File No. 65381

C A N A D A

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

(BEFORE THE HONOURABLE JUDGE F.E. HOWARD)

SURREY, B.C.

1996 MARCH 11

REGINA

V

VICTOR EUGENE CAINE

PROCEEDINGS AT

TRIAL

APPEARANCES:

T. DOHM/M. HEWITT for the Crown

J. CONROY for the Defence

K. HILLEN Court recorder

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MR. DOHM: Regina v. Caine is before Your Honour now for continuation.

THE COURT: Yes.

MR. CONROY: John Conroy appearing again on behalf of Mr. Caine, Your Honour.

MR. DOHM: T. Dohm and Mr. Hewitt for the Crown today, Your Honour.

MR. CONROY: Mr. Caine is present and the next or continuing witness is Professor Boyd.

THE COURT: Let's reswear the witness.

NEIL BOYD, a witness recalled on behalf of the Defence being duly sworn, testifies as follows:

THE CLERK: State your name for the record and spell your last name.

THE WITNESS: Neil Boyd, B-o-y-d.

THE COURT: You may have a seat, sir.

MR. CONROY: Now, Professor Boyd was last before you, Your Honour, on November 27th I believe—sorry, November 28th, and was qualified at that time as an expert, and we had got to the stage in his evidence of simply beginning to put to him some of the material in my friends' Brandeis brief and our own Brandeis brief. We have now a copy of our brief and perhaps I could tender that as the next Exhibit.

THE CLERK: Exhibit 18, Your Honour.

THE COURT: All right.

EXHIBIT 18 - BRANDEIS BRIEF

MR. CONROY: I should explain, Your Honour, that in our brief, we have included a list of articles, most of which are copied and included and on the second page of the index is a list of books, and then the books we have simply included the title page, at the appropriate tab, and we have the actual books available, some of which we have extra copies of, but some we've been unable to get extra copies of, either because they're out of print, or simply not available. We're going to keep trying to get them, or otherwise hopefully we can set up a system whereby the books are available to the Court and to my friends, but somehow can be obtained or returned at a later point in time. I would like then to—

THE COURT: Is there a second copy or—

MR. CONROY: I'm afraid there isn't of that one. I thought that an extra one had been prepared, but there isn't.

THE COURT: All right.

MR. CONROY: I can see if we can maybe arrange to have that done.

EXAMINATION IN CHIEF BY MR. CONROY continuing:

Q What I'd like to do then is, Professor Boyd, if we could have you look at Exhibit 5, I believe it is, the Crown's Brandeis brief. You have the index in front of you. I'll take you through that index so you can comment on those documents that are in the brief that pertain to your area of expertise. Now, the first document is Fair & Collant (phonetic) Report of the Addiction Research Foundation, World Health Organization Scientific Meeting on Adverse Health and Behavioural Consequences of Cannabis Use. That one pertains primarily to health issues, which is not within your area, correct?

A I think that's correct. I have read that report and I have read fairly widely in the area of health effects, but given that my training is in Law and Social Sciences, I think it's—there are other people who are better qualified than I am to speak to health effects.

Q Okay. The second one is Collant & Goldstein Drug Policy, Striking the Right Balance, any comment on that one?

A I guess the one point that I would make about the article is that—is that they talk about specifically about the extremes of—of strict prohibition and legalization, and although I have a few concerns with respect to the notion that availability inevitably affects consumption, I think it's probably more useful for me to—to speak specifically of that issue later on.

I guess the point that I would make in relation to what they have written is that it is—probably is true to say that if we're talking about a—a choice between legalization that involves the promotion of—of psychoactive drugs and—much as we do with alcohol—and prohibition, that there are problems with respect to both of those approaches.

Q Legalization with a promotion?

A With a—with promotion built in. I think one of the things that we've learned in the case of tobacco, for example, is that—that if we look back to the 1950's, we allowed tobacco companies to make false and misleading statements about their product. You know, you can go to Life Magazine, for example, in the 1950's and they ran an ad saying that more doctors smoke Camels than any other cigarette, and the doctor was pictured in a white lab coat and in the left—bottom left-hand corner there was a life expectancy table which indicated that life expectancy in the United States had increased from something like forty-two at the turn of the century to about sixty-eight by 1940, and the clear implication was that smoking had made Americans healthier. And at that time, there really was very little knowledge about the consequences of tobacco consumption, and so I think it's a simple lesson about allowing commercial interests to—to put on the market essentially dangerous commodities, and we see now, of course, in the Third World, that tobacco companies are continuing to essentially push a relatively dangerous addictive drug on an unsuspecting public.

So I—so I think that any kind of change with respect to a—the regulatory or prohibitive regime that accompanies a specific drug would not necessarily involve the right to promote that drug, and again, I think the problem with the—with the Goldstein and Collant article is more one of—well, what's—what are we talking about here, in terms of -- of a regulatory change, or in terms

of a legal change and what would be the consequences if, in fact, that's what we're talking about.

So to proceed to talk to about it in—in the polar—in terms of the polar opposites that they present, I don't think is terribly helpful. I don't think that that—those kinds of changes are contemplated, and I think that we have historical lessons and—lessons from the present that suggest that—that—that there have to be strong regulatory controls in relation to dangerous commodities in the market place.

Q That raises an interesting point in relation to the R.J.R. McDonald case. Have you had a chance to review or consider that case as yet, the one where the Supreme Court of Canada—

A The Supreme Court?

Q -- struck down the tobacco advertising—

A Yeah.

Q -- or proposed tobacco advertising legislation?

A Yeah. I guess I—I would have to say that I disagree with the Supreme Court with respect to that decision, and—and I think that there's a difference between free expression, which is really primarily commercial in its focus, and free expression which is primarily political or related to purposes that extend beyond the commercial sphere. I don't think that the tobacco companies have—I don't think the limitations placed on the tobacco companies with the—the Tobacco Products Control Act, and the restrictions on advertising, I don't think those were—those were terribly onerous restrictions. I think those were reasonable restrictions, given—given the—the nature of the product that they are—are putting on the market.

Q As I recall, there was a question of what evidence there was to show that the advertising would be effective or—or otherwise?

A Well, I think it's also true to say that from the evidence in relation to tobacco, that advertising is not the key issue in predicting whether or not a young person will smoke. If you look at why young people smoke, I don't think that advertising is critical, but I think advertising also creates a social and cultural and context in which smoking can be seen or in which those decisions that—that people make as a consequence of their peer groups, as a consequence of the communities,

and as a consequence of their—the communities in which they live, as a consequence of their families.

I think that advertising can lend support to—to those viewpoints. It can be seen as "cool" or "exciting" to smoke and so it's—while it's not the case that in my view that—that advertising in and of itself leads a given individual to—to take up smoking, I think what it does is to create a cultural context in which those people who—who do smoke gain some legitimacy.

MR. DOHM: Your Honour, the question was a fairly simple one to start out with, but now my learned—my—the witness has gone into giving expert opinion evidence on how advertising works, and I don't think he was qualified for that, with all respect.

MR. CONROY: Well, I think his answer arose in the context of the R.J.R. McDonald case and the question I put to him in terms of the issue of advertising or no advertising when you change from either a prohibitionist situation to a legal situation, so I think the witness is simply trying to express his opinion, and it's a matter of weight for the Court, in terms of what weight to give that part of his opinion in that context.

THE COURT: Is his opinion on the correctness or incorrectness of the decision?

MR. CONROY: Well, it's—

THE COURT: I have certain limitations on me in that respect.

MR. CONROY: That's right, but I mean he—he was simply -- part of his expertise was development of policy issues on drug use and—and distribution, as well as history of the laws and one of the laws that we—or involving another product or another intoxicant is the tobacco area, and so I think it's fair for him to comment that here in relation to tobacco, we've had a non-prohibitionist approach for a long period of time.

Questions—there's concerns—there's clear evidence of the public health effects of tobacco and there's been an effort—the government has said that they find it impractical to prohibit tobacco, and so instead, they have tried to adopt some halfway measure, in terms of restricting advertising of the product. And so the question to him was—that arose in relation to the—the article which is Striking the Right Balance in terms of the different policies, one of the issues that comes up in striking that balance is if you move to a legalization, is how do you try to discourage use, or how do you control the sellers from promoting use, and so I think the witness is simply saying that it's his opinion that advertising isn't the key thing that does promote use,

there are other factors that promote use, peer group pressure and—and others that he mentioned.

So the point was to show that if one did legalize, there would be this question of—of advertising, and the witness is simply indicating it's a personal opinion that he thinks there should be distinctions between the types of freedom of expression that are considered, but the fact is that the Supreme Court of Canada has said that that advertising went too far, or the evidence wasn't there to show that the advertising would cause a problem. So I think it's fair enough for the witness to simply comment on it without—and again, it then is a matter of weight for the Court.

THE COURT: All right.

MR. CONROY:

Q Staying on the topic of tobacco for a moment, and this question of availability of use—or availability and rates of use, can you comment about that in terms of tobacco and what's happened with tobacco?

A Well, I think it's—it's pretty clear from survey evidence that half as many Canadians—half as many adult Canadians smoke today as was the case thirty years ago. That in 1965, fifty percent of adult Canadians smoked. Today, approximately twenty-five to thirty percent of adult Canadians smoke, so this is really quite a remarkable change in—in terms of indulgence in a—in a fairly destructive habit, a form of dependence in relation to health.

The interesting point is that—that during the past thirty years with continuing increase in urbanization and with proliferation of commercial outlets of one kind or another, we've actually made tobacco more available. Tobacco is easier to access today than was the case thirty years ago, and—and given this increase in the availability of tobacco, one would think, as this is commonly argued, that the increase in the availability of any drug will necessarily lead to an increase in use and increase of abuse.

We would think that the—by making tobacco more available, we—we would see increases in use, if anything, and not a halving of the—of the population of users. That—I think one—one has to throw in the balance here is that we've had the emergence of the Non-Smokers' Rights Association and—and we've had fairly aggressive public education in relation to the harms of tobacco smoking.

And so I think with any drug, what we need in my view at least again, is the—is the cessation of advertising and aggressive public education. And I think similarly, that the very simple principles that apply to the Non-Smokers' Rights Movement in relation to tobacco also apply, of course, in relation to cannabis.

Q So that the change in policy on the part of the government in relation to tobacco was not one of prohibition in order to decrease use, --

A No.

Q -- but some alternative that—

A I think—

Q -- involved public education and obviously—

A And—and legislation.

Q -- an attempt of advertising control.

A Yeah. I think you know the Tobacco Products Control Act represents a change in terms of approach, if you contrast that to what we did in 1965. That kind of legislation contemplated in 1965 would have been almost unthinkable.

Q Okay. Let's move on then to the next document, three, which is the Australian Government report. A lot of that deals with health and psychological consequences, at least the one that's reproduced in the book. Are you familiar with the Australian—the overall Australian report?

A No, I'm not. I haven't—I may have flipped through this at some point in the past, but I—I don't recall it well enough to speak to it.

Q Is there another aspect of the Australian report that you are familiar with that deals more with policy issue?

A I'm familiar with more recent research into the effects of decriminalization, partial decriminalization in south Australia. A number of studies that have been carried out over the last five to—five years in that time frame, as Australia has begun to look at the decriminalization issue, and I guess the most recent one is the Donnelly article from the Australian Journal of Public Health, which I don't have a copy of, but which essentially speaks to the issue of the consequences of decriminalization, suggesting that there has been no increases in use in relation—as a consequence of decriminalization, and again, I think that finding is consistent with other findings in the United States, in the Netherlands, in Spain and Italy and so forth.

Q And you can get us a copy of that article?

A I think so, yes.

Q And when did they move towards the decriminalization in Australia—in south Australia then, so what period of time are we looking at, over what period of time?

A It was the early '90's. I—again, I can't recall the specifics. I—I'd—it's—I think the period that they looked at was '90 to—'90 to '93, that they were looking at those three years and changes within that three year span—

Q Okay.

A -- in the Donnelly article.

Q All right. The fourth and fifth article or articles in my friend's brief appear to be health-related, the Hollister and then Pope, and six deals with the question of potency and effect on patterns. Any comment on that, or would you put that into the health category as well?

A I guess the—you know, again, I've read quite a bit of literature on the—on the potency issue, because it's one that—that comes up again and again in relation to debates about cannabis. The—the argument that the—the potency of marihuana today is much greater than the potency of marihuana in 1965, I think that's true. I think that the potency of cannabis is—is greater and so I've tried to figure out what the consequences of that greater potency might be.

And one—one finding that's very consistent in the research literature is that as the level of THC increases, the amount—the puff volume, the amount inhaled decreases, and so from a health perspective, it seems to me that given that one of the major adverse consequences of cannabis use is what it does to the lungs, and smoking anything is harmful to the lungs, given that that's the case, then if people are smoking higher levels of THC, one benefit is pretty clearly that they are smoking less, and therefore doing less damage to the lungs. And I'm unable to find any evidence that suggests significant psychological consequences or other kinds of significant health consequences that flow from that—that higher potency.

I was interested in the—the Pope review article. He sets out three possibilities in relation to adverse psychological effects, and again, you start to think about the notion of some kind of neurological deficit, or some kind of withdrawal effect, and personal communication. He's indicated what he finds most compelling is the idea of some kind of withdrawal effect.

It's—I guess the—the point I would make is I'm unable to find any compelling evidence that an increase in potency has really negative consequences, except, of course, if you turn to—to impaired driving or if somebody's, you know, smoking marihuana that seems very strong, and they—they do something else then that's problematic, but I—I take that to be a separate issue.

Q Do you know if that increase in potency has had any effects in terms of distribution and use, which is one of the areas that you spoke about before?

A Well, I think—I'm pretty sure with respect to distribution and use that—that—that the amount of cannabis consumed, the amount of cannabis distributed, is quite unrelated to the law. If we look at self report studies, if we look at police data, what we see, Health and Welfare, Addiction Research Foundation, any number of forms of data, what we see is starting in 1966, a continuing increase in rates of consumption that peaks in about 1980 and it drops through the '80's reaching the nadir in about 1987, and then it starts in the late '80's and early '90's to increase again, and those—those changes, it seems to me, cannot be connected in any meaningful way to changes in—with respect to potency or changes with respect to law, more significantly.

Q Let's just review that more specifically. I think you told us earlier, in your earlier evidence, first of all, that when marihuana or cannabis was placed in the schedule in 1923, there doesn't appear to be—and correct me if I'm recalling this wrongly, but there doesn't appear to be any widespread use or—or public issue in terms of marihuana at that time?

A That's right.

Q In—here in Canada?

A That's correct. As I said, at the time the only mention in Hansard is there is a new drug in the schedule. There is no discussion and it simply proceeds to be criminalized.

Q We then move up to 1961, when the single convention was adopted by the United Nations, and that's when we had our Narcotic Control Act enacted?

A Right.

Q And at that point, there were very significant penalties included in the Act, as I recall?

A Life imprisonment. That was a—a new maximum for distribution offences.

Q And for possession?

A For possession up to seven years in jail.

Q Okay. Now, at that time, 1961, was there by that time a public issue or wide—considerably widespread—

A No.

Q -- use in Canada?

A No, in fact, you know you can look through the—you have a bit of use, I—I suppose. I haven't found any research but certainly in the States there's evidence of use among Mexican migrants during that period from the '20's and '30's through to the '60's and use among the so beat—so-called beat generation of musicians, and I suppose there was some kind of sporadic use of that sort in Canada, and I think there is some evidence in various places, a book, Panic and Indifference, and a few other sources, but—but generally speaking, very little use prior to 1966/67.

Q '66/'67 seems to be the starting point when suddenly there was a huge increase in use?

A That's right. We started with a thousand—in 1967, a thousand marihuana possession convictions and by 1975, we had forty thousand.

Q And at that—at that particular point, it was throughout the period when we had a very heavy penalties for use?

A Certainly. And the judiciary also initially were very supportive of those strong penalties in the sense that more than half of the people who came to court in 1967 charged with possession were sentenced to terms of imprisonment.

Q And it was then I think the next step, in terms of the change in the law was '69?

A Mm-hm.

Q The—the discharge—

A No, 1969 --

Q No, sorry, the summary—

A -- there was the—the creation of a hybrid offence—

Q The hybrid for simple possession.

A -- for simple possession.

Q So that arguably was a—an amelioration of—

A I think it has to be seen in—

Q -- penalties?

A -- that way because it gave Crown counsel the option of—of proceeding to treat the matter as less serious by proceeding summarily.

Q And while that change in the law occurred, the pattern of use was still on the increase—

A Yes, that's correct.

Q -- at that time? And that continued on, as I understand your evidence, until '79 when there's the peak?

A That's right.

Q And the only other legislative change that we had in that time period was—and remind me of what the date was, but the absolute and conditional discharge?

A 1974, amendments to the Criminal Code, to provide for absolute and conditional discharges for a wide range of offences, but certainly much was said at the time. I think it was John Munro who introduced the legislation and much was said about the cannabis issue at the time of introduction.

Q I think we actually have that from my friend in his volume three, if you want to just take a look at that while we're on the topic. If you look at tab 31 of Exhibit 5, volume three, the news release from John Munro, July 31st, 1972, that's the comment I take it that you are speaking about?

A No, I don't think so.

Q He says, "Following Ladane (phonetic)," he indicates first of all that the government isn't going to legalize possession of cannabis, --

A But that—that was the statement that he made indicating that the government intends to transfer cannabis—

Q -- then he—

A -- from the Narcotic Control Act to the Food and Drugs Act.

Q But then on page 2, --

A And I think at the time, my understanding was that the inference drawn was that it would be treated in much the same way as amphetamines are treated. That is, there would be an offence for distribution, but not an offence for possession.

Q But if you look at the—at page 2, the second paragraph, there's a clear policy statement there, isn't there, that the government's going to reduce the consequences relating to unlawful acts relating to cannabis?

A Mm-hm, yes.

Q And then expand its research and if you look at page 3, it makes clear reference there—

A Right, yeah, and I'm sorry—

Q -- to the discharge?

A -- it was 1972, not 1974.

Q Okay. But this is the—the policy statement by the government at that time?

A Right.

Q And the—and the third—

A Some of which has come to pass and some of which has not.

Q All right. Well, the third paragraph was the specific policy statement by the Ministers suggesting that all

Department of Justice prosecutors were going to be instructed to urge the courts to apply absolute and conditional discharges in the case of possession of cannabis, assuming no other conviction?

A I—yeah, and I don't think that was—I mean I certainly know that that was never acted upon.

Q Now, did you recall there was a reaction from the judiciary to being directed—

A Told, yeah.

Q -- as to what to do? So—but the point is, is here -- this was a clear statement from the government while the rights of use were apparently increasing. This then would be the second statement which could be—well, what the Ministry clearly seems to be saying, reduce the consequences of certain unlawful acts involving cannabis?

A Right.

Q So that it was a clear message saying the government was going to get softer, if you can use that word, while rates of use were going up?

A Yes.

Q And it isn't until '79 that there's that peak of—but the peak doesn't seem to be—correct me if I'm wrong—doesn't seem to be related to any legislated activity?

A No, it's not. I cannot see how it's related to any legislation.

Q And just to just cover again a point we've touched on earlier, this was the first effort then by the government to try and remove the consequences of having a criminal record for possession of cannabis, wasn't it, this absolute and conditional discharge?

A Yes.

Q Which again didn't turn out to be that at all?

A No. In—no. And in fact, just what, six years later, eight years later, Paul Kaplan who was Solicitor General was lamenting the fact that discharge provisions were being used in some twenty to forty percent of Cannabis

possession cases, and was, in fact, urging that—that this was too lenient an approach to cannabis.

Q Okay. All right. Let's move on to the other parts of the Brandeis brief. We've got to I think six. Seven through eleven appear to be all health-related, or do you have any comment on any of them?

A No.

Q Twelve to fifteen also appear to be primarily health-related. Any comment on any of those articles in particular?

A No.

Q And similarly, sixteen through eighteen—sixteen through eighteen deal with this—the driving question. Any comment on that from a—

A Well, I—I guess the one thing I can say—the person who's done the most comprehensive work, I think, in the last decade on the influence of marihuana on driving is Robbe (phonetic) and I've had the fortune of being able to hear him speak and—and in Germany last fall, and certainly the message that's pretty clear in his work is that—that although there are certainly effect—influences of marihuana on driving, that—that the influences are, of course, much less substantial than the influence of significant amounts of alcohol in relation to psychomotor tasks. And that there are some complicating factors in relation to previous use of cannabis, but none of that should detract from the—from a general premise that it's inappropriate to—to—to use a drug such as cannabis and operate a motor vehicle or any kind of heavy machinery.

Q And we have a law that is directed towards that, --

A We do, --

Q -- directed towards the ability—

A -- in the Criminal Code, yeah.

Q -- to drive while under the influence of alcohol or—

A That's right.

Q All right. The next reference in my friend's Brandeis brief is McFarlane Drug Offences in Canada, and that, I

think, is the—the history part of that book. I think we dealt with that initially. I don't know if there's anything further you'd want to comment on in that regard?

A No. I think it's—there are different emphases that I might place on the historical review of Canadian drug legislation, and I think that the combination of—of the—that by looking at what Bruce McFarlane has written in relation to this issue in Chapter 2, and by looking at the article from Dalhousie Law Journal, one can get some sense of what those different emphases are, but I don't think that there's much difference of opinion with respect to how the legislation emerged, that is that it was legislation introduced by the Minister of Labour, that there was an element of racism and that there was a—essentially the anti-Asiatic riot of 1907 that—that brought this issue to the fore.

Q All right. Then the next series of—of items in the Brandeis brief, item twenty, twenty-one, twenty-two, twenty-three and twenty-four, all pertain to international treaties that have been signed between Canada—or United Nations treaties that have been signed by Canada and other countries, and in Volume 3, the—you also have number twenty-five which is the 1988 Convention, and twenty-six, the Signatories to the Convention. Now, that all then relates to the federal government having entered into these various international obligations and you may recall or if you heard the announcements in—in the house by the Ministers saying that part of the purpose of the new Bill C-7, was to comply with international obligations. Have you had a chance to review this material in terms of compliance or non-compliance with the international obligations, given the—the existing law and—and the attempts to change it?

A Well, yes. It's something that I've been interested in for some time, because it is relatively consistently set out as a—as a reason for not changing the law in relation to—to cannabis, that is a reason for continuing a criminal prohibition and not permitting in any sense something such as the decriminalization of possession of cannabis.

And it seems to me particularly in relation—I'm not sure of the page numbers, but in relation to the 1988 convention, that there are alternatives within that convention to criminal conviction for possession of cannabis. I suppose more pointedly, aside from the specifics of—of the convention, one might look about the world and ask how countries that are, in fact, signatories to these agreements can have such varied approaches in relation to the control of cannabis, and here we can look to south Australia, we can look to the

Netherlands, we can look to those jurisdictions in the United States in which there has been some form of decriminalization granted in each jurisdiction and it takes slightly different form, but nonetheless, it—if decriminalization of—of—of possession of cannabis cannot be contemplated by the single conventions, then it sort of boggles the mind to—to -- because it's quite confusing at least as to why we have these approaches in different jurisdictions and why we have, you know, the decision of the—I suppose—well, there's the decision of the German constitutional court which seems to go very much against the position that—that this sort of prohibition or sort of criminalization is required by—by these U.N. conventions.

Q Now, the—what's your understanding of the decision of the German court? We have it in one of our—our books, but—

A My understanding of it, and I've only been shown—I have not spent much time at all looking at it, but my understanding is that it—it essentially says that there is a private right to consumption, that the state does not have the right to—to use force of criminal statutes in relation to private consumption of—of illicit substances.

Q If we're looking at the international conventions, can we go to the most recent one in '88 to determine what the state of our obligations or responsibilities are, or do we have to go back to the '61 convention and—and the '70 -- the one on psychotropic substances in '71?

A Well, as I recall, there is some statement in the 1988 convention, --

MR. DOHM: Excuse me, Your Honour. Excuse me, Professor Boyd, I didn't understand the man to have been—the witness to have been qualified as an expert in international law, Your Honour, and I think that's what he's being asked here.

MR. CONROY: Well, the history of laws was one of the areas, and obviously if the government is putting forward that it has to affect these policy changes, because of its international obligations, surely that falls within the area of—of this witness' expertise. He's trying to determine why governments are doing these things and—and for what purpose and why are the—and why are their policies changing, or why are they saying that they're changing.

In my submission, if he's qualified as an expert with respect to the history of the laws here in Canada, I don't see how you can separate out the fundamental basis—or one of the fundamental bases that are being put forward by my friend, namely international politics, is I think the way he put it.

MR. DOHM: I think I said international law. I intended to, in any event, but—

THE COURT: All right. I—I certainly am in no position to accept his opinion as an expert in the law of Germany, or some other country in that respect. However, I think that the question, in a broad sense, is admissible and allowable, when one deals with his expertise in terms of the general history of law.

MR. CONROY: Yes. I didn't intend for him to be an expert on German law. He mentioned the decision of the Court, so rather than leave that hanging there without any explanation, I thought we should at least have him tell us what that was, not necessarily saying that is accurate or that is definitive, but simply so you had some idea of what he was talking about.

Q Could you go, Professor, to tab twenty-five of—

A I don't think I have that.

Q -- of Volume 3, which is the '88 Convention and from my reading of it, and perhaps you can confirm if this is your understanding, if we look at Article 3, it requires each party to adopt measures necessary to establish as criminal offences under its domestic law, when committed intentionally, it sets out a whole series of—of matters and in the first one, it says, "The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery," and it goes on and nowhere in that first section does it say possession or use—for personal use, does it?

A No.

Q So if we then go over onto the next page and you look at item 3, that seems to be the first reference to possession and it talks about possession or purchase of any narcotic, drug, or psychotropic substance for the purpose of any of the activities enumerated in subsection (1), correct?

A Right.

Q So again, that doesn't seem to cover simple possession for personal use, does it?

A No.

Q Now, then if you go down to the bottom of the page, so we're now at 1©, it says, "Subject to its constitutional principles and the basic concepts of its legal system," which presumably allows for some flexibility on the—on the part of the parties signing to the document, it then goes over onto the next page and you have number two and that seems to be the provision which requires criminalization essentially of possession for personal consumption. Where it says—but—but it does say, "Subject to its constitutional principles, and the basic concepts of its legal system, each party shall adopt such measures as shall be necessary to establish as a criminal offence under its domestic law, when committed intentionally the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption," correct?

A Mm-hm.

Q So again, there seems to be a—a limitation on the obligation by the word "subject to its constitutional principles and basic concepts of its legal system." Am I right?

A I think that's—

Q So if the constitution of this country precluded prohibiting simple possession, if that was the law, that would be an escape hatch to this particular provision, would it?

A That's my understanding and I believe the Netherlands, for example, is a signatory to this agreement which—to my mind—

Q Okay. Now, if we—

A -- strengthens the (indiscernible).

Q -- if we carry on to the next page, paragraphs © and (d), which come under subsection—or come under paragraph four, and I should say four says, "Each party shall make the commission of the offence established in accordance with paragraph one of this article,"—now paragraph one, of course, was the very first one which we said didn't apply—but if we go to—and that is an (a) that I was reading, but if we go to the next page and we look at (c) and (d), let me read those and tell me what you understand those to mean. (c) says, "Notwithstanding the preceding paragraphs, in appropriate cases of a minor nature, the parties may

provide as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as when the offender is a drug abuser, treatment and after-care." And then in (d), "The parties may provide either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence, established in accordance with paragraph two of this article, measures for the treatment, education, after-care, rehabilitation or social reintegration of the offender." What do you understand those to mean?

A Well, I think particularly in relation to (d), that that section provides for the possibility of something other than a—the use of the Court to respond to possession of a substance such as cannabis, that other—as an alternative to conviction or punishment, and provided that the response has some measure of treatment education, etcetera, and—

Q So do you think from this document that there's somewhere an obligation on the part of Canada to create the offence of pro—create an offence of simple possession for personal use under pain of criminal conviction and penalty?

A I don't think so and that—that's my understanding. I may be incorrect, but my understanding is that that's not the case. As I say, more powerful, it seems to me that—well, the words on the page speak for themselves, but if we look around the world and we see what people—what different countries are doing, and recognize that they are, in fact, signatories to this agreement, I think it's clear that—that there is a significant degree of latitude in responding to the problem.

Q Well, we look at a place like the Netherlands that we've mentioned. The Netherlands has—still has an offence, doesn't it?

A Not de defacto, but yes, (indiscernible).

Q So there's an offence on the books but it's simply not prosecuted—

A Enfor—right.

Q -- or enforced? Okay. Are there other countries that we know of in which there is no offence that are signatories to this—the signatories, by the way, are at tab twenty-six of the—

A My impression is that Spain is—takes a very similar approach, but I—I am not—I—you know, I have not read sufficiently to—to tell you that—that without any reservation or hesitation that—and I haven't been to Spain. I don't know what their policy's been like, but my understanding is that they don't prosecute possession of cannabis.

Q All right. The next group of articles at the end of tab—or into their third volume, and we've just dealt with the first two, and then at tab twenty-seven, there is an extract from the House of Commons debates, Friday, February 18th, 1994, and this appears to be—to relate to an addition of Bill C-7, doesn't it, which is the new bill?

A Yes.

Q And this is a speech by Diane Marlowe (phonetic), the Minister of Health, in support of that bill, isn't it?

A Yes.

Q But she mentions in the third paragraph, "Canada's drug strategy launched in 1987, created a comprehensive coordinated effort to reduce the harm caused by alcohol and other drugs to individuals, families and communities." Are you familiar with that strategy?

A I am.

Q And what do you understand that strategy to be?

A Well, the—the strategy is one that was developed by Coalition of Health and Welfare, Solicitor General and Justice, but primarily responsibility resided, as I understand it, in Health and Welfare, the Federal Ministry, and was really an attempt to—I think there are a number of different things but—but one of the—one of the claims that was made again and again, was that—that Canada's drug strategy as launched in 1987 could be differentiated from the American strategy because there was a greater emphasis on—on treatment than on punishment and it was an attempt that—the drug strategy was really an attempt to—in the realm of Health, to—to provide better education and to provide services, particularly to affected communities, so that there was some targeting of communities at risk, and—and it was an attempt to develop on a nation-wide basis a—a coordinated effort to reduce the harm as I said, caused by alcohol and other drugs and I think one of the

strengths of the—of the—Canada's drug strategy was that it made clear that—that there should be a linkage of the legal and the illegal drugs in terms of the problem of public health.

Q So it included essentially a harm reduction policy?

A Yeah. I think it's somewhat ironic perhaps that it began at the time when we had, at least in relation to cannabis and in relation to many other drugs, legal and illegal, a relatively low point in terms of consumption.

In 1987, you may recall I said earlier, was the point which the consumption rates were at their lowest relative to the 1980 peak, and we have this—you know this cannabis drug strategy that took off in 1987 and in fact, what we've seen through the 1990's are increases in—in the use of cannabis.

Now again, at this point, I would not want to make here is to suggest that—that that drug strategy had any impact in relation to—to an increase in—in cannabis consumption. My point is more that—that the drug strategy, that these changes in law have virtually nothing to do with—with changes in relation to—to use and we—I think we see this most strongly when we look at the United States and we recognize that—that use goes up and down in decriminalized and criminalized states, independent of whether the law in place of the given state is—is criminal or—or non-criminal and—and so what we see is more a—a reflection of change over time, which I think reflects the reality that these changes are—are cultural and not affected in any significant way by minor tinkering with the legal tariff.

Q I don't know if you've had an opportunity to read this statement by the Minister, but she says things such as in the second column, third paragraph, "The real importance of these figures," and she's just cited some statistics in terms of fifteen percent of young Canadians ages fifteen to nineteen having admitted to using cannabis and two percent of Canadians claiming to have used cocaine, but she then goes on and says, "The real importance of these figures goes well beyond their statistical relevance. They translate into many millions of dollars spent on health care, family welfare, unemployment benefits and disability pensions." Now, I know she's speaking about all drugs in her—in her statement, but you made a comment earlier in your evidence about people not committing crimes to get marihuana, as they might to—to—they might commit crimes to get money to buy other drugs for example.

A Right.

Q Do—based on your knowledge of distribution and use and the policy issues in relation to drug use, does these types of comments apply to simple possession of

marihuana, or do you know? I mean, has there been a—an impact on family welfare, unemployment, disability pensions because of marihuana use?

A There can certainly be—certainly be a conflict within families as a consequence of marihuana use, but I don't think it's reasonable to say that there have been millions of dollars spent on health care and—and unemployment and disability pensions as a consequence of cannabis. I don't know that that flows—

Q And in terms of—

A -- or that follows.

Q -- increased criminality, either—either in terms of trying to get money to buy the drug or—

A Well, I think I—I may have said last day—I can't recall whether I said this, but—that the price of a cannabis high is actually cheaper than the price of a -- of an alcohol high. An ounce of cannabis sells for about three hundred dollars and a person can roll fifty or sixty joints from a—from an ounce of cannabis, and typically when you look at the context of use, two or three people share a joint, so that—that is costing the consumer—and with the relatively high strengths of—the Health Canada reports that the cannabis seized in British Columbia varies in strength between seven percent and twenty-seven percent THC level—a very small amount of smoking is sufficient to—to get the desired effect, so the price of a cannabis high, is I would say a couple of dollars, in contrast of course to the price of an alcohol high, which can be something like five times that much, so it doesn't seem to be very likely. In fact, I have no—no evidence to suggest that it is the case that—the people are committing crime in order to obtain money for cannabis.

Q So apart from the crime itself, because parliament has made it an offence to simply possess it for one's own use, are there other crimes that arise out of that prohibition? And again, I'm just focusing on simple possession now. I appreciate that in terms of trafficking or—or whatever, there may be crimes that arise because of the nature of the trafficking and the fact that it's illegal, but in terms of simple possession are there other crimes that we're aware of that are being focused on (indiscernible) --

A I suppose you could say that impaired driving occasionally flows as a consequence of—of simple

possession. I don't say—I wouldn't say it's as a consequence though, because it presumes that that—that statement would presume that people who are in possession necessarily are going to drive while impaired. I would—I think the appropriate analogy is with alcohol.

Q So at the top of the next page, or the—page 1563, I guess it's the third page, she says—and she says "it" and she's referring to drug abuse in Canada because the bottom of the previous page she says, "There's no doubt there is a very real problem of drug abuse in Canada,"—she says, "It causes death, injury and illness, lost productivity in the workplace, a burden on our health care system, and increasingly strain on our courts and police forces." Again, isolating out simple possession of marihuana and—and I appreciate you may not be able to comment on all of the areas, but in those areas applicable within your expertise, do you see any of those consequences from simple possession and use of marihuana?

A I think there's probably some lost productivity in the workplace, particularly for those people who use it all day long, because it has a sedative effect. I think that is going to negatively impact on productivity in the workplace.

I don't think its—need as substantial lost productivity as with the tobacco dependence. I think it's pretty clear that, you know, if you look at the records of smokers versus non—tobacco smokers versus non-tobacco smokers, that they have much higher rates of absenteeism and—from work and so that—I would argue that given that behaviour—given rather tobacco dependence, there's—there's a great deal of lost productivity.

On the other hand, I suppose, you know, it'd be very difficult to compare a person who—who's going to work stoned and a person who's going—who—who is smoking cigarettes and making an argument about greater or lesser productivity. I mean I think the point is that sure, any kind—any of these drugs that have intoxicating effects or health consequences, in the case of tobacco, can have an effect on productivity in the workplace.

I don't think with cannabis that we're talking really significantly about death or injury, except in the indirect context of impaired driving. I don't think we're talking about much of a burden on the health care system, although there is probably some minimal burden in relation to cannabis, and I think the strain on our courts and police forces is something that we impose on ourselves.

Q At the next tab, twenty-eight—

THE COURT: Mr. Conroy, it's—

MR. CONROY: Sorry.

THE COURT: -- ten to eleven. I think of our Clerk here who would like her break at this point in time. We'll take the morning adjournment, fifteen minutes.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

MR. CONROY: Just before we continue, Your Honour, I managed to obtain copies of the Coroners Report, the Task Force Report that we mentioned the other day when Dr. Peck was on the stand. I've given my friend a copy and I have two additional copies, one can be marked as an Exhibit and one for the Court.

THE COURT: Thank you.

MR. CONROY: That would be Exhibit 19. And I think we referred to this the other day but just so that we have the specific comment in that report that's applicable here, I'd just draw your attention to pages—it's Chapter 8 really, and particularly the recommendation at the end of it on page 88, where he recommends that the government look into legalization of marihuana.

Now, another thing that I have managed to do is obtain transcripts of the expert witnesses that testified on behalf of the government in the case of Hamon (phonetic) which is the one out of the Quebec -- that we have the decision of the Quebec Court of Appeal, and I have obtained those.

The evidence that was called on behalf of the applicants in that case was all in French and I wasn't able to get it translated so—whereas the evidence on behalf of the government is predominantly in English, and so I have those and I have a copy that I'd like to tender as an Exhibit and an extra copy for the Court.

It's essentially four witnesses who testified there. One is Dr. Collant, who I understand my friends may be calling. The other is Dr.—I should say Dr. Collant is a psychopharmacologist like Mr.—or Dr. Beyerstein; Dr. Smart, Reginald Smart, who is a psychologist; a Mr. Clayton, who is a sociology professor, and a Dr. Reese-Johns (phonetic) who is a psychiatrist. And I have obtained them so that you would have in front of you what the nature of the expert evidence—at least what the nature of the government's expert evidence was in that case, so you can compare it to what the evidence is here, and also I propose, of course, to put some of it to my experts, to have them—to see if they agree or disagree with it.

And I have endeavoured to do the same with respect to Sholette (phonetic), which was the case out of Victoria, but I'm just—there's pages missing or appear to be missing from that transcript and I'm just trying to have my office sort that out, so I hope to have that for you later in the week.

But I'd like to, if I may, then provide you with this further ominous amount of material, which is the -- the materials from Hamon, so these are the four expert witnesses have been copied and separated into separate transcripts, and I gave my friend a copy last week. So there's one set to be Exhibits, and one extra set for the Court.

THE COURT: Crown's position?

MR. DOHM: Your Honour, I object to the introduction of those transcripts in this case. Number one, what it is is an attempt to either retry the Hamon case, a case which the Supreme Court of Canada showed no interest in listening to and they refused leave.

Number two, it is an attempt to attack the evidence given by those witnesses in a manner that is unfair in the circumstances. These witnesses are not here to be re-examined or to be re-examined in chief, except for Dr. Collant who will be here, and my learned friend will have ample opportunity to cross examine Dr. Collant.

The—the danger in introducing the evidence in the Hamon case into this case is the same as it would be if you were to take the evidence from an impaired driving case, and try to introduce it into another to show a difference in the facts. And the final point that I would make to Your Honour is that there is no authority for the tendering of this.

> THE COURT: Is your purpose to introduce these transcripts as evidence proper on the trial, or for the purpose of—I suppose with respect to Dr. Collant, potentially for the purpose of cross examination, which would just—they would only be marked for identification then?
>
> MR. CONROY: Yes. No, I—what I had hoped to be able to do was to—because often—well, in particular in the judgment in Hamon, none of the witnesses are identified, nor is anything said in any detail about what they said, other than to simply say, "I accept the evidence of the experts who say that there's lots of harm from the use of marihuana."

And so it was difficult to know what evidence was before the Court, and what had the Court relied on, on this question of a public health issue from just reading the—the judgments, and so I first—my first position was to try to find out exactly what the evidence was so that it could be considered here on this question of public health, and I sought it more as—much like the Brandeis briefs, you have simply the opinion of an expert that was called by the government, who was cross examined by the defence, and who expressed various opinions, much like if they'd written an article.

In fact, most of them seem to have written a report for the Court, which they then are taken through. And so it seemed to me that it would be helpful to the Court to know what the evidence was in that case. Clearly, you have a

decision of the Quebec Court of Appeal that's not binding on you, but is highly persuasive and so that you would know exactly what the—the evidence was, and you could then compare it to the evidence here, in terms of—but in the same way as any—

THE COURT: All right. Well, --

MR. CONROY: -- of these articles—

THE COURT: -- in that respect, on—on that issue alone, it seems to me that it would be fair for you to attach the transcripts to a copy of the judgment. In other words, that's not an unheard of practice, where—where an appellate court wants to look more closely at the actual evidence that existed in the case, not necessary—is not necessarily the case before them, but in terms of understanding the judgment, the references to the evidence can be obtained by reference to the transcripts.

They wouldn't then be filed as an exhibit and treated as evidence in this case. They would only be treated as evidence in that case, pertaining to that judgment.

MR. CONROY: I don't—I'm not trying to call—in fact, it would be foolish for me to call this as evidence in support of my case, because it's the government witnesses that are opposed to my case that testified in Hamon. It's—so it's the other side's evidence that I'm trying to—to put in front of the Court, but not as evidence proper.

It's not—it's not as if I'm trying to say, "Here, in they go and don't call a witness," but I do want my witnesses to know what was said in Hamon and to then comment on whether they agree with it or not, or whether something's changed since that time, much in the same way as I could show them an article out of a Brandeis brief, but showing them the article in the Brandeis brief doesn't make the Brandeis brief article evidence in the sense—in the sense of a witness' evidence, but it's evidence to the—it's evidence of a sociological nature or—or Brandeis brief type evidence, in order to put as full and complete a picture in front of the Court in terms of what prevailing views are with respect to this issue.

Now, I think it's—it's may be a fine line because if you—if we put in a report from an expert that says A, B, and C, we have many of those in the Brandeis brief and they're not cross examined upon, and no witnesses appearing specifically and no author or anything is appearing, but we've been putting those to the various experts that are called, to have them comment on them.

That's what I propose to do with this evidence is much the same thing. We have an opinion. It happens to have simply been expressed in a courtroom in a transcript, and happens to have been cross-examined upon there. And so I appreciate that Mr.—Dr. Collant will be here and so we can hear from him directly and probably get into his transcript more specifically and his—his may well become actual evidence, because he may adopt what he said before, but—so I don't suggest that this becomes evidence in the same way as a—as a witness who is testifying, or to substitute for the witness coming here and testifying, but I submit it's evidence of an opinion from some experts that the

experts in this court could comment on. And I—I'm—I'm trying to introduce it in just that way.

I know there's—it seems to me from everyone—I didn't know my friend was going to object, so I quickly reached for my Canada Evidence Act, because it seems to me there was some—there is some provision in the Evidence Act whereby evidence of judicial proceedings can be tendered, but I must confess that I haven't looked at it with a view to this coming in that way, and there's usually some notice requirements and so on to do that.

But Section 23 of the Canada Evidence Act does say that, "Evidence of any proceeding or record whatever of or in or before any court in Great Britain, the Supreme Court, Federal Court or Tax Court of Canada, any court in any province, any court in any British colony or possession or any court of record in the United States," and it goes on, "may be given in any action or proceeding by an exemplification or certified copy of the proceeding or record purporting to be under the seal of the Court." It goes on, "Without proof of authenticity of the seal," and then sub (2) simply provides, "Where there's no seal, evidence may be given by copy purporting to be certified under the signature of a judge," etcetera. Now these don't have that—

THE COURT: But that—that particular provision doesn't set the—the parameters for admissibility.

MR. CONROY: No, it doesn't.

THE COURT: We're first going to have to have some level of -- of probative value to the proceedings or the copies of the proceedings that—that you wish to file.

MR. CONROY: I would submit the probative value is—is the same as any of the articles in the Brandeis brief, no more no less.

THE COURT: I guess I have two questions. First of all, do you have any objection to my original proposal, which was that I—I would be entitled to look at the transcripts in relation to the judgment of the Court of Appeal, so that I could understand that judgment?

MR. DOHM: I could see that, Your Honour, if you had the transcript and not part of it. That's all you're being offered here.

THE COURT: If I what?

MR. DOHM: If you had the transcript of the evidence, and not a part of it, which is all you are being offered here. There's a very—and that's an important point, Your Honour, because my learned friend has indicated that he intends to ask whether or not there has been

anything changed since the Crown witnesses in Hamon gave their evidence, but it would be equally important for Your Honour to be aware as to whether or not there is any difference in the evidence in this case from that tendered in Hamon.

THE COURT: I'm not—I'm not sure I'm following that. If I had a judgment that set out in some detail the evidentiary basis that the judge—that the Court was arriving at a decision on, --

MR. DOHM: Yes.

THE COURT: -- I—I could look straight to that—

MR. DOHM: Yes.

THE COURT: -- the details set out in the judgment without asking or requiring myself to look at all of the evidence that went in on—on the case. Do—are we—do we have the direct and cross examination of—of each of these witnesses?

MR. DOHM: Of some of the witnesses.

MR. CONROY: Of the Crown's witnesses.

THE COURT: Of the Crown's witnesses.

MR. CONROY: All of the Crown's experts on that.

THE COURT: All right. In terms of—of having the transcripts attached to the judgment, it's difficult for me to tell in advance whether the fact that—that I don't have all of the transcripts for that whole trial somehow interferes with my ability to understand the judgment.

MR. DOHM: It—it might be difficult to—to tell that, Your Honour. I can understand the predicament, but if an appellate court decides that they need the transcripts in order to understand the judgment, they tend to look at the entire case, not—not a part of it, not—not a portion, and that's out of simple fairness to the parties, to make sure that the Court doing the review has an adequate understanding of the evidence that was tendered before the original court.

THE COURT: I guess that—that might depend upon the nature of the finding that's contained in the judgment itself, because it might be on a very narrow issue on which limited people gave—a limited number of people gave evidence. The second—the second issue that your friend has raised is that it's just similar to—to putting in

evidence via a Brandeis—Brandeis brief and I must confess I—I'm not completely familiar about or with the rules and procedures in terms of filing these types of documents contained both in your brief and—and those of your friend in—what weight, if any, I am to attach to what is essentially an article or—or an opinion by someone with recognized expertise in the field. Is there any difference between the evidence given at a trial by such a person and an article from a journal or a book?

MR. DOHM: Well, in some cases there will be no difference at all, because the evidence will be based on the article and I wouldn't have a problem at all with my learned friend tendering the articles that these people have written and some of them are before you already. However, to tender the evidence, examination and cross examination, I'm repeating myself on that, without tendering all of the evidence in the case, in my submission, is simply unfair.

MR. CONROY: I'd like to and I could tender the whole thing if you want. It's—it seems larger than that pile and it's all in French.

THE COURT: I'm going to need something larger than a Jeep to—

MR. CONROY: You know, what I've—what I've copied is what I thought, in fairness, was—because I wouldn't want some of this in, if it was just my own preference, but I felt that the only fair thing to do was to give all of the stuff—all of the evidence that was against—that was called against our position so that you have that in front of you.

The other evidence was evidence that was in favour of our position, so I don't understand the unfairness. The problem—but I can put it all in front of you. It includes evidence from Marie Andre Bertrand (phonetic) who was called on behalf of the applicant and a—and a Mr. Bonardo (phonetic), but all of that evidence is in French, and all of the other aspects of the hearing were in French.

The only part of the transcript that is in English and part of it is in French and English because of the translator, are these four witnesses, because they couldn't speak or understand French sufficiently to testify in French. So I don't—my friend says it's unfair, but I can, to accommodate that part of his objection, have all the balance of it copied and put before you, for what it's worth, if that's what my friend wants.

As far as the—the evidence and what weight, I think it's this problem of—of in Charter cases, the admissibility of all of this other type of evidence that normally isn't admissible in other types of cases, and the Supreme Court of

Canada, in the R.J.R. McDonald case, actually made comment on this, and so I'm just quickly trying to find for you that part, but my recollection—I'm sorry, the—the copy that is in my brief—I guess this must have been prepared when we didn't have the Supreme Court of Canada edition, now that I think about it. I think the Supreme Court of Canada edition is in my friend's brief, or at least part of it, in his case books, and there was a comment there by the Court about how certain findings of fact would be made at this level on the record, and how the Court would be reluctant to over—over—to take a different view or to overturn those types of findings of fact, and distinguish those types of findings where there's a witness called and this examination and cross examination, as compared to what they I think call sociological evidence, or evidence from the various documents.

Now, I've seen my friend has it at tab fifteen of volume one of his materials, but I'm not sure if he has the whole thing. But there is a comment in it about this problem, and I'm afraid I—well, I can't put my hands on it immediately, but I know that there are—I remember there was a comment about the nature of this type of evidence, and I'm only asking that it come in as I've indicated, on the same basis as other—

> THE COURT: All right. What I'll do is over the lunch break, I'll—I'll take a look at that case and at a minimum, I'm prepared to have them attached to the judgment—to the Court of Appeal judgment and argument can flow when we get to the law and argument on the facts, that the—the degree to which there is some element of unfairness, if any, by having them attached in that respect.
>
> MR. CONROY: And I'm quite prepared, as I've indicated, that if—if—I can certainly produce the rest of the volumes to my friend and he can pick up whatever he thinks should go in. I'm sure his French is—working for the Department of Justice, his French is probably better than the rest of ours, but he could maybe pick out anything else that he feels should be before the Court—

THE COURT: All right.

> MR. CONROY: -- to eliminate any perceived unfairness, or as I've said before, the whole thing, if it's necessary.
>
> THE COURT: Now, I think in terms of examination of your witness, a lot of this might be academic because it is possible to formulate a question for him that refers to evidence that might have been given by an expert in another trial without couching it in those terms, and asking for his comment on a statement, you know if an academic said this, you know, what would your position be in—in very neutral terms.

MR. CONROY: Right.

THE COURT: So I—I think, as I said, much of this may be academic in terms of eliciting evidence from—from your witness.

MR. CONROY: I appreciate that. So—

THE COURT: You'll just have to be sensitive to your—

MR. CONROY: -- should we—

THE COURT: -- your friend's concerns about—

MR. CONROY: Right. Should we then leave it for now in terms of marking them, or mark them as Exhibits for identification or—given the time, I was going to put—

THE COURT: Let's mark it as—

MR. CONROY: -- the Collant—some of the Collant comments to Professor Boyd, --

THE COURT: All right. Let's mark them as an Exhibit—

MR. CONROY: -- but we cannot—don't have to do that right now, if there's only—there's only—

THE COURT: Let's put them—mark them as Exhibits for identification only, subject to argument as well.

MR. DOHM: Is there any need for that at all, My Lord -- Your Honour, if it's going to be perhaps attached as part of a judgment?

THE COURT: Probably not. Do you see any particular need?

MR. CONROY: No. It's—it would have only been for—so we just know how to identify it in the proceedings, but I think if we treat it as if it's part of the judgment or goes with the judgment which is then the case books, obviously it would be—

THE COURT: All right. What's the—what's the volume number and tab number of the—

MR. CONROY: For the case it's—it's my friend's book of authorities and it appears at tab two of volume one—yeah, tab two, volume one.

THE COURT: Volume one, tab two. All right. If they can just be delivered to the Court then as an appendix to tab two, volume one, of the Crown's brief of authorities.

MR. CONROY: In that case, I suppose you only need one batch.

THE COURT: Correct.

MR. CONROY: Because you can mark them up anyway.

THE COURT: Yes.

MR. CONROY: I'll save this for the next case.

THE COURT: Save it. There may come a point in time when you'll require them.

MR. CONROY: Yes, I—I will.

THE COURT: I'll just take those ones.

THE CLERK: Sorry, are these marked as an Exhibit?

THE COURT: No, they're just—

MR. CONROY: Appendix to the—

THE COURT: -- they're just delivered to the Court as an appendix to tab two of volume one of the Crown's brief of authorities.

THE CLERK: And that's not an exhibit, tab two, volume one?

THE COURT: No.

THE CLERK: Thank you.

NEIL BOYD, recalled, testifies as follows:

MR. CONROY: Let me say, Your Honour, just in terms of housekeeping then, before we carry on, Professor Boyd has to be back at the University this afternoon, so Professor Beyerstein was going to be here for the afternoon, and Professor Boyd is available tomorrow morning—

A Until eleven.

MR. CONROY: Sorry, tomorrow's Tuesday. So Professor Beyerstein is going to be here tomorrow morning. I hope to have Dr. Connolly tomorrow afternoon, and it now looks like Dr. Morgan from New York isn't going to be able to make it, so we continue on with Dr. Connolly on

Wednesday. Professor Boyd may be able to come back Wednesday, so he could—cross examination could start. I'm going to speak with Dr. Connolly to see if we could have Professor Boyd in the morning on Wednesday and continue with Dr. Connolly in the afternoon and that would then just leave cross examination of Professor Beyerstein, although we may even get started on that this afternoon. Just so that that—it may be that my friends will be able to start on Thursday, cut down a little bit.

THE COURT: All right.

MR. CONROY: All right. Just to—if we can then just try to—I'll try to finish off Professor Boyd and most things other than the Collant materials, which we can then—or the Hamon material, which we can consider later.

EXAMINATION IN CHIEF BY MR. CONROY continuing:

Q The last item I think, Professor, in the Crown's Brandeis brief, volume three, was tab twenty-eight, the House of Commons debate, statements of Heddy Fry, then parliamentary secretary to the Minister of Health, October 30th, 1995. I don't know if you've had an opportunity to—to review this statement of her, but she is obviously commenting on Bill C-7, the new bill, and I guess if it's October 30th, '95, would that be or do you remember if that would be the first edition or the second edition of C-7? I assume it would be the second edition.

A I think it's the final edition. I think that was the day it passed the House and I think that was also the day of the referendum, if I'm not mistaken.

Q That was the day when the opposition wasn't in the house when they passed the—passed the bill, is that—is that right?

A I'm not sure about that.

Q The Quebec Referendum day?

A I—yeah, I know that that—that it was October 30th.

Q Sort of reminiscent of 1923 when they added the drug to the schedule. Now, in terms of—

MR. DOHM: I might have to cross examine Mr. Conroy eventually, Your Honour.

THE COURT: You might be sorry.

MR. CONROY:

Q The—at the bottom of page—at the bottom of the first page, she makes comment about the—the spirit of the red book. I seem to recall in your evidence earlier you made some comment about the Liberal policy, or do you—do you remember that?

A It has been Liberty Party policy for some time to—to soften penalties in relation to cannabis. Are you speaking about the page that's numbered 15950 on the bottom?

Q Yes, at the bottom, the second paragraph from the bottom on the first column. If you would just read that and read the next few paragraphs at the top of the next page, --

A Right.

Q -- and tell us whether C-7, from a policy point of view, does it do the things indicated there?

A Well, I suppose there are a couple of claims that I would disagree with, the claim that by international law we cannot decriminalize marihuana, and—and it's true that there have been some changes in relation to cannabis, both with respect to distribution and with respect to—to possession, insofar as the bill—Bill C-7 is concerned, but—and it's true that it is now to be a—exclusively a summary offence rather than a hybrid offence in Bill C-7, and that fingerprinting and photographing will not be undertaken by police officers.

Q That's if it's under thirty grams?

A Right.

Q If it's over thirty grams, presumably the—

A Well, --

Q -- Identification of Criminals Act still applies?

A Yeah, and I think this, of course, introduces a new conception of possession, separate from what has historically existed in the Narcotic Control Act, in—as far as it follows the example of many American jurisdictions of using thirty grams or some number of grams as a—as a kind of benchmark. But it's—in my understanding, it's certainly not the case that the negative impacts have

changed substantially as a consequence of C-7, that is to say it's still possible for people to go to jail for long periods of time on summary conviction offence. It's—all of the penalties that existed prior to C-7 still exist with—with this version of C-7.

I guess secondly, it's a practice now to proceed summarily in cases of possession. I'm not aware of instances of—of Crown's proceeding by indictment in relation to possession of cannabis, so I'm not sure that that change is anything more than a—than a—than a change in practice, although I would concede that—that it produces a change in relation to fingerprinting and photographing.

There will—it seems to me there is a—there is still a criminal record and one of the major disabilities that flows from a criminal record for possession of cannabis is that it's—it limits travel and employment possibilities, and I don't think that those travel and employment disabilities disappear with C-7. In fact, if you're crossing the border and you're asked if you have a criminal record going into the United States and—and you have a record for possession of cannabis under this new legislation, I don't see any reason why your answer is going to be any different from—from your answer prior to C-7.

Q So just focusing on those two aspects of C-7, one the creation of the offence of under thirty grams and the non-fingerprinting, first of all what you were just saying a moment ago, the Criminal Records Act still applies. There's nothing to indicate that that doesn't still apply?

A That's correct.

Q Now, can you comment on these changes then, thinking back to the earlier changes that we've talked about, the absolute conditional discharges and then also in S19, when we went through the article by Michael Brian (phonetic). Again, there was an effort, as I recall, the bill that came into the senate, there was an effort to somehow again give a record and take away a record, or ensure that there wasn't a record. Am I right that this seems to be the third attempt in all of these legislative or policy changes, that we've covered since 1961? This is another effort to try and do what was attempted before in terms of eliminating records, but not really eliminating records? I mean, is that what is going on here?

A Well, I think—I think you—you get close to it when you say eliminating records, but not really eliminating records. I think there is an attempt here to—to try to satisfy a diversity of constituencies. I know from my experience in—in appearing before the House of Commons subcommittee, I could tell in—in questions directed at me and other witnesses that there was a—a

great diversity of opinion among members of the subcommittee, within the Liberal caucus itself, with respect to how Bill C-7 should be crafted and many—there was something of a small revolt at one time within the Liberal caucus in relation to Bill C-7, saying that it contradicts Liberal Party policy, that it—you know, really pretends that the last thirty years didn't exist, and moves ahead with penalties that first were promulgated in 1961.

On the other hand, there's a real—because the R.C.M.P. has—has daily the ear of government in a way that that people who would like to see change don't, there's a sense within government, within the Liberal Party, that they have to respond to that concern, and so I think they're trying to do a bit of both here. The law doesn't really change in any substantial way, but they make claims about it changing and certainly, you know, the—arguably the indignity of fingerprinting and photographing is—is dispensed with in relation to Bill C-7, but in practical terms that—that has very little effect.

I think, too, that the point we miss in focusing on these legislative changes is that the really more substantial changes have—I mean from the—our various police departments and from the judiciary during the past thirty years, that the real changes in relation to our policy with respect to cannabis can be seen in the practices of police. If you talk to any number of police officers and just look at how the—how this problem was policed in the late '60's and how it's policed now, it's very different, and similarly, the evidence is just overwhelming with respect to judicial response. We used to incarcerate more than fifty percent of people coming to court charged with possession of cannabis, and now the most common response is a fine, but it's a fine or an absolute or a conditional discharge, are the—either fine or discharge are the two most common sentencing options.

Q On page 15951 in that first column, the third paragraph referring to the thirty gram or less offence, she says, "We have reduced the seriousness of the office. The negative impact on someone charged with the offence will be changed," and mentions this lack of printing and photographing, but in the next paragraph, she says, "This does not mean that the penalties have been reduced. They have not." And as you pointed out the penalties remain the same. The summary—the current summary conviction penalties remain the same and are the same penalty. So now, if we—can you comment on that? She seems to be saying—putting out a message that we're—we're—it's going to be a less serious offence, but at the same time we're not decriminalizing, and in terms of a message, in terms of this business of availability of use, and the argument that if we decriminalize, as you've said before, the two don't seem to relate, but is this—can this compare to some of these earlier efforts that we've heard about?

A Well, I think the Minister probably and the—and the cabinet probably needed a way to respond to concerns that had been raised earlier on with the introduction of Bill C-7, and in—in committee, and I think one of the ways that they—probably the most obvious way in which they dealt with this was to say, "Well, look, it'll be exclusively a summary offence and there won't be any fingerprinting or photographing. See, we've—we've gone some way," but at the same time, of course, they maintain the status of criminal record and they maintain the possibility of imprisonment, they retain the possibility of all other sanctions that were possible for possession prior to the introduction of C-7, so I—I think it's more a—a public relations gesture than a—although I mean there is—there is some substance to it. Fingerprints and photographs will not be taken by police officers. That's something of substance.

Q If—if—in the future, if the Court asks counsel whether or not their client has a criminal record, any idea what the response would be to the Court, if the person does, in fact, have a record but it's not traceable? Should—should counsel say, "No traceable record?" I mean essentially I think the person—

A I think for—I don't know why the answer would change for purposes of either their employment or travel, which I take to be the two major disabilities that flow from a conviction for cannabis possession.

MR. CONROY: Okay. All right. That, I think, deals with the materials in my friend's Brandeis brief that relates to policy and use issues. I see we've already reached twelve o'clock. There are two other areas that I still have to—well, three other areas, I guess, subject to what the position is going to be on the Hamon materials. There's our Brandeis brief and just a package of information that I received that relates to availability of use, but even that will take some time to go through, so it's probably better to adjourn now and Professor Boyd will probably then be back—

A Wednesday morning.

MR. CONROY: -- Wednesday morning, I hope, but I will—as soon as I can figure out the scheduling, I'll let my friends know. So we should have Professor Beyerstein carrying on this afternoon where he left off on Friday.

THE COURT: All right. We'll resume then at 1:30. Thank you, sir.

MR. CONROY: Thank you, Your Honour.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

(OTHER MATTER SPOKEN TO)

MR. DOHM: Recalling Regina v. Caine, Your Honour, please.

MR. CONROY: Yes, Dr. Beyerstein is back, if he could take the stand.

BARRY LANE BEYERSTEIN, a witness recalled on behalf of the Defence being duly sworn, testifies as follows:

THE CLERK: State your name for the record and spell your last name.

THE WITNESS: Barry Lane Beyerstein. That's B-e-y-e-r-s-t-e-i-n.

THE COURT: You may have a seat, sir.

THE WITNESS: Thank you, Your Honour.

EXAMINATION IN CHIEF BY MR. CONROY continuing:

Q We had got the other day to—I think we just dealt with the tab eleven, the article at tab eleven of Exhibit 5, or volume one of the Crown's Brandeis brief, which was the Hollister 1988 article. And so the next one is number twelve, the article by Pertweit (phonetic) Cannabis Psychopharmacology at tab twelve of Exhibit 5, do you have that?

A Yes.

Q Any comment on that one?

A No. Here again, this is a reputable scientist who is summarizing in a review article the literature at the time that the article was written in 1985, and I don't think it's

anything that needs to be countered in any way, that it seems to be a reasonable summary of the evidence in the scientific literature at the time.

Q And that's up to 1985?

A Yes.

Q Is there anything significant since then that we need to particularly mention now in light of his article, or is it apparent from the other later articles?

A Not—not there. We've introduced the Zimmer and Morgan summary, which is the most recent one, and—and then the Crown has introduced the Australian task force review, which is essentially going over the same ground and I think more or less agrees with everything that's in this piece, as well.

Q So if there are already changes since '85, we can have regard to Morgan and Zimmer's article, or the scientific review, or the Australian task force material that's also in the Brandeis brief?

A Yes, I think so.

Q Okay. Then I think that takes us into volume two, if I'm not mistaken—no, we're into volume two with the article, aren't we? So the next tab is thirteen, Jacobs and Fair (phonetic), Drugs and Drug Abuse.

A Yes. This is a less technical review article, I—I suspect aimed more at street workers and there—there is sections in here on the various slang and vernacular names for the drug and how to recognize it, and its various preparations and how it can be taken by users and a—again another—yet another summary of the psychological effects of—of acute intoxication, which are no longer really controversial. I think they've been studied and agreed upon for some time. They do note, however, again the—the lack of any evidence of lethality and the basic safety factor of the drug, that you know there are no known cases of death by overdose from cannabis, anywhere in the medical literature.

Q And it seemed to me on that point that you pointed out to us when we first—when you first were called to testify the discovery only in recent years of the—what was it, anan (phonetic) --

A Anandimide (phonetic)?

Q -- anandimide and where it attaches on the brain and so on, and that there—that this reaffirmed that one can't die from marihuana consumption, is that—

A Well, perhaps can't is a little too strong, but there's no known case and because of the way the receptors are distributed in the brain, they are not found in the areas that control the vital functions of the body, which are the ones that are adversely affected by the depressant and stimulant drugs and which lead to death by respiratory arrest in the case of the depressants, and death by the overstimulation and usually by convulsion in the case of the stimulants.

Q All right. So the—what you were saying before was -- I must have misunderstood—you can't overdose, is that—overdose resulting in a—a fatality?

A You can—you can overdose in the sense that it may cause such confusion psychologically that it may be unpleasant, but this is self-limiting, within hours usually and a day at most, and but not overdose in the medical sense of—

Q Right.

A -- of causing a lethal effect.

Q But you can with heroin or—

A Yes, very much so, yes. I would also note in the Fair article we're discussing here, that under abuse potential, they note, "A small minority, however, appear to experience significant problems but that these do not seem to be sufficiently great to induce dependence in most users, and so in fact, many users claim they can take cannabis because of the mellow, relaxing state it creates, and so they're not raising any serious fear of—of untoward effects here. And then in the next section, they say inherent harmfulness, and it says, "It is generally acknowledged that occasional use of cannabis is not ordinarily harmful to healthy adults." And I would agree with that.

Q That's all at page 238 of—

A That's correct, Your Honour.

Q Okay.

A So dependence liability is mild to moderate, which agrees with, I think, the things we were talking about on Friday afternoon, as well.

Q The further—the last paragraph there deals with availability and seems to suggest that, notwithstanding the law, it's reasonably easy to obtain?

A Well, the American drug research scholar, Arnold Trebach (phonetic) once put it, "How much more do you want than all you can get?" I mean it's so easy to get that it's no deterrent on the streets these days. It's plentiful, it's cheap, it's high potency, in spite of the attempts to ratchet up the penalties.

Q Okay. Let's move on then to fourteen, Waddler and Heinlein (phonetic), Drugs and the Athlete, anything—any comment on that?

A Again, a workmanlike summary of the—of the acute effects of intoxication and pointing out that it's not really a problem in—in sports, because it's not a performance enhancer, and that the main reason that it's banned in competitions has to do with the moral aspects and the—the fact that this is not good for the image of sport, that sort of thing.

Q Apart from that, any—anything you should pay particular note of in this article?

A Under adverse effects, they list the—the things that we've already talked about, which are sort of acute anxiety attacks and that sort of thing, but they go on to say—to list psychoses, which I think we dealt with on Friday.

Pope and his colleagues have looked extensively at that—at that alleged problem and conclude that the evidence is very weak, that—that marihuana will cause a serious—a psychological reaction in an otherwise normal individual.

Q This one doesn't appear to have a date on it, so it's not clear when this article was actually written in terms of year.

A The latest references I see are 1988, so it's probably shortly thereafter, I would guess.

Q Okay. So again, similarly, we would look to either the Australian report or the Morgan Zimmer review for any change since that time?

A That's right, and I don't think there has been any. I notice they put a question mark beside the motivational syndrome here. I think that's well-placed. And the immunological, endocrine, cardiovascular, respiratory effects, again those are—were mentioned in the other sources you just cited, and were looked at exhaustively by the Australian task force, the commission that went through all of this yet again, and they decided that in the balance, such effects as there were, were not severe enough to make this an appropriate matter for criminal law.

Q Next at fifteen, Aboud and Martin, Neurobiology of Marihuana Abuse, 1987 article from Clinical Chemistry. Any comment on that?

A This is a—a little later and does talk about some of the early work on the cannabanoid receptors in the brain which were just beginning to have been typified and identified at that time, so that's a—a—an additional factor in here.

It does list some therapeutic uses and indicates as other people we've discussed already do, that there are some legitimate areas where this can be thought of as a useful medicine, and they—they mention that AIDS sufferers found some relief from the wasting syndrome that sort of thing, and—and so again, they're you know reasonable conclusions, I think, for the most part throughout the article.

Q Now, could you just direct us to the part to do with therapeutic uses? The copy I have says, "Neurobiology of Marihuana Abuse," is the face page and then it goes for—

A Yes, the—the page numbers have been chopped off unfortunately by the photocopier, so it would be—if we—if we take the—

Q No, but the last page, --

A Just—

Q -- for the reference?

A That's right, yeah.

Q Okay. Now, the copy I have, maybe I've ended up with two—let me just check with my friend. Okay. I have an extra—for some reason, -- I see. What was confusing in my material is there's an extra article that's crept in, Drug Abuse Profiles Cannabis, which is not in your—it's

probably the next article in Clinical Chemistry maybe, from this—

A Right. That—

Q Do you have that there, too?

A I have it between—let's see, as—as the second part of tab fifteen.

Q Okay. If my friend—no, this is at tab eight, so I think what's happened is we've ended up with two copies of the same thing creeping in somehow in the copying process, because we've already dealt with that. Okay. All right. The next one then—

A Just one thing—

Q Sorry?

A -- I could mention here is under therapeutic uses, they note that there have been reports to indicate that, "Cannabanoids may be effective in treating pain, convulsions, glaucoma, muscle spasticity, bronchial asthma, nausea and vomiting," so those are the particular things that they paid attention to, and in their summary statement they—but one of the few things that I would disagree with in this article is a single word here. It says, "It is by far the most widely used illegal drug of abuse in the United States. Marihuana is likely to remain a major drug of abuse for years to come because of its pleasurable effects and relatively low toxicity."

Well, I think that they are—they are mixing use and abuse, that if you define in anything—any use of an illegal substance as abuse by definition, well then I guess in a dictionary sense you can grant them that, but abuse in my way of looking at it, and in my own research, is use that causes significant harm to the individual, himself or herself, or those around him or her, and so I think they're putting a value judgment here on some scientific facts.

They—they admit that it's low toxicity. They admit that people find it pleasurable and useful in their lives, and then they turn around and simply by fiat call it abuse. I wouldn't call it abuse unless it's causing serious harm, and this article doesn't seem to be able to document that serious harm.

Q Is there an accepted definition within your field for abuse, as opposed to use?

A Yes. Abuse would be usage that interferes significantly with the mental, psychological health of the individual, the medical health of the individual, the family life, the

occupational status or—or the greater social good of the people around that individual or society at large, and if none of those is the case, or if they are of small enough amounts to be tolerable in return for other benefits that are achieved, well, then I don't think it's fair to call it abuse.

Q And so that definition would then depend upon the dose and the susceptibility of the particular individual?

A Yes, definitely.

Q Okay. So in some cases, a person with a very low tolerance could be abusing by consuming a small amount, whereas others who have a higher tolerance, it wouldn't be abuse?

A Yes. I mean somebody like that, who didn't know it, it wouldn't be abuse the first time if they tried it experimentally, but realizing that it caused an adverse reaction in them for whatever particular reason, then going back again and risking that would be a—would be abusive.

Q And so the critical part of the definition is the significant interference with—

A The harm, yes.

Q -- an individual? Okay. Okay. The next one then is Mercer and Jeffrey, Alcohol, Drugs and Impairment in Fatal Traffic Accidents in British Columbia, number sixteen.

A Right. Well, this is a report of blood analyses that were done on people who were involved in fatal traffic accidents over a—I forget how many year period, a year perhaps, but again, and these are interesting numbers, but as Zimmer and—and Morgan point out, we really don't know what to make of these, because there's no control group. There's no group of—of comparable people who were stopped on a random basis and taken out of the population and taken out of their cars preferably, and tested to see what their blood contained, and only by comparing those two kinds of individuals who were comparable except that one had an accident and the other didn't, one would be able to scientifically say that whatever was in their—in their blood was the cause or at least a contributor to the accident.

Now, over and above that, given what we know about the acute effects of marihuana, I don't think it's a—it's advisable that somebody drive while under the effects of the drugs, so I don't think that that's a—a—a point of dispute here, so if people use the drug irresponsibly and cause harm to others, then I see no reason that they should be excused for that.

On the other hand, the question is do data such as these, which are looked at in a—again in a much broader scope throughout the world literature in the Zimmer and Morgan review, again, justify a blanket prohibition as opposed to a finer response that says as, you know, that here is a particular area where the law does have—and society at large has a legitimate interest in preventing usage under these particular conditions, which is—is different from trying to justify global prohibition, with all the attendant negative downside that prohibition always brings with it.

Q I'm curious in terms of this study, the abstract shows the percentages of the different substances found. Was that situation where there was a combination of the different substances in the individual, or were these cases where in some there was only cannabis or metabolites?

A There were both. Generally speaking, I think although I—it's been a while since I've read this, I wouldn't want to be dogmatic about this, but I'm—I believe it's the case that the majority were combinations.

Q And if we focus on the THC or its metabolites, again, if my memory serves me—you indicated in earlier testimony a distinction between those two in terms of the length of time that it remains in the system, I think?

A Yes, that's right, that—

Q So—sorry.

A No, excuse me.

Q Well, I'm—what I was getting to was if—if you found thirteen percent THC in a person's system after they've been in a fatal accident say, --

A Thirteen percent?

Q Well it says—in the abstract it says thirteen percent tetrahydrocannabinol or—

A Oh, I think that's thirteen percent of the—

Q In a decreased—

A -- in a deceased victim's—

Q Sorry.

A -- showed laboratory tests positive for THC.

Q Let's take that group. Now it says, "or its metabolites?"

A Mm-hm.

Q What does that mean to us in terms of this business of it remaining in your system? As I understood you earlier, metabolites stay for a long time. How long does THC stay by itself, do they differentiate in that way?

A It—it's cleared—THC itself is cleared relatively quickly, although it has about a thirty hour half-life, which means every thirty hours, half of what's in the blood is detoxified, and so it's an exponential detoxification curve. From that point on, the metabolites also being fat-soluble tend to stay in various compartments of the body and be excreted rather more slowly. A few of them in a very high dose—a few of the metabolites would remain psychoactive as well, but generally speaking, in—after—certainly after ten or twelve hours, there would be very little residual effect of—of any of those and the rest would be—would be non-active metabolites and—

Q So if a person—if they just found metabolites in the system and nothing else, would—can you draw anything from that, in terms of how much or how long before the person consumed marihuana?

A No. The urinalysis work and the blood stuff which is related to it, it's—it's just generally accepted in the field that all you can tell from metabolites is that this individual was, at some time, exposed to an unknown dose of the active substance and breakdown products are—are still there, but you cannot tell whether it was a large dose, a long time ago, or a smaller dose more recently, because they would both end up with the same chemical residue, and you cannot tell whether it was a—a small dose over a very long period of time, in which case the person may be—hardly have been impaired at all, or a very large dose taken all at one time, when the person almost certainly would have been impaired, and so metabolites won't answer those questions.

Q And on the other hand, if you find actual THC, that would indicate—correct me again if I'm misstating this, but that would indicate consumption at a more recent time?

A Definitely.

Q And is there any way though that we can figure that out, how recently or anything like that?

A No, because it's like solving an equation with two unknowns, that unless you know how much they actually took, then you can't do the—do the calculation. And—and so it's really not possible to tell how much they initially had, just from the presence of the metabolites.

Q So if you do find THC in a person, say you did a blood sample after an accident or a fatality, and you found THC alone, let's say—how would they measure it, in milligrams per millilitres or how would they measure it?

A No, it's—I don't actually remember the exact units, but, no, it's smaller than milligram, usually microgram amounts, if I remember correctly.

Q Let's assume that we've found a certain amount of THC in the person's system and nothing else, can we deduct from that that the THC had something to do with the accident or the fatality?

A There's no sure way you could say that, I mean given what we know about the acute effects of the drug, that it does affect certain psychomotor performances that are important in operating a vehicle. If there were other contributing factors you know that you could tell about, then that would have to be factored in as well, but you—you would only have a presumptive assumption that because it can affect short-term memory, it can affect eye-hand coordination, short—that sort of thing, that it might have been something that contributed to the fatality.

Q And ways of measuring whether the person has THC in their system, assuming not a fatality but the person has been in an accident or—or simply pulled over by a policeman because of erratic driving or something like that, can we measure the amount of THC in the system through blood samples, for example?

A Yes, that's what's being done here. These people happen to be deceased, but you can take a blood sample from a live individual—like that's what I'm saying isn't here, that control group that you compare are those who were involved in fatal accidents too, and given the base rate of the usage of marihuana in the population, you would want to know whether people with that much THC in their blood are involved in fatal accidents or even non-fatal accidents at a higher rate vis a vis other people who have equal levels in their blood or—or not, and that's what we just don't know.

Q At this stage, is that the only way that we have of measuring levels of THC in a person's system, through blood sampling?

A Yes. There's—there's nothing like the breathalyzer, for instance, that would give the accurate information at roadside or shortly after.

Q And urinalysis, how effective is that?

A Urinalysis will only give you the metabolites, very little if any unmetabolized THC would be excreted in urine.

Q And so on a urinalysis, we wouldn't be able to tell—correct me again if I'm misstating this, but we wouldn't be able to tell how long ago the person consumed or what amount, because it's all just in—in metabolite form, is that right?

A That's right and—and again, you wouldn't know whether that given level of metabolites came from—came from a large dose taken a long time ago and with a large intervening period of sobriety, or a much smaller dose taken more recently, which may have—have affected the psychological state in the immediate time just before.

The other thing I might mention is that urinalysis will pick up—will pick up metabolites from passive inhalation, so there have been cases of people who haven't smoked themselves, but have been in an automobile, say or other closed confined space, where other people have, and they have—have taken in, in the sidestream smoke that they have just inhaled in the normal practice of breathing, enough to produce some metabolites in the urine.

Q Just a second-hand smoke thing?

A Yes.

Q And are there ways of determining how much that the person inhaled, or not?

A Well, actually, because of the realization that this is possible, that second-hand smoke can actually cause a sufficient amount to be absorbed that it can be picked up on these very sensitive tests like gas chromatography, mass spectromotry, the general rule now for urine screens is to set the threshold high enough so that it would have to be above the level that somebody could reasonably have picked up by passive inhalation, before they will declare that a positive test. So you can set the threshold where you wish it to be.

Q Are you familiar with the Berringer (phonetic) ionizer scan? Maybe we ought to have asked you about this before.

A I—I am not very familiar with it, but I think you mentioned it in my previous testimony and—and one or two times when we've been discussing things, but that as far as I know, only indicates exposure. It doesn't indicate any—because of course, if it's taking it off your clothing or your personal articles or even your skin, that's—that's evidence of having come into contact with the substance but these days—for instance, since the drug trade is done almost entirely in cash, people who handle a lot of—a lot of bills, especially large denomination bills, such as cashiers in banks and things, sometimes trigger those sorts of tests just from what residue there is on the—on the bills, the currency.

Q Having indicated that people could, if they were in a confined space, take in second-hand marihuana smoke in the same way as we hear about this in terms of tobacco smoke, are there any studies as there appear to be with tobacco, in terms of the effects of second-hand marihuana smoke on people, things of that nature, or do you know of any that deal with that?

A No, I don't and I—I would think that given the thoroughness of the literature search that Zimmer and Morgan did, that had there been any of the—you know they would have—would have mentioned it.

Q So we don't have some study, as far as you're aware anyway, that says that you can have all the same or similar health consequences from second-hand marihuana smoke as you do from second-hand tobacco smoke?

A No, I don't know of any studies and—and on the other hand, I mean I see no reason to think that—that that could not occur. The only thing is that the whole problem with the bronchial and lung damage story is that people smoke marihuana rather differently and under different circumstances, and in different time frames, vis a vis tobacco, and so the—the likelihood that somebody would be exposed to second-hand smoke for prolonged periods such as they would be, for instance, in working proximity to a cigarette smoker who given his or her wishes would probably tend to smoke almost continuously, that just wouldn't happen given the typical way that people consume marihuana, so if you got a comparable amount of the smoke second-hand, I suspect you'd have comparable effects, but I find it unlikely that—that that kind of exposure would happen very often, if at all.

Q And I suppose then there are ways and means of limiting the exposure by applying the same rules as apply—are being applied to tobacco smoke?

A Yes, and that's certainly a matter of social policy that's being played out as we speak, in the case of tobacco, of course.

Q All right. Okay. Nothing further out of that article. The next one is Robbe, Influence on Marihuana and Driving. I assume that deals very much with the same sort of question?

A Yes. Again, a useful summary. Interestingly, this one comes out of the Netherlands and so the Institute for Human Psychopharmacology, University of Lindberg in Mostrick (phonetic) and—and so here are people who are in the country that has experimented most with a decriminalization of marihuana, and are most interested in regulating its harmful effects, and so this is again a well-known thing in the Netherlands, as well as around the world. And what the Dutch government has done has taken the things that are in here into consideration in their formulation of—of public policy and have again decided that—that such deleterious effects as—as can arise are better dealt with in the structure of the Social Services and medical and psychological community, rather than as a matter of criminal law, except in a few cases where people act blatantly irresponsibly and cause demonstrable harm to others.

Q Now, is there anything in particular we should focus on in this article, does it differ in any great way with the Mercer and Jeffrey article, or not?

A No, I don't think there's anything especially new or noteworthy here. It's a good summary again of the acute effects of the—of the drug, and then a good summary of the—the literature on its effects on psychomotor performance that could affect driving behaviour.

Q At the conclusion of—of—of—he seems to say that there's some debate on this issue, but then goes on to say that the debate could go on indefinitely, but were one unable to objectively measure THC's effects on its users' actual driving performance, and then goes on to say that it was possible for them to do so in a series of studies in this case—or in their experiments. Is—that's a different thing from what happened in Mercer and Jeffrey, is it?

A Mercer and Jeffrey simply took cadavers of victims who had been killed in automobile accidents. What the people in this study were discussing and are interested in is the literature that—that deals with either isolated psychomotor performance of tasks that are components that we all agree are—are drawn upon in driving behaviour, or the simulator studies which increasingly realistic simulations are generated by computers and video means, and lock driving controls and people are asked to engage in many of the same behaviours that they would in driving an automobile, and then a few studies such as the one done here in Vancouver by Harry Clonoff (phonetic) and Martin Lowe back in the early '70's, where they actually had people drive in dual-controlled vehicles in actual city traffic, and so those are reviewed in here, and the—the upshot is certainly that it—it's not a prudent thing to have people intoxicated on anything, any more than it's prudent to have people driving without a good night's sleep, or people who are ill from medical causes or whatever, that these can all affect judgment and psychomotor performance, and therefore it's to be discouraged if necessary by—by legal means, that driving under the influence of any of these things.

Q Okay.

MR. DOHM: Excuse me, just for a minute, please. I'd like to point out and perhaps ask Your Honour to assist the witness. He's a qualified psychopharmacologist, but in his last three or four answers, he's given Your Honour the benefit of his personal opinions as to what should be legal and what should not, and in my respectful submission, that is not one of the purposes for which the witness is here, nor is it one for which he is qualified.

THE COURT: Any response?

MR. CONROY: I don't think that the witness should necessarily express his personal opinion on whether something should be legal or not legal. I agree with my friend on that, but if he feels, based on his expertise as a psychopharmacologist, that additional harm is occasioned to people as a result of application of the law in comparison to the harm occasioned by the drug, then I think it's fair for him to comment in that regard.

THE COURT: You may have to be a bit more specific for me on that one.

MR. CONROY: Well, if he's saying these are the effects of the particular drug and they're not very significant, but he's seen from the studies and so on that there are other effects from prohibition that manifest themselves, then I think it's fair for him to say that the harms—the psychopharmacological harms that are apparent from the studies in relation to the drug are A, B, and C, but the—there are additional harms that appear to arise depending upon how the governments approach the subject. It might be fair for him to point those out, as additional harms that arise besides the specific ones just from the drug itself.

THE COURT: I agree with—with the Crown's objection to statements from this witness with respect to the advisability of—of criminalization or decriminalization. I think he should confine his remarks to the field of—of his expertise and I'm far from satisfied that that would include commentary on the harmful effects of legal enforcement, as compared to the harmful effects or non-affects of—of drug consumption, and that's a matter of argument. Otherwise, we're really into a personal opinion. I hope you've followed this.

A Yes, I think so.

THE COURT: We want to hear all about the pharmacology of this—of this particular drug and its effects and influences on—on individuals and groups and families etcetera.

MR. CONROY: Okay.

Q The remaining articles in volume two, are all to do with the international conventions, tabs—apart from the reference to McFarland Drug Offences in Canada, twenty through twenty-four are international conventions, and I take it that's not something that falls within your area?

A No.

Q And then into volume three, I believe that essentially continues, at least until we get to number twenty-seven, which is a transcript of the House of Commons proceedings and this was the speech by then the Minister of Health, Diane Marlowe on February 18th, 1994. I'd like to take you to that, and have you tell me whether you agree with some of the things that are said there, again focusing on health and harm issues, and remembering that she is clearly talking about all drugs and we're just focusing on cannabis.

She makes the general statement in the third—well, first of all in the second paragraph, she uses the word abuse and I take it your earlier remarks would equally apply, that one shouldn't talk about abuse, one should talk about use and abuse, and differentiate, is that fair?

A Yes.

Q All right. Then in the next paragraph, she speaks of Canada's drug strategy to reduce harm caused by alcohol and other drugs to individuals, families and community. And then she says, "The harm caused by substance abuse includes among other things sickness, death, social misery, crime, violence, and economic cost to all levels of government." Focusing on marihuana, and the health aspects of it, I mean there again she talks about abuse as opposed to use. So what do you—do you understand her to be saying in that paragraph, and do you agree or disagree with it, from the—from the point of view of health, sickness, these sorts of things?

MR. DOHM: Well, I'm going to object to that question on the basis of the witness is not qualified to speak of matters of health. Your Honour, on the date of his qualification, at page 21 of the transcript, line 42 indicated that you were, "prepared to qualify him as an expert in psychoactive drugs, affects on the brain, consciousness and behaviour of humans, and in my view, behaviour of humans encompasses solitary actions as well as inter-relationships with one another and societal behaviour, and finally on the policy issues relating to drug relation." There is nothing in that qualification, Your Honour, on health effects.

MR. CONROY: What's the page reference?

MR. DOHM: Page 21. It's a transcript from November 27 and July 7.

MR. CONROY: Page 22?

MR. DOHM: I—I was looking at 21. The part that I referred to commences at line 37, "the Court."

MR. CONROY: Well, --

> THE COURT: I don't even know what relating to drug relation is.
>
> MR. CONROY: Well, my submission is—is that the doctor's clearly qualified to indicate whether, as he has been, and it seems to me most of his testimony has been what the effects of the particular drug are on health, whether it harms somebody or doesn't produce harmful effects, and so I'm asking him to speak to whether the Minister has gone and just lumped everything into one, and I'm asking him to isolate marihuana out of that statement in relation to the—to the effects.

I mean, she says that—I mean she speaks in terms of abuse, and we've spoken both in terms of use and abuse, and so I want to determine if based on his knowledge of the literature, in terms of harmful effects, if those comments apply equally to marihuana as they do to the other drugs.

THE COURT: Can you go—direct me to the specific paragraph in the minister's comment—

MR. CONROY: It's the fourth—

THE COURT: -- that you wish him to consider?

MR. CONROY: Fourth paragraph, it ties in a bit to the third paragraph, but it's the fourth paragraph on that page 1561.

THE COURT: "The harm caused by—"

MR. CONROY: Yes.

> THE COURT: -- "substance abuse includes among other things sickness, death, social misery, crime, violence and economic cost." If we—
>
> MR. CONROY: I was going to put that to him and then a couple of the other comments for example, at the top of 1563. "It causes death, injury and illness, loss of productivity in the workplace, a burden on our health care system and increasingly straining our courts and police forces." The same sort of—I put some of that to Professor Boyd, in terms of the areas of his expertise, and I just wanted to put the health and harm aspects to this witness, but limiting it to marihuana.

The politicians have—and others—have a common habit of lumping all drugs together into one, and making these public pronouncements and I'd like to break down the statement to focus specifically on marihuana. And if—if he—this witness can't comment on health, I wonder what his evidence has been up to now. I mean he's not a medical doctor and we'll be—we'll call a medical doctor and we can have the medical doctor deal with those parts that don't fall within his expertise, but it seems to me in terms of the studies he's been involved in, his familiarity with the literature and he's talking about psycho and pharmacological effects on humans, that—

THE COURT: Well, he can certainly give evidence in relation to those, to the extent, for example, they may be included under the term sickness.

MR. CONROY: Yes.

THE COURT: Sickness is a very general term.

MR. CONROY: A broad term.

THE COURT: Whereas his field of expertise is a—a very specific area that may be considered part of that general term and I have—think he's qualified to give evidence in that respect.

It's clear, though, that his answers are going to have to be confined to his specific field of expertise. In terms of death, I would expect he could limited evidence in that regard, as well, as he already has. Social misery, behaviour of humans, including solitary actions and inter-relationships between humans and that was one of the fields that he was qualified in. I think there we're getting at the effect upon—of drug use or consumption of this particular drug, on the way abilities—human's react with one another.

MR. CONROY: That's my understanding, Your Honour.

THE COURT: That would be acceptable.

MR. CONROY: I think so, Your Honour.

THE COURT: So the phrase social misery, as broad as it is, is going to have to be confined in terms of the answer that the witness gives.

MR. CONROY:

Q So bearing in mind those comments, Professor Beyerstein, and limiting your answers to the areas of your expertise as a psychopharmacologist, the statement appearing—and let's deal with both of them together.

The statement that I referred you to at 1561 in the first column, and its really paragraphs three and four, I think they interrelate to each other, and then to be clear, focusing on the sickness, death and social misery to an extent, and the comment at the top of 1563, first column, it causes death, injury and illness, and the rest of that paragraph would presumably be outside your

expertise. What would you say about those—do those statements accurately describe the consequences of marihuana use?

A Perhaps the most effective answer I can give you is to refer you to the paper by Abraham Goldstein and Harold Collant, which is tab number two of the Crown's Brandeis brief. This is what they have introduced themselves, and on page 1516, we see the following. "The first step towards a more rational and more effective drug policy is for the media, the public and governments to see the drug problem in its correct—in correct perspective. The current degree of concern about illicit drug use, bordering on hysteria, is at variance with the actual data on the magnitude of the problem. As to how this distorted perception came about, one is reminded of Lincoln Stephan's (phonetic) description of how newspapers in his day created, 'crime waves'."

And later in the same—in the same paper on page 1517, Goldstein and Collant under their section Recommendations, in the lower first column, said, "This would respond effectively to the criticism that our present laws are hypocritical and the dangerous and—and addicting, in that dangerous and addicting drugs like alcohol and nicotine are freely available and even advertised, whereas marihuana, which is less dangerous than cocaine or heroin, but by no means harmless, is under stringent legal controls." So I mean these are medical doctors and that—and that's their conclusions, so—

Q Can you just give me the first reference again? It—was that tab one or tab two?

A It's the—the—Collant—sorry, Abraham Goldstein, Harold Collant, tab two, --

Q Yes.

A -- yes, Drug Policy, Striking the Right Balance.

Q Yes. And the page?

A The first quote that I read is on the lower right-hand column page 1516, and the second quote I read was from the lower left-hand column at page 1517.

Q Thank you. All right. If we then go twenty-eight, which is a—also a speech by this time Heddy Fry in her capacity as parliamentary secretary to the Minister of Health, in speaking with respect to Bill C-7. First of all, if we go to page 15952 and paragraph—well, it's the second paragraph in the right-hand column, where she makes first reference to dangerous substances, "We want to control these substances because in the wrong hands and used in the wrong way, they can cause great harm to Canadians and to the social fabric of this country." Again, just focusing on your area of expertise in terms of psychopharmacological effects and so on,

would you agree with that statement in relation to marihuana?

A I find marihuana to be a remarkably benign substance. That isn't to say that there aren't some people who will use it to excess and cause problems for themselves or other people, but overall, I think the consensus in the psychopharmacological community is that the average user uses infrequently enough, in small enough doses; knows the effects to the point where he or she will stop when they—when they start to feel any kind of unpleasant and—unpleasant effects that they—they don't wish to take any more, and so most people titrate (phonetic) their doses quite well and the question is whether we should be formulating a policy to deal with—with the problems that a few people will have that will impact so drastically on everybody, or whether as the harm reduction approach says, we put our resources into identifying those people—

MR. DOHM: Your Honour, this is—this is the type of deviation from the point that I've been raising in my first objection. Professor Beyerstein—Dr. Beyerstein has gone beyond his expertise and now has gone into something entirely different.

A Could I answer that, please?

THE COURT: No.

MR. CONROY: Well, it depends, I suppose, on how you define policy issues relating to drug relations in the qualification. I know he testif—he's testified on a number of occasions before about the harm reduction and his—his understanding of harm reduction and—and what it means in terms of a policy—a different policy approach, and it seems to me that falls naturally within his area of expertise to a point.

He's saying these are what the effects, harmful or otherwise, may be of a particular drug, and the policy or the stated policy of the government since 1987 has been to include harm reduction, and so he's commenting on that approach, as opposed to a different approach in relation to impact on the individuals involved in using the drug. That in the one you're targeting the particular effect that's there from the drug, or trying to reduce any deleterious effects and in the other you aren't. And alternatively, what I would ask to do is to then ask him further questions about his knowledge in that area, in order to have you decide whether or not to qualify him as a witness having some expertise in that area?

THE COURT: All right. Let me just clarify one thing, so I can understand page 21, if you'd turn back to page 10, this is of the—the original transcript, July and November '95, and the area in which you, Mr. Conroy, seeked to have this witness qualified, is set out at lines 11 to 13. And it's on the policy issues surrounding drug regulation. I'm just trying to sort out my own—my own comment.

MR. CONROY: I'm sorry, --

THE COURT: On page 21, at the very bottom where it says on the policy issues relating to drug relation.

MR. CONROY: Yes.

THE COURT: It—which is nonsensical to me.

MR. CONROY: And the earlier reference—the earlier reference, I'm sorry, Your Honour?

THE COURT: Page 10.

MR. CONROY: Yes.

THE COURT: All right. So that—

MR. CONROY: So that should read drug regulation.

THE COURT: It should read drug regulation at line 47 of page 21.

MR. CONROY: And you have—

THE COURT: And he has—

MR. CONROY: -- his curriculum vitae.

THE COURT: He has been qualified in that area in a—and I think discussing harm reduction policies is an area that falls within the policy issues relating to drug regulation, recognizing that what we're dealing with here is the perspective of academics on—on a broader issue of policy. It's not up to the academics to make the policies, obviously, but from a historical perspective and a practical perspective as to the consequences of various policies, he's been qualified to give evidence in that respect. So your last question I'm going to allow, or I—

MR. CONROY: Okay.

THE COURT: -- I think it was perhaps the answer that was -- was being objected to.

MR. CONROY: It was the answer in terms, I think, of him getting into the question of harm reduction.

MR. DOHM: It was, Your Honour, simply going beyond what are his apparent qualifications, is all.

THE COURT: All right.

MR. CONROY: Now, I think the—the question was whether you agreed with that second paragraph on page 15952, but limiting it to marihuana, and whether you agreed with it, if we just limited it to marihuana. Was that not—

THE COURT: Well, -- page 15 --

MR. CONROY: -- 952, the second paragraph.

THE COURT: -- 952. Tab twenty-eight?

MR. CONROY: Yes, the right-hand column.

THE COURT: All right. The statement is, "In the wrong hands and used in the wrong way, drugs can cause great harm to Canadians and to the social fabric of this country."

MR. CONROY: I limited it to the harm to Canadians.

THE COURT: Okay. "Can cause great harm to Canadians."

MR. CONROY: Although I suppose social fabric to the extent that it involves different types of regulation of the substances. There's a limited aspect there in terms of psychopharmacological effects.

THE COURT: All right. The question?

MR. CONROY: I'm sorry, --

THE COURT: I'm just—I think we're talk—what sometimes happens is—is the witness does go beyond the field of expertise and qualification, and one can sometimes get lost in that, but the question is do you agree with the statement, "In the wrong hands and used in the wrong way,"—

MR. CONROY: "Is it a dangerous substance to start off with,"—

THE COURT: Okay.

MR. CONROY: -- "That used in the wrong hands and used in the wrong way can cause great harm to Canadians?"

A If you mean Canadians as a whole, I think the chances of that are fairly slim. If you mean individuals, by definition wrong hands means somebody who is constitutionally or otherwise incapable of dealing with this for whatever reason, and those particular individuals and those around him or her could—could be harmed if we ask them the question, "What is the likelihood of that

happening frequently enough to cause grave national concern to Canadians as a whole?" I think it's very small.

Q Okay. So it depends on really what you meant there?

A Yeah.

Q Fair enough. Okay. The next tab—I don't think there's anything else in that comment. The next tab is twenty-nine and it contains simply some excerpts from something called Horizons 1994, Alcohol and Other Drug Use in Canada, and I think my friends have included this basically because on page—the second page which is twenty-two in the bottom left-hand corner, there's a table about public opinions and that's not within your area of expertise, and on the next page, rates of drug offences, and again that's not something that—that falls within your area.

A That's the rights of drugs?

Q Rates.

A Rates, oh.

Q Yeah. Okay. Next then, we have the Ontario—at tab thirty, the Ontario Student Drug Use Survey by the Addiction Research Foundation. Are you familiar with that work?

A I didn't get a chance to review that third volume because it was only turned into the court on Friday, but I have read Professor—or Dr. Smart's testimony in the Hamon case, which I believe was based largely on that—and earlier studies that he has done in the Ontario school system of looking at rates of drug use.

Q When you are—are looking into this area, do you—is that part of the area that you have to investigate rates of use so that you can bear that in mind in determining psychopharmacological effects and things of that nature?

A Yes. We—we do surveys of our students at Simon Fraser University, for instance.

Q And—and why do you do those, to fit it into your area of expertise?

A We're interested in whether these rates seem to be increasing or decreasing over time, and we're interested

in the demographics, so that if it's not a uniform usage across the board, what kinds of people are more likely to use and what—are less likely to use, does usage of different things from the list of licit and illicit drugs, do they tend to go together, so we—we need to have that as background information for formulating hypotheses, for questions such as you know is there an addictive personality, do—do people who have certain kinds of personality variabilities fall into the user category or the non-user category, so we have to know what—what those people are—are doing.

Q Okay. All right. And then the next tab, I think, is just a statement by John Munro in '72. Let's go straight to thirty-two, which is the Freid or Fried (phonetic) -- I'm not sure how you pronounce it—article, the Ottawa Prenatal Perspective Study, Methodological Issues and Findings - It's Easy To Throw the Baby Out With The Bath Water. I think you were in court the other day when some reference was made to this particular article?

A Yes, I was. Excuse me one second here. I was just trying to find something.

Q And do you have—do you have that—you don't have that in front of you.

MR. CONROY: Let me give you—well, perhaps do we have the actual exhibit five, volume three? That must be three, yes. If he could be given that?

Q And it's at tab thirty-two. Do you remember the references to that article?

A Yes, I do.

Q And what would you have to say about it, any comment on it?

A This is one of a series of papers which are also reviewed in the Linda Smith Centres Report by Zimmer and Morgan and I don't think they actually include this particular one, because it would have come out just about the same time as the—as the Zimmer Morgan review itself, so—but it—it's one of a long series of—of follow-up studies of—of children who were exposed in utero to varying amounts of cannabanoids because their mothers imbibed during the time that they were pregnant. And until this particular study came out, there was very little—all that indicated any cause for concern.

In fact, Professor Collant testified in the Hamon case that he thought the whole purpose of—of data in this area was—was cause for concern, but not alarm; that he didn't see any real evidence of what we call pteridological (phonetic) effects, or effects of—on—on the fetus that show up later in—in—he was very cautious and I would agree with his conclusions there.

This is one—one indication on one sub-index of—of a huge number of tests that have been run on these children over a long period of time, and earlier studies at one year and at three years found no appreciable differences.

Now, at—is it four or five? I just forget which—on one sub-index, there's some indication of -- of slightly lowered attentional scores in these children who were exposed, but what to make of this is an open question, because as a child becomes older, those kinds of variables become affected by a lot of other things, including sibling relationships, parental interactions, preschool conditions, all kinds of things that might be different depending on socio-economic status, which then might also correlate with -- with having used the drug—the mother having used the drug, or not used the drug, at some earlier time, and so again, the correlation does not imply causation. It's one indication that should be followed up.

I've indicated before that I didn't think it was a good idea for pregnant women to take the chance of using any unnecessary drug during pregnancy, so again, I think it's something to be followed. A potential cautionary note, but they're not very big effects.

In earlier studies, in Fried's series, the—the children exposed in utero actually did a little better on some other indices than the non-exposed one, which isn't an argument for mothers using marihuana by any means, but it just says that it's a variable thing and if you keep looking for enough different variables, eventually even by statistical artifact, you're going to find some that will—will turn out statistically significant, so it's—it's cause for concern but not alarm.

Q Okay. Let's then, having completed the Crown's Brandeis briefs, let's go to—maybe before we go to ours, you've mentioned—no, let's—let's go to ours and then we'll come to the question of the Collant—or the Hamon materials. Now, so the defence Brandeis brief is what I'm now referring to, and if you—no, I don't think you have a copy and I guess that's the one we didn't have enough copies, --

A No, I don't, but I have some additional things here that—

Q Let me give you my copy of the Brandeis brief, and I will just—here's an index.

A This is something you asked me for on Friday in the—

THE COURT: It is ten to three. Perhaps before we embark upon this new area, we can take—

MR. CONROY: Fair enough.

THE COURT: -- we can take the afternoon break.

MR. CONROY: All right.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

MR. CONROY: Just before we proceed on, Your Honour, I just -- I'm concerned because of the two objections my friend has made earlier in terms of this witnesses' expertise and I've dug out Exhibit 4, which was his curriculum vitae, because it was my recollection that I took him through his curriculum vitae in some detail, and I thought brought out his involvement not just as a psychologist or a psychopharmacologist, but also his involvement with the drug policy foundation in Ottawa, the Canadian Drug Policy Foundation, and the U.S. Drug Policy Foundation, the fact that he'd appeared on its behalf in front of the parliamentary committee and had been asked to speak in relation to not just effects of a particular drug on individuals, but going beyond that into different approaches to regulation.

And while most of his—certainly his testimony in the courts, which is at page 4 of his curriculum vitae, was related to specific effects, that—and again, going back to your ruling at least as we have interpreted it, going back to page 10, dealing with this question of relations, that the scope of his—his expertise was a little broader—policy issues surrounding drug relation, and so that—I just want to be clear that he can give us the benefit of his experience in focusing on different types of regulation, in addition to effects.

Now, it seems to me that that's important here, and that it's the—it's evidence that can be of some assistance to the Court, because the critical issue in the case, in my submission, is whether or not there is a significant public health problem arising from possession and use of marihuana. I know my friend has said in addition to that their position in justification of the law is public safety and international obligations. And our answer, of course, to the latter two, or the applicant's position in relation to the latter two, is as we've heard from Professor Boyd this morning, going through the international treaties.

There are other options besides prohibition that can be used to comply with international obligation, so there's—that's a—a policy then that the

government has chosen the prohibition route, but there is the other option of choosing the—the other route.

So there's one example of a—of a sort of policy issue, and the same with the public safety question. The government has chosen to have a law that prohibits ability to drive while impaired by alcohol or a drug, so to target the specific mischief. Where it gets a little more complicated is when we're dealing solely with public health, because the cases seem to say that generally public health is a provincial matter, but there is some scope for federal involvement in public health under the criminal law, or the peace order and good government power.

And in relation to the peace order and good government power, as I understand the cases, it requires some fairly significant problem that affects the dominion as a whole, the words that seem to be used, but the cases aren't clear as to when it's legitimate to use the criminal law, in relation to public health. And it seems to me therefore, inevitably, the evidence has to focus on not simply whether there's a public health problem, either to an individual or to others, as a result of the individual's involvement in the drug, but significant enough to warrant—a public health problem significant enough to warrant the use of the criminal law.

It seems to me to be—the two are probably tied together and hard to separate, and that inevitably involves looking at alternatives to use of the criminal law, and sort of a balancing between the extent of the public health problem, and alternative approaches to dealing with that public health problem, so that a witness like Professor Beyerstein, who's looked at the different—not just at the different effects of marihuana from a psychological or pharmacological point of view, has also looked at different approaches to focus on the nature of the public health problem or the harm in how its dealt with.

Now, at the end of the day, it's going to be an argument—the argument is going to have to be from the applicant. Well, look, here all of the similar types of ways and means that similar drugs are dealt with, and dealt with by the province, as opposed to those that are dealt with by the Federal government, in trying to persuade you as to where the line is drawn, as between the two governments. But inevitably, that involves some focus on the different policy options available, and whether they are used by the provincial governments or the Federal governments.

So I had intended to ask this witness some further questions with respect to policy options in relation to Canada specifically and the degrees of harm that are—are put forward, so that's one issue. And the other is I had planned to ask this witness—I have asked this witness to review the evidence in Hamon, particularly from Dr. Collant and Professor Smart, Psychologist, and to some extent the psychiatrist, perhaps Dr. Reese-Johns, but particularly Collant and Smart would fall within the specific areas of expertise. And I just wanted to be clear on how we left that before lunch.

THE COURT: We haven't decided it. In terms of being -- have the witness refer directly to that—those transcripts and making comments—

MR. CONROY: See, he has read them and we had planned that he would comment on specific things said and relate that to articles we either have here or other areas of investigation that he's been involved in, either to upgrade it, or to say he agrees with it, or disagrees with it or whatever.

THE COURT: Subject to what your friends has to say, you know I'm going to want the evening to think it over and but I am inclined to say that I do not think it's proper to have him comment on the evidence given by those people at another trial. That in no way prohibits you from putting particular statements to him and asking for his comment.

It may be a fine line that's being drawn here, but in terms of filing transcripts as part of these proceedings, of evidence that was given at other proceedings, I think there are dangers involved in doing that, which I wish to avoid and if I can have the evening to think it over, I might be able to articulate my concerns in more detail, but putting certain propositions to the witness, and having him confirm or reject the propositions would not be covered by such a ruling and again, I'll have to hear from your friend on that.

MR. CONROY: Well, we can probably leave the Hamon matter possibly 'til tomorrow. We'll see how far we can get with the other materials and then—

THE COURT: All right.

MR. CONROY: Now, I don't know if my friend wants to make a comment on the first point that I made before or just wait until we get to one of those areas.

THE COURT: The questions with respect to different policy options available for dealing with "the problem of marihuana," which I'll put in quotes since that might be an issue as to whether—with policy options available for dealing with the issue of marihuana use. Is that objectionable from the Crown's perspective?

MR. DOHM: I think that is going to depend entirely on how Your Honour interprets your earlier ruling on the qualifications of Dr. Beyerstein. Looking at the ruling, it's difficult to see that you have any intention there to qualify the witness to provide evidence on policy options. If you look at his qualifications as referred to in the ten pages or so of the transcript, again there does not seem to be an awful lot to support him as being a person qualified to give opinion evidence. That's—that's

something like an objection I made earlier about one hundred percent success, I think.

THE COURT: Well, what is it that you think I meant when I said "qualified to give evidence in a field of policy issues relating to drug regulation?"

MR. DOHM: I looked at that and I was perhaps mistakenly, Your Honour, taking the entire discussion in the context that this witness being described as a psychopharmacologist, as opposed to a sociologist or some other specialty, with perhaps—you know one might expect to give that type of evidence.

THE COURT: Could I see the—what am I looking at, Exhibit 4? You've put it front of me. All right.

MR. CONROY: If I can help you in—in referring to Exhibit 4, some of the specific matters that I thought I'd drawn to the Court's attention, looking under offices and positions held, for example, on page 4, 1979 Director, Concerned Citizens, Drug Study in Education Society; '81, Organizer and Co-Chair Conference Drug Abuse, Policy Options for British Columbia.

Jumping down to 1986, Steering Committee, 9th Institute on Drugs, Crime and Justice, Imperial College, London. '87, Advisory Board, Drug Policy Foundation, Washington, D.C. And also again, Faculty Institute on Drugs, Crime and Justice, Imperial College of Science and Technology, University of London. '88 Co-Chairman, Scientific International Conference on Drug Policy, Reform Drug Policy Foundation. '88 Editorial Board International Journal on Drug Policy. 1990, Scientific Affairs and Health Committee Drug Policy Foundation.

1991, Founding Board Member, (indiscernible) for Effective Action on Drugs. Further down, 1991, More Authority for the War on Drugs, 5th International Conference on Drug Policy Reform. '93, Founding Board Member, Canadian Foundation for Drug Policy. So those were some of the areas of expertise in terms of actual positions held.

Up at the top of that page was the presentation to the House of Commons re the Controlled Substances Act. Back on page three, consulted on Urinalysis and Drug Abuse in relation to (indiscernible) in '87, although I think that's drug testing. So I think those are maybe the main—those would be the main ones that in my submission tie in with his other expertise.

Again, I'm looking at his expertise from the point of view that he's looked at all kinds of different drugs, not just marihuana. There's alcohol and tobacco and other drugs referred to, and in looking at those drugs, and their effects, he's naturally compared them to other drugs and their effects, and examined as he pointed out today, the background sort of context in terms of rates of use, and then tried to understand why maybe use is going up or down, in

various areas involving different drugs, and how the law or policy have played a—have had an effect or have entered into the picture, and naturally that then is involved looking at different policy options, in terms of focusing on is the approach that's presently being taken hampering the efforts of people in the health field to deal with the problem, is it making things worse, are there other approaches that are more commensurate with dealing with health issues, are there alternatives that are less restrictive or less onerous on the individual?

In given circumstances, in trying to—to understand the effects in relation to the policy options, because I think at the end of the day, there is going to have to be some question on the various—some of the various options that are applied to different substances, compared to this substance, in an attempt to see if there is any rational basis for it, that we can relate to the harm or—or effects of the particular drugs. So I would like to elicit some of that from this witness.

I would again submit that it will always be a matter of weight at the end of the day for the Court, in terms of how helpful or otherwise it is to the Court, in resolving the issues.

THE COURT: Any reply?

MR. DOHM: I have no reply, Your Honour.

THE COURT: All right. It seems to me going back over this witness' curriculum vitae, he has considerable experience in the area of examining and addressing issues relating to law and policy, which are pertinent to drug use.

While his most definable area of expertise or the most easily defined area might be in pharmacology, he has clearly spent a considerable amount of time in his career examining the knowledge that he has in that field in the context of law and policy issues relating to drug enforcement. In my view, he is qualified to present to the Court evidence relating to different policy options that might be available in terms of regulating drug use, and when he was qualified—originally qualified by me to give evidence on the policy issues relating to drug regulation, it was anticipated by me that he would be giving evidence on that area or in that area, predicated upon his academic experience and his practical experience in the fields, and I am going to allow him to be asked questions regarding different policy options that are available.

Having said that, it is my view that there are some fine lines to be drawn when witnesses are giving evidence in constitutional cases of this kind, especially when they are giving evidence that comes perilously close to financing upon the wisdom of certain policies as opposed to evidence regarding the actual practical consequences of certain policies.

I recognize that from the witness' perspective, it can sometimes be difficult to determine where those lines always are in relation to each question. In that respect, I will have to at the end of the day take a look at the evidence as a whole, and determine whether certain questions and answers went beyond the realm of—of expert or opinion evidence that's permissible in a case of this

kind, and for that evidence that is properly within the realm, what weight to attach to it in the context with all of the rest of the other evidence.

The second issue, on the matter of the transcripts, does the Crown wish to address that issue any further? I will rule on that issue tomorrow.

MR. DOHM: Well, the only other point that I'd like to make in the event that I haven't made it, Your Honour, is that it seems to me that it was unfair to have a witness comment on what somebody who is not a witness may have said, in a situation where you're not going to have the opportunity to have the original speaker before you, to respond.

THE COURT: As a—as a normal rule, I think asking one witness to comment on the evidence of another witness is prima facie objectionable, absent special circumstances. Your friend, however, is attempting to draw a parallel between the various articles set forth in the Brandeis briefs, and the evidence given at this particular trial in Quebec. Clearly, we're not going to have all of the authors of these articles that are placed in front of me before me giving evidence.

MR. DOHM: I'll do my utmost to avoid it, Your Honour.

THE COURT: Well, it happened for the first time, I think, yesterday on cross examination by the Crown.

MR. CONROY: I want to be clear that that's as far as I want to go, and that's my purpose is—is this case in which the Court has found that—the lower court in Quebec has found that there was significant public health justification for the law, and they did it on the basis of certain expert testimony that was presented, and unfortunately, in the Reasons For Judgment at least in the Court of Appeal, they don't identify who those experts are, or in any great detail what the evidence was, and so if—if the question—if the constitutional question at least in—as far as the public health question or aspect of it is concerned, if—if the Federal parliament or the provincial legislature has jurisdiction, depending upon the nature of the public health problem, then surely what those witnesses said, not in the same sense as criticizing or commenting on a witness in the same case, but simply because this was the nature of the evidence, just in the same way as it's in the nature of the evidence or information contained in various articles, surely I can ask an expert in this case if they have read what the expert said in that case, the examination and cross examination, and to—to (a) advise if there has been some new developments since that time, so that

we get the benefit of anything new, and (b) to, just as with any article, comment on whether this witness agrees or disagrees with what was said there. And it doesn't in any way affect the outcome of what happened in that case.

It—but it may be an issue in this case, and it allows this court then to—to see what the state of the evidence was in some detail back then in '91, in—in October of '91, when that case was decided, and to—to compare what was said there on—on this issue to the evidence before you here. But without that evidence becoming evidence in this case, unless we, my friend or I, call one of those particular people as an actual witness in the trial, so that the nature of the transcript is like an opinion or—or sociological evidence that comes in through the Brandeis briefs, and is commented on in the same way, and—and not further; but it—it certainly would then be part of what I would hope to be able to do, is that in both the cases of Sholette and Hamon, Sholette being the B.C. Supreme Court decision, that I can at least show you or argue to you that the evidence here is different or has been added to, or there's some distinction between the evidence here and the evidence there, to enable you to—to distinguish either of those cases.

THE COURT: Well, --

MR. CONROY: Because if it was all in the report—

THE COURT: -- the difficulty I have is that we're talking about findings of fact.

MR. CONROY: Yes, but—

THE COURT: And in the end, it's the evidence in front of me that I make a finding of fact on, --

MR. CONROY: Yes.

THE COURT: -- in terms of—of what you were describing as a health issue.

MR. CONROY: Yes, but if—if the Court there had put it all into their reasons, such as in the tobacco case, the R.J.R. McDonald case, there was the section on the harmful effects of tobacco, and the court nicely summarized what the experts said and said it was uncontested by the other side, and I recall putting those facts to Dr. Beyerstein and saying, "Well, do we have the same harmful effects in relation to marihuana as we have in relation to tobacco?" And I believe the answer was, "No, we don't," with some qualification in terms of smoking and—and things of that nature. And so I don't understand why there would be a difference.

The findings of fact there are as reflected presumably in the judgment of the Court, and not in the transcripts of the evidence. The transcripts of the evidence simply contain the opinions of the particular witness who's qualified as an expert and the opinions as led by the Crown and subject to cross examination by the defence, and so it's the—the nature of the opinion evidence and whether it established that there was a public health—a significant public health problem or not, we can—we know that the court accepted that it did in that case. The question is, is the evidence different here and for you to know whether the evidence is different between—in this case to that case.

THE COURT: Why would that be a critical issue for me? Why would I not just decide this case on the evidence that's in front of me?

MR. CONROY: Well, because I think at the end of the day, you'll—you're entitled to say and I'm sure my friend will argue that the Quebec courts have already passed on this issue to some extent, and while it's not binding on you, it's highly persuasive, and I want to be in a position where I can say that it's distinguishable. They didn't know about certain things, or they didn't hear about certain things or—or that things have changed, or there's a debate about this issue or that issue.

THE COURT: Let me ask your friend a question then. Are you in fact going to be asking me to consider the finding of fact by the Quebec Court of Appeal in the Hamon case to be binding upon me in some way?

MR. DOHM: I—I hadn't considered that especially, Your Honour. What I was contemplating, urging upon you, would be that the legal ruling that there was no Section 7 violation was strongly influential, especially in light of the fact that the Supreme Court of Canada refused leave on the case. They don't concern themselves, as you know, with matters of fact to any extent. They're concerned with the legal principle and that's what I would be urging upon you. Another thing that troubles me—

THE COURT: But—but underlying that—that ruling is the factual finding?

MR. DOHM: I'm not necessarily with my learned friend on that, Your Honour. I'm not—I'm not prepared to say that is the case necessarily at this stage.

THE COURT: I'm sorry, that—that the finding of fact is binding upon me, or that that finding of fact was in (indiscernible) to the legal ruling?

MR. DOHM: I would not say that the finding of fact was binding on you, and I'm not certain from a reading of Hamon that the finding of fact was a necessary precondition, whatever that finding of fact may have been. We don't know. But one thing that my learned friend has urged upon you is that he—he wants to show that the evidence in this case is different from the evidence in Hamon, but he wants to do that without letting you know what the evidence was from the defence, and there's nothing before you and neither Mr. Conroy nor I are in any great position to tell you that the defence evidence was identical to, or the same as you are hearing and will continue to hear.

THE COURT: All right. The—I'm just reading from the headnote—the headnote, because I think it adequately sets out the finding of fact which is that, "The abuse of marihuana has been shown to have harmful effect upon the health of the user and represents a danger to the lives and safety of others." All right. Anything else?

MR. CONROY: No.

THE COURT: I'll give you my ruling on that issue tomorrow.

MR. CONROY: I'd remind the court that I will be wanting to deal with this in a similar way in terms of Sholette, and I do have copies of Sholette here, of the transcript, but it appears to be missing a page or there's some—some confusion in it and that's why I haven't handed it up yet, but I can say—and that's of course even more important to us, because it's a decision of Justice Dorman, B.C. Supreme Court, and when you read the judgment on its face, it appears as if this issue has been considered by the Court.

When you read the transcript and you see what all of the facts are, I think you would—you'll agree that it just hasn't been considered in terms of the evidence the way it's been considered here. In Sholette, the only witness called as an expert witness was Professor Bruce Alexander, a psychologist from Simon Fraser University, and he actually gave very little evidence. The accused was called. It was a cultivation case as opposed to a simple possession case, and then a friend of the accused, a retired minister, Henry Boston was called. That was it. And so the extensive medical evidence, medical, psychological and policy type evidence was not before that court that is before this court. So I mention that.

Now, I could—perhaps what I should do is give the Court and my friend the copies, in fact, because if you're going to rule on it, you should, in my submission, have regard to this, as well, but my office is today trying to—to get the extra page so that we're sure that we do have the full thing, so what I would ask we do with this is the same as what we did with Hamon, and that is to attach it to the ruling in the case book.

THE COURT: All right.

MR. CONROY: So that it simply shows in more detail what it was all about. Now, the copy that I have actually has the judgment attached to it at the end. It was sent to me by counsel for the applicant there, Mr. Bolton, so the judgment is attached at the end, but I caution the Court when the pages unfortunately are—are numbered in the top left corner, which is where the staple goes, and—and they're not all there. As I went through it, I got to—well, it's page—between pages 32, 33 and 34, where the Crown is cross examining.

In all of the copies that were made, we—there's the start of the cross examination of Mr. Gray and then there's a blank page, and then there's a continuation of the cross examination, but something—and yet when you count the pages, it's as if there's no page missing, but there's obviously something missing, because it doesn't flow from the end of one page into the answer question at the top of the next page, so I'm trying to find out what happened there.

There was an agreed statement of facts apparently in Sholette, but Mr. Bowen can't find it and I had asked my secretary to get in touch with the representative from the Department of Justice, or the file in the Court Registry, to see if we could get the agreed statement of facts so that you would know clearly what the facts—no, it's—it was the Court reporter that noticed—so there are two copies—the last page on this one, I'm afraid, is ready to come off, which is part of the judgment, so if I can have that one—well, again, we don't need to mark this as an exhibit, that's right. It's—it just goes with the case so I can just hand that up to you. However, I hope that within the next day or two, I will have got to the bottom of the mystery surrounding that missing part. But I ask the Court to—to bear that in mind in considering your ruling, because again, I'd like to be able to say to you that Madam Justice Dorman had very, very limited factual information before her.

First of all, I'll say the facts are different. It's a cultivation case, and—and so on, compared to simple possession but more importantly, the evidence that was tendered in support of the argument that was presented there which has, in some respects, some similarity to here, was quite different and it was perfectly understandable why she came to the decision that she did, based on the evidence before her, so that hopefully I can distinguish the case based on the evidence before you.

All right. Now, what I'd like to do then, Your Honour, before we go into our Brandeis brief, there are a couple of additional articles that I'd ask Professor Beyerstein to try and dig out for me, that we hadn't included, and so I'm going to ask that we simply have these marked as additional exhibits and I have two here, one extra for the Court, and one to be marked as an exhibit and its entitled Legislative Options for Cannabis in Australia.

THE CLERK: Exhibit 20, Your Honour, --

MR. CONROY: And—

THE COURT: Is that correct?

THE CLERK: 20.

THE COURT: 20.

EXHIBIT 20 - LEGISLATIVE OPTIONS FOR CANNABIS

IN AUSTRALIA

BARRY LANE BEYERSTEIN, recalled, testifies as follows:

EXAMINATION IN CHIEF BY MR. CONROY continuing:

Q This one, as I understand it, and perhaps Professor Beyerstein, you can tell us, but this fits, as I understand it with the article in the Crown's Brandeis brief at tab three, the Hall Solesion (phonetic) Lemon, the part of the Australian National Drug Strategy Investigation, is that right?

A That's correct.

Q The one we have in the Crown's brief is number twenty-five, and this one is number twenty-six which followed upon it?

A They were companion reports struck by the National Task Force.

Q And so it is the—the part that deals with the various options available, and am I right that this is the one that contains the references to support for decriminalization?

A That's right.

Q Okay.

A This is—this is the one we referred to shorthand as the McDonald report in my testimony on Friday.

Q And that—

A So David McDonald was the senior author.

Q Okay. Is there any part of this article in particular you'd like to direct our attention to?

A What we have is the executive summary and—and I think the very last page, Chapter 7, Conclusion, this is the summary of the—and the conclusions drawn by this blue ribbon panel struck by the Australian government, and I think everybody can read it for themselves, but that is really the—the final recommendation of this panel.

After having taken into consideration all the materials that were in the Hall report, the monograph number twenty-five that's item three of the Crown's brief.

Q I notice in quickly flipping through mine that there are actually some parts cut off at the top of the page.

A Unfortunately, that was in—this was faxed to me by a colleague in Ottawa and that's the way it came through the fax machine, so unfortunately these photocopies of the fax are—are accurate for what I had, and I'm sorry to say.

Q So you could put me in touch with that person so that I could try and get—

A Oh, yes. That's be easy to—in fact, I think the phone number's at the top—sorry, no, I thought it was on the top of the—

Q I can get that from you?

A Yeah, I have it.

Q Okay. Essentially the importance of this one, then is that at the end of the day in terms of marihuana, the option—the legislative option they recommend is decriminalization is that—of small—small amounts for personal use?

A That's right. They lay it out, possibilities going all the way from the status quo of full prohibition with major criminal penalties for violation, all the way through to what we colloquially refer to as the cornflakes model, which is actually as easily obtainable as cornflakes on the Safeway shelf, and they conclude that neither one of those is really a viable option, and that an intermediate step, rather like what you've just described is a preferable option, where some government control is still maintained, but it's essentially taken out of the criminal law, for personal possession and use.

Q Okay. And that's basically set out in the conclusion on the last pages?

A That's right.

Q Yeah. All right. And another article that's in a similar vein but prepared by Professor Nadleman (phonetic) and relating to I take it the U.S. situation, we have—there's two for the Court—this article is called Drug Prohibition in the United States, Costs, Consequences and Alternatives by Ethan A. Nadleman.

THE CLERK: Exhibit 21, Your Honour.

THE COURT: All right.

EXHIBIT 21 - DRUG PROHIBITION IN THE UNITED STATES

MR. CONROY:

Q Now, this article, am I right that it again analyzes different policy options or models followed in the United States, and looks at the consequences of them, the cost of them, and suggests a range of options?

A Yes, and it also looks at the experience of other countries that have dealt with the same problem and it's major thrust is that every policy option has costs as well as benefits, and it's a mistake to only look at the benefits, and to only look at the costs, and—and what the intelligent social policy will do will be to weigh the two and to choose the option which maximizes the benefits and minimizes the harms and costs.

Q Is there any particular part of this article that we should pay particular attention to?

A I think it's probably the clearest assemblage to date that we've discussed, in terms of the costs of prohibition, that it is quite honest—it says that there are some benefits to it as well—but it lays out in a very orderly fashion the unintended negative consequences of prohibition wherever its been tried, and points out that these were the very same things that led to the repeal of alcohol prohibition in the United States in the early 1930's, because it became apparent and there came to be a social consensus that those costs were far outweighing the admitted benefits of—of in this case alcohol prohibition, and so the comparison is made

between that situation and the present one, with other mind-altering substances today.

Q Okay. I notice, for example, at the end of the article, in the last paragraph which appears to be a bit of a summary, he speaks there to the—the risks of legalization?

A Yes. Well, he admits that nobody has the—the foresight of the crystal ball to tell us exactly what will happen. He says that extrapolating from the evidence we do have at hand, he feels that the risks are relatively modest, and sustainable, and in return for substantial benefits and he also points out an important fact that I don't think has been discussed in these proceedings yet, which is that none of these things is etched in stone, that what an intelligent social policy does is assesses very quickly and at periodic intervals thereafter, the consequences of the changes, that we make a change best—based on the best scientific evidence we have at our disposal for the moment, and we go with the one that looks most advantageous, but history is replete with false starts and mistaken expectations, and that what he is arguing is a cautious, step-by-step approach where things are tried experimentally with a sunset clause in them, if you like, that says we look at the consequences and we're not afraid to backtrack if it turns out that the advantages we hoped for do not outweigh the cost that we anticipate.

Q All right. Let's then go to the defence Brandeis brief. You have that in front of you?

A Yes, I do.

MR. CONROY: And I think there's only the one copy, so I think the Court will need that one, Madam Registrar, that you just had in your hand. Or do you have—no, I think that was the one that I didn't have enough copies. I think the Court will need that one. Okay.

Q The first two articles are by Professor Boyd and he's dealt with them. The third one by Michael Brian, Cannabis—I think that should be Cannabis in Canada as—

A Yes, it is.

Q -- opposed to Cannabis Canada, and I think we've dealt with that one at some length with Professor Boyd, as well. Now, so the next—the one that—do you have any comment on any of those three, are you familiar

with them, or is there anything you wanted to say about them?

A No, I—I think if you've discussed these with Professor Boyd, you're probably in good stead.

Q Okay. The fourth one then is Erickson and Fisher, Canadian Cannabis Policy and the Impact of Criminalization. Can you comment on that one?

A Yes. Well, this—this is a paper given at a major international conference on cannabis policy and it's an attempt to bring people from other countries up to date on the Canadian scene. It starts by concentrating on the academic work that Professor Erickson has become justly famous for.

Looking at the consequences for people who are arrested, charged and or convicted in cases involving possession of marihuana, and what she asks is first of all what is the—the consequence for them in their personal lives and their family lives, their future employability, their ability to get Visas and travel, etcetera, and she finds that there are marked consequences, and yet at the same time, that the people that are so sentenced and dealt with don't consider even having been caught as a deterrent in the future, that I believe she quotes the number of ninety percent of them when surveyed a year later, after their brush with the criminal justice system are—are still smoking marihuana and so it really shows that it hasn't deterred them, even at considerable cost to them.

Then it goes into the moral justification for that and says, you know, who are these people, are they otherwise law abiding, are they otherwise productive citizens, and are we harming not only them and their families, but are we harming ourselves by stigmatizing potentially productive citizens producing alienated angry people who will not only not contribute, but in fact, could be wreckers in various ways in a social context. So that's essentially the thrust of it.

Then it deals with historical development of Canadian drug law, drug policy, that sort of thing, and compares it to some of the policies that have been tried elsewhere and concludes that the Canadian one is not working as well as other options that have been tried elsewhere, and it refers specifically to the McDonald report that we just entered in evidence.

Q Okay. And so when the concept of harm used, I take it then in this article, is a very broad one in the sense of not limited to specific individual harm from consumption of the drug, but broad social harms from other factors that come into play such as arrest and so on?

A That's been the primary thrust of this particular paper, yes.

Q Okay. The next one is Gruber and Pope (phonetic), Cannabis Psychotic Disorder, Does it Exist?

A Yes, well this is a paper that starts, first of all, by exhaustively reviewing the world literature on psychological problems that have been claimed at any time to have been due to marihuana usage, and what it does is provides a critical look, first of all at the methodology and says, "Do these widely cited papers, when you actually look at how the data were collected and what other confounds, such as multiple drug use, for instance, as opposed to single use of marihuana and no other psychotropic substance, pre-existing evidence of psychological distress and vulnerability on behalf of the users, and a variety of other possible confounding variables, are there any reasons to believe that this package of papers that they review, which are largely case reports, really support the notion that there is a significant likelihood of serious long-term psychosis arising merely from marihuana use?"

And their conclusion in the first part of the paper is that even though there are a fair number of reports in the literature, they all suffer from serious methodological flaws that really don't support that conclusion, and that there isn't sufficient evidence to say that otherwise well-adjusted people who have no previous indication of psychotic tendencies or vulnerabilities who use modest amounts of marihuana, or even large amounts for that matter, are—are driven into psychoses that would not have happened, had they not used the drug.

So they then go on to the next part, and say all right, the world literature is inadequate to support the conclusion that normal well-adjusted people are routinely—or at all driven to psychotic breaks, then they take the admission records from psychiatric services of two large hospitals in the Boston area with which they have some affiliation themselves—one a private hospital that deals largely with more well to do clientele, the other a large teaching hospital and public facility dealing with all classes of society—and they review somewhere between nine and ten thousand admissions to that pair of facilities. No, excuse me, sorry—five thousand—yes, that's right. Yes, it was, nine thousand, four hundred and thirty-two. I was right.

And anyway, looking at the actual medical records of—of these people where they know what the diagnostic criteria were that were used and have detailed records with the opportunity for the admitting physicians to indicate that cannabis may have been involved at all, or may have been causally linked in any way, they surveyed that entire corpus of case histories and again come to the conclusion that when other possible confounding variables are—are controlled for, that they don't find sufficient evidence to back up the claim that there's a significant threat of psychotic behaviour or—in normal well-adjusted individuals who come into contact with marihuana.

Q Okay. And Pope there, I take it is the same Pope as—

A Harrison G. Pope Junior, yes.

Q -- that is referred to in the—

A Yes, that's right.

Q -- article, just for the record, at tab five of the Crown's Brandeis brief?

A That's right.

Q The Residual Neuropsychological Effects of Cannabis?

A That's right.

Q The same person?

A Professor of Psychiatry at Harvard Medical School.

Q Okay. All right. The next one is Cowrie or Courie et al, Attributes of Heavy versus Occasional Marihuana Smokers in a College Population, 1995, that publication.

A Yes. This is actually also out of Harrison Pope's research group, a different group of collaborators. What this paper concentrates on is—is a sample taken from colleges in the Boston area, where in response to advertisements asking for marihuana users to come and be interviewed and to be put through a battery of psychological tests, they then compare—or the extremes of people who are users but very low level users and users who are very high users.

And again, the issue of harm centres on questions of—of achievement in one's occupation or in school, economic achievement, family stability, personality defects that might be attributable to the intoxicant in the short run or the long run, and so what they've done is quantified those kinds of variables and said, "Is it not reasonable to think that if this is a highly deleterious substance, those who use a lot more of it, should be more disadvantaged on these kinds of psychological and psychopathological variables, than those who just simply use occasionally and in small amounts?"

And while they do raise a couple of questions about some effects on memory, they—they still note that—that these people are—are certainly not—even heavy users are not impaired enough to not be succeeding. These are not the dropouts. These are the people in elite colleges in the Boston area, and they're getting along well enough that it can't be a serious impairment.

But in terms of—of—of the other variables, the last line of their summary here says, "Even heaviest college marihuana smokers exhibit few demographic or psychiatric features that distinguish them from students who smoke only

occasionally." So they then also review earlier studies that compare things like grade point averages, for instance, in—in this case usually in non-using students as opposed to using students, rather than low-dose users versus high-dose users as they've done here, but in their review of the other sort of thing in the non-users versus users, again they show that there's a—there's an indication that among college users anyway, a few studies have found slightly higher GPA's—that's grade point averages—in the non-using population, whereas others have found exactly the opposite and probably the majority have found no significant difference between them, and so as an overall global estimate of academic performance, then they find—like they have found here with respect to psychological well-being and performance that there's no significant reason to believe that marihuana has—has harmed these people and the use of marihuana has not harmed their academic status either.

Now, I might add that in the—in the high school population, there's a slightly different result. I don't believe they review it in here, but it has been reviewed elsewhere and it's mentioned in the things that we've discussed already, and that is that in high school users, using marihuana and as we found in our own research on smoking tobacco as well, is kind of a badge of distinction. It's a way of thumbing one's nose at authority and—and advertising that one is a disaffected and alienated youth, and so in that group, you tend to find that there is a slight indication of a lower grade point average and worse adjustment among the marihuana smokers than the non-marihuana smokers, but you also find marihuana smokers amongst the student counsel and the school band and the—the Dean's Honour Roll, as well.

It's just that there's this other group that are suffering from pre-existing problems, and this goes back to the Schedler (phonetic) and Block study that I discussed on Friday, where it said that the heavy users of marihuana were more—more likely to show those certain problems of adjustment and that sort of thing in adolescence, but that because it was a prospective study, they could go back and look at the individuals before they started smoking marihuana, because they'd been following them since infancy and what they found was that they were ill-adjusted and the drug of use was a symptom of their pre-existing psychological problems, and so that's why you get a difference in the—a high school population as opposed to the college population that the—in some studies of college populations, for instance, on measures of achievement, motivation and orientation towards success and the protestant work ethic, the marihuana groups have actually—marihuana smoking groups have actually shown higher achievement orientation than the non-smoking groups, so again it's an argument against the so-called a-motivational syndrome.

Q Okay. I note the time. I don't know if you've got time to go into the next one which is Nadleman, the Harm Reduction Approach to Drug Control, International Progress. I take it that that article is basically a summary of what's been going on internationally in terms of different countries trying the harm reduction approach, and as the title suggests, where they've got to, it's just like a progress report?

A Yes. Yes. They're outlining first of all what that approach is. It's one that Dr. Peck alluded to in his testimony on Friday, that the idea being that the resources of the state should be targeted on abusers, not users, and that it should be a job for the social services sector and the medical psychological community, rather than the criminal justice system, because the majority of people who use any drug, including heroin and cocaine for that matter, do so without escalating their dosage, without causing serious personal, family, social, economic harm to anybody and—and that it's a ill-use of resources to target everybody, when we should be looking at that small group who have pre-existing problems, and for whom drug use is a—a symptom of those pre-existing problems rather than a cause of them in most cases.

That's what the harm reduction approach really is. It reduces the harm or tries to reduce the harm for—for the user or abuser, as the case may be, and for all the rest of us in society at the same time.

MR. CONROY: Okay. Should we end there, Your Honour, and we'll carry on now again tomorrow morning? Yes, Dr. Beyerstein will be back, so that we can just carry on, and hopefully get his evidence in in chief by the end of the morning.

THE COURT: All right. Tomorrow morning then, 9:30.

MR. CONROY: Thank you, Your Honour.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED TO 1996 MARCH 12 at 9:30 a.m.)