

Commission of Inquiry
Into the Wrongful
Conviction of David Milgaard
before
THE HONOURABLE MR. JUSTICE
EDWARD P. MacCALLUM

Transcript of Proceedings
and
Testimony before the Commission
sitting at the
Radisson Hotel at
Saskatoon, Saskatchewan

On Wednesday, October 5th, 2005

Volume 81

Inquiry Proceedings



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 (Retired)



INDEX OF PROCEEDINGS

DESCRIPTION:

PAGE:

THOMAS DAVID ROBERTS CALDWELL, CONTINUED

- BY MR. HODSON

16154



Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Morning.

ALL COUNSEL: Morning.

THOMAS DAVID ROBERTS CALDWELL, continued:

BY MR. HODSON:

Q Morning, Mr. Caldwell.

A Morning, sir.

Q Yesterday when we adjourned we were dealing with a September 9th letter, September 9th, '69. If I could call up 007011, and just to cover a couple of points that we touched on yesterday, you will recall, Mr. Caldwell, that based upon your notes and Mr. Tallis' memorandum it appears that you met with him on September the 8th, 1969; do you recall us looking at those documents yesterday?

A Yes I do.

Q And it appears from those notes that there may have been, and I think you said likely was, some discussion about the file and witness information, and that Mr. Tallis had asked for some information; is that correct?

A I would think that happened, sir.

Q And I think I asked you, and you agreed, that your quote in your letter from the *Dallison vs Caffery*



1 case, I think you said that that was what you
2 believed to be your obligation at the time as far
3 as providing either information or statements to
4 defence counsel; is that correct?

5 A That's right.

6 Q If we could just go back to, or go to the next
7 page, I just want to -- actually, and if you want
8 to look at the original or -- I think your counsel
9 has a copy of that.

10 A Oh, thank you.

11 Q It's got 62 in the top right-hand corner. So I
12 think, just in the bottom there, your letter says:

13 "The various Police Officers who were to
14 check their notes for further
15 information will be attending at my
16 office at 12:00 noon on September 10th.
17 ...",

18 which was the next day, and I think that was the
19 day, the day before the prelim was finishing:

20 "... at which time we will be able to
21 interview them and you should be able to
22 recall any of them you wish in the
23 afternoon of that date."

24 We touched on this briefly. I think you said
25 yesterday that the officers were coming to your



1 office, and that you and Mr. Tallis would
2 interview them, is that fair, or that he would
3 have an opportunity to interview them?

4 A That's correct. And the way that it, the timing
5 is going there, it appears that that would give
6 him the opportunity to recall any of them during
7 the prelim's existence, if you will.

8 Q So do I read this correct that what you are
9 saying, or the arrangement you had with Mr.
10 Tallis, was these officers are checking their
11 notes for further information. Do you know what
12 that would be; was there something Mr. Tallis
13 asked them to check?

14 A Umm, I don't know what, but there may well have
15 been, Mr. Hodson.

16 Q I've got a note that I will show you in a
17 moment --

18 A Okay fine.

19 Q -- that appears -- that has some information from
20 officers that may assist, --

21 A Okay.

22 Q -- but maybe we'll deal with that then. And so
23 then Mr. Tallis would come to your office, you
24 would have the officers available, and then if he
25 chose you would then recall these witnesses?



1 A Yeah. The situation there appeared to be these
2 would be ones which he would indicate to me that
3 he wanted called, and I would call them, and it
4 would still be the Crown's case in the prelim, as
5 I read this, was --

6 Q Yes.

7 A -- was about to finish.

8 Q And are you able to tell us who the police
9 officers were, by memory, or who you think they
10 would have been?

11 A Not from the letter, I can't, sir.

12 Q And so at this point, we're September 9th, 1969,
13 and there's some further communication and further
14 letters with disclosure later on in the file and
15 I'll go through those, Mr. Caldwell, but I want to
16 pause at this point and just talk a bit about the
17 police theory. We've heard evidence that at the
18 time, certainly in February of 1969 and perhaps
19 later, that the Saskatoon City Police and the
20 RCMP, who were investigating the murder, had a
21 theory that the person who had raped two woman --
22 women and attempted to rape a third in October and
23 November of 1968, that that person, if we'll call
24 them the rapist of those three previous assaults,
25 that that rapist was also the same person who



1 killed Gail Miller. Now I believe I asked you on
2 Monday whether you were aware of that as being a
3 theory and I think you told us you were not; is
4 that correct?

5 A I think that's correct, sir.

6 Q So if we just pause here, though, where would you,
7 as prosecutor -- I mean we know that, based on the
8 police evidence, that the police had that theory,
9 and you are -- I think you have told us you didn't
10 know about it. Are you able to tell us again,
11 looking back, how -- how would it be that you
12 wouldn't know about it? And maybe that's not a
13 question for you, but for the police, but I
14 wouldn't mind your thoughts on that?

15 A Well I would be, if you will, very much
16 concentrating and involved with trying to get
17 the -- this preliminary hearing on and through in
18 the best form I could. I think I'd be, to a large
19 extent I'd be ignoring other crimes, if you will,
20 that went on in the city, including newspaper
21 accounts of them. I wouldn't -- I have no
22 recollection of seeing newspaper accounts and, as
23 you know, there were one or two searches of the
24 file at various peoples' requests which didn't
25 produce any -- cause -- I should say carried out



1 by myself. So other crimes in general, I'd be
2 pretty well looking at this case, and I -- it -- I
3 would expect that, if there was someone thinking
4 that such and such a witness or episode bore on
5 the David Milgaard prosecution, they would be
6 coming to me and saying, "Eh, did you get this
7 report", or, "I want to advise you of so and so".
8 I don't believe that happened, sir.

9 Q Okay. If we could take a look at that, and I
10 think -- correct me if I'm wrong -- but I think
11 that when you got the package of information from
12 the police I think what you are saying -- and
13 correct me if I'm wrong -- is that there wasn't
14 something there that flagged this and said, "Oh,
15 by the way, we had this other theory but it didn't
16 prove to work"?

17 A Yeah, I think it certainly didn't get before me,
18 and in a form -- I don't think in any form.

19 Q Okay.

20 A Certainly not in a form in which I would start out
21 following whatever leads those may have been.

22 Q Right. And if we just take a look at the ways in
23 which you, as prosecutor, might become aware of
24 this, the first would be that it might be in the
25 file materials that the police give you?



1 A That's a possibility --

2 Q And that --

3 A And that would be the most -- you know.

4 Q Right. And that, from those files, you as
5 prosecutor could glean that information?

6 A If --

7 Q That --

8 A If it was there.

9 Q Yeah. And I will take you through what we think
10 was on your file at the time, or what I think
11 you've told us was on your file at the time, and
12 I'll go through that.

13 A Okay, sir.

14 Q And I think you've told us that, based on that
15 review, you didn't -- you -- it didn't come to
16 your attention that that was a theory of the
17 police; I think that's what you told us?

18 A That's right.

19 Q And the second way in which you could get that
20 information, I suppose, would be to be generally
21 aware of it or to be in discussions with police
22 officers and just be familiar with that part of
23 the investigation?

24 A Well it -- I would only be -- that would only
25 happen if someone came to me saying, "Did you



1 notice item X or Y", you know. I wouldn't be
2 trying to broaden my view of the murder
3 prosecution.

4 Q And a third way, sir, would be -- and if we take a
5 look at what, the letter we just went through, is
6 that you going back to the police, and we saw this
7 with Dennis Elliott and Les Spence?

8 A Yeah.

9 Q They were suspects who were eliminated, and it
10 appears that you either went through the file, or
11 went back to the police and said, "Lookit, Mr.
12 Tallis wants to know about these rumours or about
13 these theories", and someone checked out, or you
14 checked out, --

15 A Yeah.

16 Q -- other suspects?

17 A Yeah. That, I think, is inescapable from --

18 Q Is that --

19 A And I would have done that for any (a) suspect, or
20 (b) other theory that he put to me.

21 Q Right. And that would be -- involve you looking
22 at the file and doing your own independent review,
23 saying, 'Okay, what other suspects might be here,
24 what might have been eliminated', right, so there
25 would be that?



1 A I would have to do that, I think.

2 Q Yeah. And, secondly, it also appears, from at
3 least some of the documents we've gone through so
4 far, and said, "Tell me, police", we've saw the
5 notes of Karst and Ullrich, saying, "Who were some
6 other suspects"; correct?

7 A Yeah. Because all, beyond looking at my file, the
8 next thing I would do or have to do is talk to
9 policemen --

10 Q And --

11 A -- and say, "What do you think of Mr. X or Y?"

12 Q And do you think, Mr. Caldwell, and I -- do you
13 have any recollection of the specifics of what you
14 would have talked to the police about, and those,
15 things of that nature?

16 A Not the specifics, no.

17 Q Based upon the documents that we looked at, and
18 your practices at the time, do you think you would
19 have gone back to the police and said, "Lookit,
20 tell me who are some other suspects or who were
21 suspects, do you have any information that might
22 tend to show that the accused is innocent", things
23 of that nature?

24 A I understood, sir, that it appeared that I had
25 done that.



1 Q It --

2 A From what you said.

3 Q It appears from the notes, well certainly the
4 notes we went through yesterday, --

5 A Yeah.

6 Q -- and I can call them up if you like?

7 A Yeah.

8 Q In fact maybe what I could do is just call up page
9 007014. And this was the notes, I think you've
10 told us, the three-page notes of your meeting with
11 Mr. Tallis. And if we could go to -- you seem to
12 remember at the bottom, here are the statements
13 that Mr. Tallis wanted, and go to the third page.
14 And this is titled Possible witnesses with
15 evidence which "tends to show prisoner innocent"?

16 A Yeah.

17 Q And we went through this yesterday and I believe,
18 and I went through, actually, some of the files,
19 and I believe your evidence, sir, was that this
20 would be -- be notes you made of either the review
21 of the file or the meeting with the police, or the
22 meeting with Mr. Tallis, but that it would reflect
23 a review of police files and information; is that
24 --

25 A That's right, based, essentially based on his



1 requests that we know about here.

2 Q Okay. And so I think you said, with Source, that
3 you may have actually asked officers?

4 A Yeah. What that would mean, Mr. Hodson, is in the
5 case of Dennis Elliott I would have, in effect,
6 asked Ullrich, third column Does It Show This, is
7 'no'.

8 Q Oh, I see.

9 A In the case of Spence and Elliott, I asked Karst,
10 and once again Elliott I have 'as above', which I
11 think refers to L. Spence, in other words it's the
12 same result.

13 Q Right.

14 A And both those were -- the file did not show any
15 of that class of evidence based on me speaking
16 with the people we just mentioned here.

17 Q Right. And I take it, I mean there's nothing in
18 this note that talks about the rapist theory, if I
19 can call it that, or the unknown, if -- let me put
20 it this way, the unknown suspect, being the person
21 who committed the three previous assaults?

22 A Yeah, I'm sure.

23 Q There's nothing in the document?

24 A I'm sure you are right, sir.

25 Q And so, again, do we take it from that, Mr.



1 Caldwell, that that was something that you would
2 have not known about then?

3 A The "something" being?

4 Q The unknown rapist as a possible suspect?

5 A I don't think I knew about that.

6 Q Did you --

7 A To my memory, no, I didn't have any file saying
8 that, you know, unknown rapist or --

9 Q We see, from the September 9th letter, that even
10 though I think Ullrich and Karst told you that the
11 Elliott and Spence information does not tend to
12 show that the accused is innocent, nevertheless,
13 you did -- if we can go to 007011 -- you did in
14 fact send that to Mr. Tallis?

15 A Yes.

16 Q And in, I think in fairness, on the top of the
17 next page you say:

18 "... in my opinion, none of the above
19 constitutes that evidence ...",
20 but you are providing it anyway; do you see that?

21 A Yeah, I said, 'You may have a different opinion
22 and therefore I'm supplying it', and I pointed out
23 that:

24 "... as possibly coming closest to
25 evidence in that category ... which I



1 haven't been able to find on the file."

2 And then, Mr. Hodson, it goes on. As you can
3 see:

4 "I have also spoken to some of the
5 investigators who are most familiar with
6 the file and they suggested the names of
7 Elliott and Spence."

8 So, in other words, I both read the file and
9 talked to the people who should have knowledge of
10 those people, persons.

11 Q Okay. And just back again, I think I was talking
12 about the ways in which you, as prosecutor, might
13 find out this information. I think, number one,
14 we identified by it being in the police file that
15 you got that you would read it; correct?

16 A Oh yes.

17 Q And so let me just make sure we're on the same
18 page.

19 A Okay.

20 Q I was talking about trying to probe a bit, Mr.
21 Caldwell, to see what may have happened back then
22 as to the information that the police had. We
23 know the police had theories and information about
24 an unknown rapist as a suspect, about how it might
25 have either got to your attention, and just to



1 look at that process?

2 A Okay.

3 Q So I think, number 1, we said it could be in the
4 police brief that you got, it could be in that
5 file?

6 A That would be one.

7 Q And I'll go through that in a moment. Secondly,
8 it could be in verbal communication that police
9 officers gave to you in discussions, or you were
10 generally aware of it?

11 A That could be.

12 Q And I think you've told us you weren't?

13 A Yeah.

14 Q Third, it would be where you go back to the police
15 and say it appears from the documents that you did
16 that, tell me who were suspects, tell me who has
17 been eliminated, things of that nature?

18 A That appears to be what I did.

19 Q And the fourth way, might I suggest, we've also
20 seen some indication that Mr. Tallis made some
21 specific requests of you to follow up to get me
22 information on, we saw the cab driver, get some
23 information on the cab driver and some other
24 matters?

25 A Yes.



1 Q Where he would say to you, 'lookit, I understand
2 that police investigated X, can you follow up'?

3 A That would be another method of doing it and I'm
4 sure I followed up everything he directed my way
5 in that way, Mr. Hodson.

6 Q So let's look at, and we've talked about one and
7 two, one being in the police file, and I'll go
8 through that, and I think you've told us, based
9 upon your review of the file, it didn't come to
10 your attention that there was a rapist as a
11 suspect; correct?

12 A No, that's right.

13 Q Secondly, you've told us you didn't know about it
14 at the time through other channels; correct?

15 A That's right.

16 Q So third, when you went back to the police, and I
17 think we've gone through your notes and the
18 letters, and certainly from those documents it
19 doesn't appear that that information was the
20 subject at least of written discussion between you
21 and the police?

22 A No, that's correct, sir.

23 Q If the police would have told you at that time,
24 Mr. Caldwell, that initially the police were of
25 the view that the person who committed the rapes,



1 the three previous -- when I call them rapes,
2 there was the two rapes and an attempted rape --
3 prior to the Gail Miller murder that the police
4 said we have a theory that the person who
5 committed those -- or number 1, that the same
6 person committed those three offences --

7 A Okay.

8 Q -- and secondly, we believe that person may also
9 have committed the murder and that that was
10 pursued as part of the investigation, okay.

11 A All right.

12 Q And that that was a theory at the time and that
13 the police, once they developed a case against
14 David Milgaard, eliminated that theory or
15 eliminated the unknown suspect, the unknown rape
16 suspect as a suspect in the murder, and would that
17 be information, if the police had told you that
18 and said yes, this is what we pursued and here's
19 all the information and we concluded that it was
20 not the same person and we eliminated the unknown
21 rapist as a suspect, is that the type of
22 information that you think, Mr. Caldwell, if you
23 had it at the time, that you would have given to
24 Mr. Tallis?

25 A I would think so because, Mr. Hodson, that's quite



1 a comprehensive package that you've described; in
2 other words, that's not just someone saying what
3 about good old so and so, that would be a process
4 where they did a careful investigation, presumably
5 came to a conclusion, I would assume they would,
6 you know, bring that to me and make me aware of
7 it, and in that case I wouldn't have -- I would
8 have given it to Mr. Tallis had I, in effect, had
9 it or known of that in that form. I wonder if
10 that's --

11 Q Yes. And would that be, and again if we get back,
12 we don't need to bring it up, but the test, if I
13 can call it, that you said you were trying to
14 follow, the Dallison vs Caffrey, is that a
15 credible witness who can speak to material facts
16 which tend to show the prisoner to be innocent,
17 now, it may not have been a witness, but I suppose
18 the police could be a witness, saying yeah, this
19 is --

20 A It does, a police officer could be a witness and
21 it would be a credible witness tending to show the
22 innocence of Milgaard that we're speaking of.

23 Q Right. And that would be the -- and again, when
24 we get back to -- I guess if we can make it
25 simple, when we're looking at, as a prosecutor, at



1 a file to try and identify material facts which
2 tend to show the prisoner to be innocent, am I
3 correct that there's sort of two different ways to
4 do that, and one is here's information that tends
5 to show that Mr. Milgaard did not commit the
6 crime?

7 A Yes.

8 Q And two, here's information to suggest that
9 someone else committed the crime?

10 A Yeah.

11 Q Because if someone else committed the crime, Mr.
12 Milgaard didn't; is that fair?

13 A That makes sense.

14 Q And so those would be the two prongs of what you
15 would look at when you are --

16 A Yeah.

17 Q -- trying to address the duty that you saw at the
18 time to provide information or witness statements
19 to defence counsel?

20 A That sounds correct to me, sir.

21 Q And the fourth I think that we talked about, and
22 that would be that Mr. Tallis had asked you for
23 the information, and in asking you this question,
24 Mr. Caldwell, I'm not suggesting that Mr. Tallis
25 should have asked you, okay, but if he had, if



1 Mr. Tallis had in the course of these discussions
2 said, 'lookit, I understand there were some rapes
3 at the time or I understand from talking to
4 officer X that that was investigated, would you go
5 get me information on these rapes,' would you have
6 complied with that request?

7 A Absolutely, because of various reasons, including
8 my respect for Mr. Tallis' ability and integrity
9 and his knowledge of things in the community which
10 I may not know about, I would have unquestionably
11 pursued that.

12 Q If we can now just turn, I just want to go through
13 some documents that were in your, I believe in
14 your prosecution file and just ask you some
15 questions about them.

16 A All right.

17 Q First if we could go to document 009298, and this
18 is number 25A, 25B and C. I'm not sure, Ms. Knox,
19 whether he needs to see the original on this.
20 It's the typed version and I'm just referring to
21 one paragraph, and so maybe just -- have you got
22 that? Maybe just look at the screen. If you want
23 the paper copy, let me know.

24 A Thank you.

25 Q This is a letter of February 5, 1969 from Mr.



1 Penkala to the Crime Index section, and if we can
2 go to the next page, and it starts off, "Re murder
3 of Gail Miller," provides a description, and the
4 next page, it ends up with a conclusion, and I
5 believe, Mr. Caldwell, this is on your prosecution
6 file and I believe you have acknowledged, or I
7 will ask you to acknowledge that this document,
8 that you did have it back in 1969, 1970?

9 A If that's the indication, I'm sure I did, sir.

10 Q Okay. And if we can go to this last paragraph, it
11 describes the offence and it says:

12 "Our department has two unsolved cases,
13 dating back into October and November of
14 1968, which involve complaints of rape.
15 In both these cases, the victim was
16 attacked from behind while walking in
17 the late evening, forced into a lane
18 and, under threat with a knife, made to
19 undress and submit to intercourse. The
20 victims were always threatened and
21 forbidden to see the attacker who, after
22 the attack, carried away some of the
23 victim's clothing. In these cases, the
24 attacker allowed the victim to replace
25 some of the clothing, usually the outer



1 garment or coat."

2 And so this refers to the two rape cases?

3 A All right.

4 Q This is (V1)-, (V2)-----, it doesn't refer to the
5 (V3)----- attempted rape. And so I take it, sir,
6 would you have read this back at the time you
7 reviewed the file?

8 A Yeah, if I'm taking what you said, sir, that it
9 was on our file. Now, it's addressed to the Crime
10 Index in Ottawa.

11 Q Your counsel can provide you with the original
12 from your file if that assists.

13 A Yeah, okay. And it came to our office and
14 presumably my file and I have all -- there are
15 three things as you know.

16 Q Yes.

17 A Now, that would have come and I'm assuming I would
18 have read it, sir.

19 Q And are you able to tell us, and I believe just
20 for the record I think -- and we'll see this a bit
21 later in the police -- in the Ullrich summary that
22 he sent to you, the three-page police summary, the
23 21 page witness summary, the witness statements,
24 the police reports, there was also a package of
25 correspondence that was sent, various police



1 correspondence.

2 A Okay.

3 Q And that's where this information was obtained I
4 believe, Mr. Caldwell.

5 A Okay, sir.

6 Q And I guess you would have read that. Are you
7 able to tell us whether that would have, or did it
8 cause you to I guess think about or consider
9 whether those two unsolved cases might have
10 something to do with the Gail Miller murder?

11 A Well, I'm taking it for granted that I read it.
12 At this point I can't remember what if any action
13 it prompted me to --

14 Q Yeah, and it would appear from this, just by the
15 description of the rapes, about undressing,
16 submitting to intercourse and then replacing some
17 of the clothing, and we know, we talked yesterday
18 about the unusual state that Gail Miller's dress
19 was found in with the -- which I think you said it
20 appeared that she undressed and then put her coat
21 back on before she was stabbed?

22 A Yeah, or someone did that.

23 Q Someone did that to her, I'm sorry, yes.

24 A But I think those are parallel things, Mr. Hodson,
25 those two or three things you've just mentioned.



1 It is in 1968, which is of course shortly before
2 this, before the Milgaard matter, so I assume I
3 read it. I can't -- I can't see any indication
4 that it prompted me to take any action, unless you
5 have other --

6 Q No, I have just put this to you, and perhaps with
7 the benefit of hindsight, Mr. Caldwell, does
8 this -- you've talked about the parallels
9 between --

10 A -- those two or three things.

11 Q Those two rapes and the Gail Miller murder.
12 That's apparent in looking at the document now?

13 A Yes, it is, and the benefit of hindsight, I
14 certainly would have, if I had it to do all over,
15 which hopefully I won't, I might have pursued
16 those things, but it didn't --

17 Q At the time, sir, and I think you've told us you
18 don't think this connected, if I can call it that,
19 if it had connected, what would you have done?

20 A Well, I would have said did you ever solve those
21 two cases that are mentioned in there. I think
22 they are mentioned as unsolved cases. Presumably
23 they remained unsolved for some period, including
24 this period of time. I suppose you would say
25 what's the evidence, what can you tell me about



1 the evidence you do have, identity, similarities,
2 differences to this case. You would be more used
3 to working with those in terms of similar acts
4 evidence and trying to call that on a current case
5 which was -- of course I didn't attempt to do in
6 this, in the Milgaard prosecution.

7 Q And back at the time when you are probing the
8 police for information, would it be sort of a
9 request such as lookit, can you people look at the
10 files and tell whether there's anything that --

11 A Yeah, very likely phone some investigator or
12 Ullrich and say what can you tell me about this
13 more than is in here.

14 Q And would you -- what effect if any would sort of
15 the evidence you had against Mr. Milgaard play
16 into that; in other words, would the fact that you
17 had what you thought at the time was an eye
18 witness --

19 A Yeah.

20 Q -- to the crime and an admission from another
21 witness, where, if any, would that play into your
22 thought process?

23 A Well, in that state of affairs, the case against
24 Mr. Milgaard would be much stronger than either of
25 these because we did have Nichol John as an eye



1 witness, Wilson as a quasi eye witness if you
2 will, and --

3 Q I'm sorry, let me just maybe rephrase the
4 question, I'm not sure I put it well. When you
5 are talking to the police and trying to identify
6 exculpatory information or information that may
7 tend to show the prisoner innocent, I'm wondering
8 what influence if any the facts and the case you
9 have against Mr. Milgaard would play? I'm not
10 asking you to judge other suspects or anything of
11 that, but what I'm trying to get at is if you felt
12 that you had such a strong case against Mr.
13 Milgaard based on the evidence, would that cause
14 you to do anything different when you go to the
15 police and sort of to what lengths you go to try
16 and probe and get information that may tend to
17 show him innocent? Do you understand what I'm
18 trying to get at?

19 A I think so. I don't know, Mr. Hodson, quite how
20 to answer that. I didn't think I had a strong
21 case against Mr. Milgaard. I don't know what
22 effect that would have on my request to police to,
23 you know, pursue these two other unidentified
24 accused offences; in other words, I would have
25 thought it would be the same thing. Strong or



1 weak case against him I wouldn't think would
2 affect how I approach that last paragraph, if I
3 did.

4 Q To what extent, Mr. Caldwell, would you be relying
5 on the police to bring to your attention this type
6 of information about other theories and other
7 suspects that may have been eliminated?

8 A Well, completely, other than the other narrow
9 field of Mr. Tallis which we've spoken of, I was
10 not an investigator and I had to resist
11 temptations to run around on the fringes of these
12 things, so I had -- there's no one I could rely on
13 but the police, they are the ones I would inquire
14 of and get whatever answer I got.

15 Q So just a couple of other documents. We've seen
16 the February 5th letter from Mr. Penkala. Next if
17 we could call up 009330, and this is a February
18 3rd, it says '68, but it's '69 -- no, sorry, I've
19 called up the wrong page. 002104.

20 A Now, is that one of these -- I guess it's not one
21 of the RCMP numbered things we've been looking at?

22 Q No.

23 A Okay.

24 Q And do you want -- did you want a copy of the -- I
25 can go take a look at this. It's not in your



1 correspondence folder.

2 A Okay. Well, I --

3 Q Maybe we'll just go through it, and please tell me
4 if you want the paper copy, maybe your counsel is
5 looking for it now. This is the February 4th,
6 1969 police report and this is number 93 in the
7 Ullrich witness summary.

8 A Okay.

9 Q And so this is a document that's specifically
10 referred to in the witness summary, and I think
11 the reason it is is because of this paragraph
12 here, it talks about the keys.

13 A Oh, I see, sir.

14 Q So it says here, this is Mackie's report at 5:00
15 p.m., February 1, 1969, two keys, one metal ring
16 with a leather thong attached were received from
17 Detective McCorriston and given to Detective K.
18 Mackie to be checked against 130 Avenue O South.
19 It was found that three keys for the front door
20 and the suite of Gail Miller -- sorry, I misread
21 that.

22 A I think it's were.

23 Q Were for the front door and interviewed Les Spence
24 and received a statement from him. And then if
25 you can just go to the left --



1 A Okay.

2 Q No, I'm sorry, we need the -- right over. It
3 says, "Keys from McC to K. Mackie & return."

4 A That's my writing.

5 Q And that would be a continuity issue; is that
6 right?

7 A Just to see -- yeah, I suppose if you really had
8 to end up trying to prove that you would want to
9 know where --

10 Q If we can go to the top of the document, please,
11 very top, I think you've told us yesterday that
12 you would put the name of the officer at the top,
13 and this is R. Mackie 1, and then you've got keys
14 underneath; is that right?

15 A My writing, yes.

16 Q So is it fair to say that this report, and it's
17 part of the Ullrich summary, based on your notes
18 would this be part of the evidence to establish
19 that the keys were found and the continuity and
20 then that's what the notes refer to?

21 A It -- if I had to establish continuity, it would
22 be necessary for that. I'm not so sure, Mr.
23 Hodson, that this wasn't some of the follow-up of
24 Mr. Tallis' requests project.

25 Q I see.



1 A I'm not suggesting it was, but it looks as if it
2 could be that way.

3 Q I thought yesterday that you had said, or maybe
4 even Monday, that as far as the investigation
5 reports, that you would use them in part as guides
6 for the police officers and their evidence because
7 it indicated what they had done?

8 A Yeah. Presumably that was on my file without a
9 doubt and I may have used it on the keys issue if
10 there was one.

11 Q I see. So --

12 A In other words, there may not have been any issue
13 over the keys and if it wasn't going to happen, it
14 would stay on my file, I would simply --

15 Q Right. Is it fair for us to conclude, though,
16 that your notes that you made on this police
17 report were in connection with two things, one,
18 the finding of the Gail Miller keys, and two,
19 police officers handling of those keys; is that
20 fair?

21 A Yes, and they went out and talked to this
22 gentleman.

23 Q Yes. And then if we just scroll down to the
24 bottom of that page, right to the bottom, we see
25 in this report right under the keys, it says at



1 8:30 p.m., (V2) (V2)- (V2)-----, 412 Avenue D
2 south, who would have been a rape victim, was
3 brought to the morality office where Morality
4 Sergeant Oleksyn and myself showed her a group of
5 photos which included two colour photographs which
6 included the Canton brothers. Due to no
7 identification being made of either of these men,
8 Morality Sergeant Lindgren and Phillips were
9 instructed to take this girl to the identification
10 department where a composite photo was made up by
11 her. Can we assume, Mr. Caldwell, that you would
12 have read that part of the report at some point?

13 A I would think so.

14 Q And are you able to tell whether that paragraph
15 and the name (V2) (V2)- (V2)----- would have meant
16 anything to you at the time?

17 A Evidently it didn't. I can't see any marginal
18 notes saying pursue this or ask something.

19 Q We know that Ms. (V2)----- was the second of the
20 rape victims in November of 1968. Were you aware
21 of that at the time?

22 A I don't believe so, and this thing, you know, I
23 would simply take as one more thing that officer
24 Mackie did on that date, one more paragraph of
25 things that he looked after in one form or



1 another.

2 Q And maybe you are not able to answer this, but if
3 this police report had not dealt with -- we can
4 scroll up at the top --

5 A Okay.

6 Q -- if this police report had not included this
7 paragraph about the keys, if it had not, do you
8 know whether this was a report that you would have
9 even received?

10 A Well, since it -- the label is 'R. Mackie - keys'
11 in the upper right-hand corner, and then the
12 marginal note is 'keys from McC to Mackie &
13 return,' or words to that effect, it is limited,
14 in my estimation, to evidence about these keys,
15 because that's all either boxed or highlighted or
16 has notes about it, so it's quite possible I only
17 wanted it for that, but I would be surprised if I
18 hadn't read the whole thing.

19 Q Right. But just getting back, and when we talked
20 about the witness summary yesterday, it appears,
21 and certainly the only police reports that you
22 received were those reports that were specifically
23 mentioned in the witness summary, and this report,
24 page 93, I believe is simply mentioned in
25 connection with the key s?



1 A I'm assuming you are right, sir.

2 Q Right. And so my question is if this, for
3 example, had these keys been in a completely
4 different police report, a separate report on the
5 keys and that, do you think you would have
6 received the report from Mr. Ullrich? Do you
7 follow?

8 A Well, if it were dealing with the keys, by the
9 look of this I would have obtained a reporting
10 even if it was one or two sentences about the key
11 issue, if there is one.

12 Q Yeah. Let me just try it -- and maybe this isn't
13 a fair question for you, Mr. Caldwell. If Mr.
14 Mackie had prepared two reports on February 4th,
15 one that he put the keys in, this information
16 about the keys, and one report with the rest of
17 the information -- right?

18 A Yeah.

19 Q -- I'm wondering, what was your understanding of
20 what you would get from Ullrich as far as the --

21 A Well, I wouldn't think, if Ullrich knew that I was
22 interested in, let's say, the keys as a topic, if
23 they were the only thing in that report, I'm sure
24 I would have got the report. Secondly, if he knew
25 that and the investigator talked about other



1 aspects of the case which he appears to be doing
2 here and the key business was incorporated in
3 that, I'm sure he would get me the whole report,
4 so either way, Mr. Hodson, I would get it the way
5 I see this now.

6 Q I see.

7 A But I would have of course, you know, used what
8 part of it, if any, had anything to do with the
9 case. I don't know whether the keys ended up
10 being contentious.

11 Q Right. But are you aware, sir, from a later
12 review of -- not a review, but a look at what
13 consists of the entire Gail Miller investigation
14 file, as to whether or not you received all of the
15 police investigation reports?

16 A Well, on the Gail Miller investigation file, I
17 clearly did not, and I think that I mentioned --
18 but when I saw that file, it was with Inspector
19 Quinn at the police station, I believe I went down
20 to give a statement about the so-called missing
21 statements, and that file was five to six feet,
22 plus or minus, wide horizontally, so I clearly
23 didn't get that.

24 Q Okay. And based upon the police records that we
25 have seen, there are certainly -- and based upon



1 your evidence, sir, that the only police
2 investigation reports you received were those
3 identified by page number in the Ullrich witness
4 summary, based on that it would appear that there
5 are police investigation reports that you did not
6 get?

7 A Absolutely.

8 Q And again my question is as to who -- which
9 reports that you received, was it your
10 understanding that the reports that you received
11 were those that Mr. Ullrich identified in his
12 witness --

13 A That's my understanding based on what we have done
14 in recent days, and if that proves incorrect, Mr.
15 Hodson, I would be happy to --

16 MS. KNOX: Mr. Commissioner, if I can, just
17 for the correctness of the record, I think we
18 should acknowledge that there were some reports
19 that came after the preliminary inquiry were
20 done, the ones that are dated August, September,
21 there are reports on his file that aren't
22 connected or don't match with the brief, but they
23 are post the submission of that brief before the
24 preliminary inquiry.

25 MR. HODSON: I believe that's correct,



1 although I think they are handwritten in page
2 numbers after, yeah, so we will -- as I said
3 earlier, we will have a document that identifies
4 what's on there, but I think generally, up until
5 the date that you received the Ullrich witness
6 summary, and I appreciate the comment that there
7 were a couple of police reports, I looked at one
8 yesterday, August 26th, relating to Mr.
9 Schellenberg and Albert Cadrain, do you remember
10 that police report?

11 A Yeah, I do.

12 Q That actually arose out of your interview in
13 preparation for the prelim.

14 A Okay.

15 Q So that was a police report after you got the
16 Ullrich summary that's on your file?

17 A Yeah, I expect there were, Mr. Hodson, and I
18 clearly don't recall them, but I'm happy to look
19 at any one you want to direct to me.

20 Q If we could then call up 183170, please, and we
21 looked at this yesterday, this is
22 Mr. McCorriston's February 5, '69 report. If we
23 can go to the next page, please, and I think I
24 asked you this question yesterday, we were looking
25 at the bottom part -- we don't need to call it



1 out -- but we were looking at the bottom part on
2 Mr. Tkachuk and Mr. Weinmeyer, I went through that
3 yesterday on this page?

4 A Yes.

5 Q And then I showed you at the top this reference to
6 Larry Fisher being checked, and I think you told
7 us yesterday that you would have read that in part
8 of your review?

9 A I would have. It's the report of McCorriston
10 interviewing people who were potential bus
11 catchers the day later or something.

12 Q Do you recall -- in fact, we can go to the
13 previous page, please, if we look at your note, I
14 think your counsel will get you the original or a
15 copy.

16 A Oh, thanks. That says 'Re Diewold'.

17 Q Yes. If we look at that, this is the -- this is
18 the police report that captured the information of
19 Mr. Diewold and we saw yesterday that Mr. Diewold
20 didn't give a statement, correct, he was the
21 fellow at St. Mary's church?

22 A That's what I understand.

23 Q And so would this be the report or the information
24 you relied upon to understand what Mr. Diewold's
25 story was?



1 A If he didn't give a report, this would be all I
2 had, Mr. Hodson.

3 Q I see. So then if we go on the second page, I
4 don't see any notes of yours on that page; is that
5 correct?

6 A Is that 117?

7 Q Yes. It might be a note there.

8 A No notes of mine, and I'm pleased to say that I
9 didn't do any of the highlighting, including the
10 Larry Fisher highlighting which is on here now.

11 Q Yeah. I think, just for the record, I think in
12 1990 or '91 when the police reviewed the files,
13 they may have highlighted all the names for a
14 record and we'll be hearing evidence about that.

15 A Okay.

16 Q And then the next page, these would be your notes,
17 purse found, and I think this is a report where
18 Officer McCorriston found the purse; is that
19 correct?

20 A That's right. That's not my writing, but
21 that's --

22 Q Oh, okay, sorry. The 'purse found' is not yours?

23 A The red 'purse found' in brackets is not mine. 'N
24 thinks it's --' something.

25 Q Squeeze-out?



1 A Yeah, is mine in red pencil. It appears the title
2 'purse' in the blue is mine, in the left column,
3 that's my printing or writing.

4 Q So, sorry, if you could just -- 'purse', is that
5 yours?

6 A Yes.

7 Q Where I've circled, the top purse, and 'N thinks
8 it's squeeze-out', that's your writing?

9 A That is as well.

10 Q And the rest of it is not your writing?

11 A And, I'm sorry, the 'no compact' is my writing as
12 well in the blue, sir.

13 Q So what I've circled, the 'purse, no compact, N
14 thinks it's squeeze-out' --

15 A Those are mine.

16 Q And does N refer to Nichol?

17 A Just let me read it. It could be that means N
18 commenting on what type of cosmetic or -- whatever
19 that item -- would you like me to read it?

20 Q No, that's fine.

21 A Okay.

22 Q I'm not sure much turns on that.

23 A Okay.

24 Q Would this page, then, be used by you in your
25 prosecution to assist you with dealing with the



1 purse and the compact?

2 A I would expect it would have.

3 Q So then if we can just go back to the previous
4 page, then, the reference to Mr. Fisher -- and I
5 think you may have told us this yesterday -- did
6 that have any significance to you at the time when
7 you were preparing to prosecute this case?

8 A Umm, it didn't, it did not, sir. And the address
9 never, of the Cadraains didn't stick in my mind --
10 not saying it should have -- but I never did get
11 it to where I automatically recognized it as time
12 went on in this matter, and it's the same address
13 I -- and ten minutes from now I couldn't tell you
14 what it was re Fisher, because the Fisher entry
15 did -- had no significance as I --

16 Q And did the name Larry Fisher mean anything to you
17 at that time?

18 A Not at all.

19 Q And if, just on the address, if that had connected
20 in your mind, if it had, is that something, as a
21 prosecutor, would that mean anything?

22 A Would it would, I thought it would be very
23 remarkable, and I'm not sure I'd do more than say
24 "isn't that interesting". Possibly that would
25 trigger a request for someone to go and see if --



1 Fisher, or what was going on, but it just didn't
2 happen.

3 Q Okay. If we can go to 009251. This is that
4 document, I think 346 is the police summary, so
5 this -- this document was provided to you by Mr.
6 Ullrich.

7 A Umm, okay.

8 Q Ms. Knox, did you want -- I think has got the copy
9 for you.

10 A Oh, thank you. Thanks.

11 Q And I think, at the top, we see R. Mackie number
12 1?

13 A That's right.

14 Q And then, if we can go to the next page, we see
15 R.M., which I presume is Mackie, number 2 --

16 A That's correct, all in my writing.

17 Q And then this down here, "wallet"?

18 A Yeah, the writing and underlining is not mine
19 there, Mr. Hodson.

20 Q It's not?

21 A No.

22 Q And just at the top, if we can go to the top of
23 the page, --

24 A Yes.

25 Q -- I think that arrow was added after the fact?



1 A I certainly hope so. It was not my handiwork, and
2 nor was any of the red underlining, sir.

3 Q And perhaps, maybe we can put that, is that the
4 original or is that a copy?

5 MS. KNOX: It's a coloured photocopy.

6 BY MR. HODSON:

7 Q Maybe we can just put the coloured photocopy on
8 the Elmo and I'll walk you through it, what is
9 yours.

10 A Sure.

11 Q And so on that page the 'R.M. - 2' at the top
12 would be your writing?

13 A That's correct.

14 Q And the 347, 641, and 85; is that your writing?

15 A None, none of those.

16 Q The red underlining; is that yours?

17 A None of them on that page, sir, are.

18 Q None on the page, and I think we see that all the
19 names are underlined. And is that blue arrow --

20 A That's a -- didn't exist when I had the file.

21 Q If we can go back to the -- I'm sorry, and the
22 "wallet" and the writing at the bottom is not
23 yours; is that correct?

24 A That's correct.

25 Q And if we could go back to the first page, please,



1 get the first page on there. And I think you said
2 the writing at the top, 'R. Mackie - 1', that is
3 your writing?

4 A That's correct.

5 Q And the red 2 and the red 346 and the 86; is that
6 yours?

7 A I don't -- none of those --

8 Q And --

9 A -- are mine, sir.

10 Q And the red underlining of all the names; is that
11 yours?

12 A None of that is, and nor is that initial, whatever
13 it is, B or --

14 Q Well the B is not yours, and the bottom left-hand
15 I think is Ms. Knox's handwriting on the photocopy
16 to identify which --

17 A Okay.

18 Q 93 is the government file that this document was
19 found.

20 A Okay, very good.

21 Q And I think she wrote that on the copy after it
22 was copied. And what about this; would any of
23 that be your handwriting on there?

24 A The one you've just bracketed?

25 Q Yes?



1 A No. It's red underlined, again, and it's not
2 mine.

3 Q Okay. I think we can go back, I think we're fine,
4 you can return that copy to Mr. Caldwell if he
5 needs it, if we could just put our version of the
6 document back on the screen.

7 A Oh, thank you.

8 Q Would it be fair to say, Mr. Caldwell, I think the
9 reference in the Ullrich witness summary to these
10 pages refers to the wallet?

11 A I wouldn't be surprised because it appears to be,
12 first of all, something that was involved in the
13 investigation because of where it was found
14 initially, umm, and it's very -- just that one
15 three-line paragraph about it.

16 MS. KNOX: Mr. Commissioner, if I may, I've
17 retrieved the original from the file that he had,
18 and that arrow is attached to a sticky tag note,
19 I can have it displayed on Elmo as well.

20 MR. HODSON: Sure.

21 BY MR. HODSON:

22 Q Did they have sticky notes in 1969, Mr. Caldwell?

23 A I don't think so, sir.

24 Q Okay. So that note, and I think when it got
25 copied, that's where the note came on?



1 A I -- oh, now I see. This is interesting because
2 the note shows on your -- the screen, but of
3 course not on the --

4 Q Yeah, I think that the note was copied, okay.

5 A Okay.

6 Q So that was after. If we can just go back, again,
7 is there anything in that original that changes
8 anything you've said?

9 A Not unless, sir, you wanted me to look at one part
10 of the note.

11 Q No. If we could just call up, back from the
12 Ullrich witness summary, page 105623, and I don't
13 think we need to get the original. And we'll see
14 at the bottom, this is what Mr. Ullrich prepared,
15 Detective Sergeant Mackie. If you can call that
16 out please, and you will see there pages 346-347,
17 and you will see:

18 "April 4th ... received wallet and
19 contents from Beauchamp, turned it over
20 to Penkala."

21 And then, as well, April 4 found the two
22 hospitalization cards. So if we see 346-347,
23 let's go back to 009251, and this is 346-347, and
24 if we go to the second page we see, here's the
25 information about the wallet which was seized on



1 April 4th, turned over to Penkala:

2 "... along with 2 hospitalization cards
3 for processing by their dept."

4 Can we take it from that, Mr. Caldwell, that
5 that's the connection between those, that police
6 report and the Ullrich witness summary?

7 A That's what I believe, and it narrows it down to
8 the one item, but -- that I'd be examining on the
9 way I see it now, sir.

10 Q And then if we could go back to the first page,
11 please, and I take it you would have read, I think
12 you've told us you would have read all the police
13 reports; is that correct?

14 A Yeah, I would have.

15 Q And then we see a reference here to, on March 31,
16 Carl Joseph Crook, 412 Avenue J South, date of
17 birth:

18 "... was interviewed with regards to
19 this murder. Crook was unable to offer
20 any assistance and denied being
21 responsible. Crook did not know his
22 blood grouping but believed that on the
23 morning of this offence he was at home.
24 When interviewed in regard to his
25 associations and knowledge of (V2)-----



1 and (V1)-, rape occurrences, Crook was
2 acquainted with the (V1)- family and
3 denied being responsible for either of
4 these offences also. He was unable to
5 supply with his blood grouping and as he
6 was a prisoner he was not taken to
7 RedCross for this to be done."

8 Again, would that have had any significance to
9 you at the time, sir, the mentioning of the rapes
10 and the names (V2)----- and (V1)-?

11 A Umm, no, it wouldn't.

12 Q If we can then go to the next page. Again, this
13 is the same report of Mr. Mackie, and it says:

14 "Also on April 4 I received from
15 Mr. (V2)----- one photo, one jacket
16 photographing which had been the
17 property of his son. This jacket was
18 described Mr. (V2)----- by as being an
19 identical jacket being worn by the
20 person who attacked her except that the
21 collar was different. After receiving a
22 photo of this jacket it was circularised
23 through the dept. for anyone to be on
24 the look out for it."

25 And, again, would that have had any significance



1 to you at the time when you read it, Mr.

2 Caldwell?

3 A No, sir.

4 Q If we could call up 009386, that's document ID --
5 yeah, thank you. And I asked you about this
6 yesterday, I just want to identify it for the
7 record. This is another document that was on your
8 prosecution file, and we went through this
9 yesterday when we talked about the lab reports
10 that you may have sent to Mr. Tallis, and again I
11 think what you told us, that would be your writing
12 "omit", and I believe you told us you thought this
13 was from a different file?

14 A Yeah, that's also my writing as well, yeah.

15 Q Okay. And, based on these notes, was this a case
16 where you thought it was inadvertently given to
17 you?

18 A Yeah, it's -- it came to me and un -- and of
19 course read it, the top note is "different file"
20 encircled, then the note "omit" I now realize and
21 I'm sure is my handwriting because of -- the
22 colours and the question mark would be mine, and
23 also the squiggly line was mine.

24 Q It --

25 A And so it, in my view, came from a different file,



1 shouldn't have been there at all.

2 Q And did you, at any time, draw a connection
3 between the names in that report and the names
4 from the two or three pages that I just read to
5 you in your police reports?

6 A No, I didn't, sir.

7 Q If we could then go to call up document 006486.
8 And this is a handwritten statement of (V6)---
9 (V6)-. Do you want the -- actually, Ms. Knox, if
10 you -- if you've got the statement folder there we
11 can maybe go through these. I want the (V6)---
12 (V6)-, (V)-- (V) (V)----, (V9) (V9)---- and
13 (V4)---- (V4)---, it's 38, 39, 40 are the
14 statement numbers.

15 MS. KNOX: (Inaudible)

16 BY MR. HODSON:

17 Q Perhaps, while she's getting those, I can just go
18 through the first one. This is a statement of
19 (V6)--- (V6)- and I believe the records suggest,
20 Mr. Caldwell, that these would have been sent to
21 you by the Saskatoon City Police after Mr. Tallis
22 requested that you go through all of the witness
23 statements; do you remember telling us about that
24 yesterday?

25 A Oh, yes, and I'll -- I'm sure you are correct on



1 that.

2 **Q** And so that you ended up getting all of the
3 witness statements from the city police?

4 **A** As I understood it.

5 **Q** And was that -- and I think you told us -- correct
6 me if I'm wrong -- that was prompted by a request
7 from Mr. Tallis to get them and read them?

8 **A** I think that was the sequence of events, sir. I
9 have the original here now.

10 **Q** And this is a statement of February 18th, 1969 and
11 it talks about -- if we can just call out this
12 paragraph, we have seen this document before, I'll
13 just touch on briefly what it is. This woman
14 says:

15 "On Wednesday on January 15th or 22nd
16 about two weeks before the Miller
17 murder, I was on my way to the Hi Low
18 Mart or confectionary at approximately
19 6:00 p.m."

20 And then it talks about "near Lindsay Place",
21 which is in Greystone, right off of 8th Street.

22 **A** Okay.

23 **Q** And then the next page she goes on to describe an
24 attempted assault or an assault. And then, if we
25 can go to the fourth page, she describes her



1 assailant there in the statement as:

2 "5 feet 2 inches to 5 feet 6 inches,

3 Stalky build but not fat

4 age - middle thirty's may have had a

5 thin line moustache".

6 Now I take it, from what you have told us, you
7 would have read this at the time?

8 A Yes, if it came in as a result of the Tallis
9 request through the police, I would have read it
10 when it got to me.

11 Q And it doesn't, it doesn't appear that it was
12 given to Mr. Tallis. Would there be any reason at
13 the time, Mr. Caldwell, that you would provide
14 this statement to Mr. Tallis?

15 A Maybe --

16 Q Do you wish to read through it?

17 A I would like to do that, sir.

18 Q Yeah, go ahead and read through it.

19 A (Witness reading) I get -- in this instance it's
20 another person eventually helped this lady out,
21 and she also got a, if you will, good look at the
22 assailant in this instance, which was unusual I
23 guess.

24 Q So I guess my question is, is would you view this
25 or did you view this statement at the time as a



1 credible witness who can speak to material facts
2 which tend to show Mr. Milgaard to be innocent?

3 A I wouldn't have thought so, sir.

4 Q And why not?

5 A Because there was -- is -- as it happens, I think
6 you mentioned Lindsay drive or crescent --

7 Q Yes.

8 A -- is in --

9 Q Yes.

10 A -- which is in Greystone, which is the other end
11 of the city, for one thing. This fellow was never
12 identified, although he was viewed by this
13 witness. I just didn't know how you could erect
14 that into anything.

15 Q Yeah. And are you answering that today, Mr.
16 Caldwell, based on the memory at the time or based
17 on what you think you would have done and thought
18 at the time?

19 A What I would have done and thought, sir. I don't
20 -- I have no memory of this statement.

21 Q Okay.

22 A I --

23 Q I appreciate that.

24 A Okay.

25 Q Next if we could go to 006400, and that's



1 statement 38, and your counsel will provide you
2 with the original.

3 A Okay. Thank you.

4 Q And in fact I think, if we could just identify,
5 it's actually got two occurrence numbers. I think
6 there was 705, which may have been the original,
7 and then it was added to 641, February 4th
8 statement. Now this handwriting here, can you
9 tell us on the original, is that your handwriting?

10 A No, it's not mine, and I also don't know whose it
11 is. It's in red as you see.

12 Q We don't see it on the screen, but that's in red
13 handwriting, --

14 A Yeah.

15 Q -- and the original has blue ink? Well, maybe
16 once you are done we'll just put it up on the
17 Elmo.

18 A Sure.

19 Q But that handwriting, and that would have been on
20 the document statement when you received it?

21 A Yeah, if I received it I -- it must have been on
22 there. That didn't -- was not put on there by
23 myself.

24 Q And it appears to say I-n-d for, I'm assuming,
25 "indecent assault only, not connected"?



1 A That's how I read it. I'm sorry.

2 Q What, again -- and I take it you have no memory of
3 dealing this with this statement at the time?

4 A Well I can read it if you like, sir, but I don't
5 have.

6 Q Okay. And I think just a general question. What,
7 as a prosecutor, if you saw that note on a
8 statement, presumably that was written by the
9 police, would that be a fair --

10 A Yeah, it had to be, because it was pre-arrival to
11 me.

12 Q Yes?

13 COMMISSIONER MacCALLUM: What's the name of
14 the complainant?

15 MR. HODSON: Sorry, (V)-- (V) (V)----.

16 COMMISSIONER MacCALLUM: Okay.

17 A Maybe I'll read it, Mr. Hodson, if you --

18 BY MR. HODSON:

19 Q Yes, please do.

20 A (Witness reading) I expect I read it at the time,
21 umm --

22 Q And maybe I'll just highlight just a couple
23 points --

24 A Okay.

25 Q -- so that we know dates, places and



1 circumstances. In this statement (V)-- (V)----
2 says:

3 "On February 3, 1969 ...",
4 which is three days after the murder:
5 "... at about 7:25 p.m. I was at
6 Hewgills Drug Store and left there
7 walking west on the north side of 20th
8 Street ... When in the 1900 blk 20th
9 Street ..., I heard a noise and looked
10 around and saw a man near the trees in
11 the St. Pauls nurses residence. He
12 climbed over the fence and I started
13 running."

14 And then it describes being chased, and then on
15 the next page, and describes him, he was:

16 "... about 5'9" tall wearing a light
17 coloured siwash, black pants ...",
18 etcetera. And I believe it describes, I believe
19 this fellow chased her, I don't think he ever
20 caught her. So, again, would this statement be
21 one that you -- would she be a credible witness
22 who can speak to material facts which tend to
23 show Mr. Milgaard to be innocent?

24 A I wouldn't have thought so, and she regrettably
25 couldn't identify the individual even in the sense



1 of by name, even though she got a
2 better-than-usual look at him.

3 Q And why would you -- and, again, I'm assuming you
4 are saying what you would have thought at the
5 time?

6 A Yeah.

7 Q Can you tell us why you would have concluded that
8 it was not a credible witness who can speak to
9 material facts which tend to show Mr. Milgaard to
10 be innocent?

11 A Well I -- I just don't know how anyone could erect
12 that into a -- in to fit that category, in the
13 sense that it's a person who was not identified,
14 even though this lady did get a better look at him
15 than usual. How would you go about --

16 Q What about the suggestion, Mr. Caldwell, that this
17 might be someone who would suggest that someone
18 else was in that area committing assaults?

19 A That, yeah, I would think now is something that I
20 would notice.

21 Q And the fact that it would be on February 3rd, --

22 A Yeah.

23 Q -- which is a day that the evidence you had
24 suggested that Mr. Milgaard was out of the
25 province --



1 A Yeah.

2 Q -- or certainly out of the city?

3 A Yeah. Yeah. It's close to the time of the
4 murder, and clearly it couldn't be, it couldn't be
5 him based on that alone.

6 Q And what about, if we go back to page 1, what --
7 can you tell us what influence, if any, that
8 comment from the police would have had on your
9 review of that statement?

10 A Well I would give it some weight. Because someone
11 came to that conclusion, I'm sure I would have
12 gone ahead and read the statement anyway and felt
13 that that was the correct conclusion, as in not
14 connected.

15 Q Okay. If we could call up 006402, please. This
16 is statement 39 and the statement of (V9)
17 (V9)----.

18 MS. KNOX: (*Inaudible*)

19 BY MR. HODSON:

20 Q Actually, if we can just put the original
21 statement up just for a moment, I think you can
22 take a look at. I think you indicated -- and this
23 is actually the original statement, Mr.
24 Commissioner, in handwriting, and then this red
25 pen, 'indecent assault' or:



1 "Ind assault only

2 not connected",

3 that's the red pen that you said was on there

4 when you received the document?

5 A That's right, on the (V)---- statement?

6 Q Right.

7 A Yeah.

8 Q Okay. If we can go back to the (V9) (V9)----, and

9 maybe, if you can just read through that

10 statement?

11 A Okay. (*Witness reading*) I notice, in this, she
12 says I:

13 "... did not have a chance to see his
14 face when he held me because he was
15 behind me."

16 And also, at the end, indicates his:

17 "He never spoke to me. I don't feel I
18 can recognize ..."

19 Q Right. The next page you're referring to?

20 A Yeah, the last, the second page there. So I can't
21 see how I could have used that, or shouldn't say
22 'I', but what use it would be in that heading, Mr.
23 Hodson.

24 Q Okay. If we could just go back, and I think this
25 is where you were -- she described the person as,



1 sorry, the second page?

2 A Yeah.

3 Q "I describe the person as 15 to 16 yrs
4 wearing a dark colored pile jacket and
5 hood ... about 5'6", slim build.

6 He never spoke to me. I don't
7 feel I can recognize if seen again."

8 A Uh-huh.

9 Q If we can just go back to the first page.

10 A Uh-huh.

11 Q And I'll -- just a couple of points. One, it's on
12 January 15th, which would be a couple of weeks
13 before the murder, I think that arrow has been
14 added after the fact.

15 A I think so, like that other one.

16 Q And:

17 "While in the 100-Blk Ave Q-So ...",
18 so that would be a couple of blocks from where
19 Gail Miller was murdered?

20 A That's how I read it.

21 Q Yeah. And she was employed as a nurse still in
22 uniform and wearing a coat and boots, and that
23 would be similar, I take it, to Gail Miller?

24 A Yeah, I would assume so.

25 Q Yeah. It says:



1 "While in the 100-Blk Ave Q-So about the
2 centre of the block I was walking in the
3 middle of the street a young man walking
4 toward me, when we met I stepped to the
5 side, he came to me, but pinned my arms
6 from behind as we met, he ran his hand
7 over my body, he did not try to remove
8 any of my clothing. I scuffled with him
9 for a moment and hit him in the face
10 with my elbow and he let me go."

11 And then it goes on to describe where she saw
12 this person.

13 A Yeah.

14 Q So again at the time, Mr. Caldwell, you believe
15 you would have concluded that this was not a
16 credible witness who could speak to material facts
17 which tend to show Mr. Milgaard to be innocent?

18 A I wouldn't have thought so, sir.

19 Q And again, what about a question I had asked you
20 earlier with the (V)---- statement, would it be
21 relevant or tend to show Mr. Milgaard to be
22 innocent if the person who committed this assault
23 on (V9) (V9)---- was the same person who may have
24 killed Gail Miller, and at the time, January 15th,
25 that Mr. Milgaard had not been in the city? Do



1 you follow?

2 A If -- if --

3 Q Let me just rephrase that.

4 A Okay.

5 Q If -- I think you said you didn't see how this
6 would be connected, or words to that effect. What
7 about the scenario where Mr. Tallis might say
8 "here is an assault committed two weeks earlier in
9 the area with a nurse, or an attempted assault" --
10 actually, I think it is an assault, I'm sorry --

11 A Yeah.

12 Q -- "within two weeks of the, before the murder,
13 with a nurse, and this is the guy who killed Gail
14 Miller, and it couldn't be David Milgaard because
15 he wasn't there on January 15th"; what about that
16 line of defence? Did you consider that and
17 whether that might be important in considering
18 whether this statement should be disclosed at that
19 time?

20 A I -- is it -- it is one I disclosed, is it?

21 Q No, I don't believe so.

22 A Oh, okay, I'm sorry. I could see -- I can think,
23 now, that that would be a consideration.

24 Q Okay.

25 A I don't think I recognized it in that manner at



1 that time.

2 Q Okay. Next, if we could go to the (V4)----
3 (V4)--- statement, which is 006404.

4 MS. KNOX: (*Inaudible*)

5 BY MR. HODSON:

6 Q Sure. We'll put the original of that (V9)
7 (V9)---- statement, and if you could please just
8 read the (V4)---- (V4)--- statement.

9 A Okay. (*Witness reading*)

10 Q So, again, the (V9)---- one. Sorry, Mr. Caldwell,
11 if I could just draw your attention back to the
12 (V9)---- statement on the screen.

13 A Sure.

14 Q First of all, we note the sticker added.

15 A Yeah.

16 Q What influence in your decision at the time, as to
17 whether or not to provide this statement to Mr.
18 Tallis, what influence if any would the police
19 note:

20 "Ind assault only

21 no connection",

22 have?

23 A It would have an influence because it was
24 evidently, both those were read by some
25 investigator before they got to me and, in effect,



1 eliminated, and I, you know, oft to begin with,
2 would give some weight to that point of view.

3 Q And would you read no connection to mean no
4 connection to the Gail Miller murder?

5 A Oh, that's what it would be.

6 Q If you can carry on reading the (V4)---- (V4)---
7 statement, if we can bring that up on the screen,
8 006404?

9 A Yeah, I've read that, sir.

10 Q And do you have a recollection back from 1969
11 about an incident the morning of the murder, very
12 close to the time of the murder, about seven
13 blocks away? Do you remember this?

14 A Presumably that's this one?

15 Q Yes.

16 A Yeah.

17 Q They are talking about -- do you remember the
18 (V4)---- (V4)---?

19 A No, I do not.

20 Q Do you remember anything about an assault that
21 happened the morning of the Gail Miller murder?

22 A I don't, sir.

23 Q And again we see this note, indecent assault, not
24 connected, that's in red pen on there; is that
25 right?



1 A That's right. I would assume, but don't know,
2 that it's the same author of the other red pen
3 though.

4 Q We've actually heard from Miss (V4)--- and we've
5 heard a fair bit of evidence or seen documents
6 with respect to this assault. Again -- and would
7 what she describes, I don't think I need to go
8 through it, but what she describes is at 7:07
9 a.m., which is, you would agree, would be very
10 close --

11 A Oh, absolutely.

12 Q -- to the time that, or to the range of time that
13 Gail Miller was murdered?

14 A Yes.

15 Q And seven blocks away, being accosted or assaulted
16 by a male person, who she describes, and again, is
17 this statement, Mr. Caldwell, something at the
18 time you thought was a credible witness who can
19 speak to material facts which tend to show the
20 prisoner to be innocent?

21 A Well, clearly I didn't take it that way at the
22 time, Mr. Hodson.

23 Q Okay. What -- just before I pause there, again,
24 the police note, 'indecent assault not connected.'
25 Would that have had some influence on your



1 decision?

2 A Oh, yes, it would, the same as the last one or
3 two.

4 Q And again looking back at it now, can you tell us,
5 what would have been your reasons back then if you
6 are able to answer?

7 A Yeah, I'm -- I don't know what I said, but I'm not
8 sure, this is something I got after -- because of
9 Mr. Tallis' request later on was it?

10 Q I believe the record suggests that what your file
11 shows is that this would have been one of the 95
12 statements and I can also add, I believe, and I
13 stand to be corrected, but I believe that in the
14 witness summary that Mr. Ullrich provided --

15 A Uh-huh.

16 Q -- and the police -- I know for a fact in the
17 police summary and the witness summary there's no
18 mention of the (V4)--- assault and the police
19 investigation report of Detective Bennett that was
20 made on that date that talks about Miss (V4)---
21 was not included --

22 A Okay.

23 Q -- in the package of investigation reports that
24 you received.

25 A So that --



1 Q So that the statement, you got all the statements,
2 so that's how you would have received it from the
3 police, I believe that's what the record suggests.

4 A Okay. Well, there was no -- the police report
5 referring to it was not, didn't --

6 Q I believe that to be the case.

7 A That's Detective Bennett you mentioned?

8 Q Yes.

9 A And this came with the so-called original package
10 of 95?

11 Q Yes.

12 A And what was the other thing you mentioned, sir, a
13 minute ago?

14 Q No, I think that's all.

15 A Okay.

16 Q And again, I'm just wondering if you can tell us,
17 I appreciate you don't have a recollection, but
18 whether you can help us with, at the time, what
19 might have caused you to conclude that you ought
20 not to send it to Mr. Tallis.

21 A Umm, some -- I can't say at this point, Mr.
22 Hodson. I think there would be similar reasons to
23 the last one or two that we just discussed.

24 Q And again, I think you maybe answered this, but
25 the police comment, 'indecent assault not



1 connected,' would that have influenced your
2 decision?

3 A It would have. Those things reflected somebody
4 presumably in a position of knowledge having
5 reviewed these approximate three things before
6 coming to that conclusion as I mentioned. I
7 certainly think it would have affected my, you
8 know, coming to that decision.

9 Q Right. We have seen in the documents, and I
10 suspect we will hear, and have heard evidence and
11 we'll hear more evidence about a debate as to
12 whether or not the same person theoretically could
13 have committed both offences. What the record now
14 shows, the evidence of Miss (V4)---, is that she
15 has identified Mr. Fisher as the person who --

16 A Okay.

17 Q -- assaulted her. Mr. Fisher denied that and of
18 course we know that Mr. Fisher committed the
19 murder of Gail Miller, and so again without
20 getting into the debate of whether or not --
21 whether or not Mr. Fisher was the assailant of
22 Miss (V4)---, he was never convicted of that.

23 A I was going to ask you that. There was --

24 Q No. And again, with that in mind, we've heard
25 some suggestion, Mr. Caldwell, and I'm going to



1 put this to you, that the (V4)--- assault, if I
2 can call it that, the Miss (V4)--- assault was
3 significant in that it would suggest, if one
4 presumes that only one person is out committing
5 offences of this nature on a morning, a 40 below
6 morning of January 31, that with this second
7 assault of Miss (V4)---, if you could exclude, Mr.
8 Milgaard could be excluded at that time as the
9 person who committed that assault --

10 A Yeah.

11 Q -- and you presume that the same person at the
12 time committed both the (V4)--- assault and the
13 Gail Miller murder, that that would then exclude
14 Mr. Milgaard. Do you follow that?

15 A I guess so, yeah.

16 Q And I'm just wondering if you can comment or
17 respond to that, that has been a suggestion made
18 from time to time, and I expect you will hear
19 others after me put that to you --

20 A Uh-huh.

21 Q -- probably better than I just did.

22 A It's difficult, A, to go back to what I was
23 thinking at the time of this prosecution, of
24 course whenever that was, 1969. I clearly gave
25 some weight to that endorsement on these two or



1 three statements, indecent assault not connected.
2 It's possible, Mr. Hodson, I may have simply said
3 at that point this has nothing to do -- I guess
4 you had to look at not connected to me could be
5 read as with the accused Milgaard.

6 Q Yes.

7 A In other words, when you -- you tend to think in
8 those terms, do we have other counts of this, that
9 and the other, was not connected with him in that
10 sense clearly.

11 Q If the facts were, Mr. Caldwell, at the time that
12 the police said yeah, this is connected, we
13 actually think this was Mr. Milgaard --

14 A Yeah.

15 Q -- would that change things?

16 A I would think I would get ahold of the person who
17 made the notes and say, now tell me more about
18 that or what have you done to follow that up.

19 Q And then at the time did you give any thought to,
20 back in 1969, would you have given any thought to
21 providing it to Mr. Tallis and letting him decide?

22 A The way this looks, I don't think so, sir. I
23 think -- I think that I put some, you know,
24 credibility or what have you in that endorsement.

25 Q I was not able to find in any of your file any



1 notes, I don't believe, that refer to this, and
2 there's certainly no notes on this, and I take it,
3 sir, you have no recollection of what you would
4 have thought about or what would have factored
5 into your decision at the time?

6 A No, I don't, and the more so, sir, if there are no
7 notes that have surfaced on it, you know, on my
8 file so-called, that you are saying they have not
9 surfaced?

10 Q I have not seen any. I stand to be corrected, but
11 I don't believe there's any on there.

12 A So that is a factor. If those notes existed, it
13 would be more helpful to me I think, Mr. Hodson.

14 Q Can you tell me when you got, and I think the
15 record reflects that these statements would not
16 have been provided to you until after the first
17 wave of police information, if I can call it that,
18 after Mr. Tallis asked you to review them --

19 A Yeah.

20 Q When you sat down and read through the statements,
21 do you have a recollection, did you read them
22 once, twice, or what guided your thinking when you
23 went through them?

24 A I would be surprised if I read them more than
25 once, saw the -- I read the statement, I assume



1 paid attention to the red note in the corner
2 saying that it was not, they were not connected.
3 I think that would be everything that went, you
4 know, through my mind at that time.

5 Q And would the fact that these statements may not
6 have been provided to you in the first, as part of
7 the Ullrich witness summary, as part of what the
8 police gave you, would that have any effect on
9 your thinking of their significance?

10 A I don't think so. The fact that they weren't in
11 that first batch wouldn't exclude me from looking
12 at them this time.

13 Q This is probably an appropriate time to break,
14 Mr. Commissioner. Maybe we'll just quickly put
15 that on, if people want to take a look at the
16 original, and again the red handwriting that's on
17 that statement, I think that's believed to be the
18 police; is that right, Mr. Caldwell?

19 A Yeah, it must be.

20 MR. HODSON: Okay, thank you.

21 *(Adjourned at 10:26 a.m.)*

22 *(Reconvened at 10:48 a.m.)*

23 BY MR. HODSON:

24 Q Mr. Caldwell, I had just gone through before the
25 break those statements of the three assaults,



1 (V6)-, (V)----, (V9)----, those three, and
2 (V4)---, and I think you said at the time you
3 don't recall dealing with them and you said here's
4 what I think I would have thought at the time. If
5 you had been aware, sir, of the rapist/murderer
6 theory, that being that the person who committed
7 the (V1)-, (V2)----- and (V3)----- assaults had
8 been viewed as a suspect in the murder, okay, and
9 let's just make sure we're clear here, those are
10 different assaults than the one I just showed you,
11 okay. So we've got (V1)-, (V2)-----, (V3)-----
12 being the October, November incidents. If you had
13 been aware, either from the police or otherwise,
14 that there was a theory the police were
15 investigating early on in the Gail Miller
16 investigation, and for some time period, that the
17 murderer of Gail Miller was the same person who
18 committed these earlier rapes, if you had been
19 aware of that as a theory, I think you told us you
20 would have disclosed that information?

21 A Yes.

22 Q If you had been aware of that theory, do you think
23 that would have changed what you would have done
24 with respect to the (V)----, (V9)----, (V6)- and
25 (V4)---?



1 A Well, they would arguably be of similar kinds of
2 occurrences and if I had that first piece of
3 information, I may well have, say, pursued some
4 action on those, I think four others, Mr. Hodson.

5 Q Yes, there were four others.

6 A I would think so.

7 Q So can we -- would you go so far as to say that if
8 you had been aware of the rapist/murderer theory,
9 and I think you said you would have disclosed the
10 (V1)-, (V2)-----, (V3)----- information, do you
11 think you would have also disclosed the January,
12 1969 assaults, if I can call them that?

13 A Is that the ones we just looked at?

14 Q Yes, before we went --

15 A In the same, you know, broad heading I think I
16 would have.

17 Q Okay.

18 A But I must say that the endorsement of the red
19 notes on the corner I think, you know, bore on me
20 at that time, but that was a different scenario
21 that you are putting to me now.

22 Q And you had understood what, that that note had
23 been put by the police I think you told us?

24 A It must have been. It's clearly not by me and the
25 materials arrived at me from the police



1 department.

2 Q And did you understand that to be a note made by
3 the police during the course of their
4 investigation or did you understand that to be a
5 note directed to you?

6 A Well, the red ink, the fact that it wasn't in
7 whatever the ink was in which the original
8 statement was taken, I took those to be, A,
9 recent, and B, directed to me, is the way I would
10 look at it now.

11 Q Okay. If we can just go back to 007011, and just
12 to tie this up, September 9, '69 is this letter,
13 and I think the 10th and the 11th of September you
14 finished up the preliminary hearing.

15 A Okay.

16 Q And so in this letter, clearly on this date,
17 before the preliminary hearing is finished, you
18 would have received, it says here I obtained all
19 the statements from civilian witnesses totalling
20 95 and have read them, and so certainly before the
21 preliminary hearing you would agree, Mr. Caldwell,
22 you got all of the civilian witness statements
23 that existed at that time in connection with the
24 Gail Miller murder investigation?

25 A That's correct.



1 Q And that you had read them all?

2 A Yes, that's what I say, and I'm sure that's the
3 case.

4 Q If I can then just move on, you'll recall --
5 actually, if we can just go back to that letter.
6 Go to the second page. Again, we touched on this
7 yesterday, and I think you've said as requested by
8 yourself, being Mr. Tallis, I have added the names
9 of Inspector Roberts and Mrs. Shirley Wilson to
10 the list of Crown witnesses?

11 A Yeah.

12 Q So let's just go to 007010, which are your notes,
13 page 65, I don't think we need the original, just
14 a quick reference, this looks to be your note, and
15 arrangements to get Mrs. Wilson up on the bus. Is
16 that fair? So I take it that you took those
17 steps? I just need you to confirm that these
18 would be your notes to get --

19 A They are certainly my notes, and yes, they are.

20 Q And if we can go to 007008, and this is an
21 example -- this is a police report dated September
22 5, '69 by Ident Officer Kleiv and it relates to
23 some work done on September 5 relating to the
24 exhibits, and I'm not sure if anything turns on
25 the exhibits, I think these are the contents of



1 Mr. Wilson's car that the Regina police had taken
2 to the lab, and I don't believe any of that ended
3 up being in evidence, but this police report ended
4 up on your file and I think Ms. Knox had raised
5 the point earlier that in addition to the Ullrich
6 witness summary that had some of the investigation
7 reports, that you would then get some
8 investigation reports that were generated after?

9 A Yes, I would expect that. This one appears to be
10 a later --

11 Q Right, September 5.

12 A Yeah. So that's well into the -- if not after the
13 prelim, certainly well into it.

14 Q Right. So again, to the extent that after Mr.
15 Milgaard was charged and after the police file, or
16 parts of it were turned over to you, there would
17 be occasions where further police investigation
18 work was done and generated a report and you would
19 get a copy of the report?

20 A Yeah, that would be my understanding.

21 Q Now let's go to 007005, and --

22 MS. KNOX: Page 69.

23 BY MR. HODSON:

24 Q Page 69, Mr. Caldwell, if you want to look it up.

25 A Okay, I have that, sir.



1 Q And this is dated September 10th, 1969 and the
2 heading is looked up in notes and it's got
3 McCorriston, Oleksyn and Kleiv, and if I can just
4 go back, I don't think I need to bring it up, but
5 this is September 10th. Your letter of September
6 9th to Mr. Tallis, I'll just read you on the
7 bottom of page 2, you write:

8 "The various police officers who were to
9 check their notes for further
10 information will be attending at my
11 office at 12 noon on September 10th at
12 which time we will be able to interview
13 them and you should be able to recall
14 any of them you wish in the afternoon of
15 that date."

16 A Yeah.

17 Q So are these the notes then, Mr. Caldwell, of that
18 meeting?

19 A That appears to be what they are.

20 Q And we've got McCorriston -- and do you believe
21 that Mr. Tallis would have been present when
22 McCorriston --

23 A I would fully expect so, sir, because the way it
24 was set up because of how the letter read, in a
25 word.



1 Q So McCorriston appears to be present; is that
2 fair?

3 A Oh, yeah.

4 Q And McCorriston would have had his notebook there
5 to go through?

6 A I would assume so.

7 Q And so number 1, 'knife shown Cadrain March 5,
8 little hunting knife.' Do you know what that --
9 other than what it states?

10 A No more than that.

11 Q And then it says, 'interview with Cadrain March 5,
12 with Edmondson.'

13 A Yeah, that's Stan Edmondson who testified here.

14 Q And do we take it from that that Mr. Tallis would
15 have asked these officers to check their notes to
16 see who Cadrain interviewed on March 5?

17 A That -- I would assume that to be the case. It
18 could have been me, but --

19 Q And then McCorriston, 'March 4 - discussed comb
20 with Hein - don't know if showed to --'

21 A H would be Hein I'm assuming.

22 Q Okay. So it appears there must have been some
23 issue over a comb, and I think there was a comb
24 found?

25 A Uh-huh.



1 Q And then, 'February 1 - keys and comb to
2 Fontaine.' Vicky Fontaine, to help you out, was
3 the friend of Gail Miller who she worked with who
4 actually identified the body on the date of the
5 murder.

6 A Okay. All right, sir.

7 Q So would it be fair to say that Mr. Tallis may
8 have had a question about that?

9 A May well have had.

10 Q Would you be checking these things up in their
11 notes for your own purposes?

12 A Well, the way I read this, Mr. Tallis and myself
13 would have been there, these officers would have
14 been there, and I would ask them and they would,
15 if necessary, show you the page in the notes, but
16 I don't even know that that was -- I suspect they
17 would have the note and read it and I made -- this
18 is kind of my file copy, if you will.

19 Q Would it have been your practice at the time, Mr.
20 Caldwell, to allow Mr. Tallis to actually view the
21 notebooks of the officers?

22 A I -- in this case I wouldn't oppose it in any
23 respect.

24 Q You wouldn't what?

25 A I would not oppose that and I can't imagine they



1 would either.

2 Q And so that if Mr. McCorriston or Mr. Tallis
3 wanted to look through McCorriston's notebook --

4 A Yeah, there was a routine of -- they were not
5 testifying here, but often they would fold it open
6 to the appropriate page or section. I would
7 certainly not have, you know, objected to that.

8 Q And then number 2 would be Oleksyn, and number 1,
9 'has nil - talked to accused June 6, pre Tallis
10 interviewing him.'

11 A Yeah, that's -- he has nothing to add, as it were,
12 under the --

13 Q And number 3, Kleiv, 1, and it's got a star,
14 'received small hunting knife from Oliver.' Is
15 that what that is?

16 A That's -- yeah, 'received small hunting knife from
17 Oliver,' that's right, sir.

18 Q And then 'K' which is Kleiv, 'there when O'
19 Oliver, 'found it, but Kleiv didn't see where it
20 was. February 28, 12:30 p.m., Kleiv still has
21 knife, single edged'?

22 A Yeah, all that I found out from Mr. Kleiv, as
23 presumably did Mr. Tallis.

24 Q So do we take it from this note that on September
25 10th, 1969, information about the hunting knife



1 found by Mr. Oliver was provided to Mr. Tallis?

2 A Yeah, it was.

3 Q And then the bottom -- do you know if the knife,
4 if Kleiv would have had the knife there?

5 A It says Kleiv still has it. From that I would
6 infer that he didn't have it with him at that
7 time, but at the station.

8 Q And if Mr. Tallis had said can I take a look at
9 it, would you have arranged to have Mr. Kleiv do
10 that?

11 A Certainly.

12 Q Number 2, 'got Cadrain hair sample April 26, 9:45
13 a.m. Retain sample,' and do you know what that
14 would have related to?

15 A It may have been something to do with blood types,
16 some scientific concern, because it's Cadrain as
17 opposed to anyone else.

18 Q Would it --

19 A I'm sorry, it may have been to try and eliminate
20 him from some hair and fibre --

21 Q Would this have been, do you think, a request by
22 Mr. Tallis to get some information about Cadrain's
23 hair sample?

24 A It could have been that, or me. I can't see any
25 reason why I would be pursuing, but it could be



1 me, Mr. Hodson.

2 Q Next page, it looks like Mr. Penkala was at this
3 meeting as well?

4 A Yes.

5 Q Is that fair?

6 A That's correct.

7 Q It says Penkala, number 1, 'no other exhibits or
8 samples.' Would that have been a request made of
9 him?

10 A I must have asked him that ahead of time, or then,
11 or ahead of time I would say.

12 Q And then 2, 'but no samples from autopsy.' Is
13 that -- would that be referring to the vaginal
14 aspirate that we've heard about?

15 A Well, yeah, it says got no samples from autopsy,
16 and if there had been some previous reference to
17 someone wanting that, that I would take it as his
18 answer to that, that he didn't, A, get, or B, have
19 any.

20 Q And did you think there was a request from
21 somebody then that --

22 A Yeah, it would -- the way they answer is would --
23 I presume there was a question.

24 Q And then three, it says, 'got one lump into one
25 vial, took to Emson, and Emson estimated it was



1 sperm. Then to fridge, then to Kleiv. Area
2 found.' Is that -- do you know what that relates
3 to?

4 A I assume it's the, something to do with frozen
5 snow and/or seminal samples, the way it reads.

6 Q And would this be you and Mr. Tallis then, or one
7 or both of you going through Mr. Penkala's notes
8 about these subjects?

9 A No, he would have been there the way I --

10 Q No, I appreciate that. But if I get the picture
11 right, you have a room there with McCorriston,
12 Oleksyn, Kleiv, Penkala and Reid, you and
13 Mr. Tallis going through --

14 A That's my -- that's how I read it as well, sir.

15 Q And so your notes would have been discussions or
16 questions that were asked of these officers?

17 A Yeah, that's correct.

18 Q And then down to Reid, number 5 --

19 A Yeah, that's, 'may have taken sample paring knife
20 around. Check this and let us know after prelim,'
21 Mr. Hodson.

22 Q I've been advised that my abbreviation may have
23 been in error, if we can go back up.

24 A Which one is that?

25 Q E-S-T, and I think established, I said estimated.



1 I'm sorry, Mr. Lockyer has corrected me, 'and
2 Emson established it was sperm.' Is that correct?

3 A That's -- yeah, it would be established.

4 Q Sorry about that. Thank you, Mr. Lockyer. If we
5 can go down to number 5, Officer Reid, number 1,
6 'may have taken sample paring knife around. Check
7 this and let us know after prelim.'

8 A Okay.

9 Q And can you tell us what that --

10 A Someone must have thought that there was a sample
11 paring knife. I would take that to be a knife
12 similar to the one that was found broken, but this
13 one being intact, taken around to show to
14 witnesses of some sort. Then it says, 'check this
15 and let us know after prelim.'

16 Q We did hear evidence from Mr. Penkala that the
17 police, after the blade was found under the body
18 and before the handle was found, --

19 A Uh-huh.

20 Q -- they went out and purchased --

21 A Yeah.

22 Q -- what they believed to be a replica, and that
23 that knife was used, in fact I think the
24 photograph is of, may will be of that knife.

25 A Yeah, and that --



1 Q Does that sound familiar?

2 A It does, exactly.

3 Q And so do we take it from this that -- would it be
4 Mr. Tallis who would have asked you to check this
5 and let us know after prelim?

6 A It could well have been.

7 Q And then Penkala, I'm not sure what 'P35 ID',
8 this --

9 A Oh.

10 Q Do you know what this --

11 A 'P-35 for identification, 2 vials, became
12 exhibit', those, I imagine those numbers refer to
13 my exhibit charts or --

14 Q And --

15 A Does that --

16 Q I'm not sure if anything turns on this, --

17 A Okay.

18 Q -- but would these just be notes about exhibits
19 that Penkala had handled?

20 A That's how I see it.

21 Q Okay.

22 A Unless you wish to --

23 Q No, I don't think that anything turns on that, I
24 --

25 A -- to press it.



1 Q If we could then go to 267794. I don't believe
2 the record shows that -- and the record will speak
3 for itself on the prelim -- I don't believe any of
4 the officers were recalled at the prelim, do you
5 -- it looks like September 11th:

6 "During the a.m. of this date, the
7 above-mentioned was committed for trial
8 on the charge of non-capital murder
9 ...",

10 so that would be the morning after your meeting
11 with Mr. Tallis?

12 A Presumably so.

13 Q And I don't have the transcript in front of me,
14 but if there were any officers recalled --

15 A That would be in the transcript.

16 Q Right. And I believe there is a document, I don't
17 wish to bring it up, but that Mr. Tallis argued
18 before Magistrate Cumming that he ought not to
19 commit?

20 A At the end of the prelim I would assume he would
21 have.

22 Q Yes.

23 MS. KNOX: Mr. Commissioner, if I may, the
24 index for the witnesses at the preliminary
25 inquiry indicate that either on, I believe on



1 September 10th, the last day, there was actually
2 a recall of Gerald McCorriston, Thor Kleiv, and
3 Joe Penkala.

4 MR. HODSON: Do you have a doc. ID for that
5 document?

6 MS. KNOX: It is contained in the
7 preliminary inquiry transcript, the cover
8 document page for volume 3 is 008357, and the
9 page in the index that shows those individuals
10 being recalled -- and I can indicate their
11 evidence was very brief -- is 008360.

12 MR. HODSON: Maybe, if we could just call
13 that up, 008360.

14 COMMISSIONER MacCALLUM: Yes.

15 MR. HODSON: Thank you, Ms. Knox.

16 BY MR. HODSON:

17 Q So it does appear that McCorriston, Kleiv, and
18 Penkala were called for further cross-examination?

19 A Umm, that's right.

20 Q And, as well, Shirley Wilson was called?

21 A Umm, and that, that was examination evidently for
22 the first time, sir.

23 Q Right. And then --

24 A I'm sorry, and cross-examination.

25 Q Okay. I will check on the lunch hour --



1 A Sure.

2 Q -- on the nature of the cross-examination, and I
3 can put that to you this afternoon.

4 A Sure.

5 Q And so would it be fair to say, and if you want to
6 wait until you see the transcripts, but it looks
7 like they were just called for cross-examination;
8 can we infer from that that Mr. Tallis asked that
9 they be recalled?

10 A Yeah, and there would have been no objection from
11 me, I -- and those may have been a byproduct of
12 the meeting, Mr. Hodson.

13 Q Okay, well we'll take a look at that this
14 afternoon.

15 A Very good.

16 Q And just a document, 007082, just so we have a
17 reference for the Commissioner and other counsel
18 for the days. I think this was your inside file
19 cover and this tells us the days that the prelim
20 sat?

21 A Yes, that's correct.

22 Q And I think there might even be another document,
23 but August 18th, 20, 22, 27, 28, September 4th and
24 5th and September 10th and 11th, and Ms. Knox has
25 that original file cover, so nine days.



1 A Thanks.

2 Q And there is another document that confirms that,
3 so if anybody is looking for those dates, those
4 would be the days then?

5 A That's right, and the transcript should reflect
6 that as well.

7 Q Well, unfortunately, the transcript doesn't have
8 dates on all of the pages for witnesses.

9 A Okay.

10 Q If we could just call up 006980. And these are,
11 at the top it says 'R v David Milgaard,
12 non-capital murder', the date, and I believe, Mr.
13 Caldwell -- and I don't propose to go through
14 these, I just want to identify them --

15 A Okay.

16 Q -- there is about 25 pages that followed that are
17 your handwritten notes of the preliminary hearing?

18 A Umm, I --

19 Q If you wish to take a look at them to confirm you
20 may.

21 MS. KNOX: Page 90 in that file.

22 BY MR. HODSON:

23 Q Page 90 in that file.

24 A Okay. Mr. Hodson, I found those, they are stapled
25 into one document as I have them now.



1 Q Yes. And if you want to just take a quick look
2 through, I don't have any questions on them, --

3 A Okay.

4 Q -- I just want to identify them for the record.

5 A Okay, just -- that's what they are, sir.

6 Q Yeah. And in fact, and without going through
7 them, I've gone through them and all -- it
8 appears, Mr. Caldwell, that they would be notes
9 primarily of Mr. Tallis' cross-examination.
10 Obviously, you wouldn't be making notes while you
11 were examining; is that fair?

12 A That's right.

13 Q And then if you want to go to just 007001.

14 A Is this another number?

15 Q It's 73 in the top right.

16 A Okay.

17 Q And this just talks about Wednesday, September
18 10th, and we'll see the reference there to
19 recalled McCorriston, Kleiv, and Penkala, and then
20 finished up with Shirley Wilson and Emson.

21 A Can you give me that corner number again, please?

22 Q 73. You can look at the document on the screen,
23 Mr. Caldwell, I just think it might be easier.

24 A Oh, okay, that's --

25 Q Wednesday, September 10th, it just indicates that



1 those witnesses were recalled, and I think that's
2 what Ms. Knox identified from the prelim index;
3 correct?

4 A Yeah, that's right.

5 Q And then if we go back to the full page, please.
6 It would appear that on Wednesday, September 10th,
7 3:35, case for the Crown was done on the 10th,
8 adjourned until the next morning, and if we can go
9 to the next page, Thursday, September 10th, same
10 cast, accused addressed per code, and then your
11 address, and then Mr. Tallis' address. And I take
12 it there was some --

13 MS. KNOX: Slight correction. It's
14 Thursday, September 11th, 10:00 a.m.

15 MR. HODSON: Oh, sorry, did I say September
16 10th?

17 BY MR. HODSON:

18 Q September 11th, 10:00 a.m.

19 A Because of the size of the 10 I suspect.

20 Q Yeah. So September 11th, and then it looks like
21 there was argument, and there's actually a typed
22 transcript that Mr. Tallis urged the magistrate
23 not to commit for trial; do you recall that?

24 A Yes.

25 Q We're done with those notes. If we could next go



1 to 006975, please, this is your note of September
2 16th?

3 MS. KNOX: Page 95 in the corner.

4 A Yes, that's right.

5 BY MR. HODSON:

6 Q And then if you want to get 94 and 93, being right
7 after. So this is your letter to Mr. Meldrum,
8 who's the Deputy Attorney General?

9 A Yes.

10 Q And then if we could go to the next page, please.

11 A Yes.

12 Q 94 in the top right; do you see that?

13 A I have this here.

14 Q And this is a report on completed cases.

15 A Yes.

16 Q Was it a requirement, Mr. Caldwell, for you to
17 report to the Deputy Attorney General about the
18 case?

19 A Yes, this is a standard form we used on cases at
20 that point, and completed cases included prelims,
21 which theoretically had not been completed, but
22 the --

23 Q And what was, what were you to put in these
24 reports, and what was the purpose of the report?

25 A Well, as you can see, dates, where, the Court it



1 was in, the judge, the charge, defence counsel,
2 the committal, and then interviewing, the figures
3 as to time spent, (a) 4, (b) 9.

4 Q And I'll go through the report with you.

5 A Okay.

6 Q Just talking generally, --

7 A Okay.

8 Q -- why, what was the reason for this report?

9 A Well I would assume that the deputy wanted some
10 way of measuring what I was doing here, at the
11 time, from day-to-day.

12 Q So that, if we look at this, we've got the dates
13 of the prelim up there?

14 A Right.

15 Q We've got the number of days, we've got the list
16 of witnesses, I take it, that you would have
17 prepared from your file?

18 A Right.

19 Q And if we can go to the next page, and then once
20 the witnesses are done we'll maybe go through
21 this, you would have prepared a commentary or a
22 summary of what happened?

23 A Umm, yes, that's right.

24 Q And:

25 "... major crown witnesses were Ronald



1 Dale Wilson and Nichol John, the two
2 youths who accompanied Milgaard from
3 Regina to Saskatoon on the morning of
4 the murder and then accompanied him on
5 the trip to Alberta and finally back to
6 Regina; as well as Albert H. Cadrain
7 ..."

8 And I think you've told us that already, that
9 Wilson, John, and Cadrain were the major crown or
10 the key Crown witnesses?

11 A Yeah.

12 Q You the describe:

13 "The evidence of Wilson and Cadrain was
14 good evidence. However, the John girl
15 would not describe in her evidence
16 Milgaard actually stabbing the deceased
17 (which, according to the second of her
18 two statements, she had seen happening
19 at the time of the murder). I had
20 interviewed her three times prior to her
21 giving evidence and despite this she
22 still did not come forth with the
23 evidence of actually seeing the stabbing
24 take place. It may be, however, that at
25 the time of the trial she will reveal



1 more about what she saw."

2 Now can we take it from that, Mr. Caldwell, that,
3 before the prelim, you would have interviewed her
4 three times?

5 A Yes.

6 Q And can you tell us from this note, and I think
7 you told us yesterday, that you do not believe
8 that Nichol John ever repeated her witnessing of
9 the murder to you in those interviews; is that
10 correct?

11 A That's my recollection.

12 Q And you would have had three interviews with her?

13 A That's correct, sir.

14 Q There is a reference in one of the documents, and
15 I will turn it up a bit later, about Mr. Mackie
16 being involved in one of these interviews?

17 A Yeah, I think I mentioned that, and I can --

18 Q You mentioned --

19 A Yeah.

20 Q Can you tell us again then?

21 A Yeah. Well my memory is only that, is that on one
22 of these interviews, the occasion in which she ran
23 out of my office in the courthouse out the back
24 entrance onto the parking lot and I think out to
25 the front street, we had a view of that street



1 from our office and I believe her father was there
2 in a truck or something conveying her around, I
3 think was the first kind of major interview I had
4 with her, and I did find out, one way or another,
5 that she was upset with Detective Sergeant Mackie
6 for reasons known to her. Umm, she clearly did
7 not want to go ahead with testifying in the case,
8 whatever stage it was at.

9 Q And what was -- what caused you to think that she
10 had an issue with Mr. Mackie?

11 A I think I inquired from one or two of the other
12 senior policeman, she just didn't like him.

13 Q And that was information you were provided?

14 A Yes, yeah.

15 Q And did you include Mr. Mackie in any subsequent
16 interviews; do you know?

17 A I don't know that I attempted to avoid him. I
18 think I may have got some other policeman to more
19 or less be with her on the future interviews --

20 Q Yeah.

21 A -- for that reason.

22 Q And you would have known, at the time, that it was
23 Mr. Mackie that took her incriminating statement
24 of May 24th?

25 A Yeah, I would have.



1 Q Did you have any concern with the fact that she
2 appeared to be upset at Mr. Mackie?

3 A Not in the -- in the -- only in the sense that it
4 didn't, it didn't make interviewing her and
5 getting on with the case any easier, and one way
6 of, if you will, improving that was, I think, some
7 other senior, or other, officers with her in
8 future.

9 Q Would -- did you ever consider at the time, based
10 on the fact that she did not repeat what was in
11 her statement to Mackie either to you, at the
12 prelim, or at trial, and the fact that she was
13 upset at Mackie; did you ever consider or inquire
14 as to whether there might be something there that
15 might explain -- explain why she did not testify
16 in accordance with her statement?

17 A Not in that sense. I took it as being a young
18 person who was unhappy with where and when she was
19 and it seemed to be a personal thing, Mr. Hodson,
20 and not based on anything resembling a concrete
21 difficulty, I would say.

22 Q Okay. If we can then just go down:

23 "Milgaard is in custody at the present
24 time and I will oppose any application
25 to have him released on bail."



1 I don't believe, at least I haven't seen any
2 record of bail being applied for, do you recall?

3 A I don't recall that happening.

4 Q And then you go on to conclude:

5 "This is a very lengthy and complicated
6 case and there will be many things to be
7 done by way of preparation for the trial
8 between now and the trial date.
9 However, if the Crown witnesses give
10 their evidence at the trial in the
11 manner similar to that at the
12 Preliminary Inquiry it should represent
13 a good case against the accused. No
14 defence evidence was called at the
15 Preliminary Inquiry."

16 A Yeah.

17 Q And I take it that was your view at the time, Mr.
18 Caldwell?

19 A Yes.

20 Q And we know, at the prelim, you did not have
21 Nichol John's evidence of her -- incriminating
22 evidence with respect to witnessing the murder; is
23 that right?

24 A That's right.

25 Q And so, even in the absence of Nichol John's



1 evidence on those points, on the incriminating
2 parts of the May 24th statement, even in the
3 absence of that you felt that you had a good case
4 against the accused?

5 A Umm, yes. I think it would be implicit in that I
6 expected her to give the, what I regarded as the
7 true account of the matter in the trial, but of
8 course we couldn't know at that time if that was
9 going to happen. I thought it was a -- there were
10 other very strong portions to the case.

11 Q Yeah. But my question, and I think is based on
12 this paragraph, even in the absence --

13 A Sure.

14 Q I think you say that, even if the witnesses
15 testify in a manner similar to at the prelim, it
16 should represent a good case against the accused?

17 A Right.

18 Q So even if Nichol John testifies at the trial the
19 same way --

20 A Yeah.

21 Q -- she does at the prelim, you felt you had a good
22 case against the accused?

23 A Oh, I did, sir, yeah.

24 Q And we will be dealing with this a bit later, this
25 is before you had any knowledge of the evidence of



1 Craig Melnyk and George Lapchuk, the motel
2 reenactment evidence?

3 A That's correct, sir.

4 Q And if we just go through a couple of documents
5 here, next is 006978. This appears to be a note
6 of the same date of your report, September 16th,
7 '69, a tentative order of witnesses. Would you
8 have started, that soon after the report, to start
9 looking at trial witnesses?

10 A I --

11 Q And number 91, number 92, in the right-hand
12 corner.

13 A Yeah, presumably I did this on, or started it on
14 the September 16th, as you mentioned, of '69.

15 Q If we can go to the next page, please. Down at
16 the bottom we see a question mark, after you
17 identify the witnesses, question mark,
18 Mrs. Cadrain, Mrs. Wilson, Pratt, Hnatiuk, Keith
19 Mackie, Milgaard's two statements, I think is that
20 'witnesses on voir dire'?

21 A Umm, yes, witnesses on voir dire.

22 Q Do which take it, from this, that at this time you
23 are thinking of calling Mrs. Cadrain?

24 A I, it's a question mark, I think meaning I've got
25 a -- I should decide that one way or the other, so



1 --

2 Q And can you tell us what, and we know you didn't
3 call her, --

4 A Yeah.

5 Q -- but what evidence were you thinking she might
6 be able to give?

7 A Did -- is there a statement, do you know, Mr.
8 Hodson?

9 Q No, there's not a statement from her, no.

10 A Okay. Then I -- I would -- I don't know what
11 evidence she could give, I would -- if I pursued
12 that, presumably --

13 Q Did you?

14 A -- I'm sorry -- find out whether she had any, you
15 know, admissible evidence or --

16 Q Do you have a recollection of hearing anything
17 about pants she may have found at her house and
18 turned over to Mr. Mackie?

19 A That could be. There were two or three sets of
20 pants in the case, that, that may well be.

21 Q Yeah. There is the pants that Maurice Serrato
22 brought forward, we'll talk about a bit later, --

23 A Yeah.

24 Q -- but there's some reference in some of the
25 documents that Mrs. Cadrain may have found the



1 pants that had been eaten with acid.

2 A Yeah.

3 Q I don't know whose pants, they might have been
4 Wilson's pants, I don't know.

5 A Not -- I had the notion, and don't, you know --
6 that those were Wilson's, but I may be totally
7 wrong in that.

8 Q Are you able to help us out as to why that might
9 have been, why you might have called Mrs. Cadrain?

10 A Not without more, sir.

11 Q Okay. And Mrs. Wilson I think we've talked about,
12 and I believe we saw her evidence at the prelim,
13 she was not called at trial, and I think that
14 related to the changing of the clothes, is that
15 right, the night before the trip?

16 A I assume so. Whatever she said at the prelim I
17 didn't, I didn't, I'm sorry, feel it necessary to
18 call her at the trial.

19 Q And then Pratt we know is the fellow, the elevator
20 agent, where the break-in occurred; were you
21 thinking of calling him?

22 A It looks like that.

23 Q And you decided not to?

24 A Yeah, I believe so.

25 Q And do you know why?



1 A No, I don't offhand, but I assume I did not call
2 him, sir, so --

3 Q No, you did not.

4 A Yeah, okay.

5 Q And then down, 'Milgaard's two statements', I
6 presume M is Milgaard?

7 A Yeah.

8 Q And 'witnesses on voir dire'; is that a note that
9 you might have to call witnesses to prove his
10 statements?

11 A Yeah. If I tried to prove any of his statements I
12 would have to have the appropriate witnesses lined
13 up in the event of a voir dire.

14 Q If we could then go to 006974, and that's got
15 number 96 in the top right-hand corner?

16 A I have that letter, sir.

17 Q And this is a letter of September 24th, 1969 from
18 Deputy Chief Forbes to you and it says:

19 "Enclosed are duplicate copies of an
20 account submitted by the Calgary City
21 Police Department for expenses incurred
22 by Inspector A.R. Roberts, who was
23 requested to come to Saskatoon for
24 interviews with T.D.R. Caldwell and C.F.
25 Tallis, the Crown Prosecutor and Defence



1 Counsel, respectively, at the
2 Preliminary Hearing of the Milgaard
3 case."

4 And then it just goes on to ask you to submit the
5 bill to the Attorney General's Department. And
6 then the next page, which is 006973A, and this is
7 the account, and it looks here that, although I
8 think they maybe misspelled your name, --

9 A I --

10 Q -- a salary of two days, it looks as though Mr.
11 Roberts would have been with you people and/or
12 travelling for two days?

13 A It --

14 Q Does that sound right?

15 A Yeah, it sounds right to me.

16 Q And then if we could go to 006818. This is a
17 letter of October 2, 1969 to Mr. Boyd, this is
18 your letter sending off the invoice, and it talks
19 about:

20 "During the Preliminary Inquiry Mr. C.F.
21 Tallis, Q.C., who was appointed under
22 the Legal Aid Plan to defend Milgaard,
23 became aware of the participation of
24 Inspector Roberts in questioning the
25 Crown witnesses, Wilson and John, and



1 formally requested me to have Inspector
2 Roberts subpoenaed and brought to
3 Saskatoon as a potential defence witness
4 at the Preliminary Inquiry. As you
5 know, Section 6(a) of the Plan requires
6 the Crown Prosecutor to place such
7 defence witnesses, as requested by
8 defence counsel, on the crown witness
9 sheet and have them summoned to attend
10 and pay them as if they were crown
11 witnesses.

12 Inspector Roberts attended at
13 Saskatoon and was interviewed by myself
14 and Mr. Tallis, jointly, concerning his
15 part in questioning the witnesses and,
16 as well, I interviewed him at some
17 length for my own purposes in connection
18 with the Preliminary Inquiry."

19 Now would that be an accurate account of what
20 happened?

21 A Yes, it would.

22 Q So it appears, from this letter, that Mr. Tallis
23 was considering calling Inspector Roberts as a
24 defence witness at the preliminary hearing?

25 A I would assume that. The billing, as you see, had



1 to be done through, through our department --

2 Q Right.

3 A -- for administrative reasons.

4 Q But what the letter says is that, although you
5 would subpoena him and pay for him, you were doing
6 that because the Legal Aid plan required you do
7 that, --

8 A Yeah.

9 Q -- but that, really, he would be a defence
10 witness?

11 A That's -- I'm sorry, it came from Mr. Tallis, so
12 on the face of it you would expect it would be.
13 If I can just -- thanks.

14 Q Would there be a distinction, Mr. Caldwell,
15 between Mr. Tallis saying "lookit, I would like
16 you as the Crown to call Mr. Roberts as a Crown
17 witness" versus "I would like to call him as a
18 defence witness"?

19 A I think the Crown would be stuck with the bill in
20 either case, so I --

21 Q Let's forget the bills for a moment.

22 A Okay, very good.

23 Q I want to know if you can tell us --

24 A Okay.

25 Q -- whether or not, first of all, would there be a



1 distinction or would it matter whether or not Mr.
2 Roberts was called as a Crown witness at the
3 prelim or as a defence witness?

4 A It -- in what respect?

5 Q In any respect?

6 A Not as far as I know or am concerned.

7 Q And we saw some reference, I know in the case of
8 Shirley Wilson for example, he asked you to call
9 her and you called her as a Crown witness?

10 A Yeah.

11 Q And I'm wondering, with Mr. Roberts, was there
12 some difference here, because it talks about him
13 being called as a potential defence witness, and
14 I'm wondering if that means that different -- let
15 me back up. Would it be the same as Shirley
16 Wilson, that if Mr. Tallis wanted Inspector
17 Roberts to testify at the preliminary hearing,
18 there would be two ways to do it?

19 A Yeah.

20 Q One, he could ask I to call him as a Crown
21 witness; correct?

22 A Yes.

23 Q Or, second, he could call him as a defence
24 witness?

25 A Right.



1 Q And I'm trying to understand whether there was
2 some reason that Inspector Roberts was treated
3 differently than Shirley Wilson?

4 A Well only -- one reason would be that he produced
5 a bill, in effect, that had to be paid, and we
6 have seen the correspondence on that.

7 Shirley Wilson, I would have re
8 -- the way the legal plan evidently worked, I
9 would have been the one who had to subpoena her,
10 and I did that. I don't know, sir, if I'm
11 answering --

12 Q No, I'm -- I will keep trying.

13 A Okay.

14 Q I'm trying to understand, Mr. Caldwell, whether or
15 not -- you talk in your letter of Mr. Tallis
16 wanting Roberts, twice, as a potential defence
17 witness --

18 A Yeah.

19 Q -- and place such defence witnesses. And let's
20 back up. At the preliminary hearing, --

21 A Uh-huh.

22 Q -- Mr. Tallis had the right to call defence
23 witnesses at the preliminary hearing?

24 A Yes, right.

25 Q To call his own witnesses?



1 A Absolutely.

2 Q And was it contemplated then, when you brought
3 Inspector Roberts in, that if Mr. Tallis wanted
4 him to testify at the preliminary hearing, that he
5 would have called him as a defence witness?

6 A He could have, or he could have asked me to, and I
7 could have called him and simply let him be
8 cross-examined, if that was the route, which was a
9 bit unusual I guess.

10 Q Right. And now that's what I am trying to find
11 out.

12 A Yeah.

13 Q This letter suggests that unlike Shirley Wilson,
14 in the case of Shirley Wilson you said "I'll call
15 her", --

16 A Uh-huh.

17 Q -- and I think your exam was brief and he
18 cross-examined?

19 A Okay.

20 Q With Roberts, from this letter, it appears that if
21 Mr. Tallis wanted him to testify, that you would
22 have to call him as a witness?

23 A Yeah.

24 Q Or were you prepared to call him?

25 A I would have, I think. The way that reads may not



1 give that impression.

2 Q I see. So that if Mr. Tallis said "I would like
3 Inspector Roberts' evidence to be heard at the
4 preliminary hearing" you would have called him as
5 a Crown witness?

6 A I would have, yeah.

7 Q And possibly simply called him and then let Mr.
8 Tallis cross-examine?

9 A That would be one possibility, sir.

10 Q I take it that, since Inspector Roberts wasn't on
11 your witness list, that you didn't think you
12 needed his evidence at the prelim to secure a
13 committal?

14 A I think that's right.

15 Q Do you have a recollection of your interview with
16 Mr. Roberts or your meetings with Mr. Tallis and
17 Mr. Roberts?

18 A Umm, well, I'm sure that meeting that has been
19 mentioned, I think on a Saturday morning in my
20 office, occurred. I think, I think there's some
21 documents about that, are there not, sir?

22 Q If I may assist, I think there may have been
23 later, a later discussion towards the trial, --

24 A Okay.

25 Q -- I'm talking about at the preliminary hearing.



1 A I don't offhand, and it says 'at the preliminary
2 hearing' here, so he presumably would have been
3 here.

4 Q And so, when you brought Inspector Roberts in, you
5 would have allowed Mr. Tallis to ask him whatever
6 questions he wished?

7 A Oh, certainly, yeah. Yeah, I see this paragraph,
8 the way it reads 'from my' -- 'for my own purposes
9 in connection with the preliminary inquiry', so we
10 jointly interviewed him and then I interviewed him
11 separately, which is -- wouldn't surprise me.

12 Q And that he was questioned concerning his part in
13 questioning the witnesses, and that would be
14 Nichol John and Ron Wilson?

15 A I, yeah, I would assume, must be.

16 Q Do you recall whether Mr. Tallis had raised a
17 concern with you about the manner in which Mr.
18 Roberts had interviewed these witnesses?

19 A I don't, sir, recall that.

20 Q And I take it that, there is a reference in
21 earlier notes about the lie detector, I take it
22 Mr. Tallis would have been aware that Mr. Roberts
23 had performed the lie detector test on Mr. Wilson?

24 A I would assume he would know that.

25 Q And in fact there's documents we've seen, and



1 we'll see others, that confirm that. I think the
2 note we saw yesterday about requesting the lie
3 detector tapes; do you remember that?

4 A I do.

5 Q If we can then go to 006917, which has 156 in the
6 top right-hand corner.

7 A Is that --

8 Q 156 if you want to get your notes.

9 A Yeah. Yeah, I've found that, Mr. Hodson.

10 Q And this is December 4th, '69, tentative order,
11 witnesses at trial; is that correct?

12 A Right.

13 Q And just on the, right in the middle there, it
14 looks as though you're -- Wilson, John, Cadrain,
15 and moving these around. Do you remember giving
16 any thought as to what order you were calling? It
17 looks as if you changed the order a few times as
18 between Wilson, Cadrain, and John; are you able to
19 help us out with any of that?

20 A I'll look at it, sir. It appears that John and
21 Wilson have been inverted in that bracket called
22 'attack and trip', could you -- is that what you
23 are --

24 Q Yeah, let's go to the third page, 919.

25 A Yeah, okay.



1 Q And there's some notes at the bottom where we see
2 'E to SB 19 of after Mrs. Cadrain'; do you know
3 what that refers to?

4 A That, I read that as being 'Ullrich to stand by,
5 19 or after' I presume is the 19th of --

6 Q January?

7 A -- January, 'Mrs. Cadrain'.

8 Q So --

9 A This was sort of like trying to line the witnesses
10 up in a manner that wouldn't be too awkward or --

11 Q So 'SB' means 'stand by'?

12 A Yeah, it does. I see more of that.

13 Q And 'C' means call to -- is that right? We don't
14 see it there.

15 A Yeah, I mean called to stand by after Paynter's
16 name and the three more lab witnesses, for
17 instance.

18 Q Yeah. So at this point in December you are still
19 thinking Mrs. Cadrain may be a witness?

20 A I would assume so.

21 Q And then 'changes in order, Wilson, John, Cadrain,
22 before Marcoux'?

23 A I see that.

24 Q Anything to add to that? Do you know why --

25 A Is Marcoux the young lady who --



1 Q -- found the body, yes.

2 A Found the body. Well, in one -- in one sense, or
3 in fact the episode had happened before she found
4 the body, so that would just look chronological to
5 me.

6 Q And then what about number 2, 'Diwold before
7 Rasmussen.' Diwold is the fellow at St. Mary's
8 church who saw the car, 7:10 I think, thereabouts,
9 and Rasmussen is the fellow at the motel.

10 A I'm assuming again I would try to get it in
11 chronological order, sir, as I then understood it.
12 Does that -- I mean, that's what I'm assuming.

13 Q Yeah, if you can explain that, that's fine.

14 A Yeah, that's what I take from that.

15 Q And then next, 006971, I don't think there's a
16 need for you to get your original, I just want
17 to --

18 A Okay.

19 Q Again, and we see a number of these, I don't
20 propose to go through them other than it looks as
21 though December 8th, '69 you would have had
22 subpoenas issued, these are the police officers,
23 and there's similar ones for the rest of the
24 witnesses. Does that sound right?

25 A Yeah, it does.



1 Q And then 006963, and this has got 108 in the top
2 right, December 9th, '69.

3 A I see that on the screen.

4 Q And it appears to be your letter to Chief Kettles
5 with the witness subpoenas to be served. I take
6 it the police would look after serving these for
7 you?

8 A Yes.

9 Q And then scroll down to the bottom, please, we've
10 got Robert Rasmussen in Calgary, and if I can
11 assist here, Mr. Rasmussen, again, he was the
12 fellow who worked at the motel, the Trav-a-leer
13 Motel.

14 A Okay.

15 Q And I think he had moved to Calgary by the time of
16 the trial, there's some documents trying to locate
17 him.

18 A Okay.

19 Q Do you remember that?

20 A It looks like that.

21 Q And then as well we have Inspector A.R. Roberts,
22 Calgary police department, peace officer, January
23 19th, and there is, in fact, a subpoena that you
24 get issued for Mr. Roberts.

25 A Okay.



1 Q And so, I mean, he wasn't called at trial, but I
2 take it, sir, that based on that, would it be fair
3 to say that you took steps to have him
4 available --

5 A Yes, it would.

6 Q -- at trial? I'll show you some other documents
7 on that in a moment. 006953, which is number 119
8 in the top right-hand corner, and if you want to
9 find 119?

10 A Yes, thank you, I'll try that. I've found that,
11 sir.

12 Q And you might want to grab 120 and 121 as well.

13 A Okay.

14 Q And 122, and actually right up to 123.

15 A Okay.

16 Q Again, Mr. Commissioner, these notes, the numbers
17 119, the RCMP numbered these pages when they got
18 the file and numbered them from back to front I
19 think in most cases. When I look at the file, it
20 appeared that these were some loose notes that
21 were in the file that would suggest December,
22 January sometime -- December, '69, January, '70
23 and trial prep notes; is that --

24 A That sounds --

25 Q And if we can go through them, I see we have



1 number 2 here, I couldn't find anything that was
2 number 1, and I'm not sure anything --

3 A You are still on 119, sorry.

4 Q Yes.

5 A Okay.

6 Q -- turns on that, but why don't we just go through
7 some of these.

8 A Sure.

9 Q And I take it, Mr. Caldwell, you would have had,
10 in preparing the case, we've seen notes that
11 you've jotted, reminders, I will be a bit later
12 referring to a document that you call N.B. for
13 trial, which has about 70 items you list, things
14 to check.

15 A Yeah.

16 Q And would it be fair to say -- well, let's go
17 through the first one and then I'll ask you, it
18 says, 'Why T --' and I think that's Tallis, '--
19 dwelling on no foot marks and no blood spots away
20 from body: only near body. Idea she not dragged
21 or walked there. Uniform absorbed much blood.
22 Wound causing death may be late in proceedings.'
23 And again, would this just be notes to yourself on
24 the file of things to --

25 A To try to ponder and figure out.



1 Q And do you know what -- and then you've got a line
2 through it. Does that mean you would have
3 satisfied yourself --

4 A I think that's what it means, or given up, one or
5 the other.

6 Q And do you know what this item, why you would be
7 worried or concerned about Tallis dwelling on no
8 boot marks away from body, only near body?

9 A Something -- not offhand. Something to do with
10 the order things happened in or -- at the scene I
11 presume.

12 Q Okay. And if we could scroll down to number 3,
13 and it says David, who I presume is David
14 Milgaard, 'David good boy department, cut own hair
15 sample, co-op, nice to Danchuk's. Appearances are
16 deceiving.' And then can you tell us --

17 A I'll try and help you with that, 'if a person
18 being interviewed looks nervous - doesn't prove he
19 did it. - if he prof, calm and polite, doesn't
20 eliminate him.' These were references I guess
21 that Mr. Tallis had cross-examined along these
22 lines indicating some good behaviour by Mr.
23 Milgaard.

24 Q Okay. And then you've got a note here, 'not
25 interested in his manners at all these other



1 times, proves nil so his actions --' or proves --
2 what's that word?

3 A 'Re his actions.' That looks almost that it could
4 have been something I intended to put in a jury
5 closing, sir, if the evidence was like that.

6 Q I see. So this would be a note to yourself about
7 something you might do at trial?

8 A That's the way I'm reading it here, yup.

9 Q Number 4, 'Danch,' which I assume is Danchuk,
10 'noted no scratch mark on D's face.'

11 A Yeah.

12 Q I presume that's Mr. Milgaard?

13 A Yes.

14 Q 'Knife makes one-sided'?

15 A Marks.

16 Q Okay.

17 A Oh, I'm sorry.

18 Q I think it's makes.

19 A Yeah.

20 Q Do you know what that refers to, number 4?

21 A Well, evidently there must have been some
22 indication that Danchuk, some suggestion that he
23 had noticed those scratch marks, but he -- someone
24 followed up, like me, and found they didn't exist,
25 he noticed no scratch marks.



1 Q And then five, 'sweater inside out - girls don't
2 take off sweaters this way'.

3 A Yeah. That's just another note to me. That
4 number 4 could have something to do with
5 cross-examining Mr. Danchuk by Mr. Tallis saying
6 wouldn't you have expected A, B and C to be the
7 case, but there were no scratch marks on his face,
8 that's all I can --

9 Q All right. So do you think these might have been
10 notes that you took based on Mr. Tallis'
11 cross-examination?

12 A They may well have been, sir.

13 Q And again, the last one, sweater inside out, was
14 that a matter, I think it may have been raised at
15 the prelim about --

16 A It may, her sweater may have been inside out.

17 Q And that --

18 A Someone suggested 'girls don't take off sweaters
19 this way.' That's just another thing to look at I
20 guess.

21 Q And then the next page, 006952, it has 120 in the
22 top right, 'N.B. for summation,' I take it that
23 means important for summation?

24 A That's right.

25 Q And that would be the summation to the jury?



1 A Yes, sir.

2 Q And you say, 'honest witnesses honestly mistaken,'
3 and then you have 're Danchuk's car.' You've got
4 Danchuk's car being a '64 Chev, Campbell saying
5 it's a '63 Ford. 'Trial, Mrs. Gerse, holes in
6 toque. Grant, one lump and source of it.' Can
7 you tell us what --

8 A Yeah, those would be things I would be planning on
9 covering in a closing and one of the things that
10 does happen is that honest witnesses can be and
11 are honestly mistaken and this is simply a
12 difference in the description of Danchuk's car
13 between two people. I think clearly the same car
14 as it turned down.

15 Q And if you can scroll down, I think you've done
16 the same for Wilson's car, Wilson says it's a '58
17 Pontiac, McQuhae, Anderson, Danchuk, Davis
18 describe it as a Pontiac, Chev, Pontiac and
19 various --

20 A I think that would be under the same honest
21 witnesses honestly mistaken heading.

22 Q And then you say, 'no car went east west because
23 no --'

24 A Marks.

25 Q Marks?



1 A Yeah.

2 Q And that would be the east-west alley, would be
3 the one that runs from Avenue N to Avenue O?

4 A That's right.

5 Q Or -- correct?

6 A No, that's my understanding, yeah.

7 Q Yeah. And the body was found on the north-south
8 alley that intersected?

9 A That's right.

10 Q So no car went east-west because no marks?

11 A Yeah.

12 Q And you have, 'Diwold saw a car in there. Ident
13 van had been there in a.m., apparently left no
14 marks. See photo.' And then, 'Parker walked
15 east-west in afternoon. Photo 4.' Can you tell
16 us what that --

17 A Well, that -- there's some suggestion that no car
18 had gone east and west in that same alley and in
19 following that up, it appears as if Mr. Diwold
20 did and testified that he saw a car in there, the
21 way I'm reading this. The identification van had
22 been there in the morning, but apparently left no
23 marks. Apparently that shows up, Mr. Hodson, in
24 the photo that includes that van, if that's how
25 I'm reading it, and then Detective Parker walked



1 east-west in the afternoon and evidently that's
2 encompassed in photo 4.

3 Q Okay. So can I read from this that if Mr. Tallis
4 makes the argument that there was no car in the
5 east-west alley because there were no marks, that
6 these were some of the things that you would
7 respond with?

8 A That could well be.

9 Q Then the next page, which has 121 in the
10 right-hand corner, 006951, and I think S.I. we've
11 established is sexual intercourse?

12 A It is.

13 Q 'Improbability of sexual intercourse in that
14 weather.' Number 1, 'anyone who would do that
15 wouldn't worry re freezing.' Number 2, 'sperm in
16 snow and body, unlikelihood of ejaculation taking
17 place except as part of this episode.' Can you
18 tell us what that --

19 A Well, there was a suggestion that it was unlikely
20 that sexual intercourse would take place in that
21 weather. This is my note, anyone who would do
22 that wouldn't worry about freezing, and two, there
23 was sperm in the snow and in the body, in the snow
24 and the body, and then I had an unlikelihood of
25 ejaculation taking place except as part of this



1 episode. In other words, it would appear to be
2 all one episode.

3 Q Okay. And I know there was some questioning at
4 the prelim about whether or not this offence would
5 have taken place in a car or not --

6 A Yeah.

7 Q -- or outside. But would this be sort of your
8 notes about trying to respond to the suggestion
9 that the rape couldn't have occurred outdoors?

10 A Yes.

11 Q And when you say anyone who would do that won't
12 worry re freezing, you are talking about the
13 assailant?

14 A Oh, yes, yeah.

15 Q And then secondly, you are saying that the fact
16 that there's sperm in the snow and the body means
17 that sexual intercourse did take place outside
18 because that's the only logical explanation --
19 well, you say likelihood of how it would get
20 there; is that fair?

21 A Except as part of this episode. In other words,
22 whoever --

23 Q Yes.

24 A -- did that would be the author, if you will, of
25 the sperm is what I'm trying to say.



1 Q And then it follows, and I presume that's
2 McCorriston, 'purse contents as proving it wasn't
3 Gail Miller's compact - etc. B.S. - note
4 duplications within purse contents themselves.'
5 Can you --

6 A Yeah, it appears that, 'purse contents as proving
7 it wasn't Gail Miller's compact - etc.,' I think
8 would evidently -- 'note duplications within purse
9 contents themselves.' In other words, the way the
10 purse and contents were found, itself included
11 duplications of some items that it couldn't be
12 said you would never have a duplication, which
13 would work against it not being her purse, to put
14 it awkwardly, sir.

15 Q So what you are saying is that the argument that
16 the compact, or thrown away -- or the fact that
17 Gail Miller's purse contained a compact, etc.,
18 didn't mean that she didn't have two because her
19 purse had duplications?

20 A That would be how -- my view.

21 Q Now, I looked for an officer with the initials
22 B.S., but I didn't find one. Am I --

23 A I think we had some of them testifying here
24 earlier, but I believe they are retired. I think
25 that's their traditional heading, sir.



1 Q So you were questioning that; is that fair?

2 A Yeah, thank you.

3 Q If we can go to the next page, 006950, and we have
4 a document at the top that says Wilson, and I
5 presume that's credibility department?

6 A That's right.

7 Q And number 1, 'I didn't believe him re his
8 statement re hitting a girl.' And if we can pause
9 there, and I believe, and I stand to be corrected,
10 did that -- was that a question of Mr. Wilson at
11 the prelim about what he thought when Mr. Milgaard
12 told him that he had hit a girl in Calgary?

13 A The only -- yeah, it -- I didn't believe him. The
14 only, 're his statement re hitting a girl,' if
15 that got into the preliminary evidence --

16 Q Mr. Wilson was asked about that at the prelim.

17 A Yeah, and does he say --

18 Q I believe so.

19 A Okay.

20 Q I stand to be corrected. I'm just trying to
21 understand what this might have referred to, Mr.
22 Caldwell, and I just offer that as --

23 A Well, this -- the heading is Wilson credibility
24 department. He said he didn't believe what I take
25 to be Milgaard about his statement re hitting a



1 girl. Two and three are part of the same --

2 Q Sure, why don't we just go back to two and three.

3 'David returned five minutes later after Wilson
4 returned to car (prelim)'.

5 A Evidently he said that in the prelim.

6 Q 'Or five to six (trial)'?

7 A Yeah, and then I've put 'big deal?', meaning how
8 much does this matter.

9 Q Would this be a note -- and it may be this is a
10 note after the trial or after the evidence? I'm
11 wondering if it is, because Lapchuk and Melnyk,
12 you wouldn't have known about them until --

13 A That's right, it may well be after the prelim.
14 The third thing, sir, 'why not see blood on
15 sweater and shirt too,' I assume refers to Wilson
16 not seeing blood on sweater or shirt, but maybe
17 you can --

18 Q Yeah, I'm wondering, as we go through this, Mr.
19 Caldwell, whether these might have been notes that
20 you took through the trial of matters to answer to
21 in closing. Is that possible?

22 A It's possible.

23 Q And because I see a reference here to trial and to
24 Lapchuk and Melnyk --

25 A Yeah, yeah, there's two -- he evidently gave two



1 estimates of time, one in the prelim, one in the
2 trial, that's why that's that way, and I'm
3 questioning is that a big deal, in a word.

4 Q And then I think number 3 is, 'why not see blood
5 on sweater and shirt too,' and I think
6 Mr. Wilson's evidence was that he saw it on the
7 pants, but not the shirt?

8 A That would be how I would read that, sir, but I
9 take it of David Milgaard is what they are talking
10 about, okay.

11 Q And then Lap and Mel, which I'm assuming is
12 Lapchuk and Melnyk credibility department?

13 A That's right.

14 Q 'One says bed and one floor, words different,' and
15 again would that be --

16 A Yeah, that would be things I understood they had
17 said about, of course, about the hotel room
18 reenactment. I didn't appear to attach any weight
19 to that. 'One says bed and one floor, words
20 different.' Just from my own --

21 Q If we can just go back maybe to the first page,
22 006953. In your file are these notes together,
23 Mr. Caldwell, the ones we've just gone through, or
24 are they loose notes?

25 A If you give me a second I'll --



1 Q I'm looking for 119, 120 and 121.

2 A Okay.

3 Q Sorry, 122.

4 A I have all those here.

5 Q Are they together in your file or are they loose
6 notes?

7 A Well, they are loose now. They are photocopies of
8 foolscap.

9 Q I'm wondering if, if you take a look at this first
10 page, whether these, looking at it now that we've
11 saw the page about Melnyk and Lapchuk and the
12 reference to Wilson's evidence at trial, are these
13 possibly notes through the trial that might have
14 been -- for example, 'why Tallis dwelling on no
15 boot marks,' is that something maybe that happened
16 at trial that you made notes of?

17 A It looks to me as if it's pretrial, but is there
18 any evidence --

19 Q No, I'm trying to --

20 A Yeah. I mean, was that covered in the preliminary
21 hearing possibly?

22 Q It may have been. Let's just go down to number 3.
23 I think you had said that there's quotes and I
24 think you had said these were matters that you
25 were putting together in the, based on what points



1 Mr. Tallis was making.

2 A Yeah. It could be -- for the moment it could be
3 trial time, sir, but --

4 Q Okay. This is probably a good spot to break for
5 lunch.

6 A Thank you, sir.

7 (Adjourned at 11:56 a.m.)

8 (Reconvened at 1:32 p.m.)

9 BY MR. HODSON:

10 Q Mr. Caldwell, this morning we had gone over the
11 prelim and you advised and we saw some documents
12 that suggested that three officers were recalled
13 at the prelim, being officers Kleiv, Penkala and
14 McCorriston, to give brief evidence, and I've
15 checked the transcripts, I just want to call up
16 008258, and go to the next page, please, and you
17 recall when we went through the notes about your
18 meeting with Mr. Tallis and the mention about the
19 hunting knife. It looks as though at the bottom
20 Mr. Kleiv was called and Mr. Tallis cross-examined
21 him, it says you are going to check a number of
22 items at my request during the course of your
23 cross-examination. And then the question, if you
24 go to the next page -- sorry, go back to the
25 earlier page, he says:



1 "Q First of all, you mention having in your
2 possession, a small hunting knife?

3 A Yes, sir.

4 Q As I understand it, you received that
5 small hunting knife from Constable Ian
6 Oliver on February 28, 1969?

7 A Yes, sir.

8 Q And then I believe that both of you
9 initialled it at that time?

10 A Yes, we did."

11 So again it appears that that evidence on the
12 second hunting knife was put in at the prelim at
13 Mr. Tallis' request?

14 A That's how I read it, sir, as well.

15 Q If we can go back to 006949 and there's 123 in the
16 top right-hand corner?

17 A I see that on the screen.

18 Q And I was going through before lunch some notes
19 that you had taken and the one page we had
20 referred to looked like it would have been after
21 or during the trial because it referred to Melnyk
22 and Lapchuk and to Wilson's trial evidence, and
23 I'm not sure whether this is with that, maybe
24 we'll just go through and see if you can help us
25 out in figuring out when you would have prepared



1 this. These are your notes?

2 A That's right.

3 Q And it says cover. First, 'how come Danchuk's
4 didn't see blood? Duplication of cosmetic items:
5 point out duplication within purse itself. Toque
6 - wipe blood off self on way into Cadraains.' And
7 next, 'Wilson false statements to Riddell.' Next,
8 'how sweater off - inside out and uniform top
9 down.' You see that?

10 A Yeah, I see it.

11 Q Are you able to tell us what -- when you would
12 have made those and what they were in connection
13 to?

14 A If I could look at the 122 or so?

15 Q Sure. Let's go back to 006950.

16 A That may help.

17 Q If you want to take a look, we went through
18 documents 120, 121 and 122.

19 A Yeah, I've found my original, Mr. Hodson.

20 Q Go back -- do you want to go back -- let's go to
21 006949, please. Are you able to tell us --

22 A That's the one I have in front of me now.

23 Q Yeah. And are you able to tell us, is this a note
24 you made at trial, before the trial? We've seen
25 this note before about this earlier duplication of



1 items. Is it fair to say they would have been
2 notes either in preparation for trial or during
3 the trial of points to cover?

4 A I would think that.

5 Q And then if we can scroll down further, please,
6 right here, it says, 'N.J. locked up. Long haul
7 for police.' Would that be Nichol John locked up,
8 is that what that note is?

9 A I take it to be that.

10 Q And I know at the prelim, and I believe at the
11 trial, there was some examination or
12 cross-examination of Nichol John about her stay in
13 the police cells. Do you remember --

14 A I know that was raised, yeah.

15 Q And is that what this is referring to?

16 A I would assume so.

17 Q Next if we could go to 006960, please, this is
18 document 112 in the top right-hand corner.

19 A Okay, I have that, sir.

20 Q And this is your letter, January 6, 1970, to
21 Mr. Kettles, again some subpoenas, and then a note
22 here that says, I'm assuming that is 'explained to
23 deputy chief, January 6, that I'll phone these
24 two'?

25 A That is correct.



1 Q And would that be referring to them, at the
2 bottom, Inspector Roberts -- scroll down -- I
3 presume Insp R. is Inspector Roberts?

4 A I do as well.

5 Q And, 'try to avoid January 21, important'?

6 A Yes.

7 Q 'R: Give him one or two days' notice'?

8 A That's right.

9 Q Inspector Brown. So do I take it from this that
10 you had talked to Inspector Roberts about --

11 A I would say so. I don't offhand know who
12 Inspector Brown is, but perhaps you do.

13 Q I don't know.

14 A Okay. That may become clear later.

15 Q And if we can go to 006947, and again this is just
16 a note from -- I think MMS was your secretary at
17 the time?

18 A Is this 125?

19 Q Yes.

20 A I'll just look at this.

21 Q Sure. I'll call this out, please.

22 A MMS was --

23 Q I'm sorry, I'm just getting it enlarged.

24 A Oh, I'm sorry.

25 Q So we'll go through. This is a memo to you that



1 Detective Ullrich phoned about Mr. Rasmussen, and
2 again, do you know what that would mean?

3 A That would be correct, I obviously asked Ullrich
4 to ask Rasmussen about something. At the moment
5 I'm not sure what it would be because we only have
6 the answer here.

7 Q And do you know what these -- I presume that may
8 be just information about serving subpoenas; is
9 that --

10 A Yeah. Yeah, the Danchuk one is where he is apt to
11 be found. Mrs. Danchuk, the second one, same
12 places mentioned in Ullrich brief, and I guess
13 W.D. is Walter Danchuk.

14 Q Go to 006946, this is a subpoena for a fellow by
15 the name of Maurice Cerato who had given the
16 police a statement that -- actually, maybe we
17 could -- why don't we just have you read that note
18 on the top there.

19 A Okay. The M.C. would be Maurice Cerato, 'told
20 Mr. John of getting from M on Monday --'

21 Q That would be --

22 A Pardon me?

23 Q I'm sorry, from the M, would that be Milgaard?

24 A For the moment I assume that.

25 Q Okay.



1 A 'On Monday, January 12th and John told Karst by
2 phone that p.m. Karst advised me Tuesday, 13th -
3 K and S down Wednesday, 14th - got pants and to
4 lab today.' I think that refers to Nichol's
5 father advising the police about these pants and
6 they evidently picked them up, took them to the
7 lab, and I evidently phoned Mr. Tallis that same
8 day by the look of that to advise him of that.

9 Q And there's a statement in the documents of a
10 Maurice Cerato indicating that he had bought a
11 pair of jeans from Mr. Milgaard --

12 A Yeah.

13 Q -- I think for 15 cents --

14 A Yeah.

15 Q -- that had the legs cut off, and that he thought
16 there was blood on them, and do you recall that?

17 A Yeah. Roughly speaking I do, yeah.

18 Q And that they had been washed and then I think the
19 police picked them up and took them to the lab and
20 I don't think anything came out of the lab.

21 A I think the lab more or less said they couldn't do
22 anything with them, if that's the --

23 Q I believe that's what the report says.

24 A Yeah.

25 Q And you did not in fact call Mr. Cerato?



1 A No, I don't believe so.

2 Q Now, this note here, it says, 'advise Cal,
3 Wednesday, 14,' would that be a note --

4 A Yeah, that's my note, and it's advised, as in it
5 happened, I did do that.

6 Q So you would have told Mr. Tallis about this
7 fellow?

8 A Absolutely.

9 Q And so it appears that you subpoenaed him and then
10 made the decision not to call him at trial?

11 A That looks like that.

12 Q Next page, 006948, this is just a note of January
13 12, it's document 124, I don't know if you need
14 the original or not, just a memo again from your
15 secretary about a call from Ullrich?

16 A Okay.

17 Q And in this she states, 'I have talked to
18 Detective Ullrich and he wondered if the matter
19 should be let go --' Let me just back up. They
20 are having trouble finding Mr. Rasmussen in
21 Calgary, or serving him.

22 A Okay.

23 Q And, 'talked to Detective Ullrich and he wondered
24 if the matter should be let go as there are two
25 other witnesses to tie in the part that Rasmussen



1 is involved with,' and then I think some notes,
2 some follow-up, and then I take it you did follow
3 up to have Rasmussen served?

4 A I assume so, because I think he was called, was he
5 not?

6 Q Yes.

7 A So we must have done that.

8 Q Next if we could go to 006945, and again I had
9 shown you before lunch some October letters trying
10 to get Mr. Roberts' expenses paid?

11 A Oh, okay.

12 Q This is a January 12th, 1970 letter from you to
13 the administrative officer at the Attorney
14 General, and again referencing your October 2nd
15 letter for Roberts, and then if you could scroll
16 down to the third paragraph -- just go back, the
17 second paragraph says the police received another
18 invoice and it's not paid, and then scroll down,
19 it says:

20 "Inspector Roberts was extremely helpful
21 and co-operative in attending at
22 Saskatoon in this respect last year, and
23 has been subpoenaed again as witness for
24 the trial herein, which will commence on
25 or about January 19th, and it may be



1 necessary to have him attend at
2 Saskatoon for that purpose."

3 So I take it from that that, A, January 12th, he
4 hadn't been paid for the last --

5 A Right.

6 Q And B, you had subpoenaed him and you were
7 thinking he would have to come again for the
8 trial?

9 A Yeah. This morning, Mr. Hodson, I forgot that he
10 was here twice, in a nutshell, which made it --

11 Q I'll show you some further notes here that might
12 assist.

13 A Sure, that's fine.

14 Q Next if we can go to 006920, and it's document 146
15 in the top right --

16 A This appears to be 153 to me.

17 Q Is that 006920? Yes. No, I'm sorry, 927, pardon
18 me, yeah.

19 A What --

20 Q I'm sorry, I called the wrong number.

21 A That's fine.

22 Q Yeah, 145, so 006927. And I think 146 and 145 go
23 together?

24 A Yes, there is a, a series here that are actually
25 --



1 Q Right.

2 A Yeah.

3 Q So if we have got 146, if we just go to 10, we'll
4 se this just goes to the next page. Figure --

5 A Sorry, I'm just --

6 Q Go back to 146, please.

7 A You want 146, sir.

8 Q Yeah, let's go back to 927 on the screen, please.
9 So we have Figure out Law, etc., points 1 to 10,
10 and then go to 928, 11, 12, Figure Out, so that
11 would be two-page document; is that right?

12 A Yes.

13 Q 146 and 145 on the top right?

14 A Yeah, 1 of 2, it is a 1 and 2.

15 Q Yes.

16 A It is a 1 and 2.

17 Q Yes, and you've got that in front of you?

18 A Yes.

19 Q Okay. If we can go back to the first page, it is
20 titled Figure out Law, etc. and these are your
21 notes?

22 A Yup.

23 Q And tell us what, I will go through them with you,
24 sir, I just want to know generally what, what
25 would you be putting in these notes, and when



1 would you prepare them, and what was the purpose
2 of them?

3 A Well it presumably is pretrial, and they are
4 things that haven't been settled to my mind in
5 terms of whether or not we call people, whether we
6 pursue them, that kind of thing.

7 Q So these would be, and again I think in your
8 filing folder they are around documents in early
9 January 1970, so does that sound about right?

10 A Umm --

11 Q In the time period leading up to the trial?

12 A It does.

13 Q And so we will see, you've got a number, next I am
14 going to be going to N.B. For Trial and then
15 you've got some -- a document of -- let me back
16 up. The headings of your notes that I have got
17 are Figure out Law, etc., --

18 A Yeah.

19 Q -- you have a set of notes called N.B. For Trial,
20 you have a heading of documents called See in
21 Person, you have one called Write, being
22 W-R-I-T-E?

23 A Uh-huh.

24 Q One called Phone with a list of things to do, and
25 I will go through all of those with you.



1 A Oh --

2 Q But does that sound --

3 A It sounds, yeah.

4 Q -- how you organized items to do, is that a fair
5 --

6 A Apparently so, yeah.

7 Q So if we go through the first one, Figure out Law,
8 etc.

9 A Okay.

10 Q Number '1. Put in', I'm assuming 'W' is 'Wilson's
11 pants'?

12 A Right.

13 Q 'Pros and cons' and then 'no'?

14 A And I wrote 'no'.

15 Q Is that --

16 A I assume, presumably thought they had no
17 evidentiary value once we'd found what we could
18 about them.

19 Q And is that, are we correct in assuming that you
20 had the pants; is that right?

21 A From that I assume --

22 Q That the police had the pants?

23 A Someone had 'em.

24 Q And is it possible that those came from
25 Mrs. Cadrain?



1 A Umm, it could be, sir.

2 Q Okay.

3 A At this point, you know, I can't --

4 Q And then number '2. Should we prove Wilson's
5 and/or Cadrain's blood types, if so via Brand or
6 Emson', and answer 'yes, Wilson's via Emson'?

7 A That's right. And it was just a 'yes', I
8 evidently thought that should happen, and the
9 simple way would be to have Dr. Emson do it as he
10 would be a witness anyway.

11 Q Would that be to eliminate -- let's go back to the
12 question. Would you raise that question to,
13 whether you should prove Wilson and/or Cadrain's
14 blood type, the only relevance of their blood type
15 would be to either exclude or connect them with
16 the sample found on Gail Miller; is that correct,
17 sir?

18 A That would be my thought, and I think they turned
19 out to be three different ones if Milgaard was
20 included, but --

21 Q Cadrain and Wilson were not A blood types, I can
22 tell you that, sir.

23 A Okay.

24 Q And the question here though, it appears that you
25 addressed your mind to the fact that whether or



1 not you should prove that Wilson and Cadrain could
2 not be the donors of the semen found on Gail
3 Miller?

4 A Yes, I assume it refers to the semen, I assume
5 that's what I was doing.

6 Q I'll just refer that to --

7 COMMISSIONER MacCALLUM: I'm sorry, Mr.
8 Caldwell, we just seem to be falling into the
9 habit of talking over --

10 A Oh, I beg your pardon.

11 COMMISSIONER MacCALLUM: So before I get to
12 --

13 MR. HODSON: Maybe we'll just go back to --

14 COMMISSIONER MacCALLUM: -- chastised by
15 the reporters, would you be careful.

16 A Okay. Thank you.

17 BY MR. HODSON:

18 Q And I apologize, Mr. Caldwell. If we could just
19 go back on the blood types.

20 A Okay.

21 Q Would you agree with the following; that as part
22 of your deliberations as to what you should prove
23 or establish at trial, you considered calling
24 evidence to establish the blood type of Mr.
25 Cadrain and Mr. Wilson; and secondly, that the



1 only purpose in doing so would be to exclude one
2 or both of them as the donor of the semen found
3 near Gail Miller's body?

4 A It would be a 'yes' to both those, sir.

5 Q And, thirdly, you made the decision to call only
6 evidence with respect, at least according to this
7 note, evidence with respect to Mr. Wilson's blood
8 type?

9 A Evidently so.

10 Q And would that be to show to the jury that Mr.
11 Wilson is not the one who raped Gail Miller?

12 A Well that he, if the types were right, that he, in
13 effect, couldn't have been the person who was the
14 originator of the semen, is how I would put it, I
15 guess.

16 Q Okay. Three refers to some keys, I don't think
17 anything turns on that. Go down to 4, 'RH/HL',
18 which I'm assuming is 'right hand/left hand
19 evidence'?

20 A That's right. And there is -- there was a
21 policeman named Constable Has who I believe
22 observed the accused on one, at one point. I
23 think that's what that is, as opposed do -- and
24 then 'R. Mackie phone' and 'Dimmitt'.

25 Q I think that's actually 'plane', I think



1 Mr. Mackie was on the plane with Mr. Milgaard.

2 A Oh, I'm -- beg your pardon, right. Yeah, that's
3 right, because he made some observations on the
4 plane back from B.C.

5 Q So this was a note about establishing what hand
6 Mr. Milgaard was?

7 A That's the topic, yeah.

8 Q And then number 5, 'Emson's questions'?

9 A 'From page'.

10 Q 'To autopsy report and interview Emson'?

11 A Yeah. That means that I was going to transfer Dr.
12 Emson's questions from my guide page, it looks
13 like, to the actual autopsy report, and then go
14 and interview him.

15 Q And then 'prove or leave out items left for ident,
16 identification'?

17 A Yeah.

18 Q Do you know what that is?

19 A That is some exhibits got to the -- for
20 identification didn't become full exhibits. That
21 was to remind me to either put 'em in or not.

22 Q Okay. Number 7 is, and I'm assuming M is
23 Milgaard, 'read Milgaard's statement to Karst re
24 useful admissions'?

25 A Yeah.



1 Q 'Worth trying to get ruled admissible'?

2 A That is 'for cross-examination'.

3 Q 'For cross-examination'?

4 A Yeah.

5 Q And we may have touched on this before; --

6 A Yeah.

7 Q -- is this a similar note?

8 A I would say so, sir.

9 Q And so you might, you are thinking about whether
10 you get it ruled voluntary so that you could use
11 it for cross-examination if Mr. Milgaard
12 testified?

13 A That's what I was thinking.

14 Q And at the time you were preparing for trial did
15 you, did you know whether or not Mr. Milgaard
16 would be testifying at trial?

17 A No, no I didn't, sir.

18 Q And are you able to tell us when -- we know, we
19 know that he did not -- when, in the proceeding,
20 would you be aware of that?

21 A Well I would expect I found that out at -- when
22 the Crown's case was closed and Mr. Tallis was
23 called on at -- for defence evidence or not.

24 Q And that's when you would have learned, do you
25 think?



1 A That's, yeah, I -- I expect so.

2 Q And then number '8. Read Mrs. Wilson's evidence
3 re what exactly happened with clothes'.

4 A Yeah.

5 Q And I take it that is the preliminary transcript?

6 A That's what I take it as well.

7 Q Number '9. Did purse have G.M. ident right in
8 it?'

9 A Yeah.

10 Q And I presume that's Gail Miller. Answer 'yes,
11 McCorriston'?

12 A I'm quoting McCorriston that that was the case.

13 Q And then number '10. Go over Beauchamp's wallet
14 episode with Ray Mackie, show page 76 and 77, get
15 clear where Giles Beauchamp really found it, at
16 326 O, not near school, and Remenda', Remenda's,
17 I'm assuming?

18 A Yeah.

19 Q '214 Avenue M South, page 118, or 224 N South
20 (report)? and 326'?

21 A 'Third or fourth house north', it says, yeah,
22 'page 189'.

23 Q Are you able to explain what this refers to?

24 A Well, I believe earlier in the -- I may -- in the
25 Inquiry we had both those people claiming they



1 found the wallet, did we not?

2 Q That's right, yes.

3 A Yes, so that's what it would be, at -- there was
4 an inconsistency there which I hoped to get
5 figured out before the trial.

6 Q In fairness I think, Mr. Caldwell, at the time, in
7 1969, Mr. Remenda had not provided a statement and
8 nor did any report, I don't believe, refer to him
9 as being the person who found the wallet.

10 A Oh, okay.

11 Q It reported him being there.

12 A Yeah.

13 Q And I might assist you a bit further, whether --
14 was there some concern about Mr. Beauchamp's
15 evidence as to where he found the wallet?

16 A I think so, Mr. Hodson. I'd have to look at some
17 --

18 Q Yeah, you are not, without -- this note doesn't
19 jog anything in your mind about the wallet?

20 A Well just that it was the topic, that it says
21 'wallet episode, get clear where G.B. really found
22 it'.

23 Q And that was you were going to go over with Ray
24 Mackie?

25 A I assume so, yeah.



1 Q And then next page.

2 A Okay. That 'figure out Molchanko report October
3 31, envelope said "from front right"' -- pardon
4 me -- '"from right front"', end of quote, 'who
5 wrote this, Kleiv or Tweed?' And then it appears
6 I talked to Kleiv who says he thinks it was him
7 who wrote it. The 'find out', I think, should be
8 up a line. And then it says 'Joe, it was Kleiv',
9 that refers to Joe Penkala telling me that he was
10 satisfied it was Kleiv.

11 Q Okay. And then number 12, I'm not sure again,
12 this is just reference to the code, I don't know
13 if anything turns on that. This would just be
14 notes trying to follow up on some questions you
15 had about --

16 A Yeah.

17 Q Molchanko was an RCMP fibre expert, --

18 A Yeah.

19 Q -- or fibre, in the fibre section?

20 A From the lab in some form or other.

21 Q If we could call up 006929, and that's page 144,
22 Mr. Caldwell, in your original documents.

23 A Yeah, I have that here.

24 Q It goes backwards from 144 all the way back down
25 to 131 in the RCMP numbering, and it appears to be



1 14 pages of notes called N.B. For Trial, and then
2 N.B.-1, N.B.-2, etcetera, in the top right corner;
3 is that right?

4 A That's right.

5 Q Can you tell us what the N.B. For Trial notes
6 were, and when you made them, and what their
7 purpose was?

8 A They were things that I wanted to get figured out
9 or resolved before the trial, I would expect some
10 arose before the preliminary, some during the
11 prelim, clearly I think before the trial started
12 though.

13 Q Did you keep a running list then, in your notes,
14 of N.B. For Trial that you would put items into
15 then?

16 A Yes. This was more of that foolscap that was in
17 the spring-back binder which would be with me.

18 Q So this is something, are you telling us that you
19 would make entries on this list from time to time
20 throughout the course of your preparations, and
21 perhaps even through trial?

22 A Certainly through the prelim and up to trial but,
23 Mr. Hodson, I would hope that, by the trial, that
24 that would have all been resolved, but --

25 Q I see. So this would be a set of notes, a running



1 set of notes of important items that you had to
2 either deal with or follow up on for trial?

3 A That's right, and I'd be happy to --

4 Q Sure, and we'll go through them. So, first, maybe
5 we'll just call out, number 1, 'eliminate
6 Hnatiuks', and you've got '(2)' of them, and the
7 answer is 'no', and they were, I think, Matthew
8 Hnatiuk and his mother who lived right by where
9 the body was found. I take it that would be
10 whether you could eliminate them as witnesses?

11 A Yes, and I evidently decided to keep them.

12 Q And then number '2', I believe that's 'Mary
13 Marcoux re trampling in snow not being done by
14 those looking at body'?

15 A Yeah. There was some question that -- as to
16 whether the trampling in the snow around the body
17 had been caused by the people looking at it. That
18 may have come up at the prelim.

19 Q And then number 3 --

20 A Mrs. Indyk.

21 Q -- yeah, 'Mrs. Indyk says second person female,
22 not male, with long shiny black hair and beige
23 scarf, did she give a second statement re this
24 person'.

25 A Yes.



1 Q 'Answer, Elmer, no, and both were native women'?

2 A No, I think that's 'mature'.

3 Q Oh, I'm sorry, 'mature', 'both were mature women'.

4 And then, I'm sorry, this last?

5 A Oh, 'pic on TV was a teenager', the photograph on
6 television appeared to her to be a teenager.

7 Q And was this relating to her evidence of seeing
8 someone the morning of the murder?

9 A That's -- would be my assumption, sir, because I
10 think that was what her evidence was limited to.

11 Q And so then I think we had earlier saw some
12 reference, at least in the police summary prepared
13 by Mr. Ullrich, that she, at least according to
14 that summary, had saw a female and a male?

15 A I assume that from the way this reads.

16 Q Yeah, so here she is saying no, it was two
17 females, and they were both mature women?

18 A That's right.

19 Q Is that right?

20 A That's right.

21 Q And then there is a note here, 'advise Cal' with a
22 checkmark, could you tell us what that --

23 A The 'advise Cal' means that I intended to do that,
24 and the checkmark means I did it.

25 Q So you would tell him the information you had from



1 Mrs. Indyk?

2 A I would, yeah.

3 Q And then, if you can go down, '4. Diwold or
4 someone give better description of layout and
5 directions of St. Mary's Church including
6 rectory'?

7 A That's right.

8 Q You've got 'Kleiv', self-explanatory, then the
9 Danchuks; maybe you can help me out here?

10 A Yeah.

11 Q It says 'his car red and white Pontiac, broken
12 taillight', is this relating to this part here
13 about the description of vehicles?

14 A I, yes, assume so.

15 Q And I think we saw an earlier note where you
16 were -- your note about honest people see -- make
17 honest mistakes about the type of car?

18 A Yeah, that's, I think it's the same topic. You
19 will notice that in small writing 'Campbell says
20 '63 Ford red and white', lower down 'McQuhae says
21 Pontiac', so I think it's that same question.

22 Q And then under 'Danchuk' it says 'blood "I didn't
23 see any" '?

24 A What number are we at, sir?

25 Q If you look on the screen, I've -- number 5.



1 A Oh, okay.

2 Q You will see that part.

3 A Yeah, I see that.

4 Q And, again, would that -- what would be the
5 significance of that? That was their evidence at
6 the preliminary hearing and at trial?

7 A Yeah. For some reason I wanted to ask him that.
8 It looks as if I personally asked him and got that
9 answer, as far as I can see it, Mr. Hodson. Like
10 it might, it may have been a slightly contentious
11 issue in the prelim, I may have gone back and said
12 'are you sure you didn't see any or did you', and
13 the answer I got again was 'I didn't see any',
14 which I assume is the same answer he gave in
15 evidence before, but --

16 Q Then number '6. D', which I presume is landlord,
17 'Danchuk's landlord Nick Kohout see/hear anything?
18 Talk to accused?', and then some notes that
19 suggest 'Elmer: Karst getting statements from
20 him'?

21 A Yeah.

22 Q 'Nil new, nothing new, no statement to add'?

23 A Yeah.

24 Q Is that, I take it the police would have followed
25 up on that for you?



1 A It appears that way. I asked Elmer December 31st,
2 it appears. Is Nick Kohout Danchuk's landlord? I
3 assume he is.

4 Q I'm sorry, sir, I don't know.

5 A Okay. And then 'Elmer says Karst getting
6 statement from him, Karst said nothing new, no
7 statement, nothing to add'.

8 Q Okay. And then if we can scroll down, let's deal
9 with this bottom part going up to the Danchuks,
10 'Sandra Danchuk's statement may have worn toque,
11 prelim did wear toque?'

12 A Okay.

13 Q Can you explain that?

14 A Yeah, there would evidently be a difference in
15 what she said and I would be trying to find out if
16 she could, you know, what shall I say, improve on
17 that or decide one or the other or say she didn't
18 know.

19 Q And then again number 7, just statements, and I
20 think we've touched on this, statements from these
21 eight individuals, you didn't have statements; is
22 that correct?

23 A Uh-huh, that's right.

24 Q Next page. 8 I don't think we need to go
25 through, --



1 A Okay.

2 Q -- just some sketches. You were talking about, 9,
3 10, the Hillcrest people who were involved at the
4 garage. Number 11, if you can scroll down,
5 'Oliver found hunting knife to Kleiv who retains
6 it'.

7 A Yeah.

8 Q And I think that's the one that Mr. Tallis had
9 asked about at the prelim; is that right?

10 A I believe so.

11 Q And then 'Fleming found fish knife to Hein'?

12 A Yeah, Hein was an identification officer as you
13 know, or -- and then two, I don't know what more
14 we learned about that.

15 Q And is there a reason, at the trial, that you
16 didn't put this hunting knife into evidence?

17 A Umm, the -- I hope I have this correct. I think
18 this is the knife that was across the fence, near
19 the body in terms of feet, but across the fence
20 and on the bottom stringer.

21 Q Yes, that's the hunting knife --

22 A Yeah, --

23 Q -- that Mr. Oliver found.

24 A -- covered with snow, as I recall. I don't think
25 it was ever -- the Crown didn't have any



1 indication that it was used in any way, and I
2 don't think anyone else suggested to me that, that
3 it may have been. That's about what I can say.
4 And you didn't sort of put in knives indefinitely,
5 essentially because they showed up at some time, I
6 don't seem to -- want to be seen to be facetious
7 but --

8 Q Well, yeah, I think we have seen in the documents
9 I think probably at least five knives were
10 found --

11 A Yeah.

12 Q -- in the, not in the direct vicinity but around,
13 from various parts of the police investigation?

14 A I think that's right, sir, and you tried to not
15 put in ones that appeared clearly not involved, I
16 would say.

17 Q If you would have felt that that hunting knife may
18 have been used in the murder would you have
19 tendered it as evidence?

20 A I would, yes, I would. And Mr. Tallis, I think
21 it's clear, knew Mr. Oliver and --

22 Q I think the documents, and we'll certainly hear
23 from Mr. Tallis, --

24 A Yeah.

25 Q -- but certainly the prelim transcript he



1 questioned Mr. Kleiv on that?

2 A Yeah.

3 Q Do you recall anything about Mr. Tallis wanting to
4 get the knife in as evidence?

5 A Umm, not, not offhand I don't.

6 Q And if Mr. Tallis wanted to get the knife to put
7 into one of your -- to put to one of your
8 witnesses in examination, would he be able to do
9 that?

10 A Absolutely, yeah.

11 Q Would you have the knife available for him at the
12 trial for that purpose?

13 A It would be, I would assume, at the station, but
14 it would certainly still exist and be findable.

15 Q So if you weren't going to put it in as evidence,
16 would you have told him that that was your intent?

17 A Umm, I don't think I ever intended to, and I don't
18 think he would expect I was going to.

19 Q Right.

20 A I don't know if that's --

21 Q Yeah.

22 A Yeah.

23 Q So, as far as you were concerned, are you
24 satisfied that Mr. Tallis would have known --

25 A Yeah.



1 Q -- that it wasn't your intent to put the knife in?

2 A I think so. And the small peculiarity of this was
3 that he knew Ian Oliver and recognized him right
4 at the prelim and greeted him, so he would know
5 about the situation, I would say.

6 Q Go on to number 12, 'caution Davis re
7 over-defensiveness', and then 'Elmer, where, at
8 Pike Lake or Clarence and 8th'?

9 A Yeah.

10 Q And Mr. Davis was the mechanic who worked on the
11 vehicle the second time --

12 A Yeah.

13 Q -- after it broke down at Cadraains'; can you tell
14 us what this is about?

15 A Evidently I thought he was being very, very
16 defensive in his evidence at the prelim and this
17 is -- I just thought, eh, there is no need for
18 that based on anything he did.

19 Q Defensive in what sense?

20 A Well apologetic for possibly how he treated the
21 party of three or how the car repair went or
22 something.

23 Q I see.

24 A I could if you wish, later, Mr. Hodson --

25 Q No, that's fine.



1 A Okay. That's what it is.

2 Q And then 13, 'Reid', umm, do you know what that
3 is?

4 A Yeah, 'Reid third', 'third', it looks like 'I --
5 identification Grant or Winter'. I think it means
6 that George Reid, and there was someone mentioned,
7 a third identification officer, I was wondering
8 whether it was one or two --

9 Q I see.

10 A -- of those two, the way I'm reading it here.

11 Q And then 14, we saw some evidence in the lab
12 reports about the blanket that the funeral home
13 operators put on the body?

14 A Umm uh-huh.

15 Q And I take it that that's a note to follow up on
16 that?

17 A That's right.

18 Q Next page. '15. Wilson says Dave didn't change
19 clothes in Regina that he can remember'; do you
20 know what that refers to?

21 A Umm, well evidently Wilson said that, and he ended
22 up -- now this could be in the prelim -- quote,
23 "that he can remember", end quote, which would --
24 would -- it wasn't a very unequivocal statement, I
25 might wish to say 'what do you mean "that you can



1 remember". That's about all, sir, I can suggest.

2 Q Right. And then '16. Law re evidence re short of
3 money, B & E, etcetera, as admissible', and then
4 'admissibility and relevancy' and then note 'leave
5 it out'; is that your note, 'leave it out'?

6 A Yeah, that's my note as well.

7 Q Okay.

8 A We discussed it somehow and came to some
9 conclusion we should do that.

10 Q And when you say 'we', who would that be?

11 A I would hope it was someone else plus me, possibly
12 Mr. Perras, Detective Ullrich, someone.

13 Q And so would you consider putting in evidence that
14 either Mr. Milgaard or the group were short of
15 money, the break and enter, would that be the
16 discussion or the break and enter in Aylesbury?

17 A Umm, the break and enter in Aylesbury, I assume.
18 'Short of money, B & E', there was only one B & E
19 that I recall, and etcetera, 'as admissible', and
20 then I have 'admissibility and relevancy' written
21 there. I know it was discussed with other persons
22 and I guess I --

23 Q Right.

24 A -- concluded to leave it out.

25 Q In fact I recall, and we'll maybe see this a bit



1 later or in Mr. Tallis' evidence, --

2 A Yeah.

3 Q -- I think he objected to the admissibility of
4 that evidence at trial; is that --

5 A That may well be, sir.

6 Q And so, again, 'just leave it out' and exclamation
7 mark. Anything else that would have gone into
8 that decision?

9 A I wouldn't think so.

10 Q It says 'Wilson says no change in Regina, all at
11 Cadrain's'?

12 A Yeah, 'no changing' as in clothing.

13 Q 'No changing', I'm sorry.

14 A Clothing, I'm assuming that meant.

15 Q And then '16. Roberts'?

16 A Just 'continuity of Gail Miller's clothes, he will
17 have to be called', is what I wrote.

18 Q And yesterday I think I said that there was a
19 mention of that in the notes, that Roberts might
20 have to be a witness on continuity?

21 A Yeah.

22 Q And he was not called at the trial for that
23 purpose; is that right?

24 A Yeah, I believe -- if he -- I believe he wasn't,
25 and if he wasn't it would be, I'm sure, by



1 agreement with Mr. Tallis, that he didn't think
2 anything turned on it. But it doesn't say that in
3 so many words there, but he'd be the one who could
4 give me the okay not to prove continuity, if you
5 will.

6 Q So at this point your note says you've got to call
7 him for continuity, we saw earlier that at the
8 prelim Mr. Tallis asked that he be brought in to
9 be interviewed, --

10 A Yeah.

11 Q -- which he was, but not called at the prelim?

12 A That's my recollection now, sir.

13 Q And if at trial Mr. Tallis had asked you to call
14 Mr. Roberts as a Crown witness, would you have
15 done that if you had not -- if you had determined
16 you didn't need to call him?

17 A Yeah, no, I would have called him.

18 Q You would have?

19 A Oh yeah.

20 Q If Mr. Tallis preferred?

21 A Oh sure. I didn't feel Mr. Roberts had anything
22 to hide in terms of the Crown or the
23 investigation, if you will.

24 Q But that as far as -- now obviously, at trial, Mr.
25 Tallis could have called him as a witness?



1 A Uh-huh.

2 Q As a defence witness?

3 A Yeah.

4 Q And that would have certain implications with
5 respect to addresses to the jury?

6 A I think that's one thing, it would force him to go
7 first if he -- that in itself, alone, if he might
8 not wish to do so for other reasons.

9 Q And secondly, if it was his own witness, absent
10 some ruling from the court he couldn't
11 cross-examine that witness?

12 A That's right. I certainly would have called him,
13 and I didn't feel that Mr. Roberts, that anything
14 came out about him or his investigation that was,
15 you know, harmful to the Crown.

16 Q And would it be correct to say that, in the
17 absence of Mr. Tallis' admission or agreement on
18 continuity, that you might have to call Mr.
19 Roberts?

20 A Yeah, it is. There is a, conceivably -- you can
21 check maybe at the break -- there may be a note
22 about this in that chart of mine, the double-page
23 one --

24 Q Okay.

25 A -- which would explain who decided what, sir.



1 Q Fair enough.

2 A Yeah.

3 Q '17. Karst did -- did Karst take May 21st
4 statement after first part of polygraph or after
5 whole thing'?

6 A Yeah.

7 Q Do you see that?

8 A Yeah, I do, and --

9 Q And is there a note underneath that?

10 A Yeah, it looks almost as if there had been two
11 pages joined at that point, and the W I assume was
12 the start of 'whole thing'.

13 Q Are you able to tell from your page?

14 A This is my page 5 of that N.B. For Trial thing and
15 it should go --

16 Q Your N.B.-3?

17 A It's --

18 Q Is there an answer to 17? On the screen it looks
19 to be cut off.

20 A Yeah, I'll just look here, sir. Yeah, it's the
21 same one. I'm sorry.

22 Q Do you have the original there?

23 A If you want to look at this.

24 MS. KNOX: (Inaudible)

25 BY MR. HODSON:



1 Q I think we've discovered that this may have been
2 --

3 A Yeah.

4 Q -- cut in half. We found a different page that
5 looks as though -- if I can actually line that up,
6 Kara, a bit?

7 A Oh okay.

8 Q The two pages, sorry.

9 A Oh.

10 Q And there is a W; would that be for 'whole'?

11 A Yeah, that's all I can interpret it as being, is
12 the beginning of writing 'whole'.

13 Q And then the bottom page, for the record, what is
14 the doc. ID of that page 113? 006959. Would it
15 appear that the foolscap was cut in half?

16 A It looks that way.

17 Q Okay.

18 A Well, it clearly was on the original, I don't know
19 why that would be, but it was.

20 Q And then just, we'll deal with this while we're at
21 it.

22 A Okay.

23 Q 'Kleiv - suitcase with black coat, brassiere and
24 nurses uniform to Mackie', those are some
25 continuity. 'Ray M agrees with above dates and



1 times, check if Ray checked individual items'.

2 A Yeah.

3 Q 'Ray did not check contents after return from
4 Roberts'.

5 A Yeah.

6 Q And then there's a check with an arrow, if we
7 could just scroll up a bit on that, please. Looks
8 like there's an arrow up there to Roberts and the
9 continuity?

10 A Yeah, but a bracket of sorts, and I -- that's got
11 my handiwork, sir.

12 Q Okay. If we could go to the next page, 006931,
13 which has 141 on the top right-hand corner?

14 A Okay, I have that.

15 Q And that's N.B.-4.

16 A Okay.

17 Q And '17 - Wilson's blood sample results: Who took
18 sample? Continuity?' And then some notes, 'Elmer
19 who took and continuity, results, blood type B,
20 phone Walters re mitts', and then over here 'phone
21 Ken Walters re mitts'; do you see that?

22 A Yes.

23 Q Do you know what that relates to?

24 A Yeah. I'll -- 'Wilson's blood sample results',
25 and I -- it's still me, although I switched to a



1 ballpoint, 'who took sample? Continuity?' Then I
2 evidently talked to Elmer Ullrich, asked him who
3 took it and what was the continuity, and then I
4 have 'Kleiv says no one in Saskatoon' right below
5 that, as you can see on December 31st, and that's
6 speaking to Ullrich, on the right column 'Regina
7 police may have taken one, phone Ken Walters re
8 mitts'. I, oddly enough, knew Ken Walters from my
9 Regina career, but -- and I have here in the left
10 margin 'phone Ken Walters re mitts'.

11 Q Is there --

12 A Yeah, I'm sorry, sir. That's just --

13 Q And just again on the mitts, there was some
14 evidence that efforts were made by police to find
15 mitts that Ron Wilson's sister or brother had to
16 see if they matched the toque that Mr. Milgaard
17 may have had?

18 A Uh-huh.

19 Q Do you remember anything about that?

20 A Roughly speaking I do.

21 Q And is that likely what that note refers to?

22 A I assume so, sir.

23 Q And so following up on a piece of evidence or a
24 question that you needed answered; is that fair?

25 A Yup.



1 Q And then it says, 18, 'W' which I'm assuming is
2 Wilson, 'says he left clothes he took off at
3 Cadraains: were they recovered'?

4 A That's how I read that. I don't see right there
5 an answer to that.

6 Q And then 19, 'witness missed --' and I assuming
7 I/C is in chief, 'the stupid B,' which is bitch I
8 presume --

9 A Right.

10 Q And, 'rip in Milgaard's pants.' Does that mean
11 that Wilson would have missed that in his
12 evidence-in-chief?

13 A That's how I read that, sir, in the prelim.

14 Q And so this would be a note to deal with that at
15 trial then?

16 A Yeah, to --

17 Q And 20 is, 'find Workman and Huculok case'?

18 A Yeah.

19 Q That's a legal issue you were looking at?

20 A That's right.

21 Q Do you know offhand what --

22 A Not just off the top I don't, but it would be very
23 readily findable.

24 Q 21, 'Roberts: How many questions did he feel
25 Wilson lied on?'



1 A Uh-huh.

2 Q And again, we saw some earlier notes about your
3 discussions with Roberts. Could this note have
4 been made before or after that discussion or do
5 you know?

6 A I don't know, Mr. Hodson.

7 Q Presumably it would be after the prelim because
8 it's following 'Wilson missed in chief'.

9 A Oh, yeah, I assume it would be after the prelim.

10 Q 22, 'Wilson on LSD or dope when came to
11 Saskatoon?' Do you know what that --

12 A Question mark. Someone must have suggested that
13 because there's a question mark at the end of it.

14 Q And then, 'Shorty and Nickey became sexually
15 intimate.' Again, that would be just a note from
16 somewhere would it?

17 A Yup, some -- someone claimed that.

18 Q And then 24, you've got 'N.B.' and it says, 'A.
19 John told Wilson when witness returned to car that
20 she had seen Milgaard stabbing girl (at the time
21 she was screaming, etc.) B, when Wilson told John
22 what accused had told him in Calgary, John already
23 knew.'

24 A Yeah. The first one, sir, is when Wilson
25 returned, the W is Wilson, not witness, but the



1 rest of it is all correct.

2 Q I'm sorry, when Wilson, and I believe, sir, is
3 this the point that I had asked you the other day
4 about Wilson's statements saying, number 1, that
5 he had been told by John right at the time of the
6 murder that she had witnessed it, and yet the next
7 day Wilson told John, and I think I had asked you
8 that it was somewhat -- asked you the question,
9 why would Wilson tell Nichol John something she
10 already knew. Remember when I asked you those
11 questions?

12 A I do.

13 Q It would appear that, Mr. Caldwell, you had made
14 that same, or raised that same question back when
15 you were preparing for trial?

16 A It looks that way. I don't know that I ever got a
17 total answer to it.

18 Q And you've got N.B., which I presume is important,
19 and it's got that circled; is that right?

20 A That's right.

21 Q 25, 'put in W's pants.' I presume that's
22 Wilson's?

23 A Yes.

24 Q 26, 'get RCMP handwritten statements, Wilson and
25 any others (John) etc.'?



1 A That would be to be sure that we had original
2 handwritten statements versus, you know,
3 photocopies or typed ones, because you need the
4 originals if you wanted to cross-examine or
5 whatever.

6 Q And for the record, those handwritten statements,
7 at least Ron Wilson's -- is that Nichol John's?
8 Ron Wilson's handwritten statement is on the
9 prosecutor's file.

10 MS. KNOX: I think somebody has suggested
11 that Nichol's handwritten statement was made an
12 exhibit because of the adverse witness rule.

13 BY MR. HODSON:

14 Q That's correct, her handwritten statement was
15 tendered at the trial and it was a trial exhibit.
16 So you would have had the Wilson and John original
17 handwritten statements?

18 A Yes, I would.

19 Q Next page, 140 at the top, call out the top part,
20 27, I don't know that we need to get -- 'Cadrain
21 mean by old-time clothes he wore in Regina?' I
22 think that was in his evidence?

23 A Yeah. That was old-timer, and I think
24 Mr. Cadrain, almost in a sense farming or
25 country-type clothing as opposed to dress I



1 assume.

2 Q And again, this is just some information on blood
3 typing, I don't know that we need to go through
4 that.

5 A Okay.

6 Q This would be figuring out who and when things
7 happened; is that right?

8 A Yes.

9 Q And then what is FP's, what is that, and photos?
10 Fingerprints and photos?

11 A 'Fingerprints and photos taken in Saskatoon.
12 Can't remember who present.' Who was it now --

13 Q This is about Cadrain; is that right?

14 A I assume so.

15 Q So --

16 A I see that red note in the upper box may refer to
17 this, 'Cadrain blood sample never tested,'
18 etcetera, so I assume that is about Cadrain, sir,
19 that we're speaking of.

20 Q And can we take it from this that Mr. Cadrain was
21 fingerprinted and photographed?

22 A Yes, I take that, and then you notice the next
23 line, 'Joe, he was on' the date is blank,
24 'voluntary on his part, co-operated, Kleiv - K
25 photographed and fingerprinted Cadrain, March 2.'



1 So that was the other ident member saying to me
2 that he had done that.

3 Q And you are saying here who was it and why was
4 this done. Were you asking, number 1, was
5 Mr. Cadrain photographed and fingerprinted, if so
6 why?

7 A Yeah, I suppose so. He wasn't charged or, as far
8 as I can tell, suspected of offences or anything
9 of that sort, and in this, in this state of
10 events, in other words, you wouldn't ordinarily
11 just photograph him or fingerprint him for --

12 Q We saw, and I didn't call it up, but when
13 Mr. Penkala was recalled at the preliminary
14 hearing to be examined by Mr. Tallis, he had
15 questions about Albert Cadrain giving a hair
16 sample, and do you recall if these matters were
17 matters raised by Mr. Tallis about what the police
18 had done with Mr. Cadrain as far as hair,
19 fingerprint and blood?

20 A It could be. I don't see anything indicating
21 that, but that would be possible.

22 Q Scroll down to 29, 'Cadrain re - what he remembers
23 not effected by drugs'?

24 A Yeah.

25 Q What he remembers as --



1 A Yeah, 'not effected by drugs'.

2 Q What does that refer to?

3 A Well, someone -- I'm taking it from that there was
4 some evidence that Mr. Cadrain was on drugs to
5 some extent and I'm -- was going to try and
6 establish or find out whether what he remembered
7 had been affected by the drugs. This very likely
8 came out in the prelim I would think.

9 Q And then number 30, 'C' who I presume is Cadrain,
10 'Short and Karst took him to Regina to see Nickey
11 and they all got together in a room there. Last
12 spring.'

13 A That's what that says.

14 Q Why would you make a note about that?

15 A I'm not sure right off the -- it may become
16 evident later on or --

17 Q Would that be a matter that came out of the prelim
18 perhaps?

19 A It may well have.

20 Q 31, 'Cadrain - what re hard feelings between
21 Cadrain and Milgaard over a girl'?

22 A Yeah. Someone had suggested there were hard
23 feelings. In that respect I wanted to ask him
24 about that.

25 Q And then next is Constable Mildner, number 115, re



1 M - suitcase - Humboldt.' I'm assuming M is
2 Milgaard?

3 A Yeah.

4 Q Do you know what that refers to?

5 A Yeah, it's something to do with a suitcase being
6 at Humboldt, presumably Milgaard's. I'm not
7 even -- I think there is some --

8 Q Yes, I will call it up --

9 A Okay.

10 Q -- a police report, I can tell you generally a
11 police report of Mr. Mildner where David Milgaard
12 told him while in the police cells that his pants,
13 I believe that his pants that he wore were in a
14 suitcase at the bus depot in Humboldt and his
15 mother was going to bring them, or someone was
16 going to bring them.

17 A Yeah.

18 Q Does that sound familiar? I will bring up that
19 report a bit later.

20 A Very good.

21 Q So would that be what that relates to?

22 A I believe so.

23 Q 33 -- did you ever get --

24 A I think there's, in effect, something in print,
25 Mr. Hodson, which --



1 Q Did you ever get the pants that --

2 A -- I don't --

3 Q -- that Mr. Milgaard was wearing?

4 COMMISSIONER MacCALLUM: Just a minute.

5 A I'm sorry.

6 BY MR. HODSON:

7 Q Did you ever get the pants that Mr. Milgaard was
8 wearing the morning he attended at Cadrain's
9 before he changed?

10 A I can't say at this --

11 Q I don't believe there's any record of having the
12 physical pants.

13 A No, I don't believe so.

14 Q And then 33, 'go and interview Mrs. Cadrain re -
15 pants, etc., room layout,' and does this suggest
16 that you were going to go and interview her?

17 A Not necessarily me. I would think I would ask
18 some officer to do that.

19 Q Do you have a recollection of being at the Cadrain
20 house as part of the trial preparation?

21 A I'm sure I've never been there, sir. Then
22 included.

23 Q Next page, please --

24 A Okay.

25 Q -- and then this is 139, N.B. 6, number 34, 'John



1 says Milgaard's toque matched mitts, and all three
2 belonged to Ron's brother. Get the mitts.'

3 A Yeah.

4 Q And so we saw that --

5 A Yeah, earlier.

6 Q And then Charlie, would that be Charlie Short?

7 A Where is that, sir?

8 Q Charlie on the left?

9 A Oh, yes, it is. I'm sorry.

10 Q That would be Charlie Short?

11 A That would be.

12 Q Would that mean that you believed Charlie Short to
13 pick that up?

14 A I would have asked him to do that the way I read
15 it.

16 Q 35, 'get M's' Milgaard's, "background psych
17 files.' What would that be for?

18 A Well, for the possibility that, as the case went
19 on, that there might be a defence of insanity
20 and/or drunkenness raised, that that would be
21 available for the Crown to make what it wanted of
22 that.

23 Q Would you get -- and would you get the background
24 and psych files to be used in the event that Mr.
25 Milgaard testified?



1 A Well, I'm not sure about that, but if it raised
2 one of those defences, it would be open to me, as
3 I understand it, to use it.

4 Q If he had not raised those defences would you have
5 any reason to get the background and his psych
6 files?

7 A Well, again, if he had testified, that would be
8 ground for cross-examination if it were properly
9 done.

10 Q Right.

11 A Which I couldn't -- I'm sorry, I couldn't tell
12 that far ahead.

13 Q And I'm wondering, would it have been your
14 practice at the time, sir, to get this type of
15 background information on an accused to use in the
16 event that the accused testifies not for the
17 purposes of insanity or drunkenness, but just for
18 purposes of cross-examination?

19 A No, it wouldn't have been, and this kind of, if
20 you will, preparation would only be done on very
21 serious cases, but -- at least by me.

22 Q And then number 36, it says, 'why Beauchamp
23 instead of Remenda re wallet'?

24 A I think that's that same question.

25 Q And I wouldn't mind just exploring that a bit



1 because --

2 A Okay.

3 Q -- because Mr. Beauchamp testified at the prelim
4 and at the trial and at Mr. Fisher's trial that he
5 found a wallet. Mr. Remenda, as you know,
6 testified before this Commission I think for the
7 first time in any proceeding indicating that he
8 found the wallet, not Mr. Beauchamp.

9 A Okay.

10 Q And I'm wondering if back in 1970 was there an
11 issue there about which of these two boys had
12 found the wallet?

13 A Well, apparently Beauchamp was evidently the
14 better claimant from the way you've put this
15 question. I don't -- I didn't realize that
16 Remenda first said that in the Inquiry, sir.

17 Q Let me just clarify this.

18 A Okay.

19 Q There's a statement that Mr. Beauchamp was eight
20 years of age at the time, said he found a wallet,
21 then went and showed it to Mr. Remenda at Mr.
22 Remenda's house?

23 A Uh-huh.

24 Q And then called Mr. Mackie who went to Remenda's
25 house and Mackie's reporting that he then took



1 Beauchamp back to where the wallet was found and
2 then Beauchamp testified.

3 A Okay.

4 Q Mr. Remenda's story, version of events to this
5 Commission was that he found the wallet, Remenda,
6 Beauchamp was there, they went to Beauchamp's
7 house, Beauchamp's mother phoned Mackie, Mackie
8 came down and instead of taking Remenda to show
9 him where the wallet was found, took Beauchamp, so
10 that's what we've heard so far. I'm wondering
11 whether you can tell us whether back then there
12 was the same confusion over who found the wallet?

13 A Well, evidently there were two possible claimants.
14 I don't know that anything turned on it, sir, but
15 I clearly didn't get the answer to that, at least
16 in that sense.

17 Q 37, 'prove Wilson's blood type B,' we talked about
18 that earlier?

19 A Yes.

20 Q And that would be to eliminate him as a donor of
21 the semen found near Gail Miller's body; is that
22 correct?

23 A That's right.

24 Q 38, 'Wilson - who took blood and saliva, some
25 continuity,' and again this would just be a tie-in



1 to number 37, how you are going to prove it; is
2 that right?

3 A Yeah. It's actually 'prove continuity' and then I
4 went on to say, 'Elmer, December 31, no saliva
5 from Wilson. Re blood, see page N.B. 4.'

6 Q Right. 39 and 40 just talk about Bagwell and
7 contents of Wilson's car, I don't know that
8 anything turns on that. Go down to 41.

9 A That's three envelopes. It looks like vacuum
10 collections.

11 Q I think all of these relate to the search that was
12 done of Ron Wilson's car?

13 A That's my --

14 Q After Mr. Milgaard, or at or about the time he was
15 charged?

16 A That's my assumption.

17 Q And I don't believe any of that was tendered in as
18 evidence; is that correct?

19 A I don't believe.

20 Q And presumably if any of that evidence had tended
21 to link the Wilson vehicle or anything in the
22 Wilson vehicle to Gail Miller, I presume you would
23 have called it as evidence at the trial?

24 A Yeah, or at the very least advised Mr. Tallis that
25 it was there.



1 Q Well, if --

2 A The first would be right, Mr. Hodson, I'm sorry.

3 Q Yeah. And so the next page, please, this now
4 talks about, 'Paynter re breakdowns within group,
5 A1 - A2 - etc. Paynter couldn't determine the
6 blood group of the blood found in the seminal
7 fluid.' And then maybe I'll just read this and
8 I'll come back. Just scroll down, please, and
9 just pause there. It's got, 'if blood of a group
10 A person, would give same,' then crossed out, and
11 '(liquid) checked seminal fluid for antigens -
12 found them - but couldn't say if they were from
13 blood or secreting into seminal fluid. Get this
14 straightened out!!!! (With Paynter).' Are you
15 able to tell us what that relates to?

16 A Well, it's the -- it's that same question I think
17 we were into a little earlier about how much he
18 could tell from blood found in seminal fluid --
19 no, blood group, as it were. Check -- it's that
20 same question, Mr. Hodson.

21 Q Maybe I can just try and assist you. We covered
22 this before and I think it's set out in the trial
23 transcript in your examination of Mr. Paynter.

24 A Yeah.

25 Q If we can go back to the full page, and I think,



1 and please correct me if I'm wrong, but the first
2 point is Paynter couldn't determine the blood
3 group of the blood found in the seminal fluid. So
4 if we pause there, the frozen semen had A antigens
5 in it the first time he tested. We've -- I
6 believe the evidence is that when he tested it
7 again he said that there was blood also, found
8 blood in the frozen semen. He went further to say
9 that the antigens in the semen I think could have
10 been from the blood and that might explain --

11 A Uh-huh.

12 Q -- that it may not have been from a person who was
13 a secretor. In other words, if you find antigens
14 in semen, it could be because the donor is a
15 secretor or it could be because the donor's blood
16 is in the semen, and I think that's the position
17 the Crown took at trial. Does that sound right?

18 A That does.

19 Q And I think that, and we saw a document earlier
20 where you asked Dr. Emson to advise how a donor's
21 blood could get into bodily fluids, in particular
22 semen.

23 A Uh-huh.

24 Q That sounds right?

25 A That does.



1 Q And then here it looks like, 'checked seminal
2 fluid for antigens - found them - but couldn't say
3 if they were from blood or secreting into seminal
4 fluid.' Do you see that?

5 A I do.

6 Q And so is that -- again, and you say then get this
7 straightened out with Paynter. Would this be
8 along the lines we looked at before where you were
9 following up with Paynter and Emson to sort out
10 this issue?

11 A Yes, and I think the checked seminal fluid,
12 etcetera, were things that Paynter must have told
13 me by the look of that.

14 Q And just to sort of finish off on that area, I
15 think we maybe touched on this before, but at
16 trial you had to lead evidence to explain -- let
17 me back up. At the time of trial the evidence of
18 Mr. Paynter was that in the frozen semen there
19 were A antigens?

20 A Uh-huh.

21 Q And that one explanation would be that it would be
22 from an A secretor; correct?

23 A Uh-huh.

24 Q Yes?

25 A Yes.



1 Q And you knew that Mr. Milgaard was blood type A
2 and that the tests conducted as to whether or not
3 he was a secretor did not disclose antigens.
4 We've heard Mr. Paynter say that that doesn't
5 necessarily mean he's a non-secretor, it just
6 means that they didn't find antigens in the saliva
7 when they tested. We have seen in the transcript
8 and reference elsewhere that some people took that
9 to mean that he was a non-secretor at the time.

10 A Yeah, yeah, I didn't, Mr. Hodson, I made a point
11 of calling that evidence because, as I then
12 understood it, it would eliminate him as the
13 source of the fluids, whatever they were.

14 Q Right. But at the time of trial, Mr. Caldwell, I
15 don't believe it was your position that the frozen
16 lumps of snow eliminated Mr. Milgaard as a
17 suspect.

18 A You know, I -- I can't recall that, sir.

19 Q Let me just, and we'll maybe come back to this
20 when we get to the closing address to the jury, I
21 think where it was left is that it might be
22 neutral, it doesn't eliminate him, but it doesn't
23 necessarily implicate him I think was your
24 position.

25 A Okay.



1 Q But the point -- on this point, we touched on it
2 earlier, were you not trying to find an
3 explanation for the fact that if Mr. Milgaard was
4 a non-secretor, which I think you thought at the
5 time; is that fair?

6 A That's right.

7 Q If he was a non-secretor, then his antigens
8 wouldn't be in his semen; correct?

9 A That's my understanding.

10 Q Right. And secondly, you had a sample of frozen
11 semen near the body, which I think you suggested
12 was from the person who raped and killed Gail
13 Miller?

14 A I'm sure I did.

15 Q Yeah. And in that sample there were A antigens;
16 correct?

17 A Yeah, I believe that's correct, sir.

18 Q And so if Mr. Milgaard was a non-secretor, in
19 order to connect that sample to him, you had to
20 find some explanation as to how his antigens could
21 otherwise get into the semen?

22 A I would think that's correct.

23 Q And in fact there was evidence called from
24 Dr. Emson and Paynter to say that, well, the
25 reason antigens could be in there is because



1 there's actually blood in there, not just the
2 antigens, but blood?

3 A I see.

4 Q Correct?

5 A Yes.

6 Q And then some further evidence as to how blood
7 might get in the semen; does that sound --

8 A Yeah, it does.

9 Q I think that's what the record reflects.

10 A Okay.

11 Q It's touched on again in the address to the jury
12 which I'll go through.

13 A Very good.

14 Q Again, just back on this note, would be relating
15 to this issue, you're dealings with Paynter?

16 A It would, yeah.

17 MR. HODSON: This might be an appropriate
18 spot to break.

19 *(Adjourned at 2:37 p.m.)*

20 *(Reconvened at 3:00 p.m.)*

21 BY MR. HODSON:

22 Q If we can just go back, call up 006932, and I had,
23 before the break, I had talked about this
24 Constable Mildner 're M suitcase - Humboldt,' and
25 I indicated there was a police report on your



1 file. If we can call up 032345, and it will come
2 up on the screen, the police report. This is a
3 police report, that's your handwriting, Mildner?

4 A That's right, sir.

5 Q And this is a September 1, 1969 --

6 A -- report.

7 Q Report. And I'll just go through parts of it,
8 just the first paragraph, this is Mildner's
9 report.

10 "While being assigned guard to David
11 Edgar Milgaard on separate occasions in
12 particular that of Sept. 1, Milgaard now
13 lays awake at 12 midnight and he
14 discusses his preliminary hearing."

15 If we can go down to this paragraph here, it
16 says:

17 "The conversation turned to the clothing
18 and in particular to pants that he had
19 been wearing during these events. "I
20 made 2 boo-boos in my statement to the
21 dicks upstairs. One was that I had told
22 them that I had changed my pants in
23 S'toon which wasn't right - I changed
24 them in Regina. I can bring the woman
25 up from Regina who saw me changing



1 them." Milgaard referred that he had a
2 grey pair of pants that he did change in
3 Regina when he stole the battery and
4 spilled some acid on them and that he
5 presumed that his defence lawyer Tallis
6 will bring the woman from Regina to
7 testify to that effect. The
8 conversation then turned to his suitcase
9 "Cal Tallis will bring my pants, my
10 mother asked me what the key was doing
11 with my belongings in Langenburg, I told
12 her just yesterday or the day before
13 that this key belonged to a locker in
14 the Bus Depot in Humboldt where my
15 suitcase was both the pants including
16 the striped pair of pants I changed in
17 S'toon are." He further stated that he
18 threw the older suitcase, did not when
19 or where, and that the suitcase in
20 Humboldt was a new one that he purchased
21 since the murder. He further stated
22 that he figures that Cal Tallis is
23 bringing the suitcase and that it will
24 probably be in his mother's possession
25 and be submitted evidence by his defence



1 attorney."

2 And then it goes on to talk about Humboldt. So
3 again, would that be the note in your note, Mr.
4 Caldwell, referring to this information from Mr.
5 Mildner?

6 A Yeah. Can you remind me where that, what number
7 it is or page?

8 Q Yeah, it's number 32, page 140.

9 MS. KNOX: Mr. Commissioner, for the
10 witness reference, it's not in his file number 1,
11 so he won't find it.

12 MR. HODSON: No, no, I think he's looking
13 for his hand note, it's page 140.

14 MS. KNOX: Oh, sorry.

15 A Oh, yeah, that's right. Yeah, that would be that
16 item 32, sir, on page 140. That's what it would
17 be.

18 BY MR. HODSON:

19 Q Now, do you recall whether you or the police made
20 any efforts to try and obtain the pants from this
21 locker?

22 A No, I don't.

23 Q And do you recall any discussions with Mr. Tallis
24 about these pants or do you know whether he had
25 the pants?



1 A No, sir, to all those things.

2 Q If we could go to page 006935 and this is page 137
3 of your N.B. for trial.

4 A Thank you.

5 Q Again we'll just go through some of these, 137 in
6 the top right.

7 A Yes, that's right.

8 Q And again we've got the suitcase from Kleiv to
9 Roberts, and that was Gail Miller's uniform,
10 amongst other items, that were given to Roberts
11 when he interviewed Nichol John?

12 A All right, I take that as correct.

13 Q And then Mackie and the keys, 48, 'Karst says
14 toque April 5 afternoon to Joe, April.' Again,
15 that would be a continuity item I presume?

16 A Yeah. It's actually April 5, obtained to Joe,
17 April, and then there's a blank there.

18 Q Okay.

19 A He apparently obtained it April 5th and gave it to
20 Joe, we don't know when.

21 Q If we can go down to 52, 'Detective Ken Walters:
22 what did he see on jacket?' Again, we've seen
23 some evidence and heard evidence that the jacket
24 David Milgaard was wearing on the morning of Gail
25 Miller's murder, that Shirley Wilson, Ron Wilson's



1 mother had it, and her evidence was that she
2 showed it to Ken Walters and then threw it away at
3 his direction or something to that effect.

4 A Uh-huh.

5 Q Is that what this is referring to?

6 A It must be, Mr. Hodson.

7 Q Do you have any recollection of what you learned
8 from that?

9 A No.

10 Q And then, 'Paynter: Emson: Re freeze and thaw
11 sperm - re effect on antigens pretrial.' I
12 promise I won't ask you any more detailed
13 questions about secretors, today anyway, but we
14 saw a letter I think during Mr. Penkala's evidence
15 about the theory Dr. Emson had that maybe freezing
16 and thawing semen would get rid of the antigens or
17 something of that effect?

18 A Uh-huh, that's --

19 Q Do you remember anything about that?

20 A No, sir, in a word.

21 Q It would seem that that's the issue that that may
22 relate to; would you agree?

23 A I would think so.

24 Q And 54, 'get right/left-handed evidence lined up.
25 Has Ray Mackie --'



1 A That's Has again, that policeman.

2 Q Oh Has, I'm sorry.

3 A 'Ray Mackie, school writings, etc.' would be one
4 place you could look for evidence of
5 which-handedness.

6 Q Next page, please, and then this is 55, 136 in the
7 top right, I presume that's just a note to
8 yourself to answer questions, 'items, exhibits
9 left for ident,' I think you already told us about
10 that. 57, 'McD,' who I assume is McDonald,
11 'conversation this a.m., he locked up as
12 psychopath'?

13 A Yeah, that would be Dr. McDonald, and I have 'can
14 this accused be locked up as a psychopath,' and I
15 see the answer no. That was also written by me,
16 but I assume I had, you know, consulted
17 Dr. McDonald.

18 Q And what would -- what do you mean by locked up as
19 psychopath?

20 A Well, that would be something in the range of
21 dangerous sexual offenders which I was involved
22 with a couple of those. There were very clear
23 prerequisites when you tried to launch those
24 things and what I knew of Mr. Milgaard at that
25 point led me to wonder if he could be, if that



1 could happen, and it clearly couldn't.

2 Q And then 58, I think this is just dictate from
3 in-chief guides for these witnesses I presume?

4 A Yes.

5 Q 59 talks again about Mackie taking Gail Miller's
6 clothes to Roberts?

7 A That's right.

8 Q And the next page, and again this is N.B. for
9 trial 10, this is now dated December 2nd, 1969;
10 correct?

11 A That's right.

12 Q Can we infer from that that the previous N.B.
13 pages would have been prior to that, those notes
14 prior to that date?

15 A I would say so, sir, but --

16 Q And then we have 61, 'get in evidence via John
17 that Wilson told her that Milgaard told him of
18 killing somehow?' And then a note -- sorry,
19 'exception to hearsay,' and then you have 'no way
20 to do this. Leave it out because if it goes in
21 they --'

22 A '-- are accomplices.'

23 Q Can you explain what that relates to?

24 A Well, there was a question I guess in my mind over
25 the status of the Wilson and John -- I think this



1 was seen a little earlier as well, no way to do
2 this, either I concluded that or in consultation
3 with someone that it was not -- it couldn't be
4 done, in a word.

5 Q Let me just pause here for a moment. Well, and
6 let's just go back to the main part about the
7 evidence via John that Wilson told her that
8 Milgaard told him of killing somehow.

9 A Uh-huh.

10 Q Now we'll pause there, and we touched on this a
11 bit yesterday.

12 A Uh-huh.

13 Q First of all, you could get in evidence, you could
14 have Ron Wilson say "here's what the accused told
15 me"; that would be admissible?

16 A Yeah, that's one civilian to another, as it were.

17 Q Right, and so that would be evidence against Mr.
18 Milgaard?

19 A Yeah.

20 Q So you could call that?

21 A Yes.

22 Q And it says 'get in evidence through Nichol John
23 that Wilson told her that', so in other words I
24 take it the evidence through Nichol John that she
25 was told by Wilson about Milgaard's admission



1 would have been obviously hearsay?

2 A That's my view.

3 Q And as an exception to the hearsay, and you say
4 'no way to do it', so you conclude you can't get
5 that evidence in?

6 A That's what I concluded.

7 Q And then let's go to this remark about 'leave it
8 out because if it goes in they are accomplices',
9 and were you concerned that the fact that John and
10 Wilson knew about the murder, that somehow they
11 would be accomplices, or can you explain that?

12 A That 62 entry says 'conversation on way to
13 Saskatoon re purse snatching'.

14 Q Oh, I'm sorry, let me just pause here. Is this
15 note here possibly for 62?

16 A Yeah, it is I think, Mr. Hodson.

17 Q Okay.

18 A So it says 'admissible as motive or such?', and
19 then I've written 'leave it out as if it goes in W
20 and J may be regarded as accomplices' I think.

21 Q I see.

22 A There is a case called *Castellani*, B.C. Court of
23 Appeal, that would apparently bear on that.

24 Q Okay, sorry, so this --

25 A Yeah.



1 Q This note here may be for 62? Well let's look at
2 62.

3 A Okay.

4 Q No, 62, I believe, deals with the same question I
5 had.

6 A Okay.

7 Q This is a different piece of evidence, though,
8 this is the 'conversation on the way to Saskatoon
9 re purse snatching admission as motive as such',
10 is that right, 'motive', did I read it --

11 A 'Motive or such'.

12 Q 'Or such'?

13 A Yeah.

14 Q If I can just pause there, would it be fair to say
15 you are considering evidence from Wilson and John
16 that Mr. Milgaard had talked about purse
17 snatching, and that that was his motive for what
18 you thought was the attack on Gail Miller?

19 A That --

20 Q Is that fair?

21 A Yeah, I think that I would be considering that.

22 Q And putting aside issues about admissibility of
23 evidence and this issue of accomplices, that might
24 be a piece of evidence that you'd want the jury to
25 hear, that Mr. Milgaard had talked about purse



1 snatching shortly before the encounter with
2 Ms. Miller; is that --

3 A Oh, possible.

4 Q That's part of your case at the time?

5 A Yeah, it could be, I could --

6 Q And so the issue there, is it admissible as such?

7 A Uh-huh.

8 Q And then you go on to say 'leave it out as if it
9 goes in Wilson and John may be regarded as
10 accomplices'?

11 A Yeah.

12 Q And so I take it the one benefit of putting it in
13 is that it would show motive that would support
14 your theory; correct?

15 A Yes.

16 Q And in fact we'll see in your address to the jury,
17 both your opening and closing, that was part of a
18 theory, that this started out as a purse
19 snatching.

20 A Okay. I had forgotten that, but I'm sure you are
21 right, sir.

22 Q And I'll take you to that, if I'm mistaken, we'll
23 see when we go through your address.

24 A No.

25 Q And so the advantage of calling that would be that



1 you could get in evidence that would support your
2 theory of the motive; correct?

3 A Yes.

4 Q But it appears you are saying 'leave it out
5 because if it goes in Wilson and John may be
6 regarded as accomplices'?

7 A Uh-huh.

8 Q And can you tell me what effect that would have on
9 the Crown's case?

10 A Well --

11 Q If they --

12 A Well they would be regarded as accomplices in the
13 purse snatching, I would take it, and that
14 presumably could weaken their evidence overall
15 inasmuch as they are accomplices, even though it's
16 a narrow issue, if you will.

17 Q And I don't want to get into too much of a detail
18 on the *Castellani* case --

19 A Yeah.

20 Q -- now, but was the basis of that that there would
21 be a caution to the jury that, as accomplices,
22 Wilson and John's evidence might be given lesser
23 weight?

24 A Yeah. I can't tell without looking at it, sir,
25 but it's a B.C. Court of Appeal case which appears



1 to bear on that.

2 Q I see. But just generally was it your, just back
3 at the time, was the issue that you were concerned
4 about that, if you put in evidence of the purse
5 snatching amongst Wilson, John and Milgaard being
6 part of the discussion, you were worried that
7 Wilson and John might be regarded as accomplices
8 and that might impact on their evidence?

9 A I would think so.

10 Q Okay. And then 'read history via Dr. MacDonald',
11 is that -- can you tell us what that is?

12 A That's, I wanted to read David Milgaard's
13 psychiatric history through him.

14 Q And why would that be important, sir?

15 A Well, in instances when there was a possibility of
16 drunkenness or insanity defences, if -- the more
17 you could legitimately know about the psychiatric
18 history of the accused or intervenee, I think it
19 was deemed the better off you were, and I believe
20 I did end up reading that so I think that's
21 indicated later somewhere.

22 Q Right. What about just generally, Mr. Caldwell,
23 as a prosecutor, and in looking at the evidence
24 and looking at the case and looking at the crime;
25 did you normally try and get this type of



1 information?

2 A Well in cases that, capital cases I -- you'd
3 certainly try to, because there'd always be the,
4 not danger, but likely -- or possibility that
5 these kind of defences could be raised, and if I
6 was familiar with the chart, if you will, it was
7 deemed to be helpful.

8 Q Okay. '64. M', who I'm assuming is Milgaard,
9 'statement to Karst - how much useful admissions
10 in it? To use if Milgaard testifies - such as (a)
11 denied blood on clothes (b) didn't know what he
12 did with clothes (c) in alley trying to find St.
13 Mary's Church and Cadrain's, get declaration
14 voluntary then don't tender and hold for
15 cross-examination'. And I think we saw a similar
16 note earlier.

17 A Yes, that's that same question.

18 Q Yes. And then '65. Mrs. Wilson - read her
19 evidence re what exactly happened with clothes',
20 'write Weafer' and 'Ullrich new exhibit charts', I
21 think we've seen similar notes before.

22 A Okay.

23 Q Next page, which is 134.

24 A No. I think, Mr. Hodson, as you know, this is the
25 one and only Commission document that I have



1 because it didn't photocopy correctly.

2 Q I see.

3 A Yeah.

4 Q So that's fine. So you have got 134 in the top
5 right?

6 A Yeah, I do.

7 Q And '68. Adeline Nyczai', which is a roommate,
8 'couldn't see into alley'; do you know what that
9 relates to?

10 A Umm, she, as a roommate of Gail Miller's, it
11 appears I was able to find out that she couldn't
12 see into the alley. I don't know, at the moment,
13 if that was the alley behind their residence or
14 the east-west alley, it may have been the
15 first-mentioned thing.

16 Q Yeah, there was one of the roommates that got a
17 ride to work I think that morning --

18 A Yeah.

19 Q -- with Mr. Tenezacón, and I think her statement
20 said she couldn't see down the alley because of
21 the fog?

22 A It may well be her.

23 Q And we'll go to '69. Wilson', which I'm assuming
24 is Ron, --

25 A Uh-huh.



1 Q -- let's just go through that, 'admits A. Make
2 sure', and then you've got 'leave out'?

3 A 'Purse snatching'. I had 'get in' and then
4 substituted 'leave out'.

5 Q Okay, so 'make sure to get in conversation re
6 purse snatching but would this make him an
7 accomplice and is it therefore better left out,
8 yes, leave out'?

9 A Yeah.

10 Q So is that what we just discussed?

11 A Same thing, sir.

12 Q And then 'B. Call Pratt with flashlight' and you
13 say 'no, no mention B & E, dope'?

14 A Oh, I think that would --

15 Q Oh, sorry, that's 'battery theft, etcetera'?

16 A Yeah, that's right, 'battery theft, etcetera'.
17 Note to me saying that that -- there was no need
18 to mention that, I -- that could come under the
19 heading of -- I'm just -- there was a question
20 about that and I apparently thought it was better
21 left out.

22 There is a danger, in some of
23 these cases, of calling relatively insignificant
24 other offences which end up dis -- you know,
25 concerning the judge that it, that shouldn't have



1 been called in this or a case X, whatever it may
2 be.

3 Q Okay. And then we go to, can you tell us what
4 this is, 're' --

5 A Yes, 'see', umm --

6 Q Is that 're ridicule etcetera by Tallis'?

7 A Yeah. I'm not sure if it's -- it shouldn't be
8 Tallis, with my knowledge of him, because I -- he
9 certainly didn't ridicule.

10 Q Sorry, let's just go back.

11 A Okay.

12 Q This is Wilson, and then 'see ridicule etcetera by
13 T'; do you know what that --

14 A Unless we come up with another one of the main
15 characters.

16 Q That's fine.

17 A Yeah, okay, not for the moment I don't.

18 Q And 'C2 what clothes he leave at Cadrain's, pants
19 only'?

20 A Uh-huh.

21 Q And then down here, 'how important is it we get
22 his pants into evidence and would I have to
23 testify and Madeline and Mrs. Cadrain?'

24 A Oh, okay.

25 Q 'And/or if witness ID's as positively his does



1 this eliminate need for continuity'. So do I take
2 it from that -- and Madeline was your secretary at
3 the time?

4 A That's right.

5 Q And so do I take it, from that, that Mrs. Cadrain
6 gave them to Madeline, who gave them to you?

7 A There was a pair of pants showed up at the -- at
8 our office. 'Would I have to testify, Madeline,
9 Mrs. Cadrain', I gather she must have brought them
10 to our office, to Madeline, who gave them to me,
11 'or if W identifies them positively as his does
12 this eliminate need for continuity.' They must
13 have been thought to be Wilson pants, the way I'm
14 reading that.

15 Q Okay. And then just back up to 'D. Show Wilson',
16 again this is under Wilson, 'show no bias'; do you
17 know what that means?

18 A Umm, I don't offhand.

19 Q Then scroll down, 'F', and again these all relate
20 to Wilson, 'being mad at Milgaard re transmission
21 not affecting his evidence'?

22 A Oh, here, that would be there was some evidence
23 that he was annoyed at David Milgaard over the
24 fact that Wilson's transmission had, in effect,
25 blown out, and I was gonna try and ensure that he



1 didn't let that affect his overall evidence in the
2 trial, is the way I would see that.

3 Q Okay. And then 'F2 Milgaard didn't change' --

4 A 'Clothes at Regina'.

5 Q 'Clothes at Regina', quote, '"that he can
6 remember"'?

7 A Yeah.

8 Q 'All at Cadrain's'?

9 A Yeah.

10 Q 'G. Go over guide sheets with Wilson'?

11 A With Wilson, yeah.

12 Q What is that, what is that --

13 A Well that would be my sort of list of questions in
14 chief for the trial, is what that would refer to.

15 Q And then 'H' you've got page 1 -- or 'page 460,
16 Wilson says he was able to pick out a brown bone
17 handled knife as the one Milgaard had had on way
18 to Saskatoon, what's this about, in chief said red
19 plastic: Wilson same knife'. And I think 460 is
20 the page in the transcript --

21 A Okay.

22 Q -- of the prelim.

23 A It -- apparently, apparently it says 'is the one
24 Milgaard had on the way to Saskatoon, what's this
25 about' and then I have 'IC', 'in



1 examination-in-chief he said red plastic'. Now
2 the initial 'Wilson' and the colon in there
3 indicates that I asked Wilson about that and he
4 said 'same knife' to me.

5 Q So let me just clarify that. The part here before
6 W with the colon is you would have pointed out
7 that in the transcript, or at page 460, Wilson had
8 said brown bone-handled knife but in chief had
9 said red plastic, you then talked to him and he
10 said 'same knife'?

11 A That's how I read that, yeah.

12 Q Would that be in an interview that you --

13 A Oh, it could even be in interviewing him pretrial,
14 for that matter.

15 Q And then letter 'I. Need to call Roberts to prove
16 continuity of Gail Miller clothes shown to
17 Wilson'.

18 A Uh-huh.

19 Q 'J. The stupid bitch, rip in Milgaard's pants',
20 and I think we saw a note earlier that that may
21 not have come out in chief of Wilson at the
22 prelim?

23 A Yeah.

24 Q Next page, and again these are Wilson continued,
25 if I can call out 'J. Did he swear under oath re



1 these four pages etcetera in statement to Karst'?

2 A And he says he did.

3 Q And that's answer 'yes'?

4 A Yes.

5 Q And that would be his May 23rd and 24th
6 statements?

7 A Yes. I think there was only one sworn statement
8 as I recall.

9 Q And then 'K. Not under influence alcohol drugs or
10 LSD while in Saskatoon'?

11 A Yeah, those would be things, I look at this whole
12 list, they are things I wanted to go over with
13 Wilson before he testifies, and evidently he took
14 the position that he was not under those things.

15 Q Did you have any concerns with respect to Wilson,
16 John, and Cadrain, about their drug use, both at
17 the time of the morning of January 31 and your
18 subsequent dealings with them and the police
19 subsequent dealings?

20 A Well only, I guess, the general concern that you'd
21 be disappointed that people of that age would be
22 into and using drugs, that did happen, and I
23 would -- I would try to assess how much, if any,
24 it affected their evidence when the episode was
25 going on, and at the prelim, and at the trial if



1 necessary.

2 Q Do you recall whether you had any concerns --
3 let's talk about Albert Cadrain -- as to whether
4 you were aware of his drug use and whether that
5 drug use affected his, either his credibility, or
6 his recollection of events?

7 A Well there was some other evidence from other
8 witnesses, I think, that Cadrain had been under
9 drugs, as I recall, in --

10 Q You are talking at the time in '69?

11 A That's --

12 Q I want to know back --

13 A Yeah.

14 Q -- in 1969, 1970, --

15 A Okay.

16 Q -- Mr. Caldwell, --

17 A Yeah.

18 Q -- whether you had concerns about Mr. Cadrain's
19 credibility or his recollection based on drug use,
20 from wherever --

21 A No.

22 Q -- you got the information?

23 A No I didn't, I --

24 Q What about Mr. Wilson?

25 A No, not from that reason. Mr. Wilson seemed to,



1 as we know, change his view of things from time to
2 time, but not based on that, I wouldn't be
3 concerned.

4 Q And you are talking changed his view back at the
5 time?

6 A Well, as time went on in the trial, it seems to
7 me.

8 Q And did that concern you at all?

9 A It -- well, maybe I'm confusing it with part of
10 the Inquiry, Mr. Hodson, where -- and I know that
11 in the Supreme Court he changed --

12 Q I -- yes.

13 A -- several times.

14 Q No, I appreciate that, Mr. Caldwell, and I
15 appreciate sometimes it's difficult to tell me or
16 tell us a recollection back then given what you
17 have heard subsequent and seen subsequent, --

18 A Yeah.

19 Q -- but I'm -- if you can, back at the time you
20 prosecuted the case, do you know if you would have
21 had concerns --

22 A Yeah.

23 Q -- about Mr. Wilson's credibility?

24 A Well item K says, and this means I would have put
25 this to Wilson, 'not under influence of alcohol,



1 drugs or LSD when -- while in Saskatoon', I'm not
2 telling him that but it's something I would raise
3 with him. I assume I came out of that with an
4 answer saying that he was not, and that may be in
5 the transcript somewhere.

6 Q But, again, are you able to tell us whether, at
7 the time you prosecuted Mr. Milgaard, whether you
8 would have had concerns about the reliability or
9 credibility of Wilson, John, Cadrain, because of
10 any drug use on their part?

11 A Not, not as a -- as a separate issue, I wouldn't,
12 I think.

13 Q Okay. And what about Mr. Cadrain, do you recall
14 whether you had any concerns about his mental
15 stability or credibility, not related to drugs but
16 just his credibility and mental stability?

17 A He -- he -- I assessed him as being an honest
18 young man and seemed quite determined to have his
19 account in this thing heard by a Court. There was
20 no time in which I felt that I would be improper
21 to call him, and of course I called him at both
22 the prelim and the trial and each one of those
23 would involve -- pardon me -- personal interviews
24 with me ahead of time so I -- I didn't have any,
25 you know, hesitation in calling him based on those



1 kind of factors.

2 Q Again, I take that, I mean you did call them, --

3 A Yeah.

4 Q -- but did you have concern, do you know if you
5 had concerns, --

6 A No, --

7 Q -- do you remember anything about that?

8 A -- I don't think I did.

9 Q Do you recall -- and we've heard evidence before
10 this Inquiry that Mr. Cadrain suffered some mental
11 health problems --

12 A Yeah.

13 Q -- in the early '70s; do you have any
14 recollection, at the time you prosecuted Mr.
15 Milgaard, of being aware of any condition that Mr.
16 Cadrain may have had?

17 A No. I think that those things were -- postdated,
18 well, the trial date, as I recall. They were
19 concerns raised later, he ended up in University
20 Hospital at some point.

21 Q Yes, and what I want to know, --

22 A Yeah.

23 Q -- Mr. Caldwell, though, is at the time you
24 prosecuted Mr. Milgaard, whether you observed
25 anything or were aware that Mr. Cadrain may have



1 been suffering from any mental condition?

2 A Absolutely not.

3 Q Any recollection of visions being mentioned?

4 A No.

5 Q That he may have been seeing visions related to
6 the murder?

7 A No.

8 Q Okay. If we can then go on to -- again just back
9 to what -- Mr. Wilson, 'Milgaard's toque was
10 Wilson's sister's which he thinks was white, green
11 and brown, find matching mitts, call sister to ID
12 toque.' Again, do you know what that would relate
13 to?

14 A 'Find matching mitts which would match the toque,
15 call sister to identify', I don't know whether
16 that challenge went any further than that.

17 Q Now we know that the other toque we have seen was
18 the one that Mrs. Gerse found that was a solid
19 blue; correct?

20 A That's my understanding.

21 Q And so would you be pursuing, with Mr. Wilson, to
22 try and establish what colour of toque Mr.
23 Milgaard had or was wearing that morning?

24 A Umm, there was --

25 Q Let me back up.



1 A Okay.

2 Q Would this have been -- this may have been
3 evidence that Mr. -- I think it's referring to the
4 prelim evidence that Mr. Wilson had given, --

5 A Oh.

6 Q -- or someone had, about -- I believe the evidence
7 was that Mr. Milgaard had borrowed a toque from
8 Ron Wilson --

9 A Uh-huh.

10 Q -- and that there was matching mitts, and I think,
11 according to this, if that was the toque he was
12 wearing on the morning of the murder, it would
13 have been white, green, and brown as opposed to
14 blue?

15 A Umm, I just saw that page 481 note, Mr. Hodson,
16 for the first time at the start of that.

17 Q Yeah.

18 A So it would be prelim evidence to that effect.

19 Q So would you be checking this then?

20 A Yes, to see what could be discovered that would be
21 helpful.

22 Q So we scroll down, and I -- the last one, 'M. Did
23 Milgaard say he "hit a girl" that "she fought",
24 "he jabbed her a few times with a knife"'; would
25 these be your notes for your interview of Mr.



1 Wilson, then, is this what you would go over with
2 him?

3 A Yes, I would think so.

4 Q And then 'M. M wearing a toque', I think that's a
5 point we covered?

6 A Yeah, okay.

7 Q We then go on to number '70. John'?

8 A Yes.

9 Q And this would be Nichol John?

10 A Yes.

11 Q 'A. Says', now what does that, what does that
12 refer to?

13 A 'John A. Says (6) that M bought flashlight and
14 knife' --

15 Q 'Brought flashlight and knife from elevator'?

16 A Okay, thank you.

17 Q I think he is --

18 A Yeah, x-1, yeah, that's right, 'from elevator,
19 does Pratt agree, says brown and tannish bone
20 handle knife, what's this all about, also saw a
21 maroon handled knife'. That was, I guess, an
22 attempt to sort those three sets of --

23 Q Right.

24 A -- so presumed evidence out. I wonder if that
25 could be page 6 of John's statement possibly?



1 Q Right. It says that 'Milgaard brought flashlight
2 and knife from elevator, Pratt agree'?

3 A Yeah.

4 Q And I think we see Mr. Pratt's statement that he
5 says "no, only the flashlight was taken", correct?

6 A Yes, I believe so.

7 Q I believe so. And then I believe Nichol John's
8 evidence at the prelim was she saw, I think she
9 identified a bone handled knife and a maroon
10 handled knife, is that -- I think that's what the
11 document suggests?

12 A Okay.

13 Q So would this be trying to sort out with her what
14 knives she had seen?

15 A Yes, and it says 'also saw a maroon handled
16 knife', I guess she mentioned that, that's how I
17 look at that.

18 Q So when you say here 'brown and tannish bone
19 handle, what's this all about', you are trying to
20 find out what knife this is?

21 A Uh-huh, I would say so.

22 Q Number B --

23 A I think the 6 may well refer to page 6 of her
24 statement --

25 Q Okay.



1 A -- is all I can -- I don't know.

2 Q And then B she says 'stuck twice'?

3 A Yeah.

4 Q 'Then to Danchuks'?

5 A Yeah.

6 Q 'Then to motel for a map'?

7 A Yeah.

8 Q And I think, if we pause there, I think we know, I
9 think from the evidence, that the motel was before
10 the Danchuks.

11 A Okay.

12 Q I think, and I think Ms. John corrected that at
13 trial.

14 A Okay.

15 Q And I believe that's, based on the times, that
16 that's what the record reflects. Would this be
17 just a note to check that with her?

18 A Yes, it would, because apparently what she was
19 saying, if you will, didn't match the evidence,
20 'stuck twice, then to Danchuks, then to motel',
21 which presumably is not the same as the --

22 Q Would it possibly -- would possibly these be notes
23 based on their prelim evidence that you would be
24 going through --

25 A Yeah.



1 Q -- saying "these are things I've got to check with
2 them"?

3 A Quite possibly, sir.

4 Q And then 'C', is that 'first says'?

5 A I think so.

6 Q 'First says bone handled knife was just in car,
7 doesn't know who had it'?

8 A Yeah.

9 Q 'Page 41, but goes on to say Dave had it page 42'?

10 A Yeah.

11 Q Okay.

12 A Those, I presume, are prelim evidence pages.

13 Q Okay. And then again 'D. Milgaard wearing
14 toque'; 'E. No mention B & E, dope, battery
15 theft'?

16 A Yeah.

17 Q So, again, would that be a reminder that you are
18 not going to bring it up with her?

19 A I would think so, yes.

20 Q And then the next page, 'Cadrain', and again do
21 these look to be notes or points to go over with
22 Mr. Cadrain to prepare him for trial?

23 A They would to me, yes.

24 Q And so, if we go to the top, we recalled the
25 mention before of 'old timer clothes', 'A. Date of



1 Milgaard et al. appearing in Saskatoon, check
2 credit union withdrawal, get straight, he' --
3 A 'He', 'he' -- oh, 'he fouled this up at prelim'.
4 Q Right.
5 A So that's --
6 Q I think at the prelim, if I recall, you asked him
7 when they arrived at the house --
8 A Yes.
9 Q -- and he couldn't say what year --
10 A That --
11 Q -- or what month?
12 A That would be just trying to get that straight.
13 Q And would you be trying to get something from the
14 credit union to have a piece of paper to confirm
15 --
16 A Yeah.
17 Q -- that that was the day?
18 A It says 'check credit union withdrawal?', I don't
19 know whether I followed up on that.
20 Q And then 'B. Cut out the I guess I think'?
21 A Yes.
22 Q What would that be?
23 A Well as a -- I must have felt Cadrain was rather
24 heavy on the 'I guess this' and 'I think that' as
25 opposed to things I thought that he should or did



1 know with certainty.

2 Q So would these be notes that you would use in your
3 interview with Mr. Cadrain, then, --

4 A I --

5 Q -- before the trial?

6 A I would think so.

7 Q 'B2. No hard feelings over girl between him and
8 Milgaard'?

9 A Someone had suggested that there were, and I put
10 that to Cadrain, and I assume got a negative reply
11 from him.

12 Q And then B2 -- pardon me -- 'C. Car across the
13 street facing south, fouled up at page 596 and 7,
14 go over directions with Cadrain'?

15 A Yeah.

16 Q That --

17 A I'm sorry, sir, go ahead?

18 Q And I think that, at the prelim, he may have got
19 the direction of the car wrong?

20 A That's what I would assume.

21 Q Did you have concerns about Mr. Cadrain's, his
22 evidence and the reliability of it, based on his
23 --

24 A No, no, Mr. Cadrain was -- as my understanding of
25 the evidence he, of course, was not in on whatever



1 happened to Miss Miller on any reading of the
2 evidence, he -- they picked him up at his house
3 and took him on this jaunt to Alberta, etcetera,
4 and he -- he -- I had no concerns about him unique
5 to him, if you will. I thought he was an honest
6 young fellow and seemed determined to, you know,
7 give an accurate account of what he knew about the
8 entire trip I thought.

9 Q If you could scroll down, 'B2. Nothing re theft
10 at B.A. Lunch'. I'm not sure if we have seen that
11 before; do you know what that relates to?

12 A Umm, 'nothing re theft at B.A. Lunch'. Someone
13 must have suggested there was a theft, and I must
14 -- I don't quite get -- know that at the moment.

15 Q Then Cadrain has 'episode with transport truck
16 between Saskatoon and Calgary'?

17 A Oh, and I have -- that's page 607.

18 Q Yeah.

19 A And I, then I've written 'really was between' and
20 there is nothing more, which --

21 Q I see.

22 A -- leads me to think I thought it was somewhere
23 else and wanted to pursue it with him.

24 Q And then 'E. Got home when'?

25 A Yeah.



1 Q 'Sunday, Saturday, page 620, statement, March 2nd
2 statement to Karst'. And, again, were you trying
3 to figure out when Mr. Cadrain got home from
4 Regina?

5 A Yeah, just to nail that down.

6 Q And then 'F. If not sure say so, not a la page
7 654'.

8 A Yeah.

9 Q 'Point out to Cadrain'?

10 A Yeah.

11 Q I take it there was something in the transcript
12 that you wished to raise with him?

13 A Yeah, but this page 654 would be an example of
14 that, I was hoping, if he didn't know or
15 something, he'd say so, if he was not sure he'd
16 say so, not do it the way he did on page 654 and
17 57, however that was, and we could look at it
18 eventually if you wish.

19 Q And, again, would you have said to Mr. Cadrain
20 your standard phrase, I think you told us
21 yesterday, you say to all witnesses?

22 A I would think so.

23 Q And then 'G. Admit any sexual relations with
24 Nichol John'?

25 A Yeah.



1 Q I take it that was something you would have raised
2 with him?

3 A Yes.

4 Q 'Not on drugs or LSD when Milgaard made statement
5 re killing off Nichol John and Ron Wilson or
6 affecting his memory'?

7 A Yeah. That refers to Cadrain himself, of course,
8 that he was not -- he, Cadrain, was not on drugs
9 or LSD when the statement was made re killing off
10 Nichol John and Ron Wilson, nor were they
11 affecting his memory. So that's somewhere, Mr. --
12 where I specifically addressed that.

13 Q And then lastly on here, 'brief re accomplices, no
14 mention B & E, dope, etcetera'; would you have
15 done a brief regarding the law on accomplices or
16 had Mr. Perras do that?

17 A I hope so. There may well have been one on hand
18 in the office already.

19 Q And then the next page, please, this is the last
20 one, N.B.-14, 'Cadrain, admit sexual intimacy with
21 Nichol John' and then '"bad language"'?

22 A Yeah. I assume that someone had alleged that he
23 had been sexually intimate with Nichol John, it
24 may have been her, and I -- if that was the case,
25 I wanted him to admit it, and the second is I



1 wanted him to admit any bad language he used.

2 Q I'm sorry, that you would what?

3 A The second is simply, the ditto mark is "admit",
4 and it refers to bad language. I think Cadrain
5 must have been bending over backward not to use
6 any, you know, swear words, in effect.

7 Q Yes.

8 A And I'm telling him, eh, admit bad language if you
9 used it.

10 Q And then again we see the note 'nothing re B & E,
11 dope, etcetera'; would you have told Mr. Cadrain
12 not to mention that?

13 A I expect so.

14 Q Then next if we can go to 006920, and that's page
15 147 -- no, sorry, I've got the -- if we can go to,
16 sorry, 006926.

17 A Is that that 147?

18 Q Yeah.

19 A Okay.

20 Q And, again, it looks like you've got a list of
21 witnesses or people to see in person?

22 A Yeah, I have that page, Mr. Hodson, and it's in my
23 copy, if you will. It's stapled with some other
24 documents but I'm happy to look at the one you --

25 Q If you could look at page 147. Would this be a



1 set of notes for people you need to see in person?

2 A Yes.

3 Q And again, Danchuks we've talked about. If you
4 could scroll down to number 5, it says,
5 'Mrs. Cadrain room layout, what clothes kept, what
6 wrong with Shorty's story.' Tell us what that
7 refers to?

8 A Yeah, it -- I must have had a question or there
9 had been a question over the room layout in what I
10 assume is Cadrain's house. As to what clothes
11 were left and as to what was wrong with Shorty's
12 story, which indicates that somebody must have
13 been representing to me that there were things
14 wrong with it. I can't tell from this who that
15 was.

16 Q And would you have met with Mrs. Cadrain in person
17 to talk about that?

18 A In this instance I hope I would have, but I don't
19 see evidence that I did there, sir. Oh, the check
20 marks I think indicate that I had covered those
21 three topics with her. From this I can't tell
22 whether it was by phone or in person.

23 Q And then we have what looks like a note written in
24 here, it says important, N.B., 'Mrs. Miller and
25 Mary Marcoux and Albert Cadrain all heard Nichol



1 John say I don't know why he didn't kill me too.

2 I was right there and saw it all, but I'm not

3 going to say nothing.'

4 A That's the same one we talked about earlier.

5 Q So would this note, would this be the note that

6 you took at the time you heard it or would this be

7 something you added to the 'see in person' with

8 Albert Cadrain?

9 A Well, it's certainly jammed in there in very fine

10 writing which makes me wonder if it was the

11 proverbial original the way it is. It's very fine

12 writing on my part.

13 Q This would be, I think, likely around the time

14 right before trial, is that not fair, when this

15 document would have been prepared?

16 A Yeah.

17 Q And do you think that's when you would have first

18 written down the comment about what was heard in

19 the hearing room?

20 A No, I think likely this went in, when you

21 mentioned the dates, would be transferred from one

22 of my other recordings of it, if you will.

23 Q And lastly, 'Giles Beauchamp found wallet across

24 street from St. Mary's, not same side, page 72,'

25 which is the transcript?



1 A Uh-huh.

2 Q And 'important, 76'.

3 A Yeah.

4 Q Do you know what that refers to?

5 A Not without looking at the transcript.

6 Q I think there was a concern there about where he
7 found the wallet, being across the street from
8 Cadrain's as opposed to on the same side; is that
9 right?

10 A It could -- that sounds -- that looks like it.

11 Q Then at 006925, which is page 148, and this is a
12 document that you've got 'write' and I presume
13 this is something prompting you to write the
14 letter?

15 A Yeah, to 'Cal - indictment - Mrs. Indyk -
16 statement - stand by,' I think would refer to the
17 arrangement to have her stand by and await being
18 notified, and the third is McLeod. I think that's
19 a crime lab person.

20 Q And then Weafer is the fellow in Craik?

21 A Yeah.

22 Q I take it you would have talked about that?

23 A Yeah.

24 Q Or written to him. 3, 'Cal - Emson, Wilson
25 blood,' and then second, 'bloody pants'. Do you



1 know what that would refer to?

2 A Well, it's very hard to tell from that skimpy a
3 note, but it was something about the topic of
4 bloody pants. At this point I can't single it out
5 without more, sir.

6 Q If we can go to your page 153 which is 006920 --

7 A I have that.

8 Q And again would this be, we've seen a similar
9 list, this would be your list of people to phone
10 and check items; is that fair?

11 A Yes, it would.

12 Q And some of these are similar to what we've seen
13 in other notes. Would it be the case, Mr.
14 Caldwell, where you might jot a note down
15 somewhere in the file and then later move it onto
16 one of your to-do lists?

17 A It might well be.

18 Q So here, Mary Marcoux, phone her, '- snow not
19 trampled by onlookers,' and then you have another
20 note --

21 A 'Re N John saying she saw it,' refers to about
22 Nichol John presumably said, or suggested the snow
23 was trampled.

24 Q Let me suggest it might be -- is it possible that
25 your first note is to talk to Mary Marcoux about



1 the snow not being trampled and, secondly, about
2 whether in the hearing room Mary Marcoux heard
3 Nichol John saying she saw the murder? Do you
4 recall, I think your note indicated Mary Marcoux
5 was in the hearing room.

6 A She did, and that could very well be the
7 explanation, in fact more likely I guess.

8 Q Did you consider calling that evidence of the
9 people in the waiting room at the trial, about
10 what Nichol John had said?

11 A I believe we considered it, but couldn't find, if
12 you will, a proper heading of evidence to get it
13 in on.

14 Q Scroll down, Davis, we talked about Roberts,
15 continuity, just that he had them. I take it you
16 would have talked to Roberts?

17 A Yes.

18 Q Then we get to number 4, Karst, 'take May 23
19 statement, Wilson after first part polygraph, or
20 after whole thing'?

21 A Yeah.

22 Q And then, 'K: After the whole thing.'

23 A Yeah. I asked him. He told me that.

24 Q So that would be the May 23rd statement, Wilson's
25 statement, you would have asked him whether he



1 took it after the first part of the polygraph or
2 after the whole thing, being the whole session?

3 A When it was ended, whenever that was.

4 Q And the K indicates you would have talked to Karst
5 and got that information?

6 A That's correct, and that was his reply, after the
7 whole thing.

8 Q Why at that time would you be concerned about when
9 the Wilson statement was taken, whether it was in
10 the middle of the interview with Roberts or after?

11 A Just at a glance here, I can't say that, but some
12 question must have arisen about it.

13 Q Is it possible Mr. Tallis had asked about that?

14 A It's possible, but I would have thought there
15 would be a note to that effect, but I believe that
16 was consistent with what Mr. Karst's evidence was.

17 Q And then there's the toque and then is that --

18 A Hankie and girdle.

19 Q 'Hankie - girdle to Penkala, April 7 - where
20 hankie and girdle from?' And just in fairness,
21 there is, when the toque was found, I think there
22 were two other items, and it says K, who I assume
23 is Karst, 'from lane behind Gerse's house'?

24 A That's how I read that.

25 Q Scroll down, I think Emson we've touched on,



1 Bagwell and the pants, I don't think anything
2 turned on that. It appears at the bottom, 'mitts,
3 Wilson's brother, what he sees on jacket. Wilson
4 said it looks like there were burns/holes in it -
5 didn't look re blood.' Would that be Mrs. Wilson
6 or do you know what that -- actually, sorry, this
7 is Ken Walters.

8 A Oh, okay.

9 Q Do you recall the earlier note where you were
10 going to call Ken Walters about what Mr. Wilson --
11 or what he may have seen on the jacket?

12 A I'm sorry, I just saw his name there as well and
13 this would be him, indeed.

14 Q W might be Walters, I'm sorry.

15 A Yeah. I think, Mr. Hodson, the actual letter six
16 I didn't notice, but it actually says his name
17 there, as you can see.

18 Q Right. If you look at the screen, Mr. Caldwell,
19 I've got six, Ken Walters, and then am I correct
20 at the bottom, you'll see on the screen where it
21 says what he sees on jacket, 'Walters said it
22 looked like there were burns/holes in it, didn't
23 look re blood.' Is that correct?

24 A Yeah. Oh, it didn't look re blood means he didn't
25 turn his attention to looking for blood or lack of



1 blood the way I read this.

2 Q Okay. So let me try that again. 'Walters said it
3 looks like there were burns/holes in it'?

4 A Yeah.

5 Q And then 'didn't look re blood'?

6 A Re blood in my shorthand means he didn't address
7 his attention to whether or not there was blood
8 evident there.

9 Q I see. And next page, Riddell and the handwritten
10 statements we talked about, I presume you would
11 have phoned him and got them?

12 A Right.

13 Q And here's Mildner, 115 is his badge number, 're
14 Milgaard, suitcase - Humboldt,' and then 'working-
15 off Saturday - back Wednesday.' So it looks like
16 you would have followed up with him on that?

17 A It does.

18 Q Then next, 'Ray Mackie, why Beauchamp instead of
19 Remenda re wallet'?

20 A Oh, yes. Is that the same issue?

21 Q I think so, and it says it was B who found; is
22 that right?

23 A It says, 'it was B who found it: R.M.,' which
24 means Ray Mackie told me that.

25 Q Okay. If we can scroll down, go to the next page,



1 please, go to Paynter, and I take it these other
2 items we're skipping over are just notes of people
3 that you had called with what's noted in the, on
4 the document; is that fair?

5 A That's right.

6 Q And then it says, this is Paynter, 'report May 5,
7 why when found Wilson's blood B not --' what's
8 that word?

9 A 'Not proceed with examination of his --'

10 Q Saliva sample?

11 A Yeah.

12 Q The answer was, because he was B and seminal fluid
13 suspected of being from a group A secretor,
14 eliminated him from being in class.'

15 A Yeah, that's what he told me.

16 Q And, 'get whole secretor/non-secretor story
17 straight'?

18 A Yeah.

19 Q Then Bagwell deals with the clothing and Molchanko
20 the fibre. Next page. Continuing on with
21 Paynter, I think that's the stuff from Wilson's
22 car, and then here's a note that says 'what T --'
23 which must be, I'm assuming is Tallis, '-- getting
24 at re A1, A2 etc? Re his testing technique?'

25 A That I assume the same as you do, Mr. Tallis must



1 have raised that possibly in the prelim.

2 Q Am I correct that based on something Mr. Tallis
3 did at the prelim, you were wondering whether he
4 had something or some issue with respect to blood
5 types and you are asking Paynter what is this
6 about?

7 A That's right, and his reply there is 'doesn't mean
8 much' and then the next line, 'nothing to this,
9 nil to this'.

10 Q And then, 'explain whole secreting, etc., bit'?

11 A Yeah.

12 Q 'Freeze/thaw effect on antigens,' and then it
13 says, 'Paynter has tried this - re A non-secretor
14 - and freeze and thaw has no effect.'

15 A That's right, the question, and then from Paynter
16 has on as the answer he gave me and I wrote out.

17 Q Right. So he would have done a test to see
18 whether freezing and thawing changed the sample of
19 an A non-secretor?

20 A That's right.

21 Q And I think if I'm correct, Dr. Emson had said
22 maybe if you freeze and thaw, somehow it will show
23 antigens in the semen for the non-secretor; does
24 that sound right?

25 A It does.



1 Q And then if we could just scroll down, 'Paynter re
2 - can have seminal fluid without spermatozoa - but
3 not sperm without seminal fluid.' So I take it
4 that was an issue you had raised with him?

5 A That's right.

6 Q Next page -- I think that's it for the notes. I
7 think, Mr. Commissioner, this might be a good spot
8 to break, we're getting into the actual trial
9 part.

10 (Adjourned at 3:53 p.m.)
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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of my knowledge, skill, and
ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



'	'both' [1] - 16305:3 'brief' [1] - 16377:13 'brought' [1] - 16369:15 'brown' [1] - 16370:18 'but' [1] - 16234:12 'c' [3] - 16265:13, 16328:9, 16372:4 'c2' [1] - 16358:18 'cadrain' [5] - 16325:20, 16326:17, 16327:22, 16328:20, 16377:20 'cadrain' [1] - 16372:20 'cal' [2] - 16381:15, 16381:24 'campbell' [1] - 16306:19 'can' [1] - 16347:13 'caution' [1] - 16312:6 'changes' [1] - 16265:21 'check' [2] - 16236:14, 16373:18 'checked' [1] - 16338:1 'clothes' [2] - 16360:4, 16360:5 'continuity' [1] - 16315:16 'conversation' [3] - 16347:11, 16350:12, 16351:8 'danch' [1] - 16271:9 'danchuk' [1] - 16306:22 'david' [2] - 16270:14, 16279:3 'detective' [1] - 16345:21 'diewold' [2] - 16266:6, 16274:12 'dimmitt' [1] - 16297:24 'eliminate' [1] - 16304:5 'elmer' [5] - 16307:19, 16308:5, 16312:7, 16320:18, 16335:4 'em' [2] - 16294:23, 16298:21 'episode' [1] - 16375:15 'exception' [1] - 16348:19 'explain' [1] - 16388:10 'explained' [1] - 16285:22 'f' [1] - 16359:19 'f2' [1] - 16360:3 'february' [1] - 16231:1 'figure' [1] - 16302:2 'find' [3] - 16302:7, 16322:17, 16367:14 'fingerprints' [1] - 16326:11 'first' [2] - 16372:4, 16372:6 'fleming' [1] - 16309:11 'for' [3] - 16263:8, 16299:2, 16299:3 'found' [1] - 16232:19 'freeze/thaw' [1] - 16388:12 'from' [4] - 16263:8, 16298:9, 16369:18, 16384:23 'get' [7] - 16324:24, 16331:16, 16346:24, 16348:16, 16349:22, 16357:3, 16387:16 'giles' [1] - 16380:23 'girls' [1] - 16272:18 'go' [1] - 16330:14 'got' [2] - 16233:12, 16234:24 'h' [1] - 16360:15 'hankie' [1] - 16384:19 'has' [1] - 16232:9 'he' [1] - 16373:3 'he' [2] - 16373:3 'his' [1] - 16306:11 'honest' [1] - 16273:2 'how' [3] - 16284:3, 16284:8, 16358:21 'i' [1] - 16210:22 'ic' [1] - 16360:25 'if' [2] - 16270:17, 16336:9 'important' [1] - 16381:2 'improbability' [1] - 16275:13 'in' [1] - 16360:25 'indecent' [3] - 16209:25, 16216:24, 16218:25 'interview' [1] - 16230:11 'is' [1] - 16360:23 'it' [1] - 16386:23 'items' [1] - 16347:8 'joe' [2] - 16302:8, 16326:23 'john' [2] - 16330:25, 16369:13 'just' [1] - 16315:6 'k' [1] - 16232:18 'karst' [1] - 16345:13 'keys' [1] - 16184:12 'kleiv' [2] - 16319:23, 16321:4 'kleiv' [1] - 16306:8 'knife' [2] - 16230:7, 16271:14 'leave' [8] - 16314:4, 16314:5, 16350:7, 16350:19, 16352:8, 16353:4, 16357:2, 16357:4 'lookit' [2] - 16168:1, 16172:2 'make' [1] - 16357:5 'march' [1] - 16230:19 'mary' [1] - 16304:12 'mature' [2] - 16305:2, 16305:3 'may' [2] - 16235:19, 16236:6 'mcd' [1] - 16347:10 'mcquhae' [1] - 16306:20 'milgaard' [1] - 16370:1 'mitts' [1] - 16385:2 'motive' [1] - 16351:11 'motive' [1] - 16351:10 'mrs' [4] - 16265:7, 16304:21, 16379:5, 16379:24 'nil' [1] - 16307:22 'no' [8] - 16191:11, 16234:7, 16273:22, 16315:12, 16315:13, 16348:19, 16350:4, 16357:13 'no' [4] - 16164:7, 16294:13, 16294:14, 16304:7 'not' [5] - 16270:24, 16328:1, 16364:25, 16377:4, 16387:9 'note' [1] - 16277:8 'noted' [1] - 16271:10 'nothing' [3] - 16375:12, 16378:10, 16388:8 'okay' [1] - 16161:23 'old' [1] - 16372:25 'oliver' [1] - 16309:5 'on' [1] - 16288:1 'one' [2] - 16280:14, 16280:19 'or' [3] - 16279:6, 16351:12, 16359:11 'p-35' [1] - 16237:11 'p35' [1] - 16237:7 'page' [3] - 16300:22, 16360:15, 16372:9 'parker' [1] - 16274:14 'paynter' [4] - 16336:4, 16346:10, 16388:13, 16389:1 'phone' [2] - 16320:20, 16321:10 'pic' [1] - 16305:5 'plane' [1] - 16297:25 'point' [1] - 16376:9 'pros' [1] - 16294:13 'prove' [3] - 16298:15, 16334:17, 16335:3 'purse' [6] - 16190:22, 16190:23, 16191:13, 16277:2, 16277:6, 16357:3 'purse' [2] - 16191:2, 16191:4 'put' [1] - 16324:21 'ray' [4] - 16319:25, 16320:3, 16347:3, 16386:18 're' [8] - 16189:16, 16271:3, 16273:3, 16278:14, 16341:24, 16358:6, 16382:21, 16386:13 're' [1] - 16358:4 'read' [2] - 16298:23, 16354:10 'really' [1] - 16375:19 'received' [2] - 16232:14, 16232:16 'regina' [1] - 16321:6 'reid' [1] - 16313:4 'reid' [1] - 16313:2 'report' [1] - 16387:6 'rh/hl' [1] - 16297:17 'right' [1] - 16297:18 'rip' [1] - 16322:10 'roberts' [1] - 16322:24 'same' [2] - 16361:4, 16361:10 'sandra' [1] - 16308:10 'says' [1] - 16322:2 'sb' [1] - 16265:11 'see' [2] - 16358:12, 16380:7 'see' [1] - 16358:5 'short' [2] - 16314:18, 16328:10 'shorty' [1] - 16323:14 'show' [1] - 16359:16 'sperm' [1] - 16275:15 'stand' [1] - 16265:11 'statement' [1] - 16355:9 'stuck' [2] - 16371:2, 16371:20 'sunday' [1] - 16376:1 'sweater' [1] - 16272:1 'take' [1] - 16383:18 'talked' [1] - 16289:23 'the' [1] - 16322:7 'then' [2] - 16371:4, 16371:6 'there' [1] - 16232:18 'third' [1] - 16300:21 'third' [1] - 16313:4 'to' [1] - 16298:10 'told' [1] - 16287:19
---	--



<p>'trial' [1] - 16273:5 'try' [1] - 16286:5 'ullrich' [2] - 16265:4, 16355:20 'voluntary' [1] - 16326:24 'w' [2] - 16294:10, 16322:1 'wallet' [1] - 16301:21 'walters' [2] - 16385:21, 16386:2 'we' [1] - 16314:10 'what' [2] - 16313:25, 16387:22 'who' [2] - 16302:4, 16321:1 'whole' [1] - 16318:12 'whole' [2] - 16319:10, 16319:12 'why' [5] - 16269:18, 16279:14, 16280:4, 16281:14, 16332:22 'wilson' [5] - 16284:7, 16315:10, 16323:8, 16323:10, 16334:24 'wilson' [1] - 16361:2 'witness' [1] - 16322:6 'witnesses' [2] - 16252:20, 16255:8 'working' [1] - 16386:14 'worth' [1] - 16299:1 'would' [1] - 16359:8 'write' [1] - 16355:20 'write' [1] - 16381:12 'yes' [2] - 16295:6, 16300:10 'yes' [3] - 16295:7, 16297:4, 16362:3 'you' [1] - 16165:21</p>	<p>006935 [1] - 16345:2 006945 [1] - 16290:8 006946 [1] - 16287:14 006947 [1] - 16286:15 006948 [1] - 16289:12 006949 [2] - 16283:15, 16284:21 006950 [2] - 16278:3, 16284:15 006951 [1] - 16275:10 006952 [1] - 16272:21 006953 [2] - 16268:7, 16280:22 006959 [1] - 16319:14 006960 [1] - 16285:17 006963 [1] - 16267:1 006971 [1] - 16266:15 006973a [1] - 16256:6 006974 [1] - 16255:14 006975 [1] - 16244:1 006978 [1] - 16252:5 006980 [1] - 16241:10 007001 [1] - 16242:13 007005 [1] - 16228:21 007008 [1] - 16227:20 007010 [1] - 16227:12 007011 [3] - 16154:11, 16165:13, 16226:11 007014 [1] - 16163:9 007082 [1] - 16240:16 008258 [1] - 16282:16 008357 [1] - 16239:8 008360 [2] - 16239:11, 16239:13 009251 [2] - 16193:3, 16197:23 009298 [1] - 16172:17 009330 [1] - 16179:17 009386 [1] - 16200:4 032345 [1] - 16342:1</p>	<p>137 [2] - 16345:2, 16345:5 139 [1] - 16330:25 13th [1] - 16288:2 14 [3] - 16289:3, 16303:1, 16313:11 140 [4] - 16325:19, 16344:8, 16344:13, 16344:16 141 [1] - 16320:13 144 [2] - 16302:21, 16302:24 145 [3] - 16291:22, 16292:13 146 [6] - 16291:14, 16291:22, 16292:3, 16292:6, 16292:7, 16292:13 147 [3] - 16378:15, 16378:17, 16378:25 148 [1] - 16381:11 14th [1] - 16288:3 15 [2] - 16211:3, 16288:13 153 [2] - 16291:16, 16382:6 156 [2] - 16264:5, 16264:8 15th [4] - 16202:15, 16211:12, 16212:24, 16213:15 16 [1] - 16211:3 16154 [1] - 16153:4 16th [3] - 16244:2, 16252:6, 16252:14 17 [1] - 16318:18 18 [1] - 16322:1 183170 [1] - 16188:20 189 [1] - 16300:22 18th [2] - 16202:10, 16240:23 19 [3] - 16265:2, 16265:5, 16322:6 1900 [1] - 16207:8 1968 [4] - 16157:23, 16173:14, 16176:1, 16183:20 1969 [23] - 16154:15, 16157:12, 16157:18, 16172:25, 16173:8, 16180:6, 16180:15, 16196:22, 16202:10, 16207:3, 16215:10, 16220:24, 16221:20, 16225:12, 16229:1, 16232:25, 16255:17, 16256:17, 16283:6, 16301:7, 16342:5, 16348:9, 16363:14 1970 [6] - 16173:8,</p>	<p>16285:20, 16290:12, 16293:9, 16333:10, 16363:14 1990 [1] - 16190:12 19th [3] - 16265:5, 16267:23, 16290:25 1:32 [1] - 16282:8</p>
0	1		2
<p>002104 [1] - 16179:19 006400 [1] - 16204:25 006402 [1] - 16209:15 006404 [2] - 16214:3, 16215:8 006486 [1] - 16201:7 006818 [1] - 16256:16 006917 [1] - 16264:5 006920 [4] - 16291:14, 16291:17, 16378:14, 16382:6 006925 [1] - 16381:11 006926 [1] - 16378:16 006927 [1] - 16291:22 006929 [1] - 16302:21 006931 [1] - 16320:12 006932 [1] - 16341:22</p>	<p>1 [28] - 16167:3, 16169:5, 16180:15, 16181:13, 16193:12, 16195:2, 16209:6, 16230:7, 16231:1, 16232:8, 16232:13, 16234:7, 16236:5, 16269:2, 16275:14, 16278:7, 16292:9, 16292:14, 16292:16, 16294:10, 16304:5, 16324:4, 16327:4, 16342:5, 16342:12, 16344:10, 16360:15 10 [5] - 16243:19, 16292:3, 16292:9,</p>	<p>137 [2] - 16345:2, 16345:5 139 [1] - 16330:25 13th [1] - 16288:2 14 [3] - 16289:3, 16303:1, 16313:11 140 [4] - 16325:19, 16344:8, 16344:13, 16344:16 141 [1] - 16320:13 144 [2] - 16302:21, 16302:24 145 [3] - 16291:22, 16292:13 146 [6] - 16291:14, 16291:22, 16292:3, 16292:6, 16292:7, 16292:13 147 [3] - 16378:15, 16378:17, 16378:25 148 [1] - 16381:11 14th [1] - 16288:3 15 [2] - 16211:3, 16288:13 153 [2] - 16291:16, 16382:6 156 [2] - 16264:5, 16264:8 15th [4] - 16202:15, 16211:12, 16212:24, 16213:15 16 [1] - 16211:3 16154 [1] - 16153:4 16th [3] - 16244:2, 16252:6, 16252:14 17 [1] - 16318:18 18 [1] - 16322:1 183170 [1] - 16188:20 189 [1] - 16300:22 18th [2] - 16202:10, 16240:23 19 [3] - 16265:2, 16265:5, 16322:6 1900 [1] - 16207:8 1968 [4] - 16157:23, 16173:14, 16176:1, 16183:20 1969 [23] - 16154:15, 16157:12, 16157:18, 16172:25, 16173:8, 16180:6, 16180:15, 16196:22, 16202:10, 16207:3, 16215:10, 16220:24, 16221:20, 16225:12, 16229:1, 16232:25, 16255:17, 16256:17, 16283:6, 16301:7, 16342:5, 16348:9, 16363:14 1970 [6] - 16173:8,</p>	<p>16285:20, 16290:12, 16293:9, 16333:10, 16363:14 1990 [1] - 16190:12 19th [3] - 16265:5, 16267:23, 16290:25 1:32 [1] - 16282:8</p>



3	48 [1] - 16345:13 481 [1] - 16368:15 4th [7] - 16180:5, 16185:14, 16197:18, 16198:1, 16205:7, 16240:23, 16264:10	7	A	accosted [1] - 16216:15 account [6] - 16251:7, 16255:20, 16256:7, 16257:19, 16365:19, 16375:7 accounts [2] - 16158:21, 16158:22 accurate [2] - 16257:19, 16375:7 accused [18] - 16162:22, 16165:12, 16178:24, 16221:5, 16232:9, 16243:10, 16250:13, 16251:4, 16251:16, 16251:22, 16297:22, 16307:18, 16323:22, 16332:15, 16332:16, 16347:14, 16349:14, 16354:18 acid [2] - 16254:1, 16343:4 acknowledge [2] - 16173:7, 16187:18 acknowledged [1] - 16173:6 acquainted [1] - 16199:2 action [3] - 16175:12, 16176:4, 16225:4 actions [2] - 16271:1, 16271:3 acts [1] - 16177:3 actual [3] - 16298:13, 16385:15, 16389:8 add [3] - 16217:12, 16232:11, 16265:24 add' [2] - 16307:22, 16308:7 added [6] - 16193:25, 16205:7, 16211:14, 16214:14, 16227:8, 16380:7 addition [1] - 16228:5 address [11] - 16171:17, 16192:8, 16192:12, 16192:19, 16243:11, 16339:20, 16341:11, 16352:16, 16352:23, 16386:6 addressed [4] - 16174:9, 16243:10, 16295:25, 16377:12 addresses [1] - 16317:5 Adeline [1] - 16356:7 Adjourned [4] - 16223:21, 16282:7, 16341:19, 16389:10 adjourned [2] - 16154:9, 16243:8 administrative [2] -
3 [8] - 16207:3, 16232:13, 16239:8, 16270:12, 16280:4, 16281:22, 16304:19, 16381:24 30 [1] - 16328:9 31 [6] - 16198:15, 16220:6, 16302:3, 16328:20, 16335:4, 16362:17 31st [2] - 16308:1, 16321:5 32 [2] - 16344:8, 16344:16 326 [2] - 16300:16, 16300:20 33 [2] - 16329:23, 16330:14 34 [1] - 16330:25 346 [2] - 16193:4, 16195:5 346-347 [3] - 16197:16, 16197:22, 16197:23 347 [1] - 16194:14 35 [1] - 16331:16 36 [1] - 16332:22 37 [2] - 16334:17, 16335:1 38 [3] - 16201:13, 16205:1, 16334:24 39 [3] - 16201:13, 16209:16, 16335:6 3:00 [1] - 16341:20 3:35 [1] - 16243:7 3:53 [1] - 16389:10 3rd [2] - 16179:18, 16208:21	5 5 [19] - 16172:25, 16188:22, 16203:2, 16227:22, 16227:23, 16228:11, 16230:7, 16230:11, 16230:16, 16235:18, 16236:5, 16298:8, 16306:25, 16318:14, 16345:14, 16345:16, 16379:4, 16387:6 5'6 [1] - 16211:5 5'9 [1] - 16207:16 52 [1] - 16345:21 54 [1] - 16346:24 55 [1] - 16347:6 57 [2] - 16347:10, 16376:17 58 [1] - 16348:2 59 [1] - 16348:5 596 [1] - 16374:13 5:00 [1] - 16180:14 5th [4] - 16150:21, 16179:16, 16240:24, 16345:19	7 [4] - 16298:22, 16308:19, 16374:13, 16384:19 70 [1] - 16269:13 705 [1] - 16205:6 72 [1] - 16380:24 73 [2] - 16242:15, 16242:22 76 [2] - 16300:14, 16381:2 77 [1] - 16300:14 7:07 [1] - 16216:8 7:10 [1] - 16266:8 7:25 [1] - 16207:5	A1 [2] - 16336:5, 16387:24 A2 [2] - 16336:5, 16387:24 abbreviation [1] - 16235:22 ability [2] - 16172:8, 16390:7 able [27] - 16155:20, 16155:21, 16157:8, 16158:10, 16166:1, 16174:19, 16175:7, 16183:14, 16184:2, 16217:6, 16221:25, 16229:12, 16229:13, 16253:6, 16254:8, 16264:18, 16284:11, 16284:21, 16284:23, 16299:18, 16300:23, 16311:8, 16318:13, 16336:15, 16356:11, 16360:16, 16365:6 about' [2] - 16360:25, 16370:19 above' [1] - 16164:10 above-mentioned [1] - 16238:7 absence [4] - 16250:25, 16251:3, 16251:12, 16317:17 absent [1] - 16317:9 Absolutely [6] - 16172:7, 16187:7, 16261:1, 16289:8, 16311:10, 16367:2 absolutely [1] - 16216:11 absorbed [1] - 16269:21 accompanied [2] - 16246:2, 16246:4 accomplice [1] - 16357:7 accomplices [9] - 16348:22, 16350:11, 16351:23, 16353:12, 16353:15, 16353:21, 16354:7, 16377:13, 16377:15 accomplices' [4] - 16350:8, 16350:20, 16352:10, 16353:6 accordance [1] - 16249:16 according [4] - 16246:17, 16297:6, 16305:13, 16368:11	
4	6	8	9	
4 [13] - 16197:21, 16199:14, 16230:19, 16245:3, 16271:9, 16271:20, 16272:4, 16274:15, 16275:2, 16297:17, 16306:3, 16335:5, 16383:18 40 [3] - 16201:13, 16220:5, 16335:6 41 [2] - 16335:8, 16372:9 412 [2] - 16183:1, 16198:16 42 [1] - 16372:9 460 [3] - 16360:15, 16360:19, 16361:7	6 [10] - 16203:2, 16232:9, 16285:20, 16285:23, 16307:16, 16330:25, 16369:13, 16369:25, 16370:23 6(a) [1] - 16257:5 607 [1] - 16375:17 61 [1] - 16348:16 62 [6] - 16155:11, 16350:12, 16350:15, 16351:1, 16351:2, 16351:4 620 [1] - 16376:1 641 [2] - 16194:14, 16205:7 65 [1] - 16227:13 654 [3] - 16376:7, 16376:13, 16376:16 69 [2] - 16228:22, 16228:24 6:00 [1] - 16202:19	8 [2] - 16300:2, 16308:24 81 [1] - 16150:22 85 [1] - 16194:14 86 [1] - 16195:5 8:30 [1] - 16183:1 8th [3] - 16154:15, 16202:21, 16266:21 8th' [1] - 16312:8	9 [4] - 16226:12, 16245:3, 16300:7, 16309:2 90 [2] - 16241:21, 16241:23 91 [1] - 16252:11 919 [1] - 16264:24 92 [1] - 16252:11 927 [2] - 16291:17, 16292:8 928 [1] - 16292:10 93 [4] - 16180:6, 16184:24, 16195:18, 16244:6 94 [2] - 16244:6, 16244:12 95 [4] - 16217:11, 16218:10, 16226:20, 16244:3 96 [1] - 16255:15 9:00 [1] - 16154:2 9:45 [1] - 16233:12 9th [6] - 16154:10, 16157:12, 16165:9, 16229:6, 16267:2	



<p>16258:3, 16290:13 admissibility [2] - 16315:3, 16351:22 admissible [3] - 16253:15, 16349:15, 16352:6 admissible' [3] - 16299:1, 16314:3, 16314:19 admission [4] - 16177:20, 16317:17, 16349:25, 16351:9 admissions [1] - 16355:9 admissions' [1] - 16298:24 Admit [1] - 16376:23 admit [5] - 16377:20, 16377:25, 16378:1, 16378:3, 16378:8 advantage [1] - 16352:25 adverse [1] - 16325:12 advise [3] - 16159:7, 16288:8, 16337:20 advised [5] - 16235:22, 16282:11, 16288:2, 16289:4, 16335:24 advising [1] - 16288:5 affairs [1] - 16177:23 affect [2] - 16179:2, 16360:1 affected [4] - 16219:7, 16328:7, 16362:24, 16363:5 affecting [3] - 16359:21, 16377:6, 16377:11 after' [1] - 16265:5 afternoon [7] - 16155:23, 16229:14, 16240:3, 16240:14, 16274:15, 16275:1, 16345:14 age [3] - 16203:4, 16333:20, 16362:21 agent [1] - 16254:20 ago [1] - 16218:13 agree [5] - 16216:9, 16226:21, 16296:21, 16346:22, 16369:19 agree' [1] - 16370:2 agreed [1] - 16154:24 agreement [2] - 16316:1, 16317:17 agrees [1] - 16319:25 ahead [8] - 16203:18, 16209:12, 16234:10, 16234:11, 16248:7, 16332:12, 16365:24,</p>	<p>16374:17 ahold [1] - 16221:16 Aid [2] - 16256:22, 16258:6 al [1] - 16373:1 Albert [6] - 16188:9, 16246:6, 16327:15, 16363:3, 16379:25, 16380:8 Alberta [2] - 16246:5, 16375:3 alcohol [2] - 16362:9, 16364:25 Alexander [1] - 16152:13 alleged [1] - 16377:22 alley [9] - 16274:2, 16274:8, 16274:18, 16275:5, 16355:12, 16356:12, 16356:13, 16356:14, 16356:20 alley' [1] - 16356:8 allow [1] - 16231:20 allowed [2] - 16173:24, 16263:5 almost [3] - 16271:3, 16318:10, 16325:24 alone [2] - 16209:5, 16317:7 Anderson [1] - 16273:17 annoyed [1] - 16359:23 Answer [1] - 16300:10 answer [23] - 16178:20, 16179:14, 16184:2, 16217:6, 16234:18, 16234:22, 16279:20, 16287:6, 16295:6, 16304:7, 16307:9, 16307:13, 16307:14, 16318:18, 16322:5, 16324:17, 16334:15, 16347:8, 16347:15, 16362:3, 16365:4, 16387:12, 16388:16 answered [2] - 16218:24, 16321:24 answering [2] - 16204:15, 16260:11 antigens [17] - 16336:11, 16337:4, 16337:9, 16337:13, 16338:2, 16338:19, 16339:3, 16339:6, 16340:7, 16340:15, 16340:20, 16340:25, 16341:2, 16346:11, 16346:16, 16388:12, 16388:23 any' [1] - 16307:13</p>	<p>anyway [4] - 16165:20, 16209:12, 16295:10, 16346:13 apologetic [1] - 16312:20 apologize [1] - 16296:18 apparent [1] - 16176:12 Appeal [2] - 16350:23, 16353:25 appear [10] - 16168:19, 16175:14, 16187:4, 16203:11, 16239:17, 16243:6, 16276:1, 16280:18, 16319:15, 16324:13 Appearances [2] - 16152:1, 16270:15 appeared [7] - 16157:1, 16162:24, 16175:20, 16249:2, 16268:20, 16305:6, 16310:15 appearing [1] - 16373:1 application [1] - 16249:24 applied [1] - 16250:2 appointed [1] - 16256:21 appreciate [6] - 16188:6, 16204:23, 16218:17, 16235:10, 16364:14, 16364:15 approach [1] - 16179:2 appropriate [4] - 16223:13, 16232:6, 16255:12, 16341:17 approximate [1] - 16219:5 April [11] - 16197:18, 16197:21, 16198:1, 16199:14, 16233:12, 16345:14, 16345:16, 16345:17, 16345:19, 16384:19 apt [1] - 16287:10 Ar [2] - 16255:22, 16267:21 Area [1] - 16235:1 area [3] - 16208:18, 16213:9, 16338:14 arguably [1] - 16225:1 argued [1] - 16238:17 argument [3] - 16243:21, 16275:4, 16277:15 arisen [1] - 16384:12 arms [1] - 16212:5 arose [2] - 16188:12, 16303:10 arranged [1] - 16233:9</p>	<p>arrangement [2] - 16156:9, 16381:17 arrangements [1] - 16227:15 arrival [1] - 16206:10 arrived [2] - 16225:25, 16373:7 arrow [6] - 16193:25, 16194:19, 16196:18, 16211:13, 16320:6, 16320:8 aside [1] - 16351:22 aspects [1] - 16186:1 aspire [1] - 16234:14 assailant [4] - 16203:1, 16203:22, 16219:21, 16276:13 assault [21] - 16202:24, 16205:25, 16210:1, 16212:22, 16213:8, 16213:9, 16213:10, 16214:20, 16215:20, 16215:23, 16216:6, 16216:24, 16217:18, 16218:25, 16220:1, 16220:2, 16220:7, 16220:9, 16220:12, 16221:1 assault' [1] - 16209:25 assaulted [2] - 16216:15, 16219:17 assaults [7] - 16157:24, 16164:21, 16208:18, 16223:25, 16224:7, 16224:10, 16225:12 assess [1] - 16362:23 assessed [1] - 16365:17 assigned [1] - 16342:10 assist [7] - 16156:20, 16191:25, 16262:22, 16267:11, 16291:12, 16301:13, 16336:21 assistance [1] - 16198:20 Assistant [1] - 16151:5 assists [1] - 16174:12 associations [1] - 16198:25 assume [48] - 16170:5, 16176:2, 16183:11, 16211:24, 16216:1, 16222:25, 16230:6, 16230:17, 16235:4, 16238:20, 16245:9, 16254:16, 16255:1, 16257:25, 16263:15, 16263:24, 16265:20, 16271:9, 16279:15, 16285:16, 16287:24,</p>	<p>16290:4, 16294:16, 16294:21, 16296:4, 16301:25, 16305:15, 16306:14, 16307:14, 16308:3, 16311:13, 16314:17, 16318:11, 16321:22, 16323:9, 16326:1, 16326:14, 16326:18, 16347:10, 16347:16, 16365:3, 16374:10, 16374:20, 16377:22, 16379:10, 16384:22, 16387:25 assuming [21] - 16174:17, 16185:1, 16205:24, 16208:3, 16230:21, 16266:10, 16266:12, 16280:11, 16285:22, 16294:10, 16294:19, 16297:18, 16298:22, 16300:17, 16315:14, 16322:1, 16322:6, 16329:1, 16355:8, 16356:23, 16387:23 assumption [2] - 16305:9, 16335:16 attach [1] - 16280:18 attached [2] - 16180:16, 16196:18 attack [2] - 16173:22, 16351:18 attacked [2] - 16173:16, 16199:20 attacker [2] - 16173:21, 16173:24 attempt [2] - 16177:5, 16369:22 attempted [6] - 16157:22, 16169:2, 16174:5, 16202:24, 16213:9, 16248:17 attend [2] - 16257:9, 16291:1 attended [2] - 16257:12, 16330:8 attending [3] - 16155:15, 16229:10, 16290:21 attention [8] - 16160:16, 16166:25, 16168:10, 16179:5, 16214:11, 16223:1, 16385:25, 16386:7 attorney [1] - 16344:1 Attorney [4] - 16244:8, 16244:17, 16256:5, 16290:13 Audio [1] - 16151:12 August [3] - 16187:20,</p>
--	--	--	--	--



<p>16188:8, 16240:23 author [2] - 16216:2, 16276:24 automatically [1] - 16192:11 autopsy [4] - 16234:12, 16234:15, 16298:10, 16298:13 available [4] - 16156:24, 16268:4, 16311:11, 16331:21 Ave[2] - 16211:17, 16212:1 Avenue[6] - 16180:18, 16183:1, 16198:16, 16274:3, 16300:19 avoid [2] - 16248:17, 16286:5 await [1] - 16381:17 awake [1] - 16342:13 aware [18] - 16158:2, 16159:23, 16160:21, 16167:10, 16170:6, 16183:20, 16186:11, 16224:5, 16224:13, 16224:19, 16224:22, 16225:8, 16256:23, 16263:22, 16299:20, 16363:4, 16366:15, 16366:25 awkward [1] - 16265:10 awkwardly [1] - 16277:14 Aylesbury[2] - 16314:16, 16314:17</p>	<p>16168:8, 16178:13, 16181:17, 16186:24, 16186:25, 16187:4, 16187:13, 16200:15, 16204:16, 16209:5, 16249:9, 16249:20, 16251:11, 16268:2, 16272:10, 16281:25, 16312:18, 16363:19, 16364:2, 16365:25, 16371:15, 16371:23, 16374:22, 16388:2 basis [1] - 16353:20 batch [1] - 16223:11 battery [2] - 16343:3, 16372:14 Bc [3] - 16298:4, 16350:22, 16353:25 bear [2] - 16350:23, 16354:1 Beauchamp [13] - 16197:19, 16300:15, 16332:22, 16333:3, 16333:8, 16333:13, 16333:19, 16334:1, 16334:2, 16334:6, 16334:9, 16380:23, 16386:18 Beauchamp's [4] - 16300:13, 16301:14, 16334:6, 16334:7 became [3] - 16237:11, 16256:23, 16323:14 become [4] - 16159:23, 16286:14, 16298:20, 16328:15 bed [2] - 16280:14, 16280:19 beg [2] - 16296:10, 16298:2 begin [1] - 16215:1 beginning [1] - 16319:12 behaviour [1] - 16270:22 behind [5] - 16173:16, 16210:15, 16212:6, 16356:13, 16384:23 beige [1] - 16304:22 Beitel [1] - 16151:8 belonged [2] - 16331:2, 16343:13 belongings [1] - 16343:11 below [2] - 16220:5, 16321:4 Bench [4] - 16390:1, 16390:3, 16390:14, 16390:18 bending [1] - 16378:5</p>	<p>benefit [3] - 16176:7, 16176:13, 16352:12 Bennett [2] - 16217:19, 16218:7 best [2] - 16158:18, 16390:6 better [8] - 16208:2, 16208:14, 16220:21, 16306:4, 16333:14, 16354:19, 16357:7, 16357:20 better-than-usual [1] - 16208:2 between [11] - 16168:20, 16176:9, 16198:5, 16201:3, 16250:8, 16258:15, 16264:18, 16273:13, 16328:20, 16374:7, 16375:16 between' [1] - 16375:19 beyond [1] - 16162:7 bias' [1] - 16359:16 big [1] - 16280:3 bill [3] - 16256:5, 16258:19, 16260:5 billing [1] - 16257:25 bills [1] - 16258:21 binder [1] - 16303:17 birth [1] - 16198:17 bit [16] - 16157:16, 16166:20, 16174:20, 16216:5, 16247:15, 16251:24, 16253:22, 16261:9, 16269:11, 16301:13, 16314:25, 16319:6, 16320:7, 16329:19, 16332:25, 16349:11 bit' [1] - 16388:10 bitch [2] - 16322:7, 16361:19 black [3] - 16207:17, 16304:22, 16319:23 blade [1] - 16236:17 blank [2] - 16326:23, 16345:17 blanket [1] - 16313:12 blk [1] - 16207:8 block [1] - 16212:2 blocks [3] - 16211:18, 16215:13, 16216:15 blood [56] - 16198:22, 16199:5, 16233:15, 16269:19, 16269:21, 16279:14, 16279:16, 16280:4, 16284:4, 16284:6, 16288:16, 16295:5, 16295:14, 16295:21, 16296:19,</p>	<p>16296:24, 16297:7, 16320:17, 16320:19, 16320:24, 16326:2, 16326:17, 16327:19, 16334:17, 16334:24, 16335:5, 16336:6, 16336:9, 16336:13, 16336:18, 16336:19, 16337:2, 16337:3, 16337:7, 16337:8, 16337:10, 16337:15, 16337:21, 16338:3, 16339:1, 16341:1, 16341:2, 16341:6, 16355:11, 16381:25, 16385:5, 16385:23, 16385:24, 16385:25, 16386:1, 16386:6, 16386:7, 16387:7, 16388:4 blood' [1] - 16386:5 bloody [1] - 16382:4 blown [1] - 16359:25 blue [6] - 16191:2, 16191:12, 16194:19, 16205:15, 16367:19, 16368:14 Bobs [1] - 16152:5 bodily [1] - 16337:21 body [22] - 16212:7, 16231:4, 16236:17, 16266:1, 16266:2, 16266:4, 16269:20, 16270:8, 16274:7, 16275:16, 16275:23, 16275:24, 16276:16, 16297:3, 16304:9, 16304:16, 16309:19, 16313:13, 16334:21, 16340:11 body' [1] - 16304:14 bone [6] - 16360:16, 16361:8, 16369:19, 16370:9, 16370:18, 16372:6 bone-handled [1] - 16361:8 boo [1] - 16342:20 boo-boos [1] - 16342:20 boos [1] - 16342:20 boot [2] - 16270:8, 16281:15 boots [1] - 16211:22 bore [2] - 16159:4, 16225:19 borrowed [1] - 16368:7 Boswell [1] - 16151:4 bottom [21] - 16155:12, 16163:12, 16182:24,</p>	<p>16188:25, 16189:1, 16194:22, 16195:14, 16197:14, 16229:7, 16233:3, 16252:16, 16265:1, 16267:9, 16282:19, 16286:2, 16308:9, 16309:20, 16319:13, 16385:2, 16385:20 bought [2] - 16288:10, 16369:13 box [1] - 16326:16 boxed [1] - 16184:15 boy [1] - 16270:14 Boychuk [1] - 16152:8 Boyd [1] - 16256:17 boys [1] - 16333:11 bracket [2] - 16264:21, 16320:10 bracketed [1] - 16195:24 brackets [1] - 16190:23 Brand [1] - 16295:5 brassiere [1] - 16319:23 break [11] - 16223:13, 16223:25, 16254:20, 16282:4, 16314:15, 16314:16, 16314:17, 16317:21, 16341:18, 16341:23, 16389:8 break-in [1] - 16254:20 breakdowns [1] - 16336:4 brief [8] - 16167:4, 16187:22, 16187:23, 16239:11, 16261:17, 16282:14, 16287:12, 16377:15 briefly [2] - 16155:24, 16202:13 bring [13] - 16170:6, 16170:12, 16179:5, 16215:7, 16229:4, 16238:17, 16329:15, 16329:16, 16329:18, 16342:24, 16343:6, 16343:9, 16372:18 bringing [1] - 16343:23 broad [1] - 16225:15 broaden [1] - 16161:2 broke [1] - 16312:13 broken [2] - 16236:12, 16306:11 brother [3] - 16321:15, 16331:2, 16385:3 brothers [1] - 16183:6 brought [8] - 16183:3, 16253:22, 16257:2, 16261:2, 16263:4,</p>
B				
<p>B2 [1] - 16374:12 Ba [2] - 16375:10, 16375:12 background [4] - 16331:16, 16331:23, 16332:5, 16332:15 backward [1] - 16378:5 backwards [1] - 16302:24 bad [3] - 16378:1, 16378:4, 16378:8 badge [1] - 16386:13 Bagwell [3] - 16335:6, 16385:1, 16387:19 bail [2] - 16249:25, 16250:2 ballpoint [1] - 16321:1 Based [1] - 16162:17 based [31] - 16154:13, 16158:7, 16160:14, 16163:25, 16164:15,</p>				



16316:8, 16359:9, 16370:1 brown [5] - 16360:16, 16361:8, 16367:11, 16368:13, 16369:19 Brown [2] - 16286:9, 16286:12 Bruce [1] - 16152:9 Bs [2] - 16277:3, 16277:22 build [2] - 16203:3, 16211:5 burns/holes [3] - 16385:4, 16385:22, 16386:3 bus [3] - 16189:10, 16227:15, 16329:14 Bus [1] - 16343:14 business [1] - 16186:2 by [1] - 16265:11 byproduct [1] - 16240:11	16265:7, 16359:9, 16374:14, 16376:9 Cadrain's [10] - 16233:22, 16295:5, 16295:13, 16330:8, 16355:13, 16358:18, 16363:18, 16374:21, 16379:10, 16381:8 Cadrain's [2] - 16315:11, 16360:8 Cadrains [3] - 16192:9, 16284:6, 16322:3 Cadrains [1] - 16312:13 Caffery [1] - 16154:25 Caffrey [1] - 16170:14 Cal [3] - 16289:2, 16343:9, 16343:22 Cal [2] - 16305:21, 16305:23 Caldwell [65] - 16152:5, 16153:3, 16154:5, 16154:7, 16154:13, 16157:15, 16162:12, 16165:1, 16166:21, 16168:24, 16169:22, 16171:24, 16173:5, 16175:4, 16176:7, 16179:4, 16183:11, 16185:13, 16196:4, 16196:8, 16196:22, 16198:4, 16200:2, 16201:20, 16203:13, 16204:16, 16208:16, 16212:14, 16214:10, 16216:17, 16219:25, 16221:11, 16223:18, 16223:24, 16226:21, 16228:24, 16229:17, 16231:20, 16241:13, 16242:8, 16242:23, 16244:16, 16247:2, 16250:18, 16255:24, 16258:14, 16260:14, 16269:9, 16278:22, 16279:19, 16280:23, 16282:10, 16296:8, 16296:18, 16301:6, 16302:22, 16324:13, 16339:14, 16344:4, 16354:22, 16363:16, 16364:14, 16366:23, 16382:14, 16385:18 Calgary [7] - 16255:20, 16267:10, 16267:15, 16267:22, 16278:12, 16289:21, 16323:22 Calgary [1] - 16375:16 called [1] - 16315:17 calm [1] - 16270:19 Calvin [1] - 16152:13	Campbell [1] - 16273:4 Canada [1] - 16152:12 Candace [1] - 16151:3 Canton [1] - 16183:6 capital [3] - 16238:8, 16241:12, 16355:2 captured [1] - 16189:18 car [24] - 16228:1, 16266:8, 16273:3, 16273:4, 16273:12, 16273:13, 16273:16, 16273:22, 16274:10, 16274:12, 16274:17, 16274:20, 16275:4, 16276:5, 16279:4, 16306:11, 16306:17, 16312:21, 16323:19, 16335:7, 16335:12, 16372:6, 16374:19, 16387:22 Car [1] - 16374:12 cards [2] - 16197:22, 16198:2 career [1] - 16321:9 careful [2] - 16170:4, 16296:15 Carl [1] - 16198:16 carried [2] - 16158:25, 16173:22 carry [1] - 16215:6 case [52] - 16155:1, 16157:4, 16159:2, 16164:5, 16164:9, 16169:13, 16170:7, 16177:2, 16177:4, 16177:23, 16178:8, 16178:12, 16178:21, 16179:1, 16186:1, 16186:9, 16192:7, 16200:15, 16218:6, 16227:3, 16230:17, 16231:22, 16243:7, 16244:18, 16248:7, 16249:5, 16250:6, 16250:13, 16251:3, 16251:10, 16251:16, 16251:22, 16253:20, 16256:3, 16258:20, 16259:7, 16261:14, 16269:10, 16272:7, 16299:22, 16300:12, 16331:18, 16350:22, 16352:4, 16353:9, 16353:18, 16353:25, 16354:24, 16358:1, 16364:20, 16377:24, 16382:13 case [1] - 16322:17 cases [15] - 16173:12, 16173:15, 16173:23,	16174:2, 16175:9, 16176:21, 16176:22, 16244:14, 16244:19, 16244:20, 16268:19, 16332:21, 16355:2, 16357:23 cast [1] - 16243:10 Castellani [2] - 16350:22, 16353:18 catchers [1] - 16189:11 category [2] - 16165:25, 16208:12 Catherine [1] - 16152:5 caught [1] - 16207:20 caused [3] - 16218:19, 16248:9, 16304:17 causing [1] - 16269:22 caution [1] - 16353:21 cells [2] - 16285:13, 16329:12 centre [1] - 16212:2 cents [1] - 16288:13 Cerato [4] - 16287:15, 16287:19, 16288:10, 16288:25 certain [1] - 16317:4 certainly [23] - 16157:18, 16159:17, 16163:3, 16168:18, 16176:14, 16184:21, 16186:25, 16194:1, 16209:2, 16219:7, 16222:2, 16226:20, 16227:19, 16228:13, 16232:7, 16263:7, 16310:22, 16310:25, 16311:14, 16317:12, 16355:3, 16358:9, 16380:9 Certainly [3] - 16159:20, 16233:11, 16303:22 certainty [1] - 16374:1 Certificate [1] - 16390:1 certify [1] - 16390:4 Cf [2] - 16255:24, 16256:20 challenge [1] - 16367:16 chance [1] - 16210:13 change [5] - 16221:15, 16313:18, 16315:10, 16343:2, 16364:1 change [1] - 16360:3 changed [9] - 16224:23, 16264:17, 16330:9, 16342:22, 16342:23, 16343:16, 16364:4, 16364:11, 16388:18 changes [1] - 16197:7 changing [2] -	16254:14, 16342:25 changing [2] - 16315:12, 16315:13 channels [1] - 16168:14 characters [1] - 16358:15 charge [2] - 16238:8, 16245:1 charged [3] - 16228:15, 16327:7, 16335:15 Charlie [5] - 16331:6, 16331:8, 16331:10, 16331:12 chart [2] - 16317:22, 16355:6 charts [1] - 16237:13 charts [1] - 16355:20 chased [2] - 16207:14, 16207:19 chastised [1] - 16296:14 Check [3] - 16235:20, 16236:6, 16336:19 check [17] - 16155:14, 16156:13, 16229:9, 16230:15, 16237:4, 16239:25, 16269:14, 16282:21, 16317:21, 16320:1, 16320:3, 16320:6, 16371:17, 16372:1, 16373:1, 16379:19, 16382:10 checked [8] - 16161:13, 16161:14, 16180:18, 16189:6, 16282:15, 16320:1, 16336:11, 16338:11 checking [3] - 16156:10, 16231:10, 16368:19 checkmark [2] - 16305:22, 16305:24 Chev [2] - 16273:4, 16273:18 Chief [2] - 16255:18, 16267:4 chief [9] - 16285:23, 16322:7, 16322:12, 16348:3, 16360:14, 16360:18, 16361:1, 16361:8, 16361:21 chief [1] - 16323:8 chose [1] - 16156:25 Chris [1] - 16152:8 chronological [2] - 16266:4, 16266:11 Church [2] - 16306:5, 16355:13 church [2] - 16189:21, 16266:8
C				
cab [2] - 16167:22, 16167:23 Cadrain [60] - 16188:9, 16230:7, 16230:11, 16230:16, 16233:12, 16233:16, 16246:6, 16246:9, 16246:13, 16252:18, 16252:23, 16253:25, 16254:9, 16264:14, 16264:18, 16265:19, 16265:21, 16294:25, 16295:21, 16296:1, 16296:25, 16325:24, 16326:13, 16326:18, 16326:20, 16326:25, 16327:5, 16327:15, 16327:18, 16328:4, 16328:9, 16328:21, 16330:14, 16330:19, 16358:23, 16359:5, 16362:16, 16363:3, 16363:8, 16365:9, 16365:13, 16366:10, 16366:16, 16366:25, 16372:22, 16373:23, 16374:3, 16374:10, 16374:24, 16375:15, 16376:3, 16376:19, 16377:7, 16377:8, 16378:4, 16378:11, 16379:5, 16379:16, 16379:25, 16380:8 Cadrain [5] - 16265:2,				



<p>circled [3] - 16191:7, 16191:13, 16324:19</p> <p>circularised [1] - 16199:22</p> <p>circumstances [1] - 16207:1</p> <p>city [5] - 16158:20, 16202:3, 16204:11, 16209:2, 16212:25</p> <p>City [3] - 16157:19, 16201:21, 16255:20</p> <p>civilian [3] - 16226:19, 16226:22, 16349:16</p> <p>claimant [1] - 16333:14</p> <p>claimants [1] - 16334:13</p> <p>claimed [1] - 16323:17</p> <p>claiming [1] - 16300:25</p> <p>Clarence [1] - 16312:8</p> <p>clarify [2] - 16333:17, 16361:5</p> <p>class [2] - 16164:15, 16387:14</p> <p>clear [6] - 16224:9, 16286:14, 16300:15, 16301:21, 16310:21, 16347:22</p> <p>clearly [16] - 16186:17, 16186:22, 16188:18, 16209:4, 16216:21, 16220:24, 16221:10, 16225:24, 16226:16, 16248:6, 16273:13, 16303:11, 16310:15, 16319:18, 16334:15, 16348:1</p> <p>Clerk [1] - 16151:8</p> <p>climbed [1] - 16207:12</p> <p>close [3] - 16209:3, 16215:12, 16216:10</p> <p>closed [1] - 16299:22</p> <p>closest [1] - 16165:24</p> <p>closing [5] - 16271:5, 16273:9, 16279:21, 16339:20, 16352:17</p> <p>clothes [12] - 16254:14, 16313:19, 16315:16, 16322:2, 16325:21, 16348:6, 16355:11, 16355:12, 16358:18, 16361:16, 16379:5, 16379:10</p> <p>clothes [3] - 16300:3, 16355:19, 16372:25</p> <p>Clothing [1] - 16315:14</p> <p>clothing [8] - 16173:23, 16173:25, 16175:17, 16212:8, 16315:12, 16325:25, 16342:17, 16387:19</p>	<p>co [3] - 16270:15, 16290:21, 16326:24</p> <p>co-op [1] - 16270:15</p> <p>co-operated [1] - 16326:24</p> <p>co-operative [1] - 16290:21</p> <p>coat [4] - 16174:1, 16175:20, 16211:22, 16319:23</p> <p>code [2] - 16243:10, 16302:12</p> <p>collar [1] - 16199:21</p> <p>collections [1] - 16335:10</p> <p>colon [2] - 16361:2, 16361:6</p> <p>colored [1] - 16211:4</p> <p>colour [2] - 16183:5, 16367:22</p> <p>coloured [3] - 16194:5, 16194:7, 16207:17</p> <p>colours [1] - 16200:22</p> <p>column [3] - 16164:6, 16191:2, 16321:6</p> <p>comb [4] - 16230:19, 16230:23, 16231:1</p> <p>coming [5] - 16155:25, 16159:6, 16165:24, 16219:6, 16219:8</p> <p>commence [1] - 16290:24</p> <p>comment [5] - 16188:6, 16209:8, 16218:25, 16220:16, 16380:18</p> <p>commentary [1] - 16245:21</p> <p>commenting [1] - 16191:18</p> <p>Commission [8] - 16150:2, 16150:14, 16151:1, 16151:2, 16151:8, 16333:6, 16334:5, 16355:25</p> <p>Commissioner [17] - 16154:3, 16187:16, 16196:16, 16206:13, 16206:16, 16209:24, 16223:14, 16238:23, 16239:14, 16240:17, 16268:16, 16296:7, 16296:11, 16296:14, 16330:4, 16344:9, 16389:7</p> <p>commit [3] - 16171:5, 16238:19, 16243:23</p> <p>committal [2] - 16245:2, 16262:13</p> <p>committed [16] - 16164:21, 16168:25,</p>	<p>16169:5, 16169:6, 16169:9, 16171:9, 16171:11, 16212:22, 16213:8, 16219:13, 16219:18, 16220:9, 16220:12, 16224:6, 16224:18, 16238:7</p> <p>committing [2] - 16208:18, 16220:4</p> <p>communication [2] - 16157:13, 16167:8</p> <p>community [1] - 16172:9</p> <p>compact [6] - 16191:13, 16192:1, 16277:3, 16277:7, 16277:16, 16277:17</p> <p>compact' [1] - 16191:11</p> <p>complainant [1] - 16206:14</p> <p>complaints [1] - 16173:14</p> <p>completed [3] - 16244:14, 16244:20, 16244:21</p> <p>completely [2] - 16179:8, 16185:3</p> <p>complicated [1] - 16250:5</p> <p>complied [1] - 16172:6</p> <p>composite [1] - 16183:10</p> <p>comprehensive [1] - 16170:1</p> <p>conceivably [1] - 16317:20</p> <p>concentrating [1] - 16158:16</p> <p>concern [8] - 16233:16, 16249:1, 16263:17, 16301:14, 16362:20, 16364:8, 16366:4, 16381:6</p> <p>concerned [7] - 16259:6, 16270:7, 16311:23, 16350:9, 16354:3, 16364:3, 16384:8</p> <p>concerning [3] - 16257:14, 16263:12, 16357:25</p> <p>concerns [10] - 16362:15, 16363:2, 16363:18, 16364:21, 16365:8, 16365:14, 16366:5, 16366:19, 16374:21, 16375:4</p> <p>conclude [4] - 16182:15, 16218:19, 16250:4, 16350:4</p>	<p>concluded [6] - 16169:19, 16208:7, 16212:15, 16314:24, 16349:2, 16350:6</p> <p>conclusion [6] - 16170:5, 16173:4, 16209:11, 16209:13, 16219:6, 16314:9</p> <p>concrete [1] - 16249:20</p> <p>condition [2] - 16366:15, 16367:1</p> <p>conducted [1] - 16339:2</p> <p>confectionary [1] - 16202:18</p> <p>confirm [4] - 16227:17, 16241:19, 16264:1, 16373:14</p> <p>confirms [1] - 16241:2</p> <p>confusing [1] - 16364:9</p> <p>confusion [1] - 16334:12</p> <p>Congram [1] - 16151:3</p> <p>connect [2] - 16295:15, 16340:19</p> <p>connected [16] - 16176:18, 16176:19, 16187:22, 16192:19, 16205:25, 16209:14, 16210:2, 16213:6, 16215:24, 16216:24, 16219:1, 16221:1, 16221:4, 16221:9, 16221:12, 16223:2</p> <p>connection [11] - 16182:17, 16184:25, 16198:5, 16201:2, 16214:21, 16215:3, 16215:4, 16226:23, 16257:17, 16263:9, 16284:12</p> <p>cons [1] - 16294:13</p> <p>consider [6] - 16175:8, 16213:16, 16249:9, 16249:13, 16314:13, 16383:8</p> <p>consideration [1] - 16213:23</p> <p>considered [2] - 16296:23, 16383:11</p> <p>considering [4] - 16213:17, 16257:23, 16351:15, 16351:21</p> <p>consistent [1] - 16384:16</p> <p>consists [1] - 16186:13</p> <p>Constable [4] - 16283:5, 16297:21, 16328:25, 16341:24</p> <p>constitutes [1] -</p>	<p>16165:19</p> <p>consultation [1] - 16349:2</p> <p>consulted [1] - 16347:16</p> <p>contain [1] - 16390:5</p> <p>contained [2] - 16239:6, 16277:17</p> <p>contemplated [1] - 16261:2</p> <p>contentious [2] - 16186:10, 16307:10</p> <p>contents [9] - 16197:19, 16227:25, 16277:2, 16277:4, 16277:6, 16277:9, 16277:10, 16320:3, 16335:7</p> <p>Continued [1] - 16153:3</p> <p>continued [2] - 16154:5, 16361:24</p> <p>Continuing [1] - 16387:20</p> <p>Continuity [2] - 16320:18, 16321:1</p> <p>continuity [16] - 16181:5, 16181:19, 16181:21, 16315:20, 16316:4, 16316:7, 16317:18, 16319:25, 16320:9, 16320:19, 16321:3, 16334:25, 16345:15, 16359:12, 16361:16, 16383:15</p> <p>continuity' [2] - 16335:3, 16359:1</p> <p>conversation [3] - 16342:17, 16343:8, 16357:5</p> <p>conveying [1] - 16248:2</p> <p>convicted [1] - 16219:22</p> <p>Conviction [1] - 16150:4</p> <p>copied [3] - 16195:22, 16196:25, 16197:4</p> <p>copies [1] - 16255:19</p> <p>copy [12] - 16155:9, 16172:23, 16179:24, 16180:4, 16189:15, 16193:8, 16194:4, 16195:21, 16196:4, 16228:19, 16231:18, 16378:23</p> <p>corner [15] - 16155:11, 16184:11, 16223:1, 16225:19, 16242:21, 16244:3, 16252:12, 16255:15, 16264:6, 16268:8, 16275:10,</p>
---	--	---	---	--



16283:16, 16285:18, 16303:2, 16320:13 Correct ^[1] - 16341:4 correct ^[69] - 16154:22, 16155:4, 16156:4, 16156:8, 16158:4, 16158:5, 16159:10, 16159:13, 16162:6, 16166:15, 16168:11, 16168:14, 16168:22, 16171:3, 16171:20, 16187:25, 16189:20, 16190:5, 16190:19, 16193:16, 16194:13, 16194:23, 16194:24, 16195:4, 16198:13, 16201:25, 16202:5, 16209:13, 16226:25, 16234:6, 16235:17, 16236:2, 16240:21, 16243:3, 16247:10, 16247:13, 16252:3, 16259:21, 16264:11, 16274:5, 16285:25, 16287:3, 16294:19, 16295:16, 16308:22, 16309:17, 16317:16, 16324:1, 16325:14, 16334:22, 16335:18, 16337:1, 16338:22, 16340:8, 16340:16, 16340:17, 16340:22, 16345:12, 16348:10, 16352:14, 16353:2, 16367:19, 16370:5, 16384:6, 16385:19, 16385:23, 16388:2, 16388:21, 16390:5 corrected ^[6] - 16217:13, 16222:10, 16236:1, 16278:9, 16278:20, 16371:12 correction ^[1] - 16243:13 correctly ^[1] - 16356:1 correctness ^[1] - 16187:17 correspondence ^[4] - 16174:25, 16175:1, 16180:1, 16260:6 cosmetic ^[2] - 16191:18, 16284:4 Cotler ^[1] - 16152:12 Counsel ^[3] - 16151:2, 16154:4, 16256:1 counsel ^[10] - 16155:4, 16155:8, 16171:19, 16174:11, 16180:4, 16189:14, 16205:1, 16240:17, 16245:1,	16257:8 country ^[1] - 16325:25 country-type ^[1] - 16325:25 counts ^[1] - 16221:8 couple ^[9] - 16154:11, 16179:15, 16188:7, 16206:22, 16211:11, 16211:12, 16211:18, 16252:4, 16347:22 course ^[16] - 16172:1, 16176:1, 16177:5, 16186:7, 16197:3, 16200:19, 16219:18, 16220:24, 16226:3, 16251:8, 16280:17, 16282:22, 16303:20, 16365:21, 16374:25, 16377:7 court ^[1] - 16317:10 Court ^[10] - 16151:9, 16244:25, 16350:22, 16353:25, 16364:11, 16365:19, 16390:1, 16390:3, 16390:14, 16390:18 courthouse ^[1] - 16247:23 cover ^[6] - 16154:11, 16239:7, 16240:19, 16240:25, 16284:3, 16285:3 covered ^[5] - 16281:20, 16309:24, 16336:21, 16369:5, 16379:20 covering ^[1] - 16273:9 Craig ^[1] - 16252:1 Craik ^[1] - 16381:20 credibility ^[10] - 16221:24, 16278:5, 16278:23, 16280:12, 16363:5, 16363:19, 16364:23, 16365:9, 16365:15, 16365:16 credible ^[7] - 16170:15, 16170:21, 16204:1, 16207:21, 16208:8, 16212:16, 16216:18 credit ^[3] - 16373:2, 16373:14, 16373:18 crescent ^[1] - 16204:6 crime ^[6] - 16171:6, 16171:9, 16171:11, 16177:20, 16354:24, 16381:19 Crime ^[2] - 16173:1, 16174:9 crimes ^[2] - 16158:19, 16159:1 Crook ^[4] - 16198:16,	16198:19, 16198:21, 16199:1 cross ^[22] - 16239:18, 16239:24, 16240:2, 16240:7, 16242:9, 16261:8, 16261:18, 16262:8, 16270:21, 16272:5, 16272:11, 16282:20, 16282:23, 16285:12, 16299:2, 16299:3, 16299:11, 16317:11, 16325:4, 16332:8, 16332:18, 16355:15 cross-examination ^[11] - 16239:18, 16239:24, 16240:2, 16240:7, 16242:9, 16272:11, 16282:23, 16285:12, 16299:11, 16332:8, 16332:18 cross-examination' ^[3] - 16299:2, 16299:3, 16355:15 cross-examine ^[3] - 16262:8, 16317:11, 16325:4 cross-examined ^[4] - 16261:8, 16261:18, 16270:21, 16282:20 cross-examining ^[1] - 16272:5 crossed ^[1] - 16336:10 crown ^[4] - 16245:25, 16246:9, 16257:8, 16257:10 Crown ^[20] - 16227:10, 16243:7, 16246:10, 16250:9, 16255:25, 16256:25, 16257:6, 16258:16, 16258:19, 16259:2, 16259:9, 16259:20, 16262:5, 16309:25, 16316:14, 16316:22, 16317:15, 16331:21, 16337:17 Crown's ^[3] - 16157:4, 16299:22, 16353:9 Csr ^[8] - 16151:9, 16151:10, 16390:2, 16390:12, 16390:13, 16390:16, 16390:17 Cumming ^[1] - 16238:18 current ^[1] - 16177:4 custody ^[1] - 16249:23 Cut ^[1] - 16373:20 cut ^[5] - 16270:14, 16288:15, 16318:19, 16319:4, 16319:15	D D' ^[1] - 16307:16 D's ^[1] - 16271:10 Dale ^[1] - 16246:1 Dallison ^[2] - 16154:25, 16170:14 Danchuk ^[7] - 16271:9, 16271:22, 16272:5, 16273:17, 16287:10, 16287:11, 16287:13 Danchuk's ^[8] - 16270:15, 16273:3, 16273:4, 16273:12, 16284:3, 16307:17, 16308:2, 16308:10 Danchuks ^[5] - 16306:9, 16308:9, 16371:10, 16371:20, 16379:3 Danchuks' ^[1] - 16371:4 danger ^[2] - 16355:4, 16357:22 dangerous ^[1] - 16347:21 dark ^[1] - 16211:4 Date ^[1] - 16372:25 date ^[15] - 16155:23, 16183:24, 16188:5, 16198:16, 16217:20, 16226:16, 16229:15, 16231:4, 16238:6, 16241:12, 16250:8, 16252:6, 16326:23, 16348:14, 16366:18 dated ^[4] - 16187:20, 16227:21, 16229:1, 16348:9 dates ^[7] - 16206:25, 16241:3, 16241:8, 16244:25, 16245:12, 16319:25, 16380:21 dating ^[1] - 16173:13 Dave ^[2] - 16313:18, 16372:9 David ^[17] - 16150:4, 16152:2, 16152:11, 16153:3, 16154:5, 16159:5, 16169:14, 16213:14, 16241:11, 16270:13, 16280:9, 16329:11, 16342:10, 16345:24, 16354:12, 16359:23 Davis ^[4] - 16273:17, 16312:6, 16312:10, 16383:14 day-to-day ^[1] - 16245:11 days ^[9] - 16187:14,	16207:4, 16240:18, 16240:19, 16240:25, 16241:4, 16245:15, 16256:10, 16256:12 days' ^[1] - 16286:7 deal ^[7] - 16156:22, 16279:7, 16280:3, 16304:2, 16308:8, 16319:20, 16322:14 dealing ^[6] - 16154:9, 16185:8, 16191:25, 16206:3, 16224:3, 16251:24 dealings ^[3] - 16341:15, 16362:18, 16362:19 deals ^[2] - 16351:4, 16387:19 dealt ^[1] - 16184:3 death ^[1] - 16269:22 debate ^[2] - 16219:11, 16219:20 deceased ^[1] - 16246:16 deceiving ^[1] - 16270:16 December ^[10] - 16264:10, 16265:18, 16266:21, 16267:2, 16268:21, 16268:22, 16308:1, 16321:5, 16335:4, 16348:9 decide ^[3] - 16221:21, 16252:25, 16308:17 decided ^[3] - 16254:23, 16304:11, 16317:25 decision ^[8] - 16214:16, 16217:1, 16219:2, 16219:8, 16222:5, 16289:10, 16297:5, 16315:8 declaration ^[1] - 16355:13 deemed ^[2] - 16354:19, 16355:7 defence ^[23] - 16155:4, 16171:19, 16213:16, 16245:1, 16250:14, 16257:3, 16257:7, 16257:8, 16257:24, 16258:9, 16258:18, 16259:3, 16259:13, 16259:23, 16260:16, 16260:19, 16260:22, 16261:5, 16299:23, 16317:2, 16331:19, 16343:5, 16343:25 Defence ^[1] - 16255:25 defences ^[4] - 16332:2, 16332:4, 16354:16, 16355:5
--	---	---	---	---



<p>defend [1] - 16256:22 defensive [1] - 16312:16 Defensive [1] - 16312:19 defensiveness [1] - 16312:7 deliberations [1] - 16296:22 denied [4] - 16198:20, 16199:3, 16219:17, 16355:11 Dennis [2] - 16161:7, 16164:5 Department [2] - 16255:21, 16256:5 department [9] - 16173:12, 16183:10, 16226:1, 16258:1, 16267:22, 16270:14, 16278:5, 16278:24, 16280:12 Depot [1] - 16343:14 depot [1] - 16329:14 dept [2] - 16198:3, 16199:23 Deputy [3] - 16244:8, 16244:17, 16255:18 deputy [2] - 16245:9, 16285:23 describe [6] - 16202:23, 16211:3, 16212:11, 16246:12, 16246:15, 16273:18 described [3] - 16170:1, 16199:18, 16210:25 describes [8] - 16173:11, 16202:25, 16207:14, 16207:15, 16207:18, 16216:7, 16216:8, 16216:16 Description [1] - 16153:2 description [5] - 16173:3, 16175:15, 16273:12, 16306:4, 16306:13 despite [1] - 16246:21 detail [1] - 16353:17 detailed [1] - 16346:12 Detective [11] - 16180:17, 16197:15, 16217:19, 16218:7, 16248:5, 16274:25, 16287:1, 16289:18, 16289:23, 16314:12 detector [3] - 16263:21, 16263:23, 16264:3 determine [2] -</p>	<p>16336:5, 16337:2 determined [3] - 16316:15, 16365:18, 16375:6 developed [1] - 16169:13 dicks [1] - 16342:21 dictate [1] - 16348:2 Diewold [5] - 16189:19, 16266:7, 16274:19, 16306:3 Diewold [1] - 16189:16 Diewold's [1] - 16189:24 difference [3] - 16259:12, 16273:12, 16308:14 differences [1] - 16177:2 different [16] - 16165:21, 16171:3, 16178:14, 16185:4, 16199:21, 16200:13, 16200:19, 16200:25, 16224:10, 16225:20, 16259:14, 16280:14, 16280:20, 16295:19, 16319:4, 16351:7 differently [1] - 16260:3 difficult [2] - 16220:22, 16364:15 difficulty [1] - 16249:21 dire [2] - 16252:21, 16255:13 dire [2] - 16252:20, 16255:8 direct [2] - 16188:19, 16310:12 directed [3] - 16168:4, 16226:5, 16226:9 direction [2] - 16346:3, 16374:19 directions [2] - 16306:5, 16374:14 Director [1] - 16151:3 dis [1] - 16357:24 disappointed [1] - 16362:21 disclose [1] - 16339:3 disclosed [5] - 16213:18, 16213:20, 16224:20, 16225:9, 16225:11 disclosure [1] - 16157:14 discovered [2] - 16319:1, 16368:20 discussed [5] - 16218:23, 16230:19, 16314:8, 16314:21,</p>	<p>16357:10 discusses [1] - 16342:14 discussion [6] - 16154:20, 16168:20, 16262:23, 16314:16, 16323:4, 16354:6 discussions [6] - 16160:21, 16167:9, 16172:1, 16235:15, 16323:3, 16344:23 displayed [1] - 16196:19 distinction [2] - 16258:14, 16259:1 ditto [1] - 16378:3 doc [2] - 16239:4, 16319:14 Document [2] - 16151:4, 16151:5 document [38] - 16164:23, 16172:17, 16173:7, 16176:12, 16180:9, 16181:10, 16188:3, 16193:4, 16193:5, 16195:18, 16196:6, 16200:4, 16200:7, 16201:7, 16202:12, 16205:20, 16210:4, 16238:16, 16239:5, 16239:8, 16240:16, 16240:22, 16241:2, 16241:25, 16242:22, 16269:12, 16278:4, 16285:18, 16289:13, 16291:14, 16292:11, 16293:15, 16337:19, 16355:25, 16370:11, 16380:15, 16381:12, 16387:4 documents [25] - 16154:16, 16162:3, 16162:17, 16167:15, 16168:18, 16172:13, 16179:15, 16216:5, 16219:9, 16247:14, 16252:4, 16253:25, 16262:21, 16263:25, 16267:16, 16268:6, 16282:11, 16284:18, 16288:9, 16293:8, 16293:20, 16302:22, 16310:8, 16310:22, 16378:24 Don [1] - 16151:10 Donald [2] - 16390:2, 16390:17 done [32] - 16161:19, 16162:25, 16176:19, 16182:7, 16187:13,</p>	<p>16187:20, 16199:7, 16204:17, 16204:19, 16205:16, 16221:18, 16224:23, 16227:23, 16228:18, 16243:7, 16243:25, 16245:20, 16250:7, 16258:1, 16273:15, 16290:7, 16304:13, 16316:15, 16327:2, 16327:4, 16327:18, 16332:9, 16332:20, 16335:12, 16349:4, 16377:15, 16388:17 donor [3] - 16297:2, 16334:20, 16337:14 donor's [2] - 16337:15, 16337:20 donors [1] - 16296:2 door [2] - 16180:19, 16180:23 dope [4] - 16323:10, 16372:14, 16377:14, 16378:11 dope [1] - 16357:13 double [1] - 16317:22 double-page [1] - 16317:22 doubt [1] - 16182:9 Douglas [1] - 16151:2 down [46] - 16182:23, 16186:19, 16193:17, 16198:7, 16222:20, 16235:18, 16236:5, 16249:22, 16255:5, 16267:9, 16270:12, 16273:14, 16273:15, 16281:22, 16284:9, 16285:5, 16286:2, 16288:3, 16290:16, 16290:18, 16297:17, 16302:24, 16306:3, 16306:20, 16308:8, 16309:4, 16312:13, 16327:22, 16334:8, 16335:8, 16336:8, 16342:15, 16345:21, 16356:20, 16358:21, 16359:19, 16368:22, 16375:9, 16376:5, 16379:4, 16380:18, 16382:14, 16383:14, 16384:25, 16386:25, 16389:1 Down [1] - 16252:15 Dr [9] - 16295:9, 16298:11, 16337:20, 16340:24, 16346:15, 16347:13, 16347:17, 16354:10, 16388:21</p>	<p>dragged [1] - 16269:20 draw [2] - 16201:2, 16214:11 dress [2] - 16175:18, 16325:25 drive [1] - 16204:6 driver [2] - 16167:22, 16167:23 drug [5] - 16362:16, 16363:4, 16363:5, 16363:19, 16365:10 Drug [1] - 16207:6 drugs [9] - 16328:4, 16328:7, 16362:9, 16362:22, 16363:9, 16365:1, 16365:15, 16377:4, 16377:8 drugs [2] - 16327:23, 16328:1 drunkenness [3] - 16331:20, 16332:17, 16354:16 Due [1] - 16183:6 duplicate [1] - 16255:19 duplication [3] - 16277:12, 16284:5, 16284:25 Duplication [1] - 16284:4 uplications [4] - 16277:4, 16277:8, 16277:11, 16277:19 during [8] - 16156:6, 16226:3, 16282:22, 16283:21, 16285:2, 16303:10, 16342:19, 16346:14 During [2] - 16238:6, 16256:20 duty [1] - 16171:17 dwelling [3] - 16269:19, 16270:7, 16281:14</p>
E				
<p>E [1] - 16314:18 Eamon [1] - 16152:10 early [3] - 16224:15, 16293:8, 16366:13 easier [2] - 16242:23, 16249:5 east [8] - 16273:22, 16274:2, 16274:10, 16274:15, 16274:18, 16275:1, 16275:5, 16356:14 east-west [6] - 16274:2, 16274:10, 16274:15, 16275:1, 16275:5,</p>				



<p>16356:14 eaten [1] - 16254:1 Eddie [1] - 16152:8 Edgar [1] - 16342:11 edged' [1] - 16232:21 Edmondson [2] - 16230:12, 16230:13 Edward [1] - 16150:7 effect [22] - 16164:5, 16170:8, 16177:14, 16178:22, 16184:13, 16213:6, 16214:25, 16223:8, 16260:5, 16297:13, 16329:24, 16343:7, 16346:3, 16346:11, 16346:17, 16353:8, 16359:24, 16368:18, 16378:6, 16384:15, 16388:12, 16388:14 effected [2] - 16327:23, 16328:1 efforts [2] - 16321:14, 16344:20 eight [2] - 16308:21, 16333:19 either [21] - 16155:3, 16161:10, 16163:20, 16166:25, 16177:24, 16183:7, 16184:15, 16186:4, 16199:3, 16224:13, 16232:1, 16238:25, 16249:11, 16258:20, 16285:2, 16295:15, 16298:21, 16304:2, 16314:14, 16349:2, 16363:5 ejaculation [2] - 16275:16, 16275:25 elbow [1] - 16212:10 elevator [3] - 16254:19, 16369:18, 16370:2 elevator' [1] - 16369:15 eliminate [9] - 16233:19, 16270:20, 16295:11, 16304:10, 16334:20, 16339:12, 16339:22, 16359:1, 16359:12 eliminated [9] - 16161:9, 16167:17, 16169:14, 16169:15, 16169:20, 16179:7, 16215:1, 16339:16, 16387:14 eliminated' [1] - 16161:24 Elliott [6] - 16161:7, 16164:5, 16164:9, 16164:10, 16165:11,</p>	<p>16166:7 Elmer [3] - 16305:1, 16308:1, 16321:2 Elmo [3] - 16194:8, 16196:19, 16205:17 elsewhere [1] - 16339:8 Elson [1] - 16152:7 employed [1] - 16211:21 Emson [13] - 16234:25, 16236:2, 16242:20, 16295:9, 16337:20, 16338:9, 16340:24, 16346:10, 16346:15, 16381:24, 16384:25, 16388:21 Emson' [3] - 16295:6, 16298:10 Emson's [2] - 16298:8, 16298:12 encircled [1] - 16200:20 Enclosed [1] - 16255:19 encompassed [1] - 16275:2 encounter [1] - 16352:1 end [9] - 16181:8, 16204:10, 16210:16, 16238:20, 16302:4, 16313:23, 16323:13, 16354:20, 16357:24 ended [7] - 16186:9, 16202:2, 16228:2, 16228:3, 16313:21, 16366:19, 16384:3 endorsement [3] - 16220:25, 16221:24, 16225:18 ends [1] - 16173:4 enlarged [1] - 16286:23 ensure [1] - 16359:25 enter [3] - 16314:15, 16314:16, 16314:17 entire [2] - 16186:13, 16375:8 entrance [1] - 16247:24 entries [1] - 16303:19 entry [2] - 16192:14, 16350:12 envelope [1] - 16302:3 envelopes [1] - 16335:9 episode [9] - 16159:4, 16266:3, 16275:17, 16276:1, 16276:2, 16276:21, 16300:14, 16301:21, 16362:24 erect [2] - 16204:13, 16208:11 error [1] - 16235:23 Esq [5] - 16152:3, 16152:7, 16152:8,</p>	<p>16152:9, 16152:10 essentially [2] - 16163:25, 16310:5 Esson [1] - 16151:11 Est [1] - 16235:25 establish [6] - 16181:18, 16181:21, 16296:23, 16296:24, 16328:6, 16367:22 established [4] - 16235:25, 16236:2, 16236:3, 16275:11 establishing [1] - 16298:5 estimated [2] - 16234:25, 16235:25 estimates [1] - 16280:1 estimation [1] - 16184:14 et [1] - 16373:1 etc [14] - 16277:3, 16277:7, 16277:17, 16292:9, 16292:20, 16293:17, 16294:8, 16323:21, 16324:25, 16330:15, 16336:5, 16347:3, 16387:24, 16388:10 etcetera [10] - 16207:18, 16303:2, 16314:3, 16314:19, 16326:18, 16338:12, 16358:6, 16358:12, 16362:1, 16375:3 etcetera' [4] - 16357:15, 16357:16, 16377:14, 16378:11 evening [1] - 16173:17 event [3] - 16255:13, 16331:24, 16332:16 events [5] - 16202:8, 16327:10, 16334:4, 16342:19, 16363:6 eventually [2] - 16203:20, 16376:18 evidence [134] - 16157:17, 16158:8, 16163:15, 16163:19, 16164:15, 16165:19, 16165:25, 16176:25, 16177:1, 16177:4, 16177:15, 16178:13, 16181:18, 16182:6, 16184:14, 16187:1, 16190:14, 16208:23, 16216:5, 16219:10, 16219:11, 16219:14, 16228:3, 16236:16, 16239:11, 16246:13, 16246:14, 16246:15,</p>	<p>16246:21, 16246:23, 16250:10, 16250:14, 16250:21, 16250:22, 16251:1, 16251:25, 16252:2, 16253:5, 16253:11, 16253:15, 16254:12, 16262:3, 16262:12, 16271:5, 16278:15, 16279:10, 16280:6, 16281:12, 16281:18, 16282:14, 16283:11, 16283:22, 16296:24, 16297:6, 16297:7, 16299:23, 16300:2, 16301:15, 16305:7, 16305:10, 16307:5, 16307:15, 16309:16, 16310:19, 16311:4, 16311:15, 16312:16, 16313:11, 16314:2, 16314:13, 16315:1, 16315:4, 16321:14, 16321:23, 16322:12, 16325:22, 16328:4, 16335:18, 16335:20, 16335:23, 16337:6, 16338:16, 16338:17, 16339:11, 16340:23, 16341:6, 16343:25, 16345:23, 16346:1, 16346:14, 16346:24, 16347:4, 16348:16, 16349:7, 16349:13, 16349:17, 16349:22, 16349:24, 16350:5, 16351:7, 16351:15, 16351:23, 16351:24, 16353:1, 16353:14, 16353:22, 16354:4, 16354:8, 16354:23, 16355:19, 16358:22, 16359:22, 16360:1, 16362:24, 16363:7, 16366:9, 16368:3, 16368:4, 16368:6, 16368:18, 16369:24, 16370:8, 16371:9, 16371:19, 16371:23, 16372:12, 16374:22, 16374:25, 16375:2, 16379:19, 16383:8, 16383:12, 16384:16 evidence' [2] - 16297:19, 16359:21 evidence-in-chief [1] - 16322:12 evident [2] - 16328:16, 16386:8 evidentiary [1] - 16294:17</p>	<p>Evidently [4] - 16183:17, 16279:5, 16297:9, 16312:15 evidently [17] - 16214:24, 16239:21, 16260:8, 16271:21, 16275:1, 16277:8, 16279:25, 16288:6, 16288:7, 16295:8, 16304:11, 16308:14, 16313:21, 16321:2, 16333:13, 16334:13, 16362:13 exactly [3] - 16237:2, 16300:3, 16355:19 exam [1] - 16261:17 examination [17] - 16239:18, 16239:21, 16239:24, 16240:2, 16240:7, 16242:9, 16272:11, 16282:23, 16285:11, 16285:12, 16299:11, 16311:8, 16332:8, 16332:18, 16336:23, 16361:1, 16387:9 examination' [3] - 16299:2, 16299:3, 16355:15 examination-in-chief [1] - 16361:1 examine [3] - 16262:8, 16317:11, 16325:4 examined [5] - 16261:8, 16261:18, 16270:21, 16282:20, 16327:14 examining [3] - 16198:8, 16242:11, 16272:5 example [5] - 16185:3, 16227:21, 16259:8, 16281:14, 16376:13 Except [1] - 16276:21 except [3] - 16199:20, 16275:17, 16275:25 exception [1] - 16350:3 exclamation [1] - 16315:6 exclude [5] - 16220:7, 16220:13, 16223:11, 16295:15, 16297:1 excluded [1] - 16220:8 exculpatory [1] - 16178:6 Executive [1] - 16151:3 exhibit [4] - 16237:13, 16325:12, 16325:15, 16355:20 exhibit' [1] - 16237:12 exhibits [7] - 16227:24,</p>
--	--	---	--	--



<p>16227:25, 16234:7, 16237:18, 16298:19, 16298:20, 16347:8 exist [3] - 16194:20, 16271:24, 16311:14 existed [2] - 16222:12, 16226:23 existence [1] - 16156:7 expect [13] - 16159:3, 16188:17, 16192:2, 16206:20, 16220:18, 16228:9, 16229:23, 16258:12, 16299:21, 16300:1, 16303:9, 16311:18, 16378:13 expected [2] - 16251:6, 16272:6 expenses [2] - 16255:21, 16290:10 expert [1] - 16302:17 explain [10] - 16249:15, 16266:13, 16300:23, 16308:13, 16317:25, 16337:10, 16338:16, 16348:23, 16350:11 explanation [5] - 16276:18, 16338:21, 16340:3, 16340:20, 16383:7 explanatory [1] - 16306:8 exploring [1] - 16332:25 extent [4] - 16158:19, 16179:4, 16228:14, 16328:5 extremely [1] - 16290:20 eye [3] - 16177:17, 16177:25, 16178:1</p>	<p>16277:16, 16288:25, 16295:25, 16314:25, 16340:3, 16340:23, 16350:9, 16352:16, 16359:24, 16383:7 factor [1] - 16222:12 factored [1] - 16222:4 factors [1] - 16366:1 facts [9] - 16170:15, 16171:1, 16178:8, 16204:1, 16207:22, 16208:9, 16212:16, 16216:19, 16221:11 Fair[1] - 16318:1 fair [28] - 16156:2, 16171:12, 16181:16, 16182:15, 16182:20, 16185:13, 16196:8, 16206:9, 16216:5, 16227:16, 16230:2, 16231:7, 16234:5, 16240:5, 16242:11, 16268:2, 16269:16, 16276:20, 16278:1, 16285:1, 16294:4, 16321:24, 16340:5, 16351:14, 16351:20, 16380:14, 16382:10, 16387:4 fairness [3] - 16165:16, 16301:6, 16384:20 falling [1] - 16296:8 false [1] - 16284:7 familiar [5] - 16160:22, 16166:5, 16237:1, 16329:18, 16355:6 family [1] - 16199:2 far [13] - 16155:2, 16162:4, 16182:4, 16185:20, 16225:7, 16259:6, 16307:9, 16311:23, 16316:24, 16327:7, 16327:18, 16332:12, 16334:10 farming [1] - 16325:24 fat [1] - 16203:3 father [2] - 16248:1, 16288:5 February[14] - 16157:18, 16172:25, 16179:16, 16179:17, 16180:5, 16180:15, 16185:14, 16188:22, 16202:10, 16205:7, 16207:3, 16208:21, 16232:20, 16283:6 feelings [3] - 16328:20, 16328:23, 16374:7 feet [4] - 16186:21, 16203:2, 16309:19</p>	<p>fellow [11] - 16189:21, 16204:11, 16207:19, 16254:19, 16266:7, 16266:9, 16267:12, 16287:14, 16289:7, 16375:6, 16381:20 felt [7] - 16178:11, 16209:12, 16251:3, 16251:21, 16310:17, 16365:20, 16373:23 female [2] - 16304:21, 16305:14 females [1] - 16305:17 fence [3] - 16207:12, 16309:18, 16309:19 few [2] - 16264:17, 16368:24 fibre [5] - 16233:20, 16302:17, 16302:19, 16387:20 field [1] - 16179:9 Figure[6] - 16292:4, 16292:9, 16292:10, 16292:20, 16293:17, 16294:7 figure [2] - 16269:25, 16376:3 figured [2] - 16301:5, 16303:8 figures [2] - 16245:2, 16343:22 figuring [2] - 16283:25, 16326:6 file [62] - 16154:20, 16157:14, 16158:24, 16159:25, 16160:10, 16160:11, 16161:10, 16161:22, 16162:7, 16163:21, 16164:14, 16165:7, 16166:1, 16166:6, 16166:8, 16166:14, 16167:5, 16168:7, 16168:9, 16171:1, 16172:14, 16173:6, 16174:7, 16174:9, 16174:12, 16174:14, 16182:8, 16182:14, 16186:14, 16186:16, 16186:18, 16186:21, 16187:21, 16188:16, 16194:20, 16195:18, 16196:17, 16200:8, 16200:13, 16200:19, 16200:25, 16217:10, 16221:25, 16222:8, 16228:4, 16228:15, 16231:18, 16240:18, 16240:25, 16241:21, 16241:23, 16245:17, 16268:18,</p>	<p>16268:19, 16268:21, 16269:24, 16280:22, 16281:5, 16325:9, 16342:1, 16344:10, 16382:15 files [8] - 16160:4, 16163:18, 16163:23, 16177:10, 16190:12, 16331:17, 16331:24, 16332:6 filing [1] - 16293:8 finally [1] - 16246:5 findable [2] - 16311:14, 16322:23 fine [11] - 16156:18, 16191:20, 16196:3, 16266:13, 16291:13, 16291:21, 16312:25, 16356:4, 16358:16, 16380:9, 16380:11 fingerprint [2] - 16327:11, 16327:19 fingerprinted [3] - 16326:21, 16326:25, 16327:5 Fingerprints[1] - 16326:10 finish [2] - 16157:7, 16338:14 finished [3] - 16226:14, 16226:17, 16242:20 finishing [1] - 16155:19 First[5] - 16172:17, 16214:14, 16283:1, 16284:3, 16349:13 first [35] - 16159:24, 16194:25, 16195:1, 16196:12, 16198:10, 16201:18, 16211:9, 16222:16, 16223:6, 16223:11, 16225:2, 16239:22, 16248:3, 16258:25, 16269:17, 16280:21, 16281:9, 16292:19, 16294:7, 16304:4, 16317:7, 16318:4, 16323:24, 16333:7, 16333:16, 16336:2, 16337:1, 16337:5, 16342:8, 16356:15, 16368:16, 16380:17, 16382:25, 16383:19, 16384:1 first-mentioned [1] - 16356:15 fish [1] - 16309:11 Fisher[12] - 16152:10, 16189:6, 16190:10, 16192:4, 16192:14, 16192:16, 16193:1,</p>	<p>16219:15, 16219:17, 16219:18, 16219:21 Fishers [1] - 16333:4 fit [1] - 16208:12 five [5] - 16186:21, 16272:1, 16279:3, 16279:6, 16310:9 flagged [1] - 16159:14 flashlight [4] - 16369:13, 16369:15, 16370:1, 16370:5 flashlight' [1] - 16357:12 floor [2] - 16280:14, 16280:19 fluid [11] - 16336:7, 16336:11, 16336:13, 16336:18, 16337:3, 16338:2, 16338:4, 16338:11, 16387:12, 16389:2, 16389:3 fluids [2] - 16337:21, 16339:13 fog [1] - 16356:21 fold [1] - 16232:5 folder [3] - 16180:1, 16201:10, 16293:8 follow [13] - 16167:21, 16168:2, 16170:14, 16181:23, 16185:7, 16213:1, 16220:14, 16221:18, 16290:2, 16302:14, 16304:2, 16313:15 follow-up [2] - 16181:23, 16290:2 followed [6] - 16168:4, 16241:16, 16271:24, 16307:24, 16373:19, 16386:16 following [6] - 16159:21, 16274:19, 16296:21, 16321:23, 16323:8, 16338:9 follows [1] - 16277:1 Fontaine[2] - 16231:2 foolscap [3] - 16281:8, 16303:16, 16319:15 foot [1] - 16269:19 Forbes[1] - 16255:18 forbidden [1] - 16173:21 force [1] - 16317:6 forced [1] - 16173:17 Ford[2] - 16273:5, 16306:20 foregoing [1] - 16390:4 forget [1] - 16258:21 forgot [1] - 16291:9 forgotten [1] - 16352:20</p>
F				
<p>face [5] - 16210:14, 16212:9, 16258:12, 16271:10, 16272:7 facetious [1] - 16310:6 facing [1] - 16374:13 fact [31] - 16163:8, 16165:14, 16177:16, 16189:12, 16193:25, 16205:4, 16208:21, 16211:14, 16217:16, 16223:5, 16223:10, 16226:6, 16236:23, 16242:6, 16249:1, 16249:10, 16249:12, 16263:25, 16266:3, 16267:23, 16276:15,</p>				



<p>form [8] - 16158:18, 16159:18, 16159:20, 16170:9, 16183:25, 16244:19, 16302:20 formally [1] - 16257:1 forth [1] - 16246:22 forward [1] - 16253:22 fought [1] - 16368:23 fouled [2] - 16373:3, 16374:13 found' [2] - 16190:22, 16190:23 four [3] - 16225:4, 16225:5, 16362:1 fourth [4] - 16167:19, 16171:21, 16202:25, 16300:21 Fps [1] - 16326:9 Frayer [1] - 16152:11 freeze [3] - 16346:10, 16388:14, 16388:22 freezing [5] - 16275:15, 16275:22, 16276:12, 16346:15, 16388:18 fridge [1] - 16235:1 friend [1] - 16231:3 fringes [1] - 16179:11 front [9] - 16180:19, 16180:23, 16238:13, 16247:25, 16268:18, 16284:22, 16292:17, 16302:3, 16302:4 frozen [6] - 16235:4, 16337:4, 16337:8, 16338:18, 16339:15, 16340:10 full [3] - 16243:5, 16298:20, 16336:25 fully [1] - 16229:23 funeral [1] - 16313:12 future [2] - 16248:19, 16249:8</p>	<p>16296:2, 16297:3, 16297:11, 16300:10, 16315:16, 16334:21, 16335:22, 16340:12, 16345:9, 16345:24, 16348:5, 16351:18, 16356:10, 16361:16 garage [1] - 16309:4 garment [1] - 16174:1 Garrett [1] - 16152:6 gather [1] - 16359:9 Gb [1] - 16301:21 general [3] - 16159:1, 16206:6, 16362:20 General [3] - 16244:8, 16244:17, 16290:14 Generals [1] - 16256:5 generally [8] - 16160:20, 16167:10, 16188:4, 16245:6, 16292:24, 16329:10, 16354:2, 16354:22 generated [2] - 16228:8, 16228:18 gentleman [1] - 16182:22 George [2] - 16252:1, 16313:6 Gerald [1] - 16239:2 Gerse [2] - 16273:5, 16367:18 Gerse's [1] - 16384:23 Gibson [1] - 16152:9 Giles [1] - 16300:15 girdle [3] - 16384:18, 16384:19, 16384:20 girl [9] - 16183:9, 16246:14, 16278:8, 16278:12, 16278:14, 16279:1, 16323:20, 16368:23, 16374:7 girl' [1] - 16328:21 girls [1] - 16272:1 given [12] - 16169:23, 16170:8, 16180:17, 16200:16, 16203:12, 16221:20, 16270:4, 16287:15, 16345:10, 16353:22, 16364:16, 16368:4 glance [1] - 16384:11 glean [1] - 16160:5 Gm [1] - 16300:7 gonna [1] - 16359:25 government [1] - 16195:18 Government [1] - 16152:4 grab [1] - 16268:12 Grant [2] - 16273:6,</p>	<p>16313:5 granted [1] - 16175:11 green [2] - 16367:10, 16368:13 greeted [1] - 16312:4 grey [1] - 16343:2 Greystone [2] - 16202:21, 16204:10 ground [1] - 16332:8 group [8] - 16183:4, 16314:14, 16336:4, 16336:6, 16336:9, 16336:19, 16337:3, 16387:13 grouping [2] - 16198:22, 16199:5 guard [1] - 16342:10 guess [21] - 16170:24, 16175:6, 16175:8, 16179:20, 16203:23, 16203:24, 16220:15, 16221:3, 16261:9, 16270:20, 16272:20, 16287:12, 16297:15, 16314:22, 16348:24, 16362:20, 16369:21, 16370:16, 16373:20, 16373:24, 16383:7 guide [2] - 16298:12, 16360:10 guided [1] - 16222:22 guides [2] - 16182:5, 16348:3 guy [1] - 16213:13</p>	<p>handle [3] - 16236:18, 16369:20, 16370:19 handled [8] - 16237:19, 16360:17, 16361:8, 16369:21, 16370:9, 16370:10, 16370:15, 16372:6 handling [1] - 16182:19 handwriting [10] - 16195:15, 16195:23, 16200:21, 16205:8, 16205:9, 16205:13, 16205:19, 16209:24, 16223:16, 16342:3 handwritten [11] - 16188:1, 16201:8, 16241:17, 16324:24, 16325:2, 16325:6, 16325:8, 16325:11, 16325:14, 16325:17, 16386:9 Hankie [1] - 16384:18 hankie [1] - 16384:20 happy [4] - 16187:15, 16188:18, 16304:3, 16378:24 hard [4] - 16328:20, 16328:22, 16374:7, 16382:2 harmful [1] - 16317:15 haul [1] - 16285:6 he' [1] - 16373:2 heading [9] - 16210:22, 16225:15, 16229:2, 16273:21, 16277:25, 16278:23, 16293:20, 16357:19, 16383:12 headings [1] - 16293:16 health [1] - 16366:11 hear [6] - 16219:10, 16219:11, 16220:18, 16236:16, 16310:22, 16351:25 heard [18] - 16157:17, 16207:9, 16216:4, 16216:5, 16219:10, 16219:24, 16234:14, 16262:3, 16334:10, 16339:4, 16345:23, 16364:17, 16365:19, 16366:9, 16379:25, 16380:6, 16380:18, 16383:2 hearing [21] - 16158:17, 16190:14, 16226:14, 16226:17, 16226:21, 16241:17, 16253:16, 16257:24, 16259:17, 16260:20, 16260:23, 16261:4, 16262:4,</p>	<p>16262:25, 16281:21, 16307:6, 16327:14, 16342:14, 16380:19, 16383:2, 16383:5 Hearing [1] - 16256:2 hearing' [1] - 16263:2 hearsay [3] - 16348:19, 16350:1, 16350:3 heavy [1] - 16373:24 Hein [3] - 16230:20, 16230:21, 16309:12 Hein' [1] - 16309:11 held [1] - 16210:14 help [8] - 16218:18, 16231:2, 16254:8, 16264:19, 16270:17, 16283:24, 16284:16, 16306:9 helped [1] - 16203:20 helpful [4] - 16222:13, 16290:20, 16355:7, 16368:21 hereby [1] - 16390:4 herein [2] - 16290:24, 16390:6 Hersh [1] - 16152:2 hesitation [1] - 16365:25 Hewgills [1] - 16207:6 Hi [1] - 16202:17 hide [1] - 16316:22 highlight [1] - 16206:22 highlighted [2] - 16184:15, 16190:13 highlighting [2] - 16190:9, 16190:10 Hillcrest [1] - 16309:3 him' [1] - 16307:20 himself [1] - 16377:7 hindsight [2] - 16176:7, 16176:13 Hinz [3] - 16151:9, 16390:2, 16390:13 history [3] - 16354:10, 16354:13, 16354:18 hit [3] - 16212:9, 16278:12, 16368:23 hitting [3] - 16278:8, 16278:14, 16278:25 Hnatiuk [2] - 16252:18, 16304:8 Hnatiuks' [1] - 16304:6 Hodson [79] - 16151:2, 16153:4, 16154:6, 16156:15, 16164:4, 16166:2, 16168:5, 16169:25, 16175:24, 16178:19, 16181:23, 16186:4, 16187:15, 16187:25, 16188:17,</p>
H				
<p>habit [1] - 16296:9 hair [7] - 16233:12, 16233:20, 16233:23, 16270:14, 16304:22, 16327:15, 16327:18 half [2] - 16319:4, 16319:15 hand [16] - 16155:11, 16184:11, 16195:14, 16212:6, 16252:11, 16255:15, 16264:6, 16268:8, 16275:10, 16283:16, 16285:18, 16297:18, 16298:5, 16320:13, 16344:13, 16377:17 hand/left [1] - 16297:18 handed [1] - 16346:24 handedness [1] - 16347:5 handiwork [2] - 16194:1, 16320:11</p>				
G				
<p>Gail [41] - 16158:1, 16169:3, 16173:3, 16175:10, 16175:18, 16176:11, 16180:20, 16182:18, 16186:13, 16186:16, 16211:19, 16211:23, 16212:24, 16213:13, 16215:4, 16215:21, 16216:13, 16219:19, 16220:13, 16224:15, 16224:17, 16226:24, 16231:3, 16277:3, 16277:7, 16277:17, 16295:16,</p>				



16190:2, 16193:19, 16194:6, 16196:20, 16196:21, 16201:16, 16206:15, 16206:17, 16206:18, 16209:19, 16210:23, 16214:5, 16216:22, 16218:22, 16221:2, 16222:13, 16223:20, 16223:23, 16225:4, 16228:23, 16234:1, 16235:21, 16239:4, 16239:12, 16239:15, 16239:16, 16240:12, 16241:22, 16241:24, 16243:15, 16243:17, 16244:5, 16249:19, 16253:8, 16264:9, 16274:23, 16282:9, 16284:19, 16291:9, 16296:13, 16296:17, 16301:16, 16303:23, 16307:9, 16312:24, 16318:25, 16323:6, 16325:13, 16329:25, 16330:6, 16336:2, 16336:20, 16339:10, 16341:17, 16341:21, 16344:12, 16344:18, 16346:6, 16350:16, 16355:24, 16364:10, 16368:15, 16378:22, 16385:15 hold [1] - 16355:14 holes [1] - 16273:5 home [4] - 16198:23, 16313:12, 16375:24, 16376:3 Hon [1] - 16152:12 honest [6] - 16273:10, 16273:20, 16306:16, 16306:17, 16365:17, 16375:5 honestly [3] - 16273:2, 16273:11, 16273:21 Honourable [1] - 16150:6 hood [1] - 16211:5 hope [6] - 16194:1, 16303:23, 16309:17, 16314:11, 16377:17, 16379:18 hoped [1] - 16301:4 hopefully [1] - 16176:15 hoping [1] - 16376:14 horizontally [1] - 16186:22 Hospital [1] - 16366:20 hospitalization [2] - 16197:22, 16198:2	hotel [1] - 16280:17 Hotel [1] - 16150:16 hour [1] - 16239:25 house [9] - 16253:17, 16300:21, 16330:20, 16333:22, 16333:25, 16334:7, 16373:7, 16375:2, 16379:10 house' [1] - 16384:23 Huculok [1] - 16322:17 Hugh [1] - 16151:11 Humboldt [8] - 16329:1, 16329:6, 16329:14, 16341:24, 16343:14, 16343:20, 16344:2, 16386:14 hunting [12] - 16230:8, 16232:14, 16232:16, 16232:25, 16282:19, 16283:2, 16283:5, 16283:12, 16309:5, 16309:16, 16309:21, 16310:17 I I/c [1] - 16322:7 Ian [2] - 16283:5, 16312:3 Id [4] - 16200:4, 16239:4, 16319:14, 16367:11 Id' [1] - 16237:7 Id's [1] - 16358:25 Idea [1] - 16269:20 Ident [2] - 16227:22, 16274:12 ident [4] - 16298:15, 16300:7, 16327:1, 16347:9 identical [1] - 16199:19 identification [8] - 16183:7, 16183:9, 16237:11, 16274:21, 16298:20, 16309:12, 16313:5, 16313:7 identification' [1] - 16298:16 identified [9] - 16166:14, 16187:3, 16187:11, 16204:12, 16208:13, 16219:15, 16231:4, 16243:2, 16370:9 identifies [2] - 16188:3, 16359:11 identify [9] - 16171:1, 16178:5, 16195:16, 16200:6, 16205:4, 16207:25, 16241:14, 16242:4, 16252:17 identify' [1] - 16367:15 identity [1] - 16177:1 ignoring [1] - 16158:19 imagine [2] - 16231:25, 16237:12 impact [1] - 16354:8 implicate [1] - 16339:23 implications [1] - 16317:4 implicit [1] - 16251:5 important [7] - 16213:17, 16272:23, 16304:1, 16324:18, 16354:14, 16358:21, 16379:24 important' [1] - 16286:5 impression [1] - 16262:1 improper [1] - 16365:20 improve [1] - 16308:16 improving [1] - 16249:6 in' [2] - 16294:10, 16357:3 in-chief [1] - 16348:3 inadvertently [1] - 16200:16 inasmuch [1] - 16353:15 Inaudible [4] - 16201:15, 16209:18, 16214:4, 16318:24 inches [2] - 16203:2 incident [1] - 16215:11 incidents [1] - 16224:12 include [1] - 16248:15 included [8] - 16183:5, 16183:6, 16184:6, 16217:21, 16244:20, 16277:10, 16295:20, 16330:22 includes [1] - 16274:24 including [6] - 16158:20, 16172:7, 16176:23, 16190:9, 16306:5, 16343:15 inconsistency [1] - 16301:4 incorporated [1] - 16186:2 incorrect [1] - 16187:14 incriminating [3] - 16248:23, 16250:21, 16251:1 incurred [1] - 16255:21 Ind [3] - 16205:24, 16210:1, 16214:20 indecent [3] - 16205:25, 16215:23, 16221:1	indeed [1] - 16385:13 indefinitely [1] - 16310:4 independent [1] - 16161:22 index [3] - 16238:24, 16239:9, 16243:2 Index [3] - 16153:1, 16173:1, 16174:10 indicate [4] - 16157:2, 16238:25, 16239:10, 16379:20 indicated [5] - 16182:7, 16209:22, 16341:25, 16354:21, 16383:4 indicates [5] - 16210:16, 16242:25, 16361:3, 16379:12, 16384:4 indicating [4] - 16270:22, 16288:10, 16327:20, 16333:7 indication [5] - 16167:20, 16173:9, 16176:3, 16271:22, 16310:1 indictment [1] - 16381:15 individual [2] - 16207:25, 16320:1 individuals [2] - 16239:9, 16308:21 Indyk [4] - 16304:20, 16304:21, 16306:1, 16381:15 inescapable [1] - 16161:17 infer [3] - 16233:6, 16240:8, 16348:12 influence [8] - 16178:8, 16209:7, 16214:16, 16214:18, 16214:23, 16216:25, 16362:9, 16364:25 influenced [1] - 16219:1 information [53] - 16154:20, 16154:22, 16155:3, 16155:15, 16156:11, 16156:19, 16159:11, 16160:5, 16160:20, 16162:21, 16163:23, 16165:11, 16166:13, 16166:22, 16166:23, 16167:22, 16167:23, 16168:19, 16169:17, 16169:19, 16169:22, 16171:4, 16171:8, 16171:18, 16171:23, 16172:5, 16175:3, 16177:8, 16178:6, 16178:16, 16179:6, 16185:15, 16185:17, 16189:18, 16189:23, 16197:25, 16222:17, 16224:20, 16225:3, 16225:10, 16229:10, 16232:25, 16233:22, 16248:13, 16287:8, 16305:25, 16326:2, 16332:15, 16344:4, 16355:1, 16363:22, 16384:5 initial [2] - 16195:12, 16361:2 initialled [1] - 16283:9 initials [1] - 16277:21 ink [3] - 16205:15, 16226:6, 16226:7 Inland [1] - 16151:12 innocence [1] - 16170:22 innocent [13] - 16162:22, 16163:15, 16165:12, 16170:16, 16171:2, 16178:7, 16178:17, 16204:2, 16207:23, 16208:10, 16212:17, 16212:22, 16216:20 inquire [2] - 16179:13, 16249:13 inquired [1] - 16248:11 inquiry [4] - 16187:19, 16187:24, 16238:25, 16239:7 Inquiry [11] - 16150:2, 16150:23, 16250:12, 16250:15, 16256:20, 16257:4, 16257:18, 16300:25, 16333:16, 16364:10, 16366:10 inquiry' [1] - 16263:9 insanity [3] - 16331:19, 16332:17, 16354:16 inside [5] - 16240:18, 16272:1, 16272:13, 16272:16, 16284:8 insignificant [1] - 16357:23 Insp [1] - 16286:3 Inspector [20] - 16186:18, 16227:9, 16255:22, 16256:24, 16257:1, 16257:12, 16257:23, 16259:16, 16260:2, 16261:3, 16262:3, 16262:10, 16263:4, 16267:21, 16286:2, 16286:3,
---	---	--



16286:9, 16286:10, 16286:12, 16290:20 instance [4] - 16203:19, 16203:22, 16265:17, 16379:18 instances [1] - 16354:15 instead [3] - 16332:23, 16334:8, 16386:18 instructed [1] - 16183:9 intact [1] - 16236:13 integrity [1] - 16172:8 intended [3] - 16271:4, 16305:23, 16311:17 intent [2] - 16311:16, 16312:1 intercourse [6] - 16173:19, 16175:16, 16275:11, 16275:13, 16275:20, 16276:17 interested [2] - 16185:22, 16270:25 interesting [2] - 16192:24, 16197:1 interpret [1] - 16319:11 intersected [1] - 16274:8 intervenee [1] - 16354:18 interview [15] - 16155:21, 16156:2, 16156:3, 16188:12, 16229:12, 16248:3, 16262:15, 16298:10, 16298:14, 16330:14, 16330:16, 16361:12, 16368:25, 16374:3, 16384:10 interviewed [14] - 16180:23, 16198:18, 16198:24, 16230:16, 16246:20, 16247:3, 16257:13, 16257:16, 16263:10, 16263:18, 16270:18, 16316:9, 16345:11 interviewing [5] - 16189:10, 16232:10, 16245:2, 16249:4, 16361:13 interviews [8] - 16247:9, 16247:12, 16247:16, 16247:22, 16248:16, 16248:19, 16255:24, 16365:23 intimacy [1] - 16377:20 intimate [2] - 16323:15, 16377:23 inverted [1] - 16264:21 investigated [2] -	16168:2, 16172:4 investigating [2] - 16157:20, 16224:15 investigation [21] - 16160:23, 16169:10, 16170:4, 16182:4, 16186:13, 16186:15, 16186:16, 16187:2, 16187:5, 16196:13, 16217:19, 16217:23, 16224:16, 16226:4, 16226:24, 16228:6, 16228:8, 16228:17, 16310:13, 16316:23, 16317:14 investigator [4] - 16177:11, 16179:10, 16185:25, 16214:25 investigators [1] - 16166:5 invoice [2] - 16256:18, 16290:18 involve [3] - 16161:21, 16173:14, 16365:23 involved [7] - 16158:16, 16196:12, 16247:16, 16290:1, 16309:3, 16310:15, 16347:21 Irene [1] - 16151:8 Irwin [1] - 16152:12 Isabelle [1] - 16151:5 issue [20] - 16181:5, 16182:9, 16182:12, 16185:11, 16230:23, 16248:10, 16307:11, 16322:19, 16333:11, 16338:10, 16341:15, 16346:21, 16351:23, 16352:6, 16353:16, 16354:3, 16365:11, 16386:20, 16388:4, 16389:4 issued [2] - 16266:22, 16267:24 issues [1] - 16351:22 it' [6] - 16165:22, 16301:22, 16309:6, 16350:4, 16372:7, 16386:3 item [7] - 16161:1, 16191:19, 16198:8, 16270:6, 16344:16, 16345:15, 16364:24 items [13] - 16269:13, 16277:11, 16282:22, 16284:4, 16285:1, 16294:4, 16298:15, 16303:14, 16304:1, 16345:10, 16382:10, 16384:22, 16387:2	items' [1] - 16320:1 itself [4] - 16238:3, 16277:10, 16284:5, 16317:7 J jabbed [1] - 16368:24 jacket [10] - 16199:15, 16199:17, 16199:19, 16199:22, 16211:4, 16345:22, 16345:23, 16385:3, 16385:11, 16385:21 James [1] - 16152:3 jammed [1] - 16380:9 January [21] - 16202:15, 16211:12, 16212:24, 16213:15, 16220:6, 16225:11, 16265:6, 16265:7, 16267:22, 16268:22, 16285:20, 16285:23, 16286:5, 16288:1, 16289:12, 16290:12, 16290:25, 16291:3, 16293:9, 16362:17 jaunt [1] - 16375:3 jeans [1] - 16288:11 Joe [5] - 16239:3, 16302:9, 16345:14, 16345:16, 16345:20 jog [1] - 16301:19 John [48] - 16177:25, 16246:1, 16246:9, 16246:14, 16247:8, 16251:18, 16256:25, 16263:14, 16264:14, 16264:18, 16264:20, 16265:21, 16285:7, 16285:12, 16287:20, 16288:1, 16323:19, 16323:21, 16323:22, 16324:5, 16324:7, 16324:9, 16324:25, 16325:16, 16345:11, 16348:16, 16348:25, 16349:7, 16349:22, 16349:24, 16350:9, 16351:15, 16352:9, 16353:5, 16354:5, 16354:7, 16362:16, 16365:9, 16369:9, 16371:12, 16377:5, 16377:10, 16377:23, 16380:1, 16382:21, 16382:22, 16383:3, 16383:10 Johrl [3] - 16369:7,	16376:24, 16377:21 Johrls [6] - 16250:21, 16250:25, 16325:7, 16353:22, 16369:25, 16370:7 joined [1] - 16318:11 jointly [2] - 16257:14, 16263:10 Joseph [1] - 16198:16 jot [1] - 16382:14 jotted [1] - 16269:11 Joyce [1] - 16152:3 judge [3] - 16178:10, 16245:1, 16357:25 June [1] - 16232:9 jury [9] - 16271:4, 16272:25, 16297:10, 16317:5, 16339:20, 16341:11, 16351:24, 16352:16, 16353:21 Justice [3] - 16150:6, 16152:11, 16152:13 K Kara [2] - 16151:5, 16319:6 Karen [3] - 16151:9, 16390:2, 16390:13 Karst [17] - 16152:8, 16162:5, 16164:9, 16165:10, 16288:1, 16288:2, 16298:23, 16307:19, 16308:5, 16308:6, 16318:3, 16328:10, 16355:9, 16383:18, 16384:4, 16384:23 Karst' [2] - 16362:1, 16376:2 Karst's [1] - 16384:16 keep [3] - 16260:12, 16303:13, 16304:11 Keith [1] - 16252:18 Ken [9] - 16320:21, 16321:7, 16321:8, 16321:10, 16345:21, 16346:2, 16385:7, 16385:10, 16385:19 kept [1] - 16379:5 Kettles [2] - 16267:4, 16285:21 key [6] - 16184:25, 16185:10, 16186:2, 16246:10, 16343:10, 16343:13 keys [22] - 16180:12, 16180:15, 16180:19, 16181:13, 16181:19,	16182:9, 16182:13, 16182:18, 16182:19, 16182:25, 16184:7, 16184:14, 16185:3, 16185:5, 16185:8, 16185:15, 16185:16, 16185:22, 16186:9, 16231:1, 16297:16, 16345:13 Keys [1] - 16181:3 keys' [1] - 16184:10 kill [1] - 16380:1 killed [4] - 16158:1, 16212:24, 16213:13, 16340:12 killing [4] - 16348:18, 16349:8, 16377:5, 16377:9 kind [6] - 16231:18, 16248:3, 16293:6, 16332:19, 16355:5, 16366:1 kinds [1] - 16225:1 Kleiv [24] - 16227:22, 16229:3, 16232:13, 16232:18, 16232:19, 16232:20, 16232:22, 16233:4, 16233:5, 16233:9, 16235:1, 16235:12, 16239:2, 16239:17, 16242:19, 16282:13, 16282:20, 16302:5, 16302:6, 16302:10, 16309:5, 16311:1, 16326:24, 16345:8 Kleiv [1] - 16302:8 knife [38] - 16173:18, 16230:8, 16232:14, 16232:16, 16232:21, 16232:25, 16233:3, 16233:4, 16235:19, 16236:6, 16236:11, 16236:23, 16236:24, 16282:19, 16283:2, 16283:5, 16283:12, 16309:5, 16309:11, 16309:16, 16309:18, 16309:21, 16310:17, 16311:4, 16311:6, 16311:11, 16312:1, 16360:17, 16361:8, 16368:24, 16369:15, 16369:20, 16370:2, 16370:9, 16370:10, 16370:20, 16372:6 knife' [6] - 16360:19, 16361:4, 16361:10, 16369:14, 16369:21, 16370:16
--	--	--	--	---



<p>knives [3] - 16310:4, 16310:9, 16370:14</p> <p>knowledge [7] - 16166:9, 16172:9, 16198:25, 16219:4, 16251:25, 16358:8, 16390:6</p> <p>known [6] - 16165:2, 16170:9, 16248:6, 16248:22, 16279:12, 16311:24</p> <p>Knox[24] - 16152:5, 16172:18, 16187:16, 16193:8, 16194:5, 16196:16, 16201:9, 16201:15, 16209:18, 16214:4, 16228:4, 16228:22, 16238:23, 16239:6, 16239:15, 16240:24, 16241:21, 16243:2, 16243:13, 16244:3, 16318:24, 16325:10, 16344:9, 16344:14</p> <p>Knox's [1] - 16195:15</p> <p>Kohout[2] - 16307:17, 16308:2</p> <p>Krogan[1] - 16152:4</p> <p>Kujawa[1] - 16152:6</p>	<p>Larry[5] - 16151:12, 16152:10, 16189:6, 16190:10, 16192:16</p> <p>last [12] - 16173:10, 16179:2, 16210:20, 16217:2, 16218:23, 16239:1, 16272:13, 16290:22, 16291:4, 16305:4, 16368:22, 16377:19</p> <p>Last[1] - 16328:11</p> <p>lastly [2] - 16377:13, 16380:23</p> <p>late [2] - 16173:17, 16269:22</p> <p>launch [1] - 16347:23</p> <p>Law[5] - 16292:9, 16292:20, 16293:17, 16294:7, 16314:2</p> <p>law [1] - 16377:15</p> <p>lawyer [1] - 16343:5</p> <p>layout [4] - 16306:4, 16330:15, 16379:5, 16379:9</p> <p>lays [1] - 16342:13</p> <p>lead [1] - 16338:16</p> <p>leading [1] - 16293:11</p> <p>leads [2] - 16159:21, 16375:22</p> <p>learned [3] - 16299:24, 16309:14, 16346:7</p> <p>least [11] - 16162:3, 16168:20, 16250:1, 16297:6, 16305:12, 16305:13, 16310:9, 16325:7, 16332:21, 16334:15, 16335:24</p> <p>leather [1] - 16180:16</p> <p>Leave[1] - 16348:20</p> <p>leave [5] - 16298:15, 16314:24, 16315:6, 16357:8, 16358:18</p> <p>led [1] - 16347:25</p> <p>leer [1] - 16267:12</p> <p>left [15] - 16180:25, 16191:2, 16195:14, 16207:6, 16274:13, 16274:22, 16298:15, 16321:9, 16322:2, 16331:8, 16339:21, 16347:9, 16357:7, 16357:21, 16379:11</p> <p>left-hand [1] - 16195:14</p> <p>Legal[2] - 16256:22, 16258:6</p> <p>legal [2] - 16260:8, 16322:19</p> <p>legitimately [1] - 16354:17</p> <p>legs [1] - 16288:15</p>	<p>length [1] - 16257:17</p> <p>lengths [1] - 16178:15</p> <p>lengthy [1] - 16250:5</p> <p>Les[2] - 16161:7, 16180:23</p> <p>less [2] - 16248:19, 16288:21</p> <p>lesser [1] - 16353:22</p> <p>letter [31] - 16154:10, 16154:25, 16155:12, 16157:11, 16161:5, 16165:9, 16172:25, 16179:16, 16226:12, 16226:16, 16227:5, 16229:5, 16229:24, 16244:7, 16255:16, 16255:17, 16256:17, 16256:18, 16257:22, 16258:4, 16260:15, 16261:13, 16261:20, 16267:4, 16285:20, 16290:12, 16290:15, 16346:14, 16361:15, 16381:14, 16385:15</p> <p>letters [3] - 16157:14, 16168:18, 16290:9</p> <p>letting [1] - 16221:21</p> <p>lie [3] - 16263:21, 16263:23, 16264:2</p> <p>lied [1] - 16322:25</p> <p>light [1] - 16207:16</p> <p>likelihood [1] - 16276:19</p> <p>likely [8] - 16154:19, 16177:11, 16321:21, 16328:7, 16355:4, 16380:13, 16380:20, 16383:7</p> <p>limited [2] - 16184:13, 16305:10</p> <p>Lindgren[1] - 16183:8</p> <p>Lindsay[2] - 16202:20, 16204:6</p> <p>line [10] - 16196:15, 16200:23, 16203:5, 16213:16, 16265:9, 16270:1, 16302:8, 16319:5, 16326:23, 16388:8</p> <p>lined [2] - 16255:12, 16346:24</p> <p>lines [2] - 16270:22, 16338:8</p> <p>link [1] - 16335:21</p> <p>list [12] - 16227:10, 16245:15, 16262:11, 16269:13, 16293:24, 16303:13, 16303:19, 16360:13, 16362:12, 16378:20, 16382:9</p>	<p>lists [1] - 16382:16</p> <p>lived [1] - 16304:8</p> <p>locate [1] - 16267:16</p> <p>locked [5] - 16285:6, 16285:7, 16347:11, 16347:14, 16347:18</p> <p>locker [2] - 16343:13, 16344:21</p> <p>Lockyer[3] - 16152:3, 16236:1, 16236:4</p> <p>logical [1] - 16276:18</p> <p>look [60] - 16155:8, 16159:9, 16159:22, 16161:5, 16167:1, 16168:6, 16171:15, 16172:22, 16177:9, 16179:25, 16185:9, 16186:12, 16188:18, 16189:13, 16189:17, 16197:9, 16199:24, 16203:21, 16208:2, 16208:14, 16209:22, 16221:4, 16223:15, 16226:10, 16228:24, 16232:3, 16233:8, 16240:13, 16241:19, 16242:1, 16242:22, 16245:12, 16264:20, 16266:4, 16267:6, 16268:19, 16272:19, 16281:9, 16284:14, 16284:17, 16286:20, 16288:8, 16301:16, 16306:25, 16318:20, 16318:23, 16338:13, 16347:4, 16351:1, 16362:11, 16370:17, 16372:21, 16376:17, 16378:24, 16378:25, 16385:5, 16385:18, 16385:23, 16385:24, 16386:5</p> <p>looked [11] - 16162:17, 16183:25, 16188:7, 16188:21, 16207:9, 16225:13, 16229:2, 16277:21, 16283:20, 16338:8, 16385:22</p> <p>looking [27] - 16154:16, 16158:11, 16159:2, 16161:21, 16162:7, 16170:25, 16176:12, 16179:21, 16180:5, 16188:24, 16189:1, 16217:4, 16223:11, 16241:3, 16252:9, 16281:1, 16281:10, 16304:14, 16304:17, 16322:19, 16344:12, 16353:24, 16354:23,</p>	<p>16354:24, 16381:5, 16385:25</p> <p>lookit [2] - 16177:9, 16258:15</p> <p>Lookit[2] - 16161:11, 16162:19</p> <p>looks [35] - 16182:1, 16221:22, 16227:14, 16234:2, 16238:5, 16240:6, 16243:20, 16254:22, 16256:7, 16256:10, 16264:14, 16264:17, 16266:20, 16267:20, 16270:18, 16271:3, 16281:17, 16282:19, 16289:11, 16298:12, 16307:8, 16313:4, 16318:10, 16318:18, 16319:5, 16319:16, 16324:16, 16335:9, 16338:1, 16378:20, 16379:23, 16381:10, 16385:4, 16386:3, 16386:15</p> <p>Looks[1] - 16320:7</p> <p>loose [4] - 16268:20, 16280:24, 16281:5, 16281:7</p> <p>Low[1] - 16202:17</p> <p>lower [1] - 16306:20</p> <p>Lsd[5] - 16323:10, 16362:10, 16365:1, 16377:4, 16377:9</p> <p>lump [2] - 16234:24, 16273:6</p> <p>lumps [1] - 16339:16</p> <p>lunch [4] - 16239:25, 16282:5, 16283:18, 16290:9</p> <p>Lunch[2] - 16375:10, 16375:12</p>
L				
<p>lab [11] - 16200:9, 16228:2, 16265:16, 16288:4, 16288:7, 16288:19, 16288:20, 16288:21, 16302:20, 16313:11, 16381:19</p> <p>label [1] - 16184:10</p> <p>lack [1] - 16385:25</p> <p>lady [3] - 16203:20, 16208:14, 16265:25</p> <p>Lake[1] - 16312:8</p> <p>Lana[1] - 16152:4</p> <p>landlord [3] - 16307:16, 16307:17, 16308:2</p> <p>lane [2] - 16173:17, 16384:23</p> <p>Langenburg[1] - 16343:11</p> <p>language [4] - 16377:21, 16378:1, 16378:4, 16378:8</p> <p>Lap[1] - 16280:11</p> <p>Lapchuk[6] - 16252:1, 16279:11, 16279:24, 16280:12, 16281:11, 16283:22</p> <p>large [1] - 16158:18</p>				
M				
<p>M' [1] - 16355:8</p> <p>M's' [1] - 16331:16</p> <p>Maccallum [9] - 16150:7, 16154:3, 16206:13, 16206:16, 16239:14, 16296:7, 16296:11, 16296:14, 16330:4</p> <p>Macdonald' [1] - 16354:10</p> <p>Mackie [35] - 16180:18, 16181:3, 16181:13, 16183:24, 16184:10, 16184:12, 16185:14, 16193:11, 16193:15,</p>				



<p>16195:2, 16197:15, 16199:13, 16247:15, 16248:5, 16248:10, 16248:15, 16248:23, 16249:2, 16249:11, 16249:13, 16252:19, 16253:18, 16297:24, 16298:1, 16300:14, 16301:24, 16333:24, 16334:7, 16345:13, 16346:25, 16347:3, 16348:5, 16386:18, 16386:24 Mackie [1] - 16319:24 Mackie's [2] - 16180:14, 16333:25 mad [1] - 16359:20 Madeline [5] - 16358:23, 16359:2, 16359:6, 16359:8, 16359:10 Magistrate [1] - 16238:18 magistrate [1] - 16243:22 main [2] - 16349:6, 16358:14 major [3] - 16245:25, 16246:9, 16248:3 male [3] - 16216:16, 16304:22, 16305:14 man [3] - 16207:10, 16212:3, 16365:18 Manager [1] - 16151:4 manner [5] - 16213:25, 16250:11, 16251:15, 16263:17, 16265:10 manners [1] - 16270:25 map [1] - 16371:6 March [6] - 16198:15, 16230:7, 16230:11, 16230:16, 16326:25, 16376:1 Marcoux [7] - 16265:25, 16304:13, 16379:25, 16382:18, 16382:25, 16383:2, 16383:4 Marcoux [1] - 16265:22 margin [1] - 16321:10 marginal [2] - 16183:17, 16184:12 mark [9] - 16200:22, 16252:16, 16252:17, 16252:24, 16271:10, 16315:7, 16323:12, 16323:13, 16378:3 Marks [3] - 16271:15, 16273:24, 16273:25 marks [11] - 16269:19,</p>	<p>16270:8, 16271:23, 16271:25, 16272:7, 16274:10, 16274:14, 16274:23, 16275:5, 16281:15, 16379:20 maroon [3] - 16369:21, 16370:9, 16370:15 Mart [1] - 16202:18 Mary [5] - 16379:25, 16382:18, 16382:25, 16383:2, 16383:4 Mary's [5] - 16189:21, 16266:7, 16306:5, 16355:13, 16380:24 match [3] - 16187:22, 16367:14, 16371:19 matched [2] - 16321:16, 16331:1 matching [3] - 16367:11, 16367:14, 16368:10 material [7] - 16170:15, 16171:1, 16204:1, 16207:22, 16208:9, 16212:16, 16216:19 materials [2] - 16159:25, 16225:25 matter [10] - 16176:2, 16192:12, 16251:7, 16259:1, 16272:14, 16279:8, 16289:18, 16289:24, 16328:17, 16361:14 matters [5] - 16167:24, 16279:20, 16281:24, 16327:16, 16327:17 Matthew [1] - 16304:7 mature [2] - 16305:3, 16305:17 Maurice [4] - 16253:21, 16287:15, 16287:19, 16288:10 Mc [1] - 16287:19 Mcc [2] - 16181:3, 16184:12 Mccorriston [17] - 16180:17, 16189:9, 16190:18, 16229:3, 16229:20, 16229:22, 16230:1, 16230:4, 16230:19, 16232:2, 16235:11, 16239:2, 16239:17, 16242:19, 16277:2, 16282:14, 16300:12 Mccorriston [1] - 16300:11 Mccorriston's [2] - 16188:22, 16232:3 Mcdonald [3] -</p>	<p>16347:10, 16347:13, 16347:17 McLeod [1] - 16381:18 Mcquhae [1] - 16273:17 mean [22] - 16158:7, 16164:4, 16164:17, 16192:16, 16192:21, 16215:3, 16265:15, 16266:12, 16268:1, 16270:2, 16277:18, 16281:20, 16287:2, 16313:25, 16322:10, 16325:21, 16331:12, 16339:5, 16339:9, 16347:18, 16366:2, 16388:7 meaning [2] - 16252:24, 16279:7 means [17] - 16191:17, 16259:14, 16265:11, 16265:13, 16270:4, 16272:23, 16276:16, 16298:11, 16305:23, 16305:24, 16313:5, 16339:6, 16359:17, 16364:24, 16385:24, 16386:6, 16386:24 meant [2] - 16183:15, 16315:14 measuring [1] - 16245:10 mechanic [1] - 16312:10 meeting [9] - 16163:10, 16163:21, 16163:22, 16229:18, 16234:3, 16238:10, 16240:12, 16262:18, 16282:18 meetings [1] - 16262:16 Mel [1] - 16280:11 Meldrum [1] - 16244:7 Melnik [6] - 16252:1, 16279:11, 16279:24, 16280:12, 16281:11, 16283:21 member [1] - 16327:1 memo [2] - 16286:25, 16289:14 memorandum [1] - 16154:14 memory [7] - 16157:9, 16165:7, 16204:16, 16204:20, 16206:2, 16247:21, 16377:11 memory [1] - 16377:6 men [1] - 16183:7 mental [4] - 16365:14, 16365:16, 16366:10, 16367:1 mention [10] -</p>	<p>16217:18, 16282:18, 16283:1, 16315:19, 16357:13, 16357:18, 16372:14, 16372:25, 16377:14, 16378:12 mentioned [22] - 16164:16, 16175:25, 16176:21, 16176:22, 16184:23, 16184:24, 16186:17, 16204:6, 16218:7, 16218:12, 16219:6, 16238:7, 16247:17, 16247:18, 16252:14, 16262:19, 16287:12, 16313:6, 16356:15, 16367:3, 16370:16, 16380:21 mentioning [1] - 16199:9 met [4] - 16154:14, 16212:4, 16212:6, 16379:16 metal [1] - 16180:15 method [1] - 16168:3 Meyer [3] - 16151:10, 16390:2, 16390:17 middle [4] - 16203:4, 16212:3, 16264:13, 16384:10 midnight [1] - 16342:13 might [52] - 16159:23, 16159:24, 16161:23, 16161:24, 16162:21, 16166:12, 16166:24, 16167:19, 16175:9, 16176:15, 16190:7, 16208:17, 16213:7, 16213:17, 16218:19, 16240:22, 16242:23, 16249:14, 16249:15, 16253:5, 16254:3, 16254:8, 16254:9, 16255:9, 16268:12, 16271:7, 16272:9, 16278:21, 16279:19, 16281:13, 16291:11, 16299:9, 16301:13, 16307:10, 16313:25, 16315:19, 16317:7, 16317:18, 16331:19, 16337:10, 16339:21, 16341:7, 16341:17, 16351:23, 16353:22, 16354:7, 16354:8, 16382:14, 16382:17, 16382:24, 16385:14, 16389:7 Mildner [6] - 16328:25, 16329:11, 16341:24, 16342:3, 16344:5,</p>	<p>16386:13 Mildner's [1] - 16342:8 Milgaard [91] - 16150:4, 16152:2, 16152:3, 16159:5, 16169:14, 16170:22, 16171:5, 16171:12, 16176:2, 16177:6, 16177:15, 16177:24, 16178:9, 16178:13, 16178:21, 16204:2, 16207:23, 16208:9, 16208:24, 16212:17, 16212:21, 16212:25, 16213:14, 16220:8, 16220:14, 16221:5, 16221:13, 16228:15, 16241:11, 16246:2, 16246:16, 16249:23, 16255:6, 16256:2, 16256:22, 16270:14, 16270:23, 16271:12, 16278:11, 16278:25, 16280:9, 16287:23, 16288:11, 16295:19, 16298:1, 16298:6, 16298:23, 16299:11, 16299:15, 16314:14, 16321:16, 16323:20, 16328:21, 16329:2, 16329:11, 16330:3, 16330:7, 16331:25, 16335:14, 16339:1, 16339:16, 16340:3, 16340:18, 16342:11, 16342:12, 16343:1, 16345:24, 16347:24, 16348:17, 16349:8, 16349:18, 16351:16, 16351:25, 16354:5, 16355:8, 16355:10, 16359:20, 16359:23, 16360:3, 16360:17, 16360:24, 16365:7, 16366:15, 16366:24, 16367:23, 16368:7, 16368:23, 16372:13, 16373:1, 16377:4, 16386:14 Milgaard [1] - 16374:8 Milgaard's [11] - 16252:19, 16255:5, 16298:23, 16322:10, 16329:6, 16331:1, 16331:16, 16349:25, 16354:12, 16361:19, 16367:9 Miller [34] - 16158:1, 16169:3, 16173:3, 16175:10, 16176:11, 16180:20, 16182:18,</p>
--	---	---	--	--



16186:13, 16186:16, 16202:16, 16211:19, 16211:23, 16212:24, 16213:14, 16215:4, 16215:21, 16216:13, 16219:19, 16220:13, 16224:15, 16224:17, 16226:24, 16231:3, 16295:16, 16296:3, 16297:11, 16300:10, 16335:22, 16340:13, 16351:18, 16352:2, 16361:16, 16375:1, 16379:24 Miller's [11] - 16175:18, 16277:3, 16277:7, 16277:17, 16297:3, 16315:16, 16334:21, 16345:9, 16345:25, 16348:5, 16356:10 mind [10] - 16158:14, 16192:9, 16192:20, 16219:24, 16223:4, 16293:4, 16295:25, 16301:19, 16332:25, 16348:24 mine [12] - 16190:8, 16190:23, 16191:1, 16191:2, 16191:15, 16193:18, 16195:9, 16196:2, 16200:22, 16200:23, 16205:10, 16317:22 Minister [1] - 16152:11 minus [1] - 16186:22 minute [2] - 16218:13, 16330:4 minutes [2] - 16192:13, 16279:3 misread [1] - 16180:20 Miss [7] - 16216:4, 16217:20, 16219:14, 16219:22, 16220:2, 16220:7, 16375:1 missed [3] - 16322:6, 16322:11, 16323:8 missing [1] - 16186:20 misspelled [1] - 16256:8 mistaken [4] - 16273:2, 16273:11, 16273:21, 16352:22 mistakes [1] - 16306:17 mitts [7] - 16321:13, 16321:15, 16331:1, 16331:2, 16367:11, 16367:14, 16368:10 mitts' [4] - 16320:20, 16320:21, 16321:8, 16321:10	Mms [2] - 16286:16, 16286:22 Molchanko [3] - 16302:2, 16302:17, 16387:19 moment [13] - 16156:17, 16167:7, 16209:21, 16212:9, 16258:21, 16268:7, 16282:2, 16287:4, 16287:24, 16349:5, 16356:12, 16358:17, 16375:14 Monday [4] - 16158:2, 16182:4, 16287:20, 16288:1 money [3] - 16314:3, 16314:15, 16314:18 month [1] - 16373:11 morality [1] - 16183:3 Morality [2] - 16183:3, 16183:8 morning [19] - 16198:23, 16215:11, 16215:21, 16220:5, 16220:6, 16238:10, 16243:8, 16246:3, 16262:19, 16274:22, 16282:10, 16291:9, 16305:8, 16330:8, 16345:24, 16356:17, 16362:17, 16367:23, 16368:12 Morning [4] - 16154:3, 16154:4, 16154:7, 16154:8 most [3] - 16160:3, 16166:5, 16268:19 Motel [1] - 16267:13 motel [5] - 16252:1, 16266:9, 16267:12, 16371:6, 16371:9 motel' [1] - 16371:20 mother [5] - 16304:8, 16329:15, 16334:7, 16343:10, 16346:1 mother's [1] - 16343:24 motive [5] - 16350:18, 16351:9, 16351:17, 16352:13, 16353:2 moustache [1] - 16203:5 move [2] - 16227:4, 16382:15 moved [1] - 16267:15 moving [1] - 16264:15 much' [1] - 16388:8 murder [37] - 16157:20, 16161:2, 16169:3, 16169:9, 16169:16,	16173:2, 16175:10, 16176:11, 16198:19, 16202:17, 16207:4, 16209:4, 16211:13, 16213:12, 16215:4, 16215:11, 16215:12, 16215:21, 16219:19, 16220:13, 16224:8, 16226:24, 16231:5, 16238:8, 16246:4, 16246:19, 16247:9, 16250:22, 16305:8, 16310:18, 16324:6, 16343:21, 16345:25, 16350:10, 16367:6, 16368:12, 16383:3 murder' [1] - 16241:12 murdered [2] - 16211:19, 16216:13 murderer [1] - 16224:17 must [24] - 16205:21, 16223:19, 16225:18, 16225:24, 16230:22, 16234:10, 16236:10, 16263:15, 16271:21, 16290:7, 16323:12, 16338:12, 16346:6, 16359:9, 16359:12, 16373:23, 16375:13, 16378:5, 16379:8, 16379:12, 16384:12, 16387:23, 16387:25 my' [1] - 16263:8	16220:5, 16240:2 Nb [16] - 16269:12, 16272:22, 16293:14, 16293:19, 16303:1, 16303:5, 16303:14, 16318:14, 16323:18, 16324:18, 16330:25, 16335:5, 16345:3, 16348:8, 16348:12, 16379:24 near [9] - 16202:20, 16207:10, 16269:20, 16270:8, 16297:3, 16300:16, 16309:18, 16334:21, 16340:11 necessarily [3] - 16330:17, 16339:5, 16339:23 necessary [5] - 16181:22, 16231:15, 16254:17, 16291:1, 16363:1 need [20] - 16170:12, 16181:2, 16188:25, 16197:13, 16216:7, 16227:13, 16227:17, 16229:4, 16266:16, 16289:13, 16308:24, 16312:17, 16316:16, 16325:3, 16325:20, 16326:3, 16357:17, 16359:1, 16359:12, 16379:1 Need [1] - 16361:15 needed [2] - 16262:12, 16321:24 needs [2] - 16172:19, 16196:5 negative [1] - 16374:10 nervous [1] - 16270:18 neutral [1] - 16339:22 never [9] - 16192:9, 16192:10, 16204:11, 16210:17, 16211:6, 16219:22, 16277:12, 16326:17, 16330:21 nevertheless [1] - 16165:12 new [5] - 16307:22, 16308:6, 16343:20, 16355:20 newspaper [2] - 16158:20, 16158:22 Next [18] - 16179:16, 16204:25, 16214:2, 16234:2, 16284:7, 16285:17, 16289:12, 16290:8, 16291:14, 16308:24, 16313:18, 16325:19, 16330:23,	16347:6, 16355:23, 16361:24, 16387:20, 16389:6 next [44] - 16155:6, 16155:18, 16162:8, 16165:17, 16173:2, 16173:4, 16188:23, 16190:16, 16193:14, 16199:12, 16202:23, 16207:15, 16210:19, 16243:8, 16243:9, 16243:25, 16244:10, 16245:19, 16252:5, 16252:15, 16256:6, 16266:15, 16272:21, 16275:9, 16278:3, 16282:16, 16282:24, 16284:7, 16292:4, 16293:13, 16302:1, 16320:12, 16324:6, 16326:22, 16328:25, 16336:3, 16348:8, 16372:20, 16377:19, 16378:14, 16386:9, 16386:18, 16386:25, 16388:8 nice [1] - 16270:15 Nichol [26] - 16177:25, 16191:16, 16246:1, 16247:8, 16250:21, 16250:25, 16251:18, 16263:14, 16285:7, 16285:12, 16324:9, 16325:7, 16345:11, 16349:22, 16349:24, 16369:9, 16370:7, 16376:24, 16377:5, 16377:10, 16377:21, 16377:23, 16379:25, 16382:22, 16383:3, 16383:10 Nichols [2] - 16288:4, 16325:11 Nick [2] - 16307:17, 16308:2 Nickey [2] - 16323:14, 16328:10 night [1] - 16254:15 nil [3] - 16232:9, 16271:1, 16388:9 nine [1] - 16240:25 Nj [1] - 16285:6 noise [1] - 16207:9 non [10] - 16238:8, 16241:12, 16339:5, 16339:9, 16340:4, 16340:7, 16340:18, 16388:13, 16388:19, 16388:23 non-capital [2] -
N				
N.b.-1 [1] - 16303:2 N.b.-14 [1] - 16377:20 N.b.-2 [1] - 16303:2 N.b.-3 [1] - 16318:16 N.b.-4 [1] - 16320:15 nail [1] - 16376:5 name [10] - 16181:12, 16183:15, 16192:16, 16206:13, 16208:1, 16256:8, 16265:16, 16287:15, 16385:12, 16385:16 named [1] - 16297:21 names [8] - 16166:6, 16190:13, 16194:19, 16195:10, 16199:10, 16201:3, 16227:8 narrow [2] - 16179:8, 16353:16 narrows [1] - 16198:7 native [1] - 16305:1 nature [5] - 16162:15, 16162:23, 16167:17,				



<p>16238:8, 16241:12 non-secretor [8] - 16339:5, 16339:9, 16340:4, 16340:7, 16340:18, 16388:13, 16388:19, 16388:23 none [3] - 16165:18, 16194:15, 16195:7 None [4] - 16194:15, 16194:17, 16194:18, 16195:12 noon [2] - 16155:16, 16229:11 normally [1] - 16354:25 north [2] - 16207:7, 16274:7 north' [1] - 16300:21 north-south [1] - 16274:7 Note [1] - 16357:17 note [91] - 16156:16, 16164:18, 16184:12, 16189:13, 16190:7, 16196:18, 16196:24, 16196:25, 16197:2, 16197:4, 16197:10, 16200:19, 16200:20, 16206:7, 16214:14, 16214:19, 16215:23, 16216:24, 16223:1, 16225:22, 16226:2, 16226:5, 16227:14, 16231:17, 16232:24, 16244:1, 16247:6, 16252:5, 16255:8, 16264:2, 16270:24, 16271:6, 16272:3, 16275:21, 16277:3, 16279:9, 16279:10, 16284:23, 16284:25, 16285:8, 16285:21, 16286:16, 16287:17, 16289:2, 16289:3, 16289:4, 16289:12, 16297:7, 16298:5, 16299:7, 16301:18, 16305:21, 16306:15, 16306:16, 16313:15, 16314:4, 16314:5, 16314:6, 16316:6, 16317:21, 16318:9, 16321:21, 16322:14, 16323:3, 16323:15, 16326:16, 16328:14, 16341:14, 16344:3, 16344:13, 16347:7, 16348:18, 16350:15, 16351:1, 16355:16, 16361:20, 16368:15, 16371:17, 16378:10,</p>	<p>16379:23, 16380:5, 16382:3, 16382:14, 16382:20, 16382:25, 16383:4, 16384:15, 16385:9, 16387:22 notebook [2] - 16230:4, 16232:3 notebooks [1] - 16231:21 noted [1] - 16387:3 notes [90] - 16154:13, 16154:18, 16155:14, 16156:11, 16162:5, 16163:3, 16163:4, 16163:9, 16163:10, 16163:20, 16168:17, 16181:17, 16181:20, 16182:16, 16183:18, 16184:16, 16190:4, 16190:8, 16190:16, 16196:22, 16200:15, 16221:17, 16222:1, 16222:2, 16222:7, 16222:12, 16225:19, 16227:12, 16227:18, 16227:19, 16229:2, 16229:9, 16229:17, 16230:15, 16231:11, 16231:15, 16235:7, 16235:15, 16237:18, 16241:17, 16242:8, 16242:10, 16243:25, 16263:21, 16264:8, 16265:1, 16268:16, 16268:20, 16268:23, 16269:10, 16269:23, 16272:10, 16276:8, 16279:19, 16280:22, 16280:24, 16281:6, 16281:13, 16281:16, 16282:17, 16283:18, 16284:1, 16285:2, 16290:1, 16291:11, 16292:21, 16292:25, 16293:16, 16293:19, 16302:14, 16303:1, 16303:5, 16303:13, 16303:25, 16304:1, 16307:18, 16315:19, 16320:18, 16323:2, 16348:13, 16355:21, 16368:25, 16371:22, 16372:21, 16374:2, 16379:1, 16382:13, 16387:2, 16389:6, 16390:6 nothing [9] - 16164:17, 16164:23, 16221:3, 16232:11, 16307:22, 16308:6, 16308:7,</p>	<p>16375:20, 16380:3 Nothing [1] - 16375:9 notice [6] - 16161:1, 16208:20, 16210:11, 16306:19, 16326:22, 16385:16 notice' [1] - 16286:7 noticed [2] - 16271:23, 16271:25 notified [1] - 16381:18 notion [1] - 16254:5 November [4] - 16157:23, 16173:13, 16183:20, 16224:12 Number [9] - 16233:12, 16271:9, 16275:14, 16275:15, 16294:10, 16298:22, 16300:7, 16309:4, 16370:22 number [63] - 16166:13, 16167:3, 16169:5, 16172:18, 16180:6, 16187:3, 16193:11, 16193:15, 16230:7, 16232:8, 16232:13, 16234:7, 16235:18, 16236:5, 16242:14, 16242:21, 16245:15, 16252:11, 16255:15, 16266:6, 16266:19, 16268:7, 16269:1, 16269:2, 16270:12, 16271:20, 16272:4, 16278:7, 16280:4, 16281:22, 16282:21, 16291:20, 16293:13, 16295:4, 16298:8, 16300:2, 16300:13, 16302:11, 16304:5, 16304:12, 16304:19, 16306:24, 16306:25, 16307:16, 16308:19, 16312:6, 16324:4, 16327:4, 16328:9, 16328:25, 16330:25, 16332:22, 16335:1, 16344:6, 16344:8, 16344:10, 16369:7, 16379:4, 16383:18, 16386:13 numbered [3] - 16179:21, 16268:17, 16268:18 numbering [1] - 16302:25 numbers [5] - 16188:2, 16201:14, 16205:5, 16237:12, 16268:16 nurse [3] - 16211:21, 16213:9, 16213:13</p>	<p>nurses [2] - 16207:11, 16319:24 nutshell [1] - 16291:10 Nyczal' [1] - 16356:7</p> <p>O</p> <p>Ō [1] - 16232:18 Ōkeefe [1] - 16152:10 oath [1] - 16361:25 objected [2] - 16232:7, 16315:3 objection [1] - 16240:10 obligation [1] - 16155:2 observations [1] - 16298:3 observed [2] - 16297:22, 16366:24 obtain [1] - 16344:20 obtained [5] - 16175:3, 16185:9, 16226:18, 16345:16, 16345:19 Obviously [1] - 16242:10 obviously [3] - 16287:3, 16316:24, 16350:1 occasion [1] - 16247:22 occasions [2] - 16228:17, 16342:11 occurred [3] - 16254:20, 16262:20, 16276:9 occurrence [1] - 16205:5 occurrences [2] - 16199:1, 16225:2 October [8] - 16150:21, 16157:22, 16173:13, 16224:12, 16256:17, 16290:9, 16290:14, 16302:2 oddly [1] - 16321:8 offence [3] - 16173:11, 16198:23, 16276:4 offences [7] - 16169:6, 16178:24, 16199:4, 16219:13, 16220:5, 16327:8, 16357:24 offenders [1] - 16347:21 offer [2] - 16198:19, 16278:22 offhand [7] - 16255:1, 16263:1, 16270:9, 16286:11, 16311:5, 16322:21, 16359:18 office [12] - 16155:16, 16156:1, 16156:23,</p>	<p>16174:13, 16183:3, 16229:11, 16247:23, 16248:1, 16262:20, 16359:8, 16359:10, 16377:18 Officer [4] - 16151:11, 16190:18, 16227:22, 16236:5 officer [10] - 16170:20, 16172:4, 16181:12, 16183:23, 16267:22, 16277:21, 16290:13, 16309:12, 16313:7, 16330:18 Officers [1] - 16155:13 officers [21] - 16155:25, 16156:10, 16156:20, 16156:24, 16157:9, 16160:22, 16164:3, 16167:9, 16182:6, 16182:19, 16229:8, 16230:15, 16231:13, 16231:21, 16235:16, 16238:4, 16238:14, 16249:7, 16266:22, 16282:12, 16282:13 Official [5] - 16151:9, 16390:1, 16390:3, 16390:14, 16390:18 oft [1] - 16215:1 often [1] - 16232:5 old [3] - 16170:3, 16325:21, 16325:23 old-time [1] - 16325:21 old-timer [1] - 16325:23 older [1] - 16343:18 Oleksyn [4] - 16183:4, 16229:3, 16232:8, 16235:12 Oliver [8] - 16232:14, 16232:17, 16232:19, 16233:1, 16283:6, 16309:23, 16310:21, 16312:3 omit [2] - 16200:12, 16200:20 on' [1] - 16326:23 once [7] - 16164:10, 16169:13, 16205:16, 16222:22, 16222:25, 16245:19, 16294:17 one [119] - 16158:23, 16166:13, 16167:6, 16168:6, 16168:7, 16171:4, 16172:21, 16179:12, 16179:20, 16180:15, 16182:10, 16182:17, 16183:23, 16183:24, 16183:25, 16185:10, 16185:11,</p>
---	--	---	--	---



16185:15, 16185:16, 16188:7, 16188:19, 16195:24, 16196:14, 16197:9, 16198:8, 16199:15, 16201:18, 16204:11, 16207:21, 16211:15, 16213:20, 16214:10, 16215:14, 16217:2, 16217:11, 16218:23, 16220:3, 16220:4, 16224:10, 16228:9, 16234:24, 16235:6, 16235:24, 16236:12, 16236:13, 16241:25, 16247:14, 16247:16, 16247:21, 16248:4, 16248:11, 16249:5, 16252:25, 16260:4, 16260:9, 16262:9, 16266:2, 16269:17, 16270:4, 16271:14, 16272:13, 16273:6, 16273:9, 16274:3, 16276:2, 16277:22, 16280:1, 16280:14, 16280:19, 16283:19, 16284:22, 16286:7, 16287:10, 16287:11, 16293:21, 16294:7, 16297:1, 16297:11, 16297:22, 16308:17, 16309:8, 16311:7, 16313:8, 16314:18, 16316:3, 16317:6, 16317:23, 16318:21, 16321:4, 16321:7, 16323:24, 16332:2, 16338:21, 16343:20, 16347:3, 16349:16, 16352:12, 16355:25, 16356:16, 16358:14, 16360:17, 16360:23, 16362:7, 16365:22, 16367:18, 16368:22, 16377:17, 16377:20, 16378:24, 16380:4, 16380:21, 16382:16 One ^[4] - 16211:11, 16259:20, 16293:24, 16342:21 one-sided' ^[1] - 16271:14 ones ^[9] - 16157:2, 16179:13, 16187:20, 16225:13, 16266:23, 16280:23, 16295:19, 16310:15, 16325:3 onlookers ^[1] - 16382:19	only' ^[1] - 16358:19 op ^[1] - 16270:15 open ^[2] - 16232:5, 16332:2 opening ^[1] - 16352:17 operated ^[1] - 16326:24 operative ^[1] - 16290:21 operators ^[1] - 16313:13 opinion ^[2] - 16165:18, 16165:21 opportunity ^[2] - 16156:3, 16156:6 oppose ^[3] - 16231:22, 16231:25, 16249:24 opposed ^[6] - 16233:17, 16297:23, 16325:25, 16368:13, 16373:25, 16381:8 order ^[8] - 16252:7, 16264:10, 16264:16, 16264:17, 16265:21, 16266:11, 16270:10, 16340:19 ordinarily ^[1] - 16327:10 organized ^[1] - 16294:4 original ^[30] - 16155:8, 16172:19, 16174:11, 16189:14, 16194:4, 16196:17, 16197:7, 16197:13, 16202:9, 16205:2, 16205:6, 16205:9, 16205:15, 16209:20, 16209:23, 16214:6, 16218:9, 16223:16, 16226:7, 16227:13, 16240:25, 16266:16, 16284:19, 16289:14, 16302:22, 16318:22, 16319:18, 16325:1, 16325:16, 16380:11 originals ^[1] - 16325:4 originator ^[1] - 16297:14 otherwise ^[2] - 16224:13, 16340:21 Ottawa ^[1] - 16174:10 ought ^[2] - 16218:19, 16238:18 out' ^[9] - 16191:8, 16191:14, 16302:7, 16314:5, 16315:6, 16357:2, 16357:4, 16357:8 outdoors ^[1] - 16276:9 outer ^[1] - 16173:25 outside ^[2] - 16276:7,	16276:17 over-defensiveness' ^[1] - 16312:7 overall ^[2] - 16353:14, 16360:1 own ^[8] - 16161:22, 16231:11, 16257:17, 16260:25, 16263:8, 16270:14, 16280:20, 16317:9 P package ^[5] - 16159:11, 16170:1, 16174:24, 16217:23, 16218:9 page ^[125] - 16155:7, 16163:8, 16163:10, 16163:13, 16165:17, 16166:18, 16173:2, 16173:4, 16174:22, 16174:23, 16179:19, 16182:24, 16184:24, 16187:3, 16188:1, 16188:23, 16189:3, 16189:13, 16190:3, 16190:4, 16190:16, 16191:24, 16192:4, 16193:14, 16193:23, 16194:11, 16194:17, 16194:18, 16194:25, 16195:1, 16197:12, 16197:24, 16198:10, 16199:12, 16202:23, 16202:25, 16207:15, 16209:6, 16210:19, 16210:20, 16211:1, 16211:9, 16227:6, 16227:13, 16229:7, 16231:15, 16232:6, 16234:2, 16239:8, 16239:9, 16243:5, 16243:9, 16244:10, 16245:19, 16252:15, 16256:6, 16264:24, 16272:21, 16275:9, 16278:3, 16280:21, 16281:10, 16281:11, 16282:16, 16282:24, 16282:25, 16283:19, 16289:12, 16292:4, 16292:11, 16292:19, 16298:12, 16300:14, 16300:19, 16302:1, 16302:21, 16308:24, 16313:18, 16317:22, 16318:13, 16318:14, 16319:4, 16319:13, 16319:14, 16320:12, 16325:19, 16330:23,	16335:5, 16336:3, 16336:25, 16344:7, 16344:8, 16344:13, 16344:16, 16345:2, 16347:6, 16348:8, 16355:23, 16360:15, 16360:20, 16361:7, 16361:24, 16368:15, 16369:25, 16370:23, 16372:9, 16372:20, 16374:13, 16375:17, 16376:1, 16376:6, 16376:13, 16376:16, 16377:19, 16378:14, 16378:22, 16378:25, 16380:24, 16381:11, 16382:6, 16386:9, 16386:25, 16387:20, 16389:6 Page ^[6] - 16153:2, 16228:22, 16228:24, 16241:21, 16241:23, 16244:3 page' ^[1] - 16298:9 pages ^[13] - 16196:10, 16197:16, 16201:4, 16241:8, 16241:16, 16268:17, 16303:1, 16318:11, 16319:8, 16348:13, 16362:1, 16372:12, 16390:4 paid ^[5] - 16223:1, 16260:5, 16290:10, 16290:18, 16291:4 pair ^[4] - 16288:11, 16343:2, 16343:16, 16359:7 pants ^[35] - 16207:17, 16253:17, 16253:20, 16253:21, 16254:1, 16254:3, 16254:4, 16280:7, 16288:3, 16288:5, 16294:20, 16294:22, 16322:10, 16324:21, 16329:12, 16329:13, 16330:1, 16330:7, 16330:12, 16330:15, 16342:18, 16342:22, 16343:2, 16343:9, 16343:15, 16343:16, 16344:20, 16344:24, 16344:25, 16358:18, 16358:22, 16359:7, 16359:13, 16382:4, 16385:1 pants' ^[3] - 16294:11, 16361:19, 16381:25 paper ^[3] - 16172:23, 16180:4, 16373:14 paragraph ^[15] -	16172:21, 16173:10, 16179:2, 16180:11, 16183:14, 16183:24, 16184:7, 16196:15, 16202:12, 16251:12, 16263:7, 16290:16, 16290:17, 16342:8, 16342:15 parallel ^[1] - 16175:24 parallels ^[1] - 16176:8 Pardon ^[1] - 16287:22 pardon ^[6] - 16291:17, 16296:10, 16298:2, 16302:3, 16365:23, 16374:12 paring ^[3] - 16235:19, 16236:6, 16236:11 Parker ^[1] - 16274:25 parking ^[1] - 16247:24 part ^[39] - 16160:22, 16169:10, 16181:17, 16181:18, 16182:5, 16183:12, 16186:8, 16188:25, 16189:1, 16189:7, 16197:9, 16223:6, 16223:7, 16257:15, 16263:12, 16275:17, 16275:25, 16276:21, 16279:1, 16289:25, 16296:21, 16306:12, 16307:2, 16308:9, 16318:4, 16325:19, 16326:24, 16330:20, 16349:6, 16352:4, 16352:17, 16354:6, 16361:5, 16364:9, 16365:10, 16380:12, 16383:19, 16384:1, 16389:9 participation ^[1] - 16256:23 particular ^[3] - 16337:21, 16342:12, 16342:18 parts ^[4] - 16228:16, 16251:2, 16310:13, 16342:7 party ^[1] - 16312:21 Pauls ^[1] - 16207:11 pause ^[11] - 16157:16, 16158:6, 16216:23, 16278:8, 16336:9, 16337:4, 16349:5, 16349:10, 16350:14, 16351:14, 16371:8 pay ^[2] - 16257:10, 16258:5 Paynter ^[16] - 16336:5, 16336:14, 16336:23, 16337:2, 16338:7,
---	--	---	--	--



<p>16338:9, 16338:12, 16338:18, 16339:4, 16340:24, 16341:15, 16387:1, 16387:6, 16387:21, 16388:5, 16388:15 Paynter's [1] - 16265:15 peace [1] - 16267:22 peculiarity [1] - 16312:2 pen [4] - 16209:25, 16210:3, 16215:24, 16216:2 pencil [1] - 16191:1 Penkala [17] - 16173:1, 16179:16, 16197:20, 16198:1, 16234:2, 16234:7, 16235:12, 16236:16, 16237:7, 16237:19, 16239:3, 16239:18, 16242:19, 16282:13, 16302:9, 16327:13, 16384:19 Penkala's [2] - 16235:7, 16346:14 people [20] - 16164:16, 16166:9, 16166:10, 16177:9, 16189:10, 16223:15, 16256:11, 16273:13, 16293:5, 16300:25, 16304:17, 16306:16, 16309:3, 16339:8, 16362:21, 16378:21, 16379:1, 16382:9, 16383:9, 16387:2 peoples' [1] - 16158:24 per [1] - 16243:10 performed [1] - 16263:23 Perhaps [1] - 16201:17 perhaps [6] - 16157:18, 16176:6, 16194:3, 16286:12, 16303:21, 16328:18 period [4] - 16176:23, 16176:24, 16224:16, 16293:11 Perras [2] - 16314:12, 16377:16 Person [1] - 16293:21 person [39] - 16157:21, 16157:23, 16157:25, 16164:20, 16168:25, 16169:4, 16169:6, 16169:8, 16169:20, 16199:20, 16203:20, 16208:13, 16210:25, 16211:3, 16212:12, 16212:22, 16212:23,</p>	<p>16216:16, 16219:12, 16219:15, 16220:4, 16220:9, 16220:11, 16221:16, 16224:6, 16224:17, 16249:18, 16270:17, 16297:13, 16301:9, 16304:21, 16336:10, 16337:12, 16340:12, 16378:21, 16379:1, 16379:16, 16379:22, 16381:19 person' [2] - 16304:24, 16380:7 personal [2] - 16249:19, 16365:23 personally [1] - 16307:8 persons [2] - 16166:10, 16314:21 Phillips [1] - 16183:8 phone [8] - 16177:11, 16285:23, 16288:2, 16320:20, 16321:7, 16379:22, 16382:9, 16382:18 Phone [1] - 16293:24 phone' [1] - 16297:24 phoned [4] - 16287:1, 16288:7, 16334:7, 16386:11 Photo [1] - 16274:15 photo [6] - 16183:10, 16199:15, 16199:22, 16274:14, 16274:24, 16275:2 photocopies [2] - 16281:7, 16325:3 photocopy [4] - 16194:5, 16194:7, 16195:15, 16356:1 photograph [3] - 16236:24, 16305:5, 16327:11 photographed [3] - 16326:21, 16326:25, 16327:5 photographing [1] - 16199:16 photographs [1] - 16183:5 photos [4] - 16183:5, 16326:9, 16326:10, 16326:11 phrase [1] - 16376:20 physical [1] - 16330:12 pick [2] - 16331:13, 16360:16 picked [3] - 16288:6, 16288:19, 16375:2 picture [1] - 16235:10</p>	<p>piece [5] - 16225:2, 16321:23, 16351:7, 16351:24, 16373:14 Pike [1] - 16312:8 pile [1] - 16211:4 pinned [1] - 16212:5 place [9] - 16246:24, 16257:6, 16260:19, 16275:17, 16275:20, 16275:25, 16276:5, 16276:17, 16347:4 Place [1] - 16202:20 places [2] - 16206:25, 16287:12 Plan [2] - 16256:22, 16257:5 plan [2] - 16258:6, 16260:8 plane [2] - 16298:1, 16298:4 planning [1] - 16273:8 plastic [2] - 16360:19, 16361:9 plastic' [1] - 16361:1 play [3] - 16177:15, 16177:21, 16178:9 pleased [1] - 16190:8 plus [2] - 16186:22, 16314:11 Pm [10] - 16180:15, 16183:1, 16202:19, 16207:5, 16232:20, 16282:8, 16288:2, 16341:19, 16341:20, 16389:10 point [24] - 16157:12, 16157:16, 16175:12, 16183:12, 16215:2, 16218:21, 16221:3, 16228:5, 16244:20, 16265:18, 16284:5, 16295:3, 16297:22, 16316:6, 16318:11, 16324:3, 16337:2, 16339:10, 16340:1, 16347:25, 16366:20, 16369:5, 16382:4 pointed [2] - 16165:22, 16361:6 points [8] - 16154:12, 16206:23, 16211:11, 16251:1, 16281:25, 16285:3, 16292:9, 16372:21 police [117] - 16157:8, 16157:17, 16158:8, 16158:13, 16159:12, 16159:25, 16160:17, 16160:21, 16161:6, 16161:11, 16162:4,</p>	<p>16162:14, 16162:19, 16163:21, 16163:23, 16166:14, 16166:22, 16166:23, 16167:4, 16167:8, 16167:14, 16168:2, 16168:7, 16168:16, 16168:21, 16168:23, 16168:24, 16169:3, 16169:13, 16169:17, 16170:18, 16170:20, 16174:21, 16174:22, 16174:24, 16174:25, 16177:8, 16178:5, 16178:15, 16178:22, 16179:5, 16179:13, 16180:6, 16182:6, 16182:16, 16182:19, 16184:3, 16184:6, 16184:21, 16185:4, 16186:15, 16186:19, 16186:24, 16187:1, 16187:5, 16188:7, 16188:10, 16188:15, 16189:18, 16190:12, 16193:4, 16198:5, 16198:12, 16201:5, 16202:3, 16203:9, 16206:9, 16209:8, 16214:18, 16216:24, 16217:16, 16217:17, 16217:18, 16218:3, 16218:4, 16218:25, 16221:12, 16222:17, 16223:8, 16223:18, 16224:13, 16224:14, 16225:23, 16225:25, 16226:3, 16227:21, 16228:1, 16228:3, 16228:15, 16228:17, 16229:8, 16236:17, 16266:22, 16267:6, 16267:22, 16285:7, 16285:13, 16287:16, 16288:5, 16288:19, 16290:17, 16294:22, 16305:12, 16307:24, 16310:13, 16321:7, 16321:14, 16327:17, 16329:10, 16329:11, 16329:12, 16341:25, 16342:2, 16342:3, 16344:19, 16362:18 Police [5] - 16152:7, 16155:13, 16157:19, 16201:21, 16255:21 policeman [4] - 16248:12, 16248:18, 16297:21, 16347:1 policemen [1] - 16162:9 polite [1] - 16270:19</p>	<p>polygraph [3] - 16318:4, 16383:19, 16384:1 ponder [1] - 16269:25 Pontiac [4] - 16273:17, 16273:18, 16306:11 Pontiac' [1] - 16306:21 portions [1] - 16251:10 position [5] - 16219:4, 16337:16, 16339:15, 16339:24, 16362:14 positively [2] - 16358:25, 16359:11 possession [2] - 16283:2, 16343:24 possibility [5] - 16160:1, 16262:9, 16331:18, 16354:15, 16355:4 Possible [1] - 16163:14 possible [12] - 16165:4, 16184:16, 16221:2, 16279:21, 16279:22, 16294:24, 16327:21, 16334:13, 16352:3, 16382:24, 16384:13, 16384:14 Possibly [1] - 16192:24 possibly [12] - 16165:24, 16262:7, 16281:13, 16281:21, 16312:20, 16314:11, 16350:15, 16369:25, 16371:22, 16372:3, 16388:1 post [1] - 16187:23 postdated [1] - 16366:17 potential [4] - 16189:10, 16257:3, 16259:13, 16260:16 practice [2] - 16231:19, 16332:14 practices [1] - 16162:18 Pratt [5] - 16252:18, 16254:19, 16357:12, 16369:19, 16370:2 Pratt's [1] - 16370:4 pre [2] - 16206:10, 16232:9 pre-arrival [1] - 16206:10 preferred [1] - 16316:20 Prehodchenko [1] - 16151:12 prelim [66] - 16155:19, 16157:4, 16188:13, 16228:13, 16235:20, 16236:7, 16236:15, 16237:5, 16238:3,</p>
--	--	---	--	---



<p>16238:4, 16238:20, 16240:19, 16243:2, 16245:13, 16247:3, 16249:12, 16250:20, 16251:15, 16251:21, 16254:12, 16254:16, 16259:3, 16262:12, 16272:15, 16276:4, 16278:11, 16278:16, 16279:4, 16279:5, 16279:13, 16280:1, 16282:11, 16282:13, 16283:12, 16285:10, 16303:11, 16303:22, 16304:18, 16307:11, 16308:11, 16309:9, 16310:25, 16312:4, 16312:16, 16313:22, 16316:8, 16316:11, 16322:13, 16323:7, 16323:9, 16328:8, 16328:17, 16333:3, 16360:22, 16361:22, 16362:25, 16365:22, 16368:4, 16368:18, 16370:8, 16371:23, 16372:12, 16373:6, 16374:18, 16388:1, 16388:3</p> <p>prelim' [1] - 16373:3 prelim's [1] - 16156:7 preliminary [25] - 16158:17, 16187:19, 16187:24, 16226:14, 16226:17, 16226:21, 16238:24, 16239:7, 16241:17, 16257:24, 16259:17, 16260:20, 16260:23, 16261:4, 16262:4, 16262:25, 16263:1, 16263:9, 16278:15, 16281:20, 16300:5, 16303:10, 16307:6, 16327:13, 16342:14</p> <p>Preliminary [6] - 16250:12, 16250:15, 16256:2, 16256:20, 16257:4, 16257:18 prelims [1] - 16244:20 prep [1] - 16268:23 preparation [5] - 16188:13, 16250:7, 16285:2, 16330:20, 16332:20 preparations [1] - 16303:20 prepare [2] - 16293:1, 16372:22 prepared [8] -</p>	<p>16185:14, 16197:14, 16245:17, 16245:21, 16261:24, 16283:25, 16305:12, 16380:15 preparing [4] - 16192:7, 16269:10, 16299:14, 16324:15 prerequisites [1] - 16347:23 present [4] - 16229:21, 16230:1, 16249:23, 16326:12 press [1] - 16237:25 presumably [15] - 16170:4, 16174:14, 16206:8, 16219:4, 16232:23, 16252:13, 16253:12, 16263:2, 16293:3, 16294:16, 16329:6, 16335:20, 16353:14, 16371:21, 16382:22 Presumably [5] - 16176:22, 16182:8, 16215:14, 16238:12, 16323:7 presume [25] - 16193:15, 16220:11, 16234:23, 16255:6, 16265:5, 16270:11, 16270:13, 16271:12, 16277:1, 16278:5, 16286:3, 16287:7, 16300:10, 16307:16, 16322:8, 16324:18, 16324:21, 16328:9, 16335:22, 16345:15, 16347:7, 16348:3, 16372:12, 16381:12, 16386:10 presumed [2] - 16343:5, 16369:24 presumes [1] - 16220:4 pretrial [4] - 16281:17, 16293:3, 16346:11, 16361:13 pretty [1] - 16159:2 previous [7] - 16157:24, 16164:21, 16169:1, 16189:13, 16192:3, 16234:16, 16348:12 primarily [1] - 16242:9 Pringle [1] - 16152:13 print [1] - 16329:24 printing [1] - 16191:3 prisoner [6] - 16163:15, 16170:16, 16171:2, 16178:7, 16199:6, 16216:20</p>	<p>probe [2] - 16166:20, 16178:16 probing [1] - 16177:7 problems [1] - 16366:11 proceed [1] - 16387:9 proceeding [2] - 16299:19, 16333:7 proceedings [1] - 16269:22 Proceedings [4] - 16150:12, 16150:23, 16153:1, 16154:1 process [3] - 16167:1, 16170:3, 16177:22 processing [1] - 16198:3 produce [1] - 16158:25 produced [1] - 16260:4 prof [1] - 16270:19 project [1] - 16181:24 promise [1] - 16346:12 prompted [3] - 16175:13, 16176:4, 16202:6 prompting [1] - 16381:13 prongs [1] - 16171:14 proper [1] - 16383:12 properly [1] - 16332:8 property [1] - 16199:17 propose [2] - 16241:13, 16266:20 prosecute [1] - 16192:7 prosecuted [4] - 16364:20, 16365:7, 16366:14, 16366:24 prosecution [8] - 16159:5, 16161:3, 16172:14, 16173:5, 16177:6, 16191:25, 16200:8, 16220:23 prosecutor [8] - 16158:7, 16159:23, 16160:5, 16166:12, 16170:25, 16192:21, 16206:7, 16354:23 Prosecutor [2] - 16255:25, 16257:6 prosecutor's [1] - 16325:9 prove [12] - 16159:16, 16181:8, 16255:9, 16255:11, 16270:18, 16295:4, 16295:13, 16296:1, 16296:22, 16316:4, 16335:1, 16361:15 proverbial [1] - 16380:11</p>	<p>proves [3] - 16187:14, 16271:1 provide [5] - 16171:18, 16174:11, 16203:13, 16205:1, 16214:17 provided [7] - 16193:5, 16217:14, 16222:16, 16223:6, 16233:1, 16248:13, 16301:7 provides [1] - 16173:3 providing [3] - 16155:3, 16165:20, 16221:21 province [1] - 16208:25 Province [1] - 16390:3 proving [2] - 16277:2, 16277:6 psych [3] - 16331:16, 16331:24, 16332:5 psychiatric [2] - 16354:13, 16354:17 psychopath [2] - 16347:14, 16347:19 psychopath' [1] - 16347:12 purchased [2] - 16236:20, 16343:20 purpose [7] - 16244:24, 16291:2, 16293:1, 16297:1, 16303:7, 16311:12, 16315:23 purposes [5] - 16231:11, 16257:17, 16263:8, 16332:17, 16332:18 purse [20] - 16190:17, 16190:18, 16191:7, 16192:1, 16277:4, 16277:8, 16277:10, 16277:13, 16277:17, 16277:19, 16284:5, 16300:7, 16350:13, 16351:9, 16351:16, 16351:25, 16352:18, 16353:13, 16354:4, 16357:6 pursue [4] - 16178:23, 16183:18, 16293:6, 16375:23 pursued [6] - 16169:10, 16169:18, 16172:11, 16176:15, 16225:3, 16253:11 pursuing [2] - 16233:25, 16367:21 Put [1] - 16294:10 put [40] - 16161:20, 16164:19, 16175:20, 16176:6, 16178:4, 16181:12, 16185:15, 16194:3, 16194:7,</p>	<p>16196:5, 16205:16, 16205:22, 16209:20, 16214:6, 16220:1, 16220:19, 16221:23, 16223:14, 16225:23, 16240:3, 16244:23, 16271:4, 16277:13, 16279:7, 16283:12, 16297:14, 16298:21, 16303:14, 16309:16, 16310:4, 16310:15, 16311:6, 16311:7, 16311:15, 16312:1, 16313:13, 16333:14, 16354:4, 16364:24, 16374:9 putting [6] - 16225:21, 16281:25, 16292:25, 16314:13, 16351:22, 16352:12</p>
Q				
<p>Q-so [2] - 16211:17, 16212:1 Qb [1] - 16151:9 Qc [5] - 16152:2, 16152:6, 16152:11, 16152:13, 16256:21 quasi [1] - 16178:1 Queen's [4] - 16390:1, 16390:3, 16390:14, 16390:18 questioned [2] - 16263:12, 16311:1 questioning [6] - 16256:24, 16257:15, 16263:13, 16276:3, 16278:1, 16280:3 questions [12] - 16172:15, 16235:16, 16242:2, 16263:6, 16298:12, 16302:14, 16322:24, 16324:11, 16327:15, 16346:13, 16347:8, 16360:13 questions' [1] - 16298:8 quick [2] - 16227:14, 16242:1 quickly [1] - 16223:14 Quinn [1] - 16186:19 Quite [1] - 16372:3 quite [5] - 16169:25, 16178:19, 16184:16, 16365:18, 16375:14 quote [5] - 16154:25, 16302:4, 16313:22, 16313:23, 16360:5</p>				



quotes ^[1] - 16281:23 quoting ^[1] - 16300:12	16276:12, 16278:7, 16278:8, 16278:14, 16278:25, 16298:23, 16300:3, 16304:13, 16304:23, 16312:6, 16314:2, 16320:20, 16320:21, 16321:7, 16321:10, 16327:22, 16328:20, 16328:25, 16330:14, 16332:23, 16336:4, 16346:11, 16350:13, 16351:9, 16355:19, 16357:5, 16359:20, 16361:25, 16375:9, 16375:12, 16377:5, 16377:9, 16377:13, 16378:10, 16385:5, 16385:23, 16385:24, 16386:5, 16386:19, 16387:24, 16388:13, 16389:1 read ^[62] - 16156:8, 16157:5, 16166:8, 16166:15, 16174:6, 16174:18, 16175:6, 16175:11, 16176:3, 16183:12, 16184:18, 16189:7, 16191:17, 16191:19, 16198:11, 16198:12, 16200:1, 16200:19, 16201:4, 16202:7, 16203:7, 16203:9, 16203:16, 16203:18, 16206:1, 16206:4, 16206:17, 16206:20, 16209:12, 16210:9, 16211:20, 16214:8, 16214:24, 16215:3, 16215:9, 16221:5, 16222:20, 16222:21, 16222:24, 16222:25, 16226:20, 16227:1, 16229:6, 16229:24, 16231:12, 16231:17, 16235:14, 16265:4, 16275:3, 16280:8, 16283:14, 16287:17, 16322:4, 16322:13, 16331:14, 16336:7, 16351:10, 16354:12, 16355:18, 16361:11, 16384:24, 16386:1 Read ^[1] - 16300:2 readily ^[1] - 16322:33 reading ^[12] - 16203:19, 16206:20, 16210:11, 16214:9, 16215:6, 16271:8, 16274:21, 16274:25, 16313:10, 16354:20, 16359:14,	16375:1 reads ^[4] - 16235:5, 16261:25, 16263:8, 16305:15 realize ^[2] - 16200:20, 16333:15 really ^[4] - 16181:7, 16258:9, 16300:15, 16301:21 reason ^[12] - 16180:11, 16203:12, 16233:25, 16245:8, 16248:21, 16260:2, 16260:4, 16307:7, 16309:15, 16332:5, 16340:25, 16363:25 reasons ^[6] - 16172:7, 16217:5, 16218:22, 16248:6, 16258:3, 16317:8 recalled ^[9] - 16238:4, 16238:14, 16239:10, 16240:9, 16242:19, 16243:1, 16282:12, 16327:13, 16372:24 received ^[20] - 16180:16, 16180:24, 16184:9, 16184:22, 16185:6, 16186:14, 16187:2, 16187:9, 16187:10, 16188:5, 16197:18, 16199:14, 16205:20, 16205:21, 16210:4, 16217:24, 16218:2, 16226:18, 16283:4, 16290:17 receiving ^[1] - 16199:21 recent ^[2] - 16187:14, 16226:9 recognize ^[2] - 16210:18, 16211:7 recognized ^[3] - 16192:11, 16213:25, 16312:3 recollection ^[17] - 16158:22, 16162:13, 16215:10, 16218:17, 16222:3, 16222:21, 16247:11, 16253:16, 16262:15, 16316:12, 16330:19, 16346:7, 16363:6, 16363:19, 16364:16, 16366:14, 16367:3 Reconvened ^[4] - 16154:2, 16223:22, 16282:8, 16341:20 record ^[18] - 16174:20, 16187:17, 16190:11, 16190:14, 16200:7,	16217:10, 16218:3, 16219:13, 16222:15, 16238:2, 16242:4, 16250:2, 16319:13, 16325:6, 16330:11, 16341:9, 16371:16 recordings ^[1] - 16380:22 records ^[2] - 16186:24, 16201:19 recovered ^[1] - 16322:3 rectory ^[1] - 16306:6 red ^[24] - 16190:23, 16191:1, 16194:2, 16194:16, 16195:5, 16195:10, 16196:1, 16205:11, 16205:12, 16209:24, 16210:3, 16215:24, 16216:2, 16223:1, 16223:16, 16225:18, 16226:6, 16306:11, 16306:20, 16326:16, 16360:18, 16361:1, 16361:9 Redcross ^[1] - 16199:7 reenactment ^[2] - 16252:2, 16280:18 refer ^[14] - 16174:4, 16181:20, 16191:16, 16222:1, 16237:12, 16296:6, 16301:8, 16326:16, 16328:2, 16360:14, 16369:12, 16370:23, 16381:16, 16382:1 reference ^[18] - 16189:5, 16192:4, 16196:9, 16198:15, 16227:14, 16234:16, 16240:17, 16242:18, 16247:14, 16253:24, 16259:7, 16263:20, 16279:23, 16281:12, 16302:12, 16305:12, 16339:8, 16344:10 references ^[1] - 16270:20 referencing ^[1] - 16290:14 referred ^[5] - 16180:10, 16278:21, 16283:20, 16283:21, 16343:1 referring ^[10] - 16172:20, 16210:19, 16218:5, 16234:13, 16269:12, 16285:15, 16286:1, 16344:4, 16346:5, 16368:3 refers ^[19] - 16164:11,	16174:2, 16196:10, 16265:3, 16271:20, 16279:15, 16288:4, 16296:4, 16297:16, 16300:23, 16302:9, 16313:20, 16321:21, 16329:4, 16377:7, 16378:4, 16379:7, 16381:4, 16382:21 reflect ^[2] - 16163:22, 16241:5 reflected ^[1] - 16219:3 reflects ^[3] - 16222:15, 16341:9, 16371:16 regard ^[1] - 16198:24 regarded ^[6] - 16251:6, 16350:20, 16352:9, 16353:6, 16353:12, 16354:7 regarding ^[1] - 16377:15 regards ^[1] - 16198:18 Regina ^[13] - 16228:1, 16246:3, 16246:6, 16313:19, 16315:10, 16321:9, 16325:21, 16328:10, 16342:24, 16342:25, 16343:3, 16343:6, 16376:4 Regina ^[2] - 16360:4, 16360:5 regrettably ^[1] - 16207:24 Reid ^[4] - 16235:12, 16235:18, 16236:5, 16313:6 relate ^[4] - 16335:11, 16346:22, 16359:19, 16367:12 related ^[4] - 16233:14, 16254:14, 16365:15, 16367:5 relates ^[8] - 16227:22, 16235:2, 16320:23, 16329:21, 16336:15, 16348:23, 16356:9, 16375:11 relating ^[5] - 16188:8, 16227:23, 16305:7, 16306:12, 16341:14 relations ^[1] - 16376:23 relatively ^[1] - 16357:23 released ^[1] - 16249:25 relevance ^[1] - 16295:14 relevancy ^[2] - 16314:4, 16314:20 relevant ^[1] - 16212:21 reliability ^[2] - 16365:8, 16374:22
---	---	---	---	--



<p>relied [1] - 16189:24 rely [1] - 16179:12 relying [1] - 16179:4 remained [1] - 16176:23 remark [1] - 16350:7 remarkable [1] - 16192:23 Remember[1] - 16324:10 remember [18] - 16163:12, 16175:12, 16188:9, 16201:23, 16215:13, 16215:17, 16215:20, 16264:3, 16264:15, 16267:19, 16285:13, 16313:23, 16314:1, 16321:19, 16326:12, 16346:19, 16360:6, 16366:7 remember' [1] - 16313:19 remembered [1] - 16328:6 remembers [2] - 16327:22, 16327:25 Remenda[8] - 16301:7, 16332:23, 16333:5, 16333:16, 16333:21, 16334:5, 16334:8, 16386:19 Remendá [1] - 16300:16 Remendás [4] - 16300:16, 16333:22, 16333:24, 16334:4 remind [2] - 16298:21, 16344:6 reminder [1] - 16372:17 reminders [1] - 16269:11 remove [1] - 16212:7 repair [1] - 16312:21 repeat [1] - 16249:10 repeated [1] - 16247:8 rephrase [2] - 16178:3, 16213:3 replace [1] - 16173:24 replacing [1] - 16175:16 replica [1] - 16236:22 reply [3] - 16374:10, 16384:6, 16388:7 report [56] - 16159:7, 16180:6, 16180:14, 16181:16, 16182:17, 16182:25, 16183:12, 16184:3, 16184:6, 16184:8, 16184:23, 16185:4, 16185:6, 16185:16, 16185:23,</p>	<p>16185:24, 16186:3, 16188:10, 16188:15, 16188:22, 16189:9, 16189:18, 16189:23, 16190:1, 16190:17, 16198:6, 16199:13, 16201:3, 16217:19, 16218:4, 16227:21, 16228:3, 16228:18, 16228:19, 16244:14, 16244:17, 16244:24, 16245:4, 16245:8, 16252:6, 16252:8, 16288:23, 16298:10, 16298:13, 16300:20, 16301:8, 16302:2, 16329:10, 16329:11, 16329:19, 16341:25, 16342:2, 16342:3, 16342:6, 16342:9 Report[1] - 16342:7 reported [1] - 16301:11 Reporter[2] - 16390:14, 16390:18 Reporters[2] - 16151:9, 16390:3 reporters [1] - 16296:15 Reporters [1] - 16390:1 reporting [2] - 16185:9, 16333:25 reports [21] - 16174:24, 16182:5, 16184:21, 16184:22, 16185:14, 16186:15, 16187:2, 16187:5, 16187:9, 16187:10, 16187:18, 16187:21, 16188:7, 16198:13, 16200:9, 16201:5, 16217:23, 16228:7, 16228:8, 16244:24, 16313:12 represent [2] - 16250:12, 16251:16 representing [1] - 16379:13 request [12] - 16172:6, 16177:9, 16178:22, 16192:25, 16202:6, 16203:9, 16217:9, 16233:21, 16234:8, 16234:20, 16282:22, 16283:13 requested [5] - 16201:22, 16227:7, 16255:23, 16257:1, 16257:7 requesting [1] - 16264:2 requests [4] - 16158:24, 16164:1,</p>	<p>16167:21, 16181:24 required [1] - 16258:6 requirement [1] - 16244:16 requires [1] - 16257:5 resembling [1] - 16249:20 residence [2] - 16207:11, 16356:13 resist [1] - 16179:10 resolved [2] - 16303:9, 16303:24 respect [14] - 16172:8, 16216:6, 16224:24, 16231:23, 16250:22, 16259:4, 16259:5, 16290:22, 16297:6, 16297:7, 16317:5, 16328:23, 16362:15, 16388:4 respectively [1] - 16256:1 respond [3] - 16220:17, 16275:7, 16276:8 responsible [2] - 16198:21, 16199:3 rest [4] - 16185:16, 16191:10, 16266:23, 16324:1 result [2] - 16164:12, 16203:8 results [2] - 16320:17, 16320:29 results' [1] - 16320:24 Retain[1] - 16233:13 retains [1] - 16309:5 retired [1] - 16277:24 Retired[1] - 16152:14 retrieved [1] - 16196:17 return [4] - 16181:3, 16184:13, 16196:4, 16320:3 returned [4] - 16279:3, 16279:4, 16323:19, 16323:25 reveal [1] - 16246:25 review [10] - 16160:15, 16161:22, 16163:20, 16163:23, 16168:9, 16186:12, 16189:8, 16209:9, 16222:18 reviewed [3] - 16174:7, 16190:12, 16219:5 Rick[1] - 16152:7 rid [1] - 16346:16 Riddell[2] - 16284:7, 16386:9 ride [1] - 16356:17 ridicule [3] - 16358:6, 16358:9, 16358:12</p>	<p>right-hand [10] - 16155:11, 16184:11, 16252:11, 16255:15, 16264:6, 16268:8, 16275:10, 16283:16, 16285:18, 16320:13 right/left [1] - 16346:24 right/left-handed [1] - 16346:24 ring [1] - 16180:15 rip [1] - 16361:19 Rm[3] - 16193:15, 16194:11, 16386:23 Robert[1] - 16267:10 Roberts[44] - 16153:3, 16154:5, 16227:9, 16255:22, 16256:11, 16256:24, 16257:2, 16257:12, 16257:23, 16258:16, 16259:2, 16259:11, 16259:17, 16260:2, 16260:16, 16261:3, 16261:20, 16262:10, 16262:16, 16262:17, 16263:4, 16263:18, 16263:22, 16267:21, 16267:24, 16286:2, 16286:3, 16286:10, 16290:15, 16290:20, 16315:19, 16316:14, 16316:21, 16317:13, 16317:19, 16320:8, 16323:3, 16345:9, 16345:10, 16348:6, 16361:15, 16383:14, 16383:16, 16384:10 Roberts [4] - 16262:3, 16290:10, 16315:15, 16320:4 Ron[11] - 16263:14, 16321:15, 16325:7, 16325:8, 16335:12, 16345:25, 16349:14, 16356:24, 16368:8, 16377:5, 16377:10 Rorts [1] - 16331:2 Ronald[1] - 16245:25 room [10] - 16235:11, 16280:17, 16328:11, 16330:15, 16379:5, 16379:9, 16380:19, 16383:2, 16383:5, 16383:9 roommate [2] - 16356:7, 16356:10 roommates [1] - 16356:16 Roughly[2] - 16288:17, 16321:20</p>	<p>route [1] - 16261:8 routine [1] - 16232:4 Rp[4] - 16151:10, 16390:2, 16390:16, 16390:17 rule [1] - 16325:12 ruled [2] - 16299:1, 16299:10 ruling [1] - 16317:10 rumours [1] - 16161:12 run [1] - 16179:11 running [3] - 16207:13, 16303:13, 16303:25 runs [1] - 16274:3</p>
S				
<p>Stoon [2] - 16342:23, 16343:17 salary [1] - 16256:10 saliva [3] - 16334:24, 16335:4, 16339:6 Saliva [1] - 16387:10 sample [19] - 16233:12, 16233:13, 16233:23, 16235:19, 16236:6, 16236:10, 16270:15, 16295:16, 16320:17, 16320:18, 16320:24, 16321:1, 16326:17, 16327:16, 16340:10, 16340:15, 16340:19, 16387:10, 16388:18 samples [4] - 16234:8, 16234:12, 16234:15, 16235:5 Sandra [1] - 16151:4 Saskatchewan [3] - 16150:17, 16152:4, 16390:4 Saskatoon [18] - 16150:17, 16152:7, 16157:19, 16201:21, 16246:3, 16255:23, 16257:3, 16257:13, 16290:22, 16291:2, 16323:11, 16326:11, 16350:13, 16351:8, 16360:18, 16360:24, 16373:1, 16375:16 Saskatoon' [3] - 16321:4, 16362:10, 16365:1 sat [2] - 16222:20, 16240:20 satisfied [3] - 16270:3, 16302:10, 16311:24 Saturday [3] - 16262:19, 16376:1,</p>				



<p>16386:15 saw [41] - 16161:6, 16162:4, 16167:22, 16171:17, 16186:18, 16189:19, 16206:7, 16207:10, 16212:11, 16222:25, 16247:1, 16254:12, 16259:7, 16264:2, 16266:8, 16274:12, 16274:20, 16280:6, 16281:11, 16282:11, 16305:11, 16305:14, 16306:15, 16313:11, 16316:7, 16323:2, 16327:12, 16331:4, 16337:19, 16342:25, 16346:14, 16355:15, 16361:20, 16368:15, 16369:20, 16370:8, 16370:15, 16380:2, 16382:21, 16383:3, 16385:12 Says' [1] - 16369:11 says' [1] - 16372:4 Sb [1] - 16265:2 scarf [1] - 16304:23 scenario [2] - 16213:7, 16225:20 scene [1] - 16270:10 Schellenberg [1] - 16188:9 school [2] - 16300:16, 16347:3 scientific [1] - 16233:16 scratch [4] - 16271:10, 16271:23, 16271:25, 16272:7 screaming [1] - 16323:21 screen [15] - 16172:22, 16196:6, 16197:2, 16205:12, 16214:12, 16215:7, 16242:22, 16267:3, 16283:17, 16292:8, 16306:25, 16318:18, 16342:2, 16385:18, 16385:20 scroll [19] - 16182:23, 16184:4, 16267:9, 16270:12, 16273:15, 16285:5, 16286:2, 16290:15, 16290:18, 16308:8, 16309:4, 16320:7, 16336:8, 16359:19, 16368:22, 16375:9, 16379:4, 16386:25, 16389:1 Scroll [3] - 16327:22, 16383:14, 16384:25 scuffled [1] - 16212:8</p>	<p>se [1] - 16292:4 search [1] - 16335:11 searches [1] - 16158:23 second [20] - 16160:19, 16183:19, 16190:3, 16197:24, 16210:20, 16211:1, 16220:6, 16227:6, 16246:17, 16259:23, 16280:25, 16283:12, 16287:11, 16290:17, 16304:21, 16304:23, 16312:11, 16377:25, 16378:3, 16381:25 Secondly [3] - 16167:7, 16168:13, 16185:24 secondly [7] - 16162:2, 16169:8, 16276:15, 16296:25, 16317:9, 16340:10, 16383:1 secretary [3] - 16286:16, 16289:15, 16359:2 secreting [3] - 16336:13, 16338:3, 16388:10 secretor [14] - 16337:13, 16337:15, 16338:22, 16339:3, 16339:5, 16339:9, 16340:4, 16340:7, 16340:18, 16387:13, 16387:16, 16388:13, 16388:19, 16388:23 secretor/non [1] - 16387:16 secretor/non-secretor [1] - 16387:16 secretors [1] - 16346:13 Section [1] - 16257:5 section [3] - 16173:1, 16232:6, 16302:19 secure [1] - 16262:12 Security [1] - 16151:11 see [112] - 16164:8, 16165:9, 16165:20, 16166:3, 16166:21, 16172:19, 16173:21, 16174:20, 16176:3, 16180:13, 16181:7, 16181:25, 16182:11, 16182:24, 16183:17, 16186:5, 16186:6, 16190:3, 16190:4, 16192:25, 16193:11, 16193:14, 16194:18, 16197:1, 16197:13, 16197:16, 16197:17, 16197:22, 16197:24,</p>	<p>16198:9, 16198:15, 16205:11, 16205:12, 16210:13, 16210:21, 16213:5, 16213:22, 16215:23, 16230:16, 16232:19, 16233:24, 16237:20, 16240:6, 16242:18, 16244:12, 16244:25, 16252:16, 16257:25, 16262:2, 16263:7, 16264:1, 16265:1, 16265:12, 16265:14, 16265:23, 16266:19, 16267:3, 16268:25, 16271:6, 16279:14, 16279:23, 16280:4, 16283:17, 16283:24, 16284:4, 16284:9, 16284:10, 16293:13, 16303:25, 16306:16, 16306:23, 16307:2, 16307:3, 16307:9, 16307:12, 16307:13, 16312:23, 16313:9, 16314:25, 16318:7, 16320:21, 16321:5, 16321:16, 16322:4, 16326:16, 16327:20, 16328:10, 16335:5, 16338:4, 16341:3, 16345:22, 16347:15, 16350:21, 16352:16, 16352:23, 16354:2, 16356:2, 16356:8, 16356:12, 16356:20, 16360:2, 16368:20, 16370:4, 16375:21, 16378:10, 16378:21, 16379:1, 16379:19, 16385:17, 16385:20, 16386:9, 16388:17 See [2] - 16274:14, 16293:20 see/hear [1] - 16307:17 seeing [5] - 16158:22, 16246:23, 16279:16, 16305:7, 16367:5 seem [4] - 16163:11, 16296:8, 16310:6, 16346:21 sees [2] - 16385:3, 16385:21 seized [1] - 16197:25 self [2] - 16284:6, 16306:8 self-explanatory [1] - 16306:8 semen [18] - 16296:2, 16296:4, 16297:2,</p>	<p>16297:14, 16334:21, 16337:4, 16337:8, 16337:9, 16337:14, 16337:16, 16337:22, 16338:18, 16340:8, 16340:11, 16340:21, 16341:7, 16346:16, 16388:23 seminal [12] - 16235:5, 16336:6, 16336:11, 16336:13, 16336:18, 16337:3, 16338:1, 16338:3, 16338:11, 16387:12, 16389:2, 16389:3 send [2] - 16165:14, 16218:20 sending [1] - 16256:18 senior [2] - 16248:12, 16249:7 sense [10] - 16171:13, 16207:25, 16208:13, 16221:10, 16249:3, 16249:17, 16266:2, 16312:19, 16325:24, 16334:16 sent [4] - 16174:22, 16174:25, 16200:10, 16201:20 sentences [1] - 16185:10 separate [3] - 16185:4, 16342:11, 16365:11 separately [1] - 16263:11 Sept [1] - 16342:12 September [34] - 16154:10, 16154:15, 16155:16, 16157:12, 16165:9, 16187:20, 16226:12, 16226:13, 16227:21, 16227:23, 16228:11, 16229:1, 16229:5, 16229:11, 16232:24, 16238:5, 16239:1, 16240:23, 16240:24, 16242:17, 16242:25, 16243:6, 16243:9, 16243:14, 16243:15, 16243:18, 16243:20, 16244:1, 16252:6, 16252:14, 16255:17, 16342:5 sequence [1] - 16202:8 Serge [1] - 16152:6 Sergeant [4] - 16183:4, 16183:8, 16197:15, 16248:5 series [1] - 16291:24 serious [1] - 16332:21</p>	<p>Serrato [1] - 16253:21 served [2] - 16267:5, 16290:3 Service [1] - 16152:7 serving [3] - 16267:6, 16287:8, 16289:21 session [1] - 16384:2 set [6] - 16229:24, 16293:19, 16303:25, 16304:1, 16336:22, 16379:1 sets [2] - 16253:19, 16369:22 settled [1] - 16293:4 seven [2] - 16215:12, 16216:15 several [1] - 16364:13 sexual [7] - 16275:11, 16275:13, 16275:20, 16276:17, 16347:21, 16376:23, 16377:20 sexually [2] - 16323:14, 16377:23 shall [1] - 16308:16 sheet [1] - 16257:9 sheets [1] - 16360:10 shiny [1] - 16304:22 Shirley [10] - 16227:9, 16239:20, 16242:20, 16259:8, 16259:15, 16260:3, 16260:7, 16261:13, 16261:14, 16345:25 shirt [4] - 16279:15, 16279:16, 16280:5, 16280:7 Short [3] - 16331:6, 16331:10, 16331:12 short [2] - 16314:2, 16314:14 shorthand [2] - 16386:6, 16390:5 shortly [2] - 16176:1, 16352:1 Shorty's [2] - 16379:6, 16379:11 Show [2] - 16164:6, 16359:15 show [26] - 16156:16, 16162:22, 16163:15, 16164:14, 16165:12, 16170:16, 16170:21, 16171:2, 16171:5, 16178:7, 16178:17, 16204:2, 16207:23, 16208:9, 16212:17, 16212:21, 16216:19, 16231:15, 16236:13, 16268:6, 16291:11, 16297:10, 16300:14,</p>
--	---	---	---	--



16334:8, 16352:13, 16388:22 showed [8] - 16183:4, 16189:5, 16224:10, 16230:20, 16310:5, 16333:21, 16346:2, 16359:7 shown [3] - 16230:7, 16290:9, 16361:16 shows [6] - 16197:2, 16217:11, 16219:14, 16238:2, 16239:9, 16274:23 Si [1] - 16275:10 side [4] - 16207:7, 16212:5, 16380:24, 16381:8 sided' [1] - 16271:14 significance [6] - 16192:6, 16192:15, 16199:8, 16199:25, 16223:9, 16307:5 significant [1] - 16220:3 similar [13] - 16177:3, 16211:23, 16218:22, 16225:1, 16236:12, 16250:11, 16251:15, 16266:23, 16299:7, 16355:15, 16355:21, 16382:8, 16382:12 similarities [1] - 16177:1 simple [2] - 16170:25, 16295:9 simply [8] - 16182:14, 16183:23, 16184:24, 16221:2, 16261:7, 16262:7, 16273:11, 16378:3 single [2] - 16232:21, 16382:4 sister [3] - 16321:15, 16367:11, 16367:15 sister's [1] - 16367:10 sitting [1] - 16150:15 situation [2] - 16157:1, 16312:5 siwash [1] - 16207:17 six [4] - 16186:21, 16279:6, 16385:15, 16385:19 size [1] - 16243:19 sketches [1] - 16309:2 skill [1] - 16390:6 skimp [1] - 16382:2 skipping [1] - 16387:2 Slight [1] - 16243:13 slightly [1] - 16307:10 slim [1] - 16211:5	small [6] - 16232:14, 16232:16, 16283:2, 16283:5, 16306:19, 16312:2 snatching [7] - 16351:9, 16351:17, 16352:1, 16352:19, 16353:13, 16354:5, 16357:6 snatching' [2] - 16350:13, 16357:3 snow [12] - 16235:5, 16275:16, 16275:23, 16276:16, 16304:13, 16304:16, 16309:24, 16339:16, 16382:18, 16382:22, 16383:1 so-called [3] - 16186:20, 16218:9, 16222:8 solid [1] - 16367:18 solve [1] - 16176:20 someone [24] - 16159:3, 16160:25, 16161:13, 16170:2, 16171:9, 16171:11, 16175:22, 16192:25, 16208:17, 16209:10, 16234:17, 16271:23, 16305:8, 16306:4, 16313:6, 16314:11, 16314:12, 16323:17, 16328:3, 16329:15, 16349:3, 16368:6, 16377:22 Someone [8] - 16175:23, 16236:10, 16272:18, 16294:23, 16323:12, 16328:22, 16374:9, 16375:12 sometime [1] - 16268:22 sometimes [1] - 16364:15 somewhat [1] - 16324:8 somewhere [6] - 16323:16, 16354:21, 16365:5, 16375:22, 16377:11, 16382:15 son [1] - 16199:17 soon [1] - 16252:8 Sorry [6] - 16206:15, 16214:10, 16236:4, 16281:3, 16292:5, 16358:10 sorry [54] - 16175:23, 16178:3, 16179:18, 16180:20, 16181:2, 16190:22, 16191:4, 16191:11, 16194:21,	16206:1, 16211:1, 16213:10, 16213:22, 16233:19, 16236:1, 16239:24, 16243:15, 16253:14, 16254:17, 16258:11, 16269:3, 16271:17, 16282:24, 16286:23, 16286:24, 16287:23, 16291:17, 16291:20, 16296:7, 16305:3, 16305:4, 16308:4, 16315:13, 16318:21, 16319:8, 16321:12, 16324:2, 16330:5, 16331:9, 16332:11, 16336:2, 16344:14, 16347:2, 16348:18, 16350:14, 16350:24, 16357:15, 16374:17, 16378:2, 16378:15, 16378:16, 16385:6, 16385:12, 16385:14 sort [14] - 16171:3, 16177:8, 16177:14, 16178:15, 16236:14, 16265:9, 16276:7, 16310:4, 16327:9, 16338:9, 16338:14, 16360:13, 16369:22, 16370:13 sorts [1] - 16320:10 sound [9] - 16237:1, 16256:14, 16266:24, 16293:9, 16294:2, 16329:18, 16337:17, 16341:7, 16388:24 sounds [6] - 16171:20, 16256:15, 16268:24, 16294:3, 16337:24, 16381:10 source [2] - 16273:6, 16339:13 Source [1] - 16164:2 South [4] - 16180:18, 16198:16, 16300:19 south [3] - 16183:2, 16274:7, 16374:13 speaking [6] - 16164:15, 16170:22, 16288:17, 16321:6, 16321:20, 16326:19 specific [1] - 16167:21 specifically [3] - 16180:9, 16184:22, 16377:12 specifics [2] - 16162:13, 16162:16 Spence [6] - 16161:7, 16164:9, 16164:11,	16165:11, 16166:7, 16180:23 spent [1] - 16245:3 sperm [7] - 16235:1, 16236:2, 16275:23, 16276:16, 16276:25, 16346:11, 16389:3 spermatozoa [1] - 16389:2 spilled [1] - 16343:4 spoken [2] - 16166:4, 16179:9 spot [3] - 16282:4, 16341:18, 16389:7 spots [1] - 16269:19 spring [2] - 16303:17, 16328:12 spring-back [1] - 16303:17 squeeze [2] - 16191:8, 16191:14 Squeeze [1] - 16190:25 Squeeze-out [1] - 16190:25 squeeze-out' [2] - 16191:8, 16191:14 squiggly [1] - 16200:23 St [6] - 16189:21, 16207:11, 16266:7, 16306:5, 16355:12, 16380:24 stabbed [1] - 16175:21 stabbing [3] - 16246:16, 16246:23, 16323:20 stability [2] - 16365:15, 16365:16 Staff [2] - 16151:1, 16151:7 stage [1] - 16248:8 Stalky [1] - 16203:3 Stan [1] - 16230:13 stand [8] - 16217:13, 16222:10, 16265:4, 16265:15, 16278:9, 16278:20, 16381:16, 16381:17 standard [2] - 16244:19, 16376:20 stapled [2] - 16241:24, 16378:23 star [1] - 16232:13 start [4] - 16159:20, 16252:8, 16318:12, 16368:16 started [5] - 16207:12, 16252:8, 16252:13, 16303:11, 16352:18 starts [1] - 16173:2 state [3] - 16175:18,	16177:23, 16327:9 statement [80] - 16180:24, 16186:20, 16189:20, 16201:8, 16201:10, 16201:14, 16201:18, 16202:10, 16203:1, 16203:14, 16203:25, 16204:20, 16205:1, 16205:8, 16205:20, 16206:3, 16206:8, 16207:1, 16207:20, 16209:9, 16209:12, 16209:16, 16209:21, 16209:23, 16210:5, 16210:10, 16212:20, 16213:18, 16214:3, 16214:7, 16214:8, 16214:12, 16214:17, 16215:7, 16216:17, 16218:1, 16222:25, 16223:17, 16226:8, 16248:23, 16249:11, 16249:16, 16251:2, 16253:7, 16253:9, 16278:8, 16278:14, 16278:25, 16287:16, 16288:9, 16298:23, 16301:7, 16304:23, 16307:22, 16308:6, 16308:7, 16308:10, 16313:24, 16318:4, 16325:8, 16325:11, 16325:14, 16333:19, 16342:20, 16356:19, 16362:1, 16362:7, 16369:25, 16370:4, 16370:24, 16376:1, 16376:2, 16377:4, 16377:9, 16381:16, 16383:19, 16383:24, 16383:25, 16384:9 statements [32] - 16155:3, 16163:12, 16171:18, 16174:23, 16186:21, 16201:23, 16202:3, 16217:12, 16218:1, 16221:1, 16222:15, 16222:20, 16223:5, 16223:25, 16226:19, 16226:22, 16246:18, 16252:19, 16255:10, 16255:11, 16284:7, 16307:19, 16308:19, 16308:20, 16308:21, 16324:4, 16324:24, 16325:2, 16325:6, 16325:17, 16362:6, 16386:10 statements' [1] - 16255:5
--	--	---	--	--



states [2] - 16230:9, 16289:17 station [3] - 16186:19, 16233:7, 16311:13 status [1] - 16348:25 stay [2] - 16182:14, 16285:12 stepped [1] - 16212:4 steps [2] - 16227:17, 16268:3 stick [1] - 16192:9 sticker [1] - 16214:14 sticky [2] - 16196:18, 16196:22 still [9] - 16157:4, 16211:21, 16232:20, 16233:5, 16246:22, 16265:18, 16269:3, 16311:14, 16320:25 stole [1] - 16343:3 Store [1] - 16207:6 story [5] - 16189:25, 16334:4, 16379:6, 16379:12, 16387:16 straight [2] - 16373:2, 16373:12 straight' [1] - 16387:17 straightened [2] - 16336:14, 16338:7 street [6] - 16212:3, 16247:25, 16374:13, 16380:24, 16381:7 Street [3] - 16202:21, 16207:8, 16207:9 stringer [1] - 16309:20 striped [1] - 16343:16 strong [3] - 16178:12, 16178:20, 16251:10 Strong [1] - 16178:25 stronger [1] - 16177:24 stuck [1] - 16258:19 stuff [1] - 16387:21 stupid [2] - 16322:7, 16361:19 subject [1] - 16168:20 subjects [1] - 16235:8 submission [1] - 16187:23 submit [2] - 16173:19, 16256:4 submitted [2] - 16255:20, 16343:25 submitting [1] - 16175:16 subpoena [4] - 16258:5, 16260:9, 16267:23, 16287:14 subpoenaed [4] - 16257:2, 16289:9, 16290:23, 16291:6	subpoenas [4] - 16266:22, 16267:5, 16285:21, 16287:8 subsequent [5] - 16248:15, 16362:18, 16362:19, 16364:17 substituted [1] - 16357:4 such' [3] - 16351:9, 16351:11, 16351:12 suffered [1] - 16366:10 suffering [1] - 16367:1 suggest [10] - 16167:19, 16171:8, 16201:19, 16208:17, 16220:3, 16268:21, 16307:19, 16314:1, 16330:15, 16382:24 suggested [12] - 16166:6, 16208:24, 16272:18, 16282:12, 16310:2, 16323:12, 16325:10, 16328:22, 16340:11, 16374:9, 16375:13, 16382:22 suggesting [2] - 16171:24, 16182:1 suggestion [7] - 16208:16, 16219:25, 16220:17, 16271:22, 16274:17, 16275:19, 16276:8 suggests [4] - 16217:10, 16218:3, 16261:13, 16370:11 suitcase [12] - 16319:23, 16329:1, 16329:5, 16329:14, 16341:24, 16343:8, 16343:15, 16343:18, 16343:19, 16343:23, 16345:8, 16386:14 suite [1] - 16180:20 summary [23] - 16174:21, 16174:22, 16174:23, 16180:7, 16180:10, 16181:17, 16184:20, 16184:23, 16187:4, 16188:6, 16188:16, 16193:4, 16196:9, 16197:12, 16198:6, 16217:14, 16217:17, 16223:7, 16228:6, 16245:22, 16305:12, 16305:14 summation [3] - 16272:22, 16272:23, 16272:25 summoned [1] - 16257:9	supply [1] - 16199:5 supplying [1] - 16165:22 Support [1] - 16151:7 support [2] - 16352:13, 16353:1 suppose [5] - 16160:20, 16170:17, 16176:24, 16181:7, 16327:7 Supreme [1] - 16364:11 sure' [1] - 16357:2 surfaced [2] - 16222:7, 16222:9 surprise [1] - 16263:11 surprised [3] - 16184:17, 16196:11, 16222:24 suspect [14] - 16161:19, 16164:20, 16165:4, 16166:24, 16168:11, 16169:15, 16169:16, 16169:21, 16219:10, 16224:8, 16231:16, 16243:19, 16339:17 suspected [2] - 16327:8, 16387:13 suspects [9] - 16161:9, 16161:16, 16161:23, 16162:6, 16162:20, 16162:21, 16167:16, 16178:10, 16179:7 swear [2] - 16361:25, 16378:6 sweater [6] - 16272:13, 16272:16, 16279:15, 16279:16, 16280:5, 16284:8 sweaters [2] - 16272:2, 16272:18 switched [1] - 16320:25 sworn [1] - 16362:7	16163:11, 16163:13, 16163:22, 16165:14, 16167:20, 16169:24, 16170:8, 16171:22, 16171:24, 16172:1, 16179:9, 16200:10, 16201:21, 16202:7, 16203:8, 16203:12, 16203:14, 16213:7, 16214:18, 16218:20, 16221:21, 16222:18, 16227:8, 16229:6, 16229:21, 16230:14, 16231:7, 16231:12, 16231:20, 16232:2, 16232:9, 16232:23, 16233:1, 16233:8, 16233:22, 16235:6, 16235:13, 16237:4, 16238:11, 16238:17, 16240:8, 16243:22, 16255:25, 16256:21, 16257:14, 16257:22, 16258:11, 16258:15, 16259:16, 16260:15, 16260:22, 16261:3, 16261:21, 16262:2, 16262:8, 16262:16, 16263:5, 16263:16, 16263:22, 16269:18, 16270:7, 16270:21, 16272:5, 16275:3, 16281:14, 16282:1, 16282:18, 16282:20, 16288:7, 16289:6, 16299:22, 16309:8, 16310:20, 16310:23, 16311:3, 16311:6, 16311:24, 16316:1, 16316:8, 16316:13, 16316:20, 16316:25, 16327:14, 16327:17, 16335:24, 16343:5, 16343:9, 16343:22, 16344:23, 16358:8, 16384:13, 16387:23, 16387:25, 16388:2 Tallis [11] - 16154:14, 16172:8, 16181:24, 16217:9, 16242:9, 16243:11, 16272:10, 16283:13, 16315:1, 16317:17, 16358:6 tannish [2] - 16369:19, 16370:18 tapes [1] - 16264:3 Tdr [2] - 16152:5, 16255:24 Technician [1] - 16151:12	technique [1] - 16387:24 teenager [1] - 16305:6 teenager' [1] - 16305:5 television [1] - 16305:6 temptations [1] - 16179:11 ten [1] - 16192:13 tend [13] - 16162:22, 16165:11, 16170:16, 16171:2, 16178:7, 16178:16, 16204:2, 16207:22, 16208:9, 16212:17, 16212:21, 16216:19, 16221:7 tended [1] - 16335:20 tender [1] - 16355:14 tendered [3] - 16310:19, 16325:15, 16335:17 tending [1] - 16170:21 tends [2] - 16163:15, 16171:4 Tenezacon [1] - 16356:19 tentative [2] - 16252:7, 16264:10 terms [5] - 16177:3, 16221:8, 16293:5, 16309:19, 16316:22 test [3] - 16170:12, 16263:23, 16388:17 tested [4] - 16326:17, 16337:5, 16337:6, 16339:7 testified [8] - 16230:13, 16274:20, 16299:12, 16331:25, 16332:7, 16333:3, 16333:6, 16334:2 testifies [4] - 16251:18, 16332:16, 16355:10, 16362:13 testify [8] - 16249:15, 16251:15, 16259:17, 16261:4, 16261:21, 16343:7, 16358:23, 16359:8 testifying [4] - 16232:5, 16248:7, 16277:23, 16299:16 Testimony [1] - 16150:14 testing [1] - 16387:24 tests [1] - 16339:2 that' [2] - 16349:23, 16373:24 thaw [3] - 16346:10, 16388:14, 16388:22 thawing [2] - 16346:16,
T				
T [1] - 16358:13 tag [1] - 16196:18 taillight' [1] - 16306:12 talks [10] - 16164:18, 16180:12, 16202:11, 16202:20, 16217:20, 16242:17, 16256:18, 16259:12, 16336:4, 16348:5 tall [1] - 16207:16 Tallis [101] - 16152:13, 16154:21, 16156:1, 16156:10, 16156:12, 16156:23, 16161:12,				



<p>16388:18 theft [5] - 16357:15, 16357:16, 16375:9, 16375:12, 16375:13 theft' [1] - 16372:15 themselves [2] - 16277:4, 16277:9 theoretically [2] - 16219:12, 16244:21 theories [3] - 16161:13, 16166:23, 16179:6 theory [20] - 16157:17, 16157:21, 16158:3, 16158:8, 16159:15, 16160:16, 16161:20, 16164:18, 16169:4, 16169:12, 16169:14, 16224:6, 16224:14, 16224:19, 16224:22, 16225:8, 16346:15, 16352:14, 16352:18, 16353:2 there'd [1] - 16355:3 thereabouts [1] - 16266:8 therefore [2] - 16165:22, 16357:7 thin [1] - 16203:5 thing' [3] - 16318:5, 16318:12, 16383:20 think' [1] - 16373:20 thinking [11] - 16159:3, 16220:23, 16222:22, 16223:9, 16252:23, 16253:5, 16254:21, 16265:19, 16291:7, 16299:9, 16299:13 thinks [5] - 16190:24, 16191:7, 16191:14, 16302:6, 16367:10 Third [1] - 16167:14 third [10] - 16157:22, 16161:4, 16163:13, 16164:6, 16168:16, 16264:24, 16279:14, 16290:16, 16313:7, 16381:18 third' [1] - 16313:4 thirdly [1] - 16297:5 thirty's [1] - 16203:4 this' [2] - 16373:24, 16388:9 Thomas [2] - 16153:3, 16154:5 thong [1] - 16180:16 Thor [1] - 16239:2 thoughts [1] - 16158:14 threat [1] - 16173:18 threatened [1] - 16173:20</p>	<p>Three [1] - 16297:16 three [32] - 16157:24, 16163:10, 16164:21, 16169:1, 16169:6, 16174:15, 16174:22, 16175:25, 16176:10, 16180:19, 16196:15, 16201:4, 16207:4, 16219:5, 16221:1, 16223:25, 16224:1, 16234:24, 16246:20, 16247:4, 16247:12, 16253:19, 16265:16, 16279:1, 16279:2, 16282:12, 16295:19, 16312:21, 16331:1, 16335:9, 16369:22, 16379:21 three-line [1] - 16196:15 three-page [2] - 16163:10, 16174:22 threw [2] - 16343:18, 16346:2 throughout [1] - 16303:20 thrown [1] - 16277:16 Thursday [2] - 16243:9, 16243:14 tie [3] - 16226:12, 16289:25, 16334:25 tie-in [1] - 16334:25 timer [2] - 16325:23, 16372:25 timing [1] - 16156:4 title [1] - 16191:1 titled [2] - 16163:14, 16292:20 Tkachuk [1] - 16189:2 to-do [1] - 16382:16 today [3] - 16204:15, 16288:4, 16346:13 together [5] - 16280:22, 16281:5, 16281:25, 16291:23, 16328:11 took [25] - 16226:8, 16227:16, 16234:25, 16248:23, 16249:17, 16268:3, 16272:10, 16279:20, 16288:6, 16288:19, 16320:17, 16320:19, 16321:1, 16321:3, 16322:2, 16328:10, 16333:25, 16334:9, 16334:24, 16337:17, 16339:8, 16362:13, 16375:3, 16380:6, 16384:1 top [38] - 16155:11, 16165:16, 16181:10,</p>	<p>16181:11, 16181:12, 16184:4, 16189:5, 16191:7, 16193:11, 16193:22, 16194:11, 16195:2, 16200:19, 16241:11, 16242:15, 16244:12, 16255:15, 16264:6, 16267:1, 16268:8, 16272:22, 16278:4, 16283:16, 16284:8, 16285:18, 16287:18, 16291:15, 16292:13, 16303:2, 16320:13, 16322:22, 16325:19, 16345:6, 16347:7, 16356:4, 16372:24 topic [5] - 16185:22, 16298:7, 16301:20, 16306:18, 16382:3 topics [1] - 16379:21 toque [15] - 16273:6, 16308:10, 16308:11, 16321:16, 16331:1, 16345:14, 16367:9, 16367:12, 16367:14, 16367:17, 16367:22, 16368:7, 16368:11, 16384:17, 16384:21 Toque [1] - 16284:5 toque' [2] - 16369:4, 16372:14 total [1] - 16324:17 totalling [1] - 16226:19 totally [1] - 16254:6 touch [1] - 16202:13 touched [10] - 16154:12, 16155:24, 16227:6, 16299:5, 16308:20, 16338:15, 16340:1, 16341:11, 16349:10, 16384:25 toward [1] - 16212:4 towards [1] - 16262:23 traditional [1] - 16277:25 trampled [3] - 16382:19, 16382:23, 16383:1 trampling [2] - 16304:13, 16304:16 transcript [16] - 16238:13, 16238:15, 16239:7, 16241:5, 16241:7, 16243:22, 16300:5, 16310:25, 16336:23, 16339:7, 16360:20, 16361:7, 16365:5, 16376:11, 16380:25, 16381:5</p>	<p>Transcript [2] - 16150:12, 16154:1 transcription [1] - 16390:5 transcripts [2] - 16240:6, 16282:15 transfer [1] - 16298:11 transferred [1] - 16380:21 transmission [2] - 16359:20, 16359:24 transport [1] - 16375:15 Trav [1] - 16267:12 Trava-leer [1] - 16267:12 travelling [1] - 16256:12 treated [2] - 16260:2, 16312:20 trees [1] - 16207:10 Trial [6] - 16293:14, 16293:19, 16303:1, 16303:5, 16303:14, 16318:14 trial [84] - 16238:7, 16243:23, 16246:25, 16249:12, 16250:7, 16250:8, 16250:10, 16251:7, 16251:18, 16252:9, 16254:13, 16254:18, 16262:23, 16264:11, 16267:16, 16268:1, 16268:6, 16268:23, 16269:13, 16271:7, 16279:6, 16279:10, 16279:20, 16279:23, 16280:2, 16281:12, 16281:13, 16281:16, 16282:3, 16283:21, 16283:22, 16284:24, 16285:2, 16285:3, 16285:11, 16289:10, 16290:24, 16291:8, 16293:11, 16296:23, 16299:14, 16299:16, 16301:5, 16303:9, 16303:11, 16303:21, 16303:22, 16303:23, 16304:2, 16307:6, 16309:15, 16311:12, 16315:4, 16315:22, 16316:13, 16316:24, 16322:15, 16324:15, 16325:15, 16330:20, 16333:4, 16335:23, 16336:22, 16337:17, 16338:16, 16338:17, 16339:14, 16345:3, 16348:9, 16360:2, 16360:14,</p>	<p>16362:25, 16364:6, 16365:22, 16366:18, 16371:13, 16372:22, 16374:5, 16380:14, 16383:9, 16389:8 tried [4] - 16255:11, 16310:14, 16347:23, 16388:13 trigger [1] - 16192:25 trip [3] - 16246:5, 16254:15, 16375:8 trip' [1] - 16264:22 trouble [1] - 16289:20 truck [2] - 16248:2, 16375:15 true [2] - 16251:7, 16390:5 try [18] - 16171:1, 16178:15, 16185:12, 16212:7, 16233:19, 16266:10, 16268:10, 16269:25, 16270:17, 16328:5, 16336:21, 16344:20, 16354:25, 16355:3, 16359:25, 16362:23, 16367:22, 16386:2 trying [31] - 16158:16, 16161:2, 16166:20, 16170:13, 16171:17, 16177:4, 16178:5, 16178:11, 16178:18, 16181:8, 16260:1, 16260:12, 16260:14, 16261:10, 16265:9, 16267:16, 16276:8, 16276:25, 16278:20, 16281:19, 16290:9, 16299:1, 16302:14, 16308:15, 16340:2, 16355:12, 16370:13, 16370:19, 16373:12, 16373:13, 16376:2 Tuesday [1] - 16288:2 turn [3] - 16172:12, 16247:15, 16385:25 turned [11] - 16197:19, 16198:1, 16228:16, 16253:18, 16273:14, 16295:18, 16316:2, 16334:14, 16342:17, 16343:8, 16385:2 turns [8] - 16191:22, 16227:24, 16237:16, 16237:23, 16269:6, 16297:17, 16302:13, 16335:8 Tv [1] - 16305:5 Tweed [1] - 16302:5 twice [4] - 16222:22,</p>
---	---	---	--	--



16260:16, 16291:10, 16371:20 twice' [1] - 16371:2 Two [1] - 16279:1 two [57] - 16157:21, 16158:23, 16168:7, 16169:2, 16171:3, 16171:8, 16171:14, 16173:12, 16174:2, 16175:9, 16175:25, 16176:10, 16176:11, 16176:21, 16178:23, 16180:15, 16182:17, 16182:18, 16183:5, 16185:10, 16185:14, 16197:21, 16201:4, 16202:16, 16205:5, 16213:8, 16213:12, 16217:3, 16218:23, 16220:25, 16246:1, 16246:18, 16248:11, 16252:19, 16253:19, 16255:5, 16256:10, 16256:12, 16259:18, 16273:13, 16275:22, 16277:18, 16279:2, 16279:25, 16286:7, 16289:24, 16292:11, 16305:16, 16309:13, 16313:8, 16313:10, 16318:10, 16319:8, 16333:11, 16334:13, 16384:22 two' [1] - 16285:24 two-page [1] - 16292:11 type [14] - 16169:21, 16179:5, 16191:18, 16295:14, 16296:24, 16297:8, 16306:17, 16320:19, 16325:25, 16332:14, 16334:17, 16339:1, 16354:25 typed [3] - 16172:20, 16243:21, 16325:3 types [6] - 16233:15, 16295:5, 16295:21, 16296:19, 16297:12, 16388:5 typing [1] - 16326:3	16188:16, 16193:6, 16196:9, 16197:12, 16197:14, 16198:6, 16217:14, 16223:7, 16228:5, 16287:1, 16287:3, 16287:12, 16289:15, 16289:18, 16289:23, 16305:13, 16314:12, 16321:2, 16321:6 umm [4] - 16196:14, 16206:21, 16313:2, 16358:5 Umm [26] - 16156:14, 16192:8, 16193:7, 16199:11, 16218:21, 16239:19, 16239:21, 16241:18, 16245:23, 16248:6, 16251:5, 16252:21, 16262:18, 16293:10, 16295:1, 16309:17, 16311:5, 16311:17, 16313:14, 16313:21, 16314:17, 16356:10, 16359:18, 16367:24, 16368:15, 16375:12 unable [2] - 16198:19, 16199:4 under [14] - 16173:18, 16182:25, 16232:12, 16236:17, 16256:21, 16273:20, 16306:22, 16357:18, 16359:16, 16361:25, 16362:9, 16362:14, 16363:8, 16364:25 underlined [2] - 16194:19, 16196:1 underlining [4] - 16193:18, 16194:2, 16194:16, 16195:10 underneath [2] - 16181:14, 16318:9 understood [6] - 16162:24, 16202:4, 16225:22, 16266:11, 16280:16, 16339:12 undress [1] - 16173:19 undressed [1] - 16175:20 undressing [1] - 16175:15 unequivocal [1] - 16313:24 unfortunately [1] - 16241:7 unhappy [1] - 16249:18 unidentified [1] - 16178:23	Uniform [1] - 16269:21 uniform [4] - 16211:22, 16284:8, 16319:24, 16345:9 union [3] - 16373:2, 16373:14, 16373:18 unique [1] - 16375:4 University [1] - 16366:19 unknown [8] - 16164:19, 16164:20, 16165:4, 16165:8, 16166:24, 16169:15, 16169:20 Unless [2] - 16237:22, 16358:14 unless [2] - 16176:4, 16197:9 unlike [1] - 16261:13 unlikelihood [2] - 16275:16, 16275:24 unlikely [1] - 16275:19 unquestionably [1] - 16172:10 unsolved [4] - 16173:12, 16175:9, 16176:22, 16176:23 unusual [3] - 16175:18, 16203:22, 16261:9 up [103] - 16154:11, 16163:6, 16163:8, 16167:21, 16168:4, 16170:12, 16173:4, 16179:17, 16179:19, 16181:8, 16181:23, 16183:10, 16184:4, 16186:9, 16188:4, 16188:20, 16197:11, 16200:4, 16201:7, 16202:2, 16205:16, 16209:15, 16209:21, 16215:7, 16221:18, 16226:12, 16226:14, 16227:15, 16228:3, 16228:4, 16228:24, 16229:2, 16229:4, 16229:24, 16231:10, 16235:23, 16238:17, 16239:13, 16241:10, 16242:20, 16245:13, 16247:15, 16255:13, 16259:15, 16260:20, 16265:10, 16268:14, 16270:4, 16271:24, 16274:19, 16274:23, 16282:15, 16285:6, 16285:7, 16288:6, 16288:19, 16289:19, 16290:2, 16290:3, 16293:11, 16293:16,	16302:8, 16302:14, 16302:21, 16303:22, 16304:2, 16304:18, 16307:25, 16308:9, 16310:5, 16313:15, 16313:22, 16319:5, 16320:7, 16320:8, 16321:23, 16327:12, 16329:8, 16329:18, 16331:13, 16338:9, 16338:17, 16341:22, 16342:1, 16342:2, 16342:25, 16346:24, 16347:11, 16347:14, 16347:18, 16354:20, 16357:24, 16358:14, 16359:7, 16359:15, 16366:19, 16367:25, 16372:18, 16373:3, 16373:19, 16374:13, 16375:2, 16386:16 up' [1] - 16168:2 upper [2] - 16184:11, 16326:16 upset [3] - 16248:5, 16249:2, 16249:13 upstairs [1] - 16342:21 urged [1] - 16243:22 useful [2] - 16298:24, 16355:9 usual [2] - 16208:2, 16208:15	16201:12, 16201:19, 16224:1, 16224:24 V9 [14] - 16201:12, 16209:16, 16209:17, 16210:8, 16212:23, 16214:6, 16214:7, 16214:10, 16214:12, 16224:1, 16224:24 vacuum [1] - 16335:9 vaginal [1] - 16234:13 value [1] - 16294:17 van [3] - 16274:13, 16274:21, 16274:24 various [7] - 16155:13, 16158:24, 16172:7, 16174:25, 16229:8, 16273:19, 16310:13 vehicle [3] - 16312:11, 16335:21, 16335:22 vehicles [1] - 16306:13 verbal [1] - 16167:8 version [3] - 16172:20, 16196:5, 16334:4 versus [2] - 16258:17, 16325:2 via [5] - 16295:5, 16295:6, 16348:16, 16349:7, 16354:10 vial [1] - 16234:25 vials [1] - 16237:11 vicinity [1] - 16310:12 Vicky [1] - 16231:2 victim [3] - 16173:15, 16173:24, 16183:2 victim's [1] - 16173:23 victims [2] - 16173:20, 16183:20 view [13] - 16161:2, 16168:25, 16200:25, 16203:24, 16203:25, 16215:2, 16231:20, 16247:25, 16250:17, 16277:20, 16350:2, 16364:1, 16364:4 viewed [2] - 16204:12, 16224:8 visions [2] - 16367:3, 16367:5 voir [4] - 16252:20, 16252:21, 16255:8, 16255:13 Volume [1] - 16150:22 volume [1] - 16239:8 voluntary [2] - 16299:10, 16355:14 vs [2] - 16154:25, 16170:14
U			V	
Ullrich [32] - 16162:5, 16164:6, 16165:10, 16174:21, 16177:12, 16180:7, 16181:17, 16185:6, 16185:20, 16185:21, 16187:3, 16187:11, 16188:5,			V1 [7] - 16174:4, 16199:1, 16199:2, 16199:10, 16224:7, 16224:11, 16225:10 V2 [15] - 16174:4, 16183:1, 16183:15, 16183:19, 16198:25, 16199:10, 16199:15, 16199:18, 16224:7, 16224:11, 16225:10 V3 [4] - 16174:5, 16224:7, 16224:11, 16225:10 V4 [21] - 16201:13, 16214:2, 16214:3, 16214:8, 16215:6, 16215:18, 16216:4, 16217:18, 16217:20, 16219:14, 16219:22, 16220:1, 16220:2, 16220:7, 16220:12, 16224:2, 16224:25 V6 [8] - 16201:8, 16201:9, 16201:11,	



W				
<p>Ws [1] - 16324:21 wait [1] - 16240:6 waiting [1] - 16383:9 walk [1] - 16194:8 walked [3] - 16269:21, 16274:14, 16274:25 walking [4] - 16173:16, 16207:7, 16212:2, 16212:3 wallet [20] - 16193:17, 16194:22, 16196:10, 16197:18, 16197:25, 16300:13, 16301:1, 16301:9, 16301:15, 16301:19, 16333:5, 16333:8, 16333:12, 16333:20, 16334:1, 16334:5, 16334:9, 16334:12, 16380:23, 16381:7 wallet' [2] - 16332:23, 16386:19 Walter [1] - 16287:13 Walters [11] - 16320:20, 16320:21, 16321:7, 16321:8, 16321:10, 16345:21, 16346:2, 16385:7, 16385:10, 16385:14, 16385:19 wants [1] - 16161:12 washed [1] - 16288:18 wave [1] - 16222:17 way' [1] - 16272:2 ways [4] - 16159:22, 16166:12, 16171:3, 16259:18 Wd [1] - 16287:13 Weafer [1] - 16381:20 Weafer' [1] - 16355:20 weak [1] - 16179:1 weaken [1] - 16353:14 wear [1] - 16308:11 wearing [11] - 16207:16, 16211:4, 16211:22, 16330:3, 16330:8, 16342:19, 16345:24, 16367:23, 16368:12, 16369:4, 16372:13 weather [2] - 16275:14, 16275:21 Wednesday [8] - 16150:21, 16202:15, 16242:17, 16242:25, 16243:6, 16288:3, 16289:3, 16386:15 weeks [4] - 16202:16,</p>	<p>16211:12, 16213:8, 16213:12 weight [5] - 16209:10, 16215:2, 16220:25, 16280:18, 16353:23 Weinmeyer [1] - 16189:2 west [9] - 16207:7, 16273:22, 16274:2, 16274:10, 16274:15, 16274:18, 16275:1, 16275:5, 16356:14 when' [1] - 16375:24 which-handedness [1] - 16347:5 white [3] - 16306:11, 16367:10, 16368:13 white' [1] - 16306:20 whole [11] - 16184:18, 16186:3, 16318:5, 16362:11, 16383:20, 16383:22, 16384:2, 16384:7, 16387:16, 16388:10 wide [1] - 16186:22 Wilson [98] - 16152:6, 16178:1, 16227:9, 16227:15, 16239:20, 16242:20, 16246:1, 16246:9, 16246:13, 16252:18, 16254:11, 16256:25, 16259:8, 16259:16, 16260:3, 16260:7, 16261:13, 16261:14, 16263:14, 16263:23, 16264:14, 16264:18, 16264:21, 16265:21, 16273:16, 16278:4, 16278:10, 16278:16, 16278:23, 16279:3, 16279:15, 16295:13, 16295:21, 16296:1, 16296:25, 16297:11, 16313:18, 16313:21, 16322:2, 16322:11, 16322:25, 16323:19, 16323:21, 16323:24, 16323:25, 16324:2, 16324:7, 16324:9, 16324:24, 16325:16, 16335:5, 16335:21, 16335:22, 16345:25, 16348:17, 16348:25, 16349:7, 16349:14, 16349:23, 16349:25, 16350:10, 16351:15, 16352:9, 16353:5, 16353:22, 16354:5, 16354:7, 16355:18, 16358:12,</p>	<p>16359:13, 16359:16, 16359:20, 16360:11, 16360:16, 16360:19, 16361:3, 16361:7, 16361:21, 16361:24, 16362:13, 16362:15, 16363:24, 16363:25, 16364:25, 16365:9, 16367:9, 16367:21, 16368:4, 16368:8, 16369:1, 16377:5, 16377:10, 16381:24, 16383:19, 16384:9, 16385:3, 16385:5, 16385:10 Wilson' [4] - 16356:23, 16359:15, 16360:10, 16361:17 Wilson's [30] - 16228:1, 16254:4, 16254:6, 16273:16, 16280:6, 16281:12, 16283:22, 16294:10, 16295:4, 16295:6, 16297:7, 16300:2, 16320:17, 16320:24, 16321:15, 16324:4, 16324:22, 16325:7, 16325:8, 16334:17, 16335:7, 16335:12, 16345:25, 16359:24, 16364:23, 16367:10, 16383:24, 16385:3, 16387:7, 16387:21 Winter' [1] - 16313:5 wipe [1] - 16284:6 wish [10] - 16155:22, 16203:16, 16229:14, 16237:22, 16238:17, 16241:19, 16312:24, 16313:25, 16317:8, 16376:18 wished [2] - 16263:6, 16376:12 withdrawal [2] - 16373:2, 16373:18 Witness [4] - 16203:19, 16206:20, 16210:11, 16214:9 witness [69] - 16154:20, 16159:4, 16170:15, 16170:17, 16170:18, 16170:20, 16170:21, 16171:18, 16174:23, 16177:18, 16177:21, 16178:1, 16180:7, 16180:10, 16184:20, 16184:23, 16187:3, 16187:12, 16188:5, 16196:9, 16197:12,</p>	<p>16198:6, 16201:22, 16202:3, 16204:1, 16204:13, 16207:21, 16208:8, 16212:16, 16216:18, 16217:14, 16217:17, 16223:7, 16226:22, 16228:6, 16257:3, 16257:8, 16257:24, 16258:10, 16258:17, 16258:18, 16259:2, 16259:3, 16259:9, 16259:13, 16259:21, 16259:24, 16260:17, 16261:5, 16261:22, 16262:5, 16262:11, 16265:19, 16267:5, 16290:23, 16295:10, 16315:20, 16316:14, 16316:25, 16317:2, 16317:9, 16317:11, 16323:19, 16323:25, 16325:12, 16344:10, 16358:25 witnessed [1] - 16324:6 witnesses [43] - 16156:25, 16163:14, 16226:19, 16227:10, 16236:14, 16238:24, 16241:8, 16243:1, 16245:16, 16245:20, 16245:25, 16246:10, 16250:9, 16251:14, 16252:7, 16252:9, 16252:17, 16252:21, 16255:9, 16255:12, 16256:25, 16257:7, 16257:11, 16257:15, 16260:19, 16260:23, 16260:25, 16263:13, 16263:18, 16264:11, 16265:9, 16265:16, 16266:24, 16273:2, 16273:10, 16273:21, 16289:25, 16304:10, 16311:8, 16348:3, 16363:8, 16376:21, 16378:21 witnessing [2] - 16247:8, 16250:22 Wolch [1] - 16152:2 woman [4] - 16157:21, 16202:13, 16342:24, 16343:6 women [2] - 16157:22, 16305:17 women' [2] - 16305:1, 16305:3 wonder [4] - 16170:9, 16347:25, 16369:24, 16380:10</p>	<p>wondered [2] - 16289:18, 16289:23 wondering [14] - 16178:7, 16185:19, 16218:16, 16220:16, 16259:11, 16259:14, 16279:11, 16279:18, 16281:9, 16313:7, 16332:13, 16333:10, 16334:10, 16388:3 word [6] - 16229:25, 16271:2, 16280:3, 16346:20, 16349:4, 16387:8 words [19] - 16164:11, 16166:8, 16170:2, 16177:16, 16178:24, 16182:12, 16184:13, 16213:6, 16221:7, 16276:1, 16276:21, 16277:9, 16280:14, 16280:19, 16316:3, 16327:10, 16337:13, 16349:23, 16378:6 wore [2] - 16325:21, 16329:13 Workman [1] - 16322:17 worn [2] - 16199:19, 16308:10 worried [2] - 16270:7, 16354:6 worry [3] - 16275:15, 16275:22, 16276:12 Wound [1] - 16269:22 Write [2] - 16293:21, 16293:22 write [2] - 16229:7, 16381:13 writing [20] - 16181:4, 16181:15, 16190:20, 16191:3, 16191:8, 16191:10, 16191:11, 16193:16, 16193:18, 16194:12, 16194:14, 16194:22, 16195:2, 16195:3, 16200:11, 16200:14, 16306:19, 16319:12, 16380:10, 16380:12 writings [1] - 16347:3 written [9] - 16168:20, 16206:8, 16314:20, 16347:15, 16350:19, 16375:19, 16379:23, 16380:18, 16381:24 Wrongful [1] - 16150:3 wrote [6] - 16195:21, 16294:14, 16302:5, 16302:7, 16315:17, 16388:16</p>



X
XI [1] - 16369:18
Y
<p>year [2] - 16290:22, 16373:9</p> <p>years [1] - 16333:20</p> <p>Yesterday [1] - 16154:9</p> <p>yesterday [26] - 16154:12, 16154:16, 16155:25, 16163:4, 16163:17, 16175:17, 16181:11, 16182:3, 16184:20, 16188:8, 16188:21, 16188:24, 16189:3, 16189:7, 16189:19, 16192:5, 16200:6, 16200:9, 16201:24, 16227:7, 16247:7, 16264:2, 16315:18, 16343:12, 16349:11, 16376:21</p> <p>you' [1] - 16307:12</p> <p>young [5] - 16212:3, 16249:17, 16265:25, 16365:18, 16375:6</p> <p>yourself [5] - 16227:8, 16269:23, 16270:3, 16271:6, 16347:8</p> <p>youths [1] - 16246:2</p> <p>yrs [1] - 16211:3</p> <p>Yup [3] - 16292:22, 16321:25, 16323:17</p> <p>yup [1] - 16271:8</p>

