

FEDERAL COURT

AN/lms

B E T W E E N:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO.  
and all other persons or entities unknown to the Plaintiff  
who are reproducing, publishing, promoting and/or  
authorizing the reproduction and promotion of the  
Infringing Materials

Defendants

- - - - -

This is the Cross-Examination of GRAHAM OSPREAY, on his  
affidavit sworn the 14th day of July, 2010, taken at the law  
offices of OGILVY RENAULT LLP, 200 Bay Street, Suite 3800,  
Toronto, Ontario, on the 18th day of August, 2010.

- - - - -

APPEARANCES:

BRIAN GRAY	}	-- for the Plaintiff
ALLYSON WHYTE NOWAK	}	

ALSO PRESENT:

Alnaz Jiwa

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1                               , affirmed

2       CROSS-EXAMINATION BY MR. GRAY:

3       1.       Q.       Mr. Ospreay, you have been sworn?

4               A.       Yes, sir, I have.

5       2.       Q.       And can you state your full name for the  
6               record?

7               A.       Graham P. Ospreay.

8       3.       Q.       Can you spell your last name?

9               A.       O-S-P-R-E-A-Y.

10      4.       Q.       And you have sworn an affidavit dated July  
11               15 (sic), 2010 in these proceedings?

12              A.       Yes, sir.

13      5.       Q.       And that affidavit has attached to it three  
14               reports?

15              A.       Yes, sir.

16      6.MR. GRAY:       And can we...Mr. Jiwa, I am just referring  
17                       to the respondents' motion record. They  
18                       are at tabs 9B, 9C, and 9D.

19      MR. JIWA:       Yes.

20      7.MR. GRAY:       Can we just refer to them, for convenience,  
21                       as the 9B, 9C and 9D reports?

22      MR. JIWA:       Yes.

23      8.MR. GRAY:       And the 9B and 9C reports are dated June 9,  
24                       2010?

25      MR. JIWA:       Yes.

1 THE DEPONENT: Can I look at these copies?

2  
3 BY MR. GRAY:

4 9. Q. Yes. And the...

5 A. This is Brian Lindblom's affidavit. Is it  
6 okay I use this?

7 10. Q. Is it okay to use it?

8 A. Yes, with the attachments.

9 11. Q. Well, you can have it there in front of you  
10 if you would like, Mr. Lindblom's affidavit, but I  
11 would like to have your own affidavit in front of  
12 you right at the moment.

13 A. I think they are in there, sir.

14 12. Q. Yes, but do you have a copy of your own  
15 affidavit?

16 A. I believe they are in there, or he has a  
17 copy of them with him.

18 13. Q. This is my marked-up copy. Do you have a  
19 clean copy?

20 MR. JIWA: This is clean. There is no mark-up. Let me  
21 check.

22 14. MR. GRAY: Okay. I believe you.

23  
24 \_\_\_\_\_:

25 15. Q. Okay. So, going back just for clarity,

1           your affidavit of July 15, 2010 contains three  
2           reports at 9B and 9C?

3           A.           Yes.

4       16.       Q.           These are reports dated June 9, 2010?

5           A.           Yes.

6       17.       Q.           And at 9D?

7           A.           Yes.

8       18.       Q.           A report dated July 13, 2010?

9           A.           Yes, sir.

10      19.      Q.           Okay. Now, just for the sake of the  
11           record, the plaintiff is His Highness Prince Karim  
12           Aga Khan, and if I refer to him as His Highness or  
13           Aga Khan, you will understand I mean the plaintiff?

14           A.           Yes, sir.

15      20.      Q.           And when were you retained, Mr. Ospreay?

16           A.           Sorry, it's in my working records there, if  
17           I can use those, per chance?

18      21.      Q.           Would you like to have your files back  
19           here?

20           A.           Yes.

21      22.      Q.           It's unfortunate that we don't have the  
22           copies of these files, so it's going to be...do you  
23           need both of them?

24           A.           Yes, please. It would be May 27th  
25           approximately.

1       23.       Q.       And who retained you?

2       A.       There were three individuals present, Mr.  
3       Nagib Tajdin and Alnaz Jiwa.

4       24.       Q.       Sorry, you had three individuals, Mr.  
5       Jiwa...

6       A.       Yes, the other individual was...when I met  
7       with them, it was not identified who the...the third  
8       party was party to it. I was aware that Nagib was  
9       and Alnaz was. There was a fellow by the name of  
10      Ali Dhalla present.

11      25.       Q.       So there were three people that retained  
12      you?

13      A.       Three people were present. I was aware  
14      that the individuals who were retaining was actually  
15      under the name of Nagib Tajdin, and then also Alnaz  
16      Jiwa was a party to it.

17      26.       Q.       Okay. Did you have a retainer agreement?

18      A.       A retainer agreement? No. Terms and rates  
19      went out with standard CV, and the client peruses it  
20      and decides to retain us.

21      27.       Q.       And what were the terms and rates?

22      A.       The terms and rates were at eight hours at  
23      \$200 an hour, 1,680, or 1,600 at the time...it was  
24      before HST, the retainer required.

25      28.       Q.       And how much retainer, sorry?

1           A.           It was 1,680. That was with the HST, I  
2           think, on the second.

3       29.       Q.           Sorry, so you determined...

4           A.           The \$200 an hour, and then the 80 HST,  
5           which had just been previous GST.

6       30.       Q.           And then you had \$1,680 retainer?

7           A.           That is correct.

8       31.       Q.           Okay. And how much did you ultimately get  
9           paid in respect of these opinions?

10          A.           Well, initially, 1,680. There were further  
11          examinations, and I don't have those files with me.

12       32.       Q.           What further examination are you talking  
13          about?

14          A.           The second examination where the additional  
15          known specimens were submitted, so working time,  
16          billable hours for working time.

17       33.       Q.           And so you don't have those files with you?

18          A.           No. They would actually be under my  
19          invoice, noted in an invoice.

20       34.       Q.           I see. You don't have any idea how much  
21          you were paid?

22          A.           I believe...this is just recollection...I  
23          believe there is an additional \$400, I believe,  
24          charged for the additional examination. I am not  
25          paid for my opinion. I am paid for my working time.

1       35.       Q.       So are you saying that all the reports, the  
2               9B, 9C and 9D reports cost about \$2,000 to \$2,100?

3       A.       I would be guessing. I would have to look  
4               at my financial records to give you an exact figure.

5       36.       Q.       Okay. Do you have any idea at all at this  
6               point?

7       A.       No, sir.

8       37.       Q.       I see. Pursuant to your retainer, what  
9               were you requested to do?

10      A.       Initially, I was requested to examine two  
11              signatures, one was a photocopy, one was an  
12              original, to determine whether or not they were  
13              signed by the individual named Aga Khan.

14      38.       Q.       And the signatures were where?

15      A.       I am sorry?

16      39.       Q.       The signatures were where? You said you  
17              had two signatures: One was a photocopy and one was  
18              original. Where was the photocopied signature?

19      A.       The photocopy...I am referring to my  
20              reports. I am sorry, sir.

21      40.       Q.       The reports are in the material filed in  
22              9B, are they not?

23      A.       Yes. Well, I am going back to the 30th  
24              because that was the initial on the 30th. I believe  
25              the ones that were filed, were they not the one with



1 the 20 signatures, not the initial submission with  
2 the 10 signatures on the 30th?

3 41. Q. Okay. So you were asked on...the first  
4 report was May 30?

5 A. Yes, sir, and there was...yes. The filed  
6 reports for the affidavit were the ones dated June  
7 9th. The initial retainer and the initial reports  
8 were dated for May 30th. They only included 10  
9 known signature specimens of Aga Khan.

10 42. Q. Okay. Can I see that report?

11 A. Yes, sir. It's a copy from the court  
12 affirmation, which was a photocopy of the 2-page  
13 letter addressed to "My Spiritual Child", was the  
14 original, sir.

15 43. Q. Okay. Can we mark this? We will have to  
16 make photocopies later. This is the interim report  
17 of May 30, 2010, dealing with the letter of January  
18 24, 2010; is that right?

19 A. Yes, sir.

20 MR. JIWA: I would also ask, Counsel, if there are any  
21 individual names, other than parties, they  
22 should be redacted. I am not sure if there  
23 is any names.

24 THE DEPONENT: There are no attached documents on there.  
25 I don't believe I put any names.

1 MR. JIWA: As long as there is no individual names in  
2 there.

3 44.MR. GRAY: Well, I don't see any individual names.  
4 Let's mark this then, but we only have one  
5 copy, so we will just put a little notation  
6 and we will make copies and mark it later.

7 THE DEPONENT: That is fine, sir.

8 45.MR. GRAY: We will mark this as Exhibit 1 to your  
9 cross-examination.

10  
11 :Interim Report dated May 30, 2010,  
12 regarding letter of January 24,  
13 2010  
14

15 \_\_\_\_\_:

16 46. Q. Now, I take it that you concluded in your  
17 interim report with respect to the January 24  
18 letter...your conclusion is that there is sufficient  
19 evidence to support a conclusion that it is highly  
20 probable that the writer of the known signature  
21 specimens K1 to 10, did not write the questioned  
22 signature. The writer of the known signature  
23 specimens, Prince Karim Aga Khan...

24 A. Yes, sir.

25 47. Q. ...did not write the questioned signature

1 on the second page of the computer-generated letter?

2 A. Yes.

3 48. Q. And you concluded that on the basis of the  
4 10 specimens you had at that time?

5 A. Yes, sir.

6 49. Q. Which all but one were photocopies; is that  
7 right?

8 A. I believe two. I believe two were  
9 original, sir, 6 and 7.

10 50. Q. So you had two originals and you had eight  
11 photocopies?

12 A. Yes.

13 51. Q. And the originals you had were, at that  
14 point...the earliest one was 14 years old, April  
15 2nd, 1996?

16 A. I believe so. The documents are dated.

17 52. Q. So, based on that, 10 specimens, including  
18 two originals, the earliest of which was 1996, you  
19 concluded that it was probable that the letters  
20 weren't written by the same person?

21 A. Yes.

22 53. Q. And I take it that, subsequently, you  
23 amended this report to become the report that is 9B;  
24 is that right?

25 A. Yes.

1       54.       Q.       The report of June 9 dealing with the same  
2                   matter?

3       A.       Yes. I am sorry, 'B' in this one is the  
4                   original "My Spiritual Child"; that is correct.

5       55.       Q.       Right.

6       A.       Yes, thank you.

7       56.       Q.       So the 9B is the final report of Exhibit 1?

8       A.       That is correct, based on the original,  
9                   yes.

10      57.       Q.       And I am showing you the interim report of  
11                   May 30 on the Federal Court affirmation. That is  
12                   right?

13      A.       Yes.

14      58.MR. GRAY:       So we will mark that as the next exhibit,  
15                   Exhibit 2.

16

17                   :Interim Report of May 30, 2010,  
18                   regarding Federal Court affirmation

19

20      \_\_\_\_\_:

21      59.       Q.       And, at this point, you had only a  
22                   photocopy of the Federal Court affirmation; is that  
23                   right?

24      A.       That is correct.

25      60.       Q.       And you had the same limited number of

1 samples, 10 samples?

2 A. That is correct.

3 61. Q. Of which two are original?

4 A. That is correct.

5 62. Q. Of which the last original was dated April  
6 1996?

7 A. As noted, yes.

8 63. Q. And in the period from 2008 to 2009, you  
9 had one photocopy from 2009 and one photocopy from  
10 2007?

11 A. As noted, yes.

12 64. Q. And on the basis of that, you concluded at  
13 that time, looking only at the photocopy of the  
14 affirmation, that:

15 "...There is sufficient evidence to support a conclusion  
16 that the writer of the known specimen  
17 signatures, Prince Karim Aga Khan, probably  
18 did not write the questioned signature on  
19 the Federal Court affirmation..."

20 Is that right?

21 A. Yes, sir, that is correct.

22 65. Q. Okay. And the final version of this  
23 Exhibit 2 is your report number 9C?

24 A. Yes, sir, that is correct.

25 66. Q. In which you strengthened your opinion

1 further to say that it is sufficient evidence to  
2 support a conclusion that Prince Karim Aga Khan did  
3 not write the questioned signature?

4 A. That is correct, sir.

5 67. Q. But you were ready to do that on Exhibit 2,  
6 based on the photocopy of the affirmation?

7 A. Not a complete conclusion, no. It was  
8 probable.

9 68. Q. You were prepared to say it was probable at  
10 that time, based on an examination of a photocopy  
11 only of the document?

12 A. That is correct, sir.

13 69. Q. Now, in your reports, did you...I assume  
14 that anything that was important to you in coming to  
15 your conclusions, you put in your report?

16 A. The primary characteristics that I  
17 found...I found a lot of similarities, but the  
18 primary differences that I saw, yes.

19 70. Q. Well, anything that was important to your  
20 conclusions you put in your report?

21 A. Yes, sir.

22 71. Q. Okay. And did you undertake any  
23 examinations, other than what was indicated in your  
24 report?

25 A. No, sir.

1       72.     Q.       Well, did you not...for instance, that  
2               can't be true. Isn't it true that you undertook an  
3               examination from Mr. Brian Dalrymple?

4       A.       That was on a report you have not mentioned  
5               yet, sir.

6       73.     Q.       Well, I am talking about your reports in  
7               general when I ask.

8       A.       All three?

9       74.     Q.       I am talking about all three, so let's go  
10              back now.

11      A.       Yes.

12      75.     Q.       Was there anything important to you that  
13              you included in your conclusions that you did not  
14              put in your reports?

15      A.       In all three?

16      76.     Q.       In all three.

17      A.       Yes.

18      77.     Q.       And what is that?

19      A.       The examinations conducted by Brian  
20              Dalrymple.

21      78.     Q.       And that was important to your conclusions?

22      A.       No. It was consulting with another expert  
23              to try to determine abnormalities that I was seeing  
24              within the ink of the third document that I could  
25              not identify. I was unaware of what I was seeing,

1           so I sought the expertise of another expert who may  
2           be able to assist or identify what I was seeing  
3           microscopically but could not identify.

4       79.     Q.           Right. You mentioned that in that report,  
5           the third report, the 9D report?

6           A.           It was inconclusive. He gave no report.  
7           It was inconclusive. He said he was not qualified  
8           to opinion. He indicated that it was not within his  
9           expertise. What he was seeing, he could not comment  
10          on.

11      80.     Q.           Well, isn't that relevant that it was  
12           non-conclusive? Isn't it relevant that you actually  
13           tested it and it was non-conclusive?

14          A.           I suppose. It's in my working notes. It  
15           was not a part of my report because there was no  
16           opinion to be given or a comment to be made upon it.

17      81.     Q.           Well, wouldn't there be a comment that you  
18           couldn't form a conclusion about whatever it is you  
19           were trying to get Mr. Dalrymple to opine about?

20          A.           I cannot speak for Mr. Dalrymple's opinion  
21           or his comments in my report, but I did make a note  
22           within my report of the abnormalities that I was  
23           seeing that I could not identify.

24      82.     Q.           And what were you asking Mr. Dalrymple to  
25           do?



1           A.           To assist if he could identify what I was  
2           seeing. I concluded that I thought that the third  
3           document was some form of relief print. I could not  
4           identify the process. I could not identify the  
5           colour change and tonal changes within the ink. As  
6           a well respected and known expert, I thought he  
7           might be of assistance in the identification. If  
8           his identification had proved or...was any  
9           significant information that he would have been  
10          imparted to me, I would have included it in my  
11          report. He did not.

12       83.       Q.           What is a relief print?

13       A.           Relief print? Relief print is a print that  
14       sits on top of the paper or subsurface, and it can  
15       either be carved out, like a block print as opposed  
16       to intaglio, which leaves a raised surface.

17       84.       Q.           Right. So it's sitting on top of the  
18       surface?

19       A.           It's like a stamp, that is correct.

20       85.       Q.           And he could not conclude that it was a  
21       stamp?

22       A.           No. As he indicated to me very clearly, it  
23       was not within his expertise to provide an opinion  
24       as to whether it was a stamp or not.

25       86.       Q.           So he could not conclude whether it was on

1 the surface or not?

2 A. That is correct, and he was not asked that  
3 problem. He was asked the problem to assist in  
4 identifying tonal differences and changes I could  
5 not identify; likely outside of my expertise to  
6 comment on because I am not an ink expert.

7 87. Q. Well, did you mention that in your report,  
8 9D, that you are not an ink expert?

9 A. No. Why would I?

10 88. Q. Well, because you are examining the ink and  
11 penetration, are you not? Wasn't that what you were  
12 doing?

13 A. No. I was examining the document as to  
14 whether or not it was a pen, hand-executed writing  
15 and signature. I could not identify it. The  
16 hypothesis was that it was not written by hand;  
17 therefore, I tried and attempted to identify what  
18 process created the writing of the signature. I  
19 advised my client, also, that there were other ink  
20 experts available if he chose to send it to another  
21 expert other than myself.

22 89. Q. But you asked Mr. Dalrymple to determine  
23 whether it was on the surface or not. He could not  
24 determine whether it was on the surface...

25 A. No, sir, I did not say that. I said, sir,

1           that he was asked to identify, if he could identify,  
2           the tonal changes within the ink, or what...from a  
3           spectral analysis perspective, which he is very  
4           proficient at, could he identify something that I  
5           could not identify. Visually, I was seeing, but I  
6           did not know what it was.

7       90.     Q.           So, in your report, you observed the tonal  
8           abnormalities are seen in the ink distribution, do  
9           you not, in 9D?

10          A.           One moment, please. Yes.

11       91.     Q.           Wouldn't it be relevant in mentioning that  
12           to say that you had sent it out for analysis, and  
13           the person you sent it to couldn't form a conclusion  
14           about it?

15          A.           I did not think so at the time.

16       92.     Q.           You didn't think so at the time. Do you  
17           think so now?

18          A.           No, because there was no opinion given.

19       93.     Q.           But isn't that relevant, that you could  
20           not...you are suggesting there are tonal  
21           abnormalities and that there are areas that are void  
22           of ink. And yet, you have sent it out for the very  
23           purpose of examining that, and the person could form  
24           no conclusion?

25          A.           No. I sent it to him...I took it to him to

1           try to assist, if he could, in identifying what I  
2           was seeing. He could not.

3       94.     Q.           And you took it to him to assist you as to  
4           whether or not there were tonal abnormalities?

5           A.           I consulted with another forensic expert,  
6           that is correct.

7       95.     Q.           So you consulted with another forensic  
8           expert about whether there are tonal abnormalities,  
9           he could not form a conclusive opinion about it, and  
10          you didn't think it relevant to mention that in your  
11          report?

12          A.           At the time I did not. It was noted in my  
13          working file.

14       96.     Q.           Now, Mr. Ospreay, are you a member of the  
15          Canadian Society of Forensic Science?

16          A.           No, sir.

17       97.     Q.           Are you a member of any forensic science  
18          organization in Canada?

19          A.           No, sir.

20       98.     Q.           Now, could you produce for me the originals  
21          of the letters of January 24 and February 18 that  
22          you examined?

23          A.           I don't have those originals, sir. I  
24          returned them to Mr. Alnaz Jiwa.

25       99.MR. GRAY:       Mr. Jiwa, I am asking you again to produce

1 the originals of the letters of January 24  
2 and February 18 you examined.

3 MR. JIWA: I will not be producing those.

/R

4 100.MR. GRAY: All right. And why is that?

5 MR. JIWA: They are not important those. We don't have  
6 to produce documents in terms of that.  
7 They were...those documents are the only  
8 documents that we have, and we won't be  
9 producing those.

10 101.MR. GRAY: You won't produce them, even here in this  
11 room, with yourself present?

12 MR. JIWA: No. I don't have them now. I gave them to  
13 Mr. Tajdin. They both belong to Mr.  
14 Tajdin.

15 102.MR. GRAY: Will you produce them so that I can  
16 examine them with you present?

17 MR. JIWA: It is Mr. Tajdin's documents. They are  
18 addressed to him, so...

19 103.MR. GRAY: All right.

20  
21 \_\_\_\_\_:

22 104. Q. Can you produce for me the samples that you  
23 referred to in your reports?

24 A. Yes, sir. They were given to you  
25 previously here.

1       105.     Q.       These are photocopies.

2             A.       Yes, sir. They are working photocopies.

3       106.     Q.       They are working photocopies?

4             A.       Yes, sir.

5       107.     Q.       Do you have the originals of the documents  
6             you referred to in...

7             A.       No, sir, strictly copies that I made. I  
8             made a file copy and a working copy. The file copy  
9             remained in the file; the working copy had the names  
10            of the individuals...for privacy concerns, at the  
11            request of the client, and per my policy as well, to  
12            black out...they were blacked out at the request of  
13            the client.

14       108.MR. GRAY:     Mr. Jiwa, I am asking you to produce the  
15                         originals of the samples that Mr. Ospreay  
16                         looked at.

17       MR. JIWA:       We don't have those. We have given them to  
18                         the people that had lent to us...you have  
19                         to remember, this...this is very, very  
20                         important to the individuals who received  
21                         them from the Imam, and they had given us  
22                         just for a very short time and I returned  
23                         them to them again.

24       109.MR. GRAY:     Okay.

25

1 BY MR. GRAY:

2 110. Q. So, Mr. Ospreay, you understand these are  
3 samples given to you by Mr...who were they given to  
4 you by, these samples, these so-called known  
5 samples?

6 A. At the time, in the first two reports of  
7 the 30th and of the 9th, not including the third  
8 report, were given to me at a meeting by Mr. Alnaz  
9 and Mr. Nagib Tajdin.

10 111. Q. Okay. And do you know where these  
11 documents came from?

12 A. No, sir, I do not.

13 112. Q. Do you know the chain of possession of  
14 these documents?

15 A. No, sir, I do not.

16 113. Q. In the case of photocopies, do you know if  
17 they have been changed in the photocopying, or  
18 anything of that sort?

19 A. No, sir.

20 114. Q. Do you know anything about the dates of the  
21 documents?

22 A. No, sir.

23 115. Q. All right. So you understand provenance,  
24 obviously, because you were an art examiner at one  
25 point, right?

1 A. Yes, sir.

2 116. Q. You don't know anything about the  
3 provenance of these documents; they were just given  
4 to you?

5 A. Rarely do I do when a client hires me, sir.

6 117. Q. But yet, you assumed in your report that  
7 they were written by His Highness; is that right?

8 A. If I can bring to your attention, sir,  
9 the...

10 118. Q. Let's look at report 9B for the moment, the  
11 one dated June 9 on the January 24 letter.

12 A. I think in each of my reports, sir, I am  
13 very careful to indicate in a statement in the  
14 opening to...described as the document such as the  
15 9th on the second, involving the original "Dear  
16 Spiritual Child":

17 "...You have submitted documentation of the known signature  
18 specimens of Prince Aga Khan. You have  
19 asked me to render an expert (sic) upon the  
20 following. As the standards..."

21 In my conclusions are the standards...or described are the  
22 standards:

23 "...As the standard of comparison, I have used the following  
24 documents purportedly containing the known  
25 signatures of..."



1 I am not a witness to the signing of these, so I cannot  
2 claim that they even exist if it's a photocopy.

3 119. Q. But let me refer you to your opinion on  
4 page 6:

5 "...There is sufficient evidence to support a conclusion  
6 that the writer of the known signature  
7 specimens (standards K1-20), Prince Karim  
8 \_\_\_\_\_ the questioned  
9 signature on the second page of the  
10 computer-generated letter..."

11 Now, is that not an unqualified opinion that the Aga Khan  
12 did not write the letter of January 24?

13 A. Yes.

14 120. Q. And yet, that is based upon your assumption  
15 about the specimens. Are you not assuming that  
16 those specimens, which you say are the known  
17 signature specimens, Prince Karim Aga Khan...is it  
18 not inherent in that unqualified opinion, that those  
19 signature specimens came from Prince Karim Aga Khan?

20 A. Two things to that answer, sir: Number 1,  
21 in the description of the documents, "purportedly  
22 written" qualifies that it's purportedly written. I  
23 am not a witness, therefore, that is why the  
24 conclusion of "probably written". And I will tell  
25 you that, within my documents, with my consultation

1 with both clients, I questioned on several occasions  
2 whether or not Prince Aga Khan signs every document.

3 121. Q. But you didn't see him sign any documents,  
4 did you?

5 A. No, sir.

6 122. Q. And yet, your opinion appears to be  
7 a...whatever you may have...you used the word  
8 "purportedly" on page 3, your opinion is  
9 unqualified, and appears to suggest that the Aga  
10 Khan...you have no way of knowing that, do you? You  
11 have no way of knowing...

12 A. No...

13 123. Q. All you know...excuse me, just a second.  
14 All you know is that...if we take your opinion and  
15 assume it's correct, which obviously we are not  
16 assuming and we are not agreeing with, but if we  
17 assume your opinion is correct, all that you are  
18 purporting to say, really, or should be purporting  
19 to say, is that the signature on the letter of  
20 January 24 is not the same as the signatures on the  
21 sample handwriting; is that right?

22 A. I am sorry, you have lost me on what you  
23 are trying to say there. What is your question,  
24 sir?

25 124. Q. Isn't it fair to say that your opinion

1 really is only addressed to the question of whether  
2 or not the signature on the letter of January 24 is  
3 similar to or the same as the signatures on the  
4 sample documents?

5 A. That is question posed as to whether or not  
6 the Aga Khan, in my opinion, signed the document in  
7 question.

8 125. Q. But you don't know which of...as opposed  
9 to...let's look at your report, 9C. 9C is a copy of  
10 a Federal Court affirmation. You saw the original  
11 of that?

12 A. No, that is the original, sir, that I have  
13 marked "Original" on it.

14 126. Q. Right. The one you saw is the original?

15 A. Yes, I saw both the copy and the original.

16 127. Q. And you saw that it was notarized by a  
17 notary public in Massachusetts?

18 A. Yes.

19 128. Q. And are you aware that a lawyer in  
20 Massachusetts witnessed the signature as well, and  
21 swore an affidavit to that effect?

22 A. I am understanding that, yes.

23 129. Q. You understand that. So, as between the  
24 provenance of a document that has been witnessed by  
25 a notary public and affirmed to by a lawyer, and the

1 provenance or authenticity of photocopies and other  
2 documents given to you from an unknown source, which  
3 do you think is more reliable?

4 A. I am sorry, forgive me. In my practice,  
5 and I am sure in other document examiners' practice,  
6 oftentimes lawyers' signatures, as many other  
7 individuals, come into play as to whether they are  
8 questioned or not questioned. It is not an uncommon  
9 problem.

10 I am not a witness to being a party to the signing  
11 of that document to the lawyer purportedly being  
12 there, who the lawyer was, what documentation was  
13 relied upon...I understand a passport...to identify  
14 the person purportedly as Aga Khan. I am not there  
15 to witness that. I can't make comment to that.  
16 It's an unfair question.

17 130. Q. But you did make a comment on it, didn't  
18 you? Isn't your opinion, 9C, a comment on it?  
19 Isn't your opinion, 9C...read your opinion to me,  
20 please.

21 A. "...There is sufficient evidence to support a  
22 conclusion the writer of the known  
23 signature specimens (standards 1 to 20),  
24 Prince Aga Khan, did not write the  
25 questioned signature on the Federal Court

1 affirmation, Q1..."

2 131. Q. Right. So your conclusion is that the  
3 Prince Aga Khan, His Highness, did not write the  
4 affirmation? Isn't that your conclusion?

5 A. That is correct.

6 132. Q. And you just told me that you are not here  
7 to make a judgment as to which one of these  
8 signatures is correct?

9 A. Not by witness, sir.

10 133. Q. Right. Okay.

11 A. You posed a question as to whose  
12 credibility is more...a lawyer's signature? I don't  
13 go by that. I am impartial. I go by the  
14 examinations conducted based upon similarities or  
15 dissimilarities of the known signatures and the  
16 questioned signatures, and that is all.

17 134. Q. Well, we will let a court decide who is  
18 impartial or not. But you are suggesting to me that  
19 it is impartial to say that Prince Karim Aga Khan  
20 did not write the signatures, rather than simply to  
21 make a comparison of the two signatures? You are  
22 suggesting to me that that is impartial?

23 A. Based upon my comparisons of the known  
24 signature specimens as compared to the questioned  
25 signature, it was my opinion he did not sign the

1 signature.

2 135. Q. But how do you know who the "he" is? You  
3 have no way of knowing that. You just admitted  
4 that. You don't know who the "he" is. All you know  
5 is that there is a discrepancy between the two sets  
6 of signatures.

7 A. Sir, it's based upon an examination of  
8 known signature specimens purportedly signed by Aga  
9 Khan. That is the only examination I can conduct.

10 136. Q. Now, can we look at your notes for the  
11 first report, please? Do I understand correctly  
12 that the notes that you would have made in examining  
13 the signatures of the letter of January 24 are the  
14 red handwriting or red circles that are noted on the  
15 documents themselves?

16 A. They are observations as I go through the  
17 examination.

18 137. Q. Are there any other observations, other  
19 than those?

20 A. There were written notes there for the May  
21 30th. Also notes on the folder, and I also was  
22 using a recorder at the time when I am doing visual  
23 examinations.

24 138. Q. And so you were using a recorder. Are  
25 those notes somewhere?

1           A.           There are notes that are attached to the  
2           document for the May 30th examinations.

3       139.   Q.           Okay. Well, maybe if you could just hand  
4           to me the sum total of your notes that you used to  
5           form your opinion.

6           A.           Notations on the copies of the known  
7           signature specimens?

8       140.   Q.           Just hand me that first. So let's deal  
9           with that first. So the first thing you are showing  
10          me is the known signature specimens of...they are  
11          photocopies of K1 to K20?

12          A.           Yes.

13       141.   Q.           And what you are referring to...

14          A.           And on the Q.

15       142.   Q.           Sorry?

16          A.           And on the questions.

17       143.   Q.           Well, let's do one at a time, okay?

18          A.           Yes, sir.

19       144.   Q.           So the red, what shall I say, circles, if  
20          you will, on the (a) of the documents, K1 to  
21          K20...you note "Poor copy" on K1, for instance.  
22          These are some of your notes?

23          A.           That is right. They are just points that I  
24          identify as I am going through the examination.

25       145.   Q.           All right. And if you haven't marked a

1 document at all, then you didn't have any notes on  
2 that document?

3 A. That is correct.

4 146.MR. GRAY: Okay. Can we mark this as the next  
5 exhibit? We will mark it as a bundle,  
6 Exhibit 3, which is the...I would describe  
7 it as a photocopy of the so-called known  
8 signature specimens that you have examined;  
9 is that right?

10 THE DEPONENT: That is correct.

11 147.MR. GRAY: With the names of the persons redacted.

12 THE DEPONENT: That is correct.

13  
14 :Photocopy of the so-called known  
15 signature specimens, K1-K20,  
16 examined by Mr. Ospreay

17

18 \_\_\_\_\_:

19 148. Q. And where it indicates a photocopy, that is  
20 all you had, a photocopy, I take it?

21 A. That is correct.

22 149. Q. And where it indicates an original, you had  
23 an original, which you no longer have in your  
24 possession; is that right?

25 A. That is correct. Those would have been



1           taken copies of copies because I would not have  
2           marked the original. A copy would have been made,  
3           and then a working copy made with a blacked out...

4   MR. JIWA:       I believe there is a notation of K1 to K20 on  
5                    them.

6  
7   BY MR. GRAY:

8   150.   Q.        K1 to K20, I think I said that. I hope I  
9           said that on the record, but I may have misspoke.

10          A.        That is only written on the copies. The  
11          original documents I examined would have a small  
12          mark on the bottom of them.

13   MR. JIWA:       That is K1 to K20.

14   151.MR. GRAY:    "K1-K20", so that is Exhibit 3.

15   THE DEPONENT:    And I would like to just correct myself on  
16                    that. They may not have a K1 to 20 on  
17                    them, on the originals, because I believe I  
18                    was asked not to mark any of the documents.

19  
20   \_\_\_\_\_:

21   152.   Q.        Okay. So that is the first...we may have  
22           to make a photocopy because this is in red...a  
23           colour copy, but this is the first...these are the  
24           first notes basically, just the little circles.

25          A.        Just going through the preliminary

1 examination and noticing the differences or  
2 dissimilarities.

3 153. Q. Okay. So then the second set of notes...I  
4 am just trying to identify the sum total of your  
5 notes.

6 A. These are observations noted on the copy of  
7 the questioned document.

8 154. Q. Okay. So these are notes you made on the  
9 letter of January 24, 2010, right? So let's mark  
10 that as Exhibit 4. Exhibit 4 is a copy of a letter  
11 dated January 24, 2010, with the notation "Q1(a)  
12 (original)" in the corner, and some red handwriting  
13 around the signature.

14  
15 :Copy of a letter dated January 24, 2010,  
16 with notation "Q1(a) (original)"

17  
18 \_\_\_\_\_:

19 155. Q. That handwriting is your handwriting, is it  
20 not?

21 A. That is correct. Those are my notes to  
22 myself.

23 156. Q. Okay. The next?

24 A. This is a copy of...marked as Q2, but it  
25 was Q1 because I requested two separate reports.

1 157. Q. So this is a photocopy of an affirmation  
2 signed by Aga Khan on May 12, 2010 in Federal Court,  
3 marked "Q2" at the top, and, again, it has your  
4 written notes in red around the...

5 A. Notes to self, yes.

6 158.MR. GRAY: Okay. So that is Exhibit 5.

7  
8 :Photocopy of an affirmation signed by  
9 Aga Khan on May 12, 2010 in Federal  
10 Court, marked "Q2" at top  
11

12 THE DEPONENT: One note on the document, which was not  
13 used.  
14

15 \_\_\_\_\_:

16 159. Q. Okay. So you consider this part of your  
17 notes in preparing the report?

18 A. It was submitted as a known document, but I  
19 questioned the size. It was purportedly removed  
20 from a website, so I could not determine the...

21 160. Q. So you consider this part of your notes,  
22 things that you...

23 A. Well, it was submitted. I made a note to  
24 it, so, yes. "Not used", it's a note.

25 161.MR. GRAY: Okay. So Exhibit 6 is a photocopy of a

1                   portion of a letter marked "Known. Not  
2                   used".

3  
4                   :Photocopy of a portion of a letter  
5                   marked "Known. Not used"

6  
7   MR. JIWA:       Is there a date, or something like that?

8   162.MR. GRAY:    The date, it says "Website launched". It  
9                   doesn't say any date on the letter.

10   THE DEPONENT:   This is just notes to an opening of a  
11                   file.

12  
13   \_\_\_\_\_:

14   163.   Q.        Okay. Do you consider this...I am talking  
15                   about the notes that you would prepare in  
16                   preparation for your report, your technical notes.  
17                   Do you consider the case record to be part of that?  
18                   A.        No, it's just part of the...you asked for  
19                   notes, it's part of the notes.

20   164.   Q.        Well, I am interested in the notes that you  
21                   used to prepare your report, your technical  
22                   examination and report.

23                   A.        There are notes on the file...

24   165.   Q.        So I assume we can agree that the case  
25                   record which has the address...

1 A. Unnecessary, correct.

2 166. Q. Okay. So you can have that back.

3 A. There is one form here. I am trying to  
4 find the other sheet. This is for the initial  
5 observations of May 28th.

6 167. Q. So you are producing to me a document  
7 called "Worksheet", dated May 28. These were also  
8 part of your notes?

9 A. They were taken...just transcribed from the  
10 voice recording.

11 168. Q. So this is the stuff transcribed from your  
12 voice recording?

13 A. That is correct.

14 169.MR. GRAY: We can mark that as Exhibit 7 then.

15  
16 :Document called "Worksheet", dated May  
17 28, transcribed from voice  
18 recording of Mr. Ospreay  
19

20 THE DEPONENT: There should be a second sheet. I assume  
21 it is in the other file because I cannot  
22 find it for the 9th.

23  
24 \_\_\_\_\_:

25 170. Q. Well, when you finish looking through that

1 file, then maybe you can look through the second  
2 file so that we have...

3 A. I have gone through the first. I am going  
4 through the second now.

5 171. Q. You are going through the second now?

6 A. Yes. There should be another worksheet  
7 there just for the examination of additional 10  
8 known specimens.

9 172. Q. You are pulling out some other...

10 A. Yes. This is for the third report. I  
11 cannot locate...there should be one for the  
12 examination of the additional 10 specimens. I've  
13 got notations inside the folder but I do not...there  
14 should be a worksheet like that. I don't have it  
15 here.

16 173. Q. You do not have it?

17 A. I do not have it here, sir.

18 174. Q. And you don't have it because it...why?

19 A. I don't know, sir.

20 175. Q. I see. So, at least insofar as the notes  
21 you've produced to me today for the examination of  
22 the first two reports, can we agree that the first  
23 two reports are examining the signatures of the  
24 letter of January 24, and the affirmation against  
25 these 20 samples?

1 A. Yes, sir.

2 176. Q. Do you agree with that?

3 A. Ten specimens, sir. There was an  
4 additional 10 submitted, and those are the notes I  
5 am looking for that just discuss the similarities or  
6 dissimilarities between the additional 10, and I do  
7 not have it here, sir. I am sorry. It should be  
8 here.

9 177. Q. So you don't have the ones discussing the  
10 second 10? But that is not what I asked, really.  
11 What I am trying to establish is that the first two  
12 reports were a comparison of the known samples 1 to  
13 20; in the end, that is how many you got. First you  
14 got 10, and then you got 10 more, right?

15 A. That is correct. May 30th was the 10, and  
16 then the June 9th was the 20 combined with the extra  
17 10.

18 178. Q. Right. You got 10, and then you got 10  
19 more. So, in effect, you had 20 in total?

20 A. That is correct, right.

21 179. Q. And the first two reports, what I would  
22 call the 9B and 9C reports...

23 A. Yes, sir.

24 180. Q. ...were an analysis of the handwriting in  
25 the January 24 letter for the 9B report...

1 A. Yes.

2 181. Q. ...and the affirmation for the 9C report  
3 compared to the 20 specimens, right?

4 A. That is correct.

5 182. Q. But the 9D report was not an analysis of  
6 handwriting comparing it...

7 A. No. That is...

8 183. Q. ...to known specimens?

9 A. ...separate ones here, which I will give  
10 you now.

11 184. Q. Right. That is a separate report. We will  
12 deal with that later. I just want to confirm that  
13 that...so, in that report, there is no analysis of  
14 the comparison of the handwriting because you  
15 weren't...

16 A. No, sir.

17 185. Q. You weren't doing that for the 9D report,  
18 the one...

19 A. That is correct.

20 186. Q. ...relating to the letter of February 18th?

21 A. That is correct. I was...there were known  
22 documents submitted. They were not used.

23 187. Q. Okay. You didn't do a handwriting analysis  
24 for the letter of February 18?

25 A. No, sir.



1 188. Q. You didn't compare it to the known  
2 specimens, or so-called known specimens?

3 A. That is correct, yes, sir.

4 189. Q. I am just curious. Why did you not do  
5 that?

6 A. Because, under the microscopic examination,  
7 there was an initial hypothesis that it was not  
8 original handwriting executed by hand, but a form  
9 of...some form of print, probably a relief print. I  
10 am not sure of the identification. I consulted with  
11 my client. The client advised that there was no  
12 need to continue with the examination and comparison  
13 of the handwriting, and to concentrate on the print.

14 190. Q. So you did not consider whether the letter  
15 of February 18 was, in fact, the Aga Khan signature?

16 A. No.

17 191. Q. And you formed no opinion about that?

18 A. No. I consulted with the client, because  
19 in cases of high profile individuals where a lot of  
20 signatures and documents are written, there is a  
21 good chance that signature stamps, autopens, or  
22 other form of mechanical devices may be used, or  
23 even the secretaries and people to sign for their  
24 name.

25 It happens a lot in sports stars, Hollywood stars,

1 politicians. So I questioned that with the client  
2 as to whether or not Prince Aga Khan actually could  
3 have signed all documents purportedly being  
4 submitted to his group worldwide. The client  
5 initially had indicated that it was pretty certain  
6 that Aga Khan would sign everything in person.

7 192. Q. And so, your client indicated that...it is  
8 pretty certain that Aga Khan would sign stuff in  
9 person? That is what your client indicated to you?

10 A. Yes.

11 193. Q. And notwithstanding that, and  
12 notwithstanding the concern that the January 24  
13 letter was an forgery, and the concern that the  
14 affirmation filed in the Federal Court was a  
15 forgery, you did not examine whether the letter of  
16 February 18 was allegedly a forgery?

17 A. No.

18 194. Q. Now, going back to the reports of 9B and  
19 9C, the two reports of June 9 that related to the  
20 signature analyses, right, those two reports.

21 A. Yes, sir.

22 195. Q. Do I now have the sum total of the notes  
23 that you brought with you today concerning the  
24 examination of the signatures...

25 A. No, sir. As indicated, the file folder has

1 notes as well, sir. If you want, I will find...

2 196. Q. Could you produce that? I guess we will  
3 have to...

4 A. Do you want the attachments or...that is  
5 what goes inside that file.

6 197. Q. No, I don't think we need to do that. I  
7 just want to mark the notes so that I am confident  
8 that I have the sum total of the notes that you took  
9 in relation to...

10 A. That would be the sum total, except there  
11 was another transcribed document, and it is not here  
12 and I do not...I have no explanation why it is not  
13 here. It would be simply be an examination of the  
14 10 additional specimens with conclusions being the  
15 same.

16 198. Q. Well, that's unfortunate because...you have  
17 no explanation why it's not here?

18 A. No, sir, I have not.

19 199. Q. And you know that we sent you a notice to  
20 produce and bring those documents with you?

21 A. Yes, sir, you did. And I did transcribe  
22 it. I did read it, and I have no idea what I have  
23 done with it.

24 200. Q. Did you look through the file before you  
25 brought it with you?

1           A.           I thought I did, yes. I thought it was  
2           there.

3       201.   Q.           Were those notes in there before you...

4           A.           I thought they were, yes, sir.

5       202.   Q.           I see. So, can you tell me, in respect of  
6           your notes, other than...I see the notes on the  
7           file, and they tell me about the dates of your  
8           meeting with the various clients, I suppose, with  
9           Mr. Jiwa and Mr. Tajdin?

10          A.           Yes, sir.

11       203.   Q.           Can I come over and stand near you?

12          A.           Yes, of course.

13       204.   Q.           Because we only have one copy.

14          A.           Not a problem, sir.

15       205.   Q.           So I am looking at the file folder here,  
16           and I see dates that relate to the meetings  
17           with...is that Mr. Jiwa you are meeting with on May  
18           27?

19          A.           That would have been these two individuals  
20           and this individual, sir.

21       206.   Q.           So, Mr. Ali Dhalla and Mr. Nagib Tajdin and  
22           Mr. Alnaz Jiwa?

23          A.           Yes, sir.

24       207.   Q.           Okay. So I am not interested in that right  
25           at the moment. What I am interested in is your

1 technical notes about the signatures and the sum  
2 total of that. So before I mark this file...

3 A. Here, outside of the recorded...that is a  
4 copy of the May 30th notes here, May 30th, the  
5 recording of May 30, there is a transcript of that.

6 And then this would have been the written portion  
7 in the file after the examination on June 7th,  
8 before the report. And at the same time as I was  
9 going through the examination, I would be dictating  
10 to myself or speaking to myself on the tape.

11 208. Q. Okay. So these are other reports, right?  
12 This is...

13 A. No. This is for the examination of the  
14 additional 10 specimens.

15 209. Q. All right. The inside of the file folder?

16 A. That is correct.

17 210. Q. So we had better mark...unfortunately, we  
18 now have to mark the file folder as an exhibit.

19 A. That is fine, sir.

20 211. Q. So we will mark this as Exhibit 8. I will  
21 put a little pencil mark on the outside for the  
22 moment. And this is a file folder marked "Nagib  
23 Tajdin, Alnaz Jiwa, Re Prince Karim Aga Khan". I  
24 guess this is your file number, GPO-587-10?

25 A. That is correct, sir.

1       212.     Q.       And it contains some additional notes  
2               inside the file?

3               A.       Yes, sir.

4       213.MR. GRAY:     That will be Exhibit 8.

5  
6                       :File folder marked "Nagib Tajdin, Alnaz  
7                       Jiwa, Re Prince Karim Aga Khan",  
8                       from Mr. Ospreay's file number  
9                       GPO-587-10

10  
11     \_\_\_\_\_:

12       214.     Q.       Okay. So, other than the notes on the last  
13               10 specimens that you have...can't explain where  
14               they are, are there any other notes that relate to  
15               your examination of the signatures?

16               A.       No, sir.

17       215.     Q.       All right. Now, can you tell me where you  
18               have...do your notes in any way indicate that there  
19               are similarities between the known signatures and  
20               the letter of January 24?

21               A.       I believe they do, yes. I believe there  
22               are some similarities I have noted. I don't know if  
23               I have noted specifically, outside of letter  
24               formations.

25       216.     Q.       Can you show me in, and let's start with

1 Exhibit 3...have you indicated in Exhibit 3 anywhere  
2 where there are similarities?

3 A. No. I believe in the working notes I  
4 have...the only thing I have marked in here is what  
5 I classified in...circled in red or put arrows to in  
6 regards to dissimilarities between the questioned  
7 and known. In my working notes, I believe, either  
8 in the folder file or in the initial 30th  
9 documents...

10 217. Q. We will get to that. Let's just deal with  
11 one at a time for the record.

12 A. This is simply just what I am finding are  
13 dissimilarities on the working copies.

14 218. Q. Okay. So it is fair to say, for at least  
15 Exhibit 3, you've only noted dissimilarities?

16 A. That is correct.

17 219. Q. All right. Let's look at Exhibit 4. Can  
18 you hand me back Exhibit 3, please?

19 A. Yes. And the same with that, sir.

20 220. Q. The same with Exhibit 4, you've only noted  
21 dissimilarities there; is that right?

22 A. No. Actually, I've got K11 and K20,  
23 similar...

24 221. Q. Can I come over again, please?

25 A. Yes, sir. It is similar to the point here,

1 but mostly dissimilar to the others. This was an  
2 inner comparison between the known specimens.

3 222. Q. So you've noted there at K11 is similar to  
4 the "h" at the top? Is that what you are  
5 indicating?

6 A. Yes. So this is indicating that in all the  
7 other specimens, except for two, the point or the  
8 arc of the uppercase of the...excuse me, upper loop  
9 of the "h" is actually going this way, where the  
10 rest of them sort of go most backward.

11 223. Q. Okay. So can you just read in Exhibit 4  
12 what you have written there, next to the signature  
13 at the top? Let's start with the (a). Have you  
14 written...

15 A. Here, I've got:

16 "...Dissimilar curve at top..."

17 Pointing to this.

18 224. Q. Let's just read what you...you wrote:

19 "...Diss curve at top..."

20 A. Yes,

21 "...Diss curve..."

22 which is dissimilar.

23 225. Q. Which stands for dissimilar?

24 A. Yes, it is just short...notes to myself.

25 226. Q. Okay. Then on the left?



1 A. "...No initial stroke in 'a'..."

2 227. Q. Right.

3 A. "...Acute angle..."

4 I've got here for the circle of the "g", and I wrote:

5 "...Lower speed evident here..."

6 228. Q. At the bottom.

7 A. Slower speed.

8 229. Q. And over next to the "h", you've written:

9 "...K11 similar, and K20..."

10 A. "...but mostly dissimilar to others..."

11 230. Q. All right. So you have noted a similarity  
12 there in your examination of Exhibit 4 in your  
13 notes?

14 A. That is correct.

15 231. Q. Did you mention any similarities in your  
16 report of 9B or 9C?

17 A. No, I don't think I have.

18 232. Q. And why is that? Isn't it important to  
19 mention similarities as well as differences?

20 A. Well, I believe the similarities that I  
21 found, as I think noted in probably the written  
22 notes there, were due to the simulation process.  
23 This is not a signature that someone has signed  
24 without having a model signature, or either a  
25 practised hand or a model signature. So the

1 similarities would be common because someone is  
2 trying to copy the characteristics of another  
3 writer.

4 233. Q. But isn't it important to mention that  
5 there are similarities as well as dissimilarities if  
6 you are trying to get an impartial...

7 A. I suppose it could be, yes.

8 234. Q. Okay. And Exhibit 5 then, these are your  
9 notes on the affirmation; is that correct? Sorry, I  
10 am coming over again. Can I take it that...

11 A. 100 percent, sir.

12 235. Q. No objection? I don't have to ask each  
13 time?

14 A. Not at all, sir. Not at all.

15 236. Q. All right.

16 A. No. Again, the same dissimilarities I was  
17 finding between the two, no initial stroke, a  
18 dissimilar curve at the top again. I've got:

19 "...Eyelet smaller to most knowns..."

20 in the lower loop of the "g". What I have identified here

21 as probable pen lifts between the terminal of the

22 "h" and the "a", and then the terminal of the "a" to  
23 the "n", also noted:

24 "...Slower speed of writing..."

25 237. Q. Right. But do you note again...you said

1 something similar?

2 A. No, I don't think so.

3 238. Q. No, you didn't find it similar to most  
4 knowns? You found no...you didn't note any  
5 similarities?

6 A. No. I was strictly marking for  
7 dissimilarities.

8 239. Q. You were only marking dissimilarities?

9 A. Yes, sir.

10 240. Q. But you agree with me it's important to  
11 indicate similarities if there are any. Okay. I  
12 won't ask you about Exhibit 6. That is the one you  
13 didn't use. Now, Exhibit 7, can you...I'm afraid I  
14 am going to have to ask you to read Exhibit 7  
15 because we are having trouble reading...

16 A. Notes to self, yes.

17 241. Q. Yes. Maybe you can just read that.

18 A. Upper portion, I've got "From Recorder".

19 242. Q. Just read it as you have written it...

20 A. "...File opened. Working and file copy made of Q1,  
21 Q2, K1, K10. Only two original Ks  
22 submitted. Blocked out personal names on  
23 Ks. Q1 letter to Spiritual Child  
24 original/affirmation copy [marked it as  
25 Q1].

1 Preliminary examination of knowns. Narrow  
2 variation. Microscopic examination with  
3 Leica, and peak and low-level magnifiers.  
4 Light source both fluorescent, overhead and  
5 oblique. 'K' is relatively dynamic in  
6 movement..."

7 Sorry, I am not sure what that word is I've got written  
8 there.

9 "...Speed of writing consistent. No hesitation to movement.  
10 Moderate to light pen pressure, times two,  
11 K6, K7..."

12 243. Q. So, this is your examination of the known  
13 specimens, is it?

14 A. Yes. This is...

15 244. Q. It is not an examination of the actual  
16 questioned document?

17 A. I am getting to that, and that is the  
18 initial...I always go through...I always like to  
19 look at the individual's knowns first for variation,  
20 any changes.

21 "...Q1 letter, no initial stroke to 'a'..."

22 I've got a diagram there, and I have marked these, and I  
23 believe there are some samples in my attached  
24 exhibits. There is no initial "a" curve or...excuse  
25 me, stroke to the "a".

1 "...Curve in upper part of terminal 'a' [different]..."

2 I have got "diff" for different.

3 "...Connecting strokes more arced..."

4 You've got arced here in the "a".

5 "...Some hesitation in movement found..."

6 In this portion of the "h" I've got identified here, here  
7 and in the "a".

8 "...Size of points, 'g' and the 'h' [which were the  
9 angularity]. Q1 affirmation similar to  
10 letter, dissimilarities to 'K's. Pen lifts  
11 between [as I described earlier] 'h', 'a'  
12 and 'n'..."

13 245. Q. Sorry, can I stop you right there? What do  
14 you mean by "affirmation similar to letter"?

15 A. That I...I did a comparison between  
16 the...both questioned signatures, and I found that  
17 the dissimilarities that I was finding were found in  
18 both of the questioned signatures.

19 246. Q. Okay. So, did you form an opinion as to  
20 whether both questioned signatures were written by  
21 the same person?

22 A. I would...I assumed that, yes.

23 247. Q. You assumed that they were?

24 A. That is correct.

25 248. Q. That is your view right at the moment?

1           That is your opinion?

2           A.           I did not give an opinion on it because I  
3           was not asked to compare the two.

4       249.   Q.           That is your opinion at the moment?

5           A.           I...the similarities were the same, I would  
6           assume as a critical assumption. Potentially, it  
7           could be written by the same individual but I did  
8           not give an examination to make that conclusion.

9       250.   Q.           Okay.

10       A.       "...Similarities in formations found, possibly due  
11               to freehand simulation process. Further  
12               'K's should be submitted, and should be  
13               more contemporary to Qs. Telephone call  
14               to..."

15       251.   Q.           Can I stop you right there?

16           A.           Yes, sir.

17       252.   Q.           So you think that further samples should be  
18           submitted and should be more contemporary to the  
19           questioned documents?

20           A.           Yes, sir.

21       253.   Q.           And did you put that in your report, that  
22           you needed more samples and more contemporary to the  
23           questioned documents?

24           A.           No, it was verbally given to my client.

25       254.   Q.           But you didn't put that as a qualification

1 in your report?

2 A. No, sir, I did not.

3 "...Telephone call to Alnaz. Preliminaries discussed.

4 Alnaz requested written report based upon  
5 the submissions. Letter highly probable  
6 not signed by Aga Khan. Affirmation  
7 probably did not..."

8 255.MR. GRAY: Okay. Thank you. Just go off the record  
9 for a second.

10

11 --- A BRIEF RECESS

12

13 , resumed

14

\_\_\_\_\_:

15 256. Q. Mr. Ospreay, it's been pointed out to me  
16 that I referred to your affidavit as sworn on July  
17 15th, but it was really sworn on July 14th.

18 A. Okay.

19 257. Q. We can agree that your affidavit was the  
20 affidavit of July...

21 A. I will concur.

22 258. Q. All right. Anyway, it was July 14th.

23 Okay. So, carrying on here, can you tell me now,  
24 looking at your report that is, for instance,  
25 at...let's see...sorry, I am showing you your

1 Exhibit 4, which is your notes of the Aga Khan's  
2 signature of January 24.

3 A. Yes.

4 259. Q. Now, you haven't got any notes on the "a",  
5 the second "a".

6 A. No.

7 260. Q. Did you examine the second "a" for  
8 similarities or dissimilarities?

9 A. I would have examined all portions of it.

10 261. Q. But you don't have any notes indicating any  
11 differences or similarities?

12 A. No.

13 262. Q. Why is that?

14 A. Probably finding that wasn't significant.

15 263. Q. You found that they were similar, the "a"  
16 was similar?

17 A. If I don't have any notations there...all I  
18 have noted on these documents is what I found to be  
19 consistent dissimilarity throughout the questioned  
20 signatures, as compared to all of the other  
21 signatures.

22 264. Q. But on the "a", you are saying you didn't  
23 find any dissimilarities?

24 A. No.

25 265. Q. Nothing of note?



1           A.           Well, I mean, if you will go to my...if I  
2           can have the charts that go with it.

3       266.   Q.           The charts. Okay. I am happy to do that,  
4           but I am not sure what you are referring to.

5           A.           Well, the charts that are attached to the  
6           report in relation to this...

7       267.   Q.           Okay.

8           A.           ...particular document.

9       268.   Q.           You've got the report there, don't you?

10          A.           There would be better examples within the  
11          original report that you have in the file there.

12       269.   Q.           Okay. Well, you've got the report there.

13          A.           Excuse me, I am sorry. I know the copies  
14          here are not the best.

15       270.   Q.           So this letter of January 24 refers to  
16          the...is your report 9B, is it not?

17          A.           Okay. I am just looking at copies of the  
18          charts that I have for...the one on the letter, I  
19          believe it is.

20       271.   Q.           Okay. Well, are we looking at the same  
21          thing? I just want to make sure we are looking at  
22          the same thing.

23          A.           That is the signature there. That is the  
24          one you are looking at there, correct?

25       272.   Q.           Yes. I am looking at your notes.

1           A.           That is correct. And you are asking me  
2           about the terminal portion of the...

3       273.   Q.           So I take it that you didn't make any  
4           comments in your notes about the second "a"?

5           A.           No.

6       274.   Q.           That is because you found the second "a" to  
7           be similar?

8           A.           Well, I mean, if I am looking, I am going  
9           through this demonstration, you see some of the  
10          times it is long, sometimes it's short. Here it is  
11          very short, here it is very short, so it is similar.

12          Although not as short as K2, it's similar somewhat  
13          to...

14       275.   Q.           So the answer is you found the second "a"  
15          to be similar? That is why you didn't make a...

16          A.           It was not a fundamental dissimilarity.

17       276.   Q.           Not a point of dissimilarity; is that  
18          right?

19          A.           That is correct...not a fundamental  
20          dissimilarity.

21       277.   Q.           And I take it that you didn't mention...in  
22          your notes here, you don't mention the "K" at all,  
23          do you?

24          A.           No, not there.

25       278.   Q.           So you didn't find that dissimilar?

1           A.           If it's not noted, no.

2       279.   Q.           And the "a" and the "n" in the signature,  
3           you don't make any notes there in your notes?

4           A.           No.

5       280.   Q.           Okay.  Again, you didn't find those  
6           dissimilar?

7           A.           Well, you've got to take into consideration  
8           the natural variation in the writing of all the  
9           signatures, which is examined, and whether it's far  
10          out.  Again, if you note...just an amendment in  
11          regards to my statement to you earlier in regards to  
12          that there were no notations, that there were  
13          similarities, I did not note specific similarities  
14          in my report.  But in my page 5, second paragraph, I  
15          discussed the point of freehand simulation.  The  
16          last sentence:

17       "...In either case, the appearance will resemble in some  
18               manner the genuine writing..."

19       Again, I state, as my notes indicate:

20       "...This is due to the simulation process..."

21       If it's simulated, then, yes, you are going to have points  
22               of similarities.  But again, within that paragraph:

23       "...Some subtle details may escape the eye of the individual  
24               executing the actual signature itself..."

25       281.   Q.           But you didn't note any dissimilarities for

1           some of the letters, right?

2           A.           Specifically, no. I identified what I  
3           thought were fundamentally consistently different.

4       282.   Q.           And you didn't note that in your report,  
5           that there were similarities with respect to some of  
6           the letters?

7           A.           Not specifically. In generic I did there,  
8           yes.

9       283.   Q.           Can I turn then to 9C, that is, your report  
10          9C, which is on the affirmation?

11          A.           Yes, sir.

12       284.   Q.           And can I ask you to refer to the chart,  
13          Chart 4 of that report?

14          A.           Yes, sir.

15       285.   Q.           And again, I note that you make no comment  
16          on the second "a" in the signature.

17          A.           That is correct.

18       286.   Q.           Because you find that to be similar?

19          A.           In movement, yes.

20       287.   Q.           Okay. And the "K", again, no comment?

21          A.           No comment to the "K".

22       288.   Q.           Again, you found that to be similar?

23          A.           I made no comment. It's not whether I find  
24          it similar, it is if I found any dissimilarities,  
25          unexplained dissimilarities.

1       289.     Q.        You didn't find it dissimilar. I take it  
2               that the "h" as well, you didn't find that to be  
3               dissimilar?

4       A.       Not fundamentally dissimilar.

5       290.     Q.        And the "n", you didn't find that to be  
6               fundamentally dissimilar?

7       A.       That is correct.

8       291.     Q.        Okay. And specifically, you didn't mention  
9               that in your report, 9C as well?

10      A.       No. Not that I am aware of, no. I've  
11               identified what I considered to be fundamental  
12               dissimilarities that are consistent as a  
13               dissimilarity throughout the comparison of the known  
14               specimens.

15      292.     Q.        Now, when we went through your notes, you  
16               indicated you were missing notes relating to the 10  
17               additional known specimens?

18      A.       Yes, sir.

19      293.     Q.        So the notes that you had...are missing are  
20               relating to the known specimens; they are not  
21               relating to the questioned signatures?

22      A.       No, because the examination of the  
23               questioned signatures were already executed. The  
24               comparison, if I remember correctly from reading  
25               that initial document, that it identified the same

1           dissimilarities in the additional 10 to the  
2           questioned signature.

3       294.   Q.           Well, the question is that the missing  
4           notes don't relate to the known signatures; they  
5           relate to the 10 samples, additional samples?

6       A.           No. They relate to the additional 10, and  
7           a comparison of the 10 to the questioned. And some  
8           of those notations are made on the second side of  
9           the...or the inside side of the file folder.

10      295.   Q.           Right. Okay. Now, do you know how old His  
11           Highness Prince Karim Aga Khan is?

12      A.           I gather from Mr. Lindblom's affidavit that  
13           I was given a copy of, he is in his seventies.

14      296.   Q.           Right. And did you know that at the time  
15           when you...

16      A.           No, sir, I did not.

17      297.   Q.           Would that be a relevant thing to know?

18      A.           Possibly.

19      298.   Q.           Well, is it a relevant thing or not, that  
20           he is in his seventies?

21      A.           It depends on the health of the individual,  
22           sir. Age does not necessarily mean there is a  
23           degradation of one's motor skills or motor ability  
24           to write. I have seen people who are in their  
25           hundreds who can write better than you and I.

1       299.     Q.       Do signatures evolve over time?

2             A.       They can. Sometimes they stay consistent.

3       300.     Q.       Okay. But they can evolve over time?

4             A.       They can. Again, it depends on the  
5       person's physical ability, mental skills. It could  
6       be influence of alcohol, drugs.

7       301.     Q.       I didn't ask about alcohol or drugs. I am  
8       asking...

9             A.       Well, that could influence it, sir. You  
10       are asking for influences and that could influence  
11       it.

12       302.     Q.       Okay. And so they can evolve over time?

13             A.       They can.

14       303.     Q.       Are they more likely to evolve in a person  
15       who is old than in a person who is young?

16             A.       It depends on the health of the individual.

17       304.     Q.       Right. But are they more likely to evolve  
18       in a person who is old...

19             A.       As one gets older, you would assume there  
20       could be a degeneration of one's neuromuscular  
21       control. But, again, I have seen opposite of that  
22       as well. It is not a given.

23       305.     Q.       Right. But you agree with me that  
24       handwriting undergoes many natural changes over  
25       time?

1           A.           It can, yes. Some yes, some no. Some have  
2           a wide variation, some have a narrow variation.  
3           Some people stay consistent until some mitigating  
4           factor occurs such as ill health or sudden ill  
5           health.

6       306.   Q.           Well, don't you think that the age of a  
7           person might be a qualification you should put in  
8           your report?

9           A.           No.

10      307.   Q.           No, you don't? You don't think that is  
11           something...

12          A.           Unless they were very infirm, I cannot give  
13           opinion as to one's medical condition.

14      308.   Q.           What about the change over time...why do  
15           you need it contemporaneous? You agree with me that  
16           you do need contemporaneous specimens?

17          A.           It's best suited, yes.

18      309.   Q.           And why do you need those? Because there  
19           is a possibility of change over time?

20          A.           There could be. It could also be the fact  
21           that...I have seen where an individual has a broken  
22           arm at the particular time the document is  
23           purportedly executed. So, yes, it's always best  
24           suited to have like-type documents executed as close  
25           to or on the same time frame as the questioned



1 signatures as possible.

2 310. Q. And you didn't mention that in your report  
3 either about the need for contemporaneous documents?

4 A. No. It was mentioned to the client. It  
5 was caught within the first observations and the  
6 first conclusions, and it was mentioned to the  
7 client. The client indicated it was very difficult  
8 to get any form of original signatures from Aga Khan  
9 because of the sensitivity...

10 311. Q. But not mentioned in your report is the  
11 qualification for your firm opinion that the Aga  
12 Khan didn't write the documents?

13 A. No, because in my observations of  
14 the...even though there is a long period between  
15 some of the earliest signatures and some of the  
16 latest signatures, I have noted in both my reports  
17 that there is natural variation in people's  
18 handwriting and signatures; some are narrow, some  
19 are wide. In the case of the purported Aga Khan  
20 signatures, I found that the variation was narrow.

21 312. Q. Right. Now, it's funny you should mention  
22 the broken arm. Do you understand that His Highness  
23 had a skiing accident in December of 2008?

24 A. No knowledge at all, sir.

25 313. Q. You did not know that?

1 A. No, sir.

2 314. Q. So, Mr. Jiwa did not tell you that?

3 A. No, sir.

4 315. Q. And do you consider that relevant?

5 A. If it was in relation to the date of the  
6 questioned documents and it was his writing hand and  
7 he is not ambidextrous, yes, it could be.

8 316. Q. Right. And it was his right shoulder, and  
9 he is right-handed. Did you know that?

10 A. No idea.

11 317. Q. You did not know that?

12 A. No, sir.

13 318. Q. So, does that cause you to change your  
14 opinion now?

15 A. No, sir.

16 319. Q. It doesn't?

17 A. No, sir.

18 320. Q. Even if I tell you that he had a skiing  
19 accident in December of 2008 and he broke his right  
20 arm and he is right-handed, that doesn't cause you  
21 to change your opinion?

22 A. No, sir.

23 321. Q. It doesn't cause you to qualify it in any  
24 way?

25 A. No, sir.

1       322.     Q.        It doesn't cause you to consider even  
2                mentioning it as a relevant factor in your...

3        A.        It is not part of my knowledge base in  
4                regards to the task at hand and the examination of  
5                these documents. I cannot comment to something I  
6                don't know about.

7       323.     Q.        Well, I understand that you didn't know  
8                about it at the time you wrote the report. I  
9                understand that. But now, I am telling you this. I  
10               am telling you to assume that that is correct, and  
11               Mr. Jiwa can confirm. He knows that it's correct.  
12               So I am asking you to assume that it is correct,  
13               that His Highness had a skiing accident which  
14               injured his shoulder and arm, his writing hand in  
15               December of 2008, okay? Now, are you telling me  
16               that that is not a relevant factor that you would  
17               need to consider in analyzing the handwriting?

18       A.        It could be if, in fact, there were drastic  
19                changes to the ability to sign.

20       324.     Q.        So if you knew that, that would be a  
21                qualification you would put in your report, isn't  
22                it?

23       A.        I would ask for documents related to that,  
24                yes.

25       325.     Q.        You would ask for documents that were

1 signed after December 2008 and before December 2008?

2 A. That is correct.

3 326. Q. All right. And in that regard, in respect  
4 of documents signed after December 2008, you have  
5 one document, one photocopy; is that correct?

6 A. I don't have the dates in front of me. I  
7 don't recall...

8 327. Q. Well, can we just look at that, your  
9 reports?

10 A. This is the affirmation?

11 328. Q. Either one.

12 A. It doesn't matter, either one is fine.  
13 Which one, sir?

14 329. Q. Can we agree that you are looking at the  
15 same known samples in...

16 A. Yes, sir. Which one?

17 330. Q. ...9B and 9C? So, if we look at...let's  
18 just take the 9B report.

19 A. The "K"s are similar. So, which one are  
20 you referring to, sir?

21 331. Q. 9B.

22 A. Yes.

23 332. Q. Okay. And let's look at the list of known  
24 signatures, K1 to K20.

25 A. This is the court affirmation, sir?

1       333.     Q.       Either one.  If you would rather you have  
2               that one...either one is...

3       A.       I'm sorry, I've got too many documents in  
4               front of me here.

5       334.     Q.       Can we agree that...

6       A.       I'm on 9B.

7       335.     Q.       9B, it doesn't matter.

8       A.       It doesn't matter.

9       336.     Q.       We can agree that 9B and 9C are the same  
10              samples?

11      A.       Yes, sir.

12      337.     Q.       So they have the same disadvantages,  
13              advantages, or problems, or...

14      A.       Yes, sir.

15      338.     Q.       ...with respect to the timing of the  
16              specimens?

17      A.       Yes, sir.

18      339.     Q.       It's the same specimens you used in both  
19              reports, right?

20      A.       Yes, sir.

21      340.     Q.       So, if we look at K1, that is a photocopy  
22              purportedly dated December 11, 2009, right?

23      A.       Yes, sir.

24      341.     Q.       And can we agree that, in respect of the  
25              samples you had that were after December of 2008,

1           you have one photocopy at K1? That is the only  
2           document you have after December of 2008?

3           A.           Just confirming, sir. One moment, please.

4           Yes, sir, you are correct.

5       342.   Q.           That is one photocopy. And can we also  
6           look at that document for a minute? That is in  
7           Exhibit 3, is it not? That is the list of so-called  
8           known documents? I will show you. The first one is  
9           K1? This is K1 that you have seen?

10          A.           Yes, sir.

11       343.   Q.           And what you had at the time, K1 was a  
12          photocopy?

13          A.           A poor copy, yes.

14       344.   Q.           A poor photocopy?

15          A.           Yes.

16       345.   Q.           That is right. And you have the second  
17          page of a letter with a signature?

18          A.           I am sorry, sir?

19       346.   Q.           K1 is the second page of something, anyway.

20          A.           This is all I was given. It would be...

21       347.   Q.           It has the words:

22       "...Particularly in my heart and thoughts and prayers at  
23           this time.' Yours affectionately, Aga  
24           Khan..."

25       Right?

1 A. Yes, sir.

2 348. Q. So, did you see the first page of that  
3 document?

4 A. No. This is all that was submitted, sir.

5 349. Q. And how do you know it was dated December  
6 11, 2009?

7 A. It was in the listing of documents, I  
8 believe, provided by the client.

9 350. Q. So, in other words, Mr. Jiwa or Mr. Tajdin  
10 told you it was dated December 11, 2009?

11 A. Yes, sir.

12 351. Q. So you have no personal knowledge of that?

13 A. No, sir.

14 352. Q. And the document itself doesn't say it on  
15 it?

16 A. No, sir.

17 353. Q. So, now we have a poor photocopy of a  
18 document of uncertain date, really, supposedly dated  
19 December 11, 2009, and that is the only document we  
20 have that is after the accident of December 2008?

21 A. Yes, sir.

22 354. Q. And, indeed, will you agree with me that,  
23 in the last almost five years, over four and a half  
24 years, the only documents you have are a photocopy,  
25 that photocopy we just looked at, K1? Can you look

1           again at the list?

2           A.           Yes, it's most contemporaneous to the  
3           questioned document, yes.

4       355.   Q.           And then you've got a photocopy  
5           dated...first of all, you have nothing in 2008. Can  
6           you agree with me on that?

7           A.           Yes, sir.

8       356.   Q.           And you have one document, a photocopy in  
9           2007?

10          A.           Yes, sir.

11       357.   Q.           Nothing in 2006?

12          A.           Yes, sir.

13       358.   Q.           And nothing in 2005, until we get to the  
14           document that is marked K14, 15 and 16, the  
15           originals on November 2005?

16          A.           Yes, sir.

17       359.   Q.           So, from November of 2005 until now, the  
18           only samples you looked at were two photocopies:  
19           One in 2007 and one poor photocopy we looked at in  
20           2009?

21          A.           Yes, sir.

22       360.   Q.           It's essential, isn't it, to have  
23           contemporaneous documents?

24          A.           It is best suited, yes, sir.

25       361.   Q.           Well, isn't it important to have



1 contemporaneous...

2 A. It depends on whether there are drastic  
3 changes. When I looked at the time space between  
4 the earliest signatures and the latest signatures, I  
5 noted that the variation within the Aga Khan  
6 signature, if, in fact, he has signed all these  
7 signatures, was narrow. They were relatively  
8 consistent over the period of time.

9 362. Q. Well, Mr. Ospreay, did you not write an  
10 article in the Toronto Chapter Newsletter of the  
11 Association of Certified Fraud Examiners in June of  
12 2010, and did you not state in that article that  
13 it's important to have writing which has been  
14 written in the same time period contemporary as the  
15 questioned writing?

16 A. Yes. I am not saying it is not.

17 363. Q. So you don't disagree with that?

18 A. I never did.

19 364. Q. You wrote that?

20 A. Yes.

21 365. Q. You agree that it's important to have  
22 writing that is contemporaneous?

23 A. Yes.

24 366. Q. Okay. And in the same article, do you not  
25 say that handwriting undergoes many natural changes?

1           A.           Yes.

2       367.    Q.           And you agree with that?

3           A.           It can.

4       368.    Q.           But you said in your article that:

5       "...Handwriting undergoes..."

6       You didn't say "can". It said:

7       "...Handwriting undergoes many natural changes..."

8           A.           Well, I mean, you are not looking at a  
9           scientific paper. You are looking at an article for  
10          publication purposes.

11       369.    Q.           Okay. So you don't agree with what you  
12          wrote there?

13          A.           Yes. I think that you are trying to put a  
14          consistent on something. Handwriting is not  
15          consistent. It can be consistent in some  
16          individuals, and it can change overnight. It can  
17          change from sitting, standing. So, there are a lot  
18          of variations within the complicated process of  
19          writing. Generally, in statements for document  
20          examination, yes, it's best to have as close to date  
21          and as many specimens as possible.

22       370.    Q.           Well, it's important, you've agreed?

23          A.           It's important.

24       371.    Q.           Okay. And can we agree that...we've  
25          already said this...that the problems that we talked

1           about in terms of samples are the same, whether it's  
2           9B or 9C, the reports where you've examined...

3           A.           I concur with that, yes.

4       372.   Q.           Now, in your report 9B, can I turn your  
5           attention to page 4, and your first observation  
6           there? You say:

7       "...I have considered such characteristics as signature  
8                       design, letter formations, variation,  
9                       movement, size, proportion, writing speed,  
10                      pen pressure, spacing, connecting strokes  
11                      [et cetera]..."

12       Right?

13           A.           Yes.

14       373.   Q.           Now, would you agree with me that it's  
15           important to have originals in order to determine  
16           writing speed and pen pressure?

17           A.           Pen pressure, definitely.

18       374.   Q.           Definitely pen pressure. What about  
19           writing speed?

20           A.           Well, writing speed, yes, as long as there  
21           is no hesitation of movement or clear signs...even a  
22           photocopy, if it's a clear generation photocopy...it  
23           really depends on the quality of the copy. Some  
24           machines can produce far better quality copies than  
25           others. So that, again, is a variable. But

1 generally, you would consider in pen pressure or  
2 writing speed the movement, the fundamental  
3 movement, whether it's a feathering stroke, whether  
4 it's a blunt stroke, whether there is slowness of  
5 execution of movement, whether the signature is  
6 dynamic or not, it's moving forward.

7 375. Q. You would need originals to do that?

8 A. Ideally suited, yes.

9 376. Q. Okay. And similarly with pen lifts, it  
10 would be better to have originals to determine that?

11 A. Yes, definitely.

12 377. Q. Okay. And turning further to your page 5  
13 at the top, you say that:

14 "...The simulations may be skillful representations of the  
15 model writing, or poor laboured  
16 imitations..."

17 Do you see that?

18 A. Yes.

19 378. Q. Which is it? Is this letter of January 24  
20 a skillful representation of the model writing, or a  
21 poor laboured imitation?

22 A. I would say it is relatively skillful,  
23 except for where I am seeing the hesitation of  
24 movement and pen lifts and...but I consider pen  
25 lifts after examining the original document,

1           questioned document.

2       379.   Q.           So it's skillful, not a poor laboured  
3           imitation?

4       A.           Skillful? I would say practised is  
5           probably better than skillful.

6       380.   Q.           But not a poor laboured imitation?

7       A.           No.

8       381.   Q.           Okay. And earlier on, you say that the  
9           writing is...can I point it out to you? On page 4,  
10          can you look at that? The fifth paragraph:

11       "...The questioned signature was found to exhibit  
12               fundamental differences in movement and  
13               writing speed. The questioned signature  
14               appears to have been written more slowly.  
15               Some hesitation of movement is evident,  
16               whereas in the known signature specimens,  
17               the speed of writing is dynamic..."

18       Do you see that?

19       A.           Yes.

20       382.   Q.           Now, is it possible that an injury to a  
21           shoulder or arm could cause the signature to have  
22           been written more slowly, more hesitant?

23       A.           Possible.

24       383.   Q.           Can we turn now, finally, to the report 9D?  
25           That's the one on the letter February 18.

1 A. Yes, sir.

2 384. Q. We've touched on that a couple of times  
3 during this examination.

4 A. Yes, sir.

5 385. Q. But can we just clarify that this report is  
6 fundamentally different than the other two reports  
7 because it is not examining the authenticity of the  
8 document?

9 A. Yes, sir.

10 386. Q. And that is because there was an initial  
11 hypothesis, I think you said, that it was a relief  
12 print?

13 A. That it was some form of print process.  
14 The hypothesis was that it was closer to relief, as  
15 opposed to intaglio process, or a printer, if you  
16 will, like a mechanical printer, dot matrix, or  
17 laser, yes, sir.

18 387. Q. Okay. And who gave you that initial  
19 hypothesis?

20 A. It was my conclusions based upon my  
21 examinations under microscope.

22 388. Q. So you proposed the initial hypothesis...

23 A. Yes.

24 389. Q. ...that it was a relief print and not an  
25 original, if you will?

1           A.           Well, the first hypothesis was that it was  
2           not written by hand. There was no pen pressure.  
3           There were no line striations. It appeared to be  
4           sitting on top of the paper.

5       390.   Q.           Do you have a copy of this document that  
6           you examined for report 9D, the letter of February  
7           18? Do you have a copy of that document? I've  
8           already asked for the original, obviously, and I  
9           have been refused. So I am trying to find whatever  
10          I can, and I don't see a copy of the letter of  
11          February 18, 2010, which was the subject of the  
12          report at Exhibit 9D in your file.

13          A.           I have a working copy of the last page  
14          here. The first page is not here...a copy of the  
15          last page.

16       391.   Q.           So you don't have a copy of the first page  
17          of the letter of February 18?

18          A.           No.

19       392.   Q.           It's a bit unusual, isn't it, to not keep a  
20          copy of the document you actually examined in your  
21          file?

22          A.           I made copies. The first page is not here.

23       393.   Q.           Sorry, you made?

24          A.           I made copies, but the first page is not  
25          here.

1       394.     Q.        You made a copy of the first page but it's  
2               not there?

3               A.        It's not here.

4       395.     Q.        I see.  And did you examine the file before  
5               you came here?

6               A.        I am pretty sure I did, sir, yes.

7       396.     Q.        Where is the first page?

8               A.        I don't know.

9       397.MR. GRAY:     You don't know.  And can you produce for  
10               me a copy of the first page, Mr. Jiwa?

11     MR. JIWA:        You don't have any other record in here?

12     398.MR. GRAY:     No...well, we have a copy of the document  
13               that came somehow or another, but we don't  
14               have a copy of the document that Mr.  
15               Ospreay examined.

16     MR. JIWA:        Okay.  But you do have one...

17     THE DEPONENT:     It is supposed to be here, but...

18     399.MR. GRAY:     And would you agree with me that,  
19               effectively...

20     MR. JIWA:        So that is a copy of the letter dated...

21  
22     \_\_\_\_\_:

23     400.     Q.        Well, the full letter is not in your  
24               report, Exhibit 9D, is it not?

25               A.        No.  I've got the images copied here, but I



1 don't have the actual pages except for the second  
2 page.

3 401.MR. GRAY: Let's go off the record for a second.

4

5 --- DISCUSSION OFF THE RECORD

6

7 BY MR. GRAY:

8 402. Q. I am going to ask for you to produce the  
9 original of the letter that you saw, which I take it  
10 that your client is refusing to produce; is that  
11 right?

12 MR. JIWA: We will give you a copy. U/T

13 403.MR. GRAY: You will give me a copy of the original,  
14 right?

15 MR. JIWA: Well, I don't have the original, but I will do  
16 a copy from the file.

17

18 \_\_\_\_\_:

19 404. Q. But would you agree with me that, what you  
20 are essentially saying in your report 9D is that  
21 that letter of February 18 is a photocopy?

22 A. No, sir. I am saying it is not original  
23 writing. It is probably a mechanical process that I  
24 am not fully able to identify the...

25 405. Q. What did the first page look like? Do you

1 remember?

2 A. It was addressed to...well, the copies are  
3 attached to the actual writing on it, and I am only  
4 concentrating on the written portions, not the  
5 actual letter itself...is the...I believe it  
6 was..."My Dear Spiritual Child" was written on it.

7 406. Q. But was it imprinted with a...

8 A. Yes, there was. There was a seal on it,  
9 and one page was of a different colour than the  
10 second page.

11 407. Q. Okay. And what did the seal look like?

12 A. I can probably identify it in...

13 MR. JIWA: Do you want me to show him?

14 408.MR. GRAY: Not at the moment, no. I want to see if  
15 he remembers.

16 THE DEPONENT: I can't describe it. I can probably show  
17 you an example.

18

19 \_\_\_\_\_:

20 409. Q. Do you remember what colour it was?

21 A. I want to say silver, but that's a guess,  
22 because I thought I saw one that was gold as well.

23 410. Q. So you remember seeing something with a  
24 seal? Would it have been like...

25 A. It wasn't a seal. It was, I believe, more

1 of a...I am sorry, I can't describe what it  
2 is...more of a...

3 411. Q. Is it like this? I am showing you...

4 A. Yes, sir. Yes, sir.

5 412. Q. This is a letter of January 24.

6 A. Yes, sir, like that.

7 413. Q. It was like a crown on the top?

8 A. Yes, that I recall.

9 414. Q. All right. But if the second page was a  
10 photocopy, this would be the same as your  
11 conclusion, would it not be, whether the second page  
12 was photocopied?

13 A. I am not saying it was a photocopy, sir. I  
14 am saying that I was...some form of print process,  
15 the actual handwriting itself, as opposed to  
16 original handwriting.

17 415. Q. Okay. When you say "some form of print  
18 process", you mean it could be scanned from a  
19 computer, input into a...

20 A. Not from my knowledge. There was no...any  
21 form of either dry ink or powdered ink from, say, a  
22 standard photocopier or a dot matrix pattern or a  
23 laser, it is usually very distinctive. This was a  
24 process that was more like a relief...like a stamp  
25 process.

1 I conducted several tests with different markers to  
2 see if it was due to the paper. So I used different  
3 types of markers to see whether I was seeing  
4 something that wasn't absorbing into the paper. The  
5 paper is not something I am accustomed to. It's a  
6 foreign paper. I did ask the client about that, and  
7 asked if I could have a specimen of it, or test it.

8 There was none available.

9 So there were issues in regards to the actual paper  
10 itself, and what the substrate was of either the ink  
11 that was used to place the writing and the signature  
12 on the paper. Microscopically, the most I could say  
13 that it was not absorbed into the paper. It was  
14 sitting on top of the paper.

15 I was seeing what I was considering some form of  
16 almost ink spatter, which is almost a bleeding or a  
17 movement of the ink, which is consistent with a  
18 stamp-type process. I was also seeing, and it's  
19 shown in the charts as well, where there are areas  
20 where there are gaps, full gaps, and almost  
21 plasticized on the top, that is consistent with a  
22 stamp, as opposed to...we would normally see pen  
23 pressure, troughs of pen pressure, lines striations,  
24 and you can normally identify the movement of a pen.  
25 There is where I questioned, again, to my client,

1 "Did the Aga Khan"...or, "Does the Aga Khan sign all  
2 of his documents?" Again, a hypothesis on my part.  
3 Reasonableness, in any case, would suggest that  
4 someone as important as His Highness with many  
5 documents signed probably would not sign or write  
6 all documents in person, that there could very well  
7 be the probability of a stamp or a mechanical  
8 process used. When I discussed that openly with Mr.  
9 Jiwa, he agreed that it was possible.

10 416. Q. All right. So you think it might have been  
11 a stamp, the signature?

12 A. Some form of stamp or mechanical process.  
13 I am not 100 percent sure.

14 417. Q. But you recognize that it has other  
15 writing, it has a sentence written there:

16 "...This is not at all the course that I would wish to  
17 follow..."

18 Do you remember that?

19 A. That is correct. Yes, I have a copy of  
20 that, yes.

21 418. Q. And do you think that that was a stamp,  
22 that a stamp was made up of that sentence?

23 A. I am not saying stamp. I am saying some  
24 form of, what I would consider relief process, or  
25 mechanical process.

1       419.     Q.        Okay. Well, describe to me what you mean  
2               by "some form of relief", because it is not a  
3               photocopy, you have said that?

4       A.        I don't think it's a photocopy, no.

5       420.     Q.        It's not a digital dot matrix print from a  
6               computer, right?

7       A.        That is correct.

8       421.     Q.        And I thought you said, correct me if I am  
9               wrong, that you thought that the signature might be  
10              a stamp?

11      A.        No. It was consistent with a stamp  
12              process. It was consistent with a relief...a relief  
13              process is where it is sitting and it is being  
14              placed on the paper, as opposed to where it's above  
15              the paper. So what I am saying is that, akin to a  
16              stamp, it's a relief process. I consider a relief  
17              process. And which process actually was used, I  
18              could not identify.

19      422.     Q.        And by "stamp", you mean it's something  
20              whereby somebody had a pre-existing raised, I will  
21              say, negative, if you know what I mean, image, so  
22              that when inked, it would...when put down on the  
23              paper, it would lie on the surface of the paper; is  
24              that what you are saying?

25      A.        That is correct.

1       423.     Q.        So somebody made a...or it's possible, at  
2               least, your assertion or your assumption is that  
3               somebody made a process by which the signature was  
4               raised in a way that when inked, it was a negative,  
5               so that when raised...when ink was placed on the  
6               paper, it produced a positive signature?

7       A.        I could not identify it 100 percent. It  
8               could also be an unknown to me, mechanical,  
9               computerized process. And whatever print process  
10              was used, I could not identify.

11      424.     Q.        Right. So you are suggesting that the  
12               sentence, not just the signature, but the sentence  
13               was done by this process?

14      A.        I am suggesting that, and as indicated in  
15               the report, the actual signature and handwriting on  
16               the first and second page of that document was not  
17               executed by a human hand.

18      425.     Q.        Including the sentence?

19      A.        That is correct.

20      426.MR. GRAY:     And you won't produce this, Mr. Jiwa, for  
21                       my expert to examine this?

22      MR. JIWA:        No.

23  
24      \_\_\_\_\_:

25      427.     Q.        I suppose you were given this by Mr. Jiwa





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4	Copy of a letter dated January 24, 2010, with notation "Q1(a) (original)"	36
5	Photocopy of an affirmation signed by Aga Khan on May 12, 2010 in Federal Court, marked "Q2" at top	37
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REPORTER'S NOTE:

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I hereby certify the foregoing to be a true and accurate transcription of the above noted proceedings held before me on the **18th DAY OF AUGUST, 2010** and taken to the best of my skill, ability and understanding.

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**Certified Correct:**

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**Anthony Ng**  
Verbatim Reporter