

Warman v. Kyburz
Vol. 2

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Ottawa, Ontario

--- Upon resuming on Tuesday, March 18, 2003,
at 9:42 a.m.

THE CHAIRPERSON: The first order of business, Ms. MacEachern and Mr. Warman, is to deal with the issue of the additional documents that we were dealing with yesterday. I think they were tabs 61 to 63, the second group.

First of all, the suggestion was made of notifying Mr. Kyburz by e-mail. Were you able to do that?

MS MacEACHERN: I did e-mail the documents. I scanned them in and e-mailed them to him last night to two e-mail addresses that I had for him. One of them was at freburz@yahoo.ca as seen on a number of postings that he used and that was returned to me as undeliverable last night.

But I also sent it to a second e-mail address I had for the Respondent, which is at kyburz@telusplanet.net. That e-mail address was provided to me by Mr. Warman yesterday and it is the same e-mail address that Mr. Kyburz used to send his e-mail messages and I assume that that one went through, and if not, we can actually...

THE CHAIRPERSON: I am assuming you have not heard anything back from Mr. Kyburz?

1 **MS MacEACHERN:** No.

2 **THE CHAIRPERSON:** I think what we will do
3 is we will proceed on the same basis as we did with the
4 first group of documents, which is we will allow you to
5 question Mr. Warman about them, but we will reserve our
6 decision until our final decision as to what, if any
7 weight, we will give to the documents, having regard to
8 the circumstances surrounding the issue of disclosure.

9 **MS MacEACHERN:** Thank you, Madam Chair.

10 **RESUMED: FRED WARMAN**

11 **EXAMINATION-IN-CHIEF, CONTINUED**

12 **MS. MacEACHERN:**

13 **Q.** Mr. Warman, when we closed off
14 yesterday, we were looking at the posting at tab 52 of
15 HR-2. In that posting, as you have indicated, there is a
16 statement of "Notification and Press Release" to would be
17 distributed to other persons.

18 **A.** Sorry. I believe the tab is 51.

19 **MS. MacEACHERN:**

20 **Q.** Sorry. Tab 51.

21 Do you have any information about this
22 posting being distributed to other persons?

23 **A.** Yes, I do. I am aware that it was
24 distributed, at the very least, to a colleague that I am
25 aware of who is head of the Simon Wiesenthal Centre in
26 Toronto, and I have also received notification from the

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1 Canadian Jewish Congress that they received the same
2 information as well from Mr. Kyburz.

3 Q. How did you become aware that they
4 had received this posting?

5 A. Leo Adler, the Executive Director
6 of the Simon Wiesenthal Centre, forwarded me an e-mail
7 copy.

8 Q. If we turn to tab 52...

9 A. Yes, that is the e-mail contained
10 there. In terms of the Canadian Jewish Congress, I
11 received a call from an individual who knows me there,
12 and indicated that they had also received the same
13 message.

14 Q. With respect to the document at tab
15 52, there are some lines that are blacked out up at the
16 top of that document. Can you identify what information
17 was blocked out?

18 A. Yes. Those are simply private e-
19 mail addresses.

20 Q. In his posting at tab 51, you
21 indicated that the Respondent states at page 400 that if
22 his demands are not met, then he will follow these up
23 every day with new postings. Do you have any information
24 that he did follow up on this statement?

25 A. Yes, I do. As a member of the

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1 Patriots on Guard forum, I have received essentially
2 daily updates from Mr. Kyburz, issuing further e-mails
3 along the same lines as that contained in tab 51.

4 Q. And again, how did you become aware
5 of these additional e-mails?

6 A. Because I had joined the Patriots
7 on Guard forum through a pseudonym, and was notified
8 every day when there were new postings.

9 Q. Can you identify these postings?

10 A. Yes, I can.

11 At tab 53, that was sent on Tuesday,
12 March 11, 2003; tab 54, sent later that day, Tuesday,
13 March 11, 2003; tab 55, another e-mail sent later that
14 same day, Tuesday, March 11, 2003; tab 56, sent the next
15 day, Wednesday, March 12, 2003.

16 At tab 61, sent Thursday, March 13,
17 2003; tab 62, sent Friday, March 14, 2003; and tab 63,
18 sent Saturday, March 15, 2003.

19 Q. With respect to the document at tab
20 53, and the following documents that you identified, can
21 you identify for me if it is coming from the Respondent?

22 A. Yes. If you look at tab 53, the
23 first page, if you go about halfway down the page you
24 will find a "From" line. The "From" line indicates
25 "freburz" and gives Mr. Kyburz's e-mail address. In

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1 addition, it uses the same conversational style or sort
2 of notification that he has sent to his supporters in the
3 past.

4 He also talks about incidents that are
5 occurring to him personally, and speaks in the first
6 person. And he posts extensive material that I believe
7 would only have been collected by the person who
8 originated the Daily Information pages in the first
9 place, because they are such extensive excerpts from
10 Daily Information postings.

11 The last thing would be that they are
12 also all posted to the Patriots on Guard forum.

13 Q. Can you identify the source of the
14 other e-mails?

15 A. I'm sorry; can you refer me to the
16 tabs?

17 Q. It pertains to tabs 54, 55, 56, and
18 then...

19 A. Sorry. Yes. Tab 61 is the same.
20 If you look at the very top, it says "From: freburz", and
21 then if you go down, at page 508, it says "Sender", and
22 it gives Mr. Kyburz's address, and that is about two
23 inches down from the top of the page.

24 At tab 62, page 527, again you go about
25 halfway down the heading "Information", and it says

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1 "From:" and gives Mr. Kyburz's e-mail address.

2 Then if you turn to tab 63, page 539,
3 again if you go about halfway down to the header
4 "Information" on the e-mail, it says "From: freburz" and
5 then gives Mr. Kyburz's e-mail address.

6 Q. Okay. What about tab 54, 55 and 56?

7 A. Tab 54, if you turn to page 428, if
8 you go down about three inches, there is a line that is
9 marked "X-sender", and it is marked as being from Mr.
10 Kyburz's e-mail address.

11 If you turn to tab 55, the first page
12 there, about three inches down again you will see a line
13 marked "X-sender", and it again gives Mr. Kyburz's e-mail
14 address.

15 Q. With respect to tab 55, at page
16 431, in the beginning of the second paragraph, there is a
17 reference to a URL. Can you identify that URL?

18 A. Yes. That is the URL again
19 referring to the web site that is from the organization
20 called archive.org, that is attempting to archive much of
21 the material on the Internet. That is where you can
22 still access the Patriots on Guard web site from.

23 THE CHAIRPERSON: Which page was that,
24 Ms. MacEachern?

25 MS. MacEACHERN: Page 431.

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1 **THE CHAIRPERSON:** Thank you.

2 **THE WITNESS:** And the URL is listed just
3 into the second paragraph on that page.

4 **THE CHAIRPERSON:** Thank you.

5 **MS. MacEACHERN:**

6 **Q.** Can you identify the source of the
7 document at tab 56?

8 **A.** Yes. There is a big sort of black
9 block that says "Image not available", and just to the
10 right of that it gives Mr. Kyburz's e-mail address.

11 **Q.** All right, Mr. Warman, we have now
12 gone through all of the documents.

13 With respect to your complaint that the
14 Respondent has retaliated against you for filing a
15 complaint with the Canadian Human Rights Commission, why
16 have you alleged that you have been retaliated against
17 because you filed a complaint with the Canadian Human
18 Rights Commission?

19 **A.** I think there are a number of
20 indicators that the retaliation occurred because of the
21 fact that I had filed a complaint with the Canadian Human
22 Rights Commission.

23 I think the first thing is that although
24 Mr. Kyburz had sent out a little bit of material after I
25 had first contacted his ISP and had the web site shut

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1 down, just the sheer volume of the material increased by
2 exponential factors after the complaint was filed, just
3 the sheer vitriol of the postings by Mr. Kyburz also
4 dramatically increased.

5 As you look at the material that was
6 posted after the Human Rights complaint was filed, there
7 is a sort of a morphing between the characteristics that
8 Mr. Kyburz has attributed to me and the attributes that
9 he had in the past attributed to the Zionist Jews.

10 You begin to see almost an
11 interchangeability or that I have become the symbol of
12 the Jews for Mr. Kyburz, and I am ascribed the same
13 characteristics, failings and crimes.

14 I think Mr. Kyburz has engaged in a
15 fairly extensive campaign in relation to my places of
16 employment, in regard to faxing letters to the Chief
17 Justice of the Federal Court of Canada. I have certainly
18 considered there to be attacks upon my professional
19 status.

20 One of the tabs that was sent out, tab
21 51, contains an indication that he will be forwarding his
22 messages to the Law Society of Upper Canada.

23 Mr. Kyburz, although not solely
24 responsible for, I believe had a hand in the fact that
25 other individuals who are associates of his laid criminal

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1 charges against me, or attempted to. I also feel that
2 there have definitely been threats to my personal safety,
3 as evidenced by a number of the postings.

4 In terms of Mr. Kyburz's threats, I
5 think he has followed up on some of them, by carrying out
6 the kind of e-mail campaign and circulating the e-mails
7 as broadly as possible. I think there have also been
8 exhortations to his supporters to take action as well,
9 and I think that is seen in a number of the postings.

10 I think when you have a combination of
11 an exhortation to act and the kind of inflammatory
12 language that Mr. Kyburz uses in relation to me, that
13 concerns me very much, and that certainly is, to me,
14 evidence of retaliation.

15 Q. Mr. Warman, we have also seen that
16 the Respondent has made complaints in his material about
17 you shutting down his web site. In light of these
18 complaints and this material, why do you feel that these
19 postings that you take an issue with are a result of
20 filing the complaint with the Commission?

21 A. Because I think, again if you look
22 at the volume of the postings that Mr. Kyburz makes that
23 are attacking me, and there is also after the complaint
24 is filed, Mr. Kyburz fairly regularly mentions the fact
25 that the Commission process is underway, and later on, he

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1 also mentions the Tribunal. There is a sort of constant
2 cross-referencing between the fact that there is a
3 complaint and the attacks that are occurring from Mr.
4 Kyburz upon me.

5 **MS. MacEACHERN:** At this point, I would
6 seek to have this session go in-camera, pursuant to
7 section 52.1(d) of the *Canadian Human Rights Act*. The
8 purpose of this request is that I would like to ask
9 questions of Mr. Warman with respect to the impact that
10 the postings, that we have alleged are retaliatory, have
11 had on him, and particularly, the impact that it has had
12 on his behaviour and what changes he has made in his
13 behaviour because of these messages.

14 I am relying on section 52(1)(d) of the
15 *Canadian Human Rights Act*, which allows that the inquiry
16 can provide that it not be conducted in public where
17 there is a serious possibility that the life, liberty or
18 security of the person will be endangered.

19 Mr. Warman has already introduced
20 evidence that he considers a death threat to have been
21 made against him by the Respondent. There is voluminous
22 material in front of the Tribunal with respect to threats
23 made by the Respondent against Mr. Warman which touch on
24 his personal safety.

25 For this reason, Mr. Warman's evidence

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1 about what actions he may have taken to increase his
2 personal safety in light of these attacks, if this is
3 public information, then that just undermines the steps
4 that he has taken.

5 **THE CHAIRPERSON:** Let me ask you this,
6 Ms. MacEachern. You will appreciate that, perhaps as a
7 general principle, we start with the approach that there
8 is a societal interest in having an open justice system,
9 and that would encompass the tribunal system as well.

10 Keeping that in the back of our minds, I
11 am wondering if it is necessary to explore the details of
12 what Mr. Warman may or may not have done, as opposed to -
13 I mean, do we need that information?

14 Let me put it this way. I am trying to
15 find out if there is a way that you can put forward the
16 evidence that you want to put forward without having to
17 resort to closing the hearing, because I would prefer if
18 we don't have to.

19 Particularly having regard to the
20 subject matter of this complaint, I think it is very
21 important that the hearing be as open as possible.

22 **MS MacEACHERN:** And I appreciate that
23 concern. My intent is to try and make this aspect of the
24 evidence as small as possible.

25 There have been some steps that Mr.

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1 Warman has taken which, I think it will be clear to the
2 Tribunal, are very relevant to the impact of the
3 retaliation against him, and illustrate and demonstrate
4 how this has impacted upon him. Without that evidence, I
5 think it is hard to understand what the consequences of
6 the Respondent's actions have been.

7 **MEMBER ROBERTS:** I am wondering, Ms.
8 MacEachern, if you could simply have your witness give us
9 some examples. For example, he might say that he has
10 moved his residence, without telling us to where; he has
11 changed his web site address, without telling us to what,
12 some generalities, without the specifics, where you could
13 do that.

14 If there is still some other issues that
15 you cannot deal with in generalities, I think we are all
16 of one mind, we would prefer not to have an in-camera
17 session if there is a way that you can enter the evidence
18 that would be as forceful.

19 **MS MacEACHERN:** Okay. Thank you, Members
20 of the Tribunal.

21 What I will propose to do then is to
22 proceed and, as we go through the evidence, for Mr.
23 Warman not to provide any of this identifying evidence.
24 It may be clear, from what he can tell you, what the
25 consequences have been, without providing the specifics.

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1 We will proceed in that way, and if...

2 **THE CHAIRPERSON:** Why don't you proceed
3 on that basis, Ms. MacEachern, and once you have
4 exhausted that line of questioning, if you are not
5 satisfied with the way the evidence has gone in in terms
6 of what you feel necessary to establish your case, you
7 can renew your request and we will consider it at that
8 point.

9 I certainly share Ms. Roberts' concern
10 that if we can avoid having to close the hearing, I think
11 that the integrity of the process will be better served
12 if that were the case.

13 **MS MacEACHERN:** Okay. Thank you.

14 **Q.** In light of those comments, Mr.
15 Warman, can you describe the impact that this retaliation
16 by the Respondent has had on you?

17 **A.** Yes. It has had a reasonably
18 substantial effect. I think of myself as a fairly strong
19 person, with a fairly open mind on the world, and the
20 good and the bad that is contained therein.

21 I think, though, that if you look at
22 what the effects are of two years of just constant
23 battery, in terms of the postings and in terms of the
24 kind of material that is contained in those postings,
25 both the characteristics that are ascribed to me in those

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1 postings, it is a constant barrage of accusations that I
2 engaged in extremely serious criminal conduct, and that I
3 helped either to cover up for or participate in things
4 like child pornography, child molestation, and things
5 like what Mr. Kyburz describes as Jewish ritual murder,
6 which is the murder of children.

7 I am sure the Members can appreciate
8 what having that sort of constantly sent out into the
9 world for two years would have on their character.

10 I think certainly the material that
11 caused me to be concerned for my physical safety, that I
12 took a number of steps in relation to that, and I will,
13 bearing in mind the Tribunal's words, try to be as
14 specific as possible without going into the details of
15 those.

16 My name will no longer appear in the
17 telephone book. I live in a housing co-operative, and
18 like most multi-residential buildings, there is a name
19 plaque at the entrance to that building. My name has now
20 been removed from that.

21 Certainly after the August 16th posting
22 that talked about concerns that Mr. Kyburz had that
23 someone would line someone up, a New World Order flunkey
24 out in the cross hairs and pull the trigger and then
25 mentions my name directly following that, and indicates

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1 that I have been noted by a number of people in that
2 regard. The police have also taken steps to augment my
3 personal safety over that which would be accorded to a
4 normal citizen.

5 I just think - even if you just look at
6 - just the strain at hand, the - excuse me. Even if you
7 just look at the strain and the emotional effect, and the
8 effect that it has on personal relationships, because it
9 is not just me that it has affected, because my partner
10 also sees this information, knows that it is out there,
11 and she has also expressed concern for my physical
12 safety. Not only that, but I have to take into account
13 her physical safety as well.

14 Q. Thank you, Mr. Warman.

15 Returning to your complaint that this
16 material is likely to expose persons to hatred or
17 contempt, can you explain why you have found this
18 material that we have gone through objectionable?

19 A. I think just the sheer - I think if
20 you just look at it, it's almost like injecting a poison
21 into the community. I have been involved in human
22 rights issues for a number of years, so I am aware of the
23 kind of hate material that is out there, but just looking
24 at this material over the past couple of years, just the
25 sheer repetition and the viciousness of the kind of

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1 characteristics that are attributed to persons of the
2 Jewish faith, it is over and over again ascribing to them
3 the worst possible motivations and criminal activities,
4 including involvement in child pornography, involvement
5 in the sexual torture of children, the slaughter of what
6 they describe as thousands or millions of innocent
7 people, the involvement in - the repetition of the
8 traditional antisemitic myth of the Jewish ritual murder,
9 the murder of children, the murder of Gentile children it
10 has pursuant to Jewish rituals.

11 It really is injecting a poison into the
12 community, and I don't know how I can describe it other
13 than to say that it goes well beyond a lot of the
14 traditional discriminatory material that I have seen.
15 Also, I keep drawing back to the viciousness of it.

16 It is not like there is any break in the
17 material, and it is not like there is any effort to
18 ameliorate the effect of the material. It is just
19 constant.

20 I think that the effect of having
21 material like that in the community is that it provides a
22 basis or a foundation for other discriminatory acts, and
23 I think that this is the kind of thing that lays the
24 foundation for more violent activity.

25 When you dehumanize and demonize, in

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1 effect, the community, that it becomes that much more
2 acceptable, and we have seen this throughout history,
3 that these are the precursors to being able to commit
4 acts against that particular group. It is to strip away
5 their humanity. Once that is done, it becomes that much
6 easier to encourage people to commit acts against that
7 group.

8 Q. Mr. Warman, are you Jewish?

9 A. No, I am not.

10 Q. Given that you are not, do you
11 consider yourself a victim or harmed by this material?

12 A. Yes, I do.

13 Q. Why?

14 A. For a number of reasons. The
15 first, I consider myself to have been harmed in the same
16 way that all members of the community have been harmed.
17 I say that because I think whenever this kind of material
18 goes out into the community, that it destroys the kind of
19 tolerance that is necessary for having a society where
20 people can live together and pursue the kind of goals
21 that are outlined in the *Canadian Human Rights Act*, that
22 say that everyone should have the right to pursue the
23 lives that they are able and can make for themselves
24 without being subject to this kind of discriminatory
25 material.

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1 On a more specific basis and a more
2 personal basis, I think that this material has attacked
3 me specifically, and the intent of the attack was on the
4 basis that Mr. Kyburz thought that I was Jewish, and that
5 that inevitably has a way of wearing away on someone.

6 I think the thing that is most important
7 here is the intent of the person who is engaged in that
8 kind of conduct, and that the intent of that person was
9 to victimize someone on the basis of their presumed
10 Jewish faith, and that the motivation of the individual
11 responsible for the discriminatory conduct should be the
12 primary focus here.

13 **MS MacEACHERN:** Thank you, Mr. Warman.
14 Those are all of my questions for Mr.
15 Warman.

16 **THE CHAIRPERSON:** Thank you, Ms.
17 MacEachern.

18 Mr. Warman, you are a party in your own
19 right, and if there is anything that you wish the
20 Tribunal be made aware of that has not been elicited from
21 you through Ms. MacEachern's questions, this is your
22 opportunity to do so.

23 **THE WITNESS:** I think Ms. MacEachern has
24 been quite thorough, and I think the materials that have
25 been put before the Tribunal members are so extensive

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1 that anything else I could say to you other than what has
2 already been elicited would be redundant, apart from my
3 closing statements.

4 **THE CHAIRPERSON:** All right. Thank you
5 very much.

6 **THE WITNESS:** Thank you.

7 **THE CHAIRPERSON:** We will take our
8 morning recess. I think my colleagues just want to
9 consider whether they have any questions that they want
10 to ask Mr. Warman.

11 **MS MacEACHERN:** Okay. Thank you.

12 **THE CHAIRPERSON:** We can come back and
13 proceed with the next witness. We will take a 15-minute
14 recess.

15 --- Short recess at 1015

16 --- Upon resuming at 1035

17 **THE CHAIRPERSON:** Mr. Warman, we have no
18 further questions for you.

19 Thank you very much.

20 **MS MacEACHERN:** My next witness is Dr.
21 Karen Mock.

22 **AFFIRMED: KAREN MOCK**

23 **EXAMINATION-IN-CHIEF BY MS MacEACHERN:**

24 **Q.** Dr. Mock, I would first like to go
25 through your qualifications. Your curriculum vitae is

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1 attached at tab 60 of HR-2.

2 **THE CHAIRPERSON:** Ms. MacEachern, before
3 you start taking Dr. Mock through her qualifications, can
4 you give us an indication of the field in which you
5 intend to qualify Dr. Mock? It helps us then looking at
6 the qualifications.

7 **MS MacEACHERN:** I intend to tender Dr.
8 Mock as an expert in the field of discrimination,
9 antisemitism, racism, and hate material.

10 **THE CHAIRPERSON:** Thank you. It helps us
11 focus our attention in reviewing this.

12 **MS MacEACHERN:** Thank you, Madam Chair.

13 **Q.** Dr. Mock, what is your educational
14 background?

15 **A.** I have a PhD in Applied Psychology
16 from the University of Toronto.

17 **Q.** What year did you receive that PhD?

18 **A.** In 1975.

19 **Q.** Are you qualified in another field
20 other than psychology?

21 **A.** I have an Ontario Teaching
22 Certificate as well.

23 **Q.** And when was that Teaching
24 Certificate obtained?

25 **A.** In 1978.

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1 Q. In addition to your formal
2 education, have you taken other training in the areas of
3 discrimination, racism, antisemitism and hate messages?

4 A. Yes. In particular, during the 90s,
5 I took various seminars and training programs. For
6 example, the Durham Police College, the International
7 Seminar on Hate and Bias Crime, in 1996, and several
8 other programs prior to that.

9 Q. If we turn to page 471, the second
10 page of the document presented as your curriculum vitae,
11 which is headed "Karen R. Mock, Curriculum Vitae", I see
12 there is a heading "Additional Training".

13 A. Yes.

14 Q. You referred to the Durham Police
15 College Training Seminar, is that what is listed there
16 beside 1996?

17 A. Yes, that's right.

18 Q. What was the content of that
19 seminar?

20 A. This was a group of international
21 experts in hate and bias crime, brought together by the
22 Durham Police College, in cooperation with the Toronto
23 Police as well. There were various experts from New
24 Jersey and Chicago and places across the United States
25 that had further advanced their hate and bias crime

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1 units.

2 I participated in that program. I also
3 delivered part of it. It was a three and a half day
4 program, where it was quite intensive in the most up-to-
5 date aspects of hate propaganda and determination of hate
6 motivation.

7 Q. In 1994, you have indicated you
8 took additional training. Can you describe who that was
9 with?

10 A. That's right. At that time, I was
11 National Director of the League for Human Rights of B'Nai
12 Brith Canada. Therefore, I directed and convened the
13 first symposium on legal remedies for hate crime. It was
14 also an international symposium. We invited people from
15 Great Britain, from Germany, from the United States, from
16 Australia, others that had had expertise in hate and bias
17 crime.

18 It was again a three-day program, where
19 there were police from across Canada, experts in the
20 field, community people as well. It was a very intensive
21 symposium on the various legal remedies for hate and bias
22 crime.

23 Q. In 1992, you also indicated that
24 you received additional training. Can you explain what
25 training that was at that time?

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1 current manifestations, and to be a source of public
2 education and a clearing house of information and
3 expertise on issues pertaining to all forms of racism.

4 Q. What type of organization is the
5 Canadian Race Relations Foundation?

6 A. It is actually a Crown corporation
7 that was created by the federal government as part of the
8 National Japanese Redress Agreement, but that operates at
9 arm's length to the federal government. It is also a
10 registered charitable organization.

11 Q. As their Executive Director, can
12 you describe what duties you have as the Executive
13 Director?

14 A. Yes. I oversee the programming and
15 the communications of the organization. I also have
16 responsibility for planning and implementing education
17 and training programs. I am often called on to speak at
18 major events, to give training, for example, to police
19 agencies, schools, school boards.

20 In general, I oversee the entire
21 operation of the Canadian Race Relations Foundation.

22 Q. When you are asked to speak, what
23 subjects do you speak on?

24 A. Primarily on countering racism,
25 antisemitism and hate in Canada today.

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1 Q. You indicated that part of your
2 duties is to provide training. What type of training do
3 you provide?

4 A. There are several models. It can
5 run from three- or four-day courses for police,
6 prosecutors, others in the area of hate and bias crime,
7 or providing seminars countering discrimination and
8 harassment in workplaces, giving key note addresses to
9 school boards. In fact, tomorrow, we will likely be
10 speaking to the Justice Department on these kinds of
11 issues.

12 I am asked by public and private
13 agencies and institutions to provide expertise on
14 discrimination, racism and hate crime.

15 Q. Prior to working for the Canadian
16 Race Relations Foundation, where did you work?

17 A. I was employed for 12 years as the
18 National Director of the League for Human Rights of B'Nai
19 Brith Canada, and the National Office is in Toronto.

20 Q. What was the time period that you
21 were employed there?

22 A. From September 1989 to September
23 2001.

24 Q. And what were your duties as the
25 National Director of the League of Human Rights with

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1 B'Nai Brith?

2 A. Very similar. To oversee programs
3 of education and training, but also it is more a front
4 line, hands-on organization, so my job was to monitor and
5 document the activities of hate groups, hate mongers,
6 monitor hate on the Internet. I also was responsible for
7 documenting reported incidents of antisemitism across the
8 country, and for editing and producing the annual audit
9 of antisemitic incidents in Canada, which included not
10 only a review of the actual incidents across the country,
11 but an analysis of the state of hate group activity and
12 hate crime in Canada.

13 Q. During the course of these
14 experiences, have you produced any publications?

15 A. Yes, several.

16 Q. I am just turning to the back of
17 page 474 in your curriculum vitae, and it is labelled as
18 page 8 at the bottom. The heading is "Publications and
19 Research Reports."

20 Is this a complete list of your
21 publications?

22 A. I believe I have added some
23 supplementary material in an addendum, but in more recent
24 years, I have also provided some additional papers on
25 legal remedies against racism and hate in the country,

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1 and on redefining multiculturalism, and some of the
2 papers I have overseen at the Canadian Race Relations
3 Foundation, for example, a major research report in the
4 year 2000 on race relations and training in Canada.

5 Q. I see that a number of these
6 publications deal with hate on the Internet.

7 A. That's right.

8 Q. Can you describe what those
9 publications would deal with?

10 A. Yes. The first one I did on hate on
11 the Internet I was actually asked to do for a Canadian
12 Human Rights Commission publication. I believe it was
13 called "Focus." I also was asked to do a piece for
14 Canadian Social Studies Magazine, as well for the
15 Canadian Human Rights Foundation, the one speaking about
16 rights, that is the actual volume that they have.

17 I was invited also by two authors, one
18 from England and the other from Canada, Hicks and Halpin,
19 to contribute to their book "Human Rights on the
20 Internet", and I was asked to contribute the book chapter
21 on hate on the Internet.

22 Q. Prior to producing those
23 publications, did you conduct any research?

24 A. The research was primarily for
25 purposes of the audit of antisemitic incidents. So it

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1 included again monitoring the evolution of hate on the
2 Internet as it began, in particular hate propaganda and
3 antisemitic hate propaganda and Holocaust denial on the
4 Internet, as it began in the early to mid-90s. Of
5 course, this was the period that I was the head of the
6 League for Human Rights, and my research included a very
7 thorough documentation and an analysis of the incidents
8 right up until the year 2001.

9 Q. Have you given testimony before in
10 other court proceedings as an expert?

11 A. Yes, I have.

12 Q. In what areas have you been
13 qualified as an expert for the purpose of that testimony?

14 A. In racism and antisemitism, hate
15 group activity, hate propaganda and discrimination. It
16 has been a variety of different cases.

17 Q. In how many cases have you been
18 called as an expert to give an opinion?

19 R. It is at least half a dozen.

20 Q. There is an addendum to your CV,
21 which begins at page 480, for the Tribunal; but I would
22 refer you specifically to page 483 of that, which is page
23 4 of your addendum, Dr. Mock. Does that refresh your
24 memory regarding the proceedings that you have been
25 called as an expert to give an opinion?

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1 then similarly, and was able for the Court to interpret
2 the symbols and help them understand the connectedness to
3 organized white supremacist and hate group activity.

4 Q. And what type of expert evidence
5 did you provide in the Saskatchewan Human Rights Tribunal
6 case?

7 A. This was a case of parents as the
8 complainants because the Lord's Prayer was going to be
9 reintroduced. At that time, I was qualified as an expert
10 on discrimination and was able - as well, the impact on
11 individuals of being singled out and not being treated
12 fairly.

13 MS MACEACHERN: Members of the Tribunal,
14 I now tender Dr. Karen Mock as an expert in the field of
15 discrimination, antisemitism, racism, and hate material.

16 MEMBER ROBERTS: Dr. Mock, I just wanted
17 to ask if you have any personal relationship with Mr.
18 Warman at all.

19 THE WITNESS: No. I am aware of him
20 professionally and...

21 MEMBER ROBERTS: You have never worked
22 together, you are not related to him in any way...

23 THE WITNESS: No.

24 MEMBER ROBERTS: Thank you.

25 THE CHAIRPERSON: Thank you.

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1 We are certainly prepared to qualify Dr.
2 Mock as an expert in antisemitism, racism, hate material,
3 and discrimination, certainly with respect to the last
4 item, being discrimination. Obviously that is ultimately
5 the purview of the Tribunal, but with that reservation,
6 we will qualify Dr. Mock as requested.

7 **MS. MacEACHERN:** Thank you.

8 **THE WITNESS:** Could I just clarify
9 something?

10 **THE CHAIRPERSON:** Yes.

11 **THE WITNESS:** When you say "work
12 together", years ago, we were at the same conference and
13 meeting. That is what I meant by being "aware of
14 professionally". We have at times been at the same place
15 and the same time, but not actually been colleagues or
16 worked together in any major way than most of us in the
17 overall networks.

18 **THE CHAIRPERSON:** Ms. MacEachern, would
19 you like to carry on?

20 **MS MacEACHERN:**

21 **Q.** Dr. Mock, have you been retained to
22 provide an expert opinion in this matter?

23 **A.** Yes, I have.

24 **Q.** And have you come to an opinion in
25 this matter?

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1 A. Yes.

2 Q. How did you arrive at this opinion?

3 A. I was sent a book of documents, and
4 aside from my having been aware of the web site in any
5 case, reviewed the documents that I was given and came to
6 the conclusion that the material herein is likely to
7 expose Jewish people to contempt or hatred.

8 Q. Can you identify the documents that
9 you reviewed in coming to this opinion?

10 A. Yes.

11 Q. I apologize, Dr. Mock. You have a
12 slightly different tabulated version of this material
13 than what the Tribunal is used to. The Tribunal has two
14 volumes of these documents which are before you, and I
15 have provided you with a Table of Contents.

16 Can you identify for the Tribunal which
17 documents you have reviewed in forming your opinion?

18 A. Yes. I have reviewed WA-037. Shall
19 I just say the last number?

20 Q. Yes. For clarification for the
21 Tribunal, Dr. Mock is referring to the Commission's
22 identification numbers.

23 A. I could do the tab numbers, if you
24 would like.

25 Q. That would be helpful.

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1 A. Would that be easier, the ones that
2 you have?

3 **THE CHAIRPERSON:** Are these tab numbers
4 with respect to HR-1 and HR-2?

5 **MS MaceACHERN:** Yes, they are. These
6 are tabs - WA-037, for example, is located at tab 3 of
7 HR-1.

8 **THE WITNESS:** I will use those numbers.
9 I have reviewed tab 3, 4, 5, 6, 7, 8, 9,
10 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24,
11 25, 26, 27, and 30.

12 **MS MaceACHERN:**

13 **Q.** Dr. Mock, you have identified that
14 you have come to an opinion. Could you restate your
15 opinion on whether this material is likely to expose a
16 person or persons, or groups of persons, who are
17 identifiable on the basis of prohibited ground of
18 discrimination, to hatred or contempt?

19 **A.** Yes. I believe, on the basis of
20 the documents that I have reviewed, that this material
21 would expose Jewish people to hatred or contempt on the
22 basis of religion, but also on the basis of race and
23 national or ethnic origin.

24 **Q.** Let's go through those bases one at
25 a time.

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1 With respect to religion, can you
2 identify why you have concluded it would expose Jewish
3 persons to hatred or contempt on the basis of religion?

4 A. Well, Judaism is a religion, and
5 the material repeatedly refers to Jews, Jewish, over and
6 over again. So people of the Jewish faith, who are
7 identifiable as being of the Jewish faith, would be
8 included in this material.

9 Q. Why have you identified race as
10 another ground?

11 A. Well, repeatedly also the material
12 refers to various characteristics as if they are
13 inherited or genetic. A thread that goes through is very
14 similar to the kind of language that is used in Nazi and
15 so-called neo-Nazi material, where Jews as a group were
16 racialized.

17 Q. Can you also explain why you have
18 identified national or ethnic origin as a basis for their
19 identification?

20 A. The material goes on and on about
21 Ashkenazi Jews. Ashkenazi Jews are Jews who are
22 descendant from Eastern and Western Europe. He speaks of
23 the origins or the ethnic origins of 90 percent of the
24 Jews that he is referring to.

25 In any case, Judaism itself and Jews

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1. have also been described as a race, ethnicity and
2 religion and culture because, in fact, Jewish people fall
3 into all of those categories.

4 **THE CHAIRPERSON:** Can I just stop you
5 there for a moment please? I just want to make sure I
6 understood the answer there.

7 When you were describing who the
8 Ashkenazi Jews are, I understood you to say European
9 Jews, Western European Jews. I just want to make sure...

10 **THE WITNESS:** Yes.

11 **THE CHAIRPERSON:** Just so we are clear,
12 I understood the Ashkenazi refers to the Eastern European
13 Jews, but I just wanted to...

14 **THE WITNESS:** European Jews in general.
15 Caucasian, white, European Jews. There are two kinds of
16 Jewish people. You can divide them, and I guess this
17 does come across racially or ethnically as well,
18 Ashkenazi Jews and Sephardic Jews.

19 Sephardic Jews would be Jews from
20 southern Spain and the Mediterranean in general.
21 Ashkenazi Jews would be those descendant from Eastern
22 European Jews.

23 There is some history of this and some
24 speculation. One theory describes it as the lost tribe
25 ending up in Europe. Others will speak about the

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1 Khazars, who made a decision many years ago to adopt a
2 specific religion and chose Judaism.

3 **THE CHAIRPERSON:** Who were the Khazars?
4 That was a term we had seen in the material.

5 **THE WITNESS:** I could not exactly
6 describe what country it would be now, but it would be in
7 Eastern Europe. It was a group who wanted to adopt a
8 religion, and chose Judaism.

9 With migration through Russia, Poland
10 and throughout Europe, Ashkenazi Jews are said to be
11 descendant from the European stock. That is really all
12 it means. Where Sephardic would be the Mediterranean
13 Jews, those who you might more typically think of as
14 semitic.

15 **MEMBER ROBERTS:** Ms. MacEachern, would
16 it interrupt your line of questioning if I ask the
17 witness, while she is on this question, of definitions.

18 I am not clear exactly who is a Jew,
19 whether it is someone who belongs to a race or someone
20 who belongs to a religion. Also, we see in the material
21 the term "Zionist". Could you elaborate on both of
22 those?

23 **THE WITNESS:** Yes, I could.

24 **MEMBER ROBERTS:** Thank you.

25 **THE WITNESS:** A Jewish person is someone

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1 who is born of a Jewish mother or has converted to the
2 religion of Judaism through recognized study and
3 conversion by a rabbi, ordained clergy in the Jewish
4 faith. So Jews are Jews by birth, or by conversion.

5 And it is originally a religion, the
6 religion of Judaism. I don't think you want me to
7 elaborate on that - the belief in one god and...

8 **MEMBER ROBERTS:** No. I just wanted to
9 know whether it was a race or a religion.

10 **THE WITNESS:** It is religion, but
11 beginning before the Inquisition and that whole period,
12 Jews and Judaism became racialized, because once Jews
13 were no longer visible, because they either wore
14 different clothes or kept themselves separate, once Jews
15 became more integrated into the wider society, those who
16 practised what could be called Jew hatred or wanted to
17 keep them out of professions or business or what-have-
18 you, had to invent a blood connection for being Jewish.
19 That is when, once they were no longer visible and able
20 to be excluded, the whole concept became racialized.

21 If you were born a Jew or even if you
22 converted, this is where the whole notion of conversos
23 came about during the Inquisition. You had people who
24 were closet Jews and basement Jews, and hiding and still
25 practising, but claiming that they were, in fact,

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1 converted, because previously, it was okay. If you
2 converted and embraced Jesus or became a Christian, that
3 was all right. But then as Jews became assimilated and
4 were able to move up in society, in order to exclude
5 them, there had to be this theory that Judaism was also a
6 race.

7 Then, all of this antisemitic classical
8 canards that you start finding in this material began to
9 be invented.

10 **MEMBER ROBERTS:** So a person whose
11 mother is Jewish, if they become a Christian, they are no
12 longer a Jew?

13 **THE WITNESS:** That's right. Except if
14 you are a racist, or Hitler, or someone who says it
15 doesn't matter. That's where they start with this whole
16 genetic postulation of characteristics.

17 **MEMBER ROBERTS:** And Zionism?

18 **THE WITNESS:** Zionism, in a one
19 sentence, could be defined as the self-determination
20 movement of the Jewish people. It came to be, I guess
21 the expression was coined in the 1800s when the dream
22 existed. It was founded by Theodore Herzl. The dream
23 existed of establishing the homeland in Israel.

24 Jews who are Zionists, this is the true
25 definition of it, believe in the establishment of the

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1 state of Israel, and the right for Jews to have a state.
2 It is really no more than that.

3 What you see in this material is the
4 distortion of this concept into conspiracy theory and
5 many of the classical antisemitic canards, and a
6 deliberate manipulation of the terminology.

7 **MEMBER CHOTALIO:** To continue on with
8 definitions, Dr. Mock, can you also define "semite" and
9 "antisemitism".

10 **THE WITNESS:** "Antisemitism" was a term
11 coined in 1879 by Wilhelm Marr when he was writing an
12 article that was going to be in a French journal, and the
13 term "l'antisémitisme", without a hyphen, was coined, and
14 no capital "s" in the middle, to mean Jew hatred, period,
15 full stop.

16 The only target of this Jew hatred, but
17 a more scientific pleasant sounding name, almost a
18 euphemism, was coined to mean Jew hatred, but it was only
19 targeted at Jews.

20 There has been a recent move for Arabs
21 and Moslems and those who would call themselves Semites
22 from that part of the world, from the Middle East, to say
23 that the term also applies to them. But that is actually
24 a change in the meaning of the term. And scholars today,
25 most of the prominent scholars on antisemitism, people

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1 like Emile Fackenheim(ph), Uhuda Bower(ph) and others,
2 suggest - and, by the way, B'Nai Brith has adopted this
3 too over the last four or five years, that even in
4 English it should be "antisemitism", lower case, without
5 any hyphen and without any - to show that it is not that
6 there is any such thing as "semitism", which
7 "antisemitism" is against. It is a term that strictly
8 applies to the concept of Jew hatred.

9 I'm sorry. You asked about another
10 term?

11 **MEMBER CHOTALIA:** No. That is the term.

12 Throughout the materials, the Respondent
13 refers to these various terms and says that he is an
14 antiseminite, or he is not...

15 **THE WITNESS:** He is not an antisemite.
16 That is his claim.

17 **MEMBER CHOTALIA:** So in that context, do
18 we take it to mean that it is the classical definition of
19 Jew hatred, he does not hate Jews?

20 **THE WITNESS:** Well, he is claiming that
21 he doesn't, but when you examine the material, he says "I
22 am not really an antisemite, I am only against lies,
23 cheating, deceit, world domination ..." and his list is
24 this long, "... and therefore, I am against these Jews".
25 It is literally a disclaimer that he puts, probably for

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1 tribunals like this. Later he says that even the good
2 Jews, the so-called good Jews who don't speak out against
3 all these bad Jews, which is over 90 percent of all the
4 Jews, are included, because they are part of the problem.
5 So, therefore, all Jews are in his category.

6 **THE CHAIRPERSON:** Mr. Mock, who are or
7 what is a semite? What is the definition of a semite?

8 **THE WITNESS:** It is my understanding
9 that racially, semites would refer to Jews and others in
10 the Middle East, Arabs and so on, who might, on the basis
11 of racial characteristics - I wouldn't know how to
12 describe it. I suppose suarve complexion, descendant
13 from people from that region. Most of the Sephardic Jews
14 would be categorized as semites. I have often said that
15 Jews and Arabs are cousins, of course, from that region.

16 But again, antisemitism does not refer
17 to hatred of Moslems or Arabs. It is a term that refers
18 to discrimination, racism, hatred against Jews.

19 **MEMBER CHOTALIA:** Just to follow up on
20 that, are you saying that semites are mostly Sephardic
21 Jews and not Ashkenazi Jews?

22 **THE WITNESS:** Again, if you are taking
23 the term "semite" specifically, that is what one would
24 refer to as a semite.

25 **MEMBER CHOTALIA:** Is it possible then,

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1 from the materials, that when he says he is not
2 antisemitic, he means that he is not against the
3 Sephardic Jews, but he is against the Ashkenazi Jews,
4 because that is what he talks about through the material,
5 that his concerns arise from...

6 **THE WITNESS:** It could be that that
7 what's he means, but in many ways, the logic defies me.
8 I think he is saying it just as a disclaimer, in the same
9 way as you can get people who are guilty of antisemitism
10 saying, "I'm not really an antisemite, some of my best
11 friends are Jews."

12 **MEMBER CHOTALIA:** But just to understand
13 the terminology, what percentage of the Jews in the world
14 are Ashkenazi and what percentage are Sephardic?

15 **THE WITNESS:** To be honest, I don't know
16 the exact numbers, but the majority of Jews in the world
17 today are Ashkenazi Jews. The majority of the Jews in
18 Israel would be Jews of colour and Sephardic Jews as
19 well.

20 **MEMBER CHOTALIA:** I'm sorry, I didn't
21 understand that last, Sephardic Jews...?

22 **THE WITNESS:** You have Yemenite Jews,
23 you have Iraqi Jews, you have Jews from the whole Middle
24 Eastern region. You have Ethiopian Jews who are black.
25 They would not be descendant from the Ashkenazi Jews,

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1 which is what is sometimes so outrageous in some of the
2 antisemitic propaganda describing all Jews as white,
3 western oppressors, or however they try to do this
4 because, you see, you can have Jews of all racial
5 backgrounds.

6 **MEMBER ROBERTS:** What you are saying is
7 that the majority of Jews in the world are Ashkenazi, but
8 the majority who live in Israel are Sephardic.

9 **THE WITNESS:** And descendants from other
10 regions.

11 **THE CHAIRPERSON:** But not Ashkenazi. The
12 majority in Israel.

13 **THE WITNESS:** There are lots of European
14 Jews in Israel...

15 **THE CHAIRPERSON:** But not the majority.

16 **THE WITNESS:** If you look at the entire
17 population now in Israel, it is much more diverse.

18 **MEMBER CHOTALIA:** Thank you.

19 **MS MacEACHERN:**

20 **Q.** Dr. Mock, when you identified that
21 part of the basis for identifying these groups and
22 exposing them to hatred is because of a racial ground,
23 can you provide an example of that in the material?

24 **A.** He speaks about this whole descent,
25 and he talks about blood Jews and those who claim to be

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1 Jews. He makes a distinction, then speaks also about
2 inherited characteristics. I am just going to try to
3 find in particular where he uses some of that and makes
4 sweeping generalizations.

5 His referring to Jews as "vermin" as
6 well, and their innate abilities. For example, in
7 document no. 12, your tab no. 7, he speaks about "their
8 greatest abilities", as if these are inherited
9 characteristics:

10 "Ashkenazi are in their element;
11 destruction of property and life is
12 their great ability".

13 Q. What is the...

14 A. Tab no. 7, document WA-012.

15 Q. That would be at tab 10.

16 A. Sorry. It is my 7, 10. Tab 10. I
17 have my numbers circled on one side. Sorry. I have it
18 straight now, tab 10.

19 Q. If we go to page 87, which is, Dr.
20 Mock, your page 5 of 6.

21 A. Yes, page 5 of 6.

22 Q. And you are referring to the second
23 last paragraph?

24 A. I am referring to Kyburz's
25 commentary on the document above. And you see how he

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1 refers to abilities, "it's their greatest ability". I
2 mean, it makes it -- that talks about a characteristic,
3 that is characteristic of all these Jews. And they
4 practise that ability wherever and whenever they can find
5 an opportunity, and have done so throughout the
6 centuries. These sweeping generalizations,
7 characterizing an entire group.

8 **MEMBER CHOTALIA :** So, Dr. Mock, do you
9 see that as an example of race discrimination? I am not
10 sure if you are saying that that...

11 **THE WITNESS:** Yes, I do. It is a
12 classical example of stereotyping, of discriminating an
13 entire group, over-generalizing, referring to it as a
14 characteristic of that entire group, aside from the fact
15 that it is a simple lie, and distorting even Weizmann's
16 quote to claim responsibility for World War II.

17 But aside from that fact, the sweeping
18 generalization is very characteristic of racial
19 stereotypes.

20 **MS MacEACHERN:**

21 **Q.** Dr. Mock, we have also reviewed in
22 your material, and it is labelled WA-048, and for the
23 Tribunal it is tab 26. It is the Daily Information Page
24 entitled "War Mongers".

25 **A.** Yes.

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1 Q. If I refer you to the last page of
2 that document, page 207, where Mr. Kyburz's commentary
3 is, can you identify any passages in that document which
4 similarly are racially based?

5 A. Right at the top of that page:
6 "The Jews (Zionists) are as evil as
7 they always have been."

8 That is a good example, describing them
9 as "evil".

10 He goes on again with these classical
11 antisemitic diatribes of various crimes and so on. "Hard
12 core criminals" is another good example. "You and your
13 ilk", "you and people who are like you", or of your same
14 background.

15 Q. Is that in the last paragraph,
16 partway through?

17 A. Yes. "You peoples", there's
18 another good example, third line from the bottom.

19 These are very characteristic of - you
20 hear the same kind of language that racists use against
21 other racialized minorities, "you people", or "your
22 inherited characteristics over time", or "your ilk", or
23 "others who are like you".

24 Q. Can you give examples of areas or
25 wording in the material that is based on national or

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1 ethnic origin?

2 A. I think that most of this material
3 that refers to Ashkenazi Jews refers to Jews who - people
4 who are descendant.

5 Q. Descendant from...?

6 A. From Ashkenazi Jews, which would be
7 an ethnic or a characteristic, or an origin.

8 Q. With respect to Ashkenazi Jews, if
9 I could direct you to tab 4 of HR-1, and that is WA-004,
10 Dr. Mock, at page 22 and 23. Dr. Mock, that is page 11
11 and 12 of that article.

12 There is a section that mentions
13 Ashkenazi Jews in some length. Can you explain the
14 impact of this material?

15 A. Here is where he goes into this
16 whole theory about the Khazars and those who -- the 700s
17 adopted Judaism. But actually, this passage is important
18 for other reasons. Here is where he gets to this whole
19 notion of who are the Ashkenazi Jews.

20 This whole notion of Jews being
21 imposters, the majority of Jews in the world today being
22 imposters and not being "the real Jews", or "blood Jews",
23 is a notion that has been adopted by some of the most
24 virulent white supremacists and antisemites. They use
25 what is called a so-called Christian identity theory,

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1 that says the Jews who are claiming to be Jews are not
2 the real ones, but those who are white, the Aryans and
3 others, are the real ones and, therefore, the chosen, and
4 so on. It goes on to extremes.

5 You see this kind of ideology adopted by
6 groups like the Posse Comitatus and other notorious white
7 supremacists and militia groups who are anti-government
8 and who reject most of what we today, even in Canadian
9 and North American society, think of as the way we want
10 the world to work. They just reject it and say no, it is
11 all controlled by Jews who are controlling the
12 government, who are controlling the UN. It gets into this
13 whole world-wide conspiracy theory and, therefore, things
14 like government licences or anything that is acknowledged
15 by the government or tribunals or whatever, are null and
16 void, and they don't have to adhere to that.

17 They take it from here and take it to
18 extremes. I mean these are just theories and the
19 convoluted logic of people who embrace Judaism not really
20 being Jews is just an outrageous lie, and is at the
21 source of much antisemitic thinking today.

22 **THE CHAIRPERSON:** I would like to ask a
23 question, because you said something a few minutes ago
24 that maybe I am getting confused.

25 When you gave us your identification of

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1 the terminology earlier on, as I understood your
2 testimony, and please correct me if I am wrong, you had
3 indicated that the Ashkenazi Jews tended to be the Jews
4 of European descent.

5 **THE WITNESS:** Yes.

6 **THE CHAIRPERSON:** Again, using your
7 terminology, people perhaps fairer complexioned or of
8 white skin, as opposed to, I think you identified the
9 Sephardic as being more of the suave complected
10 individuals.

11 **THE WITNESS:** You can have white
12 Sephardic Jews as well, because they are part of that
13 whole culture and the religion's institutions and so on,
14 but again, because Judaism is a religion.

15 **THE CHAIRPERSON:** I understand that, but
16 again I just want to make sure I got your last point.
17 You were talking about this notion of the Jews as
18 imposters and the Christian identity movement.

19 Where I got confused was, I understood
20 you to be saying that according to these individuals, the
21 white complected individuals were the true Jews, which
22 seems to be inconsistent with what you said before. Maybe
23 I misunderstood you.

24 **THE WITNESS:** No, no, no. I am saying
25 that Ashkenazis and Sephardic are all Jews.

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1 **THE CHAIRPERSON:** Right.

2 **THE WITNESS:** They are all, of course,
3 "true Jews".

4 **THE CHAIRPERSON:** If you could just...

5 **THE WITNESS:** What the Christian
6 identity says is that most of them are not, and they are
7 using this notion of Judaism and those from the Holy Land
8 and those who have certain entitlements and so on, in
9 saying, "and all those other people are imposters".

10 **THE CHAIRPERSON:** "And all those other
11 people" being who?

12 **THE WITNESS:** Being Jews. In this case,
13 he is highlighting Ashkenazi Jews.

14 There is no real logic. It is no wonder
15 that you are confused, because the lack of logic and the
16 switch and so on that those with the Christian identity
17 movement use, which is, by the way, again primarily a
18 white supremacist movement, is deliberately convoluted
19 and distorted in that sense. It just rejects holus-bolus
20 an entire religious group.

21 **MS. MacEACHERN:**

22 **Q.** Perhaps I could assist. You have
23 used the term "the chosen people". Perhaps you could
24 explain what you mean by that.

25 **A.** In terms of their - that is the kind

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1 of terminology of the Jews who have the covenant with
2 God, the bringing of the Ten Commandments, the one god
3 concept as well. So there is this notion historically
4 and in most of our bibles, that the Jews were chosen to
5 bring this message of the one god to the world, and the
6 Ten Commandments and so on, and have this covenant with
7 God to continue to deliver that message.

8 I am not a theologian, but that is a
9 layperson's interpretation of what that means. It does
10 not mean anything else.

11 Q. When you talk about the Christian
12 identity people considering themselves to be the real
13 Jews, how does this relate to the chosen people?

14 A. It would suggest that these other
15 Jews who are all over the world were not part of that
16 covenant.

17 Q. So as I understand it...

18 A. And that there were, I believe their
19 theory goes, there would have been some white people in
20 that part of the world who ended up being the so-called
21 true Aryans, who then are the Christians and have that
22 true connectedness to God.

23 Q. How do we get from true Aryans and
24 true Christians to the true Jews?

25 A. Well, they don't. Someone like

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1 Kyburz here will say there aren't those true Jews, they
2 are all imposters. The only ones that he would consider
3 are the ones that he is calling the blood Jews, who would
4 be the Sephardic Jews from the Middle East.

5 Q. Okay. And are they the chosen
6 people?

7 A. He doesn't actually go that far,
8 but...

9 MS. MACEACHERN: Have I assisted?

10 MEMBER CHOTALIA: To follow up with the
11 Chair's comments, is your evidence that this is his
12 theory, this is Mr. Kyburz's theory.

13 THE WITNESS: That is right.

14 MEMBER CHOTALIA: And that this theory
15 does not have any validity in the real world.

16 THE WITNESS: That's right. His theory
17 is connected to this whole Christian identity movement.
18 There are various theories about how Judaism spread. We
19 all know the theory of the Exodus. We all know the Jews
20 who were spread out through the Diaspora, and how many
21 over centuries. There is talk of a lost tribe ending up
22 in various places. Judaism has spread worldwide, and...

23 MEMBER CHOTALIA: If we go to his
24 statement that Ashkenazi Jews comprise 90 percent of the
25 Jews in the world today, is there any basis in reality.

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1 for that statement?

2 **THE WITNESS:** To be honest, I have not
3 done a census so I don't know if it is 90 percent, or 80
4 percent, or 95 percent, but the majority of Jews
5 worldwide. If you took the total population of Jews
6 worldwide, the majority would be Ashkenazi.

7 **MEMBER CHOTALIA:** And then if we follow
8 down, his logic is that Ashkenazi Jews are not really
9 Jews, at least not blood Jews, that is where he is saying
10 that they are different than the Sephardic Jews.

11 **THE WITNESS:** Yes. That is why he tries
12 to get away with saying, "So you see, I am not really an
13 antisemite".

14 **MEMBER CHOTALIA:** That is how he is able
15 to come to his conclusion that "I am not antisemitic, and
16 there are even decent Jews, even decent Ashkenazi Jews".

17 **THE WITNESS:** That's right.

18 **MEMBER CHOTALIA:** So he continues to try
19 to distance himself from being antisemitic.

20 **THE WITNESS:** That's right. And there
21 you have, the same as most of the Nazis would have told
22 you, "Well, yes, everybody is like this except Mr. so-
23 and-so, who is my pet Jew", or "who is a nice friend of
24 mine. You know what I mean. It is this "you are the
25 exception" kind of thing.

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1 And later, and I'm sorry, I have to look
2 at my notes here, but later he even says that since very
3 few of any of the good Jews will speak up, therefore they
4 are all bad. So he pretty well generalizes to all Jewish
5 people.

6 There is no question that this kind of
7 material just over, and over, and over again exposes all
8 Jewish people to contempt.

9 **MEMBER CHOTALIA:** In your experience and
10 expertise, you have indicated that you have seen this
11 theory propagated by white supremacist movements.

12 **THE WITNESS:** Yes.

13 **MEMBER CHOTALIA:** Why is that? Why do
14 they propagate this theory? Why don't they just say, "We
15 hate Jews"?

16 **THE WITNESS:** Because if they were that
17 blatant, they would be found guilty more often, I
18 suppose. But also, I believe it is a way of trying to
19 prositlatize and bring especially young people to their
20 movement, and try to convince them that this is true
21 Christianity. It is a strategy to bring more people to
22 their hateful cause.

23 You keep on planting this notion that
24 Jews are deceitful, Jews are hateful and, by the way,
25 they are a threat to all of you and they are going to

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1 destroy family life, and on, and on, and on, and on, and,
2 by the way, this is true Christian ideology. And they are
3 just imposters anyway, and even their...

4 So vulnerable people who themselves
5 don't know anything about Christianity or what you might
6 call true Christianity, are caught up. They are looking
7 for somebody to scapegoat for their own problems and
8 adopt this hateful ideology, and put Jews at threat.

9 **MEMBER CHOTALIA:** Why scapegoat
10 Ashkenazi Jews as opposed to Sephardic?

11 **THE WITNESS:** I guess you are asking me
12 to apply some kind of logic and rational thinking to
13 something that really defies logical analysis.

14 It could also be because in the North
15 American context, it is a way of turning more people
16 against more Jews. I suppose that people who he thinks
17 of, as he describes, Jews who have lived in other lands,
18 in Sephardic lands, are not bothering him. But the
19 reality is that he eventually, in this material,
20 generalizes to all Jews.

21 **MEMBER ROBERTS:** Dr. Mock, I just wanted
22 to ask you not to assume that members of the Tribunal
23 know certain things. You referred earlier about "we all
24 know about the Exodus."

25 **THE WITNESS:** Oh, I'm sorry.

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1 **MEMBER ROBERTS:** I think it is probably
2 better if you assume that we know nothing about some
3 things, and treat us as if we...

4 **THE WITNESS:** Okay. I'm sorry.

5 **MEMBER ROBERTS:** That you know
6 everything about your subject, but we know nothing.

7 **THE WITNESS:** At that time, I was
8 referring, of course, to Jews being dispersed into what
9 is called the Diaspora, that they leave Egypt and go back
10 to the so-called Promised Land. Then, in later
11 centuries, are dispersed.

12 **MEMBER CHOTALIA:** So most white
13 supremacist movements target, as I understand from your
14 evidence, Ashkenazi Jews.

15 **THE WITNESS:** I would say that most of
16 them - many of the hate groups do not bother to make the
17 distinction that he does. He has just taken this whole
18 Christian identity thing to extremes. Again, I think it
19 is his strategy to try to convince those who might want
20 to target him for hate crimes. It is just his strategy
21 to try to say he is not an antisemite, and to try to find
22 a theory, albeit a spurious one, to convince others.

23 **MEMBER CHOTALIA:** Thank you.

24 **MS MacEACHERN:**

25 **Q.** Dr. Mock, you made mention of one

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1 of the classic themes of antisemitism being the
2 conspiracy theory. Are there other classic themes of
3 antisemitism that you can identify in this material?

4 A. Yes. In addition to a conspiracy
5 theory of a small group of Jews plotting to take over the
6 world and using the Protocols of the Elders of Zion,
7 which is a known forgery, to justify this claim,
8 throughout his material, you see the theory of domination
9 of all of the world's institutions as well, banks, the
10 United Nations, government, control of the media. He
11 even extends it to pharmaceutical companies, schools,
12 universities. So this notion of Jews controlling
13 governments and all public institutions is a classical
14 recurrent theme in antisemitic hate propaganda.

15 Another common theme is the
16 dehumanization of Jewish people. He refers to them
17 variously as vermin, parasite. In one section I remember
18 - I would have to look through my notes to tell you the
19 exact place - but he goes through this convoluted thing
20 of saying, "Well, I don't know if they're descendant from
21 Satan or not but, even so ...", and even implies that
22 there is some satanic connection.

23 These are all classical notions of
24 dehumanization: Jews as the devil, Jews as vermin or
25 parasites. This was very common in nazi propaganda,

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1 because then it makes easier, if you fester that hatred,
2 for someone then to go and kill someone who is less than
3 human.

4 Another common theme is lying, cheating,
5 being deceitful. You see this over and over again in
6 several of his documents, that they can't be trusted,
7 that they're evil. Fraudulent is another.

8 Another very common one is invoking
9 notions of ritual murder, or what you would call the
10 blood libel. In modern terminology, it refers to child
11 pornography rings and that sort of thing, but there is an
12 allusion to the classical blood libel that was
13 perpetrated in Europe in particular, that then led to
14 programs(ph) and then this notion that Jews use the blood
15 of Christian children in their rituals or in preparing
16 motsas(ph) and other foods.

17 The irony, of course, is that I believe
18 it was Jews who were the first to disallow human
19 sacrifice. But this notion of the criminal Jew, the
20 ritual murderer, that you have to be afraid and,
21 therefore, rise up before they come and get you and your
22 family, is also a very classical notion.

23 There is another common theme here that
24 I guess you could say is becoming classical, although it
25 is the newer form of antisemitism, and that is Holocaust

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1 denial.

2 Q. Going through those themes, Dr.
3 Mock, and before addressing them further, but before we
4 do that, I would direct you to WA-10. To the Tribunal,
5 that is tab 8, page 64. Dr. Mock, that is page 3 of 6,
6 of February 10.

7 In the second complete paragraph,
8 partway down we see the word mentioned "Satan". You
9 mentioned it earlier as there are these comparisons to
10 "spawn of Satan".

11 Can you identify if this is one of the
12 sections that you were referring to?

13 A. This is the one I was referring to,
14 where he says that they have been referred to as the
15 spawn of Satan. And he says:

16 "I know it would be impossible for
17 the spawn of Satan to commit worse
18 crimes than these characters
19 commit".

20 So he basically says: I am not sure if
21 they are the spawn of Satan or not, but they are even
22 worse. So this notion again of the devil and the
23 criminal acts.

24 There is another really classical thing
25 that begins here and happens in others. In this kind of

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1 material, in hateful material, there is often a switch
2 done, where the antisemitic or hateful writer will
3 switch, and the victim becomes the victimizer. So he has
4 the Jews as being the murderers, and the Jews as being
5 the terrorists, and the Jews as being the perpetrators of
6 the worst crimes, and switches that around.

7 Even later, there is the referral to the
8 Jews having been responsible for the war and for the
9 Holocaust, and the Jews being the ones who are really
10 benefiting from all of this.

11 It is that classical switch that is
12 planted in people's minds.

13 Q. Going back to these themes, the
14 first one you identified is this Elders of Zion
15 conspiracy theory, classic antisemitism. Can you explain
16 how that operates or how that is used in antisemitic
17 material?

18 A. The Protocols of the Elders of Zion
19 is a Russian document that describes a couple of Jewish
20 people who are plotting to take over the world, through
21 this notion of world domination, through taking over the
22 banks, and the media, and governments, and so on.

23 It has been proved to be a forgery, but
24 it appears over and over again, and is distributed by
25 virulent antisemites, constantly refer to as if it is a

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1 credible document. In fact, this notion of referencing
2 various authors and articles, and trying to make it look
3 academic is also an insidious tool that is used by people
4 who are promoting hate propaganda.

5 The reference to this kind of conspiracy
6 or to the protocols is further evidence of antisemitic
7 motivation.

8 Q. Throughout the material there is
9 also the use of this word "Zionist". You provided us
10 with a definition of that, but does the way that the word
11 "Zionist" used in this material relate at all to this
12 concept of the Elders of Zion?

13 A. It could. It could be where he is
14 actually finding the term, but also, many people will use
15 it interchangeably to mean Jews. For example, you will
16 hear the expression in white supremacist literature - to be
17 honest with you, I don't know if I have seen it here, but
18 you will hear the expression "ZOG", meaning "Zionist
19 Occupied Government". It really means this antisemitic
20 notion of Jews controlling the government. Sometimes
21 people will use the term Zionist and Jew interchangeably.

22 Q. You identified another classic
23 theme of antisemitism being a world domination theme.
24 Does this relate back to the conspiracy theory theme at
25 all? How do these interrelate?

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1 A. Yes. The conspiracy theory is a
2 theory that a small minority - even a minority within a
3 minority, is plotting to control the world. And they do
4 that by ultimately controlling governments and media and
5 so on.

6 The other thing about the conspiracy
7 theory is it is a "don't confuse me with the facts" kind
8 of theory. So it is not possible to refute it for those
9 who believe in it, because as soon as there is actual
10 concrete evidence to show that this is not the case, for
11 example, that Jews statistically do not control the
12 media, or there are very few Jews in banking, whatever
13 the data might be that one provides, then the person that
14 provides that data is dismissed as being suspect because
15 they have been bought off by the conspiracy, and they
16 become part of the conspiracy.

17 This is why I have often said that it
18 doesn't fall under the purview of academic freedom to be
19 spouting these kinds of things, because it isn't
20 academic, it is just circular thinking and therefore not
21 possible to refute scientifically, because the data
22 simply are not accepted.

23 Q. What is the impact of the world
24 domination and conspiracy theory used in this material on
25 the reader?

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1 A. The impact is actually to promote
2 hatred, because promoting hatred does not necessarily
3 have to imply that somebody is inferior, that would be on
4 the contempt side, but here are the people that are
5 responsible for wars, they are responsible for
6 controlling the media, they are responsible for all kinds
7 of oppression. These people who are murderers and
8 imposters, and so on, in order to control the world and
9 control the UN, which he refers to as allowing terrorism
10 and whatever else. So therefore, the repetition of this
11 kind of material exposes the group to hatred.

12 Q. Do you know what the term "NWO"
13 stands for?

14 A. I am assuming it means "New World
15 Order".

16 Q. You have talked about the next
17 classical theme of the dehumanization...

18 **THE CHAIRPERSON:** I'm sorry, Ms.
19 MacEachern. If you are going to leave this New World
20 Order, I would like to know what it means.

21 **MS MacEACHERN:**

22 Q. What does that mean, Dr. Mock?

23 A. In terms of vision for the world
24 and the way it will be governed, I myself am not as
25 familiar with all of the details of how he might describe

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1 it, but basically suggests that it is being used in
2 somewhat of a derogatory sense to say that it is the Jews
3 that are controlling the direction that governments are
4 going, and the Jews that are controlling the media, and
5 the Jews that are controlling any attempts for realigning
6 power.

7 I, myself, am not as familiar with all
8 of the details of this concept.

9 **THE CHAIRPERSON:** But in interpreting
10 your testimony, Dr. Mock, am I correct in assuming that
11 it would be the outcome of the conspiracy that you have
12 described, the successful realization of the conspiracy?
13 I am just trying to tie evidence together.

14 **THE WITNESS:** That is how I believe he
15 is using it. This will be - it's the tyranny, it's the
16 New World Order where the Jews will dominate and control
17 the government, and all others will be oppressed and so
18 on. This is what he would be describing and others would
19 as the New World Order.

20 **MS. MACEACHERN:**

21 **Q.** There is a reference in the
22 material, at WA-15, tab 12, page 109. Dr. Mock, that is
23 the last page of that document.

24 **A.** Yes. Even at the beginning of that
25 document, he talks about wanting to thwart the looming

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1 NWO tyranny.

2 Q. So NWO is used on that page within
3 a certain context. Can you provide your opinion of what
4 is intended to be conveyed by that?

5 A. He is speaking about again being in
6 control and creating wars, and that these people are in
7 control of the New World Order. On the positive side,
8 you have the New World Order where tyranny is supposed to
9 be eliminated, right? And you have the aligned powers
10 trying to eliminate naziism and various evil forms of
11 government. But he says, look at how awful this is going
12 to be when this New World Order, which is really
13 controlled by these Jews who are - he even says Stalin
14 was one of them, and talking about depraved characters,
15 twisted minds, and "I don't want to be one of their
16 victims."

17 Again it is this notion of it is really
18 the Jews who are behind these governments, and we have to
19 be careful and get them before they get us.

20 Q. You have talked about
21 dehumanization, and you have given some examples...

22 MEMBER CHOTALIA: Can we just follow up
23 on that one page.

24 So Stalin, in the materials, does he tie
25 his notions of Jews to communism? Can you comment on

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1 that?

2 **THE WITNESS:** This is another classical,
3 and again the lack of logic, because Jews are variously
4 accused of being responsible for communism, and for
5 capitalism, so he will refer to the Bolsheviks, and he
6 will refer to the Communists, and say that this is all
7 part of the Jewish conspiracy and the Jewish cause.

8 Jews, classically, have been blamed for
9 every form of social upheaval, and every form of
10 political upheaval, by those who are antisemites, and
11 that is exactly what he is doing.

12 **MS MACEACHERN:**

13 **Q.** What does the term "Bolsheviks"
14 mean?

15 **A.** He is probably using it
16 interchangeably with the Communists.

17 **Q.** Do you know the history behind that
18 term?

19 **A.** Again, not being a historian, I
20 would not want to give you an expert analysis of the
21 history of that term.

22 **Q.** Going back to the dehumanization,
23 you have given examples of that. Can you explain the
24 impact of that type of terminology?

25 **A.** Yes. It is one thing to promote

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1 hatred against people who are going to be in control of
2 the world and be high up on the social order and so on,
3 but when you dehumanize people and say that they are
4 inferior, then that is when contempt also enters into it.

5 So when you refer to people as vermin,
6 parasites, liars, cheats, not to be trusted, and so on,
7 not only is there the hatred on the one hand, but that
8 kind of repetitive hate propaganda is also likely to
9 expose a group to contempt.

10 Q. You also spoke about blood libel
11 and explained what that is. Another name for that is the
12 ritual murder?

13 A. Yes.

14 Q. Can you give examples for where
15 that theme appears in this material?

16 A. I am going to have to look at my
17 notes. I know there were various references to child
18 pornography and a history of murder over the years, and
19 this is the connection, but I am going to have to find
20 it.

21 Your tab 13?

22 Q. What document number is it?

23 A. O18.

24 Q. Okay; tab 13.

25 A. Top of the last page.

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1 Q. Page 118.

2 A. I don't see a number. Page 9 of 10
3 of my document.

4 Q. Yes; your page 9 of 10 and page 118
5 for the Tribunal.

6 A. Top paragraph:

7 "Wouldn't it be very beneficial for
8 the Jewish community if you could
9 be portrayed as righteous people
10 instead of child molesters, child
11 abductors, producers of child
12 pornography, and murderers. The
13 list is very long of such
14 aberrations and heinous crimes by
15 your brethren."

16 That is a direct reference to these
17 ancient and traditional for antisemites and hate mongers,
18 blood libels of Jews being murderers of children,
19 molesters of children.

20 Q. The material also includes a WA-
21 007, at tab 7 of HR-1. There is an article posted by Dr.
22 William Pierce, entitled "There Will Be Hell to Pay".

23 MEMBER ROBERTS: Ms. MacEachern, what tab
24 are we now at?

25 MS MacEACHERN: Tab 7.

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1 Q. Are you familiar with this article?

2 A. Yes.

3 Q. Are any of these classic themes
4 found in this posting in particular?

5 A. This document actually refers to
6 the blood libel, page 7 of 18.

7 Q. And that is page 50 for the
8 Tribunal.

9 A. And that is the explanation that
10 Pierce is giving of what the blood libel is:

11 "You know the Jews have complained
12 for centuries about what they call
13 the blood libel, the blanket name
14 they have applied to all the many
15 reports which have repeatedly
16 cropped up over hundreds of years
17 in every nation of Europe ...
18 reporting of Jews kidnapping
19 Gentile children and ritually
20 murdering."

21 This was a very effective way that hate
22 mongers could rile up a population against the local
23 Jewish community, to spread these lies, and it would lead
24 to programs and so on.

25 The next page, middle paragraph:

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1 "The Jews have denied all of these
2 reports, claiming that they were
3 the work of Christian antisemites
4 who just wanted to stir up hatred
5 against them."

6 Q. At page 11 of 18 of this document,
7 page 54 for the Tribunal, at the bottom there is a
8 mention of Jewish ritual murders.

9 A. Yes. Pierce, in this, makes the
10 connection. He says: Now, I have to rethink. I used to
11 believe the Jews more than I believe the others, because
12 - as he put - what benefit do they have to murder
13 Christian children. But now, I am rethinking this. Now
14 that I see that the Jews are at the core of the whole
15 child porn, and on, and on, and on, and on.

16 This is again - he is resurrecting what
17 his another form of the Jewish blood libel, alleging that
18 child pornography is essentially a Jewish business, and
19 the news media, who should expose it, they don't, because
20 it is controlled by the Jews. So you see, there you go
21 with the conspiracy theory. Why don't we know? Why
22 doesn't the world know that the Jews control the child
23 pornography rings? Well, because the Jews control the
24 media and, therefore, they don't report it.

25 This is again this constant barrage.

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1 Q. The impact of this theme?

2 A. To expose Jews to hatred, period.

3 Q. You also mentioned the new theme,
4 which is becoming classic, of Holocaust denial.

5 Can you give examples in this material
6 of where this theme shows up?

7 A. Your tab 9, item 0-11. I think this
8 is the one where he refers to the truth- seeking Ernst
9 Zündel, "Truth and Justice Versus Lies and Hatred".

10 Q. That is the article that is posted
11 there?

12 A. Yes.

13 Q. And Ernst Zündel is referred to at
14 page 76, or page 9 of 15.

15 A. Yes.

16 And there is an article here that he
17 posts, which speaks about allegedly - I am quoting now
18 from page 7 of 15 of that document.

19 Q. Page 74, for the Tribunal.

20 A. In the beginning paragraph, there
21 is the constant repetition of claims about the Holocaust,
22 "alleged victims" of the Holocaust, "so-called murder
23 victims" on the next page.

24 Page 9 of 15, in the middle, here is
25 that section:

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1 "To date, the absolute high point
2 in the presentation of evidence to
3 refute the existence of mass murder
4 installations. It was a
5 multinational task force which the
6 truth-seeking German Canadian Ernst
7 Zündel of Toronto, Canada,
8 dispatched to Auschwitz."

9 It is another characteristic, by the
10 way, of this kind of propaganda to give references to
11 people, and cite statistics, and make it look rather
12 scientific, is what we might call pseudo scientific.

13 Q. Who is Ernst Zündel?

14 A. Ernst Zündel used to live in
15 Toronto. He is in detention right now. He was one of the
16 greatest purveyors of antisemitic hate propaganda and
17 Holocaust denial in the world. A couple of years ago, he
18 was ordered by Human Rights Tribunal to cease and desist
19 his web site, which is still being operated out of the
20 States by his wife.

21 Q. This material of Holocaust denial,
22 how does this antisemitic theme that you have described
23 used to promote antisemitism?

24 A. The notion of Holocaust denial, or
25 even Holocaust exaggeration, or what has been called by

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1 some to be historical revisionism, perpetuates this
2 notion of Jews as liars, cheaters, people who want to
3 somehow bilk the system.

4 The pain that it causes to people who
5 survived the Holocaust and lost their families and
6 everything else, not only does this material expose Jews,
7 all Jews, to hatred and contempt, but it revictimizes the
8 survivors themselves and desecrates the memories of the
9 victims.

10 Q. And how does it expose Jews to
11 hatred or contempt?

12 A. Because again, it portrays them as
13 liars, people who are trying to cheat the system, and by
14 referring to them as "alleged victims" or people who, in
15 fact, caused the war themselves, it continues to
16 perpetuate those antisemitic notions.

17 Q. At tab 11, page 91, and this is WA-
18 14, Dr. Mock, there is a posting entitled "Deaths in the
19 Concentration Camp of Dachau". Have you had an
20 opportunity to review that posting?

21 A. Yes.

22 Q. Do you find any of these classic
23 themes running through this posting and, if so, can you
24 explain how they are used?

25 A. Yes. I have actually been to Dachau

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1 several times. What he does here is, again, use probably
2 what would be specific data, but he generalizes. You
3 see, right in the first paragraph, on what I have as 2 of
4 5 in WA-14...

5 Q. Page 91.

6 A. He describes the data from - he
7 says he is going to describe the data from Dachau but
8 then he says:

9 "This tragic cycle was repeated in
10 other camps, such as Auschwitz and
11 Bergen-Belsen."

12 So you see, he is generalizing from one
13 camp, which was the first concentration camp, and
14 initially not used for gassing, with these extensive
15 crematoriums and so on, because it was right in the heart
16 of Germany and initially it was used to round up
17 political prisoners and so on. So he uses that,
18 generalizes to others that were known to be death camps.

19 His conclusion is about somebody lying
20 or twisting the truth.

21 Q. And that conclusion is on page 93?

22 A. Yes.

23 "The reason for twisting the truth
24 will be clarified as we go along,
25 and I will dig up more figures."

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1 He takes figures from a particular camp,
2 doesn't say what anyone else has said happened in Dachau,
3 and comes up with a generalization that is supposed to
4 apply to other camps, "and all of this is evidence that
5 somebody is lying about this and I am going to let you
6 know who."

7 Q. What are Auschwitz and Bergen-
8 Belsen?

9 A. Auschwitz is a very large camp.
10 There were two, actually even more than two camps at
11 Auschwitz, and a major death camp was part of it. It
12 was...

13 Q. Just to make sure we cover
14 everything, what type of camps were the?

15 A. Death camps. They are
16 euphematically called in German - rather Nazi language,
17 extermination camps. And that language is used because
18 they were referring to vermin or people that were less
19 than human.

20 Part of the camp was really nothing more
21 than a death camp. And at Bergen-Belsen, there is also
22 evidence of mass murders.

23 Q. In your opinion, what is the impact
24 of this posting that uses these numbers and then ascribes
25 them to these other camps?

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1 of the material?

2 A. Yes.

3 Q. Are there other characteristics?

4 A. Again the over-generalization to
5 all Jews, and this manipulation of the language, when he
6 says, "I am not really an antisemite, because I am only
7 talking about Ashkenazi Jews and Zionist Jews", and so
8 on, and he specifies that. But then he turns around and
9 says, "There are some good Jews, but most of them don't
10 speak out to expose the bad Jews, therefore, all Jews are
11 guilty". So it is that kind of complete generalization
12 to "all Jews" that make this characteristic as well.

13 Even if he singles out a few, it again
14 reminds me of that "some of my best friends are Jews"
15 kind of notion.

16 Q. Can you give an example in the
17 material where he does that, where he says, "if the good
18 Jews don't speak out, then they're bad too"?

19 A. I have to find it, because of this
20 change in the numbering.

21 MEMBER CHOTALIA: Can I help? It is tab
22 7, page 57.

23 THE WITNESS: Thank you.

24 MS MACEACHERN:

25 Q. Tab 7, and actually, that is WA-7

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1 for you, Dr. Mock. Tab 7 and page 57, it follows the Dr.
2 Pierce article. Page 14 of 18.

3 A. There it is:

4 "If the good Jews do not denounce
5 the bad Jews, they share the
6 guilt."

7 I think there are some other places
8 where he speaks about that too, but thank you for your
9 help.

10 MEMBER ROBERTS: It's tab 15, page 126,
11 last paragraph.

12 MS MacEACHERN:

13 Q. That is WA-27.

14 A. There is somewhere he is more
15 specific.

16 He highlights a couple of the people in
17 that one.

18 Q. Which document are you referring
19 to?

20 A. You are referring to the one...

21 Q. WA-27, at tab 15, page 126. I
22 think at the bottom of that page, in the last
23 paragraph...

24 A. Which page are you on on mine?

25 Q. I am at page 4 of 5.

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1 A. Yes.

2 Q. In the bottom paragraph.

3 A. That's right:

4 "There are decent Jews out there.
5 The majority of the Jews are
6 decent. What these Jews have to
7 understand is that they will be put
8 into the same pot with the demented
9 and twisted minds if they do not
10 help us expose ..."

11 Then he highlights a couple of people.

12 Q. Is there anything else about the
13 characteristics of how this material is presented which
14 also affects your opinion?

15 A. One of the things that is
16 characteristic of other attempts, such as the Institute
17 for Historical Review or other web sites, is the
18 appearance of legitimacy or the pseudo academic approach
19 that is used. You see how he has articles. He will
20 refer to people with accolades, "the noted historian
21 David Irving", then gives academic credentials. He
22 doesn't say that he was found to be exposed for Holocaust
23 revisionism, or he refers to William Pierce and "the
24 truth-seeking Ernst Zündel".

25 You have, for the naive reader, who may

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1 be a teenager or someone else who is bent to learn more
2 about this, or someone from a militia group, or what-
3 have-you, the kind of young people who were in Columbine
4 and influenced by this kind of material, they are drawn
5 in, and it is a deliberate attempt to make this material
6 appear credible.

7 Q. You mentioned the Institute of
8 Historical Review. That is referred to WA-045, at tab
9 24, page 194. And that is page 2 of 4, Dr. Mock.

10 The Institute for Historical Review is
11 mentioned there. Do you know anything about what the
12 Institute for Historical Review is?

13 A. Yes.

14 Q. What is it?

15 A. They are an organization that call
16 themselves historical revisionists. In some circles, that
17 is a legitimate enterprise, but the ones that are
18 involved with the Institute for Historical Review are
19 bent at Holocaust denial and primarily disproving the
20 Holocaust, or showing that it was exaggerated, and is
21 full of antisemitic diatribes.

22 Q. You also mentioned David Irving. If
23 I can refer you to WA-49, which is tab 27, page 211.

24 THE CHAIRPERSON: I am sorry, what was
25 the reference number?

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1 **MS MacEACHERN:**

2 Q. Tab 27 and it is at page 3 of 6 in
3 the second paragraph, page 211.

4 A. There is the one I was remembering.
5 He speaks about "an acclaimed British historian, author
6 of 36 books, a recognized authority on Hitler and World
7 War II. He also discovered the hoax of the Holocaust and
8 the myth of six million ..." and so on, "And the million
9 dollar reparations racket, and the eugenic conspiracy we
10 know as Zionism".

11 This is probably an example of some of
12 the most virulent terms. And it goes on later how he was
13 so excited because he put these things together, and he
14 speaks about contamination of empires.

15 Q. And where is this?

16 A. The next paragraph down.

17 Q. If we go to the first page of that,
18 this appears to be an article written by someone else,
19 posted.

20 A. Yes.

21 Q. And the reference to David Irving
22 is in that second paragraph of page 211.

23 A. Yes. Do you see what I mean about
24 posting an article, making it look like as if there are
25 credible sources that are being referred to, you get the

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1 repetition of this kind of terminology, and then his own
2 commentary afterwards, and I am now looking on page 5 of
3 6 of the same document, WA-49.

4 Q. That's page 213.

5 A. Under the asterisks, second
6 paragraph. He says:

7 "These Zionist Jews are at the very
8 root of every war and revolution.
9 The lies in the media, the
10 promotion of pornography, child
11 molesting."

12 Every evil of society he blames on the
13 Jews. So he picks up on the themes that are above, and
14 then speaks further, in the next paragraph, about frauds:

15 "They will not change."

16 Again, here is the notion of inherited
17 characteristics, almost like a racial attribution:

18 "They will not change. Will they
19 ever change their ways? I doubt
20 it, because being frauds,
21 criminals, war mongers, pedophiles,
22 anti-life and full of hate is part
23 of them."

24 You see? So he just reinforces all of
25 those horrific antisemitic diatribes.

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1 Q. Is David Irving an acclaimed
2 British historian?

3 A. At one point he was. You can't
4 take that away from him. But we can, in a way, take it
5 away from him, because his work in the last several years
6 has been primarily work of Holocaust denial and
7 antisemitism. Recently, that was upheld in a British
8 court, in the case that he had against Deborah Lipstadt,
9 for defamation for calling him a Holocaust denier and
10 antisemite. And Lipstadt won the day. She is a known and
11 very well respected historian. He was found, even in
12 England, where he lives, where the laws are different
13 from here and a little more stringent, he was found
14 guilty of Holocaust denial.

15 THE CHAIRPERSON: Ms. MacEachern, before
16 you go on, I am wondering how much longer you are likely
17 to be with Dr. Mock?

18 MS MacEACHERN: I just have a few more
19 questions, but we don't have any objection to coming back
20 after lunch and finishing up. That may be best, and I can
21 review to see if I have missed anything.

22 THE CHAIRPERSON: Why don't we do that.
23 Should we break and come back at 1:45?

24 MS MacEACHERN: Yes.

25 --- Luncheon recess at 1230

MOCK, in-chf (MacEachern)

1 --- Upon resuming at 1350

2 **THE CHAIRPERSON:** Please proceed, Ms.
3 MacEachern.

4 **MS MACEACHERN:**

5 **Q.** Dr. Mock, you spoke about other
6 characteristics of this material upon which you have
7 relied to base your opinion, and that has been the
8 academic appearance of it as well as the repetition.

9 Are there other characteristics of this
10 material which underlie your opinion that it is likely to
11 expose Jewish persons to hatred or contempt?

12 **A.** I think also some of the scare
13 tactics that are used. In addition to the
14 generalizations and the repetitions, you also get this
15 notion of "these people pose a real threat, and we better
16 act before they get you and your family" kind of thing.
17 That is not a direct quote, but that kind of scare tactic
18 that is being used.

19 As well, I think I did mention this
20 before, the role reversal that this group of people,
21 Jewish people, who are victims of discrimination and
22 antisemitism are portrayed as the perpetrators and,
23 therefore, it may be okay, especially for people who are
24 vulnerable and don't know history or are looking for
25 someone to scapegoat for their own problems, these kinds

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1 of scare tactics, and we better rise up before they get
2 us or before they destroy your family or, you know, you
3 can lose sleep now, because this is going to get worse
4 before it gets better.

5 It is characteristic of this kind of
6 material that people may then act and be incited to
7 violence based on the hatred that has been generated.

8 Q. Can you give examples of where this
9 appears in the material, these scare tactics?

10 A. I will just find the one I was
11 referring to.

12 One of the more blatant examples is
13 document no. O-47...

14 Q. This is located at tab 22?

15 A. Yes. And I am at page 5 of 6 of
16 the original document.

17 Q. That is page 187.

18 A. At the bottom of that page, where
19 he is commenting on the article, he talks about "these
20 Zionist Jews with their evil plans", and "They will be
21 hunted down again if and when a good part of the
22 population realizes what they had in mind." He uses
23 words like "penetrated our government", and goes on
24 again, first festering the hatred:

25 "They have taken control of our

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1 governments, including the courts,
2 the police, schools, universities,
3 pharmaceuticals ..."

4 The whole list is there.

5 "Countless lies being told to us.
6 Ruthless terrorists."

7 And here is the line:

8 "Unless we make efforts to stop
9 their nefarious intentions, they
10 will kill a great proportion of the
11 world population."

12 So "unless we make efforts to stop
13 them."

14 And he cautions whoever is reading this:

15 "You cannot go back to sleep very
16 soon if you want to keep yourself
17 and your family alive."

18 So literally, he is not only inciting
19 hatred, but inciting fear, and could lead to some form of
20 retaliation or pre-emptive strike of vulnerable people
21 who are drawn in to this kind of hateful ideology.

22 Q. Do you have other examples of where
23 similar, as you say, scare tactics are used in the
24 material, Dr. Mock?

25 A. In document 44, which is your tab

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1 23, and I am looking at page 3 of 4...

2 Q. So page 191.

3 A. I usually go below the asterisks,
4 because that is where he himself is summarizing or
5 commenting. So he talks about steps in the right
6 direction:

7 "The Jews will use every trick in
8 their bag."

9 And refers to them as terrorists, "to
10 get fellow terrorists and murderers off." "What goes
11 around comes around", this notion of "what goes around
12 comes around", could again lead to someone being prompted
13 to take some violent action.

14 Q. If we could turn to WA-15, which is
15 our tab 12.

16 A. I have to use my little system to
17 find my tab.

18 Q. Page 109, the last page of that
19 document.

20 A. I had that marked as well for mine.
21 Again, they are talking about Jews in
22 control of the New World Order and speaking of depraved
23 characters, depraved and twisted minds:

24 "I am not too excited to become one
25 of their victims; how about you? I

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1 hope that more of their own will
2 see the light and refuse to go
3 along with their murderous
4 campaign."

5 This challenge about "How about you?" is
6 asking the reader: Are you going to go along with this,
7 or are you going to do something about it?

8 Q. If I turn you to WA-27, which is
9 our tab 15, page 127, there is a last paragraph there.

10 A. In the last paragraph, the last
11 line, he says:

12 "If you're determined to help in
13 spreading the truth, join our
14 program."

15 He is actually inviting people to join
16 up, whether it's to send funds or join their program of
17 some sort of retaliation. This is, of course, after an
18 article that continues to speak about anti-life, of
19 vermin, scum and low lives, and so on.

20 So it's the beginning of crossing that
21 line from the hatred and contempt to really acting on it,
22 taking some action: Join our cause, join our racist
23 antisemitic ideology, and do something about it before
24 they do something to you.

25 Q. If I can refer you to one final

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1 document on this subject, at tab 17, WA-34, page 139.

2 A. It's the notion of Jewish agenda.
3 Their agenda is world domination. They will use every
4 trick in order to accomplish their goals. So he ends with
5 a warning:

6 "Be on guard, and don't let
7 yourself be fooled."

8 So he is really communicating very, very
9 directly to the people who log on to this site.

10 Q. And, in your opinion, what is the
11 impact of this type of messaging?

12 A. Well, again the impact, because of
13 the repetition and because of the diatribes that are
14 heard over and over, the stereotypes, the lies, the
15 accusations about Jews, the impact would be in the reader
16 to promote hatred, to promote contempt, both against
17 Jewish people, and with these very direct challenges,
18 "Join us", "Take action before they do something to you",
19 "Save your family", "I'm sorry, you can't sleep at
20 night", actually calling to action which, experience has
21 shown us, can be violent and even murderous.

22 Q. What experience are you referring
23 to?

24 A. The most heinous example of what
25 hate propaganda can do, particularly antisemitic

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1 propaganda, is the Holocaust.

2 Many people in pre-war Germany who were
3 not Nazis, on the basis of this repetitive hate
4 propaganda, signed up and voted for the Nazis, and
5 eventually, because of the hate propaganda, because of
6 the co-opting of the schools and the dissemination of
7 material continually to young people, this group of
8 Hitler Yungen(ph) became the SS and others who, with no
9 remorse, could kill Jews "because they were vermin, they
10 were not human"..

11 So that is the most extreme example of
12 what this kind of antisemitic hate propaganda can do.

13 There are other examples where young
14 people have been co-opted by what they have seen on the
15 Internet or by even some material in books and so on, and
16 then acted out, if they become a part of a skinhead
17 group. They may be individuals, they may not even be part
18 of an organized hate group, but they are learning from
19 the material they see, and then go out and act out their
20 violent acts.

21 **MS MacEACHERN:** Thank you, Dr. Mock.

22 Those are all of my questions for Dr.
23 Mock.

24 **THE CHAIRPERSON:** Mr. Warman, you are a
25 party here. Do you have anything to add?

1 **MR. WARMAN:** No. I think Dr. Mock's
2 testimony has been quite comprehensive.

3 **MS MaceACHERN:** Madam Chair, I
4 understand that there are two documents that I have not
5 referred to which are in the Book of Documents before
6 you.

7 One is at tab 14. That document I don't
8 intend to refer to, so I would propose that it be
9 removed.

10 The second document is at tab 32. This
11 was overlooked in error. I had thought that I had covered
12 it, but I understand that I did not, so I propose, if the
13 Tribunal permits, to recall Mr. Warman just for the
14 purpose of identifying this document for the Tribunal.

15 **RECALLED: RICHARD WARMAN**

16 **FURTHER EXAMINATION-IN-CHIEF BY MS MaceACHERN:**

17 **Q.** Mr. Warman, can you identify this
18 document located at tab 32 of HR-1?

19 **A.** Yes, I can. It is similar to the
20 other documents. This one was posted on the Yahoo groups
21 forum. Unlike most of the other e-mail postings, this
22 one was also present in the document section.

23 So Mr. Kyburz would have posted a note
24 to the Yahoo forum indicating that he had posted this
25 document into the document section, and please go and

WARMAN, further in-chf (MacEachern)

1 look at it there.

2 That's why it says "Dean Steacy" at the
3 top left corner, because Mr. Steacy, as the investigator,
4 would have gone to the web site, downloaded it. But I
5 can say from my personal knowledge that I also saw it on
6 the Yahoo forum within the document section.

7 Q. And is the document located at tab
8 32 the same as the document which you reviewed at the
9 Patriots on Guard Yahoo forum?

10 A. Yes, not the actual web site but at
11 the Yahoo forum.

12 Q. Can you identify the source of this
13 document?

14 A. Yes. Again it is fairly easy to
15 note as Mr. Kyburz's, and I say that because (a) it was
16 present on his Yahoo group forum, and (b) it contains, at
17 page 235, after the opening letter from the Commission,
18 it intersperses comments from Mr. Kyburz in response to
19 the contents of the letter, and it breaks the letter up
20 and intersperses his comments with the bold passages, and
21 the bold passages are taken from the letter on the first
22 page.

23 Q. To go back a little more slowly
24 over that.

25 So on page 235, there is text that is

WARMAN, further in-chf (MacEachern)

1 bolded. What do you identify that as being?

2 A. The text that is bolded are
3 excerpts from the letter that appears at page 234 from
4 the Commission to Mr. Kyburz.

5 Q. And what intersperses those bolded
6 sections?

7 A. He has cut-and-pasted comments from
8 the letter and then interspersed it with his own
9 comments.

10 Q. And how do you know that they are
11 Mr. Kyburz's comments?

12 A. Because he then, at the end of it,
13 goes through - posts further information, and then signs
14 it "Sincerely, Ernst Fredrick Kyburz", which I understand
15 to be his full name.

16 Q. On page 236, I see your name in
17 that text. It refers to "Mr. Richard Warman". Do you
18 understand that to be yourself?

19 A. Yes, I do.

20 Q. Could you briefly summarize the
21 text that is posted at page 236?

22 A. Yes. It claims that I have used
23 threats and coercion on others to shut down his web site,
24 states that I have misused my office for these threats
25 and coercion, and that is at the sixth paragraph down.

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1 He goes on to state that:

2 "You are not only guilty of what
3 you are accusing me of, but of
4 serious crimes."

5 At the next paragraph, he makes what
6 are, in effect, inside comments about the fact that
7 colleagues of his will be swearing out the spurious
8 criminal charges that I mentioned. He talks about the
9 flyers. He says:

10 "Mr. Warman will not be the only
11 defendant should I choose to take
12 this same approach."

13 He is talking about the criminal
14 charges.

15 He says:

16 "Every commissioner as well as you,
17 Mr. Fagen and Mr. Steacy - who are
18 Commission employees - will be
19 named in the suit. This will be
20 your last worry, though. The flyers
21 will be much worse to contend with
22 than a lawsuit. Once the flyers
23 have started, they will not stop.
24 The flyers have the capacity to
25 ruin your professional career as

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WARMAN, further in-chf (MacEachern)

1 well as your life."

2 Then he goes on to state:

3 "Careers of judges and police
4 officers have been severely
5 impeded, if not destroyed, as well
6 as their family lives."

7 Then, in the last paragraph, he goes on
8 to say:

9 "Crime does not pay, and a career
10 built on crime will have to be
11 stopped. We are living in
12 interesting times."

13 Then, after signing his name, he
14 indicates that that document was cc'd to every Member of
15 Parliament and Senator, Alberta Members of the
16 Legislative Assembly, Chief Justice John Richard of the
17 Federal Court of Canada, every commissioner of the
18 Canadian Human Rights Commission, and then many others.

19 **MS MaceACHERN:** Thank you, Mr. Warman.

20 **THE CHAIRPERSON:** Is there any other
21 evidence to enter?

22 **MS MaceACHERN:** No. That completes my
23 evidence.

24 With respect to closing submissions, I
25 would beg the Tribunal's indulgence to be able to provide

WARMAN, further in-chf (MacEachern)

1 those tomorrow morning. They would be my closing
2 submissions, and Mr. Warman has closing submissions.

3 The reason that I would request that
4 time is to be able to consolidate them and make them more
5 succinct, and present them more efficiently for the
6 Tribunal tomorrow.

7 Mr. Warman's arguments are fairly short
8 but would properly follow mine, so that he can advise if
9 he is in agreement with the Commission's position with
10 respect to the closing submissions.

11 **THE CHAIRPERSON:** Ms. MacEachern, given
12 that there hasn't really been any evidence that I don't
13 imagine you didn't anticipate, seeing there is no
14 opposite side here, I am not really sure that we need to
15 stand down until tomorrow morning for your closing
16 submissions.

17 **MS MACEACHERN:** Okay.

18 **THE CHAIRPERSON:** We will break until 3
19 o'clock, give you a chance to collect your thoughts, and
20 why don't we go ahead then.

21 **MS MACEACHERN:** Thank you.

22 --- Recess at 1410

23 --- Resumed at 1510

24 **THE CHAIRPERSON:** Please proceed, Ms.
25 MacEachern:

1 **ARGUMENT**2 **MS MaceACHERN:** Thank you.3 I have provided a Book of Authorities,
4 which I will refer to in my argument. I will let you
5 know when that is.6 There are two aspects to this complaint.
7 The first is that the Respondent violated section 13(1)
8 of the *Canadian Human Rights Act*, by communicating
9 telephonically or causing to be communicated repeatedly,
10 in whole or in part, by means of the facilities of a
11 telecommunication, material that is likely to expose a
12 person or persons to hatred or contempt by reason of the
13 fact that that person or those persons are identifiable
14 on the basis of a prohibited ground of discrimination.15 The second aspect of the complaint is
16 that the Respondent violated section 14.1, by retaliating
17 against Mr. Warman, the Complainant, because he filed the
18 complaint.19 With respect to section 13(1), the
20 components of a violation under section 13(1) are that
21 the Respondent controlled the distribution of the
22 material or caused the material to be communicated, that
23 this material was communicated telephonically, that the
24 messages were communicated repeatedly, and that this
25 material is likely to expose a person or persons to

MaceACHERN (Arg.)

1 hatred or contempt by reason of the fact that that person
2 or those persons are identifiable on the basis of a
3 prohibited ground of discrimination.

4 With respect to the first component,
5 that the Respondent controlled the communication of this
6 material or caused this material to be communicated, I
7 refer the Tribunal to the Zündel decision of the
8 Tribunal, which is located at tab 1 of the Book of
9 Authorities, specifically page 10 of that decision.

10 In this decision, the Tribunal sets out
11 what is required to be showed to satisfy this first
12 component of control, and that is at paragraphs 38 and
13 39, that what is required is proof, on a preponderance of
14 evidence, that the respondent, "acting alone or in
15 concert with others, caused the offending documents to be
16 communicated".

17 It goes on, at paragraph 41, to find
18 that this component is satisfied because of the evidence
19 in that proceeding, which showed that the Respondent
20 exercised a significant measure of control over the web
21 site. As indicia of that control, it refers to evidence
22 of the site name, the logo, the grammatical use of the
23 first person, Mr. Zündel's signature, the identification
24 of the Respondent's address in Toronto, and asking for
25 comments be directed to his e-mail address.

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1 It also points to these communications
2 being largely personal in form between Mr. Zündel and the
3 public, and that he was the author of a number of letters
4 on that web site.

5 In this complaint, the evidence is very
6 similar, that the Respondent has a significant measure of
7 control over this web site, and in fact, it is our
8 position that you can go further, that the evidence shows
9 that it is his web site and he is the person who controls
10 what is posted on that web site.

11 There is evidence of the Respondent's
12 name appearing on the home page of the web site, and
13 indicating that it is his web site, and providing his
14 address in Alberta. There is the request for donations to
15 be sent to him, followed by his name and his address
16 again in Alberta.

17 There is the repeated use of the
18 postings in the first person, particularly in the
19 introduction sections that sometimes appear in the Daily
20 Information pages, and also in his commentary which
21 follows articles that are posted.

22 There is also repeated reference by the
23 Respondent that he is the one who has posted these
24 articles that precede his commentary. For example, in
25 his commentary he will say, "I posted this for education

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1 purposes", or "I have copied the following excerpts."

2 All of those are indicia that he has
3 caused the material on the web site patriotsonguard.org
4 to be communicated.

5 He goes further than that in this
6 situation because we are not only dealing with material
7 on his web site, patriotsonguard.org, but also material
8 which he has posted in the Yahoo e-mail forum. The
9 evidence with respect to these postings by Mr. Warman
10 provide, on a preponderance of evidence, I submit, that
11 the source of this material in these postings was the
12 Respondent.

13 The "From" line on these e-mails,
14 references an e-mail used by him, many of the postings
15 are followed by the name Fred Kyburz and his address. He
16 uses the first person in these postings, and the content
17 of these postings indicate that Mr. Kyburz, the
18 Respondent, is the person who is making the posting, and
19 often refer to information which would only be available
20 to him. For example, the posting of Mr. Warman's letter
21 to the Commission with respect to the investigation of
22 his complaint and the posting of Mr. Fagen's letter to
23 Mr. Kyburz, to advise him of the investigation of the
24 complaint.

25 The second component of a violation

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1 under section 13(1) is that this material be communicated
2 telephonically.

3 The evidence provided by Mr. Warman was
4 that this material was accessed by logging on to the
5 Internet and the World Wide Web, and then entering the
6 patriotsonguard.org web site. He also gave evidence that
7 the Yahoo e-mail forums were also accessed by him over
8 the Internet. Some were communicated to him by e-mail
9 when he subscribed to this e-mail forum and requested
10 that the e-mails be forwarded to him.

11 He also gave evidence that these
12 messages were posted on the Internet and would be
13 accessible by any member of the Yahoo e-mail forum
14 Patriots on Guard, and that there was no criteria for
15 anyone to be a member, they could sign up and have access
16 to this material on the Internet.

17 The question is whether communicating by
18 use of the Internet qualifies as communicating
19 telephonically under section 13(1).

20 **THE CHAIRPERSON:** Can I just stop you
21 there because I wondered at this point, is that still a
22 question? We get into a timing issue as well, but as you
23 are no doubt aware, there were amendments to the Act.

24 **MS MacEACHERN:** Yes, and I am just going
25 to address that. You are ahead of me, Madam Chair.

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1 Section 13(2) of the Act specifically
2 clarifies that this includes communications over the
3 Internet. I note that that section came into force on
4 December 24, 2001, which is before the complaint was
5 filed.

6 **THE CHAIRPERSON:** But after some of the
7 stuff was posted.

8 **MS MaceACHERN:** After some of this
9 material on the web site. Primarily, we are dealing with
10 the material on the web site. All of the material in the
11 Yahoo e-mail forum was posted after that date.

12 There is material that has been
13 introduced from the web site which would have been posted
14 and appears to be dated prior to when this section came
15 into force. In addition, the evidence is that that web
16 site was shut down around the end of December 2001 or
17 early January 2002.

18 My position is that section 13(2) should
19 govern, but in the event that there is any question about
20 that, I would direct the Tribunal to again the Zündel
21 decision, which heard extensive evidence on the argument
22 about whether communicating through the Internet
23 qualified as communicating telephonically and the
24 Tribunal's conclusion was that it did.

25 In addition, the *Schnell v. Machiavelli*

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1 *and Associates Emprize Inc.* decision is also attached in
2 the Book of Authorities, at tab 2. In that decision, the
3 Tribunal came to the same conclusion as in *Zündel*, that
4 it did qualify as being communicated telephonically. That
5 aspect of the decision is located at page 17 to 20. I
6 apologize that I have not highlighted that material.

7 There is, in my submission, no argument
8 with respect to material which was created after section
9 13(2) came into force. I also note that there was
10 evidence before you that the Respondent's web site
11 material and, in fact, the Respondent, in the material
12 put forward, invites the reader to go to this web site
13 source, but that the web site material is still available
14 under the archive.org web site, which is run by the
15 university. So the material is still on the web site.

16 The Respondent is not the host of that
17 material, but I do point out that he does refer the
18 reader and invite the reader, in a number of his
19 postings, to access his material through that site.

20 **THE CHAIRPERSON:** Given that he is not
21 the host of the material, maybe we are jumping ahead
22 here. When you get to the issue of remedy, if we were
23 disposed to uphold the complaint, I assume we cannot
24 order a third party, who is not a party to this case, we
25 can't order archive.org to delete the information, I

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1 don't think, unless you can convince me otherwise.

2 **MS MaceEACHERN:** Right.

3 **THE CHAIRPERSON:** So what do we do?

4 **MS MaceEACHERN:** With respect to remedy,
5 what I would ask this Tribunal, this Tribunal would have
6 jurisdiction to order the Respondent, to the extent that
7 he has any control over that material, to cease and
8 desist that material from being available on that
9 organization.

10 If it is within the Respondent's control
11 to request that the archive.org remove his material, he
12 should be required to do so.

13 **MEMBER ROBERTS:** And presumably he could
14 desist from referring people to that archive material.

15 **MS MaceEACHERN:** Yes. Thank you.

16 The third component is the requirement
17 that these messages be communicated repeatedly. Mr.
18 Warman provided evidence that he accessed the
19 Respondent's web site, patriotsonguard.org, on a number
20 of occasions. His evidence was that he accessed it if
21 not daily, almost every day, so the material was
22 available to him on a repeated basis.

23 The postings to Yahoo.com, Mr. Warman
24 also gave evidence that those continued to be available
25 to people accessing that forum.

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1 I also refer the Tribunal to the Zündel
2 decision, at page 21, paragraph 112 and 113, where it
3 addresses this issue in the context of that complaint.
4 At paragraph 112, they refer to evidence that was
5 provided that individuals accessed the material on the
6 Zündel site on a number of separate occasions, but in
7 paragraph 113, they also go on to observe that the very
8 nature of the Internet makes repeated communication
9 inevitable and deliberate:

10 "The evidence regarding the World
11 Wide Web establishes that it is a
12 specific application designed to
13 enable the transmission and display
14 of text, graphics, audio or video
15 files over the Internet. This
16 technology was calculated to
17 facilitate browsing and the
18 repeated transmission of material
19 posted on a chosen site. A key
20 advantage of the Internet is that
21 it provides an inexpensive means of
22 mass distribution. We are thus
23 satisfied that there was repeated
24 communication..."

25 It is our submission that this Tribunal

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1 can come to the same finding, that repeated communication
2 was made, based on the evidence of Mr. Warman accessing
3 the site and the postings on a number of occasions, and
4 given the nature of the Internet.

5 There is further evidence before you,
6 and that is provided by the Respondent in a number of his
7 postings, which refer back to his previous web site
8 postings. He, himself, is inviting repeated
9 communication and readership of these postings.

10 The fourth component is that this
11 material is likely to expose a person or persons to
12 hatred or contempt. The Tribunal has heard the evidence
13 of Dr. Mock. She reviewed the material posted on the
14 patriotsonguard.org web site, and her opinion was that
15 this material was likely to expose Jewish persons to
16 hatred or contempt. The basis for her opinion was the
17 use of these classic antisemitic themes, the repetition
18 of the material, the academic appearance of the material
19 which attempted to gain credibility to the reader, as
20 well as how she phrased the scare tactics, the call to
21 action, wording and language and messaging of this
22 material. All of these components were likely to expose
23 Jewish persons to hatred or contempt.

24 With respect to the test that the
25 Tribunal should follow under this aspect of section

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1 13(1), I have included in the Book of Authorities the
2 Supreme Court of Canada decision in *Taylor*, and this is
3 located at tab 3. In this decision, the court reviews
4 what is meant by the term "hatred" and "contempt", at
5 page 19 and 20 of the decision, specifically paragraph 60
6 through to 61.

7 In this part of the decision, the
8 majority of the Supreme Court of Canada refers to the
9 decision in the *Nealy v. Johnston* matter, which is
10 attached at tab 4, and approves its definition of
11 "hatred" and "contempt".

12 In *Nealy*, the Tribunal referred to the
13 Oxford English Dictionary, which defined "hatred" as
14 "active dislike, detestation, enmity, ill-will,
15 malevolence". The same source provided a definition of
16 "contempt" as "the condition of being condemned or
17 despised; dishonour or disgrace". The Tribunal went on:

18 "As there is no definition of
19 "hatred" or "contempt" within the
20 [Canadian Human Rights Act], it is
21 necessary to rely on what might be
22 described as common understandings
23 of the meaning of these terms.
24 Clearly these are terms which have
25 a potentially emotive content and

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1 how they are related to particular
2 factual contexts by different
3 individuals will vary. There is
4 nevertheless an important core of
5 meaning in both, which the
6 dictionary definitions capture.
7 With "hatred", the focus is a set
8 of emotions and feelings which
9 involve extreme ill will towards
10 another person or group of persons.
11 To say that one "hates" another
12 means, in effect, that one finds no
13 redeeming qualities in the latter.
14 It is a term, however, which does
15 not necessarily involve the mental
16 process of "looking down" on
17 another or others. It is quite
18 possible to "hate" someone who one
19 feels is superior to one in
20 intelligence, wealth or power.
21 None of the synonyms used in the
22 dictionary definition for "hatred"
23 give any clues to the motivation
24 for the ill will. "Contempt" is by
25 contrast a term which suggests a

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1 mental process of "looking down"
2 upon or treating as inferior the
3 object of one's feelings. This is
4 captured by the dictionary
5 definition relied on in *Taylor* ...
6 in the use of the terms "despised",
7 "dishonour" or "disgrace".
8 Although the person can be "hated"
9 (i.e. actively disliked) and
10 treated with "contempt" (i.e.
11 looked down upon), the terms are
12 not fully coextensive, because
13 "hatred" is, in some instances, the
14 product of envy of superior
15 qualities, which "contempt" by
16 definition cannot be."

17 In paragraph 61, the Supreme Court of
18 Canada comments on that definition and states:

19 "The reference to "hatred" in the
20 above quotation speaks of "extreme"
21 ill-will and an emotion which
22 allows for "no redeeming qualities"
23 in the person at whom it is
24 directed. "Contempt" appears to be
25 viewed as similarly extreme, though

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1 it is felt by the Tribunal to
2 describe more appropriately
3 circumstances where the object of
4 one's feelings is looked down
5 upon."

6 In Nealy, which is attached at tab 4,
7 specifically page 15 of that decision, the Tribunal also
8 discusses the use of the word "expose" in section 13(1),
9 and provides that:

10 "... it is not necessary that
11 evidence be adduced that any
12 particular individual or group took
13 the messages seriously and, in
14 fact, directed hatred or contempt
15 against another or others, still
16 less that anyone has, in fact, been
17 victimized in this way. It is
18 enough to prove that the matter in
19 the messages is more likely than
20 not to spark a positive reaction
21 amongst some of the listeners to it
22 which will likely in turn manifest
23 itself in "hatred" or "contempt"
24 towards the targets of the
25 messages. Furthermore, in making

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1 the case on the potential impact of
2 the matter on recipients of it, the
3 test is not "the reasonable
4 listener" but whether there is
5 anybody, even the most malevolent
6 or unthinking person, who might be
7 inspired to treat the targets with
8 hatred or contempt."

9 When we go back to Dr. Mock's evidence
10 on this matter, she repeatedly spoke about the impact of
11 the messaging in this material, and that it would likely
12 expose Jewish persons to hatred or contempt. She gave
13 examples of how that could play out, for example,
14 suggesting that all Jewish persons are lying, deceitful,
15 child pornographers, ritual murderers. The examples are
16 endless in the material.

17 The last component is that the
18 discrimination be on a prohibited ground of
19 discrimination, that the persons likely exposed to hatred
20 or contempt are exposed in this way because they are
21 identifiable on a basis of the prohibited ground of
22 discrimination. Dr. Mock's evidence was that this
23 material was likely to expose Jewish persons to hatred or
24 contempt, and that this involved three prohibited grounds
25 of discrimination: (1) religion, (2) race, (3) ethnic and

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1 national origin.

2 This material specifically involves all
3 three grounds of discrimination, in our submission, and
4 it is quite explicit in doing so. For example, Ashkenazi
5 are identified as not only 90 percent of the Jews in the
6 world, but also individuals that chose the Jewish
7 religion, and they are specifically targeted in this
8 material because they chose the Jewish religion, and the
9 Respondent repeatedly refers to them as not real Jews,
10 but fake Jews.

11 In addition, the Respondent repeatedly
12 uses - in many of his postings he is not so careful to
13 limit his target to just certain types of Jews, but does
14 uses the wording "Jews", and "Jews", as Dr. Mock advised,
15 are people who follow the religion of Judaism.

16 Another specific example of the
17 Respondent's messaging is the messaging that says, "If
18 good Jews don't denounce the bad Jews, they're evil too."
19 Dr. Mock gave evidence about what the impact of that is
20 in terms of creating an exposure of hatred and contempt
21 against all Jews, because they are covering up for the
22 bad Jews. Again, that specifically goes to religion.

23 With respect to the racial element,
24 again Dr. Mock referred to a number of instances in the
25 material where the Respondent makes statements like,

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1 "your ilk", "in your nature", "you can't help it",
2 "you've been this way for hundreds of years", and that
3 that implies a blood connection, a racial connection, and
4 that Ashkenazi are also defined by the Respondent in a
5 racial way.

6 With respect to ethnic or national
7 origin, again the example of the specific target against
8 the Ashkenazis, the label "Ashkenazis" identifies a group
9 of Jewish persons who are Eastern European, and that goes
10 to their ethnic or national origin.

11 **MEMBER CHOTALIA:** I just have a question
12 for you, counsellor, on the issue of race.

13 Is there evidence before the Tribunal
14 that the Jewish people constitute a race, or is it a
15 perceived ground by the Respondent?

16 **MS MaceEACHERN:** We have not introduced
17 evidence that Jewish people constitute a race, but rather
18 that it is a perceived ground by the Respondent.
19 Evidence of the perceived ground, in my submission, comes
20 from his references to "you and your people", "blood
21 Jews", "you and your ilk", "in your nature", et cetera.

22 Whereas religion is something that can
23 be changed by an individual, race is not. The
24 Respondent's comments are targeted in a way that "these
25 people can't help it, because they just are that way".

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1 In my submission, those are racially targeted comments
2 and hate messages.

3 With respect to the retaliation aspect
4 of the complaint, this is under section 14.1, which
5 provides that it is a discriminatory practice for a
6 person against whom a complaint has been filed under part
7 3, or any person acting on their behalf, to retaliate or
8 threaten retaliation against the individual who filed the
9 complaint or the alleged victim.

10 Mr. Warman filed a complaint and, in our
11 submission, as a result of filing that complaint, became
12 the target of a number of communications by the
13 Respondent, which were introduced through Mr. Warman's
14 evidence. On this matter, there are postings on the web
15 site, on the patriotsonguard.org web site, by the
16 Respondent which pre-date the filing of the complaint.

17 The complaint was filed in February
18 2002, and we saw from the Daily Information pages that
19 Mr. Richard Warman's name appears on the web site prior
20 to that date. The evidence was that this appears to be a
21 result of Mr. Warman making a complaint to the
22 Respondent's web hoster and having the web site shut
23 down, albeit briefly.

24 The argument could be made that the
25 attention directed at Mr. Warman was because he was

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1 shutting down the web site rather than making the
2 complaint to the Canadian Human Rights Commission, but in
3 our submission, the evidence simply does not bear that
4 out.

5 After the complaint was filed in
6 February 2002, we saw an increase in the intensity of the
7 material being posted by the Respondent, an intensity of
8 the references to Mr. Warman, particularly the postings
9 in July and August 2002, which were being done by the
10 Respondent on an almost daily basis, and were all
11 targeted directly at Mr. Warman. Almost all of these
12 postings referred to the Canadian Human Rights Commission
13 investigation process and the complaint process.

14 We have even seen, in the material that
15 was produced in the last few days by the Respondent, that
16 again this targeting is being revved up and is
17 specifically about the complaint under the *Canadian Human*
18 *Rights Act* and this hearing today.

19 In my position, I don't think you can
20 conclude that the retaliation experienced by Mr. Warman
21 is not motivated by him filing a complaint, although
22 certainly, he received attention from the Respondent
23 prior to filing the complaint. The intensity of this
24 attention and the types of comments and the threatening
25 nature of this material, and the connection to the

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1 complaint process shows that that was the prime motivator
2 for it.

3 Mr. Warman has provided evidence of the
4 material which he received and which was posted about
5 him. Again, he only received it because he was under a
6 pseudonym arrear of the Respondent's e-mail forum,
7 although I also point out that there are postings by the
8 Respondent that indicate he has knowledge that the
9 Complainant, Mr. Warman, is reading those postings, and
10 he writes in such a way as it is quite clearly intended
11 that Mr. Warman be the recipient of these communications,
12 as well as for these communications to be communicated to
13 a wider community.

14 That is evidenced by the fact that they
15 are posted in this forum that can be accessed by anyone
16 who gets on to the Internet, as well as the cc's at the
17 bottom of some of his correspondence, to every senator,
18 to every MP, to everyone at the Commission, et cetera.

19 **MEMBER ROBERTS:** Excuse me, Ms.
20 MacEachern. There wasn't any evidence that these letters
21 were actually sent to any of these people, was there?

22 **MS MacEACHERN:** Yes, you are right. The
23 evidence that they were distributed widely is made up of
24 the fact that they were posted in this forum, that the
25 Respondent indicated an intention to distribute them

MacEACHERN (Arg.)

1 widely.

2 Mr. Warman, with respect to one of these
3 recent e-mails, did receive communications that it was
4 distributed to at least two people, who contacted him to
5 advise him that they had received it. So that is the
6 evidence before you.

7 My position is that the preponderance of
8 the evidence suggests that it was distributed widely. I
9 don't think there is any reason to suggest that the
10 Respondent has not followed through with what he
11 indicated he would do, even given that he had
12 communicated, for example, with the Chief Justice of the
13 Federal Court of Canada.

14 In any event, I don't think that is
15 crucial to the finding of retaliation. It may be
16 important to remedy and the impact on Mr. Warman, but
17 even if it was not sent out to every senator and MP, et
18 cetera, there certainly was a threat that it would be,
19 because the correspondence and the communications
20 indicated quite clearly that it would be. And there was
21 some evidence that he, in fact, followed through on
22 those.

23 With respect to remedy...

24 **THE CHAIRPERSON:** Before we leave the
25 liability issues, Ms. MacEachern, we did receive the one

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1 communication directed to the Tribunal from Mr. Kyburz,
2 which included the copyright notice. I am wondering if
3 you have any submissions to make with respect to that.

4 **MS MaceACHERN:** The copyright notice?

5 **THE CHAIRPERSON:** There appears to be,
6 from the materials returned to the Tribunal, an objection
7 to the Tribunal's jurisdiction, and attached to the
8 notice which, as I recall, said "Refused for fraud and
9 lack of jurisdiction", and attached to that was what
10 appears to be a copyright notice. Do you have any
11 submissions to make with respect to that?

12 **MS MaceACHERN:** With respect to this
13 material, in my submission, it is not relevant to the
14 issues that need to be determined by this tribunal. The
15 copyright notice is a notice sent out by the Respondent
16 that indicates that his name is copyrighted. He purports
17 to be copyrighting his name. Then he purports to provide
18 that no one can use his name without being subject to
19 damages.

20 To understand this copyright notice, the
21 Tribunal needs to give consideration to some of the
22 evidence we have heard on the Posse Comitatus and the
23 detax movement, where the theory by these individuals is
24 that they can contract out of the government and proclaim
25 themselves to be self-governing individuals and,

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1 therefore, the government has no jurisdiction over them.

2 **MEMBER ROBERTS:** Ms. MacEachern, I think
3 you are getting into the realm of giving us evidence
4 here. I think you took out the tab that dealt with that.

5 **MS MaceACHERN:** I did take out that tab.
6 Dr. Mock did refer to Posse Comitatus and Mr. Warman did
7 refer to the detax movement. The material that you have
8 in the material on the web site does talk about it.

9 This copyright notice is part of that. I
10 think in the postings, particularly the postings by the
11 Respondent that talk about how he is going to respond to
12 the complaint, explain where he is coming from.
13 Basically, as I understand where he is coming from, he
14 says the Tribunal does not have any jurisdiction over him
15 because the government does not have jurisdiction over
16 him. He has gone so far as to become self-governing and
17 copyright his own name, so we are not allowed to use his
18 name without being subject to damages.

19 That is the relevance of this notice. I
20 do not think it is relevant to any of the complaints
21 before you. It is not a valid argument, in my
22 submission. The government of Canada does not recognize
23 this type of conduct, and the Tribunal has jurisdiction
24 over individuals in Canada under the *Canadian Human*
25 *Rights Act*, and is not subject to purported actions by

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1 individuals like this that indicate the Tribunal does not
2 have that jurisdiction.

3 I think the material that the Respondent
4 has sent back to the Tribunal, with his handwritten "Void
5 for fraud and lack of jurisdiction", is only relevant
6 insofar as that it indicates that he received notice of
7 these proceedings, and was given an opportunity to
8 attend, and is aware that these proceedings are going on.

9 This is consistent with the other
10 material that is provided, of all the Respondent's e-mail
11 postings, which provide copies of the complaint, copies
12 of Mr. Warman's response to the Commission, make demands
13 of the Commission to cease the investigation, make
14 demands of the Tribunal, et cetera. So he is quite aware
15 of these proceedings, and I think it is only relevant
16 with respect to that.

17 **MEMBER CHOTALIA:** Just to follow up on
18 that. Do the copyright notices appear on some of the
19 materials in the postings?

20 **MS MaceACHERN:** No. None of the material
21 in the postings contain a copyright notice. I don't
22 think he is suggesting that his material is copyrighted.
23 If you read the copyright notice, it is just his name.

24 With respect to remedy, we are under
25 section 53(1) and 54(1) of the Act. A violation of

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1 section 13 is subject to the remedies under section
2 54(1), which allows the Tribunal to make an order under
3 section 53(a) to cease the discriminatory practice. The
4 Commission is seeking that the Tribunal make this order.

5 **THE CHAIRPERSON:** Do you have specific
6 wording that you are looking for?

7 **MS MaceACHERN:** Yes, I do.

8 The wording that the Commission is
9 seeking is an order that the Respondent, and any other
10 individuals who act in the name of or in concert with the
11 Respondent...

12 **THE CHAIRPERSON:** Are you taking this
13 out of *Zündel*?

14 **MS MaceACHERN:** Yes, I am. I am taking
15 this out of *Zündel*, and a similar order was made in
16 *Schnell*. Actually, it may be simpler for me to refer
17 you. *Zündel* is at page 49, and in *Schnell*, the remedy is
18 at section 24, although the cease and desist order is not
19 very extensive.

20 It would be seeking a similar order as
21 in *Zündel*, that the Respondent cease the discriminatory
22 practice of communicating telephonically or causing to be
23 communicating telephonically by means of the facilities
24 of telecommunication, undertaking within the legislative
25 authority of Parliament, and specifying matters of the

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1 type contained in Exhibit HR-1 and Exhibit HR-2.

2 I would specify the tabs, so excluding
3 tabs 59 and 60, which are Dr. Mock's material, and which
4 were found on the patriotsonguard.org site, and found on
5 the Yahoo e-mail forum Patriots on Guard, or any other
6 messages of a substantially similar form or content that
7 are likely to expose a person or persons to hatred or
8 contempt by reason of the fact that person or persons are
9 identifiable on the basis of a prohibited ground of
10 discrimination.

11 I would go further, to ask that the
12 Tribunal order that the Respondent cease the
13 discriminatory practice within a specified time period of
14 him receiving notice of the Tribunal's order. And I would
15 submit that a period of seven days is reasonable.

16 I would also request that the Tribunal
17 specify that notice of the order be by priority courier
18 and e-mail to the two known e-mail addresses we have for
19 the Respondent, which are freburz@yahoo.ca and
20 kyburz@telusplanet.net.

21 I would also ask that the Tribunal, in
22 addition, specify the Respondent's material located at
23 the archive.org web site, and that the Respondent be
24 directed to cease referring persons to that web site, as
25 well as that he be required to direct the organization

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1 running that web site to remove his material.

2 **THE CHAIRPERSON:** Where do we get the
3 jurisdiction, Ms. MacEachern, to do that last step?

4 **MS MacEACHERN:** Under 53(a), the
5 Tribunal has jurisdiction to order that a person cease a
6 discriminatory practice and also take measures, in
7 consultation with the Commission, for the general purpose
8 of redressing the practice or to prevent a similar
9 practice.

10 I think the jurisdiction would fall
11 under the jurisdiction of the Tribunal to order him to
12 take measures, and the Tribunal can simply direct that
13 that measure be by requesting that the archive.org web
14 site remove his material. If you are not comfortable
15 doing that, then certainly I think that the Tribunal can
16 order him to take measures, in consultation with the
17 Commission, for the general purpose of removing the
18 material that was originally found on patriotsonguard.org
19 and his Yahoo forum from the Internet.

20 **MEMBER ROBERTS:** Ms. MacEachern, you
21 asked us, if I wrote this down correctly, to make an
22 order ordering him to cease referring persons to the
23 archival web site. I am wondering, if we find for the
24 Complainant, if that is sufficient. Maybe we should
25 order him to stop referring to that archival web site,

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MACEACHERN (Arg.)

1 and he might refer to the web site without referring
2 persons to it.

3 **MS MaceACHERN:** That is a good point.
4 Thank you, Member Roberts.

5 Going back to section 54(1) and the
6 remedy section, provision (b) also provides the Tribunal
7 with jurisdiction to make an order under section 53(3) to
8 compensate a victim specifically identified in the
9 communication that constituted the discriminatory
10 practice. And section 53(3) allows the Tribunal to order
11 compensation not exceeding \$20,000 to the victim, if the
12 Tribunal finds that the person is engaging or has engaged
13 in the discriminatory practice willfully or recklessly.

14 Mr. Warman is a person who is
15 specifically identified in the hate message
16 communications. What I am specifically referring to is
17 the postings which ascribe to Mr. Warman many of the
18 negative characteristics which the Respondent has
19 ascribed to Jewish persons, such as "murderer",
20 "terrorist", "pedophile", "child pornographer", et
21 cetera.

22 Mr. Warman also appeared in this
23 material as part of the retaliation complaint, and there
24 is a remedy that we will be seeking for that, but he
25 also, I would point out, appeared in the material prior

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MaceACHERN (Arg.)

1 to the complaint being filed, again being ascribed these
2 negative characteristics, and identifying and making Mr.
3 Warman synonymous with the same group that the Respondent
4 was targeting and exposing to hatred, being Jewish
5 persons.

6 Mr. Warman is not Jewish, but our
7 position is that he is still a victim of the hate
8 messages, and he has given evidence as to why he
9 considers himself harmed by these messages, and that is
10 threefold: (1) as a member of the community, because
11 these types of messages breed intolerance into the
12 community; (2) as someone who is specifically identified
13 in the material and ascribed all of these
14 characteristics; and (3) because the Respondent perceives
15 Mr. Warman to be Jewish. He states "Mr. Warman, a Jew"
16 on a number of his postings.

17 It is certainly clear, in our
18 submission, that the Respondent intended to identify the
19 Complainant, Mr. Warman, in his postings as a Jewish
20 person and to be a target of these hate messages.

21 On that basis, our submission is that
22 Mr. Warman does qualify as a victim of these hate
23 messages - the intent is to discriminate against him
24 because of the perception that he is Jewish - and,
25 therefore claims a remedy under section 54(1)(b), and we

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MacEACHERN (Arg.)

1 are asking that the full amount of compensation which can
2 be awarded, being the sum of \$20,000, be awarded to him.

3 Lastly, under section 54(1) with respect
4 to the hate messages, the Tribunal has the jurisdiction
5 to order the Respondent to pay a penalty of not more than
6 \$10,000. The Tribunal is directed to consider the factors
7 set out at section 54(1.1) when determining whether to
8 order the Respondent to pay such a penalty.

9 The factors that the Tribunal must
10 consider are the nature, circumstances, extent and
11 gravity of the discriminatory practice, and the
12 willfulness or intent of the person who engaged in the
13 discriminatory practice, any prior discriminatory
14 practices that the person has engaged in, and the
15 person's ability to pay the penalty.

16 The decision in *Schnell* does consider
17 whether a penalty should be awarded in that case, and
18 again, I refer the Tribunal to tab 2 of the Book of
19 Authorities, page 24.

20 When we look at paragraph 162, you will
21 see that in that case, the Complainant was requesting
22 special compensation, which we have also requested
23 because Mr. Warman is a person identified. In that case,
24 the Tribunal did not award it, because they did not
25 consider that the Complainant had been specifically

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MacEACHERN (Arg.)

1 identified in the communications that constituted the
2 discriminatory practice.

3 In this matter, we have a very different
4 situation before the Tribunal. Mr. Warman is
5 specifically identified repeatedly in communications
6 which do constitute a discriminatory practice, which are
7 hateful, which do expose or are likely to expose Jews to
8 hatred or contempt.

9 With respect to the penalty, the
10 Tribunal addresses this at paragraph 163. At the last
11 sentence, you will see that the Tribunal in that case is
12 reluctant to impose a penalty where there is little or no
13 evidence relating to the factors that the Tribunal is
14 requested to take into account under section 54(1.1).

15 In this case, we do have evidence of the
16 nature, circumstances, extent and gravity of the
17 discriminatory practice. I think there is ample evidence
18 of that in the material before you.

19 We also have evidence of the willfulness
20 or intent of the Respondent to engage in this
21 discriminatory practice. Again, there is ample evidence
22 before you. I would specifically draw your attention to
23 the material by the Respondent where he indicates he has
24 knowledge of the complaint and the Commission but
25 continues, in his response to the investigation process,

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MacEACHERN (Arg.)

1 to repeat many of the hate messages that he has
2 previously communicated.

3 Again, most recently, we see these very
4 lengthy e-mails from Mr. Kyburz sent over the last couple
5 of days which just simply go back and repeat the
6 information and points raised in the Daily Information
7 pages from his web site. So there certainly is a
8 commitment on his part to continue to communicate these
9 hate messages, even in the face of knowing that they are
10 being considered objectionable, and his response to them
11 is to propagate more hate messages.

12 We do not have evidence of the
13 Respondent's ability to pay the penalty. That is because
14 the Respondent has not participated in these proceedings.

15 **THE CHAIRPERSON:** Where does the burden
16 lie on that issue?

17 **MS MacEACHERN:** In my position, the
18 burden to prove that the Respondent does not have the
19 ability to pay a penalty should lie with the Respondent.

20 In *Schnell*, I recognize that *Schnell*
21 could be interpreted as a tribunal finding that that
22 burden rested with the Commission. *Schnell* indicates that
23 they are not comfortable making a penalty when there is
24 little or no evidence relating to those factors. It does
25 not specifically identify which factors it is concerned,

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MacEACHERN (Arg.)

1 there is not evidence of.

2 In my position, if *Schnell* is construed
3 that way, I don't think that this a decision or a
4 reasoning that this tribunal should follow. My reasoning
5 is this:

6 The Respondent is a person who is in
7 control of that information, and he is the one who can
8 bring that information to the Tribunal. The Commission
9 does not have that information available to us, and I
10 don't think that the Act can be construed as suggesting
11 that the Commission has an obligation to conduct an
12 investigation process of the Respondent's financial means
13 as part of the complaint process.

14 **THE CHAIRPERSON:** Just on that point
15 before you leave it, Ms. MacEachern, you indicated there
16 is no evidence with respect to Mr. Kyburz's ability to
17 pay. There is a reference in one of the e-mails to his
18 impecuniosity.

19 **MS MacEACHERN:** Yes, there is, and thank
20 you, Madam Chairperson, for raising that.

21 He does state that he is impecunious and
22 that this will only increase his commitment to take issue
23 in this process, so that evidence is there.

24 I don't think that is sufficient
25 evidence to satisfy the Tribunal that he does not have an

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MACEACHERN (Arg.)

1 ability to pay. On the contrary. There is also evidence
2 that - I think it would be fair to assume, from the
3 material, there is evidence that he has access to a
4 computer, that he has many skills with the computer, and
5 that he has a lot of time to create postings. That is
6 evidence that is of similar strength to his statement
7 that he is impecunious, with no back-up.

8 If the Tribunal will consider a
9 statement where he says he is impecunious as being
10 sufficient to show he does not an ability to pay, I would
11 say that it should be similarly sufficient for us to show
12 that he is able to spend obviously countless hours
13 producing material, and has access to a computer, so he
14 must have some means available to him.

15 None of that evidence is very strong,
16 and I am not suggesting that it is being relied on by the
17 Tribunal. My position is that I agree that there is no
18 credible evidence about his ability to pay, but my
19 submission is that it is for the Respondent to satisfy
20 the burden that his ability to pay should be a factor in
21 the Tribunal not awarding a penalty against him,
22 especially - and I point out that when we are looking at
23 54(1.1), there is a number of factors for the Tribunal to
24 consider; only one of them is the person's ability to
25 pay. There are other factors: the willfulness, the

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MacEACHERN (Arg.)

1 intent of the person, the nature, circumstances, extent
2 and gravity of the discriminatory practice.

3 The Act requires the Tribunal to take
4 these into these into consideration, but also to take all
5 of these factors into consideration, and not just one
6 factor alone. The Act also does not say that one factor
7 alone trumps the other.

8 In the face of no evidence about ability
9 to pay, in the face of extensive evidence about the
10 nature and circumstances, extent and gravity of the
11 discriminatory practice, extensive evidence about his
12 willfulness and intent of these practices, I think that
13 it certainly would be proper for the Tribunal to order
14 the penalty.

15 **MEMBER ROBERTS:** Excuse me, Ms.
16 MacEachern. I do apologize. I was reading on a previous
17 point you made.

18 What did you say about any prior
19 discriminatory practices that the person has engaged in?
20 Or did you say anything, and perhaps that's why I missed
21 it?

22 **MS MacEACHERN:** No, I did not. In
23 retrospect to 1.1(b), my submission is that the
24 willfulness and intent of the Respondent engaging in this
25 discriminatory practice is quite relevant. I do not have

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MaceACHERN (Arg.)

1 any information of prior discriminatory practices, or no
2 information is before you.

3 **THE CHAIRPERSON:** Before we leave this
4 issue of the penalty, my sense is that you are winding up
5 on the penalty issue, is there a specific amount you are
6 asking for?

7 **MS MaceACHERN:** I am requesting that the
8 Tribunal order the maximum penalty of \$10,000.

9 With respect to the retaliation
10 complaint and the violation of section 14.1, the remedy
11 section that governs the violation of that complaint is
12 53(1). We are not limited, as a remedy to the
13 retaliation, by the same types of limitations which apply
14 to the hate messages remedy. Specifically, the Tribunal
15 is not limited in its order to compensate the victim by
16 the qualifications that are required to be shown under
17 54(1).

18 Under 53(1), with respect to a remedy
19 for the retaliation complaint, we are again requesting an
20 order that the Respondent cease the discriminatory
21 practice of retaliating against Mr. Warman because he has
22 filed a complaint with the Canadian Human Rights
23 Commission.

24 What I would ask the Tribunal to specify
25 is that the Respondent cease the discriminatory practice

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MacEACHERN (Arg.)

1 of communicating to the Yahoo group e-mail forum
2 patriotsonguard.org, as well as communicating
3 telephonically by other means any messages that are
4 substantially similar to the material set out again in
5 HR-1 and HR-2 that is targeted at Mr. Warman, and that he
6 be required to cease that retaliation within seven days
7 of notice of the order, and again, the same
8 specifications for service of that order.

9 In addition, under the retaliation
10 complaint, the Commission is also seeking an order that
11 the Respondent be required to compensate Mr. Warman under
12 section 53(2)(e) by being required to pay the amount of
13 \$20,000 for pain and suffering that Mr. Warman has
14 experienced as a result of the discriminatory practice of
15 the retaliation.

16 Finally, we would ask that the Tribunal
17 just provide that interest would be payable on all of the
18 awards of compensation, and the penalty award.

19 **THE CHAIRPERSON:** Are you aware, Ms.
20 MacEachern, of the *Hébert* decision in the Federal Court?
21 There is a decision of the Federal Court, in any event,
22 that says that even with interest, you can't go above the
23 ceilings.

24 **MS MacEACHERN:** No, I am not aware.

25 **THE CHAIRPERSON:** In fairness, that is

MaceEACHERN (Arg.)

1 under the old Act. We are dealing with the \$5,000 but...

2 **MS MaceEACHERN:** Yes.

3 **THE CHAIRPERSON:** It is not immediately
4 apparent to me why that would not also apply under the
5 new legislation.

6 **MS MaceEACHERN:** I am not aware of that
7 decision. I apologize.

8 The concern is that it is anticipated
9 that there would be problems in collecting on any amount
10 that the Respondent is ordered to pay, so our position
11 would be that interest should be payable in order to have
12 some kind of penalty associated with the delay of paying
13 these awards. If the awards are paid properly, then
14 interest does not run.

15 In my position, if the conduct warrants
16 the maximum amounts being awarded, and in my submission
17 they do, because of comments I have already made, then it
18 would seem to me that it would be most consistent with
19 the purpose of the Act to find that interest would be
20 payable, even on the maximum. But I am not familiar with
21 that decision, so I really cannot comment further, Madam
22 Chairperson.

23 **THE CHAIRPERSON:** Thank you.

24 **MEMBER CHOTALIA:** I just have one
25 question on your request for the order of ceasing and

MaceACHERN (Arg.)

1 desisting with respect to the reach under section 13.

2 I know that the Zündel case does not set
3 out any specific reference to persons of the Jewish
4 origin, whereas the decision in *Schnell*, at page 25,
5 refers to a general order, but then it says, "and in
6 particular those members or messages that associate or
7 equate homosexuality and the homosexual community with
8 pedophilia, bestiality", and so on. In other words, there
9 is an addition to the order that particularizes the
10 conduct.

11 I am just wondering if you had already
12 given thought to this, and that was why you wanted the
13 general order as set out in *Zündel*, or whether or not it
14 would be appropriate to mention something about ceasing
15 the practice as it relates to Jewish persons or perceived
16 Jewish persons.

17 **MS MaceACHERN:** Yes. That is a very good
18 point. To the extent that it is practical - obviously
19 the interest that the Commission has is to have an order
20 that is as specific as possible so that if there are
21 enforcement issues or compliance issues, it will be easy
22 to address.

23 To the extent that the Tribunal would be
24 able to do something like in *Schnell* to particularize, so
25 a general prohibition on communicating messages that

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MacEACHERN (Arg.)

1 violates section 13(1), but then to say "and
2 including...", that would be very helpful.

3 The difficulty is that there is a - the
4 material in messaging that targets Jewish persons to
5 hatred in this material is so extensive that it may be
6 practically difficult, but certainly we would support
7 identifying "including associating Jewish persons with
8 child pornography, prostitution, terrorism, murder", et
9 cetera, and those passages are in the material quite
10 clearly.

11 If the Tribunal was inclined to do
12 something like that, it may be important to say
13 "including, but not limited to, associating Jewish
14 persons .." in the manner that he has associated them,
15 with negative characteristics in the hate material.

16 Thank you.

17 **MEMBER ROBERTS:** Ms. MacEachern, I
18 noticed that neither the *Zündel* nor the *Schnell* orders
19 have any time frame in which a cease and desist order is
20 made. It just says "to cease and desist", which tells me
21 that they are to cease and desist as soon as they get
22 notice.

23 I am wondering what your reason is that
24 he cease and desist only seven days after he gets the
25 order, if the order were to be granted.

MaceACHERN (Arg.)

1 **MS MaceACHERN:** The reasoning is to
2 avoid having to deal with the potential argument in a
3 compliance situation where the Respondent could say he is
4 doing it, it just has not happened yet. And you could
5 get into an argument, does it take effect now, or does it
6 take effect as soon as reasonably possible, or does it
7 take effect seven days from now.

8 I am suggesting a time frame simply to
9 avoid those arguments. It certainly would be open for
10 the Tribunal to say that he cease and desist immediately
11 upon receipt of the order. I would be in support of
12 that. Alternatively, the Tribunal, if you want to
13 provide a specific time, it would be a very short time
14 frame, and I have suggested seven days.

15 I would prefer, though, that we not
16 leave it open to an interpretation without any time
17 frame, so we can avoid the possibility of getting into an
18 argument about whether "immediate" means "now" or "as
19 soon as I can".

20 **MEMBER ROBERTS:** Thank you.

21 **THE CHAIRPERSON:** Can I just come back
22 to this? I want to make sure on the remedies you are
23 seeking with respect to the retaliation complaint.

24 You are looking for \$20,000 for pain and
25 suffering, and you are asking for interest, and you want

MaceACHERN (Arg.)

1 a cease and desist order.

2 MS MaceACHERN: Yes.

3 THE CHAIRPERSON: Is that it?

4 MS MaceACHERN: Yes.

5 THE CHAIRPERSON: So there is no request
6 for the special compensation there?

7 MS MaceACHERN: No.

8 Those are all of my statements for the
9 closing.

10 THE CHAIRPERSON: Before you sit down,
11 I'll see if my colleagues have any questions.

12 MEMBER CHOTALIA: No questions.

13 MEMBER ROBERTS: No questions.

14 THE CHAIRPERSON: Thank you very much,
15 Ms. MacEachern.

16 Mr. Warman.

17 **ARGUMENT**

18 BY MR. WARMAN: If I may, I would just
19 in opening that I am adopting the position of the
20 Commission in relation to the remedies requested.

21 Specifically, Member Roberts, in
22 relation to your question regarding why the request for a
23 specific time line, I apologize, I don't have the cases
24 with me, but I can refer you to the names of the cases.
25 It is something that has been adopted by the Australian

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MacEACHERN (Arg.)

1 Federal Court recently in hate cases.

2 The first case is entitled *Jones v.*
3 *Scully*. The second case is *Jones v. Toben*. Without
4 presuming to go into the court's mind, I would suggest
5 that that was the type of thing that they were trying to
6 avoid, any sort of argument that "I am attempting to
7 comply with the order, it is just going to take me the
8 next six years to get there", and that in order to avoid
9 any sort of confusion about when the order was to be
10 complied with, they gave it a very finite time line and
11 said, "You know when this has to be done by; let there be
12 no argument otherwise."

13 My closing submissions are that the
14 Canadian people, through Parliament, have passed the law
15 of the *Canadian Human Rights Act*, and its purpose is
16 described in section 2 as being:

17 "To give effect to the principle
18 that all individuals should have an
19 opportunity, equal with other
20 individuals, to make for themselves
21 the lives that they are able and
22 wish to have, and to have their
23 needs accommodated consistent with
24 their duties and obligations as
25 members of society, without being

WARMAN (Arg.)

1 hindered or prevented from doing so
2 by discriminatory practices."

3 And those discriminatory practices are
4 based on any of the enumerated grounds, including race,
5 national or ethnic origin, and religion.

6 Having heard the evidence presented and
7 the testimony of Dr. Mock, I am confident that the
8 material before you is sufficient to find that it
9 constitutes matters that are likely to expose members of
10 the Jewish faith to hatred or contempt and a retaliation,
11 subset to the filing of the Human Rights complaint, has
12 taken place.

13 No group within our society should have
14 to suffer the kind of vilification present in this case
15 as an impediment to their ability to make for themselves
16 the lives that they are able and wish to have.

17 There is an often retold story from
18 World War II that when King Christian X of Denmark
19 learned that the Nazis had ordered all Jews within
20 Denmark to wear the yellow star of David, that the King
21 had one sewn on to his sleeve as well, to show that they
22 were not alone. The story is considered to be an
23 inspiring myth, but its moral is one that we can take to
24 heart, that whenever one part of our community is singled
25 out for intolerance and persecution, it is up to all

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WARMAN (Arg.)

1 members of the community to come to their defence.

2 I think this is perhaps a message that
3 all of us here understand, that the Tribunal has perhaps
4 a special role in fulfilling.

5 I am hopeful that the Tribunal will send
6 a strong message that in Canada today both the groups
7 targeted and those within the community who stand with
8 them will receive the full protection of the law.

9 In closing, I wish to thank the Tribunal
10 Members and the staff for your time and consideration.

11 Thank you.

12 **THE CHAIRPERSON:** Thank you very much,
13 Mr. Warman.

14 Are there any questions?

15 **MEMBER CHOTALIA:** I do have a question.
16 I am just wondering if there is anything more that we
17 could order within the scope of the Act. Section
18 53(2) (a), dealing with the cease and desist also
19 indicates that we can order the taking of measures in
20 consultation with the Commission on general purposes of
21 the measures.

22 I am just wondering if either you or the
23 Commission counsel had given any thought to whether or
24 not the posting of an apology would be something that we
25 could do, and whether it would be something that you

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1 would seek.

2 **MR. WARMAN:** From my personal
3 perspective, and I know that courts have gone both way on
4 the issue of apologies, but I think in this case, where
5 the evidence is so egregious, that the belief is so
6 virulently antisemitic, that any apology would be a false
7 one, and that there would be, in fact, little value in
8 forcing Mr. Kyburz to post something that both himself
9 and I think myself, and virtually anyone who had reviewed
10 the material, would know was not sincere.

11 For that reason, no, I would not be
12 requesting that that be issued as a remedy, for my part.

13 **THE CHAIRPERSON:** Thank you very much,
14 Mr. Warman.

15 You have given us a lot to think about.
16 We will endeavour to have a decision out for you as
17 quickly as we can.

18 Thank you. We are adjourned.

19 --- Whereupon the Hearing concluded at 4:20 p.m.