



REGINA V. CAINE ARCHIVE

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 12

REGINA

V

VICTOR EUGENE CAINE

PROCEEDINGS AT

TRIAL

APPEARANCES:

M. HEWITT/A. CHAN for the Crown

J. CONROY for the Defence

K. TRUEMAN Court recorder

D. CANOSA Transcriber

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1996 MARCH 12

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. CONROY: I apologize for being late, Your Honour. I was

first of all trying to find parking for a considerable period of time. I also have some bad news. I'm afraid my witness situation for this afternoon has taken a bad turn and I won't have anybody. We have Professor Beyerstein for the morning and nobody for the afternoon. Dr. Connolly just couldn't be here today. So we were hoping that we could stand down this afternoon. We can use the time to—

THE COURT: I think I can find something to do.

MR. CONROY: Yes, some reading. And we hope then to finish

off Professor Boyd tomorrow including cross examination and Professor Beyerstein including cross examination and then do Dr. Connolly on Thursday. Dr. Morgan simply we just couldn't get him here in terms of flights and things of that nature.

THE COURT: When we left off yesterday argument had been

given with respect to the use that could be made of certain transcripts from other proceedings and I am prepared to make my ruling on that issue. The question focuses on two transcripts from two proceedings, R. v. Hemon (phonetic), (1993) 85 C.C.C. (3d) 490, Quebec Court of Appeal, and R. v. Shollette (phonetic), March 23rd, 1923, unreported decision, Victoria Registry No. 64964, British Columbia Supreme Court.

In the case before me the Defence is challenging the constitutionality of the legislative scheme, that is Section 3 of the Narcotic Control Act, R.S.C. 1985, C. N-1 and its schedules by which possession of Marihuana for personal use is made unlawful. It is alleged that Section 7 of the Charter of Rights is breached by these provisions. Considerable extrinsic evidence as well as expert testimony is being presented to provide a scientific and social context within which to consider several critical issues including one, whether the use of Marihuana presents a significant public health issue; two, whether the principles of fundamental justice as encompassed by Section 7 of the Charter of Rights have been transgressed by the legislation; and three, whether the legislation is demonstrably justifiable in a free democratic

society. Similar issues were raised in the Hemon and Shollette cases. In Hemon the Crown called four experts. In Shollette the Defence called one expert. In the present case the Defence wishes to file as part of its brandeis brief transcripts of the expert evidence given by the four Crown witnesses in Hemon and the one Defence witness in Shollette. It is not proposed that the transcripts be entered in the place of testimony or as proof of the truth of the statements contained therein; rather as I understand it Defence Counsel wishes to establish that the expert evidence before me is qualitatively different from that presented in the Hemon and Shollette cases. The nature of the judgments are such that these differences are not immediately obvious from a review of the judgments themselves.

I have concluded that the transcripts referred to above may not be filed as part of the extrinsic materials or the brandeis brief of the Defence in the present case. The experts who testified before these other courts were giving oral testimony constrained by the processes of direct examination and cross examination and the rules of evidence. As witnesses they could not control the questions posed to them or the areas upon which they were questioned. In short, their testimony is simply not comparable to a research project or academic treatise of the kind contained in the brandeis brief. In my view it would be improper to have the expert testimony before one court placed before another court as if it were a scholarly enterprise in its own right. It is not. That is so even if it is proposed to enter that testimony only for the purpose of critiquing the testimony or for the purpose of demonstrating the differences between the evidence that was led in the two separate proceedings. I am, however, prepared to have the transcripts attached as appendices to the court judgments themselves. The experts called by the Defence in the present case may be asked to comment on the testimony contained in the transcripts for a very limited purpose and that is to demonstrate developments in our understanding of the scientific issues and social factors pertinent to the issues and/or to demonstrate that the testimony before me is quite different from the expert testimony that was led at the other trials. Needless to say, I have no power to review or reconsider the findings of fact made by another tribunal. I must make findings of fact based on the evidence before me and with this in mind I wish to make my position clear. The expert witnesses in the case before me may not be asked either in direct or cross examination to comment upon the reliability or accuracy of the testimony set out in the transcripts in issue as at the date that such testimony was given. This limitation does not prevent the Defence from calling direct testimony of its own to establish an evidentiary foundation which may not only be different from but in conflict with that presented before other tribunals considering similar issues.

One final issue remains and that has to do with the Hemon decision. The Crown objects to the Defence presenting the transcript only of the expert witnesses called by the Crown. It is apparent from the judgment in that case that an expert witness was called by the Defence. It is argued that a transcript of this testimony should also be appended to the judgment. Without that testimony it is simply not plausible for the Defence to argue that

the expert evidence before me was not also before the court in Hemon but rejected. I agree with the concerns expressed in this regard by the Crown. If the Defence in the present case wishes to pursue this route it should properly append transcripts of all of the expert testimony before the court in Hemon.

MR. CONROY: I will arrange then to have copies of the other

experts copied for the Court and hope to have them here then by Thursday at the latest.

THE COURT: I realize that there may be a translation issue.

It may be between you and your friend's office some common ground can be reached as—

MR. CONROY: Right.

THE COURT: -- as to what aspects of that testimony or if

it's reviewed the two of you may agree.

MR. CONROY: I may be able to get the actual witness, at

least one of them, Marie Andre Bertrand (phonetic), to translate it for me as the actual witness. I'll have to see if I can track down the other witness to see if they can do the same and then see if that's acceptable to my friend in terms of an accurate translation coming from the witnesses themselves, something like that.

To be clear because of Professor Beyerstein being the next witness, what I would propose then is I—I intend—I want to be clear I'm not transgressing your ruling, would be to take him through parts of the testimony in Hemon but to have him then simply comment on his position on the issue that's discussed at that part of the transcript and his—his evidence in relation to that issue without commenting on reliability then or accuracy of what's said. Just for—if I could use an example, at page 17 of the transcript of Dr. Calant (phonetic) the issue of whether Marihuana is a narcotic or not is discussed and so I would simply ask him whether or not—what his view is as to whether or not Marihuana is a narcotic, what his view is as an expert if that's within his—is that transgressing your ruling?

THE COURT: I—I think in—it comes perilously close to

doing that. You're presenting him with one position that was taken at this other tribunal and saying, "Well, what's your position?" Well, implicit if I guess the direction that he's going to take sometimes he may, "Oh, I agree with that." He not use those words but in effect he is—I don't know why you

can't—

MR. CONROY: So you said—

THE COURT: -- just say to him on an issue like that without  
even looking at the transcript, "Tell us about"—

MR. CONROY: Well, I—I could.

THE COURT: -- "whether or not Marihuana is a narcotic."

MR. CONROY: Well, I—I could do that. The only factor

then is that you don't know how I am—I thought you said that I could introduce it for the limited purpose of showing if there'd been a change since then and if I could demonstrate different testimony here. Now, I wrote this down fairly quickly. Maybe I misunderstood that part of your judgment. So I—I was going to do this so you would be able to see what part of Hemon I'm—I'm referring to simply so you see how different the testimony is here or if—

THE COURT: That can be done in argument.

MR. CONROY: -- something has changed. Well, yes, I

suppose. I would then in argument just bring you to each of the pages in Hemon.

THE COURT: That's right.

MR. CONROY: All right, I'm—in order to do it I'm going

to have to—as I'm questioning him I'm going to be going through Hemon. Now, I can simply not mention what page or something that I'm at or if you wish that'll make things easier when the time comes to argue I can give the reference just so that everybody knows what part I'm dealing with just so it—it'll be easier to cross-reference is basically what it would come down to then but it's still clearly directing him to the topic that's—that's dealt with to see what his evidence is.

THE COURT: Well, as I indicated in my ruling, I—I don't

think there's anything objectionable subject to what your friend has to say to you—

MR. CONROY: Yes.

THE COURT: -- calling direct evidence that is—

MR. CONROY: On the same issues.

THE COURT: -- in direct conflict with or directly congruent

with evidence that was called at another tribunal. It's just that at—at no point in these proceedings am I in a position to really say anything about the evidence of the other tribunal except that it's different.

MR. CONROY: That's right, and—and that's all I would

expect is if I say to Professor Beyerstein, for example, "At page 17 of—of the transcript in Hemon the question of whether Marihuana is a narcotic in a scientific sense or not is dealt with. What do you have to say about that?" and then you know—

MR. HEWITT: And then we can show him his transcript of the  
first day.

THE COURT: Pardon me?

MR. HEWITT: And then we could show the professor his own

transcript of the first day where—where he gave a length dissertation on—on that very point.

MR. CONROY: Well, I'll try not to be repetitive.

THE COURT: I see your friend has the transcripts committed  
to memory already.

MR. CONROY: Right. I just use that as an example—

THE COURT: I—

MR. CONROY: -- you know, so that you can mark the

differences. I'm just thinking it's going to be easier than me at the end of the day saying, "Now, Professor Beyerstein said this. This is how it's different to what was in Hemon. Here's the page reference in Hemon."

THE COURT: Do you have any position to take on the issue?

MR. HEWITT: I understood Your Honour's ruling to be that

the witness may not be asked to comment on the reliability or the accuracy of the evidence given in the other proceedings. What I take my learned friend to be doing is asking the witness to do exactly that. A statement from the transcript is put to the witness, the witness will be asked, "What is your view?" His answer is bound to be either a comment on either the reliability or the accuracy of the earlier evidence. When I listened to Your Honour give the ruling I understood that it would be appropriate to put to the witness the quotation desired and to ask the witness a question such as, "Has there been

any change in the scientific knowledge since 1989 or '90 or '91 whenever Hemon was?" That's—that's what I understood to be the effect of Your Honour's ruling.

MR. CONROY: I thought you said "or demonstrate any difference" but maybe I—

THE COURT: I did—I did say "or to demonstrate differences".

MR. CONROY: Yes, that's where—I mean it's a fine line

between accuracy and reliability and differences. I mean I fully accept that the credibility of the witness in Hemon is not in issue here. That was their opinion and all I want is to take the same topic and see what this witness's opinion is.

THE COURT: All right, I think that that is going to have to

be done without directing this witness to testimony given by other experts in another proceeding. He's to lead his own evidence or you're to lead him through it. You, yourself as counsel, obviously can—

MR. CONROY: I can—

THE COURT: -- control the areas that you're questioning him

on by reference to transcripts so that at a later point you can make arguments.

MR. CONROY: All right.

THE COURT: But by having before him certain pieces of

testimony of another witness in another proceeding we are inevitably inviting him to comment upon whether that testimony is accurate or inaccurate.

MR. CONROY: Well, I—I would ask that he be allowed to

have the copies that—that I have given him before because he has prepared his evidence based on the topics as they appear in the transcript but I won't put the transcript to him. I will just try to put the topic to him and ask him—instead of then putting the quote to him or I suppose if my friend said I could put the quote and then ask if there's any change since or if he—if he differs in his view I suppose but if you'd prefer me not to put the quote I'll just put—put the topic to him and ask him if there have been any changes since 1991 and if—what his view is on that topic, let's do it that way.

THE COURT: Changes, developments since—since the time

the testimony was given or—

MR. CONROY: Okay. All right.

THE COURT: -- are permissible I—

MR. CONROY: Well, let's see how I do and hopefully I can

fit within the parameters. I should say, Your Honour, on Shollette I have determined the—the problem on the transcript or I should say my office figured it out. We—if you take the page 31 and 32 and I think I—I may have marked them, I'm not sure if I marked them on your copies but there's a page at the bottom it says "it simply has become innocuous in Dutch society" and this is towards the end of the transcript.

THE COURT: Is that the beginning of a paragraph?

MR. CONROY: It's the very last line "it simply has become

- society" is the last word on the page. It's the page before—it should be the page before cross examination by Mr. Grey which would be indicated at the top of the page as well as in the middle of it. I don't know if you've got a blank page.

THE COURT: All right, I'm on cross—I'm—I'm at the

beginning of the cross examination by Mr. Grey of the accused?

MR. CONROY: If you go back one page—

THE COURT: Of the accused or of Alexander—

MR. CONROY: The accused was in chief by Mr. Bohlen and then

he's cross examined—

THE COURT: By Mr. Grey?

MR. CONROY: Yes, and that's—

THE COURT: I've got page—that's on page 10 that starts.

MR. CONROY: Oh, I'm sorry, it's of Bruce Alexander—

THE COURT: Okay.

MR. CONROY: -- so it's—it's page—it's about 31. It's

towards the end of the—

THE COURT: Yes.

MR. CONROY: So if you've got the page it says "it simply

has become innocuous in Dutch society" at the bottom of the page. Do you have that?

THE COURT: I have the page with the cross examination by

Mr. Grey starting—

MR. CONROY: All right, now, well—

THE COURT: -- of Alexander, B.

MR. CONROY: Yes. Now, the—the next page starts with

"respect to the public view in or about 1923". Now if you go either back a page or—

THE COURT: It doesn't.

MR. CONROY: -- or one page further that's where it should

be. Those two pages—

THE COURT: Oh, yes, one page before.

MR. CONROY: So—so if you take that out and put that

after. Now, if you go back a page before cross examination by Mr. Grey it should read "it simply has become innocuous in Dutch society" at the bottom.

THE COURT: Got it.

MR. CONROY: All right, and then there was a blank page in

there and we just take that out so then continuing on the—the second page that's cross examination by Mr. Grey ends with "with respect to their use" and then at the top of the next page it says "well, not the pharmacological effect" and that then gives us the complete cross examination of the Crown and I understand the complete transcript.

THE COURT: All right.

MR. CONROY: Just so we have that. Okay, Professor

Beyerstein.

BARRY LANE BEYERSTEIN, recalled, resworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name for the record.

A Barry Lane Beyerstein, B-e-y-e-r-s-t-e-i-n.

EXAMINATION IN CHIEF BY MR. CONROY continuing:

Q At the end of the day, Dr. Beyerstein, we were dealing with the Defence brandeis brief and we had got to number seven, "The Harm Reduction Approach to Drug Control" by Ethan Nadelmann. I think you had dealt with that to some extent. I don't know if you had any further comment on that one.

A Just that it's a worldwide emerging consensus among legal scholars, medical scholars, psychologists, sociologists that not only has prohibition been counterproductive, it hasn't reached its stated goals, but in fact it's—it has exacted a—a terrible price in various ways that is really intolerable and

- and that the harm reduction approach should be instituted in its place and that the target here should be that small minority of users who become abusers and we made that distinction yesterday and that these people should be helped by all the resources that a caring state can marshal to assist them and that the counterproductive and wasteful policies of trying to target mere users who are not harming themselves or anyone else in any significant way should be stopped and so it should be a reallocation of resources to help those who will inevitably have some problems with these substances and leave the rest of us alone.

Q Okay.

THE COURT: This is—actually this volume is filed as an exhibit, correct?

MR. CONROY: Yes.

THE COURT: For which I do not have—

MR. CONROY: I'm having extras made today—well, hopefully

this afternoon. The problem was I by mistake had the original copies of most of the articles with me and left them here yesterday instead of taking them back.

THE COURT: All right, is the witness looking at the exhibit

or a copy?

MR. CONROY: The witness has my copy.

THE COURT: All right, could I have the exhibit then,  
please, which is Exhibit—

MR. CONROY: Exhibit 18. I hope to have additional copies of that for the Court by tomorrow, Your Honour.

THE COURT: Thank you.

MR. CONROY:

Q All right, the next article then is number eight by Eugene Oscapela (phonetic), "Witch-hunts and Chemical McCarthyism, the Criminal Law and the 20th Century Canadian Drug Policy", June 1993. Would you like to comment on that?

A These are notes and I think a transcript of an address that Mr. Oscapela gave to the Society for the Reform of Criminal Law. Mr. Oscapela is a noted legal scholar who has worked extensively for the Law Reform Commission of Canada and currently for the Canadian Privacy Commissioner's Office and he was one of the founders of the Canadian Foundation for Drug Policy. And in this address to a group of fellow lawyers in Ontario he begins by documenting the failure of prohibition to even significantly reduce the availability of drugs and he brings up admissions on the part of—of police officers involved in—in both customs and street level enforcement where they admit that with this massive expenditure of funds they may have succeeded in—in interdicting perhaps five to ten percent of the illicit drug trade and he then goes on to show how much time, money, lives, resources of society have been wasted for such little gain.

And at the same time he points out as others we've discussed do as well that the unintended negative consequences of this has been to give a monopoly to some of the least desirable elements in society, to enrich organized crime, to increase official corruption and to engage people who are otherwise non-criminal in their intent and pursuits with—with criminal acts simply because the drugs that they use are criminalized and he goes on to outline many, many other unintended serious negative consequences for society. And all of this when—we find that despite increasingly drastic penalties drugs have at the same time become more plentiful, cheaper, are easier to get in all areas of Canadian society than they ever were and so it's a pretty clear indictment

of the entire prohibitionist agenda because it has failed to achieve its purpose and at the same time has exacted a great price for all the rest of us.

And, of course, one of the worst of these are—are an interest close to Mr. Oscalpela's own heart which is civil rights, that due process and personal freedoms have been severely curtailed not only for those who choose to use illicit substances but for the rest of us in the overzealous attempts to enforce what are essentially unenforceable laws. And so he points out that—that this has a cost in threatening to tear the social fabric, that it's a—an unintended consequence but a serious one nonetheless of attempts to enforce prohibition.

What he then goes on to do is to point out that drugs have become a modern scapegoat. He compares them to previous programmes against the Jews, witch-hunts and indeed the persecution of Communists in the United States and the term "Chemical McCarthyism" which appears in the title of his talk was actually coined by George Lundberg (phonetic), the Editor of the Journal of the American Medical Association who also pointed out that—that what has happened is drugs have become a symbol for all that certain people find objectionable in modern society and—and this mistaken notion that if we could simply eradicate drugs which is a fool's errand, I mean it just cannot be done, but that if we could all of these other ills in society would evaporate and, of course, that's an unobtainable goal as well. So Lundberg drew that parallel to the McCarthy era in the United States and pointed out that drugs have sort of supplanted that bogeyman of—of an earlier era and become the present-day one.

The paper then goes on to talk about the inconsistency, the contradictions, the irrationality of—of the prohibitionist approach and then to point out that those who are questioning it and those who are advocating alternatives to it are not as often portrayed to be a bunch of wild-eyed radicals, hippies, et cetera, but in fact the opposition to prohibition based on its manifest failure which he had indicated earlier really spans the political spectrum from those one would expect on the liberal end of—of the political spectrum, the civil libertarians and—and people of that persuasion, but increasingly the other extreme of the political spectrum has begun to realize that this is not in their interests either to—to continue prohibition. And in fact such prominent conservatives as William F. Buckley, George Scholtz, Ronald Regan's foreign secretary, the Nobel laureate and very conservative economist Milton Freedman and people of that sort are increasingly realizing that the costs of prohibition are too high and the yields are too low. And—and it has even in the United States percolated down to the point where certain federal judges, notably Judge Robert Sweet (phonetic), of New York have refused to hear further drug cases before them because in good conscience they cannot see themselves enforcing what they see to be these counter—counterproductive policies. So I think that's a—a summary of—of the arguments that Mr. Oscalpela made on that occasion.

Q And does he present various other policy options or does he just focus on the problems with prohibition?

A Yes, he quotes in the end again to show the wide variety of disciplines and the wide geographic dispersion

of people who have thought long and hard about this—about this issue and to say that there is a range of possibilities rather like what the Australian task force that we discussed yesterday found. There are a range of possible options and that among those who find prohibition to have been a failed experiment there are differences of opinion as to how far they would like to go, all the way to complete legalization on the part of some of these people and lesser measures of others who say that complete prohibition is certainly not justified but that some limited control by the state, perhaps models like we find in the control of tobacco and alcohol now or some would like to see a greater participation by the medical profession more like the Methadone maintenance programmes that are available in most western democracies now. But they all agree that—and as Mr. O'Connell points out, the tradition has always been in western democracies that we only use the criminal law when these lesser measures have been tried and failed, that there are other social ways of controlling behaviours that might conceivably cause harm and that these ought to be used in place of the criminal law wherever possible and that was their— their consensus. Now, exactly which model, whether you would like to follow the Dutch model or the emerging one in Australia or—or ones that we talked about yesterday suggested by Professor Nadelmann in the United States, these are things that call for some experimentation and—and attempts to see how they would work.

Q Does he deal with them—all drugs collectively or does he break it down into different approaches for different specific drugs such as Marijuana?

A The arguments apply across the board to all psychotropic substances, the ones that are currently legal as well as those that are currently illegal for that matter, but the underlying principle is—is that one set of regulations probably is not appropriate for all drugs because the potential for harm is different and certain substances may require one approach and others something else that takes into consideration the fact that some are more addictive than others, some are more harmful to one's physiology and health than others and that you need a fine-tuned mechanism not a blunt across-the-board law or set of regulations that apply exactly the same to all substances.

Q And in—in terms of the policy options does he—is there this sliding scale or continuum between those that

are more harmful to those that are less harmful and parallel more restrictive to less restrictive policy option?

A Yes, that's certainly his—his intent is to say that the harmfulness should be an issue and that this differs from substance to substance and the least harmful should be the least regulated.

Q Okay. All right, anything further on that particular article?

A No, I think that is sufficient.

Q Okay, the next one then is number nine, Schedler (phonetic) and Block, "Adolescent Drug Use and Psychological Health, A Longitudinal Inquiry".

A Yes, this paper probably—to my knowledge anyway is the only one that President Ronald Reagan ever individually singled out for note in one of his news conferences because he found the—the conclusions drawn so unpleasant but what it is is as I've already alluded to in earlier testimony the results of a longitudinal inquiry which means that rather than simply hanging around say drug treatment facilities and looking at people who admittedly have gotten into difficulty with drugs and then saying, "Well, what was in their background, what could have caused this?" and, of course, logically you cannot conclude for certain that anything in a situation like that is for sure the cause of something because, you know, if all of those people ate tomatoes too and so logically the connection between tomatoes is just as strong as the problem they have as certain other things in their personality or the drugs that they used or whatever. So a retrospective study like that can never do anything more than point out a correlation and a correlation can never imply causation.

So what this is is one of the very few studies that takes the—the longitudinal approach where a group of—of toddlers essentially were chosen for long-term follow-up through their childhood on into their teenage adolescence and now I think it's continuing on into their young adulthood. And with this kind of thing you have a large—it's called a cohort of similar people in a similar community with similar socioeconomic opportunities and so on and they are intensively studied in terms of their personality variables, in terms of parenting styles of—in their family, in terms of their educational attainments and exposures, in terms of their hobbies and interests and just a—a almost shotgun approach to measure as much as—as time and money will allow and to check for changes in all of these variables over this ensuing period of time.

Well, one of the things that they looked at was willingness to experiment with drugs and the extent to which the—this large group of—of children became

involved with different drugs and as they point out primarily Marijuana because that is the one that's most prevalent among the illicit substances and most easily obtained and so on. And at the age of eighteen they were then looked at again and to see first of all how the entire group fared in terms of measures of—of what they call social adjustment and psychological adjustment, in other words, how well were these people coping with the strains of everyday living, with their educational, social, personal, family lives. And what they found was that both the abstainers who had never experienced—had never experimented with Marijuana or any of the other or hallucinogens or other drugs that they asked about and those who had experimented and gone on to what I described yesterday as abusive involvement with drugs, that is a daily high-dose involvement, that both of those groups, the abstainers and the overusers if you like, were less well adjusted than the group that had experimented responsibly and had come through with in fact better indications of achievement and adjustment than either of the other two extremes.

And again what makes this such an important study is that once the outcome is known you can then go back and look at the antecedent conditions that you had measured longitudinally over this period and so what they found was that even among that group who were abusing or especially among that group who were abusing these drugs the problems that they saw magnified at the age of eighteen were already apparent in the early years when they were doing these repeated measures throughout the time they were watched. And so in other words the problems predated the drug use rather than the drug use causing the—the problems and so what they—what they concluded was that drug use is a symptom of the kind of personality variables, the kind of instabilities in one's character, the kinds of—of inopportune parenting strategies that one's family might have adopted, that—that the drug use is—is caused by these other pre-existing factors rather than the other way around.

Q Would that be the drug use or the drug abuse?

A The abuse, the—in—in the case of—of the—the experimenters who were users as opposed to abusers is these negative factors in their background were minimal and so what they're saying is the negative consequences that they see on their psychological measures were really rooted in probably, I don't think they make this connection, my interpretation is probably even in certain genetic differences in the way people respond to stress and the way they respond to anger or control anger and this sort of thing and I think there's good evidence that genetic factors play a part in this. But for whatever reason the people who went on to abuse drugs showed the kinds of deleterious psychological traits earlier than their drug use and—and so some people have concluded that the drug use may even be an attempt to self-medicate for the unpleasant psychological feelings that people in that situation would feel and so regardless they see the drug use as the consequence not the cause of the maladjustment.

Q So if I understand that correctly the abstainers and the users didn't have the same amount of negative—earlier negatives things in their background. Those that went on to become abusers were the ones that did, is that right?

A That's—that's almost correct although the abstainers interestingly enough did not fare as well on these measures as the moderate users, as the experimenters I think Schedler and Block like to call them, and—and there again what they concluded was that being an abstainer in the social climate in which these children grew up was indicative of not being part of

- of a well-adjusted social group, of not having the social skills, of being kind of inept in other ways and—and that this led them to be outside the group of normal achievers and that sort of thing and that again this pre—pre-existed the time that they were doing the measures and so interestingly enough the abstainers were probably abstainers because of the kind of situation they were in that was abnormal in some way itself.

Q All right, the next one then is number ten, R. Smith, "Prohibition Isn't Working, Some Legislation Will Help," an article from the British Medical Journal, December of 1995.

A Right. This is actually one of a pair of—of recent editorials in—in British medical press, this one the British Medical Journal—

Q The other one I think is at tab twelve, "Deglamorizing Cannabis", the one from the Lancet—

A Oh, yes, right, I'm sorry, I—I missed it because I have the original and this is one that was downloaded from the—from the Internet, sorry, I—I missed—

Q Okay.

A -- it because the type face was different. Yes, well, the first one then is again a—an editorial from the British Medical Journal which makes first of all quoting the American psychiatrist Thomas Zaz (phonetic) the same point that Eugene O'Connell made in the article that we discussed earlier which is that a powerful mythology is built up among a large segment of the population that—that many kinds of ills, many things that we would all agree society would be better off without are—are the result of drug abuse and—and what Zaz and others have pointed out is that in earlier times other scapegoats have been blamed for these ills which have always been with us and probably always will and—and that the

consequences of that demonization of drug use have been to fuel prohibition attempts and to refuse to consider alternatives and so we've already dealt with the negative consequences of prohibition and the fact that prohibition hasn't in any way succeeded in reducing availability and use of drugs.

And what—what this article is arguing here quoting the author, Aldis Huxley (phonetic), is that

- is that drug use may be a suboptimal coping strategy but it is a coping strategy nonetheless and that many people's lives are troubled in serious ways where the relief that these substances give are sufficiently gratifying to them that they are willing to risk serious harm to their reputation, loss of freedom, loss of money in the form of fines, et cetera, in order to achieve the values that they see in this use of things that the state thinks ought to be illegal.

And so what they're underlining there is—is the futility of—of trying to take away something that a large portion of the population finds enjoyable and objectively as probably in the grand scheme of things not really harming themselves or anybody else and that it's just not going to work to simply try to use the law to dissuade them. So it then goes on to point out that the economics of the drug trade again make it virtually impossible to eradicate because what it does is it raises the—the street price of what are essentially really quite cheap commodities and that for every drug dealer that you put away there are three or four clamouring to take his place, that in many cases the—the only way out of—particularly in ghetto populations and that sort of thing if one isn't a—a gifted sports player or highly academically gifted about the only other way of—of overcoming the bleak prospects of—of that kind of life are to enter into the highly lucrative and—and objectively not really very dangerous in terms of apprehension anyway occupation of—of dealing drugs.

And so again they—they quote the Nobel laureate Milton Freedman to the effect that—that the economic laws that are taught in every introductory economics course say that the black market created is a natural outgrowth of—of prohibition and in fact the profitability of the system ensures that if—even if you succeeded in catching more people that it wouldn't go away because others are—are wishing that they could take up the—the new openings.

So it then goes on to as they put it suggest that it's time to consider going Dutch and they compare the Dutch harm reduction approach to controlling the social and medical problems that could arise from drug use within the realm of their social services network and their welfare state approach as opposed to making it a criminal offence to use drugs and they conclude that by and large the Dutch have—have considerably reduced the ancillary problems that prohibition and drug use itself cause and—and that the Dutch are basically satisfied with what they have done and they're not considering changing it in any

major way and other people such as the Australians whom we dealt with earlier have looked at their experience and are realizing that it's probably one that they could adopt profitably in their country as well.

Q Now, the Smith article then is dealing with all drugs pretty well, is it?

A Yes, it is but again Marihuana being the most prevalent one it would be the one that would be spotlighted and

- and certainly it would be the one that if one were to experiment with some of these other policy options it would make sense to be the first one to try because as even those who oppose legalization would admit that it's the least harmful and least addicting and least likely to cause serious problems if availability were to be made decriminalized.

Q Now, the—the article from the Lancet at tab twelve it's specific to Cannabis though, isn't it?

A Yes. Again it deals with the—the Dutch experience particularly and the attempt by a British M.P. to point this out to her colleagues and introduce some legislation in the U.K. that would in some ways adopt the approach that the Dutch have taken and points out the opposition that that modest suggestion had—had engendered and it nonetheless goes on and—and says that from the perspective of the editorial board of the Lancet, one of the oldest and most prestigious medical journals in the world, the Dutch experiment has been a success, that it hasn't—it hasn't produced a utopia on earth and—and no—no reasonable advocate of it least of all the Dutch themselves I might add would say that they have solved every problem even in the drug realm with it but they certainly see it as the best attempt to date and one of the things that it has done is it's taken the emotional rhetoric out of all of this and—and it is as the title of the editorial says, it has deglamorized Cannabis.

And a few years ago I was on a panel with Eddie Inglesman (phonetic) who is one of the chief architects of the Dutch drug policy and he described it after saying that they were intending to stay the course and that claims that the Dutch experiment had failed and they were abandoning it were untrue, he said something that has stuck with me ever since, he said, "You know, in the Netherlands we have succeeded in making drug use boring," and if you look at their statistics, their usage patterns despite their more liberal laws are lower, much lower than the United States in those categories.

Q Tell us a bit more about the Lancet. You said it was the oldest and most highly regarded medical journal. Is it—does it speak primarily on behalf of the British medical establishment or is it regarded as an

international publication that speaks on behalf of the medical profession?

A It is certainly British in origin but as I said it's one of the oldest and certainly most prestigious medical organs in the world and—and a—an editorial from Lancet would certainly carry far more weight around the world than—with the exception of a few like the Journal of the American Medical Association and the New England Journal of Medicine which are also in that elite category, there are very few others that would carry more weight.

Q And does that editorial though speak to the issue from the medical health perspective?

A Oh, yes, it—it is a medical journal, that's exactly what it is. This is an editorial but the rest of the journal would be original research articles dealing with all aspects of—of disease and—and medical treatment.

Q Okay, now, I skipped over number eleven in our brief because we've gone through that in considerable detail in your earlier evidence. I don't think there's anything else we need to say about the Zimmer/Morgan (phonetic) article, is there?

A No, I think we've covered that.

Q Okay, number thirteen is the "Canadian Bar Association Submission on Bill C-7" so it's specific to the first edition of Bill C-7 because it's dated May 1994. I don't know if you've had a chance to glance at that or if there was anything—

A I—I did.

Q Anything—

A I read it and I just note that it urged as I did when I testified before the same standing subcommittee on health, the Bar Association concluded as I did that this was wrongheaded legislation and that maintaining prohibitionist stance in that new legislation was simply going to perpetuate the same kinds of intolerable social costs and—and personal costs that we discussed earlier and so this submission urged the Parliament to abandon that approach and that's exactly what I did in my own testimony.

Q Okay, now, the balance of our brandeis brief contains a list of books and I'll just go through them with you and

you can maybe comment on the ones that you're familiar with and—and how they are relevant and—and what parts we should focus on arising out of those books. The first one is Able, "Marihuana, the First Twelve Thousand Years".

A Yes, as—

Q Can you tell us a bit about that?

A As the name implies, it's—it's largely a historical treatment by a noted psychopharmacologist and what it points out is something that has come up numerous times in our discussions in this case before is that the current attitudes toward psychoactive substances are really quite aberrant in a historical perspective, that the—the idea that—that these are terrible things that do terrible things to everybody who use them and—and that we need the penalty of criminal law to regulate them and that sort of thing is of surprisingly recent origin. And—and that these substances have been around as Able says in the title of his book here twelve thousand years in a archeological and historical record at least and they've been woven into the social fabric of numerous societies, found to be useful and nonetheless controlled but by—by the mores and folkways of—of the people who—who wished to through processes of socialization teach people that there are times and places when these things are appropriate to use or not use. There are people who probably should not use them, there are behaviours that are acceptable, there are behaviours that are required, there are behaviours that are absolutely inappropriate when one engages in the use of these substances. They became ritualized and—and acculturated and—and they were certainly not demonized. I mean Queen Victoria was treated for menstrual cramps with extracts of—of Cannabis and George Washington grew Cannabis on his—on his estate and—and there's some suggestion that he used it for medicinal purposes as well as for its hemp content and so on so this current demonization is—is really quite an aberration in the historical record.

Q So does it then give examples of cultures or societies including in the United States and in England at a time when Marihuana was not prohibited obviously?

A That's right, it does and it talks about places such as Jamaica where for instance it—Marihuana has been woven into religious practices such as those of the Rastafarians for instance.

Q And does it indicate the existence of any harm to either individuals—users or others who may be associated with the users or with the culture or society as a whole?

A It certainly indicates no harm that was great enough to engender a backlash, to engender strong moves to legislate the use of these things or not use of these things and it—it just essentially wasn't an issue, it wasn't something that raised anybody's ire or—or drew the attention to it throughout that period of time, that there may well have been individuals who used more than they should have and were harmed by it but this was always considered to be a matter for that individual, his or her family, the social group that when you see somebody messing up their lives it's—it's your obligation as a fellow citizen, as a relative, as a friend to intervene and—and you don't bring the state into that, you—you help people by finding out what it is that's bothering them that is leading them to abusive behaviour in this area or to abuse sex or gambling or any of the other things that we know that disturbed people sometimes turn to as a way of coping with unacceptable stresses in their lives.

Q Okay, any other comment on that particular book?

A No, I think that is fine.

Q The next book is one called "Questioning Prohibition" put out by the International Antiprohibitionist League and I don't know if you are familiar with that one or had a chance to look at that one at all.

A I—I have seen it. I—I haven't read it cover to cover. I've drawn figures from it. It's quite a nice compendium of—of international comparative research on things and so there are some very useful tables in it but I must say I haven't read it carefully cover to cover.

MR. CONROY: I have provided my friend with a copy of this

one, Your Honour, and I'm just trying to make sure that this one is an unmarked copy so that this is one that we have a copy for the Court. So I could hand you that. It's a 1994 publication and it covers all drugs but also covers some—gives statistics and information in terms of the entire—in terms of the world actually in relation to the whole prohibition question and I'll be referring to that later in—in some detail.

Q The next book is Professor Boyd's book, "High Society", and I believe we've actually filed a copy of that as a separate exhibit and he has dealt with that. Any

comment you want to make on—on that at all, Professor?

A Just something, and since I didn't hear his testimony I'm not sure he didn't say himself, but one of the things that he's done in this book is attack the hypocrisy of—of trying to maintain a scientific distinction between legal drugs and illegal drugs as if those that are currently illegal are inherently more harmful than those that are legal. And—and he takes a sort of historical and sociological approach to explain how that distinction came about and why it's not valid and that it's essentially a historical accident that the drugs that are accepted in a culture are those that have that long history of being acculturated, of being socialized where there are mores and folkways that—that guide people quite unconsciously in—in terms of when it's appropriate to use, how much it's appropriate to use, with whom, what the behaviours are and so on and—and so he points out that the—as was mentioned in the Lancet editorial I discussed a few minutes ago that the drive if you like to alter consciousness is a universal one and—and people will seek it out. They've been very ingenious as a matter of fact in every culture in every geographic location in finding things that will alleviate anxiety, that will help people sustain attention or—or diversify it if they're looking for—for escape or—or even entertainment and—and that what's acceptable to achieve that is really a historical accident of what was introduced so long ago that no living member can remember how it got there and people just grow up with it and accept certain things and yet they find abhorrent the idea that something that another culture finds equally mundane and acceptable and not requiring any comment or intervention is in their society a target of—of extreme repression so it just points out the inconsistency and irrationality of trying to make these—these distinctions that have been made in law in our society.

MR. CONROY: Okay. I note the time, Your Honour. We got

started late but I don't know, I'm in your hands, I'm prepared to carry on but the Clerk—

THE COURT: I think we'll take the morning break so that the

staff can have a break which—

MR. CONROY: Yes.

THE COURT: -- they haven't.

MR. CONROY: Thank you.

(WITNESS ASIDE)

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

BARRY LANE BEYERSTEIN, recalled, testifies as follows:

EXAMINATION IN CHIEF BY MR. CONROY continuing:

Q The next book, Doctor, was—Professor Beyerstein, is seventeen, Erikson, "Cannabis Criminals".

A Yes, we dealt with this earlier because parts of it were summarized in the paper by Erikson and Fisher that was delivered at an international conference last year which was one of the earlier exhibits. But Patricia Erikson of the Addiction Research Foundation in Toronto is a—one of the world's leading scholars in this area where she has actually looked at the impact on the lives of individuals who have been apprehended, charged and in some cases convicted by the criminal justice system for possession of Marihuana and we've talked earlier about the negative impacts that the law can have on the lives of otherwise motivated non-criminal individuals who—whose only transgression was to run afoul of the prohibition laws and all of us know individuals, all of us who work in this area have anecdotes and things that we can relate of people whose lives have been harmed for no good social purpose and who are in the position of having difficulty getting employment, getting passports, travelling internationally, all kinds of things who are otherwise law-abiding—excuse me, law-abiding productive citizens and what Professor Erikson does in this book is—is do the actual field work to find out how many people are like that and what they're like and what their lives are—are like as a result of their convictions and so on.

Q I take it she comes to some conclusions in terms of the harm's effect?

A It's the conclusion that she and Fisher made in that earlier paper we discussed yesterday which is that these are casualties of the war on drugs, that these are people

who—who did not set out to harm themselves or harm anybody else and yet are seriously harmed by the drug laws and in ways that persist for a long time in their lives in many cases and that this is grossly unfair and something that a democratic society should find unacceptable and she, therefore, concludes that prohibition is not the way to try to handle the problems that drugs can possibly cause and that some of the harm reduction approaches would reduce this significant harm among others.

Q Am I right then in saying that this book was published in 1980 and the article you're referring to is at tab four of our brandeis brief is an up-to-date article then 1995, brings this material up to 1995 essentially?

A That's right and in some—in some cases she points out that things have gotten worse because the overwhelming majority of people who have been apprehended are Marijuana smokers who tend to be the least socially deviant of all illicit drug users and that changes in the law that may superficially look like they were progressive from her standpoint had in fact exacerbated the problems in the meantime and had created more of these casualties that she wished to describe.

Q The next one then is eighteen, Grinspoon and Bacalar (phonetic), "Marijuana, the Forbidden Medicine".

A This is a review by a professor of psychiatry at Harvard Medical School, Lester Grinspoon, and a professor of law at Harvard Law School, James Bacalar, and again one of the casualties of the prohibitionist approach has been a completely innocent group, namely those people suffering from certain medical conditions who can achieve some relief from their symptoms by the use of Cannabis or its derivatives and they've been sort of held hostage in the battle on the war on drugs because otherwise feeling people who would not deny relief to sick suffering people in pain for instance are willing to say, "No, let them suffer because to agree that this could have a medicinal use in people who are not interested in illicit use or not interested in consciousness alteration or anything else is to send the wrong message and, therefore, we're going to let this group of innocent medical victims go without something that they perceive as useful in their treatment in alleviating their condition simply because we don't wish to admit that there's any good whatsoever that can come from this unfathomably bad substance that the historical antidrug propaganda likes to propound."

Q And what are some of the illnesses that he deals with or they—they deal with just to give a few examples?

A One is glaucoma, that Marihuana has been found to be useful in reducing the buildup and intraocular pressure that can blind people if it's not abated.

MR. HEWITT: Excuse me, if I may, yesterday I made an

objection among others to the witness not being qualified to give evidence on health effects. Now, I thought Your Honour had upheld that objection. If—if so, he would appear to be in conflict with it now.

MR. CONROY: Well, I'm not asking him to express an opinion.

I'm just asking him to tell us what's in—in the book so that we have a bit of an idea of what's in the book.

MR. HEWITT: That's not the way I understood the question.

I understand the question to be, "What are some of those"—

MR. CONROY: Examples.

MR. HEWITT: -- "examples" those—

MR. CONROY: I meant taken from the book.

THE COURT: Do you have any objection to him talking about examples that—that are discussed in the book?

MR. HEWITT: I'm quite convinced he's going to basically

talk about whatever he wants to talk about in any event, Your Honour, but the—the point is that the weight to be given to many of these comments is minimal.

MR. CONROY: Well, my recollection of your ruling was that

he could give evidence with respect to the effects of the use of the drug from a psychopharmacological perspective which would in my submission involve effects on health and he has given considerable evidence about effects on health and harm from the drug both medical harm or pharmacological effects which manifest in medical harm as well as general social harm but all I'm trying to do at this point is to take him through our brandeis brief so that he can give the Court some idea of what's in some of these books that go to the issue before you. I will be having hopefully other witnesses, a medical doctor who will deal with some of that in greater detail as far as specific health effects.

THE COURT: All right, I will allow the question for the limited purpose that you've expressed.

MR. CONROY: Thank you.

Q So coming back to the Grinspoon/Bacalar book, you told us that it talks about use of the—of Marihuana for medical reasons involving medical victims. What are some of the areas that are discussed in the book in relation to what types of illnesses are they saying that Marihuana can be used for?

A I've already mentioned glaucoma, a disease that can cause blindness. Marihuana is a useful painkiller and many drug companies now are experimenting with the active ingredient, changing it chemically in various ways to produce even better analgesics. It has been found according to Professor Grinspoon and the studies that he relied on to be effective in diseases that cause spasticity of the muscles, multiple sclerosis for instance and other kinds of spastic disorders. It has also been found to be a useful adjunct to chemotherapy, that as most people know the drugs that are used to—to alleviate cancer have the terrible side effect of causing nausea, dizziness, great internal distress that is not only very unpleasant but also has the—the process of—of reducing appetite because when one—when one is very nauseated food is, of course, repulsive and these are the very people that are—are most in need of building up their resources by being well-nourished and so Marihuana has been found both in the case of radiation therapy and chemotherapy for cancer to be a useful antiemetic, that is a drug that prevents the violent vomiting that often follows these treatments and the general nausea as well. I think those are the primary ones.

Q What about AIDS?

A AIDS wasting syndrome I guess is the other one that they talk about where again this terrible disease causes a wasting of the body and as a side effect food and nourishment becomes very unpalatable and not only does the drug make some of these people feel better subjectively but it has the added advantage of being an appetite stimulant and it causes them to eat somewhat better which improves their overall medical picture.

Q This edition is 1993. I understand there's a new one in the—in the works. Do you know anything about that?

A I heard that from Lester Grinspoon himself not too long ago but I haven't actually seen it.

Q Okay, the next two books are first of all the Ledaine (phonetic) "Cannabis Report" from 1972 and then the final report from 1973, I think we've touched on that earlier on in terms of testimony. Is there anything else that needs to be said about those?

A Just that this is one of the jewels of Canadian drug scholarship. When I travel the world to international conferences as a Canadian people all—all over the world say, "Oh, yes, the country that produced the Ledaine Commission. What—what has your government done with those recommendations?" and sadly I have to say, "Well, unfortunately they haven't followed them."

Q And the update on anything contained in Ledaine would it be safe for us to say that the Australian report or what we have of the Australian report to the extent that—that there are issues dealt with by the Australians that were dealt with in Ledaine—

A That's right, that—that it's been followed up and I—and I know Gerald Ledaine himself, I was privileged to have breakfast with him at a meeting a few years ago and I asked him the question face to face, you know, "I've admired your conclusions for a long time. Has anything come to your attention in the meantime that would cause you to pull back in any areas or to change your opinions?" and he—

MR. HEWITT: Well, Your Honour—

A -- he said, "No."

MR. HEWITT: -- is Mr. Justice Ledaine going to be here to be cross examined on the evidence that this witness just attempted to give? That's—that's simply not an appropriate answer at all.

MR. CONROY: I—I think my friend is right.

THE COURT: I think the witness has strayed beyond—

MR. CONROY: Yes.

Q You—you shouldn't give evidence about what somebody else has said.

A I'm sorry.

Q If we wanted an update though on Ledaine—on the Ledaine reports the—apart from the Australian material that we have would the Morgan and Zimmer material be the other source for an update?

A Yes, I think it's even a little bit more current than

- than the Australian one just simply because it was done a bit later in time but they're both excellent detailed summaries of the world literature in all those topic areas.

Q Okay, next then we have Wyle and Rosen (phonetic), "Chocolate to Morphine, Undertaking Mind Active Drugs".

A Andrew Wyle is probably the most noted person who has written in the area of what he likes to describe as a drive to experience altered states of consciousness and we touched on this earlier in commenting on some of the earlier things in our brandeis brief as well but a lot of ethnopharmacologists, people who study the use of drugs as part of indigenous cultures around the world, have pointed out that wherever you go you find that people go sometimes to extraordinary lengths and use some very unpromising even somewhat apparently disgusting materials to achieve alterations of consciousness for spiritual reasons, for social reasons, for relaxation, for allaying anxiety and so on.

And what Wyle has been particularly interested in is how these useful things get acculturated, how they get woven into rituals and how they get woven into religious beliefs and social movements and organizations and things and that these are the real controls over when people use and how much they use of these substances and he points out that there are a lot of psychoactive substances that are not even commonly considered as such and that's where the name "Chocolate to Morphine" comes in because on the surface of it it sounds patently absurd and ridiculous to—to put those two words in the same sentence because chocolate bars we give to our children and morphine is considered a—a major narcotic but what he's pointing out is that there are some actually fairly strong psychoactive substances, namely the xanthine derivatives, theophylline and theobromine in chocolate and that we—

Q I think the Court wanted us to stay away from chocolate.

A Excuse me. But certainly hot chocolate is—is used as a pick-me-up and I've always found it ironic that parents that wouldn't let their children drink coffee or tea give them unlimited supplies of—of hot chocolate and they're giving them very similar substances.

Q Was there a time when chocolate was illegal?

A No, to my knowledge I don't believe it—it's one of the few things that are—that are legal and—and accepted in our society right now that somebody at some point hasn't considered to be absolutely beyond the pale.

Q Okay, now, there's one other book that we've discussed that's not on the list and that is a book called "Peaceful Measures" by Bruce Alexander, is that right?

A Yes.

Q And that—Bruce Alexander incidentally is a professor of psychology at Simon Fraser University?

A That's correct, he's a colleague of mine in my department.

Q And he was the witness who appeared in the Shollette case, is that right?

A I believe so.

Q And the book "Peaceful Measures" by—you're familiar with that book first of all?

A Yes.

Q And does it set out in great detail basically the position of Professor Alexander?

A It does.

Q And from the title "Peaceful Measures"—well, perhaps you can tell us in a nutshell what essentially that book deals with.

A Well, what the title alludes to is he's calling for a truce and—and peace in place of—of war in the area of the war on drugs and as a scientist Bruce Alexander has studied these drugs and their effects on people and comes to the conclusion that he does not find them sufficiently dangerous to—to be the cause of a holy war as he likes to call it and—and so he documents that in the book and then tries to understand how the current situation came to be the way it is and why it's so hard to change, why attitudes have become so entrenched and so on. And what he—what he does is says, "Well, you know, what would a caring society do if it were to try to deal with the—the admitted problems that these drugs can—can cause and how could we do that that would be least wasteful of our resources, how could we do that in

ways that would be most in keeping with our tradition as a—a free and open society that—that cares about due process and civil liberties and—and how could we most effectively target the problems and most effectively stay away from all of the negative consequences of the war on drugs?" and that's what his "Peaceful Measures" is. It's a book that lays out in the latter part his suggestions how various kinds of local control could be brought in to—to control use much more effectively because what he says like others that I've discussed earlier said is that in the final analysis what really controls human behaviour in this and most other aspects whether it's gambling or sexual behaviour or anything else is the kind of social interactions, the kind of

- of social psychological variables that are the real day-to-day controllers of our behaviour, that there just aren't enough police in the world to—to legislate and punish people for all of the kinds of infractions that they could perhaps engage in and—and so he's saying, "Well, how could we deal with drugs in the same way we deal with many other things that we agree are—are potentially harmful?" and yet we choose to deal with them within the mores and folkways of everyday social discourse.

Q One of the—the things that have been discussed in the evidence as far as harmful effects from Marijuana appears to be more the process of smoking as opposed to the Marijuana itself, I think you gave some evidence of that earlier. Can—what sorts of social policy options or what approaches do we use in terms of controlling smoking, the process of smoking as opposed to the particular substance necessarily?

A Since it's become apparent that there is damage to the pulmonary system and—and the risk of carcinogenesis from—from smoking tobacco an increasing number of jurisdictions have decided that it is a social good to try to restrict the places in which people who nonetheless choose for themselves to smoke are allowed to do so, that it's become apparent that there is some risk although it has been statistically shown to be not as big a risk as it had originally been thought to be but nonetheless some risk to innocent bystanders from side stream smoke and, therefore, it has been deemed permissible to restrict the times and places that people engage in tobacco smoking and—and this is now across the country in kind of a patchwork quilt way being addressed by local municipalities in terms of bylaws that will limit smoking in public places and other businesses and what—what's emerging is—is a lot of different local options. Some places are taking one approach, some are taking another which is essentially exactly what Bruce Alexander is arguing for in "Peaceful Measures", that it

ought to fit the local concerns and the beliefs in—in the community.

Q So is it fair to say then if—if the smoking process continues in relation to Marijuana, if people keep smoking it as opposed to using it in pill form or using it—using some device to minimize the impact of the smoking, that that's one of the more harmful effects of the use of Marijuana as it is with tobacco because of the smoking process, that's the first point, and secondly, that that harm to the individual user or to others in society is dealt with in a far less restrictive manner in relation to other substances than it is in relation to Marijuana?

A Yes, I'd agree on both counts. I think everybody agrees that it's not a wise thing to be putting products of burning vegetative matter in—in your lungs and if the effects of that are otherwise desirable and otherwise not harmful, well, then I think a prudent person would explore other ways of—of administering the substance and that's something that is being explored now and the restriction on—on smoking in public places or where other people could be exposed to the side stream smoke has been widely accepted in most communities and I think could be adapted in the case of Marijuana smoking if people choose to continue to use that as the primary means of administration but it can be administered so many other ways that if the law were changed and availability changed I wouldn't be surprised to see the majority of people choosing to administer it either orally or by vaporizer or other ways that would minimize any kind of lung damage to themselves or anybody else.

Q Okay, we've talked about or often used tobacco or alcohol as other sorts of substances that are regulated in one way or another by government in comparing to Marijuana. What other substances I'm—and we used skiing and other sorts of activities for—were used as examples in some of the evidence but what other substances from a psychopharmacological perspective would you put in the same category as Marijuana in terms of harm to the individual or harm to—to others or to society at large, not necessarily substances that are illegal in fact, are—are there other substances that we could—that you could point us to that you say would fit within the same sort of category?

A I think we could look at dietary things. It's quite clear now that eating a high fat diet and not engaging in sufficient exercise is harmful to one's health and through

educational means and promotion by Health & Welfare Canada, for instance, that word has been spread quite widely and a lot of people are indeed responding, that people are buying low fat items in greater numbers and they are beginning to exercise more and that's all to the good. On the other hand we haven't chosen to try to severely punish those who say, "It's my life and I'll choose to lead it the way I wish and I would rather enjoy these things now and if it shortens my life it comes off the end and so be it," so we—we leave that to a matter of personal discretion in a free society but there's no reason why the government can't and shouldn't point out the—the risks and—and let people make those decisions.

Q Okay, just one other point from my notes. When we talked about Ledaine and updates in terms of that—those reports we mentioned Morgan and Zimmer and we mentioned also the Australian report. To be specific in terms of the Australian report that would include, of course, Exhibit 20 that we filed yesterday which was the "Legislative Options for Cannabis in Australia"?

A That's right, the McDonald report, we've been referring to it as shorthand.

Q Okay, not just what's in the Crown's brandeis brief?

A No, that was part of—or that they were companion pieces.

MR. CONROY: Okay, now, I note the time, Your Honour. I was

going to suggest we plug on. The only area I have left to cover with this witness is, however, the items arising out Hemon and so I think the time would be better served by me going back through that and trying to pick out topics that we haven't already covered and that I can try to narrow down to fit within the scope of your ruling so that—because I must confess I had planned to basically take him through the transcript and have him comment on certain points and but I—I think if I reorganize that to fit within your ruling that might move a little bit quicker tomorrow morning and then my friends can cross examine.

THE COURT: All right. We'll adjourn this matter then

to—

MR. CONROY: Nine thirty tomorrow morning.

THE COURT: -- nine thirty tomorrow morning which is—

MR. HEWITT: The 13th I think.

THE COURT: Thank you, March 13th, 1996, courtroom nine.

MR. CONROY: Thank you, Your Honour.

MR. HEWITT: Thank you.

(WITNESS ASIDE)

(PROCEEDINGS ADJOURNED TO 1996 MARCH 13 AT 9:30 A.M.)