreme Court to consider, at that time, whether  
4 these laws were demonstrably justifiable in a free and  
5 democratic society. But that's not the way they  
6 approached it.

7                   Ironically, I was interested in  
8 looking at the existing state of the law then, in other  
9 countries, and no, they -- they looked then to the  
10 context of Canada, which -- that's their prerogative.  
11 I have no comment.

12                   But now, it seems the Attorney  
13 General is suggesting that this person is competent to  
14 compare legal systems, or laws. And my concern about  
15 that is, logically, it's impossible, without being an  
16 expert in the laws in the country in which you are  
17 making the comparison.

18                   I agree you can read the texts of  
19 various statutes, and maybe have them accurately  
20 translated, but that doesn't make you competent to  
21 comment on the legal significance or application, or  
22 anything more than you could have by looking at text.

23                   To give him the scope to make legal  
24 judgments or reasons and arguments, from knowledge of  
25 the text or even reading the cases, doesn't get us any

1 further than arguments that we can make before you, my  
2 friend, can produce, Mugesera, he can produce Keegstra,  
3 he can produce any case from any country and their  
4 text, and we can argue about it. It doesn't really  
5 entitle him to say "this is what it means" or "this is  
6 how it's applied in that country".

7 It doesn't help you to compare texts  
8 that he's not competent to comment on beyond the text.  
9 He can just show you the text, and say, this is what  
10 the law of that country is. That's a matter of record.  
11 Courts everyday look at legislation, even in other  
12 countries.

13 Now, interpreting it -- my learned  
14 friend has a very good case that she showed me,  
15 involving Mr. Shriver, Karlheinz Shreiber, it's the  
16 helicopter issue.

17 THE CHAIRPERSON: Airplanes. The  
18 airplanes, no?

19 MR. CHRISTIE: Yes, it's similar.  
20 It's versus -- Regina versus Eurocopter of Canada  
21 Limited.

22 THE CHAIRPERSON: Oh, yes.

23 MR. CHRISTIE: I suppose that's the  
24 correct name. May I offer that to -- because I believe  
25 my friend will be arguing that. And the reason I make

1 the point -- may I offer that to you -- and if you  
2 could just pass it along. I'll offer it to my  
3 friends -- before reading this, the courts don't  
4 allow --

5 THE CHAIRPERSON: Perhaps you should  
6 approach the microphone, for the transcription. Go  
7 ahead, sir.

8 MR. CHRISTIE: I'm sorry. The courts  
9 quite clearly -- and my friend will address this more  
10 in detail. But they don't allow just anybody to  
11 comment on the law of another country, only when one is  
12 a qualified expert in that country's law. Usually,  
13 it's a very experienced -- either lawyer, barrister or  
14 maybe even a judicial authority.

15 It just doesn't happen because  
16 somebody's read the text of some other country's laws.  
17 You can make the comparison or draw some inferences  
18 from their opinion. Everyone can have opinions. We  
19 all understand that. But to make some concept of  
20 expertise relevant, and to reach the level of an  
21 expert, you've got to do more than just have read the  
22 statutes, a few secondary --

23 THE CHAIRPERSON: It does pose a  
24 practical, a pragmatic difficulty. If every time a  
25 court in Canada was -- engaged in this type of

1 analysis, from doing a Section 1 analysis, would it  
2 require that on every occasion, we bring an expert  
3 from, at least all the major democracies of the world,  
4 and two -- you know, individual experts?

5 MR. CHRISTIE: Well, at least they  
6 could be cross-examined. Other points of view could  
7 be --

8 THE CHAIRPERSON: But it's  
9 impractical.

10 MR. CHRISTIE: Yes, but they're --  
11 the courts don't automatically accept the expertise of  
12 someone on another country's law to which they are not  
13 an expert themselves. And I'm really troubled by the  
14 thought that this witness not only has unusual views,  
15 even in the United States, but he's going to be asked  
16 to say --

17 THE CHAIRPERSON: Well, the unusual  
18 views -- he says he's an outlier, or not -- the U.S. is  
19 an outlier, he said, and that --

20 MR. CHRISTIE: Out --

21 THE CHAIRPERSON: -- outlier, that --  
22 in terms of the -- of international law, in its absence  
23 of any hate speech legislation.

24 MR. CHRISTIE: Right, well that's --  
25 that's a judgment that he's entitled to express, I

1           suppose.

2                           THE CHAIRPERSON:   Yes.

3                           MR. CHRISTIE:   But is he competent to  
4           testify to that with some expert knowledge of these  
5           various countries laws, just because he's read the  
6           statute, or he's had someone at an embassy tell him it  
7           hasn't been overruled.  I'm really troubled by that  
8           thought.  Anyway --

9                           THE CHAIRPERSON:   And this  
10          decision --

11                          MR. CHRISTIE:   Yes, sir.  I was going  
12          to let my learned friend address that and --

13                          THE CHAIRPERSON:   Okay, then I'll  
14          wait.

15                          MR. CHRISTIE:   Thank you very much.

16                          THE CHAIRPERSON:   Okay, thank you.

17                          MR. VIGNA:   We're just missing the  
18          last three pages of the decision.

19                          THE CHAIRPERSON:   Yes, Mr. Vigna?  
20          Sorry?

21                          MR. VIGNA:   We're missing the last  
22          three pages of the decision.

23                          THE CHAIRPERSON:   You're missing the  
24          last three pages of the decision?

25                          MS KULASZKA:   Yes, it's not the whole

1 decision. It's the part where he deals with German  
2 law.

3 THE CHAIRPERSON: And the remainder  
4 is not relevant, Charter breach?

5 MS KULASZKA: No, I'm not dealing  
6 with what actually happened with the case.

7 THE CHAIRPERSON: Okay.

8 MS KULASKZA: I'm dealing with his  
9 discussion of the expert testimony he received in the  
10 law of Germany --

11 THE CHAIRPERSON: Yes, well --

12 MS KULASZKA: -- and how he dealt  
13 with it. I just wanted to show you what happens in  
14 a -- in a case such as this.

15 THE CHAIRPERSON: This is a criminal  
16 case but --

17 MS KULASZKA: It's a criminal case.  
18 And if you look at page -- well, the second page. On  
19 the bottom you can see --

20 THE CHAIRPERSON: On the second -- so  
21 it's --

22 MS KULASZKA: It says, "The law"...

23 THE CHAIRPERSON: So can you just  
24 identify with the -- with the top number on it so --

25 MS KULASZKA: Well, page 6.



1 THE CHAIRPERSON: Page 6 of 14?

2 Okay.

3 MS KULASZKA: Page 6 of 14. It's a  
4 German law with a very live issue and the parties  
5 brought in -- they each brought in their own expert.

6 And if you turn the page, the judge  
7 states, "I have heard competing evidence on the issue  
8 of German law".

9 So then he describes the applicant  
10 who's presented as his expert on German law, Yan Oleff  
11 Leizner -- Mr. -- or Leizner -- I don't know how to say  
12 that -- he's 38 years old. He's a German citizen.  
13 He's licenced in Germany to carry on practice as a  
14 barrister, received his law degree in Germany, and he  
15 worked with a very large law firm, and was obviously a  
16 German lawyer, and therefore had expertise. And there  
17 was a bit of a -- the next few paragraphs are a  
18 discussion about whether he was impartial because he  
19 had acted for the applicant for many years.

20 Then if you turn the page over to  
21 page 9, the court discusses the respondent's expert.  
22 He's 60 years of age, was a -- he's a resident of  
23 Germany, employed as a full professor, studied law at  
24 Berlin, and it goes on through all of his  
25 qualifications. He's been a visiting professor in

1 London, England. He's been a practicing defence lawyer  
2 for the past 25 years in the field of criminal law in  
3 Germany.

4 And at page -- paragraph 43, the last  
5 sentence, in connection with his book, Dr. Kuhn  
6 explained that in the present time, it is no longer  
7 sufficient for practitioners and scholars to know only  
8 about domestic penal procedure law. The European  
9 Convention of Human Rights must be considered, along  
10 with the German Code of Criminal Procedure, and German  
11 constitutional law.

12 And my only point in raising this  
13 is -- is just to look at the qualifications of these  
14 two men, which are -- were brought into a Canadian  
15 court. And what I see here really is an incredibly  
16 arrogant young man, seriously. He is a nobody in the  
17 U.S., and even in his field, he's a young man, he  
18 doesn't even -- he doesn't have tenure, he's got  
19 contracts, he's just starting teaching in the last few  
20 years.

21 Most of what he's written is about  
22 the 13th Amendment, which is slavery. And you know,  
23 I'm beginning to see the problem with this kind of  
24 expert testimony. He's coming in here, and what he  
25 studies is slavery, the Holocaust, another example. It

1 has absolutely nothing to do with Canada or our  
2 culture. So when you apply the Section 1 test, we're  
3 not in Germany. Germany has its own history, totally  
4 different from Canada. And the same with the U.S. I  
5 mean, they have a history of slavery, it has affected  
6 their law from beginning to end, their constitutional  
7 law, their criminal law.

8 THE CHAIRPERSON: Thank you, Ms  
9 Kulaszka. I have a sense, Ms Kulaszka, it's something  
10 that you could certainly bring up in final --

11 MS KULASZKA: But it affects -- it  
12 affects you. And you're sitting here in Canada, and  
13 when you --

14 THE CHAIRPERSON: Perhaps I can -- I  
15 can disabuse myself of -- of anything that I may hear  
16 on these points. If you convince me that I should  
17 ignore them precisely for the reasons -- I gather  
18 that's what Dr. Downs mentions in -- in his report. I  
19 saw that in his report. He -- he suggests that --  
20 exactly, that the experience in Canada is entirely  
21 different from other countries.

22 MS KULASZKA: This man hasn't been  
23 involved in any case dealing with -- with  
24 discriminatory speech or hate speech. And in fact, it  
25 was that very experience which changed Professor

1 Downs's mind about these laws, and you'll see when he  
2 comes. Once he saw how they were used, that changed  
3 his mind. And this is a very young man, and he doesn't  
4 have any experience whatsoever about that. And he's  
5 read about Net Nanny and Cyber Patrol, and that makes  
6 him an expert in the Internet. And he's read a -- he's  
7 looked at a few sites. He's done no studies.

8 THE CHAIRPERSON: Well, he -- I  
9 understood this to apply -- it's been mentioned that he  
10 applied this analysis to the context of the Internet.  
11 That's what's being --

12 MS KULASZKA: Well, he --

13 THE CHAIRPERSON: I don't take him to  
14 be an expert, technical expert. I don't think that's  
15 being put forth by --

16 MS KULASZKA: Well, he's making  
17 arguments under Section 1, and he wants expertise in  
18 this area, because that's what he's going to be doing.

19 THE CHAIRPERSON: Expertise to the --  
20 in the application of what -- of what preceded, in his  
21 expertise, to the context of the Internet. That's what  
22 Mr. Fothergill said. So you are saying he's not even  
23 competent enough to deal with his -- both experts seem  
24 to have dealt with the discussion about the Net Nanny.

25 MS KULASZKA: I think when you look

1 at what he's written, he's written what seems to be --  
2 the main material was on the 13th Amendment. He's  
3 taught a few courses in conflict of laws, and the --  
4 the only book he has produced is "Destructive  
5 Messages", which isn't here. He's brought in lots of  
6 book reviews, but I don't see his book. And so then  
7 when I ask him what's in the book, it turns out it's  
8 again about slavery, Germany, and -- I don't think I  
9 have that -- there's a third example. And so what is  
10 this about? I mean, if we were dealing with a case  
11 about Germany or slavery, maybe he would be relevant,  
12 but other than that, what has he done?

13 THE CHAIRPERSON: Well, on the  
14 historical context, I'll leave that for argument later  
15 on, and whether it's relevant or not in the Section 1  
16 analysis. That's my approach on that. Mr. Vigna? Go  
17 on.

18 MR. VIGNA: Mr. Chair, I would just  
19 like to say that the stage of qualification to accept  
20 the arguments of Ms Kulaszka would be incorrect,  
21 because all we need to prove is that he has some  
22 knowledge, and he's an academic in the area.

23 All the arguments she's putting forth  
24 go to weight. They don't have any relevance in terms  
25 of his qualifications. If you just have to consider

1 the fact that she's saying he's young, and this and  
2 that, those are not --

3 THE CHAIRPERSON: Okay, I understand.  
4 That's fine. But that was to give a little context  
5 here. But I have some issues -- I want you to address  
6 this right now, thought, both of you. Mr. Fothergill,  
7 I have an issue with this -- with the comparative law  
8 analysis.

9 MR. FOTHERGILL: All right, I'll see  
10 if I can --

11 THE CHAIRPERSON: His knowledge is  
12 entirely -- it's secondary based. I mean, it almost  
13 sounds -- he's not present, I don't want to -- but I  
14 think -- is it Hubbards? Hubbards has a section in the  
15 back, in the law directory on international law. I  
16 sometimes consulted it in the past. That's what it  
17 sort of sounds like to me. It doesn't resemble --  
18 certainly, my experience has been, when we've tried  
19 to -- in civil cases, when you brought some expert on  
20 foreign law.

21 I realize the practical difficulty of  
22 this if your thesis is that it's important for this  
23 analysis to review international law, but it's  
24 complicated. It's not necessarily simple, and it's  
25 foreign law. Particularly European law, it's in --

1           it's in constant flux, on account of the European --  
2           this much I know, on account of the European context.

3                         I mean, I read decisions in the  
4           European Court of Human Rights. Well, we get them at  
5           the Tribunal. I see the complexity there. It's --  
6           it's a totally different understanding of what we  
7           understand.

8                         And his evidence on that point, that  
9           he consulted with people at embassies. I'm sorry, I've  
10          dealt with people at embassies. Again, I don't want to  
11          influence -- my findings on this, but it could, for all  
12          we know, just have been a lawyer from that country.  
13          Does -- if this lawyer has -- who's assigned to the  
14          Belgian embassy in Washington has experience in  
15          criminal law or family law, how can he possibly give a  
16          reasoned opinion to someone -- we don't even know in  
17          what context -- who contacted him in -- we know what  
18          context -- about the details or the subtleties of -- of  
19          discrimination law in -- in his home country.

20                        MR. FOTHERGILL: But I don't think we  
21          will be dealing with the details and the subtleties of  
22          discrimination law in other countries. And I think,  
23          with respect, my friends are overstating the purpose  
24          for which he's been asked to address that issues.

25                        I'm going to do my best to respond to

1       this case, although I have to observe that it's not  
2       clear to me why this had to be produced to me in the  
3       middle of submissions, when we've known for weeks and  
4       months that Professor Tsesis was coming, and my friends  
5       have known what he was going to testify about. It's a  
6       persistent problem in this case, the disclosure by the  
7       other side is made at the last minute. So I'm going to  
8       do my best to assist you, bearing in mind that I've  
9       been trying to read this while listening to  
10      submissions.

11                               I do note that in paragraph 44 of  
12      this decision, which of course, arises in a criminal  
13      context --

14                               THE CHAIRPERSON:   Yes.

15                               MR. FOTHERGILL:  -- the judge finds  
16      that the -- Dr. Kuhn to be "eminently qualified to  
17      provide me with his opinions as per law of Germany and  
18      how it might apply in the circumstances of this case",  
19      which is a much more profound application of foreign  
20      law than what we're seeking to adduce evidence about.

21                               Part of the Attorney General's  
22      argument on Section 1 is that Canada's existing laws  
23      help Canada to fulfill its international obligations,  
24      and this is something where, in my submission, Dr.  
25      Tsesis can assist us. Foreign law is always a subject



1           that can be amendable to expert testimony. He can  
2           explain international conventions, what the obligations  
3           are, where Canada's laws fit in in that obligation, how  
4           they compare, broadly speaking, because it's  
5           comparative law he's talking about, with enactments in  
6           other countries. He can situate it in the context of  
7           the United States as well.

8                           And the other aspects that where I  
9           think this -- this is germane, is when we deal with the  
10          question of rational connection, essentially the  
11          efficacy of regulation, because I anticipate my friends  
12          will likely argue that, given the United States itself  
13          has such robust First Amendment protection of free  
14          speech, there's a kind of futility to attempting to  
15          regulate the Internet. And one of my responses will  
16          be, have a look at the emerging Internet consensus on  
17          the subject. We can situate Canada's laws in the  
18          context of a growing international consensus.

19                           Now, in my submission, that would  
20          assist you. It's not likely to go any deeper than  
21          that. We won't be arguing the application of  
22          particular provisions of foreign procedure, and how  
23          they might relate in the context of extradition or some  
24          criminal process, such as the case relied upon by my  
25          friends. It is to provide you with an overview of the

1 state of the law, generally in a public international  
2 law context, so that you can understand how Canada's  
3 laws relate to its international obligations on the one  
4 hand, and how they might complement an emerging legal  
5 regime in other countries. As I said, it doesn't have  
6 to go anymore profound than that. We certainly won't  
7 be debating chapter and verse of --

8 THE CHAIRPERSON: That's what you  
9 mean by "comparative law perspective"?

10 MR. FOTHERGILL: Exactly, as opposed  
11 to providing expertise on the application of a  
12 particular legal provision in a particular  
13 circumstance, which of course is what appears -- and  
14 again, I have to make some allowance for the fact that  
15 I've been trying to read this while participating in  
16 the argument -- that appears to be what was at stake in  
17 the Eurocopter Canada case. So it's very, very  
18 different.

19 And if I can just conclude on one  
20 point, which I know you are very well aware of. This  
21 isn't a criminal trial.

22 THE CHAIRPERSON: Yes.

23 MR. FOTHERGILL: You are master of  
24 your own procedure. If you really find at the end of  
25 the day, that it's not terribly useful, of course you

1 can disregard it, but in my submission, based on the  
2 procedures that are ordinarily followed in this  
3 Tribunal, and the expertise that he has explained, he  
4 can at least provide you with an overview of what we  
5 would argue as an international consensus outside the  
6 United States. He can situate Canada within that  
7 consensus, and he can situate the United States within  
8 that consensus, and he can address the practical  
9 problem of the international nature of the Internet.

10 THE CHAIRPERSON: So you would say  
11 perhaps, "to provide an overview of the comparative law  
12 perspective on the issue". Something like that you --  
13 you are putting forth?

14 MR. FOTHERGILL: This is in fact what  
15 I would describe as a comparative law perspective.  
16 He's not offering expert testimony on the application  
17 of foreign laws in particular circumstances. He's not  
18 being tendered as an expert for that.

19 THE CHAIRPERSON: What about the  
20 issue of the long-term effects of hate speech, that I  
21 brought forth?

22 MR. FOTHERGILL: That's a historical  
23 thesis. And let me just point out that in our own  
24 existing Canadian jurisprudence, reference is sometimes  
25 made to Nazi Germany. Unless I'm much mistaken, I

1 think Taylor does actually refer to it as an example of  
2 the long-term pernicious effects of hate speech.

3 Now, my friends might want to argue  
4 for a different jurisprudential approach, but to  
5 suggest the Canadian courts have never looked outside  
6 Canada's experience in order to try to understand  
7 broader themes of human behavior is, with respect,  
8 absurd. Our courts do do that.

9 And so in fact, his line of  
10 analysis -- we heard Mr. Christie refer to it as a  
11 novel science -- but in fact, I would submit that his  
12 thesis that hate speech unchecked leads to destructive  
13 social movements, is in fact, the consensus against  
14 which they are arguing. It is the basis of the Cohen  
15 report, it is the basis of the studies that have come  
16 subsequently.

17 And then the Supreme Court of Canada  
18 identifies two types of potential harm emanating from  
19 hate speech, one being the impact on the target, but  
20 another equally important one being the influence on  
21 society, and the possibility of violence. Dr.  
22 Tsesis --

23 THE CHAIRPERSON: Working in  
24 historical context?

25 MR. FOTHERGILL: Absolutely, they

1 do --

2 THE CHAIRPERSON: And that's how you  
3 intend to lead this witness?

4 MR. FOTHERGILL: Absolutely. And  
5 essentially, I'm presenting his evidence in support of  
6 the status quo, because our jurisprudence currently  
7 recognizes that hate speech can lead to destructive  
8 social movements. And our courts have not hesitated to  
9 apply that analysis to the Canadian context, so they  
10 have not been quite as troubled by the apples and  
11 oranges concern that -- I almost said Dr Kulaszka --  
12 we're all greeting wiser as we speak -- - that Ms  
13 Kulaszka identified. But I do wish to point out that  
14 in --

15 THE CHAIRPERSON: She's wise  
16 nonetheless, whether she bears the -- doctor or not.

17 MR. FOTHERGILL: She's imminently  
18 well-qualified. I'd never suggest otherwise.

19 I would suggest, and I can say this  
20 freely, because he's not in the room. Dr. Tsesis's  
21 point of view actually represents mainstream thinking  
22 in Canadian jurisprudence. And of course, I will again  
23 today be arguing for maintaining the status quo. It is  
24 my friends who say it is time to reconsider Taylor in  
25 the light of new considerations. But Dr. Tsesis is in

1 fact much more in line with what courts currently  
2 believe.

3 THE CHAIRPERSON: I think with the  
4 discussions we've just had, and with -- with the  
5 reductions in the scope of the comparative law  
6 perspective that Mr. Fothergill has raised, I'm  
7 prepared to accept his evidence.

8 All the evidence that we have heard  
9 to date, to this point, shall form part of the record.  
10 So we don't have to go back through it again.

11 And -- but you can continue in that  
12 vein, Mr. Christie and Ms Kulaszka, if you wish. But I  
13 would note again that it's all -- forms part of the  
14 record and part of the final argument can address those  
15 points.

16 So what we'll do is we'll take our  
17 break at this time. It's 12:12, according to my  
18 computer's clock. So -- I have a conference call at  
19 one. Maybe we won't take our break at this point. How  
20 do we delay it? We'll take our break and we'll come --  
21 we'll re-convene by 1:30. Okay?

22 I'm going to ask Mr. Fothergill to be  
23 short -- as short as possible with this witness, given  
24 the limitations that he has brought forth to -- how the  
25 evidence will relate.

1 MR. SKURKA: Mr. Chairman,  
2 Mr. Fothergill will speak on behalf of all three of us  
3 in the last --

4 THE CHAIRPERSON: I would hope that,  
5 thereby enabling the other parties to cross-examine  
6 fully -- as fully as possible this day.

7 --- Upon recessing at 12:12 p.m.

8 --- Upon resuming at 1:33 p.m.

9 EXAMINATION-IN-CHIEF BY MR. FOTHERGILL

10 MR. FOTHERGILL: Dr. Tsesis, before  
11 we begin, I should let you know that, in your absence,  
12 you were qualified to give expert testimony in the four  
13 areas that I outlined at the beginning of the day.

14 And just another couple of small  
15 housekeeping matters.

16 Dr. Tsesis, can I ask you to look at  
17 tab 3 of the document that's been labeled AGC-1.

18 DR. TSESIS: Yes.

19 MR. FOTHERGILL: And you'll see there  
20 a photograph of yourself?

21 DR. TSESIS: Yes.

22 MR. FOTHERGILL: And under the  
23 heading "Faculty and Staff Directory." Can you  
24 identify that document for us?

25 DR. TSESIS: That's my biographical

1 information from the Marquette University website.

2 MR. FOTHERGILL: Could I produce  
3 that, please?

4 THE CHAIRPERSON: Yes.

5 MR. FOTHERGILL: And then if we can  
6 then turn to tab 1. Can you identify that document for  
7 us?

8 DR. TESIS: This is the expert  
9 report that I prepared for the Human Rights Tribunal.

10 MR. FOTHERGILL: And I would like to  
11 produce that document as well, please.

12 THE CHAIRPERSON: Yes.

13 MR. FOTHERGILL: All right. Dr.  
14 Tsesis, I have been asked to keep your examination  
15 reasonably brief to -- to give other counsel an  
16 opportunity to question you, given the time  
17 constraints. And when you provide your answers, I'd  
18 like you to proceed on the understanding that the chair  
19 of the Tribunal has already read your expert report,  
20 and so have the other counsel. So if you could do your  
21 best not to repeat what's already in your report,  
22 but -- but give us any additional perspective that you  
23 think might assist our understanding. I think that  
24 would be appreciated, generally.

25 If we turn to pages 2 and 3 -- and



1 first of all, let me ask you, there are a number of  
2 headings in your report. Can you tell the Tribunal  
3 where you got these headings? Things like "Present and  
4 Substantial Concern", "Rational Connection" -- when we  
5 go to page 8, "Minimal Impairment", and finally at page  
6 10, "Proportionality". Where did you get those  
7 headings from?

8 DR. TSESIS: Well, it was my  
9 understanding, from conversations with Simon  
10 Fothergill, that -- that these are the things that the  
11 Tribunal was interested in, and hence, I thought this  
12 would be an easier way of leading the Tribunal through  
13 what it may consider to be pertinent, for each of its  
14 four elements.

15 MR. FOTHERGILL: So just so the  
16 record is clear, the headings in fact came from me?

17 DR. TSESIS: Yes.

18 MR. FOTHERGILL: Right. And another  
19 point I might ask you about, the presentation of your  
20 report. There don't appear to be any footnotes or  
21 other references. Can you comment on that?

22 DR. TSESIS: I initially was going to  
23 put in footnotes, but I -- I was provided with two  
24 samples of expert reports that had absolutely nothing  
25 to do with this case. One had to do with Syria, and

1 another with a subject completely unrelated, that  
2 doesn't seem to come to mind, and neither of them had  
3 footnotes, so I excluded them. I thought this was an  
4 expert report, and since it was not for publication, I  
5 determined that there were no needs -- no need -- there  
6 was no need for footnotes.

7 MR. FOTHERGILL: And can we find the  
8 references that -- that would support these  
9 propositions elsewhere in your published literature?

10 DR. TESISIS: Yes, it should -- all of  
11 it should be found in my published literature, except  
12 Rwanda, which I discuss here, I have not yet published  
13 on, but have researched and am competent to speak on.

14 MR. FOTHERGILL: All right, thank  
15 you. I may ask you a few questions about that in a  
16 moment.

17 Let's start then, at pages 2 and 3 of  
18 your expert report. And you provide a number of  
19 historical and contemporary examples, where if I  
20 understand the report correctly, you draw a link  
21 between hate messages and what you term "destructive  
22 social movements", correct?

23 DR. TESISIS: That's right, yes.

24 MR. FOTHERGILL: Can you, first of  
25 all, with reference to the example of German

1 anti-Semitism, explain that thesis a bit more fully,  
2 and what I'm particularly interested in is your  
3 methodology. What techniques do you use to analyze  
4 this particular historical event?

5 DR. TSESIS: I look at books that  
6 relate to the development of German politics and  
7 ideology during the late 19th and early 20th century.

8 MS KULASZKA: Perhaps I could object.  
9 Mr. Tsesis is not a historian. He's not a historian,  
10 he's a lawyer. He's a law professor.

11 MR. FOTHERGILL: Dr. Tsesis has just  
12 been recognized by you as a legal historian.

13 THE CHAIRPERSON: Dr. Tsesis is a  
14 historian, to address the long-term harmful effects  
15 of -- of hate speech. That's how I qualified him.

16 MR. CHRISTIE: So just so I  
17 understand, so a legal historian is now a historian as  
18 well, and can testify to the events of history, and  
19 tell us what happened when he wasn't there. That's  
20 where I'm having trouble, knowing the bounds of this.

21 MR. FOTHERGILL: In my submission,  
22 that's precisely what he's been qualified to address  
23 you about, historical events, and his -- his  
24 prescriptive interpretation of them. This is -- what  
25 he explained as -- as the legal component of being a

1 legal historian.

2 THE CHAIRPERSON: I'll allow the  
3 question. Go ahead.

4 MR. FOTHERGILL: Thank you. Your  
5 methodology, Dr. Tsesis?

6 DR. TSESIS: I investigated what was  
7 going on in Germany in -- at the time of political  
8 developments, in -- in which the Reichstag had various  
9 political parties, from the time when the anti-Semitic  
10 parties had very little influence, until the time they  
11 became very prominent, and tried to determine what  
12 influences were there that allowed for a political  
13 party that had virtually no -- no established roots of  
14 support in the populace to gain power in Germany.

15 MR. FOTHERGILL: And can you comment  
16 on the source material that you encountered? If you  
17 can perhaps advise us of any limitations that you  
18 encountered, if there were any?

19 DR. TSESIS: Well, I -- I was working  
20 with English texts, so I was looking at translations.  
21 But I tried to go to sources that -- I tried to go to  
22 primary sources that translated the material, or had a  
23 reasonable amount of it for me to be able to evaluate.

24 MR. FOTHERGILL: And in the case of  
25 German anti-Semitism, what conclusion did you come to?

1 DR. TSESIS: Well, I found that,  
2 while the -- there were certain statements that were  
3 initially not accepted into politics, but became  
4 popular, that allowed for a coalescence, a grouping of  
5 parties with disparate interests, into a unified whole  
6 that then could take power, and use an ideology that  
7 was readily recognizable to the German people.

8 MR. FOTHERGILL: And what, in your  
9 view, was the result of that?

10 DR. TSESIS: Well, as a result,  
11 Hitler was able to gain power, even though his  
12 anti-Semitic views were well known, and he -- and he  
13 was -- Jews were dehumanized essentially, and it made  
14 easier the persecution of Jews. It facilitated  
15 people's ability to view Jews as others in an -- in a  
16 dehumanizing way, essentially as vermin.

17 MR. FOTHERGILL: Is it your opinion  
18 that that was the sole cause of what happened to the  
19 Jews?

20 DR. TSESIS: No, I think that there  
21 were numerous phenomena. In fact, the fact that  
22 anti-Semitism, using the various statements such as,  
23 "the Jews are our misfortune" and "the Jews are  
24 usurious vermin", they were unable to, in fact, alter  
25 the course of politics until a charismatic leader was

1           able to come -- come, and was able to manipulate other  
2           elements that were happening in Germany, such as its  
3           economic situation and the Versailles Treaty, but it  
4           was able to manipulate anti-Semitism specifically, in  
5           order to guide the animosity of the German populace  
6           towards a particular group, and then carry out a  
7           program that was -- to Jews.

8                           MR. FOTHERGILL:   And are you able to  
9           express an opinion on what the outcome would have been,  
10          in the absence of the hate speech?

11                          DR. TESIS:   I think it would have  
12          been --

13                          MR. CHRISTIE:   Hold on.   I  
14          respectfully suggest that this goes beyond the realm of  
15          even history.  He's asked to tell us, what would have  
16          been the result if there had not been certain speech.  
17          I respectfully suggest that this is not a legitimate  
18          opinion, even of a historian, to speculate on what  
19          might have been, had something else not occurred.  That  
20          strikes me as --

21                          THE CHAIRPERSON:   That's what it  
22          sounds like to me, Mr. Fothergill.

23                          MR. FOTHERGILL:   That is exactly what  
24          it sounds like.  That is a reasonable hypothetical that  
25          I'm putting to an expert witness, and I'm asking to

1 bring his analytical skills -- to bear on the subject.

2 THE CHAIRPERSON: That's -- you know,  
3 the expertise that I've -- that I've allowed him to  
4 speak on came up in order to -- I was trying to shorten  
5 things up and -- in the context of our discussions, I  
6 did not understand that to include -- to include that  
7 kind of a hypothesis being put to the witness. My  
8 earlier findings were with regard to his ability to  
9 review what did occur in history, not to extrapolate  
10 what might have occurred. I -- I accept the objection  
11 of Mr. Christie.

12 MR. FOTHERGILL: Very well. Let's  
13 turn to the next example, if we could, Dr. Tsesis.  
14 This is the one of American slavery?

15 DR. TSESIS: Yes.

16 MR. FOTHERGILL: And again, can you  
17 comment on your methodology, if it's in any way  
18 different, and if there are any particular challenges  
19 that you encountered when researching this example?

20 DR. TSESIS: This, in fact, for me  
21 was easier to research because it allowed me to  
22 evaluate congressional -- debates and statements about  
23 blacks. There -- there were some limitations, because  
24 it's very difficult ultimately to determine what came  
25 first, race -- racism or slavery. In fact, the two

1           seem to go hand in hand.

2                           But just as in Germany, there could  
3 not have been any focus against a particular group  
4 unless there was hate speech, unless there was a  
5 development of stereotype. So too, in the United  
6 States, unless there was a focus, a particular hatred,  
7 and a dehumanization of a group of blacks, there could  
8 not -- there would not have been slavery that was  
9 almost exclusively far above 95 percent of blacks, but  
10 rather, there would have been a general overall  
11 slavery, in a way that would have been reassembling  
12 something like Rome or Greece.

13                           MR. FOTHERGILL: Do you make the  
14 claim that the hate speech caused slavery?

15                           DR. TESISIS: Not that hate speech  
16 caused slavery, but hate speech was a necessary element  
17 in -- in having slavery that was exclusive to blacks.

18                           MR. FOTHERGILL: Turning then to your  
19 third example of Indian removal. Once again, I would  
20 like you to comment on the methodology you used, and  
21 any particular challenges you encountered.

22                           DR. TESISIS: Well, I looked at very  
23 early relations between native Americans and -- and  
24 white settlers, to see if there had been any pattern of  
25 a particular stereotype that was developed about native



1 Americans. And then, to look at whether or not they  
2 had a role in any harmful -- in any harmful way.

3 And I found that Indians, by being  
4 characterized as savages who didn't own land, who had  
5 to become white, were -- were thought of as -- it was  
6 thought to be legitimate to dispossess them of land  
7 because they didn't own any land, which is a  
8 preposterous thing, because in reality, they did own  
9 land, they just had very different property rights.  
10 And so it legitimized what -- the targeting of Native  
11 Americans, even though there could have been other  
12 motives involved.

13 MR. FOTHERGILL: And your fourth  
14 example, Mauritanian slavery. You may need to give us  
15 a little more background on this one, because I think  
16 it's a less familiar example, if you wouldn't mind?

17 DR. TESIS: Well, slavery in  
18 Mauritania is ancient, and it goes back several  
19 centuries and -- and theoretically, not -- literally  
20 it's been abolished since about the 70's, but the  
21 reality is that --

22 MR. FOTHERGILL: Sorry to interrupt  
23 you. By that, you mean the 1970's?

24 DR. TESIS: 1970's, that's right.

25 MR. FOTHERGILL: Thank you.

1 DR. TSESIS: But the reality is that  
2 in fact, it's continued, and part of the reason, and a  
3 large chunk of the reason, is because the -- because of  
4 the stereotype of blacks, and the -- the equating of  
5 blacks with slaves, which makes it almost impossible  
6 for them to move up, on any sort of socio-economic  
7 ladder.

8 MR. FOTHERGILL: And again, to just  
9 assist the Tribunal, can you explain the techniques you  
10 use to arrive at that conclusion?

11 DR. TSESIS: Well, the -- this is  
12 really -- this was quite a different study. Because I  
13 interviewed a slave, a runaway -- a person who ran away  
14 from slavery. He was a person who testified at the  
15 United States senate. That's how I came to know him.  
16 The -- my first encounter with him was on -- we have a  
17 television show that shows congressional hearings,  
18 called C-Span. And so I contacted him, and then tried  
19 to gather as much of the material as I could, and he  
20 told me and Mauritanian slavery, and then I read about  
21 it. So this one was a unique situation,  
22 methodologically.

23 MR. FOTHERGILL: Your fifth subject  
24 comprises examples from contemporary U.S. society. And  
25 can you explain those, and once again, comment on the

1 methodology you use to reach the conclusions that you  
2 do?

3 DR. TESISIS: Well, these are  
4 situations where, for example, world church is -- I  
5 mention three cases here. The World Church of the  
6 Creator has its own website, which it uses to  
7 disseminate hate messages. It speaks about race war,  
8 it promulgates race war.

9 And Benjamin Smith was one of its  
10 disciples, who wound up killing -- injuring several  
11 Jews, killing an Asian, and killing the -- a black --  
12 it -- in -- around the City of Chicago. And I found  
13 that he had disseminated leaflets in Bloomington --  
14 Bloomington, Indiana, essentially saying what he was  
15 going to do several months before it would happen.  
16 U.S. law could not stop him, because it was not  
17 imminently harmful, and this person took matters --  
18 decided that he was going to act on his ideology.

19 The high school students also,  
20 Klebold -- in -- in sorry, in Columbine, Klebold and  
21 Harris, were students -- disgruntled students who also  
22 put out a video to depict what they were going to do.  
23 They were going to go and shoot up a high school. They  
24 had timed it to be -- to happen at a time that -- on  
25 the date of Adolf Hitler's -- either birth or death,

1 something related to Adolph Hitler. They in fact,  
2 missed the date, but that was their plan, and to  
3 celebrate that holiday in their mind, they went and  
4 shot up a high school, and -- and died in the process.

5 Timothy McVeigh clearly was  
6 influenced by William Pierce "Turner Diaries", which --  
7 which depicted the -- the bombing of a federal  
8 building, which he seems to have just played out. But  
9 these are all non-cyber law cases, but I think cyber  
10 law makes these -- the dissemination even easier.

11 MR. FOTHERGILL: Can you give us a  
12 bit of background on the "Turner Diaries"? Are you  
13 able to do that?

14 DR. TESISIS: The Turner -- well, the  
15 "Turner Diaries" is -- is a white supremacist book that  
16 is a novel. It's a fictional account of the bombing of  
17 a -- of a federal building that was very similar, and  
18 mimicked by Mr. McVeigh.

19 MR. FOTHERGILL: You also gave us the  
20 example of "The Murder of James Byrd Jr." by William  
21 King. Can you comment on that one as well? This is  
22 the last example under your heading 5.

23 DR. TESISIS: Yes. This is  
24 something -- this is an example that -- where there  
25 was -- the murderer was in a -- in jail and became

1           involved -- seemingly in jail with a white supremacist  
2           group. And then upon exiting, he then put those  
3           teachings into -- in action.

4                       MR. FOTHERGILL: And when we deal  
5           with these contemporary examples, can you tell us  
6           something about your sources and your methodology for  
7           arriving at the conclusions that you do?

8                       DR. TESIS: Well, there I use a lot  
9           of contemporary research, particularly the newspapers.  
10          It's almost exclusively newspapers. With the World  
11          Church of the Creator, I actually look at their  
12          website. And you know, it's research in the  
13          contemporary sources, rather than anything that's  
14          historical.

15                      MR. FOTHERGILL: If we turn the page,  
16          in the middle of the paragraph at the top, you talk  
17          about Hutus and Tutsis. Do you see that?

18                      DR. TESIS: Yes.

19                      MR. FOTHERGILL: Can you relate that  
20          example to the other examples that you provide?

21                      THE CHAIRPERSON: I just want to be  
22          sure I'm with you.

23                      MR. FOTHERGILL: This is on page 4 --

24                      THE CHAIRPERSON: Oh, okay. Top of  
25          page 4, okay.

1 MR. FOTHERGILL: Yes, that begins  
2 with the words "in another part of the world"?

3 DR. TSESIS: The Tutsis were depicted  
4 as being a Hamidic race, that's -- that is,  
5 H-A-M-I-D-I-C -- that they came from Ham and that they  
6 were in some way more related to the Caucasians than to  
7 Africans, and the Hutus were thought to be related to  
8 the -- to the Africans much more.

9 So that the -- the Tutsis were  
10 thought to be outsiders, in a similar way the Jews were  
11 thought to be outsiders, in -- in Germany. And there  
12 was a repetition over and over again, from the time of  
13 the social revolution in 1959, that the Tutsis were  
14 cockroaches.

15 And popular media, particularly  
16 the -- a gentleman by the name of Kongoru -- and  
17 radio -- a radio station used this propaganda about --  
18 about the Hutus being cockroaches, to say that they  
19 have to be exterminated.

20 So that there is a -- an ideology  
21 that had been developed, and then this ideology was  
22 then put into play by -- through dehumanizing -- for  
23 persecuting them.

24 MR. FOTHERGILL: Are you familiar  
25 with the decision of our Supreme Court of Canada in the

1 Mugesera case?

2 DR. TSESIS: I am.

3 MR. FOTHERGILL: Could I ask you to  
4 turn to tab 14 of the book that you have?

5 DR. TSESIS: Okay.

6 MR. FOTHERGILL: In fact, there's an  
7 excerpt from the decision. Mr. Chair, this is a piece  
8 of jurisprudence obviously, but perhaps just to  
9 complete the volume, we could produce this as well --

10 THE CHAIRPERSON: Yes, do.

11 MR. FOTHERGILL: -- tabs not  
12 identified.

13 THE CHAIRPERSON: Produced.

14 MR. FOTHERGILL: And could I ask you  
15 briefly to review paragraphs 11 through to 24 And  
16 obviously, not -- not reading each one but -- because I  
17 take it you've read this before?

18 DR. TSESIS: Yes, I have, yes.

19 MR. FOTHERGILL: But can you just  
20 cast your eyes over paragraphs 11 to 24?

21 DR. TSESIS: I can -- just a minute,  
22 yes.

23 MR. FOTHERGILL: Can you tell us  
24 whether that is a reasonable depiction of the  
25 phenomenon that you are referring to?

1 DR. TSESIS: It is. And I think  
2 it -- that the Supreme Court got it just right. And it  
3 found that if --

4 MR. FOTHERGILL: Actually, if I can  
5 stop you, it's really just for the factual decision,  
6 rather than your opinion on the --

7 DR. TSESIS: The -- the factual  
8 discussion? Okay.

9 MR. FOTHERGILL: All right, thank  
10 you. And could you just tell us something about your  
11 current research in that area?

12 DR. TSESIS: Well, I've been looking  
13 now to see to what extent the development of this  
14 stereotype, of the -- as being outsiders, and as being  
15 cockroaches was -- and in some way, having perverse  
16 views about Tutsi women, was in ways, similar to the  
17 way the Jews were depicted in Germany, and how the --  
18 how the genocide came about, and the role that  
19 stereotypes of Tutsis played in the genocide in Rwanda.  
20 And I've --

21 MR. FOTHERGILL: So have you reached  
22 any conclusions that you can share with us, based on  
23 your research so far?

24 DR. TSESIS: From what I can tell,  
25 everyone has reached the same conclusions. That the --



1           there was clearly a manipulation of a stereotype,  
2           without which the Tutsis would not have been the unique  
3           group that was harmed.  In other words, the target was  
4           of the Tutsis, because the Tutsis were thought of in a  
5           particular way.  So it -- it was a mischaracterization  
6           of them in the first instance, and that's why they were  
7           targeted.

8                           MR. FOTHERGILL:  Now you told us  
9           about the sources that you generally use when you  
10          conduct your analysis.  Do you, in any way, have  
11          recourse to psychological studies in your work?

12                          DR. TESISIS:  I do, yes.

13                          MR. FOTHERGILL:  And can you explain  
14          what use you make of those?

15                          DR. TESISIS:  Well, I was interested  
16          in my book to take a look at the -- why it is that  
17          people are drawn to hate movements, and that also --  
18          why it is that -- how it is that the victims experience  
19          hate speech.

20                          MR. FOTHERGILL:  And have you found  
21          that a useful line of inquiry?

22                          DR. TESISIS:  I have, yes.

23                          MR. FOTHERGILL:  Can you compare that  
24          technique to the other technique that you discussed  
25          with us?

1 DR. TSESIS: Well, I think they both  
2 are very useful. The -- the one -- obviously the  
3 psychology and social science gives you -- gives you an  
4 empirical set that you can -- you can look at and you  
5 can question, the -- numbers and see if there is  
6 something similar in the group.

7 The methodology that I use takes a  
8 look at the culture as a whole and happened on a  
9 grander scale which cannot be replicated in a  
10 controlled setting.

11 MR. FOTHERGILL: Now, you've noted in  
12 your publications that harmful social movements do not  
13 occur in a social vacuum. And I'm wondering if you  
14 could explain that idea to us a bit more?

15 DR. TSESIS: There has to be a  
16 build-up to the use -- to discrimination, genocide,  
17 physical hate crimes. It cannot happen without -- it  
18 cannot happen on a mass scale without some commonly  
19 shared beliefs about the other, about some dehumanized  
20 group, whether they are blacks, Jews, Tutsis, or native  
21 Americans, or what have you.

22 MR. FOTHERGILL: There's a line in  
23 your expert report which is quite striking, on page 4  
24 at the top, where you quote Gordon Allport, as  
25 follows: --

1 DR. TSESIS: Yes.

2 MR. FOTHERGILL:

3 "Although most barking and  
4 elocution does not lead to  
5 biting, yet there is never a  
6 bite without previous barking."

7 Can you explain that to us?

8 DR. TSESIS: Well, Allport, in this  
9 section and right in this page, page 57, is referring  
10 to the -- the point I made to counsel during  
11 qualification, that he is saying that the -- there was  
12 the point that I made about Hoess, that Hoess, the head  
13 of the Auschwitz, said that -- how much he was  
14 influenced by Nazi propaganda.

15 He is saying that while not all hate  
16 speech necessarily leads to physical harm, there is no  
17 physical harm that's against a group, an identifiable  
18 group, without there first being hate speech.

19 MR. FOTHERGILL: And based on your  
20 own analysis, do you agree with that?

21 DR. TSESIS: Absolutely. I think he  
22 had it precisely right.

23 MR. FOTHERGILL: I'm going to move  
24 then to a different subject, which is the comparative  
25 law perspective that -- that I've asked you to bring to

1 the Tribunal, which is dealt with at pages -- it begins  
2 at page 4 your report, and continues actually for a  
3 number of pages, probably through till 8.

4 And partly in the interests of moving  
5 through this material efficiently, I'm just going to  
6 recite to you the countries that I saw identified in  
7 your report, and then perhaps you can tell us whether  
8 this -- this list is correct, and whether there is  
9 anything you wish to add to it. I noted France,  
10 Germany, Great Britain, Denmark, Finland, Sweden,  
11 Norway, Switzerland and Hungary. To your knowledge,  
12 are there any other countries that have enacted  
13 legislation to deal with hate messages, as such?

14 DR. TSESIS: Well, I know Belgium and  
15 Brazil and -- I think you did you did not mention  
16 those, Belgium and Brazil.

17 MR. FOTHERGILL: I think you're  
18 right.

19 DR. TSESIS: Yes. And India as well,  
20 and Hungary.

21 MR. FOTHERGILL: Hungary I did  
22 mention.

23 DR. TSESIS: You did mention?  
24 Those -- there are more, but those are the ones that  
25 come to mind.

1 THE CHAIRPERSON: Those are the ones  
2 that?

3 DR. TSESIS: Those are the ones that  
4 come to my mind right now. There are -- there are  
5 others.

6 MR. FOTHERGILL: To your knowledge,  
7 do any of these countries distinguish, in the  
8 application of their laws, between messages that are  
9 communicated via the Internet or through other means?

10 DR. TSESIS: No. I -- I'm aware of  
11 at least three countries -- actually, there are many  
12 more -- who have made the dissemination of hatred and  
13 supremacist views illegal on the Internet. And all of  
14 them are really applying what are already their  
15 domestic laws against hate speech, and simply giving  
16 courts the jurisdiction to adjudicate hate speech on  
17 the Internet.

18 MR. FOTHERGILL: You mention in your  
19 report some international conventions?

20 DR. TSESIS: Yes.

21 MR. FOTHERGILL: And I wonder if you  
22 could tell us a little bit about those?

23 DR. TSESIS: There are several  
24 conventions that require signatory states to create  
25 domestic laws against hate speech. The first of these,

1           which came out of the Holocaust, was the International  
2           Treaty For the Elimination of Genocide that required  
3           states to have laws that prohibited the -- the advocacy  
4           of genocide.

5                               Following that, there was the U.N.  
6           Convention on the Elimination of All Forms of Racial  
7           Discrimination. But they -- so both the first, the  
8           genocide convention and the racial -- elimination of  
9           racism convention, Canada is a signatory state to both  
10          of those.

11                              That too, requires signatories,  
12          including Canada, to have laws against the  
13          dissemination of hate speech, and that create empathy  
14          for a particular group. And then the -- there's  
15          also -- Canada's also a signatory to a new convention,  
16          additional protocols on the -- on crimes -- on cyber  
17          law -- additional -- if I can -- on the convention on  
18          cyber law -- additions to the conventions on cyber law.

19                              MR. FOTHERGILL: I might be able to  
20          assist you with the title in a moment. Could I ask you  
21          to turn to tab 13 of your materials?

22                              DR. TESISIS: Yes.

23                              MR. FOTHERGILL: And you should see  
24          an article by Jane Bailey that was published in the  
25          McGill Law Journal.

1 DR. TSESIS: I see it.

2 MR. FOTHERGILL: And have you seen  
3 that before?

4 DR. TSESIS: I've read it, yes.

5 MR. FOTHERGILL: And I wonder if we  
6 could go to page 78.

7 DR. TSESIS: Okay.

8 MR. FOTHERGILL: And you'll see a  
9 heading, "International Agreement Harmonizing  
10 Substantive Law"?

11 DR. TSESIS: I see it.

12 MR. FOTHERGILL: And there's a  
13 reference to something called the Cybercrime  
14 Convention?

15 DR. TSESIS: That's right.

16 THE CHAIRPERSON: What tab is that,  
17 please?

18 MR. FOTHERGILL: This is tab 13 of  
19 Dr. Thesis's book. I'm particularly interested in the  
20 observation made by Jane Bailey that 33 nations,  
21 including Canada and the U.S., have signed this  
22 Cybercrime convention. Can you compare the Canadian  
23 position, in relation to these international  
24 conventions, with the United States' position?

25 DR. TSESIS: Well, you see, the

1 Cybercrime Convention did not have hate speech in it.  
2 The Cybercrime Convention deals with such things as  
3 child pornography, copyright infringement, and  
4 trademark infringement. Then there was -- an addition,  
5 a later addition, to the cyber -- Cybercrime  
6 Convention.

7 And at that point, the dissemination  
8 of, as they say, incitement to hatred, and -- based on  
9 race, colour, gender, national origin and religion,  
10 were to be made law -- were to be prohibited on the  
11 Internet by all states that were signatories.

12 MR. FOTHERGILL: All right. Before  
13 you exhaust your memory, would you like to look at page  
14 79?

15 DR. TSESIS: Yes.

16 MR. FOTHERGILL: And you'll -- you'll  
17 see something referred to as the COE, and I must  
18 confess, I'm not sure what that is:

19 "The COE approved the additional  
20 protocol in January, 2003."

21 Is that what you are referring to.

22 DR. TSESIS: Yes, that's the  
23 additional protocol. That's right.

24 MR. FOTHERGILL: Could you just take  
25 a look at the quotation there, and tell us if that is



1 what you were referring to just a moment ago?

2 DR. TSEISIS: Yes, I -- yes, that's  
3 right.

4 MR. FOTHERGILL: And can you tell us  
5 whether Canada has signed on to this additional  
6 protocol?

7 DR. TSEISIS: Canada has signed on to  
8 it, yes.

9 MR. FOTHERGILL: And has the United  
10 States?

11 DR. TSEISIS: I'm unaware of the  
12 United States signing on to this.

13 MR. FOTHERGILL: More generally,  
14 where would you situate Canada in -- in terms of its  
15 participation in these international conventions that  
16 you've referred to, specifically in contrast to the  
17 United States?

18 DR. TSEISIS: Well, I would say that  
19 Canada is in the mainstream. Canada is -- Canada's  
20 laws are very much in accord with other democracies,  
21 and the United States is out of step. It's -- it has  
22 maintained an antiquated notion of free speech, when it  
23 comes to hate speech.

24 MR. FOTHERGILL: Before we leave that  
25 article, perhaps we could produce that as well. And

1           then I think the -- all that tabs in the binder will  
2           have been produced --

3                         THE CHAIRPERSON:   Okay.

4                         MR. FOTHERGILL:   -- or in the book, I  
5           should say.

6                         All right, Dr. Tsesis, I would like  
7           to move to another subject, and this is found,  
8           beginning at page 8 of your report.  Are there features  
9           of the Internet that, in your view, make it significant  
10          in the discussion about the dissemination of hate  
11          messages?

12                        DR. TSESIS:   Yes, the -- the Internet  
13          makes it much easier to disseminate speech on a wider  
14          scale.  It allows for very cheap publication, something  
15          that would have been impossible prior to the Internet,  
16          for people simply publishing print media.  And it -- it  
17          allows for groups who are very far off, to share ideas  
18          and -- and coalesce.

19                        MR. FOTHERGILL:  Have you done any  
20          independent research into the phenomenon of hate on the  
21          Internet?

22                        DR. TSESIS:   Yes, I've looked at  
23          numerous hate sites.

24                        MR. FOTHERGILL:  Can you elaborate on  
25          that, and tell us your conclusions?

1 DR. TSESIS: My conclusion is that  
2 they really are trying to get a community of peoples  
3 who are like-minded, who -- not only do they -- do they  
4 want people to hate, they want people to act violently  
5 against individuals so --

6 MR. FOTHERGILL: Let me stop you  
7 there. What, precisely, do you base that conclusion  
8 on?

9 DR. TSESIS: Well, for example,  
10 National Observer, on it's website calls for biological  
11 terrorism. The National Socialist Party says -- has a  
12 magazine on its website that says, "Total War is the  
13 Shortest War", that -- the Nazi party. The World  
14 Church of the Creator, whose leader is now in a federal  
15 penitentiary for threatening a judge, Matthew Hale,  
16 says -- their battle cry on their website is -- is  
17 "race war."

18 MR. FOTHERGILL: All right. In your  
19 discussion in the report, you then talk about  
20 commercial filtering devices. And can you give us some  
21 idea of what sort of work or research you've done into  
22 commercial filtering devices, and what conclusions  
23 you've reached?

24 DR. TSESIS: Well, I've -- I've  
25 researched the forms of filtering devices, how they are

1 used, and also what's happened when they've been run.  
2 And I've looked at it, both from the private side, that  
3 is, is users -- individual users, and libraries.

4 And what I found is that they are  
5 very good beginnings, they're very nice starts, but  
6 they are inadequate because they always tend to have  
7 some agenda, which is often very good, but much more  
8 limited than what a public entity government, for  
9 example, can do.

10 And also, they don't have the same  
11 communicative effect as a law does. They -- the allow  
12 individuals who want them, to use them.

13 The problem is, that if someone wants  
14 to participate in a hate group, that person isn't going  
15 to buy a filter. That person is going to simply use  
16 their machines to go there. Now if there was a law,  
17 that -- things would be different.

18 MR. FOTHERGILL: And another idea  
19 that you've given some consideration to, is something  
20 called the "marketplace of ideas"?

21 DR. TESISIS: Yes.

22 MR. FOTHERGILL: And can you  
23 elaborate on that a little bit, and tell us whether you  
24 think that that is an effective way of responding to  
25 hate messages on the Internet?

1 DR. TSESIS: I don't think that's an  
2 effective way of responding to messages on the  
3 Internet. On the one hand, it's a -- it's a wonderful  
4 model. When it -- when it comes to democratic speech,  
5 and speech that isn't intended to stifle the opinions  
6 of others.

7 That -- when the marketplace of ideas  
8 is abused for the purpose of undermining free speech,  
9 and tries to exploit the notion of -- of debate, in  
10 order to stop debate, that is to say, to stop debate  
11 for arbitrary purposes such as race, colour, religion  
12 and national origin, then it's inaccurate to say that  
13 truth always wins out in that market.

14 It did not win out in Germany, it did  
15 not win out in the United States, because in both  
16 places, there were plenty of people who spoke out  
17 against anti-Semitism and racism, but they simply did  
18 not win out the marketplace of ideas.

19 MR. FOTHERGILL: Based on the  
20 research that you've done into international regulation  
21 of the Internet, do you think that regulation of the  
22 Internet is a practical goal?

23 DR. TSESIS: I do.

24 MR. FOTHERGILL: Can you explain why  
25 you believe that?

1 DR. TSESIS: Well --

2 MS KULASZKA: Excuse me, but I  
3 don't -- was he qualified as an expert in international  
4 control?

5 THE CHAIRPERSON: Of the Internet?

6 MS KULASZKA: Yeah.

7 MR. FOTHERGILL: Well, he's offered  
8 us comparative perspectives on how numerous countries  
9 seek to regulate messages, and I'm asking him, on a  
10 practical level, is it his view that this kind of  
11 regulation is even possible.

12 MS KULASZKA: Well, comparative law  
13 of different countries is one thing, but isn't this  
14 something different, international control?

15 MR. FOTHERGILL: I don't think I said  
16 international control. I said, is it a realistic goal  
17 or practical goal.

18 MR. CHRISTIE: Well, this requires  
19 some knowledge of the capacity to eliminate messages  
20 from the Internet as a whole, throughout the world,  
21 which is a technical question. I'm not sure that he  
22 was qualified in that area.

23 MR. FOTHERGILL: I disagree that it's  
24 a technical questions. I think it's a -- it's a  
25 question of regulation and enforcement, which is

1 something that Dr. Tsesis has been examining.

2 THE CHAIRPERSON: So you are asking,  
3 based on his historical analysis of things like slavery  
4 in itself --

5 MR. FOTHERGILL: No, no, it's --  
6 based on his understanding of regulatory initiatives in  
7 various countries --

8 THE CHAIRPERSON: Yes?

9 MR. FOTHERGILL: -- does he believe  
10 that regulation of the Internet -- and I want him to  
11 specifically consider the anomaly of the United States,  
12 which he's referred to -- does he believe that this is  
13 a realistic goal, particularly given First Amendment  
14 protection of --

15 THE CHAIRPERSON: I haven't qualified  
16 him as an expert to give me that opinion. The  
17 context -- let's look at the record, the transcript.  
18 Well, we won't do it now --

19 MR. FOTHERGILL: No.

20 THE CHAIRPERSON: -- but in the  
21 context of our discussion earlier, the method by which  
22 I authorized this expertise was more to -- to inform  
23 the Tribunal, through his studies, of the comparative  
24 law context. It wasn't to go further than that. I'm  
25 sorry. I disagree. Okay.

1 MR. FOTHERGILL: All right. That's  
2 fine. I wonder if I might just have a moment to confer  
3 with my colleagues?

4 THE CHAIRPERSON: Sure.

5 MR. FOTHERGILL: I think, in the  
6 interest of time, I'll conclude the  
7 examination-in-chief at that point.

8 THE CHAIRPERSON: Okay. And given  
9 there had been a couple of minor rulings that I've just  
10 made, just -- further to objections, if counsel -- I  
11 guess particularly counsel for the respondent or the  
12 other intervening parties, feel there are excerpts in  
13 this text that fall into that area where I've said I  
14 don't think it -- it falls under his qualifications,  
15 they should bring that to my attention. At least, if  
16 we're not -- not necessarily to delete it, but least  
17 bring it to my attention, in the course of your  
18 questions.

19 MR. FOTHERGILL: Rather as we did  
20 with Dr. Persinger, that's --

21 THE CHAIRPERSON: I'm sorry.

22 MR. FOTHERGILL: Rather as we did  
23 with Dr. Persinger, that's --

24 THE CHAIRPERSON: As you did with Dr.  
25 Persinger. That's right.



1 MR. FOTHERGILL: Yes.

2 CROSS-EXAMINATION BY MR. CHRISTIE

3 MR. CHRISTIE: You said "there's  
4 never a bite without a bark". Is that correct, sir?

5 DR. TSESIS: I -- Gordon Allport said  
6 it. I -- agreed with him, yes.

7 MR. CHRISTIE: What I'm concerned  
8 about is the fact that the bite doesn't cause -- or the  
9 bark doesn't cause the bite. It might warn of its  
10 coming, but it doesn't cause it, right?

11 DR. TSESIS: It does -- definitely  
12 does not always cause it.

13 MR. CHRISTIE: No. And of course,  
14 it's also true that examples you've given, one of which  
15 was Burundi, among others, perhaps. But the Tutsi-Hutu  
16 conflict, which in most people's minds, was a massacre  
17 recently anyway. Taken apart and separate from the  
18 history of that conflict, can you give any assurance  
19 that the recent events would have happened?

20 THE CHAIRPERSON: The recent --

21 MR. CHRISTIE: It's okay. I should  
22 be more concise. The --

23 THE CHAIRPERSON: Well, I -- I missed  
24 the earlier portion of the question.

25 MR. CHRISTIE: I'm sorry. Perhaps to

1 be more pointed and get to the point. There was a huge  
2 history of repression of the Hutu by the Tutsis in the  
3 19th century, wasn't there?

4 DR. TSESIS: Not -- in the -- in the  
5 early 20th century.

6 MR. CHRISTIE: Yes, but even earlier.  
7 The Hutu were slaves of the Tutsis, who were much  
8 bigger and stronger and more war-like than the Hutu?

9 DR. TSESIS: That -- that's  
10 inaccurate. That's part of the stereotype that they  
11 were bigger. That -- that -- that is analogous to the  
12 sort of stereotype that Jews have bigger noses. The  
13 Tutsis were -- there were reports the Tutsis were  
14 taller than Hutus, that they were somewhat bigger and  
15 taller. There was -- wasn't slavery, it was forced  
16 labour, but they were oppressed, undoubtedly. The  
17 difference was --

18 MR. CHRISTIE: What's the difference  
19 between -- in a primitive society, what's the  
20 difference between forced labour and slavery?

21 DR. TSESIS: The -- there's a large  
22 difference between peonage and slavery because slavery  
23 is a permanent condition, and peonage is a temporary  
24 condition.

25 MR. FOTHERGILL: Okay, I'll leave it

1           there.  You've made whatever the distinction is.

2                           I put it to you that there was a  
3           history of intense violent conflict between Tutsis and  
4           Hutu that goes back well into the 19th century.  Do  
5           you agree?

6                           DR. TSESIS:  I would put it the early  
7           20th century.  But your point is correct, that there  
8           clearly was a violent -- there was violent conflict  
9           between the two groups.

10                          MR. CHRISTIE:  And it wasn't always  
11           the case that Hutus thought of the Tutsis.  There were  
12           times when the other unfortunate situation occurred,  
13           right?

14                          DR. TSESIS:  There was one huge  
15           massacre in Burundi, which you mentioned.

16                          MR. CHRISTIE:  Of who by who?

17                          DR. TSESIS:  In Burundi, it was in  
18           fact, the Tutsis slaughtered Hutu, and it wasn't really  
19           quite that, it was even perhaps worse, because it was  
20           Hutu intellectuals and spiritual leaders who were  
21           slaughtered by the Tutsis and --

22                          MR. CHRISTIE:  Okay.

23                          DR. TSESIS:  Go ahead, I'm sorry.

24                          MR. CHRISTIE:  So would whatever may  
25           have been the speech of Hutus regarding Tutsis, calling

1           them cockroaches, I put it to you there is no evidence  
2           that the violent reaction that did happen, would have  
3           happened, without the previous violent history between  
4           the parties?

5                           DR. TSEISIS: I think they were  
6           entirely interlinked, but without the -- without the  
7           stereotype of the Tutsis, it would -- could have not --  
8           the genocide could not have come about in Rwanda in  
9           1994.

10                          MR. CHRISTIE: Well, the -- the  
11           stereotype of the Tutsis, which you say was expressed  
12           by certain Hutus, was in response to an earlier  
13           stereotype of the Hutus by Tutsis, which had resulted  
14           in violence to the Hutus, isn't that true?

15                          DR. TSEISIS: They were very -- they  
16           were really very different stereotypes. The -- the  
17           Hutu was stereotyped as being someone who's -- was a  
18           more menial labourer.

19                          Now, obviously, that -- that's a put  
20           down. And certainly, there was -- there were  
21           statements on both ends. But ultimately, what the --  
22           there was a really big break. What happened in 1957  
23           is -- is that Kayibanda, President Gregory Kayibanda,  
24           who becomes president of Rwanda after independence,  
25           writes a manifesto of the Bahutu -- in which he speaks

1 about how the Hutu needs to throw off their oppression,  
2 and that -- there is a form of advocacy in -- that  
3 comes about exterminating the Tutsi.

4 MR. CHRISTIE: Were they oppressed?

5 DR. TSEISIS: Were the Hutu oppressed?

6 MR. CHRISTIE: Yeah.

7 DR. TSEISIS: They were definitely  
8 oppressed, yeah.

9 MR. CHRISTIE: Okay, that's -- that's  
10 all I need to know. So what I'm going to put to you is  
11 the -- the treatment of Hutus by Tutsis is a historical  
12 context far more significant than any communication  
13 which would have -- than any communication without a  
14 historical context?

15 DR. TSEISIS: It -- there has to be a  
16 historical context in which the hate speech can be used  
17 for the purpose of discrimination, in hate crimes or  
18 genocide.

19 MR. CHRISTIE: The more likely cause  
20 of any hate crimes or genocide is the experiential and  
21 historical context that precedes it. Because, I  
22 suggest to you that even hate speech, without a  
23 historical context, has no persuasive ability.

24 DR. TSEISIS: Well, hate speech don't  
25 exist in a vacuum, but hate speech is a stereotype

1           that's based on fallacy. So history is real and -- for  
2           example, the oppressions you spoke about, by the -- by  
3           Tutsis against the Hutu was real, it was factual, it  
4           was historical. But the stereotype that was created  
5           was unreal, and the stereotype is essential for  
6           targeting a particular group. Otherwise, the target  
7           would not have been the Tutsis, but the target would  
8           have been somewhat more dissipated, and not specific to  
9           an insular group of immutable characteristics.

10                       MR. CHRISTIE: Well, let's be honest.  
11           The historical context reinforced and created these  
12           tribal stereotypes.

13                       DR. TESISIS: No, the -- the  
14           historical context of what the Tutsis did to the Hutus,  
15           there -- they could not have possibly justified  
16           statements about exterminating Tutsis as if they were  
17           cockroaches.

18                       MR. CHRISTIE: Well, I didn't ask you  
19           whether the statements were justified. What I asked  
20           you what was, whether these two groups thought of each  
21           other, and fought each other along tribal lines, in the  
22           past?

23                       DR. TESISIS: They were not tribes.  
24           That's a mischaracterization.

25                       MR. CHRISTIE: Well, did they

1 consider themselves tribes?

2 DR. TSEISIS: No.

3 MR. CHRISTIE: Oh.

4 DR. TSEISIS: They were social groups.

5 In fact, part of the stereotype that you spoke about --  
6 in fact, the Tutsis were separated from the Hutu simply  
7 because the Belgians determined that everybody who had  
8 ten cows was going to be a Tutsi.

9 MR. CHRISTIE: Well, is that right?

10 And you are telling us that as a matter of fact?

11 DR. TSEISIS: Ten cows, that was it.

12 MR. CHRISTIE: Is that right?

13 DR. TSEISIS: Then you were Tutsi.

14 MR. CHRISTIE: Where did you get that  
15 information?

16 DR. TSEISIS: Numerous books.

17 MR. CHRISTIE: Numerous books?

18 DR. TSEISIS: That's right, yes.

19 MR. CHRISTIE: And before that  
20 determination was made on the basis of ten cows, there  
21 was no such thing as a Tutsi?

22 DR. TSEISIS: There was a thought that  
23 there was -- there was -- nobody really new. The  
24 thought is -- there is a theory that is disputed in the  
25 literature, that says that the Tutsis came from

1 Ethiopia. But ultimately, there was no proof of  
2 that --

3 MR. CHRISTIE: Did they have --

4 DR. TSESIS: -- but there was always  
5 thought that they were separate groups, and they may --  
6 may have been. But what wound up happening is that  
7 from the time of the colonial period with Germany, the  
8 Hutus and the Tutsis began to intermarry, and it became  
9 unclear --

10 MR. CHRISTIE: I thought it was  
11 Belgium that --

12 DR. TSESIS: Belgium was the second  
13 colonial power. First there was Germany.

14 MR. CHRISTIE: Well, that's fine.  
15 Did they have different languages?

16 DR. TSESIS: No, they had one.

17 MR. CHRISTIE: The had one language?

18 DR. TSESIS: One language, yes. One  
19 language, one God.

20 THE CHAIRPERSON: One language, one  
21 dialect, you said?

22 DR. TSESIS: One language, one God.  
23 A God.

24 THE CHAIRPERSON: Oh, one God.

25 DR. TSESIS: Yes.



1 MR. CHRISTIE: Uh-huh.

2 DR. TSEISIS: And then Catholicism  
3 after that.

4 MR. CHRISTIE: So they were all  
5 Muslim then, or were they Christian?

6 DR. TSEISIS: They -- they became --  
7 the Catholic church was the dominant religion. They  
8 were all Catholic.

9 MR. CHRISTIE: Uh-huh. So they had  
10 no different tribal or ethnic customs, and no apparent  
11 disparities in colour or distinguishing features?

12 DR. TSEISIS: Well, there was a claim  
13 that -- there was a claim that Tutsis noses looked  
14 different, so during the rapes that happened during the  
15 genocide of Rwandan -- against Tutsi women, often they  
16 were raped and their noses were cut off.

17 So there were some claims about  
18 their -- their physical features, that wound up leading  
19 to certain stereotypes that lead to violence. But the  
20 only difference was really socially, what -- what they  
21 were doing. There was a thought that they were  
22 physically different, but ultimately, there was --  
23 again, based on a stereotype. There was a difference  
24 between the Twas, who was a third -- who were a  
25 third --

1 MR. CHRISTIE: Excuse me, I didn't  
2 ask you about that, so let's not go too far. Because I  
3 don't have much time. Let's just deal with what I ask  
4 you, rather than speaking about other things.

5 So then how would a Hutu know who was  
6 a Tutsi, who was --

7 DR. TSESIS: They were identified --

8 MR. CHRISTIE: -- and let me finish  
9 the question -- if they didn't count the number of  
10 cows?

11 DR. TSESIS: No, the -- the cow  
12 situation didn't -- didn't apply after the Belgians  
13 determined what -- what was there --

14 MR. FOTHERGILL: Okay, so then how  
15 would they know who was a Tutsi and who was a Hutu?

16 DR. TSESIS: Based on their identity  
17 cards. And what the -- the genocide devolved was --  
18 neighbors killing neighbours, relatives killing  
19 relatives. They simply knew who was a Tutsi.

20 MR. CHRISTIE: Uh-huh.

21 DR. TSESIS: And so the identity  
22 cards themselves -- they set up roadblocks, and as  
23 people tried to leave roads, they checked their  
24 identity card, and if they were Tutsi, they slaughtered  
25 them.

1 MR. CHRISTIE: I see. So there's  
2 absolutely no distinctions of race or even religion,  
3 but some nebulous concept that had no reference to  
4 anything empirically verifiable, except an identity  
5 card?

6 DR. TSESIS: That's a great question.  
7 The -- you know, there is some dispute as to whether or  
8 not there was an ethnic difference. There is no clear  
9 record of it. We didn't know very much about the --  
10 the country of Rwanda, before the 19th century at all.

11 MR. CHRISTIE: Uh-huh.

12 DR. TSESIS: So we're unsure. It may  
13 be that ethnically, in fact, in their origin, they were  
14 distinct people. But ultimately, their religion is the  
15 same, their language is -- was the same. The -- the  
16 only difference was that the Tutsis were cow herders,  
17 the Hutu were agronomists, and the Twas were hunters.

18 MR. CHRISTIE: Okay, so according to  
19 you, there was nothing distinguishing in them, on the  
20 basis of race, religion, ethnic origin, sex, sexual  
21 orientation or any of those categories?

22 DR. TSESIS: No, in fact, they --  
23 they intermarried, that they --

24 MR. CHRISTIE: Well, do you want to  
25 answer my question or -- I didn't ask you about

1 marriage. Please.

2 DR. TSESIS: Well, sex. You asked me  
3 about sex --

4 MR. CHRISTIE: Okay, well, I can  
5 imagine there were men and women.

6 DR. TSESIS: Oh, gender? You mean  
7 gender?

8 THE CHAIRPERSON: One at a time, one  
9 at a time.

10 DR. TSESIS: Yes, they --

11 THE CHAIRPERSON: Let me hear a  
12 question here.

13 MR. CHRISTIE: Well, apparently  
14 according to you, there was nothing to distinguish them  
15 on the basis of race, religion, ethnic origin, sex,  
16 sexual orientation, mental or physical disability, and  
17 marital status, right?

18 DR. TSESIS: That's right.

19 MR. CHRISTIE: The only thing was an  
20 identity card, which had no empirical reference, except  
21 a title, Tutsi or Hutu?

22 DR. TSESIS: That's correct.

23 MR. CHRISTIE: Thank you. Klebold  
24 and Harris, you claim to have knowledge of their case,  
25 and referred to it in your evidence. Were they exposed

1 to hate speech?

2 DR. TSESIS: Yes.

3 MR. CHRISTIE: Where?

4 DR. TSESIS: On the Internet.

5 MR. CHRISTIE: When?

6 DR. TSESIS: Well, at least  
7 nine months prior to the -- the assault on the high  
8 school.

9 MR. CHRISTIE: How do you know this?

10 DR. TSESIS: Research.

11 MR. CHRISTIE: What hate speech?

12 DR. TSESIS: They were -- they were  
13 involved in supremacist -- in some sort of supremacist  
14 sites, and I'm not sure what -- what the title of those  
15 sites was.

16 MR. CHRISTIE: Oh? Well, where did  
17 you get this information?

18 DR. TSESIS: News reports.

19 MR. CHRISTIE: News reports? What  
20 news reports?

21 DR. TSESIS: I --

22 MR. CHRISTIE: CNN? ABC?

23 DR. TSESIS: I don't remember the  
24 source but it's --

25 MR. CHRISTIE: New York Times? You

1 don't remember the source, right?

2 DR. TSESIS: I don't remember the  
3 source, but I think it's cited in my book.

4 MR. CHRISTIE: Where's your book?

5 DR. TSESIS: In fact, I'm certain  
6 it's cited in my book.

7 MR. CHRISTIE: Where's your book?  
8 Look it up.

9 DR. TSESIS: Sure. You know, it  
10 looks like I did not cite it here, but I can get you  
11 the citation if you need it.

12 MR. CHRISTIE: Yes. Timothy McVeigh.  
13 There's no evidence that he ever read anything on the  
14 Internet, is there?

15 DR. TSESIS: Not that I'm aware of,  
16 but the speech that comes on the Internet is like  
17 speech -- any other place.

18 MR. CHRISTIE: Your evidence was that  
19 you say he read the "Turner Diaries"?

20 DR. TSESIS: That's right.

21 MR. CHRISTIE: And did he tell you  
22 that?

23 DR. TSESIS: Again, this is widely  
24 reported. There's never been any dispute about this.

25 MR. CHRISTIE: Well, I don't suppose

1 anybody asked Mr. McVeigh, did they?

2 DR. TSESIS: I don't know that -- the  
3 answer to that question.

4 MR. CHRISTIE: This William King  
5 example involved -- involving James Byrd Jr. What do  
6 you know about that? Did you read the transcripts?

7 DR. TSESIS: Texas case. There was  
8 no hate crime statute there. The man -- the man was  
9 involved in a hate group, came out of jail, caught a  
10 black man, tied him up to the back of his truck,  
11 dragged him around until he was dead.

12 MR. CHRISTIE: What hate group are  
13 you talking about?

14 DR. TSESIS: White supremacist group.  
15 I don't remember the specific one.

16 MR. CHRISTIE: How do you know it  
17 wasn't just a hate group that hated everybody?

18 DR. TSESIS: Well, it was a white  
19 supremacist group. I don't know who they hated.

20 MR. CHRISTIE: Well, how do you know  
21 it was a white supremacist group in jail?

22 DR. TSESIS: Again, the -- that --  
23 that's -- the universal report of that crime in -- it  
24 was something that was -- that -- the normal report on  
25 that.

1 MR. CHRISTIE: What? Didn't hear  
2 you.

3 DR. TSESIS: That was the normal  
4 report in the media.

5 MR. CHRISTIE: Can you give me a  
6 single reference of -- either in your book or anywhere  
7 else?

8 DR. TSESIS: Again, I -- if I had  
9 known that there -- there was need of a footnote, I  
10 would have been glad to do it and --

11 MR. CHRISTIE: Well, was there a  
12 footnote in the book?

13 DR. TSESIS: Pardon me?

14 MR. CHRISTIE: Is there a footnote in  
15 your book?

16 DR. TSESIS: I'm not sure. No, I  
17 don't specifically cite -- a location --

18 MR. CHRISTIE: Okay, that's fine.

19 DR. TSESIS: -- but this is something  
20 that I found through news sources.

21 MR. CHRISTIE: You referred to  
22 American slavery as an example of the importance of  
23 hate speech laws. Is it your argument that American  
24 slavery would have been prevented if there were hate  
25 speech laws?



1 DR. TSESIS: It's my argument that  
2 without hate speech, there would have been no -- no  
3 exclusive slavery of blacks. Slavery would not have  
4 been confined to blacks.

5 MR. CHRISTIE: Well, it's my  
6 understanding that -- historically, that blacks weren't  
7 the only slaves in America?

8 DR. TSESIS: Up until the -- the late  
9 18th century, there were native American slaves and  
10 the -- as well as blacks but it --

11 MR. CHRISTIE: And Irish slaves?

12 DR. TSESIS: No.

13 MR. CHRISTIE: Never, eh?

14 DR. TSESIS: There were indentured  
15 servants who were Irish.

16 MR. FOTHERGILL: Oh, indentured  
17 servants? Yes, right. Well --

18 DR. TSESIS: Yes. In that case, for  
19 years, terms of years.

20 MR. CHRISTIE: That's right. To pay  
21 back their passage?

22 DR. TSESIS: That's right, yes.

23 MR. CHRISTIE: Different contract?  
24 Slavery was --

25 DR. TSESIS: No, no different

1 contract. It's a mischaracterization. Blacks were not  
2 brought over on contract. There were some extremely  
3 early cases in the early part of the -- blacks were  
4 forced here.

5 MR. CHRISTIE: Yes, okay, well I  
6 accept your -- your historical knowledge on that.  
7 Slavery is an ancient practice that precedes America,  
8 doesn't it?

9 DR. TESIS: Yes.

10 MR. CHRISTIE: And slavery of blacks  
11 was quite common in Rome?

12 DR. TESIS: Slavery of all men of  
13 races was common in Rome, as -- you know, to be honest  
14 with you, I don't have expert -- I know about that, but  
15 I don't really have an expertise about it.

16 MR. CHRISTIE: All right. Now, so is  
17 it your view that slavery in the United States, of  
18 blacks, was caused by some racist speech that preceded  
19 it, or was it caused by the -- was it merely a product  
20 of the existing slave trade?

21 DR. TESIS: It was a product of the  
22 existing slave trade, but it was absolutely essential  
23 to making blacks, exclusively, slaves.

24 MR. CHRISTIE: Well, blacks were  
25 exclusively slaves before the language conceived of

1           that idea, weren't they?

2                         DR. TSESIS:  They were -- there was  
3           already dehumanizing discourse about blacks in the 16th  
4           century.

5                         MR. CHRISTIE:  Neamonadies speaks in  
6           derogatory terms about blacks, doesn't he?

7                         DR. TSESIS:  I'm unaware of that.

8                         MR. CHRISTIE:  You are, eh?  Now,  
9           Indian removal.  Are you aware of any of the culture of  
10          Canada regarding treatment of Indians?

11                        DR. TSESIS:  Very -- little.

12                        MR. CHRISTIE:  Are you aware of the  
13          massacre of the Little Big Horn, where the Sioux were  
14          driven off their treaty-granted lands by General Terry  
15          and others because they wanted the land for the gold,  
16          the Black Hills?  That's American history, isn't it?

17                        DR. TSESIS:  Of course, yeah.

18                        MR. FOTHERGILL:  Were you aware that  
19          Sitting Bull was a respected and welcomed refugee in  
20          Canada?

21                        DR. TSESIS:  I don't know, but I'm --  
22          I'm glad to have learned that.

23                        MR. CHRISTIE:  Are you?  Well, maybe  
24          you can include it on a future discourse.  But I put it  
25          to you that historically, if you learn anything about

1 Canada, you wouldn't disagree with that? He lived in  
2 Canada for many years.

3 DR. TSEISIS: If that's accurate. As  
4 I say, I don't have any knowledge of --

5 MR. CHRISTIE: Would it -- would it  
6 not indicate a different attitude towards Sitting Bull  
7 and the Sioux, and other Indians?

8 DR. TSEISIS: In Canada?

9 MR. CHRISTIE: Yes.

10 DR. TSEISIS: Well, if what you are  
11 saying is --

12 MR. CHRISTIE: If what I say is true?

13 DR. TSEISIS: Yes, yes.

14 MR. CHRISTIE: Okay. What about the  
15 Royal Proclamation of 1763? Do you know anything about  
16 that?

17 DR. TSEISIS: I do not know what you  
18 are referring to.

19 MR. CHRISTIE: Hey, that -- if I put  
20 it to you that the Royal Proclamation of 1763 by King  
21 George of England, vis a vis, the whole of the Empire,  
22 including the United States at that time, but certainly  
23 applying to Canada today, recognized the right of  
24 Indians to the ownership of their land and the duty to  
25 negotiate treaties with them. If I put that to you,

1 would that include a slightly different attitude in  
2 Canada toward Indian property?

3 DR. TSEISIS: Again, you are asking me  
4 things that I have no expertise on.

5 MR. CHRISTIE: Okay, I'm not asking  
6 you for expertise in the Royal Proclamation of 1763,  
7 but I'm putting it to you because you're the expert  
8 here, on Indian removal. And you're saying that the  
9 culture of Canada should consider the American  
10 experience of racist stereotypes, which were used to  
11 constitute a basis for Indian removal --

12 DR. TSEISIS: I -- the only thing I --  
13 I can -- the best that I can answer your question would  
14 be to say that if the treaty of 1763 --

15 MR. CHRISTIE: It's a Royal  
16 Proclamation, not a treaty.

17 DR. TSEISIS: Royal Proclamation,  
18 pardon me. If the Royal Proclamation -- allowed for  
19 the ownership of land by native Americans throughout  
20 the colonies, then it was clearly something that was  
21 violated because of misguided stereotypes later on in  
22 the United States.

23 MR. CHRISTIE: In the United States?

24 DR. TSEISIS: As I said, I -- I  
25 don't -- the specific example you give, I simply don't

1 know and I can't really comment.

2 MR. CHRISTIE: All right, that's  
3 fine. That's for me to argue if it has any  
4 significance here later perhaps.

5 Now, I put it to you that the Royal  
6 Proclamation of 1763 required compensation for any  
7 dispossession of lands. Now, that would indicate a  
8 different attitude than you are describing in America,  
9 wouldn't it?

10 DR. TSESIS: Again, I do not have the  
11 qualification to answer that. I don't know the  
12 surrounding circumstances. You are asking about a  
13 proclamation I'm unaware of.

14 MR. CHRISTIE: Well, I'm -- I'm not  
15 asking you about a proclamation. I'm putting it to you  
16 that, if that was the state of the royal proclamation,  
17 to require compensation before taking Indian land, it  
18 was a different attitude and culture towards Indians,  
19 in that part of British North America, that you have  
20 described in the 19th century --

21 DR. TSESIS: Once again -- I'm sorry,  
22 I simply don't have the knowledge to answer that. I  
23 know that there were --

24 MR. CHRISTIE: Why don't you honestly  
25 admit --

1 DR. THESIS: Well, I'm just going  
2 to -- if I may just answer, to the best of my ability,  
3 because I've had the same question posed so if I --

4 MR. CHRISTIE: You're not answering  
5 the question.

6 DR. TSESIS: -- do what I can. My  
7 answer, of course, is that I don't know that treaty.  
8 But I do know that there were numerous American  
9 treaties that prohibited whites from encroaching on  
10 native American land, laws that were violated,  
11 systematically, by -- by various colonists encroaching  
12 into the western territories. Now, whether that  
13 happened in Canada too, I have no idea.

14 MR. CHRISTIE: Do you have any  
15 equivalent to the Royal Proclamation of 1763 in the  
16 United States vis-a-vis --

17 DR. TSESIS: There was --

18 MR. CHRISTIE: Excuse me, wait until  
19 I finish.

20 DR. TSESIS: Go ahead.

21 MR. CHRISTIE: Vis-a-vis the attitude  
22 of the American government, to all Indian lands?

23 DR. TSESIS: I know that there were  
24 numerous treaties that allowed native Americans to keep  
25 land.

1 MR. CHRISTIE: Uh-huh. Right.

2 DR. TSEISIS: Whether that applied to  
3 all -- I'm unaware of any law in the United States that  
4 applied to all native Americans, but ones that were  
5 specific to states and tribes. And --

6 MR. CHRISTIE: Yes, I understand this  
7 distinction.

8 I put it to you that there -- there's  
9 no Canadian equivalent of the invasion of Indian  
10 territory that resulted in the massacre of the Little  
11 Big Horn?

12 DR. TSEISIS: You can put it to me,  
13 but I have no way of knowing whether you are correct.

14 MR. CHRISTIE: So in other words, you  
15 have no knowledge, really, of the Canadian cultural  
16 history regarding the treatment of Indians. Isn't that  
17 fair?

18 DR. TSEISIS: Well, I have -- not a --  
19 not a large group of knowledge, I've never written  
20 about it.

21 MR. CHRISTIE: Now, would you agree  
22 with me that if there was a different culture, vis a  
23 vis the treatment of Indians, your premises about the  
24 significance of hate speech are affected?

25 DR. TSEISIS: No, I would not.



1 MR. CHRISTIE: Oh, so it doesn't  
2 matter what the history of a country is, because  
3 another country had a bad treatment of Indians because  
4 of that stereotyping?

5 DR. TSESIS: No, I wouldn't say that.  
6 What I would say is that stereotyping is something that  
7 has universally been essential for the creation of  
8 circumstances that have allowed for discrimination,  
9 oppression, hate crimes and genocide, and that the  
10 danger is, to take for granted that a democracy like  
11 Canada can never become -- can never -- that no one in  
12 a -- in a democracy can exploit racist rhetoric in  
13 order to come to power, and cause harm to a particular  
14 group.

15 MR. CHRISTIE: Well, under the  
16 heading, "Oppression and Substantial Concern", you use  
17 the examples of Nazi Germany, American slavery, and  
18 Indian removal, because they are examples of a  
19 correlation between hate speech and bad results, right?

20 DR. TSESIS: Not only a correlation,  
21 but where there were specific statements that use the  
22 stereotype in the -- in the oppression itself -- or by  
23 the oppressors, rather, themselves.

24 MR. CHRISTIE: Oh, fair enough. But  
25 the fact is that the -- for example, the "Protocols of

1 the Elders of Zion" were by no means restricted in  
2 their distribution to Germany, were they?

3 DR. TSEISIS: No, of course not.

4 MR. CHRISTIE: They were distributed  
5 in England, weren't they?

6 DR. TSEISIS: They were distributed  
7 throughout the world. They still are.

8 MR. CHRISTIE: Yes.

9 DR. TSEISIS: It's a published book.

10 MR. CHRISTIE: Yes. And they seem,  
11 according to you in your reference, to have had an  
12 effect in Germany, correct?

13 DR. TSEISIS: They did have an effect  
14 in Germany.

15 MR. CHRISTIE: Thank you. But they  
16 had no effect in England? They had no effect in  
17 Canada --

18 DR. TSEISIS: There was a fascist  
19 movement in England --

20 MR. CHRISTIE: Right.

21 DR. TSEISIS: In fact, the -- the  
22 first hate speech law in England was specifically to  
23 respond to the brown shirt movement that was arising  
24 there.

25 MR. CHRISTIE: Not the brown shirt.

1 That was Germany.

2 DR. TSESIS: That was Germany as  
3 well, that's right.

4 MR. CHRISTIE: Well, it wasn't brown  
5 shirts in England, sir. If you know anything about the  
6 history of England, which I take it you now claim,  
7 it --

8 DR. TSESIS: That's my memory. I'll  
9 be glad to correct --

10 MR. FOTHERGILL: Oh, that's your  
11 memory? All right.

12 So I suggest to you that actually,  
13 there were many factors that had contributed to the  
14 rise of Hitler, and speech was by no means, a causative  
15 or necessary ingredient. Do you agree?

16 DR. TSESIS: No.

17 MR. CHRISTIE: Well, look, did the  
18 Treaty of Versailles create massive unemployment in  
19 Germany?

20 DR. TSESIS: Yes.

21 MR. CHRISTIE: Did the Treaty of  
22 Versailles create fertile ground for the emergence of  
23 communism, and the development of communism in Germany?

24 DR. TSESIS: Yes, it did.

25 MR. CHRISTIE: Was there -- prominent

1 communists who were very influential in Germany in the  
2 1920s?

3 DR. TSESIS: There was certainly a  
4 vying for political power between communists, that --  
5 you know, they could have -- communists could have come  
6 to power, yes.

7 MR. CHRISTIE: Yes, and wasn't the  
8 basic alternative -- the two major competing forces,  
9 National Socialism and Communism, in Germany in 1920?

10 DR. TSESIS: Well, the -- the --  
11 Nazism in Germany earned a very small portion of the --  
12 the vote in the 1920's, so that -- that's a phenomenon  
13 of them coming to power a little bit later. But if I  
14 can correct myself on the -- you are right, it wasn't  
15 brown shirt, it was the black shirt movement in -- in  
16 England.

17 MR. CHRISTIE: Yes. You put that in  
18 your book, I suppose?

19 DR. TSESIS: Yes.

20 MR. CHRISTIE: Did you have a  
21 contract with the government of Canada to develop your  
22 expertise?

23 DR. TSESIS: I had a contract for  
24 doing my expert witness report, yes.

25 MR. CHRISTIE: Yes, and how much were

1           you paid for it?

2                           MR. FOTHERGILL:  I object on the same  
3 grounds -- this is being objected to -- as the request  
4 to the specific fee paid to Dr. Mock.

5                           MR. CHRISTIE:  I have cross-examined  
6 expert witnesses in literally thousands of cases, and  
7 the retainer they are paid is just one of many factors  
8 open to argument, and I just want to reiterate that I'm  
9 asking for -- for that.

10                          MR. FOTHERGILL:  I can certainly  
11 confirm that he's been paid to prepare his report, and  
12 for his time here.

13                          MR. CHRISTIE:  And are you also paid  
14 for your attendance in giving evidence?

15                          MR. FOTHERGILL:  Yes, he is.

16                          MR. CHRISTIE:  And how much?

17                          MR. FOTHERGILL:  Well, the same  
18 objection, sir.

19                          MR. CHRISTIE:  Well, respectfully  
20 sir, the significance of an opinion --

21                          THE CHAIRPERSON:  Sir?

22                          MR. CHRISTIE:  -- if a person is paid  
23 a million dollars, that's really kind of significant.  
24 If they're a nominal professional fee, then it's  
25 actually additional to their credibility, and it does

1 make a difference. So --

2 THE CHAIRPERSON: Okay.

3 MR. CHRISTIE: -- I apologize for  
4 asking the second time. But it's just -- I've thought  
5 about it a lot, and I know what has happened in  
6 millions of other cases. It's just routinely said,  
7 "Here it is." And that's --

8 THE CHAIRPERSON: In -- on the first  
9 occasion, it sort of went away. There was a debate  
10 over it. I don't think I ruled per se on that last  
11 one. It sort of went away, and it -- it wasn't  
12 necessary, I guess, in the context of everything that  
13 was that going on. Do we want to have a full debate on  
14 this issue right here now?

15 MR. FOTHERGILL: Let me just suggest  
16 one possible resolution.

17 MR. CHRISTIE: We don't have time.

18 MR. FOTHERGILL: The privacy interest  
19 that I'm advancing, is of course, Dr. Tsesis's, and  
20 perhaps it's up to him whether it's something he wishes  
21 to disclose. If it's not something he wishes to  
22 disclose, my understanding is that under the Access to  
23 Information Act, Mr. Christie could probably get the  
24 total amount paid, eventually. But there is a basis  
25 for objecting to the hourly rate, on the basis of

1 personal information.

2 THE CHAIRPERSON: No, wait. It's for  
3 this hearing that we're talking about. And if we are  
4 going to go down that road, then let's yank out our --  
5 my statute here. Where is my statute?

6 MR. CHRISTIE: I'm prepared to leave  
7 it this way because of time. Here's what I'd like  
8 to --

9 THE CHAIRPERSON: We can -- if there  
10 is an issue of privacy, some sort of compelling reason,  
11 we can just go into the act, section 52, and it enables  
12 me to make -- to hold an in-camera hearing, and the --  
13 the document is, it's filed under a separate file at  
14 the Tribunal, so it's less accessible, and you can get  
15 the information and argue it.

16 MR. FOTHERGILL: I certainly have no  
17 objection to doing that.

18 THE CHAIRPERSON: Right. But I can  
19 do it only if it falls under the statute. Otherwise,  
20 I -- I'm acting outside my powers. If you would like  
21 to do it afterwards, and then leave it for argument, we  
22 can do that, too.

23 MR. CHRISTIE: Please. I take it,  
24 sir, just to wrap this up quickly, you do have a  
25 contract, it does involve the payment of money, and you

1 do have it available? It could be produced if the  
2 Tribunal thought it was relevant? Is that a fair  
3 statement?

4 DR. TSESIS: Yes, if -- if the  
5 Tribunal ruled that way, of course.

6 MR. CHRISTIE: Uh-huh. Okay, fair  
7 enough. Do you mind revealing it?

8 DR. TSESIS: I would -- I would -- I  
9 do not want to, but again --

10 MR. CHRISTIE: Okay.

11 DR. TSESIS: -- if the Tribunal rules  
12 that I must, then I'll do so.

13 MR. CHRISTIE: Well, then it'll -- it  
14 will have to be dealt with some other way then.

15 You wrote about Mauritanian slavery,  
16 right?

17 DR. TSESIS: Yes.

18 MR. CHRISTIE: And I know obviously,  
19 you've never been to Mauritania?

20 DR. TSESIS: No.

21 MR. CHRISTIE: And you've talked to  
22 one Mauritanian slave, correct?

23 DR. TSESIS: That's right, yes.

24 MR. CHRISTIE: Did you talk to any  
25 others?



1 DR. TSESIS: I've not, but I've read  
2 the accounts of others, and I cite to one in my report.

3 MR. CHRISTIE: Cite what, an account  
4 or the conversation?

5 DR. TSESIS: It's an account -- no,  
6 not the conversation, the -- let me just draw your  
7 attention to it. This statement by the -- "elderly  
8 former slave" is not the person whom I interviewed.

9 MR. CHRISTIE: Oh, okay.

10 DR. TSESIS: This is a completely  
11 separate account.

12 MR. CHRISTIE: Right, so we've got  
13 two accounts really?

14 DR. TSESIS: No, more than two  
15 accounts but, I mean, I -- I've read more than two  
16 accounts but -- this is one, and then I interviewed  
17 another person and then --

18 MR. CHRISTIE: Okay. Now, you regard  
19 the "Turner Diaries" as hate literature, right?

20 DR. TSESIS: That's right. As --

21 MR. CHRISTIE: And if it was to be  
22 placed on the Internet, you would call it a hate site,  
23 right?

24 DR. TSESIS: No, not necessarily.

25 MR. CHRISTIE: Oh. Well, however you

1 define that, isn't it necessary to achieve your goal,  
2 if it's as pressing and subsistent as you allege, that  
3 we must also ban novels?

4 DR. TESISIS: No.

5 MR. CHRISTIE: Which -- and why not?

6 DR. TESISIS: Well, because it depends  
7 on the context and the content for which the novels are  
8 being used.

9 MR. CHRISTIE: Well, so if they are  
10 used in a text, or a class, to discredit hate  
11 literature, that would be okay, but if it's used by  
12 someone who reads it and hasn't been preconditioned by  
13 education that you would approve of, that could be a  
14 problem; is that it?

15 DR. TESISIS: I certainly wouldn't  
16 have said that. I would have said that if it's not  
17 only in a class that's against hate literature, but  
18 also in a class of literature. If it were simply a  
19 class in which one were studying literature, and there  
20 were discriminatory tones in there, but it was not for  
21 the advocacy, and did not have a substantial  
22 likelihood, given the context of indoctrination, then I  
23 don't think that there would be a problem, if it were  
24 used for history or literature. But if it's used for  
25 indoctrination, as it was in the Keegstra case, then in

1           that situation --

2                           MR. CHRISTIE:  What?

3                           DR. TSEISIS:  -- in Keegstra.

4                           MR. CHRISTIE:  What did you just say?

5                           DR. TSEISIS:  If -- if --

6                           MR. CHRISTIE:  Did you say that --

7           that the "Turner Diaries" was used for indoctrination  
8           in the Keegstra case?

9                           DR. TSEISIS:  Not that I'm aware of,  
10          no.

11                          THE CHAIRPERSON:  I think he meant  
12          hate literature.  He was -- you began your discussion  
13          with Turner diaries, but then he -- his answer evolved  
14          into hate literature broadly.

15                          MR. CHRISTIE:  Oh, okay.  Sorry.  
16          Well --

17                          DR. TSEISIS:  No, I was just saying  
18          that if it's used -- if a novel with -- with some sort  
19          of hateful messages towards an identifiable group with  
20          a historical -- a history of oppression were used in a  
21          class, as in Keegstra, to -- his speech was derogatory  
22          about Jews, to indoctrinate, that's a different thing  
23          than if a person says, Look, there is this hatred  
24          against this particular group, then of course I  
25          wouldn't be against that, the latter, that is to say.

1 MR. CHRISTIE: You have advocated for  
2 the criminalization of Holocaust denial, correct?

3 DR. TESIS: I have not advocated for  
4 the criminalization of Holocaust denial. I've offered  
5 it as an example of hate speech that's prohibited in  
6 other countries, that I think is a legitimate form of  
7 regulation.

8 MR. CHRISTIE: Well -- all right.  
9 You have advocated for it, I say, and you say that you  
10 have simply said it's -- it's good. Would that be a  
11 fair statement?

12 DR. TESIS: That it -- it's a good  
13 law. I mean, I -- I don't want to quibble with words.  
14 Maybe you're right, we're saying identical things here,  
15 yeah.

16 MR. CHRISTIE: Well, all right.  
17 Let's analyze for a few minutes, the effect of  
18 Holocaust denial on prohibition, if it's to be  
19 effective. In view of the Internet, would you agree  
20 with me, you would to have regulate the Internet in  
21 respect to any location or any website anywhere in the  
22 world, where it could be placed, wouldn't you?

23 DR. TESIS: No. Let me be sure --

24 MR. CHRISTIE: No? Okay, let me --  
25 if that's your answer --

1 DR. TSESIS: If I may just explain --  
2 then the -- the Tribunal will --

3 THE CHAIRPERSON: I'm fairly sure of  
4 what his explanation was but -- was something wrong  
5 with his explanation there?

6 MR. CHRISTIE: Yes. No, well, I can  
7 hear this all day long, but his answer was no and I was  
8 satisfied with it.

9 THE CHAIRPERSON: Okay, no. No  
10 explanation is necessary.

11 MR. CHRISTIE: Now, if -- you say  
12 that you don't have to regulate the Internet completely  
13 to eliminate Holocaust denial off the Internet,  
14 correct?

15 DR. TSESIS: No. Again, no.  
16 You're -- you're misstating the argument. You are  
17 saying "you" are saying -- "you" can regulate, and I  
18 can't regulate at all because --

19 MR. CHRISTIE: No, no. Okay. Well,  
20 I -- I'll rephrase the question. I'll rephrase the  
21 question.

22 DR. TSESIS: Okay. Now, if I may  
23 answer. You, at this point, this is a  
24 mischaracterization.

25 MR. CHRISTIE: I'll withdraw the

1 question --

2 THE CHAIRPERSON: Excuse me.

3 MR. CHRISTIE: -- and try and  
4 rephrase it, so that even you don't misunderstand me.

5 In order to achieve the elimination  
6 of Holocaust denial literature off of the Internet,  
7 would you not have to eliminate it from websites in the  
8 United States?

9 DR. TSESIS: I guess what you are  
10 saying is, would you have to eliminate it from websites  
11 in the United States for Holocaust denial to be  
12 completely eliminated off the Internet. The answer is  
13 yes, you would to have eliminate it from every place,  
14 ultimately.

15 MR. CHRISTIE: Yes, that's what I'm  
16 trying to get at. You'd have to eliminate it from  
17 Iran, correct?

18 DR. TSESIS: That's right, yeah.

19 MR. CHRISTIE: You'd have to  
20 eliminate it from Saudi Arabia?

21 DR. TSESIS: That's right.

22 MR. CHRISTIE: And any country in the  
23 world where Holocaust denial was regarded as credible,  
24 would have to be somehow regulated or disciplined, or  
25 access to that country's Internet sites would have to

1 be blocked, right?

2 DR. TSESIS: I think you're right so  
3 that if it -- just to make clear, I don't think that  
4 Holocaust denial is considered to be credible in the  
5 United States, even though it's permissible, I think at  
6 this point --

7 MR. CHRISTIE: I didn't say it was  
8 credible.

9 DR. TSESIS: -- under the free speech  
10 laws.

11 MR. CHRISTIE: Did I say it was  
12 credible?

13 THE CHAIRPERSON: I thought you said  
14 criminal -- or credible?

15 DR. TSESIS: Credible, yes.

16 THE CHAIRPERSON: Oh, credible.

17 DR. TSESIS: He -- it would be --

18 THE CHAIRPERSON: I think the  
19 question that he's asking is -- it's almost technical,  
20 but the way I understand it is, the Internet as it  
21 functions, if you have some familiarity with these  
22 things, unless you eliminate websites from all  
23 locations in the world, that is, sending a message  
24 which may be objectionable, it will -- it will continue  
25 to circulate on the Internet?

1 DR. TSESIS: That's true, yes.

2 THE CHAIRPERSON: It may -- it may be  
3 banned in -- from websites that are based in Canada or  
4 France or England, but it can still circulate from  
5 websites based in the United States or Saudi Arabia or  
6 Iran?

7 DR. TSESIS: That's true, yes.

8 MR. CHRISTIE: And you also -- so  
9 that really, to accomplish an effective removal of  
10 Holocaust denial from public view, you have to have  
11 world censorship?

12 DR. TSESIS: No.

13 MR. CHRISTIE: I put it to you that  
14 you have to also identify and discriminate between mere  
15 Holocaust critique and actual Holocaust denial. You  
16 would have to do that, too?

17 DR. TSESIS: Yes, that's true.

18 MR. CHRISTIE: So you would have to  
19 establish an authority somewhere in the world that  
20 would identify sites that go over the line, and go into  
21 Holocaust denial, and prohibit those, but allow those  
22 that go up to the line, and just criticize or question  
23 aspects of the Holocaust. You'd have to discriminate  
24 between those two types, wouldn't you?

25 DR. TSESIS: No, you wouldn't.



1           You --

2                           MR. CHRISTIE: Well --

3                           DR. TSEISIS: -- a country, an  
4 individual country, would have to do that.

5                           MR. CHRISTIE: Okay, an individual  
6 country. But if all the countries didn't agree on it,  
7 how would you eliminate the bad kind of Holocaust  
8 denial?

9                           DR. TSEISIS: Well, if -- it's just  
10 like any other law, right, so if not all law -- not all  
11 countries agree with copyright infringement, and some  
12 countries allow for copyright infringement, that  
13 doesn't mean that a particular country like Canada  
14 should not have laws against copyright infringement,  
15 just because it will be -- copyright infringement will  
16 occur across the border anyway.

17                          MR. CHRISTIE: I didn't speak about  
18 copyright infringement, because there -- that involves  
19 the territorial significance of the law. And  
20 copyrights do have territorial boundaries, don't they?  
21 Have you ever heard of a U.S. patent?

22                          DR. TSEISIS: Of course.

23                          MR. CHRISTIE: Yes. Well, when we  
24 are talking about the Internet, do you agree that  
25 any -- any Internet site in the world is accessible

1 from all others?

2 DR. TSESIS: No.

3 MR. CHRISTIE: You don't think that  
4 any Internet site in the world is accessible to anyone  
5 who's on the Internet?

6 DR. TSESIS: Only potentially  
7 accessible. The government of China, for instance, has  
8 blocked all sites with the ".gov", so no sites with  
9 ".gov", which are all U.S. government sites are  
10 accessible in China.

11 MR. CHRISTIE: Okay, so let's see how  
12 that would work for Holocaust denial or hate, as you  
13 call it. If it didn't have a distinguishing symbol,  
14 self-imposed distinguishing symbol, then there would be  
15 no way that you could block access to it anywhere in  
16 the world, unless you blocked access to --  
17 accessibility to those sites everywhere in the world?

18 DR. TSESIS: I see what you are  
19 saying, and I see where you're going, and I -- and I  
20 think that there is a very relevant point you made  
21 there, that there is -- if the domain name did not  
22 specify where it was coming from, then you couldn't do  
23 it.

24 But it ultimately winds up not being  
25 the case, at least according to the French court in the

1       Yahoo case.  Because the French court in Yahoo says  
2       that -- that Yahoo -- Yahoo was -- for the sale of Nazi  
3       paraphernalia through its search site, and the court  
4       said that Yahoo was required to develop technology that  
5       would prohibit the sale of Nazi propaganda sites to --  
6       for their addresses to be transmitted to the United  
7       States.  So that Yahoo would be -- excuse me, from the  
8       United States to France.  So Yahoo had to develop --  
9       unless it was to pay a fine in France, Yahoo had to  
10      develop a technology to prohibit the dissemination of  
11      Nazi paraphernalia selling sites from the United States  
12      to France.

13                   MR. CHRISTIE:  What we have in your  
14      example is the imposition of the most authoritarian  
15      regime on the most liberal regime, don't we?

16                   DR. TSESIS:  No.

17                   MR. CHRISTIE:  Well, the French  
18      regime prohibits something that the American regime  
19      allows; is that correct.

20                   DR. TSESIS:  Yes, but the French --

21                   MR. CHRISTIE:  Yes but -- no?  Just  
22      yes.

23                   DR. TSESIS:  Yes, but the -- but the  
24      French court isn't required anything of the United  
25      States and it's not requiring -- it's not -- it can't

1 enforce the judgment in the United States --

2 MR. CHRISTIE: Well, how effective is  
3 it?

4 DR. TSEISIS: Extremely effective,  
5 because it was going to charge a very large sum of  
6 daily fines against Yahoo, which was -- which was  
7 gaining commercial benefit in France, if it was to  
8 continue allowing websites that serve Nazi  
9 paraphernalia to advertise through Yahoo.

10 MR. CHRISTIE: That's because it had  
11 some commercial interest in France, right?

12 DR. TSEISIS: Yes.

13 MR. CHRISTIE: Well, if it didn't  
14 have -- if an Iranian website or the Iranian government  
15 had no commercial interest in France, or in fact was  
16 hostile to France, as some governments are to others,  
17 what effect would that have?

18 What effect would -- what effect  
19 would a French ruling have on the government of Iran,  
20 or a website in some place that wasn't commercially  
21 accessible to the French courts?

22 DR. TSEISIS: Well, the French rule  
23 would have no effect on other countries, but the French  
24 ruling has an effect on France. Each country has  
25 territorial limits. Canada can have an effect on its

1 citizens, France can have an effect on --

2 MR. CHRISTIE: Okay, well let's deal  
3 with accessibility. The people of -- did Yahoo take  
4 off Nazi paraphernalia?

5 DR. TSESIS: They did, yeah.

6 MR. CHRISTIE: Is it available from  
7 some other site?

8 DR. TSESIS: I'm sure it is, yeah.

9 MR. CHRISTIE: Yes. So although it  
10 affected, perhaps Yahoo, there are other servers  
11 equally accessible to the Net, some of them very  
12 obscure, right?

13 DR. TSESIS: You know, that I  
14 don't --

15 MR. CHRISTIE: All right.

16 DR. TSESIS: I apologize, I can't say  
17 about the obscurity. But clearly, Nazi paraphernalia  
18 is still accessible elsewhere, yes.

19 MR. CHRISTIE: Yes, and it -- if it's  
20 accessible anywhere, it's accessible everywhere?

21 DR. TSESIS: Yes, but it's created a  
22 precedent that allows for lawsuits to be brought in  
23 France for any -- against any other websites as well.

24 MR. CHRISTIE: So it allows for  
25 litigious meddling from one country to another in the

1 speech laws or freedom of a -- of a different country,  
2 right?

3 DR. TESISIS: That's certainly not  
4 what the United States courts found about the Yahoo  
5 decision in France. They did not find any meddling.  
6 They found that it was -- because Yahoo brought the  
7 case in the United States, claiming that it -- it was  
8 violating its First Amendment speech to -- the Yahoo  
9 decision was -- had violated its First Amendment speech  
10 rights.

11 The American court found its First  
12 Amendment rights were not violated, because the Yahoo  
13 French case did not affect anything on the territorial  
14 limits of the United States.

15 MR. CHRISTIE: Well, it did in a way.  
16 It made Yahoo take off the Nazi paraphernalia sites,  
17 didn't it?

18 DR. TESISIS: That was Yahoo's choice.  
19 Yahoo wasn't ordered to do that.

20 MR. CHRISTIE: Well -- so if Yahoo  
21 didn't have anything but contempt for the French  
22 jurisdiction, it would have no effect?

23 DR. TESISIS: Well, it could have --  
24 presumably, like any other punishment, it could have  
25 had a contempt of court charge, it could have -- it is

1           there -- you know it's -- there could have been  
2           garnishment. I mean --

3                           MR. CHRISTIE: What's the  
4           significance of a contempt of court charge that  
5           violates the First Amendment of the United States, from  
6           a French court in the United States?

7                           DR. TSESIS: Well, in France it has  
8           no -- excuse me, in the United States, of course, it  
9           has no relevance because it's unenforceable in the  
10          United States.

11                          But in -- in France, it's very, very  
12          much enforceable. And the other thing is that American  
13          law is -- from having studied conflict of laws, I can  
14          tell you that even if certain laws are not the same as  
15          they are in a -- in a home country, they are  
16          nevertheless enforceable in that home country, as long  
17          as the due process concerns have been met in a foreign  
18          country.

19                          MR. CHRISTIE: As long as they're not  
20          in conflict with the fundamental laws of the United  
21          States, right?

22                          DR. TSESIS: Well, that's a good  
23          point, yes.

24                          MR. CHRISTIE: Thank you. Well, if  
25          group criticism involves truthful expression, which

1           inadvertently causes or exposes another group to  
2           hatred, contempt or ridicule, as an unintended side  
3           effect of that criticism, should the requirement of  
4           intent be a necessary ingredient of a reasonable limit  
5           on free expression, which inadvertently might have a  
6           hate-promoting side effect?

7                           DR. TSESIS:   Only in criminal  
8           indications.  Intent should be required, but only in  
9           criminal cases.  In civil cases, negligence should be  
10          enough.

11                          MR. CHRISTIE:  Oh, negligence should  
12          be?

13                          DR. TSESIS:  In -- in civil cases,  
14          yes.

15                          MR. CHRISTIE:  Uh-huh.  So if a  
16          statute has a provision that allows for fines to be  
17          imposed, do you still think that it's okay to limit  
18          truthful expression?

19                          DR. TSESIS:  If the truthful -- well,  
20          in that situation, if the truthful expression is being  
21          used with the intent, or if you do in a civil -- in a  
22          civil court with -- in -- with the negligent omission,  
23          with some sort of a breach of a duty, that would  
24          spread -- disseminate hatred against a particular  
25          group, such as colour, race, gender, then -- or then --



1 and it has a substantial likelihood of causing that  
2 harm, then I would say that even truth, if it's  
3 manipulated for the purpose of harm, can be limited by  
4 a government?

5 MR. CHRISTIE: Well, truth, if it's  
6 manipulated with the intent of causing harm, requires a  
7 specific intent, doesn't it?

8 DR. TSESIS: Well, it could be also  
9 negligent. It need not -- it could be reckless, it  
10 could be done with knowledge. It -- it's all those  
11 things that we call intent, right? It could be  
12 negligence, it could be knowledge, it could be  
13 recklessness. And that could be for the civil penalty.  
14 And for the criminal penalty then, we could have  
15 purpose.

16 MR. CHRISTIE: Uh-huh. But what  
17 about truth? What if this statement is entirely true  
18 or verifiable? Should the person be allowed to prove  
19 it?

20 DR. TSESIS: You would to have give  
21 me an example. I --

22 MR. CHRISTIE: All right, well, I'll  
23 give you an example.

24 DR. TSESIS: Yeah.

25 MR. CHRISTIE: You ready? All right.

1 Canada has a crime that was committed, the largest mass  
2 murder in Canadian history, someone put a bomb on board  
3 an aircraft and blew hundreds of people to their death.

4 DR. TSEISIS: Uh-huh.

5 MR. CHRISTIE: If it could be  
6 established that this was committed by a group  
7 identifiable by religion, for their religion, in the  
8 name of their religion, and someone identified that  
9 religion as being associated in exactly the precisely  
10 factual way, with the event, can you foresee that it  
11 would be reasonable to expose such a race or religion  
12 to contempt, or even hatred?

13 DR. TSEISIS: If the statements were  
14 merely that this group was involved, and they were of  
15 this religion, then I don't -- can't see how that  
16 would -- how that, in and of itself, is a negligent or,  
17 you know, intentional way of raising hate or contempt  
18 to that group.

19 If it's used for the purpose of,  
20 saying -- let's say, the group are, I don't know,  
21 called "glasses", just to -- you know, and this --  
22 these "glasses" -- this "glasses" group, somebody says  
23 "They are all" --

24 MR. CHRISTIE: Did you hear the words  
25 "for the purpose"? Did you use the word "for the

1 purpose"?

2 DR. TSESIS: I used "for the purpose"  
3 and I also used "negligently."

4 MR. CHRISTIE: Uh-huh. Well, when  
5 you were giving your example, if it was used "for the  
6 purpose" of promoting hatred --

7 DR. TSESIS: Uh-huh.

8 MR. CHRISTIE: -- did you mean what  
9 you said?

10 DR. TSESIS: For the criminal  
11 statute, of course, yeah, I think "purpose" should  
12 be --

13 MR. CHRISTIE: Well, I didn't hear  
14 the qualification at the time. Let's dial with the  
15 so-called civil statute. Just exclusively. If an  
16 entirely true statement, factually verified, was able  
17 to expose and would cause hatred to be promoted  
18 against, a group identified by religion, for instance,  
19 should the person be allowed to prove that, to  
20 demonstrate the absence of any intent, in a reasonable  
21 interpretation of the rights of free speech, in your  
22 view?

23 DR. TSESIS: Would you please ask the  
24 second part of your question, which --

25 MR. CHRISTIE: What part did you not

1 understand? Should they be allowed to --

2 DR. TSESIS: The part that I didn't  
3 hear was the second part, "should they" --

4 MR. CHRISTIE: Should they be allowed  
5 to prove --

6 DR. TSESIS: Uh-huh.

7 MR. CHRISTIE: -- that the statement  
8 they made was entirely true, entirely accurate, to  
9 rebut any suggestion of recklessness, negligence or --

10 DR. TSESIS: Yes, of course, sure.

11 MR. CHRISTIE: They should be.

12 DR. TSESIS: Yeah.

13 MR. CHRISTIE: Were you aware that  
14 this statute that you are talking about does not allow  
15 the proof of truth?

16 MR. FOTHERGILL: I think it's time to  
17 object, probably the time to object was some time ago.  
18 But it's an interesting debate. I don't think it  
19 really uses this witness's expertise, and no doubt, if  
20 I had attempted to ask anything similar, it would have  
21 been objected to.

22 I appreciate the latitude in  
23 cross-examination, but now he's being asked to comment  
24 on Section 13 precisely after Mr. Christie established  
25 that he had no particular expertise in that subject.

1 MR. CHRISTIE: Well, he has expertise  
2 apparently, in the appropriate remedy for hate speech,  
3 and he's given opinions about that. The --

4 THE CHAIRPERSON: I thought I  
5 prevented the questioning on that, did I not?

6 MR. CHRISTIE: Well, I'll move --

7 THE CHAIRPERSON: I mean, you know --  
8 you're exploring it, but I prevented him from  
9 testifying on that.

10 MR. CHRISTIE: No, I don't know that,  
11 but I'm -- I'm moving on. How can you, in your  
12 understanding, you've studied philosophy and you're  
13 a -- well, I better be very careful here about your  
14 expertise.

15 THE CHAIRPERSON: Can we take a small  
16 ten-minute break?

17 --- Upon recessing at 3:20 p.m.

18 --- Upon resuming at 3:35 p.m.

19 MR. CHRISTIE: In regard to the  
20 subject of truth, how do you discern truth from hate?

21 DR. TESIS: Well, I don't take hate  
22 to be an antonym of truth.

23 MR. CHRISTIE: Well, are they the  
24 same?

25 DR. TESIS: Well, hate was -- is the

1 antonym of amiability, and truth is the antonym of  
2 fallacy.

3 MR. CHRISTIE: Well, truth can cause  
4 either love or hate, depending on who is receiving it,  
5 right?

6 DR. TSESIS: I mean, I guess I -- I  
7 really don't know how to answer that question.

8 MR. CHRISTIE: You don't, eh?

9 DR. TSESIS: Yes.

10 MR. CHRISTIE: Well, what's the  
11 significance of truth, to your mind?

12 MR. VIGNA: This line of questions is  
13 a little argumentative and gets into a polemic, which  
14 is not part of his expertise.

15 THE CHAIRPERSON: It's interesting,  
16 philosophy, concerning truth and hate.

17 MR. CHRISTIE: All right. We're  
18 dealing with the subject of pressing and substantial  
19 concern, we're dealing with the subject of rational  
20 connection, we're dealing with the subject of minimal  
21 impairment, all of which are the categories in which  
22 this expert has offered his report.

23 THE CHAIRPERSON: Uh-huh.

24 MR. CHRISTIE: Now, I'll try and  
25 focus on those. Surely, sir, the suppression of truth

1 is not a pressing and substantial concern, unless it  
2 promotes hatred; isn't that right?

3 DR. TSESIS: One of the pressing and  
4 substantial concerns for which one -- a democratic  
5 government has a legitimate right to prevent people  
6 from communicating their ideas, even in the situation  
7 where they are truthful, but meant to -- for -- for  
8 derogatory purposes is --

9 MR. CHRISTIE: Did I hear you say, if  
10 it's meant for derogatory purposes?

11 DR. TSESIS: Yes.

12 MR. CHRISTIE: If "it" is meant for  
13 derogatory purposes. Okay. Then a democratic society  
14 can eliminate even truth, right? That's your view?

15 DR. TSESIS: No, that's not my view.  
16 My view is that if some -- something in a particular  
17 statement, in a portion of a statement, has some -- has  
18 some truth element in it that is being used for the  
19 purpose of denigration, that has a substantial  
20 likelihood to cause discrimination, harm or physical  
21 violence, then a government has the right for the  
22 general welfare of its people, to prohibit such speech.

23 MR. CHRISTIE: If it is used for the  
24 purpose of promoting hatred, even truth should be  
25 prohibited?

1 DR. TSESIS: I don't -- I said -- I  
2 don't think I said "purpose". If it's --

3 MR. CHRISTIE: Yeah, you said  
4 "purpose". I heard you.

5 THE CHAIRPERSON: You -- you did say  
6 "purpose".

7 DR. TSESIS: Well, I meant to say, if  
8 it's used for --

9 THE CHAIRPERSON: If it's used for  
10 the purpose of?

11 DR. TSESIS: -- the promotion of --

12 THE CHAIRPERSON: Oh, no, used "for  
13 the promotion", okay. But you did say "used for the  
14 purpose" in your first answer.

15 DR. TSESIS: Hmmm.

16 MR. CHRISTIE: Oh, yeah, you did.  
17 I'm careful about words like "purpose". Should  
18 unintentional racial harm be outlawed in a free and  
19 democratic society? Is there a pressing and  
20 substantial need for that?

21 DR. TSESIS: There is if it's -- if  
22 it's reckless, if it's -- if it's done with knowledge,  
23 or if there -- if it's done negligently.

24 MR. CHRISTIE: Okay, so --

25 DR. TSESIS: Then you could have a



1 court action.

2 MR. CHRISTIE: Uh-huh. If it's  
3 reckless or it's done with knowledge, that would be  
4 intent or gross negligence, recklessness. Or even  
5 negligence, it should be prohibited, right?

6 DR. TESISIS: Yes.

7 MR. CHRISTIE: Uh-huh. Well, how can  
8 we discern whether it is expressed recklessly,  
9 intentionally for a purpose, or even negligently,  
10 unless we assess the degree to which it possesses  
11 truth, to see whether a reasonable person would express  
12 those views or not?

13 DR. TESISIS: How can we -- how can  
14 that be discerned if -- it can be discerned through the  
15 language, what's being said, and it can be used --  
16 discerned through the context in -- within which  
17 something is said.

18 MR. CHRISTIE: Well, what about the  
19 factual truth of the statement? Don't you have to  
20 assess that, to determine the degree to which a  
21 reasonable person would feel compelled to express it?

22 DR. TESISIS: That's certainly a --  
23 extremely relevant concern, but the circumstances under  
24 which something is said are -- are at least equally as  
25 relevant.

1 MR. CHRISTIE: Right. Okay, well, to  
2 use the classic example of Oliver Wendell Holmes in  
3 Schenck, of which you're well familiar, shouting "fire"  
4 in a crowded theatre, right?

5 DR. TSESIS: That's imminent threat  
6 of harm, yeah.

7 MR. CHRISTIE: Imminent threat of  
8 harm, right.

9 DR. TSESIS: Yes, when -- because of  
10 a clear and present danger.

11 MR. CHRISTIE: Clear and present  
12 danger. Now, in order to assess whether that person's  
13 statement, if it is merely preceded with a -- civil --  
14 was reckless or negligent or intentional to cause harm,  
15 don't you have to inquire whether the person saw  
16 flames, heard -- heard flames, heard explosions,  
17 whether they smelled smoke, don't you have to look at  
18 the truthful elements of their belief?

19 DR. TSESIS: Holmes didn't -- didn't  
20 ever say that in --

21 MR. CHRISTIE: Well, you know what  
22 Holmes was dealing with. He wasn't dealing with fire.  
23 That was just his example. I'm using the example in  
24 another way.

25 DR. TSESIS: Would you have to

1 determine whether it was truthful?

2 MR. CHRISTIE: Yes.

3 DR. TSEISIS: Of course -- hate  
4 speech, right? But that's -- that's a distinct thing,  
5 that you are trying to save someone, as opposed to  
6 trying to harm them.

7 MR. CHRISTIE: Right. So if your  
8 duty is to tell the truth about an organization that  
9 might have a dangerous intention, like a group that set  
10 off a bomb with the intention of bringing it to --  
11 success to their group, shouldn't you have a duty to  
12 say that?

13 DR. TSEISIS: Certainly, but not to  
14 disparage them.

15 MR. CHRISTIE: Oh. Well, what if the  
16 consequence of revealing the truth about them does  
17 disparage them?

18 DR. TSEISIS: In fact, that would  
19 be -- then what you are speaking about is something  
20 like racial profiling, in which case, what winds up  
21 happening is that you -- if the government were to  
22 engage in that, it would -- it would be wide of the  
23 mark because all the --

24 THE CHAIRPERSON: Sorry, I didn't  
25 hear you?

1 DR. TSESIS: Oh, I was saying that if  
2 racial -- if the government pursued racial profiling,  
3 then what would happen is that it would -- it would  
4 spread too wide a net and would capture too many people  
5 who had certain characteristics, but were not involved.

6 And it would also cast -- have too  
7 narrow a net because all the harmful elements who --  
8 who were planting the bomb, who would, in the future,  
9 want to plant the bomb, and all you have to do is  
10 simply choose a person who didn't have those  
11 characteristics, and then they would be overlooked by  
12 the police.

13 THE CHAIRPERSON: Okay. I don't  
14 think that was the question, though. Right?

15 MR. CHRISTIE: No. I haven't got  
16 time to pursue it.

17 THE CHAIRPERSON: All right.

18 MR. CHRISTIE: I can pursue it in  
19 argument perhaps.

20 THE CHAIRPERSON: I think maybe it's  
21 better.

22 MR. CHRISTIE: How can you have a  
23 rational discussion about the nature of any expression,  
24 to determine if it is a pressing and substantial  
25 certain, unless you assess the degree to which -- that

1           it possesses truth or falsity?

2                           DR. TESIS:  By looking at the  
3           surrounding circumstances of the saying, and looking at  
4           what's happened in the past, and looking at whether or  
5           not the statement is linked to historical forms of  
6           oppression.

7                           MR. CHRISTIE:  Only an expert could  
8           do that, I suppose, eh?

9                           DR. TESIS:  Well, the court would  
10          have to be the final arbiter, but an expert could play  
11          a role in that.

12                          MR. CHRISTIE:  Uh-huh.  And in any  
13          situation, your view is that if the statement is  
14          entirely true, it wouldn't matter, as long as the  
15          context and the surrounding circumstances indicated it  
16          had an effect?  Is that your view?  That would make it  
17          pressing and substantial?

18                          DR. TESIS:  As long as the  
19          surrounding circumstances indicated that there was a  
20          substantial likelihood that it would have an effect,  
21          yes.

22                          MR. CHRISTIE:  Uh-huh.  So if the  
23          truth, told without embellishment, would have an effect  
24          of exposing the group to hatred or contempt, one of  
25          those identifiable groups, that, in your view, is

1 sufficient to justify it as being a pressing and  
2 substantial concern?

3 DR. TESISIS: "If" is the operative  
4 word. If --

5 MR. CHRISTIE: Yes, and --

6 DR. TESISIS: -- as long as the  
7 conditional in logic is false, and you say something  
8 true in the second part of the statement, you wind up  
9 with a true statement. So yes, what you're saying is  
10 true.

11 The only thing is, I can't think of  
12 any statement which would be true, which would simply  
13 make a statement of, let's say, "these terrorists  
14 happen to be Muslim" or "those thieves happen to be  
15 Gypsy", and therefore, an implication of a wide  
16 disparagement towards a group, that is to say,  
17 therefore, all Muslims have to be then banned from  
18 immigrating, or all Gypsies cannot be allowed an  
19 education, would ever be -- would ever be -- would ever  
20 work.

21 In other words, you could have a  
22 truth statement, but when you are talking about an  
23 abstraction, it's almost impossible to answer that  
24 and -- and give it any substance and meaning. When you  
25 look at a specific -- and you say, "Here are a

1           hundred -- a hundred Gypsies, they all rot." Okay,  
2           well, you said something that's true.

3                         But if the second part of the  
4           condition was, "therefore, we should not educate them",  
5           well then, all of a sudden, of course you're -- you are  
6           inciting hatred.

7                         If you say "these hundred Gypsies  
8           stole; therefore, we should put them in jail", well, I  
9           mean, of course -- well, who would want to say that  
10          there was a substantial and pressing concern of hatred  
11          there.

12                        So what you are doing is you're --  
13          you're saying these abstract statements and -- you know  
14          logic -- yeah, I can say they're true. But give me --  
15          if you -- if you put them into an example --

16                        MR. CHRISTIE: In each of the  
17          examples you chose, the first statement was a fact, the  
18          second statement was an inference.

19                        DR. TESIS: The second statement was  
20          false.

21                        MR. CHRISTIE: It was an inference.  
22          It wasn't even stated --

23                        DR. TESIS: To say that all Gypsies  
24          are thieves is false.

25                        MR. CHRISTIE: Well, you said that --

1 DR. TESIS: To say -- therefore, all  
2 Muslims should be -- should be banned from immigration  
3 because they're all terrorists, is false. Therefore,  
4 if you have a truth statement --

5 MR. CHRISTIE: Isn't the -- isn't the  
6 statement that "all Muslims should be banned from  
7 immigration", isn't that an opinion?

8 DR. TESIS: "All Muslims should be  
9 banned from immigration because they're all terrorists"  
10 is false.

11 MR. CHRISTIE: Well, that's a  
12 statement of opinion with the explanation tacked on the  
13 end. Anyway, I'm going to leave it there. We'll argue  
14 that later.

15 I still want you to tell me how you  
16 can have a rational discussion about the nature of any  
17 expression unless you assess its truth or falsity?

18 DR. TESIS: I think that's a  
19 critical part of the assessment, yeah.

20 MR. CHRISTIE: Yeah, so do I. How  
21 can you have a rational discussion about the effect of  
22 any expression unless you discuss its truth or falsity?

23 DR. TESIS: I think it would only be  
24 logical for a court to inquire into its truth.

25 MR. CHRISTIE: Yes. How can you



1 assess the truth or falsity of a statement without  
2 hearing it? No court could do that, right?

3 DR. TSESIS: Well, you could have  
4 something in writing, of course, or someone could read  
5 it.

6 MR. CHRISTIE: Oh, you could write  
7 it. Or you could write it. Yeah, you could read it or  
8 you could write it.

9 DR. TSESIS: So some sort -- some  
10 form of communication, you'd have some --

11 MR. CHRISTIE: Yes, you've got to --  
12 you've got to see what the statement says.

13 DR. TSESIS: You'd have to know --  
14 yeah, you'd have to be able to identify the form of  
15 communication in order to be able to --

16 MR. CHRISTIE: Okay, fair enough.  
17 That's all I wanted to explore. And why should any  
18 government body, in a free and democratic society  
19 like -- even American, with its slavery, with its  
20 Indian dispossession, with whatever -- why should the  
21 United States establish a body to decide on the truth  
22 of a statement in a free and democratic society, when  
23 we are each presumed to possess enough intelligence,  
24 even to choose the leaders of our state by a vote, and  
25 decide for ourselves what is the truth in history?

1 DR. TSESIS: Well, truth is -- in the  
2 second part of what you just said, there -- truth is an  
3 objective statement, so either something happened over  
4 not. You can have an opinion on it, right?

5 MR. CHRISTIE: Uh-huh.

6 DR. TSESIS: Then you can elect  
7 democratic officials and -- I think there were three  
8 parts in what you just said, and those are two of them.

9 MR. CHRISTIE: Okay. I explored the  
10 idea of the necessity to have a rational discussion  
11 about the truth or falsity of a statement to determine  
12 its nature. I think we agreed on that. You pretty  
13 well have to do that?

14 DR. TSESIS: Yes, that's right.  
15 Uh-huh.

16 MR. CHRISTIE: And then, how can you  
17 assess any statement through a government body  
18 established to decide on the truth or falsity of that  
19 statement, in a free and democratic society? Why  
20 should there -- there be such a body? Why is it a  
21 pressing and substantial concern in a free and  
22 democratic society, even the United States, with a  
23 history of slavery, a history of Indian dispossession?

24 DR. TSESIS: There are certain truths  
25 that are determined in international tribunals, like

1 the Nuremberg Tribunal --

2 MR. CHRISTIE: Oh.

3 DR. TSESIS: -- and so that the  
4 dispute of them in history is -- the court can  
5 recognize international decisions as to their truth  
6 or -- or validity.

7 MR. CHRISTIE: Oh, so there's an --  
8 there's an official truth for all time then, is there?

9 DR. TSESIS: There's an official  
10 truth concerning certain things, such as that the  
11 Holocaust occurred --

12 MR. CHRISTIE: Uh-huh.

13 DR. TSESIS: -- such as that slavery  
14 against blacks occurred, and such as that the Rwanda  
15 occurred.

16 MR. CHRISTIE: Uh-huh.

17 DR. TSESIS: Any statement that those  
18 were unreal, and any attempt to denigrate that reality,  
19 in fact, is not simply an inquiry into the truth of the  
20 matter, but rather a form of defamation against a  
21 group, to try to show it to be liars and scoundrels who  
22 use statements of history in order to manipulate  
23 political process, and to get their way.

24 MR. CHRISTIE: Oh, I see. Well, was  
25 the Armenian Holocaust part of the official history of

1 the world, or not?

2 DR. TSESIS: It has been recognized  
3 by international bodies to -- it's by U.N. body, to  
4 have been a genocide, yes.

5 MR. CHRISTIE: I see. So therefore,  
6 if there are laws in Turkey which prohibit people from  
7 advocating, or expressing their opinion in favor of the  
8 Armenian Holocaust, those laws would be what, would  
9 they be hate laws?

10 DR. TSESIS: They would be gag laws.

11 MR. CHRISTIE: Gag laws? I see. So  
12 it depends on what society you live in, what the  
13 official truth is, doesn't it?

14 DR. TSESIS: No.

15 MR. CHRISTIE: Well, Iran doesn't  
16 agree with your version of the --

17 DR. TSESIS: Of course, there -- were  
18 a hundred -- well, they were -- I'm not sure it's a  
19 hundred -- I think it's a hundred Iranian scholars who  
20 wrote a letter to the president of Iran, expressing  
21 how -- their disagreement with the Holocaust denial  
22 conflict.

23 MR. CHRISTIE: So there's democracy  
24 on that issue in -- in Iran, and these scholars could  
25 question it, eh, or disagree with the government?

1 DR. TSESIS: No, there's no  
2 democracy -- well, there -- there is a form of  
3 democracy, there are elections in -- in Iran, but I  
4 wouldn't call it a true democracy. There -- there were  
5 elections in the Soviet Union as well.

6 MR. CHRISTIE: Uh-huh. In the United  
7 States, where you come from, people are presumed to  
8 possess enough intelligence, notwithstanding their  
9 history of slavery, blacks can vote, right?

10 DR. TSESIS: Yes.

11 MR. CHRISTIE: And they can choose  
12 their leaders in the United States, through a vote?

13 DR. TSESIS: Yes.

14 MR. CHRISTIE: And they can decide  
15 what the truth is, among all the versions of history  
16 that their leaders present, right?

17 DR. TSESIS: Can they decide -- they  
18 can -- they can have an opinion about matters of truth,  
19 but they cannot make truth. Truth is -- is something  
20 that's objective.

21 MR. CHRISTIE: Uh-huh. And we have  
22 to have trials to determine what the truth is, except  
23 now, for certain limited things, there's official  
24 truth?

25 DR. TSESIS: No, trials do not

1 determine what truth is. Trials are methods of  
2 assessing evidence, and the -- predicated on the  
3 evidence that's presented by both parties, evaluating  
4 which is more accurate, and then coming to a decision.

5 MR. CHRISTIE: If there is no  
6 measurable harm demonstrated from speech, how is a  
7 limit on it demonstrably justifiable, in your view?

8 DR. TESIS: If there is no  
9 identifiable harm, it --

10 MR. CHRISTIE: Well, I said  
11 "demonstrable" harm.

12 DR. TESIS: Demonstrable harm.  
13 Well, demonstrable harm would certainly go to issues  
14 of -- for example, penalties, right, so how much -- how  
15 much one would get fined, to the extent to which there  
16 was a harm.

17 MR. CHRISTIE: No, no, I don't think  
18 you understand me. I'm not talking about how much a  
19 penalty should be for a speech. But if there is no  
20 measurable harm in society as a whole, demonstrated  
21 from speech --

22 DR. TESIS: Uh-huh.

23 MR. CHRISTIE: -- how is a limit on  
24 speech demonstrably justifiable, and how is it a  
25 pressing and substantial certain?

1 DR. TSESIS: Well, what I can tell  
2 you is that the international bodies have considered  
3 that, as long as there is a substantial likelihood,  
4 given the history of hate speech, and given the number  
5 of times it's been used for the purpose of inciting  
6 hatred towards a group and then justifying acts of  
7 discrimination and violence, they have determined that,  
8 rather than allowing the harm to happen, that they  
9 would head it off by creating laws that would allow for  
10 either private or criminal causes of action.

11 MR. CHRISTIE: This is like the  
12 concept of pre-emptive strike, isn't it?

13 DR. TSESIS: No, this -- this seems  
14 to being like the concept of attempt and conspiracy.

15 MR. CHRISTIE: What? Attempt and  
16 conspiracy?

17 DR. TSESIS: That's right.

18 MR. CHRISTIE: What does that mean?

19 DR. TSESIS: Law that -- that  
20 prohibit the attempted murder, rather than say, "We'll  
21 allow -- we will allow a person to murder" --

22 MR. CHRISTIE: Oh, right.

23 DR. TSESIS: -- laws that -- that  
24 allow for the punishment of conspiracy, rather than  
25 allowing the conspiracy to come to fruition.

1 MR. CHRISTIE: Uh-huh. So you  
2 compare what you call "hate speech" with a conspiracy?

3 DR. TESIS: Or attempt, yes.

4 MR. CHRISTIE: Uh-huh. Okay.

5 DR. TESIS: I think those are  
6 analogous.

7 MR. CHRISTIE: That's an interesting  
8 theory, and -- we'll leave it there. What measurable  
9 harm exists, other than subjective annoyance, from  
10 racist, bigoted, hypercritical speech, or epithets?

11 DR. TESIS: If it's simple  
12 annoyance, then it's likely that society has no  
13 interest in it. But the denigration, disparagement,  
14 and putting people into a lesser light and dehumanizing  
15 them has a -- it can -- can lead to all manner of  
16 discriminatory conduct that prohibits them from using  
17 their talents and -- and then harms the public interest  
18 by not -- not allowing them to participate fully in the  
19 life of a democracy.

20 MR. CHRISTIE: It can do that, but  
21 how likely is it?

22 DR. TESIS: That's a determination  
23 on a case-by-case basis, to be quite frank with you.

24 MR. CHRISTIE: So we have to leave  
25 the limits on speech on a case-by-case basis --



1 DR. TSESIS: Just like --

2 MR. CHRISTIE: -- because of the  
3 possibility of the harms you described --

4 DR. TSESIS: I'm not --

5 MR. CHRISTIE: -- or we can't assess  
6 their likelihood?

7 DR. TSESIS: No, a government can  
8 determine that there -- that it is well within its  
9 reach to limit such speech, yet whether in a particular  
10 event, a particular speech or statement, whether on the  
11 Internet or not, has a substantial likelihood of that  
12 harm, can be assessed by a court.

13 MR. CHRISTIE: And that's on a  
14 case-by-case basis; is that right?

15 DR. TSESIS: Judging the particular  
16 event must happen on a case-by-case basis, but as a  
17 policy matter of a legislature creating a statute that  
18 prohibits the incitement of hatred against a particular  
19 group that has historically been oppressed, is a policy  
20 matter that need not happen on a case-by-case basis  
21 because it can be based on the cultural events that  
22 have happened on such a broad scale and to -- that the  
23 government finds it in the interest of democracy, to  
24 prohibit it, and find that it has no place in its  
25 plural -- in its pluralistic marketplace.

1 MR. CHRISTIE: Uh-huh. And was hate  
2 speech common throughout history?

3 DR. TESIS: I have not studied, you  
4 know, all of history, but hate speech has -- is a  
5 common occurrence, yes.

6 MR. CHRISTIE: And Martin Luther, in  
7 1543, published a book called The Jews and Their Lies,  
8 correct?

9 DR. TESIS: That's right.

10 MR. CHRISTIE: And you -- you refer  
11 to it in your book?

12 DR. TESIS: I do, yes.

13 MR. CHRISTIE: And this -- you cite  
14 and acknowledge that this book referred to Jews as  
15 vermin?

16 DR. TESIS: I don't remember -- "the  
17 usurious vermin", yes. Yes, he has that statement,  
18 yes.

19 MR. CHRISTIE: Uh-huh. And he  
20 also -- this is the Protestant reformer, right?

21 DR. TESIS: Yes.

22 MR. CHRISTIE: Fairly authoritative  
23 figure in Protestant circles for a few years?

24 DR. TESIS: Until today.

25 MR. CHRISTIE: Uh-huh. And I guess

1 in order to -- and he also advocated burning  
2 synagogues, didn't he?

3 DR. TSESIS: And burning all the  
4 Jews' books as well.

5 MR. CHRISTIE: Uh-huh. Particularly  
6 the Talmud, which you claim to have some knowledge of?

7 DR. TSESIS: Well, not the Bible, but  
8 certainly, that -- to burn all their books.

9 MR. CHRISTIE: The Talmud, he  
10 mentioned, didn't he?

11 DR. TSESIS: I don't remember the  
12 Talmud, but if you have the quote, you have the quote.

13 MR. CHRISTIE: Uh-huh. You read the  
14 book?

15 DR. TSESIS: Yes.

16 MR. CHRISTIE: Oh, okay. Well, if  
17 hate speech were common throughout history, and I  
18 suggest it was, how did we in Canada avoid genocide,  
19 without hate laws?

20 DR. TSESIS: Hate is -- you pointed  
21 out earlier, requires certain socio-economic situations  
22 in order to rise into the form of propaganda that can  
23 then be manipulated by a political leader, in order to  
24 indoctrinate and gather a group of people, to harm a  
25 particular group that has been stereotyped, and against

1           whom there has been advocacy of harm.

2                               Therefore, under certain  
3           circumstances, as you and I began this line of  
4           questioning, there is barking and there is no biting.  
5           However, there is certain biting that -- barking that  
6           is substantially likely, that given the right  
7           circumstances - depression, charismatic leader coming  
8           to power, war -- that is then manipulated for the  
9           purpose of carrying out the very -- the very, sort of,  
10          ends that had been advocated -- that could have been  
11          advocated for years.

12                           MR. CHRISTIE: Did you hear my  
13          question?

14                           DR. TSESIS: Yes.

15                           MR. CHRISTIE: What was it?

16                           DR. TSESIS: Your question was, why  
17          in Canada should we prevent the use of hate propaganda,  
18          given that we haven't had this sort of history?

19                           MR. CHRISTIE: No. My question was,  
20          how did we, in Canada, avoid a genocide without the  
21          hate laws?

22                           DR. TSESIS: How did you, in Canada,  
23          avoid the hate -- how did you avoid a genocide, without  
24          hate laws?

25                           MR. CHRISTIE: Uh-huh.

1 THE CHAIRPERSON: I surmised from  
2 your answer, and tell me if this is correct, that you  
3 are saying Canada -- the history of Canada -- none of  
4 the circumstances that you referred to earlier ever  
5 presented themselves in the history of Canada, and --  
6 and that's why.

7 DR. TSESIS: And that a lot of --  
8 that's right. And a lot of --

9 THE CHAIRPERSON: Is that your  
10 answer?

11 DR. TSESIS: That's right. That's  
12 right. And later on -- well, that's it.

13 MR. CHRISTIE: Now, isn't the Bible  
14 actually viewed as a significant source of authority by  
15 a large number of people, even in Canada?

16 DR. TSESIS: I presume the Bible is  
17 viewed as a source of authority throughout the world.

18 MR. CHRISTIE: Isn't it replete with  
19 hate speech?

20 DR. TSESIS: You would have to give  
21 me an example, but there is clearly anti-Semitic  
22 speech, such as in the book of John.

23 MR. CHRISTIE: Well, there's --  
24 there's racist speech against people in the Old  
25 Testament, that "they should be killed, men, women,

1 children, even animals, to take possession of the  
2 land"?

3 DR. TESISIS: You are speaking about  
4 one occasion, that's absolutely true. That's -- that  
5 clearly was -- I don't know if we'd call it racist  
6 because "race" is not a concept that comes in until  
7 much, much later, but it -- it certainly is a horribly  
8 oppressive act against a -- a group of people.

9 MR. CHRISTIE: And the concept of  
10 killing inferior races to carry out God's willing, for  
11 the chosen people to take possession and occupy the  
12 land of Israel, was definitely repeated many times in  
13 the Old Testament?

14 DR. TESISIS: Well, again, the term  
15 "race" doesn't -- doesn't come into play, but where  
16 statements like the one you said -- it doesn't -- I'm  
17 not sure what you mean by "repeated", although I  
18 remember the particular one that you are -- you're  
19 speaking about.

20 MR. CHRISTIE: Okay, well --

21 DR. TESISIS: That -- that is a  
22 denigrating form that, if it were used today, for the  
23 purpose of advocacy, would be a form of hate speech.

24 MR. CHRISTIE: Uh-huh. Well, what  
25 about declaring homosexuality "an abomination before

1 God". That's pretty strong language, isn't it?

2 DR. TSESIS: If it's used to incite  
3 people to harm homosexuals, or to create an -- or if it  
4 creates an oppressive environment for them, then --  
5 then that is a form of hate speech, yes.

6 MR. CHRISTIE: Well, what if it --  
7 it doesn't cause harm but it exposes them to contempt  
8 for the practice of homosexuality?

9 DR. TSESIS: If it exposes them to  
10 hate, and is done with purpose, recklessness, knowledge  
11 or negligence --

12 MR. CHRISTIE: Uh-huh.

13 DR. TSESIS: -- then it is a form  
14 of -- of hate speech.

15 MR. CHRISTIE: Purpose, recklessness  
16 or knowledge, right? Did I get you correct?

17 DR. TSESIS: Yes.

18 MR. CHRISTIE: Okay. Well, what  
19 about conscience? What if it's expressed as a desire  
20 to communicate out of love and -- and conscientious  
21 goodwill, about a practice that is considered  
22 damaging? What if that was the intent --

23 DR. TSESIS: If there were people --

24 MR. CHRISTIE: -- would that be hate  
25 speech?

1 DR. TSESIS: It could have been,  
2 sure. There are people who, out of conscience, said  
3 that the body politic had to be -- had to be -- rid  
4 itself of the Jews, because it had to get rid of  
5 usurious vermin, and that's a -- that was a  
6 conscious -- I mean, if that's what you mean by  
7 "conscience."

8 MR. CHRISTIE: Well, let's use the  
9 example that I chose.

10 DR. TSESIS: On --

11 MR. CHRISTIE: Because you always  
12 bring it back to Jews, but they are not the only  
13 category in this law that we're considering. So let's  
14 talk about homosexuality.

15 DR. TSESIS: I didn't realize I was  
16 only speaking and Jews. I thought I had spoken about  
17 Tutsis, blacks, Native Americans --

18 MR. CHRISTIE: Well, you're -- I was  
19 talking about --

20 THE CHAIRPERSON: Next question  
21 please.

22 MR. CHRISTIE: What we're talking  
23 about right now is homosexuals, that's all. Not Jews,  
24 not Tutsis, not Mauritians, not Indians.

25 What role does conscience play in --



1 in a free and democratic society, that would be a  
2 pressing and substantial need to conscientiously  
3 explain what might be a dangerous sexual practice, that  
4 would expose people who do it to hatred or even  
5 contempt.

6 DR. TSESIS: Well, there exactly is  
7 the stereotype, because if we consider it to be  
8 dangerous -- that is to say, if -- by "danger", you  
9 mean it spreads AIDS, that seems to be based on a  
10 stereotype.

11 If it's based on a stereotype and  
12 is -- and is -- is a dangerous practice -- I think  
13 that's what you are implying, maybe you are implying  
14 something else -- then if that's meant, or if that is  
15 done in a way that could expose someone, against whom  
16 one has a duty not to expose to hatred and enmity, then  
17 that would be a form of hate speech.

18 MR. CHRISTIE: I'm not sure I  
19 understand you. You are saying that -- you are saying  
20 that conscience has no place in the assessment of  
21 whether it is or isn't hate speech? Well, what does?

22 DR. TSESIS: What has a role in the  
23 assessment of whether something is hate speech, is  
24 whether it is spoken, written or electronically  
25 transmitted material, meant for the purpose of

1 denigrating a group of historically oppressed peoples,  
2 or on a broad -- more broad scale, race, colour,  
3 religion, sexual orientation, and has a substantial  
4 likelihood of leading to the -- to a harm.

5 MR. CHRISTIE: Oh, I heard you say  
6 "spoken or written" and "meant for the purpose of  
7 denigration". What if it's meant for the purpose of  
8 education and rectification, reformation? What if  
9 that's the purpose? Should that be considered hate  
10 speech too, even if it's conscientious and honest?

11 DR. TESISIS: If what you mean by  
12 "education" is as a -- historical information or as  
13 literary information, then of course, I think it should  
14 be allowed.

15 But if you mean by "education",  
16 indoctrination and hatred against a particular group,  
17 then I can see why society, a democratic society, would  
18 want to prohibit such speech.

19 MR. CHRISTIE: Well, to see whether  
20 the -- what the intention was, whether it was  
21 educational and reformatory, or whether it was  
22 denigration, you've got to hear and determine the  
23 intent, don't you?

24 DR. TESISIS: You don't have to  
25 determine the intent and --

1 MR. CHRISTIE: Why not?

2 DR. TESIS: -- then I -- this is  
3 probably just the fact that I come from a U.S.  
4 background in -- so maybe if I -- if I may, just for a  
5 second, maybe just clarify that intent, to me, in a  
6 U.S. environment, means purpose, recklessness,  
7 knowledge or negligence. It means all four. Purpose  
8 is a unique thing. That's typically criminal. And  
9 recklessness and -- so I may be just using the word  
10 differently. So if you could -- when you say "intent",  
11 do you always mean purpose?

12 MR. CHRISTIE: Now, you are asking me  
13 questions. I'll tell you if you really want to know.  
14 It'll be a lot easier, clear definitions. You  
15 apparently don't like the ones I'm using. I thought  
16 "purpose" was quite clear, because you chose to use it.

17 DR. TESIS: Yes, the -- counsel was  
18 using "intent", and I was just trying to clarify what  
19 was meant by "intent".

20 MR. CHRISTIE: Uh-huh.

21 THE CHAIRPERSON: Well, "intent"  
22 has -- has all the components to it, under our law as  
23 well.

24 DR. TESIS: So in -- if you would --  
25 counsel, if you would -- if it's possible to re-ask the

1 question, I'll answer it now with that knowledge, with  
2 that -- so it's going to have all four components,  
3 right?

4 THE CHAIRPERSON: We understand that  
5 concept.

6 MR. CHRISTIE: For example,  
7 expressing opposition to multiculturalism, does that  
8 affect core political speech?

9 DR. TESIS: Opposition to  
10 multiculturalism? I would have to have an example, but  
11 I presume what you mean is anti-immigration sort of  
12 speech. If that's what you mean, then that has to do  
13 with -- with core speech, yeah.

14 MR. CHRISTIE: The answer is yes?

15 DR. TESIS: That you have core  
16 speech involvement depends on what's being said,  
17 whether it's done for the denigration, or whether it's  
18 done for, you know, simple discussion.

19 MR. CHRISTIE: Yes, so once again, it  
20 depends on the reason for the statements being made,  
21 right?

22 DR. TESIS: No, it depends on the  
23 context of the material that's -- that's being said,  
24 and again, whether or not it's negligent,  
25 knowledgeable, purposeful --

1 MR. CHRISTIE: Well, content  
2 determines whether it's negligent, knowledgeable,  
3 purposeful, et cetera. But it -- the determination of  
4 what it is requires examination of the minds of the  
5 speaker, and the intent of the speaker, doesn't it?

6 DR. TSESIS: Not necessarily. Again  
7 if we -- if we -- by "intent", you mean all four, then  
8 for negligence, you clearly don't have to look at the  
9 mind of the speaker. You look at the mind of the  
10 ordinary person.

11 THE CHAIRPERSON: Mr. Christie?

12 DR. TSESIS: Sorry?

13 THE CHAIRPERSON: Sorry, I think you  
14 are going in circles on this one -- on this point with  
15 this witness.

16 MR. CHRISTIE: Well, if in explaining  
17 opposition to multiculturalism, a person should  
18 honestly and accurately and sincerely put forward  
19 examples to demonstrate the validity of their argument,  
20 but which inadvertently expose an ethnic or religious  
21 group to contempt, wouldn't it still be an expression  
22 of core political speech?

23 DR. TSESIS: If it's being used for  
24 political purposes and it's -- it accidentally -- it's  
25 just coincidental, and the ordinary person would have

1           made such a mistake, then I can't see that it -- why  
2           society would want to bother with such a thing.

3                       MR. CHRISTIE: Uh-huh.

4                       DR. TSESIS: On the other hand, if  
5           it's -- set under circumstances in which at least an  
6           ordinary person, or that particular individual,  
7           understood that it's going to expose someone to  
8           denigration, and had a substantial likelihood of that,  
9           then I think society would be interested in -- in  
10          limiting such speech.

11                      MR. CHRISTIE: Yes, but to determine  
12          what their state of mind was, they would have to  
13          explain or be allowed to explain to you, what was the  
14          basis of their belief and whether there was a fact or  
15          foundation for it, wouldn't they, in a reasonable  
16          determination of whether it really was oppressing and  
17          substantial concern?

18                      DR. TSESIS: If -- if the statements  
19          were so blatantly untrue --

20                      MR. CHRISTIE: Well, that's right,  
21          if they're blatantly untrue. But what if they are  
22          demonstrably true?

23                      DR. TSESIS: If they're demonstrably  
24          true in part, but as I gave the examples with Gypsies  
25          or Muslims earlier, in other parts false, then the fact

1           that they are partly true but yet said for the very  
2           purpose of denigrating and harming, and putting a group  
3           into disrespect, would be enough for society to be  
4           involved.  If they are simply true, then you don't have  
5           stereotype.  You don't have the expression of hatred.

6                         MR. CHRISTIE:  You -- you might have  
7           the expression of hatred, sir, I suggest, if you could  
8           gather a number of examples of the introduction of  
9           divergent racial or religious groups, and the  
10          consequences of that, suppressing freedom.  For  
11          example, the arguments about the Danish cartoons.  Are  
12          you familiar with that?

13                        DR. TESISIS:  I am familiar with  
14          that -- those.  I did not see those cartoons, I have  
15          read about them, because they are not published in the  
16          U.S. media, and hence, I did not see the cartoons.  I  
17          read (INAUDIBLE) --

18                        MR. CHRISTIE:  Do you know -- do you  
19          know they -- do you know why they are not published in  
20          the U.S. media?

21                        DR. TESISIS:  For self-censoring  
22          purposes.

23                        MR. CHRISTIE:  Yes.  Fear, right?

24                        DR. TESISIS:  That's my understanding,  
25          yes.

1 MR. CHRISTIE: Okay. So if it could  
2 be said that multiculturalism has created a situation  
3 where we can't make cartoons, that might expose those  
4 who threaten to do something because of those cartoons,  
5 to hatred or contempt on the basis of their religious  
6 motive, to the threats, right?

7 DR. TSESIS: The -- the determination  
8 of whether or not those cartoons were in fact,  
9 denigrating speech -- first of all, I simply cannot  
10 make -- because I never saw them. If I saw them --

11 MR. CHRISTIE: Okay, so if that's the  
12 case, I'll move on. I don't have time to deal with  
13 that.

14 THE CHAIRPERSON: Okay, Mr. Christie,  
15 I've heard it over and over again. You're engaging in  
16 a debate over an issue that I didn't even authorize him  
17 to be an expert in.

18 MR. CHRISTIE: Well, I didn't hear  
19 that but --

20 THE CHAIRPERSON: Well, I --

21 MR. CHRISTIE: If you tell me to move  
22 on, I'll move on. I'm not --

23 THE CHAIRPERSON: I'm not trying to  
24 suppress your speech. I'm saying it because I didn't  
25 even authorize him to get into a philosophical



1 discussion with you on all these points.

2 MR. CHRISTIE: Well --

3 THE CHAIRPERSON: You were supposed  
4 to review the history. I made that point earlier when  
5 the objection was made. And if you insist on going  
6 through this analysis, it's great, but I think it's  
7 better left to argument, when we address Section 1. If  
8 you want to pursue it with this person, fine. But  
9 he -- I didn't authorize him to be an expert to that  
10 extent. Not to mention, I didn't -- that his answers  
11 are all returning to the same point, under any  
12 hypothesis, under any ground.

13 MR. CHRISTIE: Well, I'm not sure I  
14 understand, or agree with what you said when it comes  
15 to discussion of truth, when he was trying to explain  
16 repeatedly that truth, if it was only partial truth,  
17 could be manipulated, and then we come to the issue of  
18 intent.

19 We are, after all, looking at the  
20 various categories that he has expressed his opinion  
21 on. And the opinion, if it's beyond the scope of what  
22 he's authorized to do, I'd be glad to be told that, but  
23 he's definitely expressed views that are going to the  
24 nature of communication that is pressing --

25 THE CHAIRPERSON: Where?

1 MR. CHRISTIE: And substantial  
2 concern. On page 2.

3 THE CHAIRPERSON: As I pointed out,  
4 you know, I wanted you to -- if there are any sections  
5 in this report that go beyond the scope of what we  
6 discussed earlier this morning with -- with counsel for  
7 the Attorney General and the rest of you, for the  
8 purposes of leading up to my allowing his expertise,  
9 you were to point those things out and -- and suggest  
10 to me how you would be arguing that, and those comments  
11 are not relevant to -- to his expertise.

12 MR. CHRISTIE: Okay. Well, I'm going  
13 to then go back to the qualification phase and repeat  
14 each question in relation to the category of his  
15 expertise.

16 Now you've been qualified to -- as a  
17 legal historian, to address long-term harmful effects  
18 of hate speech. I'm going to ask you whether early  
19 papal encyclicals, which required Jews to be identified  
20 and isolated, must be edited out of the historical  
21 records, especially if they contain explanations and  
22 rationalizations for the behavior, and they must never  
23 be repeated. Do you take that view as a legal  
24 historian to --

25 DR. TESIS: No, I do not.

1 MR. CHRISTIE: -- to prevent  
2 long-term harm?

3 DR. TSESIS: No, I don't.

4 MR. CHRISTIE: So if a person was to  
5 gather all the papal encyclicals referable to Jews, and  
6 to publish them on the Internet, would that engender  
7 long-term harmful effect?

8 DR. TSESIS: Not unless it was done  
9 with the negligent, intentional, reckless or purposeful  
10 reason of trying to incite hatred towards -- and  
11 denigration towards a particular group, and had a  
12 substantial likelihood of doing so.

13 MR. CHRISTIE: Oh, it -- they would  
14 have to be trying to achieve that end?

15 DR. TSESIS: Or negligently doing so.

16 MR. CHRISTIE: Oh, well, what would  
17 "negligently doing so" amount to?

18 DR. TSESIS: That would mean that  
19 there would be a duty, and that duty could either be  
20 specific or it could be general to society as a whole,  
21 and there would have to be a breach of duty.

22 MR. CHRISTIE: Well, how would you  
23 fulfill that duty?

24 DR. TSESIS: How would you fulfill  
25 that duty? By living civilly with other peoples and --

1 MR. CHRISTIE: Being good?

2 DR. TESIS: -- not denigrating them.

3 MR. CHRISTIE: Uh-huh.

4 DR. TESIS: Well, certainly being  
5 good, I'm all for that. But it'd have to be defined  
6 and it'd have to be specified. And "good" seems like a  
7 very moral concept. Well, what the legislature does  
8 is, it determines and evaluates what's -- what's  
9 morally correct for society, and then the courts  
10 determine whether or not under -- its constitutional  
11 structure can allow it to do so.

12 MR. CHRISTIE: Well, what I'm getting  
13 at is, these encyclicals would definitely expose Jews  
14 to hatred or contempt, wouldn't they?

15 DR. TESIS: Only if they were done  
16 for the purpose of derogating them, putting --  
17 making -- making hateful statements that had a  
18 substantial likelihood of doing so. If they were used  
19 simply to say, here's what the Pope did, and then this  
20 lead to the audited phase -- and led to the  
21 Inquisition, or if it was -- if these were used as a  
22 historical record for what was believed at the time,  
23 then that would seem to be something that is  
24 beneficial.

25 MR. CHRISTIE: Are you aware of

1 Professor Tony Martin's inclusion on his reading list  
2 of a book called "The Secret Relationship between  
3 Blacks and Jews"?

4 DR. TSESIS: I am not.

5 MR. CHRISTIE: At Wellesley College?  
6 Do you know where Wellesley College is?

7 DR. TSESIS: I don't know where it  
8 is, but I do know Wellesley College. It's on the -- I  
9 know it's on the east coast.

10 MR. CHRISTIE: And you don't know  
11 anything about that controversy?

12 DR. TSESIS: I do not know that  
13 controversy. I have not received any information about  
14 it, and therefore have not been able to do any  
15 background reading on it.

16 MR. CHRISTIE: Uh-huh. So if we're  
17 to be consistent with your theory about the legal  
18 historical effects and long-term harm of hate speech,  
19 don't we have to prohibit the repetition or  
20 republication of excerpts of the Old and New Testament,  
21 Shakespeare's Merchant of Venice, Chaucer's Canterbury  
22 Tales, Huckleberry Finn, particularly references to  
23 "nigger Jim"? Wouldn't you have to do all that and  
24 prevent that being repeated in history?

25 DR. TSESIS: Not at all. My -- my

1 point of view does not at all advocate for that, nor  
2 think it right. But on the other hand, if Chaucer's  
3 Canterbury Tales, just to take an example from what you  
4 said -- there's a tale -- a wonderful book, one of the  
5 most beautiful books I have ever read, which I have  
6 re-read several times.

7 But the Prioress's Tale speaks about  
8 a little boy who travels by a Jewish neighborhood every  
9 day and he loves to sing the Ave Maria. But then the  
10 Jews murder him and use him for his blood on Passover.  
11 This is the Prioress's Tale.

12 Now, if that were used for the  
13 purpose of trying to denigrate the Jews and to try to  
14 say that this, in fact, was something that is valid and  
15 accurate and therefore, something should be done, and  
16 the Jews should be harmed, then I do see the reason,  
17 and if there is a substantial likelihood of it, that  
18 that particular person might be excised within a  
19 particular context. But not as an a whole, not as a  
20 historical document, not as a work of literature.

21 MR. CHRISTIE: So this concept of  
22 "concept" could seem to indicate that there's no clear  
23 way of knowing who can repeat it and who can't?

24 DR. TESIS: It would have to be done  
25 on a case-by-case basis. You know, it's sort of like

1 the statement we -- we spoke about earlier, about  
2 attempt about conspiracy. It's sort of like -- about a  
3 statement where one says, "I would kill the president  
4 for \$3,000".

5 Well, theoretically, you must have  
6 law -- laws about -- that advocate the murder of a  
7 president, but surely what I just did wasn't advocacy  
8 of the murder of the president, but I said that exact  
9 statement. And so that the context is critical.

10 MR. CHRISTIE: Yes. Well, in the  
11 context of the example you used, of attempt or  
12 conspiracy, involves one element, what I'll suggest is  
13 "intent", doesn't it?

14 DR. TESISIS: The -- I think that  
15 those are analogous, not in the sense of the elements,  
16 because there might -- the elements might be unique,  
17 the statutes are all unique, where I've even --  
18 attempt, there are different forms of attempt. But  
19 what I was trying to say is that those statutes are not  
20 similar because of the elements or the -- but rather  
21 because both of -- because both of those, just as hate  
22 speech laws try to prevent harm before they occur.

23 MR. CHRISTIE: Well, one thing that  
24 distinguishes an attempt and a conspiracy from not  
25 being so, is intent, isn't it?

1 THE CHAIRPERSON: From not being so?

2 MR. CHRISTIE: Not being a conspiracy  
3 or an attempt. The thing that distinguishes one from  
4 another is intent?

5 DR. TSESIS: Here again, I would  
6 imagine that that would be predicated on the statutes  
7 of conspiracy and attempt, and if you want me to go to  
8 the statutes --

9 MR. CHRISTIE: Okay, no, that's fine.

10 DR. TSESIS: -- I don't -- I  
11 wouldn't, but I don't know what they are in Canada.

12 MR. CHRISTIE: Uh-huh. Sorry, I just  
13 want to understand, well, you said in regard to the  
14 Prioress's Tale, that if anyone attempted to say that  
15 this ritual murder allegation was true and used the  
16 Prioress's Tale as an example, that would be  
17 demonstrative of the intent, right?

18 DR. TSESIS: Well, it could be -- it  
19 could be, but it might also be demonstrative of a  
20 negligent action as well. If one were to --

21 MR. CHRISTIE: But it would be the  
22 necessary intent you're talking about?

23 DR. THESIS: Well, it could be also  
24 negligent. If one were to put that tale on a white  
25 supremacist website, even if one did not intend it to



1           cause harm, but -- but the ordinary person would  
2           realize that this would cause the form of harm, that  
3           seems to be adequate enough for a government to be  
4           interested in prohibiting such speech.

5                         MR. CHRISTIE:  So it depends on who  
6           says it?

7                         DR. TSESIS:  It depends on the  
8           context, and context depends on who says it, yeah.

9                         MR. CHRISTIE:  Uh-huh.

10                        DR. TSESIS:  That's certainly one of  
11           the things that could -- but it's not only that, it's  
12           also timing, location --

13                        MR. CHRISTIE:  Uh-huh.  So if someone  
14           was to say, "There were some Jews who committed ritual  
15           murder", would that constitute hate speech?

16                        DR. TSESIS:  Again, it would depend  
17           on the context.  First of all, I'm unaware of any such  
18           event.  There was a book that's claimed that there were  
19           circumstances like that.  I think that that book is  
20           inaccurate.  That's a very different thing to --

21                        MR. CHRISTIE:  What book are you  
22           talking about?

23                        DR. TSESIS:  Well, I can't remember  
24           it.  I remember there was some book, and it was a  
25           history book, where somebody was trying to prove that

1           there -- that there were certain circumstances in which  
2           Jews used ritual murder. I've seen it -- it's not  
3           accepted at all in the history community, but that's a  
4           very different thing than denigrating a particular  
5           group because of its race, religion or colour.

6                         If -- if you -- one could in fact  
7           prove, and there was a historical debate, whether or  
8           not some Jews - which I presume to be some limited  
9           number of them - did something that was harmful. It's  
10          sort of like saying "some Jews committed murder". All  
11          right, well, is it true or false and --

12                        MR. CHRISTIE: No, but -- you know  
13          that ritual murder is -- the accusation is that Jews  
14          did it in part of -- the process of collecting  
15          Christian blood for matzos, right?

16                        DR. TESIS: Of course. Now, if  
17          one --

18                        MR. CHRISTIE: Yes.

19                        DR. TESIS: -- if that says -- if  
20          it's said in the way that you just said it, not that  
21          you just said that's dealing with hatred -- but if it  
22          said, generally, Jews used it for the purpose of  
23          collecting blood for matzos, that is clearly a form of  
24          hate speech.

25                        On the other hand, if what's being

1       said, what I think is -- has never been proven  
2       historically, that there were some Jews, and one could  
3       examine the record of history and determine whether in  
4       fact, there were some Jews -- ritual murder, maybe then  
5       you have something.

6                       And that may be just historical fact,  
7       not -- not for the purpose of denigrating particular  
8       Jews, in which historians could argue, and say, this is  
9       completely bogus information, and that's a normal  
10      standard part of historical debate.

11                     MR. CHRISTIE:  So does it depend on  
12      who makes the statement, whether it's a legitimate  
13      historical debate or not?

14                     DR. TESISIS:  It depends on the -- not  
15      only the person who says it, the context, the -- the  
16      timing, the location, and whether or not the  
17      surrounding circumstances lend it to be such that it --  
18      it disparages a particular group.

19                     MR. CHRISTIE:  So there's absolutely  
20      no certainty in the way by which anyone who wanted to  
21      make a statement about Jewish ritual murder could be  
22      sure that they were on one side of the law or the  
23      other, is there?

24                     DR. TESISIS:  An individual, through  
25      investigation, could be certain that the Jews do not

1 use ritual murder for the purpose of getting blood for  
2 matzo. If person failed to --

3 MR. CHRISTIE: Let me just stop you  
4 there.

5 DR. TSEISIS: If I could just complete  
6 my answer --

7 MR. CHRISTIE: Did you actually say  
8 that a person could be absolutely certain that --

9 DR. TSEISIS: May I just complete my  
10 answer?

11 MR. CHRISTIE: Well, I want to find  
12 out if you --

13 THE CHAIRPERSON: Let him complete  
14 the -- let him answer the question. Go ahead.

15 MR. CHRISTIE: All right.

16 DR. TSEISIS: If -- if a person did  
17 not do adequate investigation research and then --  
18 which an ordinary person, say a historian, with his  
19 qualifications should have done or would have done,  
20 rather, then in fact, that person would have been doing  
21 an act of hate speech.

22 THE CHAIRPERSON: Okay, sorry. Your  
23 question, sir?

24 MR. CHRISTIE: All right. If they  
25 could show that there was a truthful factual foundation

1 for their opinion, then it wouldn't be hate speech,  
2 right?

3 DR. TESISIS: The ritual murder is not  
4 truthful so it's a -- it's a false positive  
5 hypothetical.

6 MR. CHRISTIE: Okay.

7 DR. TESISIS: I don't know what to  
8 tell you about that.

9 MR. CHRISTIE: You see, this is where  
10 controversy arises, sir. I'm going to show you an  
11 article from the Jerusalem Post, which is published  
12 February the 8th, 2007. It says "Historian Gives  
13 Creedence to Blood Libel":

14 "An Israeli historical of  
15 Italian origin has revised blood  
16 libel in a historical study set  
17 to hit the Italian bookstores on  
18 Thursday. Ariel Toaff, son of  
19 Rabbi Elio Toaff, claims that  
20 there is some historic truth in  
21 the accusation that for  
22 centuries, provided incentives  
23 for pilgrims against Jews  
24 throughout Europe. Toeff's  
25 tome, Bloody Passovers: The Jews

1 of Europe and Ritual Murders  
2 received high praise from  
3 another Italian Jewish  
4 historian, Sergio Luzzatto, in  
5 an article in the Corriere della  
6 Sera Daily, entitled "Those  
7 Bloody Passovers", it said."

8 So --

9 MR. VIGNA: Mr. Chair, we don't know  
10 which tab he's referring to and --

11 MR. CHRISTIE: Tab 11 of the Mock  
12 binder. So what I'm going to say to you, sir, is does  
13 it -- does it now depend on who says it?

14 MR. FOTHERGILL: Can I just confirm  
15 that the witness is satisfied that he's had a  
16 reasonable opportunity to inspect that document, given  
17 that it was put to him --

18 MR. CHRISTIE: Well, I --

19 DR. TSEISIS: Yes, I'm fine commenting  
20 on that.

21 THE CHAIRPERSON: Sorry?

22 DR. TSEISIS: I'm fine commenting on  
23 that. I --

24 THE CHAIRPERSON: Fine. You're fine  
25 to comment?

1 DR. TSESIS: Yes.

2 THE CHAIRPERSON: Thank you.

3 THE WITNESS: Without reading the  
4 book, I genuinely cannot answer that question to you.  
5 I think -- if what you mean in this -- if what you mean  
6 is, does it matter that a Jew has written this, and  
7 somebody else, then the answer is no. It was a Jew who  
8 went around saying that -- where the crematoria were in  
9 Auschwitz. It was the location of -- it was the  
10 location of a swimming pool. That person was engaged  
11 in just as much hate speech as a non-Jew.

12 MR. CHRISTIE: Who was that?

13 DR. TSESIS: There was a -- he had  
14 his own TV show. I can't remember his name. Went  
15 around saying that where the crematoria were was where  
16 the location of the swimming pools were -- were in  
17 Auschwitz.

18 MR. CHRISTIE: You don't know who  
19 that was, eh?

20 DR. TSESIS: Can't remember his name,  
21 but a Jew. Now, to me, that's completely irrelevant.  
22 Hate speech can come from -- from a -- from a person  
23 of -- of their own background. This book --

24 MR. CHRISTIE: To use that example --

25 DR. TSESIS: -- this book, I simply

1           have not read it. I -- I do not know. We -- you  
2           engaged me in a dialogue, and I said to you that if  
3           there were individual cases one -- and one was just  
4           talking about individual cases -- and I can't tell from  
5           that. I mean, from what -- what you just read  
6           indicates he's talking about individual cases, right?

7                         MR. CHRISTIE: No, actually, I -- I  
8           can read more, if you want.

9                         DR. TSESIS: Again, I -- I can't  
10          answer whether or not his book is hate speech, because  
11          I simply haven't read his book. That's a journalist's  
12          account. I don't even know if that journalist read his  
13          book.

14                        MR. CHRISTIE: Well, actually he  
15          interviewed the author and he interviewed Luzzatto.  
16          But I'm not going to pursue that. If you prefer to  
17          say that you're not sure -- all I was trying to  
18          establish this -- was that -- that truth matters.

19                        THE CHAIRPERSON: Mr. Christie, we  
20          have to take a break because the court reporter needs  
21          to make a telephone call in order to be able to stay a  
22          little longer.

23                                 (DISCUSSION OFF THE RECORD)

24                        THE CHAIRPERSON: Okay. Ten minutes.

25          --- Upon recessing at 4:15 p.m.



1 --- Upon resuming at 4:19 p.m.

2 MR. CHRISTIE: To deal with this  
3 barking dogs choice of analogy, there's never a bite  
4 without a bark. So did this lead us to the logical  
5 conclusion that barking causes biting?

6 DR. TESISIS: No, it leads to the --  
7 to the conclusion that barking -- or that is, hate  
8 speech, to -- to disengage ourselves of the -- of the  
9 analogy, is a necessary element in the -- in hate -- in  
10 acts of prejudice, essentially is what Allport is  
11 speaking about.

12 MR. CHRISTIE: Well, barking dogs do  
13 not cause biting, and hate speech does not cause hate  
14 crimes; isn't that right?

15 DR. TESISIS: Hate speech is a  
16 necessary element of hate crimes.

17 MR. CHRISTIE: You say it's a  
18 necessary element. Well, I'm going to suggest to you  
19 that unless the premises of a hate speech are factually  
20 persuasive, then the hate speech never causes any  
21 effect in a rational society?

22 DR. TESISIS: Just the opposite. Hate  
23 speech is not rationally persuasive. It uses  
24 irrationality and fallacy as the norm. It sometimes  
25 uses small snippets of truth in order to get at

1 something. For example, it might say blacks in the  
2 19th century -- someone might say, blacks are ignorant.

3 Well, in -- for most blacks, that was  
4 in fact true, because they were uneducated. But if  
5 they -- if they then move on to say that it was a  
6 racial -- that -- as a matter of race, that was what  
7 was going on, then there -- then there's -- it's not  
8 a -- it's not a rational statement at all, and it's not  
9 predicated on -- on truth. It uses -- it manipulates  
10 truth for the purpose of denigrating a group.

11 MR. CHRISTIE: I don't think you're  
12 addressing my question. I'm putting it to you that  
13 today, in modern society, unless the factual premises  
14 of any speech, be it hate or otherwise, are factually  
15 persuasive, they are ineffective in a rational society,  
16 which we have today?

17 DR. TSEHIS: I completely disagree  
18 with that statement.

19 MR. CHRISTIE: Well, when you --

20 DR. TSEHIS: There's nothing factual  
21 about the Tutsis being cockroaches, but yet it was  
22 extremely effective in 1994 for the perpetration of  
23 genocide.

24 MR. CHRISTIE: Did they have a wide  
25 diversity of intelligent opinion in -- in Burundi

1 and --

2 DR. TSEISIS: Rwanda?

3 MR. CHRISTIE: -- Rwanda?

4 DR. TSEISIS: Well, it -- the genocide  
5 only occurred against the Tutsis in Rwanda, of course.  
6 Their -- the education level had really risen -- I  
7 can't remember the exact percent, it was something like  
8 40 percent, were educated at that point. I mean, you  
9 know, in lower -- not in upper education.

10 MR. CHRISTIE: Are you able to tell  
11 us whether the statements made, which you refer to as  
12 hate speech, were factually verifiable or not?

13 DR. TSEISIS: I am certain that the  
14 Tutsis were not cockroaches that needed to be  
15 exterminated for the wellbeing of Rwanda.

16 MR. CHRISTIE: Well, if -- if that  
17 was all that was said -- are you saying that was all  
18 that was said?

19 DR. TSEISIS: No, there was much more  
20 that was said. There was --

21 MR. CHRISTIE: Yeah, there was  
22 probably statements made which identified why the  
23 speaker felt that way, and I put it to you that, unless  
24 those statements had some factual resonance with the  
25 people who are hearing it, unless they were insane,

1           they would not be persuasive?

2                         DR. TSESIS: Well, I agree with that  
3 point, yeah, I mean the -- that there were elements of  
4 truth in what they were saying. The element of truth  
5 is the one that you referred to earlier, that the  
6 Tutsis had oppressed them when they were under a  
7 monarchy, and therefore -- and that they were trying to  
8 oppress them again, and that in order to prevent them  
9 from oppressing them, in order to prevent them from  
10 taking control of the country, the -- they needed to be  
11 exterminated.

12                        MR. CHRISTIE: Well, was there a  
13 struggle for control at that time?

14                        DR. TSESIS: No, Habyarimana's plane  
15 had been shot down -- oh, I'm sorry -- no, no, I -- I  
16 misunderstood you. Yes, there was -- there was a --  
17 there was a war that was occurring at that time, yeah.

18                        MR. CHRISTIE: Oh, I see. A war?  
19 Between who?

20                        DR. TSESIS: The RPF, which was a  
21 group that was organized in Uganda, primarily Tutsis --

22                        MR. CHRISTIE: Were they Tutsis?

23                        DR. TSESIS: Primarily -- almost --  
24 primarily Tutsis, who were trying to get back into  
25 the -- they were primarily refugees who had fled across

1 the border to Uganda from '59 on and --

2 MR. CHRISTIE: I've read the -- case,  
3 too. Is that where you get your information?

4 DR. TSEISIS: No.

5 MR. CHRISTIE: Oh.

6 DR. TSEISIS: Well, I mean, that's of  
7 the places, I mean I --

8 MR. CHRISTIE: Well, there was a war  
9 between those who call themselves Tutsis and those who  
10 call themselves Hutus, correct?

11 DR. TSEISIS: Predominantly -- well,  
12 the Hutus were in fact in charge in Rwanda. The -- the  
13 RPF, which was the group that was fighting against  
14 the --

15 MR. CHRISTIE: Government.

16 DR. TSEISIS: -- against the  
17 government of Rwanda, were also -- were primarily  
18 Tutsis.

19 MR. CHRISTIE: Yes, okay. So there  
20 was a -- a conflict, armed conflict, in progress, which  
21 was engaged upon lines that differentiated between  
22 Tutsis and Hutus?

23 DR. TSEISIS: That's right. But the  
24 stereotype that was used was around at least since  
25 1963.

1 MR. CHRISTIE: Well, I'm not dealing  
2 with that. I just want to get some facts straight. So  
3 that -- we are talking about the factual context of a  
4 war between these two groups, aren't we?

5 DR. TSEISIS: In Rwanda, yes.

6 MR. CHRISTIE: Uh-huh. And these two  
7 groups being at war would be somewhat similar to the  
8 United States being at war after December 8th, 1941  
9 with Japan, and taking action against those of Japanese  
10 ethnic origin. Would that be similar?

11 DR. TSEISIS: That was another form of  
12 discrimination, yes.

13 MR. CHRISTIE: Yes. That was a form  
14 of discrimination, that --

15 DR. TSEISIS: Absolutely, yes.

16 MR. CHRISTIE: It would have been  
17 impossible for America to have justified or allowed the  
18 communication of, or effect of speech, if Japan had not  
19 attacked Pearl Harbour, and there was no war between  
20 Japan and the United States. Do you seriously contend  
21 that anyone could have succeeded with -- simply saying,  
22 I don't like Japanese. Let's put them into  
23 concentration camps?

24 DR. TSEISIS: You're making --

25 MR. CHRISTIE: I'm asking a question,

1 actually.

2 DR. TSESIS: Right. You are  
3 convoluting history and you're making an error.

4 MR. CHRISTIE: I'm doing what?

5 DR. TSESIS: You're convoluting  
6 history and making an error.

7 MR. CHRISTIE: Convoluting? I just  
8 want to hear what you're talking about.

9 DR. TSESIS: Convoluting history --

10 MR. CHRISTIE: Oh, okay.

11 DR. TSESIS: -- and making an error.

12 MR. CHRISTIE: Okay.

13 DR. TSESIS: There was discrimination  
14 against the Japanese and United States before the  
15 internment that -- had occurred on the West Coast.  
16 They were not allowed to own land, they were not  
17 allowed to gain citizenship --

18 MR. CHRISTIE: Right.

19 DR. TSESIS: -- there was a  
20 citizenship provision in the U.S. law that only allowed  
21 for citizenship of whites. So yes, while you're right,  
22 they were not interned, because that set of events  
23 didn't allow for such a mass crime against humanity  
24 until -- until the war came about. There was a  
25 stereotype that had created all forms of

1 discrimination, that was predicated on numerous  
2 anti-Japanese and anti-Chinese discriminatory books  
3 that were published.

4 MR. CHRISTIE: Okay. Well, in  
5 Canada, there was no such prohibition against Japanese  
6 owning land. But we did the same. We actually  
7 confiscated Japanese property, interned them, and --  
8 and used the money we acquired from the sale of their  
9 property to pay for their internment.

10 So I suggest to you that the  
11 existence of a state of war with the country of origin  
12 of these people of that ethnic background, was a  
13 necessary ingredient to this act of discrimination.  
14 And had there been no war, such acts would never have  
15 been the reality?

16 DR. TSESIS: In the case that you are  
17 saying, yes. But not in the case of blacks in the  
18 United States. In the case of blacks in the United  
19 States, there was no war with Africa, and yet there was  
20 a racial prejudice that lead to their enslavement.

21 MR. CHRISTIE: Uh-huh. Well,  
22 slavery -- now, when -- where did that originate?

23 DR. TSESIS: Where did slavery  
24 originate? I don't know if -- I don't think -- I don't  
25 think anybody knows that.



1 MR. CHRISTIE: Well, where did black  
2 slavery originate?

3 DR. TSESIS: Well, Denmark was a --  
4 was a chief source of African slavery far before the  
5 United -- before England was involved in the slave  
6 trade. However --

7 MR. CHRISTIE: The black slave trade?

8 DR. TSESIS: Yes. Particularly in --

9 MR. CHRISTIE: Uh-huh.

10 DR. TSESIS: -- in Denmark.

11 MR. CHRISTIE: Would it be accurate  
12 to say that Arabs were engaged in the black slave  
13 trade?

14 DR. TSESIS: Yes.

15 MR. CHRISTIE: And Jews?

16 DR. TSESIS: There was a -- a  
17 fractional amount of Jews, certainly under  
18 three percent of the -- the Jewish population, who were  
19 involved in -- in some slave trade, but not "the Jews".  
20 So no, it's --

21 MR. CHRISTIE: I think I said "Jews",  
22 "some Jews".

23 DR. TSESIS: -- but some Jews, yes.

24 MR. CHRISTIE: Uh-huh, okay. Now,  
25 you are here telling us the long-term effects of hate

1 speech, and so I -- I want to ask you whether any --  
2 any hate crimes, in your observation, have been  
3 identified as caused by speech, without surrounding  
4 circumstances that were persuasive in fact?

5 DR. TESISIS: Speech can't act in a  
6 vacuum, so certainly there have to be surrounding  
7 circumstances.

8 MR. CHRISTIE: Okay. I put it to you  
9 that the real target of these laws is not hate, but  
10 truth, because without truth, any speech would have  
11 little effect in hate or in credibility. What do you  
12 say to that?

13 DR. TESISIS: If truth is truly being  
14 offered for what it's meant, then it -- then it's not  
15 denigrating. The problem is, when truth is being used  
16 for the -- for the purpose, reckless intent --  
17 recklessness, knowledge or with -- with negligence,  
18 that there is a substantial likelihood that harm will  
19 happen. In other words, truth, in and of itself, of  
20 course, is not harmful.

21 The problem is the manipulation of  
22 truth, for the purpose of -- or the -- well, with the  
23 intent of incitement, if I can use "intent". Every  
24 time I'm using it -- just for the record, I'm using it  
25 with all -- if I use "intent", I'm using it in all four

1 meanings and I can --

2 MR. CHRISTIE: Yes. Okay, well,  
3 let's say then, for the sake of argument, that you are  
4 possessed of truthful knowledge, and you are aware if  
5 you communicated, there is a substantial likelihood  
6 that hatred will be engendered, promoted or advanced.  
7 In those circumstances, I take it your view is that the  
8 free and democratic society should prevent you from  
9 expressing it?

10 DR. TESISIS: If there is a -- a  
11 statement that's purely true, with no untruth in it?

12 MR. CHRISTIE: Yes.

13 DR. TESISIS: Then society might, in  
14 fact, have a compelling state interest, in certain  
15 circumstances, to prevent that sort of speech, when  
16 it's imminently harmful. But if it's true, then it's  
17 not --it's being said without the -- without any  
18 attempt to do anything that's denigrating towards a  
19 group that I -- and from what -- you know, from the  
20 general principle that you just said.

21 MR. CHRISTIE: Without the attempt to  
22 do anything denigrating, then it's -- then it's  
23 justified, eh?

24 DR. TESISIS: Again, that's not what I  
25 said. The government might still have a compelling

1 interest --

2 MR. CHRISTIE: Uh-huh.

3 DR. TSESIS: -- in which you could  
4 pass a narrowly tailored law, but that would be a much  
5 more difficult standard for the government to meet.

6 MR. CHRISTIE: Uh-huh. Okay, I --  
7 you're familiar with defamation law?

8 DR. TSESIS: Yes.

9 MR. CHRISTIE: Civil tort. And  
10 you're aware that there is a defence of truth, but it's  
11 the burden on the defendant to prove it, right?

12 DR. TSESIS: That's right, yes.

13 MR. CHRISTIE: But we do allow the  
14 defendant to prove it, even in cases where there is  
15 clear defamation, don't we?

16 DR. TSESIS: Yes.

17 MR. CHRISTIE: Uh-huh. Because we  
18 place, in the private context, such a high value on  
19 truth, that even if it defames someone, we recognize  
20 that it has inherent merit, don't we?

21 DR. TSESIS: For the -- for the tort  
22 of defamation, yes, but for the interference of  
23 economic interests, we have completely different  
24 elements.

25 And if it -- if you say something

1           that's true for the purpose of -- so there -- in other  
2           words, the other thing I'm pointing out, without going  
3           in this direction which would be -- which would take us  
4           too far afield, is to simply say, "You're talking about  
5           one cause of action, which is defamation, and hate  
6           crimes on the Internet is another cause of action. And  
7           they have separate elements to them.

8                         MR. CHRISTIE: Uh-huh. Okay, when is  
9           speech biased, biased speech?

10                        DR. TESIS: Biased speech? Speech  
11           that relies on the stereotype against -- usually, a  
12           historically oppressed group -- it -- specifically  
13           towards race, colour, gender, and some of the other  
14           characteristics I mentioned earlier.

15                        MR. CHRISTIE: Uh-huh. That's  
16           because there -- those stereotypes are unfounded in  
17           fact, right?

18                        DR. TESIS: That's because those  
19           stereotypes are -- well, that's certainly one of the  
20           things that's involved, yes.

21                        MR. CHRISTIE: And that's the only  
22           thing that makes stereotypes improper, isn't it, if  
23           stereotypes were verifiably true --

24                        DR. TESIS: Well, it --

25                        MR. CHRISTIE: -- it would be proper

1 to express them?

2 DR. TSESIS: It would seem to me that  
3 the only truth that one could say about a group that's  
4 verifiably true is its etiology. Black people have  
5 dark skin. If that's the truth that you are talking  
6 about, then I can't see how it's harmful.

7 MR. CHRISTIE: Uh-huh.

8 DR. TSESIS: But if -- if it's a  
9 statement that black people are -- are dumber, then --  
10 and I -- maybe this is my -- it's probably my own  
11 fault, because I'm not certain of the specific example  
12 you are going to, but I'll try answer it in a more --

13 MR. CHRISTIE: Well, what I was going  
14 to say to you, if you get to the point, is that bias  
15 speech is only biased when it's unfounded in fact?

16 DR. TSESIS: Bias is not founded in  
17 fact, yes.

18 MR. CHRISTIE: And bias speech is  
19 speech asserting illogical prejudices, right?

20 DR. TSESIS: That's true, yes.

21 MR. CHRISTIE: That's what makes it  
22 biased?

23 DR. TSESIS: Yes.

24 MR. CHRISTIE: But if there was a  
25 logical and scientific verifiability to the speech, it

1 wouldn't, by definition, therefore be biased, would it?

2 DR. TESIS: If there was a logical  
3 verifiability about the statement, then it would not be  
4 bias, right.

5 MR. CHRISTIE: No, because we just we  
6 went through the definition that speech is biased  
7 because it is asserting illogical prejudice, and it is  
8 unfounded in fact. We agreed to that, did we not?

9 DR. TESIS: Yes.

10 MR. CHRISTIE: Consequently, if it is  
11 founded in fact, and is not a logical prejudice, it  
12 cannot be biased speech, can it?

13 DR. TESIS: If it's founded in -- in  
14 fact, it could well not be biased, and the -- we return  
15 to the question of, is it -- is it said in a context  
16 that is -- that has substantial likelihood of  
17 denigrating a particular group, and the state could  
18 have a compelling interest. For example, John Stuart  
19 Mill gives the example of people saying against millers  
20 and standing in front of a -- of this person's business  
21 in a -- and he says, "This is imminently harmful".

22 So there -- there are certain  
23 circumstances where, even though what you are saying  
24 is, you know, the -- all the millers' prices -- every  
25 miller in the country has extremely high prices on

1           their commodities, something has to be done about this.  
2           There are certain circumstances in which a miller might  
3           say, "This is -- this has a very high likelihood of  
4           causing harm to this miller right here in this shop."

5                           And they might in fact, say, even  
6           though that may be true, these are extremely high  
7           prices and people below a certain income level can't  
8           afford them, we might still want to prevent it -- you  
9           know, that -- that the government -- that would have to  
10          be an assessment of -- within a context.

11                           MR. CHRISTIE:  Isn't truth, or the  
12          belief in it, a necessary ingredient to promote such a  
13          strong emotion as hate in rational people?

14                           DR. TESISIS:  No.

15                           MR. CHRISTIE:  So you are saying that  
16          rational people can acquire hate where there's no truth  
17          to the statement?

18                           DR. TESISIS:  Again, you are using  
19          such -- there's no specifics in what you are saying so  
20          without any specifics --

21                           MR. CHRISTIE:  Well, there's no  
22          specifics in hate.  That's why I'm asking.

23                           DR. TESISIS:  -- without any specific,  
24          it is possible to say something hateful with any -- you  
25          know, I genuinely can't answer that.  But -- if you



1 say, for example, something like, "All Jews have  
2 horns", all right, well, that's clearly false. But  
3 there's an element of truth in it, right?

4 There are Jews, so -- well, that  
5 could make someone hate the Jew because after all,  
6 there is an element of truth. There are Jews, right,  
7 and the -- the fallacy is, they have horns. So you'd  
8 have to give me specific examples. If you could come  
9 up with one --

10 MR. CHRISTIE: Well, I will, in due  
11 course. But I want to establish certain principles in  
12 your use of language, and your assertion that long-term  
13 harm's cause -- or caused by the expression of hate,  
14 and I'm examining that because you're this -- the  
15 expert in that, and you're qualified in that area.

16 So I'm going to ask you this, what  
17 part does conviction or belief play in the promotion of  
18 hate.

19 DR. TESISIS: Could play a very  
20 high -- it has a very high role in --

21 MR. CHRISTIE: I put it to you that,  
22 unless you have conviction, which is firm belief,  
23 strong belief, you are not going to -- no rational  
24 person is going to acquire this strong emotion of hate?  
25 Therefore, I put it to you that conviction is a

1 necessary ingredient in hate?

2 DR. TSESIS: Conviction in -- that a  
3 stereotype is true is -- is accompany -- you know,  
4 something that could lead a large group of people to  
5 hate, yes.

6 MR. CHRISTIE: Well, I'm not going to  
7 be satisfied with that, because that's evasive, I  
8 suggest. What I'm putting to you is this: If you don't  
9 have conviction, but it's a strong belief, you are not  
10 going to -- no rational person will acquire the strong  
11 emotion of hate without conviction?

12 DR. TSESIS: Here, you are talking  
13 about psychology and emotion.

14 MR. CHRISTIE: No, I'm talking  
15 about --

16 DR. TSESIS: I believe that a  
17 person -- in order to indoctrinate someone, you do have  
18 to have a conviction that in fact, some stereotype is  
19 false. And without having some belief that that  
20 stereotype is false, and having a strong conviction, as  
21 you put it, you can't really motivate a person to  
22 action, yes.

23 MR. CHRISTIE: Or you couldn't  
24 motivate a person to have the emotion of hate without  
25 conviction?

1 DR. TSESIS: Well, you are just  
2 speaking about the emotion, and I'm talking about  
3 something that has a substantial likelihood of  
4 eliciting a hatred that could cause harm, such as  
5 physical, persecution or discrimination against a  
6 group.

7 So if it's simply -- if what you are  
8 saying is simply it elicits an emotion and nothing  
9 more, well, people have irrational emotions all the  
10 time. If you are talking about an emotion that is  
11 affective, that is to say that it has the effect of  
12 causing action, and I agree with you, yes, it has to be  
13 a strong conviction about the -- about some form of  
14 stereotype.

15 MR. CHRISTIE: Well, if this emotion  
16 didn't have some form of action, there would be no way  
17 of measuring it, would there?

18 DR. TSESIS: You could presumably  
19 create some sort of a scale, and psychologists have  
20 created that -- those sorts of scales --

21 MR. CHRISTIE: Right.

22 DR. TSESIS: A 1 to 10, what do  
23 you -- "how do you feel about a particular group"?

24 MR. CHRISTIE: Well, look, I'm just  
25 putting it -- well, what is -- what do you call hate?

1 Is that intense dislike?

2 DR. TSEISIS: No.

3 MR. CHRISTIE: It's not?

4 DR. TSEISIS: I'm talking about  
5 something that's affective, something that has a  
6 substantial likelihood of causing discrimination,  
7 persecution or physical harm on -- within the context  
8 that -- within particular contexts, that have to be  
9 determined on a case-by-case basis.

10 MR. CHRISTIE: You're talking about  
11 something that has a substantial likelihood of harm  
12 then? So you are talking about action?

13 DR. TSEISIS: No, I'm talking about  
14 affectiveness, with an "a".

15 MR. CHRISTIE: Are you going to  
16 acquire any affectiveness, with an "a", if you don't  
17 have the intense emotion of hate?

18 DR. TSEISIS: Yes, it's possible. For  
19 example, one could have the desire to steal money from  
20 a particular group, say gays, find a vulnerable  
21 target -- have no hatred towards gays, but simply use a  
22 stereotype in order to get other people to act against  
23 gays, by using the stereotype of hatred that one knows  
24 can motivate people to act against a gay, and steal a  
25 wallet.

1                   Then one could -- acted on hatred,  
2                   granted, right, but knowing and understanding, in that  
3                   situation that I gave -- and the example I gave with  
4                   intent, to -- to rob someone, rather than just, you  
5                   know, out of hatred for someone. It's a -- it's a  
6                   incidental victim, where the person exploits a  
7                   stereotype for the purpose of committing a criminal  
8                   action.

9                   MR. CHRISTIE: Excuse me. Well, then  
10                  if you robbed a gay, simply because you wanted the  
11                  money, had nothing to do with dislike of gays, would  
12                  that be a hate crime to you?

13                 DR. TESISIS: Yes.

14                 MR. CHRISTIE: Oh?

15                 DR. TESISIS: Because if you're  
16                  robbing a person because he's gay -- in other words,  
17                  you see a vulnerable victim, you realize -- if you  
18                  realize that you are in a county where people who rob  
19                  gays are not often brought to justice and don't -- are  
20                  not typically punished, and the police don't handle  
21                  those crimes in as -- in as -- with as much care as  
22                  they do other situations, and you rob a vulnerable  
23                  victim because of his -- because of a particular group  
24                  that he belongs to, you don't need the emotion of hate.  
25                  You could have the simple opportunism of robbing a

1 person because he's gay, without hating that person  
2 because he's gay.

3 MR. CHRISTIE: But in that example,  
4 you are relying on the hate, not from yourself the  
5 perpetrator, but of society. And I'm still forced to  
6 the question, without conviction in the society, of  
7 hate and intense dislike of gays, you are not going to  
8 have the affect that you need to perpetrate this  
9 opportunistic crime? Isn't that right?

10 DR. TSESIS: Well, there I agree with  
11 you. It's --

12 MR. CHRISTIE: Yes.

13 DR. TSESIS: -- it's hatred of a  
14 community but --

15 MR. CHRISTIE: Yeah, I understand.  
16 I -- I --

17 DR. TSESIS: Well, when you show  
18 emotion, that must mean an individual, right?

19 MR. CHRISTIE: No, it doesn't. It  
20 could be a collective emotion. But what I'm suggesting  
21 is that you don't have a collective emotion or an  
22 individual emotion without conviction, individually, or  
23 collectively, right? Let's get that simple proposition  
24 agreed.

25 DR. TSESIS: You need -- you

1           certainly -- in order to elicit a hate crime -- in  
2           other words, in order to get other people to act on a  
3           hate crime --

4                         MR. CHRISTIE: Uh-huh.

5                         DR. TSESIS: -- the typical -- you  
6           might have an emotion of hate, or not have an emotion  
7           of hate. I mean, I'm back to the same --

8                         MR. CHRISTIE: Somebody has to have  
9           the emotion of hate, either collectively or  
10          individually, to constitute a hate crime?

11                        DR. TSESIS: Well, someone has to --  
12          no, I -- the way I would put it is, someone has to prey  
13          on a stereotype and use -- a vulnerable person --

14                        MR. CHRISTIE: Yes, the reason --

15                        DR. TSESIS: -- vulnerable within a  
16          particular society --

17                        MR. CHRISTIE: The reason they're  
18          vulnerable is because, collectively or individually,  
19          they're hated?

20                        DR. TSESIS: Or denigrated, yes.

21                        MR. CHRISTIE: Denigrated or hated,  
22          disparaged or hated. But the emotion that is required,  
23          either collectively or individually, requires  
24          conviction about the inferiority of that category,  
25          right?

1 DR. TSESIS: By -- by society -- if  
2 it's by society that you are talking about, yes.  
3 That's -- I mean, that's what makes them an "out"  
4 group.

5 MR. CHRISTIE: Uh-huh. To make them  
6 an "out" group, you have to have a conviction about  
7 that "out" group, right?

8 DR. TSESIS: To have -- for someone  
9 to be in a group that is not given the rights  
10 collectively, that person has to be part of a group  
11 against whom there is a widespread belief, or a  
12 community belief, that they are -- that dehumanizes  
13 them or believes that they need not be treated equally.

14 MR. CHRISTIE: To have that strong  
15 belief that actually dehumanizes them, you need strong  
16 conviction about that belief, don't you?

17 DR. TSESIS: You -- you certainly  
18 need conviction about some form of belief, right or  
19 wrong.

20 MR. CHRISTIE: Yes. Well, in this  
21 case, wrong, according to you.

22 Okay, the next phase of my inquiry is  
23 this: Where hate is expressed, either individually or  
24 collectively, conviction and sincerity are a necessary  
25 ingredient in normal sane people. You agree?



1 DR. TESIS: I think you've asked me  
2 this question a couple of times, and I have --

3 MR. CHRISTIE: No, I don't think so,  
4 because I wrote them down, and I go through them  
5 systematically. And I'm going for a point, and a  
6 purpose.

7 MR. VIGNA: Mr. Chair, these  
8 questions are kind of rhetorical and --

9 MR. CHRISTIE: No, they're not  
10 rhetorical.

11 THE CHAIRPERSON: They're way beyond  
12 the scope of what I say is his expertise. But that's  
13 fine. You can -- I mean, you can have all the time you  
14 like. You like playing this game. Go ahead.

15 MR. CHRISTIE: I'm not playing any  
16 games --

17 THE CHAIRPERSON: -- you can go ahead  
18 until six. That's the plan for everybody -- to answer  
19 that question.

20 MR. CHRISTIE: Well, you know, this  
21 is the first occasion in this country upon which  
22 questions of this kind have been leveled at those we  
23 call experts.

24 THE CHAIRPERSON: That's fine. Go  
25 ahead.

1 MR. CHRISTIE: Okay. And you are  
2 going to treat it with that regard?

3 THE CHAIRPERSON: Sir, I will treat  
4 it as -- once we have all the evidence in, you can make  
5 all your arguments based on that. It's just -- it was  
6 quite simple in the morning. I did not authorize him  
7 to go to that extent. If you want to explore it, go  
8 ahead.

9 MR. CHRISTIE: Where is there, in  
10 your experience --

11 THE CHAIRPERSON: Ms Kulaszka --  
12 sorry. Do you intend to ask questions also?

13 MS KULASZKA: Yes I do.

14 THE CHAIRPERSON: Okay, they have to  
15 be --

16 MR. FOTHERGILL: And I would like to  
17 reserve perhaps about ten minutes.

18 THE CHAIRPERSON: We'll see. Okay.

19 MR. CHRISTIE: All right. Where is  
20 there evidence that conviction of the truthfulness or  
21 rightness of discrimination can be acquired in normal  
22 human behavior, in a free and democratic society, with  
23 a full penicle of competing ideas, such as there are on  
24 the Internet, without truthful factual evidence?

25 DR. TESIS: Hamas is one example.

1           They have a website that denigrates Jews, and they have  
2           a penicle of available information. There are  
3           societies that denigrate women, with lots of  
4           availability about the equal potential of women, and  
5           yet they are able to take in those resources, or use  
6           them or not use them, and nevertheless maintain  
7           discriminatory views.

8                         Rational people can have  
9           discriminatory views. People with PhDs can have  
10          discriminatory views, professors can.

11                        MR. CHRISTIE: Well, thank you for  
12          that. Including yourself?

13                        DR. TESISIS: Including everybody.  
14          And all of us are --

15                        MR. CHRISTIE: Okay, let me ask you  
16          this --

17                        DR. TESISIS: -- need to -- to examine  
18          ourselves and to know ourselves well enough to shed  
19          our -- to shed prejudices, if they exist.

20                        MR. CHRISTIE: Well, once again, your  
21          knowledge of the long-term harmful effects of hate  
22          speech, you prefer to Hamas. Is there an example of  
23          another armed conflict in which there is factual  
24          information presented to -- for a persuasive purpose?

25                        DR. TESISIS: That is an example of

1 where Hamas -- I mean, there's certainly an ongoing  
2 conflict, yes.

3 MR. CHRISTIE: All right. Did Nazi  
4 Germany and antebellum United States have anything like  
5 access to the diversity of opinion and information  
6 available in modern, post-Internet world?

7 DR. TSESIS: The degree to which  
8 we're able to communicate through the Internet, and  
9 have been able to since the early 90's, has been  
10 unavailable at any point in history, that I'm aware of.

11 MR. CHRISTIE: The -- the slavery  
12 that was imposed in antebellum confederate states, was  
13 officially imposed by the government, wasn't it?

14 DR. TSESIS: No, no. It was not  
15 imposed by the federal government, it was imposed by  
16 some state governments.

17 MR. CHRISTIE: Uh-huh, but certainly,  
18 it was officially --

19 THE CHAIRPERSON: I'm sorry. The  
20 slavery was imposed by state governments?

21 DR. TSESIS: Yes, the -- there was --  
22 there were laws that --

23 MR. CHRISTIE: Regulated it --

24 DR. TSESIS: -- not -- allotted for,  
25 it --

1 THE CHAIRPERSON: They -- they  
2 regulated it. It wasn't imposed.

3 DR. TSESIS: Yes, that's right. They  
4 did not -- they did not enslave people, the government  
5 did not enslave people. But they --

6 THE CHAIRPERSON: There were rules  
7 created for the operation of slavery at the state  
8 level?

9 DR. TSESIS: That's exactly right.

10 THE CHAIRPERSON: Thank you.

11 DR. TSESIS: Not at the federal  
12 level.

13 THE CHAIRPERSON: Not at the federal  
14 level.

15 DR. TSESIS: There was -- there was  
16 some federal regulation of slavery in the District of  
17 Columbia, which was -- the District of Columbia is a  
18 municipality, but it's regulated by Congress --

19 THE CHAIRPERSON: I understand that.

20 DR. TSESIS: -- and they permitted  
21 slaves -- trading there. So there -- there was --  
22 there is argument that they condoned slavery, the  
23 federal government actually condoned slavery.

24 MR. CHRISTIE: When we deal with the  
25 long-term effects of hate speech, how could others

1       acquire such a strong emotion of -- dislike or  
2       detestation of any group, as hate, by the mere  
3       expression of that emotion from others, unless the  
4       expression resonated with the same factual stimuli in  
5       their own experience?

6                   DR. TESISIS: I take your question to  
7       be, if the stereotype isn't based on fact, how could  
8       anyone possibly believe it?

9                   MR. CHRISTIE: You rephrased my  
10      question. I preferred my own.

11                  DR. TESISIS: I -- I'm sure you did.  
12      I think that -- that one can have false beliefs,  
13      irrespective of the fact that there is no truth, and  
14      you could -- you can indoctrinate large groups of  
15      people. In fact, history shows -- is replete with  
16      examples of this, despite the fact that it's untrue.  
17      One example is certainly the one that was used towards  
18      blacks, and we've mentioned that. The way that --  
19      that Native Americans were considered to be savages and  
20      hunters, which certainly was true of some tribes, but  
21      clearly untrue of many others -- is another false  
22      belief that was spread widely, and was used for the  
23      purpose -- political purpose of stealing people's land.

24                  And the belief that Jews killed  
25      Christ, that's another example in which a widespread

1 fallacy -- because even, first of all, the Jews weren't  
2 involved in the killing of Christ, and it was the  
3 Romans, who Jews had no authority against -- to do any  
4 corporal punishment. But yet it was a belief that was  
5 widely held, with strong conviction, irrespective of  
6 the fact that it was not based on truth.

7 MR. CHRISTIE: Well, the issue of  
8 truth is debatable, isn't it?

9 DR. TSESIS: Matters of truth are  
10 debatable.

11 MR. CHRISTIE: And in fact, the very  
12 statement you just made would be debatable, if one was  
13 to rely on the Gospels that allegedly record the event,  
14 that would be debatable, wouldn't it?

15 DR. TSESIS: No.

16 MR. CHRISTIE: No?

17 DR. TSESIS: I think I've said  
18 something all of the Gospels agree to. Pontius Pilate  
19 made the decision.

20 MR. CHRISTIE: And he wasn't  
21 requested to do so by any Jewish authorities?

22 DR. TSESIS: There's -- there's a  
23 claim that the -- San Hedron requested that. But given  
24 the fact --

25 MR. CHRISTIE: Yes, and there was a

1 statement in the Gospels about "washing one's hands",  
2 by Pontius Pilate? So there's a debate that arises in  
3 the Gospels as the truth of what you said, isn't there?

4 DR. TSESIS: There's not a debate in  
5 the Gospels, but there's a debate when you look at the  
6 surrounding record, and you look at the fact that  
7 Pontius Pilate was absolutely cruel to the Jews, and on  
8 one occasion, beheaded a number of Jews for not bowing  
9 down to the statue of Caesar. That indicates that he  
10 was really a very cruel tyrant who didn't really very  
11 much care for the Jews. And there's been a group of  
12 scholars who have argued that that account of him is  
13 inaccurate.

14 Now, if you were simply speaking  
15 about the historical record about individual Jews, and  
16 whether or not the San -- those people who were in the  
17 San Hedron, in fact said, you should kill Jesus, or  
18 whether you said that there were certain Jews who were  
19 standing in the crowd, when either he or Barabas could  
20 have been led out of jail, and they said, Give us --  
21 give us the other person, so --

22 MR. CHRISTIE: I didn't ask you that.

23 DR. TSESIS: -- then -- then you  
24 would have a historical form of debate. The problem  
25 is -- with hate speech, is when it denigrates people



1 and creates a stereotype that has a substantial  
2 likelihood of causing harm. So as a historical matter,  
3 yes, of course you could talk about that, whether --

4 MR. CHRISTIE: Well, the  
5 determination of whether it's true or false requires a  
6 debate about the fact of the matter, doesn't it?

7 DR. TSESIS: Not when it uses  
8 stereotype but when it uses -- you know, if you use a  
9 historical record to debate -- historical record, of  
10 course that's a -- that's a factual matter.

11 MR. CHRISTIE: Well, the historical  
12 record uses stereotypes. In the Gospels, it frequently  
13 refers to "the Jews"; when they were in the upper room  
14 and the door was locked, for fear of "the Jews" is part  
15 of the Gospel. So if the historical record contains  
16 these generalizations, how can you say that there's  
17 long-term harmful effects of hate speech when the issue  
18 is debatable?

19 DR. TSESIS: There's been substantial  
20 work done on how -- on how the Gospels have affected  
21 anti-Semitism through history.

22 MR. CHRISTIE: And they have, haven't  
23 they, the Gospels?

24 DR. TSESIS: You know, I -- I'm not  
25 an expert in the Gospels, even though I --

1 MR. CHRISTIE: All right. We'll move  
2 on then.

3 DR. TSEISIS: -- I enjoy them, but  
4 I -- I think so, yes.

5 MR. CHRISTIE: Yes, you agree with  
6 that then?

7 DR. TSEISIS: I have no -- as I say, I  
8 have no -- I'm not an expert. But yes, from what I  
9 understand, certainly.

10 MR. CHRISTIE: Yes, okay. So let's  
11 say therefore that belief, true or false --

12 DR. TSEISIS: If I may -- I'm terribly  
13 sorry, but I -- just so that I can get out of --

14 MR. CHRISTIE: Can I finish my  
15 question?

16 THE CHAIRPERSON: Let's go to the  
17 next question.

18 DR. TSEISIS: Okay, sure.

19 MR. CHRISTIE: All right. Is speech  
20 alone capable of communicating the strong -- strong  
21 emotion of hate without an experiential reference in  
22 the listener, which verifies it with their own  
23 experience?

24 THE CHAIRPERSON: Repeat that again,  
25 please.

1 MR. CHRISTIE: Is speech alone  
2 capable of communicating strong emotion of hate,  
3 without an experiential reference in the listener's  
4 experience, which verifies it?

5 DR. TSESIS: Yes.

6 MR. CHRISTIE: Where have studies  
7 verified such an unlikely human phenomenon?

8 DR. TSESIS: There is anti-Semitism  
9 that occurs in countries -- in contemporary countries,  
10 irrespective of the fact that there are no Jews there.  
11 That -- where there are no Jews, many people have not  
12 had the opportunity to have any experience with Jews,  
13 and yet they are able to hold anti-Semitic beliefs.

14 MR. CHRISTIE: What countries are we  
15 talking about, where those studies occurred?

16 DR. TSESIS: I'm unaware of any  
17 specific studies, but I know that that is a widely held  
18 statement that I've never heard -- seen anybody  
19 dispute, that anti-Semitism exists in countries where  
20 there are no Jews. And there are just ideas spread  
21 by -- by historical stereotype.

22 MR. CHRISTIE: So my question was,  
23 where have any studies verified such an unlikely human  
24 phenomenon, and you can't point to any?

25 DR. TSESIS: There need not be

1 studies in circumstances where there are countries  
2 where there are no Jews, and there are protests about  
3 Jews doing a variety of things that they're -- that are  
4 claimed to be against them.

5 In other words, you could just see  
6 protests, you can see what people say, you can see  
7 writings. I'm not sure why you need specific studies  
8 in order -- because you are not going to get at that  
9 whole -- core of the culture that way anyway.

10 MR. CHRISTIE: Okay, there are no  
11 studies. What countries are you talking about?

12 DR. TESISIS: I did not say that there  
13 were any -- no studies.

14 MR. CHRISTIE: Well, do you know of  
15 any?

16 DR. TESISIS: I'm not aware of any,  
17 no.

18 MR. CHRISTIE: All right. Well, that  
19 was my question. What countries are you talking about,  
20 where they've had demonstrations against Jews, but no  
21 experience with Jews?

22 DR. TESISIS: Well, as far as I  
23 understand, there are no Jews in Pakistan, yet there is  
24 a very wide dissemination of hatred towards Jews in  
25 that country, and that's a -- that is one example. I'm

1       sure if I were -- that there are many, many others.  
2       Indonesia --

3                   MR. CHRISTIE: Well, is there any  
4       possibility they have heard about the Palestinians, in  
5       Pakistan?

6                   DR. TSEISIS: I -- I think that often  
7       there -- the issue of the Palestinians and their rights  
8       has been exploited in order -- just as -- as a form of  
9       hate speech, in order to have animosity, and to take  
10      people's minds off of the actual problems of the  
11      country, and to re-channel them towards a hated group.

12                  MR. CHRISTIE: If laws express  
13      societal values to prohibit what we consider immoral,  
14      why not ban pornography as well, on the Internet, or  
15      violence in the media, and make Rogers Cable liable for  
16      communication of it?

17                  DR. TSEISIS: I did not say that  
18      speech should be prohibited -- that is considered to be  
19      immoral but --

20                  MR. CHRISTIE: Okay.

21                  DR. TSEISIS: -- but there are certain  
22      morals that the legislature has determined are  
23      appropriate socially, and that -- that courts have  
24      determined that the legislature has the authority to  
25      limit.

1 MR. CHRISTIE: Well, what makes you  
2 qualified to say that there are long-term harmful  
3 effects of hate speech that don't apply to violence in  
4 the media, or to pornography?

5 DR. TESIS: There is a distinction  
6 between obscenity and pornography, so I --

7 MR. CHRISTIE: I didn't ask you if  
8 there was. I just -- I'm comparing hate speech to  
9 pornography.

10 DR. TESIS: If pornography is  
11 violent -- I mean, I -- again, I've never written about  
12 pornography. I've -- maybe skirted the issue, but if  
13 pornography is violent towards women, then I could see  
14 why someone might think that there is a substantial  
15 likelihood of harm resulting from that.

16 If the media is using images of  
17 violence in a way that is -- has a substantial  
18 likelihood of causing -- of causing hatred towards a  
19 particular group, then I can see why the government  
20 would want to limit such speech.

21 MR. CHRISTIE: So your view is that  
22 only harm that affects groups would be legitimate for  
23 society to somehow prohibit?

24 DR. TESIS: That is not my view.

25 MR. CHRISTIE: Okay.

1 DR. TSESIS: Laws that --

2 MR. CHRISTIE: Why -- okay.

3 DR. TSESIS: -- for employment  
4 discrimination of individuals, I think those are  
5 legitimate laws as well.

6 MR. CHRISTIE: I see. Why, in your  
7 book, or here, do you fail to ask and answer the  
8 question, in countries that have hate speech  
9 legislation, do they have fewer hate crimes or harmful  
10 social movements?

11 DR. TSESIS: Well, I think that's a  
12 great question, and I -- simply not one that I've  
13 studied. There are others who have studied that. It's  
14 not one that I've done research on, but certainly one  
15 that I'm very interested in.

16 MR. CHRISTIE: Well, here's the --  
17 here's the question. If -- it's the existence of hate  
18 crimes or harmful social movements that's a harm to  
19 society, but if speech had no effect like that it would  
20 not be a serious or substantial harm, why wouldn't you  
21 consider it necessary to investigate the effect of hate  
22 speech regulation on the serious effect that society  
23 has a legitimate interest in?

24 DR. TSESIS: Well, I -- as I said to  
25 you I think it's a great question. I'm a limited human

1           being with a limited amount of hours, and the actual  
2           subject I have not written about, but certainly one  
3           that's very important. But I -- but would qualify it.  
4           The question isn't, sir, only the existence of hate  
5           speech laws, but also their enforcement, and what they  
6           say, and how they have been interpreted.

7                         MR. CHRISTIE: Well, hate speech laws  
8           are very strict in Germany. As a matter of fact,  
9           people shipped from here to there go to jail for things  
10          that they were able to say here.

11                        Are you able to say that there's  
12          fewer hate crimes and harmful social movements in  
13          Germany, with their strict hate laws?

14                        DR. TSESIS: Certainly, the -- the  
15          existence of hate laws have prevented the dissemination  
16          of hate speech that -- and have had a communicative  
17          effect on society, of showing hate speech and the  
18          denigration of particular groups, to be outside the  
19          scope of what is legitimate in that society.

20                        MR. CHRISTIE: How do you explain  
21          that incitement to racial violence by such a powerful  
22          religious figure as Martin Luther, unrestrained by any  
23          hate laws, had no effect in causing the Holocaust, from  
24          the late 16th century till the end of the Weimar  
25          Republic, when there were no restrictions on the



1 communication of that hatred?

2 DR. TESISIS: Because genocide is one  
3 form of harm. The fact that Jews were locked in  
4 ghettos in Germany is another. The fact they were kept  
5 out of professional circles is another harm. So that  
6 genocide is just the most extreme form of harm that --  
7 that is necessary -- in which hate speech is necessary.

8 But all forms of discrimination,  
9 whether they be in employment, or whether they be hate  
10 crimes, or whether they be as massive on a scale as  
11 genocide, requires something.

12 So just to quickly finish up, one of  
13 the reasons there was no genocide before Armenia, was  
14 there wasn't the technological means of accomplishing  
15 it. There was mass murder, mass murder in the -- in  
16 the tens and hundreds of thousands, but never an  
17 attempted genocide, because the technological means  
18 were simply not there.

19 MR. CHRISTIE: From the time of  
20 Martin Luther until the beginning of the Weimar  
21 Republic, Jews were able to leave any form of  
22 ghettoization, were able to assimilate into society,  
23 became well accepted in the professions in the Weimar  
24 Republic, long before hate laws, did they not?

25 DR. TESISIS: You are -- you're

1 speaking about the Weimar Republic now?

2 MS KULASZKA: Well, from the time of  
3 Martin Luther, with the publication of "The Jews and  
4 Their Lies", advocating burning of Jewish synagogues,  
5 and treating Jews like vermin, to the time of the  
6 Weimar Republic, Jews made tremendous progress, they  
7 became well accepted in all the professions?

8 DR. TSESIS: Well, you are going  
9 over, what, 400 years of history --

10 MR. CHRISTIE: Yes --

11 DR. TSESIS: -- with one statement?

12 MR. CHRISTIE: -- but there wasn't a  
13 single hate law in that period of time.

14 DR. TSESIS: There should have been,  
15 because Jews were -- were treated poorly in Germany,  
16 and were denigrated in Germany, and forced not to be  
17 able to join certain professions, and were -- were  
18 forced into ghettos.

19 Yes, eventually, they got out of those.  
20 You know why they got out of those, because Napoleon  
21 came, and he forced certain laws about -- about civil  
22 rights, and then after a while -- there was a period of  
23 time in the 1860s, when you're actually right, Jews  
24 were able to get out, and there really doesn't seem to  
25 have been many acts of discrimination, and Jews did

1 extremely well in Germany certainly, compared to  
2 surrounding countries.

3 But the anti-Semitic -- political  
4 groups were able to develop a base, were able to  
5 develop a rhetoric, and were able to develop a  
6 stereotype, that the -- that the Nazis were then able  
7 to incorporate for -- to gain political power, and to  
8 keep it, and to -- and then to make an attempt at  
9 extermination of Jews.

10 MR. CHRISTIE: Are you saying that  
11 hate laws are premised on the belief that government  
12 can define, and has the ability to define truth?

13 DR. TSEISIS: No.

14 MR. CHRISTIE: Are you able to  
15 acknowledge that the majority of people today in Canada  
16 can decide the truth for themselves?

17 DR. TSEISIS: Yes.

18 MR. CHRISTIE: Are you able to accept  
19 the proposition that the majority of people today would  
20 not acquire a racist, anti-Semitic or bigoted views,  
21 unless there was a factual foundation for those  
22 beliefs?

23 DR. TSEISIS: I have no idea whether  
24 the majority of people in Canada would acquire hatred  
25 towards Jews, blacks, women, gypsies, or any other

1 group, unless there was a factual foundation to it. I  
2 have no idea.

3 MR. CHRISTIE: So in the absence of  
4 any certainty about any long-term harms or effects, you  
5 still came here with the intention of advocating that  
6 these laws are necessary?

7 DR. TSESIS: Absolutely not. Your  
8 question was about the majority of Canadians. My  
9 statement is, I don't know. But could some Canadians,  
10 and enough to cause discriminatory harm, acquire those  
11 beliefs? Yes.

12 MR. CHRISTIE: How do you know that?

13 DR. TSESIS: Because throughout  
14 history, and the historical examples indicate, that  
15 without -- without there being -- without there being  
16 discrimination pointed to a particular group, that  
17 group would not be targeted. And the reason that  
18 they're targeted, is because those people who target  
19 them, rely on a stereotype about a particular group.

20 That's why they're targeted, as  
21 opposed to some general -- you know, we're going to  
22 attack everybody. Hitler wasn't trying to kill  
23 everybody. The -- the Hutus in Rwanda, they weren't  
24 trying to kill everybody, they were targeting  
25 particular groups. The reason they were targeting

1 particular groups is because they have been  
2 indoctrinated into the belief that those groups should  
3 be exterminated.

4 MR. CHRISTIE: Is there any cause or  
5 connection between speech, no matter -- speech harm, no  
6 matter how remote, sufficient to justify suppression in  
7 such speech about those who oppose a war the government  
8 supports? Would it be legitimate to consider that to  
9 be sufficiently harmful to prohibit such speech?

10 THE CHAIRPERSON: Should speech  
11 expressing views against a certain war --

12 MR. CHRISTIE: A war the  
13 government -- opposing a war the government supports.

14 THE CHAIRPERSON: You'd be surprised.

15 MR. CHRISTIE: Yes.

16 DR. TSESIS: That seems to be core  
17 political speech to me.

18 MR. CHRISTIE: I see. Is it  
19 legitimate to suppress speech imposing a policy the  
20 government supports? Is that also legitimate core  
21 speech?

22 DR. TSESIS: Yes, that's legitimate  
23 core speech, yes.

24 MR. CHRISTIE: Your book, it seems,  
25 in footnote 131, seems to suggest Gitlow and New York

1 has been rightly decided.

2 DR. TSESIS: Could you -- I  
3 apologize, my footnotes begin with one at every chapter  
4 and then -- and then begin again in the next chapter.  
5 I was wondering -- but I'll look it up in the index.  
6 It -- it won't take me long.

7 MR. CHRISTIE: Yes. Are you familiar  
8 with Gitlow and --

9 DR. TSESIS: Yes.

10 MR. CHRISTIE: -- and New York?

11 DR. TSESIS: Yes.

12 MR. CHRISTIE: And that was about a  
13 left-wing manifesto during the first world war?

14 THE CHAIRPERSON: For the record, I  
15 see individuals with this book in their hands, but it's  
16 not before the Tribunal officially.

17 MR. CHRISTIE: It's not in our hands  
18 either, is it?

19 THE CHAIRPERSON: No, no. Obviously  
20 over there.

21 MR. CHRISTIE: Yes, hasn't been  
22 provided to us.

23 Footnote 131 -- and I wasn't aware  
24 that would have to be for every separate chapter.

25 DR. TSESIS: Yes, but that's okay.

1       Wait, I don't think that's right, 131. I have it --  
2       you might be -- I have footnote 15 and 17. But that --  
3       it's footnote 13. There's -- you may just be -- may  
4       have just written it accidentally. Footnote 13, in -- in  
5       chapter 8, and then it goes on to the text accompanying  
6       footnote -- footnote 18. Yes. But I can -- you  
7       were -- I can answer the question now, or I can wait  
8       until counsel has had the opportunity to take a look.

9                   THE CHAIRPERSON: Well, I'll leave it  
10       to counsel to revise it.

11                   MR. CHRISTIE: Well, I read that to  
12       mean that you regard it as appropriate, that Gitlow was  
13       rightly decided. Am I correct in that understanding of  
14       your position?

15                   DR. TESISIS: No. What I was trying  
16       to say is that -- in this, was that the majority of  
17       opinions in Gitlow is still good law insofar as it  
18       says, and I quote, "that public, peace and safety", and  
19       here is not a quote, that the government doesn't have  
20       to wait to maintain public peace and safety:

21                               "Does not have to defer the  
22                               adoption of measures for its own  
23                               peace and safety until the  
24                               revolutionary utterances lead to  
25                               actual disturbances of the

1                   public peace, on imminent and  
2                   immediate danger of its own  
3                   destruction, but it may, in the  
4                   exercise of its judgment,  
5                   suppress the threatened danger  
6                   in its incipency."

7                   That is good law, and that is what I  
8                   was trying to say.

9                   MR. CHRISTIE: So Gitlow is good law?

10                  DR. TSESIS: Good law in the legal  
11                  sense, that it -- this is a valid Supreme Court  
12                  decision. I also think that that statement is -- is  
13                  correct. I don't know -- I don't know whether Gitlow  
14                  itself was decided, because I have not read the  
15                  manifesto. But I do think as a -- as a rule, that that  
16                  rule, that rule that can be then -- that can govern  
17                  other cases, I think, is a good rule.

18                  MR. CHRISTIE: So you do regard  
19                  Gitlow as rightly decided then?

20                  DR. TSESIS: I -- no. Because I -- I  
21                  don't know whether the whole -- was correct, but I do  
22                  know the rule was correct. I don't know if the  
23                  specific case was decided correctly, but I do know that  
24                  the rule that was established by the court was a good  
25                  rule, and that the United States Supreme Court has



1 never overturned it.

2 MR. CHRISTIE: So Gitlow has never  
3 been overturned?

4 DR. TSESIS: Gitlow has never been  
5 overturned, even though scholars will argue that it --  
6 it doesn't hold any more, but I disagree with those  
7 scholars.

8 MR. CHRISTIE: Uh-huh. R.A.V.  
9 versus Minnesota, have you heard about it?

10 DR. TSESIS: Heard about it, and --  
11 and have written about it, yes.

12 MR. CHRISTIE: And that was a  
13 decision of the Supreme Court of United States in '92?

14 DR. TSESIS: Yes, that's right.

15 MR. CHRISTIE: And it held that even  
16 what might be called "hate speech" was protected by the  
17 First Amendment, right?

18 DR. TSESIS: That's right. But  
19 that's because there was a poorly drafted ordinance.  
20 And in fact, there are four concurrences to it that  
21 disagree with the majority's reasoning, and so that  
22 ordinance was extremely poorly drafted. The problem  
23 there wasn't that, you know, all hate speech should be  
24 prohibited. In fact, the court has more recently, as I  
25 state in my expert report, prohibit -- has allowed

1 government to prohibit a form of hate speech when it's  
2 cross burning.

3 But the problem is with -- that  
4 statute said that if the cross burning elicits fear in  
5 a person, that that's enough to cause -- hold the --  
6 hold the individual who did the cross burning to -- to  
7 penalize the person who did the cross burning. And the  
8 court said that you can't simply say that -- if  
9 somebody is in fear, that that's enough to have a cause  
10 of action against the person who is burning the cross.

11 MR. CHRISTIE: Isn't there a paradox  
12 in your position about the examples of the Holocaust,  
13 the Indian expulsions and the slave trade, in that, in  
14 each of the examples you relied on to justify  
15 entrusting government officials with the power to  
16 regulate speech, they were duly constituted and  
17 sanctioned and administered by same government  
18 officials, which you now suggest should be able to  
19 decide what is appropriate speech?

20 DR. TSESIS: No, that just shows that  
21 the law was misapplied, but it doesn't show that --  
22 that the law cannot be applied appropriately. In other  
23 words, the fact that -- that blacks were treated  
24 unequally doesn't show that the Declaration of  
25 Independence about equality is wrong. To the contrary,

1           it shows that the government was wrong in not applying  
2           those principles.  So that --

3                         MR. CHRISTIE:  But it was the  
4           government that applied them?

5                         DR. TESISIS:  Well, the government  
6           could misapply all sorts of laws.  It could misapply  
7           laws against disorderly conduct, or target blacks with  
8           it.  They did it in --

9                         MR. CHRISTIE:  Well, so should we  
10          give them the power to define what's legitimate speech,  
11          when they have this tremendous propensity to abuse  
12          their power?

13                        DR. TESISIS:  Well, I mean, one could  
14          take that argument to the extreme, and say the  
15          government should never regulate anything, since after  
16          all, they can abuse all laws so --

17                        MR. CHRISTIE:  Well, the thing that's  
18          particularly important not to abuse is the freedom to  
19          criticize government policy and government laws and  
20          beliefs, isn't that right, the most important freedom?

21                        DR. TESISIS:  Well, I mean, I -- I  
22          think that that's right.  You have to be able to  
23          criticize government policy and it's -- and what it's  
24          doing, yeah.  I think that is core, yes.

25                        MR. CHRISTIE:  Uh-huh.  Government

1 policy on immigration, government policy on  
2 multiculturalism, government policy on bilingualism,  
3 government policy on legitimizing gay marriage. All  
4 those controversial things must be fully discussed and  
5 criticized.

6 DR. TSESIS: All of those are  
7 legitimate. However, when the speech is done with  
8 the -- with the purpose, knowledge, recklessness, or  
9 negligence, and it has a substantial likelihood of  
10 causing the denigration of a particular group, and  
11 physical harm towards them or -- or discrimination,  
12 then it's a different matter.

13 Then you're not -- then those people  
14 who do that are not criticizing policy about gay  
15 marriage, or immigration, or -- or desegregation of  
16 schools, but rather -- but rather, denigrating  
17 individuals through their speech.

18 MS KULASZKA: I can't understand  
19 how -- quite how you use the concept of negligence in  
20 this discernment. What do you mean by that? What is  
21 the state of mind that results in negligent promotion  
22 of hatred, when you're criticizing, say, for example,  
23 gay marriage?

24 DR. TSESIS: The negligent state of  
25 mind that could result from it, given the right

1 context, is that the finder of fact determines that the  
2 ordinary person, under those circumstances with that  
3 particular knowledge, would have realized that such  
4 utterance, under those circumstances, was substantially  
5 likely to cause a discrimination and -- or physical  
6 violence, or some worse crime against that particular  
7 group.

8 So the state of mind is the -- what  
9 the ordinary person would have thought under those  
10 circumstances, with what an ordinary person could have  
11 known.

12 MR. CHRISTIE: Yes. So if they  
13 foresaw that hatred would be promoted, is that it?

14 DR. TESIS: Well then --

15 MR. CHRISTIE: Or they ought to have  
16 foreseen that hatred would be promoted?

17 DR. TESIS: That would --  
18 approximate cause element of it, yes. It could be  
19 foreseeable, or could be substantial likelihood,  
20 depending on how you define approximate cause. The  
21 foreseeability would be a very legitimate thing for the  
22 government to consider under negligent cause of action.

23 MR. CHRISTIE: Uh-huh. But what if  
24 the intent was not to cause that harm, but to express  
25 what they either knew to be truth, and could prove to

1 be truth, or they mistakenly thought was the truth? In  
2 those circumstances, do you still think it's legitimate  
3 to protect us from this alleged harm, that such speech  
4 should be censored?

5 DR. TSESIS: Well, just under the  
6 conditions that you are saying, that the negligent --  
7 the negligence issue, staying with that, no, if they  
8 said it accidentally, and the ordinary person would  
9 have said it accidentally, of course there's no cause  
10 of action.

11 MR. CHRISTIE: No, I'm not -- I'm not  
12 talking about accidents. I'm talking about a  
13 deliberate intent to express that opinion or that  
14 belief, but honestly believing that it's the truth. In  
15 those circumstances, do you still think that because a  
16 reasonable person ought to have foreseen the effect,  
17 they should have no right to say it?

18 DR. TSESIS: If you are speaking  
19 of -- about negligence, undoubtedly.

20 MR. CHRISTIE: Pardon?

21 DR. TSESIS: If -- the ordinary  
22 person is -- because you said "ordinary person", I  
23 think --

24 MR. CHRISTIE: Reasonable person, all  
25 right?

1 DR. TSESIS: No, no, no. I'm not  
2 arguing with that. But I'm --

3 MR. CHRISTIE: Okay.

4 DR. TSESIS: -- staying -- staying  
5 with the negligent standard. For the negligent  
6 standard, my answer is yes to -- yes.

7 MR. CHRISTIE: So you say yes, such a  
8 person, honestly believing what they are saying to be  
9 the truth, should not be entitled to say it, if a  
10 reasonable person could foresee that someone else might  
11 be exposed to hatred or contempt as a result, right?

12 DR. TSESIS: If it's a tortive act --  
13 if it's a tort and that -- and negligence is a state of  
14 mind that the legislature has defined as adequate, yes.

15 MR. CHRISTIE: Don't hate speech laws  
16 and regulations generally target "out" groups?

17 DR. TSESIS: Yes.

18 MR. CHRISTIE: And by that, I mean  
19 people that are not in power, right?

20 DR. TSESIS: That's right, or people  
21 who have historically been victims. Sometimes they are  
22 in power.

23 MR. CHRISTIE: No, I don't think you  
24 heard me, because you just said something I'm sure you  
25 wouldn't agree with, if you understood it. I said, do

1 hate speech regulations and laws generally target "out"  
2 groups?

3 DR. TSESIS: Oh, do hate speech  
4 laws -- I thought you said "does hate speech". I  
5 don't --

6 MR. CHRISTIE: No, I -- I'm very  
7 careful in the choice of my words, and no one may be  
8 listening, but I'm trying very hard to be careful.

9 DR. TSESIS: Well, I -- I didn't  
10 hear --

11 MR. CHRISTIE: I said, and I repeat,  
12 do hate speech regulations and laws generally target  
13 "out" groups?

14 DR. TSESIS: Hate speech regulations  
15 and laws typically are concerned for the protection of  
16 those groups who are more likely to be harmed, and  
17 those groups tend to be "out" groups.

18 MR. CHRISTIE: Well, the target of  
19 the laws, the regulations are directed at "out" groups,  
20 and by that, I mean those who are not in power. I  
21 suggest hate speech laws are never successfully  
22 applied, or even attempted, against any powerful "in"  
23 group. Isn't that true?

24 DR. TSESIS: Certainly, that's untrue  
25 when it comes to hate crimes laws that prohibit



1 discrimination against whites. We have a very famous  
2 case in the United States called Wisconsin V Mitchell.  
3 It's the -- it's the case in which the Supreme Court  
4 decided that hate crime statutes do not violate the  
5 First Amendment, and that was hate speech by blacks  
6 against whites.

7 Generally these statutes, such as the  
8 international laws -- very early on, are written in  
9 general principles: Race, religion, colour, rather  
10 than say, blacks, Jews. And the reason for that is  
11 because they protect everybody, and they consider hate  
12 speech against any group to be wrong, but then -- but  
13 you are absolutely right, that in the promulgation of  
14 the laws, there is an understanding that it's more  
15 likely that "out" groups will suffer from the harm.

16 MR. CHRISTIE: Well, the example you  
17 just gave was an example where the hate speech  
18 regulation was applied against blacks right, Mitchell?

19 DR. TESISIS: Yes, that's right.

20 MR. FOTHERGILL: It wasn't applied  
21 against whites?

22 DR. TESISIS: Not in that case.

23 MR. CHRISTIE: No. And when it's  
24 applied against whites, it's applied against whites  
25 that are a fridge group, an extremely isolated, "out"

1 group, aren't they?

2 DR. TSESIS: You seem like you're  
3 making a universal statement, if I can --

4 MR. CHRISTIE: Well, I'm going to ask  
5 you in a minute. Tell me one example of a powerful  
6 "in" group that were prosecuted under hate laws?

7 DR. TSESIS: A powerful "in" group  
8 that was prosecuted under --

9 THE CHAIRPERSON: I just want to be  
10 clear on the term "in" group again so --

11 MR. CHRISTIE: All right, a group of  
12 people who are in power and privilege and authority.  
13 Can you give me an example of a group of people who  
14 were powerful and in authority, who were the victim of  
15 any -- or shall we say, the target of any regulation of  
16 their speech?

17 DR. TSESIS: I presume what you are  
18 saying is, can I give you any example in which hate  
19 speech laws were applied against an "in" group, or  
20 where people were prosecuted who were in an "in"  
21 group --

22 MR. CHRISTIE: Uh-huh.

23 DR. TSESIS: -- under a hate speech  
24 statute? Well, I presume Keegstra is an example.

25 MR. CHRISTIE: You regard him as a --

1 an "in" group figure?

2 DR. TSEISIS: He's a white person  
3 teaching school, who seems to be have -- to have had a  
4 secure job, and he's white. That -- in a society where  
5 the --

6 THE CHAIRPERSON: Maybe -- do you  
7 mean, in a sense, that -- has there been prosecution of  
8 hate laws against the groups that are --

9 MR. CHRISTIE: In power and  
10 privilege.

11 THE CHAIRPERSON: In power and  
12 privileged. Oh, Okay. I thought you mean it in terms  
13 of minority groups, for instance, or --

14 MR. CHRISTIE: No.

15 THE CHAIRPERSON: No, not in that  
16 sense? Power and privilege? So you would say, for  
17 instance, in Canadian society, traditionally it was  
18 male dominated, white persons.

19 MR. CHRISTIE: No.

20 THE CHAIRPERSON: Is that what you  
21 are saying to say? Perhaps --

22 MR. CHRISTIE: No. The concept that  
23 I'm trying to get at is, those people who are in power  
24 and privilege, I might say members of a powerful group  
25 like the Liberal party, or the Conservative party, or

1 major --

2 THE CHAIRPERSON: So political power  
3 or economic power?

4 MR. CHRISTIE: Political power,  
5 economic power, privilege generally. For example, the  
6 Catholic church, Bishop Henry, that's a good example.  
7 You see what I'm getting at?

8 DR. TSEISIS: Can I tell you, where  
9 there was a member of a political power -- party that  
10 was in power at that time, who was prosecuted while his  
11 political party was in power?

12 MR. CHRISTIE: No, that's not the  
13 question. You rephrased it but I -- I'll move on.

14 DR. TSEISIS: Well, I -- use Keegstra  
15 as an example of a person who's a member of -- the way  
16 that sociologists use the word "in" -- that is to say,  
17 he was an -- a person who -- even if we don't say  
18 "privileged", was a person who didn't suffer from any  
19 traditional forms of discrimination, and yet was  
20 prosecuted under the laws of --

21 MR. CHRISTIE: Okay. Let's, for  
22 example --

23 THE CHAIRPERSON: No. I'm interested  
24 now in --

25 MR. CHRISTIE: No, I know.

1 THE CHAIRPERSON: We've heard  
2 evidence here, for instance, unrelated to the  
3 constitutional issue per se -- well, perhaps it was in  
4 some way related -- that one -- if one looks at the  
5 incidence where human rights complaints have been filed  
6 under the Canadian Human Rights Act over the course of  
7 the years, you would typically find that the people who  
8 are respondents are not particularly wealthy, in fact,  
9 perhaps quite poor --

10 DR. TSEHIS: Ninety-five percent of  
11 them are unrepresented by counsel.

12 THE CHAIRPERSON: -- unrepresented by  
13 counsel, that they're white, if we make a racial  
14 distinction --

15 MR. CHRISTIE: But --

16 THE CHAIRPERSON: -- young or older,  
17 so not powerful people. Does that -- so are -- do you  
18 know of incidents where the inverse occurs? Is that --  
19 would that be a fair --

20 MR. CHRISTIE: Right, right.

21 DR. TSEHIS: Where someone was very  
22 rich and had lots of individual power, and was  
23 prosecuted?

24 THE CHAIRPERSON: No, the implication  
25 of what I've just said to you is that there -- there is

1 an imbalance that -- that Goliaths are going after  
2 Davids, and that -- and the inverse would occur.

3 DR. TSESIS: Well, the --

4 THE CHAIRPERSON: Or at least, do --  
5 do the Goliaths ever face the same type of prosecution  
6 or -- or litigation?

7 DR. TSESIS: You know, I -- nothing  
8 comes to mind. But if that's true, then that means  
9 that as applied law, might be -- one would have to do a  
10 study, whether or not it's statistically relevant at  
11 all. And if it's statistically relevant, then one has  
12 to determine whether or not the disparate effect has  
13 anything to do with the way that the -- the structure  
14 of the government is working.

15 If it's working wrongly, then that's  
16 a problem with the statute as being -- applied  
17 unequally. But it doesn't make the statute -- that  
18 protects human rights --

19 THE CHAIRPERSON: No, but one -- one  
20 wonders, do -- is hate the monopoly of -- of people who  
21 are impoverished or --

22 DR. TSESIS: No, certainly not. But  
23 the -- part of the problem is, of course, that people  
24 can't afford an attorney, and that typically, what  
25 winds up happening is that often, court proceedings at

1 a -- especially at an administrative level, don't give  
2 a person the right connection.

3 THE CHAIRPERSON: But we don't -- we  
4 didn't have to bring it to that level. Complaints  
5 being filed. I mean, what are -- no matter what the  
6 outcome of the hearing, a complaint's filed against  
7 these types of groups.

8 So what -- irrespective of the  
9 outcome, irrespective of the legal representation, why  
10 is it bad that that may occur.

11 DR. TESISIS: Well, there are people  
12 who are -- Zundel, I have no idea what his finances  
13 were, and that was person who was able to travel  
14 around. Irving was a person who was able to travel  
15 around. He had his own Internet site. According to  
16 Citron versus Zundel, he was paying a woman in  
17 California \$3,000 a month in order to publish his stuff  
18 on the Internet. Somehow he lived, somehow he did  
19 fairly -- somehow he did -- I don't know what his  
20 finances were.

21 THE CHAIRPERSON: So in fact, you  
22 question the premise and you say --

23 DR. TESISIS: I said --

24 THE CHAIRPERSON: -- that these --  
25 should these individuals fall into that group?

1 DR. TSESIS: But yes, that I -- but  
2 on the other hand, I believe that if this is the  
3 empirical -- if the empirical research indicates that  
4 in fact, there is this disparate application, then one  
5 has to look at whether or not it's fair.

6 For example, in the United States, we  
7 had a situation where Congress heard testimony that the  
8 tax court was primarily thrown against individuals who  
9 were poor. The richer they were, the more educated  
10 they were, and certainly if they were lawyers, was --  
11 made it extremely unlikely that the tax -- that there  
12 would ever be a case investigated for the evasion of  
13 paying taxes. That doesn't mean that taxing is wrong.  
14 That just means that it's being applied, or at least  
15 Congress thought that it was applied inequitably.

16 THE CHAIRPERSON: Okay. I'm sorry  
17 if -- I may have delayed things. But now -- Ms  
18 Kulaszka, I see you talking. How much time do you need  
19 for your questioning? We really -- we're bound by  
20 couple -- a combination of multiple factors. And we've  
21 had a long day. I mean -- we haven't had long delays.

22 MR. FOTHERGILL: DR. Tsesis has a car  
23 waiting for him at six clock tonight.

24 THE CHAIRPERSON: Right, so there's  
25 that, and the court reporter, and all that. So what



1 will happen? Ms Kulaszka, are you going ask questions?

2 MR. CHRISTIE: No.

3 THE CHAIRPERSON: Well, then we'll --  
4 we'll end at that time, and wherever the cards may  
5 fall.

6 MR. CHRISTIE: Well, all I can do is  
7 say that this is a matter of some importance that --

8 THE CHAIRPERSON: It is. But in my  
9 opinion, and I've indicated to you, that some of these  
10 questions perhaps have fallen outside of what I define  
11 the expertise to be, but it's your cross-examination.  
12 Go ahead and --

13 MR. CHRISTIE: Thank you.

14 THE CHAIRPERSON: -- and you know --

15 MR. CHRISTIE: Is there a possibility  
16 there's some truth to racist ideology?

17 DR. TESIS: To racist ideology? I  
18 think, by definition -- although we have to get our  
19 definitions straight -- by definition, it is an  
20 inaccurate overgeneralization.

21 MR. CHRISTIE: Uh-huh. Well, are you  
22 familiar with anything published by Philippe Rushton as  
23 to the brain size of people who are identified by race  
24 or IQ, or other intelligence or aptitude indicia?

25 DR. TESIS: No, but I am aware of

1 the work of Franz Boas, who disproved those sorts of  
2 studies in the early 20th century.

3 MR. CHRISTIE: Well, no, Boas came a  
4 long time before Philippe Rushton? Have you -- are  
5 you --

6 DR. TESISIS: I have never --

7 MR. CHRISTIE: Have you ever seen his  
8 research?

9 DR. TESISIS: It was never provided  
10 for me, and I have never seen it. But I've studied  
11 the, you know, brain size studies, and the -- the  
12 general consensus amongst scientists is that they are  
13 completely invalid. And if there is any difference in  
14 brain size, it's not determinative of intelligence  
15 anyway.

16 MR. CHRISTIE: So ultimately, your  
17 view is that such studies should not be published  
18 because they are false?

19 DR. TESISIS: I'm -- I'm again forced  
20 to resort to explaining what I mean by hate speech. If  
21 they are being published, and a reasonable scientist  
22 realizes that they are -- that they are likely --  
23 substantially likely to lead to hatred, discrimination,  
24 persecution or oppression of a particular group, then  
25 yes, I think a government has a legitimate reason to

1 limit their publication.

2 MR. CHRISTIE: Even if they are true?

3 DR. TSESIS: Even if -- if all that's  
4 being said is that this individual has measured X  
5 amount of brains, and these X amount of brains, given  
6 his methodology, are of this size, well, that's fine.  
7 But it's when the speech crosses -- usually such  
8 speech -- I've never read Rushton, so I can't comment  
9 on Rushton. I have read these sort of -- that sort of  
10 studies, and -- and typically, they're -- what their  
11 authors are trying to do is to show that one group is  
12 superior. That sort of speech, the government has a  
13 right to prohibit in a --

14 MR. CHRISTIE: All right. Usually,  
15 that's what the authors are trying to do? Is that your  
16 opinion?

17 DR. TSESIS: That's right. Now, I  
18 don't know about Rushton but --

19 MR. CHRISTIE: Well, what if they're  
20 not trying to do that?

21 DR. TSESIS: I don't --

22 MR. CHRISTIE: It depends on what  
23 they are trying to do, doesn't it?

24 DR. TSESIS: That seems to me to be a  
25 question about neuroscience and --

1 MR. CHRISTIE: Well, no, it --

2 DR. TSESIS: Well --

3 MR. CHRISTIE: Well, no, you -- you  
4 have determined it depends on what they are trying to  
5 do. And I draw to your attention that you've made the  
6 important distinction of realizing that the nature of  
7 this speech depends on the intention of the speaker?

8 DR. TSESIS: I've said that a long  
9 time ago, it all depends on the context --

10 MR. CHRISTIE: All right.

11 DR. TSESIS: -- but not necessarily  
12 the intent of the speaker, but also it could be what an  
13 ordinary scientist, under those circumstance, would  
14 realize that the publication of such a work -- what --  
15 is likely to lead to.

16 MR. CHRISTIE: Is it true that in  
17 Europe, hate speech laws are multiplying and increasing  
18 and growing, the further we get from the war?

19 DR. TSESIS: I think that's right. I  
20 haven't looked at the exact number but I -- in my -- my  
21 own experience with studying those laws, indicates that  
22 you are right on that, yes.

23 MR. CHRISTIE: Yes, well, after if  
24 war, Germany introduced restrictions on speech  
25 involving Nazism, correct?

1 DR. TSESIS: Yes, that's right.

2 MR. CHRISTIE: But at that time,  
3 France, Switzerland, Belgium, Spain, had not, correct?

4 DR. TSESIS: You know, I'm not  
5 certain of the exact chronology but --

6 MR. CHRISTIE: Well, but that time,  
7 1945, there were no hate speech laws in France or  
8 Switzerland or Belgium or Spain, were there?

9 DR. TSESIS: Not that -- no, I think  
10 the answer to that is no. None that I'm aware of, and  
11 I think the answer is no.

12 MR. CHRISTIE: And these anti-Nazi  
13 laws have expanded to cover other historical events?  
14 Now in France, it covers the Armenian massacre,  
15 Holocaust or whatever term you want to use for it?

16 DR. TSESIS: That's right. In --

17 MR. CHRISTIE: That's illegal in  
18 France now?

19 DR. TSESIS: In -- in France, any  
20 form of -- of any genocide, in France, in Rwanda, in  
21 Germany, is -- is prohibited and punishable, yes.

22 MR. CHRISTIE: Have they -- do you  
23 know if they've recognized all the genocides in the  
24 world, or is that sort of an expanding category?

25 DR. TSESIS: I don't know what all

1 the genocides in the world would be. I know that  
2 they've recognized those three.

3 MR. CHRISTIE: Those three? And I  
4 guess it's --

5 THE CHAIRPERSON: The three,  
6 Rwanda --

7 DR. TSEISIS: Rwanda, the genocide in  
8 Germany, and the Armenian genocide.

9 THE CHAIRPERSON: Cambodia?  
10 Cambodian genocide?

11 DR. TSEISIS: Kampuchea, Cambodia, I  
12 didn't -- Khmer Rouge, I have not seen any cases from  
13 France on that point.

14 MR. CHRISTIE: Uh-huh. So --

15 DR. TSEISIS: Yes, but certainly, in  
16 my mind, that was genocide. I'm uncertain whether the  
17 International Tribunals find -- found it to be that.

18 MR. CHRISTIE: So you'd want that  
19 denial of that genocide prohibited too, would you?

20 DR. TSEISIS: Yes.

21 MR. CHRISTIE: How about the Jacobite  
22 genocide in -- after 1746? Would you want to include  
23 that or -- would that be anti --

24 DR. TSEISIS: I don't know if the  
25 Jacobians were -- I don't know if that was a form of

1 genocide. I think that was a form of political  
2 butchery and murder.

3 MR. CHRISTIE: Oh, oh. You are  
4 Jacobeans, and I'm talking about Jacobites and --

5 DR. TSESIS: Oh, Jacobites?

6 MR. CHRISTIE: -- we don't understand  
7 each other.

8 DR. TSESIS: Sorry about that.

9 MR. CHRISTIE: Jacob -- Jacobites are  
10 those Highland Scots who supported Bonnie Prince  
11 Charlie in 1735, and were subsequently pushed off their  
12 land and sent around -- to New Brunswick and --

13 DR. TSESIS: I've never --

14 MR. CHRISTIE: You've never heard of  
15 that one?

16 DR. TSESIS: Not only have I not  
17 heard of that one, but I must tell you, the -- the  
18 general thought on this is that there was no genocide  
19 until the Armenians.

20 MR. CHRISTIE: Oh, I see. So that's  
21 the first one?

22 DR. TSESIS: That's what the thought  
23 is. In other words, it was an attempt to exterminate a  
24 group of people, and even though theirs was more  
25 localized, but current international bodies have

1 considered that to be -- the U.N. has considered that  
2 to be a genocide.

3 MR. CHRISTIE: And that's -- that's  
4 because there was a deliberate attempt to eliminate a  
5 people, men, women and children?

6 DR. TSESIS: That's right.

7 MR. CHRISTIE: And the Old  
8 Testament's efforts of the Israelites to eliminate the  
9 Philistines -- men, women and children -- wasn't a  
10 genocide?

11 DR. TSESIS: That was one occasion.  
12 That thing that you read to me is --

13 MR. CHRISTIE: Oh, I could read you  
14 more of that, believe me.

15 DR. TSESIS: -- that -- that occurred  
16 in one place in one time, and it was a hellacious,  
17 murderous event, that was -- as far as -- I know, from  
18 study of this, was never repeated anywhere else. But  
19 is it justified, no? It wasn't --

20 MR. CHRISTIE: All right, I didn't --  
21 no, please. Please stop.

22 THE CHAIRPERSON: Stop, Stop.

23 MR. CHRISTIE: I didn't create that  
24 question. I just asked you one question.

25 And is there not a trend now in



1 Europe, after the Danish cartoons, to question whether  
2 they should be in the business of banning ideas and  
3 political speech?

4 DR. TSESIS: Well, there's certainly  
5 a discussion about it.

6 MR. CHRISTIE: Was there ever a time  
7 before that, when -- when the subject of Muslim speech  
8 was -- or Muslim complaints rather, had founded any --  
9 complained about hate speech?

10 DR. TSESIS: I don't understand.

11 MR. CHRISTIE: Well, Europeans are  
12 now questioning hate speech laws much more so than in  
13 the past, after the Danish cartoons?

14 DR. TSESIS: I don't know whether  
15 they are questioning them more. I know that they're  
16 questioning them. But there are some Europeans who are  
17 questioning those laws.

18 MR. CHRISTIE: Okay. I have -- I'm  
19 finished with my questions. Thank you.

20 THE CHAIRPERSON: Thank you. Ms  
21 Kulaszka? You have about a quarter of an hour, Ms  
22 Kulaszka.

23 CROSS-EXAMINATION BY MS KULASZKA

24 MS KULASZKA: Dr. Tsesis, I just want  
25 you to look at your expert report, starting on page 4,

1           5, 6, 7, going onto 8. Seem to be summarizing a lot of  
2 laws in Germany, France, Belgium, et cetera?

3                   DR. TSEISIS: Yes.

4                   MS KULASZKA: How come you haven't  
5 produced these laws for the Tribunal?

6                   THE CHAIRPERSON: Produced the law of  
7 these --

8                   MS KULASZKA: The laws.

9                   THE CHAIRPERSON: The laws.

10                  DR. TSEISIS: I wasn't requested to  
11 produce them. I didn't realize that I -- there was any  
12 requirement.

13                  MS KULASZKA: You didn't think it  
14 would be useful to produce the laws?

15                  DR. TSEISIS: It didn't even come to  
16 mind, but when you say it, of course it's useful, yes.

17                  MS KULASZKA: Because otherwise, the  
18 Tribunal cannot see the laws, or any defence is  
19 available.

20                  DR. TSEISIS: I -- I wrote an expert  
21 report, and I -- that was my piece of evidence to  
22 produce.

23                  MS KULASZKA: Do you know when these  
24 various laws were passed?

25                  DR. TSEISIS: I can't tell you by

1 heart all of them, but I can -- you know, some of them,  
2 I can tell you by heart. Others, I can -- you can look  
3 at my book, and I have specific dates there.

4 MS KULASZKA: Why didn't you produce  
5 your book?

6 DR. TSESIS: I produced an expert  
7 report, and not a book. And -- and I wanted it to be a  
8 limited number of pages, so that the Tribunal would  
9 have the time to read it.

10 MR. FOTHERGILL: And also, the  
11 decision of what to produce and what not to produce is  
12 that of counsel, and not of the witness.

13 THE CHAIRPERSON: Sure.

14 MS KULASZKA: With respect to each  
15 country, do you know how often these laws are enforced?

16 DR. TSESIS: I have not looked into  
17 the -- how often they are enforced, no.

18 MS KULASZKA: So with respect to  
19 Germany, for instance, you don't know how many cases  
20 are prosecuted for various years?

21 DR. TSESIS: I have certainly seen  
22 mention of it at -- but I have not done a deep analysis  
23 of that, no.

24 MS KULASZKA: Do you know how often  
25 Section 13 is used?

1 DR. TSEISIS: I have not looked into  
2 that, no. I've not looked into the numerical number,  
3 no.

4 MS KULASZKA: Can you tell the  
5 Tribunal what defences are available under each  
6 statute?

7 DR. TSEISIS: No.

8 MS KULASZKA: Can you tell the  
9 Tribunal what defences are available under the case law  
10 in each country?

11 DR. TSEISIS: I cannot, no.

12 MS KULASZKA: Can you tell us what is  
13 considered to be hate in each country?

14 DR. TSEISIS: That's -- that's  
15 partly -- that's defined within these statutes. I  
16 cannot tell you that by heart. If you gave me a copy  
17 of them to read, I could.

18 THE CHAIRPERSON: Copy of what?

19 DR. TSEISIS: Of the statutes, any of  
20 the statutes.

21 MS KULASZKA: Are you aware of the  
22 assassination of Hrant Dink?

23 THE CHAIRPERSON: Can you spell that,  
24 please?

25 MS KULASZKA: His first name is

1 H-r-a-n-t, and his last name was D-i-n-k.

2 DR. TSEISIS: I am unaware of such an  
3 individual.

4 THE CHAIRPERSON: You are not aware?

5 DR. TSEISIS: No.

6 MS KULASZKA: You haven't -- you  
7 haven't heard of his assassination recently?

8 DR. TSEISIS: No, if a document had  
9 been produced to me, I would have been glad to look  
10 into it. But I had no document to look at of that  
11 nature.

12 MS KULASZKA: Have you been given  
13 a -- an editorial from the Globe & Mail, and it's  
14 entitled "Turkey and Hrant Dink"?

15 DR. TSEISIS: I was given a group of  
16 documents --

17 MS KULASZKA: Just -- just look  
18 through those and you'll probably see it. It's a very  
19 short editorial from the Globe & Mail.

20 DR. TSEISIS: I see a -- I see a Globe  
21 & Mail piece here that I got last night at around 5  
22 p.m.

23 MS KULASZKA: Are you aware of the  
24 law in Turkey, in -- it's a law against denigrating  
25 Turkishness?

1 DR. TESIS: I have not studied  
2 Turkey.

3 MS KULASZKA: Hrant Dink was a  
4 journalist, and he -- Armenian, and he was prosecuted  
5 under this law repeatedly, and he was murdered  
6 recently. I just want to show you a -- or point you to  
7 a paragraph in that editorial. It's on the right-hand  
8 side.

9 THE CHAIRPERSON: I have a copy of  
10 this article, too and -- it's been handed up.

11 MS KULASZKA: Oh, okay. It's on  
12 the --

13 THE CHAIRPERSON: And we can produce  
14 it later.

15 MS KULASZKA: -- the second full  
16 paragraph. It starts:

17 "A spokeswoman..."

18 DR. TESIS: Uh-huh.

19 MS KULASZKA:

20 "for Amnesty International said  
21 yesterday that Turkey retains a  
22 number of harsh laws which  
23 endorse the suppression of  
24 freedom of speech. These have,  
25 coupled with the persisting

1                   official" -- these laws --  
2                   "coupled with the persisting  
3                   official statements by a senior  
4                   government state and military  
5                   officials, condemning critical  
6                   debate and dissension opinion  
7                   create an atmosphere in which  
8                   violent attacks can take place."

9                   Do you see that?

10                  DR. TSESIS: I do, yes.

11                  MS KULASZKA: Would you agree with  
12                  that assessment of that kind of law?

13                  DR. TSESIS: I cannot comment on  
14                  Turkey, simply because I haven't studied Turkey.  
15                  This -- this speaks about Turkey, which has laws that  
16                  endorse the suppression of freedom on -- I have neither  
17                  written on Turkey, nor evaluated it. I simply -- just  
18                  not a country that I have looked into deeply, so I  
19                  don't know.

20                  MS KULASZKA: Now, you -- you come  
21                  from a Jewish family, you were born in the Soviet  
22                  Union, your family emigrates, and they go to the United  
23                  States, correct?

24                  DR. TSESIS: Yes.

25                  MR. FOTHERGILL: Why did they choose

1 the United States?

2 DR. TSESIS: I suppose you would to  
3 have ask my parents that. I think they were coming to  
4 the "land of opportunity".

5 MS KULASZKA: Yes, it was the land of  
6 opportunity, and it had all these freedoms, including  
7 freedom of speech? Wouldn't that be a reason?

8 DR. TSESIS: I'm not sure my parents  
9 thought about freedom of speech, but it's certainly a  
10 wonderful thing, both in United States in Canada,  
11 absolutely. If -- if they had that in mind, I would  
12 presume that they would come for that. But I doubt  
13 very much that that was one of the things that they  
14 were considering. They were escaping anti-Semitism.

15 MS KULASZKA: And the U.S. has not  
16 had hate laws, such as in Canada, and yet has -- have  
17 you been harmed by that fact?

18 DR. TSESIS: Have I, individually,  
19 been harmed by a lack of --

20 MS KULASZKA: Certainly, as a Jew?

21 DR. TSESIS: I've certainly  
22 experienced anti-Semitic events. But a lack of laws, I  
23 don't -- there was only one occasion when I would have  
24 filed a cause of action. That was in the Army. I told  
25 my commanding officer of the denigration I had



1 experienced from another officer, and he spoke to that  
2 officer. The officer came and apologized to me, and  
3 there was no need to take it any further.

4 MS KULASZKA: So you've done very  
5 well in the United States, because of its freedoms?

6 DR. TSEISIS: I have done extremely  
7 well in the United States because of the freedoms, and  
8 I'm -- I'm very grateful for the opportunity, but I do  
9 think that the United States is mistaken in its First  
10 Amendment document, as it applies to -- to hate speech.

11 MS KULASZKA: And there's another --  
12 maybe I could produce --

13 THE CHAIRPERSON: Yes, I thought --  
14 you know what, we'll do it tomorrow.

15 MS KULASZKA: Oh, okay. Okay.  
16 There's another article in front of you. It's  
17 called -- it's "Philosophy and Public Policy" by Sidney  
18 Hook. Do you see that?

19 DR. TSEISIS: I'm trying to find it.  
20 Yes, I see it, yes.

21 MS KULASZKA: That's the book, and  
22 this is a chapter, a small chapter from that book.  
23 It's called "The Ethics of Controversy". Have you ever  
24 seen this article before?

25 DR. TSEISIS: I have not. This is

1 another one of these things that I got at five, six  
2 o'clock last night -- I'm not sure of the precise  
3 time -- and have not -- did not have the opportunity to  
4 read.

5 MS KULASZKA: Do you know who Sidney  
6 Hook was?

7 DR. TSESIS: No, I do not.

8 MS KULASZKA: If you look on page  
9 122, he discusses the general rules of controversy. I  
10 want to ask you about them.

11 DR. TSESIS: Uh-huh.

12 MS KULASZKA: This is what he says  
13 should define the rules of controversy when there's  
14 disagreement. Number one, "Nothing and no one is  
15 immune from criticism". Would you agree with that?

16 DR. TSESIS: Yes.

17 MS KULASZKA: Even groups?

18 DR. TSESIS: When it's not said for  
19 the hateful denigration of them, of course. One can  
20 criticize, but if it's said for the -- if the criticism  
21 is -- is something that is being used for denigration,  
22 there's a substantial likelihood -- and then  
23 that's a -- that's a qualifier.

24 MS KULASZKA: Well that, of course,  
25 is an interpretation, so criticism, let's just leave it

1 at criticism.

2 DR. TSESIS: I absolutely agree with  
3 the statement. But the statement is -- it must be  
4 qualified. If the criticism in a defamation suit --

5 MS KULASZKA: Well, let's go through  
6 the list of rules. Maybe the rules will make it  
7 clearer.

8 DR. TSESIS: Okay.

9 MS KULASZKA: So the second rule:  
10 "Everyone involved in a  
11 controversy has an intellectual  
12 responsibility to inform himself  
13 of the available facts."

14 Would you agree with that?

15 DR. TSESIS: That are -- no, I would  
16 say -- I would qualify it with:

17 "That are reasonably at that  
18 individuals's disposal, that a  
19 person should have reasonably  
20 acquired knowledge of".

21 MS KULASZKA: Well, I think he's  
22 talking about debate and discussions, that:

23 "Everyone involved in a  
24 controversy has an intellectual  
25 responsibility inform himself of

1 the available facts."

2 DR. TSESIS: Yes, except I qualify it

3 by:

4 "Of all the available facts that  
5 one has the reasonable ability  
6 to have -- to have determined".

7 MS KULASZKA: Okay. Number three:

8 "Criticism should be directed  
9 first to policies and against  
10 persons, only when they are  
11 responsible for policies against  
12 their motives or purposes, only  
13 when there is some independent  
14 evidence of their character"?

15 DR. TSESIS: That one makes sense to  
16 me.

17 MS KULASZKA: Number four:

18 "Because certain words are  
19 legally permissible, they are  
20 not therefore morally  
21 permissible"?

22 DR. TSESIS: Well, that's for sure  
23 true, yes.

24 MS KULASZKA: Number five:

25 "Before impugning an opponent's

1 motives, even when they  
2 legitimately may be impugned,  
3 answer his arguments".

4 Do you agree with that?

5 DR. TSESIS: No, that one has to be  
6 taken within context. This one is true, if the  
7 circumstances allow for the person's motives not to be  
8 questioned. But there are certain circumstances in  
9 which, in fact, no amount of speech -- will be able to  
10 overcome.

11 And the Keegstra case is one example  
12 of that, where students are sitting in a classroom, the  
13 person is saying discriminatory things, and rather than  
14 go in and say, look, Keegstra, you go ahead, you say  
15 your opinion. We'll get another teacher in here, and  
16 we'll get him to say something opposite.

17 We have to -- in that situation, I  
18 think that this statement is not -- so again, it  
19 depends on context. Yes, in some contexts, I think  
20 that's right. In other contexts --

21 MS KULASZKA: Well, in the case of a  
22 teacher, you didn't need to -- a person wouldn't need  
23 to criminally charge them, they could certainly be told  
24 that what they are teaching is not in the curriculum,  
25 it's not acceptable, and he should stop teaching it?

1 DR. TESIS: Well, if -- if we're  
2 talking about abstract academic debate, then of course,  
3 I think that this is right. But if we're talking about  
4 something where the motives, right -- because this  
5 point that you're reading has to do with motives, where  
6 the motives are -- or predicated on denigration or  
7 racial superiority, then I think it's because -- it's a  
8 question of that person's motives.

9 If -- if somebody says someone's  
10 stupid, then answer them and -- and show them you are  
11 not stupid. But if the motives are to denigrate you  
12 say, as a woman, and to say you are stupid because  
13 you're a woman, I only think it's going to be  
14 legitimate to look at that person's motives and  
15 determine --

16 MS KULASZKA: Yes, I think Mr. Hook's  
17 whole -- the whole premise of this article is, he's  
18 trying to uplift discussion, and so he's trying to get  
19 away from emotion. So the minute you call somebody a  
20 hater, you are basically totally debasing that  
21 discussion, aren't you?

22 DR. TESIS: You might, yes. I mean,  
23 that's certainly a possibility, yeah.

24 MS KULASZKA: You are labeling  
25 someone, you -- you're raising the emotional tone of an

1 argument, and taking it away from rational discussion,  
2 aren't you?

3 DR. TSESIS: If it has no basis for  
4 truth, absolutely, yes.

5 MS KULASZKA: The next point, six:

6 "Do not treat an opponent of a  
7 policy as if he were" --

8 THE CHAIRPERSON: We are running out  
9 of time. I think my court reporter has to leave. So  
10 what are we going to do?

11 MS KULASZKA: Is he staying  
12 overnight?

13 THE CHAIRPERSON: No, he's not, I  
14 gather.

15 DR. TSESIS: I have an airplane that  
16 leaves at 8:25. I still have to collect my things  
17 upstairs, and -- but it won't take me long. But I had  
18 a cab that was set for 6 p.m. Now, I can -- I can  
19 stay, but I'm -- I gather that I'm at the point where  
20 I'm at a risk of losing --

21 THE CHAIRPERSON: No. And I'm not  
22 going to run past 6:00. And I asked for cooperation on  
23 the part of all counsel on this point, and I haven't  
24 seen it, so what can I do?

25 The same rule will apply tomorrow

1 with respect to Ms Kulaszka's witness. So we'll start  
2 at 9 o'clock tomorrow.

3 --- Whereupon the hearing adjourned 6:00 p.m.,  
4 to resume on Tuesday, February 27, 2007  
5 at 9:00 a.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 26th day of  
February, 2007.

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Sandra Brereton

23

Certified Shorthand Reporter

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Registered Professional Reporter

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**StenoTran**