

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
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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:

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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 WEDNESDAY, FEBRUARY 28, 2007 AT 9:39 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 |
| Paul Fromm | Canada Association for Free Expression |

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1 Toronto, Ontario

2 --- Upon commencing on Wednesday, February 28, 2007

3 at 9:39 a.m.

4 THE CHAIRPERSON: Yes, Ms Kulaszka?

5 MS KULASZKA: The next witness for
6 the respondent is Jerry Newmann.

7 AFFIRMED: JERRY NEWMANN

8 EXAMINATION-IN-CHIEF BY MS KULASZKA

9 MS KULASZKA: We're going to produce
10 a few of the documents, R-1 and R-4 through
11 Mr. Newmann. If you could turn to R-1, and turn to
12 tab 6.

13 Now, many of these documents
14 Mr. Newmann did not print out. They were printed out
15 by someone else. But what he did was go through the
16 websites and compare them.

17 So, Mr. Newmann, if you could look at
18 tab 6, Wikipedia entry for Marc Lemire. Did you check
19 the website of Wikipedia and look at this specific
20 page?

21 MR. NEWMANN: I did.

22 MS KULASZKA: When did you do that?

23 MR. NEWMANN: When?

24 MS KULASZKA: Yes.

25 MR. NEWMANN: Last evening.

1 MS KULASZKA: That is pages 1, 2 and
2 3?

3 MR. NEWMANN: Yes.

4 MS KULASZKA: And the next page is
5 entitled "CAH's Racist Identification Project!" Is
6 that still on the Internet?

7 MR. NEWMANN: It is.

8 MS KULASZKA: Did you see an
9 electronic version of it?

10 MR. NEWMANN: I did.

11 MS KULASZKA: And when did you see
12 it?

13 MR. NEWMANN: I saw that last evening
14 as well.

15 MS KULASZKA: "CAH's Racist
16 Identification Project!" goes from pages 4, that
17 numbering is at the bottom, to 14. If I could produce
18 the whole tab?

19 THE CHAIRPERSON: Is that the end of
20 it?

21 MS KULASZKA: That goes to the end of
22 the tab.

23 THE CHAIRPERSON: Okay.

24 MR. FOTHERGILL: I have some concern
25 about the Wikipedia entry, only because it appears to

1 be printed in 2005.

2 MS KULASZKA: I can ask him about
3 that.

4 When you went to the website, the
5 current page is different from this page, isn't it?

6 MR. NEWMANN: Yes, it is.

7 MS KULASZKA: So what did you have to
8 do to get this page?

9 MR. NEWMANN: This particular page
10 is -- looks pretty much like this one except for the
11 photo, is not there. The way it is now, now it's just
12 the electronic text that I recall.

13 MS KULASZKA: So this is the revision
14 as of December 15th, 2005. If you look at the top?

15 MR. NEWMANN: Uh-huh.

16 MS KULASZKA: And that page still is
17 available on the Net, correct?

18 MR. NEWMANN: Yes.

19 THE CHAIRPERSON: Okay. Any further
20 objections? I don't see any.

21 MR. VIGNA: I'll be arguing at the
22 end.

23 THE CHAIRPERSON: On relevance?

24 MR. VIGNA: On relevance. What's
25 become produced exactly? Because I understood the

1 whole tab, but only three documents --

2 THE CHAIRPERSON: There are two
3 documents.

4 MS KULASZKA: They were both put to
5 Mr. Warman and the Wikipedia was about the fact that
6 Mr. Lemire has two young children. That appeared
7 shortly after.

8 MR. VIGNA: Page 289 it was not
9 produced, right?

10 THE CHAIRPERSON: What's page 289?

11 MR. VIGNA: I heard the whole tab at
12 one point.

13 THE CHAIRPERSON: At least in my
14 book, the tab contains three pages from the Wikipedia
15 site.

16 MS KULASZKA: It's a revision of
17 Wikipedia. What they do is keep their revisions.

18 THE CHAIRPERSON: I see. These are
19 the revisions.

20 MS KULASZKA: If you look at page 2.
21 Wikipedia is constantly edited so you can see the
22 various revisions. They keep them on-line.

23 THE CHAIRPERSON: Mr. Newmann, did
24 you also look at the revisions page?

25 MR. NEWMANN: Sorry?

1 THE CHAIRPERSON: Did you look at the
2 revisions page?

3 MR. NEWMANN: The list of revisions?
4 Yes, yes, I did.

5 THE CHAIRPERSON: You did also on the
6 Web?

7 MR. NEWMANN: Yes.

8 THE CHAIRPERSON: Last night?

9 MR. NEWMANN: Yes.

10 THE CHAIRPERSON: So what would
11 obviously, though, have changed, I would think, Ms
12 Kulaszka, is that the revisions page begins at 2005.
13 So if -- for instance, if the photograph was that would
14 have been a revision and that would appear in a newer
15 version, right? I don't think anything arises from
16 this.

17 I'm just pointing out this revisions
18 page, which, yes, should form part of an excerpt from
19 Wikipedia, dates from 2005, as does the front page.

20 MS KULASZKA: Right. When this was
21 printed out this is what you would have seen, but today
22 you would see something different but you would have to
23 go -- see all these revisions are maintained so then
24 you click on the revision of December 15th and there it
25 is.

1 THE CHAIRPERSON: I understand.

2 MR. VIGNA: I'll just object and for
3 the relevance at argument. But I wanted to make --

4 THE CHAIRPERSON: I'm familiar with
5 that.

6 MS KULASZKA: It was a document put
7 to Mr. Warman, though.

8 THE CHAIRPERSON: Yes, okay, I seem
9 to recall that. It's not the first time I've seen this
10 page. And the other document, "CAH's Racist
11 Identification Project!"?

12 MS KULASZKA: Yes, and that was put
13 to him as well, and he spoke about it.

14 THE CHAIRPERSON: This also was print
15 it on on January 15th, 2006. I don't have a problem
16 producing it in those circumstances.

17 MS KULASZKA: Mr. Newmann, if you
18 turn to tab 19. Follow the numbering on the bottom. I
19 have a note this has been produced.

20 THE CHAIRPERSON: I see a tick as
21 well.

22 MS KULASZKA: Turn to page 20 to the
23 end of the tab, I don't think this has been produced.

24 THE CHAIRPERSON: I have to differ to
25 Mr. Levac? When I produce a tab I tend to just put a

1 check mark on the first page. In this instance, I
2 notice I put check marks throughout the tab, which
3 would suggest perhaps that page which does not have a
4 check mark in my book was not produced. 19. Page 19,
5 you're right.

6 MS KULASZKA: Mr. Newmann, if you --

7 MR. FOTHERGILL: I wonder if I could
8 assist a little bit. I'm not going to rise every
9 occasion to express the concern about relevance because
10 you've heard me on numerous occasions.

11 The Attorney General's position, and
12 I believe this Commission's is the same, is that
13 anything to do with the ARA is not relevant to the
14 constitutional issue. So I'll state that once on the
15 record. Beyond that, the authenticity of the documents
16 in this tab, I have no reason to dispute and I'm
17 prepared to have them produced by consent.

18 MS KULASZKA: That's fine. They're
19 all articles.

20 THE CHAIRPERSON: I understand this
21 witness's role here is to identify, get these documents
22 produced, that's fine.

23 MR. VIGNA: I echo the comments of my
24 colleague. I object also to everything -- but I don't
25 want to rise every time -- everything that this witness

1 will be testifying to and the documents that are
2 related to him. In order not to rise every time, I
3 will just echo his comments.

4 THE CHAIRPERSON: I understand and I
5 know exactly what your position is. I know the
6 position of the other side and we'll discuss it at the
7 end. This creates a foundation for the alternate
8 argument. I have no difficulty with allowing this
9 material in.

10 So Ms Kulaszka, if it's all been
11 produced, it's all consented to in terms of its
12 authenticity.

13 MS KULASZKA: So that would be from
14 pages 20 to 44.

15 THE CHAIRPERSON: Yes, 44. Which is
16 principally articles or tabs, newspaper articles,
17 pamphlets.

18 MS KULASZKA: If you could turn to
19 tab 13.

20 THE CHAIRPERSON: Tab 13.

21 MS KULASZKA: Tab 13, there's an
22 article, "Blanket Ban on Holocaust Denial," and then
23 that -- two pages. Then there's an article "Brave New
24 World War", and about three pages after that is an
25 article "Brute Censorship Disables Democracy".

1 Did you check those articles on the
2 Internet, Mr. Newmann?

3 MR. NEWMANN: I did check them on the
4 Internet and they are all as you see them here.

5 MS KULASZKA: Did you the Google News
6 Archives? It's the next -- the last two pages and it
7 was a search "holocaust iran". Did you check that?

8 MR. NEWMANN: Yes, I did.

9 MR. FOTHERGILL: Again, Mr. Chair if
10 assists, I'll take the same position on this tab.

11 THE CHAIRPERSON: Mr. Vigna, same
12 thing?

13 MR. VIGNA: Yes.

14 THE CHAIRPERSON: Tab 13 is
15 considered produced.

16 MS KULASZKA: Tab 14, Mr. Newmann, if
17 you could look at that. There's an article,
18 "Demographic Differences and Cumulative Incidence".
19 And then if you flip over. That goes on for several
20 pages.

21 Then there's the title page of the
22 American Journal of Public Health and the next page is
23 "Racial Ethnic Differences and the Risk of AIDS". And
24 then that article goes on for several pages.

25 Then it says, "The Lanset" and

1 there's a small article, "Resistance of AIDS Virus At
2 Room Temperature" which goes on for a couple of pages.

3 Then another article, "Patterns of
4 Sexual Behavior", and that goes to the end.

5 Did you go to a medical school and
6 run off these articles?

7 MR. NEWMANN: Yes, I went to the
8 medical library at the McMaster University in Hamilton
9 and researched these articles and took them out of the
10 books that you see.

11 MS KULASZKA: And you photocopied
12 them?

13 MR. NEWMANN: Yes.

14 MR. FOTHERGILL: Mr. Hadjis, I am
15 trying to assist the process, and it's really not
16 necessary for Ms Kulaszka to prove the documents.

17 THE CHAIRPERSON: To be fair to her,
18 this was presented to some witness earlier --

19 MR. FOTHERGILL: It was, Mr. Warman.

20 THE CHAIRPERSON: -- and there was
21 some discussion about its authenticity to the point I
22 wrote down, "To be produced later by witness
23 Newmann" --

24 MR. FOTHERGILL: Very well.

25 THE CHAIRPERSON: -- on this

1 document, so....

2 MR. FOTHERGILL: Speaking only for
3 the Attorney General, the concern is relevance.
4 Although in fact in this case I do remember the
5 exchange, and Mr. Warman was asked to contrast the tone
6 of these articles with the document, "AIDS Secrets"
7 that appears, so there may even not be an issue of
8 relevance in these ones.

9 Once again, no issue from the
10 Attorney General's perspective on the authenticity.
11 Relevance is a matter for argument.

12 MR. VIGNA: The only caveat I would
13 have on this document, it's a document that's medical
14 in nature. Obviously, he's not a doctor or an expert.

15 THE CHAIRPERSON: It's not for the
16 truth of any of the material. I think it's for the
17 nature of this article, as something that was alluded
18 to by Mr. Fothergill just now. I remember that line of
19 questioning.

20 MR. VIGNA: To that extent, it's
21 fine.

22 THE CHAIRPERSON: Okay, Ms Kulaszka,
23 14. All of it?

24 MS KULASZKA: It's all of it.

25 THE CHAIRPERSON: Okay.

1 MS KULASZKA: Tab 15 again is just an
2 article. If there's no objection, I would just produce
3 it.

4 THE CHAIRPERSON: I see that.
5 There's no objection. 15. Yes?

6 MS KULASZKA: And 24 is an entry on
7 Britannica for Nelson Mandella. If there's no
8 objection, I would just produce it.

9 THE CHAIRPERSON: There's no
10 objection, in R-1?

11 MS KULASZKA: Maybe I could just ask
12 if --

13 THE CHAIRPERSON: Are there any other
14 tabs in R-1 that have not been produced? Feel free to
15 do so during the breaks, along the way during the
16 hearing of all your exhibits, just to make sure. You
17 won't have a chance at the end. Once we are done I'm
18 just going to advise you of what has not been provided
19 and that's it.

20 MS KULASZKA: We could enter it.
21 It's just from the Canadian Oxford Dictionary. Maybe
22 we could just enter it and that would complete the
23 volume. It's definitions of Zionism.

24 THE CHAIRPERSON: Consent,
25 Mr. Vigna? And Funk & Wagnalls. I just wanted to say

1 that.

2 MS KULASZKA: So we're onto tab R-4.
3 If you can look at the binder, R-4, Mr. Newmann.

4 This is the entry -- look at tab 1,
5 page 1 to 4. This is another entry from Wikipedia for
6 George Burdi. Did you check that page last night?

7 MR. NEWMANN: I did, and it is as you
8 see them.

9 MS KULASZKA: I would like to produce
10 that. That was put to Karen Mock about Burdi selling
11 Resistance records in 2001.

12 THE CHAIRPERSON: Any objection to
13 those articles? No. Fine, produced.

14 MS KULASZKA: If you could turn to
15 tab 2.

16 THE CHAIRPERSON: Portions of it have
17 already been produced, I see, that I've marked it.

18 MS KULASZKA: Tab 2, I believe, pages
19 45 to 52 have not been produced.

20 Mr. Newmann, can you look at that,
21 tab 2, page 45.

22 THE CHAIRPERSON: It's consent.

23 MS KULASZKA: Oh, okay. It's on
24 consent. Okay.

25 And tab 4 all -- these are printouts

1 from the FreedomSite. I wonder if there's an
2 objection?

3 THE CHAIRPERSON: From the
4 FreedomSite with a date at the bottom, just to be
5 clear, is that January 2nd or February?

6 MS KULASZKA: That's January 2nd. I
7 don't think there's any objection.

8 THE CHAIRPERSON: No objections from
9 both?

10 MR. VIGNA: No objection.

11 THE CHAIRPERSON: Let me just note
12 this. I'm going too fast.

13 MS KULASZKA: Tab 5 is a printout
14 from Nizkor Project, article by Karen Mock. I wonder
15 if my friends could consent to that.

16 THE CHAIRPERSON: She was
17 unquestioned on this article?

18 MS KULASZKA: She was not questioned
19 on this, no.

20 MR. FOTHERGILL: Subject to the
21 proviso that Karen Mock didn't have an opportunity to
22 speak it, so it's usefulness may be limited. Of
23 course, there's no question about the authenticity, it
24 may be produced.

25 THE CHAIRPERSON: Okay.

1 MS KULASZKA: If you could turn to
2 tab 7, page 26. So it's page 26. It's poster. Do you
3 recognize that poster?

4 MR. NEWMANN: I do.

5 MS KULASZKA: Where did you see it?

6 MR. NEWMANN: I saw it first at Ernst
7 Zundel's home around I think it was 1992 or 1993.
8 Subsequently, myself and another friend went out and
9 looked around and we saw it pasted up in various places
10 around Toronto.

11 MS KULASZKA: If I can produce that,
12 just page 26.

13 THE CHAIRPERSON: Okay.

14 MS KULASZKA: If I could turn to tab
15 11. These are a couple of articles. These were put to
16 Professor Tsesis --

17 THE CHAIRPERSON: Going in by
18 consent? Articles from the Jerusalem Post.

19 MS KULASZKA: Yes, from the Jerusalem
20 Post and one from the Telegraph.

21 And in tab 12 there is one page that
22 is not produced. Could you turn to page 47,
23 Mr. Newmann? It starts at the top, "The Canadian
24 government should do everything." Do you see it?

25 MR. NEWMANN: Yes, I do.

1 MS KULASZKA: Can you identify what
2 that is?

3 MR. NEWMANN: Yes. That is a page
4 out of the Excalibur, which is a York University
5 newspaper, student newspaper there. Friend of mine, he
6 was a student there. He saw this, thought I would be
7 interested and gave me a copy.

8 MS KULASZKA: At the time?

9 MR. NEWMANN: At the time, yes.

10 THE CHAIRPERSON: The time being?

11 MS KULASZKA: It's at the top.

12 THE CHAIRPERSON: March 1993.

13 MS KULASZKA: Yeah. Tab 14. Can you
14 turn to tab 14? These are a series of little messages
15 that go from pages 1, 2 and comments -- going to pages
16 1 to 14, then starting at 15 there's an article:

17 "EU still divided over how to
18 handle the Holocaust denial".

19 Did you check the article out on the
20 Net last night?

21 MR. NEWMANN: I did and they are as
22 you see them.

23 THE CHAIRPERSON: There's a little
24 message. The witness -- appears to be -- I think we
25 had some evidence on this.

1 MS KULASZKA: Put to Karen Mock.

2 Maybe I should ask, Mr. Newmann you see the article
3 "Diplomats: EU still divided."

4 MR. NEWMANN: Yes.

5 MS KULASZKA: Where do these little
6 comments appears?

7 MR. NEWMANN: You mean the box
8 comments?

9 MS KULASZKA: The box comments.

10 MR. NEWMANN: Yes, they appeared I
11 believe it was after these -- after this one in a
12 series of commentary that Ha'aretz puts on.

13 MS KULASZKA: Under the article?

14 MR. NEWMANN: Yes.

15 MR. VIGNA: I would like to clarify
16 the documents that are in the box, when are they from
17 because --

18 THE CHAIRPERSON: We don't have
19 dates, that's true.

20 MR. VIGNA: I don't know if they are
21 still there last night.

22 THE CHAIRPERSON: You went and saw
23 all these talk back comments, sir?

24 MR. NEWMANN: Yes, every one that's
25 in here I went through them last night and they were

1 still there.

2 THE CHAIRPERSON: Still there on the
3 web. And the article itself dates from --

4 MR. NEWMANN: That was there as well.

5 THE CHAIRPERSON: -- 15th of
6 February, 2007.

7 MS KULASZKA: And the article is
8 still on the site?

9 MR. NEWMANN: It is.

10 MS KULASZKA: And under the article
11 are these comments?

12 MR. NEWMANN: Yes, and many more as
13 well.

14 MS KULASZKA: So this is a selection
15 of the comments?

16 MR. NEWMANN: Yes, it is.

17 MS KULASZKA: You checked each one to
18 make sure it was still there?

19 MR. NEWMANN: I did.

20 THE CHAIRPERSON: We haven't
21 specified, it's from the website haartez.com, which I
22 recall is in the evidence is a newspaper from Israel.

23 MS KULASZKA: And it was from the
24 website haartez.com.

25 MR. NEWMANN: Yes.

1 THE CHAIRPERSON: Is this an article?

2 Do you have that your tabs?

3 MS KULASZKA: Paul Fromm is going
4 to -- he's the one who photocopied this, ran it off and
5 he's going to introduce it, plus a letter he wrote also
6 in that volume, so he should do it.

7 THE CHAIRPERSON: Okay.

8 MS KULASZKA: Tab 6 in the same
9 volume is just an excerpt from the legislative assembly
10 where Karen Mock gave testimony. We can produce it or
11 not. I'm not relying on it.

12 THE CHAIRPERSON: Do you intend to
13 use it?

14 MS KULASZKA: I don't intend to use
15 it.

16 THE CHAIRPERSON: We can easily
17 remove it.

18 MS KULASZKA: We don't need it?

19 THE CHAIRPERSON: Just because it's
20 there, there's no reason to put it in. I see how the
21 other ones all sort of flow through each other. This
22 one has no relevance, so let's just get it out.

23 MS KULASZKA: Do you want to just
24 remove it?

25 THE CHAIRPERSON: Yeah, you can

1 remove it. I'll take it out. Tab 6, right?

2 MS KULASZKA: It was produced
3 through -- yesterday put through Dr. Downs.

4 THE CHAIRPERSON: I have it. Tab 13
5 was produced. What we should do is, just as a reminder
6 before the end of -- I suppose get to do it on Friday.
7 I don't know if there's -- to what extent we'll be
8 going through new material, there is any additional
9 evidence thereafter. But you should sit down with
10 Mr. Levac and see his list, all of you should, and
11 compare and if there is a discrepancy, if that one was
12 a discrepancy, we can address it. Okay?

13 MS KULASZKA: I had handed my friend
14 some documents this morning.

15 MR. VIGNA: Mr. Chair, we'll be
16 objecting to these documents. They were given this
17 morning. They were given late, plus I object on any
18 relevance in relation to these documents and they seem
19 to deal with another legislative provision than the
20 present.

21 THE CHAIRPERSON: They seem to be
22 what?

23 MR. VIGNA: Deal with a provision in
24 the Canada Post Act. There's three objections to the
25 documents.

1 THE CHAIRPERSON: So lack of
2 relevance on --

3 MR. FOTHERGILL: Another substantive
4 objection is having briefly perused this documents the
5 morning they all seems to relate to Mr. Zundel's
6 unsuccessful attempts to engage the Jewish community in
7 various ways. Plus the Canada Post issue that
8 Mr. Vigna alluded to.

9 And the concert that I have as
10 insofar as these things might be relevant, and of
11 course my position is that they are not. The witness
12 who might have been able to comment on them is Dr.
13 Mock, and she has now come and gone.

14 So obviously from the Attorney
15 General's perspective, the entire Zundel saga is
16 completely irrelevant to the proceedings here. But
17 insofar as there is some kind of issue about the manner
18 in which B'nai Brith and other Jewish organizations
19 responded to Mr. Zundel's approaches, the witness who
20 could have addressed that is no longer available and
21 there is a real potential for prejudice if this is
22 admitted.

23 MS KULASZKA: I asked Dr. Mock
24 whether she would debate with Ernst Zundel or whether
25 they would deal with them, and she would no. She also

1 didn't -- she didn't know anything prior to the time
2 she became the national director, which I think was
3 either the late eighties or early nineties. So she
4 didn't recognize any of the documents before that time.
5 I think it was about 1992 that we started talking about
6 the newspaper articles because that's when she becomes
7 involved.

8 But she did say on re-exam -- she was
9 asked by Mr. Fothergill, did anyone ever complain to
10 you about what was in the audit. Did they this
11 complain about being called Holocaust deniers or
12 neo-Nazis, and I think that related to people like Doug
13 Christie, Paul Fromm --

14 THE CHAIRPERSON: Ms Kulaszka,
15 there's another problem here. Whatever her answer
16 would have been is not relevant. If you had this
17 material, and this is from the eighties -- if you had
18 this material, it had to have at least been put to --
19 given to the other side so that maybe they would have
20 called her predecessor to testify or prepare for that
21 or put the question to her. I mean, we can't just say
22 she likely would not have known about it because she
23 began to be involved with B'nai Brith in '89 or
24 whatever it was.

25 MS KULASZKA: It arises during the

1 case, this is the problem. Things arise, issues arise.

2 THE CHAIRPERSON: No. I've seen this
3 argument coming from way before we started this case,
4 the whole issue, the big picture analysis. The whole
5 reason I've opened this door. Technically they are
6 right, what's on trial here is Section 13, not anything
7 else. Not the Zundel case, not the people protesting
8 in front of Mr. Fromm's house or anybody else. What's
9 on trial is Section 13. But I've allowed -- I see how
10 you're developing a broader argument, and my opinion is
11 that you should be able to have the factual --

12 MS KULASZKA: This is the argument I
13 want to make at the end of the day. It's our spin
14 that, well, that's Section 13 so anything that happened
15 because someone was charged under 319 or some other
16 Act, that doesn't apply.

17 But the argument I want to make is
18 the public doesn't distinguish between these acts.
19 You're alleged to be a hate monger or a Holocaust
20 denier or a neo-Nazi, and to the public this is all the
21 same thing and it's a label and what effect does this
22 have on the person who is labelled that way?

23 What happens to -- in society --
24 there's the reaction to that label being attached. And
25 what we'll see is there is a development of violence.

1 And my argument is very broad. It's that these laws
2 just start justifying a lack of dialogue and, in fact,
3 they have the opposite effect of what they are supposed
4 to do. They start degrading discourse --

5 THE CHAIRPERSON: With material
6 that's already in there, I think you have the factual
7 underpinning for you to make that argument. The
8 incidents have been provided to me, but we have a
9 specific fairness issue here with regard to a late
10 disclosure of these documents which should or which
11 would ordinarily trigger a response from the other side
12 to deal with specific documents. That's the problem.

13 MS KULASZKA: If I put this to Karen
14 Mock, she would have said to me, I wasn't anywhere near
15 this.

16 THE CHAIRPERSON: I can't accept
17 that, Ms Kulaszka. "She would have". I don't know
18 what she would have. That's not up to me to decide at
19 this point.

20 And there's a double problem. It
21 being put to Dr. Mock -- Dr. Mock, right -- and also
22 being provided to the other side, so that maybe they
23 wouldn't have called another witness or maybe Mr. Kurz
24 would have called one of his clients' witnesses. I
25 haven't looked at this material. From what I heard

1 from the three of you at this moment of what this
2 involved. That's the problem.

3 But honestly, Ms Kulaszka, everything
4 you've just said in that argument, you have the
5 material in front of you to support it already,
6 including what we just entered into evidence this
7 morning through this witness. So I don't see what's
8 missing. But, allowing this material here will
9 trigger -- well, first of all, it's not fair because
10 the other side has not seen it.

11 MS KULASZKA: I certainly wouldn't
12 object if Mr. Kurz called someone.

13 THE CHAIRPERSON: Why should he at
14 this point? Because the process is back and forth, and
15 we're into the forth now. We've been through their
16 side. And it's a bit of a constitutional issue.
17 There's a factual component to it. That's not how he
18 was intending to proceed. There was supposed to be
19 full disclosure before the hearing.

20 This is something that is, as I see
21 it, is of equal relevance and weight. There's all this
22 other material that you've already introduced regarding
23 ARA and so on. So it's not something you could not
24 have foreseen.

25 We've already had material on the

1 Zundel incident. This should have formed part of it.
2 It wasn't and it hasn't been produced to the other
3 sides, plural, before the hearing which would have
4 enabled them to address it through Dr. Mock or anybody
5 else for that matter.

6 MS KULASZKA: Certainly I should be
7 free to put in the decision of the board of review,
8 that's 13(A) to 22(A). That's a decision of an
9 agency --

10 THE CHAIRPERSON: Let me look. My
11 statements until now have been because of how you've
12 all described the term. You are saying 13(A) is
13 something different.

14 MS KULASZKA: 13(A) to 22(A) is a
15 decision of a --

16 THE CHAIRPERSON: Report of the Board
17 of Review.

18 MS KULASZKA: -- into the facts and
19 circumstances. So there was a prohibitory order which
20 suspended the mailing privileges of Zansat Publishers
21 Limited (ph), which was Ernst Zundel's publishing
22 company, and there was a very lengthy hearing and this
23 was their decision where they revoked the order, and
24 mailing privileges were reinstated.

25 THE CHAIRPERSON: It seems to be an

1 arm of I'll say the government, which I'm not sure
2 exists today. It's an old decision.

3 MR. FOTHERGILL: I haven't read the
4 document, but it does seem to be in the nature of a
5 legal authority so presumably it could be included in
6 the Book of Authorities at the time of argument rather
7 than filed as an exhibit.

8 THE CHAIRPERSON: We could do that.
9 If it's from a body, if it's from an administrative
10 Tribunal --

11 MS KULASZKA: Yes, Board of Review.

12 THE CHAIRPERSON: I said earlier that
13 sometimes arbitrators' decisions and things like that
14 we enter in as evidence because they are perhaps
15 obscure. It's a Board of Review, which seems to be an
16 administrative tribunal. Perhaps somebody could --

17 MS KULASZKA: It's a Board of Review
18 --

19 THE CHAIRPERSON: Section 41 Canada
20 Post Corporations Act. Perhaps you could attach that,
21 if you file it with authorities just so I know what
22 kind of administrative board this was.

23 MS KULASZKA: Can I produce that?

24 THE CHAIRPERSON: No. Why don't you
25 just keep it for authorities. That will be consistent

1 with everything we've said until now. So you'll be
2 able to use it in your argument.

3 MS KULASZKA: Yes, I'll be relying on
4 it.

5 Now, as to the other two documents,
6 they are letters. Jerry Newmann knows about these
7 letters. He can be cross-examined.

8 THE CHAIRPERSON: No, no, I'm not
9 going to. It's late disclosure. At some point it has
10 to stop.

11 MS KULASZKA: I should put on the
12 record they have been disclosing -- I have literally
13 bags of material at home I haven't even looked at
14 because it was given to me literally days before this
15 hearing.

16 THE CHAIRPERSON: What's late about
17 this, it's significant here. It comes after the
18 witness has testified. One witness has testified and
19 after they have pretty much closed their cases. It
20 wasn't -- and I took each late disclosure on a
21 case-by-case basis. Now I have an objection. Did you
22 make any objection to the late disclosure in the past?
23 Did you deal with them in in manner?

24 MS KULASZKA: Yes, I put objections
25 on the record.

1 THE CHAIRPERSON: Were they of this
2 nature? I don't remember. I don't remember right now
3 which documents you are referring to, where there was
4 late disclosure.

5 In any event, I can see where this
6 objection goes. And besides which, why is this
7 essential, Ms Kulaszka? Your argument, you've got all
8 the components for your argument already made.

9 MS KULASZKA: It goes to -- I think
10 my friends think I'm trying to re-fight the Zundel
11 case. It's got nothing to do with that. It has to do
12 with how things developed, the effect of these labels
13 and how these laws are being used.

14 THE CHAIRPERSON: I've seen that.
15 You've got all that material already in front of me.
16 If your argument has any validity there is more than
17 enough support found in the documentation that you've
18 already provided.

19 MS KULASZKA: Mr. Newmann, can you
20 turn to tab R-4? Have you got that binder, R-4? Go to
21 tab 12.

22 MR. NEWMANN: Okay.

23 MS KULASZKA: In that tab turn to
24 page 4. Page 4. It's at the top. This is an article
25 about "Courthouse Clash". I just want to take

1 Mr. Newmann through these articles. He was present at
2 most of these events and he can describe what they are
3 about and what happened.

4 What is this article about?

5 MR. NEWMANN: This article is about
6 the Ernst Zundel appearance in court to establish a
7 date for his preliminary hearing, I believe. That
8 was -- the appearance happened on January 16th. This
9 is an article the next day about what happened. It was
10 actually the second appearance for the same thing,
11 first one being December 28th, 1983 at which time there
12 was violence by JDL protestors out front of the
13 courthouse.

14 MS KULASZKA: Who is the JDL?

15 MR. NEWMANN: The group known as the
16 Jewish Defence League.

17 THE CHAIRPERSON: I'm not hearing
18 him. Is his microphone on?

19 (DISCUSSION OFF THE RECORD)

20 MS KULASZKA: You were describing who
21 the Jewish Defence League is.

22 MR. NEWMANN: Yes. Jewish Defence
23 League is a group known as the Jewish Defence League
24 and they had protestors out in front of the courthouse
25 at the time and attempted to bar Mr. Zundel's entrance

1 into the courthouse for the hearings. And violence
2 ensued of which I was part of as well.

3 And the first day, which was the
4 December 28th one, was very interesting because he was
5 actually struck down by a member of the Jewish Defence
6 League, but that never appeared in the newspapers or on
7 the news.

8 Then the Court said the prosecution
9 wasn't ready yet so we had go back for another hearing,
10 which was the subject of this article here in front of
11 us. And the violence escalated at that point and
12 the -- was much bigger fight going on at that point.
13 And the first time there had been only two police
14 officers. The second time there was about half a dozen
15 police officers and it was very hard to get into court.
16 It was very tough.

17 If you see the newscasts at the time,
18 you can see it was quite a mess, actually, you might
19 say. And then the prosecution said they still weren't
20 ready, so they headed over to the another hearing on
21 February 6th of '84.

22 February 6th the police finally
23 showed up in force, about 30 or 40 police officers
24 perhaps, and the protestors showed up in force but they
25 did manage to keep us apart at that time and did manage

1 to get in to make it to court safely at which time they
2 did in fact set a date for a preliminary hearing.

3 MS KULASZKA: Were all these
4 protestors members of the Jewish Defence League?

5 MR. NEWMANN: I wouldn't know for
6 sure, but they were certainly led by the members of the
7 Jewish Defence League that we know, that we knew at the
8 time, like Meir Halady (ph), who was the head of the
9 Jewish Defence League and some of his friends, who we
10 knew personally.

11 But the other protestors, I can't say
12 that they were actually members, but of course they
13 were going along with the Jewish Defence League
14 protestors, and they were carrying signs, at the first
15 one at least, great big banner saying "Jewish Defence
16 League, et cetera.

17 And as the one reporter said that had
18 they stopped us going into court, Mr. Zundel probably
19 would have lost his case just for non-appearance, which
20 to us at least seemed like that was what they were
21 trying to do.

22 THE CHAIRPERSON: This was with
23 regard to the criminal --

24 MS KULASZKA: Criminal charge of
25 false news.

1 If turn to page 5, there's an article
2 entitled, "Pipe Bomb A Warning?" It's dated September
3 10th, 1984, which is later that year. Can you tell me
4 what happened?

5 MR. NEWMANN: Yes, there was -- a
6 pipe bomb exploded at the back of Ernst Zundel's home
7 by his garage. There was a drainpipe from the -- rain
8 drainpipe coming off the off of the garage and somebody
9 had put a pipe bomb inside that and detonated it, which
10 did damage to his car, his garage door and a few other
11 vehicles in the area, et cetera.

12 Later on that day there was -- a
13 Jewish group declared that they had planted the bomb
14 and it was in the news that they took responsibility
15 for this.

16 MS KULASZKA: Did you see the damage
17 yourself?

18 MR. NEWMANN: I did. I was there. I
19 did see the damage itself, and from the damage done to
20 the vehicles in the area, et cetera, it was quite
21 obvious that if anyone had been walking by there they
22 could have been seriously injured by flying pieces of
23 metal, et cetera, if not worse.

24 MS KULASZKA: Was anybody charged or
25 convicted for that crime?

1 MR. NEWMANN: No, nobody was charged.

2 MS KULASZKA: In the media, right at
3 the bottom of that page there's a small little article,
4 "Pipe Bomb Damages House", at the bottom it says:

5 "A man called the Globe & Mail
6 last night on behalf of the a
7 group called The People's
8 Liberation Movement of the
9 Jewish Defence League, to claim
10 responsibility for the bomb."

11 Is that what you are referring to.

12 MR. NEWMANN: Yes, that is what I'm
13 referring to.

14 MS KULASZKA: Turn to page 6. This
15 is just an article about the first conviction. We can
16 turn past that. Several articles here.

17 Was there violence at the trial, the
18 first trial itself in 1985?

19 MR. NEWMANN: There was violence the
20 first day against the same -- kind of a replay of the
21 other ones. Jewish Defence League was waiting out
22 there with some of their friends and cohorts attempting
23 to bar entrance into the courthouse. And violence did
24 erupt, at which time the police again moved in and
25 tried to separate us and managed to get ourselves into

1 court.

2 The violence was such that the judge
3 then declared a -- not -- prohibitory order or
4 something, prohibiting members of the Jewish Defence
5 League from coming within 100 meters of the courthouse.
6 So therefore, there was no violence after that at the
7 hearing, or at the trial.

8 MS KULASZKA: Now, if you turn along
9 you can see that Ernst Zundel was convicted after a
10 second trial in 1988. Was there any trouble at all in
11 the 1988 trial?

12 MR. NEWMANN: No, there wasn't. I
13 believe the JDL was still under such an order not to
14 attend any of these trials.

15 MS KULASZKA: Ernst Zundel was
16 acquitted ultimately in August 1992; is that right?

17 MR. NEWMANN: Yes, that's correct.

18 MS KULASZKA: Can you describe --

19 THE CHAIRPERSON: Sorry, on the same
20 charge?

21 MS KULASZKA: Yes. It went to the
22 Supreme Court of Canada and it was acquitted in
23 August 1992 and the false news law was declared
24 unconstitutional.

25 THE CHAIRPERSON: Yes.

1 MS KULASZKA: What happened after
2 that?

3 MR. NEWMANN: Well, immediately after
4 that, within next day or two the people who were
5 involved in bringing the charges against him in the
6 first place, plus supporters of the charges against
7 him, immediately tried to get him charged again under
8 the hate laws.

9 MS KULASZKA: So that was another
10 offence?

11 MR. NEWMANN: Yes. First one was
12 false news law, these ones were I guess -- call it
13 section 319, the hate laws or something.

14 MS KULASZKA: If you turn to page 31.
15 At the same tab you can see an article, "Charge Zundel
16 Under Hate Law Ontario Urged". Is that what you're
17 talking about?

18 MR. NEWMANN: Yes, that's what I'm
19 talking about.

20 THE CHAIRPERSON: What page?

21 MS KULASZKA: Page 31. Have you seen
22 these articles before at the time?

23 MR. NEWMANN: Yes, I did, yes.

24 MS KULASZKA: Were you aware of the
25 campaign on page 33? It was an ad put out by B'nai

1 Brith called "Help Stop Zundel"? Were you aware of
2 that campaign?

3 MR. NEWMANN: Yes, I was.

4 MS KULASZKA: If you turn to page 35
5 there's a magazine, The Covenant. "Arrest This Man
6 Says B'nai Brith". Were you aware of that campaign?

7 MR. NEWMANN: Yes, I was. We were
8 keeping close tabs on it.

9 MS KULASZKA: Moving along, the
10 article on page 44, you'll see, "OPP won't press Zundel
11 charges", dated March 9, 1993. Do you see that?

12 MR. NEWMANN: Yes, I do.

13 MS KULASZKA: And what happened
14 there?

15 MR. NEWMANN: Well, after
16 investigations the OPP decided there was not enough
17 evidence in order to press a charge under that section
18 against Mr. Zundel. And, again, immediately after they
19 decided not to, they organized groups that were
20 attempting to have Mr. Zundel charged. Absolutely
21 when -- you might say ballistic in their own
22 publications, things like that, demanding he should
23 charged with something.

24 So I guess they went off -- we were
25 all under the impression that's what they were doing.

1 They finally went to the Human Rights Commission, if I
2 may say, and other places trying to find somebody who
3 would charge him with something. It seemed to us they
4 weren't -- they were just interested in getting him.

5 MS KULASZKA: If you can turn to page
6 47. This is the ad you identified from Excalibur.
7 And -- "But you can help stop this hate mongerer".
8 What kind of atmosphere started to arise because of
9 these ads in the poster campaign?

10 MR. NEWMANN: Well, it became very
11 difficult for Mr. Zundel to do things because he was
12 always being labelled with all these negative labels.
13 And everybody was, you know, not dealing with him the
14 way they used to deal with him in a fair basis in the
15 public, et cetera.

16 So all these labels, et cetera, were
17 having a detrimental effect on his business, on him, on
18 the way people dealt with him, the way people thought
19 about him.

20 MS KULASZKA: Can you turn to page
21 48. This is an article, "Mob Attacks Racist's Home",
22 June 12th, 1993.

23 MR. NEWMANN: Yes.

24 MS KULASZKA: This is about
25 three months after, it's about Gary Schipper. Can you

1 tell me what happened that day?

2 MR. NEWMANN: Yes, when we --
3 Mr. Zundel heard about this ARA demonstration, this mob
4 demonstration happening. He was concerned that it may
5 be directed at his residence, and so we prepared a
6 defence against a potential mob scene at his place by
7 protecting the house with sheets and things of that
8 nature, and informed the police that perhaps something
9 might happen, et cetera.

10 We did all we could to remain safe,
11 and then it turns out the mob did not come to
12 Mr. Zundel's house but they went to the house of a
13 fellow by the name of Gary Schipper, who is a member of
14 a famous Toronto group called the Heritage Front.

15 And a friend of mine was there,
16 videotaped the proceedings that went on at the house
17 there and how they trashed his house, broke the
18 windows, threw paint, threw feces at it, et cetera.
19 Certainly a lot of damage and it was in the news.

20 MS KULASZKA: How did you know there
21 was going to be trouble? Was there a poster?

22 MR. NEWMANN: Yes, there had been
23 posters put up and someone that we knew brought it to
24 our attention.

25 MS KULASZKA: If you can turn to R-1.

1 Just keep the other one open but turn to R-1 at tab 9.
2 Once you've got tab 9 look at the bottom of the pages
3 and turn to page 34. This is the poster board.

4 MR. NEWMANN: Yes, I have it in front
5 of me.

6 MS KULASZKA: Can you tell me about
7 this poster?

8 MR. NEWMANN: Yes, this is one of
9 many posters that were being put up around Toronto,
10 around the university area and in the Cabbagetown area
11 where Mr. Zundel had his office and home. And this was
12 one of the ones that concerned us at the time.

13 MS KULASZKA: So can you just
14 describe the poster and what it says?

15 MR. NEWMANN: Yes. Well, basically
16 it has a photograph from Mr. Zundel's, what do you call
17 it, his meeting when he was acquitted of the charges
18 and a picture of his house and a map to the location of
19 the house, instructions for making a Molotov cocktail,
20 which is an incendiary explosive device and
21 suggesting -- another picture of a -- a drawn picture
22 of a person holding a Molotov cocktail with a blank
23 face with a little saying, "Your picture here".

24 So for us there it was -- took that
25 to suggest that somebody was trying to egg people on to

1 burn Mr. Zundel's home. So, therefore, we were twice
2 as alert at the time.

3 THE CHAIRPERSON: When did you see
4 this poster?

5 MR. NEWMANN: This is about -- I
6 believe it was 1993, I believe.

7 MS KULASZKA: So it was just --

8 THE CHAIRPERSON: Before this other
9 attack or they are unrelated, the one we just discussed
10 earlier on Gary Schipper's home?

11 MR. NEWMANN: That was around the
12 same time. I think it was just before, I think.

13 THE CHAIRPERSON: When you said you
14 made preparations to help Mr. Zundel protect his home,
15 was it on account of this particular act or was it
16 other ones?

17 MR. NEWMANN: Well, there was an
18 accumulation of many ads, and this was just kind of the
19 latest, but the most aggressive.

20 MS KULASZKA: There was a poster, not
21 an ad?

22 MR. NEWMANN: Well, poster, yeah.
23 Little leaflets that had been posted up on -- what do
24 you call it, glued up on various lampposts and other
25 areas for putting posters up, actually around the

1 University of Toronto.

2 MS KULASZKA: Do you have a DVD of
3 the Schipper riot?

4 MR. NEWMANN: I have seen a DVD of
5 the Schipper riot.

6 MS KULASZKA: Have you brought it
7 with you today?

8 MR. NEWMANN: No, I didn't. Do you
9 have one? Oh, okay. We have one.

10 MS KULASZKA: If you could turn to
11 page 51. Were you aware of efforts, various efforts to
12 have Mr. Zundel charged with something?

13 THE CHAIRPERSON: Page 51 of?

14 MS KULASZKA: 51 of tab 12 of R-4.
15 We've gone back to the other binder. This is an
16 article, "Network to Press for Zundel Charges".

17 MR. NEWMANN: Uh-huh. We were always
18 aware of constant efforts to -- of those particular
19 groups who are antagonistic towards him to have charges
20 pressed in any venue where they could find someone to
21 accept some sort of charges.

22 MS KULASZKA: If you could turn to
23 page 52, this is "Zundel Off Air". Did he have -- did
24 he have radio shows or satellite broadcasts, public
25 access? What does this describe? Do you remember this

1 incident?

2 MR. NEWMANN: Yes. He started a
3 media outreach program and it included radio
4 broadcasts, satellite TV broadcasts and what they call
5 in the United States public access television stations.

6 In the United States he purchased air
7 time to broadcast weekly radio shows and weekly
8 satellite TV shows. And friends of theirs -- they have
9 a thing called Public Access down there which means
10 local people and the local cable stations, similar to
11 Cable 10 here in Toronto, would be able to put on
12 whatever productions they wish, under their free speech
13 laws and things like that.

14 So a number of people down in the
15 States like Mr. Zundel's work, and therefore he would
16 send them videotapes of programs that we produced and
17 they would show them down there. And they went on big
18 campaigns. The organized Jewish groups went on big
19 campaigns to try to get him on the air -- off the air
20 as much as they could, and the odd time they succeeded
21 in getting some of these local cable stations to pull
22 the programs off.

23 MS KULASZKA: Who were these groups?

24 MR. NEWMANN: Groups were
25 generally -- I guess -- I presume they were -- well,

1 groups from down there. I don't recall actually the
2 names of a lot of the Jewish groups that did it from
3 the U.S.

4 MS KULASZKA: But from Canada.

5 MR. NEWMANN: Well, certainly it was
6 applauded by the B'nai Brith and Canadian Jewish
7 Congress.

8 MS KULASZKA: If you can turn to page
9 53. This deals with radio shows. Do you have any
10 knowledge of this?

11 MR. NEWMANN: Yes, it's another Voice
12 of Freedom radio shows that he was broadcasting on.

13 MS KULASZKA: And page 54 "Zundel's
14 TV Show Gets Pulled Off Air". Was there an ongoing
15 situation?

16 MR. NEWMANN: Yes, it was. It was an
17 ongoing situation. We were contacted a few times by
18 satellite TV providers that they were being under
19 pressure to take his shows off the air.

20 I believe one satellite provider did
21 take it off the air. Another satellite provider was
22 actually there broadcasting -- some of these were
23 actually burned to the ground. And the other one they
24 stood firm and they suggested to the people putting the
25 pressure on them that if they didn't like what

1 Mr. Zundel was saying that they had the perfect right
2 to buy time before or after his program to put out
3 their point of view.

4 MS KULASZKA: If you can turn to page
5 55. This is an article headed, "Zundel foes hurl eggs,
6 red paint at his house". It's dated November 25th,
7 1993. Do you see that?

8 MR. NEWMANN: I do.

9 MS KULASZKA: Were you at that time
10 house that day?

11 MR. NEWMANN: I was.

12 MS KULASZKA: And what happened?

13 MR. NEWMANN: Well, again, there was
14 posters put out by the ARA saying there was going to be
15 a demonstration on the 24th, and therefore we did
16 prepare Mr. Zundel's house for a defence against this
17 demonstration, a big plastic sheet over the front of
18 the house. And we informed the police this was going
19 to happen, and they provided a little bit of protection
20 out front with about 10 or 12 police officers.

21 And sure enough, the ARA did show up
22 that day and they did yell and scream threats and they
23 did throw balloons full of red paint and eggs and
24 everything else at the house, which is all caught to
25 plastic sheets, et cetera. They seemed to be a little

1 frustrated that we were prepared in such manner for
2 their onslaught.

3 And then some of the demonstrators
4 looked like they were almost ready to take it out on
5 the police, their frustration out on the police, and
6 there were scuffles and some of the demonstrators were
7 arrested.

8 MS KULASZKA: Do you know what
9 threats were shouted?

10 MR. NEWMANN: There are so many.
11 Amalgam of the usual stuff, "burn your house down, kill
12 you, watch your back", stuff like that.

13 MS KULASZKA: Can you turn back to
14 the other binder. I hope you've kept it open. It's
15 R-1, tab 9 and turn to page 20. It's the bottom, look
16 at number on the bottom.

17 This is a poster, says "Stop Zundel."
18 Is this the poster you referred to?

19 MR. NEWMANN: Yes, this was the
20 poster that was brought to our attention and which we
21 took our defensive measures.

22 MS KULASZKA: I just want to read
23 from it, if you could. Or I can read it, you can
24 follow along and tell if this is accurate. In the
25 middle of the page it says:

1 "On November 24th, four main
2 organizers from the neo-Nazi
3 Heritage Front will be in court.
4 On this day the first hate
5 crimes trial in Toronto since
6 Zundel's begins. Ellisse
7 Hategan a.k.a. Desschner has
8 been charged for distributing a
9 leaflet hateful to black people.
10 That same day Gary Schipper, Ken
11 Barker and Wolfgang Droege are
12 in court on contempt charges for
13 the refusal to cease
14 broadcasting hate on the
15 Heritage Front telephone
16 hotline. While the courts would
17 have us believe that they are
18 making efforts against hate
19 propagandists in this city, we
20 know that the biggest hate
21 monger of all is operating with
22 impunity only a few blocks away.
23 To date, the HF have used court
24 dates such as these as an
25 opportunity to have a fascist

StenoTran

1 march in our streets."
2 "Prevent a Nazi march! Toronto
3 will no longer tolerate racism
4 and fascism. You will be at the
5 courts to prevent the Nazi march
6 and then we will march to
7 Zundel's production and
8 distribution headquarters."

9 Did I read that correctly?

10 MR. NEWMANN: You did.

11 MS KULASZKA: So that is what you
12 prepared for that day?

13 MR. NEWMANN: Yes, it is.

14 MS KULASZKA: The Heritage Front, was
15 that a complaint against the Heritage Front under the
16 Canadian Human Rights Act to your knowledge? Do you
17 know what it was?

18 MR. NEWMANN: I believe that's what
19 it was, I couldn't say for sure, but that's the
20 impression I had at the time.

21 MR. FOTHERGILL: Let the record show,
22 that answer was given to a leading question.

23 MS KULASZKA: Yes, I don't think
24 there's any dispute about that. I just want to know if
25 Mr. Newmann knew, but he wasn't sure.

1 After this -- after this
2 demonstration and what happened at Gary Schipper's
3 house did any of the major Jewish organizations ever
4 make a major protest against this kind of violence, to
5 your knowledge?

6 MR. NEWMANN: None that I ever heard
7 of.

8 MS KULASZKA: I want you to turn now
9 back in the binder R-4, and that's tab 12, to page 63.
10 This is an article entitled, "Arsonist strikes at
11 Zundel home", May 8th, 1995. Do you know anything
12 about this?

13 MR. NEWMANN: Yes. I was there at
14 the time that it happened.

15 MS KULASZKA: Can you describe what
16 happened? You were in the house?

17 MR. NEWMANN: I was in the house.

18 MS KULASZKA: And what happened?

19 MR. NEWMANN: Mr. Zundel was away on
20 a speaking tour at the time. He was doing an
21 engagement out in British Columbia. And I was at the
22 house, kind of as a house sitter, I suppose, and it was
23 at about 4:30 in the morning, about 4:30, 5:00 o'clock
24 in the morning when I awoke to hear somebody calling
25 fire.

1 And in that part of Toronto,
2 Cabbagetown, you hear a lot of strange things and I
3 never thought much of it for the first few seconds.
4 But it was yelled out a little bit louder so I thought
5 I better investigate. And I was up on the second floor
6 of the house and I looked out to the front and there
7 was already flames coming up past the second story
8 window.

9 So I very quickly got ready and I
10 went -- tried to phone out, and -- 911, get some
11 emergency help. Then I went down, got ready and the
12 firemen showed up and they couldn't get in the door so
13 I had to let them in, and then I took out a
14 surveillance tape out of the recorder and left the
15 building, according to the fireman's instructions.

16 And waited there during the day.
17 While we were waiting there and a crowd was gathering,
18 a fellow came over and he said that he was a witness to
19 this act because the business next door had a window
20 broken and he was there at 5:00 in the morning as a
21 glazer and he was replacing the window when the person
22 who started the fire walked past him with the gas can.
23 He saw him walk up to the building and pour the
24 flammable fluid on there and light it up.

25 And so we went to the police officer

1 and said, we have a witness here to this if you want --
2 because they have been talking to some other people.
3 You can talk to him, et cetera. They said, okay, thank
4 you very much.

5 We walked away and maybe an hour
6 later this glazer came back to us and said, "Well, did
7 you tell the police?"

8 I said, "Yeah, I told them."

9 He said, "Well, they didn't talk to
10 me. They haven't come near me."

11 And they never did. They never asked
12 him one single question at that time because he was in
13 contact with us the next day wondering what was
14 happening. Because in the surveillance tape you can
15 see him trying to put the fire out, and he was an
16 honest guy trying to do his job as a witness and nobody
17 ever did talk to him.

18 MS KULASZKA: Was anybody charged
19 with the arson?

20 MR. NEWMANN: No, nobody was.

21 MS KULASZKA: What kind of damage was
22 done to the house?

23 MR. NEWMANN: As I recall, it was
24 about 60 or \$70,000 worth of damage, most of the damage
25 was the front of the building and the top of the

1 building for fire damage, and thousands of books were
2 lost. Then of course, there was the water damage on
3 top of all that because they poured, of course, lots
4 and lots of water on the building trying to put the
5 fire out.

6 MS KULASZKA: And you're actually
7 quoted in that article on page 63, I believe. That's
8 you, is it not? If you look at page 63 on the
9 right-hand column, you said -- it reads, "While Zundel
10 was in British Columbia, Jerry Newmann was
11 housesitting". Is that you?

12 MR. NEWMANN: Yes, that's me.

13 MS KULASZKA: To your knowledge, did
14 anybody claim responsibility for that arson?

15 MR. NEWMANN: Not to my knowledge.

16 MS KULASZKA: If you turn to page 68,
17 this is an article entitled, "Police Explode Parcel
18 Bomb Mailed to Zundel Last Week". It's dated May 22nd,
19 1995. Were you aware of this incident?

20 MR. NEWMANN: Yes, I was there when
21 the parcel was delivered to the home and Mr. Zundel was
22 going through his mail and looked at the parcel and for
23 whatever reason he said, "This looks pretty suspicious,
24 don't anybody open this, until I get some
25 clarification on it".

1 So he put it on a shelf in the room
2 and it sat there for about a week or so.

3 Then one friend of -- or associate of
4 Mr. Zundel's called from British Columbia. The parcel
5 itself had a return address from British Columbia on
6 it. So he asked his friend in British Columbia if he
7 recognized this return address, which was an P.O. box.
8 And the fellow said, "It's an old P.O. box I had years
9 ago. I haven't -- I dumped it years ago."

10 So immediately he was suspicious that
11 somebody else was using this fellow's address. At that
12 point we took the box to the police station, police
13 headquarters. And as it says here they eventually took
14 the parcel and went and set it off, and they got back
15 to us and said it probably would have killed anybody
16 within a hundred meters if we had opened it.

17 MS KULASZKA: Was anybody ever
18 charged with that offence?

19 MR. NEWMANN: No, despite
20 investigations and despite some evidence that came to
21 light, nobody was ever charged.

22 MS KULASZKA: He wasn't the only
23 person a bomb was sent to?

24 MR. NEWMANN: No, there was a rash of
25 various parcel bombs and letter bombs that were sent

1 around that time.

2 MS KULASZKA: On page 69 there was --
3 an article called, "Terror Cell Targeting Far Right,
4 and the bottom of the first column it says, "'SNAP!
5 Greetings Racist Trash'"?

6 THE CHAIRPERSON: Page 89?

7 MS KULASZKA: 69. Article, "Terror
8 Cell Targeting Far Right." The first column on the
9 bottom, "'SNAP! Greetings Racist Trash'." Do you
10 remember this?

11 MR. NEWMANN: I remember the article
12 itself.

13 MS KULASZKA: You don't remember the
14 letter?

15 MR. NEWMANN: No. I must say I don't
16 remember the letter itself.

17 MS KULASZKA: Turn to page 74. This
18 is an article entitled, "Zundel Charged Nixed". Sabina
19 Citron tried to lay two further charges against Ernst
20 Zundel and this is an article about the charges being
21 dropped.

22 Were you present at the courthouse
23 that day?

24 MR. NEWMANN: Yes, I was.

25 MS KULASZKA: Was Karen Mock there

1 that day?

2 MR. NEWMANN: Yes, she was.

3 MS KULASZKA: And what happened on
4 the courthouse steps?

5 MR. NEWMANN: Yes, after the hearings
6 were over and they came outside, the press was there
7 and they started to ask Mr. Zundel some questions. And
8 Karen Mock, she butted in and was very, very upset and
9 was kind of -- she was, you know, I don't understand
10 why these -- this is not a quote, this is the
11 impression I got from what she was saying. She was
12 very upset that he wasn't going to be charged again.
13 She was kind've having a little bit of a temper
14 tantrum, you might say.

15 MR. FOTHERGILL: I object at this
16 point. This appears to be rebuttal evidence on a
17 collateral issue, namely credibility. That is nothing
18 to do with the alleged unintended effects of Section
19 13.

20 This is essentially leading
21 independent evidence that can have only one purpose,
22 which is to impugn Dr. Mock. And I think we know from
23 basic rules of evidence that one is entitled to
24 challenge a witness's credibility on the basis of some
25 pre-existing bias or partisanship, but one then is not

1 entitled to lead independent evidence of it because
2 that is in direct violation of the collateral evidence
3 rule. We're not having a separate little trial about
4 what Dr. Mock did or did not do on that day. So this
5 is an objectionable line of questioning.

6 MS KULASZKA: Well, part of the case
7 again Mr. Lemire is something on the FreedomSite about
8 Karen Mock that she's described as a hysterical zealot,
9 and this is what this evidence is going to, is part of
10 Mr. Warman's case. We could look --

11 MR. FOTHERGILL: I didn't understand
12 that any element of the Section 13 allegation includes
13 the characterization of Dr. Mock. That's not said to
14 be hate speech.

15 That's said to be evidence of the
16 respondent's attitude towards these proceedings which
17 may be a relevant consideration when dealing with the
18 disposition. But it's certainly not relating to the
19 merits of the complaint.

20 THE CHAIRPERSON: There is the
21 remedial component. If that's what it's meant to
22 address. He did testify for that purpose. Very astute
23 on the part of Ms Kulaszka, I might say.

24 Good point, Ms Kulaszka. In that
25 sense it's relevant. Go ahead.

1 MS KULASZKA: So can you describe her
2 reaction?

3 MR. NEWMANN: Yes. Her reaction was
4 that she was basically complaining that charges were
5 not going to be laid and that they should be laid
6 and -- well, not exactly a shrill manner, but she was
7 getting there.

8 At which point Mr. Zundel interrupted
9 her and suggested that they should stop all this
10 complaining and try to get the hate out of her system
11 so that we could get back to normalcy.

12 THE CHAIRPERSON: Just for the
13 record, I saw Ms Kulaszka and Mr. Lemire looking at
14 that exhibit with Dr. Mock's picture in it. I knew
15 what was being referred to in the previous exchange. I
16 don't need to see it again.

17 MS KULASZKA: Can you say that
18 Mr. Zundel changed after the arson?

19 MR. NEWMANN: Yeah, I think maybe he
20 did.

21 MS KULASZKA: How?

22 MR. NEWMANN: He was actually -- I
23 would say maybe a little more mellow. I think he was
24 thinking of in terms of perhaps retiring from the
25 business that he was in, things that he was doing,

1 thinking that maybe all this wasn't worth it.

2 MS KULASZKA: Maybe we could take a
3 break?

4 THE CHAIRPERSON: You were finishing
5 up?

6 MS KULASZKA: Yes. It's 11:00
7 o'clock already.

8 THE CHAIRPERSON: Will there be
9 cross-examination? Yes, okay.

10 --- Upon recessing at 10:58 a.m.

11 --- Upon resuming at 11:15 a.m.

12 MS KULASZKA: Mr. Newmann, I just
13 want to go back to the kind of riot in front of Gary
14 Schipper's house. Do you know who Gary Schipper was?

15 MR. NEWMANN: Yes. Gary Schipper at
16 that time I believe was the voice who recorded the
17 Heritage Front hotline messages.

18 MS KULASZKA: Okay. I want you to
19 turn to R-1. Should be going back and forth between
20 two binders. And this is tab 9, page 40. Look at the
21 bottom number. It's entitled, "Shut the Nazi Down".
22 Do you recognize that?

23 MR. NEWMANN: Yes, I do.

24 MS KULASZKA: What is it?

25 MR. NEWMANN: It was a poster that

1 was put up calling for a demonstration in front of
2 Ernst Zundel's home.

3 MS KULASZKA: In what year?

4 MR. NEWMANN: 1996.

5 MS KULASZKA: I just wanted to read
6 it and you can see whether I've read it accurately.

7 "October 25th, unions will be
8 shutting down their workplace to
9 protest the greedy and
10 oppressive policies of the
11 Harris government. Anti-Racist
12 Action will be shutting down a
13 nazi business right in the heart
14 of Toronto - Ernst Zundel's Nazi
15 propaganda publishing house.
16 From 201 Carlton Street, Zundel
17 ships fascist material all over
18 the world. Locally his building
19 is a gathering point for white
20 supremacists. During the
21 election campaign Ontario's
22 Attorney General promised to
23 charge Zundel under the hate
24 crime laws. We haven't heard
25 anything since. Zundel has been

1 declared a security threat to
2 Canada by the Canadian Security
3 and Intelligence Service, CSIS,
4 and could be deported. But the
5 feds are dragging their feet
6 carefully safeguarding Zundel's
7 every legal right. Meanwhile,
8 the rights of poor people are
9 being trampled on! Immigrants,
10 refugees, people of colour,
11 women, queers, disabled people,
12 Jewish people, youth, all being
13 attacked and we're going to
14 fight them back."

15 Did I read that accurately?

16 MR. NEWMANN: Yes.

17 MS KULASZKA: On the other side it
18 said, "Shut the Nazi Down!" "All day picket with
19 speakers, music and kosher barbecue." What did you
20 take "kosher barbecue" to mean?

21 MR. NEWMANN: We took it to mean --
22 it was a play on words we took it to mean, because of
23 the arson against Mr. Zundel's premises the year
24 before.

25 MS KULASZKA: If you turn over to

1 page 167. There's a photograph of a man, he's holding
2 up a poster that says, "Burn Zundel Down". Who is
3 that?

4 MR. NEWMANN: He was one of the
5 demonstrators out front on that day in question. Well,
6 self-explanatory and there was many other people out
7 there with similar signs and certainly making rude
8 gestures and calling threats and things of that nature.

9 MS KULASZKA: So did you see this
10 man?

11 MR. NEWMANN: Yes.

12 MS KULASZKA: Where were you?

13 MR. NEWMANN: I was standing on the
14 roof of the building looking down at the demonstrators
15 on the street.

16 THE CHAIRPERSON: This was on the
17 occasion of which protest?

18 MS KULASZKA: It's an ARA protest.

19 THE CHAIRPERSON: In front of the
20 house?

21 MR. NEWMANN: Yes, in front of the
22 house. It was the one the subjects of this on page 40,
23 the pamphlet there, October 25th, 1996.

24 MS KULASZKA: And pages 165 and 166.
25 What are these photos?

1 MR. NEWMANN: These photos are --

2 THE CHAIRPERSON: Pages 42 and 43.

3 MS KULASZKA: 41 and 42.

4 MR. NEWMANN: Yes, these are also
5 photos of demonstrations in front of Mr. Zundel's home.

6 MS KULASZKA: Was this a typical
7 sign, "Burn Zundel Down"?

8 MR. NEWMANN: Yes, it appeared quite
9 often.

10 MS KULASZKA: Was anyone ever
11 arrested for displaying this type of sign?

12 MR. NEWMANN: No, nobody was ever
13 accosted by the police or arrested or told to put the
14 sign away because it seemed to be a threat. Nobody was
15 ever bothered about it.

16 MS KULASZKA: Did Mr. Zundel ever
17 describe himself as white supremacist?

18 MR. NEWMANN: No, he did not.

19 MS KULASZKA: As a Holocaust denier?

20 MR. NEWMANN: No.

21 MS KULASZKA: As a Nazi sympathizer?

22 MR. NEWMANN: No, never described
23 himself as any of those terms.

24 MS KULASZKA: I want you to turn to
25 R-4, tab 7. You can look at page 2. It's an article

1 from the Globe & Mail, "Heritage Front Hearing Ends in
2 Muddle". Do you see that?

3 MR. NEWMANN: Yes.

4 MS KULASZKA: This is an article
5 about a riot outside the courthouse in Toronto. Were
6 you there that day?

7 MR. NEWMANN: I was.

8 MS KULASZKA: Where were you?

9 MR. NEWMANN: I was around the
10 courthouse taking videotape of the proceedings.

11 MS KULASZKA: What happened, do you
12 remember?

13 MR. NEWMANN: Yes. The demonstrators
14 showed up attempting to stop the Heritage Front members
15 who were being charged or -- from entering the
16 courthouse. And they were very vocal, very aggressive
17 and -- to such an extent the police actually had to
18 bring in horses to try to maintain order.

19 MS KULASZKA: Now, were you present
20 at some ARA demonstrations at I think it's Metro West
21 Detention Centre?

22 MR. NEWMANN: Yes, I was at Metro
23 West Detention Centre when Mr. Zundel was incarcerated
24 there. I was there a couple of times and at least one
25 time members of the ARA showed up with varying

1 aggressive intentions in mind.

2 MS KULASZKA: Now, we have a video of
3 that demonstration. It was produced by the CBC. I
4 would like to show that video.

5 THE CHAIRPERSON: Okay. Are you
6 ready? Is it set up?

7 MS KULASZKA: While he's setting it
8 up, maybe I can ask you about the other video, about
9 the Gary Schipper riot outside the house. You didn't
10 take that video. I asked you about it in the break.
11 Can you tell me about that video?

12 MR. NEWMANN: Yes. On that day in
13 question, of course, I was in front of Mr. Zundel's
14 house preparing just in case something would happen
15 there. And a couple of other friends had went over to
16 the Gary Schipper house with a camera and had taken the
17 video. After it was over, they came back and gave me
18 the original 8-millimetre videotape that they had taken.
19 That's how I came to know what transpired.

20 MS KULASZKA: What did you do with
21 it? Did you do anything with it?

22 MR. NEWMANN: I transferred it into
23 another format and made a few copies for people, yes.

24 MS KULASZKA: So you would recognize
25 it if you saw it?

1 MR. NEWMANN: Yes, I would.

2 THE CHAIRPERSON: I assume once
3 you've viewed it, a copy of the DVD it will be filed
4 with the --

5 MS KULASZKA: Both have been
6 disclosed to the other parties quite sometime ago.

7 THE CHAIRPERSON: We'll produce it
8 after.

9 MS KULASZKA: I think first we'll
10 show the Gary Schipper riot video.

11 (ABOVE-MENTIONED VIDEO WAS PLAYED)

12 THE CHAIRPERSON: Where is this
13 located?

14 MR. NEWMANN: Sherborne Street,
15 Toronto.

16 THE CHAIRPERSON: Is that near some
17 landmark?

18 MR. NEWMANN: No, that's in the
19 newscast beforehand. It says they got on a streetcar,
20 streetcar is just up Queen Street way. They are all
21 going towards that area.

22 MS KULASZKA: Just the last few bits.
23 What does that show, the last --

24 MR. NEWMANN: What we were just
25 looking at here? That is the Toronto of Ernst Zundel

1 place?

2 MS KULASZKA: What is this in the
3 front?

4 MR. FROMM: What I can see, that
5 looks like one of his cameras from up on the roof.
6 Hard to tell from here.

7 MS KULASZKA: It's just to identify
8 it.

9 MR. NEWMANN: The plastic sheet in
10 front of the house is for the protection against any
11 possible paint attacks or eggs or anything which
12 happened in November.

13 THE CHAIRPERSON: Where is it, in
14 front of other gentleman's house?

15 MR. NEWMANN: Just chanting, getting
16 up the nerve to get on the streetcar. I think you'll
17 see the streetcar show up shortly.

18 THE CHAIRPERSON: Were these
19 policemen?

20 MR. NEWMANN: Yeah. I thought it was
21 quite noteworthy the police did not interfere.

22 MS KULASZKA: Is that the video you
23 were given that day, June 3rd, 1993.

24 MR. NEWMANN: Yes.

25 MS KULASZKA: June 11th, 1993?

1 MR. NEWMANN: Yes, that's the video I
2 was given.

3 MS KULASZKA: Could I produce that?

4 THE CHAIRPERSON: Yes.

5 THE REGISTRAR: First video ARA
6 attacks dated June 11th, 1993 will be filed as
7 respondents Exhibit R-12.

8 EXHIBIT NO. R-12: DVD Video: ARA
9 Attacks dated June 11, 1993

10 THE CHAIRPERSON: Will the other one
11 be just as long?

12 MS KULASZKA: The second video?

13 MR. VIGNA: Just for clarification.
14 There was like two parts to this video. Are they both
15 on the same date?

16 THE CHAIRPERSON: I understood it was
17 to be the news report and then the live video that the
18 witness identified as having received on
19 8-millimetre --

20 MR. VIGNA: The first was an arson, I
21 believe.

22 THE CHAIRPERSON: No, the first was a
23 news report from CFTO news.

24 MR. VIGNA: All the same date?

25 MR. NEWMANN: Yes.

1 THE CHAIRPERSON: So that evening's
2 news had that news report?

3 MR. NEWMANN: It did.

4 THE CHAIRPERSON: If it's just
5 15 minutes we'll just run that right away too. Go
6 ahead, Ms Kulaszka.

7 MS KULASZKA: So in front of Ernst
8 Zundel house there's sheeting, plastic sheeting. Is
9 that what you said? Because I had a hard time hearing
10 you sitting here.

11 MR. NEWMANN: Yes. Covered it with
12 plastic sheets. They did throw paint of various
13 colours at Gary Schipper's house and that is what we
14 were trying to guard against at Mr. Zundel's place.

15 MS KULASZKA: Maybe this would be a
16 good time for a break?

17 THE CHAIRPERSON: No, I think maybe
18 we could --

19 MS KULASZKA: You wanted to get the
20 other video on?

21 THE CHAIRPERSON: We're all set up
22 for it. Microphone's set up, we should just do it.

23 MS KULASZKA: Just for the record,
24 some of the signs say things like "Nazi scum, your time
25 has come"?

1 MR. NEWMANN: Yes, one of them did
2 say that.

3 MS KULASZKA: And were the -- some of
4 the demonstrators, were their faces covered?

5 MR. NEWMANN: Yes, a number of them
6 had bandanas covering their faces, yes.

7 MS KULASZKA: There were some --
8 there was one demonstrator and he was holding a little
9 sign that was burning. Did you notice that?

10 MR. NEWMANN: Yes, I did.

11 MS KULASZKA: What was that?

12 MR. NEWMANN: That was a picture of
13 Gary Schipper.

14 MS KULASZKA: Maybe we could just
15 start the next video.

16 (ABOVE-MENTIONED VIDEO WAS PLAYED)

17 MS KULASZKA: So, Mr. Newmann, you
18 were outside the detention centre during that demo?

19 MR. NEWMANN: Yes, I was.

20 MS KULASZKA: And that's an accurate
21 depiction of what happened outside the detention
22 centre?

23 MR. NEWMANN: Yes, generally
24 accurate.

25 MS KULASZKA: If I could produce that

1 video?

2 THE CHAIRPERSON: Yes. It's a CBC --

3 MS KULASZKA: Yes, it's a CBC

4 documentary.

5 THE REGISTRAR: CBC DVD will be filed

6 as the respondent's Exhibit No. R-13.

7 EXHIBIT NO. R-13: CBC DVD

8 MR. FOTHERGILL: Could we just

9 confirm for the record the particular date of that
10 particular demonstration?

11 THE CHAIRPERSON: Something at the
12 beginning.

13 MR. VIGNA: March 21st, 2005.

14 THE CHAIRPERSON: It says on this DVD
15 as well, March 21st, 2005, handwritten.

16 MS KULASZKA: We'll just confirm it
17 off the video just to make sure.

18 THE CHAIRPERSON: There is March
19 21st, 2005.

20 MR. VIGNA: That's it is broadcast
21 date.

22 THE CHAIRPERSON: It doesn't look
23 like that was March in the picture, much warmer.

24 Sir, do you recall roughly or exactly
25 the date when the first protest had taken place outside

1 the jail and then the other protestors showed up.

2 MR. NEWMANN: In this particular
3 case? To be quite honest will you, it escapes my
4 memory right now.

5 THE CHAIRPERSON: Would it have been
6 the year preceding?

7 MR. NEWMANN: As you mentioned
8 because of the whether and stuff I would imagine it was
9 at a warmer time. It certainly wasn't cold. Must have
10 been the summer or September maybe or something like
11 that.

12 MS KULASZKA: I was just going to see
13 if we can find an argument that gives us an idea of the
14 date. R-1, tab 9, the last page. "Eatery stormed".
15 So undated. That's helpful.

16 THE CHAIRPERSON: Sunday afternoon.

17 MS KULASZKA: I'll try and see if I
18 can get a date for that article.

19 THE CHAIRPERSON: So do you have any
20 questions on the video right now, Ms Kulaszka?

21 MS KULASZKA: Did you notice
22 quotation marks around "free speech activists"?

23 MR. NEWMANN: I did.

24 MS KULASZKA: What does that show to
25 you?

1 MR. NEWMANN: Well, generally from
2 what I understand quotation marks to mean, that means
3 that somebody had said they are free speech activists
4 but the people who are using the term with the
5 quotation marks --

6 MR. FOTHERGILL: Excuse me, why is
7 this witness being asked an opinion? This is an
8 argumentative point.

9 THE CHAIRPERSON: I suppose it is an
10 argument. You can certainly bring it up in argument.
11 Thank you for pointing it out for me.

12 MS KULASZKA: I wanted to ask but the
13 constant labeling. Can you make any comments about the
14 labeling that went on with Ernst Zundel over the years?

15 MR. FOTHERGILL: Again, this witness
16 is here to speak to facts, not to offer opinions. He
17 hasn't been qualified to give any opinion evidence.

18 THE CHAIRPERSON: I assume it was
19 going to give factual evidence.

20 MS KULASZKA: He did give factual
21 evidence.

22 THE CHAIRPERSON: That's what I took
23 the question to mean.

24 MR. NEWMANN: Yes. Whatever Ernst
25 Zundel may have said about himself he was constantly

1 labelled in other ways, such as Holocaust denier,
2 neo-Nazi, Hitler sympathizer, and even during the first
3 trial and newscast when he was being charged with
4 spreading false news, mostly the newscast would say he
5 was being charged the spread be anti-Semitic hate
6 propaganda. So he was being labelled as an
7 anti-Semitic propagandist rather than -- and they were
8 just ignoring the charges that he was actually being
9 charged under.

10 And this is a constant ongoing thing
11 throughout his career.

12 MS KULASZKA: I'm going to show you
13 some photographs. They will be handed to you. These
14 were photographs that -- copies of which were disclosed
15 to the other parties.

16 MR. NEWMANN: I have the photocopies.

17 MR. VIGNA: Mr. Chair, I don't
18 remember these photographs being disclosed. If they
19 were disclosed, they were obviously not in this format.

20 THE CHAIRPERSON: You recall I did
21 allow disclosure to occur in electronic format as a way
22 to reduce costs.

23 MS KULASZKA: They weren't disclosed
24 as photographs, but they were disclosed last year as
25 photocopies in the disclosure. They were quite clear.

1 MR. VIGNA: I don't think it's a big
2 deal, but I'll let my colleague decide. They are
3 photographs, I could see a car being scratched,
4 vandalized. Is that what it is?

5 MS KULASZKA: It was printed
6 disclosure, photocopies of these articles made last
7 year.

8 THE CHAIRPERSON: I seem to remember
9 seeing this in black and white form.

10 MS KULASZKA: These are the actual
11 photographs?

12 THE CHAIRPERSON: This was a --
13 formed part of that motion I think that occurred in
14 August 2006.

15 MS KULASZKA: Yes, part of the
16 motion.

17 MR. VIGNA: I just don't recognize
18 the --

19 THE CHAIRPERSON: They were in black
20 and white when I saw that photograph.

21 MR. VIGNA: I don't remember.

22 THE CHAIRPERSON: That's okay.

23 MS KULASZKA: Just for the record, it
24 was page 109 of the disclosure.

25 THE CHAIRPERSON: So these photos --

1 let's get them identified first.

2 MS KULASZKA: Mr. Newmann, what are
3 these photographs?

4 MR. NEWMANN: These are photographs
5 of Marc Lemire's car that had been vandalized by who
6 knows who, but obviously it has been serious damage to
7 the car. I was there, I did see this at the time. He
8 pointed it out to me and it was pretty well scratched
9 to the metal.

10 MS KULASZKA: What does is scratch
11 say?

12 MR. NEWMANN: The scratch says
13 "Nazi".

14 MS KULASZKA: What date did this
15 occur?

16 MR. NEWMANN: I don't recall.

17 THE CHAIRPERSON: Roughly. 2006 or
18 earlier?

19 MR. NEWMANN: Yeah, I would say so.

20 MS KULASZKA: Where did you see the
21 car? Outside a restaurant or just on the street?

22 MR. NEWMANN: Yes, it was just parked
23 on the street. I met Marc and he was showing it to me.

24 MS KULASZKA: If I could produce
25 those photographs?

1 THE CHAIRPERSON: Just -- I don't
2 think there's a problem with this, but these
3 photographs were taken by Mr. Lemire himself?

4 MS KULASZKA: Who took the
5 photographs?

6 MR. NEWMANN: Yes, Marc said he had
7 taken them himself.

8 MS KULASZKA: But you saw the actual
9 car?

10 MR. NEWMANN: Yes.

11 MS KULASZKA: Are they an accurate
12 depiction of what the car looked like?

13 MR. NEWMANN: Oh, yes.

14 THE CHAIRPERSON: That's sufficient.
15 They could be produced. Different angles of the same
16 scene.

17 THE REGISTRAR: Three photographs
18 will be filed as respondent exhibit R-14.

19 EXHIBIT NO. R-14: Three
20 photographs

21 MS KULASZKA: Could we break for
22 lunch and I could just check with him to see if there
23 is anything else to ask, and that will be the end?

24 THE CHAIRPERSON: Okay. So then go
25 to cross. Do you have your other witness lined up for

1 this afternoon, in case the cross-examination finishes?
2 Are you going to be long in cross-examination?

3 MR. VIGNA: No.

4 MS KULASZKA: We're hoping that Paul
5 Fromm is going to be back because apparently something
6 happened with the judge's family and the whole trial
7 came to a halt.

8 THE CHAIRPERSON: I had a request and
9 worked on the assumption he would give his evidence on
10 Thursday because the counsel who prepared for the other
11 cross-examination is not here today.

12 MS KULASZKA: He's still under
13 examination-in-chief. I could continue with that,
14 finish the evidence.

15 THE CHAIRPERSON: You could. I'm
16 suspecting that the counsel prepared himself based on
17 the transcript that was already in the file.

18 MR. FOTHERGILL: He did, furthermore
19 he has told me he's not available until noon tomorrow
20 so we're hoping that Mr. Fromm's evidence can be dealt
21 with tomorrow. I don't think there will be any
22 particular objection to continuing or completing this
23 examination-in-chief tomorrow morning in Mr. Kurz's
24 absence. I think we can probably inform him of any new
25 issues or indeed Mr. Vigna --

1 THE CHAIRPERSON: Why don't we do it
2 this afternoon too?

3 MR. FOTHERGILL: We can do that too,
4 but there might be more sense in the continuity --

5 MS KULASZKA: I've just checked with
6 Mr. Lemire and this will be our last witness.

7 THE CHAIRPERSON: So no other new
8 witnesses after Mr. Newmann. Fine. We'll take our
9 lunch break then.

10 --- Upon recesing at 12:05 p.m.

11 --- Upon resuming at 1:45 p.m.

12 MS KULASZKA: I wonder if I could
13 just deal with some documents to be produced?

14 I was talking to Mr. Fothergill and
15 we were checking our records. It has to do with R-4,
16 tab 7. And it's the last one, two -- last four pages.
17 The Heritage Front report, 1994 from B'nai Brith.

18 THE CHAIRPERSON: I thought I took
19 that it out.

20 MS KULASZKA: That was produced.
21 Mr. Fothergill also has it as being produced but
22 there's no record of it being produced.

23 THE CHAIRPERSON: Really. This
24 morning I think -- I thought I did that.

25 MS KULASZKA: No, that was another

1 one. That was the audit. This is another report.

2 THE CHAIRPERSON: For the record, I
3 had it also ticked off. So if I've got it then it
4 should have been -- see, this is why we have to do this
5 exercise.

6 MS KULASZKA: The other -- the same
7 volume, it would be tab 10. And I don't know if
8 Mr. Vigna has had a chance to look at it. It's -- I
9 want to produce page 1 and page 11.

10 THE CHAIRPERSON: Were any others
11 produced?

12 MS KULASZKA: The other ones haven't
13 been produced.

14 THE CHAIRPERSON: So page 1, which is
15 an article from The National Post.

16 MS KULASZKA: And 11 is an article
17 from the Globe & Mail.

18 MR. VIGNA: We'll be arguing on
19 relevance.

20 THE CHAIRPERSON: As for
21 authenticity, you have no issue. Just page 1 and page
22 11; am I correct?

23 MS KULASZKA: That's right, two
24 pages.

25 THE CHAIRPERSON: So you have no

1 objection, Mr. Vigna, Mr. Fothergill?

2 MR. VIGNA: No.

3 THE CHAIRPERSON: So pages 1 and 11
4 of tab 10 of R-4 are produced.

5 MS KULASZKA: Mr. Newmann, how long
6 did you work for Ernst Zundel?

7 MR. NEWMANN: I worked with
8 Mr. Zundel for about pretty close to 20 years.

9 THE CHAIRPERSON: I just want to be
10 clear on the question because the question that was
11 asked was "worked for", and you said "worked with". Is
12 there a distinction? Were you employed by him?

13 MR. NEWMANN: For a short period I
14 was employed by him, yes.

15 MS KULASZKA: Could you turn to R-4,
16 tab 12 and page 39. It's a letter from Ernst Zundel to
17 the London Free Press. Do you see it?

18 MR. NEWMANN: Yes, I do.

19 MS KULASZKA: Did you read it?

20 MR. NEWMANN: I did.

21 MS KULASZKA: Would you say that
22 accurately outlines his position?

23 MR. NEWMANN: Yes, I would say that
24 that is a pretty good nutshell of his position.

25 MS KULASZKA: And at the end he said

1 that he wanted to be able to discuss the issue
2 rationally without threat of criminal proceedings,
3 violence or intimidation. To your knowledge, was that
4 his position?

5 MR. NEWMANN: Yes, that has been a
6 consistent position of his pretty ever well since I've
7 known him, which was the late seventies when I first
8 got to meet him. That's been his position. And he is
9 constantly written to various organizations, to the
10 groups like the Canadian Jewish Congress and B'nai
11 Brith, Holocaust Remembrance Association, wanting to
12 have a dialogue on the subject rationally rather than
13 all these problems as he states there. He went on far
14 once as --

15 MR. FOTHERGILL: Excuse me, I object.
16 Mr. Newmann is now attempting to describe the evidence
17 that was successfully objected to objected to this
18 morning. These would be documents that Ms Kulaszka
19 wished to put into evidence, and the witness is now
20 describing them.

21 THE CHAIRPERSON: Really? I didn't
22 see hem.

23 MR. FOTHERGILL: He's referring to
24 the correspondence generated by Mr. Zundel which refers
25 to various Jewish organizations, and that it was

1 subject of the objection.

2 MS KULASZKA: Well, putting documents
3 in is one thing. But the witness is here to give his
4 testimony. They are free to cross-examine him.

5 THE CHAIRPERSON: Interesting point.
6 They were kept out for late disclosure.

7 MR. FOTHERGILL: Also for the
8 fairness principle. Then perhaps we can go a little
9 bit further down this line, so maybe I can put Ms
10 Kulaszka on notice about the point at which I do
11 object, which is when the witness is asked to comment
12 on matters that ought properly to have been put to
13 witnesses who have already come and gone to the extent
14 that the evidence has been adduced in order to
15 compromise them.

16 THE CHAIRPERSON: Yes, I raised that
17 point too earlier. I don't know if we're there yet in
18 his questioning. I have this letter, the letter to the
19 editor which reflects what I've heard so far. This
20 letter was put to Dr. Mock, I recall.

21 MS KULASZKA: Yes, it was put to Dr.
22 Mock.

23 Did you ever see any evidence in all
24 the years you worked with him that Ernst Zundel did not
25 believe in good conscience what he was writing or

1 publishing?

2 MR. NEWMANN: No, never in my
3 presence was there ever any evidence that he did not
4 believe what he did. He was very sincere and he went
5 to great lengths to try to make sure he had all his
6 facts straight in his own mind to support what it was
7 that he believed in.

8 He was, again, very consistent in
9 that constantly. He always did research wherever he
10 could in books, documents, any places he could
11 personally go and find out what was going on. He did
12 that and talked to anybody he could -- first-hand
13 people involved in all these things. He talked to as
14 many as he possibly could to get their viewpoints on
15 the subjects that he was interested in.

16 MS KULASZKA: Did he speak to people
17 other than Germans?

18 MR. NEWMANN: Oh, yes, definitely.
19 Like I said, anybody and everybody he could. I know
20 personally of at least two people who are Jewish that
21 he was working closely with. People -- one who was
22 there at the time, another one who was researching.
23 One's name was J.J. Berg (ph) and he was member of a
24 Commission back at the end of the war who investigated
25 Auswitsch, and wrote numerous books on the subject.

1 He had interviewed him and talked
2 with him, read his books. And in more recent times
3 David Cohen, another young Jewish fellow who produced a
4 video documentary on Auswitsch which basically was
5 along Ernst Zundel lines. He worked with him.

6 MS KULASZKA: The evidence in this
7 case has shown he was consistently labeled as a white
8 supremacist. Did you see any evidence in fact that he
9 held those beliefs?

10 MR. VIGNA: Mr. Chair, I'm repeating
11 myself but I don't think with re-trying the Zundel
12 case. I didn't object earlier to a few
13 questions but --

14 MS KULASZKA: What it goes to is the
15 relevance.

16 THE CHAIRPERSON: That's exactly what
17 I was going to say. Part of their argument is that
18 environment has been fostered where people get labeled
19 without any foundation. That's the argument.

20 We've seen a line of evidence along
21 that line and this is where I gather this is going,
22 based on this person's observations he never witnessed
23 Mr. Zundel have opinions that can be described as --

24 MS KULASZKA: White supremacist.

25 THE CHAIRPERSON: -- white

1 supremacist.

2 MR. NEWMANN: Yes. At least couple
3 of times to me personally and certainly to many people
4 around him, in my presence he mentioned he was in no
5 way a white supremacist because he personally had
6 contact with many whites that he considered to be of
7 very, very poor quality, therefore, the whole concept
8 of the white supremacist for racial thing was just
9 ludicrous. It didn't bear it out in reality. So,
10 therefore, he was not a white supremacist at all.

11 He even went so as to have a black
12 woman stay in his home as a border for about three or
13 four months. She was a survivor of the Waco incident
14 down in the United States, and when the survivors of
15 Waco were going to have a class action suit against the
16 American government for that, she was going to be
17 called as a witness. But she had been deported from
18 the U.S.

19 So a friend called Mr. Zundel and
20 asked him if it would be all right for her to stay at
21 his place until they decided where the hearing was
22 going to be or where the trial take place so that she
23 could be a witness, and he agreed. So she stayed there
24 for about three or four months. No problem for anybody
25 that was around. She was a very nice lady, great cook.

1 MS KULASZKA: Over the years that you
2 worked for Mr. Zundel, which groups were consistently
3 asking for legal proceedings to be instituted against
4 him? Can you identify them?

5 MR. NEWMANN: Certainly. The groups
6 were the Canadian Jewish Congress, B'nai Brith and the
7 Holocaust Remembrance Association.

8 MS KULASZKA: How long have you known
9 Mr. Lemire?

10 MR. NEWMANN: I've known Mr. Lemire
11 more than 10 years now for sure. Exactly how many, I
12 don't know. It's been more than 10.

13 MS KULASZKA: To your knowledge, does
14 he own a house?

15 MR. NEWMANN: No, he does own any
16 property to my knowledge. He just owns a car. He
17 rents an apartment.

18 MS KULASZKA: How many kids has he
19 got?

20 MR. NEWMANN: Wife, two children.

21 MS KULASZKA: What effect do you
22 think the Internet had for Ernst Zundel in getting his
23 message out?

24 MR. NEWMANN: Well, I think the
25 Internet is -- was very important in that it gave a

1 balance to his position. Because up until the
2 Internet, what the general public knew about him was
3 the basically biased and slanted views of the media,
4 which is what they ever got, generally speaking, about
5 him.

6 So the Internet was important in that
7 they could go and get information from the horse's
8 mouth, so-to-speak, and therefore it could balance
9 their view and then they could make a rational decision
10 in their own mind what kind of a person he was and what
11 he was up to. And, hopefully, that would defuse a lot
12 of this labeling about him. And I believe it did so
13 for a lot of cases.

14 I ran into some people where it did
15 make a difference. I think the Internet per se is
16 important for that reason, in order to get a balanced
17 view on any and all hundreds of thousands, if not
18 millions of subjects that float around out there, and I
19 think that's -- if you can't get that balance there
20 then you are not going to get a balance anywhere.

21 THE CHAIRPERSON: For the record,
22 that's an opinion the witness is expressing. They want
23 to stop you, sir. What preceded certainly was
24 observations, factual observations.

25 MS KULASZKA: To your knowledge, what

1 was the effect from your personal experience on the
2 German community of the prosecutions of Ernst Zundel?

3 MR. VIGNA: Mr. Chair, I don't know
4 if he's an expert on the effect of the German community
5 of the prosecution of Ernst Zundel.

6 THE CHAIRPERSON: Perhaps this
7 individual is from the German community. I don't know.
8 He testifies to his own personal observations in actual
9 fact through observations. I don't see that as a
10 problem, if it's established he has some knowledge of
11 these things.

12 MR. VIGNA: I would think it was a
13 very much circumspect whatever he has to say on that,
14 Mr. Chair.

15 MR. NEWMANN: Well, I could of course
16 talk about the individuals that I met. I guess I can't
17 talk about the German community, per se --

18 THE CHAIRPERSON: Okay.

19 MR. NEWMANN: -- German background
20 myself and I do have many German acquaintances, German
21 Canadians and so on.

22 When this first started and
23 Mr. Zundel started this group called themselves
24 Concerned Parents of German -- didn't have much
25 support, a lot of support and then once prosecution

1 started then everybody started backing off. Mostly the
2 people -- I think privately they would still say oh,
3 yes, we still support him, but we can't do anything
4 publically because we are just too afraid that, you
5 know, what's going to happen to us? Especially those
6 with businesses and things of that nature.

7 Now that he has been labeled with all
8 those things, I'm going to get start with the same
9 brush, so they really kind of ran for cover, you might
10 say.

11 So it really deluded a lot of his
12 support just because of the labeling and the
13 prosecutions because they were afraid of what would
14 happen to them.

15 MS KULASZKA: Do you regard -- we'll
16 go back to the letter at tab 12, R-4. This is a letter
17 by Ernst Zundel. Do you regard that as hateful?

18 THE CHAIRPERSON: R-4?

19 MS KULASZKA: Tab 12, page 39.

20 THE CHAIRPERSON: His opinion on
21 whether it's hateful, Ms Kulaszka? You haven't
22 introduced him as an expert witness. You've had -- all
23 those expert witnesses have done all that for you.

24 MS KULASZKA: Those are my questions.

25 CROSS-EXAMINATION BY MR. VIGNA

1 MR. VIGNA: Mr. Newmann, how did you
2 come about to be called as a witness in this hearing?
3 You said you mentioned you've known Mr. Lemire for over
4 10 years?

5 MR. NEWMANN: Yes.

6 MR. VIGNA: How did it first come
7 about you would be called as a witness?

8 MR. NEWMANN: Well, we were talking
9 when this -- first charged and stuff and these hearings
10 got going, then I guess after a while as the case
11 developed Mr. Lemire just asked me if I would be
12 willing to be a witness.

13 MR. VIGNA: You're a close friend of
14 Mr. Lemire?

15 MR. NEWMANN: I'm a friend, yes.

16 MR. VIGNA: And you mentioned that
17 you worked for Mr. Zundel for over 20 years, correct.

18 MR. NEWMANN: I worked with him for
19 20 years, yes.

20 MR. VIGNA: When you say you worked
21 with him, how did you work, on what exactly?

22 MR. NEWMANN: What exactly did I do
23 with him? I did -- at first I just helped him mailing
24 things out, you know, but when he received book orders,
25 tape orders, things like that I would go down and help

1 mail his newsletters. After I had been for there for a
2 while, he got into video, we decided I would become his
3 chief video man. So I took over video production at
4 his place.

5 MR. VIGNA: And you were like a media
6 person for him or how --

7 MR. NEWMANN: Yeah, video camera man,
8 editor, producing -- we were discussing earlier his
9 other Voice of Freedom TV shows, satellite stuff. I
10 would produce those.

11 MR. VIGNA: "Satellite stuff", what
12 exactly do you mean by that?

13 MR. NEWMANN: Half hour programs that
14 would be sent to a broadcaster in the U.S. There are
15 private companies down in the U.S. that for a fee you
16 buy time, just like you would say a radio show, and you
17 would send it to them and they would uplink it to a
18 satellite and then people who had large satellite
19 dishes could -- if they knew what the station was, they
20 could watch it.

21 MR. VIGNA: And that as fairly
22 expensive, I gather?

23 MR. NEWMANN: I don't think it was
24 all that expensive being that he wasn't really wealthy.
25 I'm not exactly sure what it cost, but it cost

1 something of course.

2 MR. VIGNA: So Mr. Zundel was fairly
3 wealthy you're saying?

4 MR. NEWMANN: No, I'm saying he was
5 not very wealthy so I imagine it didn't cost that much.

6 MR. VIGNA: He had his own house?

7 MR. NEWMANN: Yes, he had his own
8 building in downtown Toronto.

9 MR. VIGNA: And he went to the States
10 often?

11 MR. NEWMANN: Not often, no. He went
12 there -- during the time that I knew him maybe he went
13 there maybe 10 times.

14 MR. VIGNA: And Mr. Zundel, yourself,
15 Mr. Lemire, you all know each other?

16 MR. NEWMANN: Yes.

17 MR. VIGNA: And Mr. Fromm, which we
18 saw in the video, is somebody you know also?

19 MR. NEWMANN: Yes, I know Mr. Fromm.

20 MR. VIGNA: And Wolfgang Droege, you
21 said you know also?

22 MR. NEWMANN: I knew him.

23 MR. VIGNA: Wolfgang Droege was the
24 leader of the Heritage Front?

25 MR. NEWMANN: Of course he always

1 disputed saying he was just a spokesperson for it but,
2 yes, he was the recognizable figurehead of the Heritage
3 Front.

4 MR. VIGNA: I just would like to
5 refer you to the green binder which is below the one
6 you have there. And if you can -- green binder with
7 the Freedomsite.

8 THE CHAIRPERSON: Could somebody give
9 me a number, please.

10 MR. VIGNA: HR-3.

11 THE CHAIRPERSON: Do you that, sir?

12 MR. NEWMANN: I do.

13 MR. VIGNA: I refer you to tab B. Do
14 you see the links on the Freedomsite at tab B of the
15 binder? There is "Canada First", "Heritage Front",
16 "CAFE" and "CFMAR". Do you have that?

17 MR. NEWMANN: Yes.

18 MR. VIGNA: The Heritage Front,
19 that's what we're dealing with when I talk about
20 Wolfgang Droege, correct?

21 MR. NEWMANN: Correct.

22 MR. VIGNA: If you look at that
23 symbol there, do you agree it resembles a certain
24 symbol?

25 MR. NEWMANN: Mmm.

1 MR. VIGNA: What comes to mind when
2 you see that symbol?

3 MR. NEWMANN: I have to be honest,
4 HF.

5 MR. VIGNA: HF, but look at the dark
6 colour and the white around it and if you reformulate
7 it --

8 MR. NEWMANN: Well, let's put it this
9 way, I know what you're getting at.

10 MR. VIGNA: What am I getting at?

11 MR. NEWMANN: It's supposed to
12 represent some sort of a swastika or something, but it
13 doesn't really to me. But I can see --

14 MR. VIGNA: I didn't say that. You
15 said you knew what I was getting at, so you basically
16 had the same impression.

17 MR. NEWMANN: No, that's what I
18 figured you were getting at, that's why I mentioned it.
19 Not that I have the same -- but like I said, I could
20 see where somebody could have that impression.

21 MR. VIGNA: The Heritage Front was
22 started in 1989?

23 MR. NEWMANN: Don't recall.

24 MR. VIGNA: Do you remember more or
25 less in what period of time it came about?

1 MR. NEWMANN: I don't really recall,
2 that sounds logical.

3 MR. VIGNA: And people that were
4 associated to the Heritage Front were people that were
5 militantly pro-white? If you look at your document
6 before you, it says:

7 "The Heritage Front's mandate is
8 to preserve our heritage page in
9 a militantly pro-white
10 militantly positive sense."

11 Correct?

12 MR. NEWMANN: That's what it says.

13 MR. VIGNA: Now, the people that were
14 involved with the Heritage Front were people such as
15 Paul Fromm or Wolfgang Droege, Zundel. They were all
16 people that knew each other?

17 MR. NEWMANN: Well, they knew each
18 other, but as far as I know Paul Fromm did not have
19 anything to do with the Heritage Front other than being
20 a speaker at one of their meetings.

21 MR. VIGNA: He was a speaker at one
22 of the meetings?

23 MR. NEWMANN: I believe so.

24 MR. VIGNA: Mr. Klatt, you know him
25 also?

1 MR. NEWMANN: I have met him once,
2 yes.

3 MR. VIGNA: Was Gary Schipper
4 somebody associated with the Heritage Front, if I
5 understand correctly from your testimony?

6 MR. NEWMANN: Yes. As far as I know,
7 he was the man who made most of the telephone messages.

8 MR. VIGNA: Hotline?

9 MR. NEWMANN: Hotline messages.

10 MR. VIGNA: These hotline messages,
11 what were they all about?

12 MR. NEWMANN: I don't know, I never
13 listened to them.

14 MR. VIGNA: How do you know it was
15 hotline messages?

16 MR. NEWMANN: News and talking to
17 him. People around that area, they mentioned it, but I
18 personally never called it because I'm not interested
19 in that.

20 MR. VIGNA: You mentioned about the
21 Zundel's -- the way he was labelled.

22 MR. NEWMANN: Uh-huh.

23 MR. VIGNA: You know Mr. Zundel for
24 20 years you said, correct?

25 MR. NEWMANN: Yes.

1 MR. VIGNA: You would do mailings for
2 him?

3 MR. NEWMANN: Uh-huh.

4 MR. VIGNA: They were mailings that
5 dealt with a certain type of literature.

6 MR. NEWMANN: They were his monthly
7 newsletters.

8 MR. VIGNA: And Mr. Zundel was in
9 agreement with the national socialist government of
10 1940, 1945 in Germany, correct?

11 MR. NEWMANN: No, I wouldn't
12 characterize it as being in agreement with it.

13 MR. VIGNA: He was sympathetic to it,
14 correct?

15 MR. NEWMANN: He was understanding of
16 it from a historical perspective, yes.

17 MR. VIGNA: When he was -- when we
18 saw in the video about him being jailed at the Metro
19 Detention Centre, that's in Toronto?

20 MR. NEWMANN: Yes.

21 MR. VIGNA: That's in relation to the
22 security certificate case before the Federal Court?

23 MR. NEWMANN: Yes, I believe that's
24 what it was.

25 MR. VIGNA: And you're aware there

1 was a decision by the Federal Court by Justice Blair
2 regarding that court case and relation to that
3 detention?

4 MR. NEWMANN: I heard about that but
5 I don't know exactly what it was.

6 MR. VIGNA: Well, you've been
7 following Mr. Zundel for quite some time now, correct?

8 MR. NEWMANN: Well, I was following
9 it earlier. I haven't followed it very closely in the
10 last few years.

11 MR. VIGNA: You said in the last 20
12 years you were working with him, you were at different
13 protests. You were fairly familiar with his legal
14 proceedings and his legal problems, if you want,
15 correct?

16 MR. NEWMANN: I knew there was
17 problems but I didn't really get into -- ever since he
18 closed his business around 2001, 2002, I've just been
19 marginally -- haven't really been interested in detail.

20 MR. VIGNA: What business did he
21 have?

22 MR. NEWMANN: He had business was
23 called Zansat Publishers, and, as I say, he was selling
24 video tapes, audio tapes, books.

25 MR. VIGNA: And this was on Carlton

1 Street.

2 MR. NEWMANN: It was.

3 MR. VIGNA: At 206?

4 MR. NEWMANN: It was.

5 MR. VIGNA: And 154 Carlton, do you
6 know where that is in relation to 206?

7 MR. NEWMANN: No.

8 MR. VIGNA: The kind of publishing of
9 documents and literature, you were involved with it,
10 correct? You were familiar with it at least?

11 MR. NEWMANN: I was familiar with a
12 lot of things being sent out. I wasn't actually
13 producing. I was working in the video department.

14 MR. VIGNA: Can you tell us some of
15 the books and titles of the books he would publish.

16 MR. NEWMANN: Long time ago.

17 MR. VIGNA: Just a few.

18 MR. NEWMANN: Let me think. Okay.
19 He was selling the Leuchter Report.

20 MR. VIGNA: The what?

21 MR. NEWMANN: The Leuchter Report.

22 MR. VIGNA: What's that all about?

23 MR. NEWMANN: That's all about a
24 consulting engineer down in Boston at that time back in
25 the late eighties, and his name was Fred Leuchter and

1 he was the only consulting engineer at that time in the
2 U.S. a capital punishment. And he became a witness at
3 Ernst Zundel's second trial.

4 As the videographer, I went with him
5 and others to Poland in 1988 in order to investigate
6 Auswitsch, et cetera, because being that he was
7 expert -- an acknowledged expert by New York Times and
8 others of capital punishment, the gas chambers in the
9 U.S. used the same gas that Germans were supposed to
10 have used on the Jews, so therefore he went to check
11 the technical possibilities of what was in Auswitsch as
12 compared to what they have in the U.S.

13 MR. VIGNA: Mr. Zundel wrote that
14 book?

15 MR. NEWMANN: No, Mr. Leuchter wrote
16 that book, his report. He wrote four of them actually,
17 four reports, and Mr. Zundel was promoting that. He
18 also was -- for a while there he was selling "Did Six
19 Million Really Die?", the booklet for which he was
20 charged initially.

21 MR. VIGNA: He was questioning the
22 number six million, correct?

23 MR. NEWMANN: Correct.

24 MR. VIGNA: And the publishing of
25 those books, including the one you just mentioned, was

1 in what period of time more or less?

2 MR. NEWMANN: The publishing of the
3 Leuchter Report started in 1998 and I think by time the
4 four or five of them were published, it was like up to
5 about 1991 perhaps.

6 MR. VIGNA: In these books where he
7 basically gave his view on the Holocaust, correct?

8 MR. NEWMANN: This particular war
9 books he didn't give a view. It was just the report
10 written by Fred Leuchter about his findings in these
11 various places that he went.

12 MR. VIGNA: But he was talking about
13 the Holocaust?

14 MR. NEWMANN: Oh, yes, definitely.

15 THE CHAIRPERSON: Could you spell
16 Leuchter for me?

17 MR. NEWMANN: Yes, Leuchter is
18 spelled L-E-U-C-H-T-E-R.

19 MR. VIGNA: The book, "Did Six
20 Million Really Die?", was distributed in Toronto, in
21 Canada?

22 MR. NEWMANN: Ernst Zundel was the
23 Canadian distributor of that booklet, yes. It was
24 originally distributed in the seventies in Britain.

25 MR. VIGNA: Now this book, when he

1 first began distributing it, you were involved with him
2 in this distribution and this project?

3 MR. NEWMANN: Yes, I was. I was
4 there for the very first distribution mailing and the
5 distribution was mailed to all, MPs, MPPs, and to
6 church leaders other community leaders in Canada.

7 MS KULASZKA: So you undertook a
8 fairly extensive campaign in terms the promoting the
9 book, from what I can understand from what you just
10 said?

11 MR. NEWMANN: Extensive in promoting
12 the idea, yes.

13 MR. VIGNA: So you were promoting an
14 idea in addition to the promoting the book itself,
15 correct?

16 MR. NEWMANN: Yes, to the decision
17 makers.

18 MR. VIGNA: And the reaction you got
19 to the book was what exactly?

20 MR. NEWMANN: As far as I recall, it
21 was basically dead silence except for the woman who
22 eventually charged him.

23 MR. VIGNA: The book you sent to the
24 MPs and to different individuals, what was the purpose
25 of sending all this information to the MPs and

1 politicians and different public officials

2 MR. NEWMANN: Well, the purpose was,
3 I believe, Mr. Zundel stated in his introduction that
4 he wrote for the booklet that was in the booklet was
5 to -- alleviation of what he considered the anti-German
6 propaganda prevalent in Canadian media and
7 entertainment, and so on, by having a look at the other
8 side of the story.

9 MR. VIGNA: So when you are saying
10 looking at another side of the story, you're saying he
11 didn't necessarily agree with the mainstream idea of
12 what happened in terms of the Holocaust, correct?

13 MR. NEWMANN: Correct.

14 MR. VIGNA: And that was not
15 something that was necessarily receptive in terms of
16 Canadian society, correct?

17 MR. NEWMANN: Well, whatever may or
18 may not have been receptive you don't know because
19 nobody answers really to him. So what they might
20 privately have thought about, I don't know.

21 MR. VIGNA: Mr. Fromm supported
22 Mr. Zundel? You were close to Mr. Zundel?

23 MR. NEWMANN: Yes, I don't know if
24 you would call it support.

25 MR. VIGNA: Financially supported

1 him?

2 MR. NEWMANN: Not to my knowledge.

3 MR. VIGNA: Mr. Zundel had financial
4 contributors to his --

5 MR. NEWMANN: Yes, he had many.

6 MR. VIGNA: He had many?

7 MR. NEWMANN: Hmm-hmm.

8 MR. VIGNA: And they came not only
9 from Canada, but also from the States.

10 MR. NEWMANN: From the States, from
11 Europe, even from South Africa, Australia.

12 MR. VIGNA: And they give financial
13 contributions, correct?

14 MR. NEWMANN: Yes.

15 MR. VIGNA: And the people that would
16 support him internationally would be which groups? You
17 were involved with him for over 20 years. Can you tell
18 us the groups that were supporting him?

19 MR. NEWMANN: From everything I saw,
20 the support was coming from individuals, not from
21 groups.

22 MR. VIGNA: Individuals. And these
23 individuals, how would you undertake the marketing in
24 terms of getting to these individuals? Were you using
25 the Internet? Were you using the media? What was

1 your --

2 MR. NEWMANN: When I first got
3 started, of course, there was no -- at least we were
4 not aware of the Internet, so it wasn't that. It would
5 be people that he came in contact with through the
6 media, et cetera, in Canada because he became known
7 through the media, et cetera, so he would be contacted
8 and he would cultivate them. They would have relatives
9 elsewhere, they would talk to people elsewhere, et
10 cetera.

11 And his tour around the world. He
12 was talking to all these various people and historical
13 personalities for his research purposes. He would, of
14 course, have lists of people that he met and knew, and
15 that's where he would start and then they would pass
16 things on, and it would kind of balloon from there.

17 MR. VIGNA: So he would build a
18 network around the world and basically from one person
19 to another you would start to build?

20 MR. NEWMANN: Kind of word-of-mouth
21 at the beginning, yes.

22 MR. VIGNA: Mr. John Ross Taylor is
23 someone that you know?

24 MR. NEWMANN: I saw him on occasion.

25 MR. VIGNA: Mr. Zundel knew him also?

1 MR. NEWMANN: Yes, he came around.
2 MS KULASZKA: Terri Long?
3 MR. NEWMANN: Me personally, I never
4 met Terry Long.
5 MR. VIGNA: But you've heard of him?
6 MR. NEWMANN: Yes.
7 MR. VIGNA: And Mr. Zundel had heard
8 of him?
9 MR. NEWMANN: I presume Mr. Zundel
10 had heard him as well.
11 MR. VIGNA: Randy Johnston?
12 MR. NEWMANN: Name doesn't ring a
13 bell.
14 MR. VIGNA: William James Harkus?
15 MR. NEWMANN: Doesn't ring a bell
16 either.
17 MR. VIGNA: Derek Peterson? You've
18 heard of Canadian Liberty Net.
19 MR. NEWMANN: Yes, I've heard that
20 before.
21 MR. VIGNA: Tony McAleer?
22 MR. NEWMANN: Yes, I've heard that
23 name. I met him once.
24 MR. VIGNA: Harry McCarro (ph)?
25 MR. NEWMANN: No.

1 MR. VIGNA: Charles Scott?
2 MR. NEWMANN: I've heard the name but
3 I never met him.
4 MR. VIGNA: You've heard of the grout
5 Maciavelli & Associates Emprize Incorporated?
6 MR. NEWMANN: No, I haven't.
7 MR. VIGNA: John Merco (ph)?
8 MR. NEWMANN: No.
9 MR. VIGNA: Fred Kyburz?
10 MR. NEWMANN: No.
11 MR. VIGNA: Eldon Warman?
12 MR. NEWMANN: Excuse me?
13 MR. VIGNA: Eldon Warman?
14 MR. NEWMANN: No.
15 MR. VIGNA: Alex Kulbashian?
16 MR. NEWMANN: Yes, I met Alex once.
17 MR. VIGNA: You've heard of the group
18 tricityskins.com?
19 MR. NEWMANN: Yes.
20 MR. VIGNA: Canadian Ethnic Cleaning
21 Team?
22 MR. NEWMANN: Yes.
23 MR. VIGNA: Affordablespace.com?
24 MR. NEWMANN: Yes.
25 MR. VIGNA: You've heard of Thomas

1 Winnicki?

2 MR. NEWMANN: I've heard the name,
3 yes.

4 MR. VIGNA: You know or you've heard
5 of him?

6 MR. NEWMANN: I haven't met him. I
7 heard that he got in some troubles also us with the
8 Canadian Human Rights Commission or something.

9 MR. VIGNA: Craig Harrison.

10 MR. NEWMANN: I've heard of that
11 name.

12 MR. VIGNA: Peter Kouba?

13 MR. NEWMANN: No.

14 MR. VIGNA: Glenn Bahr?

15 MR. NEWMANN: Glen?

16 MR. VIGNA: Bahr.

17 MR. NEWMANN: Bahr? I think I've
18 heard that name somewhere.

19 MR. VIGNA: The group Western Canada
20 For Us?

21 MR. NEWMANN: No, doesn't ring a
22 bell.

23 MR. VIGNA: You mention in your
24 testimony that when there was the fire, if I could
25 understand correctly, there was \$60,000 of damage to

1 the house?

2 MR. NEWMANN: Actually, the \$60,000
3 was what the insurance company allowed him. Actually,
4 the damage was much more extensive.

5 MR. VIGNA: And the house was worth
6 fairly a lot?

7 MR. NEWMANN: Yeah, I believe it was
8 \$300,000 or something like that.

9 MR. VIGNA: What's where we see on
10 the roof at one point in the video, is that you that's
11 on the roof when --

12 MR. NEWMANN: In that video? No,
13 that wasn't me.

14 MR. VIGNA: The point where we see
15 plastic covering the house, was that the house in
16 question?

17 MR. NEWMANN: Yes, it is.

18 MR. VIGNA: That's on Carlton Street?

19 MR. NEWMANN: Yes.

20 MR. VIGNA: Near Shelburne (sic)?

21 MR. NEWMANN: Actually closer to
22 Parliament.

23 MR. VIGNA: Have you heard of the
24 person called --

25 MR. FROMM: Perhaps to keep the

1 record correct and clear, the street I think Mr. Vigna
2 was searching for is Sherborne, not Shelburne.

3 THE CHAIRPERSON: There's a Shelburne
4 too? Okay. I wouldn't have known the difference
5 anyway.

6 MR. VIGNA: And the person called
7 Predulak (ph), you've heard of him?

8 MR. NEWMANN: No.

9 MR. VIGNA: Limbuf Predulak?

10 MR. NEWMANN: No.

11 MR. VIGNA: Lumpire (ph)?

12 MR. NEWMANN: (Witness shakes head.)

13 MR. VIGNA: In the video where we see
14 the Metro Detention Centre --

15 MR. NEWMANN: Yes.

16 MR. VIGNA: -- there's one point you
17 see Mr. Fromm with a megaphone?

18 MR. NEWMANN: Yes.

19 MR. VIGNA: That particular event,
20 you were present?

21 MR. NEWMANN: I was.

22 MR. VIGNA: And when that event took
23 place it was around what period, exactly?

24 MR. NEWMANN: What was that? That
25 was 2000 and --

1 THE CHAIRPERSON: We were trying to
2 ascertain that before. Have you had an opportunity to
3 consider that? That was the question I asked earlier.

4 MR. NEWMANN: I haven't had a chance
5 to really think about that. And I can't really with
6 any certainty say.

7 THE CHAIRPERSON: Ms Kulaszka, were
8 you able to find --

9 MS KULASZKA: Mr. Lemire looked into
10 it. The date was July 25th, 2004.

11 MR. VIGNA: That event, the decision
12 from the Federal Court was delivered in that particular
13 case regarding Mr. Zundel?

14 MR. NEWMANN: I don't know if there
15 was any kind of thing brought down or anything. I just
16 notice obviously being concluded because he's been
17 shipped out of the country.

18 MR. VIGNA: And he went to Germany?

19 MR. NEWMANN: He was shipped to
20 Germany.

21 MR. VIGNA: And you are aware he's
22 been recently convicted in Germany?

23 MR. NEWMANN: Yes.

24 MR. VIGNA: Do you know for what he
25 was convicted?

1 MR. NEWMANN: Not specifically. I
2 don't know the exact wording of the law, but something
3 about Holocaust denial because questioning the standard
4 version of the Holocaust over there is a criminal
5 offence.

6 MR. VIGNA: You mention that
7 Mr. Zundel was being given labels for which -- in your
8 words, he didn't portray himself. But nevertheless,
9 you agree that he has been convicted of Holocaust
10 denial in Germany, correct?

11 MR. NEWMANN: He's been -- like I
12 say, I don't know the exact wording of the law over
13 there.

14 MR. VIGNA: Even his publications --

15 MR. NEWMANN: But he has been
16 convicted because he promoted or -- what do you call
17 it, didn't agree with the standard version and he
18 promoted his viewpoint.

19 MR. VIGNA: And that's in the same
20 line of thinking of the publication that he had where
21 he published "Did Six Million Jews Really Die?"
22 Correct?

23 MR. NEWMANN: Correct.

24 MR. VIGNA: I think you were
25 questioned on the binder, which is the Mock binder

1 which is before you, at tab 12.

2 THE CHAIRPERSON: What's the number
3 of the binder?

4 MR. VIGNA: R-4.

5 THE CHAIRPERSON: Which tab?

6 MR. VIGNA: Tab 12, the first
7 article.

8 THE CHAIRPERSON: Page 1?

9 MR. VIGNA: Yeah. You seen this
10 article, you were questioned about it earlier?

11 MR. NEWMANN: Yes, I've seen the
12 article, yes.

13 MR. VIGNA: This is an article of
14 1983.

15 MR. NEWMANN: That's what it said,
16 yes, October 13th, 1983.

17 MR. VIGNA: The article mentions
18 about certain of the recordings that Mr. Zundel was
19 selling, correct?

20 MR. NEWMANN: Correct.

21 MR. VIGNA: They mention the book you
22 just mentioned, "Did Six Million Jews --" I don't know
23 if it's the book in question but they talk about a book
24 there later from his home in Owen Sound.

25 MR. NEWMANN: I'm not sure.

1 MR. VIGNA: Second paragraph.

2 THE CHAIRPERSON: Says:

3 "From his home in Flesherton
4 near Owen Sound, Ron Gostick
5 distributes across Canada".

6 Who is the "his"? Is it Mr. Zundel
7 or is it Gostick? Is that relevant? When I read that
8 paragraph --

9 MR. VIGNA: I'll read further:

10 "From his home in Flesherton
11 near Owen sound, Ron Gostick
12 distributes across Canada books
13 that say the Nazi extermination
14 of six million Jews is 'a
15 Zionist hoax' and that blame
16 Jews of 'every divisive force of
17 the modern era'."

18 Is this a book that was being
19 distributed by Mr. Zundel?

20 MR. NEWMANN: I don't see a title of
21 a book there.

22 MR. VIGNA: But you worked for him so
23 what do you know about that?

24 MR. NEWMANN: In this paragraph --
25 don't see a title of a book, so I can't comment.

1 MR. VIGNA: Do you know which book it
2 was since you were working with him?

3 MR. NEWMANN: I wasn't working with
4 him on Gostick. I don't know what he was distributing.

5 THE CHAIRPERSON: Seems that
6 paragraph relates to a certain Ron Gostick, Mr. Vigna.
7 That's what I read, too. See, the first paragraph
8 discusses Mr. Zundel and the second paragraph discusses
9 Mr. Gostick.

10 I did see a reference down below here
11 that Mr. Zundel said he had publically challenged I
12 guess the Attorney General Roy McMurry to prosecute
13 him for printing an anti-Holocaust booklet, "Did Six
14 Million Really Die?". Is that what you want to refer
15 to, Mr. Vigna?

16 MR. VIGNA: Yeah, it wasn't this
17 article but I can't locate it right now.

18 THE CHAIRPERSON: It's at the bottom
19 of the third column.

20 MS KULASZKA: Maybe just to help,
21 Mr. Vigna. In this article, you have to go to the
22 second page, the columns go down. So you have to go to
23 the second page then go back to the first.

24 MR. VIGNA: The third paragraph -- in
25 the third column, Mr. Newmann:

1 "Zundel has publically
2 challenged McMurtry to prosecute
3 him, printing anti-Holocaust
4 booklet titled "Did Six Million
5 Really Die?" And inviting the
6 Attorney General to test the
7 definition and I guess the
8 legality of the so-called
9 hate --" and it's cut off.

10 Do you see it?

11 MR. NEWMANN: Yes, I do.

12 MR. VIGNA: In 1983 you were involved
13 with Mr. Zundel?

14 MR. NEWMANN: Yes, I was.

15 MR. VIGNA: Do you remember this
16 incident?

17 MR. NEWMANN: I remember starting
18 debate over this book "Did Six Million Really Die?"
19 Yes, I remember that.

20 MR. VIGNA: You agree with me that
21 this kind of publication would cause -- would stir some
22 emotions in Canadian society?

23 MR. NEWMANN: Yes, even Mr. Zundel
24 would agreed with that. That's why he first sent it to
25 all the MPPs and MPs so he would get something going

1 without disturbing the society.

2 MR. VIGNA: So the publications was
3 of the nature to raise people's feelings, correct?

4 MR. NEWMANN: Certainly it would
5 raise their consciousness.

6 MR. VIGNA: Raise conscious or stir
7 emotions about the fact such statements were made?

8 MR. NEWMANN: Well, however it
9 effects whoever -- Mr. Zundel didn't distribute it in
10 order to cause trouble in society. He distributed it
11 in order to try to fight against what he thought was a
12 problem in society, which was anti-German propaganda,
13 and he was hoping this would help alleviate that. So
14 whatever else might have done, he was not doing it for
15 the reasons other than that.

16 MR. VIGNA: But Germany itself
17 convicted Mr. Zundel recently, correct?

18 MR. NEWMANN: Correct.

19 MR. VIGNA: So you would say the
20 German government would be discriminating against
21 Mr. Zundel by convicting him?

22 MR. NEWMANN: If it's a law, it's not
23 discrimination. It's just a broken legality in that
24 particular country.

25 MR. VIGNA: You agree the German

1 government that represents the German people actually
2 convicted Mr. Zundel?

3 MR. NEWMANN: Well, it's obvious that
4 he was convicted under a law in Germany, yes.

5 MR. VIGNA: For the same type of
6 literature and ideas -- promotion of ideas, correct?

7 MR. NEWMANN: Correct.

8 MR. VIGNA: When you said this
9 morning that you were going to the Zundel house to
10 protect the house, I don't remember the words you said
11 but you said you were going to protect it against the
12 ARA, or -- at least not the ARA but people mentioning
13 that they would be attacking the house. Were you
14 living at that house?

15 MR. NEWMANN: I wasn't. That was not
16 my permanent address, but I did stay there sometimes.

17 MR. VIGNA: So you were fairly close
18 to Mr. Zundel in terms of socializing with him and
19 staying with him?

20 MR. NEWMANN: Yes.

21 MR. VIGNA: The radio shows you
22 talked about in your examination-in-chief, that was
23 radio shows in the States or in Canada?

24 MR. NEWMANN: In the States.

25 MR. VIGNA: And they dealt with what

1 kind of topics?

2 MR. NEWMANN: General revisionist
3 topics, Holocaust-related and things like that.

4 MR. VIGNA: And Mr. Zundel was in
5 charge of the show?

6 MR. NEWMANN: Yes, it was usually him
7 talking or him interviewing somebody.

8 MR. VIGNA: These revisionist shows,
9 they dealt basically solely with the issue of the
10 Holocaust and questions in regards to the Holocaust?

11 MR. NEWMANN: Not solely.

12 MR. VIGNA: Primarily.

13 MR. NEWMANN: I would say primarily.
14 They also dealt with freedom of speech.

15 MR. VIGNA: And which statement were
16 those shows -- this radio was, what kind of radio show?
17 Was it a daily show?

18 MR. NEWMANN: I believe it started
19 off as a weekly show and then it ended up as I think
20 tri-weekly, I think.

21 MR. VIGNA: And he would go back and
22 forth between Canada and the United States?

23 MR. NEWMANN: No, he would just
24 produce most of them here, then they would be sent down
25 to the States in cassette, audio cassette form, and

1 they would broadcast there.

2 MR. VIGNA: You were referred to tab
3 12 in the R-4, page 76.

4 MS KULASZKA: Just for the record, I
5 didn't refer to that article.

6 THE CHAIRPERSON: I thought so. But
7 it has been referred to earlier because I have a
8 marking on it. Some other witness referred to it.

9 MR. VIGNA: Anyways, if you look at
10 the article it talks about the Zundel Internet hearing.

11 MR. NEWMANN: Yes, I have it.

12 MR. VIGNA: You were familiar with
13 that hearing?

14 MR. NEWMANN: I was familiar with the
15 fact there was a hearing going on, and I think I even
16 sat in on it one day once.

17 MR. VIGNA: Who were the lawyers in
18 that case?

19 MR. NEWMANN: I don't know, I've been
20 through so many hearing.

21 MR. VIGNA: Do you remember Doug
22 Christie being his lawyer?

23 MR. NEWMANN: For some reason I
24 remember Doug Christie.

25 MR. VIGNA: And Ms Kulaszka was also

1 one of his lawyers?

2 MR. NEWMANN: I believe she was
3 involved.

4 MR. VIGNA: Do you know if Mr. Fromm
5 is today involved in representing various respondents
6 before the Tribunal?

7 MR. NEWMANN: Yes.

8 MR. VIGNA: And Mr. Fromm is known to
9 many of the respondents that he represents?

10 MR. NEWMANN: I'm not sure who he's
11 all representing, so I really can't state anything on
12 that matter.

13 MR. VIGNA: Do you know that he
14 assists --

15 MS KULASZKA: I just want to maybe --

16 THE CHAIRPERSON: Would you like to
17 stand up?

18 MS KULASZKA: Mr. Fromm is in the
19 room.

20 MR. VIGNA: But he's a party.

21 THE CHAIRPERSON: Your objection, Ms
22 Kulaszka?

23 MS KULASZKA: As long as Mr. Vigna
24 doesn't have an objection, that's okay.

25 THE CHAIRPERSON: Because he's a

1 witness? Is that why?

2 MR. VIGNA: He's --

3 THE CHAIRPERSON: He's also in the
4 middle of his testimony, in fact.

5 MR. VIGNA: Do you know if Mr. Fromm
6 assisted these respondents in also making complaints
7 before the Human Rights Commission?

8 MR. NEWMANN: No, I don't know about
9 that.

10 MR. VIGNA: Do you have interactions
11 with Mr. Fromm?

12 MR. NEWMANN: I see him once in a
13 while.

14 MR. VIGNA: In what kind of
15 occasions?

16 MR. NEWMANN: Usually social
17 occasions.

18 MR. VIGNA: Such as?

19 MR. NEWMANN: Go to a party, go to
20 somebody else's house, just social stuff.

21 MR. VIGNA: So you're --

22 MR. NEWMANN: Except for today, I see
23 him here.

24 MR. VIGNA: You are in the same
25 circle of friends?

1 MR. NEWMANN: Not really.

2 MR. VIGNA: Well, you see him at
3 parties you are saying?

4 MR. NEWMANN: Once or twice in a few
5 years.

6 MR. VIGNA: When was the last time
7 you saw him at a party?

8 MR. NEWMANN: Long time, five years
9 ago anyway. I don't remember what the party was all
10 about. Although I did, of course, see him at the Metro
11 West Detention Centre.

12 MR. VIGNA: The video?

13 MR. NEWMANN: On the video on that
14 day. So I seen him at times like that.

15 MR. VIGNA: That protest that we saw
16 on the video, what was the purpose of your attendance
17 and the people that were on the side of the street that
18 you were on of being at that protest?

19 MR. NEWMANN: The purpose was to
20 protest against the incarceration of Ernst Zundel.

21 MR. VIGNA: And you had made that
22 publically known?

23 MR. NEWMANN: Certainly. I
24 considered he was in there without proper charge and so
25 we just try to bring that to people's attention.

1 MR. VIGNA: We saw pictures of the
2 Mr. Lemire's car with vandalism on it?

3 MR. NEWMANN: Yes.

4 MR. VIGNA: When did you see this for
5 the first time?

6 MR. NEWMANN: Don't really recall.

7 MR. VIGNA: This was where?

8 MR. NEWMANN: Where did it see it?

9 MR. VIGNA: Yeah, which location?

10 MR. NEWMANN: Not a hundred percent
11 sure either. I think it might have been at that time
12 Metro West one time. Gone there a couple times while
13 Mr. Zundel was there.

14 MR. VIGNA: Was that the detention,
15 the event that was there?

16 MR. NEWMANN: Might not have been at
17 that event. I've been there a couple times. Could
18 have been at one of those times that Mr. Lemire had
19 his car and showed it to me.

20 MR. VIGNA: At the protest?

21 MR. NEWMANN: Yes. Might have been
22 at one of the other ones when there wasn't --

23 MR. VIGNA: But you are sure it
24 wasn't the Metro --

25 MR. NEWMANN: No, not a hundred

1 percent sure, but I think so. It's not something that
2 stuck out in my mind.

3 MR. VIGNA: And Mr. Lemire, do you
4 know what he does for a living?

5 MR. NEWMANN: No, I didn't.

6 MR. VIGNA: You said you knew he had
7 two children and that -- what do you know about
8 Mr. Lemire?

9 MS KULASZKA: I'm going to object.
10 Mr. Warman didn't answer any questions, he didn't even
11 admit he did live at Ho, Ho, Ho, Utopia. And I'll
12 object very strongly.

13 THE CHAIRPERSON: First of all, did
14 you ask some questions, and I gather the purpose was to
15 get some evidence before the Tribunal to deal with
16 Section 54, with regard to remedy where the Tribunal
17 takes into account all evidence before it in
18 determining whether --

19 MS KULASZKA: I --

20 THE CHAIRPERSON: -- is that not why
21 you --

22 MS KULASZKA: I wouldn't object if he
23 knows how much money he makes in a year, but not where
24 he works, not where he lives.

25 MR. VIGNA: I don't know where he

1 works.

2 THE CHAIRPERSON: Now I understand
3 your question with greater detail. The nature of the
4 work and earnings.

5 MS KULASZKA: Earnings. Certainly I
6 have no objection.

7 THE CHAIRPERSON: I would think you
8 would want that.

9 MR. VIGNA: You were asked if he owns
10 a house.

11 THE CHAIRPERSON: Do you want to go
12 back to your question? You can just ask what does he
13 do for a living.

14 MR. VIGNA: I refer to the
15 question --

16 THE CHAIRPERSON: Which was the
17 question that was asked, Ms Kulaszka, to be fair to
18 Mr. Vigna. I wrote it down as, what does he do for a
19 living.

20 MR. VIGNA: So you were asked that
21 question?

22 MR. NEWMANN: Okay. What kind of
23 work does Marc Lemire do for a living? He works -- I
24 believe he's to do with computer networking.

25 MR. VIGNA: He's got his own company?

1 MR. NEWMANN: Not to my knowledge.

2 MR. VIGNA: You don't know much about
3 his financial situation.

4 MR. NEWMANN: I don't ask and he
5 doesn't say.

6 MR. VIGNA: The video we saw at one
7 point, CBC, the second video. There was a first video,
8 the first video was I presume a homemade video or
9 some -- wasn't done by professional, was done by who
10 exactly? Was it done by yourself?

11 MR. NEWMANN: No, wasn't done by
12 myself. I was -- that day what I was at Mr. Zundel's
13 place. We didn't know where the ARA was going that
14 day, so we were prepared over there as well. It was
15 done by one of Mr. Zundel's acquaintances.

16 MR. VIGNA: But it seems --

17 MR. NEWMANN: Elderly gentleman, and
18 I don't recall his name.

19 MR. VIGNA: How did you get
20 possession of it?

21 MR. NEWMANN: After the day ended he
22 came by Mr. Zundel's place and gave him the tape.

23 MR. VIGNA: Do you know who gave it
24 to him?

25 MR. NEWMANN: Elderly fellow but I

1 don't recall the name.

2 MR. VIGNA: And how did you end up
3 getting it?

4 MR. NEWMANN: Well, I'm working with
5 video. Mr. Zundel said, let's do something with this.

6 MR. VIGNA: And the individual that
7 brought the video, what did he say when he brought in
8 the video?

9 MR. NEWMANN: I don't know. He gave
10 it directly to Mr. Zundel first, so I wasn't privy to
11 what he said, at the beginning.

12 MR. VIGNA: The video seemed to be
13 following the ARA all over and filming. Was there some
14 instructions given to film the ARA parade or protest,
15 if you want?

16 MR. NEWMANN: If I understand it,
17 this individual, he offered to go down there see what
18 the ARA was up to in case they would be coming by
19 Mr. Zundel's place, and he ended up following them.

20 MR. VIGNA: At one point when there
21 was reference to one of the articles in I believe it
22 was tab 12 in R-4. You were quoted at one point I
23 believe by -- and you were referred to as an associate
24 of Mr. Zundel. Do you remember?

25 MR. NEWMANN: No.

1 MR. VIGNA: In your
2 examination-in-chief.

3 MR. NEWMANN: Not specifically, no.

4 MS KULASZKA: Just to help Mr.
5 Vigna, it's page 63. Mr. Newmann was quoted in that
6 article.

7 MR. VIGNA: Look at page 63, the same
8 tab. Said, "While I was in was British Columbia an
9 associate, Joe Newmann, was housesitting."

10 MR. NEWMANN: Yes, I read that.

11 MR. VIGNA: Do you understand why
12 they call you an associate? Is that how you presented
13 yourself to the reporter?

14 MR. NEWMANN: No, nobody asked me.
15 When they talked to me all -- said I was here, et
16 cetera, nobody asked me -- my association with
17 Mr. Zundel or anything. I guess they just put that in
18 there. Of course that's their own opinion but they
19 probably put it in there because he didn't know exactly
20 what my position was. So that's just kind of a
21 catch-all.

22 MR. VIGNA: Were you the only one in
23 the house when that happened?

24 MR. NEWMANN: Yes I was.

25 MR. VIGNA: So Mr. Zundel had a lot

1 of trust in you?

2 MR. NEWMANN: Yes.

3 MR. VIGNA: The week of February 19,
4 when the hearing began you were at the Days Inn at one
5 point in Toronto?

6 MR. NEWMANN: Which hearing?

7 MR. VIGNA: This hearing.

8 MR. NEWMANN: Days Inn. I think I
9 was there, may have been once.

10 MR. VIGNA: Do you remember
11 Mr. Livingston being there?

12 MR. NEWMANN: No.

13 MR. VIGNA: You didn't see
14 Mr. Livingston?

15 MR. NEWMANN: Not that I recognized
16 as a Mr. Livingston.

17 MR. VIGNA: Do you know
18 Mr. Livingston?

19 MR. NEWMANN: No, I don't.

20 MR. VIGNA: Final question. At one
21 point you said -- the question was asked whether
22 Mr. Zundel described himself as a Nazi sympathizer or
23 Holocaust denier. You said no to that question.

24 MR. NEWMANN: Right.

25 MR. VIGNA: However, you did

1 recognize that he was a revisionist.

2 MR. NEWMANN: He had a revisionist
3 viewpoint on things, yes.

4 MR. VIGNA: And you do recognize that
5 he wrote, or at least promoted the book "Did Six
6 Million Ever Die?"

7 MR. NEWMANN: "Did Six Million Really
8 Die?" Yes.

9 MR. VIGNA: You agree with me that
10 although Mr. Zundel didn't describe himself, at least
11 publically, as a Holocaust denier or Nazi sympathizer,
12 perhaps his views on what I just mentioned would be the
13 basis for people terming him that way, correct?

14 MR. NEWMANN: No.

15 MR. VIGNA: You're saying that these
16 labels came out of no where?

17 MR. NEWMANN: No, I didn't say no
18 where. That came out of the mouths of people who
19 deliberately labelled him like that to try to denigrate
20 him in the public eye.

21 MR. VIGNA: But they were based on
22 his works as publications, his statements, his radio
23 shows, his views as a revisionist, correct?

24 MR. NEWMANN: Well, anybody who
25 labeled him those things has not read him extensively

1 or listened to him extensively, otherwise they wouldn't
2 say that.

3 MR. VIGNA: But they were based on
4 certain of his statements.

5 MR. NEWMANN: I don't know. The
6 people that made the labels, I didn't get to ask them
7 that question.

8 MR. VIGNA: I don't have any further
9 questions.

10 THE CHAIRPERSON: Mr. Fothergill? Ms
11 Kulaszka, re-examination?

12 RE-EXAMINATION BY MS KULASZKA

13 MS KULASZKA: You were asked about --
14 given a kind of list of names who had anything to do
15 with Heritage Front? Paul Fromm was one and Ernst
16 Zundel was another. I think you said Paul Fromm just
17 spoke at a meeting. What was Ernst Zundel's
18 relationship with the Heritage Front, if any.

19 MR. NEWMANN: During the time that I
20 knew him he didn't have any relationship with Heritage
21 Front at all. Basically he just knew some of the
22 people who were involved in it, such as Wolfgang.

23 MS KULASZKA: And how did you meet
24 Bernard Klatt? You were asked if you met Bernard
25 Klatt.

1 MR. NEWMANN: Yes. I met him once, I
2 believe it was some kind of hearing out West when I was
3 out there. And I met him at that hearing, not for very
4 long, just long enough to say that I know him to see
5 him.

6 MS KULASZKA: Those are my questions.

7 THE CHAIRPERSON: Thank you, sir.

8 All right, then, so we'll have no
9 further witnesses today, right?

10 MS KULASZKA: No. So I suppose Paul
11 Fromm is up tomorrow.

12 THE CHAIRPERSON: Mr. Fromm, we'll
13 continue with the examination in-chief. How long would
14 you be with that?

15 MS KULASZKA: Maybe about an hour.

16 THE CHAIRPERSON: And how long would
17 you be in cross-examination?

18 (DISCUSSION OFF THE RECORD)

19 MR. VIGNA: Mr. Kurz will be here,
20 but I'm not sure what's going to happen so I might have
21 to ask him. If he's not here I'll take over the
22 cross-examination. We should at least expect a good
23 portion of time for Mr. Fromm.

24 THE CHAIRPERSON: Should not?

25 MR. VIGNA: Should. Just on a

1 technical -- Mr. Fromm has a whole list of cases and at
2 minimal I wanted to produce all the cases that he's
3 referring to. I put them in two binders and --

4 THE CHAIRPERSON: You mean the
5 decisions?

6 MR. VIGNA: The decisions. I know by
7 the Tribunal, but since the witness is mentioning every
8 single case --

9 THE CHAIRPERSON: It's helpful.
10 Cases of the Tribunal. They are readily at hand for
11 us. I may have them all on my computer already.

12 MR. VIGNA: Normally I wouldn't need
13 to do that, but he's referring to each individual case,
14 so to get the full picture I felt it's necessary to
15 have the actual case and see what was said.

16 THE CHAIRPERSON: Mr. Vigna, if you
17 think it's going to be long, can you consult perhaps
18 with Mr. Kurz and see if you can start the
19 cross-examination as soon as Ms Kulaszka is done,
20 because I don't want us to find us in that tight
21 situation. Although we have Friday, but I think the
22 intention was that maybe we could finish off tomorrow.
23 We do have Friday. I think it might be more convenient
24 if we just get rid of it all at once.

25 If there are questions that relate to

1 the jurisprudence of the Tribunal, something you are
2 probably more familiar than Mr. Kurz is, then maybe you
3 should start.

4 MR. VIGNA: I understood last time he
5 hadn't finished.

6 THE CHAIRPERSON: He has not
7 finished. I just asked.

8 MR. VIGNA: And I have the
9 understanding he was going to complete all his list of
10 cases and I felt at least at minimum --

11 THE CHAIRPERSON: That's fine. I'm
12 just saying try to keep clean and get -- finish this
13 evidence in one day maybe we should look at you
14 starting, if you feel you are in a position to do so.
15 If the three or you or whomever --

16 MR. VIGNA: I could start if he's not
17 here.

18 THE CHAIRPERSON: Do you have any
19 objection if Mr. Vigna did that portion of it -- no,
20 actually it wouldn't make a difference. It's separate
21 parties so it's not even an issue.

22 So regular time tomorrow, 9:30, okay?

23 MR. FOTHERGILL: Before we break
24 today, perhaps we should use the time a little bit now
25 to discuss issues of scheduling.

1 THE CHAIRPERSON: Good idea. I do
2 have something --

3 MR. VIGNA: I just wanted to mention
4 on that issue, just spoke with my colleague in Ottawa
5 and we're preparing sort of a motion on the issue of
6 the subpoenas that we're presenting a motion to be
7 quashed.

8 We were planning on filing it perhaps
9 on Monday morning, and that would give perhaps I think
10 a week for the respondents to respond to it then we're
11 available as the week of the 12th through the 19th to
12 plead it.

13 THE CHAIRPERSON: It's pushing us too
14 far. If the ruling is going to be that those people
15 should testify, that puts their testimony at some point
16 deep into March, and I don't want to get too far ahead.

17 As I indicated, I want this hearing
18 to be done by some point in April. Remember, I told
19 you? As soon as we get the transcripts in, I want you
20 all to start working on preparing your final
21 submissions, and hopefully in writing in advance
22 whatever you can for the Tribunal so the Tribunal can
23 at least be somewhat aware of what arguments are going
24 to be raised.

25 MR. VIGNA: Unless you want the

1 motion to be strictly in writing and we can wait for
2 your decision.

3 THE CHAIRPERSON: Why would it have
4 to be viva voce? I don't see why it should. Don't
5 even make it that formal. Certainly you may do
6 whatever you want. I will not expect from the
7 respondent that it be a formal document. Just reply in
8 a letter as she's done other times.

9 MR. VIGNA: If we file it on Monday,
10 when can we realistically --

11 THE CHAIRPERSON: It won't be ready
12 for Monday, is what you're saying?

13 MR. VIGNA: Yes.

14 THE CHAIRPERSON: Ms Kulaszka, how
15 much time would you need to deal with it in writing? I
16 don't want you to have to displace yourself.

17 MS KULASZKA: As I said to my friend
18 before, my position is it's res judicata between the
19 parties to decide. I looked it up in transcript.

20 There was a motion, Mr. Fothergill
21 spoke, Mr. Vigna spoke, even Mr. Warman spoke, he was
22 there. And the ruling was made and my position is if
23 they want it quashed, they have to go Federal Court.

24 THE CHAIRPERSON: We still have to go
25 through the -- if you -- you can just simply refer us

1 to the sections of the transcript.

2 MS KULASZKA: Yes, they can make
3 their motion and --

4 THE CHAIRPERSON: I want to keep the
5 time frame in mind. So if I gave you until Friday next
6 week to even just cite to me those passages or your
7 position in writing, would that be sufficient?

8 MS KULASZKA: That's sufficient.

9 THE CHAIRPERSON: Let's get it all
10 done by Friday.

11 MR. VIGNA: Next week?

12 THE CHAIRPERSON: Yeah. Then I'll
13 give you my ruling on it.

14 MR. VIGNA: Then the continuation, if
15 there is whatever it is, I was thinking of the week of
16 the 12th or the 19th.

17 THE CHAIRPERSON: 12th of the 19th of
18 March for the evidence, if it takes place, of the three
19 people if the Commission?

20 MR. VIGNA: Right.

21 THE CHAIRPERSON: Now, one of the
22 people was --

23 MR. VIGNA: Steacy, the other one is
24 Harvey Goldberg, and the other one is on sick leave,
25 and -- until I think it's April but I'm not sure. So

1 we had already mentioned that at the beginning.

2 THE CHAIRPERSON: Will that prevent
3 that person from coming --

4 MR. VIGNA: My understanding is yes.
5 I don't want to go into the details of her personal
6 situation in public. But it's not -- I was told she
7 wouldn't be able to come basically because of her
8 medical situation.

9 THE CHAIRPERSON: Is she one of the
10 people who made the affidavit? No, it was Goldberg and
11 Steacy who made those affidavits.

12 MR. VIGNA: Correct. I don't know if
13 my colleague is still insisting on her presence.

14 THE CHAIRPERSON: Is she the
15 investigator, the Commission investigator?

16 MS KULASZKA: She's the investigator.

17 THE CHAIRPERSON: As I said before,
18 we don't ordinarily hear from Commission investigators
19 in tribunal cases. So perhaps you could indicate to
20 us -- you know what? On the other two, and let's be
21 clear now because when you take your position on what
22 my rulings earlier were, I seem to recall a discussion
23 really centred on -- and it dates back to our
24 conversations at the case management conference calls,
25 that everything was centred around those two people who

1 wrote the affidavits. You wanted to examine them on
2 the affidavits. And I sent the matter over, said,
3 we're coming into the hearing, if you want to subpoena
4 them, subpoena them to the Tribunal hearing.

5 MS KULASZKA: That's right. And I
6 brought the motion and you said to my friends they had
7 opened -- to Mr. Vigna that he had opened it up because
8 the two affidavits had been filed and --

9 THE CHAIRPERSON: I'm just trying to
10 get on the time frame now with that third person. So
11 those two people, they would be available to testify.
12 There's no problem there, aside from the motion.

13 Now, this third person --

14 MS KULASZKA: That's Hannya Rizk.
15 Can I ask my friend is she coming back in April or do
16 you know what the date is?

17 MR. VIGNA: I don't know the full
18 details. The last time I spoke to my colleague I think
19 it's somewhere mid-April, and she's on leave basically.
20 She's not ordinary leave, she's on leave.

21 THE CHAIRPERSON: Can you reassess
22 your situation and see whether the other two Commission
23 witnesses may be able to provide the information you
24 are seeking?

25 MS KULASZKA: I wonder if Mr. Vigna

1 can get more details. I don't want to know her
2 personal situation, but when they is coming back, the
3 exact date?

4 THE CHAIRPERSON: That bothers me.
5 If she's coming back in June I'm not going to postpone
6 this hearing into June because one witness is
7 unavailable. We have to find a way to get this case
8 closed.

9 MS KULASZKA: Hannya Rizk, the
10 evidence from the Commission, and I hope to put this
11 in, this was a disk they produced. Hannya Rizk had
12 been investigating Marc Lemire about a year before any
13 complaints were laid, even more.

14 So -- then there's a dispute about
15 why it was disclosed to Mr. Lemire that they were
16 investigating him for JRBooksOnline and Stormfront, she
17 wrote a memo saying she had been told by Mr. Warman not
18 to say anything. He denied this. He had she had
19 misrepresented what he had said to her.

20 THE CHAIRPERSON: I'm confused. Is
21 it a disclosure issue? What is it something you could
22 put to the other side?

23 MS KULASZKA: It's something she
24 seems to have personal knowledge of why she was
25 investigating literally a year before it and wasn't for

1 the Freedom site. It was for Stormfront. She was
2 monitoring posts on Stormfront.

3 MR. VIGNA: If I recall, Ms Kulaszka,
4 it was in relation to one memo, I believe.

5 THE CHAIRPERSON: Could we go through
6 with a procedure, motion for particulars we call it in
7 Quebec law, where you were put specific questions to
8 the Commission and they could provide answers to all
9 those questions? It could be under sworn affidavit.
10 But specific leading questions on from the part of the
11 respondent, and you can get answers from her just to
12 get the answers to why these things happened?

13 I'm just trying to move that case
14 along. I don't know how crucial it is to the whole
15 case. So far this big picture here, how the
16 Commission --

17 MS KULASZKA: Absolutely is part of
18 the big picture, because the complaint is laid after
19 the Freedom site puts out a series of press releases
20 about Richard Warman's actions. And the day he gets a
21 letter -- a Freedom site mailing that says that a letter
22 of complaint has been filed with the Chief Commissioner
23 concerning his actions, that day he sits down and then
24 he lays his complaint.

25 And where the evidence from Hannya

1 Rizk clearly shows -- and Mr. Warman himself -- they
2 had been -- he had been looking at the FreedomSite for
3 at least a year. Hannya Rizk had been looking and so
4 the question is --

5 THE CHAIRPERSON: If the documentary
6 ever already supports your position, what do you need
7 Hannya Rizk for?

8 MS KULASZKA: Why are they monitoring
9 him? Why are they doing this? This is part of the --
10 why are they doing this? Do they regularly monitor
11 people?

12 MR. VIGNA: Mr. Chair, I think I
13 conduct again with --

14 THE CHAIRPERSON: Can you check?

15 MR. VIGNA: -- and see what the
16 situation is. Last time I know she wasn't available
17 before mid-April. Now I don't think it has changed but
18 I'll check to double check. I'll put it writing in the
19 motion and perhaps I'll go as far as I can go in terms
20 of expressing what concerns we've in her in ability to
21 testify. And I will ask perhaps my friend put in
22 writing what they are seeking, specifically in relation
23 to which documents. And another option could be there
24 is questions and answers like a bit in Federal Court.

25 THE CHAIRPERSON: Yes.

1 MR. VIGNA: That would be something
2 be perhaps more practical and more realistic in light
3 of her condition.

4 THE CHAIRPERSON: Perhaps some of the
5 answers to these questions that you are seeking, Ms
6 Kulaszka, could be provided by Mr. Goldberg and the
7 other fellow, Steacy? Being as they are -- this
8 material is probably within the possession of -- the
9 Commission is an organization. These are
10 representatives of the organization. They may be able
11 to provide the answers.

12 But I want to be clear on another
13 point, though. She may be on disability leave, but the
14 Tribunal issues subpoenas to come to hearing whether a
15 person is disabled or not. If the person is unable to
16 show up to a summons of a tribunal, pursuant to Section
17 52 of our Act, they have to explain themselves to the
18 Tribunal and not to their employer. So look at that
19 whole situation.

20 And we're talking the Tribunal. We
21 accommodate. This would not displace any individual
22 beyond coming to our tribunal offices on 160 Elgin,
23 downtown Ottawa, for a short time. I don't know what
24 the disability is, but certainly it's an accessible
25 facility.

1 MR. VIGNA: It's not --

2 THE CHAIRPERSON: Whatever it may be,
3 but I would need some detail if the person is not
4 available. If the subpoena -- actually, a subpoena was
5 issued. I have signed one?

6 MS KULASZKA: The subpoena is issued.

7 THE CHAIRPERSON: So now aside from
8 the anything may be raising in your motion -- I'll get
9 to you in a second, Mr. Fromm.

10 Aside from what you may have -- be
11 raising in your motion, there is this other part about
12 the person not being "available". Well, is another
13 issue and that has to be addressed through the
14 Tribunal.

15 MR. VIGNA: I'll explain as far as I
16 can go and perhaps we'll see what we can see in terms
17 of the reason why she's unable.

18 THE CHAIRPERSON: In a document.

19 MR. VIGNA: Yeah.

20 THE CHAIRPERSON: Do it in a
21 document, let everyone know.

22 MR. VIGNA: I'll think it over.

23 THE CHAIRPERSON: Look, Ms Kulaszka,
24 I want to consider the possibility of other options.
25 Suppose he tells you something in good faith about the

1 person's disability and she can't testify. If there is
2 another possibility that can serve your purpose of
3 getting that information before the Tribunal, consider
4 it. Because I don't want to postpone this case until
5 June or July mainly because one witness is not
6 available, who's not actually key to the merits of the
7 complaint or really any -- another component to this
8 broader argument. There's already many components in
9 front of the Tribunal, and maybe another helpful
10 component and it's not the same as the evidence of
11 Mr. Warman on one side or your experts on the other.

12 Now, Mr. Fromm, you wanted to say
13 something?

14 MR. FROMM: Yes. As you know, sir,
15 in the another Warman complaints against Jessica
16 Beaumont --

17 THE CHAIRPERSON: You have to come
18 forward, sir.

19 MR. FROMM: In another complaint by
20 Richard Warman against Jessica Beaumont,
21 B-E-A-U-M-O-N-T, and Kiaran, K-I-A-R-A-R-N, Donnelly,
22 D-O-N-N-E-L-L-E-Y.

23 In that complaint there was a problem
24 with Mr. Donnelly's health and we had Mr. Warman,
25 Mr. Vigna, yourself and I and I think Ms Beaumont on

1 occasions did have discussions. And I think I
2 complained and commented about the ghoulish nature of
3 going into people's illnesses too far.

4 On the other hand, I think we do
5 have -- if she is going to be excused completely, I
6 think there has to be at least modicum of revelation
7 without getting into some of the ghoulish conversation
8 I think we found ourselves involved in.

9 And perhaps, as you suggest, if it's
10 the sort of thing could be accommodated with different
11 hours or some other physical provisions I don't know
12 imagine Ms Kulaszka's questioning would be very long,
13 but I think the evidence might be really important as
14 to the procedure.

15 THE CHAIRPERSON: I'm asking for some
16 flexibility on either side. You can get that
17 information to the Tribunal without it being in the
18 public forum. So you can do it either through the
19 motion or you put a in a letter that is only addressed
20 to counsel, if you would like, in order to explain what
21 the situation is. And we'll deal with it that way.

22 But remember, we're not going to --
23 no travel involved, won't be any --

24 MR. VIGNA: I'm aware of that.

25 THE CHAIRPERSON: Okay, so we can

1 dates. Maybe we can go off the record at this point.

2 (DISCUSSION OFF THE RECORD)

3 --- Whereupon the hearing adjourned at 3:20 p.m.,

4 to resume on Thursday, March 1, 2007

5 at 9:30 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 28th day of
February, 2007.

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Sandra Brereton

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Certified Shorthand Reporter

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Registered Professional Reporter

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StenoTran