

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

Plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

Commission

and/et

TOMASZ WINNICKI

Respondent

Intimé

BEFORE/DEVANT:

KAREN JENSEN

CHAIRPERSON/
PRÉSIDENTE

CAROL ANN HARTUNG

REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N° CAUSE:

T1021/0205

VOLUME:

7

LOCATION/ENDROIT:

TORONTO, ONTARIO

DATE:

2005/10/21

PAGES:

769 - 887

StenoTran

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

SITTING AT JPR ARBITRATION CENTRE, 390 BAY STREET, 3rd FLOOR,
TORONTO, ONTARIO ON FRIDAY, OCTOBER 21, 2005, AT 9:30 A.M.
LOCAL TIME

CASE FOR HEARING/CAUSE DEVANT ÊTRE ENTENDUE

IN THE MATTER of the complaint filed under section 7 of the
Canadian Human Rights Act by Richard Warman, dated September 7th,
2002, and as amended against Tomasz Winnicki. The Complainant
alleges that the Respondent has engaged in a discriminatory
practice on the grounds of religion, race and national or ethnic
origin, colour and retaliation in a matter relating to the usage
of a telecommunications undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	on his own behalf
Monette Maillett Ikram Warsame	Counsel for the Commission
Chi-Kun Shi	Counsel for the Respondent

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1 Toronto, Ontario

2 --- Upon commencing on Friday, October 21, 2005

3 at 9:30 a.m.

4 REGISTRY OFFICER: Order, please.

5 All rise.

6 Please be seated.

7 THE CHAIRPERSON: Good morning.

8 MS SHI: Good morning.

9 THE CHAIRPERSON: Well, we have made
10 it to day five. Today is Friday and I must commend all
11 counsel and parties for getting to this point. It has
12 been a long, difficult week but we are entering the
13 home stretch.

14 So, Ms Shi, you are going to
15 continue.

16 MS SHI: Yes.

17 THE CHAIRPERSON: And actually before
18 we begin, I would like to reiterate my statement that I
19 made and I have been making every day, which is that
20 this a case in which there are strong feelings, strong
21 emotions on the part of many different people, and I am
22 encouraging all who are involved to exercise the utmost
23 of caution and restraint in terms of their behaviour
24 towards people whose views they may not agree with, and
25 we will not tolerate any kind of intimidation of

1 witnesses, counsel, parties, anyone involved, and if
2 there are any allegations or any concerns, you are to
3 address the please who are present and also bring that
4 to my attention.

5 I will reiterate this again at
6 another point during the day.

7 Ms Shi.

8 MS SHI: Thank you, Madam Chair.

9 FREDERICK PAUL FROMM, RESUMED:

10 EXAMINATION

11 MS SHI: Mr. Fromm, could I take you
12 to tab 37, please. Please turn to page 211, tab 37.

13 MR. FROMM: Yes.

14 MS SHI: In the second complete
15 paragraph it talks about Mr. Winnicki being charged in
16 the context of a demonstration about Mr. Ernst Zundel.

17 Do you know anything about that?

18 MR. FROMM: Yes, I do, I was present.

19 MS SHI: Can you tell us what you
20 saw?

21 MR. FROMM: Yes. Mr. Winnicki with a
22 carload of friends from London arrived somewhat before
23 the protest and parked in the parking lot beside the
24 Metro West Detention Centre.

25 He and his friends were leaving their

1 car to take up a position on the sidewalk some distance
2 from the car where the protest was to occur and the
3 please descended on his car, searched it and found
4 these items in the trunk of the car, but neither Mr.
5 Winnicki or his friends were carrying these items to
6 the demonstration, they were already quite a distance
7 from the car and they had none of these items with
8 them.

9 MS SHI: Thank you.

10 Yesterday we had talked about the use
11 of the word nigger in the Adventures of Huckleberry
12 Finn written by Mark Twain.

13 MR. FROMM: Yes.

14 MS SHI: Do you know how many times
15 the word nigger is used in that book?

16 MR. FROMM: Not exactly, but I
17 have -- when I taught the book, at one point did a
18 count and I came up with over a hundred uses in the
19 book.

20 It's probably not an exhaustive
21 figure, but at least at hundred.

22 MS SHI: Could we go to tab 50,
23 please.

24 MR. FROMM: Yes.

25 MS SHI: Mr. Fromm, can you take a

1 look at the contents of this tab, please.

2 THE CHAIRPERSON: Can you just hang
3 on for a minute, I am having trouble finding it.

4 MS SHI: Yes. It is in the red
5 binder.

6 THE CHAIRPERSON: Okay, thank you.
7 Go ahead.

8 MS SHI: I'm going to give Mr. Fromm
9 a minute.

10 Have you had a look at the pages
11 under that tab?

12 MR. FROMM: Yes, I have. The first
13 page, page 335, is a download from the Toronto Public
14 Library and it lists one of its holdings and that's a
15 novel called the Turner Diaries.

16 MS SHI: All right. And what is on
17 page 336 to 339?

18 MR. FROMM: Page 336 to 339 is a
19 download from the website of the Anti-Defamation League
20 in the United States and it's their take on the Turner
21 Diaries.

22 This a description of the Turner
23 Diaries and their criticism of it.

24 MS SHI: Thank you.

25 Could we mark that as an exhibit,

1 please.

2 THE CHAIRPERSON: Mr. Fromm, before
3 we do that, did you download this yourself?

4 MR. FROMM: Both of these were found
5 by counsel and I checked their existence, so I got on
6 the website of the Toronto Public Library and also the
7 Anti-Defamation League, saw these to be there.

8 THE CHAIRPERSON: These same copies?

9 MR. FROMM: These same copies.

10 THE CHAIRPERSON: Thank you.

11 REGISTRY OFFICER: The documents
12 found at tab 50 of the respondent's book of documents,
13 Volume II, pages 336 to 339, including a download from
14 the Toronto Public Library and a download from the ADL
15 of the Turner Diaries, Extreme Living in America, will
16 be marked as respondent Exhibit R-38.

17 EXHIBIT NO. R-38: Documents
18 found at tab 50 of the
19 respondent's book of documents,
20 Volume II, pages 336 to 339,
21 including a download from the
22 Toronto Public Library and a
23 download from the ADL of the
24 Turner Diaries, Extreme Living
25 in America.

1 MS SHI: Thank you.

2 Could we go to tab 60, please.

3 MR. FROMM: Okay.

4 MS SHI: Have you seen this before,
5 Mr. Fromm?

6 MR. FROMM: Yes.

7 MS SHI: What is it?

8 MR. FROMM: Well, I downloaded this
9 myself, this from the Globe and Mail of October the
10 11th, and it is an article about multiculturalism.

11 It's reporting on a speech by Trevor
12 Phelps who's the Chairman of Britain's Commission on
13 Racial Equality, and it's suggesting that some aspects
14 of multiculturalism ought to be reconsidered.

15 MS SHI: Could we mark that as an
16 exhibit, please.

17 I'm sorry, it's only pages 495 to
18 496, please.

19 REGISTRY OFFICER: So, we can
20 officially remove 497 to 502?

21 MS SHI: Yes, please.

22 REGISTRY OFFICER: Let the record
23 reflect that pages 497 to 502 at tab 60 of the
24 respondent's book of documents, Volume II, have been
25 removed, and that pages 495 and 496 at tab 60 of the

1 respondent's book of documents, Volume II, will be
2 marked -- entitled a download from globeandmail.com,
3 multicultural plus, dated Tuesday, October 11th, 2005
4 will be marked as respondent Exhibit R-39.

5 EXHIBIT NO. R-39: Pages 495 and
6 496 at tab 60 of the
7 respondent's book of documents,
8 Volume II, entitled a download
9 from globeandmail.com,
10 multicultural plus, dated
11 Tuesday, October 11th, 2005.

12 MS SHI: Thank you.

13 Could we go to tab 54, please.

14 Madam, chair, in reviewing the
15 exhibits, I note that 54 and 55, in my view, had
16 actually been identified by Mr. Warman when we went
17 through it, however, it was only marked for
18 identification purpose.

19 Would you like Mr. Fromm to tell you
20 what he knows of it, or shall we just mark it?

21 THE CHAIRPERSON: Yes.

22 MS SHI: Mr. Fromm, tab 54 first.

23 MR. FROMM: Tab 54. Yes. When you
24 go on the VNN site you can log on, you can click on
25 members' lists and you get letters of the alphabet and

1 you can click on the letter and it will print out for
2 you a list of the members and the number of posts they
3 have and the time they last visited and if they have an
4 Avatar, and I have examined this part of the site.

5 MS SHI: Could we mark that as an
6 exhibit, please.

7 THE CHAIRPERSON: Yes.

8 REGISTRY OFFICER: The document found
9 at tab 54 of the respondent's books of documents,
10 Volume II, currently marked for identification as C
11 Vanguard Network News forum members list, will be
12 marked as respondent Exhibit R-40.

13 EXHIBIT NO. R-40: Document
14 found at tab 54 of the
15 respondent's books of documents,
16 Volume II, currently marked for
17 identification as C Vanguard
18 Network News forum members list.

19 MS SHI: Thank you. Can we go to tab
20 55, please.

21 Mr. Fromm, there is -- it's a big
22 tab, I would like you to just quickly have a look at
23 it.

24 Madam Chair, Mr. Warman had indicated
25 after reviewing those that the print-out looks like

1 that they are his postings.

2 I am in your hands as to how much
3 scrutiny you want Mr. Fromm to go through. Does he
4 need to identify each page, or how would you like to do
5 that?

6 In my view, it has been identified by
7 Mr. Warman, he has checked it and said they look like
8 his postings.

9 THE CHAIRPERSON: Do you have any
10 submissions to make on that, Mr. Warman, Ms Maillet?

11 MS MAILLET: I would just ask Mr.
12 Fromm if he, in fact, is familiar with the documents,
13 if he viewed them on the internet, and I'm assuming his
14 answer will be that counsel has downloaded them and
15 that he checked the websites, but I wouldn't mind
16 having those answers from Mr. Fromm.

17 MS SHI: Just generally?

18 MR. WARMAN: The same.

19 MS MAILLET: Yes, just generally.

20 MS SHI: All right, Mr. Fromm.

21 MR. FROMM: Yeah. When I was advised
22 that apparently Mr. Warman's handle was Axetogrind, I
23 did look up the postings of Axetogrind and I have
24 seen -- I have seen many of these, I recognize a number
25 of them.

1 MS SHI: Could we mark that as an
2 exhibit?

3 MR. WARMAN: Objection. Can he
4 identify which of the postings he has, in fact, seen or
5 which he has, in fact, not seen, please.

6 MS SHI: Well, Madam Chair, I think
7 that Mr. Warman himself had examined it and had
8 admitted on the record that these were his postings.

9 I don't think it matters.

10 THE CHAIRPERSON: Nonetheless, at
11 this point I think it would be useful for us to know
12 which of these, in fact, Mr. Fromm has seen and which
13 you have not seen.

14 MR. FROMM: I was particularly
15 interested in the postings about the British National
16 Party, I found some of them quite inflammatory and
17 anti-homosexual, for instance, the one on page 357:

18 "Webster Outs Griffin as
19 HOMOSEXUAL!!!"

20 The writer says:

21 "From the fax it looks like that
22 closet door is..."

23 THE CHAIRPERSON: Just a minute,
24 please, Mr. Fromm.

25 MR. WARMAN: In fact, the answer is

1 not identifying which postings he's actually seen, he
2 is going into to his opinion about one of the postings,
3 so if he could, in fact, perhaps answer the first
4 question before he goes on to his editorial comments.

5 THE CHAIRPERSON: Objection
6 sustained. I would like to hear from Mr. Fromm which
7 of these postings he can identify as having seen
8 himself.

9 MS SHI: Madam Chair, could I ask
10 whether this is an investigation as to whether it could
11 be -- it's sufficient identification for marking it as
12 an exhibit, because I would like to get that done first
13 and then, obviously, we can move on from there.

14 But I really believe at this point
15 it's been fully identified.

16 THE CHAIRPERSON: I'm not sure that
17 it has been fully identified.

18 MS SHI: It was identified by Mr.
19 Warman.

20 THE CHAIRPERSON: It hasn't been
21 entered as an exhibit.

22 MS SHI: Well, I am entering it now.

23 THE CHAIRPERSON: Yes. So, if you
24 are entering it now, what I think we need to do is go
25 through and identify it properly, so that Mr. Fromm can

1 testify as to which of these he has seen and can verify
2 as having been on the internet.

3 MS SHI: But wait a second, but
4 surely --

5 THE CHAIRPERSON: And then we will
6 move to your questions, Ms Shi.

7 MS SHI: But surely, I think Mr.
8 Warman identified it fully based on Mr. Warman's
9 testimony that those were his postings on the VNN.

10 What more should be required to
11 identify this document?

12 THE CHAIRPERSON: Well, I would like
13 to hear from Mr. Fromm whether he has viewed these
14 documents himself.

15 MS SHI: Well, I have to register my
16 objection at this point, because I feel it had been
17 sufficiently identified and I think for the purpose of
18 tendering it as an exhibit, I think it's more than
19 sufficient that the person who posted the postings
20 himself looked at it and said that, yes, these are my
21 postings.

22 That should be more than sufficient
23 to identify them.

24 THE CHAIRPERSON: I am going to need
25 a read back then from the transcripts of that --

1 MS SHI: We could do that. We could
2 do that. I have no problem with that.

3 THE CHAIRPERSON: -- of that portion
4 of the examination in order for me to determine if
5 those were sufficiently identified.

6 MS SHI: Sure, absolutely.

7 Can we do that, please.

8 THE CHAIRPERSON: Okay.

9 Before we do that, do I have any
10 submissions.

11 MS MAILLET: If we could just have a
12 moment, five seconds.

13 Madam Chair, we are willing to
14 consent to the material going in, however, we will be
15 asking Mr. Fromm questions about these documents, of
16 course, but for the purposes of moving things along, we
17 are okay with having them go in, as identified by Mr.
18 Warman.

19 MS SHI: Thank you.

20 THE CHAIRPERSON: Thank you.

21 MS SHI: Could we mark it as an
22 exhibit then, please.

23 REGISTRY OFFICER: The document found
24 at tab 55 of respondent's book of documents, Volume II
25 currently marked for identification as D, postings on

1 the Vanguard News Network, postings made by Axetogrind
2 from pages 354 to 470, will be marked as respondent
3 Exhibit R-41.

4 EXHIBIT NO. R-41: Document
5 found at tab 55 of respondent's
6 book of documents, Volume II
7 currently marked for
8 identification as D, postings on
9 the Vanguard News Network,
10 postings made by Axetogrind from
11 pages 354 to 470.

12 MS SHI: Thank you. Could we go to
13 tab 47, please.

14 Mr. Fromm, can you tell us what this
15 document is?

16 MR. FROMM: This a posting from VNN
17 by Tom Winnicki.

18 MS SHI: Have you seen it --

19 MR. FROMM: Yes, I have.

20 MS SHI: -- on the internet?

21 MR. FROMM: On the internet.

22 MS SHI: Could we mark it as an
23 exhibit, please.

24 REGISTRY OFFICER: The document found
25 at tab 47 of the respondent's book of documents, Volume

1 I, pages 306 and 307 posting by Tomasz Winnicki on the
2 Vanguard News Network will be marked as respondent
3 Exhibit R-42.

4 EXHIBIT NO. R-42: Document
5 found at tab 47 of the
6 respondent's book of documents,
7 Volume I, pages 306 and 307
8 posting by Tomasz Winnicki on
9 the Vanguard News Network.

10 MS SHI: Thank you. Tab 48, please.
11 Have you seen that before, Mr. Fromm?

12 MR. FROMM: Yes.

13 MS SHI: On the internet?

14 MR. FROMM: This another posting by
15 Tom Winnicki on the VNN forum.

16 MS SHI: And you have seen it on the
17 internet?

18 MR. FROMM: I did, yes.

19 MS SHI: Could we mark that as an
20 exhibit, please.

21 REGISTRY OFFICER: Tab 48?

22 MS SHI: Yes, please.

23 REGISTRY OFFICER: The document found
24 at tab 48 of the respondent's book of documents, Volume
25 I, pages 308 to 310, postings by Tomasz Winnicki to the

1 Vanguard News Network will be marked as respondent
2 Exhibit R-43.

3 EXHIBIT NO. R-43: Document
4 found at tab 48 of the
5 respondent's book of documents,
6 Volume I, pages 308 to 310,
7 postings by Tomasz Winnicki to
8 the Vanguard News Network.

9 MS SHI: Could we go to tab 33,
10 please.

11 Mr. Fromm, could you please have a
12 look at the whole tab and then I am going to ask you a
13 few questions about the different pages.

14 And, Madam Registrar, I'm not marking
15 page 137, so we can take that out, please.

16 REGISTRY OFFICER: Can you please
17 advise me as to what page?

18 MS SHI: Oh, tab 33.

19 REGISTRY OFFICER: Sorry, it starts
20 at 133.

21 MS SHI: No, it starts at 132, but
22 I'm taking out page 137.

23 REGISTRY OFFICER: Okay.

24 MS SHI: Thank you.

25 Are you ready, Mr. Fromm?

1 MR. FROMM: Yes, I am.

2 MS SHI: Now, first of all, from page
3 132 to 136, have you seen this on the internet?

4 MR. FROMM: Yes. This an article
5 downloaded from the website of the Institute for
6 Historical Review in California and it's an article by
7 the institute director Dr. Mark Weber, a Look at The
8 'Powerful Jewish Lobby'.

9 MS SHI: And then page 138.

10 MR. FROMM: 138 is from the download
11 from the website of the Toronto Public Library
12 indicating that they have a book in their collection
13 called the Holocaust industry: reflection on the
14 exploitation of Jewish suffering by Norman Finkelstein.

15 MS SHI: And page 139?

16 MR. FROMM: 139 is also a download
17 from the Toronto Public Library's website indicating
18 that in their holdings they have a book by the former
19 Congressman Paul Findley, They dare to speak out:
20 people and institutions confront Israel's lobby.

21 MS SHI: Actually that's 139 to 140.

22 And then from 142 to 145, have you
23 seen this article?

24 MR. FROMM: Yes.

25 MS SHI: Madam Chair, sorry, perhaps

1 I should explain a bit. This article was produced in
2 response to my friend's concern about my production of
3 the article we just saw, Powerful Jewish Lobby,
4 concerned that maybe some of the quotes' veracity needs
5 to be examined, and what I have done is for a select
6 few of them I have found the source material, mostly
7 from the US Congress, some from the Public Library and
8 in, one case, the Harper's Magazine archives, and I
9 have so informed the witness.

10 And so I just want to clarify with
11 the Commission that Mr. Fromm's identification of these
12 documents will be based on information and belief. The
13 source of information being myself.

14 THE CHAIRPERSON: Are there any
15 objections?

16 MS MAILLET: I have no objection,
17 unless Mr. Warman does.

18 MR. WARMAN: Not to that point
19 specifically, although I will be objecting to the
20 introduction of the article.

21 THE CHAIRPERSON: Pardon me?

22 MR. WARMAN: I believe Ms Shi is
23 trying to ask if there's an objection to the idea of
24 having the subsequent original sources, but I would be
25 objecting to the introduction of the original article

1 altogether.

2 THE CHAIRPERSON: So, we are talking
3 about two articles here; are we?

4 MS SHI: Actually several. There is
5 the Paula Hyman's from the New York Times.

6 THE CHAIRPERSON: Mm-hmm.

7 MS SHI: And then from page 150 to
8 156 are excerpts from the Holocaust industry, that is
9 from the Toronto Reference Library, you can see the bar
10 code on it.

11 THE CHAIRPERSON: Mm-hmm.

12 MS SHI: And then from 157 to 163 is
13 the Paul Findley book, They dare to speak out, also
14 from the Public Library.

15 THE CHAIRPERSON: But from 157 to 158
16 I have two pages.

17 MS SHI: And then after that...?

18 THE CHAIRPERSON: Then I have a blue
19 page.

20 MS SHI: I know, I have to say I'm
21 mystified by it too. Maybe we should take it out.

22 THE CHAIRPERSON: Take the blue page
23 out.

24 MS SHI: I think so. 159 should be
25 taken out.

1 THE CHAIRPERSON: So the pictures
2 then that precede 160, 157 and 158, those are the cover
3 pages of the...

4 MS SHI: They dare to speak out,
5 right.

6 THE CHAIRPERSON: Okay.

7 MS SHI: And perhaps seeing that Mr.
8 Warman has no objection on the source documents but has
9 an objection about the article by Mark Weber itself,
10 perhaps I wonder if we should split it up, mark the
11 source documents and then we can discuss the --

12 THE CHAIRPERSON: Yes, let's mark
13 them.

14 MS SHI: -- article itself.

15 So, if I could mark --

16 THE CHAIRPERSON: Can you hang on one
17 second.

18 MS SHI: Yes.

19 THE CHAIRPERSON: I think Ms Hartung
20 has a concern about...

21 REGISTRY OFFICER: We also removed
22 pages 141 and 149 which are blank blue pages.

23 MS SHI: Thank you.

24 So, could we please mark from tab 33,
25 pages 142 to 163 but with the deleted pages as Madam

1 Registrar indicated earlier, as an exhibit, please.

2 THE CHAIRPERSON: Well, let's just --
3 let's mark it -- I think what we need to do is first
4 hear the objections.

5 MS SHI: Well, but the objection is
6 not on the articles, it's on -- it's not on the source
7 documents.

8 THE CHAIRPERSON: No, it is not, but
9 it is --

10 MS SHI: As Mr. Warman --

11 THE CHAIRPERSON: They are objecting
12 to their entry as evidence.

13 MS SHI: I wasn't aware that Mr.
14 Warman was objecting to the entry of the source
15 documents, I think he said it's on Mark Weber's
16 article.

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

18 THE CHAIRPERSON: Okay.

19 MS SHI: So, let's mark this part and
20 then we can discuss the article.

21 THE CHAIRPERSON: Sorry.

22 REGISTRY OFFICER: Documents found at
23 tab 33 of the respondent's book of documents, Volume I,
24 pages 142 to 163, from 142 --

25 MR. WARMAN: Madam Chair, just to be

1 clear, I have no objection from pages 138 onwards.

2 MS SHI: Thank you.

3 MR. WARMAN: The pages that reflect
4 the Toronto Library print-out.

5 THE CHAIRPERSON: So, 138 to...?

6 MS SHI: To 163.

7 MR. WARMAN: Yes.

8 THE CHAIRPERSON: To 163.

9 MS SHI: Thank you, Mr. Warman.

10 REGISTRY OFFICER: Correction, pages
11 138 to 163 which include print-out from the Toronto
12 Public Library, the Holocaust industry: reflection on
13 exploitation of Jewish suffering, and the They dare to
14 speak out: people and institutions confront Israel's
15 lobby, and the article New Debate on the Holocaust,
16 cover title to the Holocaust industry with Toronto
17 Reference Library bar code, and article Holocaust
18 industry by Norman G. Finkelstein and four-page excerpt
19 from They Dare to Speak Out, a book by Paul Findley
20 will be marked as respondent Exhibit R-44.

21 EXHIBIT NO. R-44: Documents
22 found at tab 33, pages 138 to
23 163 consisting of: print-out
24 from the Toronto Public Library,
25 the Holocaust industry:

1 reflection on exploitation of
2 Jewish suffering, and the They
3 dare to speak out: people and
4 institutions confront Israel's
5 lobby, and the article New
6 Debate on the Holocaust, cover
7 title to the Holocaust industry
8 with Toronto Reference Library
9 bar code, and article Holocaust
10 Industry by Norman G.
11 Finkelstein and four-page
12 excerpt from They Dare to Speak
13 Out, a book by Paul Findley.

14 MS SHI: Thank you.

15 Madam Chair, I wonder if it will
16 assist to finish the debate on the admissibility of
17 Mark Weber's article if I advise the court that I will
18 be asserting as to the authenticity of the quotes with
19 respect to the quotes for which I have produced the
20 source documents now marked as R-44.

21 For the remainder of the article,
22 including all the other quotes, where I haven't
23 produced the source documents, I am only tendering this
24 article for the limited purpose to show that you can
25 find these writings on the internet, which Mr. Fromm

1 has testified to and confirmed that he has found it.

2 So, I wonder if that would address
3 Mr. Warman or the Commission counsel's concern?

4 MR. WARMAN: No.

5 THE CHAIRPERSON: Okay. Then could
6 you speak to your concerns.

7 MR. WARMAN: Yes.

8 As I indicated, I have no objection
9 to the idea of entering source material that is
10 available in the Toronto Public Library, as the
11 secondary primary source material is indicated and it
12 has been entered into evidence.

13 My objection is to the original
14 article entitled, 'A Look at The Powerful Jewish Lobby'
15 and I am objecting to the relevance of what is
16 essentially an anti-Semitic screed by the head of a
17 Holocaust denial group in the United States.

18 The fact that this is simply
19 available on the website that is based in the United
20 States, I have no understanding of how that is
21 relevant.

22 The fact that there is anti-Semitic
23 material available on the internet in the world, I will
24 quite happily concede to, but the relevance of this
25 article written by the head of the U.S. Holocaust

1 denial group, I'm not clear on what the relevance is to
2 either Ms Shi's Canadian community standards test or
3 the materials that are in question pursuant to the hate
4 messaging or the retaliation aspects of this complaint.

5 THE CHAIRPERSON: There are other
6 articles in here that are into evidence now, clearly,
7 that are dealing with the same kind of issue that you
8 are raising.

9 MR. WARMAN: But to my knowledge the
10 ones that I can recall have been related to Canada or
11 Ms Shi's Canadian community standards.

12 I don't take it that Ms Shi is
13 attempting to establish a global community standards
14 that everywhere in the world it's possible to find
15 examples of hate, what I took, and perhaps Ms Shi can
16 correct me, is that she was attempting to make some
17 application to the Canadian community, which is what,
18 of course, the Canadian Human Rights Act governs.

19 THE CHAIRPERSON: Ms Maillet?

20 MS MAILLET: We adopt or agree with
21 that objection, Madam Chair. I have no further
22 submissions.

23 THE CHAIRPERSON: Ms Shi?

24 MS SHI: Well, Madam Chair, this was
25 submitted just to show what Canadians are exposed to

1 every day on the internet, and it's true that it's my
2 respectful submission it should go into the
3 consideration of the community standard which must be
4 considered in order to decide whether the messages are
5 likely to expose identifiable groups to hatred and
6 contempt.

7 Hatred and contempt has got to
8 emanate from somewhere, and the only reasonable
9 interpretation is that it must emanate from the
10 Canadian public, and how susceptible are the Canadian
11 public to following so-called messages such as the
12 subject messages, or sometimes Mr. Warman liked to call
13 them hate messages.

14 THE CHAIRPERSON: But I think -- can
15 you speak to the issue specifically. I think Mr.
16 Warman's point is that so far you have been bringing
17 forward articles that reflect what the Canadian
18 standards of tolerance are and what the Canadian
19 stomach is for messages of a diverse nature.

20 And this is apparently authored by
21 someone in the United States, which would make it
22 difficult for us to know exactly what the Canadian
23 reaction, what the Canadian --

24 MS SHI: But it's available on the
25 internet.

1 THE CHAIRPERSON: -- level of
2 tolerance would be for this kind of thing, since we are
3 not looking at whether or not this article subjects
4 identifiable groups to hatred and contempt, I need to
5 hear more from you about the link then between the
6 Canadian standards of tolerance that you are asserting
7 and how this will assist us to know what those
8 standards of tolerance are.

9 MS SHI: Well, it goes to show what
10 Canadians are exposed to every day on the internet and
11 we can all see what the reaction is, and I think that
12 it that does go to Canadian standard.

13 It really doesn't matter where it
14 emanates from.

15 THE CHAIRPERSON: Well, how can we
16 see -- you say we can see what the reaction is. What
17 do you mean by that?

18 MS SHI: Well, we can see the kind of
19 society that we live in. I mean, that is a question,
20 of course, that eventually the Tribunal will have to
21 address as to what the effect had been of the messages
22 that are similar in nature, because how can the
23 Tribunal decide on the likely effect of Mr. Winnicki's
24 messages if the Tribunal does not look to what else is
25 out there and how it has affected the community, if at

1 all.

2 It really doesn't matter where the
3 author lives and where the message emanates from.

4 For example, in the Zundel case the
5 cite was in the United States but the Tribunal has no
6 problem finding that it breached the Canadian Human
7 Rights Act.

8 So, it really doesn't matter where
9 the site is, the point is the message is available on
10 the internet to Canadians.

11 THE CHAIRPERSON: What about all the
12 other kinds of materials that are available on the
13 internet, there are vast, vast, vast numbers of
14 materials that I would imagine that Canadians are
15 subjected to.

16 Why this?

17 MS SHI: Because this, in some ways,
18 I believe contains the same elements that the
19 complainant says is likely to expose an identifiable
20 group to hatred and contempt and that has cost him pain
21 and suffering.

22 And I think it is germane to this
23 hearing that we then see how much of messages of
24 similar nature are out there, and we haven't seen
25 Canadians line up to say that that kind of message hurt

1 them because that they, as a society, are all
2 diminished, which is, I understand, the complainant's
3 claim.

4 So, I think that it is, in that
5 sense, useful to have before the Commission. As I have
6 said --

7 THE CHAIRPERSON: Before the
8 Tribunal?

9 MS SHI: I'm sorry, I apologize,
10 before the Tribunal. I reiterate the fact that to the
11 extent I have not produced the source document for the
12 quotes, I am not asserting the authenticity, I am
13 simply tendering this to show that this kind of writing
14 is out there.

15 In some ways, if those quotes are not
16 accurate, they are even more sinister because they have
17 been cloaked with respectability by naming well-known
18 sources, prominent figures.

19 So, it really is not the point
20 whether I have produced source documents for them, it's
21 the fact that it's out there on the internet available
22 to Canadians.

23 THE CHAIRPERSON: It concerns me that
24 this -- you know, if one were to look at -- I mean, it
25 is an interesting question compared to what is this,

1 you know, how do these messages compare to others, but
2 when there is only one point of comparison that you are
3 providing -- well, I suppose there are others.

4 MS SHI: Yes, there are and this
5 piece has its own interesting point.

6 Madam Chair, I haven't flooded this
7 hearing with what "A" said and "B" said, I have
8 produced evidence of passages that would draw attention
9 and maybe consider important, such as passages from the
10 Bible and the Quoran, it takes no evidence to show how
11 many people believe in the Bible and the Quoran, the
12 Tribunal provides the Bible for people to swear on,
13 that's the status of the Bible.

14 And this article purports to supply
15 quotes from well-read figures such as Bishop Desmond
16 Tutu and UN Secretary General Kofi Anan on issues that
17 are similar to the ones that the complainant has
18 complained about.

19 So, in my view, it is important for
20 the Tribunal to consider that before it can make a
21 sensible evaluation based on proper evidence as to
22 whether Mr. Winnicki's messages are likely to expose an
23 identifiable group or groups to the hatred and
24 contempt.

25 THE CHAIRPERSON: Thank you.

1 MS SHI: Thank you.

2 THE CHAIRPERSON: Mr. Warman?

3 MR. WARMAN: just a couple of quick
4 points. I believe the Zundel case, in fact, applied
5 the substantial connection test which the courts have
6 established for the ability of the Tribunal to take
7 jurisdiction over subject matter.

8 Mr. Zundel was able to -- was within
9 the jurisdiction of the Tribunal because it was found
10 that he was, in fact, operating the website out of his
11 Toronto home. So, it's not a case where Mr. Zundel was
12 in Australia, his website was run out of Toga and
13 suddenly someone decided in Canada that they would
14 seize jurisdiction over him and bring him before the
15 Canadian Human Rights Tribunal.

16 So, I believe that that's an
17 important fact, that there was substantial connection
18 to Canada. That's what the Tribunal found

19 THE CHAIRPERSON: If I could just
20 stop you there for a minute, I'm sorry Mr. Warman, but
21 I don't think Ms Shi is asserting that this would
22 properly be within the jurisdiction.

23 MR. WARMAN: Sorry, I am getting to
24 my second point, which is the fact that there is no
25 ability to govern the conduct of US citizens operating

1 US websites under Canadian law. There is no
2 extraterritorial application of the Canadian Human
3 Rights Act. This could well be the subject of a
4 Federal human rights complaint, were it published on a
5 Canadian website or by Canadian.

6 There is no evidence that someone
7 wouldn't file a complaint against that, and that that
8 doesn't, in fact, violate section 13.1 of the Human
9 Rights Act.

10 So, I think perhaps just to simplify
11 my objection, I have no objection to Ms Shi entering
12 the primary documents, the primary -- the quotes from
13 their primary source, which she has done in a number of
14 instances, it's this article with its editorial
15 comments by the head of a Holocaust denial group that I
16 simply fail to see how it applies to.

17 If you want to look at the internet
18 as a whole, there is lots of child pornography out
19 there, surely there is an abundance of hate that one
20 could find if one went looking for it.

21 But the question is, how does that
22 apply to Canada, how does that apply to Canadian
23 society as a whole has chosen to govern what Canadians
24 have access to and what is fundamentally destructive to
25 Canadian society, and there needs to be some connection

1 to Canadian society in order for it to be relevant to
2 these proceedings, I would submit.

3 THE CHAIRPERSON: Well, we have, and
4 it has yet to be determined what weight will be
5 accorded to it, but we have accepted into evidence
6 documents such as Mein Kampf and the Adventures of
7 Huckleberry Finn and other such documents.

8 MR. WARMAN: All of which were
9 brought -- oh, I'm sorry.

10 THE CHAIRPERSON: No, go ahead.

11 MR. WARMAN: All of which were
12 brought to us from the Toronto Public Library or St.
13 Mike's Library, something that shows these are
14 circulating locally here in the vicinity, not what may
15 possibly be accessed anywhere in the world from any of
16 the billions of pages that exist on the internet.

17 I mean, surely there has to be some
18 relevance to Canadian standards, not that some other
19 country somewhere has standards that allow say, child
20 pornography, which is horrific, or even more horrific,
21 hate propaganda and is the subject of these complaints.

22 The question is, is there a relevance
23 to Canada, is there a relevance to the ability of
24 Canadian society to regulate that conduct, and I would
25 submit very strongly that an article by the head of a

1 Holocaust denial group in the US from a US website just
2 doesn't meet the test of relevance, and is it related
3 to issues that are raised in the messages in question.

4 I mean, sure.

5 Can you find anti-Semitic screeds
6 elsewhere in the world? Can you find homophobic
7 screeds elsewhere in the world? Can you find screeds
8 that promote mysogeny? Sure.

9 I mean, if that's the point that is
10 trying to be made, can you find those things on the
11 internet? Sure.

12 But for this specific article, if
13 it's trying to go beyond and say, look at these things,
14 these are the things that Canadians are exposed to on a
15 daily basis, I think you would be hard pressed to enter
16 this document and say that Canadians as a whole are
17 finding these things on a daily basis or that it has a
18 direct relevant to Canadian standards.

19 The reason that the material that is
20 here today, pursuant to the complaint section 13 and
21 14.1, is because Mr. Winnicki lives in Canada, Mr.
22 Winnicki lives in London, Ontario and posts the
23 material from there to a US website forum which is why
24 the Human Rights Tribunal can take jurisdiction and why
25 the Canadian Human Rights Commission found that there

1 was jurisdiction to proceed with an investigation of
2 the complaint.

3 So, I fear we are getting down that
4 road that leads us away from the issues at hand, again,
5 and that, you know, if you take the global, where could
6 I find something that is even worse, I mean what is to
7 stop people from bringing in, you know, thousands of
8 documents and saying, look, this is worse, this as bad,
9 this almost as bad and it is out there.

10 But if there is no way for Canadian
11 society to govern that conduct, then what is the
12 relevance?

13 THE CHAIRPERSON: The relevance is
14 for the comparative purposes, and I think Ms Shi's
15 argument is that we are -- you know, you can't look at
16 the messages in question in isolation, you have to look
17 at them in the context of the other messages that are
18 available to Canadians, either through the website or
19 through the Toronto Public Library or otherwise, and
20 that this is one such article and that, sure, it might
21 be possible to bring in hundreds of other articles, but
22 this is, in effect, one example.

23 MR. WARMAN: I would put it to you
24 that if this article were published by a Canadian on a
25 Canadian website or if there was a substantial

1 connection, if Mark Weber the head of the Holocaust
2 denial group lived in Canada, then I would have no
3 hesitation in filing a Canadian Human Rights complaint
4 on the basis of the material that's in there, or on the
5 rest of the material that's on their Holocaust denial
6 website, which because it's posted in the US, there is
7 no ability for Canadians to take Federal human rights
8 complaints against.

9 I mean, the whole idea, do people
10 commit murders in the world somewhere, isn't that
11 worse?

12 This is not a comparative weighing of
13 how bad is Mr. Winnicki's conduct really compared to,
14 say, sexual assault or genocide or any other
15 substantive crime of violence? You know, it's not a
16 weighing of how bad could conduct really be compared to
17 the kind of conduct that exists in the world?

18 You know, it's not a meritive weight
19 of evil in the world, it's: Did Mr. Winnicki violate
20 section 13.1 of the Human Rights Act and did he
21 retaliate for my having filed a human rights complaint
22 against him.

23 And I really feel we are getting into
24 way off the beaten track in terms of what this hearing
25 should properly be the focus of, or what should

1 properly be the focus of this hearing.

2 THE CHAIRPERSON: Thank you.

3 Ms Maillet?

4 MS MAILLET: Yes. The Commission
5 completely supports Mr. Warman's position in this
6 instance.

7 We had indicated that, firstly, that
8 even the bringing about of the issue of Canadian
9 standards, we questioned the relevance of that in terms
10 of the test as to what is likely to expose people to
11 hatred or contempt, therefore, if we are looking at
12 what are the Canadian community standards, it's our
13 submission that should be limited to what is tolerated
14 in Canada by Canadians, what is the community standard
15 in terms of what we will tolerate from our fellow
16 citizens.

17 The example that you have internet
18 websites all over the world that as well communicate
19 hate and expose people to hatred or contempt, my answer
20 to that would be that there could be websites from
21 countries that have brutal dictatorships and all we
22 could say is, thank goodness we don't live there, and
23 it doesn't mean that would be tolerated or behaviour
24 from those countries would be tolerated by our fellow
25 Canadian citizens.

1 And if we are looking at what the
2 Canadian community standards are, it's our submission
3 that that should be limited to what people do and what
4 people communicate here in Canada and not in other
5 countries.

6 THE CHAIRPERSON: Thank you.

7 MS SHI: I want to make it perfectly
8 clear that, first of all, I haven't dragged thousands
9 of documents before the Tribunal and, in fact, after
10 this one I just have one more exhibit and I'm done.

11 The second thing is, I am not
12 tendering this to make the point to say that Winnicki
13 is not such a bad boy, look around the world there are
14 worse people. No, I am trying to address the issue of
15 whether the impact, the likely impact, because in order
16 to decide whether the subject messages are likely to
17 expose groups to hatred and contempt, we must undergo
18 an examination as to the likely impact his messages,
19 and that cannot be done in isolation.

20 In order to do so, there must be some
21 understanding as to the group that are supposed to
22 react to these messages, the Canadian public and,
23 therefore, what the Canadian public -- and I would
24 submit the Canadian public has a high level of
25 tolerance, I have made no secret, that will be my

1 submission, the Canadian public is highly tolerant, has
2 tolerated a big diversity.

3 I emphasize the word tolerate,
4 because I'm sure a lot of us at different times in our
5 lives have been encountered with messages that we find
6 very, very disagreeable. For example, driving up
7 Avenue Road to go home and see pictures of carved up
8 unborn fetuses put up by anti-abortionists. I have a
9 weak stomach, it turns my stomach, but I tolerate it.

10 And I think Canadians generally, and
11 it will be my premise that we are a very tolerant group
12 of people, we tolerate diversity of speeches without
13 having it produce an adverse effect on us.

14 I would submit that we remain, for
15 example, on the issue of abortion -- I don't want to
16 digress -- that despite all that rhetoric, Canadians
17 are still very supportive of women's abortion rights.
18 That's just one example.

19 And that is why articles and
20 documents such as this is informative. That decision
21 as to whether it's likely to expose cannot be made in a
22 vacuum, just to have -- with all due respect, the
23 Tribunal members sitting in a room and saying, yeah, I
24 think...

25 It has to be evaluated based on

1 evidence as to what the likely impact it will be on the
2 group, the Canadian public, or what is the likely
3 reaction of the Canadian public.

4 THE CHAIRPERSON: Can I ask you, Ms
5 Shi, I am thinking that I have misunderstood your
6 argument then with regard to the relevance of this
7 document.

8 MS SHI: Yes.

9 THE CHAIRPERSON: My understanding
10 was that you were tendering it for the purposes of a
11 kind of comparative exercise so that we would look at
12 this and say, you know, compare this to the messages in
13 question in the complaint and determine the relative --

14 MS SHI: Relative degree of
15 culpability.

16 THE CHAIRPERSON: Right.

17 MS SHI: Or, if I could say that, no,
18 no, not per se.

19 THE CHAIRPERSON: I don't understand
20 how this article will give me any feel for what the
21 Canadian standards of tolerance might be. I don't
22 know...

23 MS SHI: This is what we tolerate.

24 THE CHAIRPERSON: I don't have any
25 evidence of whether the Canadian public tolerates this

1 or not.

2 In hate cases often what happens is
3 that, and I am speaking broadly in terms of criminal
4 charges and then hate message cases in the human rights
5 context, often there is a witness who is called that
6 can testify, a sociologist or somebody who can testify
7 as to what the level of Canadian tolerance is for
8 messages and the likely effect of a message.

9 We don't have this in this case, and
10 I'm not sure that simply looking at an article like
11 this will allow me to judge what the Canadian standard
12 of tolerance might be.

13 MS SHI: Well, I think it does, I
14 think it is informative in that it shows you the
15 environment that the Canadians live in and the
16 different forces that we face every day and how we sort
17 it out because, Madam Chair, this article, I put it in
18 because it is not just one of the thousands and
19 thousands that is very bad, it is unique in that it
20 cites very many prominent people.

21 I have named a few, and then there
22 are more. In the case of the former Joint Chief of
23 Staff in the US, that quote I have found the source
24 document for, it is cloaked with a good deal of
25 authority and, therefore, it is a forceful document,

1 and in that way it is informative as to the level of
2 robustness of Canadians as to their fundamental values.

3 THE CHAIRPERSON: Thank you for your
4 submissions, Ms Shi. I think I understand now where
5 you are coming from on this. I think I understand the
6 position of the other parties on this.

7 I am going to rule that this document
8 is not admissible because I do not believe that it
9 provides me with any kind of evidence upon which to
10 base an estimation of what the community standards of
11 tolerance are on this kind of material, or the kind of
12 material that is present in the complaint.

13 We will remove that from the tab,
14 that is page 132 to 136.

15 MS SHI: Could we go to tab 49,
16 please.

17 Madam Chair, to save time, in light
18 of your ruling just now, I should advise the Tribunal
19 that this is a download from the internet of quotes
20 from famous -- some famous people.

21 THE CHAIRPERSON: We are at tab 45,
22 I'm sorry?

23 MS SHI: Tab 49.

24 THE CHAIRPERSON: Tab 49, sorry, I
25 was just making a note of my ruling, I didn't follow

1 you. Tab 49.

2 MS SHI: Right, about Jews and I'm
3 not tendering all of them, I am tendering the quotes of
4 Mr. Winston Churchill, Mr. Mark Twain and Mr. Bernard
5 Shaw, and what I have done is, again, because my friend
6 raised concerns, I have requested and obtained mostly
7 from the library, US Library of Congress, the source
8 document that is Mr. Winston Churchill's speech, Mr.
9 Bernard Shaw's excerpts from the Literary Digest and
10 Mr. Mark Twain's article concerning Jews.

11 And given your comment earlier,
12 perhaps we should...

13 THE CHAIRPERSON: I don't see any
14 reference to Mark Twain at the tab.

15 MS SHI: Well, perhaps we should just
16 go to the source document.

17 Madam Chair, given your ruling
18 earlier, I'm suggesting that anticipating what your
19 view will be about page 311 to 314, that we remove that
20 but consider the rest of it.

21 THE CHAIRPERSON: And the article at
22 page 319?

23 MS SHI: The article is for the
24 summary.

25 THE CHAIRPERSON: Pardon me?

1 MS SHI: The first four pages are the
2 quotes themselves, and then I have produced the source
3 documents for the quotes that I intend to focus on.

4 THE CHAIRPERSON: And the article at
5 page 319 is what?

6 MS SHI: Is Mr. Winston Churchill's,
7 and that's from the Library of Congress.

8 THE CHAIRPERSON: Okay.

9 MS SHI: You will see, it's from this
10 book of 51 documents, Zionist Collaboration with the
11 Nazis, and in there is Mr. Winston Churchill's article
12 starting at page 23 and the article itself has been
13 produced from page 321 to page 324.

14 THE CHAIRPERSON: Right.

15 MS SHI: And then Mr. Shaw's quote at
16 page 325, and then Mark Twain's article concerning Jews
17 from the Harper's Magazine archives from page 326 to
18 334.

19 And, again, with respect to -- from
20 page 319 to 334, Mr. Fromm has examined it, but his
21 identification of it will be based on information and
22 belief, myself being the source of that information.

23 THE CHAIRPERSON: So, you are
24 suggesting -- so that I am clear here -- 318 to 334
25 should be tendered.

1 MS SHI: 319 to 334.

2 THE CHAIRPERSON: 319.

3 MS SHI: They will be identified
4 based on information...

5 THE CHAIRPERSON: Okay.

6 MS SHI: And I could perhaps ask Mr.
7 Fromm to speak to page 315 to 318 then.

8 Mr. Fromm, do you have tab 49 in
9 front of you?

10 MR. FROMM: Yes, I do.

11 MS SHI: Could you go to page 315 and
12 start there and tell us what you know about the four
13 pages.

14 MR. FROMM: Yes. I have examined
15 this. This a download from the website of the Ontario
16 Government and it indicates that, searching for Shaw
17 that there is a thing called the Shaw Festival, and on
18 page 316 that the Shaw Festival produces a program of
19 plays and it has the assistance of the Ontario
20 Government in so doing.

21 And on page 316 and 317 and page 318,
22 is from the website of the City of Toronto and
23 indicates that on June the 3rd, 2004 there was a
24 rededication of a statue to Winston Churchill at Nathan
25 Phillips Square.

1 MS SHI: And, Madam Chair, just in
2 case there is any questions about the handwriting
3 Churchill, it is my handwriting.

4 Could we mark then from page 315 to
5 page 334 as an exhibit, please.

6 MR. WARMAN: Objection, Madam Chair.

7 THE CHAIRPERSON: Mm-hmm.

8 MR. WARMAN: If I take it correctly,
9 and Ms Shi can correct me if I'm misinterpreting what
10 her intention is, the argument will go something like:
11 Mr. Shaw once said bad things about Jews, Mr. Churchill
12 once said bad things about Jews, and yet we have a
13 theatre festival because Mr. Shaw was a playwright,
14 that now exists in the year 2004 or 2005 that holds
15 plays in Niagara-on-the-Lake and that, therefore,
16 because Mr. Shaw once said bad things about Jews and
17 yet there is a theatre festival that bears his name,
18 that somehow this goes to community standards, that the
19 idea is that because Mr. Winston Churchill once said
20 bad things about Jews and yet there is a statute of him
21 in Nathan Phillips square around the corner, the fact
22 that historical figures are imperfect human beings, as
23 are all of us, and may have held repugnant beliefs at
24 one time, in historical context, does not mean that
25 anything else that they may have done should not be

1 considered to be laudable or in some way worthy of
2 having a theatre festival named after them or a statue
3 in Nathan Phillips Square.

4 The theatre festival was not named
5 after Mr. Shaw because he said bad things about Jews,
6 Mr. Churchill's statue is not in Nathan Phillips Square
7 because he said bad things about Jews.

8 These are not the parts of their
9 character, I would submit, that are being celebrated
10 and I have a very difficult time understanding the
11 relevance of those considerations to these proceedings
12 which are whether Mr. Winnicki posted hate messages to
13 the internet that are likely to expose individuals to
14 hatred or contempt as a result of their race, religion,
15 et cetera, and whether Winnicki retaliated against me
16 pursuant to my having filed a human rights complaint
17 against him.

18 And I will raising the exact same
19 objection that I did to the materials regarding whether
20 some US Holocaust denier also says bad things about
21 Jews.

22 THE CHAIRPERSON: Ms Shi?

23 MS SHI: I was thinking about what
24 Mr. Warman said, something about that just because
25 public figures are not perfect, no reason why we

1 shouldn't have a statue of him in our Nathan Phillips
2 Square.

3 Well, Mr. Ahenakew was charged and
4 convicted of willful promotion of hatred, sort of
5 behaviour along the line of what Mr. Winnicki has been
6 accused of doing. He was stripped of the Order of
7 Canada.

8 And so I think our own government's
9 endorsement of a historic figure to such a degree that
10 his statue sits on the ground of our city hall has got
11 to say something about how we view what he stands for,
12 including his view about Jewish people and how we view
13 the importance of allowing speeches to be unimpeded.

14 I think it is very relevant. This is
15 not -- again, I'm not just dragging into this Tribunal
16 with evidence to say, but so-and-so did this, but
17 so-and-so did that, this is not just so-and-so did
18 something, this is Winston Churchill who explicitly
19 made extensive comments about Jewish people in a way
20 that could well be considered to infringe section 13
21 and yet, not only -- and I'm not following up on the
22 issue of whether anything should have been done to ban
23 the speech or whatnot, but we have his statue at the
24 Nathan Phillips Square.

25 I could equally hear someone saying

1 how can we have a statue in our city square of somebody
2 who has made such hateful comments about Jewish people
3 and that seeing that statue there every day could
4 really cause a lot of pain and suffering.

5 This is not just somebody saying
6 something bad, this is an historic figure saying
7 something and our government decides to embrace him and
8 all that he stands for, including his opinion about
9 Jewish people and their role in the Bolshevik
10 Revolution, so much so that we have a statue of him and
11 recently rededicated in Toronto.

12 That is something that, in my
13 respectful submission, this Tribunal must take into
14 account, not just what the community views are and what
15 our government's views are, and that's why I put this
16 in here, it has significance. That is our government
17 speaking.

18 THE CHAIRPERSON: Ms Maillet?

19 MS MAILLET: Yes. I just have a
20 couple of points.

21 In my submission, Madam Chair, this
22 is exactly our point, that this material is irrelevant
23 in terms of what Canadian community standards are.

24 Our laws in Canada, both criminal
25 laws and human rights laws have been put into place and

1 changed to reflect the lack of tolerance that we have
2 based on the damages that has been done in the past as
3 a result of hate in our societies, and Mr. Ahenakew was
4 the perfect example of that.

5 That may have been tolerated at one
6 time in the past when the present Canadian laws and
7 tolerance were different; that is not the case today,
8 and I fail to see how this is a reflection of what we
9 tolerate in Canada today.

10 THE CHAIRPERSON: Ms Shi?

11 MS SHI: Just a very quick reply.
12 The message may have been old but the rededication of
13 the statue happened 2004, June 3rd. Our government's
14 view and endorsement of Mr. Winston Churchill and what
15 he stands, for including his view on Jewish people, is
16 new.

17 THE CHAIRPERSON: Thank you for your
18 vigorous submissions, all of you, on this.

19 I am going to rule that this material
20 which emanates from Canadian and some non-Canadian
21 sources but deals with issues relevant to the Canadian
22 context is admissible. I will take the objections that
23 have been raised into account in determining the weight
24 that I will give, as well as the arguments that have
25 been made by respondent counsel in determining the

1 weight that I will give to this kind of document.

2 I find that it is relevant to the
3 argument that Ms Shi is making with respect to the
4 context in which the messages in question are made, as
5 well as relevant to the argument that she ultimately
6 would make regarding community standards of tolerance.

7 I would like to point out that the
8 arguments that you have made to me now with regard to
9 the objections you have really, in very many ways, are
10 dealing with final arguments and that I think are going
11 to be made on this, so I think it is still very much a
12 live question as to the fullness of the argument that
13 might be made on the basis of this material.

14 But I am going to rule at this point
15 that it is admissible.

16 MS SHI: Could we mark it then as an
17 exhibit then, please, page 315 to page 334 under tab
18 49, please.

19 REGISTRY OFFICER: Let the record
20 reflect that the document, pages 311 to 314 of
21 respondent's tab 49 of the respondent's book of
22 documents, Volume I, will be removed from the record.

23 And the documents found at tab 49,
24 pages 315 to 334 downloaded from Government of Ontario
25 regarding Shaw Festival, press release from the Shaw

1 festival, press release June 3rd, 2004 regarding
2 Winston Churchill statue rededication at Nathan
3 Phillips Square, as well as an expert, 51 documents,
4 Zionist Club, Zionist Collaboration with the Nazis,
5 excerpt from -- is it an excerpt or the whole?

6 MS SHI: Which page?

7 REGISTRY OFFICER: 326, is that the
8 entire...?

9 MS SHI: Yes, it is the entire
10 article concerning the Jews.

11 REGISTRY OFFICER: Article concerning
12 the Jews by Mark Twain will be marked as respondent
13 Exhibit R-45.

14 EXHIBIT NO. R-45: Documents
15 found at tab 49, pages 315 to
16 334 downloaded from Government
17 of Ontario regarding Shaw
18 Festival, press release from the
19 Shaw festival, press release
20 June 3rd, 2004 regarding Winston
21 Churchill statue rededication at
22 Nathan Phillips Square, as well
23 as an expert, 51 documents,
24 Zionist Club, Zionist
25 Collaboration with the Nazis,

1 article concerning the Jews by
2 Mark Twain.

3 MS SHI: Thank you.

4 Mr. Fromm, could you go to tab 34,
5 please.

6 MS SHI: Perhaps Madam Registrar
7 could assist me. I have down here that tab 35 has been
8 marked, but I don't have an exhibit number.

9 REGISTRY OFFICER: 35?

10 MS SHI: Yes, please.

11 REGISTRY OFFICER: R-37.

12 MS SHI: Thank you.

13 Madam Chair, I am in your hands as
14 to, and my friend's hands as to how we proceed with
15 this.

16 What this consists of is a download,
17 first of all, of an article containing excerpts of
18 messages from rap music and they all have one theme,
19 violence against white people, and then starting from
20 page 170 are downloaded from the HMV Record Company's
21 website as to the availability of the Cds containing
22 the rap music that is the subject of the quotes in the
23 article.

24 And what I have done to make it a bit
25 easier is, as you can see, the particular song has been

1 pinpoint referenced and then behind it perhaps, for
2 example, perhaps if I could take an example and explain
3 it, and then I will see what everybody would like to
4 do.

5 My question is whether we want to
6 actually pop the Cds in and listen to the singing of
7 these lyrics. My view is it isn't necessary because I
8 think the focus of this investigation is what is
9 available on the internet.

10 These Cds are all purchased in
11 Toronto.

12 Now, for example, page 170, the first
13 one is -- the name of the album is Da Hood by an artist
14 called Menace Clan and it's available on HMV Amazon.ca,
15 and behind it are the lyrics that it comes out of the
16 songs that I have pinpoint referenced on page 170, one
17 of them is called, No. 3, Record Deal, and No. 13,
18 called Kill Whitey.

19 So, if you go to page 171, you will
20 see the -- actually there is also, I should have
21 pinpoint referenced No. 2, Mad Nigga.

22 Now, you will see on page 171 the
23 lyrics in question from Mad Nigga, I will just read a
24 little bit:

25 "He preys on old white ladies

1 [who] drive the Mercedes with
2 the windows cracked...you should
3 have heard the bitch
4 screaming...sticking guns in
5 crackers' mouths..."

6 THE CHAIRPERSON: I think we can read
7 that.

8 MS SHI: That's right, thank you.
9 And then we go on to page 172, same similarly, again,
10 this album, The Chronic by Dr. Dre is available on HMV
11 Amazon.ca, and then you see on page 173 I pinpoint
12 reference, song No. 4, and you can hear these songs on
13 the net, if you like you can hear the samples.

14 And then you go to page 174, is a
15 reproduction of the lyrics in question, and I have put
16 down there counters. If there is any interest in
17 actually hearing the lyrics that's when you will find
18 it in the song. For example, 1:54 is about you start
19 to hear that.

20 And then the same thing for Lethal
21 Injection album by Ice Cube, the song is No. 11 Enemy,
22 the lyrics in question in the next page, and then
23 Guerillas in Tha Mist, page 177 by Da Lench Mob, song
24 No. 2, Buck Tha Devil?, and the lyrics has been
25 reproduced at page 179.

1 And then page 180, Planet of Da Apes
2 by Da Lench Mob, the songs are No. 4, King Of The
3 Jungle, No. 7 Goin' Bananas, and No. 12 Final Call and
4 the lyrics have been reproduced at page 181.

5 And if any of these lyrics are not
6 legible, and I know somehow the reproduction is not
7 very good, they can all be found from page 164 to page
8 169, that is the article that we started with, so,
9 and...

10 Oh, and I would like to remove pages
11 182 to 186, please.

12 And then, finally, is 187 to 188, is
13 a download from a link that reproduces the lyrics of
14 the Menace Clan, some of the songs from the Menace
15 Clan, Da Hood album, I don't think I need to read them.

16 THE CHAIRPERSON: I think -- I mean,
17 I think we would need to have some further
18 identification from the witness on this.

19 MS SHI: Sure.

20 THE CHAIRPERSON: It is not entirely
21 clear to me how this all works together,
22 notwithstanding your explanations there.

23 MS SHI: Well, I'm hoping that will
24 give us a start and then I will have Mr. Fromm go
25 through it, but my question is whether we will need to

1 play the songs and, to be perfectly frank, I don't
2 think it's either necessary nor that --

3 THE CHAIRPERSON: Not pleasant.

4 MS SHI: -- something that I prefer
5 to do.

6 THE CHAIRPERSON: Right.

7 Are there any objections that I
8 should hear about this at this point in time?

9 MR. WARMAN: If I could just have a
10 moment, please.

11 THE CHAIRPERSON: Mm-hmm.

12 Would you like to take a break?

13 MR. WARMAN: 30 seconds more.

14 THE CHAIRPERSON: Sure.

15 MR. WARMAN: Madam Chair, are you all
16 right?

17 THE CHAIRPERSON: Yes, I am.

18 MR. WARMAN: I believe I will speak
19 on behalf of both the Commission and myself, in that
20 counsel for the Commission will correct me if I've said
21 anything that does not reflect their position.

22 Given the rulings that you have
23 already made on the issue, I think we would like to,
24 with regard to the material that may possibly be
25 available within Canada, although both the Commission

1 and myself take the position that this material is not
2 in any way relevant to the matters before the Tribunal
3 in this hearing, pages 170 to -- sorry, the individual
4 pages that are evidence the material is for sale
5 through HMV teamed Amazon.ca that shows that the
6 individual CDs are available, that would be pages 170,
7 page 172 and 173, page 175, 177 and 78, and then 180,
8 we would have no objection to their being entered.

9 THE CHAIRPERSON: But the wording
10 themselves, is the wording...

11 MR. WARMAN: I just want to make that
12 clear, and then I will move to my second point.

13 THE CHAIRPERSON: Okay.

14 MR. WARMAN: The origin of the lyrics
15 on page 164, 65, 66, 67, 68 and 69 is, in fact, from a
16 US neo-Nazi website.

17 I think given the concerns about the
18 integrity of neo-Nazis reproducing what they purport to
19 be lyrics by self-evidently Black musicians, both the
20 Commission and I take the position that if we are going
21 to rely on lyrics, it would be preferable to rely on
22 what purport to be the lyrics downloaded from the pages
23 187 and 188, in that it is home.att.net and it is not,
24 at least to the best of our knowledge self-evidently a
25 neo-Nazi website from the United States.

1 THE CHAIRPERSON: So, correct me if
2 I'm wrong then, the numbered sections in this first bit
3 called rap lyrics and violence --

4 MR. WARMAN: Yes.

5 THE CHAIRPERSON: -- refer to the
6 downloaded lyrics that, those are excerpts.

7 MS SHI: Not all of them, the
8 pages -- unfortunately, pages 187 and 188 doesn't
9 contain all the lyrics that I would like to put in as
10 evidence, and if my friend is not prepared to accept
11 that article which contains all the quotes, and I will
12 submit to the Commission, I can say that I have
13 personally listened to --

14 THE CHAIRPERSON: The Tribunal.

15 MS SHI: Sorry, I apologize, it will
16 be the last time.

17 THE CHAIRPERSON: It is just they are
18 very, very different.

19 MS SHI: Sorry. I think I am tired,
20 it has been a long week.

21 THE CHAIRPERSON: I understand.

22 MS SHI: For the ones where I have
23 put down the numbering, I have actually listened to
24 them myself.

25 There are two, Da Hood, the Menace

1 Clan there is the one reproduced at 187, 188, we have
2 ordered the CD, unfortunately it hasn't arrived yet,
3 and the Da Lench Mob as well, but HMV has accepted our
4 request for copy, so it is available and I would submit
5 to you of all the ones that I have been able to check,
6 and as you can see there were quite a few, the quotes
7 are actually very accurate and I have the Cds here if
8 there is any interest in verifying.

9 So, I would submit that that article
10 is actually quite reliable. If my friend or the
11 Tribunal has any concerns, we can listen to a few and
12 hear them, but I must enter the lyrics into the
13 evidence, otherwise there is no point.

14 Well, HMV sells this, so what? What
15 is this? The lyrics have to be the in the evidence.

16 THE CHAIRPERSON: I don't think we
17 have heard yet on that point, on the lyrics; have we?

18 MR. WARMAN: No, no, I have no
19 personal objection to the lyrics going in provided that
20 they do accurately reflect -- sorry, I shouldn't say
21 that.

22 I object strongly to the relevance
23 and will make an issue of the weight to be given to the
24 lyrics in my closing submissions, and I believe the
25 Commission will as well.

1 However, to the extent that they
2 accurately reflect the lyrics that are available on
3 these Cds that are available for sale within Canada, I
4 don't believe that -- I believe I speak for both of us,
5 that we don't object to their entry.

6 Unfortunately, the first four pages
7 suffer from the exact same -- sorry, the first -- pages
8 164 to 169 suffer from the same malady as did, or
9 evidentiary malady as did the article from the US
10 Holocaust denial website, in that there is editorial
11 content interspersed throughout the materials.

12 MS SHI: Perhaps if I can interject
13 here. Can we stop the problem by saying only the
14 quotes of the lyrics go in. I wasn't going to use
15 anything else in that article.

16 MR. WARMAN: Well, I'm prepared to
17 take Ms Shi's undertaking that these are, in fact,
18 reflected and if the Cds can be provided to us and that
19 they do, in fact, reflect the lyrics, I think that
20 would probably solve the issue and prevent us using up
21 Tribunal time to actually listen to the lyrics right
22 now.

23 MS SHI: Well, I have three of them
24 here and perhaps during the break my friend and
25 Commission counsel, they could check on them.

1 As I said the Planet Of Da Apes, I'm
2 sorry, I have trouble pronouncing those names, and I
3 believe the other one is called Da Hood, are still --
4 I'm sure HMV will tell me that it's in the mail.

5 So, if my friend is interested they
6 could be produced, but I am concerned about sort of
7 having this provisional admission and then maybe later
8 on getting into a fight.

9 I would suggest, if I may, that my
10 friend during the break check the ones we have here and
11 if they are acceptable, then perhaps consider allowing
12 admitting in pages 164 to 169, only to the extent of
13 the quotes about these rap music and nothing else.

14 As I said, I wasn't going to use it
15 for anything else anyway.

16 THE CHAIRPERSON: Well, would you be
17 prepared to accept the proposal that, in fact, 164 to
18 169 not be entered but rather the quotes themselves.

19 MS SHI: Right.

20 THE CHAIRPERSON: So, that 164 to 169
21 would be taken out, 170 on through would be left
22 subject to your being able to provide the wording for
23 the outstanding lyrics that you wish to put in.

24 MR. WARMAN: Sorry, I wish to
25 maintain that I would like disclosure of the albums to

1 confirm for myself that, you know, as per any other
2 document being entered into evidence, I would like a
3 copy of the materials so that I may personally verify
4 the accuracy of the lyrics.

5 MS SHI: So, let me hear this. So,
6 see if I understand you correctly, Madam Chair.

7 Take out 164 to 169.

8 THE CHAIRPERSON: Right.

9 MS SHI: But enter 170 all the way
10 through.

11 THE CHAIRPERSON: Mm-hmm.

12 MS SHI: However, with respect to Da
13 Hood at page 170, well, actually the Da Hood is fine
14 because the lyrics has been reproduced at page 187 and
15 188, but for the album Planet of Da Apes at page 180,
16 this one I'm still waiting for the CD to arrive, that
17 the lyrics will be admitted once I produce the CD and
18 my friend have a chance to verify that the lyrics are
19 accurate; is that the suggestion?

20 THE CHAIRPERSON: That is the
21 suggestion I am hearing; is that correct?

22 MR. WARMAN: In the same way that the
23 tapes were provided to us, that copies of the original
24 source documents or source CDs in this case be provided
25 as were any other evidentiary disclosure.

1 MS SHI: I'm all right with that and
2 perhaps I could request then during the break my friend
3 and Mr. Warman check the three that I have here to
4 satisfy themselves, and as I said, they will find that
5 I have written down on it the counter, and so they
6 can -- they don't have to listen to the whole thing,
7 although the songs are not very long and they will be
8 able to hear where it is and verify for themselves, I
9 have heard it and from what I could hear, the quotes
10 are accurate.

11 THE CHAIRPERSON: I think what we are
12 also hearing is that we need copies made.

13 MS SHI: These are the copies.

14 MR. WARMAN: Sorry.

15 THE CHAIRPERSON: Sufficient copies
16 for all the parties and the Tribunal.

17 MS SHI: Yes, I'm doing that right
18 now.

19 And the other two obviously they can
20 confirm, maybe by way of letter to the Tribunal and
21 myself, once I send them the album so see if they are
22 satisfied.

23 THE CHAIRPERSON: Yes, and we are
24 reconvening to hear oral argument, then we can dedicate
25 a portion of the beginning of the day to dealing with

1 outstanding evidentiary issues.

2 MR. WARMAN: And I note also, and I'm
3 not objecting to it, just that they are not originals,
4 so I would ask that some evidence be tendered with
5 regard to the provenance of the copies, please.

6 MS SHI: Well, I have a solution,
7 Madam Chair. I think we have been trying to, not all
8 of us, listen to it, but I think we are getting to
9 maybe having to do that, but I have the originals here
10 and perhaps my friend could listen to the originals
11 during the break.

12 THE CHAIRPERSON: Okay. Well, I
13 think then what it sounds like we have got here is
14 agreement that we will remove pages 164 to 169 of this
15 tab, that we will have a verification and I actually
16 would request, if you would, Ms Shi, a clearer copy, I
17 have trouble reading this.

18 MS SHI: What pages, Madam Chair?

19 THE CHAIRPERSON: Page 171 is
20 difficult for me to read.

21 MS SHI: Yes.

22 THE CHAIRPERSON: Page 176 is
23 difficult for me to read.

24 MS SHI: I think what I will do, I
25 would undertake to do and send it to both the Tribunal

1 and my friend and Mr. Warman early next week, is a good
2 legible copy of all the lyrics that's been reproduced.
3 The cut and paste job after several copies just becomes
4 very hard, but I'm sure my staff can do something about
5 the intensity of the colour and make the writing more
6 legible, so it will be...

7 THE CHAIRPERSON: I am wondering then
8 if it might not be better for us to just simply set
9 this aside at this time, and on the understanding that
10 we have aired the objections with regard to
11 admissibility and the like, and that will be admissible
12 subject to producing better copies and also producing
13 the lyrics.

14 MS SHI: No, but I have produced the
15 lyrics.

16 THE CHAIRPERSON: In here? Have you
17 produced the lyrics for all?

18 MS SHI: And the CD. The only ones
19 that were --

20 THE CHAIRPERSON: Because you are
21 still missing a couple of Cds.

22 MS SHI: There are two, only two Cds
23 that are missing, but one of them Da Hood at page 170,
24 I really don't need because the lyrics have been
25 produced at 187 and 188, although I have purchased it

1 and when it comes I will produce it anyway.

2 THE CHAIRPERSON: But counsel and
3 everyone need to hear and verify.

4 MS SHI: Yes, but the rest of them,
5 the lyrics can be listened to, say the next one is Dr.
6 Dre at page 172, the CD is here.

7 THE CHAIRPERSON: But are -- and the
8 words are on page 174.

9 MS SHI: Right.

10 THE CHAIRPERSON: Okay.

11 MS SHI: And then Lethal Injection at
12 page 175 by Ice Cube, the CD is here and the words are
13 reproduced at the next page, 176, and then Guerillas in
14 Tha Mist by Da Lench Mob, the CD is here.

15 THE CHAIRPERSON: And the words are
16 on 179?

17 MS SHI: And the words are reproduced
18 at 179.

19 Now, Planet of Da Apes by Da Lench
20 Mob, I am still waiting for that CD.

21 THE CHAIRPERSON: What is page 181
22 then?

23 MS SHI: It's the lyrics from that
24 CD.

25 THE CHAIRPERSON: I see. You just

1 don't have the CD itself.

2 MS SHI: I am waiting for it, I am
3 waiting for it.

4 THE CHAIRPERSON: So, this came off
5 the web?

6 MS SHI: This came from the article.

7 THE CHAIRPERSON: So, these are the
8 words that are found in the article; right?

9 MS SHI: It wasn't verified on the
10 web. It was not verified -- well, the article came
11 from the web and the CDs were bought in Toronto.

12 THE CHAIRPERSON: Mm-hmm.

13 MS SHI: The words are verified on
14 the CD, the quotes are accurate.

15 THE CHAIRPERSON: With the exception
16 of 181.

17 MS SHI: With the exception of 181,
18 correct, not yet.

19 THE CHAIRPERSON: Okay.

20 MS SHI: And so I would prefer if I
21 may to mark for now 170 to 181 as an exhibit, subject
22 to two things, one that I provide some time next week
23 better copies of page 171, 174, 176, 179, and 181; and
24 also subject to my production of the CD found on page
25 181 and the Commission counsel and my friend being

1 satisfied that the lyrics in question are indeed found
2 on the CD, and these Cds are all available on the
3 internet through the HMV Amazon.ca and you can listen
4 to the samples of the songs on the net.

5 THE CHAIRPERSON: Okay. So, what
6 you are talking about is a conditional entry of this
7 into evidence, conditional admissibility subject to the
8 two conditions that you are suggesting.

9 We have yet to have Mr. Fromm --

10 MS SHI: Yes.

11 THE CHAIRPERSON: -- speak to these,
12 so that is an outstanding issue that we will get to in
13 a minute.

14 I would like to ask the two of you,
15 Ms Maillet, Mr. Warman, whether these conditions seem
16 acceptable?

17 MR. WARMAN: Yes

18 MS MAILLET: Yes, that's fine.

19 THE CHAIRPERSON: Okay.

20 All right. Then I would like to hear
21 from Mr. Fromm in terms of the identification of this
22 document.

23 MS SHI: All right.

24 Yes, Mr. Fromm, could you look at
25 page 170 to 188, please.

1 MR. FROMM: Okay.

2 MS SHI: Can you tell me what page
3 170 is?

4 MR. FROMM: Page 170 is taken from
5 the website of HMV Amazon.ca.

6 MS SHI: I'm sorry. Have you seen
7 this on the internet?

8 MR. FROMM: Yes, I have and it
9 indicates that they are for sale, the CD, Da Hood by
10 Menace Clan.

11 MS SHI: All right. And what is your
12 understanding of 171? As you heard earlier I advised
13 Madam Chair that this was prepared by my office and
14 that you don't have direct knowledge of it, but what is
15 your understanding of what this is as advised?

16 MR. FROMM: These are excerpts of
17 lyrics from the song Mad Nigga, Fuck a Record Deal and
18 Kill Whitey by Menace Clan, they are on this CD.

19 MS SHI: And then page 172, have you
20 seen this on the internet?

21 MR. FROMM: Yes, this was also from
22 HMV Amazon.ca, indicates that they have for sale a CD
23 by Dr. Dre called The Chronic.

24 MS SHI: Yes, and page 173, what does
25 that indicate?

1 MR. FROMM: That indicates the songs
2 that are on The Chronic, the No. 4, The Day The Niggaz
3 Took Over is highlighted, and then on page 174 are
4 selected lyrics from The Day The Niggaz Took Over.

5 MS SHI: Have you seen 175?

6 MR. FROMM: Yes, that was also on HMV
7 Amazon.ca indicating that here in Canada you can buy
8 the CD by Ice Cube called Lethal Injection, and near
9 the bottom of page 175 are the songs that are on that
10 CD, on page 176 from song No. 11, The Enemy is, some
11 selected lyrics from that song.

12 MS SHI: And Madam Chair, the
13 handwriting I can advise, they are my handwriting.

14 Have you seen page 177 before?

15 MR. FROMM: Yes, that's also from HMV
16 Amazon.ca indicating that in Canada you can buy the CD
17 called Guerillas in Tha Mist by a group called Da Lench
18 Mob, and at the bottom of the page are the songs, I
19 guess the six songs on that CD and highlighted is Buck
20 the Devil!.

21 MS SHI: And that's on page 179?

22 MR. FROMM: On page 179 are selected
23 lyrics from the song Buck the Devil!.

24 THE CHAIRPERSON: May I ask a
25 question, I'm sorry.

1 MS SHI: Yes.

2 THE CHAIRPERSON: Going back to page
3 176 --

4 MS SHI: Yes.

5 THE CHAIRPERSON: -- you indicated
6 that that is your writing, counsel?

7 MS SHI: Yes.

8 THE CHAIRPERSON: I can't read that.

9 MS SHI: It says -- well, first of
10 all, there is the counter.

11 THE CHAIRPERSON: Yes.

12 MS SHI: And then on the left I think
13 it's my note that at 3:00 you will hear that it says
14 'Kill more crackers'.

15 THE CHAIRPERSON: Kill...?

16 MS SHI: 'Kill more crackers'.

17 Sorry, Mr. Fromm, could you go to the
18 next page, please.

19 MR. FROMM: Page 180?

20 MS SHI: Yes, please.

21 MR. FROMM: That's also a download
22 from HMV Amazon.ca that you can buy here in Canada, a CD
23 called Planet of Da Apes by the Lench Mob, and further
24 down page 180 the lists of the 12 tracks on that CD.
25 Three of them are highlighted, and

1 selected lyrics from those highlighted ones are on page
2 181. The first song, the King of the Jungle, the
3 second song being Goin' Bananas and the third called
4 Final Call.

5 MS SHI: And then we are going to
6 skip over then to page 187 to 188.

7 Mr. Fromm, have you seen this on the
8 internet?

9 MR. FROMM: Yes, I have and I have
10 examined these lyrics from Menace Clan's 1995 album Da
11 Hood.

12 MS SHI: Okay, and that's page 187 to
13 188.

14 MR. FROMM: Yes.

15 THE CHAIRPERSON: What is this?

16 MS SHI: Yes, Mr. Fromm, what is
17 this?

18 MR. FROMM: What is this document?

19 MS SHI: Yes.

20 MR. FROMM: This document is from
21 this website, gives quotations from songs that are on
22 the -- the group called Menace Clan's album Da Hood.

23 MS SHI: And, Madam Chair, as I have
24 indicated before, I have purchased or my staff has
25 purchased this album from HMV Amazon.ca, it just hasn't

1 arrived yet, but the lyrics have been reproduced here
2 and I understand that Mr. Warman had indicated that he
3 has no issue with the veracity of this document and its
4 contents.

5 It purports to be quotes from the
6 songs that are in the album that's available in HMV
7 Amazon.ca, the name of the album being Da Hood and the
8 name of the artist is Menace Clan.

9 If you see -- if I could take you,
10 Madam Chair, to page 170.

11 THE CHAIRPERSON: Right.

12 MS SHI: You see a listing of the
13 songs in that album. The first one in the quotes is
14 Kill Whitey, and you will find that at song No. 13.

15 The second quotes are from Fuck a
16 Record Deal and you will see there a song that is song
17 No. 3.

18 And the third quotes are from a song
19 called Mad Nigga, and that's from song No. 2.

20 And the last one are quotes from a
21 song called Runaway Slave, and it finishes on page 188
22 and that's song No. 5 on page 170.

23 THE CHAIRPERSON: But that doesn't --
24 oh, I see.

25 So, it shows -- where does it show

1 you where the songs are from?

2 MS SHI: Oh, I'm sorry, page 170.

3 THE CHAIRPERSON: Yes, I see that.

4 MS SHI: Madam Chair, right here.

5 THE CHAIRPERSON: I have got that.

6 How does that relate to 187?

7 MS SHI: All right. If we go to the
8 first quote and you go down to the part where they have
9 the letters in bold Kill Whitey:

10 "Menace Clan, Da Hood, 1995,
11 Rap-A-Lot Records, Noo Trybe
12 Records, subsidiaries of what
13 was called Thorn EMI and now is
14 called the EMI Group, United
15 Kingdom."

16
17 THE CHAIRPERSON: So, that is where
18 the name of the song is Kill Whitey?

19 MS SHI: That's right.

20 THE CHAIRPERSON: Okay. I got it.

21 MS SHI: So, these are the lyrics.

22 And so, Mr. Fromm, you have seen this
23 on the internet?

24 MR. FROMM: Yes, I have.

25 MS SHI: So, could we then mark that

1 as an exhibit, please.

2 THE CHAIRPERSON: Subject to the two
3 conditions that --

4 MS SHI: Yes, please.

5 THE CHAIRPERSON: I think we are
6 discussing whether or not we should just mark this next
7 time when everyone has had a time to review the better
8 copies and the CD that you are going to produce on page
9 181.

10 MS SHI: But we have -- I have most
11 of the Cds here and they can verify.

12 THE CHAIRPERSON: There is just the
13 one.

14 MS SHI: But, frankly, the better
15 more legible copy of the quotes can be found between
16 page 164 and 169, that is where they come from and
17 actually when I listened to it, I used the not very
18 legible copy but when you hear the words on the CD then
19 you can actually hear it.

20 But if there are concerns about that,
21 I can find the same passages between 164 and 169.

22 I would like to get it marked today
23 so there isn't going to be another sort of having to
24 come back.

25 My understanding is that when we come

1 back we do submissions, I would like to know that, so
2 long as those two conditions are met, that this is
3 entered as an exhibit. I mean, it has been fully
4 identified by Mr. Fromm and most of the lyrics are
5 going to be verified during the break.

6 THE CHAIRPERSON: Yes, it is a very
7 unusual sort of procedure, we haven't marked as
8 exhibits something that is conditional upon fulfilment
9 of these two requirements.

10 MS SHI: Well, I would submit that
11 realistically it is my view that there isn't going to
12 be a problem. I can certainly produce the more legible
13 copy, you can see them right now between page 164 and
14 169.

15 And the second point about the Cds,
16 they are on their way and all the ones that I have
17 checked it is accurate.

18 I don't have very much concern that
19 there is going to be a problem, and if it isn't
20 satisfactory, then they will just be struck.

21 THE CHAIRPERSON: Counsel has said
22 that they are okay with these conditions, so...

23 MS SHI: Right.

24 THE CHAIRPERSON: So, I think we will
25 enter -- we are just going to do something very unusual

1 here and enter this as an exhibit subject to the two
2 conditions.

3 MS SHI: Thank you.

4 THE CHAIRPERSON: And if you could
5 make a record of this action.

6 MS SHI: Okay.

7 THE CHAIRPERSON: So, a full
8 description would be needed then of the exhibit.

9 MS SHI: By myself?

10 THE CHAIRPERSON: Yes, please.

11 MS SHI: All right. Print-out from
12 the HMV Amazon.ca website of availability of Da Hood by
13 Menace Clan, excerpts of lyrics from Da Hood, print-out
14 from HMV Amazon.ca internet website as to availability
15 of The Chronic by Dr. Dre, D-R-E, excerpts of lyrics
16 from The Chronic, print-out from the internet of HMV
17 Amazon.ca as to availability of Lethal Injection by Ice
18 Cube, excerpts of lyrics from Lethal Injection,
19 internet print-out from HMV Amazon.ca as to
20 availability of Guerillas in Tha Midst by the Lench
21 Mob, excerpts of lyrics from Guerillas in Tha Mist,
22 that is spelled as T-h-a, Madam Registrar, internet
23 print-out from HMV Amazon.ca as to availability of
24 Planet of Da Apes, Da spelled D-a, from Da Lench Mob,
25 excerpts of lyrics from Planet of Da Apes, and that is

1 from pages 170 to 181.

2 And then go on to page 187, download
3 from internet lyrics from Da Hood, an album by Menace
4 Clan, title of document Menace Clan, 1995 album.

5 REGISTRY OFFICER: Thank you.

6 The document as described by
7 respondent counsel found at tab 34 of the respondent's
8 books of documents will be marked as respondent Exhibit
9 R-46.

10 EXHIBIT NO. R-46: Document,
11 pages 170 to 181 as described by
12 respondent counsel found at tab
13 34 of the respondent's books of
14 documents.

15 MS SHI: Thank you.

16 Those are my questions.

17 THE CHAIRPERSON: Okay. It is 11:30,
18 11:25 by my watch. Would you like to take a short
19 break and start your cross-examination, or would you
20 like to take a longer break?

21 MS MAILLET: I think I maybe prefer
22 to take an early lunch, depending how other people feel
23 and then determine at that time how we would like to
24 cross-examine Mr. Fromm.

25 THE CHAIRPERSON: Okay, that sounds

1 like a reasonable proposal.

2 Shall we say 11:30 to 12:30 for
3 lunch?

4 MS MAILLET: Sure.

5 THE CHAIRPERSON: Is that adequate?
6 And we will begin again.

7 REGISTRY OFFICER: Order, please.

8 --- Upon recessing at 11:25 a.m.

9 --- Upon resuming at 12:40 p.m.

10 REGISTRY OFFICER: Order, please.

11 All rise. Please be seated.

12 THE CHAIRPERSON: Ms Maillet, are you
13 ready to begin?

14 MS MAILLET: Yes. Mr. Warman is
15 actually going to begin cross-examination of Mr. Fromm.

16 THE CHAIRPERSON: Pardon me?

17 MS MAILLET: Mr. Warman is going to
18 conduct the cross-examination.

19 THE CHAIRPERSON: Okay.

20 EXAMINATION

21 MR. WARMAN: Mr. Fromm, could I take
22 you to Exhibit R-21, please, the respondent's Exhibit
23 that is entitled Vanguard News Network Who We Are,
24 please.

25 THE CHAIRPERSON: Mr. Warman, if you

1 could refer to it by the tab number it maybe easier for
2 the witness.

3 MR. WARMAN: Sure.

4 So, this was the single sheet that
5 was submitted yesterday that was part of Mr. Fromm's
6 notice that he was regarding and reading from?

7 THE CHAIRPERSON: So, that wasn't at
8 a tab?

9 MR. WARMAN: No, it was not.

10 I'm wondering if you can just read
11 out, in the bottom left corner there is a URL address
12 there, I'm just wondering if you can read the base URL
13 after the http, please.

14 MR. FROMM: Vanguard News
15 Network.com.

16 MR. WARMAN: Thank you, that's
17 adequate.

18 Can I take you to tab 2 of the book
19 of documents of the Human Rights Commission and the
20 complainant, please.

21 MR. FROMM: Is this the complaint?MR.

22 WARMAN: It is. So, if I could just ask you to flip
23 forward, I believe it's to the fourth page with what
24 appears to be the first page where the materials that
25 are in question in this complaints are, it says page 1

1 of 12 and at the top it says VNN Forum-VNN In News?

2 MR. FROMM: Okay, I found that.

3 MR. WARMAN: If I refer you to the
4 bottom left corner, please. When I refer to the base
5 URL, I mean just the e-mail address that could be
6 accessed just by typing that in without any of the sort
7 of numbers and letters sequences that follow afterwards
8 indicate a specific posting.

9 MR. FROMM: You mean the URL not the
10 e-mail?

11 MR. WARMAN: Excuse me, if I said
12 that then I correct myself. Could you just read out
13 what the base URL is at the bottom left on that
14 posting, please.

15 MR. FROMM: <http://www.vnnforum.com>.

16 MR. WARMAN: Thank you, that's
17 sufficient. Could I ask you to forward to the tab 2B
18 within that document, please. It states page 1 of 4
19 and it's after the 12th page of the first document that
20 I referred you to, please, and it states at the top VNN
21 Forum Anti-Semitism's hateful resurgence.

22 MR. FROMM: Yes, I found that.

23 MR. WARMAN: Can I just ask you
24 without bothering to read the http, can you just read
25 me the base URL of that document at the bottom

1 left-hand corner, please.

2 MR. FROMM: vnnforum.com.

3 MR. WARMAN: Thank you. Can I ask
4 you to turn forwards to the next, what is called tab C
5 which is after the fourth page of the document that you
6 have just looked at that states at top the left, VNN
7 Forum Americans are not Humans.

8 MR. FROMM: Yes, I have that.

9 MR. WARMAN: Madam Chair, do you have
10 it?

11 THE CHAIRPERSON: I do.

12 MR. WARMAN: Okay, thank you.

13 Mr. Fromm, I'm not sure if your copy
14 has a little bit cut off, but the next page of my copy
15 is clear as to what the base URL is.

16 I wonder if you can read that,
17 please.

18 MR. FROMM: vnnforum.com.

19 MR. WARMAN: Without going through
20 all of the rest of the postings in the material in
21 question, if I put it to you that all of the material
22 in question, or at least at vast majority of it that
23 deals with Mr. Winnicki's postings comes from the base
24 URL vnnforum.com, do you have any personal knowledge to
25 contradict that?

1 MR. FROMM: Could you repeat the
2 question?

3 MR. WARMAN: In essence, rather than
4 take you through all of the postings that are in
5 question pursuant to these complaints, I am simply --
6 or if you would like to just flip through quickly the
7 postings, I put it to you that you will note that the
8 base URL in all of them is vnnforum.com, and I am
9 wondering if you have any reason to contradict that?

10 MS SHI: Madam Chair, perhaps the --
11 whether it did come from there or not is something
12 that's clearly marked on the document. Perhaps instead
13 of asking the witness to verify it, it could simply be
14 put to him that that is what it is and Mr. Warman can
15 ask his question with that as the premise.

16 It is what it is, the document speaks
17 for itself. Whether Mr. Fromm reads it out or not
18 makes no difference, I assume Mr. Warman wishes to ask
19 a question based on that fact, so perhaps he could
20 simply put that factually to the witness and then ask
21 the question.

22 MR. WARMAN: That's perfectly
23 acceptable to me.

24 Mr. Fromm, the documents in question,
25 if not the vast majority, for all of the postings that

1 are in question pursuant to these complaints, come from
2 the website having the base URL www.vnnforum.com; would
3 you agree with me that that is different from the base
4 URL that you have read out at Exhibit R-21 at
5 www.vanguardnewsnetwork.com

6 MR. FROMM: I think only to the
7 extent that the forum is a subset of Vanguard News.

8 You get into the forum via Vanguard
9 News.

10 MR. WARMAN: I'm sorry, I will let
11 you finish.

12 MR. FROMM: You get into the forum
13 via Vanguard News.

14 MR. WARMAN: So, previous evidence at
15 this hearing established that, in fact, you could
16 access vnnforum.com directly.

17 If I put it to you that that is the
18 case, do you have any personal knowledge that would
19 indicate to the contrary of that?

20 MR. FROMM: That's not my experience.

21 MR. WARMAN: Thank you.

22 The next question that I have for you
23 is that previous evidence in this hearing was that any
24 individual could access any area -- excuse me could you
25 just please in regard to the first question that I

1 asked you, could you describe what your experience is
2 in accessing the VNN forum, please?

3 MR. FROMM: Well, when I tried to
4 access this from a computer that was not yet -- that
5 was not a member of Vanguard News, I went in through
6 this -- through the method I described yesterday, going
7 on Vanguard News Network, which included the
8 information on the page I think is marked R-21, and
9 then from that you could go into the forum but could
10 only access certain things, it could not post.

11 MR. WARMAN: So, have you ever
12 attempted to access the website www.vnnforum.com
13 directly yourself?

14 MR. FROMM: No, I have not.

15 MR. WARMAN: Thank you.

16 MR. FROMM: I have not been able to.

17 MR. WARMAN: I'm sorry.

18 MR. FROMM: I have not been able to,
19 I was only able to do that directly once I joined.

20 MR. WARMAN: Perhaps I can restate my
21 question. Have you ever attempted to access the
22 website www.vnnforum.com correctly without going
23 through the Vanguard News Network.com website?

24 MR. FROMM: I was not able to do that
25 without going through Vanguard News Network.

1 MR. WARMAN: Sorry, so just to make
2 sure I understand what you're saying, you have in fact
3 attempted that and were unable to do so?

4 MR. FROMM: That's correct. That is
5 my experience.

6 MR. WARMAN: And can you tell me when
7 you attempted to do that?

8 MR. FROMM: I think the first time
9 was in late April or May of 2004. The most recent time
10 was last week.

11 MR. WARMAN: Madam Jensen, an issue
12 arises about the question about whether, in fact, it is
13 possible to access the website vnnforum -- excuse me,
14 www.vnnforum.com without going through the Vanguard
15 News Network.com website.

16 Just in the interests of having the
17 best evidence before the Tribunal, I'm just curious if
18 there is the means of access to the internet from our
19 location here?

20 THE CHAIRPERSON: Yes, we can.

21 MR. WARMAN: And not knowing exactly
22 how to go about doing that, could you tell me. I'm am
23 in the Tribunal's hands as to best going about
24 demonstrating that fact.

25 THE CHAIRPERSON: Ah, Ms Hartung has

1 informed me that we can hook her lap top up to the
2 screen.

3 MR. WARMAN: If that is possible,
4 that would be greatly appreciated.

5 THE CHAIRPERSON: While Ms Hartung is
6 setting us up, this might be the appropriate juncture
7 to simply acknowledge the tremendous work that the
8 Registry Officer and the court reporter and the
9 security officers have provided to us, in case I forget
10 to do that at the end of the conclusion of the hearing,
11 but I am appreciative of the support.

12 MR. WARMAN: Indeed, and without
13 putting words in my fellow counsels' mouths, I think
14 that would be agreed by counsel for all the parties and
15 myself as a party.

16 MR. WARMAN: Madam Hartung, could I
17 ask that you enter the URL www --

18 MS SHI: Just a moment, is there any
19 way that we could get a print-out of the screens as a
20 record of what is being shown to the witness, would
21 that be possible?

22 THE CHAIRPERSON: That is a good
23 question. Can we do that? What about if -- can we
24 save them?

25 REGISTRY OFFICER: I can save them

1 and then they can be printed from disk. I can save the
2 screen shots.

3 MS SHI: Yes, and I would like to put
4 on the record, so long as we receive a full record of
5 what was done on this screen --

6 THE CHAIRPERSON: Of each?

7 MS SHI: -- with this line of
8 questions and this record, be admissible, in my view.

9 THE CHAIRPERSON: Duly noted.

10 MS SHI: Thank you.

11 MR. WARMAN: Thank you.

12 The base URL vnnforum.com, please.

13 THE CHAIRPERSON: So, let me just be
14 clear about what we are doing here. We need to save --
15 do you need to save the Google?

16 MS SHI: Yes, everything that we see
17 now because Mr. Warman is going to do his
18 cross-examination based on what we see on the screen,
19 and unless we have a full record of it.

20 What he typed in to start with and
21 then what shows up and --

22 THE CHAIRPERSON: Can we go back --

23 REGISTRY OFFICER: Do you want the
24 Google?

25 MS SHI: Oh, absolutely.

1 THE CHAIRPERSON: So, just go back.

2 MS SHI: I guess it can even be
3 e-mailed to my office, if that's easier, since it is on
4 Ms Hartung's computer.

5 THE CHAIRPERSON: But I think we
6 should have hard copies as well.

7 MS SHI: Absolutely.

8 REGISTRY OFFICER: I am entering,
9 going to the site.

10 THE CHAIRPERSON: At each step...

11 MS SHI: So then, please save again.
12 May I go up to get a better look?

13 THE CHAIRPERSON: Sure, you can
14 gather around.

15 So, have you saved this page?

16 REGISTRY OFFICER: I have saved this
17 page. If it's possible, if we are going to be a
18 moment, maybe people could move their chairs, if you
19 can do that, just so that all counsel can see.

20 It's better if all counsel can see
21 what is going on.

22 MS SHI: Absolutely, sure.

23 THE CHAIRPERSON: Mr. Winnicki, did
24 you want to come ahead?

25 MR. WINNICKI: I'm okay.

1 THE CHAIRPERSON: You are okay, and
2 sit closer.

3 MR. WARMAN: Thank you.

4 REGISTRY OFFICER: Ms Maillet?

5 THE CHAIRPERSON: Do you want to come
6 closer?

7 MS MAILLET: It's okay for our
8 purposes.

9 REGISTRY OFFICER: We have now saved
10 this last page to the vnnforum.com.

11 MR. WARMAN: Thank you, Madam
12 Hartung. Can you scroll down, I'd like to demonstrate
13 that this the VNN forum page with the various topics
14 and there was access directly.

15 And could I ask that you scroll back
16 up to the top, please, and just click on one of the
17 links to the left that is in red and maybe underlined,
18 yeah, just one of those, please.

19 REGISTRY OFFICER: "This just in"?

20 MR. WARMAN: That's fine.

21 THE CHAIRPERSON: You are clicking on
22 what?

23 MS SHI: "This just in."

24 REGISTRY OFFICER: Do you want me to
25 save this?

1 THE CHAIRPERSON: Yes.

2 MR. WARMAN: This won't be much
3 longer I assure you, in fact, it will be very, very
4 brief.

5 THE CHAIRPERSON: Circle time.

6 --- Laughter

7 MR. WARMAN: Yes, cozying up to the
8 campfire.

9 Madam Hartung, you indicated to me
10 that you had clicked on the URL -- sorry, not on the
11 URL link, but on the left-hand side link indicating
12 "This just in", is that accurate?

13 REGISTRY OFFICER: Yes, I am in the
14 thread, "This just in".

15 MR. WARMAN: Thank you. Now, can I
16 just ask you to click again on one of the threads
17 within that particular heading, please.

18 Yes, thank you, just anyone.

19 MS SHI: I have a question, Madam
20 Chair. I wonder whether Madam Registrar can tell me
21 whether the whole screen is being saved, all of it,
22 including the address.

23 REGISTRY OFFICER: It says, "This
24 just in", that thread page?

25 MS SHI: Yes.

1 REGISTRY OFFICER: Yes.

2 MS SHI: Thank you.

3 REGISTRY OFFICER: Okay. So, now we
4 are back in the topic and "This just in thread".

5 MR. WARMAN: Thank you, Madam
6 Hartung?

7 Could I ask that you just scroll
8 down, please, on this thread. Thank you, Madam
9 Hartung.

10 THE CHAIRPERSON: Has this all been
11 saved?

12 REGISTRY OFFICER: Yes, and just let
13 the record reflect that we have scrolled down to page 1
14 of 5 of the topics in this thread.

15 MR. WARMAN: Madam Hartung, could you
16 just click on page 5 please.

17 And just very briefly just scroll
18 down, thank you.

19 THE CHAIRPERSON: Does this need to
20 be saved?

21 MS SHI: Oh, every screen I assume Ms
22 Hartung is saving. I think we should only save the
23 screens that we have looked at. That one had five
24 pages but we only looked at one and five.

25 THE CHAIRPERSON: Well, I think you

1 have to save them all.

2 MS SHI: I guess we should.

3 REGISTRY OFFICER: This is the screen
4 capture and if I go to that it goes to that, so you can
5 omit pages 2, 3 and 4 from what is going to happen, but
6 it comes up.

7 MS SHI: Well, we have on the record
8 that we have looked at page 1 and 5, so that is fine.

9 MR. WARMAN: In fact, if I may, that
10 is my understanding that when a screen shot is
11 conducted what it saves is the actual threads and in
12 order to save the second or third or fourth you would
13 have to actually go to those and save the screen shots.

14 THE CHAIRPERSON: So, the only ones
15 we have saved are 1 and 5?

16 MR. WARMAN: Yes. So, just in an
17 abundance of caution...

18 REGISTRY OFFICER: It actually has
19 saved 1 through 5. I just actually saved it and gone
20 into what has been saved.

21 Did you want to see that again?

22 MS SHI: We saw it just now.

23 REGISTRY OFFICER: You saw it. I
24 think maybe you were conferring and you didn't see it
25 because it looked the same.

1 THE CHAIRPERSON: So, we are just
2 including for the record pages 1 and 5.

3 MR. WARMAN: And just for an
4 abundance of caution could you just click on page 3,
5 please and then just scroll down. Thank you.

6 THE CHAIRPERSON: Okay, so that is
7 saved.

8 MR. WARMAN: So, for the record, I'd
9 just like to state that what has just transpired is
10 that the website URL www.vnnforum.com --

11 MS SHI: Excuse me, I feel I know
12 what my friend is about to say, but --

13 THE CHAIRPERSON: Can you let him
14 finish what he is saying first and then you can make
15 your objection.

16 MS SHI: Well, I will be asking for
17 his comment to be stricken from the record.

18 THE CHAIRPERSON: Well, just a
19 minute. I don't even know what the comment is, so I
20 need to hear that.

21 MS SHI: Well, my friend had started
22 to describe what we saw and I do not believe that is
23 appropriate.

24 MR. WARMAN: It's okay.

25 MS SHI: We have on the record what

1 we saw.

2 THE CHAIRPERSON: Okay. Let's
3 hear...

4 MS SHI: Thank you.

5 THE CHAIRPERSON: Are we done with
6 this?

7 MR. WARMAN: I'm sorry, can I just
8 have one second, please.

9 Mr. Fromm, I put it to you that what
10 just transpired here is that we accessed the website
11 URL www.vnnforum.com directly; is that correct?

12 MR. FROMM: Well, that was not the
13 way I had done it.

14 MR. WARMAN: Mr. Fromm, I put it to
15 you that what we just did was to access website the URL
16 base www.vnnforum.com directly; is that correct?

17 MR. FROMM: That seems to be what was
18 done.

19 MR. WARMAN: Mr. Fromm, I put it to
20 you that once we were in the main page of the VNN
21 forum, we then clicked on one of the sub-headings and
22 that that then came up on the screen directly; is that
23 correct?

24 MR. FROMM: That's what happened.

25 MR. WARMAN: Mr. Fromm, I put it to

1 you that once we were in one of the sub-headings, we
2 then clicked on one of the threads that was to the
3 left-hand side and that the individual collection of
4 postings under that thread then came up; is that
5 correct?

6 MR. FROMM: That's what happened for
7 that one, yes.

8 MR. WARMAN: Mr. Fromm, I put it to
9 you that we then viewed a variety of pages within the
10 postings under that thread, we did so directly and
11 that there were no pages that we clicked on what I
12 would put to you as being random pages that we were
13 unable to access; is that correct?

14 MR. FROMM: In that general thread,
15 yes.

16 MR. WARMAN: Mr. Fromm, was the
17 heading of that thread "This just in"?

18 MR. FROMM: Yes, it was.

19 MR. WARMAN: Thank you.

20 Mr. Fromm, you indicated that in
21 order to become a member of the VNN forum you had to
22 sign up and be approved; is that correct?

23 MR. FROMM: That was my experience,
24 yes.

25 MR. WARMAN: Thank you.

1 Madam Jensen, then asked you if you
2 knew what was involved in the approval process for
3 membership, and am I correct you answered no?

4 MR. FROMM: That is my answer, I
5 don't know what is involved.

6 MR. WARMAN: Thank you. If I submit
7 to you that all becoming a member involves is
8 submitting a name, password and valid e-mail followed
9 by clicking on the URL --

10 MS SHI: Excuse me, does my friend
11 have any factual foundation for putting that to Mr.
12 Fromm, because otherwise I would submit that my friend
13 is trying to testify through cross-examination.

14 There is no factual foundation for
15 putting that question before Mr. Fromm right now.

16 And he is not saying that you do it
17 one, then perhaps Mr. Warman could put contrary
18 evidence before Mr. Fromm to try and contradict him.

19 When Mr. Fromm said I don't know,
20 there will be no point of putting that question to Mr.
21 Fromm, he's not in a position to tell him anything
22 about it.

23 MR. WARMAN: Madam Chair, I would
24 maintain that given the kind of latitude that Ms Shi
25 was permitted in her cross-examination over a period of

1 several days that if I am submitting that I have under
2 10 questions to ask Mr. Fromm in cross-examination and
3 that the question that I am about to put to him is in
4 the negative going only to whether he has any personal
5 knowledge to contradict the suggestion that I am
6 putting to the him, that that is not in any way an
7 improper question, and given this is an administrative
8 tribunal that there is some broader leeway within the
9 rules of evidence, I would just simply put that my
10 ability to ask the witness whether he has personal
11 knowledge that what I put to him is incorrect, that
12 that is a legitimate question.

13 MS SHI: Well, doesn't matter how
14 many questions my friend is going to ask, an improper
15 question is still an improper question.

16 And Mr. Fromm has clearly indicated
17 that he has no knowledge, and my friend in asking and
18 putting a proposition to him is simply putting on the
19 record something that I'm sure he intends to submit is
20 the truth.

21 There is no probative value
22 whatsoever to this question, it's meaningless, a
23 witness that doesn't have knowledge, asking the witness
24 to say, well then, you can't say it's not true.

25 There is no probative value to the

1 answer to that question.

2 Of course he doesn't know, I can say
3 it right now, how can Mr. Fromm know that that
4 statement is true or false when he doesn't know what
5 the process involves, and all that will be achieved is
6 that my friend would have put a proposition on the
7 record, which I'm sure he intends to use later on as
8 proof of that fact, and I strongly object to that.

9 If he wanted to prove how easy it is
10 to get into VNN and joining that discussion, he should
11 have done that in chief; not having done that, he's not
12 allowed now to come and try to start testifying again.

13 If he's going to have information
14 contrary to what Mr. Fromm had testified or -- I agree
15 that cross-examination is wide ranging, but it still
16 has to have a purpose.

17 There is no purpose to this question,
18 and to put that kind of proposition on the record is
19 very misleading.

20 THE CHAIRPERSON: I think that Mr.
21 Warman is entitled to test Mr. Fromm's credibility.

22 There is, in my view, a factual
23 foundation to the specific question. In
24 examination-in-chief of Mr. Warman there was
25 information that was put on the record regarding this,

1 and I am going to permit the question on the basis the
2 he is attempting to test Mr. Fromm's credibility on
3 this issue and that is a proper line of questioning in
4 cross-examination.

5 MR. WARMAN: Thank you.

6 MS SHI: Well, I am going to then put
7 it on the record, to make it perfectly clear, I would
8 strenuously object, if Commission counsel or Mr. Warman
9 in submissions in any way trying to assert the
10 proposition he's about to put to Mr. Fromm as a fact
11 that it's in the evidence, it is not, it's a question
12 in cross-examination with proposition in it.

13 THE CHAIRPERSON: Your objection is
14 duly noted.

15 MS SHI: Thank you.

16 MR. WARMAN: Mr. Fromm, if I submit
17 to you that all becoming a member of the VNN forum
18 involves is submitting a name, password and valid
19 e-mail address followed by clicking on a URL link
20 contained in an e-mail that will then automatically be
21 sent to you, do you have any personal knowledge to
22 contradict that?

23 MR. FROMM: Well, my experience when
24 I joined in order to try to pursue the information I
25 was looking for was that there was a lag, it seemed to

1 me at least a day before I got accepted, just did
2 not -- it was my recollection it was not automatic,
3 simply putting in a name, a password, reconfirming the
4 password and clicking a button.

5 MR. WARMAN: Thank you. Can I please
6 direct your attention to tab 50, please.

7 MR. FROMM: Of which?

8 MR. WARMAN: In the respondent's book
9 of documents, Volume II of II, please.

10 MR. FROMM: Okay.

11 MR. WARMAN: Mr. Fromm, am I correct
12 in stating that you indicated that the Turner Diaries
13 were available through the Toronto Public Library and
14 that you had confirmed that through these documents by
15 searching their website browser?

16 MR. FROMM: Well, what I said was
17 that their website indicates that the Turner Diaries is
18 in their holdings. I didn't say that I had actually
19 taken it out.

20 MR. WARMAN: Sorry, I didn't mean to
21 put that to you, simply that it was available through
22 the Toronto Public Library holdings.

23 MR. FROMM: That is what the website
24 says, yes.

25 MR. WARMAN: Thank you. Can I refer

1 you to the section on page 335 under the words towards
2 the bottom that say copy/holding information and under
3 the heading collection.

4 The letters there are -- excuse me,
5 can you tell me what the letters are there, please?

6 MR. FROMM: Copy/holdings
7 information.

8 MR. WARMAN: Sorry, no.

9 MR. FROMM: Yes, okay.

10 MR. WARMAN: Under that, under the
11 heading collection in bold.

12 MR. FROMM: Yes.

13 MR. WARMAN: There are the letters
14 ref-stacks, and then there is the word request.

15 MR. FROMM: Yeah.

16 MR. WARMAN: If I put it to you that
17 this means that the work is not generally available but
18 must be requested from the ref section of the library;
19 do you have any personal knowledge to contradict this?

20 MR. FROMM: Sounds to me as though
21 you are testifying, but my knowledge of libraries
22 means --

23 MS SHI: Excuse me, I was just about
24 to say that being mindful of, Madam Chair's ruling
25 earlier, I just want to again, put on the record, my

1 position, that what Mr. Warman just did was simply put
2 a proposition to a witness.

3 I want to make it perfectly clear
4 that was not legitimate evidence.

5 THE CHAIRPERSON: Noted.

6 Can you put that question more
7 broadly.

8 MR. WARMAN: Mr. Fromm, have you ever
9 attempted to access the Turner Diaries through the
10 Toronto Public Library system?

11 MR. FROMM: No, I have not.

12 MR. WARMAN: So, Mr. Fromm, you have
13 no knowledge of how in fact you can access the Turner
14 Diaries through the Toronto Public Library; is that
15 correct?

16 MR. FROMM: If you're asking have I
17 ever taken them out from the Toronto Public Library,
18 no, I have not.

19 MR. WARMAN: No, sorry, that was the
20 question I just previously asked you.

21 So, my question now is, do you have
22 any personal knowledge about how you would go about
23 doing it if you wanted to, as an individual, access the
24 Turner Diaries through the Toronto Public Library?

25 MR. FROMM: Well, from the

1 understanding of municipal libraries and academic
2 libraries, what that says to me is that the book is
3 available in the stacks, it means you cannot take it
4 out of the library, it's a reference book like a
5 dictionary.

6 MR. WARMAN: Thank you. Mr. Fromm,
7 are you aware that the Canada Customs -- and I bare in
8 mind all of the previous comments both by counsel and
9 Madam Chair -- are you, Mr. Fromm, aware that Canada
10 Customs and Revenue Agency maintains a listing of works
11 that are banned from importation to Canada as hate
12 propaganda?

13 MS SHI: Again, I want to object to
14 the way it's being put to the witness as if it's a fact
15 that has been established, are you are aware, and the
16 following.

17 I would ask my friend instead to put
18 it as a proposition because we, in fact, have no
19 evidence before this Tribunal as to what lists Canada
20 Customs maintains or not maintain, it is a proposition
21 that my friend may put to the witness, but it is a
22 proposition and only a proposition, it is not to be put
23 to the witness as it is an assumed fact.

24 THE CHAIRPERSON: And he is putting
25 it in propositional form, and I would ask that you put

1 it in propositional form.

2 MR. WARMAN: Mr. Fromm, if it put it
3 to you that Canada Customs and Revenue Agency maintains
4 a list of works that are banned from importation into
5 Canada as hate propaganda, do you have any personal
6 knowledge to contradict that?

7 MR. FROMM: No, I can confirm, it's a
8 sad and pathetic truth that our country, our government
9 practises extensive censorship and there is a very long
10 list of political and religious and economic books that
11 are banned from Canada. It's too bad but that is quite
12 true.

13 MR. WARMAN: Mr. Fromm, if I put it
14 to you that the Turner Diaries are in fact on the list
15 of works that are banned from importation into Canada
16 as hate propaganda by the Canada Customs and Revenue
17 Agency, do you have any personal knowledge to
18 contradict that?

19 MR. FROMM: I don't know whether
20 that's true or not.

21 MR. WARMAN: Madam Chair, if I may
22 just have a second to confer with counsel.

23 Madam Chair, those are all the
24 questions that I have for Mr. Fromm.

25 THE CHAIRPERSON: Thank you.

1 Re-examination?

2 MS SHI: None, Madam Chair. Thank
3 you.

4 THE CHAIRPERSON: Thank you.

5 It is now 1:25.

6 Mr. Fromm, you may take a seat.

7 Thank you very much, Mr. Fromm.

8 Okay. So, we are in a position now
9 where it appears as though, am I correct, Ms Shi, that
10 your case is complete?

11 MS SHI: Yes, that's my case, yes.
12 That's all my witnesses.

13 THE CHAIRPERSON: Okay. But am I
14 correct in assuming that neither, not one of the
15 parties would be in a position to do closing argument?

16 MS SHI: That's correct.

17 MS MAILLET: Yes.

18 MS SHI: And I have brought my
19 schedule with me.

20 MS MAILLET: Yes.

21 THE CHAIRPERSON: Does everyone have
22 their calendars with them.

23 MS MAILLET: Madam Chair, Mr. Warman
24 and I spoke last night to compare when we were both
25 available, so we do have some dates that we are both

1 available that we are able to provide to the Tribunal.

2 THE CHAIRPERSON: My only dates
3 unfortunately don't begin until November 7th because I
4 am in hearings otherwise, although I'm available next
5 week but I'm assuming next week would be a little bit
6 too soon.

7 What I was thinking of was to provide
8 two weeks for written argument. Does that seem like a
9 satisfactory time frame for the preparation of written
10 argument?

11 MS MAILLET: I am just curious as to
12 transcripts and...

13 THE CHAIRPERSON: Ten-day delivery,
14 unless we made a special order and that's quite unusual
15 and expensive, so we would stick with the ten-day
16 delivery which would mean -- that is a good point,
17 because we are at the 21st now, so 10 days from now
18 would put us at the 4th and then if we said two weeks
19 after that for written argument, that would put us
20 at the 18th.

21 MS SHI: Madam Chair, if I may, the
22 usual practice in my own experience of course, I am in
23 your own hands, is that I will receive my friend's and
24 Mr. Warman's submissions and then be able to respond to
25 it.

1 THE CHAIRPERSON: That you would do
2 in oral argument. What we typically do is we receive
3 the written argument from all parties and then I
4 provide you with an opportunity in oral submissions to
5 respond to one another.

6 MS SHI: Fine.

7 THE CHAIRPERSON: So, that would be
8 the 18th as a deadline. Does two weeks seem ample time
9 to put together your written submissions, having a look
10 at your agendas?

11 MS MAILLET: That's fine, Madam
12 Chair.

13 THE CHAIRPERSON: I will wait for Ms
14 Shi to have a look.

15 MS SHI: I pause only because within
16 that time period I have about 10 days when I am really
17 tied up, so I would be grateful if I could have a
18 little bit more time.

19 THE CHAIRPERSON: How much is a
20 little bit more?

21 MS SHI: I was afraid you were going
22 to ask that.

23 THE CHAIRPERSON: We typically don't
24 give much more than two weeks, but would it help in
25 terms of the scheduling of your time if we got the

1 expedited transcripts that are available in five days?

2 MS SHI: That would be very, very,
3 very helpful because the time slot I'm being given
4 right now, in truth, will not have a lot of it
5 because --

6 THE CHAIRPERSON: You are tied up in
7 other matters.

8 MS SHI: Exactly. It is unfortunate
9 but exactly collides with my almost busiest time of the
10 year.

11 THE CHAIRPERSON: So, if we got
12 expedited transcripts, that would be next Friday, which
13 would then give us until the 11th for written
14 submissions...

15 MS SHI: Madam Chair, I thought you
16 said 18th.

17 THE CHAIRPERSON: We could put it to
18 the 18th.

19 MS SHI: That would be very helpful
20 to me, I would be very grateful if we could do that.

21 THE CHAIRPERSON: We will say the
22 18th is the deadline for...

23 MS SHI: So long as we get the
24 transcripts by the -- is it the 28th then that we will
25 have the transcripts?

1 THE CHAIRPERSON: I believe so, yes.

2 MS SHI: That will be fine then, then
3 I would and I am grateful for that.

4 And I am sorry to change the subject,
5 but before I forget I did want to report to the
6 Tribunal that during the break Commission counsel and
7 Mr. Warman did listen to the three Cds that are here.

8 Perhaps if I could just take a moment
9 to put it on the record.

10 THE CHAIRPERSON: That is okay.

11 MS SHI: And I apologize for the
12 interruption.

13 We have listened to the Cds that are
14 available here and it was agreed that the lyrics found
15 on page 174 which is tab 34, Exhibit R-46, we were able
16 to confirm the lyrics found on page 174, 176 and 179.

17 THE CHAIRPERSON: Can you repeat the
18 tab and exhibit number for me please.

19 MS SHI: Yes, tab 34, Exhibit 46.

20 THE CHAIRPERSON: R-46?

21 MS SHI: Yes, sorry, and you find the
22 lyrics that we listened to on pages 174, 176 and 179.

23 And they were confirmed.

24 THE CHAIRPERSON: Okay.

25 MS SHI: Thank you.

1 THE CHAIRPERSON: Okay. So back to
2 deadlines, we are looking at providing the transcripts
3 on an expedited basis by the 28th, which is a bit
4 unusual and I am being indulgent here.

5 MS SHI: I really appreciate that,
6 thank you.

7 THE CHAIRPERSON: And then, again,
8 deviating somewhat from the normal course of about two
9 weeks for written submission and saying three weeks,
10 which puts us to the 18th which then means that we can
11 look at oral argument the week of November 21st.

12 MS MAILLET: In fact, Madam Chair,
13 perhaps I can provide the dates that Mr. Warman and I
14 were available and, unfortunately, between both of us
15 both of us are only available December 1st, 2nd and
16 then 19th, 20th and 21st.

17 THE CHAIRPERSON: Whoa. I am in a
18 hearing that week, the first week of December and then
19 you are talking the 19th of December.

20 MS MAILLET: That's correct. One or
21 the other of us were out of town and completely
22 unavailable.

23 MS SHI: I'm available December 1st
24 and 2nd and the week of the 19th I will not schedule
25 anything. I have two young children, I do Christmas

1 things with them, I am being perfectly honest, but that
2 is what it is.

3 THE CHAIRPERSON: So, if we took up
4 the 19th and 20th that would take time away from
5 Christmas with your children.

6 MS SHI: Yes, because already the
7 rest of the year is busy and that is sacred, I book
8 nothing as it as my time off really, I'm not going to
9 say that I am not available, I will be in town, but I
10 really would not want to schedule anything. That's my
11 time off.

12 I guess maybe I should have simply
13 said that I'm not available, but I want...

14 THE CHAIRPERSON: Well, you are
15 talking to a mother of four young kids, so I know.

16 MS SHI: Perhaps you manage better
17 than I do, Madam Chair.

18 THE CHAIRPERSON: No, I know how a
19 sacred time that is, but I also know we need to get
20 this matter dealt with.

21 Are you saying, Ms Maillet, that
22 there is no time in November at all that's free?

23 MS MAILLET: We looked at this last
24 night. I will take a look again.

25 THE CHAIRPERSON: My problem is that

1 I am in a hearing and unless the matter settles, I'm
2 not at all available that first week of December.

3 MS SHI: And of course I, on the
4 other hand, am available, really the week of the 19th
5 is my only problem and aside from that, I am --
6 December 5th, otherwise my December is pretty open.

7 MS MAILLET: I found another day,
8 November 25th.

9 MS SHI: I'm not available that day,
10 unfortunately.

11 MS MAILLET: Because we thought when
12 we were preparing this last night that we would have
13 oral submissions and written submissions at the same
14 time, so if the written submissions are already done
15 then it's just a matter of coming and delivering them
16 orally, we could do it on the 25th.

17 THE CHAIRPERSON: But there is no
18 availability for Ms Shi.

19 MS SHI: Not for me.

20 THE CHAIRPERSON: And any other days
21 in December that are free for you?

22 MS MAILLET: Of December?

23 There was the 1st and the 2nd and
24 then I will be preparing for something else, but there
25 is a possibility on December 12th.

1 MS SHI: I'm available.

2 THE CHAIRPERSON: Is that okay?

3 MS MAILLET: Sorry, do you know
4 something, I don't.

5 THE CHAIRPERSON: Well, we were
6 saying that it's just so that everything is out in the
7 open here, that it is the last day of my hearing on
8 December 2nd, and so you know, exercising my power as
9 the Chair of that panel, possibly I could cancel the
10 last day of the hearing on that, I would rather not do
11 that, that doesn't seem fair to the parties, so if
12 there is any way that you could swing it to do the
13 12th.

14 MS MAILLET: Okay.

15 THE CHAIRPERSON: I think that is
16 best from my point of view.

17 MS SHI: That's great for me. Thank
18 you.

19 THE CHAIRPERSON: I appreciate that.

20 MS MAILLET: Okay.

21 THE CHAIRPERSON: I know that puts
22 you in a difficult position, I do appreciate that.

23 MS MAILLET: That's okay.

24 THE CHAIRPERSON: Well, okay. So we
25 have got the deadline of -- let's just review these

1 things so we are all on the same page, transcripts will
2 be made available by the Registry Officer by the end of
3 the day October 28th.

4 REGISTRY OFFICER: Can I just
5 indicate that it will probably be the end of the day
6 and they will come electronically, is how they will
7 come.

8 MS SHI: That's fine.

9 THE CHAIRPERSON: And the deadline
10 for written submissions will be November the 18th, 2005
11 and we will then have oral argument on December the
12 12th, Monday, here in Toronto at a location to be
13 determined, hopefully here but it is subject to the
14 availability of this location.

15 So, you will be duly notified of
16 that, of the venue.

17 Anything else?

18 REGISTRY OFFICER: The Tribunal would
19 ask that we receive two copies of the written
20 submissions for the Tribunal, and another copy in an
21 envelope with -- one for the complainant and one for
22 the respondent, or it can go...

23 MR. WARMAN: I was just going to ask
24 if electronic copies are acceptable?

25 THE CHAIRPERSON: I would prefer

1 written.

2 MR. WARMAN: Sure, okay.

3 THE CHAIRPERSON: I would prefer
4 written, I work better from a written document, so I
5 would like it submitted in written form, hard copy
6 form.

7 REGISTRY OFFICER: The copies are
8 coming through the Tribunal to the other side, it would
9 be important that we receive the copies in time so that
10 the other party receives on that day.

11 If it's agreeable by the parties that
12 we receive electronic copies so that, the issue is we
13 have a day lag when things come to the Tribunal and
14 back out to the other parties.

15 So, if the deadline is November 18th,
16 then if I receive something to go to Toronto or to
17 Ottawa on that day they may not receive it until the
18 next day, but the parties are agreeable to receive an
19 electronic copy on that day, then they can submit
20 electronic copies as well for me to forward on, so that
21 the other party has something that day, and then the
22 hard copy will follow, if that is agreeable?

23 MS SHI: That's agreeable to me.

24 MS MAILLET: Just that when there is
25 counsel we do send each other information directly.

1 THE CHAIRPERSON: The problem is that
2 Mr. Warman is a party as well.

3 MS MAILLET: Yes.

4 THE CHAIRPERSON: So things do not go
5 directly to him, so it is better that it be through the
6 Tribunal.

7 MS MAILLET: Right.

8 REGISTRY OFFICER: So either the day
9 before the 18th so I can send it out for Mr. Warman to
10 receive that day or electronically.

11 MS SHI: May I ask then just what the
12 software, is it Microsoft Word or Word Perfect, what do
13 you prefer?

14 REGISTRY OFFICER: Either.

15 THE CHAIRPERSON: Either.

16 REGISTRY OFFICER: Either is fine, we
17 work in both.

18 THE CHAIRPERSON: Well, that
19 concludes the hearing in this matter for this time --
20 I am adjourning the hearing at this point at the
21 conclusion of the case for the respondent.

22 I would like to thank all counsel
23 involved. This has been difficult in many ways, but I
24 think all counsel have shown a high degree of courtesy
25 and forbearance at the appropriate moment and I

1 appreciate the rigor with which you have argued your
2 points and the intensity of effort that everyone has
3 put into this matter.

4 So, safe trip back to Ottawa and safe
5 trip through the jungle of Toronto traffic, for those
6 of who are here.

7 MS SHI: Thank, you, Madam Chair.

8 MS MAILLET: Thank you.

9 REGISTRY OFFICER: Order, please.

10 --- Whereupon the hearing adjourned at 1:40 p.m.
11 to resume on Monday, December 12, 2005
12 at 9:30 a.m.

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HEREBY CERTIFY, to the best of
my skill and ability, that the
foregoing is a true and accurate
transcript of the proceedings.



Beverley R. Dillabough, C.S.R.