

**CANADIAN  
HUMAN RIGHTS  
TRIBUNAL**



**TRIBUNAL CANADIEN  
DES DROITS  
DE LA PERSONNE**

**BETWEEN/ENTRE:**

RICHARD WARMAN

**Complainant**

**le plaignant**

**and/et**

CANADIAN HUMAN RIGHTS COMMISSION

**Commission**

**la Commission**

**and/et**

WESTERN CANADA FOR US AND GLENN BAHR

**Respondents**

**les intimés**

**BEFORE/DEVANT:**

JULIE LLOYD

THE CHAIRPERSON/  
LA PRÉSIDENTE

LINE JOYAL

REGISTRY OFFICER/  
L'AGENTE DU GREFFE

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

HEARING HELD IN THE QUEEN ELIZABETH ROOM, DELTA EDMONTON CENTRE,  
10222 102 STREET, EDMONTON, ALBERTA ON THURSDAY, JUNE 1<sup>st</sup>, 2006,  
AT 9:30 A.M. LOCAL TIME

IN THE MATTER OF a complaint filed by Richard Warman dated June 8, 2004, pursuant to Section 13(1) of the Canadian Human Rights Act against Western Canada For Us and Glenn Bahr. The complainant alleges that the respondents have engaged in a discriminatory practice on the grounds of religion, sexual orientation, race, colour, national and/or ethnic origin and disability in the matter related to the usage of telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	on his own behalf
Giacomo Vigna Ikrame Warsame	on behalf of the Commission
Paul Fromm	on behalf of Glenn Bahr

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1 Edmonton, Alberta

2 --- Upon commencing on Thursday, June 1, 2006,

3 at 9:30 a.m.

4 THE CHAIRPERSON: Good morning,  
5 everyone.

6 Okay, Mr. Fromm?

7 MR. FROMM: I would like to call as  
8 my witness Bernard Klatt.

9 AFFIRMED: BERNARD KLATT

10 EXAMINATION BY MR. FROMM

11 MR. FROMM: Mr. Klatt, could you tell  
12 us what you have been paid for your testimony today?

13 MR. KLATT: I don't get paid for  
14 this.

15 MR. FROMM: Thank you.

16 Could you outline your education for  
17 us?

18 MR. KLATT: Should I refer to my C.V.  
19 or just from memory here?

20 MR. FROMM: I guess from memory.

21 MR. KLATT: South Okanagan Secondary  
22 School, Okanagan College, B.C. Institute of Technology,  
23 various company and training courses.

24 MR. FROMM: When you attended the  
25 B.C. Institute of Technology, what was your specialty?

1 MR. KLATT: Telecommunications.

2 MR. FROMM: On your C.V., you listed  
3 a number of places in which you were employed. Could  
4 you outline for us what area of work you entered into?

5 MR. KLATT: Primarily related to  
6 computer installation, repair, maintenance, trouble  
7 shooting, and software installations, more recently,  
8 internet networking.

9 MR. FROMM: You have on your C.V.  
10 that from 1979 to 1981, you worked for Digital  
11 Equipment Corporation. What was the nature of your  
12 work for that company?

13 MR. KLATT: Did installations,  
14 various computer-based systems from primarily western  
15 Canada, second and third level technical support,  
16 troubleshooting for more advanced problems. When I was  
17 in the U.S., I did similar work for the western region  
18 of the U.S.

19 MR. FROMM: In your C.V., you  
20 mentioned that you worked with Defence contractors and  
21 large corporations, Fortune 500 companies. What sort  
22 of work did you do for those?

23 MR. KLATT: Installation setup and  
24 troubleshooting of problems that arose at those sites.

25 MR. FROMM: At that point, were we

1 into the internet age or not?

2 MR. KLATT: The beginnings of the  
3 internet, which were known as ARPAnet, were available  
4 at some locations but not the generally accessible  
5 public internet as we see today.

6 MR. FROMM: For the recording  
7 secretary, ARPAnet is A-R-P-A net, all one word.

8 Moving closer to the present, from  
9 1985 to '88, you indicate here that you worked for  
10 Philips Signetics Corporation for Sunnyville,  
11 California. What was the nature of the work you did  
12 for that company?

13 MR. KLATT: That is described as  
14 technical support for their corporate in-house networks  
15 that comprise their local campus buildings, the  
16 fabrication sites in New Mexico, Utah, and remote  
17 locations in Thailand and Korea.

18 MR. FROMM: In 1988, you indicate  
19 that you returned to Canada, and you founded a company  
20 called Fairview Technology Centre Limited. Can you  
21 tell us what that company does and the nature of your  
22 work there?

23 MR. KLATT: Initially I was primarily  
24 involved in selling small PC systems for the first few  
25 years.

1                   In 1995, we added on the local  
2 internet service provider business. Shortly after we  
3 got the dial-up part of it working, we had an  
4 arrangement with the local cable company where we  
5 provided the internet available to residential  
6 subscribers to the cable TV system. And that was  
7 highly successful for a number of years.

8                   MR. FROMM: So you have been an  
9 internet service provider?

10                  MR. KLATT: That is correct.

11                  MR. FROMM: So you are aware of the  
12 ways in which an individual can get on the internet?

13                  MR. KLATT: Yes.

14                  MR. FROMM: Can you indicate the sort  
15 of clients your business has?

16                  MR. KLATT: Primarily small  
17 businesses, individuals, real estate companies,  
18 insurance companies, manufacturing, wineries. That  
19 type of business clientele would make up the bulk of  
20 our customer base.

21                  MR. FROMM: And what sort of service  
22 are you providing for these people?

23                  MR. KLATT: We do on-site network  
24 setup, integration, and troubleshooting.

25 Internet-related issues often are a significant part of



1 the work we do.

2 MR. FROMM: You indicate here your  
3 memberships in a number of organisations. The B.C.  
4 Internet Association, what is that?

5 MR. KLATT: At that time, it was a  
6 newly formed group of internet service providers that  
7 tried to work out and discuss issues that were of  
8 common interest to beginning internet service companies  
9 that were getting started in British Columbia at that  
10 time.

11 MR. FROMM: The next organisation on  
12 page 2 that you indicate that you were a member of was  
13 the Electronic Frontier Canada. What was that  
14 organisation?

15 MR. KLATT: They were a group active  
16 in promoting free speech and freedom of expression  
17 issues on the internet.

18 MR. FROMM: This was a Canadian  
19 group?

20 MR. KLATT: Yes.

21 MR. FROMM: You indicate a number of  
22 professional conferences that you attended. What went  
23 on in the 1959 and 1996 Internet World Conference and  
24 Exposition in San Jose?

25 MR. KLATT: I think a better term for

1           that would be the Comdex Trade Show, which was a large  
2           collection of manufacturers and exhibitors that  
3           provided products and software services related to  
4           internet and networking and personal computer  
5           technology.

6                           MR. FROMM:   You indicate that you  
7           have a number of certifications.   Being a technical  
8           peasant, I don't know what they mean.   Maybe you could  
9           tell the tribunal, CompTIA, what is that?

10                          MR. KLATT:   That is the name of an  
11           organisation that provides certification services to  
12           indicate proficiency in a variety of areas that are  
13           primarily related to networking and computer  
14           technology.

15                          MR. FROMM:   And after this  
16           qualification, there is a hyphen that says "A+"; is  
17           that to be read as one thing:   compTIA/A+?

18                          MR. KLATT:   Yes.   Those are  
19           individual certifications that were achieved.

20                          MR. FROMM:   The next certification is  
21           Network Plus.   What does that mean?

22                          MR. KLATT:   That is another  
23           certification with a specialty emphasizing proficiency  
24           in network-related technology.

25                          MR. FROMM:   So these were computer

1 networks?

2 MR. KLATT: Yes.

3 MR. FROMM: The next qualification  
4 was i-Net+. What is that?

5 MR. KLATT: That is another  
6 certification primarily meant to demonstrate competence  
7 in internet-related technology.

8 MR. FROMM: The final certification  
9 you list is Server Plus. What is that?

10 MR. KLATT: That primarily refers to  
11 the way to understand and diagnose, troubleshoot, and  
12 install a network server-based system.

13 MR. FROMM: And you have been  
14 accepted as an expert witness in a number of cases  
15 having to do with the internet, have you not?

16 MR. KLATT: One specifically would  
17 be -- I think you are referring to as the CHRT versus  
18 Zündel.

19 MR. FROMM: And in your C.V. here,  
20 you list another case involving John Micka.

21 MR. KLATT: I believe the correct  
22 designation there would be as a fact witness.

23 MR. FROMM: And that is spelt  
24 M-i-c-k-a, John Micka.

25 You also indicate that you have

1 experience as an instructor. Could you tell us about  
2 that?

3 MR. KLATT: Yes. For, I think, one  
4 semester at Okanagan College, I had night school  
5 classes on beginning internet usage, and "Introduction  
6 to Internet", I think, was the name of the course.

7 MR. FROMM: That would be students at  
8 these classes?

9 MR. KLATT: Typically people that  
10 hadn't used the internet before and wanted an overview  
11 of what the internet was, how they could use it, what  
12 type of resources were available.

13 MR. FROMM: Would these be day  
14 students or open to the general community?

15 MR. KLATT: Generally residents of  
16 the local community.

17 MR. FROMM: Those are all my  
18 questions. I would like to ask Mr. Klatt's C.V. be  
19 tendered into evidence.

20 THE REGISTRAR: Bernard Klatt's C.V.  
21 will be filed as Respondent's Exhibit GB-10.

22 EXHIBIT NO. GB-10: Bernard  
23 Klatt's C.V.

24 MR. VIGNA: Madam Chair, I would like  
25 to establish the area of expertise for this complaint

1 to be established.

2 THE CHAIRPERSON: So, Mr. Vigna, what  
3 further information are you looking for?

4 MR. VIGNA: I would like to know in  
5 what area he was tendered as an expert, more  
6 specifically.

7 THE CHAIRPERSON: Okay. We do have  
8 an expert report, so I am not sure that I share your  
9 confusion, but ...

10 MR. VIGNA: I understand he has  
11 familiarity with the internet and has done what he  
12 wants. My understanding is that he wants to introduce  
13 him as an expert, or is it more than that?

14 THE CHAIRPERSON: Mr. Fromm, would  
15 you speak to that, please?

16 MR. FROMM: Yes. Obviously the  
17 functioning of the internet, how people get on the  
18 internet and use the internet. I am also speaking to  
19 inquire through Mr. Klatt about his expertise in the  
20 functioning of computers in terms of how they might be  
21 hacked, and I think that is part of his report.

22 I am not quite sure if you classify  
23 that as the internet or the technical functioning of  
24 the computer, but it is in those areas that I want to  
25 make some inquiries.

1 THE CHAIRPERSON: Counsel, is that  
2 all right? All right. I am satisfied that Mr. Klatt  
3 has the requisite education, knowledge, and experience  
4 to be qualified, and opinion evidence that will be put  
5 before this tribunal will be with respect to the  
6 internet, with respect to computer functioning, and  
7 with respect in particular to the hacking of computers.

8 All right, let us carry on,  
9 Mr. Fromm.

10 What is this you have provided me,  
11 Mr. Fromm, and have you provided it to your friends and  
12 when?

13 MR. FROMM: Well, the first two pages  
14 are his expert report, which were, as you mentioned,  
15 provided on the 28th of ...

16 THE CHAIRPERSON: Oh, yes, I see.

17 MR. FROMM: I believe it was on the  
18 20th of April.

19 The remaining sheets here are the  
20 printoffs of the links that were in Mr. Klatt's report  
21 just for greater ease and reference in discussion this  
22 morning.

23 Mr. Klatt suggested that we run off  
24 the link so that there is text in front of us.

25 THE CHAIRPERSON: Okay. Thank you.

1                   MR. VIGNA:  Madam Chair, we just  
2                   received only the first two pages.  The remaining  
3                   documents, I understand they are links and all that.  
4                   We never had disclosure of them, and we are being  
5                   presented with a bunch of documents today in addition  
6                   to the two pages that were presented as expert reports.

7                   THE CHAIRPERSON:  Well, when I  
8                   reviewed this report, I did notice that there were  
9                   specific sites and links that were identified.  I don't  
10                  think it is inappropriate to have the hard copies.  In  
11                  fact, I think it will be helpful, and I expect that you  
12                  would have taken time to review some of these  
13                  attachments.

14                  MR. VIGNA:  Yes.

15                  THE CHAIRPERSON:  So I think we  
16                  should be entering this as an exhibit too.  So, Madam  
17                  Registrar?

18                  THE REGISTRAR:  Bernard Klatt's  
19                  expert report with attached links to websites will be  
20                  filed as Respondent Exhibit GB-11.

21                  THE CHAIRPERSON:  Thank you.

22                                 EXHIBIT GB-11:  Bernard Klatt's  
23                                 expert report with attached  
24                                 links to websites

25                  MR. FROMM:  In preparing your expert

1 report, Mr. Klatt, what research did you do and who did  
2 you talk to and what documents did you consult?

3 MR. KLATT: I was able to review a  
4 copy of the transcript of Constable Kent Dahl and a  
5 telephone conversation with Glenn Bahr.

6 MR. FROMM: And you focussed your  
7 attention upon the two people accounts:  
8 Glennbahr@hotmail.com and Glennbahr@yahoo.ca; is that  
9 correct?

10 MR. KLATT: That is my understand of  
11 the e-mail accounts that are in question regarding this  
12 case.

13 MR. FROMM: What is a Hotmail  
14 account? I am sorry, what is MSN Hotmail?

15 MR. KLATT: It is a free web-based  
16 e-mail service provided by Microsoft accessible through  
17 web browsers, and it is usually integrated and also  
18 accessible in part of the MSN Messenger service.

19 MR. FROMM: Just for the record, what  
20 is it used for, MSN?

21 MR. KLATT: It is a convenient way of  
22 having e-mail service instead of having to rely on an  
23 internet account provided by an internet service  
24 provider such as a local dial-up provider or a cable  
25 company.



1                   If a person chooses not to use their  
2 internet e-mail addresses that is assigned by their  
3 local internet service provider, they may choose to use  
4 a web-based one, because it is one that doesn't change  
5 if they change internet providers.

6                   MR. FROMM:   Okay.

7                   MR. KLATT:   Another reason a person  
8 might use a web-based e-mail account is that it doesn't  
9 require installing a client e-mail software on their  
10 own PC other than having a web browser.

11                  MR. FROMM:   So you are suggesting  
12 there are several ways for a person to have e-mail?

13                  MR. KLATT:   Correct.

14                  MR. FROMM:   And one would be directly  
15 through one's server, correct?

16                  MR. KLATT:   Yes.   When a person  
17 arranges for internet service from their local internet  
18 service provider, in nearly all cases that I am aware  
19 of, the service includes the e-mail address associated  
20 with the internet service provider that the subscriber  
21 obtains their internet connection through or with.

22                         Some people choose not to use it,  
23 because they don't expect to stay with that internet  
24 provider for a long time or they know that they are  
25 going to be moving to a different location.  Or they

1           may just prefer having an e-mail address as something  
2           other than what their internet service provider  
3           provides.

4                       MR. FROMM:   How might Glenn Bahr's  
5           e-mail account read if he were to have the account  
6           through a server, like, let us say Shaw, an ISP like  
7           Shaw?

8                       MR. KLATT:   Just as an example, it  
9           could be an e-mail address like GlennBahr@shaw.ca or  
10          GlennBahr@telus.net.  Those would be examples.  But  
11          nowadays, most larger internet providers do provide  
12          web-based e-mail access, although it wasn't nearly as  
13          common years ago.

14                      MR. FROMM:   When you say "years ago",  
15          could you put a sort of timeframe on it?

16                      MR. KLATT:   During the 1990s, it was  
17          quite unusual.  Most of the larger internet providers  
18          now do make that available as a standard feature.

19                      MR. FROMM:   I see.  The next point in  
20          your expert report is what is Yahoo mail?  Could you  
21          explain that for us?

22                      MR. KLATT:   In many ways, it is  
23          similar to the functionality that is provided through  
24          Hotmail.  Yahoo mail is also a web-based e-mail service  
25          accessible through web browsers.  It has integration

1 with the Yahoo messenger instant messaging programme.

2 MR. FROMM: Probably more germane to  
3 this case is your next point. Are Hotmail and Yahoo  
4 e-mail accounts considered secured? As an internet  
5 expert, could you answer that?

6 MR. KLATT: Well, in my research and  
7 experience in dealing with clients, I would consider  
8 Yahoo and Hotmail e-mail accounts not particularly  
9 secure, because they are web-based, and as such, they  
10 are subject to vulnerabilities associated with  
11 web-based services.

12 There has been a history of exploits  
13 involving various methods of compromising access to  
14 Yahoo and Hotmail e-mail accounts.

15 MR. FROMM: You mention in your  
16 report that one method is something -- one  
17 vulnerability is cross-site scripting, and you have an  
18 "A" under that. Could you lead us to that?

19 MR. KLATT: That refers to a document  
20 near the end. Well, actually, the second page refers  
21 to a URL I refer to as Davidnews.com, articles at the  
22 end of the attachment.

23 MR. FROMM: So the "A" that you are  
24 referring to is near the end of the package with an "A"  
25 in the upper right hand corner. And it is a two-page

1 document. Is that the one entitled "New Hack Poses  
2 Threat to Popular Services"?

3 MR. KLATT: Correct. And it mentions  
4 and describes the exploit that was noted and mentioned  
5 in the 2001 timeframe.

6 MR. FROMM: What was that exploit?

7 MR. KLATT: Basically it involves a  
8 method of encoding HTML scripts on web pages where, as  
9 it describes here, unauthorised scripts passed the web  
10 server for execution, securities against running such  
11 scripts. And by visiting a website or reading an HTML  
12 formatted e-mail, you could potentially become victims  
13 of malicious hackers.

14 But that particular vulnerability,  
15 after it was publicised, Microsoft Hotmail programmers  
16 did work up a solution that no longer makes that  
17 particular method available.

18 It just goes to show that this is one  
19 of the methods that were used at that time for  
20 compromising Hotmail accounts.

21 MR. FROMM: You indicate that in  
22 June, 2005, there was another Hotmail exploit involving  
23 cookies, and that was described in Tab B, which follows  
24 this side near the back of the bundle. Is that the  
25 item called "Hacking Hotmail by Alex Defrees (ph), '04,

1 June, 2005", a five-page document?

2 MR. KLATT: That is correct.

3 MR. FROMM: This is far more recent,  
4 timely. Could you try to explain in layman's terms  
5 what hacking Hotmail using cookies means?

6 MR. WARMAN: Essentially what this  
7 person has documented is a method that worked to  
8 provide unauthorised access to Hotmail accounts using  
9 what is referred to as cookie files and uses what he  
10 refers to as Option 4, where if you have a cookie for  
11 passport.net or Hotmail MSN, you can fake a user's  
12 cookie file and make the Hotmail server believe that  
13 another person has already logged in as that user. It  
14 would then provided ways of accessing their e-mail  
15 contents.

16 MR. FROMM: In computer terminology,  
17 what is a cookie?

18 MR. KLATT: It is usually a small  
19 text file that contains information that a web server  
20 uses for various purposes.

21 MR. FROMM: Is it the identification  
22 of the user?

23 MR. KLATT: It can be. I guess in  
24 this particular case, the author describes -- I don't  
25 know what the exact name used for it is. I think on

1           this one, it involved two cookie files, as I recall.  
2           And they essentially were being exploited to provide  
3           the ability to fool the Hotmail server into thinking  
4           that a third party was the intended or legitimate user  
5           of that particular Hotmail account.

6                         THE CHAIRPERSON: So sorry to jump in  
7           here, but I am just looking at the first page, and my  
8           understanding of this particular technique, I suppose,  
9           to be sending something to a victim, I suppose, and the  
10          access is secured after the victim clicks on a URL that  
11          you sent, so it requires the user to do something. It  
12          doesn't sound very smart. In your experience, would  
13          that be common?

14                        MR. KLATT: Unfortunately, it is  
15          often the case that people click links in e-mails or  
16          attachments sent by instant messenger.

17                        THE CHAIRPERSON: But the user would  
18          have to engage in that kind of behaviour, opening  
19          something or clicking on a URL before this individual  
20          would have the access that they are looking for. Am I  
21          understanding that to be the case?

22                        MR. KLATT: That is typically  
23          correct, although I should further qualify that answer  
24          by if a user does not have adequate anti-virus software  
25          on their machine, just the act of opening an e-mail

1           that contains the exploiting code can compromise the  
2           user system.

3                         THE CHAIRPERSON:   Okay.

4                         MR. FROMM:   The next part of your  
5           report deals with a summary of various methods.  
6           Various methods of what?

7                         MR. KLATT:   Gaining third party  
8           unauthorised access to web-based e-mail services such  
9           as Yahoo or Hotmail.

10                        MR. FROMM:   And to paraphrase that,  
11           would that be the same thing as identity theft?

12                        MR. KLATT:   That can be used to  
13           impersonate e-mails as if they were sent from a person  
14           when they weren't, in fact, offered by that individual.

15                        MR. FROMM:   Well, the first link you  
16           take us to, Number 1 in the margins entitled a website  
17           pwcrack.com/howtohackAOL, and that is Document Number 1  
18           immediately after the text of your report.  Could you  
19           outline the content of that, how to hack?

20                        MR. KLATT:   That is what this  
21           document is; essentially a summary of various methods  
22           that have been used or attempted to be used to achieve  
23           unauthorised access to Yahoo and Hotmail and AOL  
24           accounts.

25                        I think the most significant methods

1           that are described here are trojans, which is a piece  
2           of software that ends up on a, quote, victim's  
3           computer. A trojan can be used to collect what a user  
4           types on their keyboard or other information that the  
5           trojan is designed to capture and forward it on to a  
6           third party, which it can then use that collective  
7           information to impersonate the victim.

8                         MR. FROMM: I wonder if we could  
9           pursue that a little bit.

10                        MR. KLATT: A hardware version of  
11           that would be the key logger hardware device. Those  
12           two devices have a lot of aspects in common. One is  
13           done through software, the other one is done through a  
14           hardware attached device.

15                        MR. FROMM: How would a hacker make  
16           use of a trojan?

17                        MR. KLATT: Well, the most common,  
18           current activity involving trojans that have spyware  
19           seems to be trending toward attempts to gain access to  
20           on-line banking information, because there is a  
21           financial motive involved in that.

22                        A third party can acquire the user  
23           name, the password, account number, or whatever  
24           identifying information is needed to access a third  
25           party's bank account. They can do on-line debits from



1 the victim's account and credit it to their account or  
2 transfer it to an on-line e-commerce site to make the  
3 financial transaction harder to trace -- essentially it  
4 is stealing money from the old bank accounts.

5 That seems to be the most recent  
6 trend, but it can also be used to collect information,  
7 it can be used to compromise web-based e-mail servers.

8 MR. FROMM: How can a hacker send the  
9 trojan to the intended victim's computer?

10 MR. KLATT: A couple ways that come  
11 to mind are -- probably the most obvious or likely is  
12 just sending as an e-mail attachment. Another fairly  
13 common method is if the attacker has the ability to  
14 communicate with the victim through instant messaging,  
15 often they will try various social engineering  
16 techniques to get the victim to open the attachments.  
17 They say, "Oh, you want to see my picture?" Or, "This  
18 is a neat little programme I found. I want you to try  
19 it out." They will use some ruse or excuse to get the  
20 intended victim to open the attached file that contains  
21 the trojan.

22 MR. FROMM: So if the intended victim  
23 opens the attached file to see the picture or whatever,  
24 at that point, is the trojan transferred into the  
25 victim's computer?

1                   MR. KLATT: Yes, it is, and activated  
2 and often stays resident on the computer.

3                   A common technique can be to tell a  
4 person that they are going to receive a picture file,  
5 and they can name the file, like, mypicture.jpg.exe. A  
6 lot of people know that a jpg files are associated with  
7 pictures, and they somehow or other forget that the exe  
8 file type is often an indication that it is an  
9 executable file.

10                  MR. FROMM: What is an executable  
11 file?

12                  MR. KLATT: A file that is actually  
13 executed to run on the computer that it is resident on  
14 and not just displayed as a static image, such as a  
15 picture would be.

16                  MR. FROMM: So an executable file, if  
17 it is transferred to a victim's computer, that actually  
18 can perform the functions? Is that --

19                  MR. KLATT: That is what it is  
20 designed to do, yes.

21                  MR. FROMM: I think I interrupted you  
22 before you moved on, but you did mention key logger.  
23 Could you explain what that is?

24                  MR. KLATT: A key logger is a piece  
25 of software or hardware, usually referred to as

1 hardware, designed to perform a specific function of  
2 just capturing key strokes and making those key strokes  
3 available to a third party at a later date.

4 MR. FROMM: Is that like a trojan?

5 MR. KLATT: It can be similar. Some  
6 trojans do perform key logger functions.

7 MR. FROMM: How would this key logger  
8 software end up on the computer of the victim?

9 MR. KLATT: Much the same way as the  
10 trojan or any other piece of software. The user could  
11 be tricked or fooled into inadvertently downloading it  
12 or accepting it as a file that the person or  
13 correspondent is sending it to.

14 They may think it is a music file or  
15 a picture file, and they attempt to open it. Instead  
16 of playing a song or displaying a picture, it actually  
17 executes the code that was inputted in the file.

18 MR. FROMM: You said it records the  
19 key strokes of the victim?

20 MR. KLATT: Yes. It is designed to  
21 capture whatever is typed on the keyboard, store the  
22 file, and usually they are automatically forwarded to a  
23 remote site or keep it stored until requested by the  
24 hacker.

25 MR. FROMM: And what would the hacker

1 get? It is the key strokes, but would it come back in  
2 the form of text? Would it come back -- say the victim  
3 had written a letter. Would the hacker be able to have  
4 access to the text of that letter? Is that what you  
5 are saying?

6 MR. KLATT: Yes. The text file that  
7 would be sent back would include your user names, login  
8 passwords, form the contents that were typed in on  
9 on-line forums, be documents that were created using  
10 the keyboard.

11 MR. FROMM: So you are saying, then,  
12 that with this software that you call key logger, it  
13 would be possible to learn, let us say, the password  
14 that the person uses to get on the site?

15 MR. KLATT: Yes. That would be a  
16 common method or common reason for using such software,  
17 yes.

18 MR. FROMM: The second link,  
19 document, that you presented was "How to Hack Yahoo and  
20 Hotmail."

21 THE CHAIRPERSON: So are we moving,  
22 sir, to the next?

23 MR. FROMM: Yes, Number 2.

24 THE CHAIRPERSON: Okay, I just want  
25 to be clear. I am not much of a computer person

1           myself, and a lot of the acronyms and information I  
2           find a little confusing. So I am sorry for jumping in,  
3           but I will forget the question later. You described  
4           the tag -- I am familiar with the tag jpg, the J-peg  
5           thing where you get a picture.

6                        Are you telling me, though, that the  
7           suspect files or these dangerous viruses, trojans -- I  
8           am seeing impersonation and stuff here -- would all  
9           have the exe?

10                      MR. KLATT: Not necessarily. It  
11           could be other extensions that could cause the code to  
12           be executed. Another example of an executable file  
13           type would be the file that ends in "bat", which stands  
14           for batch file.

15                      Another possible file type would be  
16           "com", which stands for compiled, a set of instructions  
17           depending on the context.

18                      MR. FROMM: So did you say the file  
19           that ends in .com?

20                      MR. KLATT: Correct.

21                      MR. FROMM: That would seem to be a  
22           fairly common internet address, wouldn't it?

23                      MR. KLATT: No. I am not talking  
24           about internet addresses, I am talking about file types  
25           that would be included as attachments or files that

1           were sent by instant messenger or file transfer.

2                           MR. FROMM:   I see.

3                           THE CHAIRPERSON:  And the other  
4           question I have, I am just noticing that the  
5           inexperienced user is popping up here.  In your expert  
6           opinion, would an experienced user be likely to miss  
7           something that is that lethal, those three little  
8           letters that could crash your computer?

9                           MR. KLATT:  Unfortunately, it is very  
10          common.

11                          THE CHAIRPERSON:  It happens?  Okay.  
12          When you are downloading one of these files thinking  
13          you are getting a song or a picture, do you get the  
14          song or picture?

15                          MR. KLATT:  In a lot of cases -- in  
16          fact, I am trying to think of any case where it is  
17          successful.  I would say in most cases, they do not get  
18          the picture or music file.

19                          THE CHAIRPERSON:  So as an  
20          experienced user, would that raise a red flag for you  
21          immediately?

22                          MR. KLATT:  It typically would, but  
23          they would say, "Well, the file didn't come through."  
24          Or the person initiating the attack would say, "Oh, it  
25          must be a bad file.  Here, I will send you another

1 one." They will send it again with a picture or with a  
2 song but with the same name, because it is not unheard  
3 of to get a bad file copy.

4 THE CHAIRPERSON: Okay. Thanks.

5 Carry on, Mr. Fromm.

6 MR. FROMM: Okay. Obviously, I was  
7 about to direct you to the next point in your report,  
8 "How to Hack Yahoo and Hotmail", which would seem to be  
9 on point here. And that is a two-page document. Is  
10 that the one entitled "T-Shirt Insanity"?

11 MR. KLATT: That is one of the  
12 advertising banners on the page, but the title of the  
13 same page is "How to Hack --"

14 MR. FROMM: "How to Hack --"

15 MR. KLATT: "-- Yahoo and Hotmail".

16 MR. FROMM: "-- Yahoo and Hotmail".

17 Could you pinpoint the important  
18 points in that report?

19 MR. KLATT: One that is mentioned on  
20 this document wasn't mentioned in the previous one is  
21 the example of somebody directing a victim to a fake  
22 login page where they think they are logging into the  
23 website that they are used to logging into, but it is  
24 just designed to mimic the appearance and functionality  
25 of the commercial service, and all its function is to

1 collect the user name and password.

2 And typically it returns an error  
3 message that implies that the user somehow or other  
4 mistyped the user name or password, and then it often  
5 redirects the user to the correct login page.

6 So when the user tries to log in a  
7 second time, they are now at the original or valid  
8 web-based e-mail service.

9 MR. FROMM: Is that frequently done  
10 with Paypal?

11 THE CHAIRPERSON: With what?

12 MR. FROMM: Messages purporting to  
13 come from Paypal, that there is a problem with your  
14 account?

15 MR. KLATT: Paypal is a popular  
16 target. I get numerous bans from scammers that are  
17 trying to direct people to fake Paypal logins and fake  
18 bank logins.

19 I get phone calls from clients  
20 saying, "I didn't know I had a Bank of America  
21 account," or "I didn't know I had a bank account at Des  
22 Gardines Case Popular in Quebec." I say, "Well, do you  
23 think you do?" And they often say, "No, but maybe I  
24 have a relative who set one up for me." I tell them  
25 that if they don't know about the bank account, they



1 shouldn't be attempting to enter any login information.

2 MR. FROMM: I see highlighted the key  
3 logger, which you have mentioned before key logger  
4 trojan. Was there anything else in this report that is  
5 new, you know, to what you already mentioned?

6 MR. KLATT: Essentially it makes some  
7 of the same points the British document covered, which  
8 was key logger software, trojans, and hardware devices.

9 MR. FROMM: And I will move on to the  
10 third document, which is entitled "The Register". And  
11 you headlined as part of your report "An Earlier Method  
12 Involving Crafting Specially Formatted URL".

13 THE CHAIRPERSON: Mr. Fromm, I am  
14 sorry to interrupt again, but before I forget, this  
15 document we were just looking at, which is Document  
16 Number 2, I am looking for and I don't see the date  
17 that this was first posted. I am trying to get a sense  
18 of when these warnings were issued and in what time  
19 period, because things certainly change. I am seeing  
20 the next one, for example, of 2001, published. But I  
21 am not seeing that on this one. Can you help me  
22 understand when this was posted first, or can we tell?

23 MR. KLATT: Not from the printout  
24 that we have here. If we had access to the source  
25 codes, sometimes in the HTML source there may be a

1 reference to revision date or edit date. But the  
2 information on this Document Number 2 is still current.

3 THE CHAIRPERSON: Okay.

4 MR. FROMM: So your testimony is that  
5 these techniques outlined in "How to Hack Yahoo and  
6 Hotmail" and still widely practiced by hackers?

7 MR. KLATT: Well, there are still  
8 current methods that can be used.

9 MR. FROMM: May I move on?

10 THE CHAIRPERSON: Yes, of course.

11 MR. FROMM: So the third document,  
12 which I mentioned in my question about the headline "An  
13 Early Method Involving Crafting Specially Formatted  
14 URL", and that is a document entitled "The Register".  
15 Is that correct? Or the headline "The Register"?

16 MR. KLATT: Yes, that is correct.

17 MR. FROMM: "Hacking Hotmail Made  
18 Easy"?

19 MR. KLATT: Right.

20 MR. FROMM: Could you explain this  
21 technique that is referred to, crafting specially  
22 formatted URL?

23 MR. KLATT: This was one of the  
24 exploits that was noted or discovered back in 2001  
25 where it was a vulnerability in the way that the

1 Hotmail web mail server was initially programmed to  
2 deal with web access to user e-mail accounts.

3 This document essentially describes  
4 how the URLs were constructed to provide access to  
5 third party e-mail accounts.

6 It is not currently a valid way of  
7 accessing it, because that method has been closed. But  
8 it goes to show that Hotmail has had a history of being  
9 an insecure website service.

10 THE CHAIRPERSON: Is this the method  
11 that is talked about in the document that is identified  
12 as "A" that you are talking about before?

13 MR. KLATT: No. The "A" document is  
14 near the end of the collection.

15 THE CHAIRPERSON: Yes. But is that  
16 talking about in particular this crafting a URL we  
17 reviewed? Earlier, I just noticed that the dates were  
18 pretty close to the same, August of 2001.

19 MR. KLATT: We are talking about the  
20 beta news one?

21 THE CHAIRPERSON: "New Hack Poses  
22 Threat to Popular Web Services" page.

23 MR. KLATT: No, that one is a  
24 slightly different method. That is referred to as the  
25 cross-site scripting tack.

1 THE CHAIRPERSON: Thank you.

2 MR. KLATT: This one in Exhibit 3 or  
3 what I have labelled as 3 is not site scripting method.

4 MR. FROMM: And as part of your  
5 report, you say that there is some number of the  
6 popular methods of obtaining Hotmail and Yahoo e-mail  
7 account passwords involving social engineering.

8 And you did mention social  
9 engineering before, but you had a section here in  
10 Document Number 4, and that is entitled "Hacking Mail  
11 I.D.s by Social Engineering", a two-page document. Do  
12 you recognise that?

13 MR. KLATT: Right.

14 MR. FROMM: And could you outline for  
15 us what that document indicates about what social  
16 engineering is in this particular context?

17 MR. KLATT: My understanding and  
18 usage of the term "social engineering" relates to a  
19 third party attempting to elicit confidential or  
20 private information from a victim through false  
21 pretenses or through taking advantage of a lot of  
22 people's natural wish to be helpful or cooperative.

23 It involves, essentially, in many  
24 cases impersonating someone that a person trusts or has  
25 a reason to believe they should trust.

1                   And this is a document that describes  
2                   a method of attempting to convince a person that they  
3                   should provide the hacker with the user I.D. or  
4                   password that a person wouldn't normally give to a  
5                   perfect stranger on the street if they were approached.  
6                   But since they can create an online persona that  
7                   implies that they are somebody that the target should  
8                   trust, and in some cases, they are successful in  
9                   retrieving that type of information.

10                   MR. FROMM: Is this a fairly common  
11                   method of hacking Hotmail and Yahoo?

12                   MR. KLATT: Well, it is not limited  
13                   to Yahoo or Hotmail, by any means. It is a technique  
14                   that has been around for quite a while. And often it  
15                   is the only successful method of acquiring information  
16                   necessary for what we refer to as network penetration  
17                   or gaining access to a corporate database is to employ  
18                   some method of social engineering.

19                   They can be fairly elaborate ruses  
20                   that involve more than one person, or they can be  
21                   implemented over a series of days or weeks in order to  
22                   develop a character or legend that is believable for a  
23                   target to believe in and comply with providing the  
24                   information.

25                   THE CHAIRPERSON: So if you are

1           trying to develop this relationship with trust and even  
2           perhaps you do develop a relationship, give me an  
3           example, if you could, of the circumstances under which  
4           somebody -- even if I trusted them or thought I was in  
5           a chat forum or something, I give them my password?  
6           Why? I need your password because -- because there has  
7           got to be a because in there.

8                                So in social engineering, you have  
9           been around the block on this, so what kind of trick or  
10          ruse would get a user, particularly a sophisticated  
11          user, to say, "Oh, sure".

12                           MR. KLATT: One I just came across a  
13          description on the internet not too long ago described  
14          the scenario where a boss in a corporation has an  
15          executive assistant. And the boss often relies on the  
16          executive assistant for performing various functions  
17          related to accessing information on the corporate  
18          computer system.

19                           The hacker was able to phone up the  
20          help line for the company and impersonate the boss's  
21          executive assistant and say, "I am the boss's executive  
22          assistant. The boss needs this information. It is  
23          time critical. I don't want to aggravate or annoy the  
24          boss. I need the information now. Give it to me."

25                           And the help desk is trained by

1 nature to be helpful. They didn't adequately  
2 authenticate the request, and they provided the user  
3 name and password to the hacker.

4 THE CHAIRPERSON: So that is the kind  
5 of scenario that would trick somebody into --

6 MR. KLATT: Yeah. That is more on an  
7 offline example.

8 An online example could be with  
9 instant messaging programmes like MSN Messenger or  
10 Yahoo Chat. People often change their online identity  
11 names. Like, for example, a trusted associate working  
12 on a project could be J. Lloyd, and you could for some  
13 reason change your online messenger I.D. to Julie Lloyd  
14 or any other name you wanted to use. But a hacker  
15 might choose to create an on-line identity that is .J  
16 Lloyd. The dot doesn't show up on the screen where the  
17 proportional font doesn't visually look much different  
18 than J. Lloyd.

19 So from a quick glance on the list of  
20 connected users that a victim may be looking at, they  
21 may think they are talking to J. Lloyd, but in actual  
22 fact, they are talking to the hacker .J Lloyd. And the  
23 person at the other end could say, "I misplaced my  
24 password for accessing the website. I need it." And  
25 you might respond, "Here's the admin login and

1 password."

2                                   And they may think they are providing  
3 it to the user name they are used to dealing with when,  
4 in fact, it is an impersonated user name that is  
5 slightly different.

6                                   THE CHAIRPERSON: Okay. Thank you.

7                                   MR. FROMM: Was there anything else  
8 you wish to draw our attention to by hack e-mail I.D.?

9                                   MR. KLATT: It is a fairly important  
10 method of gaining access to a wide variety of  
11 information, because instant messaging is probably the  
12 most common way of soliciting information remotely  
13 nowadays.

14                                   It is not so common to see people  
15 phone up or give out their phone number to establish a  
16 telephone conversation with somebody at the other end.

17                                   And the reason social engineering  
18 hacking is so effective using instant messaging is a  
19 lot of the informational cues that would be available  
20 through a face-to-face meeting or even a telephone  
21 conversation are lacking in the messenger conversation,  
22 because all you have to rely on is the text information  
23 that shows up on the screen you have in front of you.

24                                   You don't have the feedback of the  
25 voice quality or male/female voice distinguishing



1 characteristics or the intonations or inflections as  
2 you would have in a telephone conversation.

3 So for a social engineering hacking  
4 point of view, instant messaging is far more effective  
5 than any other method.

6 MR. FROMM: Would you agree that  
7 instant messaging has the appearance of the victims  
8 seeing that maybe it is just an e-mail exchange by  
9 contact?

10 MR. KLATT: I would think so, because  
11 often people think they know who they are corresponding  
12 with at the other end of the instant messaging  
13 transaction, whereas e-mail, people are used to getting  
14 spam and unwanted e-mails, so e-mail probably would be  
15 less effective.

16 MR. FROMM: At the very bottom of the  
17 first page of your report, there is a section entitled  
18 "Hack Yahoo Passwords", and it may on your document,  
19 depending on where your paper clip is, be a bit  
20 obscured, but there is a reference to a support  
21 document numbered 5 and URL HTTP raldzteck.logspot.com,  
22 et cetera. That is a three-page document with that  
23 title, RALDZ, et cetera, and the headline is "Hack  
24 Yahoo Passwords". Could you draw our attention to what  
25 is important in that?

1 MR. KLATT: Yeah, this is a fairly  
2 recent one, about a year ago.

3 MR. FROMM: That would be dated what?

4 MR. KLATT: The web page is dated  
5 February 23, 2005.

6 MR. FROMM: According to this  
7 document, how are Yahoo passwords hacked?

8 MR. KLATT: Well, that exploit  
9 essentially involved -- the way I see it, they are  
10 essentially getting the victim to enter their password  
11 associated with an account that the hacker was  
12 attempting to access. And this was a technique that  
13 apparently is no longer usable.

14 MR. FROMM: The next part of your  
15 report says another method is to hire someone else to  
16 obtain the e-mail account password, and you refer us to  
17 Document 6. It is two-page document, and it is  
18 entitled "Cracking the Web". Could you explain the  
19 technique involved here?

20 MR. KLATT: The significance of  
21 these, Document 6 and Document 7, are essentially to  
22 note the presence and availability of services on the  
23 internet that claim to be able to make available Yahoo  
24 and Hotmail and AOL login user names and passwords  
25 available for a fee.

1                   I understand that most of these types  
2 of services are located in eastern Europe or Russia or  
3 possibly India, and they apparently have been in  
4 business for quite a number of years. I see references  
5 to these types of services going back a number of  
6 years, so apparently they do find it worthwhile to  
7 continue to offer this type of service.

8                   I would have no way of knowing how  
9 much business they get, but the fact that they maintain  
10 a web page and continue to advertise the services seems  
11 to imply that they would find it worthwhile to do so.

12                  MR. FROMM: So these are businesses  
13 that offer for a fee to provide you with an intended  
14 victim's password for a Yahoo or Hotmail account?

15                  MR. KLATT: It is also included in  
16 Document 8. I will relate to this type of commercial  
17 service where you pay this hacker group to provide you  
18 with access to your intended victim's Hotmail or Yahoo  
19 or AOL account.

20                  They typically need the e-mail  
21 address that you are interested in the Hotmail or Yahoo  
22 or e-mail address that you want access to. Using their  
23 own proprietary means, they will provide proof they  
24 gained access to that account, and then they request  
25 that the purchaser forward the funds. Then they will

1 provide the password for further access to that  
2 account.

3 MR. FROMM: And is that the sort of  
4 information contained in Document 7 and 8, the URLs  
5 <http://www.invaders> et cetera?

6 MR. KLATT: Yes, all three of those  
7 documents -- 6, 7, and 8 -- relate to that  
8 paid-for-hire web-based e-mail hacking services.

9 MR. FROMM: The next session of the  
10 report is headlined "Exploit Using Cookies". And you  
11 have already mentioned cookies before just this  
12 morning. And your first document, Number 9, which is a  
13 two-page document entitled "Hacking Hotmail" by -- if I  
14 use this at or ampersand, osirus ampersand.

15 MR. KLATT: Correct. That is another  
16 variation or another way of describing the method of  
17 using the cookie exploit to access a Hotmail account.  
18 It goes into this slightly different technical  
19 description of how that method is used.

20 MR. FROMM: The next part of the  
21 report draws our attention to using a key logger trojan  
22 to capture the e-mail account password. Could you  
23 explain that?

24 MR. KLATT: We covered some of that  
25 concept already.

1 MR. FROMM: Okay.

2 MR. KLATT: The key logger software  
3 is primarily designed to capture what the user types on  
4 the keyboard and store it on the file or you get it  
5 automatically forwarded off to the hacker's remote site  
6 either by e-mail or FTP transfer or it can stay  
7 resident on the victim's computer until remotely  
8 requested by the hacker.

9 MR. FROMM: The next section is "Hack  
10 Yahoo Password". And you draw our attention to  
11 Document Number 10, which is a six-page document, and  
12 it is entitled "Evil Opinions". Explain this to us.

13 MR. KLATT: Well, I would refer to  
14 the document title as "Hack Yahoo Password".

15 MR. FROMM: Indeed, yes.

16 MR. KLATT: Essentially what this  
17 person is describing is a method which involves using  
18 MSN Messenger to send what is referred to as a RAT or  
19 refer to it as remote access trojan. What the RAT  
20 programme does is allows the hacker remote access to  
21 the victim's computer.

22 And this RAT programme can then be  
23 used to install additional software on the user's  
24 programme or perform functions that the user at the  
25 computer would normally perform.

1 MR. FROMM: So do you call it rat or  
2 just RAT?

3 MR. KLATT: Rat is probably the  
4 colloquial term, but RAT is another way of referring to  
5 it.

6 MR. FROMM: Well, the RAT is  
7 software, is it?

8 MR. KLATT: Yes. In some ways, it is  
9 similar to a programme that has a commercial use, for  
10 example, such as a programme called PC Anywhere, which  
11 allows support personnel to remotely administer or help  
12 users to deal with a computer problem remotely.

13 MR. FROMM: How would a hacker get  
14 the RAT software into the intended victim's computer?

15 MR. KLATT: Essentially page 2 of 6  
16 on that document describes how they acquire and  
17 transfer a remote admin tool to the victim's computer.

18 Essentially you use the Yahoo  
19 messenger or MSN Messenger to do a file send to the  
20 recipient. And once the recipient receives and  
21 installs the file, then the sending party can then use  
22 that remote admin tool to perform additional functions  
23 on the victim's computer.

24 MR. FROMM: So you are saying that  
25 the hacker would use instant messenger? Am I correct?

1 MR. KLATT: Correct.

2 MR. FROMM: To send a file. The RAT  
3 does not enter the victim's computer until the file is  
4 collected? Would that be correct?

5 MR. KLATT: Yes. The victim has to  
6 either be tricked into receiving it through social  
7 engineering or just by some reason to trust the file  
8 that is arriving as something that they want.

9 MR. FROMM: Now, how does the RAT  
10 differ in its capabilities from a trojan?

11 MR. KLATT: Well, RAT is essentially  
12 a way of remote controlling a computer. It is more of  
13 a general purpose tool. It is not a key logger, per  
14 se, but the RAT can be loaded in a software to install  
15 such as a trojan or key logger.

16 MR. FROMM: Okay. So you are saying  
17 that if the RAT software is injected into the victim's  
18 computer, the person who did it could essentially take  
19 over the victim's computer?

20 MR. KLATT: Well, it essentially  
21 gives them remote access to perform a variety of  
22 functions on the victim's computer, yes.

23 MR. FROMM: Would it allow them to  
24 send out, let us say, and e-mail impersonating the  
25 victim?

1                   MR. KLATT: In some circumstances,  
2                   yes, that could be done.

3                   MR. FROMM: You then go on in your  
4                   report to talk about something called Spy Master.  
5                   Could you explain that to us, please?

6                   MR. KLATT: Spy Master is a fairly  
7                   recent -- what is the correct term? That is the Spy  
8                   Master "A" variant. That is one of the more recent key  
9                   logger trojan spyware that has been identified as  
10                  circulating on the internet.

11                  MR. FROMM: When you say "more  
12                  recent" -- because computer e-mail and computer  
13                  technology is very, very recent historically -- what  
14                  are we talking about as recently?

15                  MR. KLATT: As of January of this  
16                  year. January, 2006.

17                  MR. FROMM: And the next section of  
18                  your report is headlined "How to Hack/Crack Yahoo,  
19                  Hotmail, AOL Passwords", and you draw our attention to  
20                  Document 11, which is an 11-page document with the  
21                  title, "How to Hack/Crack Yahoo, Hotmail, AOL  
22                  Passwords". Are there techniques outlined on that  
23                  document that you have not already dealt with?

24                  MR. KLATT: No. It is essentially  
25                  another example of paid-for-hire services advertising



1 to gain access to these types of web-based services.

2 MR. FROMM: In your work with  
3 Fairview Technology, do you deal much with people who  
4 have had problems being hacked?

5 MR. KLATT: A large portion of our  
6 business involves dealing with computers that are  
7 infected with spyware trojans, viruses, adware, various  
8 combinations and degrees of symptoms that our clients  
9 bring to us or that we go onsite to troubleshoot and  
10 deal with.

11 MR. FROMM: Typically, do your  
12 clients know that they have been the victims of  
13 hacking?

14 MR. KLATT: Eventually, they notice  
15 symptoms that cause them to believe they have got  
16 something wrong with their computer. It is a fairly  
17 common occurrence.

18 I was just driving in this morning,  
19 and I noticed one of the billboards beside one of the  
20 malls. It said:

21 "Virus removal, \$50."

22 It was a sign by the road, so it is a  
23 fairly widely available service, and we come across it  
24 often.

25 The symptoms can be everything from a

1 machine running too slow, taking too long to start up,  
2 excessive pop-ups, reports from their internet service  
3 provider that their machine has been identified as a  
4 machine for sending out spam, service attacks. Those  
5 are typical examples of PCs that have been compromised  
6 with undesired software such as trojans, viruses, and  
7 spyware.

8 MR. FROMM: Typically, what might a  
9 person do who has been hacked and not know for a while?

10 MR. KLATT: That is often not unusual  
11 that the user may not know or may not realise that  
12 their computer has been compromised for quite some  
13 time.

14 MR. FROMM: Would that only be a very  
15 occasional or unsophisticated user?

16 MR. KLATT: I recently came across a  
17 reference that the Ohio University discovered recently  
18 that at least three of their university servers had  
19 been compromised by hackers for over a year, and they  
20 were surprised that it had been the case.

21 MR. FROMM: You said that in  
22 preparing this report in terms of this case that you  
23 had reviewed the complaint transcript, which is now in  
24 evidence, the interview between Constable Kent Dahl  
25 from the RCMP Red Deer detachment and Glenn Bahr. From

1 the information there, your conversations with  
2 Mr. Bahr, can you shed any light on his report that his  
3 computer had been hacked?

4 MR. WARMAN: Objection, Madam Chair.  
5 That is not contained in the expert report.

6 THE CHAIRPERSON: What we had talked  
7 about yesterday was dealing specifically with what was  
8 in the report and the forensic report from Sergeant  
9 Camp. So perhaps we could turn to that now? What you  
10 are dealing with now are things that we hadn't talked  
11 about yesterday, and it is also hearsay.

12 So let us turn to this report and  
13 deal with that. I think it was Tab 8 of the smaller  
14 binder. Oh, or was it Tab 9? Tab 10. That would be  
15 HR-13, I think.

16 MR. FROMM: Well, as it is 11:00, I  
17 was wondering if it might be possible to have a break.  
18 This might be a useful break in the evidence.

19 THE CHAIRPERSON: Okay. Thank you.  
20 I will see you in 15 minutes.

21 --- upon recessing at 10:53 a.m.

22 --- upon resuming at 11:15 a.m.

23 THE CHAIRPERSON: Welcome back.

24 Mr. Fromm?

25 MR. FROMM: Mr. Klatt, you have taken

1 us through the methodologies that might be used to hack  
2 into a computer or into e-mail: Hotmail, Yahoo  
3 accounts.

4 THE CHAIRPERSON: Sorry, Mr. Fromm.  
5 You are asking him to restate that evidence?

6 MR. FROMM: No. I am just saying he  
7 has.

8 THE CHAIRPERSON: Yes. Carry on.

9 MR. FROMM: He has done this.  
10 So what is your report responding to?

11 MR. KLATT: My report was based on  
12 the transcript provided to me with Constable Kent Dahl  
13 and a conversation with Glenn Bahr. I reviewed the  
14 transcript of Constable Kent Dahl and based my record  
15 on the symptoms that --

16 MR. VIGNA: Madam Chair, I object.  
17 You made a ruling.

18 THE CHAIRPERSON: Yes, and I will  
19 explain my concern in more detail so you understand.  
20 We have heard evidence, some evidence, that Mr. Bahr  
21 spoke to the police in March of 2004 and identified  
22 that he had some concerns that his computer was being  
23 interfered with. That complaint was filed.

24 I believe it was Mr. Bahr, your  
25 client, who provided the first statement of his

1           particulars -- I am not sure if it was with your  
2           assistance -- but expressly identified at that time a  
3           concern that his computer had been hacked into.

4                       Your expert report was provided in  
5           April, the end of April, of this year, so just a month  
6           ago. There is no mention in that expert report that  
7           you were going to be leading through this expert  
8           evidence specific to Mr. Bahr's allegations that were  
9           made in March of 2004.

10                      Mr. Fromm, you have written  
11           correspondence to the tribunal talking about that you  
12           had a sensitivity to hearing by ambush. It is the last  
13           day of the hearing, and it is too late to be addressing  
14           these matters now. It is not fair to the other side.  
15           I have been just as hard on them over disclosure  
16           issues, and I have to, because it is about fairness.

17                      So you will not ask questions  
18           specific to those incidents in March of 2004 because of  
19           an utter lack of disclosure in this expert witness's  
20           report.

21                      MR. FROMM: Does not --

22                      THE CHAIRPERSON: So carry on,  
23           Mr. Fromm.

24                      MR. FROMM: Does not the first  
25           sentence of his report say:

1 "This is entirely based and  
2 responsive to the complaint  
3 transcript of the interview  
4 between Constable Dahl"?

5 THE CHAIRPERSON: Yes, and we have  
6 reviewed the report, and it describes quite nicely and  
7 very helpfully in very general terms how it is possible  
8 to hack or that it is possible to hack into someone's  
9 accounts or e-mail.

10 What it doesn't do, importantly, is  
11 say, "And it happened here, and this is the evidence."  
12 And so that is the line of inquiry that you have failed  
13 to open for yourself, Mr. Fromm.

14 So, again, when we spoke yesterday, I  
15 said, yes, you can have your witness speak to this  
16 forensic report. You identified for me that your  
17 expert had reviewed the report, and you wanted to ask  
18 him some questions arising from that report. So,  
19 please, carry on and do that.

20 MR. FROMM: Mr. Klatt, do you  
21 recognise the document in front of you?

22 MR. WARMAN: Objection, Madam Chair.

23 THE CHAIRPERSON: I think I have seen  
24 this before. Didn't I see it through Sergeant Camp? I  
25 remember seeing "Go Daddy" on top.

1                   MR. FROMM: Yes, you did see it, and  
2                   Sergeant Camp -- if I recall correctly, I asked him if  
3                   he had sought to learn who had registered the website  
4                   Western Canada For Us or WCFU. He said he thought he  
5                   had, but he wasn't sure. And I asked him if he  
6                   recognised this, and he said he did not. So I would  
7                   like to enter it into evidence.

8                   THE CHAIRPERSON: I am not going to  
9                   admit this.

10                  MR. FROMM: But he is a computer  
11                  expert.

12                  THE CHAIRPERSON: I am going to  
13                  repeat my comments that the expert report that was  
14                  entered does not deal with issues such as the document  
15                  that you have before me here. And I am going to keep  
16                  you to that report and to the technical report that we  
17                  have.

18                  So if you will start with the  
19                  technical report, if this document necessarily arises  
20                  from that, then I will reconsider. But for now, we  
21                  need to start with where you told me you were going to  
22                  start with, and that is this report. Thank you.

23                  MR. FROMM: In preparing your  
24                  technical report, did you search out the registration  
25                  of the WCFU site?

1 MR. WARMAN: Objection, Madam Chair.  
2 He is attempting to bring in through the back door what  
3 you just ruled inadmissible through the front door.

4 THE CHAIRPERSON: Thank you.

5 Mr. Fromm, carry on. It is not an  
6 admissible question pursuant to the last two rulings  
7 that I have tried to make as clear as I can to you.

8 MR. FROMM: Can you identify that  
9 document?

10 THE CHAIRPERSON: Mr. Fromm, I am  
11 going to try again. And maybe if I talk a little bit  
12 more about the nature of my objection, you will be able  
13 to proceed in an appropriate direction.

14 A question that I would consider  
15 allowing is a question that says, "I am referring you  
16 to Paragraph 3.A of the forensic report of the EPS. Do  
17 you have any evidence ..." The question has to arise  
18 from this document.

19 And so continuing to go about it the  
20 way you are going about it is not working. But why  
21 don't you try this way? Why don't you start from the  
22 report? Because that is what you told us all that you  
23 would be doing, and that is what I deemed to be an  
24 appropriate inquiry, right?

25 So maybe if you just do it the other



1 way, maybe we are okay. But, otherwise, I have to  
2 continue to reject these documents that you are  
3 providing.

4 So if you would like to take a minute  
5 and see maybe if you can refashion the questions to do  
6 what we are supposed to be doing here?

7 MR. FROMM: Mr. Klatt, from the  
8 hacking methodologies that you were able to identify as  
9 an expert, could any of those explain what was reported  
10 to you happened to Mr. Bahr?

11 MR. WARMAN: Objection.

12 THE CHAIRPERSON: It is not allowed.

13 Next question, Mr. Fromm.

14 MR. FROMM: I would like, then, to --  
15 well, before I hand it out just to have to take it back  
16 again, I would like to ask if Mr. Klatt would be  
17 allowed to identify something he has seen on the  
18 computer in terms of books listed in the holdings of  
19 the University of Alberta.

20 THE CHAIRPERSON: It is not in the  
21 expert report.

22 MR. FROMM: Thank you. Thank you,  
23 Mr. Klatt, for a very interesting seminar in the  
24 computer hacking. Well, thanks.

25 THE CHAIRPERSON: Thank you.

1 MR. KLATT: I thought you were going  
2 to ask regarding the forensic report. Is not that part  
3 of it?

4 MR. FROMM: That is not allowed.

5 THE CHAIRPERSON: It appears that  
6 Mr. Fromm is done.

7 MR. KLATT: Isn't it --

8 THE CHAIRPERSON: So, Mr. Vigna?

9 No. I am sorry, Mr. Klatt.

10 Mr. Vigna or Mr. Warman, you will  
11 have an opportunity to cross-examine.

12 MR. VIGNA: I will let Mr. Warman  
13 start. I don't know too much. I will have a question  
14 afterwards.

15 MR. FROMM: Can't ask too many  
16 questions.

17 MR. KLATT: Ms Chairperson, is it  
18 clear that Mr. Fromm understands that he is not allowed  
19 to ask questions regarding the forensic report?

20 THE CHAIRPERSON: I am sorry?

21 MR. KLATT: Are we clear that Paul  
22 Fromm is not allowed to ask questions regarding the  
23 forensic report?

24 THE CHAIRPERSON: My directions to  
25 Mr. Fromm, I believe, have been quite clear. He has

1 concluded his examination in chief. I think my  
2 directions were very clear that I was allowing  
3 questions with respect to this report and none were  
4 forthcoming.

5 So, Mr. Warman, could you, please,  
6 carry on?

7 MR. WARMAN: Good morning, Mr. Klatt.  
8 If I could take you, please, to Item 4 that is attached  
9 to your expert report, please?

10 MR. KLATT: I will require a copy.

11 THE REGISTRAR: Mr. Fromm, do you  
12 have his copy?

13 MR. FROMM: He has his copy.

14 MR. KLATT: Thank you.

15 MR. WARMAN: Sir, if I could refer  
16 you to the method just below "Hacking Yahoo is as Easy  
17 as Sending E-Mail"? Would you agree, essentially, that  
18 what it suggests an individual do is enter your e-mail  
19 at Yahoo.com? This is in the first box below that that  
20 I am referring you to.

21 And then it says to enter some text  
22 and then your password, and then it says something,  
23 essentially, that ends with "get pass", and in  
24 brackets, you enter the e-mail address of the person  
25 that you want the password of. Is that an accurate

1 description of the box?

2 MR. KLATT: That first enclosed box?

3 MR. WARMAN: Yes, with sort of the  
4 double square brackets there -- or, double square box,  
5 I mean.

6 MR. KLATT: Describing as a code  
7 fragment that is purported to attempt to retrieve a  
8 password from the Yahoo e-mail server?

9 MR. WARMAN: Yes. Is the way I have  
10 just described it to you an accurate description of  
11 what you see in that box?

12 MR. KLATT: Well, I don't claim to  
13 have the expertise in the programming language or  
14 technique that has been used, but that is my  
15 understanding of what this method attempts to do.

16 MR. WARMAN: I am sorry. I guess I  
17 am actually just asking you if that is an accurate  
18 description of what it says in that box, what I have  
19 just described to you.

20 MR. KLATT: This document was  
21 provided as an example of how one method of obtaining  
22 e-mail passwords was obtained for the Hotmail servers.

23 MR. WARMAN: Sir, the question I  
24 asked you was the description that I gave you on the  
25 contents of that box, is that a fairly accurate

1 description of what it says in that box just based on  
2 your physical observation of that box right now?

3 MR. KLATT: The contents of the box  
4 are as stated.

5 MR. WARMAN: Madam Chair, I would  
6 suggest that the witness is being nonresponsive.

7 THE CHAIRPERSON: Perhaps if you can  
8 try another tack, Mr. Warman?

9 MR. WARMAN: Mr. Klatt, if I can  
10 direct you to Exhibit Number 5, please, that was  
11 attached to your expert report? Does this at the  
12 bottom -- sorry, at the top -- bottom of page 1 of 3 --  
13 this document, Exhibit 5, suggests that you compose an  
14 e-mail address, and then it gives a specific Yahoo.com  
15 e-mail address, then suggests that you type in  
16 "password recovery". Then you add your Yahoo I.D., and  
17 it suggests that your Yahoo I.D. is needed for the  
18 server to send the other person's password back to you.  
19 Then it says on the second line:

20 Type your password, and it must be  
21 correct."

22 And then it says on the third line:

23 "Put the e-mail address you want  
24 the password for."

25 Is it fair to say that that method

1 and the method that is described in the first box in  
2 Exhibit number 4 are roughly the same?

3 MR. KLATT: Yeah. That is, they are  
4 similar.

5 MR. WARMAN: Thank you. Could I take  
6 you to Exhibit 4, again, please? If you go to page 2  
7 of 2 at the top, does the document say:

8 "Let me clear you all. Yahoo  
9 doesn't have any such mechanism  
10 to retrieve the password, so  
11 don't get trapped into such  
12 dirty games"?

13 Does it say that, sir?

14 MR. KLATT: Yes.

15 MR. WARMAN: Sir, if I take you to  
16 the bottom of page 2 of 2 on that exhibit, does it in  
17 relation to the method described in the second box on  
18 page 1 then say:

19 "Well, in this case, let me  
20 clear you all that in the case  
21 of popular free mail servers  
22 like Hotmail, Yahoo, Redip (ph)  
23 doesn't follow such mechanism to  
24 retrieve the password, so don't  
25 get trapped into such dirty

1 games"?

2 MR. KLATT: That is what is stated,  
3 yes.

4 MR. WARMAN: Thank you.

5 I have one further question.  
6 Mr. Klatt, in October of 2003, did you attend a protest  
7 with Mr. Fromm outside of a synagogue at which I was  
8 presenting a speech on internet --

9 MR. BAHR: Objection.

10 MR. FROMM: This is not a relevant --

11 MR. BAHR: What is the relevance?

12 THE COURT REPORTER: One at a time.

13 THE CHAIRPERSON: Mr. Warman, that is  
14 not appropriate.

15 MR. WARMAN: It is a direct question  
16 in relation to credibility. Madam Chair, I am going to  
17 be referring later to case law in which Mr. Klatt's  
18 specific proclivity for participation --

19 MR. FROMM: Mr. Warman is testifying.

20 MR. WARMAN: No, I am not.

21 I will be referring directly to case  
22 law from the tribunal that states this.

23 THE CHAIRPERSON: Mr. Fromm, the  
24 issue of credibility is an issue that has caused us a  
25 fair amount in this hearing, and you know that I have

1 allowed you some significant latitude in dealing with  
2 issues of credibility with respect both to Sergeant  
3 Camp and to Mr. Warman.

4 Credibility is an issue, that is  
5 being made an issue here by Mr. Warman, and so I will  
6 allow some latitude to Mr. Warman in dealing with  
7 issues of credibility.

8 Mr. Warman?

9 MR. WARMAN: Mr. Klatt, I will repeat  
10 the question for you. In October of 2003, did you  
11 attend with Mr. Fromm a protest at a synagogue in  
12 Victoria, British Columbia, of a speech that I was  
13 giving on the issue of internet hate?

14 MR. KLATT: Yes, I was present.

15 MR. WARMAN: Thank you.

16 Those are all my questions, Madam  
17 Chair.

18 MR. VIGNA: I just have one question.  
19 In examination in chief, you were asked what you were  
20 paid for your testimony today, and you said you  
21 weren't. You also mentioned that you have been  
22 declared an expert in the past. Have you been paid in  
23 the past for being an expert?

24 MR. KLATT: No, I was not paid for  
25 the testimony.



1 MR. VIGNA: So I understand you are  
2 here because you believe in the position taken by the  
3 respondent?

4 MR. BAHR: Objection. What does this  
5 have to do with his expert testimony?

6 THE CHAIRPERSON: I agree that that  
7 is not an appropriate question.

8 MR. VIGNA: I won't insist, Madam  
9 Chair, but I am --

10 THE CHAIRPERSON: You were putting a  
11 conclusion of fact to our witness. I take your point.

12 MR. VIGNA: I won't insist on my  
13 question.

14 THE CHAIRPERSON: Okay. Thank you.  
15 Thank you very much, Mr. Klatt.

16 Now, we spoke yesterday about just in  
17 terms of procedure. Mr. Vigna, you haven't started  
18 your submissions yet, so I expect to hear them. And  
19 then I have also invited counsel to make any comments  
20 specific to the matters that came into issue as a  
21 result of Mr. Klatt's testimony.

22 So having said that, Mr. Vigna, if  
23 you would like to do your submissions? I would be  
24 happy --

25 MR. VIGNA: I have given a written

1 copy.

2 THE CHAIRPERSON: Oh, those are  
3 yours?

4 MR. VIGNA: Everybody should have  
5 one. Yes? Okay.

6 Madam Chair, firstly, I would like to  
7 reiterate that I will not argue some of the points that  
8 were argued by Mr. Warman, but the Commission adopts  
9 them also. It is just for the sake of not being  
10 repetitious.

11 THE CHAIRPERSON: And I appreciate  
12 that.

13 MR. VIGNA: I will repeat certain  
14 aspects which might be important.

15 First of all, the key section that  
16 the tribunal has to determine. I will start with the  
17 law in the case law and then apply it to the facts in  
18 Section 13, and we have to look at the ingredients of  
19 Section 13.

20 The ingredients of Section 13 is, 1,  
21 did a person or a group of persons acting in concert to  
22 communicate telephonically or to cause to be so  
23 communicated?

24 Another aspect of the ingredient is  
25 the word "repeatedly". And for that, I will refer to

1 the Micka case, Tab 8, Paragraph 129, as well as  
2 Tab 12, the Kyburz case, Paragraph "N", which, in my  
3 own words, I will say, states that when dealing with  
4 the internet, the aspect "repeatedly" is a given.

5 3, in whole or in part by means of  
6 the facilities of a telecommunication undertaken within  
7 the legislative authority of Parliament. And in that  
8 respect, when we deal with internet, we have  
9 Section 13(2) and (3), which makes it clear that the  
10 internet is considered a facility of telecommunication.

11 And, 4, any matter that is likely to  
12 expose -- one of the key words here is "expose", in  
13 contrast to the word "insight", which has been  
14 distinguished in the case law -- a person or persons to  
15 hatred or contempt by reason of the fact that that  
16 person or those persons are identifiable on the basis  
17 of a prohibited ground of discrimination.

18 And when we deal with prohibited  
19 ground of discrimination, we have to refer to Section 3  
20 of the Canadian Human Rights Act and Section 2, which  
21 is the key section in the Canadian Human Rights Act,  
22 which is, I would say, the philosophical section which  
23 governs all the other sections which follow the  
24 Canadian Human Rights Act.

25 In deciding whether or not -- the big

1 case is made up with the fact that freedom of speech  
2 and whether Section 13 violates Section 2 of the  
3 Charter.

4 Firstly, I would like to say that  
5 there has been no Charter challenge. But,  
6 nevertheless, I would just mention that in deciding  
7 whether or not Section 13 of the Canadian Human Rights  
8 breached the Charter's guarantee of freedom of  
9 expression -- and so if so, whether it is safe under  
10 Section 1, the Supreme Court v. Taylor -- and it is  
11 included in Tab 3, Paragraphs 26 to 40 -- recognise the  
12 importance of freedoms of expression in our society.

13 "The court then looked at a  
14 purpose of Section 2 of the  
15 Canadian Human Rights Act.

16 The purpose of this Act is to extend  
17 to the present laws in Canada to give effect within the  
18 purview of matters coming within the legislative  
19 authority of the Parliament of Canada to the principle  
20 that every individual should have an equal opportunity  
21 with other individuals to make for himself or herself  
22 the life that he or she is able and wishes to have  
23 without being hindered or prevented from doing so by  
24 discriminatory practices based on race, national or  
25 ethnic origin, colour, religion, and disability.

1                   The court then notes that Parliament  
2                   has indicated that it views the activity described in  
3                   Section 13, that is, communicating messages that are  
4                   likely to expose people to hatred based on certain  
5                   characteristics, as contrary to the furtherance of the  
6                   equality, which is mentioned in Section 2."

7                   Which is the key section in terms of  
8                   the philosophical philosophy in the Canadian Human  
9                   Rights Act.

10                   "The court refers to the Cohen  
11                   Committee Report in Taylor, as  
12                   well as many other studies,  
13                   which identify the serious harm  
14                   caused by messages of hatred,  
15                   noting that individuals  
16                   subjected to racial or religious  
17                   hatred may suffer substantial  
18                   psychological distress, the  
19                   damaging consequences including  
20                   a loss of self-esteem, feelings  
21                   of anger and outrage, and strong  
22                   pressure to renounce cultural  
23                   differences that mark them as  
24                   distinct.

25                   This intensely painful reaction

1           undoubtedly detracts from an individual's ability to,  
2           in the words of Section 2 of the Act, 'Make for himself  
3           or herself the life that he or she is able or wishes to  
4           have.'

5                           As stated by Justice Mahoney J. of  
6           the Court of Appeal in Taylor, (Paragraph 19, Tab 3)."

7                           I will not refer to it for purposes  
8           of expediency.

9                           "In his view, Canada is a  
10           multicultural country. Such  
11           multiculturalism represents a  
12           positive characteristic of its  
13           national persona. While racial  
14           and religious strife were not  
15           rampant in Canada, the great  
16           upheaval and damage caused by  
17           intolerance in certain other  
18           nations amply illustrated the  
19           potentially serious impact of  
20           these prejudicial ideas.

21                           The Supreme Court in Taylor  
22           recognises the importance of freedom of expression in  
23           our society and weighed this right against the harm  
24           caused by hate messages.

25                           At Paragraph 39 of the decision, the

1 Court looked at the purpose of the Canadian Human  
2 Rights Act as stated in Section 2.

3 In its analysis of the harm caused by  
4 hate messages, the Supreme Court in the Taylor refers  
5 to the Cohen Report."

6 And I quote from the decision there.

7 Further at page 3:

8 "The Court in Taylor also refers  
9 at Paragraph 19 to the reasoning  
10 of Mahoney."

11 I just quoted earlier about the  
12 multiculturalism aspect of the Canadian society.

13 Then there is the case in Barrick  
14 Gold Corporation, which is important, dealing with the  
15 issue of internet. I quoted the relevant passage,  
16 which is found at Tab 1 of the case of defamatory  
17 communication.

18 "Communication via the internet  
19 is instantaneous, seamless,  
20 interactive, blunt, borderless,  
21 and far-reaching. It is also  
22 impersonal, and the anonymous  
23 nature of such communications  
24 may itself create a greater risk  
25 that the defamatory remarks are





1 internet; it is there, and there is no need to  
2 legislate it.

3 On the contrary, I would submit  
4 respectfully, Madam Chair, that because it is so  
5 widespread and that it can harm so easily that it is  
6 important to legislate it. And that is why the  
7 legislator in Section 13 legislated on hate messages on  
8 the internet.

9 "Truth is not a defence in cases  
10 of discriminatory hate  
11 messages."

12 Here, basically, we make a  
13 distinction between liable cases versus cases dealing  
14 with Section 13 to basically say that when we are  
15 dealing with Section 13, the Canadian Human Rights Act  
16 in general, the intent is not what is important. It is  
17 basically what is the effect of the hate messages?

18 I go on to page 4 from the case of  
19 Taylor, Citron versus Zündel, which is found at Tab 5  
20 in the court case in Taylor, which I just mentioned at  
21 Paragraphs 25 and 27.

22 "We have already concluded that  
23 showing that the offending  
24 statements are true is not a  
25 defence to a breach of Section

1                                   13(1) of the Canadian Human  
2                                   Rights Act.

3                                   Dickson discussed this issue in  
4                                   Keegstra, which involved the criminal offence of  
5                                   willfully promoting hatred against an identifiable  
6                                   group.

7                                   In Keegstra, he expressed the view  
8                                   that he was doubtful as to whether the Charter mandates  
9                                   that truthful statements communicated with an intention  
10                                  to promote hatred need be excepted from criminal  
11                                  condemnation.

12                                  Relying then on his reasoning in  
13                                  Keegstra:

14                                  I am of the view that the Charter  
15                                  does not mandate an exception for truthful statements  
16                                  in the context of Section 13(1).

17                                  Similarly, it seems to be settled law  
18                                  that evidence of intent is not required, that the focus  
19                                  of human rights inquiries is on effects."

20                                  And that is the famous case of  
21                                  O'Malley versus Simpson Sears, which Mr. Warman spoke  
22                                  about yesterday.

23                                  Then it goes on to talk about the  
24                                  unique nature of the Canadian Human Rights Act in  
25                                  comparison to other legislation.

1                   "The other difference to be  
2                   taken into account in looking at  
3                   the differences between cases of  
4                   defamation and that of hate  
5                   messages is the unique nature  
6                   and purpose of the Canadian  
7                   Human Rights Act.

8                   The Act is a quasi-constitutional law  
9                   addressing a fundamental objective of equal opportunity  
10                  in our society without people being hindered by  
11                  discrimination and must, therefore, be given a liberal  
12                  and purposive interpretation.

13                  The respondent's conduct contravenes  
14                  a statute which is remedial, and the purpose of which  
15                  is to prevent discrimination as stated in Taylor at  
16                  Paragraph 70.

17                  In Taylor, Justice Dickson, writing  
18                  for the majority, states at Paragraph 59 that the  
19                  'nature of human rights legislation mitigates against  
20                  an unduly narrow reading of Section 13(1).'

21                  At Paragraph 59, he refers to the  
22                  Heerspink case, which was referred to yesterday by  
23                  Mr. Warman, and says:

24                         "To the effect that a human  
25                         rights code is not to be treated

1 as another ordinary law of  
2 general application, it should  
3 be recognised for what it is, a  
4 fundamental law.

5 The Commission submits that the test  
6 to be used in determining whether or not this material  
7 is likely to expose people to hatred or contempt is as  
8 set out by the Tribunal in Nealy."

9 This was mentioned yesterday, and  
10 which was supported in Supreme Court of Canada in  
11 Taylor at Paragraphs 60 and 61, which says:

12 "With 'hatred', the focus is a  
13 set of emotions and feelings  
14 which involve extreme ill will  
15 towards another person or group  
16 of persons.

17 To say that one hates another means  
18 in effect that one finds no redeeming qualities in the  
19 latter. It is a term, however, which does not  
20 necessarily involve the mental process of 'looking  
21 down' on another or others. It is quite possible to  
22 hate someone who one feels is superior to one in  
23 intelligence, wealth, or power.

24 None of the synonyms used in the  
25 dictionary definition for 'hatred' gives any clues to

1 the motivation for the ill will. 'Contempt' is, by  
2 contrast, a term which suggests a mental process of  
3 'looking down' upon or treating as inferior the object  
4 of one's feelings."

5 And then I refer to the case of  
6 Winnicki, which is at Tab 15, which contests the  
7 definition of "hate", "contempt", and "exposed" at  
8 Paragraph 42 and so on.

9 At Paragraph 42:

10 "In answering this question, the  
11 tribunal is guided by the  
12 definition of the words  
13 'hatred', 'contempt', 'exposed',  
14 and likely to have been provided  
15 decisions of the Canadian Human  
16 Rights Tribunal, the Federal  
17 Court of Canada, and the Supreme  
18 Court.

19 In Canada versus Taylor, the Supreme  
20 Court on Canada adopted the tribunal's definition of  
21 'hatred' and 'contempt'. It is referred to Nealy and  
22 Western Guard Party decision.

23 'Hatred' is defined as active  
24 dislike, devastation, enmity, ill will, and  
25 malevolence. It means, in effect, that one finds no

1           redeeming qualities in the object of one's detestation.

2                           It is a term, however, which is not  
3 necessarily involved in the mental process of looking  
4 down on another or others. It is quite possible to  
5 hate someone who one feels is superior in intelligence,  
6 wealth, or power.

7                           'Contempt' is, by contrast, a term  
8 which suggests a mental process of 'looking down' upon  
9 or treating as inferior the object of one's feelings.

10                           This reflects the dictionary  
11 definitions 'despise', 'dishonour', and 'disgraced'.

12                           'Exposed' means to leave a person  
13 unprotected, to live without shelter, in effect, to  
14 live open to danger, ridicule, or censure.

15                           In Taylor, the tribunal held that  
16 'exposed' is a more passive word than 'incite'. This  
17 suggests that active effort or intent on the part of  
18 Winnicki is not seditious.

19                           Similarly, the use of the word  
20 'exposed' suggests that a violent reaction on the part  
21 of the recipient message is not envisaged.

22                           In other words, the tribunal stated  
23 that one is creating the right conditions for hatred to  
24 flourish, leaving the identifiable group open to  
25 vulnerable ill feelings or hostility if one is putting

1           them at risk or being hated.

2                           In a situation where hatred or  
3           contempt are inevitable, one then falls within the  
4           compass of Section 13(1) of the Human Rights Act.

5                           The tribunal in Nealy versus Johnston  
6           stated that the use of the word 'likely' in Section  
7           13(1) means that it is not necessary that evidence be  
8           adduced to prove that any particular individuals or  
9           group took the message seriously and directed hatred or  
10          contempt towards others.

11                          Nor is it necessary to show that. In  
12          fact, anyone who was so victimised --"

13                          THE CHAIRPERSON: Mr. Vigna, what  
14          page are you on in your submissions?

15                          MR. VIGNA: Sorry, page 12, 46. On  
16          the submissions part, you mean?

17                          THE CHAIRPERSON: I am sorry?

18                          MR. VIGNA: I was referring to the  
19          case book.

20                          THE CHAIRPERSON: Oh, heavens, you  
21          are not going to read whole cases. Trust me, I will  
22          read the jurisprudence very carefully.

23                          MR. VIGNA: Sorry.

24                          THE CHAIRPERSON: And I am sure that  
25          in your submissions, you have referred me to particular

1 paragraphs that you think are important.

2 MR. VIGNA: So page 5, I quote --

3 THE CHAIRPERSON: I can feel the eyes  
4 of everyone in the room glazing over when people start  
5 reading cases.

6 MR. VIGNA: Okay. I am sorry Madam  
7 Chair. It is just that I felt those definitions were  
8 important in terms of Section 13. But I understand the  
9 tribunal has full knowledge of the definitions and the  
10 case law, so I will just go through my speech.

11 THE CHAIRPERSON: Thank you. And I  
12 can also see tendons jumping out of Madam Clerk's  
13 wrists, which is a concern.

14 MR. VIGNA: I apologise, Madam Chair.

15 THE CHAIRPERSON: Okay.

16 MR. VIGNA: I won't refer to the  
17 Citron case, which is also as important, at Tab 5. I  
18 will go straight to the part where I write "Rebuttal to  
19 Respondent's Argument".

20 The respondent mentioned yesterday  
21 that there was no expert evidence. On that point,  
22 Madam Chair, I will simply refer to what was said in  
23 the Winnicki case at Tab 15, Paragraph 43, as well as  
24 Section 48(1) of the Canadian Human Rights Act, which  
25 says that the tribunal member has to have expertise in



1 the human rights issues and sensitivity.

2 All that is to say is that it has  
3 been clearly demonstrated that the evidence does not  
4 need an expert to determine whether it is hate or not.  
5 I respectfully submit that the tribunal can simply  
6 judge the nature of the material submitted without  
7 there being a need for expert evidence, particularly in  
8 this case.

9 Perhaps in cases where the nature of  
10 the evidence is more subtle, expert evidence might be  
11 useful. But in this case, I respectfully submit that  
12 there so in need for an expert's attendance to judge.  
13 The definition of hate as defined in Taylor are pretty  
14 clear to guide the tribunal in that respect.

15 As far as community standards and  
16 tolerance, which was mentioned yesterday by the  
17 respondent, I refer to the Winnicki case at Tab 15 at  
18 pages 15 to 16.

19 As far as the argument of  
20 Section 13(2), broadcasting undertaking, I respectfully  
21 submit that there is no evidentiary basis to rely on  
22 such exception and, therefore, this defence is not  
23 valid.

24 As far as the WCFU as respondent, I  
25 refer to Tab 14, Paragraph 116, page 38. The

1           respondent talks about the issue of a group being  
2           liable, that it is not necessary that they be  
3           incorporated. And it is very clear in the case law,  
4           and I will not elaborate more on that.

5                        As far as the argument by the  
6           respondent that the need for the complainant to be a  
7           victim or affected by the hate message, I refer to  
8           Section 40, which basically says that any person can  
9           make a complaint.

10                      And the philosophy behind Section 40,  
11           I would submit, is simply that it doesn't have to be  
12           the person that is affected or that is a victim,  
13           because the purpose of the Human Rights Act is  
14           basically, well, the society as described in Section 2,  
15           that is equal, that is multicultural, and that is free  
16           of discrimination, and, therefore, perhaps the types of  
17           groups that are directly affected or victims are more  
18           vulnerable to complaints, but that shouldn't be an  
19           obstacle to a complaint being put by Mr. Warman as a  
20           complainant.

21                      I go on to say the issues that are to  
22           be determined. I won't go through them, but basically  
23           it reiterates the ingredients I mentioned at  
24           Paragraph 13.

25                      And then I go through the page 6 and

1 discuss the evidence by making the link on each  
2 ingredient in relation to Section 13.

3 So the first thing is the tribunal  
4 must determine whether the respondents acted in concert  
5 with others to communicate or caused to be communicated  
6 the material which is the subject of the complaint.

7 The entire evidence coupled with the  
8 lack of evidence to support any serious defence answers  
9 this question positively without a doubt and can lead  
10 only to one logical conclusion.

11 And I will go through the main  
12 highlights of the evidence by mentioning the evidence  
13 of Sergeant Camp, which basically in a nutshell  
14 explained how he created the City of Edmonton Hates  
15 Crimes unit, how he was able by putting different  
16 pieces of the puzzle together to determine that SS-88  
17 became the subject of interest and how he came to the  
18 conclusion that SS-88 and Glenn and Glenn Bahr were all  
19 one and different pieces of evidence such as the fliers  
20 being distributed, the identification of Mr. Bahr in  
21 Duke, the ARA poster, and the exact conformity with the  
22 poster that was actually distributed and the fact that  
23 Glenn put that on the website, the documentary  
24 evidence, the photos of Mr. Glenn Bahr being at the  
25 protest at Anne McLellan's office.

1 All of these, they clearly go to the  
2 issue of identity, and there is no doubt on the issue  
3 of identity. I will not go through all the points I  
4 mentioned in here, but I just highlight some of the  
5 important ones. I mean, just the radio interview  
6 itself would be sufficient, in my view, Madam Chair, to  
7 clarify any ambiguity about identity.

8 So I respectfully submit that there  
9 is absolutely no doubt that Mr. Bahr was behind the  
10 website and WCFU.

11 Also, Mr. Bahr explained how he  
12 started from -- I explained how the whole discussion  
13 forum started on Stormfront. There was discussion of  
14 the website to be created on March 8th, and eventually  
15 the website WCFU was eventually create.

16 Mr. Bahr in a very, I respectfully  
17 submit, not persuasive and very general manner that he  
18 has chosen not to testify despite the protections of  
19 the law in terms of whether he has to face criminal  
20 charges did not give any specifics on one of the main  
21 theories that he is presenting to you on this defence,  
22 that he was hacked in his computer and that he was not  
23 responsible for the posting.

24 He has not made any specific  
25 reference to specific hacking or material that he was

1 hacked or that he was usurped in his identity. He  
2 makes a general allegation in that sense. He chooses  
3 not to testify, and I respectfully submit that in order  
4 for such a defence to be considered, the minimum  
5 Mr. Bahr would have to have done was testify to mention  
6 what material specifically he would have been hacked  
7 on.

8 Also, in the interview with the RCMP,  
9 which was produced yesterday, where he seems to be very  
10 evasive and little cooperative in providing his  
11 computer. And if I look at the overall discussion,  
12 there is no concern about the poster being posted by  
13 the ARA than the actual issue of hacking.

14 So on that whole issue of hacking,  
15 Madam Chair, I respectfully submit that there is  
16 practically no evidence, and the little evidence there  
17 is is very unconvincing.

18 Mr. Warman confirms also much of what  
19 Sergeant Camp mentioned. He mentions that he went into  
20 the website Western Canada For Us as well as  
21 Stormfront. There has been a CD ROM, which basically  
22 captures as a photo the website as it existed at the  
23 time.

24 Therefore, on the first point, I  
25 think the evidence is more than ample.

1                   On the second point, was the material  
2                   communicated telephonically by the internet? I think  
3                   that goes without saying that the website was on  
4                   internet and the Section 13(2) and (3) mentioned that  
5                   the internet is considered to be telephonically  
6                   communicated.

7                   Number 3, was the material exposed to  
8                   hatred or contempt? By reason of the fact that those  
9                   persons are identifiable on the basis of prohibitive  
10                  grounds of discrimination, it is clear from reading the  
11                  material from the evidence that it is likely to expose  
12                  to hatred based on all the prohibitive grounds.

13                  I mean, there are attacks on  
14                  Aboriginals, and I refer to the application form where  
15                  the defence -- or, at least judging from the questions  
16                  that were asked in cross-examination -- was a joke.  
17                  That is far from being a credible defence. The way  
18                  that Aboriginals are portrayed and the lecture of the  
19                  document itself speaks for itself.

20                  The mention about the words "Jewish  
21                  problem", the attack on homosexuals and them being  
22                  needed to be terminated and also as well as mentally  
23                  ill persons, which affects the ground of disability.

24                  So I respectfully submit that  
25                  basically all the grounds except perhaps, begging your

1       pardon, for the criminal record. And even there, if  
2       you look at the ten commandments, it says they want to  
3       establish a society, which is Whiteville, with only  
4       whites, with no criminal record, no criminals, and also  
5       there would be no homosexuals.

6                   I believe that these are principles  
7       which are rejected by the Canadian society independent  
8       of political stripes and independent of beliefs. And  
9       it is not an issue of a political group, as the  
10      respondent tries to submit, but it is an issue of  
11      common, universally accepted values that the Canadian  
12      society accepts and have been captured in the Canadian  
13      Human Rights Act.

14                   I won't go at length through the  
15      various pieces of evidence which Sergeant Camp  
16      testified about, and I refer for voracity to the actual  
17      evidence, because I simply referred and summarised it  
18      and explained it to the best of my capacities the  
19      content that was put before the tribunal, also the  
20      literature of "White Power", "The Black Plague", "The  
21      International Jew", the "Turner Diaries".

22                   I think when you take it globally --  
23      and that is the whole perspective that the tribunal  
24      must take -- when you take the website globally, there  
25      is only one logical conclusion, and that is it is there

1 to promote hate. It doesn't talk about -- even when  
2 the respondent says that there was discussion on other  
3 topics, that makes it irrelevant.

4 Globally, the website --  
5 fundamentally, the core of the website, the heart of  
6 the website, deals with issues of hate. The links are  
7 made to particular links of certain subject interest.

8 Even in the radio interview, at one  
9 point -- and I am trying to go to the best of my  
10 recollection in memory -- Peter Warren mentions about  
11 the fact that he has a website, and it refers to bed  
12 and breakfast, and why doesn't the website of Mr. Bahr  
13 where he is interviewed also refer to other types of  
14 websites or links that do not deal with hate? And he  
15 says what it is not of interest.

16 So when you look at the core, the  
17 heart of the website, it is more than obvious, I  
18 respectfully submit, that we are dealing with hate. We  
19 are dealing with -- I refer particularly to HR-44,  
20 HR-45, and HR-47 -- I put it in pen -- HR-50.

21 HR-44, which deals with  
22 homosexuals -- and I won't go through that specific  
23 posting, but it was very clear. When they talk about  
24 terminating homosexuals, I mean, what more do you need  
25 to say? That you are exposing certain groups to



1 hatred? You don't need an expert to conclude that. It  
2 is common sense.

3 When you are dealing about the  
4 "Jewish problem" and denying that it is discriminatory  
5 towards Jewish people, I mean, just the fact that we  
6 are talking about a Jewish problem, it speaks for  
7 itself.

8 So even when you look at the photos,  
9 for example, and you look at the emblem, for example,  
10 one of them with the date 1939, when the respondent in  
11 his cross-examination tries to say that he is not a  
12 Nazi, he believes in National Socialism, I mean, the  
13 date of 1939 refers to the period of Hitler. I mean,  
14 that is universally accepted knowledge, which the  
15 tribunal has judicial knowledge of.

16 So when you look at the overall  
17 evidence, Madam Chair, I think that you have more than  
18 ample evidence to conclude that Section 13 has been  
19 violated. We are dealing with a civil proceeding where  
20 basically, I would submit respectfully, the respondent  
21 cannot just simply raise a reasonable doubt. And even  
22 there, I doubt very much that that would be satisfying  
23 even in a criminal proceeding.

24 We have to decide on a balance of  
25 probabilities, whether the overall evidence by the

1           respondents Mr. Bahr and WCFU -- which he is the  
2           president of based on the business card I referred  
3           to -- in the entire evidence exposed peoples to hatred  
4           and to contempt.

5                           And I submit to you respectfully that  
6           his lack of evidence or serious evidence leaves the  
7           evidence uncontradicted and very conclusive.

8                           As far as the testimony of Mr. Klatt  
9           this morning, I don't have much to say in that respect,  
10          because Mr. Klatt simply testified on generalities  
11          regarding the possibility of people being hacked, but  
12          there has been no link made to the facts of this case.

13                           And to give an example -- I will  
14          simply state that the testimony of Mr. Klatt should  
15          have no bearing on the ultimate determination and no  
16          relevance, and I will give you an example.

17                           For example, in criminal law, when  
18          somebody is charged for drunk driving, they will call  
19          an expert to say that the Breathalyzer should not have  
20          read over 80 based on certain hours of consumption from  
21          an expert who actually interviewed the accused and says  
22          that he drank "X" amount of alcohol over such a period  
23          of time.

24                           That expert, which might be very  
25          crucial in acquittal, will only be crucial if, 1, he

1 has interviewed the actual accused on his consumption  
2 and, 2, if the accused, when he testifies, is believed  
3 in his version.

4 So it is not the issue of the  
5 expert's credibility or what the expert says. In order  
6 for that type of expert, just like in this case, to  
7 have any validity and having a positive result for the  
8 accused or respondent in this case, you would have had  
9 to have, 1, an interview with the accused with the  
10 specifics and the link to the actual hacking theory  
11 and, 2, the accused testifying before you and being  
12 subject to cross-examination to see how much  
13 credibility and how much specificity we can grant to  
14 such a defence.

15 So for all these reasons, Madam  
16 Chair, I think you should have no difficulty in  
17 concluding liability based on Section 13. And if that  
18 happens, you will have to go to the issue of remedies,  
19 which is based on Section 54.

20 The Commission would ask that a cease  
21 and desist order go against the respondents Glenn Bahr  
22 and WCFU, which is not represented today.

23 And on the issue of notice, there is  
24 case law on that issue. I believe it is in Kulbashian  
25 that mentions about the fact that they had ample

1 notice.

2 Also that a penalty in the upper  
3 range be ordered considering the gravity of the nature  
4 of the material put in evidence against the  
5 respondents.

6 And, finally, when Mr. Fromm spoke  
7 yesterday about the fact that such cease and desist  
8 orders are useless because we are dealing with the  
9 internet, et cetera, I refer to the Zündel case.

10 "... the significant symbolic  
11 value in the public denunciation  
12 of the actions that are the  
13 subject of this complaint.  
14 Similarly, there is the  
15 potential educative and  
16 ultimately larger preventative  
17 benefit that can be achieved by  
18 open discussion of the  
19 principles of the Tribunal's  
20 decision.

21 A cease and desist order will  
22 hopefully prevent these respondents from spreading hate  
23 into our society."

24 So there is an important function in  
25 the tribunal in applying Section 13 and giving the

1 message that such behaviour is not universally accepted  
2 values in Canadian society, that it has nothing  
3 whatsoever to do with political ideology, it has  
4 nothing to do with the left or the right, that there is  
5 a certain limit to what people can say.

6 We cannot accept in our Canadian  
7 society statements that invoke hate or contempt towards  
8 an identifiable group.

9 So, Madam Chair, that is all I have  
10 to say, and I will let my friends complete.

11 THE CHAIRPERSON: Okay. I directed  
12 yesterday that both counsel would have an opportunity  
13 to make any further submissions that are relevant to  
14 the evidence that we heard from Mr. Klatt this morning.  
15 Remember, of course, that I have also directed that  
16 anyone who wants to provide additional legal argument  
17 or submission can do so on or before the 30th of June  
18 by providing it to the tribunal, who will forward it on  
19 to me.

20 So, having that in mind, I am not  
21 sure, Mr. Warman, do you want to make some submissions?

22 MR. WARMAN: Madam Chair, I am sorry.  
23 Yesterday -- and I may have misunderstood what it was,  
24 your intent, but when I consented there were certain  
25 portions that I would address today, there was a small

1           portion that I would like to just cover off, if I may.

2                           THE CHAIRPERSON: Yes, you did advise  
3 me yesterday.

4                           MR. WARMAN: It may avoid our need  
5 for later submissions.

6                           Just during the -- and I would just  
7 like to cover off a few issues. During the radio  
8 interview on Peter Warren with CKNW and Mr. Bahr, when  
9 talking about the KKK link that my colleague,  
10 Mr. Vigna, has mentioned, I would invite you to draw  
11 your own conclusion from the fact that when Peter  
12 Warren was describing the kind of links that he has on  
13 his website, Mr. Bahr responds with reasons why he has  
14 links like the KKK and Aryan Nations.

15                           He says:

16   "Basically, it has something to  
17 do with our cause."

18                           I would invite you to draw your  
19 attention also to the passage during that same  
20 interview where Mr. Bahr states in response to Richard  
21 from London, who calls in. Richard from London talks  
22 about the fact that Mr. Bahr has banned a few  
23 individuals from the WCFU forum, and Mr. Bahr responds:

24   "Of course I am going to ban  
25 them."

1                   And so I would invite you to draw the  
2 conclusion that this demonstrates that Mr. Bahr does,  
3 in fact, have -- or, it is further evidence of control  
4 over the forum and its contents.

5                   In terms of the discriminatory  
6 conduct, I would draw your attention obviously to --  
7 and my numbers may be off by one or two pages, because  
8 I was trying to do my best to follow along when  
9 Sergeant Camp was scrolling through the website -- but  
10 page 348, the postings that clearly calls for the  
11 killing of homosexuals and the mentally disabled.

12                   THE CHAIRPERSON: What date?

13                   MR. WARMAN: I believe this was the  
14 7th of May website image.

15                   At approximately 380 and maybe a few  
16 pages before that as well, Tower DB posts that sort of  
17 real blacks are only one in 500 versus "niggas". He  
18 states that the only good Arabic is a dead Arabic. He  
19 describes Jews as race mixers, and then states:

20                   "A nigger is a nigger."

21                   In terms of holocaust denial material  
22 that was present on the WCFU website, at pages 480,  
23 give or take, there is a post from Exterminance that  
24 goes into extensive discussion of what he alleges are  
25 dates throughout the course of history where Jews have

1           been forcibly expelled from a wide variety of  
2           countries.

3                           He then engages, again, in holocaust  
4           denial by alleging that there were a maximum of 500,000  
5           Jews killed during the holocaust.

6                           In terms of further anti-Semitic  
7           material, at page 515 during Sergeant Camp's testimony,  
8           there is a thread that is entered called "The Big Jew"  
9           thread. I would respectfully submit that that speaks  
10          for itself.

11                          Not only that, but within that  
12          thread, there is a description Jews as "Hook-nosed  
13          parasitic infesters". You know, you don't need to be a  
14          linguist or skilled in semiotics to interpret what the  
15          intent of that is and whether that exposes Jews to  
16          hatred or contempt.

17                          At page 640 and following, there is  
18          extensive anit-Aboriginal material under the thread  
19          "Are Aboriginals a Doomed Race?"

20                          At page 704 under the thread "Enoch  
21          Sign Historic Land Agreement", there is anti-Jewish,  
22          anit-homosexual, anti-Hispanic, and other  
23          discriminatory material.

24                          At page 728, Exterminance makes a  
25          post stating that he hopes or he feels that the



1 elimination of the Jew will help solve the problem of  
2 homosexuality.

3 At page 142 under the heading "New  
4 Downloads", SS-88 states:

5 "I have just added some  
6 literature under the downloads  
7 section. Check it out!"

8 Again, I would ask you to draw the  
9 conclusion that this indicates that it was, in fact,  
10 Mr. Bahr who placed that material on the download  
11 section. There is no other indication from anyone else  
12 that they had posted material to the download section.

13 Mr. Fromm, when the CBC video was  
14 played regarding Sergeant Camp discussing the issue of  
15 the execution of the search warrant on Mr. Bahr's  
16 residence, Mr. Fromm has asked you to draw the  
17 conclusion that what the officer says is that when he  
18 talks about oppression and elimination, that Sergeant  
19 Camp is, in fact, referring to Mr. Bahr and his group.

20 I would suggest to you that if you  
21 actually listen to the content of that, that it is  
22 clear that what Sergeant Camp is referring to is the  
23 material on the website promoting the exclusion and  
24 oppression of the targeted groups.

25 There is also an indication -- there

1 was also some discussion with regard to Mr. Bahr's  
2 removal of the term "kill". There is a post by  
3 Mr. Bahr. I would invite you that if you actually  
4 looked at what the posts says, it indicates Mr. Bahr  
5 says that he had blocked the word "kill" from use on  
6 the website on the basis that it might be used in a  
7 threatening manner. And then immediately underneath  
8 it, he says:

9 "I have unblocked it now."

10 I would suggest that that speaks  
11 volumes to Mr. Bahr's commitment to ensuring that the  
12 website stayed free of threatening and hateful  
13 material.

14 With regard to the issue of jokes and  
15 whether that kind of material is acceptable, I would  
16 refer you to the decision in Kulbashian et al in which  
17 that argument is rejected, that it is possible to use  
18 jokes that contain bigoted material as an acceptable  
19 form of discourse in Canadian society.

20 There was some discussion of a  
21 community standards type argument, and I would  
22 encourage you to consult the Winnicki decision by  
23 Member Jensen, which rejects this attempted line of  
24 defence, if you will.

25 Madam Chair, there was some

1 allegation specifically with regard to the post by  
2 Mr. Bahr regarding homosexuals and the mentally  
3 disabled and the fact that they should be exterminated.  
4 If I recall Sergeant Camp's testimony correctly, he  
5 showed at us the March version, the 10 March -- sorry,  
6 the posting is on 10 March, 2006. And in the first  
7 version of the police capture of the website, that  
8 posting is present.

9 There is no evidence tendered before  
10 you that Mr. Bahr had somehow lost control of the WCFU  
11 website. The allegation that this was not, in fact,  
12 made by Mr. Bahr is post-complaint, and, therefore, I  
13 would argue it is self-serving.

14 I would also invite you to consider  
15 the fact that -- and, again, if I recall Sergeant  
16 Camp's testimony correctly, the May 7th version  
17 continued to contain that same post.

18 If this had, in fact, been a false  
19 post by someone else, why wouldn't Mr. Bahr have  
20 announced on the website, "Hey, look, that post that  
21 calls for the termination of homosexuals and mentally  
22 disabled, that wasn't me", and removed it. It beggars  
23 belief, if you will, that knowing and alleging that  
24 someone has been making false posts under his name, one  
25 of which includes a call for the genocide of

1           homosexuals and mentally disabled, that the person who  
2           controls that very same forum would not then go and  
3           remove that over the span of several months.

4                         With regard to the question of  
5           remedy, I would adopt Mr. Vigna's submissions, counsel  
6           for Commission. Section 54(1).1 refers to a number of  
7           categories.

8                         In terms of mitigating factors that I  
9           believe may be appropriate in this case, there has been  
10          no evidence submitted to you of prior discriminatory  
11          practices on the part of Mr. Bahr or WCFU.

12                        Mr. Fromm has suggested to you on a  
13          number of occasions that Mr. Bahr is not wealthy. I  
14          would ask that you take that evidence with some  
15          caution. It is not sworn evidence, it was tendered  
16          only by Mr. Fromm, and it is only one of four factors  
17          of a wide number of factors in the two different  
18          subsections of 1.1 that are to be considered.

19                        In terms of aggravation or  
20          information that would tend to lead to support our  
21          submission that a penalty under this section should be  
22          at the higher end towards maximum of \$10,000, Mr. Fromm  
23          has indicate that Mr. Bahr is employed full time when  
24          he was suggesting that it may cause some concern about  
25          missing work.

1                   The extent and the gravity -- the  
2                   nature of circumstances, extent, and gravity of  
3                   discriminatory practices, I would suggest it would be  
4                   difficult indeed to find a more severe example than  
5                   where people are calling for the genocide of designated  
6                   groups.

7                   With regard to the willfulness and  
8                   intent, I would also suggest to you that this is  
9                   severe. Mr. Bahr was aware that his conduct was  
10                  causing outrage in the community. He was aware that  
11                  there was extensive media coverage that condemned the  
12                  activities of this group. In fact, one of them refer  
13                  to his group's activities as "supreme stupidity" and  
14                  the fact that there were counter protests to at least  
15                  one event head by WCFU in Winnipeg.

16                  I believe that all of this should  
17                  indicate or should have indicated to Mr. Bahr and the  
18                  group as a whole that their actions and the kind of  
19                  material that they were putting into the community were  
20                  abhorrent.

21                  With regard specifically, again, to  
22                  the question of how severe the kinds of material are, I  
23                  would just bring you back to the "Turner Diaries".

24                  At page 29, there is clear incitement  
25                  to the extermination of Jews. At page 130, it talks of

1 the extermination of whites who have engaged in  
2 miscegenation. At page 143 to 154, it speaks of the  
3 hanging of Jews, blacks, or mongrels of various sorts  
4 as well as the slaughter of white women who engaged in  
5 miscegenation of black males. At page 136, it speaks  
6 of the subsequent cleaning up of all the hung corpses  
7 of these individuals and describes their numbers as  
8 being between 55 and 60,000 individuals who were  
9 slaughtered. At page 166, it talks about mopping up:

10 "The last of the non-white bands  
11 who are hunted down and  
12 exterminated followed by the  
13 final purge of undesirable  
14 racial illness among the  
15 remaining white population."

16 With regard to homosexuals, again on  
17 the same posting as that made by Mr. Bahr regarding to  
18 their extermination, Der totenkopf either just before  
19 or just after Mr. Bahr's post states:

20 "I want to stop the Jews, but I  
21 also want these homos stopped  
22 dead."

23 Madam Chair, I had agreed to make a  
24 copy of my submissions to you, and I will provide a  
25 hard copy. I had anticipated that this may go after

1 lunch, so I will go either at the conclusion of these  
2 hearings -- perhaps I can deposit it at the front desk  
3 if it is concluded or at before lunch. I can make a  
4 copy.

5 I won't belabour the issue of what  
6 the Canadian Human Rights Tribunal has had to say about  
7 Mr. Klatt's testimony in the past, but I would draw  
8 your attention to the case of Schnell v. Micka et al.  
9 Paragraphs 131 to 136 describe in some detail  
10 Mr. Klatt's background and involvement within this  
11 area.

12 Similarly, in Citron v. Zündel, the  
13 tribunal also considered Mr. Klatt's testimony and  
14 dealt with that at Paragraphs 103 to 105.

15 Mr. Klatt admitted to you this  
16 morning that he participated along with Mr. Fromm in a  
17 protest outside a synagogue in Victoria on the 26th of  
18 October, 2003, where there were presentations given on  
19 internet hate, one of the presenters being me.

20 I would suggest that this brings into  
21 question his ability to act as an objective,  
22 independent witness.

23 Finally, Mr. Klatt's expert report  
24 consists of essentially definitions of what Hotmail and  
25 Yahoo e-mail are as well as a conglomeration of

1 internet links to various websites purporting to give  
2 information on how such e-mail passwords may be  
3 illegitimately obtained.

4 This information, even if presumed  
5 accurate, should be of no assistance to the defence put  
6 forward by the respondent in that it engages in no  
7 consideration whatsoever of the actual facts of this  
8 case.

9 In dealing with the question of  
10 adverse inference:

11 "Mr. Bahr has not given evidence  
12 in this proceeding despite his  
13 presence, his presence here  
14 throughout the hearing. His  
15 refusal to submit himself to  
16 cross-examination permits the  
17 tribunal to draw an inference  
18 that his evidence may, indeed,  
19 have been detrimental to him if  
20 it had been given.

21 As noted by the tribunal in Nealy v.  
22 Johnston at Paragraph 45627:

23 As Sopinka and Lederman state --"  
24 And it is a supra. It is a further  
25 quote:



1                   "-- failure on the part of the  
2                   defendant to testify once a  
3                   prima facie case has been made  
4                   out against the defendant may be  
5                   the subject of an adverse  
6                   inference.

7                   The learned authors also note an  
8                   unfavourable inference can also be drawn when a party  
9                   litigant does not testify or fails to call a witness  
10                  who would have knowledge of the facts and who might  
11                  have given important supporting evidence if the case of  
12                  the litigant had been sound.

13                  In this case, not only did Mr. Bahr  
14                  not testify, he did not choose to call any of his  
15                  associates who were involved in Western Canada For Us  
16                  with him. It is submitted that in this case, a prime  
17                  facie case has been made out and that it would be  
18                  appropriate for the tribunal to draw an adverse  
19                  inference under the circumstances.

20                  As noted by member Hadjis in the  
21                  Kulbashian decision at Paragraphs 114 and 115:

22                  The ultimate burden obviously rests  
23                  on the complainant and the Commission to establish  
24                  their case on the balance of probabilities. But where  
25                  the prima facie case has been made out, it is incumbent

1           upon the respondent to provide a reasonable explanation  
2           demonstrating that the alleged discrimination did not  
3           occur as alleged or that the conduct was somehow  
4           nondiscriminatory."

5                           He continues:

6                                   "From my earlier discussion on  
7                                   the evidence, it is clear that a  
8                                   prime facie case has been  
9                                   established against  
10                                  Mr. Kulbashian and  
11                                  Mr. Richardson. Did they put  
12                                  forth a reasonable explanation?

13                                 Both gentlemen indicated at the  
14                                 outset of the hearing that they looked forward to  
15                                 presenting their versions of the facts when their turn  
16                                 would come up. But when this opportunity finally  
17                                 arrived, they chose not to adduce any evidence."

18                                 And this is what I emphasise.

19                                   "The tribunal cannot take stock  
20                                   of mere hints or innuendos that  
21                                   may have been tossed in with  
22                                   their leading questions during  
23                                   their cross-examination of  
24                                   Commission witnesses if there is  
25                                   ultimately no evidence produced

1 to sustain these assertions."

2 He concludes:

3 "This is not a reasonable  
4 explanation.

5 It is submitted to you that that is  
6 exactly the case here as well."

7 In closing, I would just quote Martin  
8 Luther King Junior, because his words may have been  
9 written or could have been written exactly for such  
10 circumstances as here. He stated:

11 "Morality cannot be legislated,  
12 but behaviour can be regulated.  
13 Judicial decrees may not change  
14 the heart, but they can restrain  
15 the heartless."

16 Barring any questions you may have,  
17 Madam Chair, those are my submissions subject to the  
18 right of my reply.

19 THE CHAIRPERSON: Thank you.

20 Mr. Fromm, do you have anything?

21 MR. FROMM: In a general way that  
22 both Mr. Vigna and Mr. Warman made references to other  
23 judgments in other Canadian Human Rights Tribunals in  
24 the Schnell versus Micka case and the Warman versus  
25 Kulbashian case and the Warman versus Winnicki case and

1 as we have been told earlier, the tribunal, while these  
2 may be of interest to you, they are certainly not  
3 binding.

4 I won't revisit other matters in the  
5 case where I sited a decision in another case and was  
6 told it was not applicable here, because each case is  
7 separate and discrete. So I suggest that be something  
8 taken into consideration.

9 Mr. Vigna and Mr. Warman both made  
10 considerable points about our expert witness, and no  
11 evidence was lead about hacking into Mr. Bahr's site.  
12 I was not allowed to.

13 But I would suggest that what little  
14 Mr. Klatt was allowed to tell you might be of some  
15 assistance.

16 We have evidence before there was any  
17 indication of a police investigation or charges under  
18 the Criminal Code or charges under Section 13(1) that  
19 Mr. Bahr came to realise that he is having problems  
20 with his computer. There was hacking that had been  
21 going on, there seemed to be identity theft, posts were  
22 being made in his name, and misinformation was sown.

23 And he did the responsible thing: He  
24 went and filed a complaint with the police in his  
25 community at that time. It was Red Deer, and that

1 complaint or that discussion with the police was  
2 reviewed in evidence yesterday.

3 Mr. Klatt studied that, talked to  
4 Mr. Bahr, and drew up the report that was presented to  
5 you. While he is not allowed to testify about what he  
6 thought of Mr. Bahr's complaint or his claim, certainly  
7 what Mr. Klatt presented to you this morning is a  
8 fairly detailed explanation of how one might be able to  
9 hack a computer.

10 He also indicated that this was  
11 relatively widespread. He also indicated that even  
12 sophisticated computer users -- and I don't know that  
13 we have in evidence that Mr. Bahr was such. He was a  
14 graphic designer who used computers, but whether that  
15 would make him a sophisticated user is something, I  
16 suppose, that you will have to judge.

17 Mr. Klatt testified that even  
18 sophisticated users can be hacked and for a period of  
19 time and not know it.

20 The really problematic posting, as  
21 far as Mr. Bahr is concerned, is the one calling for  
22 the euthanising of homosexuals. That appeared on the  
23 Western Canada For Us website on the 10th of March.  
24 Mr. Bahr went into the police station on 19th of March,  
25 and he told Officer Dahl that he had been having

1           problems for about two weeks. To back that up, it  
2           would seem that that covers the period in question.

3                       Mr. Warman said, "Well, he didn't  
4           remove it." It was a fairly extensive site. I think  
5           what we were looking at, Sergeant Camp was showing it  
6           to us, it extended to something like 800 pages. I  
7           would like to conclude that for a man who is working  
8           full time, who is doing this political thing on a  
9           part-time basis, who is adding new material all the  
10          time, it is entirely possible that a thread that had  
11          basically petered out, run out, this posting in his  
12          name, SS-88, may never have come to his attention.  
13          Certainly we have no evidence that it came to his  
14          attention.

15                      We have no evidence that a complaint  
16          was made to him like, "What are you doing? What sort  
17          of comment is that? You will only get us into  
18          trouble." Nothing of that nature.

19                      I would like to conclude that in a  
20          busy world, often on the internet, you post something,  
21          and we move on. Especially if you are active, you are  
22          not simply reviewing lovingly a post you made three  
23          weeks ago just to see if they made a comment after  
24          that. Some do, but there was no evidence that that was  
25          Mr. Bahr's style. So I don't think any negative

1 inference should be drawn from the fact that this post  
2 was not removed.

3 We have been accused of not  
4 presenting any evidence. We tried with Mr. Klatt the  
5 best we could.

6 We had one of Mr. Bahr's associates'  
7 girlfriend, Ms. Bundschuh, who would have had pertinent  
8 information to offer. She was not allowed to testify.

9 It is not that we have been unwilling  
10 or reluctant or have nothing to say. Heck, piece of  
11 evidence after piece of evidence after piece of  
12 evidence was not allowed to bring in.

13 I will try the backdoor one more  
14 time. I will refer you to the Winnicki case. And in  
15 the report there, you will agree that Mr. Winnicki's  
16 defence was able to bring into evidence the fact that  
17 books like "Turner Diaries" and "Mein Kampf" were  
18 available at the Public Library. Mr. Warman has  
19 highlighted many certainly peppering passages in the  
20 "Turner Diaries", which, of course, is a novel. It is  
21 a story. It is also available -- maybe not widely  
22 available, but it is available in Canada.

23 I invite you to adopt a fairly  
24 sophisticated analysis of literature. Just because a  
25 novel says something doesn't mean anybody is exposed to

1 hatred or contempt.

2 Mr. Vigna assured us that it had  
3 nothing to do with politics. Left or right, it didn't  
4 matter. This has nothing to do with politics. It all  
5 has to do with hate.

6 I suggest to you that you are  
7 knowledgeable on this, because you probably would have  
8 to be knowledgeable for you to have been appointed. If  
9 you look over the history of Section 13(1) of the  
10 Canadian Human Rights Act, the only people who have  
11 ever been prosecuted, ever, the only people, are those  
12 on what you might call the right of the political  
13 spectrum. I know Mr. Warman will call them Nazis or  
14 neoNazis or whatever.

15 But if you go down all this way back  
16 to the great big granddaddy of them all, John Ross  
17 Taylor, eccentric old man. Some people might have said  
18 he was a follower of Hitler. But, anyway, he was the  
19 first one.

20 Then when we were still in the era of  
21 telephone answering machines, then there was a fellow  
22 in Winnipeg named Marcus, I think, and he had some  
23 outfit called like the Ku Klux Klan. There was Terry  
24 Long, who was the creator. There was some young fellow  
25 in Vancouver whose name temporarily escapes me, but



1 Tony MacClair (ph), who had some more sophisticated  
2 website in which you would call in and get different  
3 messages. But he, too, was a prosecutor.

4 And then in the internet era, of  
5 course, we had Zündel in terms of the internet. The  
6 second was John Micka, and that is M-I-C-K-A, from  
7 Vancouver for internet postings he made.

8 And in the Warman era, we have now a  
9 long list of people: Kulbashian and Richardson, who at  
10 least at the time of their postings were described as  
11 skinheads.

12 We had Warman versus Warman, which is  
13 not a marital dispute but Eldon Warman -- not a  
14 skinhead except that he is bald -- Eldon Warman is a  
15 gentleman in Calgary who we might call a tax dissident,  
16 a man with some very definite ideas about economics,  
17 but I suppose we might say to the right of the  
18 political spectrum.

19 Then there was another gentleman in  
20 Alberta named Kyburz. That is Warman versus Kyburz.  
21 Kyburz, too, was one of those tax dissenters or detax  
22 people, who have their own theories that the income tax  
23 laws is illegal. He, too, was prosecuted.

24 There are a whole lot of other  
25 prosecutions that have not yet been completed, so let

1 us only deal with the ones that have been completed.

2 But it becomes clear, there is only  
3 one side of the political spectrum that ever gets  
4 prosecuted under Section 13(1).

5 And as I pointed out in previous  
6 submissions, nobody has ever won a case. So the Act  
7 must, in fact, be so immedicable to freedom of speech  
8 that it basically is a tool -- you are being invited, I  
9 should say, to use this as a tool of the State to  
10 suppress one form of political opinion. And that is  
11 what it is. It is one form of political repression.

12 I will no longer revisit all the  
13 things that I mentioned yesterday, but I think  
14 Mr. Warman mischaracterises what you saw in that CBC  
15 interview with Sergeant Camp.

16 It is quite clear. It was personal.  
17 It was the people Warman said should be oppressed, and  
18 they need to be thrown in jail. You don't throw hate  
19 in jail, you throw people in jail.

20 It was quite clear. It was  
21 political. He didn't like Mr. Bahr, didn't like what  
22 he stood for, didn't like Western Canada For Us, and it  
23 is clear -- again, without reprising everything that  
24 was said yesterday -- there was a deliberate campaign  
25 to destroy the group, and the campaign succeeded. Hey,

1           it is not --

2                           THE CHAIRPERSON: Mr. Fromm, you  
3 really are tracing back into your submissions  
4 yesterday. I will ask that you confine your  
5 submissions to the responses to the material that you  
6 heard here today.

7                           MR. FROMM: Okay. I will attempt to  
8 do that, and I will put on the record that Mr. Warman  
9 was never interrupted. I will soldier on as best I  
10 can.

11                           Your attention was drawn to the  
12 meaning of the word "expose", and it was defined in, I  
13 believe, the Winnicki case. Now, that, of course, the  
14 terms was only the interpretation of the member of that  
15 tribunal, and that is at Mr. Vigna's Tab 15.

16                           And part of the definition of  
17 "expose" is to leave a person unprotected, to leave  
18 without shelter or defence. I invite you to adopt a  
19 broad interpretation of that. None of the groups who  
20 are mentioned in the complaint are party to this  
21 complaint. The complaint was not made by any of them.

22                           And these groups, I invite you to  
23 recognise, have many means of protection. They are not  
24 operating on the fringes of political spectrum like  
25 Western Canada For Us. They are mainstream, as

1 Sergeant Camp said. He liaised with the spokesmen for  
2 many of these groups. These groups, I think without  
3 apogeaning, who have undue power and influence  
4 certainly have a favourable ear, for the most part, of  
5 the mass media.

6 These groups are not defenceless.  
7 They have an opportunity to state their case, to make  
8 their concerns known, to refute people if they even  
9 think they are worth refuting. They may say things  
10 that are negative about them.

11 So I invite you to look at this case  
12 in its totality and the behaviour particularly of  
13 Mr. Bahr, postings he put up, his political behaviour,  
14 the meetings he organises, his liaisoning with the  
15 police, and draw the conclusion that people in the  
16 community did not see Western Canada For Us as a  
17 problem. Some may have agreed. Many may not have  
18 agreed. I think the vast majority didn't even know it  
19 existed.

20 So as this is the important part of  
21 what I would invite you to consider, I will make no  
22 bones about it, the fact that I think Section 13(1) is  
23 appalling. It is a disgrace. When I reread, a learned  
24 judge would say, "The truth is no defence", you wonder,  
25 is this still the Anglo-Saxon system?

1                   That is why I suggest -- I wasn't  
2 meaning to be humorous, but it hardly even matters to  
3 people. Do you swear to tell the truth? It doesn't  
4 matter. Let us just have a little chat.

5                   But whether we like it or not, this  
6 is the law that you are being asked to apply. And,  
7 considering that, I would like you to consider that the  
8 generous application of likely to expose -- I am  
9 suggesting there has been no evidence that anybody was  
10 exposed, and the supposedly targeted groups seem to  
11 have no particular concern about this at all.

12                   The other factor that I think is  
13 really very important, and this was addressed, but I  
14 don't think very helpfully by Mr. Vigna, is the lack of  
15 expert evidence in terms of the impugned statements as  
16 to whether they were likely to expose hatred or  
17 contempt to the groups mentioned.

18                   You were told that on the one hand,  
19 well, you can judge that, because you must be an  
20 expert. You were appointed because you have some  
21 sensitivity to human rights. And that may well be  
22 true, but that is not necessarily the same thing as  
23 having knowledge or having perhaps the assistance of  
24 linguists or people who study literature or mass  
25 communications as to whether or not those particular

1 statements were likely to expose groups to hatred or  
2 contempt. But some of those statements might be  
3 controversial, no doubt.

4 But had they reached back to that  
5 threshold? You have no evidence this is being read.  
6 We have had, of course, the assertions of Mr. Warman  
7 and Sergeant Camp, but they are not experts. They are  
8 certainly entitled to their opinions like some people  
9 are, but that is not evidence on the important point.

10 And so, in conclusion, in terms of  
11 the case, we were told earlier in the ever-shifting  
12 sands of this case that Mr. Bahr would have to answer  
13 for what he posted. So while there may be other posts  
14 that were brought to our attention, in terms of the  
15 complaint against Mr. Bahr, he is responsible for what  
16 he posted. I suggest the only really problematic post  
17 is the one about the euthanising of homosexuals, and I  
18 think we have already provided an answer on that.

19 If there are other posts that seem to  
20 be of concern, I invite the member to take a broad and  
21 generous approach to consider it, particularly that the  
22 groups in question did not seem particularly concerned  
23 and did have numerous ways of making their point of  
24 view known if, indeed, there was any problem at all.

25 I think, to be realistic, as has

1 already been done, I will address the matter that one  
2 of the sanctions sought by the Commission and  
3 Mr. Warman is a cease and desist order. The fact is  
4 these tend to be very, very open ended. And I would  
5 urge you if a cease and desist order is made, that it  
6 be very, very tightly framed so that it is not a matter  
7 that Mr. Bahr may never again express his views on  
8 immigration or Aboriginals or same-sex marriage or  
9 whatever without risking being brought to court on a  
10 possible charge of being in contempt of court and all  
11 the penalties that attest to that.

12 Now, in the past, tribunals have  
13 issued cease and desist orders which are absolutely  
14 unlimited. They are for life, and this is really  
15 shocking. The penalties, should Mr. Bahr be convicted,  
16 are two years in prison. That is the maximum time in  
17 prison. You are being invited to impose a life  
18 sentence. I would urge you -- and I would like to  
19 think there would be no finding of discrimination here.  
20 But if there is, I would submit that there should be a  
21 very tightly written -- specific only to whatever post  
22 or posts you find contravene the Act that there be a  
23 cease and desist order carefully crafted to capture  
24 only that and that that be of limited duration. I  
25 would suggest a year.

1                   A fine is urged by both Mr. Warman  
2                   and the Commission. It is interesting that in the  
3                   Warman versus Warman case, the member, after finding  
4                   the older Warman guilty, considered the matter of a  
5                   fine. And the certain Indian gentleman concerned him a  
6                   great deal. He brought up the case of Chief Ohanikew  
7                   (ph), who had just recently been found guilty under  
8                   Section 219. And Chief Ohanikew was find by the court  
9                   in the province of Alberta \$1,000. And the member --  
10                  sorry, Saskatchewan -- court of Saskatchewan \$1,000.

11                  And the member in the Warman versus  
12                  Warman case asked for submissions as to whether there  
13                  should be a more serious penalty. I think the  
14                  Commission was asking for a \$10,000 fine as a more  
15                  serious penalty attending before a civil court, a  
16                  tribunal, that then was imposed in a criminal court.  
17                  And I invite you to consider that in your  
18                  deliberations.

19                  If you, like me, have a lot of  
20                  problems with this Act as really an affront to freedom,  
21                  perhaps you might send the message about your opinion  
22                  if you do find Mr. Bahr guilty of discriminatory  
23                  practice and send the powers that be a message by  
24                  giving him a fine of \$1.

25                  Mr. Bahr has not, as Mr. Warman



1 suggested, been willful. He has proven himself to be a  
2 concerned young man, as mentioned yesterday in what  
3 evidence we were allowed to lead, and behaved in a  
4 responsible fashion: cooperating with law enforcement,  
5 holding meetings, and promoting his political views in  
6 what would normally be considered a responsible manner.  
7 I think that ought to be considered in any decision  
8 about him.

9 I am sorry, I did leave out one case  
10 law I would like to draw to your attention. We were,  
11 of course, told that the senior jurisprudence included  
12 the Supreme Court of Canada has ruled that the truth is  
13 no defence. Back in the early 1990s -- and this is  
14 indexed as "Canada (Canadian Human Rights Commission  
15 versus French)" -- there had been a cease and desist  
16 agreement. Actually, it was not imposed after a case  
17 as far as I can recall, but there was an agreement  
18 between the Canadian Human Rights Commission and the  
19 Heritage Front in Toronto on Wolfgang Droege. And it  
20 referred to telephone messages that the Western  
21 Guard -- the Heritage Front had a regular telephone  
22 message. And sometime after this agreement, there were  
23 several messages recorded that the Canadian Human  
24 Rights Commission felt violated with the cease and  
25 desist order, and so the Heritage Front, Wolfgang

1 Droege, and a fellow by the name of June Louis French  
2 found themselves in Federal Court on a contempt of  
3 court charge.

4 Mr. Justice Cullan at the time  
5 dismissed the Human Rights application with costs to  
6 the respondents. And this is what he said. He said --  
7 and this is it at Paragraphs 43, 44. He said:

8 "I am troubled that the Canadian  
9 Human Rights Commission did not  
10 take the time to examine whether  
11 there was even a grain of truth  
12 in some of the allegations in  
13 the subject message.

14 The prosecution of war criminals like  
15 the native lands, the merits of immigration, are  
16 subjects of vigorous debate in this country.

17 I have no doubt that these subjects  
18 arouse strong feelings in the people. Speaking the  
19 truth or one's honestly held belief, so long as the  
20 belief does not promote hatred, should not be  
21 sufficient to bring one in contempt of the court or to  
22 be questioned."

23 And while truth in itself amazingly  
24 may not be a defence, I think in terms of the broad  
25 range of political debate and the serious disagreements

1 on some of the hot issues of the day, I think you ought  
2 to consider the degree to which some of the postings  
3 that may be impugned were true or at least sincere  
4 expressions of strongly held political opinions.

5 I mentioned yesterday I worry about  
6 our country where open discussion is not possible. I  
7 don't think that really is the Canadian tradition that  
8 was suggested to us by Mr. Vigna.

9 A great man from Saskatchewan, former  
10 Prime Minister John Diefenbaker, was once campaigning  
11 in a rural area so remote that they couldn't find a  
12 little town hall to hold the meeting.

13 So on the edge of a field, I guess  
14 some of his advanced men brought together the  
15 neighbouring farmers, about 20 in number, and  
16 John Diefenbaker took the only available platform, and  
17 that was a manure spreader.

18 He got up on the top of the manure  
19 spreader, and he began to deliver a speech. And one  
20 old farmer said, "John, that spreader sure carried a  
21 load tonight."

22 It used to be possible in this  
23 country to have strong disagreements about the future  
24 of this country, about ideology, about points of view.  
25 It used to be possible to state disagreements nastily,

1           offensively, even to hell without the consequence being  
2           threats of fine or bans or prison.

3                           I would like to conclude by asking  
4           the member to think about the two possible directions  
5           we could go. She could take the very narrow legalistic  
6           approach offered by Mr. Warman and Commission counsel,  
7           Mr. Vigna. Or you could take a broader, more generous  
8           approach, because this Act is also to be governed by  
9           the Charter of Rights and Freedoms and all its  
10          guarantees of freedom of speech, freedom of belief, and  
11          all those really good things that are necessary for a  
12          free, democratic society.

13                           And the two roads that I invite you  
14          to consider are these: In very few countries in the  
15          world are governments chained by any means other than  
16          violence -- a coup d'etat or military or a group of  
17          people as did Castro get together enough guns and  
18          support, and they shoot their way to power. And that  
19          is the way power is changed in much of the world.

20                           We are fortunate to live in a country  
21          where, over a period of centuries and going back to  
22          Britain, we developed another way, and that might be  
23          loosely called a democratic life. We are going to have  
24          elections, we elect our leaders. But very much tied to  
25          that is the right to be able to discuss issues.

1                   It is rather illusory to be told you  
2                   can go once every few years and mark an "X" on a  
3                   ballot, but you mustn't talk about issues or you  
4                   mustn't criticize certain groups, or else bad, bad  
5                   things will happen to you.

6                   I did not mean to suggest, and  
7                   perhaps I am helping Mr. Vigna -- I didn't mean to  
8                   suggest that the cease and desist order would have no  
9                   effect. Of course it would. It would silence  
10                  Mr. Bahr. All I meant is that the internet is such a  
11                  wild and such a free institution that there will be  
12                  other Glenn Bahrs. You can't suppress the idea. You  
13                  can suppress Glenn Bahr. That is easy enough. You can  
14                  suppress him. But you will not to be able suppress  
15                  ideas.

16                  And so the choice becomes this: Do  
17                  we have men of words, or do we have men of the sword?  
18                  Glenn Bahr is a man of words. You saw he has no  
19                  criminal record. In his testimony with -- the  
20                  interview with the policeman in Red Deer, he said he  
21                  doesn't party, he is not a heavy drinker, he doesn't  
22                  get into brawls. His thing is words, and we saw that  
23                  on his website. He is a man of the word.

24                  But there are other people who are  
25                  men of the sword. That is the vision being suggested

1 to you in the "Turner Diaries". If you take away our  
2 right to talk about things, there will be other people,  
3 maybe not Glenn Bahr, but people will say, "If I am  
4 going to go to jail anyway, why go to jail for writing  
5 some rinky dink thing on the internet? I might as well  
6 do something worthwhile."

7 I don't think that is a very pretty  
8 prospect. I wouldn't want to see Canada with the  
9 vision outlined in the "Turner Diaries". I don't think  
10 that is what any Canadian would want.

11 But if you repress the men of the  
12 word, as surely as the sun will rise tomorrow -- and we  
13 have seen this in the endless troubles in northern  
14 Ireland -- the men of the word will be replaced by the  
15 hard men of the sword.

16 THE CHAIRPERSON: Thank you.

17 Thank you very much, counsel. The  
18 hearing is concluded.

19 MR. WARMAN: Madam Chair, I am sorry.

20 THE CHAIRPERSON: Oh. Yes?

21 MR. WARMAN: Ten seconds worth of  
22 reply?

23 THE CHAIRPERSON: Yes.

24 MR. VIGNA: Madam Chair, just five  
25 seconds of reply?

1 THE CHAIRPERSON: Okay.

2 MR. VIGNA: The first comment about  
3 not being able to present the defence, I dispute that  
4 statement, because the main concern would have been the  
5 respondent to have to present himself, not the expert.

6 And on the case law that has been  
7 referred to you, I just want to bring to your attention  
8 that the criminal standards being adopted in the French  
9 case, which is a reasonable doubt. So there is an  
10 important distinction that has to be made.

11 And finally on a more humouristic  
12 note, when Mr. Fromm says that words are not as  
13 powerful as the sword, I will just say that the pen is  
14 mightier than the sword.

15 THE CHAIRPERSON: Mr. Warman?

16 MR. WARMAN: I apologise that I have  
17 no levity, but at Paragraph 113 of the Kyburz case --  
18 you don't need to turn to it -- it is just simply the  
19 wording that I would submit is appropriate for the  
20 cease and desist order for the case.

21 THE CHAIRPERSON: All right. It is  
22 hard to do this prematurely, but I would like to thank  
23 counsel for their assistance, Mr. Fromm. The hearing  
24 is concluded.

25 I have directed that I will receive

1 additional argument if any parties want to provide them  
2 on or before the 30th of June, and I will provide my  
3 reasons for decision as shortly thereafter as I can.

4 So, again, thank you very much.

5 Thank you, and have a good afternoon.

6 --- Whereupon the hearing adjourned at 1:03 p.m.

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I HEREBY CERTIFY THAT I HAVE, to  
18 the best of my skill and  
19 ability, accurately reported and  
20 transcribed the foregoing.

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24

Eveliène Symonds

25

C.S.R.(A), R.P.R.