

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
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Saskatoon, Saskatchewan

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Volume 111

Inquiry Proceedings



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INDEX OF PROCEEDINGS

<u>DESCRIPTION:</u>	<u>PAGE:</u>
<u>THOMAS YANIN, CONTINUED</u>	
- BY MR. HODSON	22310
- BY MR. PRINGLE	22410
- BY MR. WILSON	22415
- BY MR. LORAN	22418
- BY MS. MCLEAN	22440
<u>PAUL HENDERSON, SWORN</u>	
- BY MR. HODSON	22446



Transcript of Proceedings

(Reconvened at 9:05 a.m.)

MR. HODSON: Good morning, Mr. Commissioner. Before Mr. Vanin -- Mr. Vanin, you can come up to the stand.

I'm just going to indicate, we had last week scheduled Wednesday, Thursday of this week for an application to be heard by David Milgaard and the plan was to have his two medical people testify. I was contacted by Mr. Wolch on Sunday and Mr. Wolch is ill and I spoke with him again last night and Mr. Wolch is not able to be here this week. We have been able to move the witnesses, Dr. Bailey and Mr. Grymaloski, to Monday and Tuesday of next week. I've informed all counsel and so I simply wish to notify you that his application for an accommodation will now be heard on Monday, January 30th, and Tuesday, January 31st due to Mr. Wolch's illness and that we will proceed this week with Mr. Vanin's evidence and next will be Paul Henderson and, if things go well, that might just work out, that the evidence we have fills the week.

COMMISSIONER MacCALLUM: Okay.

THOMAS YANIN, continued:



1 BY MR. HODSON:

2 Q Mr. Vanin, yesterday when we left off we were
3 going through some newspaper articles around
4 August 30th, 1991 and I just want to pick up from
5 that, and if we can call up 220387, and this is an
6 article of Peter Edwards of the *Toronto Star*.
7 Does that name ring a bell at all?

8 A No, sir.

9 Q And this is carrying on with the theme of the
10 missing documents. Yesterday we talked a bit
11 about the (V4)---- (V4)--- matter, you recall that
12 name being someone who was a person of interest to
13 the Milgaard group in, at about this time?

14 A That was -- (V4)---- (V4)--- was brought to my
15 attention by David Roberts.

16 Q Right. But you knew her to be the person who was
17 assaulted the same morning of Gail Miller, in the
18 same vicinity and around the same time?

19 A That's what Roberts told me, yes, sir.

20 Q And what we know and what's before this Commission
21 is that the (V4)---- (V4)--- statement was on the
22 Gail Miller file and the police report relating to
23 her complaint was part of the Gail Miller file.
24 Did you know that?

25 A No, sir.



1 Q And I want to just go through this, there's a
2 mention here, I want to find out whether you know
3 anything about this, and this article is September
4 1, it quotes, it says:

5 "Joyce Milgaard said police sources have
6 told her that the file about the attack
7 on a Metro woman has gone missing from
8 police department records.

9 An internal police
10 investigation is already under way into
11 the apparent disappearance from
12 Saskatoon police computers of key files
13 involving Fisher's possible involvement
14 in the Miller case.

15 "In light of the missing files
16 of Larry Fisher, it's interesting that
17 there isn't a file on this lady," Joyce
18 Milgaard said.

19 Any probe of Saskatoon police
20 shouldn't stop the missing files, she
21 added."

22 And did you -- can you tell us whether you might
23 be the, let me just find it again, the police
24 source referred to by Joyce Milgaard in this
25 article?



1 A No, sir, that would not be me. I never spoke to
2 Joyce Milgaard except for briefly at the Colonial
3 Motel when I first met her and Paul Henderson. As
4 I stated before, that after just a brief
5 conversation sort of introducing ourselves, then
6 she left.

7 Q Okay. Would you have told Mr. Asper, Mr.
8 Henderson or Dave Roberts that the file about the
9 attack on (V4)---- (V4)--- had gone missing from
10 police department records?

11 A I had no knowledge of that file, sir.

12 Q Now if we can go to 226702, please, this is a
13 report, it's not on the document, but it's
14 September the 6th, 1991, it's 226702, an article
15 by Timothy Appleby, and I think you told us the
16 other day, yesterday, that that was a name, he
17 worked with Mr. Roberts I think?

18 A Are you referring to Mr. Appleby?

19 Q Yeah.

20 A Yes, sir, he did work with Roberts.

21 Q He was a fellow that I think you said was in your
22 home with Mr. Roberts on one occasion?

23 A Both Roberts and Appleby attended at my home.

24 Q And so would it be correct to say that you would,
25 in addition to talking to Mr. Roberts, that you



1 might have also talked to Timothy Appleby from
2 time to time?

3 A Certainly.

4 Q Yeah. And in fact talked to them together,
5 Roberts and Appleby on the line at the same time,
6 did that happen?

7 A I don't recall ever talking to the both of them by
8 phone at the same time.

9 Q And in this article, and again just following the
10 chronology, sir, August 29th, 1991 was *The Globe*
11 and *Mail* article that first publicly talked about
12 missing Fisher files, and this is September 6th,
13 about a week later, and he says:

14 "Saskatoon City Police yesterday
15 acknowledged that some internal
16 computerized files linked to the David
17 Milgaard case are missing, but suggested
18 this was to be expected because "files
19 of the nature requested are required to
20 be maintained for only 10 years."

21 And then it says:

22 "A Saskatchewan police source, however,
23 said the 10-year limit was "unheard of."

24 And then I just want to refer you to another
25 quote over here and it says:



1 "The police source, however, said last
2 night that if there is a policy of
3 discarding 10-year-old material from the
4 computer system, it is a new one. "When
5 was it implemented? Yesterday? I've
6 never heard of it."

7 Are those comments that are attributed to a
8 Saskatchewan police source by Mr. Appleby, did
9 those come from you, sir?

10 A I don't think so.

11 Q And why do you say that?

12 A I just don't recall saying something like that.

13 Q Can you tell --

14 A They might have been, but I just don't recall.

15 Q Well, let's just talk about your knowledge or
16 understanding of whether there's a 10-year time
17 limit for keeping files in the police station. Is
18 that something that you were aware of?

19 A No, sir. There was a 10-year limit on keeping
20 your memo books, you had to retain your memo books
21 for a minimum of 10 years, that was in the Police
22 Act.

23 Q Okay.

24 A But -- and it may pertain to files, but I wasn't
25 aware of it.



1 Q And again, are you able to tell us again whether
2 this might have been something you said to Mr.
3 Appleby, and maybe not the exact words, but
4 generally this type of information, do you recall
5 giving him this information?

6 A I do not recall giving him this type of
7 information, but speaking in generalities, I might
8 have said words to this effect.

9 Q And what would you have based that on?

10 A I just never heard of very serious files ever
11 being destroyed.

12 Q Okay. And so let's go back to 1991, and I think
13 at that time you would have been in major crimes;
14 is that right?

15 A Yes, sir.

16 Q And what was your understanding of the rules, if I
17 can call them that, for how long a rape file would
18 be kept?

19 A I understood that they would be kept indefinitely,
20 and I know there was some procedure in place to
21 start destroying files, but I wasn't part of that.
22 Inspector Klinger I think was trying to come up
23 with a new policy, but to my knowledge it wasn't
24 in place yet.

25 Q Did you ever work in morality?



1 A No, sir.

2 Q Do you know what the rules would have been with
3 respect to rape files and whether they would be
4 any different than files that you had dealt with
5 in major crimes or in detectives?

6 A A rape file would have been considered a major
7 crime file, although morality would have worked on
8 it.

9 Q Okay. And so let's just go back. In your years
10 with the police would it be fair to say in major
11 crimes and detectives, would homicides be where
12 you spent most of your time?

13 A Yes, sir.

14 Q And on homicide files what was your understanding
15 of the practice?

16 A That they were kept indefinitely.

17 Q And then down the line, let's take something down
18 to, I don't want to call any crime minor, but a
19 property offence, for example, theft, things of
20 that nature, what was your understanding of how
21 long those files were kept?

22 A I don't know, sir, but I know they had a great big
23 walk-in room where files were stored.

24 Q And do you know if --

25 A They were taken out of Central Records and taken



1 and boxed and numbered in this storage room.

2 Q And do you recall there being any distinction
3 between the solved -- between the length in time
4 which you would keep a file that was solved versus
5 an unsolved file?

6 A No, sir.

7 Q It didn't matter if it was solved or not, you
8 would keep the file, or did you understand
9 differently?

10 A Well, obviously not every file is solved, so I
11 guess eventually they were put into storage.

12 Q Now, this article talks about, it looks like Mr.
13 Appleby is reporting that someone from the city
14 police is explaining that there is a 10-year
15 policy or limit for keeping files, Mr. Appleby
16 then reports that he talked to a police source who
17 said the 10-year limit was unheard of, and again I
18 just want to go back to this and try and
19 understand, Mr. Vanin, I think you told us you
20 don't recall telling them that and I think you
21 also said you don't think you did; is that right?

22 A I'm saying I don't recall saying it, but I may
23 have.

24 Q Okay. And if I asked you at the time, on
25 September 6th, 1991, based on what you knew at the



1 time, if I called you up and said the police are
2 saying that they have a policy where they destroy
3 files, certain files after 10 years, have you ever
4 heard of it, what would you have said to me?

5 A I would say I'm not aware of it.

6 Q And what else would you say?

7 A That I am just not aware of it.

8 Q Okay. If we can then go to 000263, please. And I
9 just want to show you parts of this. I think you
10 told us that you were aware that, after your
11 information to the *Globe and Mail* and Mr. Asper,
12 and after the publication of the news article on
13 August 29th, 1991, I think you said you became
14 aware that the Police Commission undertook an
15 investigation into the missing files; is that
16 right?

17 A That's what I was told, yes, sir.

18 Q And did you ever have a chance to read that
19 report?

20 A No, sir.

21 Q I just want to go to parts of this that relate to
22 retention of files and ask you some questions. If
23 we can go to 000265, please, of this document.
24 And this is, the cover report is by Mr. Justice
25 Laing, he was the Commissioner -- I should say the



1 Commissioner of the Police Commission at the time,
2 Mr. Laing, who wrote this part of the report. And
3 what he says here is that:

4 "In the years 1968-1971, the Saskatoon
5 City Police Department had a policy of
6 retaining serious *Criminal Code* offense
7 files for a period of 10 years. It was
8 not until March 10, 1982 that the
9 Saskatchewan Police Commission enacted
10 municipal police report forms and filing
11 system regulations which provided for
12 the same 10-year retention period for
13 serious *Criminal Code* offenses, and for
14 indefinite retention of unsolved serious
15 *Criminal Code* offenses."

16 Let me just go back. Were you aware of the
17 information -- and assume for the purposes of
18 this question that this is accurate -- were you
19 aware of this being the policy in place 1968 to
20 1971?

21 A No, sir.

22 Q Okay. Do you have any reason to think that this
23 paragraph is incorrect in stating that that was a
24 policy at the time?

25 A I'm not saying that it's incorrect, I just wasn't



1 aware of it. I thought it was our department
2 policy to keep every major crime file on file,
3 solved or unsolved.

4 Q Okay. And what do you base that on, what --

5 A Well often you would go back to the old files for
6 suspects, witnesses, people that might be
7 associated with the crime that you were
8 investigating, and there might have been some link
9 to -- in a previous file.

10 Q And so let's just go back on a file that you --
11 you were involved in. Once it was concluded and a
12 person convicted, I presume you would have
13 concluded your file in some form, is that right?

14 A Yes.

15 Q And it would go off to central records for filing
16 or it would be filed there, I presume, I think
17 that's the evidence that we've heard?

18 A Yes.

19 Q And then would it --

20 A But they would have their, what would be the
21 original copy; I, as an investigator, would have
22 the investigator's copy.

23 Q But once you finished a case what would you do
24 with your copy?

25 A Send it off to central records.



1 Q Right. So once you were done a case would central
2 records be the custodians of the various file
3 copies?

4 A Yes sir.

5 Q And --

6 A Now those they might have destroyed, --

7 Q Okay.

8 A -- you know, they might not have kept
9 duplications.

10 Q And were you --

11 A But I never worked at central records, I don't
12 know what their policy was.

13 Q And so again, as far as the decision of the
14 Saskatoon Police to either keep or destroy or file
15 or microfiche, or do something with one of your
16 concluded files, would that be something that
17 someone else would have dealt with as opposed to
18 you as the investigator?

19 A Oh, certainly.

20 Q Okay. And as far as you were aware, I think you
21 told us you thought that they kept them all
22 forever, is that right?

23 A The major crime ones, yes.

24 Q And then in this report it says that in:

25 "... March 10, 1982 the Police



1 Commission enacted municipal police
2 report forms and filing system
3 regulations which provided for the same
4 10-year retention period ...";

5 were you aware of that happening?

6 A No, sir, but I'm sure -- I'm sure they would have
7 notified all of us in the form of an order or some
8 type of written memo, but I don't recall it.

9 Q If we can then go to 330778, I think this is just
10 a different copy of the same report, but I want to
11 go to -- when the report was filed Mr. Laing, as
12 the Commission, wrote a report and then attached
13 an investigation report prepared by Bill Graham
14 and Gary Treble, and this comes from -- I want to
15 go to the investigation part. If we can go to
16 330854, please. Do you remember Bill Graham and
17 Gary Treble being around the police station in the
18 latter part of 1991 looking into the missing
19 records and talking to various officers?

20 A I'm familiar of their names, but I never met those
21 two gentlemen. I believe they worked for the
22 provincial Police Commission.

23 Q I think you're right, at the time they did, and
24 they were talking to various police officers; I
25 take it they didn't talk to you?



1 A No, sir.

2 Q Did you ever think of going and talking to them
3 and say "I have information that might assist you
4 in looking for the missing files because I am the
5 one who went to central records on at least two
6 occasions, likely more, to look for them, and then
7 I got a copy of this index card, here it is."

8 A No, I never did that.

9 Q And why not?

10 A The opportunity just never presented itself, and
11 they never spoke to me, and --

12 Q Okay. Would they -- and, again, this may be a
13 better question for them, but I think actually I
14 can tell you that in their report they had a copy
15 of the Centurion Ministries' (V5)-- (V5)--- report
16 that had the blacked-out name of an officer who
17 provided the (V5)--- file, and they tried to
18 determine who that was and tried to find that
19 person to ask questions about the missing files, I
20 think they suspected it was Gus Weir and that's
21 what was stated in their report. It was only a
22 suspicion. And so I think, from that report, I
23 expect that Mr. Graham and Mr. Treble said then,
24 and will say now, that they didn't know you were
25 the person who provided information to the *Globe*



1 and Mail and David Asper; does that -- do you have
2 any reason to dispute that?

3 A No, sir.

4 Q And if you would -- would it be fair to say, at
5 the time this investigation was going on, you knew
6 they were looking into missing files, and that the
7 investigation was prompted by your original
8 search; right, you knew that?

9 A Yes.

10 Q And I'm wondering why, if there was any reason why
11 you would not have gone to them with your
12 information to assist them in getting to the
13 bottom of what might have happened with the files,
14 when they might have gone missing, etcetera?

15 A In all honesty, sir, I suspected that they would
16 eventually come to me and be -- and would
17 interview me, and seeing they didn't come to me, I
18 didn't go to them.

19 Q And how did you think they would find you or find
20 out that you might have information that was
21 relevant?

22 A I think that they should have gone to the head of
23 every department and interviewed them.

24 Q And, if they had come to you and asked you to talk
25 to them, would you have told them about what you



1 did?

2 A I would have got legal counsel before I would have
3 talked to them.

4 Q And would that have been Mr. Asper then?

5 A It could have -- might have been Mr. Asper or
6 maybe somebody in Saskatoon.

7 Q Okay.

8 COMMISSIONER MacCALLUM: What department
9 were you heading at the time, sir?

10 A Major crimes.

11 BY MR. HODSON:

12 Q Did you have any -- oh sorry -- did you have any
13 discussions with Mr. Asper, at or around this
14 time, about whether or not you should go to the
15 Police Commission with your information?

16 A No, he certainly didn't suggest that I go
17 anywhere.

18 Q Did he suggest that you not go and talk to them?

19 A Words to that effect, that we'd try keep a lid on
20 this.

21 Q Okay. In --

22 A On my dealings with the files.

23 Q Okay. And explain, explain what, either what he
24 said or what you understood he said about keeping
25 a lid on things?



1 A Just not to talk about, to talk about it, and this
2 was something between Asper and myself, or the
3 invest -- David Milgaard investigation.

4 Q Would you have known, sir, that your role in
5 searching for the files might be relevant and of
6 assistance to the Police Commission in trying to
7 figure out what happened to the files; would that
8 be -- would that have crossed your mind?

9 A No, because I only found an index card and one
10 sheet of an investigation report, and I didn't
11 think it was relevant at all.

12 Q Okay.

13 A And I assumed that it was still in central records
14 and they would find it.

15 Q I see. If we can just go again, and this is in
16 part from Mr. Graham's report, I just want to read
17 you parts of this. And I showed this to you last
18 week, Mr. Vanin, it says, 'On November 26, 1982
19 ...' -- actually, let me just go back. Did -- you
20 would have known the Police Commission was
21 investigating the missing files, I think you told
22 us that, is that right?

23 A Yes sir.

24 Q Would -- you told us earlier that the reason you
25 didn't go to administration, to Chief Penkala, is



1 because of your distrust for him and the issues
2 you had with him; is that right?

3 A That's correct.

4 Q Did you have any issues with the Saskatchewan
5 Police Commission, or Bill Graham or Gary Treble,
6 that would cause you to not want to go to the
7 Police Commission with information that might be
8 relevant to what they were looking at?

9 A I didn't know Graham or Treble.

10 Q Did you have any issues with the Police Commission
11 that would have caused you to not trust them or
12 not want to go to them with information that you
13 might have had that was relevant to what they were
14 looking at?

15 A No, I didn't.

16 Q Okay. If we can just go back to this, and it
17 talks about 'On November 26, 1982 J. Penkala,
18 chief of police, issued a policy on file
19 retention. This policy was a mirror of the
20 *Saskatchewan Police Act* regulations. A copy of
21 this policy is included.'

22 And then if we can go, it talks
23 about, 'The police of the day was under the direct
24 control of the chief of the day, and in this case
25 the late James Kettles.'



1 And if you can go to the next
2 page, this is a memo of November 26th, 1982, and I
3 think in 1982 you would have been where, sir; you
4 would have been a sergeant, is that right?

5 A I would have been a staff sergeant.

6 Q Staff sergeant? And in what department; do you
7 remember?

8 A 1980 or 90 -- is that '82 or 90?

9 Q Yeah, 1982.

10 A Oh. 1982 I was probably a sergeant. I don't
11 know. If Penkala was chief I would have been in
12 traffic --

13 Q Okay.

14 A -- because I think the first or second day that
15 Penkala got -- was promoted to chief, the first or
16 second day that he was on duty he transferred
17 Eddie Karst out of detectives, and 30 days later
18 he transferred me to traf -- other detectives to
19 traffic.

20 Q And so, at the time, you would be a sergeant in
21 traffic; is that right?

22 A I believe so.

23 Q And, again, if we can just look at the caption,
24 that list of people, would you be included in that
25 group do you think?



1 A Well it says inspector in charge of traffic, it
2 doesn't pertain to a traffic sergeant, but I'm
3 sure it would have come to our section.

4 Q And Parade Room; what is that?

5 A Well that's where the constables prepare to go on
6 duty.

7 Q So from this --

8 A Traffic constables did not go -- did not parade.

9 Q So is this a memorandum that you think would have
10 got to you in -- as a sergeant in traffic at the
11 time?

12 A Oh, I'm sure it did.

13 Q And this is a, it's called, 'Re: File retention
14 policy'. 'This will serve to officially inform
15 members and staff of the Saskatoon Police
16 Department that the policy on file retention will
17 be consistent with the provisions of the
18 provincial minimum standard regulations ...',
19 etcetera.

20 And that, 'Members and staff who
21 are charged with file administration will pay
22 particular attention to the identification of the
23 files which fall within the scope of these
24 regulations.'

25 And if we can go to the next



1 page, this sets out the regulations. And then if
2 we can go to the next page, you will see this is
3 March 1982, file retention, and it talks about --
4 if we can just go back, call that out, 'As a
5 minimum standard for retention of files', it says,
6 'the police force may, at their discretion, retain
7 them longer', but we'll see for the offence of
8 rape, and then if you can scroll down, so -- so
9 for the offence of rape, 'Concluded files - Ten
10 (10) years Retention.'

11 Do you see that?

12 A Yes sir.

13 Q So what this policy and regulation in 1982
14 purports to say is that concluded rape files are
15 to be kept, at a minimum, for ten years; would you
16 agree with that?

17 A That's what that document says, sir.

18 Q And this appears to be a policy that was put in
19 place in 1982 and distributed to the police
20 members; would you agree with that?

21 A Yes sir.

22 Q Yeah. And so, again, is this something that you
23 would have been aware of in 1991 when you were
24 talking to Mr. Asper and Mr. Roberts, Mr. Appleby?

25 A No, sir, I wasn't aware of this file retention



1 policy.

2 Q Okay. But you think you would have been made
3 aware of it in 1982?

4 A Certainly.

5 Q And then what, it's something that didn't stick in
6 your mind, or --

7 A Our workload was so heavy, and when we concluded
8 our files they went to central records and that
9 became their problem, and --

10 Q Would it be fair to say that the issue of how long
11 a rape file might be retained, and when it might
12 be thrown out, was a subject matter that was never
13 dealt with you as a police officer from 1964 to
14 1991, something that you never had to deal with,
15 it was someone else dealt with that issue; is that
16 correct?

17 A That's correct. But if they asked me for my
18 opinion, and they didn't, I would have made it
19 very plain that I would -- my position would have
20 been to keep those files for a very lengthy time.

21 Q Okay. If who would have asked you?

22 A Anybody in administration.

23 Q Okay. And you, at -- or is what you are telling
24 us is that you think a rape file, concluded or
25 not, should be kept for longer than ten years?



1 A That's my position, yes, sir.

2 Q And I think you told us a bit earlier that you
3 often used those files or might use those files;
4 maybe have you explain to us why would you want
5 them to be kept longer than ten years, what would
6 some of the reasons be?

7 A A source of information, and looking up previous
8 witnesses or previous victims, --

9 Q Okay.

10 A -- licence plate numbers, just any source of
11 information.

12 Q And certainly with respect to an unsolved file,
13 well, and this policy said Indefinite Retention,
14 and I take it you would agree with that?

15 A Yes sir.

16 Q Now I want to go to 330778 -- I think we're on
17 that document -- if you go to page 330803. And we
18 had talked earlier about the Board of Police
19 Commissioners commencing the investigation, and I
20 just want to go through with, this with you. This
21 is from the Chairman of the Board of Police
22 Commissioners to the Executive Director, it's to
23 Henry Dayday, who was also the Mayor at the time.
24 It says, 'At its regular meeting on September 12,
25 1991, the Saskatoon Board of Police Commissioners



1 received a report from A/Chief Montague regarding
2 allegations made by *The Globe and Mail* newspaper
3 in an article dated August 29, 1991. A copy of
4 the article and an excerpt from the Board minutes
5 are attached.

6 The board is hereby requesting
7 the Saskatchewan Police Commission, under its
8 powers set out in section 11 of *The Police Act*, to
9 enquire into the allegations of tampering with
10 files which were made on August 29, 1991.'

11 So you would see from that, sir,
12 that the investigation that the Police Commission
13 undertook -- and I think you have confirmed this
14 for us, at least your understanding -- that it was
15 as a result of the August 29th *Globe and Mail*
16 newspaper article; is that right, that was your
17 understanding?

18 A That was my understanding.

19 Q Yes. And I appreciate --

20 A I'm not certain, but that's what I generally
21 believe.

22 Q And, in particular, the allegation of tampering
23 with files; you see that?

24 A Yes.

25 Q And if we can go to the next page, please. And



1 then this is an excerpt of the minutes of the
2 meeting of September 12th, and 'A/Chief Montague
3 reported to the board in some detail regarding the
4 Fisher files requested by the Federal Department
5 of Justice.'

6 And you will recall yesterday I
7 read to you from Sergeant Pearson's notes that
8 showed, on August the 20th, 1991, Federal Justice
9 asked him to get copies of the Fisher files, the
10 four rape files, he said that they had checked a
11 year ago and they weren't there, or not many of
12 them were there, but that he would check again;
13 remember I read you that yesterday?

14 A Yes sir.

15 Q And so I think that's what's being referred to
16 here. He says, 'He advised the board that it is
17 important to note that it is the Fisher files that
18 have been requested, not the Milgaard files. All
19 of the Milgaard files are intact.'

20 And then he goes on to explain
21 that, 'The paper files of what were requested were
22 destroyed a number of years ago in the course of
23 ordinary file management. However, it was the
24 practice at the time to microfilm the files before
25 they were destroyed. He further reported that the



1 police continue to search for the files on the
2 microfilm tape. In fact, extra staff have been
3 assigned to this work and they are working double
4 shifts. They are reviewing all of the old
5 microfilm tapes from 1968 to 1972. There are
6 about 150 of these tapes so the search will take
7 some time.

8 The A/Chief reiterated that
9 there is no evidence, in his opinion, of tampering
10 with files or any wrongdoing. He specifically
11 requested that the board call in the Saskatchewan
12 Police Commission to investigate whether there has
13 been any tampering with files in this matter. His
14 reason was that the police force feels that an
15 outside investigation is the only way to
16 counteract the allegations that have been made
17 against them.'

18 And then if we can go to the
19 next page, and this is attached to the Board of
20 Police Commissioners, and, again, this is part of
21 the Police Commission report.

22 I had earlier brought up a
23 different version of that article, Mr.
24 Commissioner, 220340, but it's the same article.

25 And, in particular, you will



1 recall yesterday, Mr. Vanin, that I put this quote
2 to you, 'Something went on, it's very bizarre,
3 it's something that just shouldn't happen, for
4 every detail like that to vanish,' a Saskatchewan
5 police source said. 'Somebody's tampered with the
6 system.'

7 And I think we spent some time
8 yesterday, and you gave your views on what you
9 might have said to Mr. Roberts along those lines,
10 is that right?

11 A Yes sir.

12 Q Did you have, at that time, any evidence that
13 someone had tampered with the system?

14 A Absolutely none, sir.

15 Q If we can then go to 077752, and just -- this is
16 September 13th, and it says the *Missing files*
17 *prompt probe*, and it talks here about:

18 "When Federal Justice officials
19 requested Fisher's files in relation to
20 Milgaard's second application for
21 retrial, Saskatoon Police couldn't find
22 all of them. They've not specified
23 what's missing. They did say they found
24 one file on a 1970 victim."

25 And then:



1 "Dayday says in a news release the
2 investigation by an outside agency was
3 requested by acting police chief Murray
4 Montague in response to 'allegations
5 which were published in the media.'"

6 And, again, I think you told us that that was
7 your understanding as well, that it was what was
8 in the newspaper that prompted the investigation,
9 is that right?

10 A Yes sir.

11 Q I want to go back to 000263, and I referred to
12 this a bit earlier, this is Mr. Laing's report.
13 If we can go to the next page, and you will see
14 the Police Commission sets out the allegation, and
15 the first one is:

16 "That the Larry Fisher files and records
17 had been recently deliberately removed
18 from the system by someone."

19 And I think you told us yesterday, Mr. Vanin --
20 correct me if I'm wrong -- that based on what you
21 knew at the time, what you knew was that the
22 files weren't there, and that you believed they
23 hadn't been there for some time; is that right?

24 A That's my belief, sir.

25 Q And I think you told us you had, just a moment



1 ago, no evidence that they had been deliberately
2 removed from the system by someone recently, being
3 in and around August 1991; is that correct?

4 A That's correct, sir.

5 Q If we can go to page 000275, and this just
6 details -- again, this is someone else's report,
7 this is Mr. Laing's report about what they found
8 when they went to look, and here, starting here,
9 they say:

10 "A search of the computer records by the
11 civilian manager in charge of Saskatoon
12 Police records failed to reveal the
13 names of Larry ... Fisher, or the name
14 of the complainant in ...",

15 this:

16 "... in Occ. No. 10173/68 or the name of
17 the complainant in Occ. No. 11435/68."

18 And let me just pause there, and I think the
19 report reflects this, and then let me just carry
20 on. It says here:

21 "It will be noted there was no
22 cross-reference to Larry Fisher which in
23 the normal course should have been there
24 if the file had been concluded with a
25 conviction."



1 And, again, I think what they are saying is what
2 it should have been in the system was a file card
3 with Larry Fisher's name cross-referenced to the
4 files, and that they looked for that in the
5 system and couldn't find it, okay; do you see
6 that being in the report?

7 A Yes sir.

8 Q And I'm wondering if you have any explanation or
9 information, Mr. Vanin, to explain how they were
10 not able to find the index card -- and I
11 appreciate you were not involved in their
12 search -- but how they were not able to find the
13 index card with Larry Fisher's name when they did
14 their search apparently within a month or weeks
15 after you had done the same search; do you follow?

16 A Yes.

17 Q And I'm wondering, and I'm not asking you to
18 speculate on what or how they did anything, but do
19 you have any information to explain why they did
20 not find the index card that the clerk provided to
21 you prior to this?

22 A I have no explanation whatsoever, sir.

23 Q Now did you then become aware, at some point, of
24 the conclusions of the Police Commission into the
25 missing files, do you remember that, or --



1 A I believe I read something in the paper in respect
2 to Mr. Laing's conclusion of his investigation.

3 Q And did you take issue with any of that or do
4 anything in follow-up to any of that?

5 A I believe he concluded that the files could have
6 gone missing from the transfer from the old police
7 station to the new police station, and I believe
8 that that was his theory, and I certainly don't
9 agree with -- or disagree with that.

10 Q You certainly do or don't, I'm sorry?

11 A I certainly don't disagree with that, that could
12 have happened.

13 Q Okay. And would that be an explanation as to why
14 the Fisher files were not in central records when
15 you went and asked for them in or about August of
16 1991?

17 A Certainly.

18 Q Okay. If we can go ahead, there's just a couple
19 more articles here, 004286. And I just want to --
20 this article talks about, it was discovered or it
21 became news in the media around this time that
22 Eddie Karst had been one of the officers who went
23 and saw Larry Fisher in October of 1970, and I
24 believe with Inspector Nordstrom, the records
25 suggested, had gone to take a statement from Larry



1 Fisher when he was in jail in Fort Garry,
2 Manitoba, relating to the Saskatoon rapes; and do
3 you remember becoming aware of that at that time?

4 A Yes, sir, I called sergeant -- or Staff Sergeant
5 Karst personally and asked him if he went to
6 Winnipeg.

7 Q Right. And I think you told us on Thursday and he
8 initially told you he doesn't know who went to
9 Winnipeg?

10 A Yeah.

11 Q And then I think you said he called you a couple
12 of weeks later; is that right?

13 A Yes, sir, he called back a couple of weeks later
14 and he says, "I apologize, Tom," he says, "I'm the
15 one that went to Winnipeg, but I just totally
16 forgot about it." He says, "I'm not lying to you,
17 I just don't recall ever going there."

18 Q Okay. Now, this article is again by Roberts and
19 Appleby and they've talked about the incidents in
20 Winnipeg, etcetera, and it says:

21 "But police sources say it would have
22 been highly unusual for Mr. Karst -- one
23 of 250 officers on the force -- to have
24 been assigned the Fisher case because he
25 belonged to what was termed the



1 detectives division, which handled
2 homicides but not rapes."

3 And I'm wondering, is that information that you
4 would have provided to David Roberts and/or
5 Timothy Appleby?

6 A I don't think so. Staff Sergeant Karst was a very
7 up and coming excellent officer, regarded as an
8 excellent officer and interrogator and statement
9 taker, and although he did work in detectives, and
10 our boss was Deputy Chief Hughey Fraser who was
11 also morality, morality fell under his --

12 Q Yes.

13 A -- responsibility, so I could see Deputy Chief
14 Fraser saying, "Look, Karst, you are our best man,
15 go to Winnipeg."

16 Q Okay. And would that be -- and the words used in
17 the article are that it would be highly unusual
18 for Mr. Karst to be the one to go, and first of
19 all, I think you told us you don't think you gave
20 this information to Roberts and Appleby; is that
21 right? If we can just go back to the bottom of
22 the earlier column, and I have two questions for
23 you, one, whether you gave this information to
24 them and, if you did not, do you agree with it?

25 A I'm not certain. I could have given that



1 statement, but now that I rethink it and think
2 about it, I could see why Deputy Chief Fraser
3 would have sent Karst.

4 Q Okay. So it's possible that you are the source
5 referred to in this article, it's possible this
6 is --

7 A Yes.

8 Q Do you have any recollection of giving this
9 information or being asked about this by Roberts
10 or Appleby?

11 A No, sir, but they certainly, for some reason it
12 was so important to them, and I don't mean Appleby
13 and Roberts, but to the Wolch team to find out who
14 did go to Winnipeg.

15 Q Okay.

16 A They never told me why it was really important to
17 find out.

18 Q Now, did you become aware -- let's just go ahead,
19 you know, time wise in 1991, that in late 1991 and
20 early 1992, that Mr. Rick Pearson who was -- or
21 Sergeant Pearson with the RCMP, he was assisting
22 Federal Justice at the time in investigating David
23 Milgaard's application to the Minister of Justice
24 for review, okay, he was -- that was his role and
25 he was working with a fellow by the name of Eugene



1 Williams who was a lawyer with Federal Justice,
2 and the -- Mr. Pearson has testified, and we've
3 seen his notes, indicating that he had discussions
4 with David Asper from time to time as to what was
5 going on and his evidence, Mr. Pearson's evidence
6 to this Inquiry was that he made some effort
7 through Mr. Asper to get Mr. Asper to tell him
8 your name, the name of the person referred to in
9 the Centurion Ministries memorandum, being the
10 (V5)-- (V5)--- file.

11 Now, in fairness, Mr. Vanin, you
12 said you are not the one that gave, or showed the
13 (V5)--- file to Paul Henderson, you've told us you
14 are the officer though who provided information to
15 Mr. Asper, so we'll certainly hear from Mr. Asper
16 and from Mr. Henderson, but at the time Mr.
17 Pearson made inquiries of Mr. Asper to get the
18 name and Mr. Asper refused to provide it, citing
19 it was confidential, and that Mr. Pearson also
20 suggested to Mr. Asper, and I'll take you to these
21 documents, that lookit, I need to talk to your
22 confidential source because files are missing and
23 if your source went in there and looked at files,
24 he is a suspect in my mind and I need to talk to
25 him because maybe he's the one that took the files



1 out and maybe the files that are missing are not
2 helpful to David Milgaard's cause, maybe they are
3 harmful and that type of thing, and that was
4 put -- again, I'll show you the documents, I'm
5 just trying to summarize that, and it was a
6 suspicion on Mr. Pearson's part and he wished to
7 meet with you to go through that and find out
8 whether or not his suspicions had any merit. Were
9 you aware of that, that he was making -- A, that
10 Mr. Pearson was making the inquiries of Mr. Asper
11 for your identity, and two, that he had raised
12 this issue that maybe you might be the person who
13 could explain more about the missing files?

14 A I met Eugene Williams. I had no idea that Pearson
15 was working for him.

16 Q And when did you meet Eugene Williams?

17 A When he was in the police station reviewing the
18 Milgaard file.

19 Q And when would that have been?

20 A Oh, I'm not certain, sir. He had an office right
21 next to my superintendent, Gerry McCorriston, and
22 as I stated yesterday, I was often in asking
23 McCorriston for information, what was the hard
24 evidence that they had in respect to David
25 Milgaard, and I think I told you that also I



1 annoyed him to the point where he would get angry
2 at me for asking so many questions.

3 Q Okay. But just back to my question, I'm wondering
4 whether, did Mr. Asper ever make you aware of the
5 fact that he was being pressed by an RCMP officer
6 on behalf of Federal Justice to disclose your
7 identity and to allow you to provide the
8 information you had to this officer relating to
9 the missing files?

10 A If he did, I don't recall, and if he had such
11 information and didn't let me know about it, I
12 think I would have been quite angry about it.

13 Q Can you explain that?

14 A Well, if there's somebody trying to find out who
15 the source is and Asper knew about it,
16 particularly the RCMP, I would have been angry at
17 Asper that he did not make me aware of it.

18 Q Okay.

19 A And maybe he did, but I just don't remember.

20 Q I see. Let's just go through, I'll call up -- and
21 I'll just, in fairness, walk you through the
22 documents, the exchange of communication between
23 Mr. Asper and Mr. Pearson. 056743 is the doc ID
24 for Mr. Pearson's chronology, and if we can go to
25 056816, please, and so please keep in mind, Mr.



1 Vanin, these are -- these are Sergeant Pearson's
2 notes and details his version of events and then
3 I'll show you some correspondence passing back and
4 forth. You may or may not be aware of the
5 contents or what's discussed, I simply want to go
6 through it and find out whether you had been made
7 aware of some of these things and, if so, what you
8 would have said, and, if not, what you might have
9 said if you had been made aware.

10 So this is November 26th, '91
11 and Pearson is talking to Bill Graham and then he
12 says here:

13 "I suggested to Graham that he should go
14 to the source of the Application
15 material --"

16 And that's the Centurion report,

17 "-- and ask for the identity of the city
18 Police Officer vetted out in the
19 Application."

20 Now, we now know from the document that it's your
21 name that's vetted out. He says:

22 "The possibility exists that if the
23 Fisher files were removed on this one
24 occasion, other Fisher files and in fact
25 other police files, may have been



1 removed by this same person. In
2 fairness to all interests in the
3 Milgaard/Fisher investigation, it would
4 be appropriate to have this information.
5 Graham is going to discuss this aspect
6 with his boss. My position is the fact
7 that the vetted out information may
8 indirectly harm the Milgaard cause. I
9 am actually quite concerned about this
10 omitted information, which may be the
11 key to the whole inquiry being conducted
12 by the Sask Police Commission. I will
13 let them run their investigation before
14 I make a decision on what I should do."

15 So this is a discussion with Mr. Graham. Now I
16 just want to go ahead to 056824 and I'll just
17 read you a couple more and then I'll have some
18 questions. This is now December 10th, '92 and
19 Pearson says:

20 "I called Sask Police Commission and
21 talked to Gary Treble, asking him if the
22 Sask Police Commission investigation had
23 contact with Asper and Wolch for details
24 surrounding their source in the City
25 Police. Gary Treble states that he



1 believes that Bob Laing, Commission
2 chairman, had made contact with Hersh
3 Wolch, however, it is unknown if it was
4 on this particular point. I also
5 discussed with Treble whether or not the
6 Commission had any notes applicable from
7 City Police investigators involved in
8 the Fisher investigation."

9 So again, December 10th he raises it again and
10 Treble says he believes that Bob Laing,
11 Commission chairman, had made contact.

12 I then want to go ahead to the
13 next, 056826, and this suggests, according to Mr.
14 Pearson, I think he confirmed this for us in his
15 evidence, that he:

16 "... met with Sask Police Commission
17 investigators and arranged to attend
18 their office next week to view various
19 notes they may have accessed during the
20 Fisher/Miller review. I asked if they
21 had checked Asper for the source who
22 leaked the file material, apparently the
23 Commission chairman, Laing, contacted
24 Asper asking if there was any more info
25 to be provided, and apparently Asper



1 stated there was not, and the matter
2 rests there."

3 Now, I don't know if Mr. Pearson, I don't think
4 he was able to tell us for certain that Mr. Laing
5 contacted Mr. Asper and made a request, and we'll
6 certainly ask Mr. Asper that, but were you, do
7 you recall being made aware from Mr. Asper that
8 the chairman of the Police Commission, Bob Laing,
9 may have -- may have, I'm not saying he did --
10 may have contacted him asking for your name or
11 information from you? Do you recall any of that?

12 A No, sir, and I'm quite certain I would have
13 remembered that if Justice Laing was making those
14 inquiries.

15 Q Now, at the time he wasn't Justice Laing, he was
16 Commissioner Laing.

17 A Oh, okay. My apologies.

18 Q No. And if you had been made aware that
19 Mr. Laing, the chairman of the Police Commission,
20 was seeking information about what you found in
21 the police files, what would you, Tom Vanin, have
22 done in response to that?

23 A Contacted a lawyer.

24 Q And done what? To get advice as to whether or not
25 you should respond or how you should respond?



1 A That's correct.

2 Q Let's go ahead to 057206, and this is a letter
3 December 30th, 1991 from Sergeant Pearson to David
4 Asper, and have you ever seen this letter before?
5 Let me go through this paragraph and then in
6 fairness I'll ask you. Sergeant Pearson says:

7 "It has been suggested the missing
8 Fisher files may contain information
9 relevant to David Milgaard's case.
10 Attached please find a copy of the
11 Application material provided by your
12 office, with key information vetted
13 out."

14 And again I can tell you that that is the
15 memorandum that has your name blacked out.

16 "It has recently been determined the
17 Saskatchewan Police Commission
18 investigators tasked with locating the
19 "missing Fisher files" from the
20 Saskatoon Police Department, did not
21 approach your office seeking assistance
22 in this regard. With this in mind, and
23 in an effort to determine the facts and
24 truths surrounding the Milgaard/Fisher
25 matter, I am asking that you provide me



1 with the vetted out information you
2 possess which will hopefully assist in
3 advancing this investigation."

4 So it appears from this letter that, according to
5 Sergeant Pearson, that the Police Commission may
6 not have talked directly to Mr. Asper, okay,
7 that's what the letter suggests. Do you recall
8 being -- seeing this letter at the time or being
9 made aware of this by Mr. Asper?

10 A No, sir. If I saw this letter, it would have been
11 in your office during our preliminaries.

12 Q I see. Then if we can go to 057205, and this is
13 the reply of January 8th, 1992 from Mr. Asper back
14 to Mr. Pearson and he sends copies of the entire
15 police report dealing with (V5)-- (V5)--- to whom
16 reference is made in the vetted out portions, and
17 he says:

18 "The material that I am sending to you
19 was provided to us by the Saskatchewan
20 Department of Justice."

21 Let me just pause there. At this time the
22 Federal Minister of Justice had ordered the
23 matter to go to the Supreme Court of Canada and
24 there's other correspondence that we have seen
25 and other evidence that we'll hear whereby the



1 Department of Justice delivered police files,
2 etcetera, to Mr. Asper's firm at and prior to
3 this time in preparation for the case, okay, so I
4 think that's the reference there, and so Mr.
5 Asper is saying here's the file that we got from
6 justice. He says:

7 "Quite frankly, I am somewhat amazed
8 that you had not been provided with this
9 material, especially since it appears
10 that the (V5)--- file is only one of two
11 ((V3)-----) that remain in existence."

12 So he provides a copy of the file. Then the next
13 paragraph he says:

14 "Insofar as the information which is
15 vetted on the second page of the report
16 that you provided to us is concerned, I
17 can advise that this information was
18 provided by a confidential informant,
19 and I am not at liberty to disclose the
20 identity of this person. I can assure
21 you, however, that this informant did
22 not provide us with anything that we do
23 not now have in our possession from the
24 Department of Justice in Saskatchewan."

25 Now, again I'm not sure, Mr. Vanin, if you can



1 tell us what Mr. Asper had from the Department of
2 Justice in Saskatchewan, but apart from -- I
3 think you told us what you would have provided to
4 Mr. Asper, and I want you to clarify this because
5 I think you said you would not have given him
6 copies, but the two pieces of paper you got from
7 the Central Records, from Central Records in or
8 about August of 1991, the Larry Fisher index card
9 and the one page rape investigation report, or
10 partial report, did you ever give a copy of that
11 to David Asper?

12 A No, sir.

13 Q Did you ever show it to him or read it to him or
14 discuss it with him?

15 A I might have discussed it with him, but the only
16 person that I showed it to was Mr. Henderson.
17 Mr. Paul Henderson, not Vern Henderson.

18 Q And so then if we can go to 05 -- let me ask you
19 this. Do you recall being contacted by Mr. Asper
20 around this time in connection with the request by
21 the RCMP for, number 1, your identity, and number
22 2, to give information to the RCMP? Do you
23 remember being made aware of that?

24 A No, sir. I'm not saying it didn't happen, I just
25 don't recall it.



1 Q And if you had been made aware of that, what would
2 your response have been?

3 A I don't know.

4 Q Let's just carry on, there's a few more notes
5 here. 056845, which is back in Pearson's notes,
6 and here we're now into January 13th, '92 and Mr.
7 Pearson writes:

8 "I received mail from Mr. Asper who
9 provided me with a copy of (V5)--
10 (V5)---' file, which I already have. I
11 have no idea why it was included, other
12 than an expression of cooperation, as I
13 did not request it. Asper did say the
14 vetted info is a confidential informant
15 and will not be revealed to me. What
16 concerns me about this is that Mr. Asper
17 makes reference in his correspondence as
18 to how "intriguing" it is that files
19 have gone missing, possibly, in my
20 opinion, by his own source, yet he seems
21 satisfied with leaving this question as
22 it is. I am not sure if there is more
23 that can be done in this regard."

24 And then to 056877 -- actually, just go to the
25 previous page so we can get a date. This is



1 February 7th, '92, and go to the next page, and
2 it talks about I think a discussion Mr. Pearson
3 is having with Mr. Asper, and he says:

4 "At this time Mr. Asper also advised
5 that he will not reveal his source to me
6 regarding the vetted out portion of the
7 Application material submitted to the
8 Minister of Justice. We discussed this
9 in general terms. I explained to Mr.
10 Asper the vetted out portion prevents me
11 from pursuing this possible lead. I
12 explained that his source could very
13 well have been leaking file material,
14 and is actually responsible for the
15 disappearance of the Fisher files, and
16 if he wishes it to remain as is, he will
17 have to explain the consequences of his
18 decision. I explained to him that I
19 will not be pursuing this aspect of the
20 inquiry any further."

21 And then if we can go to 057204, this is a
22 letter -- actually, this is January 14th, so it
23 predates that last note, but what he says in this
24 letter, this is a letter from Mr. Pearson to Mr.
25 Asper and it talks about Mr. Asper's letter:



1 "In the third paragraph of your
2 correspondence, you describe as
3 "intriguing" the fact some of the Fisher
4 files are missing. Is it possible your
5 informant has provided the Fisher files
6 to other individuals? What I find
7 intriguing with this is the fact your
8 confidential informant may actually be
9 the person responsible for the missing
10 files. Without your assistance, we may
11 never know!"

12 Did you become aware from Mr. Asper or from
13 anybody else that in and around this time,
14 January, 1992, that the RCMP, on behalf of
15 Federal Justice, had been making this type of
16 inquiry or suggestion to Mr. Asper that you
17 possibly could be the person responsible for the
18 missing Fisher files?

19 A Yes, at one time Mr. Asper did make me aware that
20 the RCMP or the Justice Department had my name and
21 just simply advised me that somehow they came into
22 possession of it, I think it was through the
23 Centurion Ministries.

24 Q Okay. Now, I believe that would have been late
25 1993, at least according to the documents. Does



1 that sound right, it's sometime later?

2 A Yes.

3 Q Yeah. And so prior to that, do you recall being
4 made aware of an allegation -- maybe that's too
5 strong a word, but a suggestion that you might
6 have more information about the missing Fisher
7 files and may actually be the person responsible
8 for the missing files, and that without an
9 opportunity to talk to you, the RCMP is saying we
10 may never know, were you aware of that being put
11 forward to Mr. Asper around the time?

12 A No, sir.

13 Q If you had been aware that another police force
14 was either implying or suggesting that, and you
15 are unknown to them at the time, that the person
16 who went in and looked at the files and came up
17 with the information that said the files are
18 missing, maybe the one who has the files or may
19 know where they are, what would your response have
20 been to that type of suggestion?

21 A I think the first thing I would have done was have
22 conversation with Mr. Wolch and the agreement we
23 had.

24 Q Okay. Being what, I'm sorry?

25 A That I had solicitor/client privilege, or I



1 believed I had solicitor/client privilege with Mr.
2 Wolch's firm.

3 Q And what I'm trying to get at, Mr. Vanin, is if
4 you had been aware of the nature of this
5 allegation or suggestion being made by Sergeant
6 Pearson to David Asper at the time, would you, Tom
7 Vanin, have felt the need to respond or to provide
8 information or would you have relied on others to
9 deal with the issues?

10 A Again, I would take my lawyer's advice. There's
11 no point in having a lawyer if you don't follow
12 his advice.

13 Q I see. 057203 is a letter from Mr. Asper back to
14 Mr. Pearson and he says, and he's responding to
15 the letter I just wrote to you:

16 "As you are no doubt aware, we are
17 currently set for the hearing in The
18 Supreme Court --"

19 Etcetera.

20 "As soon as I have some time, I will
21 speak to our confidential informant to
22 determine whether that individual might
23 be prepared to meet with you, even on a
24 confidential basis."

25 Do you have any recollection of you and Mr. Asper



1 discussing the prospect of you meeting with the
2 RCMP in early 1992 or thereabouts?

3 A No, sir.

4 Q If we can now move ahead to 060934, this is a
5 letter December 3, 1992 from Mr. Wolch to
6 Inspector Sawatsky of the RCMP, and at this time,
7 let me just explain a bit, Mr. Vanin, around this
8 time the RCMP were in the process of mobilizing an
9 investigation into allegations that had been made
10 from the Milgaard group about wrongdoing on the
11 part of police, Crown, government, etcetera, and
12 so this was a different, a different task than
13 what Mr. Pearson was doing from what I just read
14 to you, okay. It's the same RCMP, but it's a
15 different group of officers and it's now a
16 different task. So this is December, 1992 and
17 there's a reference here about a meeting, just
18 call up the first part here, a meeting that Hersh
19 Wolch had with Inspector Sawatsky and others on
20 November 26th, and Mr. Wolch says we agreed to
21 provide you with further information, and number 1
22 deals with Michael Breckenridge. Is that a name
23 that has any familiarity with you, sir?

24 A No, sir.

25 Q And number 2:



1 "Insofar as your request for the name of
2 our contact within the Saskatoon Police
3 Department, we have spoken with David
4 Asper and Paul Henderson, who are the
5 only individuals who have spoken to this
6 contact."

7 Now, let me pause there. I think you told us
8 that you also talked to Hersh Wolch on one
9 occasion; is that right, the initial call?

10 A My initial call, yes.

11 Q And I think you said you spoke to Joyce Milgaard
12 briefly at coffee; is that right?

13 A That's correct. Nothing was discussed in respect
14 to David Milgaard or any files.

15 Q Social conversation with Joyce Milgaard; would
16 that be --

17 A That's the best way to put it, sir.

18 Q And then it says:

19 "We are advised by Mr. Asper and Mr.
20 Henderson that:

21 (a) Our contact has no information
22 relevant to the Miller murder or the
23 Milgaard conviction;"

24 And assuming you are the contact within the
25 Saskatoon Police Department, would you agree with



1 that, that you had no information relevant to the
2 Miller murder or the Milgaard conviction?

3 A That's absolutely correct.

4 Q "(b), our contact --"

5 And I assume this is you, sir,

6 "-- knows nothing of the Fisher cases,
7 nor does he have any specific knowledge
8 of any subsequent cover-up."

9 Is that correct?

10 A Yes, sir.

11 Q "(c) Our contact's involvement consisted
12 of retrieving the Nichol's file from
13 police records and showing it to Paul
14 Henderson."

15 We touched on that. Assuming you are the
16 contact, is that correct?

17 A No, sir. I did not have the (V5)--- file, I only
18 had the index card and one part of -- one page of
19 an investigation, and it might have been one page
20 from the (V5)--- file.

21 Q Okay.

22 A I don't know.

23 Q Now, did you become aware of an RCMP investigation
24 ongoing in 1992, '93, that time frame?

25 A Well, I knew the RCMP were reinvestigating the



1 Milgaard file.

2 Q And do you have a recollection of the RCMP
3 contacting you for an interview?

4 A Yes.

5 Q If we can call up 054573, please, and this is
6 September 16th, '93, and this is an RCMP document,
7 and I think this explains how they learned of your
8 name. They talk about Sergeant Dressler through
9 inquiries and document analysis, they say here:

10 "This source has always been concern to
11 this investigation and we have attempted
12 to reveal the source's identity so that
13 the source could be interviewed. The
14 purpose of any interviews with the
15 source would be to confirm and document
16 information provided to Centurion
17 Ministries by the source. Previously
18 this source had provided information
19 concerning the climate within the
20 Saskatoon Police Department at the time
21 of the Gail Miller murder. As well, it
22 is felt this source could provide
23 information about the missing files from
24 the department.

25 In view of the fact that we now



1 know the identity of the source, I feel
2 it is imperative this person, Sgt. Tom
3 Vanin be interviewed. However, I also
4 feel that it is necessary for us to
5 disclose the identity of this person to
6 the chief."

7 And then it goes on to talk about some meetings
8 that took place. And so it would appear that in
9 September of 1993 the RCMP became aware that
10 yours was the name in the Centurion Ministries
11 report that was vetted out, and I think, Mr.
12 Vanin, at least based on the records, it appears
13 that an unredacted copy may have been provided by
14 Mr. McCloskey to the RCMP in and around this
15 time. So with that background, I just want to
16 skip ahead. How did you first -- what do you
17 recall, how were you first contacted and made
18 aware that someone wanted to talk to you?

19 A I believe it was Inspector Quinn, umm, came to my
20 office and advised me that the RCMP had set up
21 their equipment and there was two officers that
22 wanted to take a statement from me.

23 Q Did you, did you know what it was about?

24 A No, I didn't, but I suspected it was probably in
25 respect to the Milgaard file.



1 Q Did you contact Mr. Asper or Mr. Wolch?

2 A No, sir.

3 Q And any reason you didn't?

4 A Well I had no idea what the RCMP were there for or
5 what they were going to ask me.

6 Q If we could go to 054563, is the doc. ID, please.
7 And these are notes, if we could go to 054570, and
8 this suggests that the meeting took place on
9 September 29th, 1993, and that Inspector Sawatzky,
10 Staff Sergeant Tost, and Inspector Quinn were the
11 people present; does that sound right, so it was
12 -- as far as the number of people and the identity
13 of the people there?

14 A Initially, but the -- their interrogation or their
15 attempt to get a statement from me just included
16 Sawatzky and Tost.

17 Q I see. So Inspector Quinn, and now let's just
18 read down, it says:

19 "Insp. Quinn brings S/Sgt. Vanin into
20 the office and introduces us to him at
21 9:35 and Quinn departs."

22 And so that's what your recollection is?

23 A Yes sir.

24 Q And then I'll just read parts of this and ask for
25 your comment. It says:



1 "Insp. Sawatzky details the facts that
2 we are part of the investigative team
3 enquiring into a great number of issues
4 surrounding the David Milgaard
5 investigation/conviction. He advises
6 that during the course of our
7 investigation we have been supplied with
8 reports from Centurion Ministries an
9 investigation firm who had been employed
10 by either Joyce Milgaard, David Asper or
11 Hersh Wolch to assist Milgaard in
12 securing information that would reveal
13 that Milgaard was wrongfully convicted.
14 That in those reports a specific
15 paragraph had been found wherein he had
16 been identified as a source of
17 information and had provided for viewing
18 certain files obtained from the
19 Saskatoon Police Dept."

20 And, again, would that accurately summarize what
21 Inspector Sawatzky would have told you?

22 A Yes.

23 Q And then he goes on to say:

24 "Insp. Sawatzky went on to adv. that the
25 S'toon City Police upper administration



1 was fully aware of the reasons for our
2 interview. Therefore it was necessary
3 that he should also know that although
4 we were not accusing him of any criminal
5 act, he should be aware that he may be
6 subject to an internal investigation.
7 This would mean that ...",

8 I think it says:

9 "This would mean that we could be called
10 as witnesses for the Police Dept. in the
11 event of an internal proceeding.
12 Therefore, he was not compelled to tell
13 us anything and he had every right to
14 contact a lawyer and was even encouraged
15 to do so by Sawatzky. He was also
16 advised that it was our purpose to
17 examine the content of the Centurion
18 Ministries report."

19 And it says:

20 "To allow him every opportunity to
21 verify its content or repudiate it. It
22 was also explained that our report would
23 become public and that the Centurion
24 Ministries reports would form part of
25 our findings. Should he wish to offer



1 an elaboration, explanation, denial,
2 rebuttal or anything to the fact that he
3 was being identified in that report we
4 would record same."

5 Would that be an accurate summary of what was
6 conveyed to you by Inspector Sawatzky at the
7 time?

8 A Yes sir.

9 Q Would it be fair to say, at this time, that (a)
10 you would have been informed that your name
11 appeared on a Centurion Ministries report as the
12 source; and (b), that upper administration at the
13 city police knew that; and that (c) or (3), that
14 one of the things they were looking at is you
15 providing access to look at police files and other
16 information to third parties; would that -- that
17 would have been on your mind at the time, you
18 would have been aware of that?

19 A Yes sir.

20 Q And then it goes on to say, if we scroll down:
21 "Vanin refused to acknowledge or deny
22 the report. He advised he would not
23 answer our questions and would retain
24 legal counsel.

25 Although Vanin refused to



1 answer any questions concerning the
2 Centurion Ministries report and being
3 identified in same, he did shed some
4 light on other areas.

5 He advised that at the time of
6 the Miller murder no one knew Fisher.
7 He learned about Fisher in the
8 newspaper.

9 He advised "...",
10 let me just pause there. And I think you have
11 touched on this the other day; would that have
12 been accurate, what I just read to you there,
13 would you have told them that?

14 A Yes.

15 Q And --

16 A And I also said the other day that I thought I
17 first heard about Asper -- or of Fisher, pardon
18 me, from Mr. Asper.

19 Q But the part --

20 A So I'm telling the RCMP I read it in the newspaper
21 first, and then I read it in the --

22 Q So that, and I think you did qualify it the other
23 day, saying it could have -- it was one or the
24 other, it was either Mr. Asper --

25 A Yes.



1 Q -- or the newspaper, but it would have been around
2 the time you had discussions with Mr. Asper that
3 you would have learned of Mr. Fisher either
4 through him or newspapers; is that fair?

5 A Yes.

6 Q The comment where you say:

7 "He advised that at the time of the
8 Miller murder no one knew Fisher.";
9 is that something you would have told the RCMP?

10 A Yes.

11 Q And was that true as far as you were concerned?

12 A Well, as far as I knew, I couldn't find anybody in
13 the department that had heard of Larry Fisher.

14 Q Okay. Next page.

15 A But obviously somebody in the department knew of
16 Larry Fisher.

17 Q Pardon me?

18 A I said obviously somebody in the department knew
19 of Larry Fisher.

20 Q Right, I mean, based on the '70 and '71
21 confessions and convictions?

22 A Yes.

23 Q If we can go back to here the notes show:

24 "When shown copies of the documents
25 outlining the summary of events in the



1 Miller murder commonly referred to by
2 our investigators as the "Can Say"
3 documents he advised he had never seen
4 it before."

5 I'm just going to call up 033328, please.

6 A Can you show me that again, please?

7 Q I'm sorry, what do you want to see, the --

8 A Just what you had in the square previously.

9 Q Yeah, this? And I'm going to show you a document.
10 I think the RCMP showed you a five-page document
11 and asked you whether you had ever seen it before?

12 A Just give me a second to read that, please.

13 Q Sure.

14 A (Witness reading) That's correct, I had never saw
15 that document.

16 Q Okay. And if we can pull up 033328, just to
17 verify, and is this the document that the RCMP
18 showed you that they referred to in their report?

19 A I'm not certain, sir. And you showed me this
20 document in your office and I, prior to that I
21 didn't, I cannot recall ever seeing this document.

22 Q Okay. So just so we know, this is page 1, let's
23 go to the last page, 033, Summary and Suggestions.
24 And, again, I believe this is the document the
25 RCMP showed you in 1993. I, as well, showed you



1 this document last week, and wondering, Mr. Vanin,
2 whether this is a document you would have seen at
3 any time other than your interview by the RCMP and
4 your dealings with the Commission?

5 A I have never seen this document, sir.

6 Q If we can just go back to 054567, it says here:

7 "He explained that the investigators or
8 detectives involved in the case were
9 satisfied that Milgaard was responsible
10 for the murder. He stated that there
11 did not appear to be any doubt among the
12 detectives that Milgaard was the right
13 man. He went on to say that the uniform
14 members did not have the full details of
15 the investigation. Among many of them
16 there was the view that here was a 16 or
17 17 year old kid who keeps saying he's
18 innocent. Maybe they have the wrong
19 guy."

20 And would that be something that you both
21 believed in and told the RCMP at the time?

22 A Yes sir.

23 Q And then next page:

24 "I read to Vanin the excerpt in the
25 Centurion Ministries report wherein he



1 is identified as the source. He asked
2 me to repeat the sentence pertaining to
3 a thick and extensive file which he is
4 alleged to have shown to the Centurion
5 Ministries investigator. He stated
6 "Bullshit."

7 And would that be an accurate summary of the
8 exchange you would have had with Inspector
9 Sawatzky?

10 A Yes sir.

11 Q And so I believe what was shown to you was the
12 memorandum from Centurion Ministries, the one that
13 I showed you yesterday that had your name,
14 suggesting that you provided a, I think the words
15 were, 'thick and extensive file on (V5)-- (V5)---
16 to Mr. Henderson to review'. And so in 1993 the
17 RCMP showed you the same thing that I did, and at
18 that time I presume you said 'no, that didn't' --
19 the word, well you said "bullshit", but I think
20 what you are saying is no, you didn't show them,
21 Henderson, the (V5)--- file; is that fair?

22 A That's absolutely correct.

23 Q So in 1993, when you saw the memorandum that
24 attributed you to having shown this, (a) obtaining
25 the (V5)--- file and (b) showing it to Henderson;



1 what was your reaction to that?

2 A Well I was quite angry that it was suggested that
3 I showed somebody the (V5)--- file when in fact I
4 never saw the (V5)--- file, never had the (V5)---
5 file, I just had two pieces of paper.

6 Q Right.

7 A And my response, as you can see I was angry that
8 they suggested that I did it, and I replied by
9 "bullshit".

10 Q And just so we're clear, I -- and are we correct
11 in interpreting that response to be the equivalent
12 of "no, that didn't happen"?

13 A No, I did not show him.

14 Q Okay. And then if we can scroll down:

15 "Insp. Sawatzky made arrangements with
16 Vanin to forward a list of our questions
17 ...",

18 I'm not sure what that is, but:

19 "... Confidential envelope through
20 Inspector Quinn for Vanin & his lawyer's
21 perusal. He agreed to this format and
22 indicated he would entertain a
23 response.",

24 but indicated you wished to talk to a lawyer and
25 that you might consider answering written



1 questions; is that right?

2 A Yes sir.

3 Q Now if we can next go to 054577. And this is
4 September 30th, 1993, this is a letter from
5 Inspector Sawatzky to you, Mr. Vanin, the day
6 after the interview sending you a copy of the
7 paragraph where you are named by Centurion and a
8 number of questions for your perusal. And I think
9 at this time, 1993, Mr. Vanin, you would have been
10 in finance/informatics section, is that right, of
11 the police?

12 A No, at that time I was now in charge of central
13 records.

14 Q And can you tell us, in 1993, what was going on in
15 your life, sir, that was -- in 1993 when you were
16 dealing with these requests?

17 A Well I was having a very difficult time in -- on
18 July the 9th of 1992 I lost my son as a result of
19 a gunshot wound or -- and it was investigated by
20 the Saskatoon Police and they ruled it to be a
21 suicide.

22 Q Okay.

23 A I wasn't part of, of course I couldn't be part of
24 the investigating.

25 Q And as far as your September of 1993, sir, did



1 that event have an impact, an influence, on your
2 well-being and your dealing with the situation at
3 the time?

4 A It certainly did, and it does 'til this day.

5 Q If we can go to 061391, I think this is the list
6 of questions, and I don't propose to go through it
7 but just to confirm that Inspector Sawatzky would
8 have sent to you, sir, an outline of areas to
9 follow up on that he wanted you to respond to; is
10 that right?

11 A Yes sir.

12 Q Did you, after you had the interview with
13 Sawatzky, with Inspector Sawatzky, did you contact
14 Mr. Asper or Mr. Wolch?

15 A I don't recall, but I'm certain I did. I just
16 can't imagine not contacting them and telling them
17 that I was approached for a warned statement from
18 the RCMP.

19 Q You, a little earlier this morning you, when I was
20 asking you a question about whether you and David
21 Asper had a discussion in '92 about RCMP and
22 suggestions they were making, I think you said you
23 remembered a discussion with David Asper where he
24 told you that the RCMP had your name; do you
25 remember telling me that this morning?



1 A Yes sir.

2 Q And I think at that time, I suggested to you that
3 that might have been in 1993, do you remember Mr.
4 Asper contacting you or you talking to him where
5 he told you "lookit, they have got your name"?

6 A Yes.

7 Q And what do you remember of that discussion?

8 A Mr. Asper told me that the RCMP had my name, and
9 they got it through the Centurion Ministries, and
10 --

11 Q And --

12 A -- he explained that he did not divulge my name to
13 them --

14 Q Okay.

15 A -- and explained how they did get my name.

16 Q And do you recall anything else of that
17 discussion?

18 A No.

19 Q Did you ask him for any advice about what you
20 should say to the RCMP if they contact you?

21 A No, not that I recall.

22 Q If we can go to 061397, and I think this is a
23 letter, and it appears that you then retained
24 Mr. Priel to act on your behalf; is that right?

25 A That's correct.



1 Q And he would have sent this letter on your behalf
2 to Inspector Sawatzky responding to his earlier
3 letter?

4 A Yes sir.

5 Q I just want to read you what he says, and this is
6 in response to the list of questions, he says:

7 "By way of response to your inquiry, we
8 wish to make it clear that Staff
9 Sergeant Vanin was not involved directly
10 or indirectly in the investigation of
11 the Gail Miller murder which took place
12 on January 31, 1969. Staff Sergeant
13 Vanin was not involved in the
14 investigation of David Milgaard as a
15 suspect in the murder of Gail Miller nor
16 was Staff Sergeant Vanin in any way
17 involved in the prosecution of David
18 Milgaard. Further, he was not in any
19 way involved in any investigation
20 relating to Larry Fisher. He does not
21 know or have any opinions or beliefs
22 concerning Albert Cadrain."

23 And then just scroll down:

24 "Staff Sergeant Vanin has, at this time,
25 no further comments to make with respect



1 to your letter of September 30th."

2 So did that accurately reflect your position at
3 the time?

4 A Yes sir.

5 Q And, just for the record, a few more documents.
6 054584, looks like Inspector Sawatzky sends back,
7 looks like there was a telephone conversation; and
8 then if we could just go to 054585, another set of
9 questions went to Mr. Priel; and then if we could
10 go to 054583, and Mr. Priel asks for a copy of the
11 statement of Mr. Henderson which gave rise to the
12 RCMP interest in obtaining information from you;
13 and then 054581, this is December 7th, '93, and
14 Sawatzky sends back:

15 "... an excerpt from a Centurion
16 Ministries report prepared by Paul
17 Henderson in which he claims S/Sgt.
18 Vanin is a source on internal police
19 problems and provided him access to a
20 police file.

21 So there is no misunderstanding
22 about our purpose, in order to
23 authenticate Henderson's report, we need
24 to obtain S/Sgt Vanin's response to the
25 questions outlined in our letter of



1 93-11-19."

2 And I don't think, at least in the documents that
3 I found, sir, that I don't think there was any
4 further response from you to the RCMP; would that
5 be correct?

6 A I don't think there was any further response from
7 the RCMP to me.

8 Q Yeah, and that may well have been as well, but can
9 we conclude from these documents that this would
10 have been basically it as far as your
11 communications, that you never did -- other than
12 Mr. Priel's one letter that I read, you didn't
13 provide a set of written answers to the RCMP to
14 those questions?

15 A Just the one letter that Priel prepared.

16 Q Correct. So you made a, you had the interview
17 with them which I went through, the letter that
18 Mr. Priel went -- sent on your behalf, and that
19 would be it as far as information that you
20 provided to the RCMP, is that correct, is that
21 your recollection?

22 A In respect to Fisher/Milgaard, but I had an awful
23 lot of dealings with the RCMP, but not anything
24 that --

25 Q In relation to their investigation in 1992-'93



1 relating to the alleged wrongdoings?

2 A Yes.

3 Q Okay.

4 A This was it.

5 Q Yeah. And so you would have dealt with RCMP on
6 unrelated matters, I take it, from time to time?

7 A Yes.

8 Q All right.

9 A I was asked for their assistance.

10 Q I want to go through a couple more documents, and
11 then we're finished, that relate to the RCMP
12 report. Did you become aware that in, I think it
13 was early '94, maybe late '93, the RCMP actually
14 published a report, a fairly lengthy report of
15 their investigation into various matters that went
16 to the Deputy Attorney General in Alberta; do you
17 remember hearing about that?

18 A No, sir.

19 Q Yeah. I just want to -- the report is 052660, and
20 you will see this as a, *The RCMP Investigation*
21 *Into Allegations of Wrongdoing By the Saskatoon*
22 *City Police and the Saskatchewan Department of the*
23 *Attorney General, Saskatchewan Justice, in the*
24 *Investigation and Prosecution of David Edgar*
25 *Milgaard*, and Inspector Sawatzky is the Assistant



1 Officer in Charge. And I just want to go to page
2 052716, and this is a part where they are dealing
3 with the RCMP about the missing files, and it says
4 here, "Our investigators interviewed S/Sgt. Vanin
5 September 29th, 1993', and that's the date of the
6 report I showed you, 'in Saskatoon, at police
7 headquarters. When confronted with the
8 information outlined in the Centurion Ministries
9 report, S/Sgt. Vanin refused to acknowledge or
10 deny the report without the advice of legal
11 counsel.'

12 And I think what we saw from
13 those notes is that maybe you told them "no, that
14 isn't accurate", is that what I think you told us
15 a bit earlier?

16 A In respect to (V5)-- (V5)---?

17 Q Yes.

18 A Yes, that's accurate.

19 Q And then it says, note, 'When interviewed December
20 9th, '93, Mr. Asper indicated that he believed
21 that the source showed Mrs. Milgaard and Henderson
22 a "list" of existing files, and that later several
23 files were found purged from the list. Obviously,
24 this contradicts what is outlined in Henderson's
25 report.'



1 And if you assume, sir, that you
2 are the source referred to, is what Mr. Asper says
3 here accurate; did you show Mrs. Milgaard and
4 Henderson a list of existing files and that,
5 later, several files were found purged from the
6 list?

7 A No, Mr. Asper is inaccurate in that statement.

8 Q In what respect?

9 A Well I didn't show Mrs. Milgaard any files, and I,
10 I don't know anything about any purged files.

11 Q If we could then go to 331214. And, again, the
12 quality -- this is an interview February 25-26,
13 1993, and so this would be prior to your interview
14 in September of '93, but this was the part -- I
15 think this was an initial interview or one of the
16 initial interviews the RCMP had with Joyce
17 Milgaard, they also had one with Mr. Wolch and
18 others, to get background information on some of
19 the allegations.

20 And just for the record, Mr.
21 Commissioner, the doc. ID of the tape is 038023.

22 So I just want to read you parts
23 of what Mrs. Milgaard said to Inspector Sawatzky
24 at this interview. And, again, the tape is not
25 perfect, but if we could go to 331317, and down at



1 the bottom -- and Mr. Commissioner, what the Q and
2 A, the A's answers are Joyce Milgaard, the Q's are
3 questions from the officers present, it doesn't
4 distinguish between which of the officers is
5 asking the question so when you see different Q's
6 that's what it refers to. And we've got the tape
7 from the RCMP if anybody wishes to go back to that
8 source. And they talk about the Police
9 Commission, and Mrs. Milgaard says:

10 "A Yeah, the Police Commission did that but
11 they were working without the right
12 information, they, they maybe, that's a
13 question down there for David Asper, uh
14 to talk to him about - that disclosure.
15 We found, um, stuff in the file
16 indicating - we were working from the
17 premise that these files had been purged
18 or something at a certain time and yet
19 um, when we got Larry Fisher (break in
20 tape) dates that these things were
21 available. So, in essence, what they
22 were, the premise that they were
23 starting from was wrong and that, those
24 files were actually available and, in
25 fact, I mean, the fact that we were able



1 to get uh, copies of the con___ (break
2 in tape), and also saw other reports in
3 there at that time, and they disappeared
4 after that. Like, you know, the other
5 victims were all there ...

6 Q So, they, they were there when this
7 person went to the files in the first
8 instance but they were gone later?

9 A Yeah.

10 Q What year would we be talking?

11 Q 19...

12 A '90s (inaudible)

13 Q See, because in order to verify that
14 pretty well means that, an informant is
15 coming forward to us ...".

16 Actually, let me just pause there. If we assume
17 that you are the provider of this information,
18 would that be accurate, what Mrs. Milgaard said
19 there?

20 A No, it's not accurate, or it's some other
21 informant, not me.

22 Q Okay. And why is that, what is in there that you
23 disagree with, at least from your involvement in
24 the matter?

25 A I did not show Mrs. Milgaard any files whatsoever.



1 Q And --

2 A Prior to this hearing, I only had approximately a
3 five-minute conversation over coffee when we
4 introduced ourselves with Paul Henderson.

5 Q And so putting aside, let's assume what you would
6 have shown to either Paul Henderson, Joyce
7 Milgaard, David Asper, David Roberts, anybody of
8 who -- who you thought might be associated with
9 the Milgaard group; would what is stated here be
10 accurate, and in particular the statement there
11 that the other victims were all there, so that
12 when this person, being you:

13 "... went to the files in the first
14 instance but they were gone later?

15 A Yeah.",
16 would that be accurate, would you have told that
17 type of information to anybody?

18 A No, sir.

19 Q And then, if we can go down, it says.

20 "Q ... because in order to verify that
21 pretty well means that, an informant is
22 coming forward to us, and I spoke to
23 Asper about that and he thought that
24 this person didn't have anything,
25 additional to offer.



1 A Uh-hmm.

2 Q Which is different than what you're
3 telling me now...

4 A Uh-hmm.

5 Q ... so maybe I should mention that to
6 him again because, you know, if this
7 person can verify something then we're
8 going to have to talk to this person.

9 A Because, to me, the fact that there
10 were uh, other files in there was very
11 important and we sort of um, let me
12 ask you the question, if I should get
13 in touch with this, our source? If
14 you were to see him and talk to him
15 um, what sort of protection does he
16 have, the fact that he's uh, you know,
17 if you should talk to him."

18 And they go on to talk about that. Now, and
19 again I think I've asked you this already, but
20 you don't have any recollection about being
21 contacted about, in 1993, about possibly talking
22 to the RCMP?

23 A No, sir. I was only contacted by Sawatzky and
24 Tost on one occasion, and no other police officer,
25 or no other RCMP or other police officers.



1 Q And, again, at --

2 A From what I am reading here it would appear that
3 there's certainly more than one source.

4 Q And is that because -- why?

5 A Because that's not my information.

6 Q Okay. If we can go to 331320. And again this is
7 just carrying on, I think it's the next page, and
8 I'll just -- talking here about -- actually, if we
9 can just go up to the top a bit, the question is
10 -- no, a little further -- the question:

11 "Q See, in that report from the Police
12 Commission outlines it very clearly that
13 there's, from here to here, there's a
14 gap. So, what they are saying is that,
15 in that gap, there was files from other
16 investigations ...

17 A Um-hmm.

18 Q ... therefore they didn't just single
19 that out but I mean, you're talking
20 about people being smart, maybe they're
21 smart enough to take ...

22 Q Take everything.

23 Q ... take everything so that includes
24 what they want ..."

25 "Q There was still some, some of Fisher's



1 rape victim's or yeah, files still there

2 ...

3 A Um-hmm.

4 Q ... like, some of them are still there.

5 A No, but just the ones that we already
6 had.

7 Q Yeah."

8 "A Yeah, the ones that we didn't have were
9 gone.

10 Q I causes some concern ...

11 A ... the ones that we didn't pull."

12 And then here:

13 "Q when you say that suddenly they are,
14 they were there and suddenly they're
15 gone.

16 A Yeah.

17 Q That, that's different than, if your
18 moving from one building to another
19 ...".

20 And, again, would that be the type of information
21 that you would have provided to anybody on behalf
22 of the Milgaards?

23 A Absolutely not. I had no knowledge of this.

24 Q And then 331334, again this is carrying on from
25 the same interview, and the officer says:



1 "Q ... like I said, that's something that
2 we may have to contact you about and you
3 may want to speak with Mr. Wolch or
4 whatever. I guess what's, what's
5 happening is that he, that is to me a
6 very critical point. So if he is
7 alleging that there was material there
8 one day and then, you know ...

9 A Gone the next.

10 Q ... gone the next, I think that's
11 extremely important ...

12 A Un-hmm.

13 Q ... so, and I just don't know how we,
14 how we're going to handle that.

15 A Well ...

16 Q So, I guess probably the best thing I
17 can do is maybe collectively uh, a
18 decision would have to be made as to
19 whether it's worth surfacing this person
20 because there is no doubt that his
21 testimony is very important.

22 A Well, I think maybe what you need to
23 do is talk to Paul, Henderson,
24 because, Paul worked with him much
25 more closely than I did.



1 Q Okay.

2 A And I think Paul might even be willing
3 to talk about him, um, sort of
4 quietly.

5 Q Why I have sort of understood that he
6 didn't really have anything to offer um,
7 in talking to David Asper. David Asper
8 sort of indicated to me that there was
9 nothing he could officer, that he had
10 already given everything he could.

11 A Yeah, but I think ...

12 Q So uh, but, but, that ...

13 A But, I, I felt that was wrong, in the
14 fact, to me, that there was something
15 there when he looked, I thought that
16 was very important and, and so that
17 one of the reasons that I felt I
18 should bring it up."

19 And so again I think that's just similar to what
20 I read you before, and would you agree, I mean,
21 is that the type of information you would have
22 provided to anybody on behalf of the Milgaards?

23 A No, sir, and again, my position is that there's
24 obviously more than one informant, or several
25 informants.



1 Q Go to the next page, please --

2 A And it just doesn't make sense. The files,
3 according to Gus Weir, were missing many, many
4 years before that and all of a sudden they appear
5 and disappear the next day? I --

6 Q I think you may have told me this yesterday, who
7 told you about what Gus Weir said about the files
8 having been missing some time ago?

9 A Dave Roberts.

10 Q And then if we can just -- here's the discussion
11 about meetings with you, Mrs. Milgaard says:

12 "A ... Paul did all the workings, pretty
13 well with this man. I only met him uh,
14 well, I met with two police officers,
15 um, on one or two occasions, so I did
16 meet with him. Um, most of all the work
17 was done with Paul and he would report
18 back to me on, you know ... Because they
19 were naturally, very uncomfortable ...
20 about being seen with me ..."

21 I guess the latter part, I think you confirmed
22 that, that you -- is that fair, you didn't want
23 to deal directly with Mrs. Milgaard; is that
24 right?

25 A That's correct, I didn't want to deal with



1 Mrs. Milgaard, but I certainly would have felt
2 comfortable to be seen with her, but I just made
3 this agreement with Asper that I would talk to
4 Henderson and Henderson alone.

5 Q And then the question is:

6 "Q In, in your meetings with them, did, did
7 they, I'm not saying that they were on
8 the force necessarily, when this
9 happened but was there any, any
10 discussion taking place like, between,
11 with them that would suggest that the
12 City Police covered up anything or did
13 they ...

14 A Well, basically, what was happening
15 uh, and Paul will give you more
16 information on this but ... I, I'm
17 just being very honest here because
18 just, I do a lot by, and I pray a lot
19 and I go a lot by instinct and I
20 somehow felt that these, these men,
21 and I, I may be wrong about this, but
22 I thought they had is in for Penkala
23 and I, I ...

24 Q He would, he would have been the chief
25 of course at the Saskatoon ...



1 A Yes, yes, and I thought they had it in
2 for Penkala and that they were trying
3 to use me to get him, and that, you
4 know that they were trying to use ...

5 Q But was that, would that be necessarily
6 over David's case or was that just, just
7 ...

8 A No, no, they were giving me a lot of
9 stuff ...

10 Q To get to Pen ... to get Penkala out.

11 A ... to get Penkala out uh, based on,
12 and this was the basis of their, their
13 thinking, to me was uh, now look Mrs.
14 Milgaard, if, if, if you can show that
15 Penkala is dirty now, then people are
16 going to believe that he was dirty
17 then. Now, and, and, I realized that
18 that is a good rational, but, uh,
19 some, and this is why that one report
20 I gave you, that was some of the, this
21 was some of the areas that we were
22 talking about, and I guess I'm sitting
23 there thinking, look, I'm here
24 investigating what happened to David
25 Milgaard back at that time, this is



1 the information that I want to know.
2 I don't want to know about something
3 that uh, where we knew about Henderson
4 (break in tape) and he didn't do
5 anything about it and ..."

6 And I think it may be referring to Vern
7 Henderson:

8 "I don't want to go into all that stuff,
9 I have all the stuff that I need to have
10 in my head now with my own case. I
11 can't get involved in, in uh, it just
12 seemed that I'd been asked to get into,
13 involved in another investigation.

14 Q But, basically Penkala's involvement
15 during that first time, the real
16 critical part, of course, is finding
17 that semen in the snow?

18 A Um-hmm, um-hmm.

19 Q Other than that he never really had much
20 to do with the investigation.

21 A No, he didn't but the thing, the
22 thought was, like, did he really find
23 that there, you know. Was this
24 something that was used. Like it
25 happened four days after, like if, if



1 the man um, doesn't have integrity, is
2 it possible that he hasn't had
3 integrity all the way along."

4 So again, that's a fairly lengthy exchange about
5 her statements about, and I think attributes to
6 you, your issues with Penkala, and again, would
7 that -- would it be fair to say, sir, and maybe
8 you've already told us, that that was on your
9 mind at the time when you met with Mr. Henderson
10 and agreed to meet with him, is that you had
11 issues about Mr. Penkala; is that fair?

12 A I had issues with Penkala, but this also pertains
13 to forensic evidence which I had nothing to do
14 with or no knowledge other than reading that he
15 found two lumps in the snow.

16 Q Mrs. Milgaard seems to be saying to the officers
17 here that your focus was on showing that Penkala
18 did not have integrity, Mr. Penkala did not have
19 integrity in 1991 and your concerns were there and
20 that somehow if you could show he didn't have
21 integrity then, maybe he didn't have integrity 20
22 years ago, do you follow what she has said there
23 to the RCMP, and my question is, is that something
24 that you would have discussed with Mr. Henderson
25 or was that what was on your mind at the time?



1 A No, sir. I think I explained in great detail the
2 first time I testified, the issues with Penkala
3 and myself were in respect to the high-speed chase
4 and the injuries that I sustained.

5 Q Okay. If we can go to 046170, go to page -- is
6 the doc ID, and go to page 046173.

7 I just have a few more
8 documents, Mr. Commissioner, I'll maybe go until
9 I'm finished here before we break if that's all
10 right?

11 COMMISSIONER MacCALLUM: Okay.

12 BY MR. HODSON:

13 Q At the bottom here this is a reference to the RCMP
14 talking to Mr. Asper, a note, it says:

15 "I informed Mr. Asper that we were still
16 waiting to hear from Mrs. Milgaard on
17 exactly what files she saw which were
18 later destroyed. Asper stated that he
19 believed they were shown a list of
20 existing files and then later several
21 files were found purged off the list."

22 And again, if that reference is to you, sir, and
23 what you showed him, is that accurate?

24 A No, that wasn't me.

25 Q If we can lastly call up 170805, and this is a



1 letter dated January 19th, 1998 faxed by you to
2 Greg Rodin; is that correct?

3 A Yes. Well, I don't know if it was faxed or sent
4 by mail.

5 Q At the top here it looks as though it was faxed
6 from Youth Services. Do you see that?

7 A Yes, yes.

8 Q Would that be at the police station?

9 A No. My wife typed that letter and at that time
10 she worked at Youth Services, so it could have
11 been faxed. I don't have a fax machine, so my
12 wife could have definitely have faxed that.

13 Q And Youth Services, is that -- I'm sorry, is that
14 at all part of the Saskatoon Police Service?

15 A No, it isn't.

16 Q At this time you would have been retired for a
17 couple of years; is that right?

18 A Yes.

19 Q And at that time I think you've told us that you
20 dealt with Greg Rodin who followed up from David
21 Asper; is that right?

22 A Yes, sir.

23 Q And that from time to time you provided
24 information to Mr. Rodin; is that right?

25 A That's correct.



1 Q And it starts off:

2 "As per your letter and agreement dated
3 August 6, 1997, my fees and expenses as
4 of January 15, 1998 are \$5,000.00."

5 Now, this document was provided to us I think by
6 Mr. Wolch if I'm not mistaken. I have not been
7 able to find any letter and agreement dated
8 August 6, 1997, although I must say I'm not done
9 looking. Can you tell us, was there an agreement
10 put in place for you to be paid for your
11 services?

12 A As far as I recall, it was just a verbal
13 agreement.

14 Q Okay. And what was the agreement and who did you
15 make it with?

16 A I think it was originally made with David Asper
17 and then Rodin agreed to honour the agreement.

18 Q And what was the agreement?

19 A That they would pay me \$100 an hour as an
20 investigator and pay for my expenses.

21 Q Did you ever receive any payment from David Asper
22 or Greg Rodin or anybody on behalf of David or
23 Joyce Milgaard?

24 A No, sir.

25 Q Did you ever get any response to this letter?



1 A I got a response from Rodin and he wanted a list
2 of my expenses and a report and different things
3 that I can recall and that was not our agreement
4 and I just felt if -- that Mr. Rodin, if he broke
5 the agreement, he has to live with it, not me.

6 Q And did you -- was it your view that he had?

7 A Did he break the agreement?

8 Q Yes.

9 A Yes, and I never contacted him or anybody from the
10 Wolch firm or Milgaard family or Rodin again. I
11 just felt that we had an agreement and it was his
12 responsibility to honour it.

13 Q And it says here:

14 "This bill for \$5,000.00 includes
15 interviews with policeman, retired
16 policeman, civilians, obtaining sources
17 within the police department and the
18 information passed on to you to date."

19 Let me just pause there -- and it's underlined.
20 What sources within the police department did you
21 obtain for the Milgaard group?

22 A I'm not sure. I talked to so many policemen I'm
23 not certain.

24 Q And so you've -- is there anything in addition to
25 what you've already told this Commission of



1 Inquiry about your efforts in interviewing
2 policemen, and I'm going to touch on a couple of
3 comments later in the letter, but were there any
4 other interviews or work that you did that you
5 have not already told us about generally?

6 A I think you've covered it all, sir, unless you can
7 refresh my memory with something.

8 Q Well, I can only refresh with what I know, so
9 again, let's just talk about the interview, you
10 would have talked to police officers over the
11 years trying to gather information that might
12 assist David Milgaard in showing he was innocent;
13 is that correct?

14 A Yes.

15 Q And then it says:

16 "As you are aware, no police officer
17 ever believed that David Milgaard was
18 innocent."

19 And would that be an accurate statement?

20 A I think that should have probably said the
21 majority of the police officers.

22 Q Okay. And:

23 "To date, I have been fortunate to be
24 able to convince the main players of his
25 innocence."



1 Which main players had you convinced of his
2 innocence?

3 A Well, Rusty Chartier was one, he gave me a phone
4 call one day and -- or he came to my office and
5 said, "Vanin, you are the only police officer in
6 this whole department that ever believed Milgaard
7 was innocent," and he says, "It appears that you
8 are correct," and then he asked -- his daughter
9 was a reporter for some newspaper and he asked me
10 if I would give her an interview and I declined to
11 do so.

12 Q And would that have been before or after the DNA
13 testing which was July of '97; do you know? This
14 letter is after the DNA testing. Do you know?

15 A When Chartier came to me?

16 Q Yes.

17 A I'm not certain. I think it was probably before.

18 Q Anybody else of the main players that you had been
19 able to convince of his innocence?

20 A Well, just in general conversations I think all
21 the other officers were coming around and seeing
22 my point of view.

23 Q And any specific names that you can think of that
24 you convinced, convinced them that David Milgaard
25 was innocent?



1 A I can't -- I would have to think about it, sir.

2 Q No one comes to mind?

3 A Nothing jumps out. I'm sure that if I thought
4 about it for a while I could think of somebody,
5 but --

6 Q It says:

7 "Presently, negotiations are continuing
8 with people that were present when David
9 Milgaard was interviewed and the
10 location of the interviews and the tape
11 recordings."

12 What does that relate to?

13 A I stated the other day that I received information
14 that David Milgaard's conversations with
15 Mr. Tallis were being monitored and that's what
16 that makes reference to.

17 Q And "negotiations are continuing with people that
18 were present," who was that and what were the
19 negotiations?

20 A I don't know. Like, I was talking to as many
21 people as possible.

22 Q And then it says:

23 "In my opinion this investigation
24 although slow, is progressing
25 satisfactorily. As you are aware, this



1 involves interviewing very intelligent
2 senior police officers that are very
3 intimidated."

4 And what was the source of the intimidation in
5 your view?

6 A I think they were beginning to feel that the
7 Justice Department and the Milgaard team was on
8 the right track and perhaps there might be some
9 repercussions that the conviction would be
10 overturned.

11 Q Okay. And now at this time, January of 1998, the
12 conviction had been overturned and the DNA had
13 been released in July, so again, would these --
14 I'm just wondering if that assists you at all. So
15 six months earlier the DNA would have matched
16 Larry Fisher and not matched David Milgaard, that
17 was made public in July of 1997?

18 A Yes.

19 Q And again, is that -- I'm sorry, when you said
20 people were intimidated, would that have been at
21 an earlier time frame or in January of 1998?

22 A I have a hard time recalling these things. I
23 spoke of my -- or you asked me about my son in
24 1992 and a lot of this, it just didn't become
25 important to me. After my son died, this was just



1 not important to me any more.

2 MR. HODSON: This is probably an
3 appropriate spot to break, Mr. Commissioner. I
4 believe I'm done, I'll just check my notes and
5 I'll canvass other parties for examination and I
6 apologize for keeping you on there for two hours,
7 Mr. Vanin.

8 *(Adjourned at 11:05 a.m.)*

9 *(Reconvened at 11:27 a.m.)*

10 BY MR. HODSON:

11 Q Just two questions from my notes that I neglected
12 to touch on and then I will let you know who is
13 examining.

14 If we could call up 054586,
15 please, and I had read to you, Mr. Vanin, your
16 interview with the police, remember I went through
17 Inspector Sawatsky's summary of the interview, and
18 these are the notes of an officer, I think it was
19 Tost, who was present at the interview, and they
20 are fairly consistent with what's in Inspector
21 Sawatsky's summary, but there's just one remark
22 here. If we can go to 054589 and what's recorded,
23 and again this is your meeting in September, end
24 of September, '93, okay, and it says here:

25 "Vanin advises that the general feeling



1 of the members was that this was a
2 murder case that didn't seem to come
3 together like ones before. Perhaps
4 Milgaard was not the right guy. He was
5 just a 16 or 17 year old kid who kept
6 saying he was innocent."

7 And I'm wondering, is that something you would
8 have said to the officers at the time?

9 A Yes, sir.

10 Q And what did you mean by the comment that it was a
11 murder case that didn't seem to come together like
12 ones before?

13 A Well, there was no confession, there was no
14 warrant statement, I think that's what I meant by
15 that. There was no -- I certainly couldn't find
16 any hard physical evidence to --

17 Q Okay. And then lastly if we could go to 331335 is
18 the page number, this is the interview, I think
19 the doc ID is 331214, which is the interview of
20 Joyce Milgaard, and if you could go to 331335, and
21 there's just a reference here, this is Mrs.
22 Milgaard's interview by the RCMP, and I think I
23 maybe touched on part of this, I may have in fact
24 read this to you, but what she says here, that she
25 met with two police officers on one or two



1 occasions and:

2 "... like they were being brought in
3 vans to where I was, type of thing and I
4 was being brought in a van so that there
5 was a lot of ... discomfort."

6 Do you recall -- when you went to see Paul
7 Henderson and Joyce Milgaard, I think you said
8 she was there for the first few minutes. Do you
9 recall you coming in a van or her coming in a
10 van?

11 A No. They were already in the restaurant and I
12 certainly didn't come in a van.

13 Q Okay. Thank you, Mr. Vanin, those are my
14 questions. I understand that counsel, Ms. McLean
15 has questions, Mr. Wilson has questions, Mr. Loran
16 has questions, Mr. Pringle has questions and I
17 believe that's it, and as far as order, I'm not
18 sure whether there's agreement as to who goes
19 first and last, but I might -- I believe
20 Ms. McLean has advised me she believes she is
21 entitled to go last, and I don't know if anybody
22 disagrees with that, so I'm either prepared to
23 have whoever wishes to come up and ask questions
24 or if you wish to address the order, you may do
25 so.



1 Actually, sorry, I was going to
2 clarify one other thing. In my questioning you,
3 just so that this is clear on the record, about
4 where your name came from to the RCMP, and I
5 believe what I said on the record was that the
6 document that did not have your name redacted came
7 from Centurion Ministries, and based on the RCMP
8 file, it's my understanding, and we'll certainly
9 hear evidence from other individuals, that
10 Mr. McCloskey was interviewed and refused to
11 divulge your name on behalf of Centurion
12 Ministries, there was a request for the file and
13 the original file was sent from Centurion
14 Ministries to the RCMP in September of 1993 and it
15 may well have been inadvertent that the unredacted
16 portion was included in that, but that appears to
17 be where the RCMP got it from after having been
18 told they wouldn't have been provided it, so just
19 for the record, Mr. Commissioner, I don't want to
20 give evidence, but I did indicate that that's
21 where the document came from. I believe that to
22 be the case and I expect that we'll hear evidence
23 along those lines later on.

24 COMMISSIONER MacCALLUM: Thanks, Mr.
25 Hodson. All right, who's first? Any agreement?



1 Any argument, I should have asked, about who's
2 first?

3 MR. LORAN: Mr. Commissioner, Pat Loran on
4 behalf of the Saskatoon Police Service. If I may
5 speak to the issue of order?

6 COMMISSIONER MacCALLUM: Yes.

7 MR. LORAN: While Mr. Vanin, I think it
8 might be a stretch to suggest that he's a
9 Saskatoon Police Service witness, he certainly is
10 a former member of the Saskatoon Police Service,
11 and one of the issues is the question of anything
12 which might arise in the course of his
13 examination by other counsel that we might wish
14 to address and we would like to be in a position
15 to do that. For that reason we would be asking
16 to examine last.

17 COMMISSIONER MacCALLUM: Okay. Anybody
18 else with a similar request? Yes, Mr. Pringle?

19 MR. PRINGLE: Mr. Commissioner, I have no
20 problem with going first.

21 COMMISSIONER MacCALLUM: Okay. I'll just
22 have to deal with who goes last here.

23 MR. PRINGLE: Okay.

24 COMMISSIONER MacCALLUM: Ms. McLean, you
25 want to be last as well?



1 MS. McLEAN: Yes, Mr. Commissioner, but
2 it's largely on the basis of the way the rulings
3 have been going, that the most substantially
4 aligned, and I think in this case it is Mr. and
5 Mrs. Milgaard, my questions would be at the
6 moment very, very brief, if any, and they are
7 related very much to what other counsel do.

8 COMMISSIONER MacCALLUM: I think what you
9 say is correct, you'll go last. Okay, Mr.
10 Pringle?

11 **BY MR. PRINGLE:**

12 **Q** Mr. Vanin, I represent Justice Tallis, I've just
13 got a couple of questions for you.

14 You mentioned in your evidence
15 that Officer Chartier had indicated to you that
16 there had been electronic listening of
17 conversations between Mr. Tallis when he was Mr.
18 Milgaard's defence lawyer and David Milgaard. Do
19 you remember giving that testimony earlier?

20 **A** Yes, sir.

21 **Q** I would just like to ask you a little bit more as
22 to when that conversation took place between you
23 and Officer Chartier, if you could give us some
24 information about that?

25 **A** Well, to start with, it was a long time ago, but I



1 think the investigation, the Milgaard
2 investigation was winding down and it was going
3 before the Supreme Court, and I'm not sure if
4 Chartier had retired by that time or not.

5 Q Okay. Do you remember where that conversation
6 took place?

7 A I think that conversation took place at my home.

8 Q And was there anybody else present when the
9 conversation took place?

10 A Not that I recall, sir.

11 Q Just you and Chartier?

12 A Yes.

13 Q Did Chartier indicate how the electronic
14 surveillance took place, was it a listening
15 device, and if it was a listening device, how was
16 it planted and where?

17 A No, he didn't. I didn't ask any questions. I
18 was, to tell you quite honestly, shocked to find
19 out that they were in fact doing this, and
20 Chartier explained to me that he was just a
21 technician and just simply did what he was told to
22 do, and as far as he was concerned, the tapes
23 should be at the police station someplace.

24 Q Did he indicate who told him to do that?

25 A Not to my recollection.



1 Q And when you say a tape, did he indicate how the
2 tape was prepared from whatever electronic device
3 was used?

4 A No, he didn't, but then again, I was just making
5 an assumption that it was a tape recording.

6 Q Okay. Did he ever indicate whether a transcript
7 was prepared from the tape?

8 A No, sir.

9 Q Did he ever talk to you about conducting
10 electronic surveillance on conversations that the
11 polygrapher, Mr. Roberts, from the Calgary Police
12 Service, had with Nichol John or Ron Wilson at the
13 Cavalier Hotel in Saskatoon, did he ever talk to
14 you about conducting electronic surveillance on
15 discussions that occurred between Inspector
16 Roberts and Wilson and John?

17 A I was aware of that, but I'm not sure if I heard
18 it from Chartier or from somebody else.

19 Q Do you remember how you became aware of that?

20 A Just through general conversation and just picking
21 away at information since 1970.

22 Q Okay. When you say general conversation, do you
23 remember who the general conversation --
24 conversation that you had, who that was with?

25 A No, sir.



1 Q Okay. And with respect to this electronic
2 surveillance that Officer Chartier told you about
3 involving conversations that Mr. Tallis had with
4 Mr. Milgaard, do you recall more specifically
5 where these conversations were taking place that
6 were the subject of this electronic surveillance?

7 A No, he didn't tell me, but I made the assumption
8 that it was done at the police station, because in
9 those days we had what we called an interview room
10 where lawyers would come in and sit with their
11 clients, interview their clients and then would be
12 let out. There was a little light switch that
13 when they were finished or wanted -- they were
14 locked, actually physically locked in the room
15 with the client and when they were finished their
16 interview they flipped this light and it would
17 show up, the light would go on in the staff
18 sergeant's office and then somebody would go up
19 and unlock the door.

20 Q Okay. Now, you made one other comment that I
21 would like to ask you about and that is that with
22 respect to Shorty Cadrain, you indicated in your
23 testimony that some officers had indicated, and I
24 gather this was to you, that he was absolutely
25 crazy and not believable. Do you remember that?



1 A Yes.

2 Q Do you remember who those officers were and when
3 that comment was made to you?

4 A That was probably in the late '70s, and I don't
5 remember who it was, out in a patrol car working
6 and we would be discussing the Milgaard file, and
7 of course I was always asking questions and often
8 working with senior people, and although they
9 might not have been involved in the investigation,
10 they might have talked to people that were
11 involved in the investigation.

12 Q Okay.

13 A A lot of this, a lot of what I was told, was
14 hearsay.

15 Q Right. Just going back to the, your memory of
16 this conversation with Mr. Chartier about the
17 interception of conversations between Mr. Tallis,
18 as he then was, and David Milgaard, you indicated
19 that you thought that conversation with Chartier
20 took place at your house; are you sure that it was
21 at your house or do you remember?

22 A I'm not certain that it was at my house. I think
23 it was at my house. Chartier runs a greenhouse as
24 a hobby and I often bought my flowers from him.

25 Q Were you a fairly good friend of his?



1 A I would like to think so.

2 Q And has your relationship soured or are you still
3 on friendly terms with him?

4 A I haven't seen him for a few years, and --

5 Q The --

6 A I, I thought he was somebody that I could talk to.
7 After my son died I, of course, needed somebody to
8 talk to, and I thought he was a good friend and I
9 could discuss these things with him, but he wanted
10 no part of that conversation.

11 Q I see.

12 A So he shied away from us then.

13 Q Okay. Okay. Thank you, sir, those are my
14 questions.

15 BY MR. WILSON:

16 Q Mr. Vanin, my name is Garrett Wilson, and I
17 represent Serge Kujawa.

18 I have a question or two about
19 your early conversations with Mr. Wolch and Mr.
20 Asper. You told us that you were concerned about
21 the propriety of what you were about to undertake
22 for them and they offered you some protection if
23 trouble developed?

24 A Yes sir.

25 Q And you were thinking, presumably, about a



1 possible offence under *The Municipal Police*
2 *Discipline Regulations*?

3 A Yes sir.

4 Q You also told us, yesterday afternoon, that you
5 were a little concerned that the conduct might
6 amount to criminal conduct?

7 A Yes sir.

8 Q What, specifically, did you think it might amount
9 to?

10 A I have no idea, sir, but I'm sure there is
11 something in the code that would probably have
12 covered, covered that.

13 Q Are you think of theft, theft of information,
14 breach of trust, that sort of thing?

15 A Well certainly breach of trust would be one that
16 came to mind.

17 Q Yeah. Did you discuss that with Mr. Wolch or Mr.
18 Asper?

19 A We discussed no specific offences.

20 Q I see.

21 A In the beginning I was more concerned about
22 charges under *The Police Act*, but then as things
23 snowballed and things started to go very
24 favourably for the Milgaard team, I thought
25 perhaps they could come back and find something



1 that related in a criminal matter and charge me
2 with it.

3 Q Did it occur to you that, if a criminal
4 prosecution did come about, that Mr. Wolch or Mr.
5 Asper might be similarly prosecuted as parties to
6 the offence?

7 A No, I -- it never occurred to me. But in general
8 conversation, a lot of my friends were lawyer --
9 or acquaintances were lawyers, and just speaking
10 generalities they all said, first of all, if I was
11 ever charged in trying to prove an innocent man --
12 to prove that an innocent man is in jail and that
13 I, what I was doing was to see that he be found
14 not guilty, that society wouldn't -- wouldn't
15 stand for such a thing, and that there wouldn't be
16 a Court in Canada that would convict me of that.

17 Q I see. The end justifying the means even for
18 criminal conduct, do you think?

19 A That's what I was told, sir.

20 Q I see. And you received that advice from
21 otherwise well-known and respectable lawyers in
22 the City of Saskatoon?

23 A Yes.

24 Q I see. And that was similar to the advice that
25 you were receiving from Mr. Wolch and Mr. Asper?



1 A The advice I got from Mr. Asper is that I would
2 have lawyer/client privileges, and that if I was
3 ever charged they would defend me, and they --
4 there would be no cost to me.

5 Q I see. Thank you, Mr. Vanin.

6 **BY MR. LORAN:**

7 Q Good morning, Mr. Vanin. Once again, Pat Loran,
8 Saskatoon Police Service.

9 Mr. Vanin, you mentioned that
10 you had various issues with the Saskatoon Police
11 Service administration, conflict I guess. Can we
12 agree that those issues arose in the 1980s before
13 you started receiving inquiries from the press or
14 from Mr. Wolch or Mr. Asper regarding the David
15 Milgaard conviction?

16 A Yes, sir, the -- what started it was that
17 high-speed chase where I was severely injured.

18 Q And that predated the inquiries from the press and
19 from Mr. Wolch and Mr. Asper?

20 A Yes.

21 Q You were aware, and I believe you have been asked
22 some questions about that already, that the
23 Saskatoon Police Commission performed an
24 investigation regarding the files related to Larry
25 Fisher that couldn't be found; you were aware of



1 that, weren't you?

2 A Yes.

3 Q Now I'm going to ask for document number 000263,
4 which is the report prepared by Bob Laing, and I
5 draw your attention to page 000264. Can we agree
6 that the sexual assault files that we're talking
7 about are those -- I'm not sure how to do this, is
8 there, a finger works, thanks -- the sexual
9 assault files that we're talking about relate to
10 sexual assaults which occurred October 21st,
11 November -- of 1968, November 13th of 1968,
12 November 29th of 1968, and February 21st of 1970?

13 A I have no idea when the offences took place, sir.

14 Q Does that sound about right, in accordance with
15 your recollection?

16 A Yes, there were sexual assaults goin' on at --
17 prior to Gail Miller.

18 Q These were the sexual assaults that you were
19 looking for information on, though, weren't they?

20 A I have no idea, sir. I was given names by Asper
21 and when I checked in the central records they did
22 not appear there.

23 Q During the period from 1968 to 1971 you were a
24 constable with the Saskatoon Police Service; is
25 that correct?



1 A I believe so.

2 Q During that period of time would you have had a
3 good understanding of how files were maintained,
4 the policies on file storage, that sort of thing?

5 A Very little, sir.

6 Q When did you move into detectives; was that 1973?

7 A Yes sir.

8 Q By then would you have developed a better
9 understanding of how the files were kept?

10 A No, sir.

11 Q No? Okay. When would you have developed a better
12 understanding of file management and how that sort
13 of thing worked?

14 A I never did develop a good understanding how the
15 file system worked, and as I stated before, they
16 were going from a manual system to a computerized
17 system and updating the computers, and there was
18 constantly being changes done to central records,
19 and I was not a part of that at all.

20 Q Okay. And --

21 A And my workload in detectives was extremely,
22 extremely, extremely heavy, and I liked and I
23 requested the big files, being the armed robberies
24 and the homicides. And usually my partner was
25 Eddie Karst, and I enjoyed working with him, and



1 as a team we had a lot of success.

2 Q Would it be fair to say, then, that you counted on
3 central records staff to deal with the issue of
4 file maintenance, storage, that sort of thing?

5 A Absolutely.

6 Q All right. Now Mr. Hodson called your attention
7 to page 000265 of Mr. Laing's report. Can I draw
8 your attention to this paragraph here, I think it
9 was drawn to your attention earlier. Does that
10 sound like it fits with your recollection of what
11 you saw in terms of the way files were managed?

12 A Can you give me an opportunity to read that,
13 please?

14 Q Sure.

15 A *(Witness reading)* I'm not familiar with, I wasn't
16 interested in central records' policies or how
17 they did their job, I was -- focused all of my
18 energies on major crime.

19 Q Does it fit with what you saw central records
20 doing in terms of their file management?

21 A I don't know what central records was doing with
22 their file management.

23 Q You must have had some interaction with them?

24 A As I stated the other day, I believe it was
25 yesterday, I would just approach a counter, I



1 didn't have access to central records, I would
2 talk to the staff and they would provide whatever
3 document I needed, or file, or it was usually
4 doing CPIC checks, or we used to have a suspicious
5 person or a persons of interest index system, and
6 I would often ask them if this person has been --
7 if they had record of this person being checked
8 recently. There was different, there was several
9 different categories in that department, they had
10 RCMP files, CPIC, they had their own files, they
11 had their own computer, they had their own cards
12 for this and their own cards for that. To me it
13 was a hodge-podge. It worked, seemed to work good
14 for them, I just wasn't interested in how --

15 Q You just counted on them --

16 A I counted --

17 Q -- and that was it?

18 A Yes sir, I counted on them.

19 Q I'm going to draw your attention, now, to the page
20 ending in 268. At the top of the page they talk
21 about the move from the old police station to the
22 new one occurring in 1976; does that sound
23 correct?

24 A I believe so. I'm not certain, but if it says it
25 on this document, I have no reason to dispute it.



1 Q Now you are familiar with the index cards that are
2 referred to later in that paragraph?

3 A I have to read it. (Witness reading) I read that
4 paragraph, sir, go ahead?

5 Q You are familiar with those index cards that are
6 referred to?

7 A Well, I see it says 300,000, I had no idea we had
8 that many.

9 Q Okay. Would the card that was one of the two
10 documents you obtained from central records in
11 1991 have been one of these index cards?

12 A It could have been.

13 Q Now this same page of this document suggests that
14 files began to be moved onto the computer in about
15 1981; would that be consistent with your
16 recollection?

17 A If that's what that document says, I can't
18 disagree with it, because I don't know.

19 Q Okay. Can we agree that by 1981 ten years had
20 passed from the last of the offences that I was
21 asking you about earlier, and the 1982 regulations
22 have not yet been passed?

23 A I don't know, sir.

24 Q The files that were, that you were trying to
25 access, they all related to about the time of the



1 Gail Miller murder; did they not?

2 A That was my understanding, yes.

3 Q Yeah. And so by 1981 ten years have passed;
4 correct?

5 A Yes.

6 Q Umm, I'm going to draw your attention now to page
7 271 -- I'm sorry -- back at 270, bottom of 270. I
8 draw your attention to this paragraph, please.

9 A *(Witness reading)* I've read that paragraph.

10 Q And the detective referred to; can we agree that
11 that's Mr. Karst?

12 A Mr. Karst says it was him so I guess we have to
13 agree.

14 Q All right. And we can agree that, in 1970, Mr.
15 Fisher was convicted of rapes in Winnipeg?

16 A That's my understanding, yes, sir.

17 Q Turning over to the next page, 271, it appears Mr.
18 Fisher admitted to two of the four assaults which
19 occurred in Saskatoon during that time period,
20 denied the other two, but eventually confessed to
21 those as well; can we agree?

22 A *(Witness reading)* Well from this statement it
23 appears that he agreed to plead guilty to those
24 charges, so to answer your question, yes.

25 Q Now, in terms of your understanding of how things



1 would proceed once someone who was already
2 convicted of offences and in prison admitted to
3 further charges, I draw your attention to this
4 paragraph and ask you to tell me whether that
5 sounds consistent with how you think charges might
6 be dealt with?

7 A (Witness reading) I have no knowledge how the
8 attorney generals of Manitoba and Saskatchewan
9 worked, and if they worked out an agreement and
10 Mr. Fisher pled guilty to the charges in Regina,
11 that's --

12 Q Does that sound reasonable?

13 A Well that's what happened.

14 Q Correct. I'm going to draw your attention to the
15 next page and ask you to review that.

16 A (Witness reading)

17 Q Is that consistent with your understanding of the
18 facts as they occurred in regard to the Fisher
19 convictions?

20 A Yes, that's what happened.

21 Q Now the reasons given for this having occurred in
22 the way it did are set out on the following page,
23 273; can I ask you to review those reasons?

24 A (Witness reading)

25 Q Essentially what it boils down to, Mr. Vanin, is



1 the direct indictment had to be signed by the
2 Attorney General who was in Regina, Regina was
3 where the head office was, and it was more
4 convenient to deal with it there, it was more
5 convenient to transport the prisoners to Regina
6 because there were more regular flights there, and
7 last of all there were no court proceedings which
8 would cause the matter to have come to Saskatoon.
9 Do these reasons explain, to your satisfaction,
10 the events which occurred in relation to the
11 direct indictment of Larry Fisher?

12 A Having read this, they certainly do.

13 Q Thank you. Now I'm going to draw your attention
14 to this paragraph at the bottom of 273 and over to
15 the top of 274.

16 A *(Witness reading)*

17 Q This would be consistent with your evidence
18 yesterday that the files had disappeared long
19 before 1990, in fact it would appear they had
20 disappeared even before the '80s, would that be
21 correct?

22 A That's correct.

23 Q Now in regard to the evidence of Gus Weir, umm,
24 that these files, that he had searched for these
25 files and couldn't find them, that was, I think it



1 was your evidence that that occurred in the '70s;
2 is that correct?

3 A I'm not sure when it occurred.

4 Q Okay. This came, this evidence that Gus Weir had
5 searched for these files and been unable to find
6 them at an earlier date, this is information you
7 received from Gus Weir directly, or from Dave
8 Roberts?

9 A From Dave Roberts.

10 Q And that who told you, was it Dave Roberts who
11 told you that Gus Weir had advised him of this, or
12 did the information make its way from Gus Weir to
13 Dave Roberts in a different fashion?

14 A I have no way of knowing that, sir. I know that
15 Roberts was speaking to Weir and on one occasion
16 Roberts told me that he was interviewing Weir as
17 well.

18 Q And you would have been told this by Dave Roberts
19 about what time period?

20 A It was -- sir, I'm only -- I could only guess, you
21 know, 10, 15 years ago, I'm not sure.

22 Q Would it have been shortly after you first met
23 with Mr. Roberts?

24 A It, it could be.

25 Q Okay. I'm going to draw your attention now to



1 276.

2 COMMISSIONER MacCALLUM: Are you going to
3 be a while, Mr. Loran?

4 MR. LORAN: I will be a little while yet,
5 Mr. Commissioner.

6 COMMISSIONER MacCALLUM: All right. We'll
7 break then for lunch. 1:30, please.

8 Mr. Vanin, you realize you are
9 under cross-examination, please don't speak to
10 counsel at the break.

11 A Yes sir. I can speak to my counsel, can I not?

12 COMMISSIONER MacCALLUM: No.

13 *(Adjourned at 12:06 p.m.)*

14 *(Reconvened at 1:33 p.m.)*

15 BY MR. LORAN:

16 Q Good afternoon, Mr. Vanin. You'll recall that
17 before lunch we talked briefly about file
18 maintenance and record keeping, about the move
19 from the old police station to the new one, and
20 the direct indictment in Regina of Larry Fisher.
21 I wanted to draw your attention now to a further
22 provision of the report of Robert Laing on behalf
23 of the Police Commission, the page ending in 277.
24 It refers to a letter asking, I believe it's the
25 RCMP lab to examine some microfilm which was taken



1 from the Saskatoon Police Service. Would it be
2 fair to say that you recall files were put onto
3 microfilm back in the '70s and into the early
4 '80s?

5 A It's fair to say that I know that files were put
6 on microfiche, but I don't know when that took
7 place.

8 Q Okay. This report refers to, this report of
9 Robert Laing refers to a report from Mr. Ostrum of
10 the RCMP lab. When you've finished reading this,
11 I'm going to draw your attention then to the
12 report itself.

13 A Go ahead, sir.

14 Q And that report is found at 284. You'll see the
15 conclusions are that the tapes were not cut,
16 spliced, obliterated or altered in any way. Now
17 I'm going to go back to 277. The suggestion is
18 that a number of files never made it onto
19 microfiche and, you know, enough files -- it's not
20 just the Fisher files, but a number of files
21 didn't make their way over onto the microfiche,
22 and would this be consistent, Mr. Vanin, with your
23 evidence that you thought those files had
24 disappeared a long, long time before the issue of
25 Larry Fisher ever came up?



1 A That's my opinion, sir.

2 Q Thank you. And by way of conclusion, we know it's
3 your view that from a very early date you were of
4 the view that David Milgaard was wrongfully
5 convicted and, as it turns out, you were correct
6 on that, but it would also be fair to say that
7 you've never really had any evidence to suggest
8 that files were destroyed by the Saskatoon Police
9 Service in an attempt to cover up anything?

10 A I have no evidence to that effect whatsoever, sir.

11 Q Thank you. Now, were you ever contacted by a
12 Sergeant Pearson of the RCMP with questions about
13 the Milgaard file or the Fisher file?

14 A No, sir, although I do believe I worked with
15 Pearson on a homicide file, but it had nothing to
16 do with the issue before this Inquiry.

17 Q Right, we heard about that this morning, didn't
18 we.

19 A Yes.

20 Q I remember that now. Is it fair to say that 14 or
21 15 years later it's a little tough to recall all
22 of the particulars of who you spoke to and
23 precisely when?

24 A Yes, sir, in particular to the accident and my
25 son's death, yeah, things are very difficult to



1 recall.

2 Q Okay, thank you. Now, I'm assuming you can't give
3 us the precise date when you first asked Central
4 Records staff for any file material related to
5 Larry Fisher?

6 A No, sir.

7 Q Would you think it might have been early 1991?

8 A I would think it was before that, sir.

9 Q Okay.

10 A But I'm only guessing.

11 Q And in terms of your contacts with the press, I
12 think the evidence we've heard, but I would ask
13 you to confirm it, is that you first spoke to a
14 fellow whose last name was Karp and later you
15 spoke to Dave Roberts?

16 A And Mr. Appleby.

17 Q And Mr. Appleby. And you spoke to Dave Roberts
18 and Timothy Appleby on different occasions, not
19 simultaneously, but to each of them on different
20 occasions?

21 A Yes, sir, although on one occasion the two of them
22 met me at my home.

23 Q Mr. Appleby and Mr. Roberts?

24 A Yes, sir.

25 Q Now, Mr. Roberts was represented to you as someone



1 who was working for Mr. Wolch and Mr. Asper; is
2 that correct?

3 A Yes, sir.

4 Q Okay. Had both of Mr. Wolch and Mr. Asper
5 described themselves to you as your lawyers?

6 A I never discussed that issue with Mr. Wolch, just
7 with Mr. Asper.

8 Q Okay.

9 A And it was my understanding Mr. Wolch's firm would
10 represent me if need be.

11 Q Okay. So was that on the basis of a
12 representation made to you by Mr. Asper?

13 A Yes, sir.

14 Q And did he say we are your lawyers or we will be
15 your lawyers? Do you recall the difference? Do
16 you recall which he would have said?

17 A No, sir.

18 Q Did you believe they were your lawyers at the
19 time?

20 A Yes, sir.

21 Q Did they say anything to lead you to believe
22 otherwise?

23 A Not -- no, and the same would apply to Mr. Rodin
24 as well.

25 Q All right. Now, I think it was your evidence



1 earlier that you were told your communications of
2 confidential police information were protected by
3 solicitor/client privilege; is that correct?

4 A Could you repeat your question, sir?

5 Q I think it was your evidence earlier that you were
6 told that your communications to Mr. Wolch, Mr.
7 Asper, to the firm, were protected by
8 solicitor/client privilege; is that correct?

9 A Yes, sir.

10 Q And that this included your communications
11 regarding confidential police information?

12 A Yes, sir.

13 Q And were you told that by each of Mr. Wolch and
14 Mr. Asper or just by Mr. Asper?

15 A Just by Mr. Asper and Mr. Rodin.

16 Q I'm going to ask for document -- oh, actually I'm
17 referring now to -- I'm referring now to your
18 evidence given earlier, the transcript of your
19 evidence, the reference number is 22139, and if
20 you look at 22139 and over to 22140, down here,
21 would it be fair to say that sort of your best
22 guess is that you started talking to Mr. Roberts
23 about January of '91?

24 A No, sir, I think I was talking to them in the late
25 '80s, but I could be mistaken.



1 Q All right, fair enough, you are not sure about
2 that. Can we at least agree that you met with Mr.
3 Henderson and Mrs. Milgaard when Mr. Asper
4 couldn't fly to Saskatoon in the spring of 1991?

5 A If that's what the record shows, yes, I agree with
6 that. I was supposed to meet Asper, he couldn't
7 make it, so I met with Henderson and Mrs.
8 Milgaard.

9 Q And in terms of the date, I'm referring to your
10 evidence found at 22149, it talks about the
11 spring, and I'm assuming that you were talking
12 there about the spring of 1991, I believe that's
13 right down here, if you look at that. Does that
14 sound about right?

15 A I'm not sure what year it was, sir, and I think it
16 was May. The weather was nice and it was bright
17 out and I just believe it was in the spring of the
18 year.

19 Q Okay. But we can agree that it was months after
20 your first contact with Mr. Asper?

21 A I think that's fair to say.

22 Q Thank you, and I appreciate you can't be sure of
23 precise dates. You do agree that you eventually
24 asked Central Records staff for material on the
25 Fisher file?



1 A Yes, sir.

2 Q And first you had some unsuccessful requests, then
3 you obtained the two documents which you
4 previously described, the index card and one page
5 from a file?

6 A One investigation report, one page of an
7 investigation report.

8 Q Okay. The way Central Records worked at the time,
9 would it have been possible for you to sign these
10 documents out?

11 A Oh, I think so, yes.

12 Q Okay. There was a sign-out sheet or something
13 like that?

14 A Yes, there was a sign-out sheet if you removed the
15 actual document.

16 Q I understand. Your evidence was you took a
17 photocopy?

18 A Yes.

19 Q But people could remove the original documents,
20 couldn't they, simply by signing them out?

21 A I think you had to be of a, be in the supervisor
22 category in order to remove a file from Central
23 Records.

24 Q Okay.

25 A I don't think a constable could just walk in and



1 remove a file unless he had permission from his
2 supervisor.

3 Q Isn't it also true that sometimes people would
4 forget to sign out documents, they would take a
5 file and not sign it out, bring it back later on,
6 but it never appeared on the sign-out sheet?

7 A Oh, I'm sure that that has happened.

8 Q Now, at some later time one of the Central Records
9 people advised you that senior administrative
10 personnel were searching for the Fisher files,
11 that was your evidence I think; isn't that
12 correct?

13 A Yes, sir.

14 Q I think it was your evidence yesterday that when
15 you heard this, you told, you passed this
16 information along to Dave Roberts of *The Globe and*
17 *Mail*?

18 A Yes, sir.

19 Q Did you call him or did he call you?

20 A I believe I called him, and probably, I probably
21 called Mr. Asper first.

22 Q All right. Now I'm going to draw your attention
23 to document number 056743 at 056797. What this
24 suggests, Mr. Vanin, and I'm going to suggest you
25 have no reason to dispute it, is that on August



1 22nd, 1991 Sergeant Pearson of the RCMP contacted
2 Inspector Quinn of the Saskatoon City Police
3 asking for files, we'll call them the Fisher
4 files, and that he provided the names of those
5 victims. You have no reason to dispute that do
6 you?

7 A No, sir.

8 Q Okay. And we can agree this is about the time
9 when you saw, or you heard that inspectors from
10 the Saskatoon Police Service were searching for
11 the Larry Fisher files?

12 A It was about the time, but give or take maybe six
13 months.

14 Q Okay. Now, on August 29th there's an article in
15 *The Globe and Mail*, 057451, it's written by Dave
16 Roberts and Tim Appleby, and it refers to a
17 Saskatchewan police source talking about how the
18 files went missing. Just given the time lines,
19 I'm going to suggest to you that it's pretty
20 likely you are the police source they refer to
21 and, just to be clear, I'm going to ask you, you
22 didn't tell Dave Roberts that the files had been
23 there a couple of weeks before did you?

24 A No, sir.

25 Q That's his creation, not yours?



1 A Not mine, sir.

2 Q You only told him that four Saskatoon police
3 inspectors were trying to track down the files and
4 you did this on the basis of what you've been told
5 by Central Records staff; is that correct?

6 A No. I think I told him there were seven of them.

7 Q Okay, thank you.

8 A Now, the young lady that gave me that information
9 might have meant there were four inspectors and
10 maybe three civilian supervisors working with
11 them, maybe that's the four, but --

12 Q Sure.

13 A -- what I was told, there were seven inspectors
14 looking for the files.

15 Q Okay. Now, is it fair to say that you were not
16 contacted by the other reporters who wrote the
17 flurry of articles that appeared in other
18 newspapers following Dave Roberts' August 29th,
19 1991 story in *The Globe and Mail*? You spoke to
20 Dave Roberts about seeing these inspectors or
21 having heard the reports of these inspectors
22 searching for the file and that was it; is that
23 not correct?

24 A To the best of my recollection, I never spoke to
25 any other reporters regarding the missing files or



1 the search for the missing files.

2 Q Now, this morning you referred to the possibility
3 of other sources in the Saskatoon Police Service.
4 Were you aware of any other sources, like, are you
5 aware of somebody who was also providing
6 information to these reporters or Mr. Asper and
7 Mr. Wolch?

8 A I didn't know of anybody personally, but it
9 wouldn't have surprised me, and things --

10 Q And that's all I want, is your personal knowledge
11 if you know of it, or even if it's hearsay, but
12 not speculation. Do you know of anyone who was
13 also talking to the reporters?

14 A No, sir, but I suspected there were others, and
15 other, shall I call it, strange things, like, when
16 I would report for duty in the morning my -- the
17 staff sergeant's office was locked, but I would
18 find envelopes with paper in it and information
19 pertaining to the Milgaard file, I would find
20 envelopes in my, at my home with information.

21 Q Everybody knew you were interested in the Milgaard
22 file didn't they?

23 A It would appear so, and they were passing
24 information onto me, but they didn't want to get
25 involved. The information that was left for me



1 was not signed.

2 Q Now, we're going to hear from, the Commission here
3 will hear from the reporters later on.

4 A Uh-huh.

5 Q But if, if you are the only source for the various
6 articles which were written by Dave Roberts and
7 Tim Appleby and then by different newspapers based
8 upon *The Globe and Mail* story which was originally
9 written by Dave Roberts and Tim Appleby, if you
10 are the only source, would you agree the
11 suggestions of cover-up and destroying files on
12 the part of the Saskatoon Police Service are
13 unfounded and, to the extent these reporters
14 obtained information from you, that information
15 doesn't justify the stories that were written?

16 A I knew of no cover-up or deliberate destruction of
17 files.

18 MR. LORAN: Thank you. Those are all the
19 questions I have.

20 BY MS. McLEAN:

21 Q Good afternoon, sir. My name is Joanne McLean,
22 I'm counsel for Joyce Milgaard, and in the absence
23 of Mr. Wolch due to illness today, I'm also Mr.
24 Wolch.

25 Just to follow-up for a minute



1 on something that you said to Mr. Loran, it sounds
2 like other police employees were providing
3 information to you anonymously; is that correct?

4 A Yes.

5 Q And is that something that happened after you
6 became involved in providing information to Mr.
7 Asper or had it been going on earlier?

8 A I'm not sure. Some of that information could have
9 come, started coming to me before I got involved
10 with Asper, but it was probably after Asper and I
11 made contact.

12 Q Amongst the rank and file, would you have been
13 known as somebody who had rather strong views in
14 favour of David Milgaard?

15 A Well, originally I tried to play it as low keyed
16 as possible, but as time went on and as
17 Mrs. Milgaard and Mr. Wolch, their teams were
18 having more and more success, I was asking more
19 and more questions and they would have to be damn
20 fools if they didn't realize it was me that was
21 providing the information.

22 Q And can you estimate how frequently it was that
23 you would find anonymous envelopes either under
24 the door or at your home providing information to
25 you?



1 A I would say, if you average it out, at least once,
2 maybe twice a week.

3 Q Over what period of time?

4 A Probably over a year, 18 months' time.

5 Q And --

6 A Maybe it wasn't that frequent, maybe it wasn't
7 that frequent, maybe once or twice a month.

8 Q Okay.

9 A It's so hard to -- it's so long ago.

10 Q I appreciate that. And notwithstanding that these
11 are anonymous, were you able to tell either from a
12 style of writing or even handwriting if there was
13 more than one person that was providing you
14 anonymous information?

15 A Oh, yes.

16 Q There was more than one person?

17 A Oh, yes.

18 Q And was the information confined to the Fisher
19 allegations or to the rapes or was it general
20 information about the Milgaard case?

21 A Some of it was in respect to the Milgaard case,
22 others was in respect to Penkala. There was a
23 variety of information coming to me on different
24 matters.

25 Q And did you pass on that information to others or



1 keep it to yourself or what?

2 A Well, I had to pass on -- or what I thought was
3 important to Mr. Asper, I certainly passed it on
4 to him.

5 Q Okay.

6 A If it didn't pertain to the Milgaard file, there
7 was no point in passing it on to Mr. Asper.

8 Q When you testified on Thursday, when you thought
9 this would be a much shorter process I'm sure, you
10 were asked about your knowledge of the rapes that
11 were taking place in the fall of 1968 in and
12 around where the Gail Miller murder took place.
13 Do you remember being asked questions about that?

14 A Yes.

15 Q And your answer then was that you had some
16 recollection of knowing about the rapes, but you
17 had no involvement in the investigation itself?

18 A That's correct.

19 Q Do you remember any conversations or any general
20 impressions from back at that time about whether
21 or not the rapes were attributable to one
22 individual?

23 A No.

24 Q And do you recall any information or any
25 discussions with anybody that you might have



1 overheard or in a police cruiser when you are
2 going about your business, any discussions about
3 whether or not the rapes may be related to the
4 murder?

5 A No, I don't, although that might be something we
6 had discussed, but sitting here today I don't
7 recall it.

8 Q It's gone from your recollection 30 some years
9 later?

10 A It is.

11 Q But you were discussing certainly the Milgaard
12 matter with other police officers that were in the
13 car, you were asking questions, trying to find
14 hard evidence, things like that you told us about?

15 A Since 1970.

16 Q Mr. Wilson asked you some questions about the
17 potential criminal charges that you might have
18 been facing and you've told us about potential
19 Police Act charges. You were aware before you
20 ever spoke to Mr. Roberts that certainly Police
21 Act charges were a possibility; did you not?

22 A Oh, certainly.

23 Q And that's a risk that you undertook when you
24 first contacted him, Mr. Roberts?

25 A I didn't share any information with Mr. Roberts at



1 that time that could lead to a charge in my
2 opinion.

3 Q Okay.

4 A We just talked generalities, more about the
5 decline of the police force and how, in my
6 opinion, Penkala was just taking the entire
7 department down the sewer and that type of
8 generality.

9 Q And did you think that those types of
10 generalities, if traced back to you, were they the
11 kind of things that could or could not result in
12 an investigation under the Police Act?

13 A Well, anything could result in an investigation,
14 but it was my opinion that they certainly didn't
15 have any grounds to lay a charge against me.

16 Q So if they did, the charge wouldn't be sustained,
17 but a charge may have been laid; is that --

18 A It wouldn't have surprised me if Penkala tried to
19 charge me, let's put it that way.

20 Q Okay. And certainly, the information that you
21 started giving to Mr. Asper, you understood then
22 that that information was potentially chargeable
23 under *The Police Act*?

24 A It -- possibly.

25 Q And there would have been, there, a -- certainly



1 more than a potential for a risk to your career if
2 there had been a successful prosecution under *The*
3 *Police Act*?

4 A I laid my career on the line.

5 Q And you did that because you believed that there
6 was something wrong that this kid had been in jail
7 for 23 years?

8 A Yes, a 16-year-old boy had been incarcerated all
9 this time.

10 Q On behalf of David, Joyce, the whole family, I
11 thank you for the risks that you did take, and the
12 efforts you made, and the reasons you did it.
13 Thank you, sir.

14 A Thank you.

15 MR. HODSON: I have no questions for
16 re-examination. Thank you very much, Mr. Vanin,
17 for testifying.

18 COMMISSIONER MacCALLUM: Thanks for coming,
19 Mr. Vanin. You are excused.

20 A Thank you, sir.

21 MR. HODSON: And the next witness is
22 Mr. Paul Henderson, if you could come to the
23 front.

24 **PAUL HENDERSON, sworn:**

25 **BY MR. HODSON:**



1 Q Good afternoon, Mr. Henderson. Thank you for
2 agreeing to testify before this Commission.

3 A Good afternoon.

4 Q I'll just get one document. I understand, Mr.
5 Henderson, that you reside in Seattle, Washington,
6 in the United States; is that correct?

7 A I do.

8 Q And your current age?

9 A 67.

10 Q And that you are currently affiliated with
11 Centurion Ministries, an agency that works on
12 behalf of wrongly convicted individuals, is that
13 correct?

14 A That's correct.

15 Q And I understand that in 1990 and 1991, that you
16 assisted Joyce and Dave Milgaard, David Milgaard
17 in their efforts to overturn David Milgaard's
18 conviction; is that correct?

19 A That's correct, but the investigation also
20 extended into 1993 as well.

21 Q Into 1993?

22 A Yeah.

23 Q So 1990 to 1993?

24 A That's correct.

25 Q I'd like you to tell us first a bit about your



1 background, sir, and then we'll talk about the
2 Centurion Ministries, but if you can just give us
3 your background and history of what types of
4 occupations you held, what things you did, just in
5 a very general way, prior to your association with
6 Centurion Ministries?

7 A Well it -- I guess I should start with my
8 journalism career which began as an army
9 correspondent in Korea in 1960; upon my discharge
10 I went to work for a small daily newspaper in
11 Iowa, worked there for four years; then was hired
12 across the river, across the Missouri River at the
13 *Omaha World Herald*, worked there for a year; and
14 then got a job in Seattle with the evening paper,
15 *The Seattle Times*, where I stayed from 1967 to
16 1985. I spent a total of 23 years in journalism
17 and then left journalism to become a criminal
18 justice investigator specializing in defending
19 people who I felt had been wrongfully either
20 charged with a crime or convicted of a crime.

21 Q And that would be 1985 to about 1987, is that
22 right, in that time frame?

23 A No. I began as a criminal justice investigator, a
24 private detective, in Omaha -- excuse me -- in
25 Seattle in 1985 and continued as a private



1 investigator, that is an investigator with an
2 agency licence, until 1987. Prior to that, ten
3 years earlier, though, I began working on a
4 case-by-case basis, that is part-time basis, with
5 Centurion Ministries, and was hired full-time by
6 Centurion in 1997.

7 Q 1997?

8 A 1997.

9 Q So from 1987 to 1997 --

10 A I was working, yes, as an investigator on a
11 part-time basis, that was the capacity that I was
12 with Centurion when I was involved in the *Milgaard*
13 case, I was not a full-time employee.

14 Q Okay, so if we can just -- let me just back up to
15 make sure I have this clear. 1967 to 1985 you
16 worked with *The Seattle Times*; is that right, is
17 that the newspaper?

18 A 1967 to 1985, yes.

19 Q And let me just pause there; what type of reporter
20 were you, what area did you work in, was it
21 general --

22 A I started out as a, primarily as a police reporter
23 working out of the police station, and then
24 gradually got into investigative reporting and
25 ended out my career as an investigative reporter.



1 Q Tell us what an investigative reporter is and
2 does?

3 A An investigative reporter? Well some would say
4 that every reporter is an investigative reporter,
5 I would disagree with that, but I think that you
6 could -- it would be fair to say that we try to
7 go, an investigative reporter tries to go out and
8 uncover evidence of wrongdoing or tries to find
9 evidence of government fraud, government cheating,
10 miscarriages of justice, whatever. There's all
11 kinds of things wrong with the world and an
12 investigative reporter is out trying to find them,
13 discover them, and prove them.

14 Q And so, as an investigative reporter, would your
15 focus be primarily on government or state
16 institutions, things of that nature?

17 A Well, let me give you an example, a couple of
18 examples of the major projects that I recall being
19 involved in.

20 I did a story on, in 1976, on a
21 heroin kingpin in the Walla Walla State
22 Penitentiary in Washington, a guy who had been a
23 major -- the major heroin dealer on the west
24 coast, and once he got to prison in Washington he
25 started dealing drugs from there, and as a result



1 there were 17 murders in three years. My job was
2 to go out and expose this, and with the help of
3 prison guards and other sources we were able to
4 expose this man for what he was doing, and also
5 cast a great deal of suspicion on the prison
6 administration for allowing this to happen.

7 The following year I did a story
8 on widespread waterfront theft in Seattle being
9 committed by longshoremen and teamsters, with the
10 Port of Seattle overlooking this because they
11 didn't want to acquire the wrath of longshoremen,
12 who could consequently shut down the docks. That
13 resulted in a number of changes in the reporting
14 of theft on the waterfront.

15 Did an expose of police
16 corruption in Yakima, where they overlooked
17 widespread prostitution and the related
18 consequences of that. I --

19 Q Now I understand, Mr. Henderson, that you had
20 occasion, as a writer, to be involved in working
21 with a person, a wrongfully-convicted person by
22 the name of Steve Titus; is that right?

23 A Yes.

24 Q And can you tell us briefly about when that was
25 and what -- now would that be the first time that



1 you became involved in a significant way in
2 working for a wrongfully-convicted person?

3 A Yes.

4 Q And can you tell us, when was that?

5 A Umm, Steve Titus was convicted of a rape in 1981,
6 and I got involved in his case that same year,
7 shortly after his arrest but prior -- after his
8 conviction but prior to his sentencing.

9 Q Okay. And can you tell us what you -- you were a
10 writer at the time I take it?

11 A I was a writer and an investigative reporter, yes.

12 Q Yes. And tell us, again just briefly, what did
13 you do, why did you do it, and how were you
14 involved?

15 COMMISSIONER MacCALLUM: Excuse me. Mr.
16 Henderson?

17 A Yes.

18 COMMISSIONER MacCALLUM: You have a fine
19 voice. At the moment, however, it's too close to
20 the microphone.

21 A Okay.

22 COMMISSIONER MacCALLUM: Could you just
23 back up a bit because it's causing some feedback.

24 A I sure will. Thank you, sir.

25 BY MR. HODSON:



1 Q Okay. Yeah, if you could just tell us about your
2 involvement in the Titus matter?

3 A Mr. Titus was a 31-year-old executive with a fast
4 food firm chain of restaurants. He contacted me,
5 called me, and was in tears, and said he had been
6 wrongfully convicted of a rape, and wanted me to
7 hear his story. I gave him an audience that same
8 night, went down and talked to him. I thought he
9 was, wasn't sure that he was telling me the truth,
10 but there were reasons to believe that he may in
11 fact have been wrongfully convicted. I began an
12 investigation. There were, over a period of two
13 months, there were three major stories in the
14 paper. The end result was that the articles
15 proved the innocence of this fellow and also led
16 police to the real rapist, a fellow by the name of
17 King, Edward Lee King, who subsequently admitted
18 to having committed 52 rapes in Seattle. That
19 was, that was the story and the end result.

20 Q And I understand, sir, that you were awarded a
21 Pulitzer Prize for that work in that case; is that
22 right?

23 A That's correct.

24 Q And would that have been your first significant
25 experience, then, in dealing with the issue of



1 wrongful conviction?

2 A Yes, I think it was.

3 Q And what, again, what -- in the *Titus* case, what
4 were the issues again? I don't want to get into
5 too much detail, but what were the issues that you
6 had identified in that case that you believed
7 contributed to the wrongful conviction?

8 A Umm, it -- first of all there was a, as it turned
9 out there was a mistaken identity evolving, I
10 would say with confidence, from a suggestive
11 police montage coupled with coaxing by the
12 detective in charge of the investigation. When
13 the victim finally recognized that she'd made a
14 mistake she, the words she uttered were, "oh my
15 God, what have I done to Mr. Titus". There
16 were -- there was evidence of false representation
17 by the Port of Seattle Police Department on
18 evidence that they claimed was in the suspect's
19 car when they first stopped him. Umm, there was
20 an erroneous polygraph test on Mr. Titus which may
21 or may -- which I have no reason to think that it
22 was a deliberate attempt by the polygrapher or the
23 examiner, but that was an element of a decision
24 that was made to charge him and take him to trial.
25 Umm, there were a number of reasons why this case



1 went to trial. I've certainly seen more, since
2 then, far more egregious instances of misconduct,
3 misjudgment, etcetera, resulting in wrongful
4 convictions.

5 Q Yeah. So after the *Titus* case, then, I take it
6 you stayed with the newspaper for about three more
7 years; is that correct?

8 A That's correct.

9 Q And then, when you left the newspaper, you became
10 a criminal justice investigator; is that right?

11 A Correct.

12 Q And that would be working for what, defence
13 counsel?

14 A Yes, I was hired by lawyers.

15 Q And so this would be a private investigator
16 dealing with cases where people were charged with
17 offences and you were doing investigative work for
18 them; is that --

19 A That's correct, yes.

20 Q Was there any work for people who were alleging
21 wrongful conviction, that you were working on
22 their behalf?

23 A A number of them, yes.

24 Q And so this would be after the proceedings were
25 concluded and you were doing investigative work?



1 A I did both pretrial investigation and
2 post-conviction investigation.

3 Q So then I'm sorry, in 1987, I take it then that
4 you then began an association with Centurion
5 Ministries; is that right?

6 A That -- I first met Jim McCloskey, I did a, I
7 participated in an HBO documentary on mistaken
8 identification convictions -- mistaken identity
9 convictions, excuse me, and Jim became aware of
10 that and contacted me and came out and we talked,
11 and I started work with him, part-time work with
12 him on a case in Los Angeles the following June,
13 June of 1988.

14 Q And so that would be the first case that you
15 worked on for Centurion Ministries; is that
16 correct?

17 A That's correct.

18 Q And when did that case finish?

19 A Well, interestingly, it finished just about the
20 same time that the Canadian Supreme Court
21 overturned the Milgaard conviction.

22 Q Yeah. So that was in 1992. And it's my
23 understanding, I would ask that you confirm that
24 the David Milgaard matter would have been the
25 second matter you would have been involved in in



1 your capacity or through the Centurion Ministries,
2 is that right?

3 A Through the Centurion, yes, the second case with
4 Centurion.

5 Q And just, again, back up. Generally, let's talk
6 about before your involvement in the *Milgaard*
7 case, so pre -- which I think was March of '90.
8 In your work as an investigative reporter and your
9 criminal defence investigation work would you,
10 would you spend a fair bit of time with police
11 reports, was that part of your practice, reviewing
12 police reports for example?

13 A As a reporter I dealt with police reports every
14 morning. I would come to work in the morning at
15 6:30 at the police station and go through all of
16 the police reports that were generated since
17 perhaps noon the previous day. Yeah, I was
18 always, every morning I was going through a file
19 of reports as big as a Toronto phone book.

20 Q And so prior to, again let's just talk pre-1990
21 and the work you did both as an investigative
22 reporter, and from 1985 to 1990, before your
23 direct dealings in the *Milgaard* case, would you
24 have had dealings in looking at the conduct of
25 state prosecutors in various criminal cases, for



1 example, would that be one of the things that you
2 would have had some experience with?

3 A As a matter of fact, yes. I did a, as an
4 investigative reporter I did a case on a, a
5 prosecutor in Seattle, King County, who was, for a
6 lack of a better word he was dishonest, and he was
7 the so-called filing deputy, meaning he was
8 responsible for deciding what criminal cases were
9 filed and which ones were not, which ones were
10 discarded, and working with two other reporters we
11 examined a number of cases that had gone south
12 under his direction and exposed him as a -- I
13 don't know what the word to use here, he was, he
14 was, he was betraying his position --

15 Q Yes?

16 A -- and, as a result, he was fired.

17 Q What about, did you have experience in examining
18 the conduct of various police forces in the course
19 of criminal investigations, was that part of the
20 work that you had done prior to 1990?

21 A Well the investigation I did into the prison
22 system in Washington State, that is the officials
23 at Walla Walla, part of that was exposing the
24 malfeasance and dishonesty of prison officials,
25 including guards, although we did not make an



1 issue out of the warden himself in what --

2 Q But what about the work on Steve Titus then, I
3 think you told us a bit about that, and your other
4 criminal investigation work from '85 to '90; did
5 that involve reviewing police practices, police
6 conduct, or the work product of police and
7 criminal investigations?

8 A Absolutely, in many cases, yes.

9 Q So I want to go now to Centurion Ministries. You
10 told us you met Mr. McCloskey in late 1987?

11 A That's correct.

12 Q And then he asked you to join Centurion
13 Ministries; is that right?

14 A On a part-time basis, case-by-case basis.

15 Q And that means that you would get assigned cases
16 and --

17 A Well what it meant, when I first met him, was that
18 he wanted to see how I did on one case --

19 Q Yes?

20 A -- working with him, and --

21 Q And so can you tell us a bit about Centurion
22 Ministries then? I understand you are still with
23 Centurion Ministries; is that right?

24 A Yes, I'm now a full-time employee.

25 Q And if you could tell us, and if you can I'd like



1 to get a snapshot of Centurion Ministries back in
2 1990, and just what it was, what it did, who it
3 was?

4 A Well Centurion was founded by James McCloskey, who
5 was originally a Bucknell graduate, who originally
6 was a businessman. He worked a number of places
7 including Japan, and he decided that he wanted to
8 find something more fulfilling in his life, and so
9 he went back to school. He already had a degree
10 in economics and in business, he went back -- I
11 should say a Masters degree in both. He went back
12 to school, enrolled in the School of Theology at
13 Princeton University, and was expecting I believe
14 to become a church pastor, but was assigned at
15 some point to do some type of missionary work in
16 prison in New Jersey, and he met a man who
17 proclaimed to him to be innocent. He made a
18 promise to this guy that he would take a look into
19 it, and became absorbed in that mission, and
20 ultimately came up with evidence of his absolute
21 innocence. And at that point I believe the
22 direction of his, of his ministry changed, and he
23 decided to become a full-time -- devote his
24 efforts to proving the innocence of wrongfully
25 convicted people in prison, and he's been doing



1 that since. His organization, of course, started
2 very small, he had very little money, in fact Jim
3 was living for a number of years in small bedrooms
4 -- I mean a small one-room apartment in some
5 lady's home in Princeton, and over a period of
6 time, as Centurion has gained more recognition,
7 first locally, then nationally, and now we're
8 fairly well-known all over the United States of
9 course, and in other areas as well, we have a
10 much-enhanced budget that allows us to take on
11 three or four new cases every year.

12 Q So, if we can just go back to 1990, would it be
13 correct to state that at that time the work that
14 Centurion Ministries had done had been limited to
15 the United States?

16 A Yes, that's true.

17 Q And, other than the *David Milgaard* case, have they
18 done any other cases in Canada?

19 A One, yes.

20 Q And which and when was that?

21 A Well I understand, I'm not sure -- that's one
22 thing I didn't bone up on before I came here --
23 but Jim worked on a case, I think it was in
24 Alberta, a murder case, and prevailed. I don't
25 know the name of the defendant, but he was, his



1 conviction was overturned.

2 Q And when, do you know when that would have been?

3 A That was several years ago.

4 Q Was that after the *David Milgaard* case?

5 A Yes sir.

6 Q And tell me -- and what types of cases, and how
7 would Centurion Ministries decide which cases to
8 pursue, what was the process?

9 A It's a very elongated process. We get, now, 1300
10 letters a year from people in prison asking for
11 our help. We have, although we have a very small
12 staff of full-time employees there is a cadre of
13 volunteers who come into the offices at Centurion
14 on a daily basis and review files, correspond with
15 appellants, appellants in prisons across the
16 country. They begin the process that starts with
17 a letter from an inmate, they develop information
18 over a period of time on that inmate and his case
19 through correspondence, through telephone
20 conversations, by talking with relatives, primary
21 sources. They also conduct an initial review of
22 the trial record, including the transcripts,
23 appeals, whatnot. This process takes a long time.

24 Q How long? Give me an example?

25 A Oh. Well I'm working on a case now in



1 Pennsylvania where the three men who we are
2 representing -- let me say two, because one of
3 them is no longer with us because of evidence
4 indicating that he might be guilty -- they first
5 wrote to us in 1992. We started field work, or
6 Jim McCloskey met with all three of them in
7 January 1992 and committed to their case,
8 committed our full resources to proving their
9 innocence. That was ten years from the first time
10 we heard from them. We have been working in the
11 field, I am -- have been working with a volunteer
12 now from Boston who started the preliminary field
13 investigation primarily gathering additional
14 documents, Court files, police reports. I started
15 on that in August 2002, I believe, and I've been
16 -- and we're still going on it. We have a
17 database of 985 names.

18 Q So let me just pause here for a moment. You -- a
19 couple things I want to have you elaborate on. I
20 take it there is a process that you go through at
21 Centurion Ministries to establish in your mind, at
22 least, that the person who writes the letter is in
23 fact innocent; is that correct?

24 A Absolutely.

25 Q And would it be fair to say that many of the



1 letters you get from convicted people are from
2 convicted guilty people who are wrongly claiming
3 innocence?

4 A I would assume so, although I don't review the
5 letters.

6 Q Okay. Are there -- and I mean are there cases,
7 though, where you've gone back and rejected
8 applicants because you believe, or Centurion
9 believes, that they are not innocent?

10 A Yeah, applicants whose information that they
11 provided us just didn't pass muster.

12 Q Yeah. So let's just talk about the process to get
13 over the first hurdle. The first hurdle would be
14 to establish or have Centurion Ministries
15 establish in their own mind that a convicted
16 person is innocent or likely innocent; what are
17 the words you people use to pass the test so that
18 you will take on their case?

19 A Well, I don't know if I could answer that because
20 I'm not involved in that process, however every
21 year Jim McCloskey and Kate Germond, who has been
22 with him for longer than I have, have a meeting,
23 and they go over these cases and decide which two
24 or three, maybe four they are going to take on,
25 and there is -- I should mention the criteria.



1 First of all, anybody who we
2 decide to represent has to be, number 1, totally
3 indigent; they have to -- necessary that they have
4 exhausted all of their appeals. So they are
5 penniless and they are dead in the water on
6 appeals. Another consideration that we take into
7 account, that is taken into account, is how long
8 they have been in prison. An inmate who has been
9 in prison for 25 years would be given priority
10 over someone who had been in prison for ten
11 years, --

12 Q That's --

13 A -- everything else being equal.

14 Q So then there is a selection process to pick those
15 cases that Centurion believes warrants their
16 advocacy; is that fair?

17 A Yes, or perhaps better put, that the cream of the
18 crop, the best cases.

19 Q The best cases. So my point, just back, I think
20 you said that there was a long process of work
21 that's done to screen the application to even get
22 to the point where you will consider it for the
23 cream of the crop; is that right?

24 A That is exactly correct.

25 Q And would part of that process be to enquire and



1 to check into and to satisfy yourselves that the
2 convicted person is innocent or likely innocent?

3 A To the best of our ability.

4 Q And, just so that I'm clear, so that would be step
5 1, am I right, that you would want to make sure
6 that the person is innocent?

7 A We would want to do everything possible to
8 determine the probability of that person being
9 innocent as best we could from the office. That
10 would be without any field work.

11 Q And so how long would that take and what would you
12 do to get to that comfort level?

13 A Oh, well, as I mentioned, in the Pennsylvania case
14 with three clients, that file was actually under
15 review, active and inactive for a period of 10
16 years. As I recall, there might have been a
17 problem with obtaining transcripts, but a thorough
18 read of the transcripts, a preliminary -- thorough
19 preliminary review is an integral part of the
20 process, so we have to have all the records or --

21 Q And again, it may be obvious, but I would like you
22 to tell us, why was it important, or why is it
23 important and was it important to Centurion
24 Ministries that you be satisfied of the convicted
25 person's claim to innocence?



1 A All right. I don't quite -- could you repeat that
2 question?

3 Q Sure, just to tell us the importance of the fact
4 that the person whose case you are going to
5 pursue, that that person is in fact innocent.

6 A It's important, it's extremely important, the
7 screening process is one of the most important
8 parts of the process at Centurion Ministries
9 because we only have so much money, and obviously
10 if Jim McCloskey sent me out to investigate every
11 claim of innocence that came in, we would be
12 wasting our time and would soon be out of
13 resources.

14 Q Have there been cases in the history of Centurion
15 Ministries where people who you thought were
16 innocent that passed your first test, that in the
17 course of either your work or the government's
18 review it turned out that your first assessment
19 was wrong and that in fact the person who claimed
20 to be innocent was in fact guilty?

21 A Yes.

22 Q And in how many cases would that have happened?

23 A I believe there were four, there have been four, I
24 was involved in one of them, and interestingly it
25 was DNA that proved us wrong.



1 Q And again, step number 1, though, would be to try
2 and, best you can, weed out or not pursue those
3 cases where the convicted person isn't, hasn't
4 established in your mind that he's innocent?

5 A We simply would not pursue a case, we would not
6 commit to a case unless we felt there was a very,
7 very strong probability of innocence.

8 Q Tell us how difficult that process is for you as
9 an individual to make a determination that a
10 convicted person is in fact innocent and what is
11 it that causes you to reach those conclusions?

12 A Well, one of the cases that turned out to be wrong
13 was actually a case that I brought to Centurion, a
14 young man in Oklahoma by the name of Jamie Abels,
15 his father had contacted me in Seattle before I
16 went to work for Centurion and I had become
17 involved in his efforts to prove his innocence.

18 This fellow was convicted of
19 raping and murdering a housekeeper in an apartment
20 complex which his father managed and which he was
21 employed and everything about this guy told me
22 that he didn't do it. There were in my mind --
23 there was in my mind a far more likely suspect
24 based on my investigation and I think that what
25 convinced me the most about Jamie Abels' innocence



1 was Jamie Abels himself, he had gotten, when he
2 was convicted he had gotten more than 50, 75
3 letters from virtually everybody who knew him in
4 his home town in Minnesota, and I think his church
5 minister, boy scout leader. I left him in prison
6 one time in Oklahoma and I was in tears. This guy
7 even in prison was so well thought of that his job
8 was to train seeing eye dogs for the blind, he
9 actually slept with these dogs in training, German
10 shepherds in training in his cell, but ultimately
11 in 1989 when -- by the way, he had been convicted,
12 his conviction had been overturned and now they
13 were taking him back to trial. They got him
14 convicted, that's when we came in, that is,
15 Centurion came in. We had him DNA'd and it came
16 back linking him to the murder victim, so that was
17 the one mistake in judgment that I personally was
18 involved in.

19 CM has had several others. In
20 two of the three other cases, four other cases,
21 the person we were working for admitted, I
22 understand, to Jim that he had lied to us. In
23 other, in the remaining cases the inmate continued
24 to proclaim innocence.

25 The most recent case, example,



1 which is from our headlines in the United States,
2 was Roger Coleman who was executed for a murder in
3 coal mining country of West Virginia -- excuse me,
4 of Virginia, 1992, the same year that David was
5 released from prison, and Jim McCloskey had worked
6 that case very hard and was convinced of Roger's
7 innocence, he thought he had identified the real
8 killers. His evidence was presented to
9 prosecutors in the jurisdiction where he was
10 convicted, where Coleman was convicted. Time was
11 running out for Roger, he was on the front page of
12 *Time Magazine*. The headline was this man could be
13 innocent, this man is about to be executed, and in
14 fact he was executed in the electric chair in
15 Virginia. Jim vowed to him before he went to his
16 execution to continue efforts to try and prove his
17 innocence.

18 McCloskey lobbied through the
19 years for DNA testing. The testing came back a
20 couple of weeks ago -- excuse me, the governor of
21 Virginia agreed to have the evidence tested, DNA,
22 and it came back conclusively showing that Roger
23 Coleman was the person who killed, who committed
24 the murder. It was a bitter pill for Jim
25 McCloskey to swallow, but he, in a press release,



1 he admitted that we were wrong, that we had made a
2 mistake and that the authorities were right, they
3 had the right person.

4 Q So again just back on the initial task then of
5 assessing a convict's claim of innocence then,
6 would it be fair to say that it would be a
7 difficult and time-consuming task?

8 A Yes. In some cases more so than in others.

9 Q And no perfect system, perhaps other than DNA, but
10 no perfect system in place to ensure that your
11 assessment is right; is that --

12 A That's correct, and I think that I should also
13 mention that until we commit to a case, we have
14 not as yet met, until we meet with the person who
15 is asking for our help, or persons, and have a
16 chance to -- that's the final stage of the initial
17 review.

18 Q Right.

19 A Before that we never even met them, we just were
20 talking, or reading the record and talking to
21 people who, with information on the case and
22 trying to get a sense of --

23 Q Yeah. Once you made the determination then that
24 Centurion Ministries is going to take on a case,
25 tell us what you do then, what is the normal case,



1 what information do you gather? I take it the
2 first thing you do is gathering information; is
3 that fair?

4 A Are you talking about after we commit to a --

5 Q Yes.

6 A We go into the field --

7 Q Okay.

8 A -- and we start finding and talking to witnesses.

9 Q What information -- let's start talking about
10 documents and records. Is there a protocol you
11 use? What do you go out and gather?

12 A Well, first of all, ideally we've already gathered
13 most of the record, we've made contact with
14 whatever, whoever the defender was, the defenders,
15 if it was a public defender, which is often the
16 case, or whether it was a privately retained
17 attorney, we try and get all of the discovery that
18 they had, the defence had benefit of going into
19 trial. Sometimes that's been turned over to the
20 inmate's family, sometimes it's actually in the
21 inmate's cell and sometimes it's been destroyed,
22 so we do our best to get, to gather the entire
23 record, and once we start in the field, we try and
24 fill in what we haven't yet acquired.

25 Q Let's just go back then. The Court record,



1 obviously the transcript of the Court proceedings?

2 A Yes, certainly.

3 Q Trial transcript?

4 A Very important part of the record.

5 Q You talked about discovery I think were your
6 words. Would that be information that the state
7 prosecutor provided to defence counsel?

8 A Yes.

9 Q And where would you go to get that usually?

10 A Usually it would be -- in a typical case it would
11 be in the possession of the Defendant, Defendant's
12 family, or still retained by the defence attorney.

13 Q So you would go to that source to try and get
14 every piece of paper a defence counsel was given
15 by the prosecutor; is that right?

16 A Yes. That's during the screening process.

17 Q And what about, did you make efforts to contact
18 prosecutors or prosecuting offices to find out if
19 there were any other documents that may not have
20 been provided to defence counsel?

21 A We don't make contact -- to my knowledge,
22 Centurion has never made contact with a
23 prosecutor's office or a district attorney's
24 office during the screening process.

25 Q I'm sorry, once you are in the field --



1 A Yes.

2 Q -- and you are actually gathering information to
3 prove -- let me back up a minute here. What's the
4 purpose of going into the field, what is your
5 objective?

6 A To start talking to people to try and find out
7 what really happened to get to the truth.

8 Q And is it to develop a case then to present -- I
9 think in the United States the procedure is that
10 you present it to a Court by way of a petition; is
11 that right?

12 A Petition for post-conviction relief.

13 Q And so going into the field, you say the purpose
14 is to get the truth, and if your assessment is
15 correct that the convicted person is innocent,
16 would it be fair to say you would be gathering the
17 evidence that would be necessary to present to the
18 Court?

19 A Yes. We are essentially reinvestigating the case.

20 Q Would you go back to the original investigating
21 police force and say lookit, I think you made a
22 mistake, go reinvestigate?

23 A No.

24 Q Why not?

25 A Well, that would be -- first of all, that would be



1 a waste of time. We sometimes make contact with
2 investigative agencies, police departments, but we
3 certainly don't go back and suggest that they go
4 back and do their work, we're doing the work now,
5 this is our job at this point and as far as we're
6 concerned they are out of it. It would be a waste
7 of time to try to get them to go reinvestigate
8 anyway because they wouldn't do it.

9 Q So when you go out into the field, let's just talk
10 about the information you gather, you go to the
11 public defender, the defence lawyer and get what
12 information he or she had to defend the case; is
13 that fair?

14 A That's correct, right.

15 Q And presumably that would be -- my question
16 earlier, if we assume that the public defender or
17 the lawyer got all of the information from the
18 Crown or from the prosecutor, that's where you
19 would get it from; is that right, the public
20 defender?

21 A Well, when you say we assume that the defence had
22 gotten all of the information from the Crown or
23 the prosecutor, we don't assume that because quite
24 often the defence has not gotten all of the
25 information.



1 Q What steps do you take then to fill in those
2 blanks and get that information?

3 A Well, first of all, part of the investigative
4 purpose is to determine what information, what
5 documents, what evidence might have been withheld
6 from the defence. In most cases where you have a
7 situation where exculpatory evidence has been
8 withheld from the defence, we become aware of that
9 very quickly.

10 Q How?

11 A Well, let's say if we find a witness who told the
12 police, who tells us that he told the police that
13 he saw another person fleeing out the bedroom
14 window of the murder victim's home and that that
15 person didn't match the description of the man who
16 went to trial and was convicted and there is, and
17 the defence has never seen hide nor hair of a
18 report on that witness, that's an example of a
19 police withholding, police and prosecutors
20 withholding exculpatory evidence. Let me add,
21 that's a dramatic example. Most evidence that we
22 determine has not been turned over is considerably
23 more subtle, but nonetheless important.

24 Q Do you interview the convicted person's defence
25 lawyer or former defence lawyer?



1 A Absolutely.

2 Q And is that an important step?

3 A Yes, it is.

4 Q Tell us why?

5 A Well, you can learn a lot about somebody who is
6 asking for help from just talking to the person
7 who represented him. Usually -- from my personal
8 experience, if somebody who has asked for our help
9 is indeed innocent, chances are his lawyer is
10 going to have the same feelings, unless it was a
11 defence attorney, and I've had, personally had
12 examples of defence attorneys who didn't much care
13 about the truth and were simply putting in their
14 hours and going through the drill, but most
15 defence attorneys in murder cases have an opinion
16 on the guilt or innocence of the person they
17 represented and they will make their feelings
18 known to us.

19 Q Would you ask questions about what happened at
20 trial, what convicted the person, tell us your
21 views on this piece of evidence?

22 A Yes.

23 Q Why did you do this, why did you do that, are
24 those the things that you would pursue?

25 A We attempt to learn everything that has any



1 possible bearing on what happened in Court on the
2 outcome of a case. You know, to succeed in the
3 business of overturning wrongful convictions, you
4 simply can't leave any stones unturned.

5 Q And then give us an idea how long, you used the
6 term in the field, once you are out there
7 gathering the information, how long a process is
8 that roughly?

9 A Well, Jim McCloskey has said that from the time we
10 commit our resources to a case, which is basically
11 the time when we go into the field, to the day
12 that a judge decides whether there is merit to our
13 appeal, the average time is five years, and that's
14 on top of the screening, the time that is spent
15 screening the file or the request for help, so you
16 could say anywhere from eight to 10 years from
17 start to finish. David Milgaard, by the way, was
18 a very unusual exception to that.

19 Q In what respect?

20 A Well, first of all, the screening process was much
21 streamlined.

22 Q Yeah, I'm sorry, and I will go through that with
23 you.

24 A Okay.

25 Q I'm sorry. You are talking about how Centurion



1 became involved in the --

2 A Yeah. It was not the usual case.

3 Q Yes, and I will touch on that, I'm sorry. If we
4 could just finish up on this area. So about five
5 years. Tell me, once you are out in the field,
6 and assuming it's a case where you get what you
7 think is evidence or support for your position
8 that a convicted person is innocent, what do you
9 do, what's the product that comes out of this and
10 what do you do with it?

11 A Well, the -- what we develop takes many forms. We
12 might -- I might end up at the end of a day with a
13 document in my hand that was powerful, that
14 contradicted the prosecution's case, I might end
15 up with a statement from a witness.

16 Q So you would -- I'm sorry, I mean, you would
17 compile whatever you had in some written form; is
18 that right?

19 A Oh, you are asking me how we present this?

20 Q Yes, just walk us through, once you've completed
21 your investigation, you say we now think we have
22 evidence that shows our client is innocent.

23 A Well, by this time we have retained a law firm to
24 take our appeal to Court.

25 Q Okay. And again, my understanding in the United



1 States, then, it would be a petition to a Court
2 saying we have new evidence that suggests the
3 convicted person is innocent, or probably
4 innocent, and you would ask for some relief by way
5 of a rehearing, a new trial or something of that
6 nature?

7 A Yes, we would ask for, either for a judge to
8 overturn the conviction based on the petition or
9 to grant us an evidentiary hearing.

10 Q And an evidentiary hearing would be where you
11 could go and call witnesses before a judge to
12 demonstrate support for your petition; is that
13 right?

14 A Yes. If you are granted an evidentiary hearing
15 in, say, Federal Court, we have subpoena power and
16 we can bring witnesses in.

17 Q So prior to that stage in the United States, and I
18 don't want to get too much into the procedure
19 there versus Canada, but you would not have the
20 power there to subpoena or compel people to talk
21 to you?

22 A Absolutely not.

23 Q Once you file the materials or once you've
24 completed your case, I take it that there would
25 be, this would be filed somewhere and that the



1 state would be the party then who would have to
2 respond to it; is that right?

3 A Yes, there would be a response from them.

4 Q And do they then go out and investigate and follow
5 up what you put forward as the basis for saying
6 your client is innocent?

7 A Yeah, that's usually what they do. They sometimes
8 go out and try and sabotage what we've done.

9 Q And so how long, just give us an idea once you
10 file it, would you give anything to the state?
11 And I presume that's the right term, the state,
12 they would be the ones you are dealing with.
13 Would you give anything to the government or to
14 the state before you are done or would you wait
15 until your investigation is complete before you
16 turn things over?

17 A Often -- of course, this is a decision that I had
18 nothing to do with, but Jim often, in the cases
19 I've been involved in, and some others that I
20 haven't, at some point where we have reached,
21 we've reached the point where we feel that we have
22 put together a compelling case or argument for
23 innocence, he will go to the prosecutor and share
24 our information with them, ask them if they will,
25 would consider enjoining with us on a motion for a



1 new trial, or stipulating to our request for a new
2 trial, and very seldom do they agree to do that,
3 but --

4 Q Would there be then, in that case where you go to
5 the prosecutor, or where you file with the Court,
6 would there then be a time period during which the
7 state, and whoever they had assisting them, would
8 investigate the information that you put forward?

9 A Yes, that's true.

10 Q And would they go out and basically verify and
11 check and validate and inquire into what you had
12 put forward?

13 A Yes. An example of that is going on right now. I
14 worked on a case in Dallas, a wrongful murder
15 conviction, we have identified the real killer,
16 unquestionably identified the real killer and
17 we've shared our information now. As a courtesy
18 we shared the information that we developed with
19 the district attorney's office before we filed and
20 we just got their response and they are of course
21 fighting us tooth and nail and there's no question
22 in my mind that the investigators will be, from
23 Dallas city police department will be out trying
24 to undo what we have done.

25 Q And how long a time frame then, just give me on



1 average once you've filed a case, how long do you
2 then have to wait for the state or their
3 investigating agencies to review what you've put
4 forward?

5 A Well, it's -- are you talking about the review by
6 the district attorney's office or the prosecutor's
7 office or by a judge?

8 Q Both.

9 A Well, once we file a case in Court, as a petition
10 in Court, I can't say how long it would take
11 before a judge would make a decision on it.

12 Q I'm sorry, not for the judge, the decision, what
13 I'm getting at is how long a time period generally
14 does it take for the state to go out and
15 investigate and review, and I think your word was
16 sabotage what --

17 A Well, yeah, I'm not saying that they are always
18 trying to sabotage, but --

19 Q But let me -- I take it that once you file this
20 field work that might take you up to five years --

21 A Yes.

22 Q -- there's a time period during which the state or
23 someone on its behalf goes out and does its own
24 review; is that right?

25 A Well, once -- once we file in Court, then of



1 course obviously the prosecution or the district
2 attorney's office is going to become aware of what
3 we have brought forward.

4 Q Yes.

5 A And invariably, unless they are going to agree to
6 stipulate to a reversal of the conviction, a new
7 trial, they are going to go out -- if they are
8 going to fight us, they are going to go out and
9 try and do their own investigation and, in my
10 opinion, you know, they are just as anxious to --
11 if I have a recantation from a witness, they are
12 just as anxious to undo that recantation as I was
13 to get the recantation and that's what they are
14 going to try and do, they are going to try and
15 find fault with the investigation, the interviews,
16 the process by which I got the --

17 Q And how long does that -- I mean, are we talking
18 weeks, months, years? In the normal case that you
19 have, once you've done your investigation, how
20 long do you usually have to wait for the state,
21 assuming that they are going to challenge or
22 oppose, or not agree to your petition, how long,
23 what time frame on average does it take for them
24 to go review?

25 A I have no idea. The case -- they've been aware



1 for almost a year now, the Dallas police have
2 known about our plans to file a petition for
3 post-conviction relief on behalf of our client
4 Benjamin Spencer and we, I alerted, I made a
5 special trip to Dallas to inform our witnesses,
6 oh, my goodness, last summer, to inform our
7 witnesses to be on the alert that detectives could
8 be coming around to talk with them and question
9 them about the recant -- or the statements that
10 they gave us. The case is still going on. I
11 don't know what Dallas police department is doing
12 now, but -- and I don't know, it seems to me
13 that -- I don't think I've heard that they
14 actually ended up contacting any of the witnesses
15 as yet, so I can't answer that question.

16 MR. HODSON: Okay. This might be an
17 appropriate spot to break, Mr. Commissioner.

18 *(Adjourned at 2:57 p.m.)*

19 *(Reconvened at 3:22 p.m.)*

20 BY MR. HODSON:

21 Q Mr. Henderson, just before the break we were
22 talking about responses the state would have to
23 cases you put forward for wrongful conviction.
24 Would it be fair to say that in cases where you
25 work on behalf of a wrongfully convicted person



1 and gather, whether it be recantations or
2 information, would it be fair to say that you know
3 that that's going to be something that's going to
4 be checked fairly thoroughly by the authorities?

5 A Absolutely.

6 Q I think your comments on again, just let's talk
7 generally in cases where you have been involved on
8 behalf of a wrongfully convicted person, at what
9 point -- or what role does the media play in the
10 case you are putting forward and at what point in
11 the process do you get the media involved or do
12 they usually get involved?

13 A If we are talking about a Centurion Ministries
14 case --

15 Q Yes I am.

16 A -- they very seldom get involved.

17 Q And why is that?

18 A Umm, I would have to say that my best guess would
19 be a reluctance to second-guess a jury conviction,
20 trepidation, umm --

21 Q Would you as an investigator, then, at some point
22 go to the media or want the media to become
23 involved in promoting your case?

24 A We have gone to the media in the latter stages of
25 our investigation, in most of the cases that I



1 have been involved in, and given them a
2 presentation to see if they were interested in
3 doing some articles on our investigation. That's
4 usually when it's been determined that we're not
5 going to get any cooperation from the police or
6 the prosecutors.

7 Q So this would be after you've presented the
8 evidence and had it considered then?

9 A This -- not necessarily. This would be certainly
10 after we'd gathered all the evidence that we felt
11 was necessary, to our mind, to establish the
12 innocence of the person that we were working for
13 or on behalf of.

14 Q And what would be the purpose in trying to get the
15 media, then, to write about it?

16 A To sway public opinion.

17 Q And why would that be important?

18 A Well, I'm going to have to admit, shoot from the
19 hip here and say that we -- we are trying to sway
20 public opinion to create an atmosphere that would
21 be favourable for our client.

22 Q And so to have some influence on the judge or the
23 decision-maker or the authorities then?

24 A Well, I suppose that's true. However, let me say
25 that the involvement of the press in the *Milgaard*



1 case is something extraordinary because this,
2 these developments were being presented to the
3 press one at a time, piece by piece, and that is
4 certainly nothing that we would ever do.

5 Q And, what, you would deliberately not do that?

6 A Deliberately not do that, that's correct.

7 Q And why not?

8 A Well because -- well, first of all, there wouldn't
9 be that much interest in the case, in a criminal
10 conviction, by the press unless we had a very,
11 very compelling collection of evidence that
12 pointed to a wrongful conviction. And even if
13 they were picking up on it and writing stories
14 development by development, I -- it wouldn't be
15 that compelling. I mean there has to be a reason
16 to go to the press. We don't just routinely try
17 and retry the case in the press. I mean when we
18 go to the press, when we contact a reporter, it's
19 because we think we need the assistance of the
20 press to prevail because of the atmosphere that
21 exists.

22 Q Okay. And I think you had said just a moment ago
23 that you would not go piecemeal or piece by piece;
24 is that --

25 A Absolutely not.



1 Q And what do you mean by 'going piece by piece'?

2 A Well for example in the *Milgaard* case, when Joyce
3 Milgaard and I went on our first mission, which
4 was to the small town of Cando to talk with Linda
5 Fisher, we emerged from our meeting with her, a
6 period of several days, with a statement in which
7 Linda expressed her strong belief that her husband
8 was -- her ex-husband committed the Gail Miller
9 murder. Umm, we certainly would not have gone to
10 the press at that juncture of an investigation and
11 released that information.

12 Now I'm not saying that the
13 circumstances here did not warrant that, but it
14 isn't something that we would have done.

15 Q Sure. And we'll touch on this a bit later, and I
16 think the evidence that we'll see, and we've --
17 already have seen, is that for example the
18 recantation -- let me back up. The statement from
19 Dennis Cadrain on May 26th, 1990, Ron Wilson's
20 recantation of June 4th, 1990, and Albert
21 Cadrain's June 24th, 1990 statement regarding the
22 police treatment were all statements that you took
23 that ended up in many newspapers the very next
24 day, and I will go through some of that with you.
25 Is that something that -- that -- give me your



1 comments on that practice compared to how
2 Centurion Ministries would be dealing with their
3 cases?

4 A Well, first of all, there apparently was a level
5 of interest in the *Milgaard* case that we would not
6 find in -- at various -- at these same junctures
7 of an investigation of a murder conviction in the
8 United States. Umm, frankly I would guess that's
9 because, first of all, there aren't as many
10 murders up here. Secondly, wrongful convictions
11 are generally regarded as rare, you might say rare
12 or, in the minds of some people, unheard of. I
13 mean that seems to be the posture of the citizenry
14 of Canada, is that "we just don't convict,
15 wrongfully convict innocent people in this
16 country", umm, that's hardly a delusion. Let me
17 put it this way. In United States wrongful
18 convictions are being recognized as a -- they are
19 hardly an uncommon occurrence.

20 Q Yeah. Just back, just again the question, Mr.
21 Henderson. You had said you would -- and I think
22 your words were you wouldn't give out, on a
23 piece-by-piece or piecemeal basis, information in
24 the course of an investigation, or something like
25 that, as you got it?



1 A No, we wouldn't.

2 Q And so I was trying to get you to explain why, and
3 the example I gave you were the three statements
4 from Dennis Cadrain, Ron Wilson, and Albert
5 Cadrain; would those be -- and I think you said
6 that in that case you would not have gone to the
7 media with those statements as and when you would
8 have received them?

9 A Well, start with the first one. No, we wouldn't
10 have gone to the media with the Linda Fisher
11 statement.

12 Q Why not?

13 A Well, because it would have been, in our mind it
14 would have been premature. Obviously, we had a
15 great deal more work to do. I mean Linda Fisher's
16 statement was just the beginning of the process of
17 unraveling what happened to David Milgaard. And
18 the word for it is 'premature', it would have been
19 way, way too early to go to the press.

20 Q Now at what point --

21 A At least the way we operate.

22 Q Okay. At what point would you go to the press to
23 identify another person as being the perpetrator
24 of the crime?

25 A Let me think of an example of when we have done



1 that. A case in St. Louis, we went to the St.
2 *Louis Post-Dispatch* either upon completion of our
3 investigation but before we filed the petition, or
4 upon completion of our investigation after we had
5 filed the petition.

6 And let me add that in no case
7 that I have been involved in in the United States
8 has the press become involved on an advocacy
9 basis, that is no time has a reporter come in and
10 taken information from us and conducted
11 independent investigation. In virtually every
12 case where we have had prejudgment publicity it's
13 simply been a representation of the work that we
14 have done.

15 Q What do you mean by the word "advocacy", I think
16 you said "advocacy journalism" or "advocacy" --

17 A Well, yeah. I probably was deluding myself after
18 I did what I would call an advocacy piece on
19 behalf of Steve Titus in 1980-'81. I went out,
20 basically, and re-investigated the case, and came
21 up with a series of stories that proved his
22 innocence. Umm, when we get a story in the paper
23 on our work now, it's simply a representation of
24 what we have uncovered.

25 Q Okay. In the, your involvement in the David



1 *Milgaard* case, based on your dealings with
2 Canadian media and what you observed would that be
3 something that you would consider to be advocacy
4 journalism?

5 A I would say it was advocacy journalism. I don't
6 know just how enterprising the press was in terms
7 of going out and trying to develop new evidence on
8 their own in addition to what we had turned up, I
9 suspect there may have been some examples of that.
10 In other words, let's say that had Larry Milgaard
11 (sic) confessed to somebody --

12 Q Larry Fisher?

13 A -- Larry Fisher confessed to somebody that we
14 weren't aware of, hadn't found out about it, the
15 press digs that up, I'm not aware of any of that
16 type of reporting. But, certainly, the press in
17 this country was an advocate, --

18 Q Okay.

19 A -- did advocate for David Milgaard.

20 Q If we could, there's just one document I wish to
21 show you before we return to your work on the
22 *Milgaard* case, 332 -- 333207.

23 A Is that going to show up on the screen here?

24 Q It will show up, yes. And this is a copy, it's
25 right at the bottom, *Seeking Freedom For the*



1 Imprisoned Innocent. If we go to the next page,
2 actually two pages over, next page -- and this is
3 just a photocopy of the pamphlet, Mr. Henderson,
4 that you provided me in Seattle a couple of weeks
5 ago, and I think I'll just have you identify;
6 would this be a summary, then, of information that
7 Centurion Ministries would put forward about the
8 work they do, purpose, function, beneficiaries,
9 selection process, and would this in fact be
10 accurate?

11 A Yes.

12 Q And this would have been prepared in the last year
13 or so; is that right?

14 A No, this brochure has been in circulation now for,
15 oh, I -- this particular brochure with the blue
16 cover I think has been in circulation now for ten
17 years, but it's periodically updated with new
18 cases that we've prevailed in.

19 Q And maybe I can ask you; how old were you when
20 this picture was taken?

21 A Umm --

22 Q Is that a much younger Paul Henderson?

23 A I'm afraid so.

24 Q Okay. So this is, for historical value then, this
25 pamphlet would have been -- it, or some version of



1 it, would have been around for many years, and
2 that this would set out the work that you do; is
3 that fair?

4 A Yes. When I first came to work, started work with
5 Centurion on a part-time basis, soon thereafter
6 they came out with a brochure with a very short
7 list of people who we had worked for.

8 Q If we could now -- done with that document -- turn
9 to the *David Milgaard* case. And could you tell us
10 when and how you, Paul Henderson, became involved,
11 and Centurion Ministries became involved, in David
12 Milgaard's case?

13 A It started with -- actually, the genesis of our
14 involvement with the case started with, began with
15 Joyce's appearance in Princeton or introduction to
16 Jim McCloskey, the background that she provided
17 him on her son's imprisonment. Joyce was there
18 because of her work with -- as a Christian
19 Scientist, and I believe she was at a retreat
20 there, but also volunteered her time. My
21 understanding is that Jim told her that we did not
22 have the resources to get involved in David's case
23 at that point. Nonetheless, Joyce considered
24 her -- I mean continued her volunteer work for
25 Centurion. Sometime later there was new



1 information about a woman who had -- who had an
2 ex-husband who she suspected of having committed
3 the murder. Umm, Joyce appealed to Jim to get
4 Centurion involved on a limited investigative
5 mission and he decided to, I think he committed to
6 a week, and assigned me to go up there and
7 accompany Joyce on a visit to Linda Fisher.

8 Q Okay. Let me just pause there for a moment. What
9 we know from the documents and other evidence,
10 that February 28th, 1990 is when Milgaard lawyers
11 Hersh Wolch and/or David Asper received a call, an
12 anonymous call from a Sidney Wilson indicating
13 that Larry Fisher was the killer, and that his
14 wife, Linda Fisher, saw him come home the morning
15 of the murder with blood on his clothes or
16 something like that?

17 A That's my understanding as well.

18 Q And so would it be correct that, at some point
19 after that call, you would have been contacted by
20 Mr. McCloskey and he asked you to go up to Canada
21 to assist Joyce Milgaard for a week; is that
22 correct?

23 A That's correct.

24 Q And had you ever heard of the Milgaard case --

25 A No.



1 Q -- before this?

2 A I had not.

3 Q And am I to take it from your evidence, sir, that
4 the Centurion Ministries, you described for us in
5 a fair bit of detail the process of reviewing
6 cases; is it fair to say from that, from what you
7 just said, that the *David Milgaard* case did not go
8 through the Centurion Ministries process,
9 selection process, did not go through the
10 screening, did not go through any of that?

11 A That's correct.

12 Q And so at the time you got the call what did you
13 know about the case?

14 A When I got the call from Jim McCloskey I knew
15 nothing about the case.

16 Q Did someone at Centurion Ministries then make some
17 determination -- let me back up. I think you said
18 this was a one-week -- and maybe these weren't
19 your words -- but a limited engagement, you were
20 going to go up for a week and assist on some
21 questioning; is that --

22 A Yeah, I think he, the way I understood it he
23 agreed to send me up there for a week.

24 Q Do you know, based on your discussion with
25 Mr. McCloskey at the time, had someone at



1 Centurion Ministries made the determination that
2 David Milgaard was likely innocent?

3 A No, they had not.

4 Q And so when you went up to Canada what was going
5 through your mind about the case, his innocence,
6 or what type of mindset did you have when you went
7 up there regarding his claim to innocence?

8 A Well if -- I should probably try to explain what
9 information I had been benefit of at that point.
10 Of course we had Joyce Milgaard, a mother who
11 strongly believed in her son's innocence; we had
12 the spectre of a man who had committed a number of
13 rapes; --

14 Q Okay. Let me just pause there for a moment, Mr.
15 Henderson. That would be information you learned
16 when you went to see Linda Fisher; correct?

17 A It would be information that I had before I left
18 Seattle.

19 Q Oh, I'm sorry, carry on then. Where did you get
20 that from?

21 A As I re -- well, I'm positive that I was aware of
22 the fact that Larry Fisher, the woman -- the
23 person who we were going to be inquiring about,
24 was a convicted rapist and that he -- I'm not even
25 sure we knew where he lived, but we knew that this



1 person was a convicted rapist, and his wife
2 supposedly had information on his involvement in
3 the Gail Miller murder. That's about all I knew.

4 Q And did you know anything about the evidence that
5 had convicted David Milgaard at his original
6 trial?

7 A I'm -- you know, I can't imagine, as thorough as
8 Jim McCloskey is, that he would send me up there
9 without benefit of the transcripts. Umm, I don't
10 have a distinct recollection of receiving the
11 transcript before I left, that is the transcripts
12 of the trial where I would -- was able to read
13 about the witness testimony, but I think I
14 probably did.

15 Q You think you probably did?

16 A Receive a transcript or limited documents that
17 filled me in on some of the background.

18 Q And that would be from Mr. McCloskey?

19 A Yes, who would have received them from Joyce
20 Milgaard.

21 Q Do you recall whether Mr. McCloskey expressed any
22 opinion to you about his view of David Milgaard's
23 guilt or innocence?

24 A No, I don't think he did, however he would not
25 have -- certainly would not have agreed to send me



1 up there if he wasn't somewhat provoked.

2 Q I see. So would this task you were undertaking,
3 this interview, would this be different than the
4 other work that you would normally do for
5 Centurion Ministries in the sense that -- no, not
6 interviewing a witness -- but the process that
7 Centurion was undertaking? What had gone on, what
8 you had done, what you had not done before the
9 interview, was this a little bit different or out
10 of the ordinary?

11 A It was quite a bit different, yes.

12 Q Had you ever been involved in a case in Canada in
13 any way prior to this time?

14 A No, --

15 Q And --

16 A -- not as an investigator, as a reporter I had.

17 Q Were you aware of the process in Canada, or the
18 procedure in Canada, to have wrongful convictions
19 reviewed?

20 A Didn't know much about it at all.

21 Q Did you know where, at what stage David Milgaard
22 was at as far as challenging his conviction?

23 A Not really. Not that I recall. I wasn't familiar
24 with the appeal process, where he was, where he'd
25 been.



1 Q And --

2 A Well, let me add, I'm -- excuse me for
3 interrupting. I knew that he had been in prison a
4 long time and so I imagine I assumed that he --
5 his entire process, his appeal process, had been
6 exhausted. I also knew that he had escaped from
7 prison twice, and with dire consequences, and I
8 knew a little bit about the murder -- oh, well
9 actually more than a little bit. But I knew that
10 a woman had been abducted and murdered in an alley
11 early in the morning, I knew it was 40 degrees
12 below zero, that it occurred on January 31st,
13 1969, that Milgaard was convicted the following
14 year, and that a serial rapist by the name of
15 Larry Fisher had emerged within months of the
16 Milgaard conviction.

17 Q And where did you learn that from and when?

18 A That would have been, that information probably
19 would have been provided to me by Jim McCloskey
20 when he was assigning me this.

21 Q So this, before you went to see Linda Fisher,
22 then, this is something you would have been told?

23 A Yes.

24 Q So tell us -- and, again, I will go through some
25 documents with you, we've got taped interviews



1 with Linda Fisher, etcetera -- but maybe if you
2 could just walk us through, in a general sense,
3 your recollection of arriving in Canada. And you,
4 I presume you would have met with Joyce Milgaard
5 first, --

6 A Yeah.

7 Q -- before you went to see Linda Fisher? Did you
8 have a discussion with Joyce before you met Linda
9 Fisher?

10 A Sure, a lengthy one, I'm sure. And, of course, I
11 also undoubtedly learned a lot from her on the way
12 up to try and meet with Linda.

13 Q Okay. So you would have had a lengthy discussion,
14 you think, with Mrs. Milgaard about the case?

15 A Yes. And I also remember, at this location where
16 we spent a night, a small, I think it was an
17 apartment that Joyce -- had been loaned to Joyce
18 by somebody, and I was sleeping on, I was on a
19 sleeping bag on the floor and -- but I remember on
20 the kitchen table there were some transcripts, so
21 I think I learned some more about it before we
22 left.

23 Q So you would have read some transcripts --

24 A Yes.

25 Q -- while in Saskatoon?



1 A Yes, uh-huh.

2 Q And what recollection do you have of Linda Fisher,
3 then, and your meeting with her?

4 A Well, we didn't know how we were going to be
5 received by her. When we arrived in Cando we
6 found her house, Cando is a very small town, there
7 were only maybe a dozen houses there, no place to
8 go to the bathroom by the way. So we knocked on
9 the door, a young boy came to the door and invited
10 us in, and he told us that yes, he was Linda's
11 son, but she wasn't home at the time. So with his
12 permission I think we waited for her, or we might
13 have left and come back later, but when we met
14 Linda she was very gracious and invited us in, and
15 I mean the woman was obviously a little bit
16 nervous but she seemed -- had no, was not at all
17 reticent about telling us about her feelings about
18 her ex-husband.

19 Q And what was your reaction to the information that
20 she provided to you and Mrs. Milgaard?

21 A Well it, it took me -- in my mind it was a quantum
22 leap in establishing, in my mind, a likelihood of
23 Larry Fisher's involvement in the Gail Miller
24 murder.

25 Q All right. So explain that for me, please, I'm



1 not sure I understand 'it took a quantum leap'?

2 A My faith in David Milgaard's innocence took a
3 quantum leap as a result of what I learned from
4 Linda Fisher.

5 Q So then I think -- and we'll go to the transcript
6 here -- after your first interview with Linda
7 Fisher and the information that she gave you, what
8 was your view or your opinion about David
9 Milgaard's innocence after meeting with Linda
10 Fisher?

11 A Well based on my taped interview, a tape recording
12 of my contacts, my next contact, which was with
13 Dennis Cadrain, it appears that I was, I was sold
14 on David Milgaard's innocence by that point.

15 Q Okay. And what about at what point did you form
16 the opinion, in your own mind, that Larry Fisher
17 had killed Gail Miller, and on what basis?

18 A I think that after talking with Linda and weighing
19 the circumstances and the proximity and the
20 geography, whatnot, I had a very strong feeling
21 that Larry Fisher was the perpetrator.

22 Q And so if -- after your initial meeting, and I
23 think we'll see it was over a couple of days with
24 Linda, I think a meeting, an interview, and then
25 the next day a statement, a further interview and



1 a meeting with Cliff Pambrun; does that sound
2 right?

3 A Yes.

4 Q In the course of the end of that weekend then,
5 after having met Linda Fisher, you felt quite
6 strongly that Larry Fisher was the perpetrator?

7 A Yes, I'm sure I did. However, I think I should
8 point out that, you know, this wasn't the usual
9 case where all of a sudden I just heard about this
10 guy, you know, and he'd been -- he'd appealed to
11 Centurion Ministries and we put him on the
12 fast-track and they sent me out to talk to
13 somebody who had evidence on the guilt of someone
14 else. This case had a long history before I got
15 involved. There were a lot of questions being
16 asked about this conviction, the conviction of
17 David Milgaard, long before we got involved.

18 Q And I guess what I am trying to ascertain from
19 you, as to what your knowledge was at the time and
20 what you based your conclusions on, and so at the
21 time, --

22 A All right.

23 Q -- let's say at the end of this weekend, if I
24 would have asked you at the conclusion of the
25 weekend, "what do you think about Gail Miller's



1 murder, who do you think did it, do you think
2 David Milgaard did it, do you think Larry Fisher
3 did it", what would you have told me?

4 A I would have said "it appears to me that Larry
5 Fisher is a far better suspect than David
6 Milgaard".

7 Q Okay. And at that point would you have gone
8 further than that, from a suspect, to saying "yes,
9 I think he's the person who did it"? When did
10 that happen, in your mind, and on what basis?

11 A You know, I -- I would have to say honestly that,
12 I could have changed my mind at that point, but at
13 that point I was, I think, fairly well convinced
14 that Larry Fisher was the person who committed
15 this murder. And there were several reasons for
16 that, and one of them was the many years of
17 controversy that surrounded the Milgaard
18 conviction. I mean I wasn't the first person to
19 have, to question the legitimacy of this
20 conviction, and there had been doubts long before
21 I got involved.

22 Q The --

23 A The spectre of Linda Fisher, I think, convinced me
24 that there -- that Larry Fisher was the
25 perpetrator.



1 Q And so, again, just your comment about the spectre
2 of doubt about Mr. Milgaard. When you formed the
3 conclusion then, or you held the belief I think
4 pretty early on, you are telling us, that Larry
5 Fisher is the killer of Gail Miller, I suspect
6 what that means is that David Milgaard couldn't
7 have done it; right?

8 A Of course, yes.

9 Q What information, if any, did you have at that
10 time about the case against David Milgaard so that
11 you, in your mind, could weigh the case against
12 David Milgaard versus the case against Larry
13 Fisher, or did you ever do that?

14 A Well I wasn't -- I don't think I knew a whole lot
15 about the case because -- that is about the record
16 on David Milgaard, I wasn't intimately acquainted
17 with the testimony of the witnesses, that is Ron
18 Wilson, Albert Cadrain, Nichol John. I knew that
19 these three witnesses had made certain allegations
20 of observances, statements, suspicious
21 circumstances, umm, I'm sure that I was aware of
22 them in general, but I had not had the opportunity
23 to scrutinize them, to take a real close look at
24 'em, which we always do ultimately.

25 On the other hand, what we



1 learned about Larry Fisher seemed to overshadow,
2 in my mind, the evidence of David Milgaard's
3 involvement in this murder. Mostly it was the
4 proximity. I knew at that time that Larry Fisher
5 lived just a block and a half or two blocks from
6 this alley where the murder occurred, and I knew
7 that the victim's wallet or purse, or something
8 along that line, was found a house -- in the yard
9 a house or two away from the house where Larry
10 Fisher lived in the basement with his wife. I
11 also knew that Albert Cadrain, the Cadrain family,
12 lived in the main level of that house, which was
13 -- which was the reason why David Milgaard became
14 a suspect, that being the fact that David Milgaard
15 showed up at that house that morning to try and
16 find an old friend, and that -- to find Albert
17 Cadrain and try and talk him on -- into taking a
18 trip with him. It occurred to me, and my feelings
19 were, that this was a, just a very bizarre set of
20 circumstances that pointed to the wrong man, and
21 that once it became known that Larry Fisher lived
22 in the same house, that the picture changed
23 completely. Does that make sense?

24 Q Well, again, it's at that time, though, that the
25 information you had, that would be the information



1 that you had that caused you to reach the
2 conclusion?

3 A Yes.

4 Q And again we'll go through the interview with
5 Linda Fisher and there may be a few other things
6 that I'll ask you about. Just back for a moment
7 on the engagement, your engagement in this matter,
8 I think you told us earlier that once Centurion
9 Ministries took on a case, you would get in to do
10 with the field work. Would it be fair to say that
11 you then, or whoever on Centurion Ministries was
12 the investigator, would call the shots, for lack
13 of a better word, as to who to interview, how to
14 interview, when to interview, what to do with it,
15 things of that nature?

16 A When I start a case now, I work out an
17 investigative agenda and I pass it on to Jim
18 McCloskey and he takes a look at it and he says it
19 sounds good or it doesn't sound good. In this
20 case we had, you know, we had an agenda that was
21 far more restricted, I mean --

22 Q Who was calling the shots?

23 A Well, of course it was Joyce Milgaard's idea to go
24 interview Linda Fisher, that's the person we
25 started with. Then we, from that point we took



1 the logical next steps, let's go talk to the other
2 witnesses.

3 Q Who did you take, and again we'll go through your
4 other involvement in this matter, but who did you
5 take your instructions from, who asked you or told
6 you to go interview witnesses and things of that
7 nature?

8 A My boss, Jim McCloskey. After we finished up with
9 Linda, I went back to Seattle, he decided he was
10 going to extend our involvement in it and he asked
11 me to go talk with, try and talk with Albert
12 Cadrain.

13 Q So that Jim McCloskey would be who you report to
14 as far as -- wear your Centurion hat for a moment.
15 In deciding what witnesses Centurion would
16 interview, did that come from Mr. McCloskey or did
17 it come from --

18 A Yes, it did, every step of the way.

19 Q But did he get that from Mrs. Milgaard or Mr.
20 Asper or --

21 A Well, I'm sure at some point he decided that --
22 you know, the next steps were pretty obvious. We
23 had -- there were three witnesses who largely
24 orchestrated, whose testimony largely was
25 responsible for this conviction, so it was a



1 no-brainer that we would want to go talk to all
2 those people starting with, well, Cadrain, Ron
3 Wilson and Nichol John.

4 Q If you were starting the investigation yourself,
5 is that where you would have started?

6 A Well, I would have first started the way we did
7 start and that was with Linda Fisher based on this
8 information that we had, that she had information
9 on her ex-husband, so that was obviously the
10 logical starting place, but the next step would
11 have been to go try and contact and talk with the
12 witnesses; that is, the Crown's star witnesses.

13 Q And putting aside the information from Linda
14 Fisher, because that wasn't known until, at least
15 the information about the call from Sidney Wilson,
16 that wasn't known until 10 days earlier?

17 A Yes.

18 Q If that information had not been, if you had not
19 been aware of, where would you start?

20 A We would have started with the three key
21 prosecution witnesses.

22 Q And done what?

23 A We would have contacted them and tried to get them
24 to talk to us and tell us whether they were
25 truthful, tell us truthfully whether they were



1 truthful.

2 Q Okay. So let's go back to the interview with
3 Linda Fisher. What was -- was there any
4 discussion or agenda or strategy as to who would
5 question Linda Fisher, what would be asked, things
6 of that nature? Do you remember anything like
7 that?

8 A Oh, I don't remember that there was any plan, but
9 I've noticed from the transcript of our, of our
10 interview with Linda, that Joyce started it out, I
11 think she made the initial approach.

12 Q And at the time, and you've covered some of this,
13 I just want to go through it though, in your
14 initial meeting with Linda when you went to see
15 her, I think you told us you would have been aware
16 that prior to the interview, that Larry Fisher
17 lived in the basement of the Cadrain house at the
18 time of the murder; is that right?

19 A Yes.

20 Q And what did you know before you talked to Linda
21 about the crimes that Larry Fisher had previously
22 committed, the number, the time, where they might
23 have been committed?

24 A This is where it gets difficult for me to remember
25 exactly with any precision, but what we, what I



1 did know was that he was a convicted serial
2 rapist, that there was some similarity in the
3 rapes that he was arrested for and circumstances
4 surrounding the Miller murder; that is, I think we
5 knew that the rape victims were abducted on the
6 street and that the assaults occurred either in
7 alleys or back yards, which was the case, likely
8 the case with Gail Miller, that there was a knife
9 involved in at least some of the rapes, so I had
10 heard, I think, as I recall, I knew that there was
11 a knife involved. These were armed assaults.

12 Q You use the term serial rapist. What do you mean
13 when you use the term serial --

14 A Well, you know, there's a fine line I suppose.
15 Recurrent rapist might be a better term. I think
16 when you start using the term serial you are
17 talking about an extended period of time. It
18 would probably be more accurate to refer to, to
19 refer to Larry Fisher, based on his record, as a
20 recurrent rapist.

21 Q At the time you went to see Linda Fisher, did you
22 know anything about the murder weapon that was
23 believed to have been used in the murder of Gail
24 Miller?

25 A I may have read about the discovery of a knife



1 beneath the victim's body, but I didn't know,
2 certainly didn't know much about it.

3 Q Do you recall whether you knew the colour or the
4 type of knife or details?

5 A No, I don't recall.

6 Q Did you know, and again I want to know about just
7 prior to going in to see Linda, whether it was
8 something Mr. McCloskey told you, something Mrs.
9 Milgaard told you or something you may have read
10 prior to going to see Linda Fisher, did you know
11 anything about the theory that a car may have been
12 involved or used by the assailant of Gail Miller?

13 A I think I -- I think the car was in the picture,
14 the possibility that a car was in the picture, but
15 we certainly had no proof. There was some
16 discussion or some evidence of a car being seen by
17 somebody with a, the silhouette of a person
18 passing in front of the car, this would be in the
19 alley close to the murder site, and of course I
20 was forming opinions on whether Gail Miller was or
21 was not forced into a car and, quite frankly, I
22 never was able to figure it out.

23 Q When you went to see Linda Fisher, was one of the
24 things then on your mind whether or not Larry
25 Fisher had a car or had access to a car on the



1 morning of the murder?

2 A I'm sure it was, but it may not have been the
3 primary thing on my mind.

4 Q Okay. If we could call up 076 -- actually, let me
5 just pause here, I'm going to call up, if can we
6 call up that chronology document. This might be
7 helpful at the start just to get an outline of
8 your involvement, and I'm sorry, I don't have a
9 doc ID for that, and this is a document that I
10 prepared, Mr. Henderson, based upon a review of
11 the documents in our interview, and I just quickly
12 want to go through this so that before we get into
13 the details of what you did we have a general
14 understanding of your involvement, and again just
15 items 1 and -- item 1 is the date of the first
16 application. At what point did you become aware
17 that about 14 months before your arrival to see
18 Linda Fisher, that David Milgaard or his lawyers
19 had filed an application to the Federal Justice
20 Minister to review his conviction? Were you aware
21 of that when you came out?

22 A I may have been vaguely aware of that, but I
23 certainly wasn't -- I wasn't well versed on it.

24 Q Were you aware or did you become aware that an
25 application to try and set aside the conviction on



1 other grounds had been filed many months earlier,
2 or 14 months earlier, and that the application was
3 pending?

4 A I'm not sure. I'm not sure whether I -- to be
5 honest with you, I don't know whether I realized
6 that there was something already in the works or
7 whether, what ultimately led to the hearing in
8 Ottawa was strictly as a result of the work that
9 we were involved in. I just don't know. I don't
10 think I knew nearly as much about this as I should
11 have. Under other circumstances and in another
12 case I would have known a great deal more about
13 the background.

14 Q And so item 2 is evidence we've heard of February,
15 1990, the call to Mr. Wolch identifying Larry
16 Fisher as the killer and that Linda Fisher may
17 have incriminating evidence. And I just want to
18 go through, I think March 9 and 11th, 1990, the
19 documents suggest that's when you and Mrs.
20 Milgaard interviewed Linda Fisher and Cliff
21 Pambrun and took two statements from Linda Fisher
22 and one statement from Cliff Pambrun; is that
23 right?

24 A Yes, I remember both those witnesses being
25 contacted within a day or two of each other.



1 Q And then I think, and I'll take you through all
2 these documents, I just want to go through the
3 outline. I think then a couple of months later I
4 understand that you were then asked, or Centurion
5 was asked to send you out for another week or so
6 to interview some witnesses and you interviewed
7 Dennis Cadrain and Albert Cadrain in British
8 Columbia, Dennis provided a statement, and then
9 June 4th, 1990 you interviewed Ron Wilson and
10 obtained a statement; is that right?

11 A Yes, that's correct.

12 Q And we'll go through the details. You then tried
13 to contact Nichol John and she refused an
14 interview and then on June 24th, 1990 you
15 interviewed Albert Cadrain again and obtained a
16 statement?

17 A That's correct.

18 Q And so here, I guess if we look at the first
19 involvement with Linda Fisher, then I think you
20 said the logical next steps would be to interview
21 the main Crown witnesses, and other than Nichol
22 John, you would have done that; is that correct?

23 A Yes.

24 Q And then here, June, July, we've got the
25 statements for release to the media and you're



1 quoted in various media sources. I take it -- do
2 you recall that after, that you had obtained these
3 statements, dealing with media people about them?

4 A Yeah, I remember being contacted by the media a
5 number of times, but I don't have specific
6 recollection who and when.

7 Q Sure. And then after I think you obtained the
8 June 24th, 1990 statement, it appears your next,
9 or the next involvement, if we can go to the next
10 page, would be in December, 1990 when Centurion
11 Ministries prepared a report entitled a report
12 outlining the wrongful conviction of David
13 Milgaard that was provided to all members of
14 parliament, and I understand, sir, that Jim
15 McCloskey authored that report; is that correct?

16 A Yes.

17 Q And then February 27th, 1991, Justice Minister Kim
18 Campbell dismissed the application and then in
19 April and May, and I've taken these dates from
20 your statements, late April, early May, you
21 interviewed seven, the seven victims of Larry
22 Fisher's sexual assaults; is that correct, you and
23 Mrs. Milgaard?

24 A With Joyce, yes.

25 Q And then as well in there, May 5, you and Mrs.



1 Milgaard interviewed a woman by the name of
2 (V14)-- (V14)-; is that right?

3 A Yes, just before we interviewed (V3)-- (V3)-----
4 in Moose Jaw.

5 Q Right. So the day before?

6 A Yes. That was in Regina.

7 Q And then I have May, and we'll touch on this a bit
8 later, you would have had dealings with Tom Vanin,
9 a Saskatoon police officer at the time; is that
10 right?

11 A Well, let me see here, that --

12 Q And the timing, we'll go through the documents.

13 A Well, you are correct, yes, I later had contact
14 with Tom Vanin.

15 Q And again, that memorandum suggests you talked to
16 Linda Fisher, Jake Ketler, being Larry Fisher's
17 boss, and Lorne Huff, being the police officer who
18 dealt with Mr. Fisher in Winnipeg, or Fort Garry
19 in 1970. Do you have a recollection of that?

20 A You know, I know that I talked with all of these
21 witnesses, but I don't have a distinct
22 recollection of when and where and I can't even
23 picture myself with them.

24 Q Sure.

25 A Tom Vanin is the only one that I have --



1 Q Okay.

2 A It could have been a telephone call with some of
3 these others.

4 Q Sure. So at least you had some involvement and
5 there's a document that, a memo that I'll show you
6 a bit later that I think was May 28th, 1991, I
7 just put May, and then August 8th, 1991 you
8 interviewed George Lapchuk in Vancouver I think?

9 A Yeah. That was a lot of fun.

10 Q Yeah, we will hear about that. And then August
11 14th the second application to the minister was
12 filed and it was based upon your work, or
13 Centurion Ministries' work in interviewing of the
14 victims; correct?

15 A I see it here, yes.

16 Q Yeah. And then the next page there's a reference,
17 January 6, 1992, interviewing Launa Edwards, and I
18 believe you were involved in that?

19 A I remember that interview distinctly.

20 Q And then the last two items are the Supreme Court
21 hearings, you did not testify at the Supreme
22 Court; is that correct?

23 A I did not.

24 Q And I believe that would, this outline that I've
25 gone through, would that generally cover and



1 outline the work that you did on behalf of David
2 Milgaard?

3 A I think so. We -- Joyce and I and -- no, Joyce
4 and I appeared on a show in Toronto, a panel, the
5 Shirley Show I believe, that was another one of
6 the trips that I made to Canada.

7 Q So apart from some media appearances, and I think
8 I will go through some newspaper reports, I think
9 you talked to the media sources, and I think as
10 well we'll see on a number of occasions you would
11 have had discussions with David Asper and Joyce
12 Milgaard; is that right?

13 A That's correct.

14 Q Did you have -- let's just talk about Mr. Asper.
15 Tell us about your dealings with Mr. Asper, what
16 your relationship was with him, did he give you
17 instructions, did you report to him? What was the
18 relationship?

19 A You know, I'm not even sure when I first met Mr.
20 Asper. I know that I didn't meet him during my
21 first trip up here. I think that maybe my first
22 conversation with him was by phone after I got the
23 statement from either Dennis on Albert Cadrain, a
24 conversation with him. I know that I was -- I
25 think the record shows that I had some -- there



1 were tape recordings of conversations to which I
2 was a party with Asper and Joyce sometime during
3 the period of time that I was talking with the
4 Cadrain brothers.

5 Q So just again, what would be the purpose of you
6 talking to Mr. Asper then just generally?

7 A To report on progress that we had made, the
8 results of interviews with the witnesses, that is,
9 the Cadrain brothers, to provide my input into
10 where I thought we were going to be going with
11 these witnesses, my insights into the posture,
12 position of these two witnesses, that is, Dennis
13 and his brother. The other purpose would,
14 obviously based on what I read, was to participate
15 in strategy discussions about what we should do
16 next, how we should go about it with these two
17 witnesses.

18 Q And did you get any sense as to who was calling
19 the shots or making -- who were the decision
20 makers here on what would be done as far as the
21 investigation, who to talk to and what to do with
22 the statements, whether to go to the media, how to
23 go to the media, etcetera, who was doing all of
24 that?

25 A Well, it was obviously, you know, it wasn't



1 something that -- we didn't have a lot; that is,
2 Centurion didn't have a lot of input into it. I
3 mean, there had been a history, Joyce and David
4 Asper's law firm had had a history I think of
5 dealing with the media, so that was largely their
6 doing. I weighed in on some of the thoughts that
7 were discussed during this period of time.

8 Q Okay. If we could call up 076270. This document
9 is a transcript of the interview between Joyce
10 Milgaard, Paul Henderson and Linda Fisher and I
11 believe this is a tape that Mrs. Milgaard may have
12 had, or possibly you, that was transcribed by the
13 RCMP, and we've had occasion to review many parts
14 of this. I just want to touch on a few things.
15 Go to 076281. This is the discussion where Linda
16 Fisher tells you about her paring knife being
17 missing?

18 A Uh-huh.

19 Q And your reaction is "oh oh oh oh," and Mrs.
20 Milgaard is "wow," and then it goes on to talk
21 about the knife. Do you have a recollection about
22 this information coming to your attention?

23 A Only a vague one.

24 Q And she goes on to describe it as a brown-handled
25 paring knife with wooden handles and rivets,



1 etcetera. Do you remember, Mr. Henderson, whether
2 you formed a view at the time that her missing
3 paring knife either was or may have been the
4 murder weapon used by Larry Fisher?

5 A Well, based on what she told us, as I recall, she
6 thought it was, and so we certainly had to
7 consider that possibility. I don't know whether I
8 was convinced that it was or wasn't, but it was
9 another element of the picture that was emerging
10 in my mind's eye of Larry Fisher's involvement.

11 Q Now, subsequently Linda Fisher, or actually let
12 me, I don't think I need to take it to here, you
13 get her to describe the knife in detail and she
14 said it's a wooden-handled paring knife with
15 rivets and I believe a non-serrated edge. The
16 murder weapon that was tendered at the Gail
17 Miller -- at the David Milgaard trial was a maroon
18 plastic-handled knife with no rivets, not a wooden
19 handle and I believe a serrated edge, and again,
20 was that something you would have -- do you
21 remember being aware of that at the time?

22 A No, I was not aware of that.

23 Q And if that had been something that you were aware
24 of when you talked to Linda Fisher, that when she
25 described the missing knife that at least was the



1 subject matter of her discussion with Larry Fisher
2 on the morning she says of the murder, would that
3 have had any influence on your thinking at the
4 time?

5 A Of course. If I -- if she had described a knife
6 missing, the missing knife as having a wooden
7 handle, a brown wooden handle and I was aware of
8 the fact that the murder weapon, that is, the
9 knife found beneath the victim had a plastic
10 maroon handle, that would have been a red flag.

11 Q And what do you mean a red flag?

12 A It would have been an indication to me that Linda
13 Fisher was wrong.

14 Q Wrong about what?

15 A Wrong about her suspicions that her husband was
16 involved.

17 Q And why?

18 A Because if she had -- well, she is the one who
19 described this weapon, this missing knife to us,
20 she said it was missing and she indicated to us
21 that the missing knife was one of the reasons she
22 suspected her husband's involvement. Well, if I
23 had known that the knife that she described was
24 not the murder weapon, it -- I'm sure I would have
25 had concerns that she was mistaken about her



1 husband's involvement.

2 Q When you left the weekend after interviewing Linda
3 Fisher, in your mind was it your understanding or
4 view that the missing paring knife that she
5 described was the murder weapon, or likely the
6 murder weapon?

7 A I would have to say that I considered it to be a
8 distinct possibility.

9 Q Okay. And the fact that she was missing a paring
10 knife on the morning of the murder would have been
11 a factor then in you concluding that Larry Fisher
12 was either the killer or a very good suspect or
13 something of that nature?

14 A Certainly a very good suspect, but, you know, it
15 was more than the missing knife, it was what she
16 told us about his reaction when she confronted him
17 on this, and that was that Larry did not deny to
18 her that he committed the murder when she
19 suggested to him that he did, that she said he
20 just stood there and stared down at the floor or
21 away from her. I thought that was very
22 significant.

23 Q Go to the next page, please, 076285, and you'll
24 see there's a discussion here about a car, Mrs.
25 Milgaard is questioning, and then Linda Fisher



1 says:

2 "You see Larry wouldn't have had a car
3 if he did this. He would have got on
4 the bus with her."

5 Again, do you remember that being something that
6 you learned, or did you place --

7 A I don't remember her saying that. It's a shame
8 that I didn't because it would have been helpful
9 if I had had that in my mind as we proceeded in
10 the investigation from that point.

11 Q If you can then go -- and why would that be
12 helpful?

13 A Well, it would have -- I didn't realize that Linda
14 Fisher envisioned her husband possibly committing
15 this murder without a car.

16 Q And --

17 A So the car -- let me add that the car was
18 something we never quite figured out, whether, if
19 Larry was involved, whether he had a car or
20 whether he didn't have a car.

21 Q What was your belief, did you think that in order
22 to show that Larry Fisher had committed the Gail
23 Miller murder, did you think you had to connect
24 him to a car based on the evidence that you knew
25 had existed?



1 A Well, I think it was the weather that mostly
2 influenced my vision of this crime and it was hard
3 for me to imagine that anybody would or could
4 commit a rape in 40 degree below zero weather, so
5 yes, I envisioned Larry Fisher abducting this
6 woman, forcing her into a car and having her
7 remove her clothes in the car and then following
8 the act having her put her coat back on and then
9 chasing her down the alley and stabbing her. I
10 thought that this -- I mean, it made more sense to
11 me that there was a car.

12 Q And so would it be fair to say that that would be
13 a line of inquiry that you would certainly pursue,
14 is to see if you could establish that Larry Fisher
15 either had a car or access to a car that morning?

16 A Yes, we pursued that as best we could with other
17 witnesses.

18 Q Go to the next page, please, and there was a
19 reference here about her Uncle Roy Pambrun and
20 boots, work boots burned in garbage. Do you have
21 a recollection of that having significance in your
22 discussions with Linda Fisher?

23 A Yes, that was provocative information, but it, I
24 don't think it panned out.

25 Q Go to 076291, and we've been through these



1 transcripts before this Commission on other
2 occasions, so I won't go through all of this and
3 try and summarize this. There is questions of
4 Linda Fisher about I think her statement, her
5 version of events to you and Mrs. Milgaard was
6 that she waited up the night before for Larry, she
7 packed her clothes in the middle of the room
8 threatening to leave and then she woke up in the
9 morning around nine or 10 and Larry was there in
10 his good clothes, and do you remember that being
11 the general --

12 A Yes, that's what she told us as I recall.

13 Q And then there's a discussion here about whether
14 or not, I think whether he might have come home
15 and got up at 6:30 to go to work, or to go get on
16 the bus and then come home at nine or 10 in the
17 morning and be in his good clothes. Do you follow
18 this exchange?

19 A I do, yes.

20 Q And do you remember that being probed with Linda
21 Fisher?

22 A Not -- not specifically, no, but I know that we
23 spent a lot of time with her that afternoon, so
24 I'm sure we got as much -- we delved into this as
25 deeply as we could in terms of what she remembered



1 about her contacts with Larry that morning.

2 Q And she says here, Mrs. Milgaard is saying:

3 "So you have no way of knowing if he was
4 there all.. at home all night or not?"

5 Could have been there, and she says:

6 "I know he didn't... either didn't get
7 home till really really late.. but I
8 expected him to go to work. So he must
9 have.. he must have been home."

10 Do you remember that being an issue as to
11 whether -- I take it trying to identify where
12 Larry Fisher was at or around 6:45 a.m. to 7:15
13 a.m. that morning would be important?

14 A Yes, but I think we both, or at least I recognized
15 that it would be impossible based on what, the
16 fact that Linda Fisher was asleep, she would have
17 no way of knowing whether he was home at seven
18 o'clock, all she knew was that he was home when
19 she woke up at nine or so, so it was apparent to
20 me that we were not going to establish, at least
21 through Linda Fisher, what time Larry got home.

22 Q Okay. If we can go to 076292, and here's a
23 discussion about Larry's previous rapes, and Linda
24 says about going to jail, and then you say ''69
25 and '70 he was committing these other rapes', and



1 so I think you told us you would have been aware,
2 when you went into the meeting, that Larry had
3 committed previous rapes; is that right?

4 A Yes, this seems to confirm that.

5 Q Yeah. And then Mrs. Milgaard says, 'In Regina,
6 wasn't it, were you living in Regina', and then
7 'Regina and Winnipeg'; do you recall this
8 discussion about the rapes being in Regina as
9 opposed to Saskatoon, and in Winnipeg?

10 A Well umm, you know, I really don't. I don't
11 remember. I think that if I had been aware of
12 Linda Fisher telling us, if I remembered her
13 telling us that her husband had committed rapes in
14 Regina, we would have made an active effort -- we
15 would have been down there or trying to find out
16 whether these rapes were on record there, and we
17 didn't do that, so I guess I just wasn't aware of
18 that. I wasn't --

19 Q Umm --

20 A I might have assumed that they occurred somewhere
21 in Saskatoon. Umm --

22 Q Let me just pause there. I think you told us, and
23 the records show, that at this time Mrs. Milgaard
24 and her counsel would have been aware of Mr.
25 Fisher's criminal record, that we've heard some



1 evidence that the criminal record showed the '68
2 to '70 rapes in Regina, which is where Mr. Fisher
3 pled guilty, but there would have been four rapes,
4 '68 to '70, and two rapes in Winnipeg.

5 A Uh-huh.

6 Q What, did you pursue those, or --

7 A No.

8 Q -- follow up to find out what happened with those
9 at this time?

10 A Oh, I see here that Joyce Milgaard remarks that
11 'the rapes were in Regina, weren't they', she
12 says.

13 Q Yeah?

14 A And Linda Fisher, I think she says, is that
15 'uh-uh' or --

16 Q Yeah. I think, in fairness, there was some
17 confusion at this time based upon a criminal
18 record that had either been obtained by Rick
19 Pearson of the RCMP, or perhaps Mr. Asper in a
20 letter to Federal Justice, there was references to
21 them being Regina rapes. It was discovered about
22 four or five months later that they were in fact
23 Saskatoon rapes, but whether they were in Regina
24 or Saskatoon, you had said earlier that you would
25 have gone down to investigate. And at this time,



1 let's talk about March of 1990, would that have
2 been something you think ought to have been done
3 by you or others on behalf of Milgaards?

4 A You know, I can't honestly tell you, I can't say
5 where I thought these rapes had occurred, whether
6 they were -- I thought they were in Saskatoon or
7 whether I knew or I recognized, as Joyce did, that
8 they supposedly had occurred in Regina. I don't
9 know. If I was acutely aware that they -- if I
10 had benefit of the information about Regina I
11 would have suggested that we beat our feet down
12 there and pull those files.

13 Q You would have known at this time, March of 1990,
14 March 9th you would have known that Larry Fisher
15 had committed previous rapes?

16 A Yes, I would have known that, I knew that.

17 Q So, regardless of where they are, I'm trying to
18 find out whether there was a conscious decision
19 not to go pursue those, a decision to go pursue
20 those, or what. And you had earlier said, I think
21 you started off by saying, "I would have gone down
22 there or gone there and checked the files"?

23 A You know, I can't imagine that we would not have
24 wanted to, sooner than later, obtain the files on
25 these rapes. I, you know, I'm just blanking out



1 though on why, why I don't remember, umm, any
2 discussion about that or any efforts to get the
3 background. I --

4 Q Well we saw from the outline 14 months later you
5 interviewed the rape victims, --

6 A Uh-huh.

7 Q -- in April and May of 1991; correct?

8 A Yes.

9 Q And I'm just wondering; do you have a recollection
10 as to why that might not have been done in March
11 of 1990. At and around this time do you remember
12 any discussion about doing that or not doing that,
13 or having someone else for the authorities doing
14 that, anything of that nature?

15 A No, I really don't. And, you know, we were
16 talking earlier about what our first steps would
17 have been. And certainly backgrounding, getting
18 information on these rapes to compare them to the
19 Gail Miller murder, would have been one of the
20 first things that would have occurred to me to do.
21 So I just can't explain it, I just don't know why
22 that didn't happen, or why I don't have some
23 recollection of trying to get that information.

24 Q Okay. Would those have been decisions that you
25 would have made or would someone else be making



1 those decisions then?

2 A Well that, you know, you might have a point there,
3 maybe that would explain it. Because I was, I was
4 following the dots, you know. This investigation
5 was being dictated by Jim McCloskey one step at a
6 time, and at this point, of course, I was on a
7 limited-engagement one-week commitment to try and
8 find out what this new witness had to say, this
9 Linda Fisher. That was as far as the commitment
10 went. So I don't know why we didn't take on the
11 task, earlier, of trying to get to the bottom of
12 these rapes.

13 Q There's some documents or some suggestions
14 somewhere, and let me ask you this; that it may
15 have been that your week, or this trip to
16 interview Linda might have initially been that
17 that was the only thing that Centurion Ministries
18 was going to provide, is that possible?

19 A That's true, yeah, that might explain it. Maybe
20 there wasn't time to go down to the, well, would
21 you call it the courthouse here? That's what I'd
22 have done if this had happened in St. Louis, I'd
23 have been down to the courthouse trying to dig up
24 criminal files on Larry Fisher.

25 But yes, this was a limited



1 assignment, and so was the next one.

2 Q Right. And I think we'll see some documents
3 tomorrow that talk about the efforts that were
4 made to get you back for another week, that I
5 think ended up being a little longer than a week,
6 is that right?

7 A I believe it did, yes.

8 Q This might be an appropriate spot to break for the
9 day.

10 (Adjourned at 4:29 p.m.)

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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

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 our 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



\$	22336:2 'the [4] - 22327:23, 22330:6, 22334:21, 22532:11 'thick [1] - 22373:15 'this [1] - 22329:14 'uh [1] - 22532:15 'uh-uh' [1] - 22532:15 'when [1] - 22382:19	076285 [1] - 22526:23 076291 [1] - 22528:25 076292 [1] - 22530:22 077752 [1] - 22336:15	1964 [1] - 22331:13 1967 [3] - 22448:15, 22449:15, 22449:18 1968 [7] - 22319:19, 22335:5, 22419:11, 22419:12, 22419:23, 22443:11 1968-1971 [1] - 22319:4 1969 [2] - 22378:12, 22501:13 1970 [7] - 22336:24, 22340:23, 22412:21, 22419:12, 22424:14, 22444:15, 22519:19 1971 [2] - 22319:20, 22419:23 1972 [1] - 22335:5 1973 [1] - 22420:6 1976 [2] - 22422:22, 22450:20 1980 [1] - 22328:8 1980-81 [1] - 22492:19 1980s [1] - 22418:12 1981 [4] - 22423:15, 22423:19, 22424:3, 22452:5 1982 [13] - 22319:8, 22321:25, 22326:18, 22327:17, 22328:2, 22328:3, 22328:9, 22328:10, 22330:3, 22330:13, 22330:19, 22331:3, 22423:21 1985 [6] - 22448:16, 22448:21, 22448:25, 22449:15, 22449:18, 22457:22 1987 [5] - 22448:21, 22449:2, 22449:9, 22456:3, 22459:10 1988 [1] - 22456:13 1989 [1] - 22469:11 1990 [20] - 22426:19, 22447:15, 22447:23, 22457:22, 22458:20, 22460:2, 22461:12, 22489:19, 22489:20, 22489:21, 22496:10, 22516:15, 22516:18, 22517:9, 22517:14, 22518:8, 22518:10, 22533:1, 22533:13, 22534:11 1991 [31] - 22310:4, 22312:14, 22313:10, 22315:12, 22317:25, 22318:13, 22322:18, 22330:23, 22331:14, 22332:25, 22333:3, 22333:10, 22334:8,	22338:3, 22340:16, 22343:19, 22351:3, 22354:8, 22396:19, 22423:11, 22431:7, 22434:4, 22434:12, 22437:1, 22438:19, 22447:15, 22518:17, 22520:6, 22520:7, 22534:7 1992 [14] - 22343:20, 22352:13, 22357:14, 22360:2, 22360:5, 22360:16, 22362:24, 22375:18, 22404:24, 22456:22, 22463:5, 22463:7, 22470:4, 22520:17 1992-93 [1] - 22380:25 1993 [19] - 22357:25, 22364:9, 22365:9, 22371:25, 22373:16, 22373:23, 22375:4, 22375:9, 22375:14, 22375:15, 22375:25, 22377:3, 22382:5, 22383:13, 22387:21, 22408:14, 22447:20, 22447:21, 22447:23 1997 [7] - 22399:3, 22399:8, 22404:17, 22449:6, 22449:7, 22449:8, 22449:9 1998 [4] - 22398:1, 22399:4, 22404:11, 22404:21 19th [1] - 22398:1 1:30 [1] - 22428:7 1:33 [1] - 22428:14
'		1		
"	"69 [1] - 22530:24 '68 [2] - 22532:1, 22532:4 '70 [4] - 22370:20, 22530:25, 22532:2, 22532:4 '70s [3] - 22414:4, 22427:1, 22429:3 '71 [1] - 22370:20 '80s [3] - 22426:20, 22429:4, 22433:25 '82 [1] - 22328:8 '85 [1] - 22459:4 '90 [2] - 22457:7, 22459:4 '90s [1] - 22385:12 '91 [2] - 22347:10, 22433:23 '92 [4] - 22348:18, 22355:6, 22356:1, 22376:21 '93 [7] - 22362:24, 22363:6, 22379:13, 22381:13, 22382:20, 22383:14, 22405:24 '94 [1] - 22381:13 '97 [1] - 22402:13 'a/chief [1] - 22334:2 'allegations [1] - 22337:4 'as [1] - 22330:4 'at [1] - 22332:24 'concluded [1] - 22330:9 'em [1] - 22507:24 'going [1] - 22489:1 'he [1] - 22334:16 'in [2] - 22382:6, 22531:5 'it [1] - 22504:1 'members [1] - 22329:20 'no [1] - 22373:18 'on [2] - 22326:18, 22327:17 'premature [1] - 22491:18 're [1] - 22329:13 'regina [1] - 22531:7 'something [1] -	0 000263 [3] - 22318:8, 22337:11, 22419:3 000264 [1] - 22419:5 000265 [2] - 22318:23, 22421:7 000275 [1] - 22338:5 004286 [1] - 22340:19 033 [1] - 22371:23 033328 [2] - 22371:5, 22371:16 038023 [1] - 22383:21 046170 [1] - 22397:5 046173 [1] - 22397:6 05 [1] - 22354:18 052660 [1] - 22381:19 052716 [1] - 22382:2 054563 [1] - 22365:6 054567 [1] - 22372:6 054570 [1] - 22365:7 054573 [1] - 22363:5 054577 [1] - 22375:3 054581 [1] - 22379:13 054583 [1] - 22379:10 054584 [1] - 22379:6 054585 [1] - 22379:8 054586 [1] - 22405:14 054589 [1] - 22405:22 056743 [2] - 22346:23, 22436:23 056797 [1] - 22436:23 056816 [1] - 22346:25 056824 [1] - 22348:16 056826 [1] - 22349:13 056845 [1] - 22355:5 056877 [1] - 22355:24 057203 [1] - 22359:13 057204 [1] - 22356:21 057205 [1] - 22352:12 057206 [1] - 22351:2 057451 [1] - 22437:15 060934 [1] - 22360:4 061391 [1] - 22376:5 061397 [1] - 22377:22 076 [1] - 22515:4 076270 [1] - 22523:8 076281 [1] - 22523:15	10 [9] - 22311:4, 22354:21, 22360:21, 22371:22, 22465:2, 22466:5, 22468:1, 22515:15 10 [13] - 22313:20, 22314:21, 22318:3, 22319:7, 22319:8, 22321:25, 22330:10, 22427:21, 22466:15, 22478:16, 22511:16, 22529:9, 22529:16 10-year [7] - 22313:23, 22314:16, 22314:19, 22317:14, 22317:17, 22319:12, 22322:4 10-year-old [1] - 22314:3 10173/68 [1] - 22338:16 10th [2] - 22348:18, 22349:9 11 [1] - 22333:8 111 [1] - 22305:22 11435/68 [1] - 22338:17 11:05 [1] - 22405:8 11:27 [1] - 22405:9 11th [1] - 22516:18 12 [1] - 22332:24 12:06 [1] - 22428:13 12th [1] - 22334:2 1300 [1] - 22462:9 13th [3] - 22336:16, 22355:6, 22419:11 14 [4] - 22430:20, 22515:17, 22516:2, 22534:4 14th [2] - 22356:22, 22520:11 15 [3] - 22399:4, 22427:21, 22430:21 150 [1] - 22335:6 16 [2] - 22372:16, 22406:5 16-year-old [1] - 22446:8 16th [1] - 22363:6 17 [3] - 22372:17, 22406:5, 22451:1 170805 [1] - 22397:25 18 [1] - 22442:4 19 [1] - 22385:11 1960 [1] - 22448:9	2 2 [3] - 22354:22, 22360:25, 22516:14 20 [1] - 22396:21 2002 [1] - 22463:15 2006 [1] - 22305:21 20th [1] - 22334:8 21st [2] - 22419:10, 22419:12 220340 [1] - 22335:24 220387 [1] - 22310:5 22139 [2] - 22433:19, 22433:20 22140 [1] - 22433:20 22149 [1] - 22434:10 22310 [1] - 22308:4 22410 [1] - 22308:5 22415 [1] - 22308:6 22418 [1] - 22308:7



<p>22440 [1] - 22308:8 22446 [1] - 22308:10 226702 [2] - 22312:12, 22312:14 22nd [1] - 22437:1 23 [2] - 22446:7, 22448:16 24th [4] - 22305:21, 22489:21, 22517:14, 22518:8 25 [1] - 22465:9 25-26 [1] - 22383:12 250 [1] - 22341:23 26 [2] - 22326:18, 22327:17 268 [1] - 22422:20 26th [4] - 22328:2, 22347:10, 22360:20, 22489:19 270 [2] - 22424:7 271 [2] - 22424:7, 22424:17 273 [2] - 22425:23, 22426:14 274 [1] - 22426:15 276 [1] - 22428:1 277 [2] - 22428:23, 22429:17 27th [1] - 22518:17 284 [1] - 22429:14 28th [2] - 22496:10, 22520:6 29 [2] - 22333:3, 22333:10 29th [8] - 22313:10, 22318:13, 22333:15, 22365:9, 22382:5, 22419:12, 22437:14, 22438:18 2:57 [1] - 22485:18</p>	<p>330854 [1] - 22322:16 331214 [2] - 22383:11, 22406:19 331317 [1] - 22383:25 331320 [1] - 22388:6 331334 [1] - 22389:24 331335 [2] - 22406:17, 22406:20 332 [1] - 22493:22 333207 [1] - 22493:22 3:22 [1] - 22485:19</p>	<p>985 [1] - 22463:17 9:05 [1] - 22309:2 9:35 [1] - 22365:21 9th [3] - 22375:18, 22382:20, 22533:14</p>	<p>22369:12, 22373:7, 22382:14, 22382:18, 22383:3, 22385:18, 22385:20, 22386:10, 22386:16, 22397:23, 22401:19, 22494:10, 22513:18 accurately [2] - 22366:20, 22379:2 accusing [1] - 22367:4 acknowledge [2] - 22368:21, 22382:9 acknowledged [1] - 22313:15 acquaintances [1] - 22417:9 acquainted [1] - 22507:16 acquire [1] - 22451:11 acquired [1] - 22472:24 act [3] - 22367:5, 22377:24, 22528:8 Act [9] - 22314:22, 22327:20, 22333:8, 22416:22, 22444:19, 22444:21, 22445:12, 22445:23, 22446:3 acting [1] - 22337:3 active [2] - 22466:15, 22531:14 actual [1] - 22435:15 acutely [1] - 22533:9 add [4] - 22476:20, 22492:6, 22501:2, 22527:17 added [1] - 22311:21 addition [3] - 22312:25, 22400:24, 22493:8 additional [2] - 22386:25, 22463:13 address [2] - 22407:24, 22409:14 Adjourned [4] - 22405:8, 22428:13, 22485:18, 22536:10 administration [7] - 22326:25, 22329:21, 22331:22, 22366:25, 22368:12, 22418:11, 22451:6 administrative [1] - 22436:9 admit [1] - 22487:18 admitted [5] - 22424:18, 22425:2, 22453:17, 22469:21, 22471:1 adv [1] - 22366:24 advancing [1] - 22352:3 advice [8] - 22350:24,</p>	<p>22359:10, 22359:12, 22377:19, 22382:10, 22417:20, 22417:24, 22418:1 advise [1] - 22353:17 advised [14] - 22334:16, 22356:4, 22357:21, 22361:19, 22364:20, 22367:16, 22368:22, 22369:5, 22369:9, 22370:7, 22371:3, 22407:20, 22427:11, 22436:9 advises [2] - 22366:5, 22405:25 advocacy [8] - 22465:16, 22492:8, 22492:15, 22492:16, 22492:18, 22493:3, 22493:5 advocate [2] - 22493:17, 22493:19 affiliated [1] - 22447:10 afraid [1] - 22494:23 afternoon [6] - 22416:4, 22428:16, 22440:21, 22447:1, 22447:3, 22529:23 age [1] - 22447:8 agencies [2] - 22475:2, 22483:3 agency [3] - 22337:2, 22447:11, 22449:2 agenda [3] - 22509:17, 22509:20, 22512:4 ago [12] - 22334:11, 22334:22, 22338:1, 22392:8, 22396:22, 22410:25, 22427:21, 22442:9, 22462:3, 22470:20, 22488:22, 22494:5 agree [23] - 22330:16, 22330:20, 22332:14, 22340:9, 22342:24, 22361:25, 22391:20, 22418:12, 22419:5, 22423:19, 22424:10, 22424:13, 22424:14, 22424:21, 22434:2, 22434:5, 22434:19, 22434:23, 22437:8, 22440:10, 22482:2, 22484:5, 22484:22 agreed [8] - 22360:20, 22374:21, 22396:10, 22399:17, 22424:23, 22470:21, 22497:23, 22499:25 agreeing [1] - 22447:2</p>								
<p>3</p>	<p>4</p>	<p>A</p>										
<p>3 [2] - 22360:5, 22368:13 30 [2] - 22328:17, 22444:8 300,000 [1] - 22423:7 30th [5] - 22309:18, 22310:4, 22351:3, 22375:4, 22379:1 31 [1] - 22378:12 31-year-old [1] - 22453:3 31st [2] - 22309:19, 22501:12 330778 [2] - 22322:9, 22332:16 330803 [1] - 22332:17</p>	<p>40 [2] - 22501:11, 22528:4 4:29 [1] - 22536:10 4th [2] - 22489:20, 22517:9</p>	<p>A's [1] - 22384:2 A'chief [2] - 22333:1, 22335:8 abducted [2] - 22501:10, 22513:5 abducting [1] - 22528:5 Abels [2] - 22468:14, 22469:1 Abels' [1] - 22468:25 ability [2] - 22466:3, 22537:7 able [14] - 22309:12, 22309:13, 22315:1, 22339:10, 22339:12, 22350:4, 22384:25, 22399:7, 22401:24, 22402:19, 22442:11, 22451:3, 22499:12, 22514:22 absence [1] - 22440:22 absolute [1] - 22460:20 absolutely [3] - 22362:3, 22373:22, 22413:24 Absolutely [9] - 22336:14, 22389:23, 22421:5, 22459:8, 22463:24, 22477:1, 22480:22, 22486:5, 22488:25 absorbed [1] - 22460:19 access [6] - 22368:15, 22379:19, 22422:1, 22423:25, 22514:25, 22528:15 accessed [1] - 22349:19 accident [1] - 22430:24 accommodation [1] - 22309:17 accompany [1] - 22496:7 accordance [1] - 22419:14 according [4] - 22349:13, 22352:4, 22357:25, 22392:3 account [2] - 22465:7 accurate [15] - 22319:18, 22368:5,</p>	<p>5</p>	<p>5 [1] - 22518:25 50 [1] - 22469:2 52 [1] - 22453:18</p>	<p>6</p>	<p>6 [3] - 22399:3, 22399:8, 22520:17 67 [1] - 22447:9 6:30 [2] - 22457:15, 22529:15 6:45 [1] - 22530:12 6th [3] - 22312:14, 22313:12, 22317:25</p>	<p>7</p>	<p>75 [1] - 22469:2 7:15 [1] - 22530:12 7th [2] - 22356:1, 22379:13</p>	<p>8</p>	<p>8th [2] - 22352:13, 22520:7</p>	<p>9</p>	<p>9 [1] - 22516:18 90 [2] - 22328:8 93-11-19 [1] - 22380:1</p>



<p>agreement [16] - 22358:22, 22393:3, 22399:2, 22399:7, 22399:9, 22399:13, 22399:14, 22399:17, 22399:18, 22400:3, 22400:5, 22400:7, 22400:11, 22407:18, 22408:25, 22425:9</p> <p>ahead [9] - 22340:18, 22343:18, 22348:16, 22349:12, 22351:2, 22360:4, 22364:16, 22423:4, 22429:13</p> <p>Albert [10] - 22378:22, 22489:20, 22491:4, 22507:18, 22508:11, 22508:16, 22510:11, 22517:7, 22517:15, 22521:23</p> <p>Alberta [2] - 22381:16, 22461:24</p> <p>alert [1] - 22485:7</p> <p>alerted [1] - 22485:4</p> <p>Alexander [1] - 22307:12</p> <p>aligned [1] - 22410:4</p> <p>allegation [4] - 22333:22, 22337:14, 22358:4, 22359:5</p> <p>Allegations [1] - 22381:21</p> <p>allegations [7] - 22333:2, 22333:9, 22335:16, 22360:9, 22383:19, 22442:19, 22507:19</p> <p>alleged [2] - 22373:4, 22381:1</p> <p>alleging [2] - 22390:7, 22455:20</p> <p>alley [4] - 22501:10, 22508:6, 22514:19, 22528:9</p> <p>alleys [1] - 22513:7</p> <p>allow [2] - 22346:7, 22367:20</p> <p>allowing [1] - 22451:6</p> <p>allows [1] - 22461:10</p> <p>almost [1] - 22485:1</p> <p>alone [1] - 22393:4</p> <p>altered [1] - 22429:16</p> <p>amazed [1] - 22353:7</p> <p>amount [2] - 22416:6, 22416:8</p> <p>analysis [1] - 22363:9</p> <p>Angeles [1] - 22456:12</p> <p>angry [5] - 22346:1, 22346:12, 22346:16, 22374:2, 22374:7</p>	<p>annoyed [1] - 22346:1</p> <p>anonymous [4] - 22441:23, 22442:11, 22442:14, 22496:12</p> <p>anonymously [1] - 22441:3</p> <p>answer [6] - 22368:23, 22369:1, 22424:24, 22443:15, 22464:19, 22485:15</p> <p>answering [1] - 22374:25</p> <p>answers [2] - 22380:13, 22384:2</p> <p>anxious [2] - 22484:10, 22484:12</p> <p>anyway [1] - 22475:8</p> <p>apart [2] - 22354:2, 22521:7</p> <p>apartment [3] - 22461:4, 22468:19, 22502:17</p> <p>apologies [1] - 22350:17</p> <p>apologize [2] - 22341:14, 22405:6</p> <p>apparent [2] - 22311:11, 22530:19</p> <p>appeal [4] - 22478:13, 22479:24, 22500:24, 22501:5</p> <p>appealed [2] - 22496:3, 22505:10</p> <p>appeals [3] - 22462:23, 22465:4, 22465:6</p> <p>appear [7] - 22364:8, 22372:11, 22388:2, 22392:4, 22419:22, 22426:19, 22439:23</p> <p>appearance [1] - 22495:15</p> <p>appearances [1] - 22521:7</p> <p>Appearances [1] - 22307:1</p> <p>appeared [4] - 22368:11, 22436:6, 22438:17, 22521:4</p> <p>appellants [2] - 22462:15</p> <p>Appleby [22] - 22312:15, 22312:18, 22312:23, 22313:1, 22313:5, 22314:8, 22315:3, 22317:13, 22317:15, 22330:24, 22341:19, 22342:5, 22342:20, 22343:10, 22343:12, 22431:16, 22431:17, 22431:18,</p>	<p>22431:23, 22437:16, 22440:7, 22440:9</p> <p>applicable [1] - 22349:6</p> <p>applicants [2] - 22464:8, 22464:10</p> <p>application [11] - 22309:8, 22309:17, 22336:20, 22343:23, 22465:21, 22515:16, 22515:19, 22515:25, 22516:2, 22518:18, 22520:11</p> <p>Application [4] - 22347:14, 22347:19, 22351:11, 22356:7</p> <p>apply [1] - 22432:23</p> <p>appreciate [4] - 22333:19, 22339:11, 22434:22, 22442:10</p> <p>approach [3] - 22351:21, 22421:25, 22512:11</p> <p>approached [1] - 22376:17</p> <p>appropriate [4] - 22348:4, 22405:3, 22485:17, 22536:8</p> <p>April [3] - 22518:19, 22518:20, 22534:7</p> <p>area [2] - 22449:20, 22479:4</p> <p>areas [4] - 22369:4, 22376:8, 22394:21, 22461:9</p> <p>argument [2] - 22409:1, 22481:22</p> <p>arise [1] - 22409:12</p> <p>armed [2] - 22420:23, 22513:11</p> <p>army [1] - 22448:8</p> <p>arose [1] - 22418:12</p> <p>arranged [1] - 22349:17</p> <p>arrangements [1] - 22374:15</p> <p>arrest [1] - 22452:7</p> <p>arrested [1] - 22513:3</p> <p>arrival [1] - 22515:17</p> <p>arrived [1] - 22503:5</p> <p>arriving [1] - 22502:3</p> <p>article [18] - 22310:6, 22311:3, 22311:25, 22312:14, 22313:9, 22313:11, 22317:12, 22318:12, 22333:3, 22333:4, 22333:16, 22335:23, 22335:24, 22340:20, 22341:18, 22342:17, 22343:5, 22437:14</p> <p>articles [6] - 22310:3,</p>	<p>22340:19, 22438:17, 22440:6, 22453:14, 22487:3</p> <p>ascertain [1] - 22505:18</p> <p>aside [3] - 22386:5, 22511:13, 22515:25</p> <p>asleep [1] - 22530:16</p> <p>aspect [2] - 22348:5, 22356:19</p> <p>Asper [115] - 22312:7, 22318:11, 22324:1, 22325:4, 22325:5, 22325:13, 22326:2, 22330:24, 22344:4, 22344:7, 22344:15, 22344:17, 22344:18, 22344:20, 22345:10, 22346:4, 22346:15, 22346:17, 22346:23, 22348:23, 22349:21, 22349:24, 22349:25, 22350:5, 22350:6, 22350:7, 22351:4, 22352:6, 22352:9, 22352:13, 22353:5, 22354:1, 22354:4, 22354:11, 22354:19, 22355:8, 22355:13, 22355:16, 22356:3, 22356:4, 22356:10, 22356:25, 22357:12, 22357:16, 22357:19, 22358:11, 22359:6, 22359:13, 22359:25, 22361:4, 22361:19, 22365:1, 22366:10, 22369:17, 22369:18, 22369:24, 22370:2, 22376:14, 22376:21, 22376:23, 22377:4, 22377:8, 22382:20, 22383:2, 22383:7, 22384:13, 22386:7, 22386:23, 22391:7, 22393:3, 22397:14, 22397:15, 22397:18, 22398:21, 22399:16, 22399:21, 22415:20, 22416:18, 22417:5, 22417:25, 22418:1, 22418:14, 22418:19, 22419:20, 22432:1, 22432:4, 22432:7, 22432:12, 22433:7, 22433:14, 22433:15, 22434:3, 22434:6, 22434:20, 22436:21, 22439:6, 22441:7, 22441:10, 22443:3, 22443:7, 22445:21,</p>	<p>22496:11, 22510:20, 22521:11, 22521:14, 22521:15, 22521:20, 22522:2, 22522:6, 22532:19</p> <p>Asper's [3] - 22353:2, 22356:25, 22523:4</p> <p>assailant [1] - 22514:12</p> <p>assault [2] - 22419:6, 22419:9</p> <p>assaulted [1] - 22310:17</p> <p>assaults [7] - 22419:10, 22419:16, 22419:18, 22424:18, 22513:6, 22513:11, 22518:22</p> <p>assessing [1] - 22471:5</p> <p>assessment [3] - 22467:18, 22471:11, 22474:14</p> <p>assigned [5] - 22335:3, 22341:24, 22459:15, 22460:14, 22496:6</p> <p>assigning [1] - 22501:20</p> <p>assignment [1] - 22536:1</p> <p>assist [7] - 22323:3, 22324:12, 22352:2, 22366:11, 22401:12, 22496:21, 22497:20</p> <p>assistance [5] - 22326:6, 22351:21, 22357:10, 22381:9, 22488:19</p> <p>Assistant [3] - 22306:5, 22306:6, 22381:25</p> <p>assisted [1] - 22447:16</p> <p>assisting [2] - 22343:21, 22482:7</p> <p>assists [1] - 22404:14</p> <p>associated [2] - 22320:7, 22386:8</p> <p>association [2] - 22448:5, 22456:4</p> <p>assume [9] - 22319:17, 22362:5, 22383:1, 22385:16, 22386:5, 22464:4, 22475:16, 22475:21, 22475:23</p> <p>assumed [3] - 22326:13, 22501:4, 22531:20</p> <p>assuming [5] - 22361:24, 22431:2, 22434:11, 22479:6, 22484:21</p> <p>Assuming [1] - 22362:15</p> <p>assumption [2] -</p>
---	--	--	--	--



<p>22412:5, 22413:7 assure [1] - 22353:20 atmosphere [2] - 22487:20, 22488:20 attached [3] - 22322:12, 22333:5, 22335:19 Attached [1] - 22351:10 attack [2] - 22311:6, 22312:9 attempt [4] - 22365:15, 22430:9, 22454:22, 22477:25 attempted [1] - 22363:11 attend [1] - 22349:17 attended [1] - 22312:23 attention [17] - 22310:15, 22329:22, 22419:5, 22421:6, 22421:8, 22421:9, 22422:19, 22424:6, 22424:8, 22425:3, 22425:14, 22426:13, 22427:25, 22428:21, 22429:11, 22436:22, 22523:22 Attorney [3] - 22381:16, 22381:23, 22426:2 attorney [4] - 22425:8, 22472:17, 22473:12, 22477:11 attorney's [4] - 22473:23, 22482:19, 22483:6, 22484:2 attorneys [2] - 22477:12, 22477:15 attributable [1] - 22443:21 attributed [2] - 22314:7, 22373:24 attributes [1] - 22396:5 audience [1] - 22453:7 Audio [1] - 22306:13 August [18] - 22310:4, 22313:10, 22318:13, 22333:3, 22333:10, 22333:15, 22334:8, 22338:3, 22340:15, 22354:8, 22399:3, 22399:8, 22436:25, 22437:14, 22438:18, 22463:15, 22520:7, 22520:10 authenticate [1] - 22379:23 authored [1] - 22518:15 authorities [4] - 22471:2, 22486:4, 22487:23, 22534:13 available [2] -</p>	<p>22384:21, 22384:24 average [4] - 22442:1, 22478:13, 22483:1, 22484:23 awarded [1] - 22453:20 aware [76] - 22314:18, 22314:25, 22318:5, 22318:7, 22318:10, 22318:14, 22319:16, 22319:19, 22320:1, 22321:20, 22322:5, 22330:23, 22330:25, 22331:3, 22339:23, 22341:3, 22343:18, 22345:9, 22346:4, 22346:17, 22347:4, 22347:7, 22347:9, 22350:7, 22350:18, 22352:9, 22354:23, 22355:1, 22357:12, 22357:19, 22358:4, 22358:10, 22358:13, 22359:4, 22359:16, 22362:23, 22364:9, 22364:18, 22367:1, 22367:5, 22368:18, 22381:12, 22401:16, 22403:25, 22412:17, 22412:19, 22418:21, 22418:25, 22439:4, 22439:5, 22444:19, 22456:9, 22476:8, 22484:2, 22484:25, 22493:14, 22493:15, 22498:21, 22500:17, 22507:21, 22511:19, 22512:15, 22515:16, 22515:20, 22515:22, 22515:24, 22524:21, 22524:22, 22524:23, 22525:7, 22531:1, 22531:11, 22531:17, 22531:24, 22533:9 awful [1] - 22380:22</p>	<p>22364:12, 22370:20, 22394:11, 22408:7, 22440:7, 22468:24, 22480:8, 22493:1, 22497:24, 22504:11, 22505:20, 22511:7, 22513:19, 22515:10, 22520:12, 22522:14, 22524:5, 22527:24, 22530:15, 22532:17 basement [2] - 22508:10, 22512:17 basis [17] - 22359:24, 22394:12, 22410:2, 22432:11, 22438:4, 22449:4, 22449:11, 22459:14, 22462:14, 22481:5, 22490:23, 22492:9, 22495:5, 22504:17, 22506:10 bathroom [1] - 22503:8 bearing [1] - 22478:1 beat [1] - 22533:11 became [15] - 22318:13, 22331:9, 22340:21, 22364:9, 22412:19, 22441:6, 22452:1, 22455:9, 22456:9, 22460:19, 22479:1, 22495:10, 22495:11, 22508:13, 22508:21 become [17] - 22339:23, 22343:18, 22357:12, 22362:23, 22367:23, 22381:12, 22404:24, 22448:17, 22460:14, 22460:23, 22468:16, 22476:8, 22484:2, 22486:22, 22492:8, 22515:16, 22515:24 becoming [1] - 22341:3 bedroom [1] - 22476:13 bedrooms [1] - 22461:3 began [7] - 22423:14, 22448:8, 22448:23, 22449:3, 22453:11, 22456:4, 22495:14 begin [1] - 22462:16 beginning [3] - 22404:6, 22416:21, 22491:16 behalf [22] - 22346:6, 22357:14, 22377:24, 22378:1, 22380:18, 22389:21, 22391:22, 22399:22, 22408:11, 22409:4, 22428:22, 22446:10, 22447:12, 22455:22, 22483:23,</p>	<p>22485:3, 22485:25, 22486:8, 22487:13, 22492:19, 22521:1, 22533:3 Beitel [1] - 22306:9 belief [4] - 22337:24, 22489:7, 22507:3, 22527:21 beliefs [1] - 22378:21 believable [1] - 22413:25 believes [5] - 22349:1, 22349:10, 22407:20, 22464:9, 22465:15 bell [1] - 22310:7 belonged [1] - 22341:25 below [2] - 22501:12, 22528:4 Bench [4] - 22537:1, 22537:3, 22537:14, 22537:20 beneath [2] - 22514:1, 22525:9 beneficiaries [1] - 22494:8 benefit [4] - 22472:18, 22498:9, 22499:9, 22533:10 Benjamin [1] - 22485:4 Bessborough [1] - 22305:16 best [14] - 22342:14, 22361:17, 22390:16, 22433:21, 22438:24, 22465:18, 22465:19, 22466:3, 22466:9, 22468:2, 22472:22, 22486:18, 22528:16, 22537:6 betraying [1] - 22458:14 better [8] - 22323:13, 22420:8, 22420:11, 22458:6, 22465:17, 22506:5, 22509:13, 22513:15 between [11] - 22317:3, 22326:2, 22346:22, 22384:4, 22393:10, 22410:17, 22410:22, 22412:15, 22414:17, 22523:9 big [3] - 22316:22, 22420:23, 22457:19 bill [1] - 22400:14 Bill [4] - 22322:13, 22322:16, 22327:5, 22347:11 bit [21] - 22310:10,</p>	<p>22332:2, 22337:12, 22360:7, 22382:15, 22388:9, 22410:21, 22447:25, 22452:23, 22457:10, 22459:3, 22459:21, 22489:15, 22497:5, 22500:9, 22500:11, 22501:8, 22501:9, 22503:15, 22519:7, 22520:6 bitter [1] - 22470:24 bizarre [2] - 22336:2, 22508:19 blacked [2] - 22323:16, 22351:15 blacked-out [1] - 22323:16 blanking [1] - 22533:25 blanks [1] - 22476:2 blind [1] - 22469:8 block [1] - 22508:5 blocks [1] - 22508:5 blood [1] - 22496:15 blue [1] - 22494:15 Board [5] - 22332:18, 22332:21, 22332:25, 22333:4, 22335:19 board [4] - 22333:6, 22334:3, 22334:16, 22335:11 Bob [4] - 22349:1, 22349:10, 22350:8, 22419:4 Bobs [1] - 22307:4 body [1] - 22514:1 boils [1] - 22425:25 bone [1] - 22461:22 book [1] - 22457:19 books [2] - 22314:20 boots [2] - 22528:20 boss [4] - 22342:10, 22348:6, 22510:8, 22519:17 Boston [1] - 22463:12 Boswell [1] - 22306:4 bottom [8] - 22324:13, 22342:21, 22384:1, 22397:13, 22424:7, 22426:14, 22493:25, 22535:11 bought [1] - 22414:24 boxed [1] - 22317:1 boy [3] - 22446:8, 22469:5, 22503:9 Boychuk [1] - 22307:7 brainer [1] - 22511:1 breach [2] - 22416:14, 22416:15 break [11] - 22384:19, 22385:1, 22395:4,</p>
<p>B</p>				
	<p>background [8] - 22364:15, 22383:18, 22448:1, 22448:3, 22495:16, 22499:17, 22516:13, 22534:3 backgrounding [1] - 22534:17 bag [1] - 22502:19 Bailey [1] - 22309:14 base [1] - 22320:4 based [23] - 22315:9, 22317:25, 22337:20,</p>			



22397:9, 22400:7, 22405:3, 22428:7, 22428:10, 22485:17, 22485:21, 22536:8 Breckenridge [1] - 22360:22 brief [2] - 22312:4, 22410:6 briefly [5] - 22312:2, 22361:12, 22428:17, 22451:24, 22452:12 bright [1] - 22434:16 bring [3] - 22391:18, 22436:5, 22480:16 brings [1] - 22365:19 British [1] - 22517:7 brochure [3] - 22494:14, 22494:15, 22495:6 broke [1] - 22400:4 brother [1] - 22522:13 brothers [2] - 22522:4, 22522:9 brought [6] - 22310:14, 22335:22, 22407:2, 22407:4, 22468:13, 22484:3 brown [2] - 22523:24, 22525:7 brown-handled [1] - 22523:24 Bruce [1] - 22307:8 Bucknell [1] - 22460:5 budget [1] - 22461:10 building [1] - 22389:18 Bullshit [1] - 22373:6 bullshit [2] - 22373:19, 22374:9 burned [1] - 22528:20 bus [2] - 22527:4, 22529:16 business [3] - 22444:2, 22460:10, 22478:3 businessman [1] - 22460:6	Caldwell [1] - 22307:4 Calgary [1] - 22412:11 Calvin [1] - 22307:12 Campbell [1] - 22518:18 Canada [13] - 22307:11, 22352:23, 22417:16, 22461:18, 22480:19, 22490:14, 22496:20, 22498:4, 22500:12, 22500:17, 22500:18, 22502:3, 22521:6 Canadian [2] - 22456:20, 22493:2 Candace [1] - 22306:3 Cando [3] - 22489:4, 22503:5, 22503:6 cannot [1] - 22371:21 canvass [1] - 22405:5 capacity [2] - 22449:11, 22457:1 caption [1] - 22328:23 car [24] - 22414:5, 22444:13, 22454:19, 22514:11, 22514:13, 22514:14, 22514:16, 22514:18, 22514:21, 22514:25, 22526:24, 22527:2, 22527:15, 22527:17, 22527:19, 22527:20, 22527:24, 22528:6, 22528:7, 22528:11, 22528:15 card [10] - 22323:7, 22326:9, 22339:2, 22339:10, 22339:13, 22339:20, 22354:8, 22362:18, 22423:9, 22435:4 cards [5] - 22422:11, 22422:12, 22423:1, 22423:5, 22423:11 care [1] - 22477:12 career [4] - 22446:1, 22446:4, 22448:8, 22449:25 carry [3] - 22338:19, 22355:4, 22498:19 carrying [3] - 22310:9, 22388:7, 22389:24 case [112] - 22311:14, 22313:17, 22320:23, 22321:1, 22327:24, 22341:24, 22351:9, 22353:3, 22372:8, 22394:6, 22395:10, 22406:2, 22406:11, 22408:22, 22410:4, 22442:20, 22442:21, 22449:4, 22449:13, 22452:6, 22453:21, 22454:3, 22454:6, 22454:25, 22455:5, 22456:12, 22456:14, 22456:18, 22457:3, 22457:7, 22457:23, 22458:4, 22459:14, 22459:18, 22461:17, 22461:23, 22461:24, 22462:4, 22462:18, 22462:25, 22463:7, 22464:18, 22466:13, 22467:4, 22468:5, 22468:6, 22468:13, 22469:25, 22470:6, 22471:13, 22471:21, 22471:24, 22471:25, 22472:16, 22473:10, 22474:8, 22474:19, 22475:12, 22478:2, 22478:10, 22479:2, 22479:6, 22479:14, 22480:24, 22481:22, 22482:4, 22482:14, 22483:1, 22483:9, 22484:18, 22484:25, 22485:10, 22486:10, 22486:14, 22486:23, 22488:1, 22488:9, 22488:17, 22489:2, 22490:5, 22491:6, 22492:1, 22492:6, 22492:12, 22492:20, 22493:1, 22493:22, 22495:9, 22495:12, 22495:14, 22495:22, 22496:24, 22497:7, 22497:13, 22497:15, 22498:5, 22500:12, 22502:14, 22505:9, 22505:14, 22507:10, 22507:11, 22507:12, 22507:15, 22509:9, 22509:16, 22509:20, 22513:7, 22513:8, 22516:12 case-by-case [2] - 22449:4, 22459:14 cases [34] - 22362:6, 22455:16, 22457:25, 22458:8, 22458:11, 22459:8, 22459:15, 22461:11, 22461:18, 22462:6, 22462:7, 22464:6, 22464:23, 22465:15, 22465:18, 22465:19, 22467:14, 22467:22, 22468:3, 22468:12, 22469:20, 22469:23, 22471:8, 22476:6, 22477:15, 22481:18, 22485:23,	22485:24, 22486:7, 22486:25, 22490:3, 22494:18, 22497:6 cast [1] - 22451:5 categories [1] - 22422:9 category [1] - 22435:22 Catherine [1] - 22307:4 caused [2] - 22327:11, 22509:1 causes [2] - 22389:10, 22468:11 causing [1] - 22452:23 Cavalier [1] - 22412:13 cell [2] - 22469:10, 22472:21 Central [9] - 22316:25, 22354:7, 22431:3, 22434:24, 22435:8, 22435:22, 22436:8, 22438:5 central [17] - 22320:15, 22320:25, 22321:1, 22321:11, 22323:5, 22326:13, 22331:8, 22340:14, 22375:12, 22419:21, 22420:18, 22421:3, 22421:16, 22421:19, 22421:21, 22422:1, 22423:10 Centurion [78] - 22323:15, 22344:9, 22347:16, 22357:23, 22363:16, 22364:10, 22366:8, 22367:17, 22367:23, 22368:11, 22369:2, 22372:25, 22373:4, 22373:12, 22375:7, 22377:9, 22379:15, 22382:8, 22408:7, 22408:11, 22408:13, 22447:11, 22448:2, 22448:6, 22449:5, 22449:6, 22449:12, 22456:4, 22456:15, 22457:1, 22457:3, 22457:4, 22459:9, 22459:12, 22459:21, 22459:23, 22460:1, 22460:4, 22461:6, 22461:14, 22462:7, 22462:13, 22463:21, 22464:8, 22464:14, 22465:15, 22466:23, 22467:8, 22467:14, 22468:13, 22468:16, 22469:15, 22471:24, 22473:22, 22478:25, 22486:13, 22490:2, 22494:7,	22495:5, 22495:11, 22495:25, 22496:4, 22497:4, 22497:8, 22497:16, 22498:1, 22500:5, 22500:7, 22505:11, 22509:8, 22509:11, 22510:14, 22510:15, 22517:4, 22518:10, 22520:13, 22523:2, 22535:17 certain [15] - 22318:3, 22333:20, 22342:25, 22345:20, 22350:4, 22350:12, 22366:18, 22371:19, 22376:15, 22384:18, 22400:23, 22402:17, 22414:22, 22422:24, 22507:19 certainly [39] - 22321:19, 22325:16, 22332:12, 22340:8, 22340:10, 22340:11, 22343:11, 22344:15, 22350:6, 22376:4, 22388:3, 22393:1, 22406:15, 22407:12, 22408:8, 22409:9, 22416:15, 22426:12, 22443:3, 22444:11, 22444:20, 22444:22, 22445:14, 22445:20, 22445:25, 22455:1, 22473:2, 22475:3, 22487:9, 22488:4, 22489:9, 22493:16, 22499:25, 22514:2, 22514:15, 22515:23, 22524:6, 22528:13, 22534:17 Certainly [4] - 22313:3, 22331:4, 22340:17, 22526:14 Certificates [1] - 22537:1 certify [1] - 22537:4 chain [1] - 22453:4 chair [1] - 22470:14 chairman [5] - 22349:2, 22349:11, 22349:23, 22350:8, 22350:19 Chairman [1] - 22332:21 challenge [1] - 22484:21 challenging [1] - 22500:22 chance [2] - 22318:18, 22471:16 chances [1] - 22477:9 changed [3] - 22460:22,
C			
Cadrain [19] - 22378:22, 22413:22, 22489:19, 22491:4, 22491:5, 22504:13, 22507:18, 22508:11, 22508:17, 22510:12, 22511:2, 22512:17, 22517:7, 22517:15, 22521:23, 22522:4, 22522:9 Cadrain's [1] - 22489:21 cadre [1] - 22462:12			



<p>22506:12, 22508:22 changes [2] - 22420:18, 22451:13 Charge[1] - 22382:1 charge [11] - 22329:1, 22338:11, 22375:12, 22417:1, 22445:1, 22445:15, 22445:16, 22445:17, 22445:19, 22454:12, 22454:24 chargeable [1] - 22445:22 charged [5] - 22329:21, 22417:11, 22418:3, 22448:20, 22455:16 charges [8] - 22416:22, 22424:24, 22425:3, 22425:5, 22425:10, 22444:17, 22444:19, 22444:21 Chartier[13] - 22402:3, 22402:15, 22410:15, 22410:23, 22411:4, 22411:11, 22411:13, 22411:20, 22412:18, 22413:2, 22414:16, 22414:19, 22414:23 chase [2] - 22397:3, 22418:17 chasing [1] - 22528:9 cheating [1] - 22450:9 check [4] - 22334:12, 22405:4, 22466:1, 22482:11 checked [6] - 22334:10, 22349:21, 22419:21, 22422:7, 22486:4, 22533:22 checks [1] - 22422:4 Chief[4] - 22326:25, 22342:10, 22342:13, 22343:2 chief [7] - 22327:18, 22327:24, 22328:11, 22328:15, 22337:3, 22364:6, 22393:24 Chris[1] - 22307:7 Christian[1] - 22495:18 chronology [3] - 22313:10, 22346:24, 22515:6 church [2] - 22460:14, 22469:4 circulation [2] - 22494:14, 22494:16 circumstances [6] - 22489:13, 22504:19, 22507:21, 22508:20, 22513:3, 22516:11 citing [1] - 22344:18</p>	<p>citizenry [1] - 22490:13 city [4] - 22317:13, 22347:17, 22368:13, 22482:23 City[9] - 22313:14, 22319:5, 22348:24, 22349:7, 22366:25, 22381:22, 22393:12, 22417:22, 22437:2 civilian [2] - 22338:11, 22438:10 civilians [1] - 22400:16 claim [4] - 22466:25, 22467:11, 22471:5, 22498:7 claimed [2] - 22454:18, 22467:19 claiming [1] - 22464:2 claims [1] - 22379:17 clarify [2] - 22354:4, 22408:2 clear [6] - 22374:10, 22378:8, 22408:3, 22437:21, 22449:15, 22466:4 clearly [1] - 22388:12 clerk [1] - 22339:20 Clerk[1] - 22306:9 client [5] - 22413:15, 22479:22, 22481:6, 22485:3, 22487:21 clients [3] - 22413:11, 22466:14 Cliff[3] - 22505:1, 22516:20, 22516:22 climate [1] - 22363:19 close [3] - 22452:19, 22507:23, 22514:19 closely [1] - 22390:25 clothes [5] - 22496:15, 22528:7, 22529:7, 22529:10, 22529:17 Cm[1] - 22469:19 coal [1] - 22470:3 coast [1] - 22450:24 coat [1] - 22528:8 coaxing [1] - 22454:11 code [1] - 22416:11 Code[3] - 22319:6, 22319:13, 22319:15 coffee [2] - 22361:12, 22386:3 Coleman[3] - 22470:2, 22470:10, 22470:23 collection [1] - 22488:11 collectively [1] - 22390:17 Colonial[1] - 22312:2 colour [1] - 22514:3</p>	<p>Columbia[1] - 22517:8 column [1] - 22342:22 comfort [1] - 22466:12 comfortable [1] - 22393:2 coming [11] - 22342:7, 22385:15, 22386:22, 22402:21, 22407:9, 22441:9, 22442:23, 22446:18, 22485:8, 22523:22 commencing [1] - 22332:19 comment [6] - 22365:25, 22370:6, 22406:10, 22413:20, 22414:3, 22507:1 comments [5] - 22314:7, 22378:25, 22401:3, 22486:6, 22490:1 Commission[46] - 22305:2, 22305:14, 22306:1, 22306:2, 22306:9, 22310:20, 22318:14, 22319:1, 22319:9, 22322:1, 22322:12, 22322:22, 22325:15, 22326:6, 22326:20, 22327:5, 22327:7, 22327:10, 22333:7, 22333:12, 22335:12, 22335:21, 22337:14, 22339:24, 22348:12, 22348:20, 22348:22, 22349:1, 22349:6, 22349:11, 22349:16, 22349:23, 22350:8, 22350:19, 22351:17, 22352:5, 22372:4, 22384:9, 22384:10, 22388:12, 22400:25, 22418:23, 22428:23, 22440:2, 22447:2, 22529:1 Commissioner[31] - 22309:4, 22309:24, 22318:25, 22319:1, 22325:8, 22335:24, 22350:16, 22383:21, 22384:1, 22397:8, 22397:11, 22405:3, 22408:19, 22408:24, 22409:3, 22409:6, 22409:17, 22409:19, 22409:21, 22409:24, 22410:1, 22410:8, 22428:2, 22428:5, 22428:6, 22428:12, 22446:18, 22452:15,</p>	<p>22452:18, 22452:22, 22485:17 Commissioners [4] - 22332:19, 22332:22, 22332:25, 22335:20 commit [5] - 22468:6, 22471:13, 22472:4, 22478:10, 22528:4 commitment [2] - 22535:7, 22535:9 committed [17] - 22451:9, 22453:18, 22463:7, 22463:8, 22470:23, 22489:8, 22496:2, 22496:5, 22498:12, 22506:14, 22512:22, 22512:23, 22526:18, 22527:22, 22531:3, 22531:13, 22533:15 committing [2] - 22527:14, 22530:25 commonly [1] - 22371:1 communication [1] - 22346:22 communications [4] - 22380:11, 22433:1, 22433:6, 22433:10 compare [1] - 22534:18 compared [1] - 22490:1 compel [1] - 22480:20 compelled [1] - 22367:12 compelling [3] - 22481:22, 22488:11, 22488:15 compile [1] - 22479:17 complainant [2] - 22338:14, 22338:17 complaint [1] - 22310:23 complete [1] - 22481:15 completed [2] - 22479:20, 22480:24 completely [1] - 22508:23 completion [2] - 22492:2, 22492:4 complex [1] - 22468:20 computer [4] - 22314:4, 22338:10, 22422:11, 22423:14 computerized [2] - 22313:16, 22420:16 computers [2] - 22311:12, 22420:17 con [1] - 22385:1 concern [2] - 22363:10, 22389:10</p>	<p>concerned [8] - 22348:9, 22353:16, 22370:11, 22411:22, 22415:20, 22416:5, 22416:21, 22475:6 concerning [3] - 22363:19, 22369:1, 22378:22 concerns [3] - 22355:16, 22396:19, 22525:25 conclude [1] - 22380:9 concluded [9] - 22320:11, 22320:13, 22321:16, 22330:14, 22331:7, 22331:24, 22338:24, 22340:5, 22455:25 concluding [1] - 22526:11 conclusion [5] - 22340:2, 22430:2, 22505:24, 22507:3, 22509:2 conclusions [4] - 22339:24, 22429:15, 22468:11, 22505:20 conclusively [1] - 22470:22 conduct [7] - 22416:5, 22416:6, 22417:18, 22457:24, 22458:18, 22459:6, 22462:21 conducted [2] - 22348:11, 22492:10 conducting [2] - 22412:9, 22412:14 confessed [3] - 22424:20, 22493:11, 22493:13 confession [1] - 22406:13 confessions [1] - 22370:21 confidence [1] - 22454:10 confidential [9] - 22344:19, 22344:22, 22353:18, 22355:14, 22357:8, 22359:21, 22359:24, 22433:2, 22433:11 Confidential[1] - 22374:19 confined [1] - 22442:18 confirm [5] - 22363:15, 22376:7, 22431:13, 22456:23, 22531:4 confirmed [3] - 22333:13, 22349:14,</p>
--	--	---	---	---



<p>22392:21 conflict [1] - 22418:11 confronted [2] - 22382:7, 22526:16 confusion [1] - 22532:17 Congram [1] - 22306:3 connect [1] - 22527:23 connection [1] - 22354:20 conscious [1] - 22533:18 consequences [3] - 22356:17, 22451:18, 22501:7 consequently [1] - 22451:12 consider [5] - 22374:25, 22465:22, 22481:25, 22493:3, 22524:7 considerably [1] - 22476:22 consideration [1] - 22465:6 considered [4] - 22316:6, 22487:8, 22495:23, 22526:7 consisted [1] - 22362:11 consistent [7] - 22329:17, 22405:20, 22423:15, 22425:5, 22425:17, 22426:17, 22429:22 constable [2] - 22419:24, 22435:25 constables [2] - 22329:5, 22329:8 constantly [1] - 22420:18 consuming [1] - 22471:7 contact [26] - 22348:23, 22349:2, 22349:11, 22361:2, 22361:6, 22361:21, 22361:24, 22362:4, 22362:16, 22365:1, 22367:14, 22376:13, 22377:20, 22390:2, 22434:20, 22441:11, 22472:13, 22473:17, 22473:21, 22473:22, 22475:1, 22488:18, 22504:12, 22511:11, 22517:13, 22519:13 contact's [1] - 22362:11 Contacted [1] - 22350:23</p>	<p>contacted [20] - 22309:10, 22349:23, 22350:5, 22350:10, 22354:19, 22364:17, 22387:21, 22387:23, 22400:9, 22430:11, 22437:1, 22438:16, 22444:24, 22453:4, 22456:10, 22468:15, 22496:19, 22511:23, 22516:25, 22518:4 contacting [4] - 22363:3, 22376:16, 22377:4, 22485:14 contacts [3] - 22431:11, 22504:12, 22530:1 contain [2] - 22351:8, 22537:5 content [2] - 22367:17, 22367:21 contents [1] - 22347:5 continue [2] - 22335:1, 22470:16 continued [4] - 22309:25, 22448:25, 22469:23, 22495:24 Continued [1] - 22308:3 continuing [2] - 22403:7, 22403:17 contradicted [1] - 22479:14 contradicts [1] - 22382:24 contributed [1] - 22454:7 control [1] - 22327:24 controversy [1] - 22506:17 convenient [2] - 22426:4, 22426:5 conversation [19] - 22312:5, 22358:22, 22361:15, 22379:7, 22386:3, 22410:22, 22411:5, 22411:7, 22411:9, 22412:20, 22412:22, 22412:23, 22412:24, 22414:16, 22414:19, 22415:10, 22417:8, 22521:22, 22521:24 conversations [11] - 22402:20, 22403:14, 22410:17, 22412:10, 22413:3, 22413:5, 22414:17, 22415:19, 22443:19, 22462:20, 22522:1 conveyed [1] - 22368:6 convict [3] - 22417:16,</p>	<p>22490:14, 22490:15 convict's [1] - 22471:5 convicted [39] - 22320:12, 22366:13, 22424:15, 22425:2, 22430:5, 22447:12, 22448:20, 22451:21, 22452:2, 22452:5, 22453:6, 22453:11, 22460:25, 22464:1, 22464:2, 22464:15, 22466:2, 22466:24, 22468:3, 22468:10, 22468:18, 22469:2, 22469:11, 22469:14, 22470:10, 22474:15, 22476:16, 22476:24, 22477:20, 22479:8, 22480:3, 22485:25, 22486:8, 22498:24, 22499:1, 22499:5, 22501:13, 22513:1 conviction [35] - 22338:25, 22361:23, 22362:2, 22404:9, 22404:12, 22418:15, 22447:18, 22452:8, 22454:1, 22454:7, 22455:21, 22456:2, 22456:21, 22462:1, 22469:12, 22474:12, 22480:8, 22482:15, 22484:6, 22485:3, 22485:23, 22486:19, 22488:10, 22488:12, 22490:7, 22500:22, 22501:16, 22505:16, 22506:18, 22506:20, 22510:25, 22515:20, 22515:25, 22518:12 Conviction [1] - 22305:4 convictions [9] - 22370:21, 22425:19, 22455:4, 22456:8, 22456:9, 22478:3, 22490:10, 22490:18, 22500:18 convince [2] - 22401:24, 22402:19 convinced [8] - 22402:1, 22402:24, 22468:25, 22470:6, 22506:13, 22506:23, 22524:8 cooperation [2] - 22355:12, 22487:5 copies [6] - 22321:3, 22334:9, 22352:14, 22354:6, 22370:24,</p>	<p>22385:1 copy [16] - 22320:21, 22320:22, 22320:24, 22322:10, 22323:7, 22323:14, 22327:20, 22333:3, 22351:10, 22353:12, 22354:10, 22355:9, 22364:13, 22375:6, 22379:10, 22493:24 correct [75] - 22312:24, 22327:3, 22331:16, 22331:17, 22337:20, 22338:3, 22338:4, 22351:1, 22361:13, 22362:3, 22362:9, 22362:16, 22371:14, 22373:22, 22374:10, 22377:25, 22380:5, 22380:20, 22392:25, 22398:2, 22398:25, 22401:13, 22402:8, 22410:9, 22419:25, 22422:23, 22424:4, 22426:21, 22426:22, 22427:2, 22430:5, 22432:2, 22433:3, 22433:8, 22436:12, 22438:5, 22438:23, 22441:3, 22443:18, 22447:6, 22447:13, 22447:14, 22447:18, 22447:19, 22447:24, 22453:23, 22455:7, 22455:8, 22455:19, 22456:16, 22456:17, 22459:11, 22461:13, 22463:23, 22465:24, 22471:12, 22474:15, 22475:14, 22488:6, 22496:18, 22496:22, 22496:23, 22497:11, 22498:16, 22517:11, 22517:17, 22517:22, 22518:15, 22518:22, 22519:13, 22520:14, 22520:22, 22521:13, 22534:7, 22537:5 Correct [3] - 22380:16, 22425:14, 22455:11 correspond [1] - 22462:14 correspondence [5] - 22347:3, 22352:24, 22355:17, 22357:2, 22462:19 correspondent [1] - 22448:9 corruption [1] - 22451:16</p>	<p>cost [1] - 22418:4 Cotler [1] - 22307:11 Counsel [1] - 22306:2 counsel [15] - 22309:16, 22325:2, 22368:24, 22382:11, 22407:14, 22409:13, 22410:7, 22428:10, 22428:11, 22440:22, 22455:13, 22473:7, 22473:14, 22473:20, 22531:24 counted [4] - 22421:2, 22422:15, 22422:16, 22422:18 counter [1] - 22421:25 counteract [1] - 22335:16 country [4] - 22462:16, 22470:3, 22490:16, 22493:17 County [1] - 22458:5 couple [15] - 22340:18, 22341:11, 22341:13, 22348:17, 22381:10, 22398:17, 22401:2, 22410:13, 22437:23, 22450:17, 22463:19, 22470:20, 22494:4, 22504:23, 22517:3 coupled [1] - 22454:11 course [25] - 22334:22, 22338:23, 22366:6, 22375:23, 22393:25, 22395:16, 22409:12, 22414:7, 22415:7, 22458:18, 22461:1, 22461:9, 22467:17, 22481:17, 22482:20, 22484:1, 22490:24, 22498:10, 22502:10, 22505:4, 22507:8, 22509:23, 22514:19, 22525:5, 22535:6 court [1] - 22426:7 Court [25] - 22306:10, 22352:23, 22359:18, 22411:3, 22417:16, 22456:20, 22463:14, 22472:25, 22473:1, 22474:10, 22474:18, 22478:1, 22479:24, 22480:1, 22480:15, 22482:5, 22483:9, 22483:10, 22483:25, 22520:20, 22520:22, 22537:1, 22537:3, 22537:14, 22537:20 courtesy [1] - 22482:17 courthouse [2] -</p>
---	--	---	--	--



22535:21, 22535:23 cover [7] - 22318:24, 22362:8, 22430:9, 22440:11, 22440:16, 22494:16, 22520:25 cover-up [3] - 22362:8, 22440:11, 22440:16 covered [5] - 22393:12, 22401:6, 22416:12, 22512:12 Cox [1] - 22307:10 Cpic [2] - 22422:4, 22422:10 crazy [1] - 22413:25 cream [2] - 22465:17, 22465:23 create [1] - 22487:20 creation [1] - 22437:25 crime [10] - 22316:7, 22316:18, 22320:2, 22320:7, 22321:23, 22421:18, 22448:20, 22491:24, 22528:2 crimes [5] - 22315:13, 22316:5, 22316:11, 22325:10, 22512:21 criminal [20] - 22367:4, 22416:6, 22417:1, 22417:3, 22417:18, 22444:17, 22448:17, 22448:23, 22455:10, 22457:9, 22457:25, 22458:8, 22458:19, 22459:4, 22459:7, 22488:9, 22531:25, 22532:1, 22532:17, 22535:24 Criminal [3] - 22319:6, 22319:13, 22319:15 criteria [1] - 22464:25 critical [2] - 22390:6, 22395:16 crop [2] - 22465:18, 22465:23 cross [3] - 22338:22, 22339:3, 22428:9 cross-examination [1] - 22428:9 cross-reference [1] - 22338:22 cross-referenced [1] - 22339:3 crossed [1] - 22326:8 Crown [4] - 22360:11, 22475:18, 22475:22, 22517:21 Crown's [1] - 22511:12 cruiser [1] - 22444:1 Csr [8] - 22306:10, 22306:11, 22537:2,	22537:12, 22537:13, 22537:18, 22537:19 current [1] - 22447:8 custodians [1] - 22321:2 cut [1] - 22429:15 D daily [2] - 22448:10, 22462:14 Dallas [5] - 22482:14, 22482:23, 22485:1, 22485:5, 22485:11 damn [1] - 22441:19 database [1] - 22463:17 date [9] - 22355:25, 22382:5, 22400:18, 22401:23, 22427:6, 22430:3, 22431:3, 22434:9, 22515:15 dated [4] - 22333:3, 22398:1, 22399:2, 22399:7 dates [3] - 22384:20, 22434:23, 22518:19 daughter [1] - 22402:8 Dave [17] - 22312:8, 22392:9, 22427:7, 22427:9, 22427:10, 22427:13, 22427:18, 22431:15, 22431:17, 22436:16, 22437:15, 22437:22, 22438:18, 22438:20, 22440:6, 22440:9, 22447:16 David [83] - 22305:4, 22309:8, 22310:15, 22313:16, 22324:1, 22326:3, 22342:4, 22343:22, 22344:4, 22345:2, 22345:24, 22351:3, 22351:9, 22354:11, 22359:6, 22361:3, 22361:14, 22366:4, 22366:10, 22376:20, 22376:23, 22378:14, 22378:17, 22381:24, 22384:13, 22386:7, 22391:7, 22394:24, 22398:20, 22399:16, 22399:21, 22399:22, 22401:12, 22401:17, 22402:24, 22403:8, 22403:14, 22404:16, 22410:18, 22414:18, 22418:14, 22430:4, 22441:14, 22446:10, 22447:16,	22447:17, 22456:24, 22461:17, 22462:4, 22470:4, 22478:17, 22491:17, 22492:25, 22493:19, 22495:9, 22495:11, 22496:11, 22497:7, 22498:2, 22499:5, 22499:22, 22500:21, 22504:2, 22504:8, 22504:14, 22505:17, 22506:2, 22506:5, 22507:6, 22507:10, 22507:12, 22507:16, 22508:2, 22508:13, 22508:14, 22515:18, 22518:12, 22521:1, 22521:11, 22523:3, 22524:17 David's [2] - 22394:6, 22495:22 Dayday [2] - 22332:23, 22337:1 days [6] - 22328:17, 22395:25, 22413:9, 22489:6, 22504:23, 22511:16 dead [1] - 22465:5 deal [10] - 22331:14, 22359:9, 22392:23, 22392:25, 22409:22, 22421:3, 22426:4, 22451:5, 22491:15, 22516:12 dealer [1] - 22450:23 dealing [11] - 22352:15, 22375:16, 22376:2, 22382:2, 22450:25, 22453:25, 22455:16, 22481:12, 22490:2, 22518:3, 22523:5 dealings [8] - 22325:22, 22372:4, 22380:23, 22457:23, 22457:24, 22493:1, 22519:8, 22521:15 deals [1] - 22360:22 dealt [9] - 22316:4, 22321:17, 22331:13, 22331:15, 22381:5, 22398:20, 22425:6, 22457:13, 22519:18 death [1] - 22430:25 December [8] - 22348:18, 22349:9, 22351:3, 22360:5, 22360:16, 22379:13, 22382:19, 22518:10 decide [3] - 22462:7, 22464:23, 22465:2 decided [5] - 22460:7,	22460:23, 22496:5, 22510:9, 22510:21 decides [1] - 22478:12 deciding [2] - 22458:8, 22510:15 decision [12] - 22321:13, 22348:14, 22356:18, 22390:18, 22454:23, 22481:17, 22483:11, 22483:12, 22487:23, 22522:19, 22533:18, 22533:19 decision-maker [1] - 22487:23 decisions [2] - 22534:24, 22535:1 decline [1] - 22445:5 declined [1] - 22402:10 deeply [1] - 22529:25 defence [19] - 22410:18, 22455:12, 22457:9, 22472:18, 22473:7, 22473:12, 22473:14, 22473:20, 22475:11, 22475:21, 22475:24, 22476:6, 22476:8, 22476:17, 22476:24, 22476:25, 22477:11, 22477:12, 22477:15 defend [2] - 22418:3, 22475:12 defendant [1] - 22461:25 Defendant [1] - 22473:11 Defendant's [1] - 22473:11 defender [5] - 22472:14, 22472:15, 22475:11, 22475:16, 22475:20 defenders [1] - 22472:14 defending [1] - 22448:18 definitely [1] - 22398:12 degree [3] - 22460:9, 22460:11, 22528:4 degrees [1] - 22501:11 deliberate [2] - 22440:16, 22454:22 Deliberately [1] - 22488:6 deliberately [3] - 22337:17, 22338:1, 22488:5 delivered [1] - 22353:1 Delta [1] - 22305:16 deluding [1] - 22492:17	delusion [1] - 22490:16 delled [1] - 22529:24 demonstrate [1] - 22480:12 denial [1] - 22368:1 denied [1] - 22424:20 Dennis [7] - 22489:19, 22491:4, 22504:13, 22517:7, 22517:8, 22521:23, 22522:12 deny [3] - 22368:21, 22382:10, 22526:17 Department [15] - 22319:5, 22329:16, 22334:4, 22351:20, 22352:20, 22353:1, 22353:24, 22354:1, 22357:20, 22361:3, 22361:25, 22363:20, 22381:22, 22404:7, 22454:17 department [17] - 22311:8, 22312:10, 22320:1, 22324:23, 22325:8, 22328:6, 22363:24, 22370:13, 22370:15, 22370:18, 22400:17, 22400:20, 22402:6, 22422:9, 22445:7, 22482:23, 22485:11 departments [1] - 22475:2 departs [1] - 22365:21 Dept [2] - 22366:19, 22367:10 Deputy [4] - 22342:10, 22342:13, 22343:2, 22381:16 deputy [1] - 22458:7 describe [3] - 22357:2, 22523:24, 22524:13 described [8] - 22432:5, 22435:4, 22497:4, 22524:25, 22525:5, 22525:19, 22525:23, 22526:5 description [1] - 22476:15 Description [1] - 22308:2 destroy [2] - 22318:2, 22321:14 destroyed [7] - 22315:11, 22321:6, 22334:22, 22334:25, 22397:18, 22430:8, 22472:21 destroying [2] - 22315:21, 22440:11
--	---	--	--	---



<p>destruction [1] - 22440:16</p> <p>detail [6] - 22334:3, 22336:4, 22397:1, 22454:5, 22497:5, 22524:13</p> <p>details [8] - 22338:6, 22347:2, 22348:23, 22366:1, 22372:14, 22514:4, 22515:13, 22517:12</p> <p>detective [3] - 22424:10, 22448:24, 22454:12</p> <p>detectives [11] - 22316:5, 22316:11, 22328:17, 22328:18, 22342:1, 22342:9, 22372:8, 22372:12, 22420:6, 22420:21, 22485:7</p> <p>determination [4] - 22468:9, 22471:23, 22497:17, 22498:1</p> <p>determine [6] - 22323:18, 22351:23, 22359:22, 22466:8, 22476:4, 22476:22</p> <p>determined [2] - 22351:16, 22487:4</p> <p>develop [5] - 22420:14, 22462:17, 22474:8, 22479:11, 22493:7</p> <p>developed [4] - 22415:23, 22420:8, 22420:11, 22482:18</p> <p>development [2] - 22488:14</p> <p>developments [1] - 22488:2</p> <p>device [3] - 22411:15, 22412:2</p> <p>devote [1] - 22460:23</p> <p>dictated [1] - 22535:5</p> <p>didn't [1] - 22373:18</p> <p>died [2] - 22404:25, 22415:7</p> <p>difference [1] - 22432:15</p> <p>different [21] - 22316:4, 22322:10, 22335:23, 22360:12, 22360:15, 22360:16, 22384:5, 22387:2, 22389:17, 22400:2, 22422:8, 22422:9, 22427:13, 22431:18, 22431:19, 22440:7, 22442:23, 22500:3, 22500:9, 22500:11</p>	<p>differently [1] - 22317:9</p> <p>difficult [5] - 22375:17, 22430:25, 22468:8, 22471:7, 22512:24</p> <p>dig [1] - 22535:23</p> <p>digs [1] - 22493:15</p> <p>dire [1] - 22501:7</p> <p>direct [5] - 22327:23, 22426:1, 22426:11, 22428:20, 22457:23</p> <p>direction [2] - 22458:12, 22460:22</p> <p>directly [4] - 22352:6, 22378:9, 22392:23, 22427:7</p> <p>Director [2] - 22306:3, 22332:22</p> <p>dirty [2] - 22394:15, 22394:16</p> <p>disagree [5] - 22340:9, 22340:11, 22385:23, 22423:18, 22450:5</p> <p>disagrees [1] - 22407:22</p> <p>disappear [1] - 22392:5</p> <p>disappearance [2] - 22311:11, 22356:15</p> <p>disappeared [4] - 22385:3, 22426:18, 22426:20, 22429:24</p> <p>discarded [1] - 22458:10</p> <p>discarding [1] - 22314:3</p> <p>discharge [1] - 22448:9</p> <p>Discipline [1] - 22416:2</p> <p>disclose [3] - 22346:6, 22353:19, 22364:5</p> <p>disclosure [1] - 22384:14</p> <p>discomfort [1] - 22407:5</p> <p>discover [1] - 22450:13</p> <p>discovered [2] - 22340:20, 22532:21</p> <p>discovery [3] - 22472:17, 22473:5, 22513:25</p> <p>discretion [1] - 22330:6</p> <p>discuss [4] - 22348:5, 22354:14, 22415:9, 22416:17</p> <p>discussed [10] - 22347:5, 22349:5, 22354:15, 22356:8, 22361:13, 22396:24, 22416:19, 22432:6, 22444:6, 22523:7</p> <p>discussing [3] - 22360:1, 22414:6, 22444:11</p> <p>discussion [21] - 22348:15, 22356:2, 22376:21, 22376:23, 22377:7, 22377:17, 22392:10, 22393:10, 22497:24, 22502:8, 22502:13, 22512:4, 22514:16, 22523:15, 22525:1, 22526:24, 22529:13, 22530:23, 22531:8, 22534:2, 22534:12</p> <p>discussions [9] - 22325:13, 22344:3, 22370:2, 22412:15, 22443:25, 22444:2, 22521:11, 22522:15, 22528:22</p> <p>dishonest [1] - 22458:6</p> <p>dishonesty [1] - 22458:24</p> <p>dismissed [1] - 22518:18</p> <p>dispatch [1] - 22492:2</p> <p>dispute [4] - 22324:2, 22422:25, 22436:25, 22437:5</p> <p>distinct [3] - 22499:10, 22519:21, 22526:8</p> <p>distinction [1] - 22317:2</p> <p>distinctly [1] - 22520:19</p> <p>distinguish [1] - 22384:4</p> <p>distributed [1] - 22330:19</p> <p>district [4] - 22473:23, 22482:19, 22483:6, 22484:1</p> <p>distrust [1] - 22327:1</p> <p>division [1] - 22342:1</p> <p>divulge [2] - 22377:12, 22408:11</p> <p>Dna [8] - 22402:12, 22402:14, 22404:12, 22404:15, 22467:25, 22470:19, 22470:21, 22471:9</p> <p>Dna'd [1] - 22469:15</p> <p>doc [6] - 22346:23, 22365:6, 22383:21, 22397:6, 22406:19, 22515:9</p> <p>docks [1] - 22451:12</p> <p>Document [3] - 22306:4, 22306:5, 22306:6</p> <p>document [37] - 22312:13, 22318:23, 22330:17, 22332:17, 22347:20, 22363:6, 22363:9, 22363:15, 22371:9, 22371:10, 22371:15, 22371:17, 22371:20, 22371:21, 22371:24, 22372:1, 22372:2, 22372:5, 22399:5, 22408:6, 22408:21, 22419:3, 22422:3, 22422:25, 22423:13, 22423:17, 22433:16, 22435:15, 22436:23, 22447:4, 22479:13, 22493:20, 22495:8, 22515:6, 22515:9, 22520:5, 22523:8</p> <p>documentary [1] - 22456:7</p> <p>documents [30] - 22310:10, 22344:21, 22345:4, 22346:22, 22357:25, 22370:24, 22371:3, 22379:5, 22380:2, 22380:9, 22381:10, 22397:8, 22423:10, 22435:3, 22435:10, 22435:19, 22436:4, 22463:14, 22472:10, 22473:19, 22476:5, 22496:9, 22499:16, 22501:25, 22515:11, 22516:19, 22517:2, 22519:12, 22535:13, 22536:2</p> <p>dogs [2] - 22469:8, 22469:9</p> <p>Don [1] - 22306:11</p> <p>Donald [2] - 22537:2, 22537:19</p> <p>done [33] - 22321:1, 22339:15, 22350:22, 22350:24, 22355:23, 22358:21, 22392:17, 22399:8, 22405:4, 22413:8, 22420:18, 22454:15, 22458:20, 22461:14, 22461:18, 22465:21, 22481:8, 22481:14, 22482:24, 22484:19, 22489:14, 22491:25, 22492:14, 22495:8, 22500:8, 22507:7, 22511:22, 22517:22, 22522:20, 22533:2, 22534:10, 22535:22</p> <p>door [4] - 22413:19, 22441:24, 22503:9</p>	<p>dots [1] - 22535:4</p> <p>double [1] - 22335:3</p> <p>doubt [4] - 22359:16, 22372:11, 22390:20, 22507:2</p> <p>doubts [1] - 22506:20</p> <p>Douglas [1] - 22306:2</p> <p>down [26] - 22316:17, 22330:8, 22365:18, 22368:20, 22374:14, 22378:23, 22383:25, 22384:13, 22386:19, 22411:2, 22425:25, 22433:20, 22434:13, 22438:3, 22445:7, 22451:12, 22453:8, 22526:20, 22528:9, 22531:15, 22532:25, 22533:11, 22533:21, 22535:20, 22535:23</p> <p>dozen [1] - 22503:7</p> <p>Dr [1] - 22309:14</p> <p>dramatic [1] - 22476:21</p> <p>draw [12] - 22419:5, 22421:7, 22422:19, 22424:6, 22424:8, 22425:3, 22425:14, 22426:13, 22427:25, 22428:21, 22429:11, 22436:22</p> <p>drawn [1] - 22421:9</p> <p>Dressler [1] - 22363:8</p> <p>drill [1] - 22477:14</p> <p>drugs [1] - 22450:25</p> <p>due [2] - 22309:19, 22440:23</p> <p>uplications [1] - 22321:9</p> <p>During [2] - 22419:23, 22420:2</p> <p>during [12] - 22349:19, 22352:11, 22366:6, 22395:15, 22424:19, 22473:16, 22473:24, 22482:6, 22483:22, 22521:20, 22522:2, 22523:7</p> <p>duty [3] - 22328:16, 22329:6, 22439:16</p>
<p style="text-align: center;">E</p>		
<p>Eamon [1] - 22307:9</p> <p>early [11] - 22343:20, 22360:2, 22381:13, 22415:19, 22429:3, 22430:3, 22431:7, 22491:19, 22501:11, 22507:4, 22518:20</p>		



<p>economics [1] - 22460:10</p> <p>Eddie [4] - 22307:7, 22328:17, 22340:22, 22420:25</p> <p>Edgar [1] - 22381:24</p> <p>edge [2] - 22524:15, 22524:19</p> <p>Edward [2] - 22305:7, 22453:17</p> <p>Edwards [2] - 22310:6, 22520:17</p> <p>effect [3] - 22315:8, 22325:19, 22430:10</p> <p>effort [3] - 22344:6, 22351:23, 22531:14</p> <p>efforts [9] - 22401:1, 22446:12, 22447:17, 22460:24, 22468:17, 22470:16, 22473:17, 22534:2, 22536:3</p> <p>egregious [1] - 22455:2</p> <p>eight [1] - 22478:16</p> <p>either [21] - 22321:14, 22325:23, 22358:14, 22366:10, 22369:24, 22370:3, 22386:6, 22407:22, 22441:23, 22442:11, 22448:19, 22467:17, 22480:7, 22492:2, 22513:6, 22521:23, 22524:3, 22526:12, 22528:15, 22530:6, 22532:18</p> <p>elaborate [1] - 22463:19</p> <p>elaboration [1] - 22368:1</p> <p>electric [1] - 22470:14</p> <p>electronic [7] - 22410:16, 22411:13, 22412:2, 22412:10, 22412:14, 22413:1, 22413:6</p> <p>element [2] - 22454:23, 22524:9</p> <p>elongated [1] - 22462:9</p> <p>emerged [2] - 22489:5, 22501:15</p> <p>emerging [1] - 22524:9</p> <p>employed [2] - 22366:9, 22468:21</p> <p>employee [2] - 22449:13, 22459:24</p> <p>employees [2] - 22441:2, 22462:12</p> <p>enacted [2] - 22319:9, 22322:1</p> <p>encouraged [1] - 22367:14</p>	<p>end [9] - 22405:23, 22417:17, 22453:14, 22453:19, 22479:12, 22479:14, 22505:4, 22505:23</p> <p>ended [4] - 22449:25, 22485:14, 22489:23, 22536:5</p> <p>ending [2] - 22422:20, 22428:23</p> <p>energies [1] - 22421:18</p> <p>engagement [4] - 22497:19, 22509:7, 22535:7</p> <p>enhanced [1] - 22461:10</p> <p>enjoining [1] - 22481:25</p> <p>enjoyed [1] - 22420:25</p> <p>enquire [2] - 22333:9, 22465:25</p> <p>enquiring [1] - 22366:3</p> <p>enrolled [1] - 22460:12</p> <p>ensure [1] - 22471:10</p> <p>enterprising [1] - 22493:6</p> <p>entertain [1] - 22374:22</p> <p>entire [4] - 22352:14, 22445:6, 22472:22, 22501:5</p> <p>entitled [2] - 22407:21, 22518:11</p> <p>envelope [1] - 22374:19</p> <p>envelopes [3] - 22439:18, 22439:20, 22441:23</p> <p>envisioned [2] - 22527:14, 22528:5</p> <p>equal [1] - 22465:13</p> <p>equipment [1] - 22364:21</p> <p>equivalent [1] - 22374:11</p> <p>erroneous [1] - 22454:20</p> <p>escaped [1] - 22501:6</p> <p>especially [1] - 22353:9</p> <p>Esq [3] - 22307:6, 22307:7, 22307:9</p> <p>essence [1] - 22384:21</p> <p>essentially [1] - 22474:19</p> <p>Essentially [1] - 22425:25</p> <p>Esson [1] - 22306:12</p> <p>establish [6] - 22463:21, 22464:14, 22464:15, 22487:11, 22528:14, 22530:20</p> <p>established [1] -</p>	<p>22468:4</p> <p>establishing [1] - 22503:22</p> <p>estimate [1] - 22441:22</p> <p>etcetera [9] - 22324:14, 22329:19, 22341:20, 22353:2, 22360:11, 22455:3, 22502:1, 22522:23, 22524:1</p> <p>Etcetera [1] - 22359:19</p> <p>Eugene [3] - 22343:25, 22345:14, 22345:16</p> <p>evening [1] - 22448:14</p> <p>event [2] - 22367:11, 22376:1</p> <p>events [4] - 22347:2, 22370:25, 22426:10, 22529:5</p> <p>eventually [4] - 22317:11, 22324:16, 22424:20, 22434:23</p> <p>evidence [66] - 22309:21, 22309:23, 22320:17, 22335:9, 22336:12, 22338:1, 22344:5, 22345:24, 22349:15, 22352:25, 22396:13, 22406:16, 22408:9, 22408:20, 22408:22, 22410:14, 22426:17, 22426:23, 22427:1, 22427:4, 22429:23, 22430:7, 22430:10, 22431:12, 22432:25, 22433:5, 22433:18, 22433:19, 22434:10, 22435:16, 22436:11, 22436:14, 22444:14, 22450:8, 22450:9, 22454:16, 22454:18, 22460:20, 22463:3, 22470:8, 22470:21, 22474:17, 22476:5, 22476:7, 22476:20, 22476:21, 22477:21, 22479:7, 22479:22, 22480:2, 22487:8, 22487:10, 22488:11, 22489:16, 22493:7, 22496:9, 22497:3, 22499:4, 22505:13, 22508:2, 22514:16, 22516:14, 22516:17, 22527:24, 22532:1</p> <p>evidentiary [3] - 22480:9, 22480:10, 22480:14</p> <p>evolving [1] - 22454:9</p> <p>ex [4] - 22489:8,</p>	<p>22496:2, 22503:18, 22511:9</p> <p>ex-husband [4] - 22489:8, 22496:2, 22503:18, 22511:9</p> <p>exact [1] - 22315:3</p> <p>exactly [3] - 22397:17, 22465:24, 22512:25</p> <p>examination [4] - 22405:5, 22409:13, 22428:9, 22446:16</p> <p>examine [3] - 22367:17, 22409:16, 22428:25</p> <p>examined [1] - 22458:11</p> <p>examiner [1] - 22454:23</p> <p>examining [2] - 22405:13, 22458:17</p> <p>example [13] - 22316:19, 22450:17, 22457:12, 22458:1, 22462:24, 22469:25, 22476:18, 22476:21, 22482:13, 22489:2, 22489:17, 22491:3, 22491:25</p> <p>examples [3] - 22450:18, 22477:12, 22493:9</p> <p>excellent [2] - 22342:7, 22342:8</p> <p>except [1] - 22312:2</p> <p>exception [1] - 22478:18</p> <p>excerpt [4] - 22333:4, 22334:1, 22372:24, 22379:15</p> <p>exchange [4] - 22346:22, 22373:8, 22396:4, 22529:18</p> <p>exculpatory [2] - 22476:7, 22476:20</p> <p>Excuse [1] - 22452:15</p> <p>excuse [5] - 22448:24, 22456:9, 22470:3, 22470:20, 22501:2</p> <p>excused [1] - 22446:19</p> <p>executed [3] - 22470:2, 22470:13, 22470:14</p> <p>execution [1] - 22470:16</p> <p>executive [1] - 22453:3</p> <p>Executive [2] - 22306:3, 22332:22</p> <p>exhausted [2] - 22465:4, 22501:6</p> <p>existed [1] - 22527:25</p> <p>existence [1] - 22353:11</p> <p>existing [3] - 22382:22,</p>	<p>22383:4, 22397:20</p> <p>exists [2] - 22347:22, 22488:21</p> <p>expect [2] - 22323:23, 22408:22</p> <p>expected [2] - 22313:18, 22530:8</p> <p>expecting [1] - 22460:13</p> <p>expenses [3] - 22399:3, 22399:20, 22400:2</p> <p>experience [4] - 22453:25, 22458:2, 22458:17, 22477:8</p> <p>explain [17] - 22325:23, 22332:4, 22334:20, 22339:9, 22339:19, 22345:13, 22346:13, 22356:17, 22360:7, 22426:9, 22491:2, 22498:8, 22503:25, 22534:21, 22535:3, 22535:19</p> <p>explained [9] - 22356:9, 22356:12, 22356:18, 22367:22, 22372:7, 22377:12, 22377:15, 22397:1, 22411:20</p> <p>explaining [1] - 22317:14</p> <p>explains [1] - 22363:7</p> <p>explanation [4] - 22339:8, 22339:22, 22340:13, 22368:1</p> <p>expose [3] - 22451:2, 22451:4, 22451:15</p> <p>exposed [1] - 22458:12</p> <p>exposing [1] - 22458:23</p> <p>expressed [2] - 22489:7, 22499:21</p> <p>expression [1] - 22355:12</p> <p>extend [1] - 22510:10</p> <p>extended [2] - 22447:20, 22513:17</p> <p>extensive [2] - 22373:3, 22373:15</p> <p>extent [1] - 22440:13</p> <p>extra [1] - 22335:2</p> <p>extraordinary [1] - 22488:1</p> <p>extremely [5] - 22390:11, 22420:21, 22420:22, 22467:6</p> <p>eye [2] - 22469:8, 22524:10</p>
--	--	--	--	--



<p>F</p> <p>facing [1] - 22444:18</p> <p>fact [35] - 22313:4, 22335:2, 22346:5, 22347:24, 22348:6, 22357:3, 22357:7, 22363:25, 22368:2, 22374:3, 22384:25, 22387:9, 22387:16, 22391:14, 22406:23, 22411:19, 22426:19, 22453:11, 22458:3, 22461:2, 22463:23, 22467:3, 22467:5, 22467:19, 22467:20, 22468:10, 22470:14, 22494:9, 22498:22, 22508:14, 22525:8, 22526:9, 22530:16, 22532:22</p> <p>factor [1] - 22526:11</p> <p>facts [3] - 22351:23, 22366:1, 22425:18</p> <p>failed [1] - 22338:12</p> <p>fair [33] - 22316:10, 22324:4, 22331:10, 22368:9, 22370:4, 22373:21, 22392:22, 22396:7, 22396:11, 22421:2, 22429:2, 22429:5, 22430:6, 22430:20, 22433:21, 22434:1, 22434:21, 22438:15, 22450:6, 22457:10, 22463:25, 22465:16, 22471:6, 22472:3, 22474:16, 22475:13, 22485:24, 22486:2, 22495:3, 22497:5, 22497:6, 22509:10, 22528:12</p> <p>fairly [7] - 22381:14, 22396:4, 22405:20, 22414:25, 22461:8, 22486:4, 22506:13</p> <p>fairness [5] - 22344:11, 22346:21, 22348:2, 22351:6, 22532:16</p> <p>faith [1] - 22504:2</p> <p>fall [2] - 22329:23, 22443:11</p> <p>false [1] - 22454:16</p> <p>familiar [5] - 22322:20, 22421:15, 22423:1, 22423:5, 22500:23</p> <p>familiarity [1] - 22360:23</p> <p>family [5] - 22400:10,</p>	<p>22446:10, 22472:20, 22473:12, 22508:11</p> <p>far [20] - 22321:13, 22321:20, 22365:12, 22370:11, 22370:12, 22375:25, 22380:10, 22380:19, 22399:12, 22407:17, 22411:22, 22455:2, 22468:23, 22475:5, 22500:22, 22506:5, 22509:21, 22510:14, 22522:20, 22535:9</p> <p>fashion [1] - 22427:13</p> <p>fast [2] - 22453:3, 22505:12</p> <p>fast-track [1] - 22505:12</p> <p>father [2] - 22468:15, 22468:20</p> <p>fault [1] - 22484:15</p> <p>favour [1] - 22441:14</p> <p>favourable [1] - 22487:21</p> <p>favourably [1] - 22416:24</p> <p>fax [1] - 22398:11</p> <p>faxed [5] - 22398:1, 22398:3, 22398:5, 22398:11, 22398:12</p> <p>February [6] - 22356:1, 22383:12, 22419:12, 22496:10, 22516:14, 22518:17</p> <p>Federal [11] - 22334:4, 22334:8, 22336:18, 22343:22, 22344:1, 22346:6, 22352:22, 22357:15, 22480:15, 22515:19, 22532:20</p> <p>feedback [1] - 22452:23</p> <p>feelings [4] - 22477:10, 22477:17, 22503:17, 22508:18</p> <p>fees [1] - 22399:3</p> <p>feet [1] - 22533:11</p> <p>fell [1] - 22342:11</p> <p>fellow [6] - 22312:21, 22343:25, 22431:14, 22453:15, 22453:16, 22468:18</p> <p>felt [12] - 22359:7, 22363:22, 22391:13, 22391:17, 22393:1, 22393:20, 22400:4, 22400:11, 22448:19, 22468:6, 22487:10, 22505:5</p> <p>few [7] - 22355:4, 22379:5, 22397:7,</p>	<p>22407:8, 22415:4, 22509:5, 22523:14</p> <p>field [15] - 22463:5, 22463:11, 22463:12, 22466:10, 22472:6, 22472:23, 22473:25, 22474:4, 22474:13, 22475:9, 22478:6, 22478:11, 22479:5, 22483:20, 22509:10</p> <p>fight [1] - 22484:8</p> <p>fighting [1] - 22482:21</p> <p>figure [2] - 22326:7, 22514:22</p> <p>figured [1] - 22527:18</p> <p>file [92] - 22310:22, 22310:23, 22311:6, 22311:17, 22312:8, 22312:11, 22315:17, 22316:6, 22316:7, 22317:4, 22317:5, 22317:8, 22317:10, 22320:2, 22320:9, 22320:10, 22320:13, 22321:2, 22321:14, 22323:17, 22327:18, 22329:16, 22329:21, 22330:3, 22330:25, 22331:11, 22331:24, 22332:12, 22334:23, 22336:24, 22338:24, 22339:2, 22344:10, 22344:13, 22345:18, 22349:22, 22353:5, 22353:10, 22353:12, 22355:10, 22356:13, 22362:12, 22362:17, 22362:20, 22363:1, 22364:25, 22373:3, 22373:15, 22373:21, 22373:25, 22374:3, 22374:4, 22374:5, 22379:20, 22384:15, 22408:8, 22408:12, 22408:13, 22414:6, 22420:4, 22420:12, 22420:15, 22421:4, 22421:20, 22421:22, 22422:3, 22428:17, 22430:13, 22430:15, 22431:4, 22434:25, 22435:5, 22435:22, 22436:1, 22436:5, 22438:22, 22439:19, 22439:22, 22441:12, 22443:6, 22457:18, 22466:14, 22478:15, 22480:23, 22481:10, 22482:5, 22483:9, 22483:19, 22483:25,</p>	<p>22485:2</p> <p>File [1] - 22329:13</p> <p>filed [11] - 22320:16, 22322:11, 22458:9, 22480:25, 22482:19, 22483:1, 22492:3, 22492:5, 22515:19, 22516:1, 22520:12</p> <p>files [148] - 22311:12, 22311:15, 22311:20, 22313:12, 22313:16, 22313:18, 22314:17, 22314:24, 22315:10, 22315:21, 22316:3, 22316:4, 22316:14, 22316:21, 22316:23, 22317:15, 22318:3, 22318:15, 22318:22, 22319:7, 22320:5, 22321:16, 22323:4, 22323:19, 22324:6, 22324:13, 22325:22, 22326:5, 22326:7, 22326:21, 22329:23, 22330:9, 22330:14, 22331:8, 22331:20, 22332:3, 22333:10, 22333:23, 22334:4, 22334:9, 22334:10, 22334:17, 22334:18, 22334:19, 22334:21, 22334:24, 22335:1, 22335:10, 22335:13, 22336:16, 22336:19, 22337:16, 22337:22, 22339:4, 22339:25, 22340:5, 22340:14, 22344:22, 22344:23, 22344:25, 22345:1, 22345:13, 22346:9, 22347:23, 22347:24, 22347:25, 22350:21, 22351:8, 22351:19, 22353:1, 22355:18, 22356:15, 22357:4, 22357:5, 22357:10, 22357:18, 22358:7, 22358:8, 22358:16, 22358:17, 22358:18, 22361:14, 22363:23, 22366:18, 22368:15, 22382:3, 22382:22, 22382:23, 22383:4, 22383:5, 22383:9, 22383:10, 22384:17, 22384:24, 22385:7, 22385:25, 22386:13, 22387:10, 22388:15, 22389:1, 22392:2, 22392:7, 22397:17, 22397:20, 22397:21,</p>	<p>22418:24, 22419:6, 22419:9, 22420:3, 22420:9, 22420:23, 22421:11, 22422:10, 22423:14, 22423:24, 22426:18, 22426:24, 22426:25, 22427:5, 22429:2, 22429:5, 22429:18, 22429:19, 22429:20, 22429:23, 22430:8, 22436:10, 22437:3, 22437:4, 22437:11, 22437:18, 22437:22, 22438:3, 22438:14, 22438:25, 22439:1, 22440:11, 22440:17, 22462:14, 22463:14, 22533:12, 22533:22, 22533:24, 22535:24</p> <p>files' [1] - 22330:5</p> <p>filing [4] - 22319:10, 22320:15, 22322:2, 22458:7</p> <p>fill [2] - 22472:24, 22476:1</p> <p>filled [1] - 22499:17</p> <p>fills [1] - 22309:23</p> <p>final [1] - 22471:16</p> <p>finally [1] - 22454:13</p> <p>finance/informatics [1] - 22375:10</p> <p>findings [1] - 22367:25</p> <p>fine [2] - 22452:18, 22513:14</p> <p>finger [1] - 22419:8</p> <p>finish [3] - 22456:18, 22478:17, 22479:4</p> <p>finished [8] - 22320:23, 22381:11, 22397:9, 22413:13, 22413:15, 22429:10, 22456:19, 22510:8</p> <p>fired [1] - 22458:16</p> <p>firm [9] - 22353:2, 22359:2, 22366:9, 22400:10, 22432:9, 22433:7, 22453:4, 22479:23, 22523:4</p> <p>First [1] - 22465:1</p> <p>first [66] - 22312:3, 22313:11, 22328:14, 22328:15, 22337:15, 22342:18, 22358:21, 22360:18, 22364:16, 22364:17, 22369:17, 22369:21, 22385:7, 22386:13, 22395:15, 22397:2, 22407:8, 22407:19, 22408:25,</p>
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22409:2, 22409:20, 22417:10, 22427:22, 22431:3, 22431:13, 22434:20, 22435:2, 22436:21, 22444:24, 22447:25, 22451:25, 22453:24, 22454:8, 22454:19, 22456:6, 22456:14, 22459:17, 22461:7, 22463:4, 22463:9, 22464:13, 22467:16, 22467:18, 22472:2, 22472:12, 22474:25, 22476:3, 22478:20, 22488:8, 22489:3, 22490:4, 22490:9, 22491:9, 22495:4, 22502:5, 22504:6, 22506:18, 22511:6, 22515:15, 22517:18, 22521:19, 22521:21, 22534:16, 22534:20 Fisher ^[132] - 22307:9, 22311:16, 22313:12, 22334:4, 22334:9, 22334:17, 22337:16, 22338:13, 22338:22, 22340:14, 22340:23, 22341:1, 22341:24, 22347:23, 22347:24, 22349:8, 22351:8, 22351:19, 22354:8, 22356:15, 22357:3, 22357:5, 22357:18, 22358:6, 22362:6, 22369:6, 22369:7, 22369:17, 22370:3, 22370:8, 22370:13, 22370:16, 22370:19, 22378:20, 22384:19, 22404:16, 22418:25, 22424:15, 22424:18, 22425:10, 22425:18, 22426:11, 22428:20, 22429:20, 22429:25, 22430:13, 22431:5, 22434:25, 22436:10, 22437:3, 22437:11, 22442:18, 22489:5, 22491:10, 22493:12, 22493:13, 22496:7, 22496:13, 22496:14, 22498:16, 22498:22, 22501:15, 22501:21, 22502:1, 22502:7, 22502:9, 22503:2, 22504:4, 22504:7, 22504:10, 22504:16, 22504:21, 22505:5, 22505:6, 22506:2,	22506:5, 22506:14, 22506:23, 22506:24, 22507:5, 22507:13, 22508:1, 22508:4, 22508:10, 22508:21, 22509:5, 22509:24, 22511:7, 22511:14, 22512:3, 22512:5, 22512:16, 22512:21, 22513:19, 22513:21, 22514:10, 22514:23, 22514:25, 22515:18, 22516:16, 22516:20, 22516:21, 22517:19, 22519:16, 22519:18, 22523:10, 22523:16, 22524:4, 22524:11, 22524:24, 22525:1, 22525:13, 22526:3, 22526:11, 22526:25, 22527:14, 22527:22, 22528:5, 22528:14, 22528:22, 22529:4, 22529:21, 22530:12, 22530:16, 22530:21, 22531:12, 22532:2, 22532:14, 22533:14, 22535:9, 22535:24 Fishers ^[11] - 22311:13, 22336:19, 22339:3, 22339:13, 22388:25, 22491:15, 22503:23, 22518:22, 22519:16, 22524:10, 22531:25 Fisher/milgaard ^[1] - 22380:22 Fisher/miller ^[1] - 22349:20 fit ^[1] - 22421:19 fits ^[1] - 22421:10 five ^[6] - 22371:10, 22386:3, 22478:13, 22479:4, 22483:20, 22532:22 five-minute ^[1] - 22386:3 five-page ^[1] - 22371:10 flag ^[2] - 22525:10, 22525:11 fleeing ^[1] - 22476:13 flights ^[1] - 22426:6 flipped ^[1] - 22413:16 floor ^[2] - 22502:19, 22526:20 flowers ^[1] - 22414:24 flurry ^[1] - 22438:17 fly ^[1] - 22434:4 focus ^[2] - 22396:17, 22450:15 focused ^[1] - 22421:17	follow ^[9] - 22339:15, 22340:4, 22359:11, 22376:9, 22396:22, 22440:25, 22481:4, 22529:17, 22532:8 follow-up ^[2] - 22340:4, 22440:25 followed ^[1] - 22398:20 following ^[8] - 22313:9, 22425:22, 22438:18, 22451:7, 22456:12, 22501:13, 22528:7, 22535:4 food ^[1] - 22453:4 fools ^[1] - 22441:20 force ^[7] - 22330:6, 22335:14, 22341:23, 22358:13, 22393:8, 22445:5, 22474:21 forced ^[1] - 22514:21 forces ^[1] - 22458:18 forcing ^[1] - 22528:6 foregoing ^[1] - 22537:4 forensic ^[1] - 22396:13 forever ^[1] - 22321:22 forget ^[1] - 22436:4 forgot ^[1] - 22341:16 form ^[5] - 22320:13, 22322:7, 22367:24, 22479:17, 22504:15 format ^[1] - 22374:21 formed ^[2] - 22507:2, 22524:2 former ^[2] - 22409:10, 22476:25 forming ^[1] - 22514:20 forms ^[3] - 22319:10, 22322:2, 22479:11 Fort ^[2] - 22341:1, 22519:18 forth ^[1] - 22347:4 fortunate ^[1] - 22401:23 forward ^[12] - 22358:11, 22374:16, 22385:15, 22386:22, 22481:5, 22482:8, 22482:12, 22483:4, 22484:3, 22485:23, 22486:10, 22494:7 founded ^[1] - 22460:4 four ^[14] - 22334:10, 22395:25, 22424:18, 22438:2, 22438:9, 22438:11, 22448:11, 22461:11, 22464:24, 22467:23, 22469:20, 22532:3, 22532:22 frame ^[5] - 22362:24, 22404:21, 22448:22, 22482:25, 22484:23	frankly ^[3] - 22353:7, 22490:8, 22514:21 Fraser ^[3] - 22342:10, 22342:14, 22343:2 fraud ^[1] - 22450:9 Freedom ^[1] - 22493:25 frequent ^[2] - 22442:6, 22442:7 frequently ^[1] - 22441:22 friend ^[3] - 22414:25, 22415:8, 22508:16 friendly ^[1] - 22415:3 friends ^[1] - 22417:8 front ^[3] - 22446:23, 22470:11, 22514:18 fulfilling ^[1] - 22460:8 full ^[7] - 22372:14, 22449:5, 22449:13, 22459:24, 22460:23, 22462:12, 22463:8 full-time ^[5] - 22449:5, 22449:13, 22459:24, 22460:23, 22462:12 fully ^[1] - 22367:1 fun ^[1] - 22520:9 function ^[1] - 22494:8	gathering ^[5] - 22463:13, 22472:2, 22474:2, 22474:16, 22478:7 general ^[15] - 22356:9, 22402:20, 22405:25, 22412:20, 22412:22, 22412:23, 22417:7, 22442:19, 22443:19, 22448:5, 22449:21, 22502:2, 22507:22, 22515:13, 22529:11 General ^[3] - 22381:16, 22381:23, 22426:2 generalities ^[4] - 22315:7, 22417:10, 22445:4, 22445:10 generality ^[1] - 22445:8 Generally ^[1] - 22457:5 generally ^[8] - 22315:4, 22333:20, 22401:5, 22483:13, 22486:7, 22490:11, 22520:25, 22522:6 generals ^[1] - 22425:8 generated ^[1] - 22457:16 genesis ^[1] - 22495:13 gentlemen ^[1] - 22322:21 geography ^[1] - 22504:20 George ^[1] - 22520:8 German ^[1] - 22469:9 Germond ^[1] - 22464:21 Gerry ^[1] - 22345:21 Gibson ^[1] - 22307:8 given ^[10] - 22342:25, 22354:5, 22391:10, 22419:20, 22425:21, 22433:18, 22437:18, 22465:9, 22473:14, 22487:1 Globe ^[9] - 22313:10, 22318:11, 22323:25, 22333:2, 22333:15, 22436:16, 22437:15, 22438:19, 22440:8 God ^[1] - 22454:15 goin' ^[1] - 22419:16 goodness ^[1] - 22485:6 Government ^[1] - 22307:3 government ^[5] - 22360:11, 22450:9, 22450:15, 22481:13 government's ^[1] - 22467:17 governor ^[1] - 22470:20 gracious ^[1] - 22503:14
G				
Gail ^[22] - 22310:17, 22310:22, 22310:23, 22363:21, 22378:11, 22378:15, 22419:17, 22424:1, 22443:12, 22489:8, 22499:3, 22503:23, 22504:17, 22505:25, 22507:5, 22513:8, 22513:23, 22514:12, 22514:20, 22524:16, 22527:22, 22534:19 gained ^[1] - 22461:6 gap ^[2] - 22388:14, 22388:15 garbage ^[1] - 22528:20 Garrett ^[2] - 22307:5, 22415:16 Garry ^[2] - 22341:1, 22519:18 Gary ^[5] - 22322:14, 22322:17, 22327:5, 22348:21, 22348:25 gather ^[7] - 22401:11, 22413:24, 22472:1, 22472:11, 22472:22, 22475:10, 22486:1 gathered ^[2] - 22472:12, 22487:10				



gradually ^[1] - 22449:24 graduate ^[1] - 22460:5 Graham ^[9] - 22322:13, 22322:16, 22323:23, 22327:5, 22327:9, 22347:11, 22347:13, 22348:5, 22348:15 Graham's ^[1] - 22326:16 grant ^[1] - 22480:9 granted ^[1] - 22480:14 great ^[6] - 22316:22, 22366:3, 22397:1, 22451:5, 22491:15, 22516:12 greenhouse ^[1] - 22414:23 Greg ^[3] - 22398:2, 22398:20, 22399:22 grounds ^[2] - 22445:15, 22516:1 group ^[6] - 22310:13, 22328:25, 22360:10, 22360:15, 22386:9, 22400:21 Grymaloski ^[1] - 22309:14 guards ^[2] - 22451:3, 22458:25 guess ^[16] - 22317:11, 22390:4, 22390:16, 22392:21, 22394:22, 22418:11, 22424:12, 22427:20, 22433:22, 22448:7, 22486:18, 22486:19, 22490:8, 22505:18, 22517:18, 22531:17 guessing ^[1] - 22431:10 guilt ^[3] - 22477:16, 22499:23, 22505:13 guilty ^[7] - 22417:14, 22424:23, 22425:10, 22463:4, 22464:2, 22467:20, 22532:3 gunshot ^[1] - 22375:19 Gus ^[8] - 22323:20, 22392:3, 22392:7, 22426:23, 22427:4, 22427:7, 22427:11, 22427:12 guy ^[7] - 22372:19, 22406:4, 22450:22, 22460:18, 22468:21, 22469:6, 22505:10	half ^[1] - 22508:5 hand ^[2] - 22479:13, 22507:25 handle ^[5] - 22390:14, 22524:19, 22525:7, 22525:10 handled ^[4] - 22342:1, 22523:24, 22524:14, 22524:18 handles ^[1] - 22523:25 handwriting ^[1] - 22442:12 hard ^[7] - 22345:23, 22404:22, 22406:16, 22442:9, 22444:14, 22470:6, 22528:2 hardly ^[2] - 22490:16, 22490:19 harm ^[1] - 22348:8 harmful ^[1] - 22345:3 hat ^[1] - 22510:14 Hbo ^[1] - 22456:7 head ^[3] - 22324:22, 22395:10, 22426:3 heading ^[1] - 22325:9 headline ^[1] - 22470:12 headlines ^[1] - 22470:1 headquarters ^[1] - 22382:7 hear ^[9] - 22344:15, 22352:25, 22397:16, 22408:9, 22408:22, 22440:2, 22440:3, 22453:7, 22520:10 heard ^[21] - 22309:8, 22309:18, 22314:6, 22315:10, 22318:4, 22320:17, 22369:17, 22370:13, 22412:17, 22430:17, 22431:12, 22436:15, 22437:9, 22438:21, 22463:10, 22485:13, 22496:24, 22505:9, 22513:10, 22516:14, 22531:25 hearing ^[7] - 22359:17, 22381:17, 22386:2, 22480:9, 22480:10, 22480:14, 22516:7 hearings ^[1] - 22520:21 hearsay ^[2] - 22414:14, 22439:11 heavy ^[2] - 22331:7, 22420:22 held ^[2] - 22448:4, 22507:3 help ^[6] - 22451:2, 22462:11, 22471:15, 22477:6, 22477:8, 22478:15	helpful ^[4] - 22345:2, 22515:7, 22527:8, 22527:12 Henderson ^[46] - 22308:9, 22309:21, 22312:3, 22312:8, 22344:13, 22344:16, 22354:16, 22354:17, 22361:4, 22361:20, 22362:14, 22373:16, 22373:21, 22373:25, 22379:11, 22379:17, 22382:21, 22383:4, 22386:4, 22386:6, 22390:23, 22393:4, 22395:3, 22395:7, 22396:9, 22396:24, 22407:7, 22434:3, 22434:7, 22446:22, 22446:24, 22447:1, 22447:5, 22451:19, 22452:16, 22485:21, 22490:21, 22494:3, 22494:22, 22495:10, 22498:15, 22515:10, 22523:10, 22524:1 Henderson's ^[2] - 22379:23, 22382:24 Henry ^[1] - 22332:23 Herald ^[1] - 22448:13 hereby ^[2] - 22333:6, 22537:4 herein ^[1] - 22537:6 heroin ^[2] - 22450:21, 22450:23 Hersh ^[5] - 22349:2, 22360:18, 22361:8, 22366:11, 22496:11 hide ^[1] - 22476:17 high ^[2] - 22397:3, 22418:17 high-speed ^[2] - 22397:3, 22418:17 highly ^[2] - 22341:22, 22342:17 himself ^[2] - 22459:1, 22469:1 Hinz ^[3] - 22306:10, 22537:2, 22537:13 hip ^[1] - 22487:19 hired ^[3] - 22448:11, 22449:5, 22455:14 historical ^[1] - 22494:24 history ^[5] - 22448:3, 22467:14, 22505:14, 22523:3, 22523:4 hmm ^[7] - 22387:1, 22387:4, 22388:17, 22389:3, 22390:12, 22395:18	hobby ^[1] - 22414:24 hodge ^[1] - 22422:13 hodge-podge ^[1] - 22422:13 Hodson ^[17] - 22306:2, 22308:4, 22308:10, 22309:3, 22310:1, 22325:11, 22397:12, 22405:2, 22405:10, 22408:25, 22421:6, 22446:15, 22446:21, 22446:25, 22452:25, 22485:16, 22485:20 home ^[19] - 22312:22, 22312:23, 22411:7, 22431:22, 22439:20, 22441:24, 22461:5, 22469:4, 22476:14, 22496:14, 22503:11, 22529:14, 22529:16, 22530:4, 22530:7, 22530:9, 22530:17, 22530:18, 22530:21 homicide ^[2] - 22316:14, 22430:15 homicides ^[3] - 22316:11, 22342:2, 22420:24 Hon ^[1] - 22307:11 honest ^[2] - 22393:17, 22516:5 honestly ^[3] - 22411:18, 22506:11, 22533:4 honesty ^[1] - 22324:15 honour ^[2] - 22399:17, 22400:12 Honourable ^[1] - 22305:6 hopefully ^[1] - 22352:2 Hotel ^[2] - 22305:16, 22412:13 hour ^[1] - 22399:19 hours ^[2] - 22405:6, 22477:14 house ^[12] - 22414:20, 22414:21, 22414:22, 22414:23, 22503:6, 22508:8, 22508:9, 22508:12, 22508:15, 22508:22, 22512:17 housekeeper ^[1] - 22468:19 houses ^[1] - 22503:7 Huff ^[1] - 22519:17 Hugh ^[1] - 22306:12 Hughey ^[1] - 22342:10 hurdle ^[2] - 22464:13 husband ^[8] - 22489:7, 22489:8, 22496:2, 22503:18, 22511:9, 22525:15, 22527:14, 22531:13	husband's ^[2] - 22525:22, 22526:1 I Id ^[6] - 22346:23, 22365:6, 22383:21, 22397:6, 22406:19, 22515:9 idea ^[11] - 22345:14, 22355:11, 22365:4, 22416:10, 22419:13, 22419:20, 22423:7, 22478:5, 22481:9, 22484:25, 22509:23 ideally ^[1] - 22472:12 identification ^[2] - 22329:22, 22456:8 identified ^[8] - 22366:16, 22368:3, 22369:3, 22373:1, 22454:6, 22470:7, 22482:15, 22482:16 identify ^[3] - 22491:23, 22494:5, 22530:11 identifying ^[1] - 22516:15 identity ^[11] - 22345:11, 22346:7, 22347:17, 22353:20, 22354:21, 22363:12, 22364:1, 22364:5, 22365:12, 22454:9, 22456:8 ill ^[1] - 22309:11 illness ^[2] - 22309:19, 22440:23 imagine ^[5] - 22376:16, 22499:7, 22501:4, 22528:3, 22533:23 impact ^[1] - 22376:1 imperative ^[1] - 22364:2 implemented ^[1] - 22314:5 implying ^[1] - 22358:14 importance ^[1] - 22467:3 important ^[21] - 22334:17, 22343:12, 22343:16, 22387:11, 22390:11, 22390:21, 22391:16, 22404:25, 22405:1, 22443:3, 22466:22, 22466:23, 22467:6, 22467:7, 22473:4, 22476:23,
H				
hair ^[1] - 22476:17				



22477:2, 22487:17, 22530:13 impossible [1] - 22530:15 impressions [1] - 22443:20 Imprisoned [1] - 22494:1 imprisonment [1] - 22495:17 inaccurate [1] - 22383:7 inactive [1] - 22466:15 inadvertent [1] - 22408:15 inaudible [1] - 22385:12 incarcerated [1] - 22446:8 incidents [1] - 22341:19 included [6] - 22327:21, 22328:24, 22355:11, 22365:15, 22408:16, 22433:10 includes [2] - 22388:23, 22400:14 including [3] - 22458:25, 22460:7, 22462:22 incorrect [2] - 22319:23, 22319:25 incriminating [1] - 22516:17 indeed [1] - 22477:9 Indefinite [1] - 22332:13 indefinite [1] - 22319:14 indefinitely [2] - 22315:19, 22316:16 independent [1] - 22492:11 Index [1] - 22308:1 index [12] - 22323:7, 22326:9, 22339:10, 22339:13, 22339:20, 22354:8, 22362:18, 22422:5, 22423:1, 22423:5, 22423:11, 22435:4 indicate [6] - 22309:6, 22408:20, 22411:13, 22411:24, 22412:1, 22412:6 indicated [9] - 22374:22, 22374:24, 22382:20, 22391:8, 22410:15, 22413:22, 22413:23, 22414:18, 22525:20	indicating [4] - 22344:3, 22384:16, 22463:4, 22496:12 indication [1] - 22525:12 indictment [3] - 22426:1, 22426:11, 22428:20 indigent [1] - 22465:3 indirectly [2] - 22348:8, 22378:10 individual [3] - 22359:22, 22443:22, 22468:9 individuals [4] - 22357:6, 22361:5, 22408:9, 22447:12 influence [3] - 22376:1, 22487:22, 22525:3 influenced [1] - 22528:2 info [2] - 22349:24, 22355:14 inform [3] - 22329:14, 22485:5, 22485:6 informant [10] - 22353:18, 22353:21, 22355:14, 22357:5, 22357:8, 22359:21, 22385:14, 22385:21, 22386:21, 22391:24 informants [1] - 22391:25 information [140] - 22315:4, 22315:5, 22315:7, 22318:11, 22319:17, 22323:3, 22323:25, 22324:12, 22324:20, 22325:15, 22327:7, 22327:12, 22332:7, 22332:11, 22339:9, 22339:19, 22342:3, 22342:20, 22342:23, 22343:9, 22344:14, 22345:23, 22346:8, 22346:11, 22348:4, 22348:7, 22348:10, 22350:11, 22350:20, 22351:8, 22351:12, 22352:1, 22353:14, 22353:17, 22354:22, 22358:6, 22358:17, 22359:8, 22360:21, 22361:21, 22362:1, 22363:16, 22363:18, 22363:23, 22366:12, 22366:17, 22368:16, 22379:12, 22380:19, 22382:8, 22383:18, 22384:12,	22385:17, 22386:17, 22388:5, 22389:20, 22391:21, 22393:16, 22395:1, 22398:24, 22400:18, 22401:11, 22403:13, 22410:24, 22412:21, 22416:13, 22419:19, 22427:6, 22427:12, 22433:2, 22433:11, 22436:16, 22438:8, 22439:6, 22439:18, 22439:20, 22439:24, 22439:25, 22440:14, 22441:3, 22441:6, 22441:8, 22441:21, 22441:24, 22442:14, 22442:18, 22442:20, 22442:23, 22442:25, 22443:24, 22444:25, 22445:20, 22445:22, 22462:17, 22464:10, 22471:21, 22472:1, 22472:2, 22472:9, 22473:6, 22474:2, 22475:10, 22475:12, 22475:17, 22475:22, 22475:25, 22476:2, 22476:4, 22478:7, 22481:24, 22482:8, 22482:17, 22482:18, 22486:2, 22489:11, 22490:23, 22492:10, 22494:6, 22496:1, 22498:9, 22498:15, 22498:17, 22499:2, 22501:18, 22503:19, 22504:7, 22507:9, 22508:25, 22511:8, 22511:13, 22511:15, 22511:18, 22523:22, 22528:23, 22533:10, 22534:18, 22534:23 informed [3] - 22309:15, 22368:10, 22397:15 initial [10] - 22361:9, 22361:10, 22383:15, 22383:16, 22462:21, 22471:4, 22471:16, 22504:22, 22512:11, 22512:14 injured [1] - 22418:17 injuries [1] - 22397:4 inmate [4] - 22462:17, 22462:18, 22465:8, 22469:23 inmate's [2] - 22472:20, 22472:21 innocence [28] -	22401:25, 22402:2, 22402:19, 22453:15, 22460:21, 22460:24, 22463:9, 22464:3, 22466:25, 22467:11, 22468:7, 22468:17, 22468:25, 22469:24, 22470:7, 22470:17, 22471:5, 22477:16, 22481:23, 22487:12, 22492:22, 22498:5, 22498:7, 22498:11, 22499:23, 22504:2, 22504:9, 22504:14 Innocent [1] - 22494:1 innocent [32] - 22372:18, 22401:12, 22401:18, 22402:7, 22402:25, 22406:6, 22417:11, 22417:12, 22460:17, 22463:23, 22464:9, 22464:16, 22466:2, 22466:6, 22466:9, 22467:5, 22467:16, 22467:20, 22468:4, 22468:10, 22470:13, 22474:15, 22477:9, 22479:8, 22479:22, 22480:3, 22480:4, 22481:6, 22490:15, 22498:2 input [2] - 22522:9, 22523:2 inquire [1] - 22482:11 inquiries [6] - 22344:17, 22345:10, 22350:14, 22363:9, 22418:13, 22418:18 inquiring [1] - 22498:23 inquiry [5] - 22348:11, 22356:20, 22357:16, 22378:7, 22528:13 Inquiry [5] - 22305:2, 22305:23, 22344:6, 22401:1, 22430:16 insights [1] - 22522:11 Insofar [2] - 22353:14, 22361:1 Insp [4] - 22365:19, 22366:1, 22366:24, 22374:15 Inspector [23] - 22315:22, 22340:24, 22360:6, 22360:19, 22364:19, 22365:9, 22365:10, 22365:17, 22366:21, 22368:6, 22373:8, 22374:20, 22375:5, 22376:7, 22376:13, 22378:2,	22379:6, 22381:25, 22383:23, 22405:17, 22405:20, 22412:15, 22437:2 inspector [1] - 22329:1 inspectors [6] - 22437:9, 22438:3, 22438:9, 22438:13, 22438:20, 22438:21 instance [2] - 22385:8, 22386:14 instances [1] - 22455:2 instinct [1] - 22393:19 institutions [1] - 22450:16 instructions [2] - 22510:5, 22521:17 intact [1] - 22334:19 integral [1] - 22466:19 integrity [6] - 22396:1, 22396:3, 22396:18, 22396:19, 22396:21 intelligent [1] - 22404:1 interaction [1] - 22421:23 interception [1] - 22414:17 interest [5] - 22310:12, 22379:12, 22422:5, 22488:9, 22490:5 interested [4] - 22421:16, 22422:14, 22439:21, 22487:2 interesting [1] - 22311:16 interestingly [2] - 22456:19, 22467:24 interests [1] - 22348:2 internal [5] - 22311:9, 22313:15, 22367:6, 22367:11, 22379:18 interpreting [1] - 22374:11 interrogation [1] - 22365:14 interrogator [1] - 22342:8 interrupting [1] - 22501:3 interview [47] - 22324:17, 22363:3, 22367:2, 22372:3, 22375:6, 22376:12, 22380:16, 22383:12, 22383:13, 22383:15, 22383:24, 22389:25, 22401:9, 22402:10, 22405:16, 22405:17, 22405:19, 22406:18, 22406:19, 22406:22,
---	--	--	---	---



22413:9, 22413:11, 22413:16, 22476:24, 22500:3, 22500:9, 22504:6, 22504:11, 22504:24, 22504:25, 22509:4, 22509:13, 22509:14, 22509:24, 22510:6, 22510:16, 22512:2, 22512:10, 22512:16, 22515:11, 22517:6, 22517:14, 22517:20, 22520:19, 22523:9, 22535:16 interviewed [16] - 22324:23, 22363:13, 22364:3, 22382:4, 22382:19, 22403:9, 22408:10, 22516:20, 22517:6, 22517:9, 22517:15, 22518:21, 22519:1, 22519:3, 22520:8, 22534:5 interviewing [7] - 22401:1, 22404:1, 22427:16, 22500:6, 22520:13, 22520:17, 22526:2 interviews [8] - 22363:14, 22383:16, 22400:15, 22401:4, 22403:10, 22484:15, 22501:25, 22522:8 intimately [1] - 22507:16 intimidated [2] - 22404:3, 22404:20 intimidation [1] - 22404:4 intriguing [3] - 22355:18, 22357:3, 22357:7 introduced [1] - 22386:4 introduces [1] - 22365:20 introducing [1] - 22312:5 introduction [1] - 22495:15 invariably [1] - 22484:5 invest [1] - 22326:3 investigate [6] - 22335:12, 22467:10, 22481:4, 22482:8, 22483:15, 22532:25 investigated [2] - 22375:19, 22492:20 investigating [7] - 22320:8, 22326:21, 22343:22, 22375:24,	22394:24, 22474:20, 22483:3 investigation [73] - 22311:10, 22318:15, 22322:13, 22322:15, 22324:5, 22324:7, 22326:3, 22326:10, 22332:19, 22333:12, 22335:15, 22337:2, 22337:8, 22340:2, 22348:3, 22348:13, 22348:22, 22349:8, 22352:3, 22354:9, 22360:9, 22362:19, 22362:23, 22363:11, 22366:7, 22366:9, 22367:6, 22372:15, 22378:10, 22378:14, 22378:19, 22380:25, 22381:15, 22395:13, 22395:20, 22403:23, 22411:1, 22411:2, 22414:9, 22414:11, 22418:24, 22435:6, 22435:7, 22443:17, 22445:12, 22445:13, 22447:19, 22453:12, 22454:12, 22456:1, 22456:2, 22457:9, 22458:21, 22459:4, 22463:13, 22468:24, 22479:21, 22481:15, 22484:9, 22484:15, 22484:19, 22486:25, 22487:3, 22489:10, 22490:7, 22490:24, 22492:3, 22492:4, 22492:11, 22511:4, 22522:21, 22527:10, 22535:4 Investigation [2] - 22381:20, 22381:24 investigation/ conviction [1] - 22366:5 investigations [3] - 22388:16, 22458:19, 22459:7 investigative [19] - 22366:2, 22449:24, 22449:25, 22450:1, 22450:3, 22450:4, 22450:7, 22450:12, 22450:14, 22452:11, 22455:17, 22455:25, 22457:8, 22457:21, 22458:4, 22475:2, 22476:3, 22496:4, 22509:17 investigator [14] - 22320:21, 22321:18,	22373:5, 22399:20, 22448:18, 22448:23, 22449:1, 22449:10, 22455:10, 22455:15, 22486:21, 22500:16, 22509:12 investigator's [1] - 22320:22 investigators [7] - 22349:7, 22349:17, 22351:18, 22371:2, 22372:7, 22382:4, 22482:22 invited [2] - 22503:9, 22503:14 involve [1] - 22459:5 involved [51] - 22320:11, 22339:11, 22349:7, 22372:8, 22378:9, 22378:13, 22378:17, 22378:19, 22395:11, 22395:13, 22414:9, 22414:11, 22439:25, 22441:6, 22441:9, 22449:12, 22450:19, 22451:20, 22452:1, 22452:6, 22452:14, 22456:25, 22464:20, 22467:24, 22468:17, 22469:18, 22479:1, 22481:19, 22486:7, 22486:11, 22486:12, 22486:16, 22486:23, 22487:1, 22492:7, 22492:8, 22495:10, 22495:11, 22495:22, 22496:4, 22500:12, 22505:15, 22505:17, 22506:21, 22513:9, 22513:11, 22514:12, 22516:9, 22520:18, 22525:16, 22527:19 involvement [23] - 22311:13, 22362:11, 22385:23, 22395:14, 22443:17, 22453:2, 22457:6, 22487:25, 22492:25, 22495:14, 22499:2, 22503:23, 22508:3, 22510:4, 22510:10, 22515:8, 22515:14, 22517:19, 22518:9, 22520:4, 22524:10, 22525:22, 22526:1 involves [1] - 22404:1 involving [2] - 22311:13, 22413:3 Iowa [1] - 22448:11	Irene [1] - 22306:9 Irwin [1] - 22307:11 Isabelle [1] - 22306:5 issue [12] - 22331:10, 22331:15, 22340:3, 22345:12, 22409:5, 22421:3, 22429:24, 22430:16, 22432:6, 22453:25, 22459:1, 22530:10 issued [1] - 22327:18 issues [14] - 22327:1, 22327:4, 22327:10, 22359:9, 22366:3, 22396:6, 22396:11, 22396:12, 22397:2, 22409:11, 22418:10, 22418:12, 22454:4, 22454:5 item [2] - 22515:15, 22516:14 items [2] - 22515:15, 22520:20 itself [3] - 22323:10, 22429:12, 22443:17	22509:17, 22510:8, 22510:13, 22518:14, 22535:5 Joanne [2] - 22307:2, 22440:21 job [5] - 22421:17, 22448:14, 22451:1, 22469:7, 22475:5 Jodie [1] - 22306:6 John [6] - 22412:12, 22412:16, 22507:18, 22511:3, 22517:13, 22517:22 join [1] - 22459:12 journalism [6] - 22448:8, 22448:16, 22448:17, 22492:16, 22493:4, 22493:5 Joyce [40] - 22307:2, 22311:5, 22311:17, 22311:24, 22312:2, 22361:11, 22361:15, 22366:10, 22383:16, 22384:2, 22386:6, 22399:23, 22406:20, 22407:7, 22440:22, 22446:10, 22447:16, 22489:2, 22495:17, 22495:23, 22496:3, 22496:7, 22496:21, 22498:10, 22499:19, 22502:4, 22502:8, 22502:17, 22509:23, 22512:10, 22518:24, 22521:3, 22521:11, 22522:2, 22523:3, 22523:9, 22532:10, 22533:7 Joycés [1] - 22495:15 judge [7] - 22478:12, 22480:7, 22480:11, 22483:7, 22483:11, 22483:12, 22487:22 judgment [1] - 22469:17 July [5] - 22375:18, 22402:13, 22404:13, 22404:17, 22517:24 jumps [1] - 22403:3 junction [1] - 22489:10 junctions [1] - 22490:6 June [8] - 22456:12, 22456:13, 22489:20, 22489:21, 22517:9, 22517:14, 22517:24, 22518:8 jurisdiction [1] - 22470:9 jury [1] - 22486:19 Justice [27] - 22305:6,
J				
jail [4] - 22341:1, 22417:12, 22446:6, 22530:24 Jake [1] - 22519:16 James [2] - 22327:25, 22460:4 Jamie [3] - 22468:14, 22468:25, 22469:1 January [16] - 22305:21, 22309:18, 22309:19, 22352:13, 22355:6, 22356:22, 22357:14, 22378:12, 22398:1, 22399:4, 22404:11, 22404:21, 22433:23, 22463:7, 22501:12, 22520:17 Japan [1] - 22460:7 Jaw [1] - 22519:4 Jennifer [1] - 22307:10 Jersey [1] - 22460:16 Jim [24] - 22456:6, 22456:9, 22461:2, 22461:23, 22463:6, 22464:21, 22467:10, 22469:22, 22470:5, 22470:15, 22470:24, 22478:9, 22481:18, 22495:16, 22495:21, 22496:3, 22497:14, 22499:8, 22501:19,				



22307:10, 22307:12, 22318:24, 22334:5, 22334:8, 22336:18, 22343:22, 22343:23, 22344:1, 22346:6, 22350:13, 22350:15, 22352:20, 22352:22, 22353:1, 22353:24, 22354:2, 22356:8, 22357:15, 22357:20, 22381:23, 22404:7, 22410:12, 22515:19, 22518:17, 22532:20 justice [5] - 22353:6, 22448:18, 22448:23, 22450:10, 22455:10 justify [1] - 22440:15 justifying [1] - 22417:17	killed [2] - 22470:23, 22504:17 killer [6] - 22482:15, 22482:16, 22496:13, 22507:5, 22516:16, 22526:12 killers [1] - 22470:8 Kim [1] - 22518:17 kind [1] - 22445:11 kinds [1] - 22450:11 King [3] - 22453:17, 22458:5 kingpin [1] - 22450:21 kitchen [1] - 22502:20 Klinger [1] - 22315:22 knife [21] - 22513:8, 22513:11, 22513:25, 22514:4, 22523:16, 22523:21, 22523:25, 22524:3, 22524:13, 22524:14, 22524:18, 22524:25, 22525:5, 22525:6, 22525:9, 22525:19, 22525:21, 22525:23, 22526:4, 22526:10, 22526:15 knocked [1] - 22503:8 knowing [4] - 22427:14, 22443:16, 22530:3, 22530:17 knowledge [12] - 22312:11, 22314:15, 22315:23, 22362:7, 22389:23, 22396:14, 22425:7, 22439:10, 22443:10, 22473:21, 22505:19, 22537:6 known [15] - 22326:4, 22326:20, 22417:21, 22441:13, 22461:8, 22477:18, 22485:2, 22508:21, 22511:14, 22511:16, 22516:12, 22525:23, 22533:13, 22533:14, 22533:16 knows [1] - 22362:6 Knox [1] - 22307:4 Korea [1] - 22448:9 Krogan [1] - 22307:3 Kujawa [2] - 22307:5, 22415:17	22438:8 lady's [1] - 22461:5 laid [2] - 22445:17, 22446:4 Laing [15] - 22318:25, 22319:2, 22322:11, 22349:1, 22349:10, 22349:23, 22350:4, 22350:8, 22350:13, 22350:15, 22350:16, 22350:19, 22419:4, 22428:22, 22429:9 Laings [4] - 22337:12, 22338:7, 22340:2, 22421:7 Lana [1] - 22307:3 Lapchuk [1] - 22520:8 largely [4] - 22410:2, 22510:23, 22510:24, 22523:5 Larry [68] - 22306:13, 22307:9, 22311:16, 22337:16, 22338:13, 22338:22, 22339:3, 22339:13, 22340:23, 22340:25, 22354:8, 22370:13, 22370:16, 22370:19, 22378:20, 22384:19, 22404:16, 22418:24, 22426:11, 22428:20, 22429:25, 22431:5, 22437:11, 22493:10, 22493:12, 22493:13, 22496:13, 22498:22, 22501:15, 22503:23, 22504:16, 22504:21, 22505:6, 22506:2, 22506:4, 22506:14, 22506:24, 22507:4, 22507:12, 22508:1, 22508:4, 22508:9, 22508:21, 22512:16, 22512:21, 22513:19, 22514:24, 22516:15, 22518:21, 22519:16, 22524:4, 22524:10, 22525:1, 22526:11, 22526:17, 22527:2, 22527:19, 22527:22, 22528:5, 22528:14, 22529:6, 22529:9, 22530:1, 22530:12, 22530:21, 22531:2, 22533:14, 22535:24 Larrys [1] - 22530:23 last [19] - 22309:7, 22309:12, 22314:1, 22326:17, 22356:23, 22371:23, 22372:1,	22407:19, 22407:21, 22409:16, 22409:22, 22409:25, 22410:9, 22423:20, 22426:7, 22431:14, 22485:6, 22494:12, 22520:20 lastly [2] - 22397:25, 22406:17 late [9] - 22327:25, 22343:19, 22357:24, 22381:13, 22414:4, 22433:24, 22459:10, 22518:20, 22530:7 latter [3] - 22322:18, 22392:21, 22486:24 Launa [1] - 22520:17 law [2] - 22479:23, 22523:4 lawyer [12] - 22344:1, 22350:23, 22359:11, 22367:14, 22374:24, 22410:18, 22417:8, 22475:11, 22475:17, 22476:25, 22477:9 lawyer's [2] - 22359:10, 22374:20 lawyer/client [1] - 22418:2 lawyers [10] - 22413:10, 22417:9, 22417:21, 22432:5, 22432:14, 22432:15, 22432:18, 22455:14, 22496:10, 22515:18 lay [1] - 22445:15 lead [3] - 22356:11, 22432:21, 22445:1 leader [1] - 22469:5 leaked [1] - 22349:22 leaking [1] - 22356:13 leap [2] - 22503:22, 22504:3 leap' [1] - 22504:1 learn [3] - 22477:5, 22477:25, 22501:17 learned [9] - 22363:7, 22369:7, 22370:3, 22498:15, 22502:11, 22502:21, 22504:3, 22508:1, 22527:6 least [16] - 22323:5, 22333:14, 22357:25, 22364:12, 22380:2, 22385:23, 22434:2, 22442:1, 22463:22, 22491:21, 22511:14, 22513:9, 22520:4, 22524:25, 22530:14, 22530:20 leave [2] - 22478:4,	22529:8 leaving [1] - 22355:21 led [2] - 22453:15, 22516:7 Lee [1] - 22453:17 left [11] - 22310:2, 22312:6, 22439:25, 22448:17, 22455:9, 22469:5, 22498:17, 22499:11, 22502:22, 22503:13, 22526:2 legal [3] - 22325:2, 22368:24, 22382:10 legitimacy [1] - 22506:19 length [1] - 22317:3 lengthy [5] - 22331:20, 22381:14, 22396:4, 22502:10, 22502:13 letter [33] - 22351:2, 22351:4, 22352:4, 22352:7, 22352:8, 22352:10, 22356:22, 22356:24, 22356:25, 22359:13, 22359:15, 22360:5, 22375:4, 22377:23, 22378:1, 22378:3, 22379:1, 22379:25, 22380:12, 22380:15, 22380:17, 22398:1, 22398:9, 22399:2, 22399:7, 22399:25, 22401:3, 22402:14, 22428:24, 22462:17, 22463:22, 22532:20 letters [4] - 22462:10, 22464:1, 22464:5, 22469:3 level [3] - 22466:12, 22490:4, 22508:12 liberty [1] - 22353:19 licence [2] - 22332:10, 22449:2 lid [2] - 22325:19, 22325:25 lied [1] - 22469:22 life [2] - 22375:15, 22460:8 light [5] - 22311:15, 22369:4, 22413:12, 22413:16, 22413:17 likelihood [1] - 22503:22 likely [8] - 22323:6, 22437:20, 22464:16, 22466:2, 22468:23, 22498:2, 22513:7, 22526:5 limit [5] - 22313:23,
K				
Kara [1] - 22306:5 Karen [3] - 22306:10, 22537:2, 22537:13 Karp [1] - 22431:14 Karst [12] - 22307:7, 22328:17, 22340:22, 22341:5, 22341:22, 22342:6, 22342:14, 22342:18, 22343:3, 22420:25, 22424:11, 22424:12 Kate [1] - 22464:21 keep [8] - 22317:4, 22317:8, 22320:2, 22321:14, 22325:19, 22331:20, 22346:25, 22443:1 keeping [6] - 22314:17, 22314:19, 22317:15, 22325:24, 22405:6, 22428:18 keeps [1] - 22372:17 Kendry [1] - 22306:6 kept [11] - 22315:18, 22315:19, 22316:16, 22316:21, 22321:8, 22321:21, 22330:15, 22331:25, 22332:5, 22406:5, 22420:9 Ketler [1] - 22519:16 Kettles [1] - 22327:25 key [4] - 22311:12, 22348:11, 22351:12, 22511:20 keyed [1] - 22441:15 kid [3] - 22372:17, 22406:5, 22446:6	L			
	lab [2] - 22428:25, 22429:10 lack [2] - 22458:6, 22509:12 lady [2] - 22311:17,			



22314:17, 22314:19, 22317:15, 22317:17 limited [6] - 22461:14, 22496:4, 22497:19, 22499:16, 22535:7, 22535:25 limited-engagement [1] - 22535:7 Linda [59] - 22489:4, 22489:7, 22491:10, 22491:15, 22496:7, 22496:14, 22498:16, 22501:21, 22502:1, 22502:7, 22502:8, 22502:12, 22503:2, 22503:14, 22504:4, 22504:6, 22504:9, 22504:18, 22504:24, 22505:5, 22506:23, 22509:5, 22509:24, 22510:9, 22511:7, 22511:13, 22512:3, 22512:5, 22512:10, 22512:14, 22512:20, 22513:21, 22514:7, 22514:10, 22514:23, 22515:18, 22516:16, 22516:20, 22516:21, 22517:19, 22519:16, 22523:10, 22523:15, 22524:11, 22524:24, 22525:12, 22526:2, 22526:25, 22527:13, 22528:22, 22529:4, 22529:20, 22530:16, 22530:21, 22530:23, 22531:12, 22532:14, 22535:9, 22535:16 Lindás [1] - 22503:10 line [6] - 22313:5, 22316:17, 22446:4, 22508:8, 22513:14, 22528:13 lines [3] - 22336:9, 22408:23, 22437:18 link [1] - 22320:8 linked [1] - 22313:16 linking [1] - 22469:16 list [12] - 22328:24, 22374:16, 22376:5, 22378:6, 22382:22, 22382:23, 22383:4, 22383:6, 22397:19, 22397:21, 22400:1, 22495:7 listening [3] - 22410:16, 22411:14, 22411:15 live [1] - 22400:5 lived [6] - 22498:25,	22508:5, 22508:10, 22508:12, 22508:21, 22512:17 living [2] - 22461:3, 22531:6 loaned [1] - 22502:17 lobbied [1] - 22470:18 locally [1] - 22461:7 locating [1] - 22351:18 location [2] - 22403:10, 22502:15 locked [3] - 22413:14, 22439:17 logical [3] - 22510:1, 22511:10, 22517:20 longer [1] - 22330:7 longshoremen [2] - 22451:9, 22451:11 Look [1] - 22342:14 look [12] - 22323:6, 22328:23, 22338:8, 22368:15, 22394:13, 22394:23, 22433:20, 22434:13, 22460:18, 22507:23, 22509:18, 22517:18 looked [4] - 22339:4, 22344:23, 22358:16, 22391:15 looking [11] - 22322:18, 22323:4, 22324:6, 22327:8, 22327:14, 22332:7, 22368:14, 22399:9, 22419:19, 22438:14, 22457:24 lookit [3] - 22344:21, 22377:5, 22474:21 looks [4] - 22317:12, 22379:6, 22379:7, 22398:5 Loran [13] - 22307:6, 22308:7, 22407:15, 22409:3, 22409:7, 22418:6, 22418:7, 22428:3, 22428:4, 22428:15, 22440:18, 22441:1 Lorne [1] - 22519:17 Los [1] - 22456:12 lost [1] - 22375:18 Louis [3] - 22492:1, 22492:2, 22535:22 low [1] - 22441:15 lumps [1] - 22396:15 lunch [2] - 22428:7, 22428:17 lying [1] - 22341:16	M Maccallum [17] - 22305:7, 22309:24, 22325:8, 22397:11, 22408:24, 22409:6, 22409:17, 22409:21, 22409:24, 22410:8, 22428:2, 22428:6, 22428:12, 22446:18, 22452:15, 22452:18, 22452:22 machine [1] - 22398:11 Magazine [1] - 22470:12 mail [2] - 22355:8, 22398:4 Mail [9] - 22313:11, 22318:11, 22324:1, 22333:2, 22333:15, 22436:17, 22437:15, 22438:19, 22440:8 main [5] - 22401:24, 22402:1, 22402:18, 22508:12, 22517:21 maintained [2] - 22313:20, 22420:3 maintenance [2] - 22421:4, 22428:18 Major [1] - 22325:10 major [11] - 22315:13, 22316:5, 22316:6, 22316:10, 22320:2, 22321:23, 22421:18, 22450:18, 22450:23, 22453:13 majority [1] - 22401:21 maker [1] - 22487:23 makers [1] - 22522:20 malfeasance [1] - 22458:24 man [14] - 22342:14, 22372:13, 22392:13, 22396:1, 22417:11, 22417:12, 22451:4, 22460:16, 22468:14, 22470:12, 22470:13, 22476:15, 22498:12, 22508:20 managed [2] - 22421:11, 22468:20 management [4] - 22334:23, 22420:12, 22421:20, 22421:22 manager [1] - 22338:11 Manager [1] - 22306:4 Manitoba [2] - 22341:2, 22425:8 manual [1] - 22420:16	March [9] - 22319:8, 22321:25, 22330:3, 22457:7, 22516:18, 22533:1, 22533:13, 22533:14, 22534:10 maroon [2] - 22524:17, 22525:10 Masters [1] - 22460:11 match [1] - 22476:15 matched [2] - 22404:15, 22404:16 material [11] - 22314:3, 22347:15, 22349:22, 22351:11, 22352:18, 22353:9, 22356:7, 22356:13, 22390:7, 22431:4, 22434:24 materials [1] - 22480:23 matter [18] - 22310:11, 22317:7, 22331:12, 22335:13, 22350:1, 22351:25, 22352:23, 22385:24, 22417:1, 22426:8, 22444:12, 22453:2, 22456:24, 22456:25, 22458:3, 22509:7, 22510:4, 22525:1 matters [3] - 22381:6, 22381:15, 22442:24 Mayor [1] - 22332:23 Mccloskey [27] - 22364:14, 22408:10, 22456:6, 22459:10, 22460:4, 22463:6, 22464:21, 22467:10, 22470:5, 22470:18, 22470:25, 22478:9, 22495:16, 22496:20, 22497:14, 22497:25, 22499:8, 22499:18, 22499:21, 22501:19, 22509:18, 22510:8, 22510:13, 22510:16, 22514:8, 22518:15, 22535:5 Mccorriston [2] - 22345:21, 22345:23 Mclean [8] - 22307:2, 22308:8, 22407:14, 22407:20, 22409:24, 22410:1, 22440:20, 22440:21 mean [26] - 22343:12, 22367:7, 22367:9, 22370:20, 22384:25, 22388:19, 22391:20, 22406:10, 22461:4, 22464:6, 22479:16, 22484:17, 22488:15,	22488:17, 22489:1, 22490:13, 22491:15, 22492:15, 22495:24, 22503:15, 22506:18, 22509:21, 22513:12, 22523:3, 22525:11, 22528:10 meaning [1] - 22458:7 means [5] - 22385:14, 22386:21, 22417:17, 22459:15, 22507:6 meant [3] - 22406:14, 22438:9, 22459:17 media [20] - 22337:5, 22340:21, 22486:9, 22486:11, 22486:22, 22486:24, 22487:15, 22491:7, 22491:10, 22493:2, 22517:25, 22518:1, 22518:3, 22518:4, 22521:7, 22521:9, 22522:22, 22522:3, 22523:5 medical [1] - 22309:9 meet [9] - 22345:7, 22345:16, 22359:23, 22392:16, 22396:10, 22434:6, 22471:14, 22502:12, 22521:20 meeting [16] - 22332:24, 22334:2, 22360:1, 22360:17, 22360:18, 22365:8, 22405:23, 22464:22, 22489:5, 22503:3, 22504:9, 22504:22, 22504:24, 22505:1, 22512:14, 22531:2 meetings [3] - 22364:7, 22392:11, 22393:6 member [1] - 22409:10 members [5] - 22329:15, 22330:20, 22372:14, 22406:1, 22518:13 memo [5] - 22314:20, 22322:8, 22328:2, 22520:5 memorandum [6] - 22329:9, 22344:9, 22351:15, 22373:12, 22373:23, 22519:15 memory [2] - 22401:7, 22414:15 men [2] - 22393:20, 22463:1 mention [4] - 22311:2, 22387:5, 22464:25, 22471:13 mentioned [3] -
--	--	--	---	---



<p>22410:14, 22418:9, 22466:13 merit [2] - 22345:8, 22478:12 met [24] - 22312:3, 22322:20, 22345:14, 22349:16, 22392:13, 22392:14, 22396:9, 22406:25, 22427:22, 22431:22, 22434:2, 22434:7, 22456:6, 22459:10, 22459:17, 22460:16, 22463:6, 22471:14, 22471:19, 22502:4, 22502:8, 22503:13, 22505:5, 22521:19 Metro [1] - 22311:7 Meyer [3] - 22306:11, 22537:2, 22537:19 Michael [1] - 22360:22 microfiche [4] - 22321:15, 22429:6, 22429:19, 22429:21 microfilm [5] - 22334:24, 22335:2, 22335:5, 22428:25, 22429:3 microphone [1] - 22452:20 middle [1] - 22529:7 might [69] - 22309:22, 22311:22, 22313:1, 22314:14, 22315:2, 22315:7, 22320:6, 22320:8, 22321:6, 22321:8, 22323:3, 22324:13, 22324:14, 22324:20, 22325:5, 22326:5, 22327:7, 22327:13, 22331:11, 22332:3, 22336:9, 22345:12, 22347:8, 22354:15, 22358:5, 22359:22, 22362:19, 22374:25, 22377:3, 22386:8, 22391:2, 22401:11, 22404:8, 22407:19, 22409:8, 22409:12, 22409:13, 22414:9, 22414:10, 22416:5, 22416:8, 22417:5, 22425:5, 22431:7, 22438:9, 22443:25, 22444:5, 22444:17, 22463:4, 22466:16, 22476:5, 22479:12, 22479:14, 22483:20, 22485:16, 22490:11, 22503:12,</p>	<p>22512:22, 22513:15, 22515:6, 22529:14, 22531:20, 22534:10, 22535:2, 22535:16, 22535:19, 22536:8 Milgaard [148] - 22305:4, 22307:2, 22309:9, 22310:13, 22311:5, 22311:18, 22311:24, 22312:2, 22313:17, 22326:3, 22334:18, 22334:19, 22345:18, 22345:25, 22348:8, 22360:10, 22361:11, 22361:14, 22361:15, 22361:23, 22362:2, 22363:1, 22364:25, 22366:4, 22366:10, 22366:11, 22366:13, 22372:9, 22372:12, 22378:14, 22378:18, 22381:25, 22382:21, 22383:3, 22383:9, 22383:17, 22383:23, 22384:2, 22384:9, 22385:18, 22385:25, 22386:7, 22386:9, 22392:11, 22392:23, 22393:1, 22394:14, 22394:25, 22396:16, 22397:16, 22399:23, 22400:10, 22400:21, 22401:12, 22401:17, 22402:6, 22402:24, 22403:9, 22404:7, 22404:16, 22406:4, 22406:20, 22407:7, 22410:5, 22410:18, 22411:1, 22413:4, 22414:6, 22414:18, 22416:24, 22418:15, 22430:4, 22430:13, 22434:3, 22434:8, 22439:19, 22439:21, 22440:22, 22441:14, 22441:17, 22442:20, 22442:21, 22443:6, 22444:11, 22447:16, 22449:12, 22456:21, 22456:24, 22457:6, 22457:23, 22461:17, 22462:4, 22478:17, 22487:25, 22489:2, 22489:3, 22490:5, 22491:17, 22493:1, 22493:10, 22493:19, 22493:22, 22495:9, 22496:10, 22496:21, 22496:24, 22497:7, 22498:2, 22498:10, 22499:5,</p>	<p>22499:20, 22500:21, 22501:13, 22501:16, 22502:4, 22502:14, 22503:20, 22505:17, 22506:2, 22506:6, 22506:17, 22507:2, 22507:6, 22507:10, 22507:12, 22507:16, 22508:13, 22508:14, 22510:19, 22514:9, 22515:18, 22516:20, 22518:13, 22518:23, 22519:1, 22521:2, 22521:12, 22523:10, 22523:11, 22523:20, 22524:17, 22526:25, 22529:5, 22530:2, 22531:5, 22531:23, 22532:10 Milgaard's [15] - 22336:20, 22343:23, 22345:2, 22351:9, 22403:14, 22406:22, 22410:18, 22447:17, 22495:12, 22499:22, 22504:2, 22504:9, 22504:14, 22508:2, 22509:23 Milgaard/fisher [2] - 22348:3, 22351:24 Milgaards [3] - 22389:22, 22391:22, 22533:3 Miller [28] - 22310:17, 22310:22, 22310:23, 22311:14, 22361:22, 22362:2, 22363:21, 22369:6, 22370:8, 22371:1, 22378:11, 22378:15, 22419:17, 22424:1, 22443:12, 22489:8, 22499:3, 22503:23, 22504:17, 22507:5, 22513:4, 22513:8, 22513:24, 22514:12, 22514:20, 22524:17, 22527:23, 22534:19 Miller's [1] - 22505:25 mind [30] - 22326:8, 22331:6, 22344:24, 22346:25, 22351:22, 22368:17, 22396:9, 22396:25, 22403:2, 22416:16, 22463:21, 22464:15, 22468:4, 22468:22, 22468:23, 22482:22, 22487:11, 22491:13, 22498:5, 22503:21, 22503:22,</p>	<p>22504:16, 22506:10, 22506:12, 22507:11, 22508:2, 22514:24, 22515:3, 22526:3, 22527:9 mind's [1] - 22524:10 minds [1] - 22490:12 mindset [1] - 22498:6 mine [1] - 22438:1 minimum [4] - 22314:21, 22329:18, 22330:5, 22330:15 mining [1] - 22470:3 Minister [6] - 22307:10, 22343:23, 22352:22, 22356:8, 22515:20, 22518:17 minister [2] - 22469:5, 22520:11 Ministries [52] - 22344:9, 22357:23, 22363:17, 22364:10, 22366:8, 22367:18, 22367:24, 22368:11, 22369:2, 22372:25, 22373:5, 22373:12, 22377:9, 22379:16, 22382:8, 22408:7, 22408:12, 22408:14, 22447:11, 22448:2, 22448:6, 22449:5, 22456:5, 22456:15, 22457:1, 22459:9, 22459:13, 22459:22, 22459:23, 22460:1, 22461:14, 22462:7, 22463:21, 22464:14, 22466:24, 22467:8, 22467:15, 22471:24, 22486:13, 22490:2, 22494:7, 22495:11, 22497:4, 22497:8, 22497:16, 22498:1, 22500:5, 22505:11, 22509:9, 22509:11, 22518:11, 22535:17 Ministries' [2] - 22323:15, 22520:13 ministry [1] - 22460:22 Minnesota [1] - 22469:4 minor [1] - 22316:18 minute [3] - 22386:3, 22440:25, 22474:3 minutes [3] - 22333:4, 22334:1, 22407:8 mirror [1] - 22327:19 miscarriages [1] - 22450:10 misconduct [1] -</p>	<p>22455:2 misjudgment [1] - 22455:3 missing [48] - 22310:10, 22311:7, 22311:15, 22311:20, 22312:9, 22313:12, 22313:17, 22318:15, 22322:18, 22323:4, 22323:19, 22324:6, 22324:14, 22326:21, 22336:23, 22339:25, 22340:6, 22344:22, 22345:1, 22345:13, 22346:9, 22351:7, 22351:19, 22355:19, 22357:4, 22357:9, 22357:18, 22358:6, 22358:8, 22358:18, 22363:23, 22382:3, 22392:3, 22392:8, 22437:18, 22438:25, 22439:1, 22523:17, 22524:2, 22524:25, 22525:6, 22525:19, 22525:20, 22525:21, 22526:4, 22526:9, 22526:15 Missing [1] - 22336:16 mission [3] - 22460:19, 22489:3, 22496:5 missionary [1] - 22460:15 Missouri [1] - 22448:12 mistake [4] - 22454:14, 22469:17, 22471:2, 22474:22 mistaken [6] - 22399:6, 22433:25, 22454:9, 22456:7, 22456:8, 22525:25 misunderstanding [1] - 22379:21 mobilizing [1] - 22360:8 moment [9] - 22337:25, 22410:6, 22452:19, 22463:18, 22488:22, 22496:8, 22498:14, 22509:6, 22510:14 Monday [2] - 22309:15, 22309:18 money [2] - 22461:2, 22467:9 monitored [1] - 22403:15 montage [1] - 22454:11 Montague [3] - 22333:1, 22334:2, 22337:4</p>
---	---	---	---	--



<p>month [2] - 22339:14, 22442:7</p> <p>months [12] - 22404:15, 22434:19, 22437:13, 22453:13, 22484:18, 22501:15, 22515:17, 22516:1, 22516:2, 22517:3, 22532:22, 22534:4</p> <p>months' [1] - 22442:4</p> <p>Moose [1] - 22519:4</p> <p>morality [4] - 22315:25, 22316:7, 22342:11</p> <p>morning [22] - 22309:3, 22310:17, 22376:19, 22376:25, 22418:7, 22430:17, 22439:2, 22439:16, 22457:14, 22457:18, 22496:14, 22501:11, 22508:15, 22515:1, 22525:2, 22526:10, 22528:15, 22529:9, 22529:17, 22530:1, 22530:13</p> <p>Most [1] - 22476:21</p> <p>most [10] - 22316:12, 22392:16, 22410:3, 22467:7, 22468:25, 22469:25, 22472:13, 22476:6, 22477:14, 22486:25</p> <p>mostly [1] - 22528:1</p> <p>Mostly [1] - 22508:3</p> <p>Motel [1] - 22312:3</p> <p>mother [1] - 22498:10</p> <p>motion [1] - 22481:25</p> <p>move [5] - 22309:13, 22360:4, 22420:6, 22422:21, 22428:18</p> <p>moved [1] - 22423:14</p> <p>moving [1] - 22389:18</p> <p>much-enhanced [1] - 22461:10</p> <p>Municipal [1] - 22416:1</p> <p>municipal [2] - 22319:10, 22322:1</p> <p>murder [50] - 22361:22, 22362:2, 22363:21, 22369:6, 22370:8, 22371:1, 22372:10, 22378:11, 22378:15, 22406:2, 22406:11, 22424:1, 22443:12, 22444:4, 22461:24, 22469:16, 22470:2, 22470:24, 22476:14, 22477:15, 22482:14, 22489:9, 22490:7, 22496:3, 22496:15, 22499:3, 22501:8,</p>	<p>22503:24, 22506:1, 22506:15, 22508:3, 22508:6, 22512:18, 22513:4, 22513:22, 22513:23, 22514:19, 22515:1, 22524:4, 22524:16, 22525:2, 22525:8, 22525:24, 22526:5, 22526:6, 22526:10, 22526:18, 22527:15, 22527:23, 22534:19</p> <p>murdered [1] - 22501:10</p> <p>murdering [1] - 22468:19</p> <p>murders [2] - 22451:1, 22490:10</p> <p>Murray [1] - 22337:3</p> <p>must [4] - 22399:8, 22421:23, 22530:8, 22530:9</p> <p>muster [1] - 22464:11</p>	<p>22534:14</p> <p>nearly [1] - 22516:10</p> <p>necessarily [3] - 22393:8, 22394:5, 22487:9</p> <p>necessary [5] - 22364:4, 22367:2, 22465:3, 22474:17, 22487:11</p> <p>need [9] - 22344:21, 22344:24, 22359:7, 22379:23, 22390:22, 22395:9, 22432:10, 22488:19, 22524:12</p> <p>needed [2] - 22415:7, 22422:3</p> <p>neglected [1] - 22405:11</p> <p>negotiations [3] - 22403:7, 22403:17, 22403:19</p> <p>nervous [1] - 22503:16</p> <p>never [33] - 22312:1, 22314:6, 22315:10, 22321:11, 22322:20, 22323:8, 22323:10, 22323:11, 22331:12, 22331:14, 22343:16, 22357:11, 22358:10, 22371:3, 22371:14, 22372:5, 22374:4, 22380:11, 22395:19, 22400:9, 22417:7, 22420:14, 22429:18, 22430:7, 22432:6, 22436:6, 22438:24, 22471:19, 22473:22, 22476:17, 22514:22, 22527:18</p> <p>New [1] - 22460:16</p> <p>new [15] - 22314:4, 22315:23, 22340:7, 22422:22, 22428:19, 22461:11, 22480:2, 22480:5, 22482:1, 22484:6, 22493:7, 22494:17, 22495:25, 22535:8</p> <p>news [3] - 22318:12, 22337:1, 22340:21</p> <p>newspaper [13] - 22310:3, 22333:2, 22333:16, 22337:8, 22369:8, 22369:20, 22370:1, 22402:9, 22448:10, 22449:17, 22455:6, 22455:9, 22521:8</p> <p>newspapers [4] - 22370:4, 22438:18,</p>	<p>22440:7, 22489:23</p> <p>Next [1] - 22370:14</p> <p>next [40] - 22309:15, 22309:21, 22328:1, 22329:25, 22330:2, 22333:25, 22335:19, 22337:13, 22345:21, 22349:13, 22349:18, 22353:12, 22356:1, 22372:23, 22375:3, 22388:7, 22390:9, 22390:10, 22392:1, 22392:5, 22424:17, 22425:15, 22446:21, 22489:23, 22494:1, 22494:2, 22504:12, 22504:25, 22510:1, 22510:22, 22511:10, 22517:20, 22518:8, 22518:9, 22520:16, 22522:16, 22526:23, 22528:18, 22536:1</p> <p>nice [1] - 22434:16</p> <p>Nichol [5] - 22412:12, 22507:18, 22511:3, 22517:13, 22517:21</p> <p>Nichol's [1] - 22362:12</p> <p>night [6] - 22309:12, 22314:2, 22453:8, 22502:16, 22529:6, 22530:4</p> <p>nine [3] - 22529:9, 22529:16, 22530:19</p> <p>no-brainer [1] - 22511:1</p> <p>non [1] - 22524:15</p> <p>non-serrated [1] - 22524:15</p> <p>none [1] - 22336:14</p> <p>Nonetheless [1] - 22495:23</p> <p>nonetheless [1] - 22476:23</p> <p>noon [1] - 22457:17</p> <p>Nordstrom [1] - 22340:24</p> <p>normal [3] - 22338:23, 22471:25, 22484:18</p> <p>normally [1] - 22500:4</p> <p>note [4] - 22334:17, 22356:23, 22382:19, 22397:14</p> <p>noted [1] - 22338:21</p> <p>notes [14] - 22334:7, 22344:3, 22347:2, 22349:6, 22349:19, 22355:4, 22355:5, 22365:7, 22370:23, 22382:13, 22405:4, 22405:11, 22405:18, 22537:6</p>	<p>Nothing [2] - 22361:13, 22403:3</p> <p>nothing [7] - 22362:6, 22391:9, 22396:13, 22430:15, 22481:18, 22488:4, 22497:15</p> <p>noticed [1] - 22512:9</p> <p>notified [1] - 22322:7</p> <p>notify [1] - 22309:16</p> <p>notwithstanding [1] - 22442:10</p> <p>November [8] - 22326:18, 22327:17, 22328:2, 22347:10, 22360:20, 22419:11, 22419:12</p> <p>number [26] - 22334:22, 22354:21, 22360:21, 22360:25, 22365:12, 22366:3, 22375:8, 22406:18, 22419:3, 22429:18, 22429:20, 22433:19, 22436:23, 22451:13, 22454:25, 22455:23, 22458:11, 22460:6, 22461:3, 22465:2, 22468:1, 22498:12, 22512:22, 22518:5, 22521:10</p> <p>numbered [1] - 22317:1</p> <p>numbers [1] - 22332:10</p>
N				
<p>nail [1] - 22482:21</p> <p>name [39] - 22310:7, 22310:12, 22312:16, 22323:16, 22338:13, 22338:16, 22339:3, 22339:13, 22343:25, 22344:8, 22344:18, 22347:21, 22350:10, 22351:15, 22357:20, 22360:22, 22361:1, 22363:8, 22364:10, 22368:10, 22373:13, 22376:24, 22377:5, 22377:8, 22377:12, 22377:15, 22408:4, 22408:6, 22408:11, 22415:16, 22431:14, 22440:21, 22451:22, 22453:16, 22461:25, 22468:14, 22501:14, 22519:1</p> <p>named [1] - 22375:7</p> <p>names [6] - 22322:20, 22338:13, 22402:23, 22419:20, 22437:4, 22463:17</p> <p>nationally [1] - 22461:7</p> <p>naturally [1] - 22392:19</p> <p>nature [10] - 22313:19, 22316:20, 22359:4, 22450:16, 22480:6, 22509:15, 22510:7, 22512:6, 22526:13,</p>				
O				
<p>o'clock [1] - 22530:18</p> <p>O'keefe [1] - 22307:9</p> <p>objective [1] - 22474:5</p> <p>obliterated [1] - 22429:16</p> <p>observances [1] - 22507:20</p> <p>observed [1] - 22493:2</p> <p>obtain [3] - 22379:24, 22400:21, 22533:24</p> <p>obtained [9] - 22366:18, 22423:10, 22435:3, 22440:14, 22517:10, 22517:15, 22518:2, 22518:7, 22532:18</p> <p>obtaining [4] - 22373:24, 22379:12, 22400:16, 22466:17</p> <p>obvious [2] - 22466:21, 22510:22</p> <p>obviously [11] - 22317:10, 22370:15, 22370:18, 22391:24, 22467:9, 22473:1,</p>				



<p>22484:1, 22503:15, 22511:9, 22522:14, 22522:25</p> <p>Obviously^[2] - 22382:23, 22491:14</p> <p>Occ^[2] - 22338:16, 22338:17</p> <p>occasion^[8] - 22312:22, 22347:24, 22361:9, 22387:24, 22427:15, 22431:21, 22451:20, 22523:13</p> <p>occasions^[7] - 22323:6, 22392:15, 22407:1, 22431:18, 22431:20, 22521:10, 22529:2</p> <p>occupations^[1] - 22448:4</p> <p>occur^[1] - 22417:3</p> <p>occurred^[17] - 22412:15, 22417:7, 22419:10, 22424:19, 22425:18, 22425:21, 22426:10, 22427:1, 22427:3, 22501:12, 22508:6, 22508:18, 22513:6, 22531:20, 22533:5, 22533:8, 22534:20</p> <p>occurrence^[1] - 22490:19</p> <p>occurring^[1] - 22422:22</p> <p>October^[2] - 22340:23, 22419:10</p> <p>offence^[5] - 22316:19, 22330:7, 22330:9, 22416:1, 22417:6</p> <p>offences^[5] - 22416:19, 22419:13, 22423:20, 22425:2, 22455:17</p> <p>offense^[1] - 22319:6</p> <p>offenses^[2] - 22319:13, 22319:15</p> <p>offer^[3] - 22367:25, 22386:25, 22391:6</p> <p>offered^[1] - 22415:22</p> <p>office^[19] - 22345:20, 22349:18, 22351:12, 22351:21, 22352:11, 22364:20, 22365:20, 22371:20, 22402:4, 22413:18, 22426:3, 22439:17, 22466:9, 22473:23, 22473:24, 22482:19, 22483:6, 22483:7, 22484:2</p> <p>officer^[15] - 22323:16, 22331:13, 22342:7,</p>	<p>22342:8, 22344:14, 22346:5, 22346:8, 22387:24, 22389:25, 22391:9, 22401:16, 22402:5, 22405:18, 22519:9, 22519:17</p> <p>Officer^[6] - 22306:12, 22347:18, 22382:1, 22410:15, 22410:23, 22413:2</p> <p>officers^[20] - 22322:19, 22322:24, 22340:22, 22341:23, 22360:15, 22364:21, 22384:3, 22384:4, 22387:25, 22392:14, 22396:16, 22401:10, 22401:21, 22402:21, 22404:2, 22406:8, 22406:25, 22413:23, 22414:2, 22444:12</p> <p>offices^[2] - 22462:13, 22473:18</p> <p>Official^[5] - 22306:10, 22537:1, 22537:3, 22537:14, 22537:20</p> <p>officially^[1] - 22329:14</p> <p>officials^[3] - 22336:18, 22458:22, 22458:24</p> <p>Often^[1] - 22481:17</p> <p>often^[9] - 22320:5, 22332:3, 22345:22, 22414:7, 22414:24, 22422:6, 22472:15, 22475:24, 22481:18</p> <p>Oklahoma^[2] - 22468:14, 22469:6</p> <p>old^[9] - 22320:5, 22335:4, 22340:6, 22372:17, 22406:5, 22422:21, 22428:19, 22494:19, 22508:16</p> <p>Omaha^[2] - 22448:13, 22448:24</p> <p>omitted^[1] - 22348:10</p> <p>Once^[4] - 22320:11, 22418:7, 22471:23, 22480:23</p> <p>once^[21] - 22320:23, 22321:1, 22425:1, 22442:1, 22442:7, 22450:24, 22472:23, 22473:25, 22478:6, 22479:5, 22479:20, 22480:23, 22481:9, 22483:1, 22483:9, 22483:19, 22483:25, 22484:19, 22508:21, 22509:8</p> <p>One^[2] - 22435:6,</p>	<p>22461:19</p> <p>one^[89] - 22312:22, 22314:4, 22321:15, 22323:5, 22326:9, 22336:24, 22337:15, 22340:22, 22341:15, 22341:22, 22342:18, 22342:23, 22344:12, 22344:25, 22347:23, 22353:10, 22354:9, 22357:19, 22358:18, 22361:8, 22362:18, 22362:19, 22368:14, 22369:6, 22369:23, 22370:8, 22373:12, 22380:12, 22380:15, 22383:15, 22383:17, 22387:24, 22388:3, 22389:18, 22390:8, 22391:17, 22391:24, 22392:15, 22394:19, 22402:3, 22402:4, 22403:2, 22405:21, 22406:25, 22408:2, 22409:11, 22413:20, 22416:15, 22422:22, 22423:9, 22423:11, 22427:15, 22428:19, 22431:21, 22435:4, 22435:6, 22436:8, 22442:13, 22442:16, 22443:21, 22447:4, 22458:1, 22459:18, 22461:4, 22461:21, 22463:2, 22467:7, 22467:24, 22468:12, 22469:6, 22469:17, 22488:3, 22491:9, 22493:20, 22497:18, 22502:10, 22506:16, 22514:23, 22516:22, 22519:25, 22521:5, 22523:23, 22525:18, 22525:21, 22534:19, 22535:5, 22535:7, 22536:1</p> <p>one-room^[1] - 22461:4</p> <p>one-week^[2] - 22497:18, 22535:7</p> <p>ones^[9] - 22321:23, 22389:5, 22389:8, 22389:11, 22406:3, 22406:12, 22458:9, 22481:12</p> <p>ongoing^[1] - 22362:24</p> <p>operate^[1] - 22491:21</p> <p>opinion^[15] - 22331:18, 22335:9, 22355:20, 22403:23, 22430:1, 22445:2, 22445:6,</p>	<p>22445:14, 22477:15, 22484:10, 22487:16, 22487:20, 22499:22, 22504:8, 22504:16</p> <p>opinions^[2] - 22378:21, 22514:20</p> <p>opportunity^[5] - 22323:10, 22358:9, 22367:20, 22421:12, 22507:22</p> <p>oppose^[1] - 22484:22</p> <p>opposed^[2] - 22321:17, 22531:9</p> <p>orchestrated^[1] - 22510:24</p> <p>order^[9] - 22322:7, 22379:22, 22385:13, 22386:20, 22407:17, 22407:24, 22409:5, 22435:22, 22527:21</p> <p>ordered^[1] - 22352:22</p> <p>ordinary^[2] - 22334:23, 22500:10</p> <p>organization^[1] - 22461:1</p> <p>original^[6] - 22320:21, 22324:7, 22408:13, 22435:19, 22474:20, 22499:5</p> <p>originally^[5] - 22399:16, 22440:8, 22441:15, 22460:5</p> <p>Ostrum^[1] - 22429:9</p> <p>otherwise^[2] - 22417:21, 22432:22</p> <p>Ottawa^[1] - 22516:8</p> <p>ought^[1] - 22533:2</p> <p>ourselves^[2] - 22312:5, 22386:4</p> <p>outcome^[1] - 22478:2</p> <p>outline^[6] - 22376:8, 22515:7, 22517:3, 22520:24, 22521:1, 22534:4</p> <p>outlined^[3] - 22379:25, 22382:8, 22382:24</p> <p>outlines^[1] - 22388:12</p> <p>outlining^[2] - 22370:25, 22518:12</p> <p>outside^[2] - 22335:15, 22337:2</p> <p>overheard^[1] - 22444:1</p> <p>overlooked^[1] - 22451:16</p> <p>overlooking^[1] - 22451:10</p> <p>overshadow^[1] - 22508:1</p> <p>overturn^[2] - 22447:17, 22480:8</p>	<p>overturned^[5] - 22404:10, 22404:12, 22456:21, 22462:1, 22469:12</p> <p>overturning^[1] - 22478:3</p> <p>own^[11] - 22355:20, 22395:10, 22422:10, 22422:11, 22422:12, 22464:15, 22483:23, 22484:9, 22493:8, 22504:16</p>
P				
<p>packed^[1] - 22529:7</p> <p>page^[44] - 22328:2, 22330:1, 22330:2, 22332:17, 22333:25, 22335:19, 22337:13, 22338:5, 22353:15, 22354:9, 22355:25, 22356:1, 22362:18, 22362:19, 22370:14, 22371:10, 22371:22, 22371:23, 22372:23, 22382:1, 22388:7, 22392:1, 22397:5, 22397:6, 22406:18, 22419:5, 22421:7, 22422:19, 22422:20, 22423:13, 22424:6, 22424:17, 22425:15, 22425:22, 22428:23, 22435:4, 22435:6, 22470:11, 22494:1, 22494:2, 22518:10, 22520:16, 22526:23, 22528:18</p> <p>Page^[1] - 22308:2</p> <p>pages^[2] - 22494:2, 22537:4</p> <p>paid^[1] - 22399:10</p> <p>Pambrun^[4] - 22505:1, 22516:21, 22516:22, 22528:19</p> <p>pamphlet^[2] - 22494:3, 22494:25</p> <p>panel^[1] - 22521:4</p> <p>panned^[1] - 22528:24</p> <p>paper^[9] - 22334:21, 22340:1, 22354:6, 22374:5, 22439:18, 22448:14, 22453:14, 22473:14, 22492:22</p> <p>Parade^[1] - 22329:4</p> <p>parade^[1] - 22329:8</p> <p>paragraph^[13] - 22319:23, 22351:5,</p>				



<p>22353:13, 22357:1, 22366:15, 22375:7, 22421:8, 22423:2, 22423:4, 22424:8, 22424:9, 22425:4, 22426:14</p> <p>pardon [1] - 22369:17 Pardon [1] - 22370:17 paring [6] - 22523:16, 22523:25, 22524:3, 22524:14, 22526:4, 22526:9</p> <p>parliament [1] - 22518:14</p> <p>part [37] - 22310:23, 22315:21, 22319:2, 22322:15, 22322:18, 22326:16, 22335:20, 22345:6, 22360:11, 22360:18, 22362:18, 22366:2, 22367:24, 22369:19, 22375:23, 22382:2, 22383:14, 22392:21, 22395:16, 22398:14, 22406:23, 22415:10, 22420:19, 22440:12, 22449:4, 22449:11, 22456:11, 22457:11, 22458:19, 22458:23, 22459:14, 22465:25, 22466:19, 22473:4, 22476:3, 22495:5</p> <p>part-time [5] - 22449:4, 22449:11, 22456:11, 22459:14, 22495:5</p> <p>partial [1] - 22354:10</p> <p>participate [1] - 22522:14</p> <p>participated [1] - 22456:7</p> <p>particular [7] - 22329:22, 22333:22, 22335:25, 22349:4, 22386:10, 22430:24, 22494:15</p> <p>particularly [1] - 22346:16</p> <p>particulars [1] - 22430:22</p> <p>parties [3] - 22368:16, 22405:5, 22417:5</p> <p>partner [1] - 22420:24</p> <p>parts [7] - 22318:9, 22318:21, 22326:17, 22365:24, 22383:22, 22467:8, 22523:13</p> <p>party [2] - 22481:1, 22522:2</p> <p>pass [5] - 22442:25,</p>	<p>22443:2, 22464:11, 22464:17, 22509:17</p> <p>passed [7] - 22400:18, 22423:20, 22423:22, 22424:3, 22436:15, 22443:3, 22467:16</p> <p>passing [4] - 22347:3, 22439:23, 22443:7, 22514:18</p> <p>pastor [1] - 22460:14</p> <p>Pat [3] - 22307:6, 22409:3, 22418:7</p> <p>patrol [1] - 22414:5</p> <p>Paul [22] - 22308:9, 22309:21, 22312:3, 22344:13, 22354:17, 22361:4, 22362:13, 22379:16, 22386:4, 22386:6, 22390:23, 22390:24, 22391:2, 22392:12, 22392:17, 22393:15, 22407:6, 22446:22, 22446:24, 22494:22, 22495:10, 22523:10</p> <p>pause [12] - 22338:18, 22352:21, 22361:7, 22369:10, 22385:16, 22400:19, 22449:19, 22463:18, 22496:8, 22498:14, 22515:5, 22531:22</p> <p>pay [3] - 22329:21, 22399:19, 22399:20</p> <p>payment [1] - 22399:21</p> <p>Pearson [26] - 22343:20, 22343:21, 22344:2, 22344:17, 22344:19, 22345:10, 22345:14, 22346:23, 22347:11, 22348:19, 22349:14, 22350:3, 22351:3, 22351:6, 22352:5, 22352:14, 22355:7, 22356:2, 22356:24, 22359:6, 22359:14, 22360:13, 22430:12, 22430:15, 22437:1, 22532:19</p> <p>Pearson's [6] - 22334:7, 22344:5, 22345:6, 22346:24, 22347:1, 22355:5</p> <p>Pen [1] - 22394:10</p> <p>pending [1] - 22516:3</p> <p>Penitentiary [1] - 22450:22</p> <p>Penkala [18] - 22326:25, 22327:17, 22328:11, 22328:15,</p>	<p>22393:22, 22394:2, 22394:10, 22394:11, 22394:15, 22396:6, 22396:11, 22396:12, 22396:17, 22396:18, 22397:2, 22442:22, 22445:6, 22445:18</p> <p>Penkala's [1] - 22395:14</p> <p>penniless [1] - 22465:5</p> <p>Pennsylvania [2] - 22463:1, 22466:13</p> <p>people [34] - 22309:10, 22320:6, 22328:24, 22365:11, 22365:12, 22365:13, 22388:20, 22394:15, 22403:8, 22403:17, 22403:21, 22404:20, 22414:8, 22414:10, 22435:19, 22436:3, 22436:9, 22448:19, 22455:16, 22455:20, 22460:25, 22462:10, 22464:1, 22464:2, 22464:17, 22467:15, 22471:21, 22474:6, 22480:20, 22490:12, 22490:15, 22495:7, 22511:2, 22518:3</p> <p>per [1] - 22399:2</p> <p>perfect [3] - 22383:25, 22471:9, 22471:10</p> <p>performed [1] - 22418:23</p> <p>perhaps [6] - 22404:8, 22416:25, 22457:17, 22465:17, 22471:9, 22532:19</p> <p>Perhaps [1] - 22406:3</p> <p>period [19] - 22319:7, 22319:12, 22322:4, 22419:23, 22420:2, 22424:19, 22427:19, 22442:3, 22453:12, 22461:5, 22462:18, 22466:15, 22482:6, 22483:13, 22483:22, 22489:6, 22513:17, 22522:3, 22523:7</p> <p>periodically [1] - 22494:17</p> <p>permission [2] - 22436:1, 22503:12</p> <p>perpetrator [4] - 22491:23, 22504:21, 22505:6, 22506:25</p> <p>person [63] - 22310:12, 22310:16, 22320:12, 22323:19, 22323:25,</p>	<p>22344:8, 22345:12, 22348:1, 22353:20, 22354:16, 22357:9, 22357:17, 22358:7, 22358:15, 22364:2, 22364:5, 22385:7, 22386:12, 22386:24, 22387:7, 22387:8, 22390:19, 22422:5, 22422:6, 22422:7, 22442:13, 22442:16, 22451:21, 22452:2, 22463:22, 22464:16, 22466:2, 22466:6, 22466:8, 22467:4, 22467:5, 22467:19, 22468:3, 22468:10, 22469:21, 22470:23, 22471:3, 22471:14, 22474:15, 22476:13, 22476:15, 22477:6, 22477:16, 22477:20, 22479:8, 22480:3, 22485:25, 22486:8, 22487:12, 22491:23, 22498:23, 22499:1, 22506:9, 22506:14, 22506:18, 22509:24, 22514:17</p> <p>person's [2] - 22466:25, 22476:24</p> <p>personal [2] - 22439:10, 22477:7</p> <p>personally [4] - 22341:5, 22439:8, 22469:17, 22477:11</p> <p>personnel [1] - 22436:10</p> <p>persons [2] - 22422:5, 22471:15</p> <p>pertain [3] - 22314:24, 22329:2, 22443:6</p> <p>pertaining [2] - 22373:2, 22439:19</p> <p>pertains [1] - 22396:12</p> <p>perusal [2] - 22374:21, 22375:8</p> <p>Peter [1] - 22310:6</p> <p>petition [9] - 22474:10, 22480:1, 22480:8, 22480:12, 22483:9, 22484:22, 22485:2, 22492:3, 22492:5</p> <p>Petition [1] - 22474:12</p> <p>phone [4] - 22313:8, 22402:3, 22457:19, 22521:22</p> <p>photocopy [2] - 22435:17, 22494:3</p> <p>physical [1] - 22406:16</p>	<p>physically [1] - 22413:14</p> <p>pick [2] - 22310:4, 22465:14</p> <p>picking [2] - 22412:20, 22488:13</p> <p>picture [6] - 22494:20, 22508:22, 22514:13, 22514:14, 22519:23, 22524:9</p> <p>piece [10] - 22473:14, 22477:21, 22488:3, 22488:23, 22489:1, 22490:23, 22492:18</p> <p>piece' [1] - 22489:1</p> <p>piece-by-piece [1] - 22490:23</p> <p>piecemeal [2] - 22488:23, 22490:23</p> <p>pieces [2] - 22354:6, 22374:5</p> <p>pill [1] - 22470:24</p> <p>place [24] - 22315:20, 22315:24, 22319:19, 22330:19, 22364:8, 22365:8, 22378:11, 22393:10, 22399:10, 22410:22, 22411:6, 22411:7, 22411:9, 22411:14, 22413:5, 22414:20, 22419:13, 22429:7, 22443:11, 22443:12, 22471:10, 22503:7, 22511:10, 22527:6</p> <p>places [1] - 22460:6</p> <p>plain [1] - 22331:19</p> <p>plan [2] - 22309:9, 22512:8</p> <p>plans [1] - 22485:2</p> <p>planted [1] - 22411:16</p> <p>plastic [2] - 22524:18, 22525:9</p> <p>plastic-handled [1] - 22524:18</p> <p>plate [1] - 22332:10</p> <p>play [2] - 22441:15, 22486:9</p> <p>players [3] - 22401:24, 22402:1, 22402:18</p> <p>plead [1] - 22424:23</p> <p>pled [2] - 22425:10, 22532:3</p> <p>Pm [5] - 22428:13, 22428:14, 22485:18, 22485:19, 22536:10</p> <p>podge [1] - 22422:13</p> <p>point [34] - 22339:23, 22346:1, 22349:4, 22359:11, 22390:6,</p>
--	--	--	--	---



<p>22402:22, 22443:7, 22460:15, 22460:21, 22465:19, 22465:22, 22475:5, 22481:20, 22481:21, 22486:9, 22486:10, 22486:21, 22491:20, 22491:22, 22495:23, 22496:18, 22498:9, 22504:14, 22504:15, 22505:8, 22506:7, 22506:12, 22506:13, 22509:25, 22510:21, 22515:16, 22527:10, 22535:2, 22535:6</p> <p>pointed [2] - 22488:12, 22508:20</p> <p>Police [79] - 22307:6, 22313:14, 22314:21, 22318:14, 22319:1, 22319:5, 22319:9, 22321:14, 22321:25, 22322:22, 22325:15, 22326:6, 22326:20, 22327:5, 22327:7, 22327:10, 22327:20, 22329:15, 22332:18, 22332:21, 22332:25, 22333:7, 22333:8, 22333:12, 22335:12, 22335:20, 22335:21, 22336:21, 22337:14, 22338:12, 22339:24, 22347:18, 22348:12, 22348:20, 22348:22, 22348:25, 22349:7, 22349:16, 22350:8, 22350:19, 22351:17, 22351:20, 22352:5, 22361:2, 22361:25, 22363:20, 22366:19, 22366:25, 22367:10, 22375:20, 22381:22, 22384:8, 22384:10, 22388:11, 22393:12, 22398:14, 22409:4, 22409:9, 22409:10, 22412:11, 22416:1, 22416:22, 22418:8, 22418:10, 22418:23, 22419:24, 22428:23, 22429:1, 22430:8, 22437:2, 22437:10, 22439:3, 22440:12, 22444:19, 22444:20, 22445:12, 22445:23, 22446:3, 22454:17</p> <p>police [100] - 22310:22, 22311:5, 22311:8, 22311:9, 22311:12, 22311:19, 22311:23,</p>	<p>22312:10, 22313:22, 22314:1, 22314:8, 22314:17, 22316:10, 22317:14, 22317:16, 22318:1, 22319:10, 22322:1, 22322:17, 22322:24, 22327:18, 22327:23, 22330:6, 22330:19, 22331:13, 22335:1, 22335:14, 22336:5, 22337:3, 22340:6, 22340:7, 22341:21, 22345:17, 22347:25, 22350:21, 22352:15, 22353:1, 22358:13, 22360:11, 22362:13, 22368:13, 22368:15, 22375:11, 22379:18, 22379:20, 22382:6, 22387:24, 22387:25, 22392:14, 22398:8, 22400:17, 22400:20, 22401:10, 22401:16, 22401:21, 22402:5, 22404:2, 22405:16, 22406:25, 22411:23, 22413:8, 22422:21, 22428:19, 22433:2, 22433:11, 22437:17, 22437:20, 22438:2, 22441:2, 22444:1, 22444:12, 22445:5, 22449:22, 22449:23, 22451:15, 22453:16, 22454:11, 22457:10, 22457:12, 22457:13, 22457:15, 22457:16, 22458:18, 22459:5, 22459:6, 22463:14, 22474:21, 22475:2, 22476:12, 22476:19, 22482:23, 22485:1, 22485:11, 22487:5, 22489:22, 22519:9, 22519:17</p> <p>policeman [2] - 22400:15, 22400:16</p> <p>policemen [2] - 22400:22, 22401:2</p> <p>policies [2] - 22420:4, 22421:16</p> <p>policy [17] - 22314:2, 22315:23, 22317:15, 22318:2, 22319:5, 22319:19, 22319:24, 22320:2, 22321:12, 22327:18, 22327:19, 22327:21, 22329:16, 22330:13, 22330:18, 22331:1, 22332:13</p>	<p>policy [1] - 22329:14</p> <p>polygraph [1] - 22454:20</p> <p>polygrapher [2] - 22412:11, 22454:22</p> <p>Port [2] - 22451:10, 22454:17</p> <p>portion [3] - 22356:6, 22356:10, 22408:16</p> <p>portions [1] - 22352:16</p> <p>position [9] - 22331:19, 22332:1, 22348:6, 22379:2, 22391:23, 22409:14, 22458:14, 22479:7, 22522:12</p> <p>positive [1] - 22498:21</p> <p>possess [1] - 22352:2</p> <p>possession [3] - 22353:23, 22357:22, 22473:11</p> <p>possibility [6] - 22347:22, 22439:2, 22444:21, 22514:14, 22524:7, 22526:8</p> <p>possible [13] - 22311:13, 22343:4, 22343:5, 22356:11, 22357:4, 22396:2, 22403:21, 22416:1, 22435:9, 22441:16, 22466:7, 22478:1, 22535:18</p> <p>possibly [6] - 22355:19, 22357:17, 22387:21, 22445:24, 22523:12, 22527:14</p> <p>post [3] - 22456:2, 22474:12, 22485:3</p> <p>Post [1] - 22492:2</p> <p>post-conviction [3] - 22456:2, 22474:12, 22485:3</p> <p>Post-dispatch [1] - 22492:2</p> <p>posture [2] - 22490:13, 22522:11</p> <p>potential [3] - 22444:17, 22444:18, 22446:1</p> <p>potentially [1] - 22445:22</p> <p>power [2] - 22480:15, 22480:20</p> <p>powerful [1] - 22479:13</p> <p>powers [1] - 22333:8</p> <p>practice [4] - 22316:15, 22334:24, 22457:11, 22490:1</p> <p>practices [1] - 22459:5</p> <p>pray [1] - 22393:18</p>	<p>pre [1] - 22457:7</p> <p>pre-1990 [1] - 22457:20</p> <p>precise [2] - 22431:3, 22434:23</p> <p>precisely [1] - 22430:23</p> <p>precision [1] - 22512:25</p> <p>predated [1] - 22418:18</p> <p>predates [1] - 22356:23</p> <p>Prehodchenko [1] - 22306:13</p> <p>prejudgment [1] - 22492:12</p> <p>preliminaries [1] - 22352:11</p> <p>preliminary [3] - 22463:12, 22466:18, 22466:19</p> <p>premature [1] - 22491:14</p> <p>premise [2] - 22384:17, 22384:22</p> <p>preparation [1] - 22353:3</p> <p>prepare [1] - 22329:5</p> <p>prepared [11] - 22322:13, 22359:23, 22379:16, 22380:15, 22407:22, 22412:2, 22412:7, 22419:4, 22494:12, 22515:10, 22518:11</p> <p>present [10] - 22365:11, 22384:3, 22403:8, 22403:18, 22405:19, 22411:8, 22474:8, 22474:10, 22474:17, 22479:19</p> <p>presentation [1] - 22487:2</p> <p>presented [4] - 22323:10, 22470:8, 22487:7, 22488:2</p> <p>Presently [1] - 22403:7</p> <p>press [18] - 22418:13, 22418:18, 22431:11, 22470:25, 22487:25, 22488:3, 22488:10, 22488:16, 22488:17, 22488:18, 22488:20, 22489:10, 22491:19, 22491:22, 22492:8, 22493:6, 22493:15, 22493:16</p> <p>pressed [1] - 22346:5</p> <p>presumably [2] - 22415:25, 22475:15</p> <p>presume [5] - 22320:12, 22320:16, 22373:18, 22481:11,</p>	<p>22502:4</p> <p>pretrial [1] - 22456:1</p> <p>pretty [6] - 22385:14, 22386:21, 22392:12, 22437:19, 22507:4, 22510:22</p> <p>prevail [1] - 22488:20</p> <p>prevailed [2] - 22461:24, 22494:18</p> <p>prevents [1] - 22356:10</p> <p>previous [8] - 22320:9, 22332:7, 22332:8, 22355:25, 22457:17, 22530:23, 22531:3, 22533:15</p> <p>previously [3] - 22371:8, 22435:4, 22512:21</p> <p>Previously [1] - 22363:17</p> <p>Priel [5] - 22377:24, 22379:9, 22379:10, 22380:15, 22380:18</p> <p>Priel's [1] - 22380:12</p> <p>primarily [3] - 22449:22, 22450:15, 22463:13</p> <p>primary [2] - 22462:20, 22515:3</p> <p>Princeton [3] - 22460:13, 22461:5, 22495:15</p> <p>Pringle [8] - 22307:12, 22308:5, 22407:16, 22409:18, 22409:19, 22409:23, 22410:10, 22410:11</p> <p>priority [1] - 22465:9</p> <p>prison [17] - 22425:2, 22450:24, 22451:3, 22451:5, 22458:21, 22458:24, 22460:16, 22460:25, 22462:10, 22465:8, 22465:9, 22465:10, 22469:5, 22469:7, 22470:5, 22501:3, 22501:7</p> <p>prisoners [1] - 22426:5</p> <p>prisons [1] - 22462:15</p> <p>private [3] - 22448:24, 22448:25, 22455:15</p> <p>privately [1] - 22472:16</p> <p>privilege [4] - 22358:25, 22359:1, 22433:3, 22433:8</p> <p>privileges [1] - 22418:2</p> <p>Prize [1] - 22453:21</p> <p>probability [2] - 22466:8, 22468:7</p> <p>probe [2] - 22311:19,</p>
--	--	---	--	--



22336:17 probed [1] - 22529:20 problem [3] - 22331:9, 22409:20, 22466:17 problems [1] - 22379:19 procedure [4] - 22315:20, 22474:9, 22480:18, 22500:18 proceed [2] - 22309:20, 22425:1 proceeded [1] - 22527:9 proceeding [1] - 22367:11 proceedings [3] - 22426:7, 22455:24, 22473:1 Proceedings [4] - 22305:12, 22305:23, 22308:1, 22309:1 process [32] - 22360:8, 22443:9, 22462:8, 22462:9, 22462:16, 22462:23, 22463:20, 22464:12, 22464:20, 22465:14, 22465:20, 22465:25, 22466:20, 22467:7, 22467:8, 22468:8, 22473:16, 22473:24, 22478:7, 22478:20, 22484:16, 22486:11, 22491:16, 22494:9, 22497:5, 22497:8, 22497:9, 22500:6, 22500:17, 22500:24, 22501:5 proclaim [1] - 22469:24 proclaimed [1] - 22460:17 product [2] - 22459:6, 22479:9 progress [1] - 22522:7 progressing [1] - 22403:24 projects [1] - 22450:18 promise [1] - 22460:18 promoted [1] - 22328:15 promoting [1] - 22486:23 prompt [1] - 22336:17 prompted [2] - 22324:7, 22337:8 proof [1] - 22514:15 property [1] - 22316:19 propose [1] - 22376:6 propriety [1] - 22415:21 prosecuted [1] - 22417:5	prosecuting [1] - 22473:18 prosecution [5] - 22378:17, 22417:4, 22446:2, 22484:1, 22511:21 Prosecution [1] - 22381:24 prosecution's [1] - 22479:14 prosecutor [7] - 22458:5, 22473:7, 22473:15, 22475:18, 22475:23, 22481:23, 22482:5 prosecutor's [2] - 22473:23, 22483:6 prosecutors [5] - 22457:25, 22470:9, 22473:18, 22476:19, 22487:6 prospect [1] - 22360:1 prostitution [1] - 22451:17 protected [2] - 22433:2, 22433:7 protection [2] - 22387:15, 22415:22 protocol [1] - 22472:10 prove [6] - 22417:11, 22417:12, 22450:13, 22468:17, 22470:16, 22474:3 proved [3] - 22453:15, 22467:25, 22492:21 provide [11] - 22344:18, 22346:7, 22351:25, 22353:22, 22359:7, 22360:21, 22363:22, 22380:13, 22422:2, 22522:9, 22535:18 provided [38] - 22319:11, 22322:3, 22323:17, 22323:25, 22339:20, 22342:4, 22344:14, 22349:25, 22351:11, 22352:19, 22353:8, 22353:16, 22353:18, 22354:3, 22355:9, 22357:5, 22363:16, 22363:18, 22364:13, 22366:17, 22373:14, 22379:19, 22380:20, 22389:21, 22391:22, 22398:23, 22399:5, 22408:18, 22437:4, 22464:11, 22473:7, 22473:20, 22494:4, 22495:16, 22501:19, 22503:20,	22517:8, 22518:13 provider [1] - 22385:17 provides [1] - 22353:12 providing [7] - 22368:15, 22439:5, 22441:2, 22441:6, 22441:21, 22441:24, 22442:13 Province [1] - 22537:3 provincial [2] - 22322:22, 22329:18 proving [2] - 22460:24, 22463:8 provision [1] - 22428:22 provisions [1] - 22329:17 provocative [1] - 22528:23 provoked [1] - 22500:1 proximity [2] - 22504:19, 22508:4 public [8] - 22367:23, 22404:17, 22472:15, 22475:11, 22475:16, 22475:19, 22487:16, 22487:20 publication [1] - 22318:12 publicity [1] - 22492:12 publicly [1] - 22313:11 published [2] - 22337:5, 22381:14 Pulitzer [1] - 22453:21 pull [3] - 22371:16, 22389:11, 22533:12 purged [5] - 22382:23, 22383:5, 22383:10, 22384:17, 22397:21 purports [1] - 22330:14 purpose [10] - 22363:14, 22367:16, 22379:22, 22474:4, 22474:13, 22476:4, 22487:14, 22494:8, 22522:5, 22522:13 purposes [1] - 22319:17 purse [1] - 22508:7 pursue [9] - 22462:8, 22467:5, 22468:2, 22468:5, 22477:24, 22528:13, 22532:6, 22533:19 pursued [1] - 22528:16 pursuing [2] - 22356:11, 22356:19 put [22] - 22317:11, 22330:18, 22336:1, 22345:4, 22358:10,	22361:17, 22399:10, 22429:2, 22429:5, 22445:19, 22465:17, 22481:5, 22481:22, 22482:8, 22482:12, 22483:3, 22485:23, 22490:17, 22494:7, 22505:11, 22520:7, 22528:8 putting [4] - 22386:5, 22477:13, 22486:10, 22511:13 Q Q's [2] - 22384:2, 22384:5 Qb [1] - 22306:10 Qc [2] - 22307:5, 22307:12 qualify [1] - 22369:22 quality [1] - 22383:12 quantum [3] - 22503:21, 22504:1, 22504:3 Queen's [4] - 22537:1, 22537:3, 22537:14, 22537:20 questioning [3] - 22408:2, 22497:21, 22526:25 questions [39] - 22318:22, 22323:19, 22342:22, 22346:2, 22348:18, 22368:23, 22369:1, 22374:16, 22375:1, 22375:8, 22376:6, 22378:6, 22379:9, 22379:25, 22380:14, 22384:3, 22405:11, 22407:14, 22407:15, 22407:16, 22407:23, 22410:5, 22410:13, 22411:17, 22414:7, 22415:14, 22418:22, 22430:12, 22440:19, 22441:19, 22443:13, 22444:13, 22444:16, 22446:15, 22477:19, 22505:15, 22529:3 quickly [2] - 22476:9, 22515:11 quietly [1] - 22391:4 Quinn [7] - 22364:19, 22365:10, 22365:17, 22365:19, 22365:21, 22374:20, 22437:2 quite [11] - 22346:12,	22348:9, 22350:12, 22374:2, 22411:18, 22467:1, 22475:23, 22500:11, 22505:5, 22514:21, 22527:18 Quite [1] - 22353:7 quote [2] - 22313:25, 22336:1 quoted [1] - 22518:1 quotes [1] - 22311:4 R raised [1] - 22345:11 raises [1] - 22349:9 rank [1] - 22441:12 rape [16] - 22315:17, 22316:3, 22316:6, 22330:8, 22330:9, 22330:14, 22331:11, 22331:24, 22334:10, 22354:9, 22389:1, 22452:5, 22453:6, 22513:5, 22528:4, 22534:5 rapes [28] - 22341:2, 22342:2, 22424:15, 22442:19, 22443:10, 22443:16, 22443:21, 22444:3, 22453:18, 22498:13, 22513:3, 22513:9, 22530:23, 22531:3, 22531:8, 22531:13, 22531:16, 22532:2, 22532:3, 22532:4, 22532:11, 22532:21, 22532:23, 22533:5, 22533:15, 22533:25, 22534:18, 22535:12 rapes' [1] - 22530:25 raping [1] - 22468:19 rapist [8] - 22453:16, 22498:24, 22499:1, 22501:14, 22513:2, 22513:12, 22513:15, 22513:20 rare [2] - 22490:11 rather [1] - 22441:13 rational [1] - 22394:18 Rcmp [63] - 22307:8, 22343:21, 22346:5, 22346:16, 22354:21, 22354:22, 22357:14, 22357:20, 22358:9, 22360:2, 22360:6, 22360:8, 22360:14, 22362:23, 22362:25, 22363:2, 22363:6,
--	--	---	--	--



22364:9, 22364:14, 22364:20, 22365:4, 22369:20, 22370:9, 22371:10, 22371:17, 22371:25, 22372:3, 22372:21, 22373:17, 22376:18, 22376:21, 22376:24, 22377:8, 22377:20, 22379:12, 22380:4, 22380:7, 22380:13, 22380:20, 22380:23, 22381:5, 22381:11, 22381:13, 22381:20, 22382:3, 22383:16, 22384:7, 22387:22, 22387:25, 22396:23, 22397:13, 22406:22, 22408:4, 22408:7, 22408:14, 22408:17, 22422:10, 22428:25, 22429:10, 22430:12, 22437:1, 22523:13, 22532:19 re [3] - 22446:16, 22492:20, 22498:21 re-examination [1] - 22446:16 re-investigated [1] - 22492:20 reach [2] - 22468:11, 22509:1 reached [2] - 22481:20, 22481:21 reaction [4] - 22374:1, 22503:19, 22523:19, 22526:16 read [32] - 22318:18, 22326:16, 22334:7, 22334:13, 22340:1, 22348:17, 22354:13, 22360:13, 22365:18, 22365:24, 22369:12, 22369:20, 22369:21, 22371:12, 22372:24, 22378:5, 22380:12, 22383:22, 22391:20, 22405:15, 22406:24, 22421:12, 22423:3, 22424:9, 22426:12, 22466:18, 22499:12, 22502:23, 22513:25, 22514:9, 22522:14 reading [13] - 22371:14, 22388:2, 22396:14, 22421:15, 22423:3, 22424:9, 22424:22, 22425:7, 22425:16, 22425:24, 22426:16, 22429:10, 22471:20 real [6] - 22395:15,	22453:16, 22470:7, 22482:15, 22482:16, 22507:23 realize [3] - 22428:8, 22441:20, 22527:13 realized [2] - 22394:17, 22516:5 really [11] - 22343:16, 22391:6, 22395:19, 22395:22, 22430:7, 22474:7, 22500:23, 22530:7, 22531:10, 22534:15 reason [14] - 22319:22, 22324:2, 22324:10, 22326:24, 22335:14, 22343:11, 22365:3, 22409:15, 22422:25, 22436:25, 22437:5, 22454:21, 22488:15, 22508:13 reasonable [1] - 22425:12 reasons [11] - 22332:6, 22367:1, 22391:17, 22425:21, 22425:23, 22426:9, 22446:12, 22453:10, 22454:25, 22506:15, 22525:21 rebuttal [1] - 22368:2 recalling [1] - 22404:22 recant [1] - 22485:9 recantation [5] - 22484:11, 22484:12, 22484:13, 22489:18, 22489:20 recantations [1] - 22486:1 Receive [1] - 22499:16 receive [1] - 22399:21 received [9] - 22333:1, 22355:8, 22403:13, 22417:20, 22427:7, 22491:8, 22496:11, 22499:19, 22503:5 receiving [3] - 22417:25, 22418:13, 22499:10 recent [1] - 22469:25 recently [4] - 22337:17, 22338:2, 22351:16, 22422:8 recognition [1] - 22461:6 recognized [4] - 22454:13, 22490:18, 22530:14, 22533:7 recollection [23] - 22343:8, 22359:25, 22363:2, 22365:22,	22380:21, 22387:20, 22411:25, 22419:15, 22421:10, 22423:16, 22438:24, 22443:16, 22444:8, 22499:10, 22502:3, 22503:2, 22518:6, 22519:19, 22519:22, 22523:21, 22528:21, 22534:9, 22534:23 Reconvened [4] - 22309:2, 22405:9, 22428:14, 22485:19 record [22] - 22368:4, 22379:5, 22383:20, 22408:3, 22408:5, 22408:19, 22422:7, 22428:18, 22434:5, 22462:22, 22471:20, 22472:13, 22472:23, 22472:25, 22473:4, 22507:15, 22513:19, 22521:25, 22531:16, 22531:25, 22532:1, 22532:18 recorded [1] - 22405:22 recording [2] - 22412:5, 22504:11 recordings [2] - 22403:11, 22522:1 records [28] - 22311:8, 22312:10, 22320:15, 22320:25, 22321:2, 22321:11, 22322:19, 22323:5, 22326:13, 22331:8, 22337:16, 22338:10, 22338:12, 22340:14, 22340:24, 22362:13, 22364:12, 22375:13, 22419:21, 22420:18, 22421:3, 22421:19, 22421:21, 22422:1, 22423:10, 22466:20, 22472:10, 22531:23 Records [9] - 22316:25, 22354:7, 22431:4, 22434:24, 22435:8, 22435:23, 22436:8, 22438:5 records' [1] - 22421:16 Recurrent [1] - 22513:15 recurrent [1] - 22513:20 red [2] - 22525:10, 22525:11 redacted [1] - 22408:6 refer [4] - 22313:24, 22437:20, 22513:18, 22513:19 reference [12] -	22338:22, 22352:16, 22353:4, 22355:17, 22360:17, 22397:13, 22397:22, 22403:16, 22406:21, 22433:19, 22520:16, 22528:19 referenced [1] - 22339:3 references [1] - 22532:20 referred [12] - 22311:24, 22334:15, 22337:11, 22343:5, 22344:8, 22371:1, 22371:18, 22383:2, 22423:2, 22423:6, 22424:10, 22439:2 referring [5] - 22312:18, 22395:6, 22433:17, 22434:9 refers [5] - 22384:6, 22428:24, 22429:8, 22429:9, 22437:16 reflect [1] - 22379:2 reflects [1] - 22338:19 refresh [2] - 22401:7, 22401:8 refused [6] - 22344:18, 22368:21, 22368:25, 22382:9, 22408:10, 22517:13 regard [4] - 22351:22, 22355:23, 22425:18, 22426:23 regarded [2] - 22342:7, 22490:11 regarding [9] - 22333:1, 22334:3, 22356:6, 22418:14, 22418:24, 22433:11, 22438:25, 22489:21, 22498:7 regardless [1] - 22533:17 Regina [15] - 22425:10, 22426:2, 22426:5, 22428:20, 22519:6, 22531:5, 22531:8, 22531:14, 22532:2, 22532:11, 22532:21, 22532:23, 22533:8, 22533:10 Reginā [1] - 22531:6 regular [2] - 22332:24, 22426:6 regulation [1] - 22330:13 regulations [7] - 22319:11, 22322:3, 22327:20, 22329:18, 22329:24, 22330:1,	22423:21 Regulations [1] - 22416:2 rehearing [1] - 22480:5 reininvestigate [2] - 22474:22, 22475:7 reinvestigating [2] - 22362:25, 22474:19 reiterated [1] - 22335:8 rejected [1] - 22464:7 relate [4] - 22318:21, 22381:11, 22403:12, 22419:9 related [7] - 22410:7, 22417:1, 22418:24, 22423:25, 22431:4, 22444:3, 22451:17 relating [5] - 22310:22, 22341:2, 22346:8, 22378:20, 22381:1 relation [3] - 22336:19, 22380:25, 22426:10 relationship [3] - 22415:2, 22521:16, 22521:18 relatives [1] - 22462:20 release [3] - 22337:1, 22470:25, 22517:25 released [3] - 22404:13, 22470:5, 22489:11 relevant [8] - 22324:21, 22326:5, 22326:11, 22327:8, 22327:13, 22351:9, 22361:22, 22362:1 relied [1] - 22359:8 relief [3] - 22474:12, 22480:4, 22485:3 reluctance [1] - 22486:19 remain [2] - 22353:11, 22356:16 remaining [1] - 22469:23 remark [1] - 22405:21 remarks [1] - 22532:10 remember [41] - 22322:16, 22328:7, 22334:13, 22339:25, 22341:3, 22346:19, 22354:23, 22376:25, 22377:3, 22377:7, 22381:17, 22405:16, 22410:19, 22411:5, 22412:19, 22412:23, 22413:25, 22414:2, 22414:5, 22414:21, 22430:20, 22443:13, 22443:19, 22502:15, 22502:19, 22512:6,
--	---	--	---	--



<p>22512:8, 22512:24, 22516:24, 22518:4, 22520:19, 22524:1, 22524:21, 22527:5, 22527:7, 22529:10, 22529:20, 22530:10, 22531:11, 22534:1, 22534:11 remembered [4] - 22350:13, 22376:23, 22529:25, 22531:12 remove [4] - 22435:19, 22435:22, 22436:1, 22528:7 removed [5] - 22337:17, 22338:2, 22347:23, 22348:1, 22435:14 repeat [3] - 22373:2, 22433:4, 22467:1 repercussions [1] - 22404:9 replied [1] - 22374:8 reply [1] - 22352:13 report [71] - 22310:22, 22312:13, 22318:19, 22318:24, 22319:2, 22319:10, 22321:24, 22322:2, 22322:10, 22322:11, 22322:12, 22322:13, 22323:14, 22323:15, 22323:21, 22323:22, 22326:10, 22326:16, 22333:1, 22335:21, 22337:12, 22338:6, 22338:7, 22338:19, 22339:6, 22347:16, 22352:15, 22353:15, 22354:9, 22354:10, 22364:11, 22367:18, 22367:22, 22368:3, 22368:11, 22368:22, 22369:2, 22371:18, 22372:25, 22379:16, 22379:23, 22381:12, 22381:14, 22381:19, 22382:6, 22382:9, 22382:10, 22382:25, 22388:11, 22392:17, 22394:19, 22400:2, 22419:4, 22421:7, 22428:22, 22429:8, 22429:9, 22429:12, 22429:14, 22435:6, 22435:7, 22439:16, 22476:18, 22510:13, 22518:11, 22518:15, 22521:17, 22522:7 reported [2] - 22334:3,</p>	<p>22334:25 Reporter[2] - 22537:14, 22537:20 reporter [19] - 22402:9, 22449:19, 22449:22, 22449:25, 22450:1, 22450:3, 22450:4, 22450:7, 22450:12, 22450:14, 22452:11, 22457:8, 22457:13, 22457:22, 22458:4, 22488:18, 22492:9, 22500:16 reporters [7] - 22438:16, 22438:25, 22439:6, 22439:13, 22440:3, 22440:13, 22458:10 Reporters[2] - 22306:10, 22537:3 Reporters[1] - 22537:1 reporting [4] - 22317:13, 22449:24, 22451:13, 22493:16 reports [13] - 22317:16, 22366:8, 22366:14, 22367:24, 22385:2, 22438:21, 22457:11, 22457:12, 22457:13, 22457:16, 22457:19, 22463:14, 22521:8 represent [4] - 22410:12, 22415:17, 22432:10, 22465:2 representation [4] - 22432:12, 22454:16, 22492:13, 22492:23 represented [3] - 22431:25, 22477:7, 22477:17 representing [1] - 22463:2 repudiate [1] - 22367:21 request [8] - 22350:5, 22354:20, 22355:13, 22361:1, 22408:12, 22409:18, 22478:15, 22482:1 requested [8] - 22313:19, 22334:4, 22334:18, 22334:21, 22335:11, 22336:19, 22337:3, 22420:23 requesting [1] - 22333:6 requests [2] - 22375:16, 22435:2 required [1] - 22313:19 reside [1] - 22447:5</p>	<p>resources [4] - 22463:8, 22467:13, 22478:10, 22495:22 respect [16] - 22316:3, 22332:12, 22340:1, 22345:24, 22361:13, 22364:25, 22378:25, 22380:22, 22382:16, 22383:8, 22397:3, 22413:1, 22413:22, 22442:21, 22442:22, 22478:19 respectable [1] - 22417:21 respond [5] - 22350:25, 22359:7, 22376:9, 22481:2 responding [2] - 22359:14, 22378:2 response [16] - 22337:4, 22350:22, 22355:2, 22358:19, 22374:7, 22374:11, 22374:23, 22378:6, 22378:7, 22379:24, 22380:4, 22380:6, 22399:25, 22400:1, 22481:3, 22482:20 responses [1] - 22485:22 responsibility [2] - 22342:13, 22400:12 responsible [7] - 22356:14, 22357:9, 22357:17, 22358:7, 22372:9, 22458:8, 22510:25 restaurant [1] - 22407:11 restaurants [1] - 22453:4 restricted [1] - 22509:21 rests [1] - 22350:2 result [10] - 22333:15, 22375:18, 22445:11, 22445:13, 22450:25, 22453:14, 22453:19, 22458:16, 22504:3, 22516:8 resulted [1] - 22451:13 resulting [1] - 22455:3 results [1] - 22522:8 retain [3] - 22314:20, 22330:6, 22368:23 retained [5] - 22331:11, 22377:23, 22472:16, 22473:12, 22479:23 retaining [1] - 22319:6 Retention[2] -</p>	<p>22330:10, 22332:13 retention [10] - 22318:22, 22319:12, 22319:14, 22322:4, 22327:19, 22329:13, 22329:16, 22330:3, 22330:5, 22330:25 rethink [1] - 22343:1 reticent [1] - 22503:17 Retired[1] - 22307:13 retired [3] - 22398:16, 22400:15, 22411:4 retreat [1] - 22495:19 retrial [1] - 22336:21 retrieving [1] - 22362:12 retry [1] - 22488:17 return [1] - 22493:21 reveal [4] - 22338:12, 22356:5, 22363:12, 22366:12 revealed [1] - 22355:15 reversal [1] - 22484:6 review [19] - 22343:24, 22349:20, 22425:15, 22425:23, 22462:14, 22462:21, 22464:4, 22466:15, 22466:19, 22467:18, 22471:17, 22483:3, 22483:5, 22483:15, 22483:24, 22484:24, 22515:10, 22515:20, 22523:13 review [1] - 22373:16 reviewed [1] - 22500:19 reviewing [5] - 22335:4, 22345:17, 22457:11, 22459:5, 22497:5 Rick[2] - 22343:20, 22532:18 ring [1] - 22310:7 rise [1] - 22379:11 risk [2] - 22444:23, 22446:1 risks [1] - 22446:11 river [1] - 22448:12 River[1] - 22448:12 rivets [3] - 22523:25, 22524:15, 22524:18 robberies [1] - 22420:23 Robert[2] - 22428:22, 22429:9 Roberts[42] - 22310:15, 22310:19, 22312:8, 22312:17, 22312:20, 22312:22, 22312:23, 22312:25, 22313:5, 22330:24, 22336:9, 22341:18, 22342:4,</p>	<p>22342:20, 22343:9, 22343:13, 22386:7, 22392:9, 22412:11, 22412:16, 22427:8, 22427:9, 22427:10, 22427:13, 22427:15, 22427:16, 22427:18, 22427:23, 22431:15, 22431:17, 22431:23, 22431:25, 22433:22, 22436:16, 22437:16, 22437:22, 22438:20, 22440:6, 22440:9, 22444:20, 22444:24, 22444:25 Roberts [1] - 22438:18 Rochelle[1] - 22307:8 Rodin[10] - 22398:2, 22398:20, 22398:24, 22399:17, 22399:22, 22400:1, 22400:4, 22400:10, 22432:23, 22433:15 Roger[3] - 22470:2, 22470:11, 22470:22 Rogers [1] - 22470:6 role [3] - 22326:4, 22343:24, 22486:9 Ron[6] - 22412:12, 22489:19, 22491:4, 22507:17, 22511:2, 22517:9 Room[1] - 22329:4 room [6] - 22316:23, 22317:1, 22413:9, 22413:14, 22461:4, 22529:7 roughly [1] - 22478:8 routinely [1] - 22488:16 Roy[1] - 22528:19 Rpr[4] - 22306:11, 22537:2, 22537:18, 22537:19 ruled [1] - 22375:20 rules [2] - 22315:16, 22316:2 rulings [1] - 22410:2 run [1] - 22348:13 running [1] - 22470:11 runs [1] - 22414:23 Rusty[1] - 22402:3</p>
S				
<p>Stoon [1] - 22366:25 S/sgt [5] - 22365:19, 22379:17, 22379:24, 22382:4, 22382:9 sabotage [3] - 22481:8,</p>				



<p>22483:16, 22483:18 Sandra [1] - 22306:4 Sask [4] - 22348:12, 22348:20, 22348:22, 22349:16 Saskatchewan [19] - 22305:17, 22307:3, 22313:22, 22314:8, 22319:9, 22327:4, 22327:20, 22333:7, 22335:11, 22336:4, 22351:17, 22352:19, 22353:24, 22354:2, 22381:22, 22381:23, 22425:8, 22437:17, 22537:4 Saskatoon [49] - 22305:17, 22307:6, 22311:12, 22311:19, 22313:14, 22319:4, 22321:14, 22325:6, 22329:15, 22332:25, 22336:21, 22338:11, 22341:2, 22351:20, 22361:2, 22361:25, 22363:20, 22366:19, 22375:20, 22381:21, 22382:6, 22393:25, 22398:14, 22409:4, 22409:9, 22409:10, 22412:13, 22417:22, 22418:8, 22418:10, 22418:23, 22419:24, 22424:19, 22426:8, 22429:1, 22430:8, 22434:4, 22437:2, 22437:10, 22438:2, 22439:3, 22440:12, 22502:25, 22519:9, 22531:9, 22531:21, 22532:23, 22532:24, 22533:6 satisfaction [1] - 22426:9 satisfactorily [1] - 22403:25 satisfied [3] - 22355:21, 22372:9, 22466:24 satisfy [1] - 22466:1 saw [14] - 22340:23, 22352:10, 22371:14, 22373:23, 22374:4, 22382:12, 22385:2, 22397:17, 22421:11, 22421:19, 22437:9, 22476:13, 22496:14, 22534:4 Sawatsky [2] - 22360:6, 22360:19 Sawatsky's [2] -</p>	<p>22405:17, 22405:21 Sawatzky [19] - 22365:9, 22365:16, 22366:1, 22366:21, 22366:24, 22367:15, 22368:6, 22373:9, 22374:15, 22375:5, 22376:7, 22376:13, 22378:2, 22379:6, 22379:14, 22381:25, 22383:23, 22387:23 scheduled [1] - 22309:7 school [2] - 22460:9, 22460:12 School [1] - 22460:12 Scientist [1] - 22495:19 scope [1] - 22329:23 scout [1] - 22469:5 screen [2] - 22465:21, 22493:23 screening [7] - 22467:7, 22473:16, 22473:24, 22478:14, 22478:15, 22478:20, 22497:10 scroll [4] - 22330:8, 22368:20, 22374:14, 22378:23 scrutinize [1] - 22507:23 search [8] - 22324:8, 22335:1, 22335:6, 22338:10, 22339:12, 22339:14, 22339:15, 22439:1 searched [2] - 22426:24, 22427:5 searching [4] - 22326:5, 22436:10, 22437:10, 22438:22 Seattle [14] - 22447:5, 22448:14, 22448:15, 22448:25, 22449:16, 22451:8, 22451:10, 22453:18, 22454:17, 22458:5, 22468:15, 22494:4, 22498:18, 22510:9 second [9] - 22328:14, 22328:16, 22336:20, 22353:15, 22371:12, 22456:25, 22457:3, 22486:19, 22520:11 second-guess [1] - 22486:19 Secondly [1] - 22490:10 section [3] - 22329:3, 22333:8, 22375:10 securing [1] - 22366:12 Security [1] - 22306:12</p>	<p>see [52] - 22326:15, 22330:2, 22330:7, 22330:11, 22333:11, 22333:23, 22337:13, 22339:5, 22342:13, 22343:2, 22346:20, 22352:12, 22359:13, 22365:17, 22371:7, 22374:7, 22381:20, 22384:5, 22387:14, 22398:6, 22407:6, 22415:11, 22416:20, 22417:13, 22417:17, 22417:20, 22417:24, 22418:5, 22423:7, 22429:14, 22459:18, 22487:2, 22489:16, 22498:16, 22500:2, 22501:21, 22502:7, 22504:23, 22512:14, 22513:21, 22514:7, 22514:10, 22514:23, 22515:17, 22519:11, 22520:15, 22521:10, 22526:24, 22527:2, 22528:14, 22532:10, 22536:2 See [2] - 22385:13, 22388:11 seeing [6] - 22324:17, 22352:8, 22371:21, 22402:21, 22438:20, 22469:8 seeking [2] - 22350:20, 22351:21 Seeking [1] - 22493:25 seem [2] - 22406:2, 22406:11 seldom [2] - 22482:2, 22486:16 selection [3] - 22465:14, 22494:9, 22497:9 semen [1] - 22395:17 send [4] - 22497:23, 22499:8, 22499:25, 22517:5 Send [1] - 22320:25 sending [2] - 22352:18, 22375:6 sends [3] - 22352:14, 22379:6, 22379:14 senior [3] - 22404:2, 22414:8, 22436:9 sense [7] - 22392:2, 22471:22, 22500:5, 22502:2, 22508:23, 22522:18, 22528:10 sent [8] - 22343:3, 22376:8, 22378:1,</p>	<p>22380:18, 22398:3, 22408:13, 22467:10, 22505:12 sentence [1] - 22373:2 sentencing [1] - 22452:8 September [18] - 22311:3, 22312:14, 22313:12, 22317:25, 22332:24, 22334:2, 22336:16, 22363:6, 22364:9, 22365:9, 22375:4, 22375:25, 22379:1, 22382:5, 22383:14, 22405:23, 22405:24, 22408:14 Serge [2] - 22307:5, 22415:17 sergeant [8] - 22328:4, 22328:5, 22328:6, 22328:10, 22328:20, 22329:2, 22329:10, 22341:4 Sergeant [17] - 22334:7, 22341:4, 22342:6, 22343:21, 22347:1, 22351:3, 22351:6, 22352:5, 22359:5, 22363:8, 22365:10, 22378:9, 22378:12, 22378:16, 22378:24, 22430:12, 22437:1 sergeant's [2] - 22413:18, 22439:17 serial [5] - 22501:14, 22513:1, 22513:12, 22513:13, 22513:16 series [1] - 22492:21 serious [4] - 22315:10, 22319:6, 22319:13, 22319:14 serrated [2] - 22524:15, 22524:19 serve [1] - 22329:14 Service [14] - 22307:6, 22398:14, 22409:4, 22409:9, 22409:10, 22412:12, 22418:8, 22418:11, 22419:24, 22429:1, 22430:9, 22437:10, 22439:3, 22440:12 Services [3] - 22398:6, 22398:10, 22398:13 services [1] - 22399:11 set [9] - 22333:8, 22359:17, 22364:20, 22379:8, 22380:13, 22425:22, 22495:2, 22508:19, 22515:25</p>	<p>sets [2] - 22330:1, 22337:14 seven [5] - 22438:6, 22438:13, 22518:21, 22530:17 several [9] - 22382:22, 22383:5, 22391:24, 22397:20, 22422:8, 22462:3, 22469:19, 22489:6, 22506:15 severely [1] - 22418:17 sewer [1] - 22445:7 sexual [6] - 22419:6, 22419:8, 22419:10, 22419:16, 22419:18, 22518:22 Sgt [1] - 22364:2 shall [1] - 22439:15 shame [1] - 22527:7 share [2] - 22444:25, 22481:23 shared [2] - 22482:17, 22482:18 shed [1] - 22369:3 sheet [4] - 22326:10, 22435:12, 22435:14, 22436:6 shepherds [1] - 22469:10 shied [1] - 22415:12 shifts [1] - 22335:4 Shirley [1] - 22521:5 shocked [1] - 22411:18 shoot [1] - 22487:18 short [1] - 22495:6 shorter [1] - 22443:9 shorthand [1] - 22537:5 shortly [2] - 22427:22, 22452:7 Shorty [1] - 22413:22 shots [3] - 22509:12, 22509:22, 22522:19 Show [1] - 22521:5 show [22] - 22318:9, 22345:4, 22347:3, 22354:13, 22370:23, 22371:6, 22371:9, 22373:20, 22374:13, 22383:3, 22383:9, 22385:25, 22394:14, 22396:20, 22413:17, 22493:21, 22493:23, 22493:24, 22520:5, 22521:4, 22527:22, 22531:23 showed [17] - 22326:17, 22334:8, 22344:12, 22354:16, 22371:10, 22371:18, 22371:19, 22371:25,</p>
--	--	--	---	--



22373:13, 22373:17, 22374:3, 22382:6, 22382:21, 22397:23, 22508:15, 22532:1 showing [5] - 22362:13, 22373:25, 22396:17, 22401:12, 22470:22 shown [6] - 22370:24, 22373:4, 22373:11, 22373:24, 22386:6, 22397:19 shows [3] - 22434:5, 22479:22, 22521:25 shut [1] - 22451:12 sic [1] - 22493:11 Sidney [2] - 22496:12, 22511:15 sign [6] - 22435:9, 22435:12, 22435:14, 22436:4, 22436:5, 22436:6 sign-out [3] - 22435:12, 22435:14, 22436:6 signed [2] - 22426:1, 22440:1 significance [1] - 22528:21 significant [3] - 22452:1, 22453:24, 22526:22 signing [1] - 22435:20 silhouette [1] - 22514:17 similar [3] - 22391:19, 22409:18, 22417:24 similarity [1] - 22513:2 similarly [1] - 22417:5 simply [10] - 22309:16, 22347:5, 22357:21, 22411:21, 22435:20, 22468:5, 22477:13, 22478:4, 22492:13, 22492:23 simultaneously [1] - 22431:19 single [1] - 22388:18 sit [1] - 22413:10 site [1] - 22514:19 sitting [3] - 22305:15, 22394:22, 22444:6 situation [2] - 22376:2, 22476:7 six [2] - 22404:15, 22437:12 skill [1] - 22537:6 skip [1] - 22364:16 sleeping [2] - 22502:18, 22502:19 slept [1] - 22469:9 slow [1] - 22403:24	small [8] - 22448:10, 22461:2, 22461:3, 22461:4, 22462:11, 22489:4, 22502:16, 22503:6 smart [2] - 22388:20, 22388:21 snapshot [1] - 22460:1 snow [2] - 22395:17, 22396:15 snowballed [1] - 22416:23 so-called [1] - 22458:7 Social [1] - 22361:15 society [1] - 22417:14 sold [1] - 22504:13 solicitor/client [4] - 22358:25, 22359:1, 22433:3, 22433:8 solved [5] - 22317:3, 22317:4, 22317:7, 22317:10, 22320:3 someone [18] - 22310:12, 22317:13, 22321:17, 22331:15, 22336:13, 22337:18, 22338:2, 22338:6, 22364:18, 22425:1, 22431:25, 22465:10, 22483:23, 22497:16, 22497:25, 22505:13, 22534:13, 22534:25 someplace [1] - 22411:23 Sometime [1] - 22495:25 sometime [2] - 22358:1, 22522:2 Sometimes [1] - 22472:19 sometimes [5] - 22436:3, 22472:20, 22472:21, 22475:1, 22481:7 somewhat [2] - 22353:7, 22500:1 somewhere [3] - 22480:25, 22531:20, 22535:14 son [5] - 22375:18, 22404:23, 22404:25, 22415:7, 22503:11 son's [3] - 22430:25, 22495:17, 22498:11 soon [3] - 22359:20, 22467:12, 22495:5 sooner [1] - 22533:24 sorry [17] - 22325:12, 22340:10, 22358:24, 22371:7, 22398:13,	22404:19, 22408:1, 22424:7, 22456:3, 22473:25, 22478:22, 22478:25, 22479:3, 22479:16, 22483:12, 22498:19, 22515:8 sort [11] - 22312:5, 22387:11, 22387:15, 22391:3, 22391:5, 22391:8, 22416:14, 22420:4, 22420:12, 22421:4, 22433:21 sound [9] - 22358:1, 22365:11, 22419:14, 22421:10, 22422:22, 22425:12, 22434:14, 22505:1, 22509:19 sounds [3] - 22425:5, 22441:1, 22509:19 source [40] - 22311:24, 22313:22, 22314:1, 22314:8, 22317:16, 22332:7, 22332:10, 22336:5, 22343:4, 22344:22, 22344:23, 22346:15, 22347:14, 22348:24, 22349:21, 22355:20, 22356:5, 22356:12, 22363:10, 22363:13, 22363:15, 22363:17, 22363:18, 22363:22, 22364:1, 22366:16, 22368:12, 22373:1, 22379:18, 22382:21, 22383:2, 22384:8, 22387:13, 22388:3, 22404:4, 22437:17, 22437:20, 22440:5, 22440:10, 22473:13 source's [1] - 22363:12 sources [10] - 22311:5, 22341:21, 22400:16, 22400:20, 22439:3, 22439:4, 22451:3, 22462:21, 22518:1, 22521:9 soured [1] - 22415:2 south [1] - 22458:11 speaking [3] - 22315:7, 22417:9, 22427:15 special [1] - 22485:5 specializing [1] - 22448:18 specific [5] - 22362:7, 22366:14, 22402:23, 22416:19, 22518:5 specifically [4] - 22335:10, 22413:4, 22416:8, 22529:22	specified [1] - 22336:22 spectre [3] - 22498:12, 22506:23, 22507:1 speculate [1] - 22339:18 speculation [1] - 22439:12 speed [2] - 22397:3, 22418:17 Spencer [1] - 22485:4 spend [1] - 22457:10 spent [6] - 22316:12, 22336:7, 22448:16, 22478:14, 22502:16, 22529:23 spliced [1] - 22429:16 spoken [2] - 22361:3, 22361:5 spot [3] - 22405:3, 22485:17, 22536:8 spring [4] - 22434:4, 22434:11, 22434:12, 22434:17 square [1] - 22371:8 St [3] - 22492:1, 22535:22 stabbing [1] - 22528:9 Staff [10] - 22306:1, 22306:8, 22328:6, 22341:4, 22342:6, 22365:10, 22378:8, 22378:12, 22378:16, 22378:24 staff [12] - 22328:5, 22329:15, 22329:20, 22335:2, 22413:17, 22421:3, 22422:2, 22431:4, 22434:24, 22438:5, 22439:17, 22462:12 stage [3] - 22471:16, 22480:17, 22500:21 stages [1] - 22486:24 stand [2] - 22309:5, 22417:15 standard [2] - 22329:18, 22330:5 star [1] - 22511:12 Star [1] - 22310:6 stared [1] - 22526:20 start [14] - 22315:21, 22410:25, 22448:7, 22472:8, 22472:9, 22472:23, 22474:6, 22478:17, 22491:9, 22509:16, 22511:7, 22511:19, 22513:16, 22515:7 started [22] - 22416:23, 22418:13, 22418:16,	22433:22, 22441:9, 22445:21, 22449:22, 22450:25, 22456:11, 22461:1, 22463:5, 22463:12, 22463:14, 22495:4, 22495:13, 22495:14, 22509:25, 22511:5, 22511:6, 22511:20, 22512:10, 22533:21 starting [5] - 22338:8, 22384:23, 22511:2, 22511:4, 22511:10 starts [2] - 22399:1, 22462:16 state [14] - 22450:15, 22457:25, 22461:13, 22473:6, 22481:1, 22481:10, 22481:11, 22481:14, 22482:7, 22483:2, 22483:14, 22483:22, 22484:20, 22485:22 State [2] - 22450:21, 22458:22 statement [27] - 22310:21, 22340:25, 22342:8, 22343:1, 22364:22, 22365:15, 22376:17, 22379:11, 22383:7, 22386:10, 22401:19, 22406:14, 22424:22, 22479:15, 22489:6, 22489:18, 22489:21, 22491:11, 22491:16, 22504:25, 22516:22, 22517:8, 22517:10, 22517:16, 22518:8, 22521:23, 22529:4 statements [11] - 22396:5, 22485:9, 22489:22, 22491:3, 22491:7, 22507:20, 22516:21, 22517:25, 22518:3, 22518:20, 22522:22 states [1] - 22348:25 States [10] - 22447:6, 22461:8, 22461:15, 22470:1, 22474:9, 22480:1, 22480:17, 22490:8, 22490:17, 22492:7 stating [1] - 22319:23 station [12] - 22314:17, 22322:17, 22340:7, 22345:17, 22398:8, 22411:23, 22413:8, 22422:21, 22428:19,
---	--	---	--	--



<p>22449:23, 22457:15 stayed [2] - 22448:15, 22455:6 step [6] - 22466:4, 22468:1, 22477:2, 22510:18, 22511:10, 22535:5 steps [5] - 22476:1, 22510:1, 22510:22, 22517:20, 22534:16 Steve [4] - 22451:22, 22452:5, 22459:2, 22492:19 stick [1] - 22331:5 still [10] - 22326:13, 22388:25, 22389:1, 22389:4, 22397:15, 22415:2, 22459:22, 22463:16, 22473:12, 22485:10 stipulate [1] - 22484:6 stipulating [1] - 22482:1 stones [1] - 22478:4 stood [1] - 22526:20 stop [1] - 22311:20 stopped [1] - 22454:19 storage [4] - 22317:1, 22317:11, 22420:4, 22421:4 stored [1] - 22316:23 stories [4] - 22440:15, 22453:13, 22488:13, 22492:21 story [7] - 22438:19, 22440:8, 22450:20, 22451:7, 22453:7, 22453:19, 22492:22 strange [1] - 22439:15 strategy [2] - 22512:4, 22522:15 streamlined [1] - 22478:21 street [1] - 22513:6 stretch [1] - 22409:8 strictly [1] - 22516:8 strong [5] - 22358:5, 22441:13, 22468:7, 22489:7, 22504:20 strongly [2] - 22498:11, 22505:6 stuff [4] - 22384:15, 22394:9, 22395:8, 22395:9 style [1] - 22442:12 subject [4] - 22331:12, 22367:6, 22413:6, 22525:1 submitted [1] - 22356:7 subpoena [2] -</p>	<p>22480:15, 22480:20 subsequent [1] - 22362:8 subsequently [2] - 22453:17, 22524:11 substantially [1] - 22410:3 subtle [1] - 22476:23 succeed [1] - 22478:2 success [2] - 22421:1, 22441:18 successful [1] - 22446:2 sudden [2] - 22392:4, 22505:9 suddenly [2] - 22389:13, 22389:14 suggest [9] - 22325:16, 22325:18, 22393:11, 22409:8, 22430:7, 22436:24, 22437:19, 22475:3, 22516:19 suggested [10] - 22313:17, 22340:25, 22344:20, 22347:13, 22351:7, 22374:2, 22374:8, 22377:2, 22526:19, 22533:11 suggesting [2] - 22358:14, 22373:14 suggestion [5] - 22357:16, 22358:5, 22358:20, 22359:5, 22429:17 suggestions [3] - 22376:22, 22440:11, 22535:13 Suggestions [1] - 22371:23 suggestive [1] - 22454:10 suggests [7] - 22349:13, 22352:7, 22365:8, 22423:13, 22436:24, 22480:2, 22519:15 suicide [1] - 22375:21 summarize [3] - 22345:5, 22366:20, 22529:3 Summary [1] - 22371:23 summary [6] - 22368:5, 22370:25, 22373:7, 22405:17, 22405:21, 22494:6 summer [1] - 22485:6 Sunday [1] - 22309:11 superintendent [1] - 22345:21 supervisor [2] -</p>	<p>22435:21, 22436:2 supervisors [1] - 22438:10 supplied [1] - 22366:7 support [2] - 22479:7, 22480:12 Support [1] - 22306:8 suppose [2] - 22487:24, 22513:14 supposed [1] - 22434:6 supposedly [2] - 22499:2, 22533:8 Supreme [6] - 22352:23, 22359:18, 22411:3, 22456:20, 22520:20, 22520:21 surfacing [1] - 22390:19 surprised [2] - 22439:9, 22445:18 surrounded [1] - 22506:17 surrounding [4] - 22348:24, 22351:24, 22366:4, 22513:4 surveillance [5] - 22411:14, 22412:10, 22412:14, 22413:2, 22413:6 suspect [10] - 22344:24, 22378:15, 22468:23, 22493:9, 22506:5, 22506:8, 22507:5, 22508:14, 22526:12, 22526:14 suspect's [1] - 22454:18 suspected [6] - 22323:20, 22324:15, 22364:24, 22439:14, 22496:2, 22525:22 suspects [1] - 22320:6 suspicion [3] - 22323:22, 22345:6, 22451:5 suspicious [2] - 22345:8, 22525:15 suspicious [2] - 22422:4, 22507:20 sustained [2] - 22397:4, 22445:16 swallow [1] - 22470:25 sway [2] - 22487:16, 22487:19 switch [1] - 22413:12 Sworn [1] - 22308:9 sworn [1] - 22446:24 system [16] - 22314:4, 22319:11, 22322:2, 22336:6, 22336:13,</p>	<p>22337:18, 22338:2, 22339:2, 22339:5, 22420:15, 22420:16, 22420:17, 22422:5, 22458:22, 22471:9, 22471:10</p> <p style="text-align: center;">T</p> <p>table [1] - 22502:20 taker [1] - 22342:9 talks [9] - 22317:12, 22327:17, 22327:22, 22330:3, 22336:17, 22340:20, 22356:2, 22356:25, 22434:10 Tallis [6] - 22307:12, 22403:15, 22410:12, 22410:17, 22413:3, 22414:17 tampered [2] - 22336:5, 22336:13 tampering [4] - 22333:9, 22333:22, 22335:9, 22335:13 tape [15] - 22335:2, 22383:21, 22383:24, 22384:6, 22384:20, 22385:2, 22395:4, 22403:10, 22412:1, 22412:2, 22412:5, 22412:7, 22504:11, 22522:1, 22523:11 taped [2] - 22501:25, 22504:11 tapes [4] - 22335:5, 22335:6, 22411:22, 22429:15 task [6] - 22360:12, 22360:16, 22471:4, 22471:7, 22500:2, 22535:11 tasked [1] - 22351:18 Tdr [1] - 22307:4 team [5] - 22343:13, 22366:2, 22404:7, 22416:24, 22421:1 teams [1] - 22441:17 teamsters [1] - 22451:9 tears [2] - 22453:5, 22469:6 Technician [1] - 22306:13 technician [1] - 22411:21 telephone [3] - 22379:7, 22462:19, 22520:2 Ten [1] - 22330:9</p>	<p>ten [9] - 22330:15, 22331:25, 22332:5, 22423:19, 22424:3, 22449:2, 22463:9, 22465:10, 22494:16 tendered [1] - 22524:16 term [6] - 22478:6, 22481:11, 22513:12, 22513:13, 22513:15, 22513:16 termed [1] - 22341:25 terms [9] - 22356:9, 22415:3, 22421:11, 22421:20, 22424:25, 22431:11, 22434:9, 22493:6, 22529:25 test [3] - 22454:20, 22464:17, 22467:16 tested [1] - 22470:21 testified [3] - 22344:2, 22397:2, 22443:8 testify [3] - 22309:10, 22447:2, 22520:21 testifying [1] - 22446:17 testimony [6] - 22390:21, 22410:19, 22413:23, 22499:13, 22507:17, 22510:24 Testimony [1] - 22305:14 testing [4] - 22402:13, 22402:14, 22470:19 theft [5] - 22316:19, 22416:13, 22451:8, 22451:14 theme [1] - 22310:9 themselves [1] - 22432:5 Theology [1] - 22460:12 theory [2] - 22340:8, 22514:11 thereabouts [1] - 22360:2 thereafter [1] - 22495:5 therefore [1] - 22388:18 Therefore [2] - 22367:2, 22367:12 they' [1] - 22532:11 they've [2] - 22341:19, 22484:25 They've [1] - 22336:22 thick [1] - 22373:3 thinking [4] - 22394:13, 22394:23, 22415:25, 22525:3 third [2] - 22357:1, 22368:16 Thomas [2] - 22308:3, 22309:25</p>
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thorough [3] - 22466:17, 22466:18, 22499:7 thoroughly [1] - 22486:4 thoughts [1] - 22523:6 threatening [1] - 22529:8 three [14] - 22438:10, 22451:1, 22453:13, 22455:6, 22461:11, 22463:1, 22463:6, 22464:24, 22466:14, 22469:20, 22491:3, 22507:19, 22510:23, 22511:20 thrown [1] - 22331:12 Thursday [3] - 22309:7, 22341:7, 22443:8 Tim [3] - 22437:16, 22440:7, 22440:9 time-consuming [1] - 22471:7 timing [1] - 22519:12 Timothy [4] - 22312:15, 22313:1, 22342:5, 22431:18 Titus [10] - 22451:22, 22452:5, 22453:2, 22453:3, 22454:3, 22454:15, 22454:20, 22455:5, 22459:2, 22492:19 today [2] - 22440:23, 22444:6 together [4] - 22313:4, 22406:3, 22406:11, 22481:22 Tom [7] - 22341:14, 22350:21, 22359:6, 22364:2, 22519:8, 22519:14, 22519:25 tomorrow [1] - 22536:3 took [21] - 22344:25, 22364:8, 22365:8, 22378:11, 22410:22, 22411:6, 22411:7, 22411:9, 22411:14, 22414:20, 22419:13, 22429:6, 22435:16, 22443:12, 22489:22, 22503:21, 22504:1, 22504:2, 22509:9, 22509:25, 22516:21 tooth [1] - 22482:21 top [5] - 22388:9, 22398:5, 22422:20, 22426:15, 22478:14 Toronto [3] - 22310:6, 22457:19, 22521:4	Tost [4] - 22365:10, 22365:16, 22387:24, 22405:19 total [1] - 22448:16 totally [2] - 22341:15, 22465:2 touch [7] - 22387:13, 22401:2, 22405:12, 22479:3, 22489:15, 22519:7, 22523:14 touched [3] - 22362:15, 22369:11, 22406:23 tough [1] - 22430:21 town [3] - 22469:4, 22489:4, 22503:6 traced [1] - 22445:10 track [3] - 22404:8, 22438:3, 22505:12 traf [1] - 22328:18 traffic [6] - 22328:12, 22328:19, 22328:21, 22329:1, 22329:2, 22329:10 Traffic [1] - 22329:8 train [1] - 22469:8 training [2] - 22469:9, 22469:10 transcribed [1] - 22523:12 Transcript [2] - 22305:12, 22309:1 transcript [9] - 22412:6, 22433:18, 22473:1, 22473:3, 22499:11, 22499:16, 22504:5, 22512:9, 22523:9 transcription [1] - 22537:5 transcripts [8] - 22462:22, 22466:17, 22466:18, 22499:9, 22499:11, 22502:20, 22502:23, 22529:1 transfer [1] - 22340:6 transferred [2] - 22328:16, 22328:18 transport [1] - 22426:5 treatment [1] - 22489:22 Treble [9] - 22322:14, 22322:17, 22323:23, 22327:5, 22327:9, 22348:21, 22348:25, 22349:5, 22349:10 trepidation [1] - 22486:20 trial [14] - 22454:24, 22455:1, 22462:22, 22469:13, 22472:19, 22476:16, 22477:20,	22480:5, 22482:1, 22482:2, 22484:7, 22499:6, 22499:12, 22524:17 Trial [1] - 22473:3 tried [6] - 22323:17, 22323:18, 22441:15, 22445:18, 22511:23, 22517:12 tries [2] - 22450:7, 22450:8 trip [4] - 22485:5, 22508:18, 22521:21, 22535:15 trips [1] - 22521:6 trouble [1] - 22415:23 true [7] - 22370:11, 22436:3, 22461:16, 22482:9, 22487:24, 22535:19, 22537:5 trust [3] - 22327:11, 22416:14, 22416:15 truth [4] - 22453:9, 22474:7, 22474:14, 22477:13 truthful [2] - 22511:25, 22512:1 truthfully [1] - 22511:25 truths [1] - 22351:24 try [24] - 22317:18, 22325:19, 22450:6, 22468:1, 22470:16, 22472:17, 22472:23, 22473:13, 22474:6, 22475:7, 22481:8, 22484:9, 22484:14, 22488:16, 22498:8, 22502:12, 22508:15, 22508:17, 22510:11, 22511:11, 22515:25, 22529:3, 22535:7 trying [27] - 22315:22, 22326:6, 22345:5, 22346:14, 22359:3, 22394:2, 22394:4, 22401:11, 22417:11, 22423:24, 22438:3, 22444:13, 22450:12, 22471:22, 22482:23, 22483:18, 22487:14, 22487:19, 22491:2, 22493:7, 22505:18, 22530:11, 22531:15, 22533:17, 22534:23, 22535:11, 22535:23 Tuesday [3] - 22305:21, 22309:15, 22309:19 turn [2] - 22481:16, 22495:8 turned [6] - 22454:8,	22467:18, 22468:12, 22472:19, 22476:22, 22493:8 Turning [1] - 22424:17 turns [1] - 22430:5 twice [3] - 22442:2, 22442:7, 22501:7 two [36] - 22309:9, 22322:21, 22323:5, 22342:22, 22345:11, 22353:10, 22354:6, 22364:21, 22374:5, 22392:14, 22392:15, 22396:15, 22405:6, 22405:11, 22406:25, 22415:18, 22423:9, 22424:18, 22424:20, 22431:21, 22435:3, 22453:12, 22458:10, 22463:2, 22464:23, 22469:20, 22494:2, 22508:5, 22508:9, 22516:21, 22516:25, 22520:20, 22522:12, 22522:16, 22532:4 type [16] - 22315:4, 22315:6, 22322:8, 22345:3, 22357:15, 22358:20, 22386:17, 22389:20, 22391:21, 22407:3, 22445:7, 22449:19, 22460:15, 22493:16, 22498:6, 22514:4 typed [1] - 22398:9 types [3] - 22445:9, 22448:3, 22462:6 typical [1] - 22473:10	22490:8, 22492:22, 22494:21, 22496:3, 22499:9, 22531:19, 22531:21 Un-hmm [1] - 22390:12 unable [1] - 22427:5 Uncle [1] - 22528:19 uncomfortable [1] - 22392:19 uncommon [1] - 22490:19 uncover [1] - 22450:8 uncovered [1] - 22492:24 under [13] - 22311:10, 22327:23, 22333:7, 22342:11, 22416:1, 22416:22, 22428:9, 22441:23, 22445:12, 22445:23, 22446:2, 22458:12, 22466:14 Under [1] - 22516:11 underlined [1] - 22400:19 understood [5] - 22315:19, 22325:24, 22391:5, 22445:21, 22497:22 undertake [1] - 22415:21 undertaking [2] - 22500:2, 22500:7 undertook [3] - 22318:14, 22333:13, 22444:23 undo [2] - 22482:24, 22484:12 undoubtedly [1] - 22502:11 unfounded [1] - 22440:13 unheard [3] - 22313:23, 22317:17, 22490:12 uniform [1] - 22372:13 United [10] - 22447:6, 22461:8, 22461:15, 22470:1, 22474:9, 22479:25, 22480:17, 22490:8, 22490:17, 22492:7 University [1] - 22460:13 unknown [2] - 22349:3, 22358:15 unless [6] - 22401:6, 22436:1, 22468:6, 22477:10, 22484:5, 22488:10 unlock [1] - 22413:19 unquestionably [1] -
U				
uh' [1] - 22532:15 Uh-hmm [2] - 22387:1, 22387:4 ultimately [4] - 22460:20, 22469:10, 22507:24, 22516:7 um-hmm [1] - 22395:18 Um-hmm [3] - 22388:17, 22389:3, 22395:18 umm [7] - 22364:19, 22426:23, 22486:20, 22490:16, 22507:21, 22531:10, 22534:1 Umm [14] - 22424:6, 22452:5, 22454:8, 22454:19, 22454:25, 22486:18, 22489:9,				



22482:16 unraveling [1] - 22491:17 unredacted [2] - 22364:13, 22408:15 unrelated [1] - 22381:6 unsolved [4] - 22317:5, 22319:14, 22320:3, 22332:12 unsuccessful [1] - 22435:2 untuned [1] - 22478:4 unusual [3] - 22341:22, 22342:17, 22478:18 up [77] - 22309:5, 22310:4, 22310:5, 22315:22, 22318:1, 22332:7, 22335:22, 22340:4, 22342:7, 22346:20, 22358:16, 22360:18, 22362:8, 22363:5, 22364:20, 22371:5, 22371:16, 22376:9, 22388:9, 22391:18, 22393:12, 22397:25, 22398:20, 22405:14, 22407:23, 22413:17, 22413:18, 22429:25, 22430:9, 22440:11, 22440:16, 22440:25, 22449:14, 22452:23, 22457:5, 22460:20, 22461:22, 22474:3, 22479:4, 22479:12, 22479:15, 22481:5, 22483:20, 22485:14, 22488:13, 22489:18, 22489:23, 22490:10, 22492:21, 22493:8, 22493:15, 22493:23, 22493:24, 22496:6, 22496:20, 22497:17, 22497:20, 22497:23, 22498:4, 22498:7, 22499:8, 22500:1, 22502:12, 22508:15, 22510:8, 22515:4, 22515:5, 22515:6, 22521:21, 22523:8, 22529:6, 22529:8, 22529:15, 22530:19, 22532:8, 22535:23, 22536:5 updated [1] - 22494:17 updating [1] - 22420:17 upper [2] - 22366:25, 22368:12 usual [2] - 22479:2, 22505:8 uttered [1] - 22454:14	V V14 [2] - 22519:2 V3 [3] - 22353:11, 22519:3 V4 [8] - 22310:11, 22310:14, 22310:21, 22312:9 V5 [22] - 22323:15, 22323:17, 22344:10, 22344:13, 22352:15, 22353:10, 22355:9, 22355:10, 22362:17, 22362:20, 22373:15, 22373:21, 22373:25, 22374:3, 22374:4, 22382:16 vague [1] - 22523:23 vaguely [1] - 22515:22 validate [1] - 22482:11 value [1] - 22494:24 van [4] - 22407:4, 22407:9, 22407:10, 22407:12 Vancouver [1] - 22520:8 Vanin [54] - 22309:4, 22310:2, 22317:19, 22326:18, 22336:1, 22337:19, 22339:9, 22344:11, 22347:1, 22350:21, 22353:25, 22359:3, 22359:7, 22360:7, 22364:3, 22364:12, 22365:19, 22368:21, 22368:25, 22372:1, 22372:24, 22374:16, 22374:20, 22375:5, 22375:9, 22378:9, 22378:13, 22378:16, 22378:24, 22379:18, 22382:4, 22382:9, 22402:5, 22405:7, 22405:15, 22405:25, 22407:13, 22409:7, 22410:12, 22415:16, 22418:5, 22418:7, 22418:9, 22425:25, 22428:8, 22428:16, 22429:22, 22436:24, 22446:16, 22446:19, 22519:8, 22519:14, 22519:25 Vanin's [2] - 22309:21, 22379:24 vanish [1] - 22336:4 vans [1] - 22407:3 variety [1] - 22442:23 various [11] - 22321:2,	22322:19, 22322:24, 22349:18, 22381:15, 22418:10, 22440:5, 22457:25, 22458:18, 22490:6, 22518:1 verbal [1] - 22399:12 verify [6] - 22367:21, 22371:17, 22385:13, 22386:20, 22387:7, 22482:10 Vern [2] - 22354:17, 22395:6 versed [1] - 22515:23 version [4] - 22335:23, 22347:2, 22494:25, 22529:5 versus [3] - 22317:4, 22480:19, 22507:12 vetted [11] - 22347:18, 22347:21, 22348:7, 22351:12, 22352:1, 22352:16, 22353:15, 22355:14, 22356:6, 22356:10, 22364:11 vicinity [1] - 22310:18 victim [4] - 22336:24, 22454:13, 22469:16, 22525:9 victim's [4] - 22389:1, 22476:14, 22508:7, 22514:1 victims [8] - 22332:8, 22385:5, 22386:11, 22437:5, 22513:5, 22518:21, 22520:14, 22534:5 view [12] - 22349:18, 22363:25, 22372:16, 22400:6, 22402:22, 22404:5, 22430:3, 22430:4, 22499:22, 22504:8, 22524:2, 22526:4 viewing [1] - 22366:17 views [3] - 22336:8, 22441:13, 22477:21 Virginia [4] - 22470:3, 22470:4, 22470:15, 22470:21 virtually [2] - 22469:3, 22492:11 vision [1] - 22528:2 visit [1] - 22496:7 voice [1] - 22452:19 Volume [1] - 22305:22 volunteer [2] - 22463:11, 22495:24 volunteered [1] - 22495:20 volunteers [1] -	22462:13 vowed [1] - 22470:15 W wait [3] - 22481:14, 22483:2, 22484:20 waited [2] - 22503:12, 22529:6 waiting [1] - 22397:16 walk [5] - 22316:23, 22346:21, 22435:25, 22479:20, 22502:2 walk-in [1] - 22316:23 Walla [4] - 22450:21, 22458:23 wallet [1] - 22508:7 warden [1] - 22459:1 warned [1] - 22376:17 warrant [2] - 22406:14, 22489:13 warrants [1] - 22465:15 Washington [4] - 22447:5, 22450:22, 22450:24, 22458:22 waste [2] - 22475:1, 22475:6 wasting [1] - 22467:12 water [1] - 22465:5 waterfront [2] - 22451:8, 22451:14 weapon [8] - 22513:22, 22524:4, 22524:16, 22525:8, 22525:19, 22525:24, 22526:5, 22526:6 wear [1] - 22510:14 weather [3] - 22434:16, 22528:1, 22528:4 Wednesday [1] - 22309:7 weed [1] - 22468:2 week [21] - 22309:7, 22309:8, 22309:13, 22309:15, 22309:20, 22309:23, 22313:13, 22326:18, 22349:18, 22372:1, 22442:2, 22496:6, 22496:21, 22497:18, 22497:20, 22497:23, 22517:5, 22535:7, 22535:15, 22536:4, 22536:5 weekend [4] - 22505:4, 22505:23, 22505:25, 22526:2 weeks [7] - 22339:14, 22341:12, 22341:13, 22437:23, 22470:20,	22484:18, 22494:4 weigh [1] - 22507:11 weighed [1] - 22523:6 weighing [1] - 22504:18 Weir [10] - 22323:20, 22392:3, 22392:7, 22426:23, 22427:4, 22427:7, 22427:11, 22427:12, 22427:15, 22427:16 well-being [1] - 22376:2 well-known [2] - 22417:21, 22461:8 Wempe [1] - 22307:8 west [1] - 22450:23 West [1] - 22470:3 whatnot [2] - 22462:23, 22504:20 whatsoever [3] - 22339:22, 22385:25, 22430:10 whereby [1] - 22352:25 wherein [2] - 22366:15, 22372:25 whole [4] - 22348:11, 22402:6, 22446:10, 22507:14 widespread [2] - 22451:8, 22451:17 wife [5] - 22398:9, 22398:12, 22496:14, 22499:1, 22508:10 Williams [3] - 22344:1, 22345:14, 22345:16 willing [1] - 22391:2 Wilson [14] - 22307:5, 22308:6, 22407:15, 22412:12, 22412:16, 22415:15, 22415:16, 22444:16, 22491:4, 22496:12, 22507:18, 22511:3, 22511:15, 22517:9 Wilson's [1] - 22489:19 winding [1] - 22411:2 window [1] - 22476:14 Winnipeg [10] - 22341:6, 22341:9, 22341:15, 22341:20, 22342:15, 22343:14, 22424:15, 22519:18, 22531:9, 22532:4 Winnipeg [1] - 22531:7 wise [1] - 22343:19 wish [6] - 22309:16, 22367:25, 22378:8, 22407:24, 22409:13, 22493:20 wished [2] - 22345:6, 22374:24



<p>wishes [3] - 22356:16, 22384:7, 22407:23 withheld [2] - 22476:5, 22476:8 withholding [2] - 22476:19, 22476:20 Witness [9] - 22371:14, 22421:15, 22423:3, 22424:9, 22424:22, 22425:7, 22425:16, 22425:24, 22426:16 witness [9] - 22409:9, 22446:21, 22476:11, 22476:18, 22479:15, 22484:11, 22499:13, 22500:6, 22535:8 witnesses [28] - 22309:14, 22320:6, 22332:8, 22367:10, 22472:8, 22480:11, 22480:16, 22485:5, 22485:7, 22485:14, 22507:17, 22507:19, 22510:2, 22510:6, 22510:15, 22510:23, 22511:12, 22511:21, 22516:24, 22517:6, 22517:21, 22519:21, 22522:8, 22522:11, 22522:12, 22522:17, 22528:17 woke [2] - 22529:8, 22530:19 Wolch [35] - 22309:10, 22309:11, 22309:12, 22343:13, 22348:23, 22349:3, 22358:22, 22360:5, 22360:19, 22360:20, 22361:8, 22365:1, 22366:11, 22376:14, 22383:17, 22390:3, 22399:6, 22400:10, 22415:19, 22416:17, 22417:4, 22417:25, 22418:14, 22418:19, 22432:1, 22432:4, 22432:6, 22433:6, 22433:13, 22439:7, 22440:23, 22440:24, 22441:17, 22496:11, 22516:15 Wolch's [3] - 22309:19, 22359:2, 22432:9 woman [7] - 22311:7, 22496:1, 22498:22, 22501:10, 22503:15, 22519:1, 22528:6 wondering [9] - 22324:10, 22339:8, 22339:17, 22342:3,</p>	<p>22346:3, 22372:1, 22404:14, 22406:7, 22534:9 wooden [5] - 22523:25, 22524:14, 22524:18, 22525:6, 22525:7 wooden-handled [1] - 22524:14 word [8] - 22358:5, 22373:19, 22458:6, 22458:13, 22483:15, 22491:18, 22492:15, 22509:13 words [10] - 22315:3, 22315:8, 22342:16, 22373:14, 22454:14, 22464:17, 22473:6, 22490:22, 22493:10, 22497:19 Words [1] - 22325:19 workings [1] - 22392:12 workload [2] - 22331:7, 22420:21 works [3] - 22419:8, 22447:11, 22516:6 World [1] - 22448:13 world [1] - 22450:11 worth [1] - 22390:19 wound [1] - 22375:19 wow [1] - 22523:20 wrath [1] - 22451:11 write [1] - 22487:15 writer [3] - 22451:20, 22452:10, 22452:11 writes [2] - 22355:7, 22463:22 writing [2] - 22442:12, 22488:13 written [8] - 22322:8, 22374:25, 22380:13, 22437:15, 22440:6, 22440:9, 22440:15, 22479:17 Wrongdoing [1] - 22381:21 wrongdoing [3] - 22335:10, 22360:10, 22450:8 wrongdoings [1] - 22381:1 wrongful [12] - 22454:1, 22454:7, 22455:3, 22455:21, 22478:3, 22482:14, 22485:23, 22488:12, 22490:10, 22490:17, 22500:18, 22518:12 Wrongful [1] - 22305:3 wrongfully [11] - 22366:13, 22430:4,</p>	<p>22448:19, 22451:21, 22452:2, 22453:6, 22453:11, 22460:24, 22485:25, 22486:8, 22490:15 wrongfully-convicted [2] - 22451:21, 22452:2 wrongly [2] - 22447:12, 22464:2 wrote [5] - 22319:2, 22322:12, 22359:15, 22438:16, 22463:5</p>	<p>22436:14 Yesterday [2] - 22310:10, 22314:5 young [3] - 22438:8, 22468:14, 22503:9 younger [1] - 22494:22 yourself [2] - 22443:1, 22511:4 yourselves [1] - 22466:1 Youth [3] - 22398:6, 22398:10, 22398:13</p>
		<p>Y</p> <p>Yakima [1] - 22451:16 Yanin [2] - 22308:3, 22309:25 yard [1] - 22508:8 yards [1] - 22513:7 year [17] - 22334:11, 22372:17, 22385:10, 22406:5, 22434:15, 22434:18, 22442:4, 22448:13, 22451:7, 22452:6, 22461:11, 22462:10, 22464:21, 22470:4, 22485:1, 22494:12, 22501:14 years [42] - 22313:20, 22314:21, 22316:9, 22318:3, 22319:4, 22319:7, 22330:10, 22330:15, 22331:25, 22332:5, 22334:22, 22392:4, 22396:22, 22398:17, 22401:11, 22415:4, 22423:19, 22424:3, 22427:21, 22430:21, 22444:8, 22446:7, 22448:11, 22448:16, 22449:3, 22451:1, 22455:7, 22461:3, 22462:3, 22463:9, 22465:9, 22465:11, 22466:16, 22470:19, 22478:13, 22478:16, 22479:5, 22483:20, 22484:18, 22494:17, 22495:1, 22506:16 yesterday [15] - 22310:2, 22312:16, 22313:14, 22334:6, 22334:13, 22336:1, 22336:8, 22337:19, 22345:22, 22373:13, 22392:6, 22416:4, 22421:25, 22426:18,</p>	<p>Z</p> <p>zero [2] - 22501:12, 22528:4</p>

