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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/
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HEARING HELD IN THE QUEEN ELIZABETH ROOM, DELTA EDMONTON CENTRE,
10222 102 STREET, EDMONTON, ALBERTA ON THURSDAY, JUNE 1st, 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 "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
the best of my skill and
ability, accurately reported and
transcribed the foregoing.

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Eveliène Symonds

24

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

25