

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
Delta Bessborough Hotel at
Saskatoon, Saskatchewan

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Volume 123

Inquiry Proceedings



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 (Retired)



INDEX OF PROCEEDINGS

DESCRIPTION:

PAGE:

CALVIN FORRESTER TALLIS, CONTINUED

- BY MR. HODSON	24814
- BY MR. GIBSON	24862
- BY MR. FOX	24872
- BY MS. KNOX	24912



Transcript of Proceedings

(Reconvened at 1:30 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

COMMISSIONER MacCALLUM: Mr. Tallis.

CALVIN FORRESTER TALLIS, continued:

BY MR. HODSON:

Q Good afternoon, Mr. Tallis. When we adjourned I guess nine or ten days ago we were just dealing with, the subject matter we left off on was the Section 690 proceedings, but I just want to go back to one document. You will recall that I asked you a number of questions and went through some materials from the police reports, and some materials, and I asked you the question that whether or not, if you would have received this information or document, whether you would have done anything with it in connection with your defence of Mr. Milgaard. And there was one document I neglected to put to you.

If we could call up 006799. And this is a document that has been called many things, I think the 'script document' is what it has been most commonly referred to, it's a five-page document. The evidence that we have



1 heard in the Inquiry is that it was believed to
2 have been prepared by Raymond Mackie in late
3 April/early May of 1969, and he testified that it
4 was his thoughts or theories or notes. And if we
5 can go to the fifth page -- and you have had a
6 chance to review this document recently, Mr.
7 Tallis?

8 A Umm, yes, you showed it to me this morning.

9 Q Yeah.

10 A And I think that it was included in material that
11 you had asked me to read some time ago.

12 Q And did you receive a copy of this as part of your
13 disclosure back in 1969 or '70?

14 A No, I did not.

15 Q And can you tell us, if the information in this
16 document or the document in itself, can you tell
17 us what, if anything, you would have done with the
18 information or the document in preparation for the
19 defence of Mr. Milgaard?

20 A Well, I can speak in general terms. First of all
21 it's my view that it would have assisted me, and
22 secondly of course, if there had been a voir dire
23 with respect to the Section 9(2) application and
24 the circumstances under which that statement was
25 given, this certainly would have furnished a great



1 deal of background information dealing with
2 potential circumstances that might have been dealt
3 with on that voir dire, if one had been held.

4 Secondly, it was the type of
5 information that I was hoping to get in my
6 interview of Mr. Roberts, because I was aware of
7 the polygraph, but as I indicated to you the other
8 day, I was not able to get any real assistance
9 from him in terms of background information and so
10 forth.

11 Q And I think you --

12 A I don't know whether that answers it --

13 Q Yeah.

14 A -- in a sufficiently comprehensive way or not.

15 Q And I think you told us, when we were talking
16 about the Section 9 sub (2) procedure, that if
17 there had been a voir dire, that you would have
18 expected Mr. Roberts, Mr. Mackie, and perhaps some
19 other officers to be called in the absence of the
20 jury so that you could probe the circumstances
21 under which Nichol John's statement arose; is that
22 fair?

23 A Yes.

24 Q And so, in connection with the evidence you gave
25 on that subject matter, I believe what you are



1 telling us that a document of this nature would
2 have been of assistance to you in that endeavour?

3 A Yes.

4 Q Now we know that there was not a voir dire under
5 Section 9 sub (2) at the trial. Apart from that,
6 can you tell us -- and I appreciate this is asking
7 you to go back and speculate a bit -- can you tell
8 us any other purpose or value this document may
9 have had?

10 A Well looking at it in retrospect it would have
11 been helpful, in my view, if I had had it when I
12 was talking to Mr. Roberts. I've already
13 indicated to you I had serious doubts about
14 whether he was being forthcoming and cooperative,
15 and this at least would indicate to me that there
16 was much more background than what he disclosed to
17 me.

18 Q If we can now go to document 333222. I just want
19 to go over, and we dealt with this document on our
20 last sitting day and we got sort of part-way
21 through trying to identify the dates and times
22 that you met with Mr. Williams and the documents
23 that were prepared, so I'm just going to quickly
24 go through some of the documents we already
25 touched on to see if we can put this in a better



1 time frame. And this is the starting document of
2 October 23rd, 1989, and it looks as though there
3 would have been a telephone discussion with you
4 and Mr. Williams, and I think you told us last
5 sittings that that would have happened. If we can
6 then go to 157030, and we touched on this as well,
7 and this is Mr. Williams' letter to you of October
8 23, 1989, confirms the discussion of October 19th,
9 '89, which I think you told us you don't dispute
10 happened on that date, and then as well this is
11 when you got the waiver signed by Mr. Milgaard
12 which, if we can go to 157032, we brought that up
13 as well.

14 And then if we go to 333324.

15 And, again, I think we went through this document
16 and I'll just bring it up. And this is an October
17 31, 1989 memorandum from Eugene Williams to his
18 file, and it appears to confirm a meeting for
19 November 6, 1989 at the courthouse. And I think
20 when we look at the other documents, Mr. Tallis,
21 that it appears that there was an initial perhaps
22 brief meeting with Mr. Williams in person,
23 followed up by some written questions, and then a
24 further in-depth interview; does that sound
25 correct?



1 A Yes, that sounds correct to me, although I don't
2 have specific recollection of the dates and,
3 necessarily, the sequence, but I think you've
4 developed a sequence and I do not disagree with
5 that --

6 Q So --

7 A -- sequence.

8 Q -- it would appear that there would be a fairly
9 brief initial meeting with Mr. Williams; do you
10 have a recollection of that?

11 A My recollection of that first meeting is that it
12 was quite short, I couldn't give you the number of
13 minutes now, but I think that it was just sort of
14 an introductory type of meeting and indicating
15 that -- what you have mentioned about questions,
16 and so on, that would be forwarded.

17 Q Then if we can go to 157044. And, again, this is
18 February 23rd from Mr. MacFarlane, of '90, to you.
19 And, again, I think we've dealt with this, it just
20 confirms the undertaking to receive your responses
21 to questions, and I think we touched on that.

22 And if we can go to 335388 --
23 just try and do this chronologically -- and go to
24 page 390, I think you identified for us these
25 would be the two pages of questions that were sent



1 out for you to consider; is that correct?

2 A Yes.

3 Q Then if we can go back to 333359, please -- yeah,
4 333359. And this is a March 13th, 1990 memorandum
5 of Mr. Williams, it refers to a telephone
6 conversation about the written questions sent on
7 February 23rd, and looks to set up a meeting for
8 the week of March 16th.

9 Then if we go to 335388, and I
10 think this is the document where we left off last
11 day, March 27th, 1990, and it talks about a
12 meeting on March 21, I think it says '1969',
13 presumably that should be '1990'. And so it would
14 appear, Mr. Tallis, that Mr. Williams met with you
15 to go over your answers to those questions and
16 interview you; is that fair?

17 A Yes, we had the meeting, and I'm sure that's the
18 right date.

19 Q And then it's my understanding from the documents
20 that the meeting was not taped or recorded in any
21 way; is that correct?

22 A No it was not, as far as I knew, --

23 Q Yeah.

24 A -- and I certainly was not taping it or recording
25 it.



1 Q And I think Mr. Williams made notes of the
2 discussion that were later forwarded to you; is
3 that correct?

4 A Yes. Now I don't recall the letter that he sent
5 to me, but I certainly do recall receiving from
6 Mr. MacFarlane the memorandum that had passed
7 between Mr. Williams and Mr. MacFarlane, and so
8 that's the one that I am quite sure that I read
9 over and used as sort of the working paper for
10 when I met with Mr. Wolch.

11 Q So on March 21, 1990, that appears then to be the
12 date that you had your meeting with Mr. Williams;
13 prior to that time had you met with either
14 Mr. Wolch or Mr. Asper to discuss the defence of
15 David Milgaard?

16 A I don't think I had. I've, I know that you've
17 asked me about that, and I don't think I had a
18 meeting before that.

19 Q If we could then go to 335386.

20 COMMISSIONER MacCALLUM: That's prior to
21 March 21, '89?

22 MR. HODSON: 1990, yes, prior to the
23 meeting with Mr. Williams. It says '1969' --

24 COMMISSIONER MacCALLUM: Yes.

25 MR. HODSON: -- but I think the meeting was



1 March 21 of 1990.

2 COMMISSIONER MacCALLUM: So it means 1990
3 instead of '69?

4 MR. HODSON: Yes.

5 BY MR. HODSON:

6 Q Is that -- I'm referring to the document --

7 A Yes, yes.

8 COMMISSIONER MacCALLUM: And your answer,
9 sir, was that you had not met either Mr. Wolch or
10 Mr. Asper respecting your defence?

11 A Not before that date.

12 COMMISSIONER MacCALLUM: Okay, thanks.

13 BY MR. HODSON:

14 Q If we can go to 335 -- oh, sorry -- 386. This is
15 the May 11th, 1990 memo from Mr. Williams to Mr.
16 MacFarlane, and it summarizes in the second
17 paragraph the meeting that Mr. Williams had with
18 you on March 21, 1990. And I think you have had a
19 chance to go through this previously Mr. Tallis,
20 is that right, this memorandum, and I think you
21 told us that this was given to you prior to
22 testifying at the Supreme Court; is that correct?

23 A Oh yes, yes.

24 Q Okay. And are you able to say that it would
25 accurately set out what you, some of what you



1 would have provided to Mr. Williams?

2 A Umm, yes. I think that when Mr. MacFarlane phoned
3 me and asked if I had received it, and this I
4 think was partly as a result of Mr. Wolch having
5 contacted him, I indicated that certain details
6 had to be fleshed out but that, that it was, it
7 was not all of the conversation but hit
8 significant points of it.

9 Q And, as far as this memorandum, was there anything
10 in this memorandum that was incorrect or
11 improperly stated? And, if you like, I can go
12 through it with you.

13 A No, I don't think so, other than that there are
14 some things that, umm, should be added.

15 Q If we can maybe just go to the second page. And,
16 again, these are Mr. Williams' words and gets into
17 the issue of testifying:

18 "At this juncture I suggested to his
19 Lordship that his client was facing a
20 substantial circumstantial case and
21 wondered why Milgaard didn't take the
22 stand. His Lordship indicated that
23 Milgaard was reluctant to be
24 cross-examined. Among the factors that
25 were considered was the knowledge that



1 Milgaard would provide damaging
2 admissions."

3 And, again, is that -- would you agree with that
4 as a summary of what you would have told him?

5 A Yes, that was a significant part of it, but I'm
6 sure it was discussed in more detail than that,
7 but --

8 Q And a fair --

9 A -- we've gone into it earlier in these proceedings
10 and I don't want to be repetitious.

11 Q So generally, what you told this Commission of
12 Inquiry, would you have told similar things to Mr.
13 Williams?

14 A Yes. I can't, you know, say precisely word for
15 word, but the 'damaging admissions', I know that
16 was in connection with the stopping of the lady
17 and the additional motive of maybe looking her
18 over for purse-snatching or robbing.

19 Q And then the memo goes on to say:

20 "Secondly, Mr. Milgaard appeared to him
21 to be vague in dealing with the issues
22 that would be covered during his
23 testimony. For example, Milgaard did
24 not explain why he threw the compact out
25 of the car window. Nor did he respond



1 to the question "where did it come
2 from?" Thirdly, Mr. Milgaard's denials
3 were lukewarm. These denials were not
4 characterized by the outrage and the
5 vehemence that one would expect from
6 someone confronting an unjust
7 accusation. For example, Milgaard
8 denied saying anything to Wilson in the
9 Calgary bus station. The words
10 attributed to Milgaard were tantamount
11 to a confession."

12 And, again, would that be an accurate summary,
13 subject to your earlier qualifications, of what
14 you would have told him?

15 A Well, may -- a portion of that, obviously, is Mr.
16 Wilson's impressions --

17 Q Williams?

18 A -- Williams' impressions. For example the words
19 "I don't know" in response to certain questions,
20 he clearly interpreted that, in my view, as a
21 lukewarm response, or the denials, but --

22 Q Would those be his words as opposed to your words?

23 A That's right. I mean:

24 "The words attributed to Milgaard were
25 tantamount to a confession.",



1 those are not my words. But this, I recognize,
2 is a report that he made to someone else, this
3 was an interoffice memorandum.

4 Q If we can go again, so I think March 23rd, 1990,
5 the next document is 335401. So we're now jumping
6 ahead about a year and a half, December 18th,
7 1991, and in late November 1991 the Minister of
8 Justice ordered a reference to the Supreme Court
9 which started in January of 1992. And I'll go
10 through this letter and some subsequent
11 correspondence but, before I do, can you tell us
12 whether, after your meeting with Mr. Williams on
13 March 23rd -- pardon me -- March 21st, 1990, do
14 you recall meeting with either Hersh Wolch or
15 David Asper?

16 A Well, there came a time where I had a meeting with
17 Mr. Wolch and Mr. Asper and I think that was
18 subsequent -- I'm quite sure that was subsequent
19 to the meeting with Mr. Williams, but prior to --
20 yes, I'm getting this mixed. It was subsequent to
21 the meeting with Mr. Williams and then later on I
22 met with Mr. Wolch alone, he came to Regina, and
23 that meeting in my recollection was longer than
24 the meeting I had with Mr. Asper and Mr. Wolch.

25 Q Okay. And let's just talk about the second



1 meeting with Mr. Wolch alone. Do you recall if
2 that was around the time of the Supreme Court
3 reference or the month or two prior?

4 A It would be before it. I can't recall how long
5 before it, but it could well have been about a
6 month or so before.

7 Q Do you recall if that meeting with Mr. Wolch alone
8 was in relation to evidence that you may be able
9 to give at the Supreme Court reference?

10 A Yes, I think that would be a fair characterization
11 of it because before meeting with Mr. Wolch I
12 think that he had pressed Mr. MacFarlane or
13 somebody in Ottawa to make available to me the
14 memorandum, which I did, and when I met with Mr.
15 Wolch I had it --

16 Q Okay.

17 A -- with me.

18 Q And I think I can show you some documents that
19 would suggest it would be in likely January of
20 1992, but we'll come to that and maybe you can
21 confirm it.

22 A Yes.

23 Q So the meeting then between March 21, 1990 and,
24 let's say, January, 1992, you had one meeting with
25 Mr. Wolch and Mr. Asper; is that correct?



1 A Yes.

2 Q And do you recall how long that meeting was and
3 what was discussed?

4 A No, I don't recall how long it was except my
5 recollection is that it didn't seem like a very
6 long meeting, at least comparing it with the
7 meeting that I had with Mr. Wolch later on.

8 Q Okay. What about your meeting with Mr. Williams
9 as far as the time, was it a longer meeting,
10 shorter meeting?

11 A Oh, it would be quite a bit shorter than the
12 meeting I had with Mr. Wolch.

13 Q I'm sorry, with Mr. Williams?

14 A No, the meeting I had with Mr. Williams was quite
15 a bit shorter than the one that I had with Mr.
16 Wolch.

17 COMMISSIONER MacCALLUM: The last one, sir?

18 A The last one, yes.

19 BY MR. HODSON:

20 Q Okay. And so the meeting with Mr. Wolch and Mr.
21 Asper I think you said was -- do you recall what
22 was discussed at that?

23 A Well, just in general terms we discussed I think
24 aspects of the steps that were being taken to
25 exonerate him, but as far as all the details, I



1 wouldn't be able to recall them now.

2 **Q** Are you able to tell us whether there would have
3 been a discussion about what David Milgaard told
4 you had happened on January 30 and 31, 1969?

5 **A** I think there probably was in general terms, but I
6 also at that time, I think I made it clear that in
7 order to flesh things out, I would have to read
8 not only the case, that is, the reasons for
9 judgment at the Court of Appeal, and I may have
10 had them there, as well as any other
11 documentation. At that time I think I still hoped
12 that maybe my file or some aspects of my file
13 would be located.

14 **Q** And were you prepared to review the transcript of
15 the trial if requested to do so?

16 **A** Yes. I wasn't requested to do so at that time
17 and --

18 **Q** If we can go back to this document then. I
19 think -- maybe we'll just go through this, and
20 it's a letter from Mr. Wolch to Mr. MacFarlane and
21 at this time the Supreme Court reference has been
22 set and this letter deals with the release of your
23 interview, and you recall an earlier document,
24 Federal Justice gave an undertaking to you not to
25 disclose the contents of your interview and I



1 think you told us last sitting that that was at
2 their request or was that at your request that
3 this undertaking was provided?

4 A I didn't ask for it, but I think it was something
5 that they were doing at the time.

6 Q So he says:

7 "You will recall at our last meeting
8 that Mr. Williams indicated that Justice
9 Tallis had placed restrictions on the
10 release of the interview. Mr. Justice
11 Tallis informs me that he felt that it
12 was a very qualified release of
13 privilege only authorizing him to be
14 interviewed and not to be released
15 beyond that. Mr. Justice Tallis
16 indicated to me by telephone that he
17 felt the privilege in this matter was
18 Mr. Milgaard's to release if he so
19 deemed appropriate. He further
20 indicated that his interview was one in
21 which his comments were perhaps
22 summarized and he was not asked to
23 verify the accuracy of the notes taken.
24 He expressed a view that if in fact
25 there was to be any release of privilege



1 he would appreciate having the summary
2 sent to him so that he may determine its
3 accuracy and make corrections if
4 necessary."

5 Again, are you able to tell us whether that would
6 be a fair summary of your position as
7 communicated to Mr. Wolch?

8 A Yes, I think I was very -- I was obviously very
9 concerned about solicitor/client privilege and
10 that was something that I viewed as very important
11 because it was David's privilege, it wasn't mine
12 as far as I was concerned.

13 Q Okay. And I think we --

14 A And if it goes into the public domain without
15 waiver of solicitor/client privilege, I didn't
16 think that would be the right way to do it.

17 Q Okay. Now, we had shown last day the waiver that
18 was provided to you by Mr. Milgaard. Was that --
19 did that provide you with sufficient comfort or
20 did you still have concerns?

21 A Well, I think that for the purposes of giving
22 evidence at the Supreme Court, my recollection is
23 that a waiver was actually filed --

24 Q Okay.

25 A -- the morning I was giving evidence. I don't



1 recall the language of it now, but I had not up to
2 that time seen an actual waiver with respect to
3 testimony before the Supreme Court of Canada.

4 Q If we could call up 335402, and this is December
5 30, 1991, this is from Mr. Williams to you, and
6 again refers to Mr. Wolch's letter and the
7 comments attributed to you, that you may be
8 prepared to release the undertaking, and:

9 "This release is subject to your
10 verification of a summary that I
11 prepared of our conversation. A copy of
12 my summary that covered a portion of our
13 discussion accompanies this letter.
14 Other notes that I made of our
15 conversation were not transcribed or
16 summarized elsewhere.

17 If after reviewing the summary,
18 there are clarifications that are
19 necessary, please advise."

20 And then about the undertaking. If you go to the
21 next page:

22 "Accompanying this letter are copies of
23 Mr. MacFarlane's letter to you dated
24 February 23, 1990 ..."

25 Which I showed you, and as well the May 11th,



1 1990, and maybe we'll just call that up, 335386,
2 and this is in fact the summary that Mr. Williams
3 provided you, correct, and asked you to review?

4 A Yes. Yes, this came from Mr. MacFarlane, or was
5 the summary he gave to Mr. MacFarlane, and that's
6 the one that I definitely recall receiving and
7 looking at and actually going over when I was
8 meeting with Mr. Wolch.

9 Q Okay. Then if we can go ahead to 157236 and go to
10 page 238, and again this is Mr. Wolch's letter to
11 Mr. MacFarlane -- or to Mr. Williams, he's copied
12 you, it talks about the privilege being released
13 and he says:

14 "We would strongly suggest that if
15 Justice Tallis approves of the notes of
16 the interview that you immediately
17 forward same to us so we can determine
18 whether or not David Milgaard will
19 release privilege in a general sense.
20 We would also ask you to forward to us
21 copies of any other notes taken from
22 your interview with Justice Tallis and
23 we would undertake that if we are going
24 to release privilege that we would not
25 do so without confirming their accuracy



1 with Mr. Justice Tallis first."

2 And again, I'm not sure, this was just copied to
3 you, Mr. Tallis. Do you remember anything
4 specific about what's discussed in this letter?

5 A No, I don't, other than what I told you about the
6 memorandum passing between Mr. Williams and Mr.
7 MacFarlane.

8 Q Do you recall at this time whether there was,
9 notwithstanding the fact that privilege had been
10 waived by Mr. Milgaard and you shared information
11 with Mr. Williams, was there still an issue as to
12 whether or not there might be a privilege
13 exercised by him to preclude you testifying at the
14 Supreme Court about your discussions with him?

15 A Well, I thought there might be an argument made
16 that the waiver given for the purpose of talking
17 to Mr. Williams was a limited waiver and I know
18 that I wanted to be sure that there was a waiver
19 of solicitor/client privilege with respect to
20 testimony at the Supreme Court level. In my
21 opinion, I viewed the privilege as being David's
22 privilege and it was not something that I could
23 waive, it was something that he would have to
24 waive if he was going to with the advice of
25 counsel and, as I mentioned earlier, my



1 recollection is that the formal written waiver was
2 actually filed during the proceedings in the
3 Supreme Court and I think right at the very
4 opening I mentioned I had not seen a copy of it.

5 Q Okay.

6 A And so one was made for me right then and there.

7 Q Would it be fair to say that your concern at the
8 time, Mr. Tallis, was that in the event that you
9 were going to give evidence, or even talk about
10 what David Milgaard discussed with you, you wanted
11 to be sure that privilege had been properly waived
12 by Mr. Milgaard; is that fair?

13 A Yeah, that's a fair summary.

14 Q And as far as the decision as to whether or not
15 privilege should be waived any further than it
16 was, or retracted or whatever, that that would be
17 a subject matter that David Milgaard and his
18 counsel at the time would be dealing with as
19 opposed to you; is that fair?

20 A That's correct.

21 Q And do you recall being advised of any concern by
22 Mr. Wolch about David Milgaard waiving the
23 privilege in a general sense for the purposes of
24 your giving evidence at the Supreme Court?

25 A I think during our interview he indicated that he



1 probably would waive the privilege, but of course
2 that's an indication to me that he would have to
3 get instructions from his client.

4 Q Okay. So then if we can go to 158496, and I think
5 you told us, Mr. Tallis, already that during this
6 time you did not read the newspapers nor follow in
7 the media what was happening with this case; is
8 that correct?

9 A No, I didn't.

10 Q And so would it be fair to say that based on
11 discussions with either Mr. Williams, Mr.
12 Fainstein or Mr. Wolch, you would have been
13 generally aware that a reference was going to be
14 held and that you may need to give evidence at
15 that reference; is that fair?

16 A That's correct.

17 Q So here's a letter of January 4th, '92 from Mr.
18 Wolch to Chief Justice Lamer.

19 COMMISSIONER MacCALLUM: 14th I believe.

20 BY MR. HODSON:

21 Q I'm sorry, January 14th, 1992, and it's talking
22 about what witnesses are going to be called, and
23 if we can go to 158498, and what Mr. Wolch writes
24 here:

25 "In connection with David's evidence,



1 Mr. Fainstein advised that the Court may
2 be interested in hearing from
3 Mr. Justice Tallis. David has indicated
4 a willingness to waive privilege, and
5 with that in mind, we attended in Regina
6 last weekend to meet with Justice
7 Tallis. We understand Justice Tallis
8 does not have his files, although he has
9 searched for same, and he indicated to
10 the writer that he has been deliberately
11 avoiding the publicity and emerging
12 evidence in order to keep his memory as
13 unaffected by recent developments as
14 possible."

15 Let me just pause there. I take it from this
16 that it would have been in early January that you
17 had the meeting with Mr. Wolch, '92?

18 A I think that's correct.

19 Q Then he goes on to say:

20 "Justice Tallis expressed certain
21 concerns, and in particular felt that
22 the sanctity of solicitor/client
23 privilege is so important, he was
24 concerned that the public would be given
25 the wrong impression. He was clear that



1 the privilege belonged to David, and if
2 it was to be waived, it should be as
3 objectively and fairly done as
4 possible."

5 Would that be a fair summary of what you would
6 have communicated to Mr. Wolch?

7 A Yes, I think that's the substance of it.

8 Q And then:

9 "The obvious options are to either
10 testify or provide a statement for the
11 Court's purposes. His Lordship was
12 concerned that a statement would be
13 interpreted as perhaps what he selected
14 to put before the Court, or if it was
15 pursuant to an interview as to what the
16 interviewer chose to select."

17 And again, would that have been something you
18 would have told Mr. Wolch?

19 A It certainly sounds like the position I would have
20 taken. I don't recall it specifically, but I
21 would think that's an accurate statement.

22 Q And then it says:

23 "Accordingly, His Lordship suggested,
24 and we agreed that the information His
25 Lordship would put before the Court



1 should be in answer to what the Court
2 feels is important."

3 Is that accurate?

4 A Well, yes, I think that's stating the obvious.

5 Q "Previously Justice Tallis was
6 interviewed by a Federal Department of
7 Justice official, and notes were made of
8 this interview and provided to the
9 Minister. We were never shown a copy of
10 the notes. Justice Tallis could peruse
11 those notes and see if they reflect what
12 he said, and presumably get them to
13 confirm with his memory.

14 Our attendance on Justice
15 Tallis last weekend was on the urging of
16 the Department of Justice, and we do
17 confirm that our client's instructions
18 are that we are willing to waive
19 privilege, but we certainly require
20 further guidance in this area."

21 And again, you had mentioned -- the memorandum
22 from Mr. MacFarlane, or I think it's the
23 memorandum from Eugene Williams to Mr. MacFarlane
24 of May 11, 1990 --

25 A Yes.



1 Q -- that summarized in Mr. Williams' words what was
2 discussed at your interview?

3 A Yes.

4 Q Was that document, that memorandum, would you have
5 shown that to Mr. Wolch at your meeting in early
6 January, 1992?

7 A Yes, at the last meeting I had with Mr. Wolch in
8 Regina I had that document and that was sort of a
9 working script and I actually put some notes on it
10 and he asked if he could see it, so I invited him
11 to come around and look over my shoulder at my
12 desk.

13 Q And would you have shared with Mr. Wolch at that
14 meeting the same type of information that you had
15 shared with Mr. Williams back in March of 1990?

16 A Yes, I think it was fleshed out in more detail
17 with Mr. Wolch.

18 Q If we could then go to 153531, and again this is a
19 letter from Mr. Wolch to you. The Supreme Court
20 reference has started, but you have not testified
21 yet, and here's where Mr. Wolch advises you:

22 "... that David Milgaard is prepared to
23 waive privilege in order to assist the
24 Supreme Court in arriving to a just
25 conclusion."



1 And I think in fact a waiver was filed with the
2 Court.

3 "I do share your concern that the public
4 not be misled into believing that
5 solicitor/client privilege is not sacred
6 and that what is happening here is the
7 norm."

8 Would that have been a concern that you
9 expressed?

10 A Yes. I had always thought that solicitor/client
11 privilege was sacrosanct unless waived by the
12 client.

13 Q And then he says:

14 "Accordingly, David's position is that
15 questions by the Supreme Court should be
16 answered but the privilege is waived for
17 that purpose and not to allow other
18 parties to fish for what they think
19 might advance their case."

20 And do you have any recollection of this subject
21 matter coming up, Mr. Tallis, about who would
22 question you at the Supreme Court reference and
23 any views you had on the subject matter?

24 A Well, the one thing that I recall in either
25 speaking to Mr. MacFarlane or Mr. Fainstein was



1 that they had somehow or other had got the
2 impression that my position was that I would only
3 be questioned by the Chief Justice of the Court.
4 This was news to me. I was quite appalled at the
5 suggestion and I indicated to whichever one I
6 spoke to that that had never been my position and
7 I asked that steps be taken to dispel that notion.

8 Q Did you in your discussions with either Mr.
9 Fainstein or Mr. MacFarlane, did they advise you
10 where they got that information from?

11 A No, and I didn't ask.

12 Q And are you able to tell us whether that's
13 something that they believed had come from you,
14 that it was your request?

15 A I can't tell you what they believed, but they
16 certainly had taken it seriously.

17 Q Let me --

18 A Because whoever it was that spoke to me raised it
19 with me.

20 Q Did they attribute, though, this request as being
21 your request?

22 A That was the implication I got.

23 Q Okay.

24 A But, you know, I may have misread their comments,
25 but I certainly had that sense, and that's why I



1 asked them, or asked whichever one I spoke to to
2 take steps to dispel that notion.

3 Q If we can go to 117085, please.

4 A I should just say that when the issue of waiver
5 came up in the Supreme Court of Canada right at
6 the beginning, I had read this letter that you
7 just showed me as perhaps focusing on a limited
8 waiver.

9 Q If we could have the letter back up, please,
10 153531, and maybe go to this.

11 A Yes.

12 Q And can you explain what you understood?

13 A Well, I thought that might be construed as a
14 limited waiver of privilege and, frankly, I wanted
15 to know where I stood before people started
16 getting into matters in the Supreme Court.

17 Q Okay.

18 A And I think that was resolved at that time with
19 the document being filed.

20 Q And would it be fair to say, as you stated
21 earlier, Mr. Tallis, that your concern about
22 whether there was a waiver or a limited waiver or
23 the extent of the limited waiver was not whether
24 it should or should not be granted, but whether
25 you were able to testify; in other words, whether



1 a proper waiver was given?

2 A That's right.

3 Q I wonder if we can go to 117085, and this is a
4 March 2nd, 1992 letter from Mr. Wolch to Robert
5 Frater, Department of Justice, and I think Mr.
6 Frater was one of the justice lawyers assisting
7 with the reference and the calling of witnesses,
8 etcetera, and in this letter he states:

9 "Justice Tallis - at the last meeting
10 with the Chief Justice it was my
11 understanding that His Lordship will be
12 doing the questioning of Justice Tallis
13 and that we should be submitting
14 questions. From our perspective the
15 most relevant question would obviously
16 be whether David maintained his
17 innocence throughout Justice Tallis'
18 representation of him. I spoke with
19 Justice Tallis on Saturday, February 29,
20 1992 and he has received no instruction
21 on the issue of refreshing his memory.
22 As you know he does not have a file and
23 he is hesitant to read material without
24 some direction."

25 And then:



1 "His Lordship advised me that he had
2 received a copy of his jury address from
3 Mr. MacFarlane, but he is not certain
4 whether he should be reading material or
5 not. I had the excerpts from Milgaard's
6 evidence as to where he refers to
7 Justice Tallis but out of an abundance
8 of caution I have not provided same to
9 His Lordship."

10 And I think he's referring to Mr. Milgaard's
11 evidence at the reference. So again there's
12 mention here about the Chief Justice doing the
13 questioning of you and I think you've already
14 told us your position on that. Is there anything
15 you wish to add based on this letter?

16 A No. I wasn't -- I of course didn't receive a copy
17 of this letter and I wasn't aware of its contents
18 until you showed it to me.

19 COMMISSIONER MacCALLUM: Can I see the top
20 of it, Mr. Hodson, please?

21 MR. HODSON: The top?

22 COMMISSIONER MacCALLUM: Thanks.

23 BY MR. HODSON:

24 Q March 2, 1992.

25 And then if we can go to, the



1 doc ID is 232815, and this is March 4, 1992 which
2 is the date I think you gave your evidence. If we
3 can go to page 232820, and you'll see Mr. Wolch
4 states:

5 "My lord, I believe the first witness
6 scheduled is Justice Tallis. I don't
7 believe the nature of the questioning
8 has been determined as to who will be
9 questioning or what the parameters are.

10 Your lordship may recall that
11 there was some suggestion that the Court
12 may do the questioning. I can reiterate
13 our position, if the Court wishes, in
14 regard to the solicitor-client
15 privilege. Our position very simply is
16 that some time ago the Court raised some
17 concern over two issues, one regarding
18 disclose which I believe has been
19 answered, and another regarding the
20 matter of David Milgaard testifying at
21 trial.

22 We will obviously wish to
23 co-operate with the Court in any way.
24 The Court feeling those matters are
25 important, David has waived privilege



1 for the Court to be able to ask whatever
2 the Court considers important. That is
3 our position.

4 If the Court feels that
5 everybody should question his lordship,
6 then we will obviously abide by the
7 Court's decision. Our position is that
8 the Court should determine what the
9 Court wants to know because it is such a
10 rare procedure to have, in effect,
11 counsel testify as to disclosures, or
12 whatever, with his client. We are in
13 the hands of the Court."

14 And Chief Justice Lamer says:

15 "I am given to understand that
16 Mr. Tallis has asked to be treated like
17 any other witness and therefore all
18 previous witnesses were offered to you
19 to be examined -- except in this case to
20 you Mr. Beresh. I don't think this
21 touches upon your client. I think we
22 should proceed according to the
23 witness's wishes, that he be dealt with
24 as any previous witness.

25 Given the nature of the



1 testimony, it is not very important who
2 leads off. Maybe the Court could lead
3 off."

4 And then goes on and Mr. Brown starts. So again,
5 would that fairly capture, Mr. Tallis, your
6 position as to giving evidence at the Supreme
7 Court reference?

8 A Yes, in the light of what I had, particularly in
9 the light of what I had been told by either Mr.
10 MacFarlane or Mr. Fainstein.

11 Q If we can go ahead, move on to the RCMP. In 1993
12 did you become aware that the RCMP were conducting
13 an investigation in late '92, 1993 with respect to
14 allegations of criminal conduct and misconduct on
15 the part of various government, Crown, police
16 officials?

17 A Well, there came a time when somebody involved in
18 it contacted me and later they arranged to meet
19 with me. I couldn't tell you the date, but I'm
20 sure that you have it in the materials there.

21 Q If we could call up 044867, and I think it's April
22 29th, 1993, an interview, it looks like Inspector
23 Sawatsky, Sergeant Williams and Constable
24 Jorgenson, interviewed you in Regina; is that
25 correct?



1 A Yes, I'm sure that's correct as to date and
2 personnel.

3 Q And it goes through parts. If we could go to page
4 866 which I think --

5 COMMISSIONER MacCALLUM: Is this really
6 Sergeant Williams or is it Eugene Williams?

7 A This would be a sergeant of the RCMP.

8 COMMISSIONER MacCALLUM: Okay, thank you.

9 A Eugene Williams was not with the --

10 COMMISSIONER MacCALLUM: No.

11 A -- group of RCMP officers who came to see me.

12 MR. HODSON: Yeah. Mr. Commissioner, there
13 is in fact a Sergeant Williams with the RCMP who
14 was involved in the '93 investigation.

15 COMMISSIONER MacCALLUM: Thanks.

16 BY MR. HODSON:

17 Q So if we can go to the next page and there's a
18 comment here, and these are the RCMP notes, they
19 say:

20 "In so far as disclosure is concerned,
21 Tallis stated that he knows that he
22 received material before the preliminary
23 hearing and the trial. Cannot be
24 specific about the material he received.
25 Feels that the S.C.C. addressed the



1 issue of disclosure. At the time he
2 made the assumption that he was getting
3 full disclosure. No reason to believe
4 that he wasn't. Justice Tallis pointed
5 out, that given disclosure of the day,
6 he may very well have received more than
7 he was entitled too. (Note research
8 material on file concerning
9 correspondence between Mr. Tallis & Mr.
10 Caldwell which certainly appears to deal
11 with the aspect of disclosure.)"

12 Again, would that be an accurate summary of what
13 you would have told the officers?

14 A I think it probably is. It doesn't have too many
15 details, but of course one of the things that I
16 explained to them, that I only could, I only knew
17 what I had received based on the correspondence
18 that they had, I was in no position to judge what
19 I had not received that they may well have been
20 probing, but they didn't go into that with me and
21 I could understand why, because I would have had
22 to say, well, I didn't know about the existence of
23 this or that.

24 Q Then it says:

25 "Mr. Justice Tallis recalls being



1 supplied with the statements of Lapchuk
2 & Melnyk by Mr. Caldwell and that he had
3 these statements to go over with, with
4 Milgaard. He also recalled the Crown
5 making Frank & Roberts available to him
6 for interviewing. He recalls no
7 surprise witnesses by the Crown.
8 Indicates co-operation on the part of
9 the Crown."

10 Would that be accurate?

11 A Yes, of course subject to the discussion about the
12 date when I received the Lapchuk and Melnyk
13 information, but that was a matter of record, so
14 they obviously had that.

15 Q If we can then go to the next page which is 865,
16 it says:

17 "Mr. Justice Tallis pointed out that his
18 S.C.C. Testimony explains the aspect
19 concerning David Milgaard not taking the
20 stand. From the beginning he took a
21 great deal of time to explain to David
22 Milgaard what would be going on and in
23 terms that Milgaard would understand.
24 That he had ongoing discussions with
25 Milgaard. He could not add anything



1 more to his S.C.C. Testimony in this
2 area."

3 Again, would that be a fair summary of what you
4 would have told the officers?

5 A Yes, that's a distilled summary of it.

6 Q And then they write:

7 "During an interview with Mrs. Milgaard,
8 it was suggested that there may have
9 been collusion between TALLIS &
10 CALDWELL. ... The aspect of collusion
11 was briefly touched upon with Mr.
12 Justice Tallis, who stated that such a
13 statement is absurd."

14 Does that accurately record what you would have
15 told them?

16 A Yes. Once again, it would be a distilled version.

17 Q And then scroll down. The scribbler, I think
18 we've touched on that. And then here:

19 "Mr. Justice Tallis had no objection to
20 Justice Bence's charge to the jury. In
21 fact, he felt that the charge to the
22 jury was favourable to the defence.
23 Justice Tallis also pointed out that the
24 defence received several favourable
25 rulings during the trial."



1 Again, let me pause there. Would that be a fair
2 summary of what you would have told him?

3 A Yes, mindful of the fact that I did not have all
4 that material in front of me and I had not read it
5 over, so I was speaking there from pure
6 recollection and without the benefit of having
7 read over all of the material that, you know, is
8 certainly before this Commission.

9 Q And then:

10 "During the Prelim or the Trial, he does
11 not recall MILGAARD ever suggesting to
12 him that specific witnesses were lying
13 or fabricating their evidence."

14 And, again, does that accurately record what you
15 would have told the RCMP?

16 A Well I think that one of the things that I would
17 say on that, I certainly didn't know of anything
18 that pointed to that, and I think that that's a
19 very distilled version of how I felt.

20 Q Could you maybe expand on how you felt, or maybe
21 you could answer the question for us now?

22 A Well I was quite concerned about the fact that I
23 hadn't been able to get anything, really, by way
24 of background from Mr. Roberts, and I don't see
25 any reference to that here, but I'm sure that I



1 mentioned it in our discussions. I am not sure
2 now, going back all those years, but it's -- there
3 were concerns that I'm sure that I thought about.

4 COMMISSIONER MacCALLUM: Mr. Hodson, I'm
5 sorry, I didn't --

6 MR. HODSON: Yeah.

7 COMMISSIONER MacCALLUM: I wasn't clear on,
8 from that answer, as to whether --

9 MR. HODSON: Yeah.

10 COMMISSIONER MacCALLUM: -- Mr. Tallis
11 recalled Mr. Milgaard ever suggesting to him.

12 MR. HODSON: Yes.

13 BY MR. HODSON:

14 Q Yes. Just the paragraph that I have got circled
15 there; do you recall, at any point, Mr. Milgaard
16 suggesting to you during the preliminary hearing
17 or trial that specific witnesses were lying or
18 fabricating their evidence?

19 A Well he certainly indicated that he didn't have
20 any blood on his person, he certainly had
21 indicated that he had not killed the girl or had
22 anything to do with her, I mean all these are
23 matters that I dealt with in the Supreme Court of
24 Canada. And so that has to be read along with the
25 whole picture.



1 Q Right. And I think you've told this Commission
2 that -- and we went through in some detail last
3 sitting -- what Mr. Milgaard told you, and
4 compared that to what the evidence was at trial of
5 Mr. Wilson, Ms. John, Mr. Cadrain?

6 A Yes.

7 Q And so, again, is that your answer; that he gave
8 you a different version of events than other
9 witnesses testified at trial on some matters?

10 A Yes, and I -- I indicated during the course of the
11 Supreme Court of Canada hearing, you know, when I
12 was asked specifically about, you know, "did he
13 ever admit or did he deny doing it", and I think I
14 covered that in that hearing. And, of course, I
15 knew that the -- this material was available to
16 investigators.

17 Q Did he ever say "lookit, Ron Wilson is lying, he's
18 making that up" or "Nichol John is lying or making
19 that up", or words to that effect?

20 A Well, that was his position, I mean implicit in
21 his denial, not only that he had nothing to do
22 with it, but that he -- and our discussions, of
23 course, discussed his so-called "friends".

24 Q Yeah, okay.

25 A And, I mean, he certainly disagreed with them.



1 Q If we can then go down to the last point. It
2 says:

3 "Milgaard never suggested to Mr. Justice
4 Tallis that he felt that the S.C.P. were
5 attempting to frame him and Mr. Tallis
6 had no concerns in this area either.
7 Justice Tallis pointed out though, that
8 in fairness to David Milgaard, there was
9 nothing to suggest this, that would
10 cause him to consider this at that
11 time."

12 And would that be a fair recording of what you
13 would have told the RCMP at the time?

14 A I think it probably sets it up in a distilled
15 form.

16 Q Just to conclude matters, Mr. Tallis --

17 COMMISSIONER MacCALLUM: Could I just get
18 you to confirm that page number?

19 MR. HODSON: Sure.

20 COMMISSIONER MacCALLUM: Was it 865?
21 That's what you said.

22 MR. HODSON: Yes, 044865.

23 COMMISSIONER MacCALLUM: Thanks very much.

24 MR. HODSON: The doc. ID is 044864.

25 COMMISSIONER MacCALLUM: Right.



1 A I should add that I never, I did not see that
2 document until it was shown to me during the
3 course of these proceedings.

4 BY MR. HODSON:

5 Q The RCMP summary?

6 A Yes. Now in the years following that, David
7 Milgaard's conviction, and in particular the time
8 frame 1989 to 1997, there was a great deal of
9 publicity regarding this case and commentary and
10 criticism by some regarding the conduct of the
11 investigation and trial and the conduct and,
12 indeed, misconduct of the participants in the
13 investigation and trial. As well, in the media,
14 we have seen various reports where those views
15 were repeated and in fact attributed to some
16 commentators, or to the media, and as well we have
17 seen evidence that similar information regarding
18 people's conduct was provided to the authorities
19 as part of the efforts to re-open the
20 investigation, and as well provided to the RCMP in
21 1993 so that they could conduct their
22 investigation. And these allegations, if I could
23 call them that, or suggestions included
24 allegations of unprofessional conduct and
25 misconduct on the part of many, including you, Mr.



1 Tallis. And I don't propose to call up the
2 details, it's all in the record. I will call up
3 one document and perhaps just summarize for you,
4 in a general way, what has been said about the
5 work that you did on this matter.

6 If we could call up 032805. And
7 this is the report of August 15th, 1994, and this
8 is the result of the RCMP investigation, and if we
9 can go to page 032818. And I referred to this
10 document earlier, and with respect to suggestions
11 -- if we can actually, actually go to the next
12 page -- I referred to the allegations made that --
13 you don't need to call that out -- but allegations
14 that Mr. Kujawa, Mr. Caldwell and others were part
15 of a conspiracy where they deliberately withheld
16 information from you. And if we can just go back
17 to the previous page, one of the allegations that
18 the RCMP also investigated is at the bottom:

19 "It is alleged that there was collusion
20 ..."

21 call that out please:

22 "... that there was collusion on the
23 part of Caldwell, Tallis and the
24 Saskatoon police and that since there
25 was an assumption of Milgaard's guilt,



1 he was given only a token defence."

2 And that may well have been what the RCMP asked
3 you about in '93; is that correct?

4 A I'm, I'm sure that would have reference to it.

5 Q So in addition to -- and I think I can just
6 summarize; in one, the allegation that you gave a
7 token defence; two, that you colluded with Mr.
8 Caldwell and the police, umm, to give a token
9 defence; three, there has been references made in
10 some of the materials that, in your role as legal
11 counsel to the police association at the time,
12 that that would influence your conduct in
13 defending Mr. Milgaard to his detriment; fourth,
14 because you were engaged through Legal Aid you
15 didn't put in a full effort; and five, that you
16 didn't follow up on anything that David Milgaard
17 told you or call any witnesses on his behalf.

18 Now I'm summarizing, generally,
19 what's in the materials, Mr. Tallis, and I think I
20 provided the background documents for you to
21 review; is that correct?

22 A Yes.

23 Q And, again just generally, would you like -- I'd
24 like you to respond and comment about what has
25 been said about you and your role in this matter?



1 A Well I think that throughout the course of my
2 testimony I have tried to outline the situation as
3 I saw it and I do not intend to revisit all those
4 areas unless I'm specifically asked to.

5 I do, however, say this; that
6 the allegations that you have outlined to me
7 amount to an allegation of corruption and
8 professional misconduct of the most serious type
9 that I can think of when focusing on an advocate's
10 role. I have already spoken of my view of the
11 role of an advocate and the duties that an
12 advocate has, I endeavoured to fulfil those
13 duties, and I categorically and emphatically
14 reject any imputation of corruption and
15 professional misconduct of this kind.

16 I can tell you that it is very
17 painful to have allegations of this nature made
18 against one, particularly when you have used your
19 best endeavours to achieve a hoped-for result.

20 Now having put my response in
21 rather emphatic terms to say the least, but I hope
22 in a measured way, I try, and I think I have
23 looked at this in a rather philosophical way. I
24 know that there are always people who will grasp
25 on an allegation of sinister motives when



1 statements of this kind are made, but at the end
2 of the day and in a philosophical way, I think
3 that the airing of some of these issues before a
4 Commission of this Inquiry will have an educative
5 effect. And when I use the term "educative
6 effect" I think it is of a positive nature, and
7 one can only hope that with that airing, albeit
8 years and years later when memories fail in some
9 respects, one can only hope that objective and
10 fair-minded people will reconsider the tentative
11 views that they may have expressed along the way.

12 I do not want to weary you with
13 additional comments because I think that sums up
14 my feelings and situation as best I can in
15 response to your question without being too
16 long-winded.

17 Q Thank you very much, Mr. Tallis, those are all my
18 questions. I would like to thank you and your
19 counsel for the time you took to review the
20 binders and binders of materials that I provided
21 to you, and the Commission thanks you for that.

22 It might be an appropriate -- do
23 you want to break at this point, Mr. Commissioner,
24 or go on?

25 COMMISSIONER MacCALLUM: I think that would



1 be called for, sure.

2 (Adjourned at 2:44 p.m.)

3 (Reconvened at 3:04 p.m.)

4 BY MR. GIBSON:

5 Q Mr. Justice Tallis, as you know my name is Bruce
6 Gibson, I act for the RCMP. We had a chance to
7 say "hello" at the end of the break. I --

8 A Yes. You can omit the prefix, it's no longer
9 applicable.

10 Q I won't be very long with you.

11 COMMISSIONER MacCALLUM: It's hard to live
12 a thing like that down, Mr. Tallis.

13 A I guess I never will.

14 BY MR. GIBSON:

15 Q Yeah. If we could just call up 23959 from the
16 transcript, I'm just going to walk through some of
17 the areas Mr. Hodson went through with you, and I
18 promise not to belabour those points. At this
19 page Mr. Hodson put document 007037 to you, which
20 was your August 21st, 1969 letter to Mr. Caldwell,
21 and at the bottom of that page, if we can just
22 call up, the word is "I would". And if you go to
23 the next page, please, I just want to read the
24 first few lines of that page. It says:

25 "'... I would certainly want you to make



1 it a point to check to see whether or
2 not there are any witnesses that you do
3 not propose to call who may be able to
4 give evidence of assistance to the
5 defence. If the City Police Department
6 have not turned over all of their
7 material to you in this connection I
8 would be obliged if you would look into
9 this matter prior to the completion of
10 the preliminary hearing.'"

11 And I suppose at that point, Mr. Tallis, it was
12 clearly your understanding that the investigation
13 into the death of Gail Miller was being handled
14 by the Saskatoon City Police department; is that
15 right?

16 A That's correct.

17 Q And you weren't aware that the RCMP were assisting
18 the file, assisting on the file, rather, for a
19 couple of months during the outset of that
20 investigation?

21 A No, I think that that's a fair statement.

22 Q Okay. And, again, I believe the evidence was that
23 Mr. Caldwell went back to the city police
24 department and asked for all the statements taken
25 so that he could fulfil your request to see if



1 there was any information that might assist you?

2 A Well, I wasn't privy to the exchanges in that
3 connection, but I'm sure I made that assumption.

4 Q Okay. Now if we could just go to 23963, please,
5 of the transcript. And, again, if we could just
6 call up that part, and I'll just read that to you,
7 again it's a question from Mr. Hodson:

8 "When you would meet with Mr. Caldwell,
9 if you are able to tell us from your
10 recollection of this file, or even on
11 your recollection of practices at the
12 time, would a prosecutor show you, for
13 example, police reports or anything of
14 that nature or discuss them or what
15 would be the type of information you
16 might get in a face-to-face meeting with
17 the Crown?"

18 And the answer is:

19 "A I'm quite sure that one was not allowed
20 access to police reports, ..."

21 And again, there are a number of police reports
22 that Mr. Hodson went through with you during your
23 days on the stand, and I take it that you never
24 reviewed any of the police reports?

25 A That's correct.



1 Q And as far as your disclosure went, then, it would
2 have been whatever was provided by the police to
3 Mr. Caldwell in this case, and then whatever Mr.
4 Caldwell looked at and felt was relevant to
5 disclose to you, and I suppose that's how the
6 chain of disclosure would go?

7 A I think that's a fair assessment. And, you know,
8 I know that police reports were certainly off
9 limits at that time.

10 Q Okay. In we could go to 24752 of the transcript,
11 please. And, again, I'll try to summarize this
12 rather than go through specific paragraphs with
13 you, but Mr. Hodson raised the issue of the city
14 police and the RCMP, who were assisting the city
15 police in the investigation at the outset,
16 initially suspecting an unknown rapist may have
17 been the killer of Gail Miller, and you'll recall
18 numerous discussions about that over the days on
19 the stand?

20 A Yes, I do.

21 Q And if we could just call up the Riddell report,
22 065399. And I believe this report was one that
23 was put to you, and in that report Inspector
24 Riddell does make reference to that theory, that
25 it could have been an individual who was also --



1 carried out those rapes that may have killed Gail
2 Miller. And at the top of that document, there,
3 there is a stamp that references the RCMP
4 forwarded this copy on. Anyways, it was received
5 by the Attorney General's Department March 28th of
6 1969, and again it was with the AG's office, then,
7 about eight days after it was prepared by the
8 RCMP. And your evidence, my understanding is Mr.
9 Tallis, that you have never seen this document up
10 until you were preparing for the Inquiry?

11 A That's correct, it was only after it was produced
12 during these proceedings that I was shown a copy
13 of it, and I believe Mr. Hodson and my counsel
14 asked me to read it.

15 Q And, again, your evidence is that any disclosure
16 that you received during 1969 was through Mr.
17 Caldwell and would not have been through anybody
18 else in the Attorney General's office; is that
19 correct?

20 A Mr. Caldwell was the, subject to what I said with
21 respect to Mr. Wolff, the city prosecutor, it was
22 through Mr. Caldwell's office, and I think he was
23 the only one that I dealt with there. I believe
24 Mr. Perras was also there, but I don't recall
25 having anything to do with him in connection with



1 this matter.

2 **Q** And, again, your evidence is that back then police
3 reports were simply not handed over to defence
4 counsel anyways?

5 **A** That's correct.

6 **Q** Okay. If we could go to 24761 of the transcript,
7 please, if we could just call up that portion.
8 And here -- and, again, I'm going to try to
9 paraphrase -- Mr. Hodson took you through some
10 city police department documents that were on the
11 Gail Miller investigation file, and 105520 is the
12 police report that he makes reference to there,
13 which is a report that was prepared in February of
14 1969 by Lieutenant Penkala, and it references a
15 possible connection between a couple of rapes and
16 the investigation of the Miller death. And then
17 if we can go a ways down on that page, please, it
18 references another document there, being 009298,
19 and again it's a letter prepared by Lieutenant
20 Penkala to the Crime Index section of the RCMP.
21 If we can go to the next page of that transcript,
22 please. And again at the top there, starting
23 there, it goes into quite a bit of detail with
24 respect to the connection between the modus
25 operandi of the two rapes and the Miller



1 investigation that was ongoing. And, again, your
2 evidence is that such reports, even the city
3 report here or this Crime Index letter, is a
4 document that was not provided to you and would
5 not routinely have been provided to you at that
6 time?

7 A That's correct.

8 Q Okay. So, if the city police don't forward
9 something over to Mr. Caldwell, then obviously
10 that's something that you would not receive
11 because, again, the only disclosure that you
12 received was what Mr. Caldwell received, and then
13 he would review it, determine if it was something
14 that was relevant for defence purposes, and then
15 provide it or not provide it?

16 A Yes, I think that's the way it would work.

17 Q Okay. And so what might be considered relevant by
18 the city police at the time, and would necessarily
19 be forwarded over to Mr. Caldwell, may be
20 influenced by the police's current theory of the
21 crime or their understanding of the case?

22 A Well, I can't speak for them, but that's one
23 inference that a person might draw.

24 Q And --

25 A As you have.



1 Q And again as we have seen, and Mr. Hodson take --
2 has taken you through the documents, initially the
3 city police, in their investigation, thought there
4 might be a connection between the rapes that had
5 occurred previous to the Miller murder and the
6 Miller murder, and that eventually that changed
7 with the evidence of Albert Cadrain, Ron Wilson,
8 Nichol John, and later with Craig Melnyk and
9 George Lapchuk when that evidence came to light,
10 and you were obviously provided with the
11 statements of Mr. Cadrain, Wilson, John, Melnyk,
12 and Lapchuk?

13 A Yes.

14 Q As opposed to any connection to the other --

15 A Yes.

16 Q -- rapes or other occurrences that happened prior
17 to the Miller murder?

18 A Yes.

19 Q Yeah. Now you had the opportunity to examine Ron
20 Wilson at both trial and at the prelim, and you
21 were asked by Mr. Hodson about whether you had any
22 concerns at that time about the police pressuring
23 Mr. Wilson to change his evidence, and if we could
24 just call up, from the transcript, 24308, please.
25 If we can just call that portion up, and just



1 right about here, Mr. Hodson asks:

2 "Did you have the sense, Mr. Tallis,
3 when dealing with Mr. Wilson at the
4 preliminary hearing and at the trial,
5 that he may have been pressured by
6 police into testifying against his
7 friend?"

8 And then your answer follows:

9 "A Well I certainly wondered why he changed
10 his testimony, and what the motive was,
11 but there was nothing that he came up,
12 even when I was questioning him at the
13 preliminary, with the suggestion that he
14 was pressured into doing that. At least
15 that's as I recall the preliminary
16 hearing evidence that you have referred
17 me to. I ...",

18 and then it goes on to the next page at the top:

19 "... was certainly exploring it.

20 Q And again, beyond exploring it, did you
21 ascertain anything or -- of the nature
22 that might support the contention that
23 the police were responsible for
24 influencing Mr. Wilson to give evidence
25 that was not true?"



1 And your answer is:

2 "A No, I didn't."

3 And I take it, again, that was what you also told
4 the RCMP when they were investigating such
5 allegations back in 1993, that back in 1969 when
6 you were dealing with the case, that nothing of
7 that nature came to your knowledge?

8 A That's correct.

9 Q You've offered us some impressions about Mr.
10 Wilson on the stand and how you would deal with
11 him as defence counsel, and did you ever get the
12 impression that Mr. Wilson was trying his best to
13 be convincing in the evidence that he was giving?
14 I know you indicated to us that you felt he wasn't
15 a reluctant witness; did you feel that he was
16 trying to be convincing as well with his evidence
17 --

18 A Well --

19 Q -- or is there anything more you can tell us on
20 that?

21 A Well I guess, based on my discussions with David
22 and my personal assessment of him, I thought he
23 was a treacherous type of person and I think that,
24 trying to look back, I'm sure that he was trying
25 to be convincing.



1 Q Yeah. And is there anything more that you can
2 recall from that? I know that's a difficult
3 question years later.

4 A Well it's a very broad question, but even when
5 confronted with conflicting testimony under oath,
6 for example about the time frame or the time
7 factor, he certainly portrayed himself as one who
8 had given it additional thought with the result
9 that he, in fact, doubled the time.

10 Q Okay.

11 A Things like that certainly would be indicative of
12 someone who was trying to portray himself as a
13 truthful person even in the face of things like
14 that. Now I don't think I can really be any more
15 specific than something like that for you, but
16 he -- he certainly, I think, was probably trying
17 to do that.

18 Q Okay, thank you, those are all the questions I
19 have.

20 BY MR. FOX:

21 Q I think I'm next, Mr. Commissioner. Mr. Tallis,
22 for the record I'm Aaron Fox and I represent Eddie
23 Karst, and I'm sure I'll lapse into the habit of
24 calling you My Lord somewhere along the way here
25 but I'll try and work on that in any event. I



1 just want to cover a few areas with you, Mr.
2 Tallis.

3 You've talked a little bit about
4 the evidence of Nichol John and some of the
5 evidence that came out about whether or not Gail
6 Miller had been stabbed by someone who was
7 right-handed, and I think the Nichol John evidence
8 that talked about -- she appeared to be describing
9 seeing the stabbing taking place with the right
10 hand, you recall that evidence that we're -- that
11 I am talking about?

12 A Yes, I recall those statements in her statement, I
13 just don't recall whether she -- I don't think she
14 adopted all of those statements at trial.

15 Q Yeah. When you got to trial, though, one of the
16 issues that you wanted to hopefully bring out or
17 one of the points that you wanted to bring out was
18 that David was left-handed?

19 A Very definitely, and I had actually spent a fair
20 bit of time checking, I think was it a, either a
21 text or some writings in medical jurisprudence
22 about the angle of cuts and so on, and I'm quite
23 sure that I also had solicited some medical advice
24 on it because I thought that was a significant
25 point to deal with in this case, and I believe I



1 not only -- I also canvassed it with Dr. Emson in
2 the light of instructions that I had received.

3 Q Sure. And the obvious significance of it is that
4 if this, if this victim, if Gail Miller had been
5 stabbed apparently by a right-handed person and
6 David, if you could establish at the trial that
7 David was left handed, that would be something
8 that would suggest he was not the perpetrator of
9 the crime?

10 A Yes. I thought that was a material fact that
11 pointed in his favour.

12 Q Now, one of the questions then as defence counsel
13 as you would be preparing for that is trying to
14 determine how am I going to establish in front of
15 the jury that he's left handed, one of the ways
16 would be obviously if he were able to get on the
17 stand and testify to that; that would be correct?

18 A Yes.

19 Q Another way would be if some witness could confirm
20 that in fact he's left handed, then you wouldn't
21 have to worry about calling him as a witness?

22 A Yes.

23 Q Would that be correct?

24 A Yes.

25 Q And in this particular case, as I understand it,



1 you were able to extract that information from Mr.
2 Karst when he testified?

3 A Yes. From reading over the record, I am quite
4 satisfied that I asked him the question the way I
5 did and that he answered it quite directly.

6 Q And I think just for the record, I think it's
7 actually the transcript doc ID, I think, I hope
8 I've got this right, is 076809, and I think that
9 exchange took place at 815 and 16.

10 COMMISSIONER MacCALLUM: That's the trial
11 transcript?

12 BY MR. FOX:

13 Q Trial transcript. There we are, okay. I think it
14 starts about at the bottom of page 815. This is
15 your questioning of, cross-examination of
16 Detective Karst. You talked to him about he
17 having obtained a statement from David in Winnipeg
18 and of course you would have known from that some
19 sketches were drawn and perhaps Detective Karst
20 would have made some observation as to whether
21 David was left or right handed; that would be
22 correct?

23 A Yes.

24 Q So the question again:

25 "Q And I believe that it is also fair to



1 say that you observed David writing?"

2 And Detective Karst acknowledged that he did. Go
3 to the top of the next page:

4 "Q And you specifically recollect that he
5 is left handed?

6 A That's right.

7 Q That is he wrote left handed?

8 A He wrote left-handed, yes.

9 Q You noted that specifically at that
10 time?

11 A That's right."

12 That would be consistent, I take it, from your
13 recollection of the type of questioning that took
14 place of Detective Karst?

15 A Oh, yes, I mean, I don't dispute that record, and
16 I'm quite satisfied that it accurately reflects
17 the question and his direct answer.

18 Q And you mentioned I think when Mr. Hodson asked
19 you about that, that others perhaps had sort of
20 qualified their answers on that point a bit as to
21 whether he was right or left handed?

22 A Yes. I think that there was some qualification, I
23 think it was Lieutenant Penkala who said, well, I
24 meant a person using his right hand, so to speak.

25 Q Right.



1 A But --

2 Q In the case of Detective Karst, there was no
3 qualification in terms of -- clearly he confirmed
4 that he was left handed?

5 A Yes, that's right.

6 Q When you spoke with David you mentioned you asked
7 him as well about his dealings with the police in
8 Winnipeg when he was first apprehended and
9 questioned, this would have been on or about March
10 3rd, 1969, I think there was an RCMP officer
11 involved and we know that Detective Karst was
12 involved. Do you recollect that area of your
13 testimony, Mr. Tallis?

14 A Yes.

15 Q And I think you indicated you would have asked him
16 if he had any complaints or concerns about how he
17 was treated by the police on that occasion?

18 A Yes.

19 Q And I think you indicated that there was no
20 suggestion of badgering or pressure being applied
21 to him at that time to make a statement perhaps or
22 say something that he wasn't prepared to say?

23 A Yeah, I think that's a fair summary of my
24 recollection. Naturally at this late date I can't
25 recall all the specifics, but certainly that



1 fairly summarizes my recollection.

2 Q Did you have any knowledge of Detective Karst on a
3 professional basis in 1969 or during your time
4 period that you were practicing?

5 A Well, I suppose I had cross-examined him many
6 times through the years and that would go back
7 quite a few years before that, so -- I'm just
8 trying to think. I think by the time this case
9 was before the courts, he had been on the force
10 for a number of years.

11 Q When you asked him about whether Mr. Milgaard was
12 right handed or left handed, and I think the issue
13 probably would have been fairly obvious as to why
14 that question would be significant, did you have
15 any concerns about him not answering you in a
16 forthright manner?

17 A No. I knew that he was an experienced officer and
18 I'm sure that my sense was he, along with Staff
19 Sergeant Edmondson, would certainly be thinking
20 about those type of things.

21 Q And did you have any concerns that he might want
22 to hide the fact, for example, that he observed
23 that this individual was left handed versus right
24 handed and not reveal that to you?

25 A No, I don't think that that thought crossed my



1 mind.

2 Q Was there anything in your --

3 A I posed the question and he answered it.

4 Q Was there anything in your previous professional
5 dealings with him that would have caused you any
6 concern in asking that question?

7 A No. I expected a forthright answer to it.

8 Q If I could just bring up Mr. Karst's report, and
9 it's document 009254, this is his report of April
10 18th, 1969. Sorry, Mr. Commissioner, I brought
11 the wrong -- in this -- this would have been, when
12 we talk about police reports, this is the type of
13 police report that we know is generated at that
14 time but as defence counsel we wouldn't receive in
15 1969; would that be correct?

16 A That's correct.

17 Q Today certainly practicing in the criminal law
18 area, we would routinely expect to have reports
19 like this released to us, that's just the
20 difference in the law and the practice that exists
21 now versus 1969?

22 A Yes. You are better able to speak to that than I
23 am, but I have no reason to doubt you,
24 particularly in the light of *Stinchcombe* and its
25 progeny.



1 Q When we get the boxes and boxes of disclosure I'm
2 not sure if we've got a benefit there or not, but
3 it's certainly changed. But when I look at this
4 report, for example, if I can highlight that area
5 there:

6 "Further investigation of this girl when
7 she was interviewed gave one the feeling
8 that she was telling the truth and she
9 emphatically stated she could not recall
10 any time while they were in the City of
11 Saskatoon during the morning of the
12 murder at which time Wilson or Milgaard
13 had left the vehicle ..."

14 This is Mr. Karst's report in talking about Miss
15 John. Obviously you weren't provided with that
16 at the time?

17 A That's correct.

18 Q Having said that, I take it you would take some
19 comfort in the fact that at least the police are
20 recognizing, gee, if this girl looks like she is
21 telling the truth and if she is telling the truth,
22 there's a problem here?

23 A Yes. Well, the report indicates that.

24 Q And those sort of inquires, in other words, here
25 we've got evidence that points towards guilt, here



1 we've got evidence that points towards him not
2 being involved, that type of analysis would be the
3 same sort of analysis that you would be doing all
4 of the time as well, would that not be correct, as
5 defence counsel?

6 A Yes, probing, and I guess my share of speculation
7 too.

8 Q Sure. If we could bring up Detective Karst's
9 report of March 7th, 1969, and that's document
10 009233, and if we could turn to 009235, this is
11 Detective Karst's report and I'm just going to run
12 through there. This is sort of his analysis of
13 some of the issues that he identified after having
14 spoke with David and this is after Albert Cadrain
15 had come in with his statement. Number 1:

16 "That his arrival time in Saskatoon
17 coincided with the time of the Murder."
18 Obviously that's a concern. It doesn't mean that
19 David Milgaard was involved in the murder of Gail
20 Miller, but it looks like he was in Saskatoon
21 around the time the murder took place.

22 Mr. Tallis, again that would be an issue that is
23 obviously going to have to be investigated and
24 pursued, that wouldn't surprise you?

25 A Oh, no.



1 Q And obviously one that you want addressed as well
2 in preparing your defence for him?

3 A Yes.

4 Q "He can be placed in the vicinity of
5 the Murder due to his own admission.
6 That would just be another factor?

7 A Yes, using vicinity, from my perspective, in a
8 rather broad sense.

9 Q In that west area?

10 A Yes.

11 Q Somewhere 20th, 22nd Street?

12 A Yes.

13 Q In the avenues. Number 3:

14 "And we know he was travelling in the
15 lanes having been told from same by tow
16 trucks which we have information and
17 statements with regard to."

18 So that he was travelling in the lanes, cold
19 morning, lots of snow, poor car. Doesn't mean he
20 committed an offence, but it's something that
21 sort of calls out to be why was that, you know,
22 how come was he doing that; would that be fair?

23 A Yes.

24 Q Number 4:

25 "Also that Milgaard attended at the



1 Cadrain residence and also through his
2 own admission was in an excited
3 condition and although he denies this,
4 Cadrain stated that he had blood on his
5 clothing, this clothing not being found
6 or located at this time."

7 So again, just Albert Cadrain says he came there,
8 he had blood on him. Milgaard denies it, but
9 something has got to get -- you know, we want to
10 find out what the bottom, what the answer is to
11 that, again, a question that needs to be
12 answered?

13 A Yes. I mean, I would have no doubt it would be
14 the subject of police inquiry.

15 Q And finding the clothes could be sort of good or
16 bad, finding the clothes -- if you found the
17 clothes he was wearing and there was no blood on
18 them, that would be helpful for David obviously?

19 A Yes.

20 Q Found them and there was blood on them wouldn't be
21 so helpful?

22 A Correct.

23 Q Number 5:

24 "Also that from Insp. Ridell's
25 conversation with the other youth



1 involved, Ronald Wilson in Regina,
2 stating that certainly Milgaard was
3 excited giving the reason of his girl
4 friend having ditched him for one of the
5 other youths when in fact it was found
6 through Milgaard's statement that he was
7 a little excited and in a hurry due to
8 the fact that he was going to see his
9 girl friend in St. Albert ..."

10 Also this girlfriend being Sharon Williams giving
11 her side of the story and gives the address
12 there. So, in other words, Ron Wilson says,
13 well, David is upset because his girlfriend got
14 ditched, ditched him, that's Nichol John, but
15 then Milgaard says, well, I'm in a hurry because
16 I want to see my girlfriend Sharon Williams,
17 that's why we were going to Edmonton. Doesn't
18 necessarily mean guilt or innocence, but it just
19 raises a question why is one person giving one
20 story and the other person giving something
21 different; would that be fair?

22 A Yes. That was obviously part of the
23 investigation.

24 Q Number 6:

25 "That we know these persons were under



1 the effect of drugs through their own
2 admission."

3 Now, on the drugs issue, that was further
4 canvassed and it looked like at the end of the
5 day there wasn't much in the way of drugs used
6 that morning or that night, I think that was sort
7 of the conclusion that you came to?

8 A Well, the information I had, and I think
9 ultimately it was conceded, was that drugs were
10 not used on the trip at all.

11 Q One of the concerns, though, would be obviously if
12 drugs were used, might have that had some impact
13 on behaviour and so on, so not surprisingly that
14 the police would want to at least find out what
15 the situation was with that?

16 A I have no doubt that it would be an area of
17 inquiry on their part.

18 Q Number 7:

19 "Also that these persons were in
20 financial trouble."

21 That would have been an issue obviously that you
22 identified, that if they were making a trip to
23 Alberta and didn't really have any money, maybe
24 there's a motive to commit an offence to obtain
25 money, you saw that as an area of concern as



1 well?

2 A Yes.

3 Q Number 8:

4 "Also to be taken into consideration is
5 his record and type of offences which
6 Milgaard has a record, this being
7 covered in the statements taken from
8 him."

9 David mentioned some previous dealings with the
10 law in his statement to the police. Just like
11 you, the police would look at that and say, well,
12 maybe this is pointing towards someone who might
13 have been involved in something like this? Not
14 conclusive, but something that you would be aware
15 of and obviously want to follow up; would that be
16 correct?

17 A Yes, that's a fair statement, that -- now, I don't
18 recall details of his conflict with the law, but I
19 don't think that there was a serious record, if I
20 may use that term.

21 Q Right.

22 A If indeed there were recorded offences.

23 Q Some suggestion of sexual morality or something
24 like that?

25 A Yeah.



1 Q And again, not necessarily anything that's
2 conclusive in any way, but not surprising that the
3 police might look at that and say, well, that
4 means we've got to dig a little deeper; would that
5 be fair?

6 A Yes.

7 Q Item number 9, there was some indication from one
8 of the service station attendants that while the
9 vehicle was being fixed at the garage at Avenue P
10 Milgaard made various attempts to clean the
11 vehicle out. If there's some indication of that,
12 that might be some indication that he's trying to
13 get rid of evidence, that's a possibility?

14 A Well, I don't -- but I don't think there was
15 anything to support the suggestion that items of
16 any major interest were thrown out.

17 Q On March 7th, 1969, if there's some indication
18 that there was some cleaning out of the vehicle --

19 A Oh, yes.

20 Q -- you definitely would want to follow that up?

21 A That's right, that's a lead that would undoubtedly
22 be followed up by an experienced investigator.

23 Q Item number 10 just again points out the time
24 factor, that they were wandering around in the
25 area where the murder occurred about the time the



1 murder occurred, a very broad time frame and a
2 very general area, but it does at least, when
3 Albert Cadrain comes in and says hey, this fellow
4 walked into my house that morning of the murder
5 with blood on his clothes, we now know that, yeah,
6 he was at least in Saskatoon that morning would be
7 a cause for further follow-up; would that be
8 correct?

9 A Yes.

10 Q If I can turn to the next page, the first
11 paragraph:

12 "Intensive interrogation and questioning
13 of Milgaard by myself and S/Sgt.
14 Edmunson reveal that he does not account
15 for this period of time and states he
16 just doesn't remember other than
17 probably driving around looking for his
18 friend "Shorty's" residence."

19 Again, doesn't necessarily mean he's done
20 anything wrong, but the police are saying we're
21 not really getting much in the way of detail from
22 him might be a reason why they were suspicious;
23 fair to say?

24 A Yes, I'm sure that was an area of inquiry on their
25 part.



1 Q And it's a similar concern that you expressed,
2 that when he gave answers that were a little bit
3 evasive or not very clear like why did you throw
4 the compact out and doesn't give an answer, or how
5 did it get there and he doesn't really give an
6 answer, that would cause you some concern and
7 caused you a concern that if he got on the stand
8 and testified like that, it might be viewed by the
9 jury with some suspicion?

10 A Yes.

11 Q About halfway down, if I can:

12 "Also noted that Milgaard has in fact
13 received psychiatric treatment during
14 the past years from the Psychiatric
15 Centre in Yorkton ..."

16 That was also an area that you had some concern
17 about in the sense that you didn't want that
18 information before the jury?

19 A That's correct.

20 Q And again, it's not really determinative of an
21 issue, but perhaps if we're looking for someone
22 who has committed a fairly serious and horrendous
23 offence, some psychiatric problems in the past
24 might somehow point towards that? It's not
25 conclusive, but it's just something else you would



1 keep in mind; correct?

2 A I have no doubt that many investigators would be
3 checking on that type of background.

4 Q Sure. And from you, as a defence counsel point of
5 view, would have preferred that that not be in
6 front of the jury because of the detrimental
7 effect it might have?

8 A Well, and furthermore, I think that it would not
9 be properly admissible evidence unless one did
10 something that opened the door for it to get in.

11 Q I agree with you completely on that, you would
12 hope you would be able to keep it out, but at the
13 same time always a concern that you don't want to
14 accidentally open the door that it might be able
15 to come in?

16 A That's correct.

17 Q Okay. This next paragraph:

18 "It was also noted that although
19 Milgaard's reason for driving in the
20 lanes in this City on the morning in
21 question his explanation for being in
22 the lanes was that he was looking for
23 his friend's residence ..."

24 And again, that's sort of reflective of your own
25 concerns, why is he out driving around in the



1 lanes if he doesn't really know the area, somehow
2 somebody might view that with some suspicion?

3 A Yes. I think that's the type of thing that would
4 probably arouse the suspicion of an experienced
5 investigator.

6 Q Mr. Tallis, by the time you arrived at the
7 preliminary hearing, you knew by that time that
8 Albert Cadrain, Nichol John and Ron Wilson all
9 were giving incriminating statements in relation
10 to, and I know you've used the word friend
11 probably in quotation marks in describing them as
12 their friends --

13 A Yes.

14 Q -- but against David. Did David have any
15 explanation to you as to why they may have been
16 saying this? I mean, if these statements weren't
17 true, if Ron Wilson was lying, for example, why
18 was he doing that, did he have any explanation for
19 that?

20 A Well, you know, in our discussions we certainly
21 probed that and as I think I've indicated in the
22 testimony under examination-in-chief by Mr.
23 Hodson, David and I discussed it, whether, for
24 example, there had been a falling out with Nichol
25 John and Cadrain or, you know, because of



1 intimacies and so on, and David certainly didn't
2 feel there was anything to that suggestion or
3 inquiry on my part and, you know, one of the
4 things that I wondered about, frankly, and
5 discussed with him, do you think your "friends"
6 are doing this with the prospect of getting some
7 money out of it, you know, in terms of rewards and
8 so on, so to make a long story short, he couldn't
9 come up with, and I don't use that in a
10 disparaging way, he couldn't come up with anything
11 concrete as to why they were doing this.

12 Q Would it have been a subject matter discussed with
13 his family?

14 A I think I primarily -- I think I discussed it with
15 him. After all, you know, his family weren't
16 really involved in those discussions.

17 Q Did anything come back to you during that time
18 period that suggested that any one of these three
19 had been subject to coercion or undue pressure by
20 the police causing them to give a false statement,
21 did anything come back to you suggesting that?

22 A No, but, you know, I was concerned along the way
23 later on, I was wondering about Inspector Roberts'
24 role, but I've already discussed that --

25 Q Yeah.



1 A -- in as much detail as I can recollect.

2 Q And it looks like, at least at the preliminary
3 hearing because you've got a little bit more of a
4 free rein in cross-examination at the preliminary
5 hearing, you are not at the trial, that you were
6 at least trying to probe Ron Wilson to see if he
7 would give you any hint or suggestion that he
8 might have been coerced or pressured somehow into
9 giving a false statement; do I have that correct?

10 A That's correct, I certainly probed that with, you
11 know, I suppose in a rather cautious way because I
12 didn't want to give him too many ideas --

13 Q Yeah.

14 A -- being the type of person he was, but there was
15 nothing really forthcoming on that.

16 Q And I'm assuming from that, that sort of gave you
17 the message that this isn't going to be very
18 fruitful if I try and pursue that at trial because
19 he's just not biting on any suggestion that there
20 might have been some pressure put on him?

21 A Well, having interviewed Mr. Roberts, there wasn't
22 anything that I was able to elicit from him that
23 would strengthen ones hand in that area.

24 Q Just on that, you mentioned that you spoke
25 directly with Mr. Roberts. Did that happen very



1 often, that you would speak directly with an
2 officer involved in an investigation?

3 A No, but in this particular case he was -- you see,
4 I wanted to -- I did this through Mr. Caldwell, I
5 wanted to speak to him because of this polygraph
6 background.

7 Q Right.

8 A And I knew a little bit about the types of
9 questions that were put both before and frequently
10 after the actual administration of the test
11 because they are often indicative of certain
12 things that could take place, but I didn't get
13 anything of value from Mr. Roberts at all on that.

14 Q Did you speak with any other officers about the
15 polygraph?

16 A No. I think that my understanding was that Mr.
17 Roberts was the one who did it and he was the
18 operator and he represented to me that his
19 participation was solely that as, of a technician,
20 so to speak.

21 Q So it appeared as though --

22 A "I was a mere operator."

23 Q The impression you were left with was that in
24 terms of the administration of the polygraph,
25 whatever that involved, it was Mr. Roberts who was



1 involved in that, no indication of anybody else
2 specifically being involved in that?

3 A That's right.

4 Q Just -- I'm jumping around a little bit here, but
5 just talking about Nichol John, it appeared, it
6 seemed to appear from your question, that you had,
7 or there was some knowledge that there was a
8 matron present when she was at the cells or at the
9 police station?

10 A Well, you know, I've tried to recollect the
11 details of that, and having read over the
12 transcript, I must have maybe had some information
13 that I picked up casually about it, but I just
14 can't recall. I noticed that I used a specific
15 name and that's what leads me to think that I was
16 probing to see whether or not there was something
17 of value there, but I don't recall whether I later
18 spoke to, spoke to the matron before or after or
19 anything, without my file I just couldn't be
20 precise, but you are quite right in, that in
21 directing my attention to this, I obviously had
22 some reason to do it.

23 Q And am I correct that Nichol John, both at the
24 preliminary hearing and at trial, notwithstanding
25 the various forms of cross-examination by Mr.



1 Caldwell and then yourself, at no point in time
2 indicated that she was coerced or pressured or
3 gave an indication of that into giving her
4 statement?

5 A That certainly is my recollection, and I've
6 already told the Commission or Commission Counsel
7 about my impression of Nichol John, particularly
8 at trial, and what I thought the judge's
9 impression of her was.

10 Q Yeah. And I can appreciate the distinction
11 between an answer on her part which is "it didn't
12 happen" versus the frankly more damaging answer of
13 "I don't remember".

14 A Yeah.

15 Q I just want to talk about Ron Wilson for a second.
16 If we can turn to the transcript, page 12738, this
17 is a questioning of Mr. Karst and I'm just going
18 to ask you to comment on this. This was Mr.
19 Hodson -- sorry, myself questioning Mr. Karst, I
20 said to him:

21 "If I can turn to Ron Wilson's
22 transcript at page 5956, Mr. Wilson was
23 asked here about sort of his state of
24 mind at various times and he was asked
25 the question:



1 "Q So if I stopped you on the street
2 the day before David Milgaard's trial
3 and said "do you think he murdered Gail
4 Miller" what would you have answered me,
5 truthfully?"

6 He answered:

7 "A Yes."

8 He talks about how he changed his mind
9 afterwards. Do you have any comment on
10 that, Mr. Wilson's state of mind,
11 whether he did believe or didn't
12 believe?"

13 Mr. Karst answered:

14 "A I didn't know whether to believe him or
15 not most of the time, so I can't say I
16 believed him or I didn't."

17 You would sort of agree with Mr. Karst's
18 assessment of Mr. Wilson?

19 A Well, I don't think I would be as charitable as
20 Mr. Karst. I've indicated that I considered
21 Mr. Wilson a treacherous type of person and that
22 was based on my discussions with David and my own
23 assessment, so as I say, I don't think I could be
24 that charitable.

25 Q If we turn to the next page then, answer -- the



1 question was, was there anything -- I'm sorry, the
2 top half:

3 "Q Was there anything after that caused you
4 to give Mr. Wilson's evidence some
5 weight or testimony some weight?

6 A Well, I suppose when Inspector Roberts
7 had completed his examination, I
8 placed weight on that.

9 Q If Inspector Roberts hadn't completed
10 his examination, if you are able to do
11 that hypothetically, take Inspector
12 Roberts out of the equation, what would
13 your view have been on the reliability
14 of Mr. Wilson?

15 A Very dubious."
16 Are you able to comment on that, Mr. Tallis?

17 A Well I really can't speak --

18 Q Do you see how --

19 A -- I can't speak --

20 Q Sorry.

21 A -- for Mr. Karst, but it does tell me at this
22 stage that Mr. Roberts played a bigger role than
23 he led me to believe.

24 Q And could you see how for example, from Mr. Karst'
25 perspective, while he obviously views Ron Wilson



1 as a very dubious witness, if Mr. Roberts comes
2 back and says "well here's the examination we did
3 on him, here's his statement", why he might take
4 some comfort in that?

5 A Well, I can't speak for him on that, but I can
6 understand how this would arise.

7 Q And --

8 A Because, you know, Insp -- Mr. Roberts was an
9 inspector, albeit from another police force, and
10 probably at that time -- and I'm just saying
11 "probably" -- held himself out as being sort of
12 one of the expert polygraph operators in Western
13 Canada. Otherwise, he likely wouldn't have been
14 brought in, but that's just an assumption I'm
15 making years later.

16 Q Yes. And I think we've heard some evidence on
17 that already.

18 A Yeah.

19 Q I'm just going to go back now, if I can, just
20 directing your mind back to 1969 versus today.
21 Today it would be fair to say that -- well, maybe
22 you are able to comment on this or maybe not --
23 but it would be a fairly common practice to see
24 statements that are actually videotaped or
25 certainly audio taped, that; you would see that



1 fairly frequently?

2 A In '69?

3 Q No, today?

4 A Oh. Well you and some of your colleagues actively
5 involved in the defence bar would be in a better
6 position than I am.

7 Q Uh-huh?

8 A But from my post-defence counsel work I know that
9 it's not uncommon for statements to be videotaped,
10 whether they're confessions or witness statements,
11 and sometimes confessions include reenactment of a
12 crime and they are videotaped. So I think that
13 it, in a sense, has progressed through taping of
14 interviews and -- although, looking at the
15 reports, some taping was -- had occurred in this
16 particular case -- and then moved along to the
17 point where you had audio/videotaping.

18 Q Yes. In 1969, 1968-'69, this murder occurred
19 January 31st, 1969; to your knowledge, back at
20 that time. Was it a very common practice to tape
21 statements?

22 A I don't think it was a common practice, and I
23 can't specifically recall, but what I do know from
24 the material Mr. Hodson asked me to read that
25 there was some taping --



1 Q There's an indication of that, yes.

2 A -- of certain statements. Now I didn't get copies
3 of those tapes so that's the best I can tell you.

4 Q And I --

5 A It wasn't a general practice in every case, that I
6 recall, but it may well have been starting in
7 serious cases.

8 Q If -- in terms of disclosure in 1968-'69 would you
9 ever expect, at that time, to receive disclosure
10 directly from the police or would that come
11 through the prosecutors office?

12 A Oh the protocol was always, in my experience,
13 always through the prosecutors office.

14 Q In 1969 I think you indicated that you were -- we
15 know now that at the time David was charged in the
16 spring of 1969, by that time two rapes and a
17 sexual assault had occurred in Saskatoon, and I
18 think you've already indicated you were not aware
19 of that at that time?

20 A That's correct.

21 Q And we don't need to bring up this document, but
22 document 039527, Mr. Commissioner, that's just the
23 December 14th, '68 *StarPhoenix* article.

24 COMMISSIONER MacCALLUM: 039 what?

25 MR. FOX: 039527. That is just the warning



1 that appeared in *The StarPhoenix*.

2 COMMISSIONER MacCALLUM: Okay.

3 BY MR. FOX:

4 Q And I think you've already indicated, Mr. Tallis,
5 you have no recollection of seeing that?

6 A No, and I don't recall it having been brought to
7 my attention. As I mentioned, one of those
8 incidents, the (V6)- incident, had apparently
9 taken place not that far from where we lived, and
10 I don't recall it being a topic of conversation in
11 the community.

12 Q You'd mentioned that you had made some inquiries
13 of a fellow you knew on the west side, and I --
14 about sort of did he have any knowledge of
15 anything goin' on at the time that might have led
16 you to a perpetrator of the Gail Miller murder
17 other than David?

18 A Yes.

19 Q And I'm assuming that person, that wouldn't have
20 been a police officer, that would just have been
21 somebody that you -- sort of a street connection,
22 if I can put it that way?

23 A Yeah, a 'street connection' is a good term, I mean
24 me was the type of person that was involved in
25 enough things that he usually seemed to know what



1 was going on.

2 Q And I take it that inquiry didn't -- nothing came
3 back from him to indicate to you "there is
4 somebody out there been committing some sexual
5 assaults" --

6 A No.

7 Q -- "and maybe you should check that"; nothing like
8 that came back?

9 A No, that's true.

10 Q And I'm assuming, throughout 1969 through to
11 David's trial in 1970, there again was no
12 indication that there's, there's a rapist out
13 there in the City of Regina -- or in the City of
14 Saskatoon that's loose committing these offences?

15 A No, nothing like that came to my attention.

16 Q The -- you've indicated, Mr. Tallis, that had you
17 been aware of the two rapes and sexual assault
18 that had occurred you might have been able to have
19 led some evidence on that or brought that out that
20 there is a, perhaps a perpetrator out there who's
21 committed these offences, it's not David, so maybe
22 that's the person responsible for it; that's,
23 that's sort of the defence line that you would try
24 and pursue I'd take it?

25 A Well, as I indicated to Mr. Hodson, in light of



1 the contents of the reports which he referred me
2 to I think -- and I know I would have thought at
3 the time -- that a very compelling argument could
4 have been made for the admission of that evidence
5 with a view to establishing that the offence was
6 probably committed by a third person, albeit one
7 that could not be identified by name. Now I can
8 only say that I've actually covered that in
9 earlier testimony.

10 Q Yes.

11 A And this, to me, is quite a significant matter,
12 and I think that the law at that time certainly
13 was that it would be open to an accused charged
14 with an offence to show that the offence was
15 probably committed by a third person.

16 Q Now if you -- sorry?

17 A No, go ahead.

18 Q No? If you were going to sort of pursue that
19 before the jury, though, I take it, once again,
20 you would have to tread somewhat carefully --

21 A Well --

22 Q -- because you don't want, for example, the jury
23 to think that your accused has perhaps been
24 involved in other offences?

25 A No, but I think that the issue of admissibility of



1 that evidence would be first determined in the
2 absence of the jury, and that might even involve
3 calling the individuals who were attacked and
4 sexually ravished or nearly ravished, and if the
5 evidence is viewed -- was viewed as relevant and
6 probative of that issue, then it would be admitted
7 and you would call the evidence with the benefit
8 of having had that determination made in the
9 absence of the jury.

10 Q Let me give you an example of what I was referring
11 to. In detective or in Constable Cressman's
12 report -- this is document 004102, that's April
13 15th, '69, if you could bring that up -- in this
14 report (V1)--- (V1)-, who was one of the victims,
15 was shown some photographs, and it's recorded
16 here -- whether she would do that at a trial or
17 not I don't know -- but at least at that time it
18 was indicated in the report that she immediately
19 picked out the photo of David Milgaard and one
20 other male person. She didn't identify them as
21 the person who had assaulted her but said these
22 were two people that she recognized there. And
23 again, when I say 'tread carefully', that's an
24 example where as defence counsel, if I'm going to
25 go down this route, I've got to be very careful



1 that this doesn't backfire on me and (V1)--- (V1)-
2 happens to say "yeah, that is the person that
3 assaulted me".

4 A What was the date of that?

5 Q That? April 15th, '69.

6 A No, but the date of the (V1)- offence?

7 Q Umm --

8 A Oh, all right.

9 COMMISSIONER MacCALLUM: I think it was
10 October or November of '68?

11 BY MR. FOX:

12 Q October or November of '68, yeah.

13 A Well the reason I ask that, if I may, is that you
14 are quite right one would have to be careful, but
15 if you could demonstrate, which I think you could
16 have in this particular case, that David was not
17 in the city at that time, then of course that
18 would remove the consideration that you have quite
19 properly raised with me.

20 Q And you would have to demonstrate that he wasn't
21 in the city at that time?

22 A Well, I think it would be prudent to.

23 Q Otherwise -- of course.

24 A Yeah.

25 Q Otherwise there might be the suggestion that he



1 was involved?

2 A Yes.

3 Q And now when I -- and what I am not suggesting to
4 you, Mr. Tallis, is that you wouldn't go down that
5 route, but another question then you would have to
6 look at; "okay, if she has picked out his picture,
7 but I, then I want to establish that he wasn't in
8 the city in October of 1968, how do I do that?",
9 that would mean either finding an alibi for him or
10 having to put him on the stand?

11 A Yes.

12 Q And, again, that brings back to the consideration
13 of "do I want to put him on the stand or not"? My
14 point being, simply, there is a multitude of
15 considerations that you would have to look at as
16 you work through that line of defence?

17 A From what I can remember, in general discussions,
18 I think that independent evidence would have
19 established that he was not in the city on that
20 occasion.

21 Q If we can turn to the (V4)---- (V4)--- complaint,
22 this was the lady who was -- claimed to have been
23 assaulted or was assaulted the morning of January
24 31st, 1969, gave a very specific time as having
25 been assaulted at 7:07 a.m. that morning.



1 A Yes.

2 Q And, again, that evidence might point towards
3 another perpetrator having assaulted her and also
4 having killed Gail Miller; that's what you would
5 hope to do with that evidence as a defence
6 counsel?

7 A I -- it would be part of all the circumstances
8 that would be canvassed in the application to
9 adduce this evidence designed to show that the
10 perpetrator of this murder/sexual assault was
11 probably a third person, albeit one that could not
12 be identified by name. And of course as I've
13 indicated earlier, and I don't want to be too
14 repetitious, this would involve a consideration
15 and calling of evidence as to the modus operandi
16 of this individual, and that included some of the
17 unique features or similarities that are canvassed
18 in police reports and which were canvassed with
19 me.

20 Q And it would be fair to say, as defence counsel,
21 part of my assessment would be am I perhaps gonna
22 put before the jury the possibility that there is
23 two completely different perpetrators, in other
24 words that same person -- that the jury, that the
25 Crown may be able to establish the same person



1 couldn't have committed the murder and also the
2 assault on (V4)---, in which case I've now got two
3 separate perpetrators and the possibility that the
4 previous rapist also assaulted (V4)---, someone
5 completely different killed Gail Miller; that's
6 just something you would have to consider as you
7 decide whether you're going to embark down that
8 road or not?

9 A Oh, I'm sure it would be weighed. But I guess,
10 realistically speaking, I probably would have
11 assessed it this way, and it's sort of almost,
12 there's almost an element of statistical causation
13 involved here; the likelihood of two different
14 rapists operating in that area of town on a
15 40-below morning is highly unlikely. Certainly,
16 that would be an argument that would be advanced
17 by the defence --

18 Q Sure.

19 A -- in support of the contention that this was
20 relevant and admissible evidence going to an issue
21 in the case.

22 Q Sure.

23 A Now I appreciate that the point you take is really
24 a point that the prosecutor might take in arguing
25 against its admissibility but I think, on the



1 question of admissibility, a very compelling case
2 could be made for its admission, and that the
3 point you make probably would go more to the
4 weight --

5 Q Sure.

6 A -- than to its admissibility.

7 Q Yeah, I don't know if there's any question as to
8 the admissibility. It would be a question of
9 whether or not, at the end of the day, you could
10 suggest that it is likely the same perpetrator or
11 whether the Crown, because of timing, the
12 comparison of the type of offence that occurred,
13 distance and so on, whether or not we're really
14 talking about two different, two different people
15 having committed two different offences that
16 particular morning. And that's just the type of
17 analysis that you, as defence counsel, would have
18 to make in deciding do I want to go down that road
19 or not; would that be correct?

20 A That's correct. But I'd have to say, at the end
21 of the day, on balance, looking back, I think the
22 factors are more compelling with respect to the
23 admission of that type of evidence and putting it
24 forward.

25 Q Did you ever make any inquiry of the police as to



1 was there someone else out there committing rapes
2 or assaults?

3 A No, anything I did was through Mr. Caldwell,
4 because that was the protocol. And I think I
5 mentioned to Mr. Hodson that I remember on one
6 occasion early in the going I saw I think
7 Lieutenant Short in the corridor somewhere and
8 asked him some minor matter and he said, well,
9 anything of that nature would have to go through
10 Mr. Caldwell's office, and I knew that that was
11 the way in which it was being handled and treated
12 as such.

13 Q And did you ever make any inquiries of Mr. Karst
14 on any matter in relation to this investigation
15 other than your questioning at the preliminary
16 hearing or the trial?

17 A I don't, I don't think that I ever spoke to him
18 directly. Anything was either at the preliminary
19 hearing or trial, or seeking information from Mr.
20 Caldwell, as the correspondence discloses.

21 Q Thank you, Mr. Tallis, those are all the questions
22 I have.

23 A I wonder if we can break for just a few minutes.

24 COMMISSIONER MacCALLUM: Yeah, yes.

25 A Just very few.



(Adjourned at 4:09 p.m.)

(Reconvened at 4:15 p.m.)

BY MS. KNOX:

Q Thank you. Mr. Tallis, for the record my name is Catherine Knox, we've met on previous occasions, and you know of course that I am acting as counsel for the prosecutor, T.D.R. Caldwell?

A Yes.

Q And, for the record, you and I have not discussed your role or Mr. Caldwell's role in the involvement in this case except on an occasion when Mr. Halyk and I visited you at your chambers in the Court of Appeal with respect to the civil suit that was pending against our client?

A Yes, that's correct.

Q Okay. Now, sir --

A And just so there is no misunderstanding, I think you had a solic -- had a waiver --

Q Yes.

A -- of privilege --

Q Yes, there would have been.

A -- that had been furnished to you?

Q Yes, through the offices of Mr. Rodin, I believe, who was handling the civil file at the time.

A Okay.



1 Q But you requested and we provided you with
2 documentation to show that there had been waiver
3 of privilege and you could discuss certain matters
4 with us.

5 Now, sir, I get the
6 impression -- and perhaps you can correct me if
7 I'm wrong -- that out of a sense of obligation to
8 keep yourself as focused on your own knowledge as
9 possible in this case, that primarily you've
10 declined to follow what's been happening in the
11 press, you haven't been reading transcripts of
12 evidence, witness statements, except as more
13 recently provided to you by Commission Counsel?

14 A That's a fair statement.

15 Q Okay. So to a large extent, except as may have
16 arisen in the course of your discussions with your
17 counsel and Commission Counsel in preparation for
18 your testimony here, you have not followed or read
19 the evidence of Mr. Caldwell when he appeared
20 before this Commission?

21 A No, I haven't, unless I was asked to read certain
22 portions.

23 Q Okay.

24 A But I wasn't making it a practice of following the
25 testimony.



1 Q Okay. Now, Mr. Tallis, like you Mr. Caldwell
2 testified, when he was before this Commission for
3 a number of weeks, that at a -- from his personal
4 and his professional point of view, in the years
5 through the '90s up 'til the time of this Inquiry,
6 that it was painful for him to have his
7 professional integrity and his personal integrity
8 called into question, sometimes in the national
9 media, and you've expressed that sentiment today.
10 What Mr. Caldwell has said though, on the record,
11 is that in reviewing all of the information that
12 has now been made available to you, and going back
13 into his old file, he realizes with the benefit of
14 hindsight that there are some things on the file
15 that he should have disclosed to you, and I take
16 it you are aware of that?

17 A Not in any specific way.

18 Q Okay.

19 A I assume that you are probably referring to the
20 particulars concerning the sexual assaults that
21 had occurred within a certain time frame, but I
22 didn't have a chance to look at any of the details
23 or anything like that until Mr. Hodson actually
24 made them available to me and asked if I would
25 read a fairly large booklet of police reports, so



1 I think that fairly summarizes the situation. But
2 as far as what Mr. Caldwell has said, as outlined
3 by you, I accept that that's what he has said but
4 I haven't really focused on that.

5 Q Okay. Sir, to ensure that I don't cause any
6 misimpression on your part or create any error in
7 the record, what Mr. Caldwell has testified to is
8 that his file did not contain the police complaint
9 reports with respect to the (V1)- and (V2)-----
10 rapes, which were the actual rapes that Larry
11 Fisher subsequently plead guilty to; were you
12 aware of that, that those reports were not in his
13 file?

14 A I think I may have been told that by Mr. Hodson,
15 but -- in going over this, but --

16 Q Okay.

17 A -- I could be wrong on that too.

18 Q I'll take you through some documents --

19 A In any event, I can't speak for Mr. Caldwell on
20 that part.

21 Q No. I'll take you through some documents that
22 support his contention or his evidence that the
23 materials were not known to him or he had not made
24 a connection about previous rapes, and the first
25 document I'm going to ask to have brought up is



1 009386. This is a copy of a laboratory report
2 that was actually in his file with his handwriting
3 on it; and you've seen this report before?

4 A Yes, that one I recall being shown.

5 Q Okay. Mr. Commissioner, if I could have your
6 permission, I'm going to pass the witness a colour
7 photocopy of this report.

8 COMMISSIONER MacCALLUM: Okay.

9 A (Witness reading) Yes, I have had a quick glance
10 at it.

11 Q And, sir, there is two parts or three parts that I
12 want to direct your attention to. First off you
13 will notice that there is a file number that I
14 have just covered up with my finger, but it's a
15 different file number than the Gail -- it's
16 286-69, which is a different file number than the
17 file number assigned to the Gail Miller murder
18 file, which I believe was 641-69; so you see it
19 has a different file number?

20 A Yes.

21 Q And the second part, it refers to (V2) (V2)-
22 (V2)----- and (V1)--- (V1)- --

23 A Yes.

24 Q -- which is circled on the copy that we have
25 before us, circled in the colour photocopy that we



1 have; you will see that?

2 A Yes.

3 Q Now I want to take you back to the top, and you'll
4 see a notation in the handwriting that's been
5 identified in what we know to be Mr. Caldwell in a
6 pen ink that's visible on the colour photocopy,
7 that he made a notation to his file that this is a
8 "different file" and made a presumption, he has
9 testified, that it had nothing to do with the Gail
10 Miller murder.

11 A Yes, I follow you.

12 Q And consequent to that he drew this curvy line as
13 drawn by his fountain pen, in the copy in front of
14 you, and it has the word "omit" on it, because in
15 assessing the evidence that he was prepared to
16 present he drew a conclusion at that time that
17 there was nothing about this that related it to
18 the Gail Miller file and he made a presumption
19 that it had been misfiled in the Miller file; do
20 you see that?

21 A Well, now, I don't -- I see the words "omit", but
22 I don't see anything about "misfiled", but --

23 Q Well do you see the words "different file"?

24 A Oh yes.

25 Q And I am using "misfiled".



1 A Okay.

2 Q But he made a specific notation that it belonged
3 to a different file?

4 A Yes.

5 Q Okay. And would you accept that, if that was an
6 honestly-held belief by him at the time, that this
7 was not a lab report that would have or should
8 have been turned over to you as counsel for Mr.
9 Milgaard in preparation for the conduct of the
10 preliminary inquiry or his trial, as long as Mr.
11 Caldwell is acting in good faith when he made that
12 notation?

13 A Well the answer is that I can't speak for Mr.
14 Caldwell.

15 Q No.

16 A And if, of course, he concluded that it was a
17 different file and was accordingly irrelevant to
18 the issues in this case, I suppose one could make
19 that kind of mistake.

20 Q Uh-huh, yes.

21 A But I am unable to, and it would be improper for
22 me to, usurp the role of the Commissioner in
23 passing judgement on anything like that.

24 Q And please understand that I am not asking you to
25 usurp the role, but I just want to make sure that



1 we're clear that when Mr. Caldwell testified
2 before the Commission, that he indicated that in
3 hindsight he recognized --

4 A Yeah.

5 Q -- that there were some things that he should have
6 turned over to the defence, that he wasn't
7 addressing the (V1)- and (V2)----- rapes, --

8 A Yes.

9 Q -- he was talking about other assaults that I will
10 take you to very shortly.

11 A Yes.

12 Q So from that point of view in 1969 he made a
13 notation that indicated he was of that belief at
14 that time, would you agree, when he said
15 "different file"?

16 A Yes, I view it in that context. And in making the
17 comment that I did a moment ago I'm mindful of
18 admonition that Mr. Hodson gave me the other day
19 about not going into certain areas that were not
20 proper for me.

21 Q Okay. And with respect to that, Mr. Gibson asked
22 you in his questions to you about the reports, the
23 RCMP reports of Inspector Riddell and Rasmussen
24 that went back to March of '69 where they did
25 reports that went to their division commanders in



1 Regina who sent them to the Attorney General's
2 office in Regina, which would of course be the
3 head office for the prosecutions here in
4 Saskatoon; are you aware that Mr. Caldwell had no
5 idea, like you, that those reports existed and
6 they only became known to him in 1993-1994?

7 A No, I have no knowledge of that.

8 Q Okay. Well, again, the evidence before the
9 Commission, and there will be further evidence I
10 believe from Crown officials and police officers,
11 that those reports were never part of the
12 prosecution file just like they were never part of
13 the Saskatoon Police Service file, so again, in
14 terms of whether he was acting in good faith, I'd
15 ask that we sort of take that part, that
16 information off the scales that I want to set out
17 here with you, if I can use that phrase. He
18 thought the lab report was put in as filed by
19 mistake, he didn't have the Rasmussen and Riddell
20 reports about their belief of a possible
21 connection and he's testified that he didn't have,
22 that he can recall, any knowledge that there was a
23 series of unresolved rapes on the west side at
24 that time, and Mr. Hodson and others have taken
25 you to newspaper reports. Your indication is as a



1 defence lawyer, as a father, as a husband, you had
2 no knowledge that there was a serial rapist on the
3 loose, to use the language others have used in
4 these proceedings, in 1969-'70 did you?

5 A No, and as I mentioned earlier, one of the other
6 incidents, the (V6)- incident that I mentioned,
7 actually apparently took place not too far from
8 where we lived, but there was simply no talk in
9 the community there about it.

10 Q Okay. And, sir, just to go back to that term
11 that's been used a number of times in parts of the
12 review of the prosecution of Mr. Milgaard and
13 actions by various officials, as a practicing
14 defence lawyer and sometimes a prosecutor in the
15 late '60s and early '70s was the term "serial
16 rapist" part of the jargon of the day or is that a
17 more recent, to your memory, term that came with
18 the Ted Bundys of the world and others?

19 A Well, I can't recall, although a few years later
20 when the *Threinen* case arose in Saskatoon, the
21 term serial killer was used.

22 Q Okay.

23 A But to go to '69, I just -- my recollection is not
24 clear on that.

25 Q Yeah. And --



1 A It may have been developing, but as I say, the
2 *Threinen* case was I think in the '70s, probably
3 '73, '74 or thereabouts, and the term was
4 certainly used in that connection, at least among
5 the people in the community that we lived in,
6 which wasn't that far from at least some of the
7 areas where abductions had taken place, so it was
8 very much on people's minds.

9 Q And that was '73 Mr. Hodson indicated last time,
10 last week, maybe '74 that that case occurred?

11 A It's somewhere in that neighbourhood, so the term
12 serial killer was definitely being used at that
13 time, but before that, I'm afraid I can't assist
14 you any more than that.

15 Q Okay. And in that case, Mr. Threinen had a number
16 of victims where he abducted and killed various
17 people?

18 A There were -- my recollection is that it was, the
19 number was four.

20 Q Yeah.

21 A Two and two I believe --

22 Q Okay.

23 A -- you know, within a relatively short space of
24 time.

25 Q Okay. Now, sir, again with the Commissioner's



1 permission I'm going to pass you three, this time
2 I have original documents from the prosecution
3 file that I'm going to ask you to look at in
4 respect to my next series of questions.

5 Mr. Commissioner, I'm passing to the witness the
6 original of the (V4)---- (V4)--- statement of
7 January 31st, 1969. The document number is
8 006404.

9 COMMISSIONER MacCALLUM: Do you want to
10 continue this in the morning? I see it's 4:30.

11 MS. KNOX: Oh, certainly.

12 COMMISSIONER MacCALLUM: I don't know
13 what -- would you like the witness to look at
14 that at his leisure before we convene tomorrow or
15 what?

16 MS. KNOX: What I would like to do, because
17 I am very cautious of taking original documents,
18 I have coloured photocopies, I'll give him the
19 coloured photocopies and return the originals to
20 Mr. Hodson until morning.

21 COMMISSIONER MacCALLUM: All right, that
22 will be fine. Thank you.

23 *(Adjourned at 4:30 p.m.)*
24
25



OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of my knowledge, skill, and
ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



	1	24832:5 1992 [9] - 24826:9, 24827:20, 24827:24, 24836:21, 24840:6, 24844:4, 24844:20, 24845:24, 24846:1 1993 [5] - 24848:11, 24848:13, 24848:22, 24857:21, 24871:5 1993-1994 [1] - 24920:6 1994 [1] - 24858:7 1997 [1] - 24857:8 19th [1] - 24818:8 1:30 [1] - 24814:2	24832:5 31 [2] - 24818:17, 24829:4 31st [3] - 24900:19, 24907:24, 24923:7 333222 [1] - 24817:18 333324 [1] - 24818:14 333359 [2] - 24820:3, 24820:4 335 [1] - 24822:14 335386 [2] - 24821:19, 24833:1 335388 [2] - 24819:22, 24820:9 335401 [1] - 24826:5 335402 [1] - 24832:4 386 [1] - 24822:14 390 [1] - 24819:24 3:04 [1] - 24862:3 3rd [1] - 24877:10	24875:14 865 [2] - 24851:15, 24856:20 866 [1] - 24849:4
' 1969 [2] - 24820:12, 24821:23 ' 1990 [1] - 24820:13 ' 60s [1] - 24921:15 ' 68 [3] - 24901:23, 24906:10, 24906:12 ' 69 [6] - 24822:3, 24900:2, 24905:13, 24906:5, 24919:24, 24921:23 ' 70 [1] - 24815:13 ' 70s [2] - 24921:15, 24922:2 ' 73 [2] - 24922:3, 24922:9 ' 74 [2] - 24922:3, 24922:10 ' 89 [2] - 24818:9, 24821:21 ' 90 [1] - 24819:18 ' 90s [1] - 24914:5 ' 92 [3] - 24836:17, 24837:17, 24848:13 ' 93 [2] - 24849:14, 24859:3 ' damaging [1] - 24824:15 ' script [1] - 24814:23 ' street [1] - 24902:23 ' tread [1] - 24905:23	1 [1] - 24881:15 10 [1] - 24887:23 105520 [1] - 24867:11 11 [1] - 24839:24 117085 [2] - 24843:3, 24844:3 11th [2] - 24822:15, 24832:25 123 [1] - 24810:22 12738 [1] - 24896:16 13th [1] - 24820:4 14th [3] - 24836:19, 24836:21, 24901:23 153531 [2] - 24840:18, 24843:10 157030 [1] - 24818:6 157032 [1] - 24818:12 157044 [1] - 24819:17 157236 [1] - 24833:9 158496 [1] - 24836:4 158498 [1] - 24836:23 15th [3] - 24858:7, 24905:13, 24906:5 16 [1] - 24875:9 16th [1] - 24820:8 18th [2] - 24826:6, 24879:10 1968 [1] - 24907:8 1968-69 [2] - 24900:18, 24901:8 1969 [24] - 24815:3, 24815:13, 24829:4, 24862:20, 24866:6, 24866:16, 24867:14, 24871:5, 24877:10, 24878:3, 24879:10, 24879:15, 24879:21, 24881:9, 24887:17, 24899:20, 24900:18, 24900:19, 24901:14, 24901:16, 24903:10, 24907:24, 24919:12, 24923:7 1969-70 [1] - 24921:4 1970 [1] - 24903:11 1989 [5] - 24818:2, 24818:8, 24818:17, 24818:19, 24857:8 1990 [15] - 24820:4, 24820:11, 24821:11, 24821:22, 24822:1, 24822:2, 24822:15, 24822:18, 24826:4, 24826:13, 24827:23, 24832:24, 24833:1, 24839:24, 24840:15 1991 [3] - 24826:7,	2 2 [3] - 24816:16, 24817:5, 24845:24 2006 [1] - 24810:21 20th [2] - 24810:21, 24882:11 21 [6] - 24820:12, 24821:11, 24821:21, 24822:1, 24822:18, 24827:23 21st [2] - 24826:13, 24862:20 22nd [1] - 24882:11 23 [2] - 24818:8, 24832:24 232815 [1] - 24846:1 232820 [1] - 24846:3 238 [1] - 24833:10 23959 [1] - 24862:15 23963 [1] - 24864:4 23rd [5] - 24818:2, 24819:18, 24820:7, 24826:4, 24826:13 24308 [1] - 24869:24 24752 [1] - 24865:10 24761 [1] - 24867:6 24814 [1] - 24813:4 24862 [1] - 24813:5 24872 [1] - 24813:6 24912 [1] - 24813:7 27th [1] - 24820:11 286-69 [1] - 24916:16 28th [1] - 24866:5 29 [1] - 24844:19 29th [1] - 24848:22 2:44 [1] - 24862:2 2nd [1] - 24844:4	4 4 [2] - 24846:1, 24882:24 40-below [1] - 24909:15 4:09 [1] - 24912:1 4:15 [1] - 24912:2 4:30 [2] - 24923:10, 24923:23 4th [1] - 24836:17	9 9 [3] - 24816:16, 24817:5, 24887:7 9(2) [1] - 24815:23
0		3 3 [1] - 24882:13 30 [2] - 24829:4,	5 5 [1] - 24883:23 5956 [1] - 24896:22	A Aaron [2] - 24812:7, 24872:22 abducted [1] - 24922:16 abductions [1] - 24922:7 abide [1] - 24847:6 ability [1] - 24924:7 able [23] - 24816:8, 24822:24, 24827:8, 24829:1, 24829:2, 24831:5, 24842:12, 24843:25, 24847:1, 24853:23, 24863:3, 24864:9, 24874:16, 24875:1, 24879:22, 24890:12, 24890:14, 24893:22, 24898:10, 24898:16, 24899:22, 24903:18, 24908:25 absence [3] - 24816:19, 24905:2, 24905:9 absurd [1] - 24852:13 abundance [1] - 24845:7 accept [2] - 24915:3, 24918:5 access [1] - 24864:20 accidentally [1] - 24890:14 accompanies [1] - 24832:13 Accompanying [1] - 24832:22 according [1] - 24847:22 Accordingly [2] - 24838:23, 24841:14 accordingly [1] - 24918:17 account [1] - 24888:14 accuracy [3] - 24830:23, 24831:3, 24833:25 accurate [5] - 24825:12,
004102 [1] - 24905:12 006404 [1] - 24923:8 006799 [1] - 24814:21 007037 [1] - 24862:19 009233 [1] - 24881:10 009235 [1] - 24881:10 009254 [1] - 24879:9 009298 [1] - 24867:18 009386 [1] - 24916:1 032805 [1] - 24858:6 032818 [1] - 24858:9 039 [1] - 24901:24 039527 [2] - 24901:22, 24901:25 044864 [1] - 24856:24 044865 [1] - 24856:22 044867 [1] - 24848:21 065399 [1] - 24865:22 076809 [1] - 24875:8		3 3 [1] - 24882:13 30 [2] - 24829:4,	6 6 [2] - 24818:19, 24884:24 641-69 [1] - 24916:18 690 [1] - 24814:11	
		3	7 7 [1] - 24885:18 7:07 [1] - 24907:25 7th [2] - 24881:9, 24887:17	
			8 8 [1] - 24886:3 815 [2] - 24875:9,	



<p>24838:21, 24839:3, 24850:12, 24851:10 accurately [4] - 24822:25, 24852:14, 24853:14, 24876:16 accusation [1] - 24825:7 accused [2] - 24904:13, 24904:23 achieve [1] - 24860:19 acknowledged [1] - 24876:2 act [1] - 24862:6 acting [3] - 24912:6, 24918:11, 24920:14 actions [1] - 24921:13 actively [1] - 24900:4 actual [3] - 24832:2, 24894:10, 24915:10 add [3] - 24845:15, 24851:25, 24857:1 added [1] - 24823:14 addition [1] - 24859:5 additional [3] - 24824:17, 24861:13, 24872:8 address [2] - 24845:2, 24884:11 addressed [2] - 24849:25, 24882:1 addressing [1] - 24919:7 adduce [1] - 24908:9 adjourned [1] - 24814:8 Adjourned [3] - 24862:2, 24912:1, 24923:23 administration [2] - 24894:10, 24894:24 admissibility [5] - 24904:25, 24909:25, 24910:1, 24910:6, 24910:8 admissible [2] - 24890:9, 24909:20 admission [6] - 24882:5, 24883:2, 24885:2, 24904:4, 24910:2, 24910:23 admissions [1] - 24824:2 admissions' [1] - 24824:15 admit [1] - 24855:13 admitted [1] - 24905:6 admonition [1] - 24919:18 adopted [1] - 24873:14 advance [1] - 24841:19 advanced [1] -</p>	<p>24909:16 advice [2] - 24834:24, 24873:23 advise [2] - 24832:19, 24842:9 advised [3] - 24835:21, 24837:1, 24845:1 advises [1] - 24840:21 advocate [2] - 24860:11, 24860:12 advocate's [1] - 24860:9 afraid [1] - 24922:13 afternoon [3] - 24814:3, 24814:4, 24814:8 afterwards [1] - 24897:9 Ag's [1] - 24866:6 ago [4] - 24814:9, 24815:11, 24846:16, 24919:17 agree [4] - 24824:3, 24890:11, 24897:17, 24919:14 agreed [1] - 24838:24 ahead [4] - 24826:6, 24833:9, 24848:11, 24904:17 Aid [1] - 24859:14 airing [2] - 24861:3, 24861:7 albeit [4] - 24861:7, 24899:9, 24904:6, 24908:11 Albert [6] - 24869:7, 24881:14, 24883:7, 24884:9, 24888:3, 24891:8 Alberta [1] - 24885:23 Alexander [1] - 24812:12 alibi [1] - 24907:9 allegation [3] - 24859:6, 24860:7, 24860:25 allegations [9] - 24848:14, 24857:22, 24857:24, 24858:12, 24858:13, 24858:17, 24860:6, 24860:17, 24871:5 alleged [1] - 24858:19 allow [1] - 24841:17 allowed [1] - 24864:19 almost [2] - 24909:11, 24909:12 alone [3] - 24826:22, 24827:1, 24827:7 amount [1] - 24860:7 analysis [4] - 24881:2,</p>	<p>24881:3, 24881:12, 24910:17 angle [1] - 24873:22 answer [17] - 24822:8, 24839:1, 24853:21, 24854:8, 24855:7, 24864:18, 24870:8, 24871:1, 24876:17, 24879:7, 24883:10, 24889:4, 24889:6, 24896:11, 24896:12, 24897:25, 24918:13 answered [8] - 24841:16, 24846:19, 24875:5, 24879:3, 24883:12, 24897:4, 24897:6, 24897:13 answering [1] - 24878:15 answers [4] - 24816:12, 24820:15, 24876:20, 24889:2 Anyways [1] - 24866:4 anyways [1] - 24867:4 Apart [1] - 24817:5 appalled [1] - 24842:4 Appeal [2] - 24829:9, 24912:13 appear [3] - 24819:8, 24820:14, 24895:6 Appearances [1] - 24812:1 appeared [6] - 24824:20, 24873:8, 24894:21, 24895:5, 24902:1, 24913:19 applicable [1] - 24862:9 application [2] - 24815:23, 24908:8 applied [1] - 24877:20 appreciate [4] - 24817:6, 24831:1, 24896:10, 24909:23 apprehended [1] - 24877:8 appropriate [2] - 24830:19, 24861:22 approves [1] - 24833:15 April [4] - 24848:21, 24879:9, 24905:12, 24906:5 April/early [1] - 24815:3 area [16] - 24839:20, 24852:2, 24856:6, 24877:12, 24879:18, 24880:4, 24882:9, 24885:16, 24885:25, 24887:25, 24888:2, 24888:24, 24889:16,</p>	<p>24891:1, 24893:23, 24909:14 areas [5] - 24860:4, 24862:17, 24873:1, 24919:19, 24922:7 arguing [1] - 24909:24 argument [3] - 24834:15, 24904:3, 24909:16 arise [1] - 24899:6 arisen [1] - 24913:16 arose [2] - 24816:21, 24921:20 arouse [1] - 24891:4 arranged [1] - 24848:18 arrival [1] - 24881:16 arrived [1] - 24891:6 arriving [1] - 24840:24 article [1] - 24901:23 ascertain [1] - 24870:21 aspect [3] - 24850:11, 24851:18, 24852:10 aspects [2] - 24828:24, 24829:12 Asper [7] - 24821:14, 24822:10, 24826:15, 24826:17, 24826:24, 24827:25, 24828:21 assault [4] - 24901:17, 24903:17, 24908:10, 24909:2 assaulted [7] - 24905:21, 24906:3, 24907:23, 24907:25, 24908:3, 24909:4 assaults [4] - 24903:5, 24911:2, 24914:20, 24919:9 assessed [1] - 24909:11 assessing [1] - 24917:15 assessment [5] - 24865:7, 24871:22, 24897:18, 24897:23, 24908:21 assigned [1] - 24916:17 assist [3] - 24840:23, 24864:1, 24922:13 assistance [3] - 24816:8, 24817:2, 24863:4 Assistant [1] - 24811:5 assisted [1] - 24815:21 assisting [4] - 24844:6, 24863:17, 24863:18, 24865:14 association [1] - 24859:11 assume [1] - 24914:19</p>	<p>assuming [3] - 24893:16, 24902:19, 24903:10 assumption [4] - 24850:2, 24858:25, 24864:3, 24899:14 attacked [1] - 24905:3 attempting [1] - 24856:5 attempts [1] - 24887:10 attendance [1] - 24839:14 attendants [1] - 24887:8 attended [2] - 24837:5, 24882:25 attention [4] - 24895:21, 24902:7, 24903:15, 24916:12 Attorney [3] - 24866:5, 24866:18, 24920:1 attribute [1] - 24842:20 attributed [4] - 24825:10, 24825:24, 24832:7, 24857:15 audio [1] - 24899:25 Audio [1] - 24811:12 audio/videotaping [1] - 24900:17 August [2] - 24858:7, 24862:20 authorities [1] - 24857:18 authorizing [1] - 24830:13 available [5] - 24827:13, 24851:5, 24855:15, 24914:12, 24914:24 Avenue [1] - 24887:9 avenues [1] - 24882:13 avoiding [1] - 24837:11 aware [11] - 24816:6, 24836:13, 24845:17, 24848:12, 24863:17, 24886:14, 24901:18, 24903:17, 24914:16, 24915:12, 24920:4</p>
B				
<p>backfire [1] - 24906:1 background [7] - 24816:1, 24816:9, 24817:16, 24853:24, 24859:20, 24890:3, 24894:6 bad [1] - 24883:16 badgering [1] -</p>				



<p>24877:20 balance [1] - 24910:21 bar [1] - 24900:5 based [5] - 24836:10, 24845:15, 24850:17, 24871:21, 24897:22 basis [1] - 24878:3 became [1] - 24920:6 become [1] - 24848:12 beginning [2] - 24843:6, 24851:20 behalf [1] - 24859:17 behaviour [1] - 24885:13 Beitel [1] - 24811:8 belabour [1] - 24862:18 belief [3] - 24918:6, 24919:13, 24920:20 belonged [2] - 24838:1, 24918:2 Bence's [1] - 24852:20 Bench [4] - 24924:1, 24924:3, 24924:14, 24924:18 benefit [4] - 24853:6, 24880:2, 24905:7, 24914:13 Beresh [2] - 24812:9, 24847:20 Bessborough [1] - 24810:16 best [5] - 24860:19, 24861:14, 24871:12, 24901:3, 24924:6 better [3] - 24817:25, 24879:22, 24900:5 between [9] - 24821:7, 24827:23, 24834:6, 24850:9, 24852:9, 24867:15, 24867:24, 24869:4, 24896:11 beyond [2] - 24830:15, 24870:20 bigger [1] - 24898:22 binders [2] - 24861:20 bit [11] - 24817:7, 24828:11, 24828:15, 24867:23, 24873:3, 24873:20, 24876:20, 24889:2, 24893:3, 24894:8, 24895:4 biting [1] - 24893:19 blood [6] - 24854:20, 24883:4, 24883:8, 24883:17, 24883:20, 24888:5 Bobs [1] - 24812:5 booklet [1] - 24914:25 Boswell [1] - 24811:4 bottom [4] - 24858:18,</p>	<p>24862:21, 24875:14, 24883:10 boxes [2] - 24880:1 break [3] - 24861:23, 24862:7, 24911:23 Brian [1] - 24812:9 brief [2] - 24818:22, 24819:9 briefly [1] - 24852:11 bring [7] - 24818:16, 24873:16, 24873:17, 24879:8, 24881:8, 24901:21, 24905:13 brings [1] - 24907:12 broad [3] - 24872:4, 24882:8, 24888:1 brought [6] - 24818:12, 24879:10, 24899:14, 24902:6, 24903:19, 24915:25 Brown [1] - 24848:4 Bruce [2] - 24812:8, 24862:5 Bundys [1] - 24921:18 bus [1] - 24825:9</p>	<p>24854:24, 24855:11, 24899:13 Candace [1] - 24811:3 Cannot [1] - 24849:23 canvassed [5] - 24874:1, 24885:4, 24908:8, 24908:17, 24908:18 capture [1] - 24848:5 car [2] - 24824:25, 24882:19 careful [2] - 24905:25, 24906:14 carefully [1] - 24904:20 carefully' [1] - 24905:23 carried [1] - 24866:1 case [27] - 24823:20, 24829:8, 24836:7, 24841:19, 24847:19, 24857:9, 24865:3, 24868:21, 24871:6, 24873:25, 24874:25, 24877:2, 24878:8, 24894:3, 24900:16, 24901:5, 24906:16, 24909:2, 24909:21, 24910:1, 24912:11, 24913:9, 24918:18, 24921:20, 24922:2, 24922:10, 24922:15 cases [1] - 24901:7 casually [1] - 24895:13 categorically [1] - 24860:13 Catherine [2] - 24812:5, 24912:5 causation [1] - 24909:12 caused [3] - 24879:5, 24889:7, 24898:3 causing [1] - 24892:20 caution [1] - 24845:8 cautious [2] - 24893:11, 24923:17 cells [1] - 24895:8 Centre [1] - 24889:15 certain [10] - 24823:5, 24825:19, 24837:20, 24845:3, 24894:11, 24901:2, 24913:3, 24913:21, 24914:21, 24919:19 certainly [33] - 24815:25, 24820:24, 24821:5, 24838:19, 24839:19, 24842:16, 24842:25, 24850:10, 24853:8, 24853:17, 24854:19, 24854:20, 24855:25, 24862:25,</p>	<p>24865:8, 24870:9, 24870:19, 24872:7, 24872:11, 24872:16, 24877:25, 24878:19, 24879:17, 24880:3, 24884:2, 24891:20, 24892:1, 24893:10, 24896:5, 24899:25, 24904:12, 24922:4, 24923:11 Certainly [1] - 24909:15 Certificate [1] - 24924:1 certify [1] - 24924:4 chain [1] - 24865:6 chambers [1] - 24912:12 chance [4] - 24815:6, 24822:19, 24862:6, 24914:22 change [1] - 24869:23 changed [4] - 24869:6, 24870:9, 24880:3, 24897:8 characterization [1] - 24827:10 characterized [1] - 24825:4 charge [2] - 24852:20, 24852:21 charged [2] - 24901:15, 24904:13 charitable [2] - 24897:19, 24897:24 check [2] - 24863:1, 24903:7 checking [2] - 24873:20, 24890:3 chief [1] - 24891:22 Chief [5] - 24836:18, 24842:3, 24844:10, 24845:12, 24847:14 chose [1] - 24838:16 chronologically [1] - 24819:23 circled [3] - 24854:14, 24916:24, 24916:25 circumstances [4] - 24815:24, 24816:2, 24816:20, 24908:7 circumstantial [1] - 24823:20 City [6] - 24863:5, 24863:14, 24880:10, 24890:20, 24903:13 city [13] - 24863:23, 24865:13, 24865:14, 24866:21, 24867:10, 24868:2, 24868:8, 24868:18, 24869:3, 24906:17, 24906:21,</p>	<p>24907:8, 24907:19 civil [2] - 24912:13, 24912:24 claimed [1] - 24907:22 clarifications [1] - 24832:18 clean [1] - 24887:10 cleaning [1] - 24887:18 clear [6] - 24829:6, 24837:25, 24854:7, 24889:3, 24919:1, 24921:24 clearly [3] - 24825:20, 24863:12, 24877:3 Clerk [1] - 24811:8 client [7] - 24823:19, 24836:3, 24841:12, 24846:14, 24847:12, 24847:21, 24912:14 client's [1] - 24839:17 clothes [4] - 24883:15, 24883:16, 24883:17, 24888:5 clothing [2] - 24883:5 co [2] - 24846:23, 24851:8 co-operate [1] - 24846:23 co-operation [1] - 24851:8 coerced [2] - 24893:8, 24896:2 coercion [1] - 24892:19 coincided [1] - 24881:17 cold [1] - 24882:18 colleagues [1] - 24900:4 colluded [1] - 24859:7 collusion [4] - 24852:9, 24852:10, 24858:19, 24858:22 colour [3] - 24916:6, 24916:25, 24917:6 coloured [2] - 24923:18, 24923:19 comfort [3] - 24831:19, 24880:19, 24899:4 coming [1] - 24841:21 commanders [1] - 24919:25 comment [7] - 24849:18, 24859:24, 24896:18, 24897:9, 24898:16, 24899:22, 24919:17 commentary [1] - 24857:9 commentators [1] - 24857:16</p>
--	---	--	--	--



<p>comments [4] - 24830:21, 24832:7, 24842:24, 24861:13 Commission [18] - 24810:2, 24810:14, 24811:1, 24811:2, 24811:8, 24824:11, 24853:8, 24855:1, 24861:4, 24861:21, 24896:6, 24913:13, 24913:17, 24913:20, 24914:2, 24919:2, 24920:9 Commissioner [41] - 24814:3, 24814:5, 24821:20, 24821:24, 24822:2, 24822:8, 24822:12, 24828:17, 24836:19, 24845:19, 24845:22, 24849:5, 24849:8, 24849:10, 24849:12, 24849:15, 24854:4, 24854:7, 24854:10, 24856:17, 24856:20, 24856:23, 24856:25, 24861:23, 24861:25, 24862:11, 24872:21, 24875:10, 24879:10, 24901:22, 24901:24, 24902:2, 24906:9, 24911:24, 24916:5, 24916:8, 24918:22, 24923:5, 24923:9, 24923:12, 24923:21 Commissioner's [1] - 24922:25 commit [1] - 24885:24 committed [7] - 24882:20, 24889:22, 24903:21, 24904:6, 24904:15, 24909:1, 24910:15 committing [3] - 24903:4, 24903:14, 24911:1 common [3] - 24899:23, 24900:20, 24900:22 commonly [1] - 24814:24 communicated [2] - 24831:7, 24838:6 community [3] - 24902:11, 24921:9, 24922:5 compact [2] - 24824:24, 24889:4 compared [1] - 24855:4 comparing [1] -</p>	<p>24828:6 comparison [1] - 24910:12 compelling [3] - 24904:3, 24910:1, 24910:22 complaint [2] - 24907:21, 24915:8 complaints [1] - 24877:16 completed [2] - 24898:7, 24898:9 completely [3] - 24890:11, 24908:23, 24909:5 completion [1] - 24863:9 comprehensive [1] - 24816:14 conceded [1] - 24885:9 concern [14] - 24835:7, 24835:21, 24841:3, 24841:8, 24843:21, 24846:17, 24879:6, 24881:18, 24885:25, 24889:1, 24889:6, 24889:7, 24889:16, 24890:13 concerned [7] - 24831:9, 24831:12, 24837:24, 24838:12, 24849:20, 24853:22, 24892:22 concerning [3] - 24850:8, 24851:19, 24914:20 concerns [10] - 24831:20, 24837:21, 24854:3, 24856:6, 24869:22, 24877:16, 24878:15, 24878:21, 24885:11, 24890:25 conclude [1] - 24856:16 concluded [1] - 24918:16 conclusion [3] - 24840:25, 24885:7, 24917:16 conclusive [3] - 24886:14, 24887:2, 24889:25 concrete [1] - 24892:11 condition [1] - 24883:3 conduct [8] - 24848:14, 24857:10, 24857:11, 24857:18, 24857:21, 24857:24, 24859:12, 24918:9 conducting [1] - 24848:12</p>	<p>confession [2] - 24825:11, 24825:25 confessions [2] - 24900:10, 24900:11 confirm [6] - 24818:18, 24827:21, 24839:13, 24839:17, 24856:18, 24874:19 confirmed [1] - 24877:3 confirming [1] - 24833:25 confirms [2] - 24818:8, 24819:20 conflict [1] - 24886:18 conflicting [1] - 24872:5 confronted [1] - 24872:5 confronting [1] - 24825:6 Congram [1] - 24811:3 connection [15] - 24814:18, 24816:24, 24824:16, 24836:25, 24863:7, 24864:3, 24866:25, 24867:15, 24867:24, 24869:4, 24869:14, 24902:21, 24915:24, 24920:21, 24922:4 connection' [1] - 24902:23 consequent [1] - 24917:12 consider [3] - 24820:1, 24856:10, 24909:6 consideration [4] - 24886:4, 24906:18, 24907:12, 24908:14 considerations [1] - 24907:15 considered [3] - 24823:25, 24868:17, 24897:20 considers [1] - 24847:2 consistent [1] - 24876:12 conspiracy [1] - 24858:15 Constable [2] - 24848:23, 24905:11 construed [1] - 24843:13 contacted [2] - 24823:5, 24848:18 contain [2] - 24915:8, 24924:5 contention [3] - 24870:22, 24909:19, 24915:22</p>	<p>contents [3] - 24829:25, 24845:17, 24904:1 context [1] - 24919:16 continue [1] - 24923:10 Continued [1] - 24813:3 continued [1] - 24814:6 convene [1] - 24923:14 conversation [6] - 24820:6, 24823:7, 24832:11, 24832:15, 24883:25, 24902:10 Conviction [1] - 24810:4 conviction [1] - 24857:7 convincing [3] - 24871:13, 24871:16, 24871:25 cooperative [1] - 24817:14 copied [2] - 24833:11, 24834:2 copies [3] - 24832:22, 24833:21, 24901:2 copy [11] - 24815:12, 24832:11, 24835:4, 24839:9, 24845:2, 24845:16, 24866:4, 24866:12, 24916:1, 24916:24, 24917:13 correct [44] - 24818:25, 24819:1, 24820:1, 24820:21, 24821:3, 24822:22, 24827:25, 24833:3, 24835:20, 24836:8, 24836:16, 24837:18, 24848:25, 24849:1, 24859:3, 24859:21, 24863:16, 24864:25, 24866:11, 24866:19, 24867:5, 24868:7, 24871:8, 24874:17, 24874:23, 24875:22, 24879:15, 24879:16, 24880:17, 24881:4, 24886:16, 24888:8, 24889:19, 24890:1, 24890:16, 24893:9, 24893:10, 24895:23, 24901:20, 24910:19, 24910:20, 24912:15, 24913:6, 24924:5 Correct [1] - 24883:22 corrections [1] - 24831:3 correspondence [4] - 24826:11, 24850:9, 24850:17, 24911:20</p>	<p>corridor [1] - 24911:7 corruption [2] - 24860:7, 24860:14 counsel [21] - 24812:3, 24834:25, 24835:18, 24847:11, 24859:11, 24861:19, 24866:13, 24867:4, 24871:11, 24874:12, 24879:14, 24881:5, 24890:4, 24900:8, 24905:24, 24908:6, 24908:20, 24910:17, 24912:6, 24913:17, 24918:8 Counsel [5] - 24811:2, 24814:4, 24896:6, 24913:13, 24913:17 couple [2] - 24863:19, 24867:15 course [18] - 24815:22, 24836:1, 24845:16, 24850:15, 24851:11, 24855:10, 24855:14, 24855:23, 24857:3, 24860:1, 24875:18, 24906:17, 24906:23, 24908:12, 24912:6, 24913:16, 24918:16, 24920:2 Court [45] - 24811:9, 24822:22, 24826:8, 24827:2, 24827:9, 24829:9, 24829:21, 24831:22, 24832:3, 24834:14, 24834:20, 24835:3, 24835:24, 24837:1, 24838:14, 24838:25, 24839:1, 24840:19, 24840:24, 24841:2, 24841:15, 24841:22, 24842:3, 24843:5, 24843:16, 24846:11, 24846:13, 24846:16, 24846:23, 24846:24, 24847:1, 24847:2, 24847:4, 24847:8, 24847:9, 24847:13, 24848:2, 24848:7, 24854:23, 24855:11, 24912:13, 24924:3, 24924:3, 24924:14, 24924:18 Courts [2] - 24838:11, 24847:7 courthouse [1] - 24818:19 courts [1] - 24878:9 cover [1] - 24873:1 covered [6] - 24824:22, 24832:12, 24855:14,</p>
---	--	---	--	---



<p>24886:7, 24904:8, 24916:14 Craig^[1] - 24869:8 create^[1] - 24915:6 Cressman's^[1] - 24905:11 Crime^[2] - 24867:20, 24868:3 crime^[3] - 24868:21, 24874:9, 24900:12 criminal^[2] - 24848:14, 24879:17 criticism^[1] - 24857:10 cross^[5] - 24823:24, 24875:15, 24878:5, 24893:4, 24895:25 cross-examination^[3] - 24875:15, 24893:4, 24895:25 cross-examined^[2] - 24823:24, 24878:5 crossed^[1] - 24878:25 Crown^[8] - 24848:15, 24851:4, 24851:7, 24851:9, 24864:17, 24908:25, 24910:11, 24920:10 Csr^[8] - 24811:9, 24811:10, 24924:2, 24924:12, 24924:13, 24924:16, 24924:17 current^[1] - 24868:20 curvy^[1] - 24917:12 cuts^[1] - 24873:22</p>	<p>24871:21, 24873:18, 24874:6, 24874:7, 24875:17, 24875:21, 24876:1, 24877:6, 24881:14, 24881:19, 24883:18, 24884:13, 24886:9, 24891:14, 24891:23, 24892:1, 24897:2, 24897:22, 24901:15, 24902:17, 24903:21, 24905:19, 24906:16 David's^[5] - 24831:11, 24834:21, 24836:25, 24841:14, 24903:11 days^[4] - 24814:9, 24864:23, 24865:18, 24866:7 deal^[6] - 24816:1, 24850:10, 24851:21, 24857:8, 24871:10, 24873:25 dealing^[6] - 24814:9, 24816:1, 24824:21, 24835:18, 24870:3, 24871:6 dealings^[3] - 24877:7, 24879:5, 24886:9 deals^[1] - 24829:22 dealt^[6] - 24816:2, 24817:19, 24819:19, 24847:23, 24854:23, 24866:23 death^[2] - 24863:13, 24867:16 December^[3] - 24826:6, 24832:4, 24901:23 decide^[1] - 24909:7 deciding^[1] - 24910:18 decision^[2] - 24835:14, 24847:7 declined^[1] - 24913:10 deemed^[1] - 24830:19 deeper^[1] - 24887:4 defence^[30] - 24814:19, 24815:19, 24821:14, 24822:10, 24852:22, 24852:24, 24859:1, 24859:7, 24859:9, 24863:5, 24867:3, 24868:14, 24871:11, 24874:12, 24879:14, 24881:5, 24882:2, 24890:4, 24900:5, 24900:8, 24903:23, 24905:24, 24907:16, 24908:5, 24908:20, 24909:17, 24910:17, 24919:6,</p>	<p>24921:1, 24921:14 defending^[1] - 24859:13 definitely^[4] - 24833:6, 24873:19, 24887:20, 24922:12 deliberately^[2] - 24837:10, 24858:15 Delta^[1] - 24810:16 demonstrate^[2] - 24906:15, 24906:20 denial^[1] - 24855:21 denials^[3] - 24825:2, 24825:3, 24825:21 denied^[1] - 24825:8 denies^[2] - 24883:3, 24883:8 deny^[1] - 24855:13 department^[3] - 24863:14, 24863:24, 24867:10 Department^[5] - 24839:6, 24839:16, 24844:5, 24863:5, 24866:5 depth^[1] - 24818:24 describing^[2] - 24873:8, 24891:11 Description^[1] - 24813:2 designed^[1] - 24908:9 desk^[1] - 24840:12 detail^[6] - 24824:6, 24840:16, 24855:2, 24867:23, 24888:21, 24893:1 details^[7] - 24823:5, 24828:25, 24850:15, 24858:2, 24886:18, 24895:11, 24914:22 detective^[1] - 24905:11 Detective^[9] - 24875:16, 24875:19, 24876:2, 24876:14, 24877:2, 24877:11, 24878:2, 24881:8, 24881:11 determination^[1] - 24905:8 determinative^[1] - 24889:20 determine^[5] - 24831:2, 24833:17, 24847:8, 24868:13, 24874:14 determined^[2] - 24846:8, 24905:1 detriment^[1] - 24859:13 detrimental^[1] -</p>	<p>24890:6 developed^[1] - 24819:4 developing^[1] - 24922:1 developments^[1] - 24837:13 difference^[1] - 24879:20 different^[16] - 24855:8, 24884:21, 24908:23, 24909:5, 24909:13, 24910:14, 24910:15, 24916:15, 24916:16, 24916:19, 24917:8, 24917:23, 24918:3, 24918:17, 24919:15 difficult^[1] - 24872:2 dig^[1] - 24887:4 dire^[4] - 24815:22, 24816:3, 24816:17, 24817:4 direct^[2] - 24876:17, 24916:12 directing^[2] - 24895:21, 24899:20 direction^[1] - 24844:24 directly^[5] - 24875:5, 24893:25, 24894:1, 24901:10, 24911:18 Director^[1] - 24811:3 disagree^[1] - 24819:4 disagreed^[1] - 24855:25 disclose^[3] - 24829:25, 24846:18, 24865:5 disclosed^[2] - 24817:16, 24914:15 discloses^[1] - 24911:20 disclosure^[13] - 24815:13, 24849:20, 24850:1, 24850:3, 24850:5, 24850:11, 24865:1, 24865:6, 24866:15, 24868:11, 24880:1, 24901:8, 24901:9 disclosures^[1] - 24847:11 discuss^[3] - 24821:14, 24864:14, 24913:3 discussed^[14] - 24824:6, 24828:3, 24828:22, 24828:23, 24834:4, 24835:10, 24840:2, 24855:23, 24891:23, 24892:5, 24892:12, 24892:14, 24892:24, 24912:9 discussion^[6] -</p>	<p>24818:3, 24818:8, 24821:2, 24829:3, 24832:13, 24851:11 discussions^[13] - 24834:14, 24836:11, 24842:8, 24851:24, 24854:1, 24855:22, 24865:18, 24871:21, 24891:20, 24892:16, 24897:22, 24907:17, 24913:16 disparaging^[1] - 24892:10 dispel^[2] - 24842:7, 24843:2 dispute^[2] - 24818:9, 24876:15 distance^[1] - 24910:13 distilled^[4] - 24852:5, 24852:16, 24853:19, 24856:14 distinction^[1] - 24896:10 ditched^[3] - 24884:4, 24884:14 division^[1] - 24919:25 doc^[3] - 24846:1, 24856:24, 24875:7 Document^[2] - 24811:4, 24811:5 document^[38] - 24814:12, 24814:17, 24814:20, 24814:22, 24814:25, 24815:6, 24815:16, 24815:18, 24817:1, 24817:8, 24817:18, 24817:19, 24818:1, 24818:15, 24820:10, 24822:6, 24826:5, 24829:18, 24829:23, 24840:4, 24840:8, 24843:19, 24857:2, 24858:3, 24858:10, 24862:19, 24866:2, 24866:9, 24867:18, 24868:4, 24879:9, 24881:9, 24901:21, 24901:22, 24905:12, 24915:25, 24923:7 document'^[1] - 24814:23 documentation^[2] - 24829:11, 24913:2 documents^[12] - 24817:22, 24817:24, 24818:20, 24820:19, 24827:18, 24859:20, 24867:10, 24869:2, 24915:18, 24915:21,</p>
D				
<p>damaging^[2] - 24824:1, 24896:12 date^[11] - 24818:10, 24820:18, 24821:12, 24822:11, 24846:2, 24848:19, 24849:1, 24851:12, 24877:24, 24906:4, 24906:6 dated^[1] - 24832:23 dates^[2] - 24817:21, 24819:2 David^[45] - 24810:4, 24812:2, 24812:10, 24821:15, 24826:15, 24829:3, 24833:18, 24835:10, 24835:17, 24835:22, 24837:3, 24838:1, 24840:22, 24844:16, 24846:20, 24846:25, 24851:19, 24851:21, 24856:8, 24857:6, 24859:16,</p>				



24923:2, 24923:17 domain [1] - 24831:14 Don [1] - 24811:10 Donald [2] - 24924:2, 24924:17 done [4] - 24814:18, 24815:17, 24838:3, 24888:19 door [2] - 24890:10, 24890:14 doubled [1] - 24872:9 doubt [4] - 24879:23, 24883:13, 24885:16, 24890:2 doubts [1] - 24817:13 Douglas [1] - 24811:2 down [9] - 24852:17, 24856:1, 24862:12, 24867:17, 24889:11, 24905:25, 24907:4, 24909:7, 24910:18 Dr [1] - 24874:1 draw [1] - 24868:23 drawn [2] - 24875:19, 24917:13 drew [2] - 24917:12, 24917:16 driving [3] - 24888:17, 24890:19, 24890:25 drugs [5] - 24885:1, 24885:3, 24885:5, 24885:9, 24885:12 dubious [2] - 24898:15, 24899:1 due [2] - 24882:5, 24884:7 during [16] - 24824:22, 24835:2, 24835:25, 24836:5, 24852:25, 24854:16, 24855:10, 24857:2, 24863:19, 24864:22, 24866:12, 24866:16, 24878:3, 24880:11, 24889:13, 24892:17 During [2] - 24852:7, 24853:10 duties [2] - 24860:11, 24860:13	Edmonton [1] - 24884:17 Edmunson [1] - 24888:14 educative [2] - 24861:4, 24861:5 Edward [1] - 24810:7 effect [6] - 24847:10, 24855:19, 24861:5, 24861:6, 24885:1, 24890:7 effort [1] - 24859:15 efforts [1] - 24857:19 eight [1] - 24866:7 either [12] - 24821:13, 24822:9, 24826:14, 24836:11, 24838:9, 24841:24, 24842:8, 24848:9, 24856:6, 24873:20, 24907:9, 24911:18 element [1] - 24909:12 elicit [1] - 24893:22 elsewhere [1] - 24832:16 embark [1] - 24909:7 emerging [1] - 24837:11 emphatic [1] - 24860:21 emphatically [2] - 24860:13, 24880:9 Emson [1] - 24874:1 end [5] - 24861:1, 24862:7, 24885:4, 24910:9, 24910:20 endeavour [1] - 24817:2 endeavoured [1] - 24860:12 endeavours [1] - 24860:19 engaged [1] - 24859:14 ensure [1] - 24915:5 entitled [1] - 24850:7 equation [1] - 24898:12 error [1] - 24915:6 Esq [3] - 24812:6, 24812:8, 24812:9 establish [4] - 24874:6, 24874:14, 24907:7, 24908:25 established [1] - 24907:19 establishing [1] - 24904:5 etcetera [1] - 24844:8 Eugene [4] - 24818:17, 24839:23, 24849:6, 24849:9 evasive [1] - 24889:3	event [3] - 24835:8, 24872:25, 24915:19 events [1] - 24855:8 eventually [1] - 24869:6 evidence [59] - 24814:25, 24816:24, 24827:8, 24831:22, 24831:25, 24835:9, 24835:24, 24836:14, 24836:25, 24837:12, 24845:6, 24845:11, 24846:2, 24848:6, 24853:13, 24854:18, 24855:4, 24857:17, 24863:4, 24863:22, 24866:8, 24866:15, 24867:2, 24868:2, 24869:7, 24869:9, 24869:23, 24870:16, 24870:24, 24871:13, 24871:16, 24873:4, 24873:5, 24873:7, 24873:10, 24880:25, 24881:1, 24887:13, 24890:9, 24898:4, 24899:16, 24903:19, 24904:4, 24905:1, 24905:5, 24905:7, 24907:18, 24908:2, 24908:5, 24908:9, 24908:15, 24909:20, 24910:23, 24913:12, 24913:19, 24915:22, 24917:15, 24920:8, 24920:9 examination [7] - 24875:15, 24891:22, 24893:4, 24895:25, 24898:7, 24898:10, 24899:2 examination-in-chief [1] - 24891:22 examine [1] - 24869:19 examined [3] - 24823:24, 24847:19, 24878:5 example [13] - 24824:23, 24825:7, 24825:18, 24864:13, 24872:6, 24878:22, 24880:4, 24891:17, 24891:24, 24898:24, 24904:22, 24905:10, 24905:24 except [5] - 24828:4, 24847:19, 24912:11, 24913:12, 24913:15 excerpts [1] - 24845:5 exchange [1] - 24875:9 exchanges [1] -	24864:2 excited [3] - 24883:2, 24884:3, 24884:7 Executive [1] - 24811:3 exercised [1] - 24834:13 existed [1] - 24920:5 existence [1] - 24850:22 exists [1] - 24879:20 exonerate [1] - 24828:25 expand [1] - 24853:20 expect [3] - 24825:5, 24879:18, 24901:9 expected [2] - 24816:18, 24879:7 experience [1] - 24901:12 experienced [3] - 24878:17, 24887:22, 24891:4 expert [1] - 24899:12 explain [3] - 24824:24, 24843:12, 24851:21 explained [1] - 24850:16 explains [1] - 24851:18 explanation [3] - 24890:21, 24891:15, 24891:18 exploring [2] - 24870:19, 24870:20 expressed [6] - 24830:24, 24837:20, 24841:9, 24861:11, 24889:1, 24914:9 extent [2] - 24843:23, 24913:15 extract [1] - 24875:1	factor [3] - 24872:7, 24882:6, 24887:24 factors [2] - 24823:24, 24910:22 fail [1] - 24861:8 Fainstein [5] - 24836:12, 24837:1, 24841:25, 24842:9, 24848:10 fair [30] - 24816:22, 24820:16, 24824:8, 24827:10, 24831:6, 24835:7, 24835:12, 24835:13, 24835:19, 24836:10, 24836:15, 24838:5, 24843:20, 24852:3, 24853:1, 24856:12, 24861:10, 24863:21, 24865:7, 24873:19, 24875:25, 24877:23, 24882:22, 24884:21, 24886:17, 24887:5, 24888:23, 24899:21, 24908:20, 24913:14 fair-minded [1] - 24861:10 fairly [10] - 24819:8, 24838:3, 24848:5, 24878:1, 24878:13, 24889:22, 24899:23, 24900:1, 24914:25, 24915:1 fairness [1] - 24856:8 faith [2] - 24918:11, 24920:14 falling [1] - 24891:24 false [2] - 24892:20, 24893:9 family [2] - 24892:13, 24892:15 far [12] - 24820:22, 24823:9, 24828:9, 24828:25, 24831:12, 24835:14, 24849:20, 24865:1, 24902:9, 24915:2, 24921:7, 24922:6 father [1] - 24921:1 favour [1] - 24874:11 favourable [2] - 24852:22, 24852:24 features [1] - 24908:17 February [6] - 24810:21, 24819:18, 24820:7, 24832:24, 24844:19, 24867:13 Federal [2] - 24829:24, 24839:6 feelings [1] - 24861:14 fellow [2] - 24888:3,
E			F	
early [4] - 24837:16, 24840:5, 24911:6, 24921:15 Eddie [2] - 24812:7, 24872:22 Edmondson [1] - 24878:19			fabricating [2] - 24853:13, 24854:18 face [3] - 24864:16, 24872:13 face-to-face [1] - 24864:16 facing [1] - 24823:19 fact [17] - 24830:24, 24833:2, 24834:9, 24841:1, 24849:13, 24852:21, 24853:3, 24853:22, 24857:15, 24872:9, 24874:10, 24874:20, 24878:22, 24880:19, 24884:5, 24884:8, 24889:12	



24902:13 felt [9] - 24830:11, 24830:17, 24837:21, 24852:21, 24853:19, 24853:20, 24856:4, 24865:4, 24871:14 few [6] - 24862:24, 24873:1, 24878:7, 24911:23, 24911:25, 24921:19 fifth [1] - 24815:5 file [33] - 24818:18, 24829:12, 24844:22, 24850:8, 24863:18, 24864:10, 24867:11, 24895:19, 24912:24, 24914:13, 24914:14, 24915:8, 24915:13, 24916:2, 24916:13, 24916:15, 24916:16, 24916:17, 24916:18, 24916:19, 24917:7, 24917:8, 24917:18, 24917:19, 24917:23, 24918:3, 24918:17, 24919:15, 24920:12, 24920:13, 24923:3 filed [5] - 24831:23, 24835:2, 24841:1, 24843:19, 24920:18 files [1] - 24837:8 financial [1] - 24885:20 fine [1] - 24923:22 finger [1] - 24916:14 First [2] - 24815:20, 24916:12 first [8] - 24819:11, 24834:1, 24846:5, 24862:24, 24877:8, 24888:10, 24905:1, 24915:24 fish [1] - 24841:18 Fisher [2] - 24812:9, 24915:11 five [2] - 24814:25, 24859:15 five-page [1] - 24814:25 fixed [1] - 24887:9 flesh [1] - 24829:7 fleshed [2] - 24823:6, 24840:16 focused [2] - 24913:8, 24915:4 focusing [2] - 24843:7, 24860:9 follow [7] - 24836:6, 24859:16, 24886:15, 24887:20, 24888:7, 24913:10, 24917:11 follow-up [1] - 24888:7	followed [3] - 24818:23, 24887:22, 24913:18 following [2] - 24857:6, 24913:24 follows [1] - 24870:8 force [2] - 24878:9, 24899:9 foregoing [1] - 24924:4 form [1] - 24856:15 formal [1] - 24835:1 forms [1] - 24895:25 Forrester [2] - 24813:3, 24814:6 forth [1] - 24816:10 forthcoming [2] - 24817:14, 24893:15 forthright [2] - 24878:16, 24879:7 forward [4] - 24833:17, 24833:20, 24868:8, 24910:24 forwarded [4] - 24819:16, 24821:2, 24866:4, 24868:19 fountain [1] - 24917:13 four [1] - 24922:19 fourth [1] - 24859:13 Fox [8] - 24812:7, 24813:6, 24872:20, 24872:22, 24875:12, 24901:25, 24902:3, 24906:11 frame [6] - 24818:1, 24856:5, 24857:8, 24872:6, 24888:1, 24914:21 Frank [1] - 24851:5 frankly [3] - 24843:14, 24892:4, 24896:12 Frater [2] - 24844:5, 24844:6 Frayer [1] - 24812:10 free [1] - 24893:4 frequently [2] - 24894:9, 24900:1 friend [5] - 24870:7, 24884:4, 24884:9, 24888:18, 24891:10 friend's [1] - 24890:23 friends [3] - 24855:23, 24891:12, 24892:5 front [4] - 24853:4, 24874:14, 24890:6, 24917:13 fruitful [1] - 24893:18 fulfil [2] - 24860:12, 24863:25 full [2] - 24850:3, 24859:15 furnished [2] -	24815:25, 24912:22 furthermore [1] - 24890:8 G Gail [15] - 24863:13, 24865:17, 24866:1, 24867:11, 24873:5, 24874:4, 24881:19, 24897:3, 24902:16, 24908:4, 24909:5, 24916:15, 24916:17, 24917:9, 24917:18 garage [1] - 24887:9 gee [1] - 24880:20 general [9] - 24815:20, 24828:23, 24829:5, 24833:19, 24835:23, 24858:4, 24888:2, 24901:5, 24907:17 Generals [3] - 24866:5, 24866:18, 24920:1 generally [4] - 24824:11, 24836:13, 24859:18, 24859:23 generated [1] - 24879:13 George [1] - 24869:9 Gibson [6] - 24812:8, 24813:5, 24862:4, 24862:6, 24862:14, 24919:21 girl [5] - 24854:21, 24880:6, 24880:20, 24884:3, 24884:9 girlfriend [3] - 24884:10, 24884:13, 24884:16 given [9] - 24815:25, 24822:21, 24834:16, 24837:24, 24844:1, 24847:15, 24850:5, 24859:1, 24872:8 Given [1] - 24847:25 glance [1] - 24916:9 goin' [1] - 24902:15 gonna [1] - 24908:21 government [1] - 24848:15 Government [1] - 24812:4 granted [1] - 24843:24 grasp [1] - 24860:24 great [3] - 24815:25, 24851:21, 24857:8 group [1] - 24849:11 guess [5] - 24814:9, 24862:13, 24871:21,	24881:6, 24909:9 guidance [1] - 24839:20 guilt [3] - 24858:25, 24880:25, 24884:18 guilty [1] - 24915:11 H habit [1] - 24872:23 half [2] - 24826:6, 24898:2 halfway [1] - 24889:11 Halyk [1] - 24912:12 hand [3] - 24873:10, 24876:24, 24893:23 handed [17] - 24867:3, 24873:7, 24873:18, 24874:5, 24874:7, 24874:15, 24874:20, 24875:21, 24876:5, 24876:7, 24876:8, 24876:21, 24877:4, 24878:12, 24878:23, 24878:24 handled [2] - 24863:13, 24911:11 handling [1] - 24912:24 hands [1] - 24847:13 handwriting [2] - 24916:2, 24917:4 hard [1] - 24862:11 head [1] - 24920:3 heard [2] - 24815:1, 24899:16 hearing [14] - 24837:2, 24849:23, 24854:16, 24855:11, 24855:14, 24863:10, 24870:4, 24870:16, 24891:7, 24893:3, 24893:5, 24895:24, 24911:16, 24911:19 held [4] - 24816:3, 24836:14, 24899:11, 24918:6 hello [1] - 24862:7 helpful [3] - 24817:11, 24883:18, 24883:21 hereby [1] - 24924:4 herein [1] - 24924:6 Hersh [2] - 24812:2, 24826:14 hesitant [1] - 24844:23 hide [1] - 24878:22 highlight [1] - 24880:4 highly [1] - 24909:15 himself [3] - 24872:7, 24872:12, 24899:11 hindsight [2] -	24914:14, 24919:3 hint [1] - 24893:7 Hinz [3] - 24811:9, 24924:2, 24924:13 hit [1] - 24823:7 Hodson [46] - 24811:2, 24813:4, 24814:7, 24821:22, 24821:25, 24822:4, 24822:5, 24822:13, 24828:19, 24836:20, 24845:20, 24845:21, 24845:23, 24849:12, 24849:16, 24854:4, 24854:6, 24854:9, 24854:12, 24854:13, 24856:19, 24856:22, 24856:24, 24857:4, 24862:17, 24862:19, 24864:7, 24864:22, 24865:13, 24866:13, 24867:9, 24869:1, 24869:21, 24870:1, 24876:18, 24891:23, 24896:19, 24900:24, 24903:25, 24911:5, 24914:23, 24915:14, 24919:18, 24920:24, 24922:9, 24923:20 Hon [1] - 24812:11 honestly [1] - 24918:6 honestly-held [1] - 24918:6 Honourable [1] - 24810:6 hope [6] - 24860:21, 24861:7, 24861:9, 24875:7, 24890:12, 24908:5 hoped [2] - 24829:11, 24860:19 hoped-for [1] - 24860:19 hopefully [1] - 24873:16 hoping [1] - 24816:5 horrendous [1] - 24889:22 Hotel [1] - 24810:16 house [1] - 24888:4 hurry [2] - 24884:7, 24884:15 husband [1] - 24921:1 hypothetically [1] - 24898:11 I Id [3] - 24846:1,
---	---	--	---	---



<p>24856:24, 24875:7 idea [1] - 24920:5 ideas [1] - 24893:12 identified [6] - 24819:24, 24881:13, 24885:22, 24904:7, 24908:12, 24917:5 identify [2] - 24817:21, 24905:20 immediately [2] - 24833:16, 24905:18 impact [1] - 24885:12 implication [1] - 24842:22 implicit [1] - 24855:20 important [6] - 24831:10, 24837:23, 24839:2, 24846:25, 24847:2, 24848:1 impression [7] - 24837:25, 24842:2, 24871:12, 24894:23, 24896:7, 24896:9, 24913:6 impressions [3] - 24825:16, 24825:18, 24871:9 improper [1] - 24918:21 improperly [1] - 24823:11 imputation [1] - 24860:14 in-depth [1] - 24818:24 incident [2] - 24902:8, 24921:6 incidents [2] - 24902:8, 24921:6 include [1] - 24900:11 included [3] - 24815:10, 24857:23, 24908:16 including [1] - 24857:25 incorrect [1] - 24823:10 incriminating [1] - 24891:9 indeed [2] - 24857:12, 24886:22 independent [1] - 24907:18 Index [3] - 24813:1, 24867:20, 24868:3 indicate [2] - 24817:15, 24903:3 indicated [30] - 24816:7, 24817:13, 24823:5, 24823:22, 24830:8, 24830:16, 24830:20, 24835:25, 24837:3, 24837:9,</p>	<p>24842:5, 24854:19, 24854:21, 24855:10, 24871:14, 24877:15, 24877:19, 24891:21, 24896:2, 24897:20, 24901:14, 24901:18, 24902:4, 24903:16, 24903:25, 24905:18, 24908:13, 24919:2, 24919:13, 24922:9 indicates [1] - 24880:23 Indicates [1] - 24851:8 indicating [1] - 24819:14 indication [10] - 24836:2, 24887:7, 24887:11, 24887:12, 24887:17, 24895:1, 24896:3, 24901:1, 24903:12, 24920:25 indicative [2] - 24872:11, 24894:11 individual [3] - 24865:25, 24878:23, 24908:16 individuals [1] - 24905:3 inference [1] - 24868:23 influence [1] - 24859:12 influenced [1] - 24868:20 influencing [1] - 24870:24 information [23] - 24814:17, 24815:15, 24815:18, 24816:1, 24816:5, 24816:9, 24834:10, 24838:24, 24840:14, 24842:10, 24851:13, 24857:17, 24858:16, 24864:1, 24864:15, 24875:1, 24882:16, 24885:8, 24889:18, 24895:12, 24911:19, 24914:11, 24920:16 informs [1] - 24830:11 initial [2] - 24818:21, 24819:9 ink [1] - 24917:6 Inland [1] - 24811:12 innocence [2] - 24844:17, 24884:18 inquires [1] - 24880:24 inquiries [2] - 24902:12, 24911:13 Inquiry [7] - 24810:2, 24810:23, 24815:1, 24824:12, 24861:4,</p>	<p>24866:10, 24914:5 inquiry [7] - 24883:14, 24885:17, 24888:24, 24892:3, 24903:2, 24910:25, 24918:10 Insp [2] - 24883:24, 24899:8 inspector [1] - 24899:9 Inspector [7] - 24848:22, 24865:23, 24892:23, 24898:6, 24898:9, 24898:11, 24919:23 instead [1] - 24822:3 instruction [1] - 24844:20 instructions [3] - 24836:3, 24839:17, 24874:2 integrity [2] - 24914:7 intend [1] - 24860:3 Intensive [1] - 24888:12 interest [1] - 24887:16 interested [1] - 24837:2 interoffice [1] - 24826:3 interpreted [2] - 24825:20, 24838:13 interrogation [1] - 24888:12 interview [15] - 24816:6, 24818:24, 24820:16, 24829:23, 24829:25, 24830:10, 24830:20, 24833:16, 24833:22, 24835:25, 24838:15, 24839:8, 24840:2, 24848:22, 24852:7 interviewed [5] - 24830:14, 24839:6, 24848:24, 24880:7, 24893:21 interviewer [1] - 24838:16 interviewing [1] - 24851:6 interviews [1] - 24900:14 intimacies [1] - 24892:1 introductory [1] - 24819:14 investigated [2] - 24858:18, 24881:23 investigating [1] - 24871:4 investigation [18] - 24848:13, 24849:14, 24857:11, 24857:13, 24857:20, 24857:22, 24858:8, 24863:12,</p>	<p>24863:20, 24865:15, 24867:11, 24867:16, 24868:1, 24869:3, 24880:6, 24884:23, 24894:2, 24911:14 investigator [2] - 24887:22, 24891:5 investigators [2] - 24855:16, 24890:2 invited [1] - 24840:10 involve [2] - 24905:2, 24908:14 involved [18] - 24848:17, 24849:14, 24877:11, 24877:12, 24881:2, 24881:19, 24884:1, 24886:13, 24892:16, 24894:2, 24894:25, 24895:1, 24895:2, 24900:5, 24902:24, 24904:24, 24907:1, 24909:13 involvement [1] - 24912:11 Irene [1] - 24811:8 irrelevant [1] - 24918:17 Isabelle [1] - 24811:5 issue [14] - 24823:17, 24834:11, 24843:4, 24844:21, 24850:1, 24865:13, 24878:12, 24881:22, 24885:3, 24885:21, 24889:21, 24904:25, 24905:6, 24909:20 issues [6] - 24824:21, 24846:17, 24861:3, 24873:16, 24881:13, 24918:18 Item [2] - 24887:7, 24887:23 items [1] - 24887:15 itself [1] - 24815:16</p>	<p>24884:14, 24891:8, 24891:25, 24895:5, 24895:23, 24896:7 Johrls [1] - 24816:21 Jorgenson [1] - 24848:24 Joyce [1] - 24812:3 judge [1] - 24850:18 judge's [1] - 24896:8 judgement [1] - 24918:23 judgment [1] - 24829:9 jumping [2] - 24826:5, 24895:4 juncture [1] - 24823:18 jurisprudence [1] - 24873:21 jury [14] - 24816:20, 24845:2, 24852:20, 24852:22, 24874:15, 24889:9, 24889:18, 24890:6, 24904:19, 24904:22, 24905:2, 24905:9, 24908:22, 24908:24 justice [1] - 24844:6 Justice [42] - 24810:6, 24812:10, 24812:12, 24826:8, 24829:24, 24830:8, 24830:10, 24830:15, 24833:15, 24833:22, 24834:1, 24836:18, 24837:3, 24837:6, 24837:7, 24837:20, 24839:5, 24839:7, 24839:10, 24839:14, 24839:16, 24842:3, 24844:5, 24844:9, 24844:10, 24844:12, 24844:17, 24844:19, 24845:7, 24845:12, 24846:6, 24847:14, 24850:4, 24850:25, 24851:17, 24852:12, 24852:19, 24852:20, 24852:23, 24856:3, 24856:7, 24862:5</p>
J				
<p>January [11] - 24826:9, 24827:19, 24827:24, 24829:4, 24836:17, 24836:21, 24837:16, 24840:6, 24900:19, 24907:23, 24923:7 jargon [1] - 24921:16 Jerry [1] - 24811:11 John [13] - 24855:5, 24855:18, 24869:8, 24869:11, 24873:4, 24873:7, 24880:15,</p>				
K				
<p>Kara [1] - 24811:5 Karen [3] - 24811:9, 24924:2, 24924:13 Karst [16] - 24812:7, 24872:23, 24875:2, 24875:16, 24875:19, 24876:2, 24876:14, 24877:2, 24877:11,</p>				



24878:2, 24896:17, 24896:19, 24897:13, 24897:20, 24898:21, 24911:13 Karst' [1] - 24898:24 Karst's [5] - 24879:8, 24880:14, 24881:8, 24881:11, 24897:17 keep [4] - 24837:12, 24890:1, 24890:12, 24913:8 killed [5] - 24854:21, 24866:1, 24908:4, 24909:5, 24922:16 killer [3] - 24865:17, 24921:21, 24922:12 kind [3] - 24860:15, 24861:1, 24918:19 knowledge [11] - 24823:25, 24871:7, 24878:2, 24895:7, 24900:19, 24902:14, 24913:8, 24920:7, 24920:22, 24921:2, 24924:6 known [3] - 24875:18, 24915:23, 24920:6 knows [1] - 24849:21 Knox [6] - 24812:5, 24813:7, 24912:3, 24912:5, 24923:11, 24923:16 Krogan [1] - 24812:4 Kujawa [1] - 24858:14	24818:4, 24820:10, 24828:17, 24828:18, 24830:1, 24830:7, 24831:17, 24837:6, 24839:15, 24840:7, 24844:9, 24855:2, 24856:1, 24922:9, 24922:10 late [5] - 24815:2, 24826:7, 24848:13, 24877:24, 24921:15 law [5] - 24879:17, 24879:20, 24886:10, 24886:18, 24904:12 lawyer [2] - 24921:1, 24921:14 lawyers [1] - 24844:6 lead [2] - 24848:2, 24887:21 leads [2] - 24848:2, 24895:15 least [13] - 24817:15, 24828:6, 24860:21, 24870:14, 24880:19, 24885:14, 24888:2, 24888:6, 24893:2, 24893:6, 24905:17, 24922:4, 24922:6 led [3] - 24898:23, 24902:15, 24903:19 left [16] - 24814:10, 24820:10, 24873:18, 24874:7, 24874:15, 24874:20, 24875:21, 24876:5, 24876:7, 24876:8, 24876:21, 24877:4, 24878:12, 24878:23, 24880:13, 24894:23 left-handed [2] - 24873:18, 24876:8 legal [1] - 24859:10 Legal [1] - 24859:14 leisure [1] - 24923:14 letter [22] - 24818:7, 24821:4, 24826:10, 24829:20, 24829:22, 24832:6, 24832:13, 24832:22, 24832:23, 24833:10, 24834:4, 24836:17, 24840:19, 24843:6, 24843:9, 24844:4, 24844:8, 24845:15, 24845:17, 24862:20, 24867:19, 24868:3 level [1] - 24834:20 Lieutenant [4] - 24867:14, 24867:19, 24876:23, 24911:7	light [6] - 24848:8, 24848:9, 24869:9, 24874:2, 24879:24, 24903:25 likelihood [1] - 24909:13 likely [3] - 24827:19, 24899:13, 24910:10 limited [5] - 24834:17, 24843:7, 24843:14, 24843:22, 24843:23 limits [1] - 24865:9 line [3] - 24903:23, 24907:16, 24917:12 lines [1] - 24862:24 live [1] - 24862:11 lived [3] - 24902:9, 24921:8, 24922:5 located [2] - 24829:13, 24883:6 long-winded [1] - 24861:16 look [12] - 24818:20, 24840:11, 24863:8, 24871:24, 24880:3, 24886:11, 24887:3, 24907:6, 24907:15, 24914:22, 24923:3, 24923:13 looked [3] - 24860:23, 24865:4, 24885:4 looking [8] - 24817:10, 24824:17, 24833:7, 24888:17, 24889:21, 24890:22, 24900:14, 24910:21 lookit [1] - 24855:17 looks [6] - 24818:2, 24820:7, 24848:22, 24880:20, 24881:20, 24893:2 loose [2] - 24903:14, 24921:3 Loran [1] - 24812:6 Lord [1] - 24872:24 lord [1] - 24846:5 Lordship [8] - 24823:19, 24823:22, 24838:11, 24838:23, 24838:25, 24844:11, 24845:1, 24845:9 lordship [2] - 24846:10, 24847:5 lukewarm [2] - 24825:3, 24825:21 lying [5] - 24853:12, 24854:17, 24855:17, 24855:18, 24891:17	M Maccallum [34] - 24810:7, 24814:3, 24814:5, 24821:20, 24821:24, 24822:2, 24822:8, 24822:12, 24828:17, 24836:19, 24845:19, 24845:22, 24849:5, 24849:8, 24849:10, 24849:15, 24854:4, 24854:7, 24854:10, 24856:17, 24856:20, 24856:23, 24856:25, 24861:25, 24862:11, 24875:10, 24901:24, 24902:2, 24906:9, 24911:24, 24916:8, 24923:9, 24923:12, 24923:21 Macfarlane [17] - 24819:18, 24821:6, 24821:7, 24822:16, 24823:2, 24827:12, 24829:20, 24833:4, 24833:5, 24833:11, 24834:7, 24839:22, 24839:23, 24841:25, 24842:9, 24845:3, 24848:10 Macfarlane's [1] - 24832:23 Mackie [2] - 24815:2, 24816:18 maintained [1] - 24844:16 major [1] - 24887:16 male [1] - 24905:20 Manager [1] - 24811:4 manner [1] - 24878:16 March [21] - 24820:4, 24820:8, 24820:11, 24820:12, 24821:11, 24821:21, 24822:1, 24822:18, 24826:4, 24826:13, 24827:23, 24840:15, 24844:4, 24845:24, 24846:1, 24866:5, 24877:9, 24881:9, 24887:17, 24919:24 marks [1] - 24891:11 material [12] - 24815:10, 24844:23, 24845:4, 24849:22, 24849:24, 24850:8, 24853:4, 24853:7, 24855:15, 24863:7, 24874:10, 24900:24	materials [7] - 24814:14, 24814:15, 24848:20, 24859:10, 24859:19, 24861:20, 24915:23 matron [2] - 24895:8, 24895:18 matter [16] - 24814:10, 24816:25, 24830:17, 24835:17, 24841:21, 24841:23, 24846:20, 24851:13, 24858:5, 24859:25, 24863:9, 24867:1, 24892:12, 24904:11, 24911:8, 24911:14 matters [6] - 24843:16, 24846:24, 24854:23, 24855:9, 24856:16, 24913:3 mean [13] - 24825:23, 24854:22, 24855:20, 24855:25, 24876:15, 24881:18, 24882:19, 24883:13, 24884:18, 24888:19, 24891:16, 24902:23, 24907:9 means [2] - 24822:2, 24887:4 meant [1] - 24876:24 measured [1] - 24860:22 media [4] - 24836:7, 24857:13, 24857:16, 24914:9 medical [2] - 24873:21, 24873:23 meet [3] - 24837:6, 24848:18, 24864:8 meeting [43] - 24818:18, 24818:22, 24819:9, 24819:11, 24819:14, 24820:7, 24820:12, 24820:17, 24820:20, 24821:12, 24821:18, 24821:23, 24821:25, 24822:17, 24826:12, 24826:14, 24826:16, 24826:19, 24826:21, 24826:23, 24826:24, 24827:1, 24827:7, 24827:11, 24827:23, 24827:24, 24828:2, 24828:6, 24828:7, 24828:8, 24828:9, 24828:10, 24828:12, 24828:14, 24828:20, 24830:7, 24833:8, 24837:17, 24840:5, 24840:7,
L				
lab [2] - 24918:7, 24920:18 laboratory [1] - 24916:1 lady [2] - 24824:16, 24907:22 Lamer [2] - 24836:18, 24847:14 Lana [1] - 24812:4 lanes [5] - 24882:15, 24882:18, 24890:20, 24890:22, 24891:1 language [2] - 24832:1, 24921:3 Lapchuk [4] - 24851:1, 24851:12, 24869:9, 24869:12 lapse [1] - 24872:23 large [2] - 24913:15, 24914:25 Larry [3] - 24811:12, 24812:9, 24915:10 last [16] - 24817:20,				



<p>24840:14, 24844:9, 24864:16</p> <p>Melnyk [4] - 24851:2, 24851:12, 24869:8, 24869:11</p> <p>memo [2] - 24822:15, 24824:19</p> <p>memorandum [12] - 24818:17, 24820:4, 24821:6, 24822:20, 24823:9, 24823:10, 24826:3, 24827:14, 24834:6, 24839:21, 24839:23, 24840:4</p> <p>memories [1] - 24861:8</p> <p>memory [4] - 24837:12, 24839:13, 24844:21, 24921:17</p> <p>mention [1] - 24845:12</p> <p>mentioned [14] - 24819:15, 24834:25, 24835:4, 24839:21, 24854:1, 24876:18, 24877:6, 24886:9, 24893:24, 24902:7, 24902:12, 24911:5, 24921:5, 24921:6</p> <p>mere [1] - 24894:22</p> <p>message [1] - 24893:17</p> <p>met [8] - 24817:22, 24820:14, 24821:10, 24821:13, 24822:9, 24826:22, 24827:14, 24912:5</p> <p>Meyer [3] - 24811:10, 24924:2, 24924:17</p> <p>might [32] - 24816:2, 24834:12, 24834:15, 24841:19, 24843:13, 24861:22, 24864:1, 24864:16, 24868:17, 24868:23, 24869:4, 24870:22, 24878:21, 24885:12, 24886:12, 24887:3, 24887:12, 24888:22, 24889:8, 24889:24, 24890:7, 24890:14, 24891:2, 24893:8, 24893:20, 24899:3, 24902:15, 24903:18, 24905:2, 24906:25, 24908:2, 24909:24</p> <p>Milgaard [53] - 24810:4, 24812:2, 24812:3, 24814:19, 24815:19, 24818:11, 24821:15, 24823:21, 24823:23, 24824:1, 24824:20, 24824:23, 24825:7,</p>	<p>24825:10, 24825:24, 24829:3, 24831:18, 24833:18, 24834:10, 24835:10, 24835:12, 24835:17, 24835:22, 24840:22, 24846:20, 24851:4, 24851:19, 24851:22, 24851:23, 24851:25, 24852:7, 24853:11, 24854:11, 24854:15, 24855:3, 24856:3, 24856:8, 24859:13, 24859:16, 24878:11, 24880:12, 24881:19, 24882:25, 24883:8, 24884:2, 24884:15, 24886:6, 24887:10, 24888:13, 24889:12, 24905:19, 24918:9, 24921:12</p> <p>Milgaard's [9] - 24825:2, 24830:18, 24845:5, 24845:10, 24857:7, 24858:25, 24884:6, 24890:19, 24897:2</p> <p>Miller [20] - 24863:13, 24865:17, 24866:2, 24867:11, 24867:16, 24867:25, 24869:5, 24869:6, 24869:17, 24873:6, 24874:4, 24881:20, 24897:4, 24902:16, 24908:4, 24909:5, 24916:17, 24917:10, 24917:18, 24917:19</p> <p>mind [7] - 24837:5, 24879:1, 24890:1, 24896:24, 24897:8, 24897:10, 24899:20</p> <p>minded [1] - 24861:10</p> <p>mindful [2] - 24853:3, 24919:17</p> <p>minds [1] - 24922:8</p> <p>mine [1] - 24831:11</p> <p>Minister [3] - 24812:10, 24826:7, 24839:9</p> <p>minor [1] - 24911:8</p> <p>minutes [2] - 24819:13, 24911:23</p> <p>misconduct [5] - 24848:14, 24857:12, 24857:25, 24860:8, 24860:15</p> <p>misfiled [3] - 24917:19, 24917:22, 24917:25</p> <p>misimpression [1] - 24915:6</p> <p>misled [1] - 24841:4</p>	<p>misread [1] - 24842:24</p> <p>Miss [1] - 24880:14</p> <p>mistake [2] - 24918:19, 24920:19</p> <p>misunderstanding [1] - 24912:17</p> <p>mixed [1] - 24826:20</p> <p>modus [2] - 24867:24, 24908:15</p> <p>moment [1] - 24919:17</p> <p>Monday [1] - 24810:21</p> <p>money [3] - 24885:23, 24885:25, 24892:7</p> <p>month [2] - 24827:3, 24827:6</p> <p>months [1] - 24863:19</p> <p>morality [1] - 24886:23</p> <p>morning [14] - 24815:8, 24831:25, 24880:11, 24882:19, 24885:6, 24888:4, 24888:6, 24890:20, 24907:23, 24907:25, 24909:15, 24910:16, 24923:10, 24923:20</p> <p>most [4] - 24814:24, 24844:15, 24860:8, 24897:15</p> <p>motive [3] - 24824:17, 24870:10, 24885:24</p> <p>motives [1] - 24860:25</p> <p>move [1] - 24848:11</p> <p>moved [1] - 24900:16</p> <p>multitude [1] - 24907:14</p> <p>murder [14] - 24869:5, 24869:6, 24869:17, 24880:12, 24881:19, 24881:21, 24887:25, 24888:1, 24888:4, 24900:18, 24902:16, 24909:1, 24916:17, 24917:10</p> <p>Murder [2] - 24881:17, 24882:5</p> <p>murder/sexual [1] - 24908:10</p> <p>murdered [1] - 24897:3</p> <p>must [1] - 24895:12</p>	<p>24860:17, 24861:6, 24864:14, 24870:21, 24871:7, 24911:9</p> <p>nearly [1] - 24905:4</p> <p>necessarily [5] - 24819:3, 24868:18, 24884:18, 24887:1, 24888:19</p> <p>necessary [2] - 24831:4, 24832:19</p> <p>need [3] - 24836:14, 24858:13, 24901:21</p> <p>needs [1] - 24883:11</p> <p>neglected [1] - 24814:20</p> <p>neighbourhood [1] - 24922:11</p> <p>never [9] - 24839:9, 24842:6, 24856:3, 24857:1, 24862:13, 24864:23, 24866:9, 24920:11, 24920:12</p> <p>news [1] - 24842:4</p> <p>newspaper [1] - 24920:25</p> <p>newspapers [1] - 24836:6</p> <p>next [14] - 24826:5, 24832:21, 24849:17, 24851:15, 24858:11, 24862:23, 24867:21, 24870:18, 24872:21, 24876:3, 24888:10, 24890:17, 24897:25, 24923:4</p> <p>Nichol [11] - 24816:21, 24855:18, 24869:8, 24873:4, 24873:7, 24884:14, 24891:8, 24891:24, 24895:5, 24895:23, 24896:7</p> <p>night [1] - 24885:6</p> <p>nine [1] - 24814:9</p> <p>norm [1] - 24841:7</p> <p>notation [5] - 24917:4, 24917:7, 24918:2, 24918:12, 24919:13</p> <p>Note [1] - 24850:7</p> <p>noted [3] - 24876:9, 24889:12, 24890:18</p> <p>notes [12] - 24815:4, 24821:1, 24830:23, 24832:14, 24833:15, 24833:21, 24839:7, 24839:10, 24839:11, 24840:9, 24849:18, 24924:6</p> <p>nothing [10] - 24855:21, 24856:9, 24870:11, 24871:6, 24893:15,</p>	<p>24903:2, 24903:7, 24903:15, 24917:9, 24917:17</p> <p>notice [1] - 24916:13</p> <p>noticed [1] - 24895:14</p> <p>notion [2] - 24842:7, 24843:2</p> <p>notwithstanding [2] - 24834:9, 24895:24</p> <p>November [4] - 24818:19, 24826:7, 24906:10, 24906:12</p> <p>number [17] - 24814:13, 24819:12, 24856:18, 24864:21, 24878:10, 24887:7, 24887:23, 24914:3, 24916:13, 24916:15, 24916:16, 24916:17, 24916:19, 24921:11, 24922:15, 24922:19, 24923:7</p> <p>Number [7] - 24881:15, 24882:13, 24882:24, 24883:23, 24884:24, 24885:18, 24886:3</p> <p>numerous [1] - 24865:18</p>
O				
<p>oath [1] - 24872:5</p> <p>objection [1] - 24852:19</p> <p>objective [1] - 24861:9</p> <p>objectively [1] - 24838:3</p> <p>obligation [1] - 24913:7</p> <p>obliged [1] - 24863:8</p> <p>observation [1] - 24875:20</p> <p>observed [2] - 24876:1, 24878:22</p> <p>obtain [1] - 24885:24</p> <p>obtained [1] - 24875:17</p> <p>obvious [4] - 24838:9, 24839:4, 24874:3, 24878:13</p> <p>Obviously [2] - 24880:15, 24881:18</p> <p>obviously [18] - 24825:15, 24831:8, 24844:15, 24846:22, 24847:6, 24851:14, 24868:9, 24869:10, 24874:16, 24881:23, 24882:1, 24883:18, 24884:22, 24885:11, 24885:21, 24886:15, 24895:21, 24898:25</p>				



<p>occasion [4] - 24877:17, 24907:20, 24911:6, 24912:11</p> <p>occasions [1] - 24912:5</p> <p>occurred [10] - 24869:5, 24887:25, 24888:1, 24900:15, 24900:18, 24901:17, 24903:18, 24910:12, 24914:21, 24922:10</p> <p>occurrences [1] - 24869:16</p> <p>October [7] - 24818:2, 24818:7, 24818:8, 24818:16, 24906:10, 24906:12, 24907:8</p> <p>offence [8] - 24882:20, 24885:24, 24889:23, 24904:5, 24904:14, 24906:6, 24910:12</p> <p>offences [6] - 24886:5, 24886:22, 24903:14, 24903:21, 24904:24, 24910:15</p> <p>offered [2] - 24847:18, 24871:9</p> <p>office [8] - 24866:6, 24866:18, 24866:22, 24901:11, 24901:13, 24911:10, 24920:2, 24920:3</p> <p>Officer [1] - 24811:11</p> <p>officer [4] - 24877:10, 24878:17, 24894:2, 24902:20</p> <p>officers [6] - 24816:19, 24849:11, 24850:13, 24852:4, 24894:14, 24920:10</p> <p>offices [1] - 24912:23</p> <p>official [1] - 24839:7</p> <p>Official [5] - 24811:9, 24924:1, 24924:3, 24924:14, 24924:18</p> <p>officials [3] - 24848:16, 24920:10, 24921:13</p> <p>often [2] - 24894:1, 24894:11</p> <p>old [1] - 24914:13</p> <p>omit [3] - 24862:8, 24917:14, 24917:21</p> <p>once [1] - 24904:19</p> <p>Once [1] - 24852:16</p> <p>one [55] - 24814:12, 24814:19, 24816:3, 24821:8, 24825:5, 24827:24, 24828:15, 24828:17, 24828:18, 24830:20, 24833:6, 24835:6, 24841:24,</p>	<p>24842:5, 24843:1, 24844:6, 24846:17, 24850:15, 24853:16, 24858:3, 24858:17, 24859:6, 24860:18, 24861:7, 24861:9, 24864:19, 24865:22, 24866:23, 24868:22, 24872:7, 24873:15, 24873:17, 24874:12, 24874:15, 24880:7, 24882:1, 24884:4, 24884:19, 24887:7, 24890:9, 24892:3, 24892:18, 24894:17, 24899:12, 24902:7, 24904:6, 24905:14, 24905:19, 24906:14, 24908:11, 24911:5, 24916:4, 24918:18, 24921:5</p> <p>One [1] - 24885:11</p> <p>ones [1] - 24893:23</p> <p>ongoing [2] - 24851:24, 24868:1</p> <p>open [3] - 24857:19, 24890:14, 24904:13</p> <p>opened [1] - 24890:10</p> <p>opening [1] - 24835:4</p> <p>operandi [2] - 24867:25, 24908:15</p> <p>operate [1] - 24846:23</p> <p>operating [1] - 24909:14</p> <p>operation [1] - 24851:8</p> <p>operator [2] - 24894:18, 24894:22</p> <p>operators [1] - 24899:12</p> <p>opinion [1] - 24834:21</p> <p>opportunity [1] - 24869:19</p> <p>opposed [3] - 24825:22, 24835:19, 24869:14</p> <p>options [1] - 24838:9</p> <p>order [3] - 24829:7, 24837:12, 24840:23</p> <p>ordered [1] - 24826:8</p> <p>original [3] - 24923:2, 24923:6, 24923:17</p> <p>originals [1] - 24923:19</p> <p>Otherwise [3] - 24899:13, 24906:23, 24906:25</p> <p>Ottawa [1] - 24827:13</p> <p>outline [1] - 24860:2</p> <p>outlined [2] - 24860:6, 24915:2</p> <p>outrage [1] - 24825:4</p>	<p>outset [2] - 24863:19, 24865:15</p> <p>own [6] - 24882:5, 24883:2, 24885:1, 24890:24, 24897:22, 24913:8</p>	<p>P</p> <p>page [27] - 24814:25, 24815:5, 24819:24, 24823:15, 24832:21, 24833:10, 24846:3, 24849:3, 24849:17, 24851:15, 24856:18, 24858:9, 24858:12, 24858:17, 24862:19, 24862:21, 24862:23, 24862:24, 24867:17, 24867:21, 24870:18, 24875:14, 24876:3, 24888:10, 24896:16, 24896:22, 24897:25</p> <p>Page [1] - 24813:2</p> <p>pages [2] - 24819:25, 24924:4</p> <p>painful [2] - 24860:17, 24914:6</p> <p>paper [1] - 24821:9</p> <p>paragraph [4] - 24822:17, 24854:14, 24888:11, 24890:17</p> <p>paragraphs [1] - 24865:12</p> <p>parameters [1] - 24846:9</p> <p>paraphrase [1] - 24867:9</p> <p>pardon [1] - 24826:13</p> <p>part [24] - 24815:12, 24817:20, 24824:5, 24848:15, 24851:8, 24857:19, 24857:25, 24858:14, 24858:23, 24864:6, 24884:22, 24885:17, 24888:25, 24892:3, 24896:11, 24908:7, 24908:21, 24915:6, 24915:20, 24916:21, 24920:11, 24920:12, 24920:15, 24921:16</p> <p>part-way [1] - 24817:20</p> <p>participants [1] - 24857:12</p> <p>participation [1] - 24894:19</p> <p>particular [7] - 24837:21, 24857:7,</p>	<p>24874:25, 24894:3, 24900:16, 24906:16, 24910:16</p> <p>particularly [4] - 24848:8, 24860:18, 24879:24, 24896:7</p> <p>particulars [1] - 24914:20</p> <p>parties [1] - 24841:18</p> <p>partly [1] - 24823:4</p> <p>parts [4] - 24849:3, 24916:11, 24921:11</p> <p>pass [2] - 24916:6, 24923:1</p> <p>passed [1] - 24821:6</p> <p>passing [3] - 24834:6, 24918:23, 24923:5</p> <p>past [2] - 24889:14, 24889:23</p> <p>Pat [1] - 24812:6</p> <p>pause [2] - 24837:15, 24853:1</p> <p>pen [2] - 24917:6, 24917:13</p> <p>pending [1] - 24912:14</p> <p>Penkala [3] - 24867:14, 24867:20, 24876:23</p> <p>people [7] - 24843:15, 24860:24, 24861:10, 24905:22, 24910:14, 24922:5, 24922:17</p> <p>people's [2] - 24857:18, 24922:8</p> <p>perhaps [14] - 24816:18, 24818:21, 24830:21, 24838:13, 24843:7, 24858:3, 24875:19, 24876:19, 24877:21, 24889:21, 24903:20, 24904:23, 24908:21, 24913:6</p> <p>period [3] - 24878:4, 24888:15, 24892:18</p> <p>permission [2] - 24916:6, 24923:1</p> <p>perpetrator [6] - 24874:8, 24902:16, 24903:20, 24908:3, 24908:10, 24910:10</p> <p>perpetrators [2] - 24908:23, 24909:3</p> <p>Perras [1] - 24866:24</p> <p>person [22] - 24818:22, 24854:20, 24868:23, 24871:23, 24872:13, 24874:5, 24876:24, 24884:19, 24884:20, 24893:14, 24897:21, 24902:19, 24902:24, 24903:22, 24904:6,</p>	<p>24904:15, 24905:20, 24905:21, 24906:2, 24908:11, 24908:24, 24908:25</p> <p>personal [3] - 24871:22, 24914:3, 24914:7</p> <p>personnel [1] - 24849:2</p> <p>persons [2] - 24884:25, 24885:19</p> <p>perspective [3] - 24844:14, 24882:7, 24898:25</p> <p>peruse [1] - 24839:10</p> <p>philosophical [2] - 24860:23, 24861:2</p> <p>phoned [1] - 24823:2</p> <p>photo [1] - 24905:19</p> <p>photocopies [2] - 24923:18, 24923:19</p> <p>photocopy [3] - 24916:7, 24916:25, 24917:6</p> <p>photographs [1] - 24905:15</p> <p>phrase [1] - 24920:17</p> <p>picked [3] - 24895:13, 24905:19, 24907:6</p> <p>picture [2] - 24854:25, 24907:6</p> <p>place [8] - 24873:9, 24875:9, 24876:14, 24881:21, 24894:12, 24902:9, 24921:7, 24922:7</p> <p>placed [3] - 24830:9, 24882:4, 24898:8</p> <p>played [1] - 24898:22</p> <p>plead [1] - 24915:11</p> <p>Pm [6] - 24814:2, 24862:2, 24862:3, 24912:1, 24912:2, 24923:23</p> <p>point [18] - 24854:15, 24856:1, 24861:23, 24863:1, 24863:11, 24873:25, 24876:20, 24889:24, 24890:4, 24896:1, 24900:17, 24907:14, 24908:2, 24909:23, 24909:24, 24910:3, 24914:4, 24919:12</p> <p>pointed [6] - 24850:4, 24851:17, 24852:23, 24853:18, 24856:7, 24874:11</p> <p>pointing [1] - 24886:12</p> <p>points [6] - 24823:8, 24862:18, 24873:17,</p>
--	---	--	---	---	--



24880:25, 24881:1, 24887:23 Police [4] - 24812:6, 24863:5, 24863:14, 24920:13 police [44] - 24814:14, 24848:15, 24858:24, 24859:8, 24859:11, 24863:23, 24864:13, 24864:20, 24864:21, 24864:24, 24865:2, 24865:8, 24865:14, 24865:15, 24867:2, 24867:10, 24867:12, 24868:8, 24868:18, 24869:3, 24869:22, 24870:6, 24870:23, 24877:7, 24877:17, 24879:12, 24879:13, 24880:19, 24883:14, 24885:14, 24886:10, 24886:11, 24887:3, 24888:20, 24892:20, 24895:9, 24899:9, 24901:10, 24902:20, 24908:18, 24910:25, 24914:25, 24915:8, 24920:10 police's [1] - 24868:20 polygraph [5] - 24816:7, 24894:5, 24894:15, 24894:24, 24899:12 poor [1] - 24882:19 portion [4] - 24825:15, 24832:12, 24867:7, 24869:25 portions [1] - 24913:22 portray [1] - 24872:12 portrayed [1] - 24872:7 posed [1] - 24879:3 position [14] - 24831:6, 24838:19, 24841:14, 24842:2, 24842:6, 24845:14, 24846:13, 24846:15, 24847:3, 24847:7, 24848:6, 24850:18, 24855:20, 24900:6 positive [1] - 24861:6 possibility [3] - 24887:13, 24908:22, 24909:3 possible [5] - 24837:14, 24838:4, 24867:15, 24913:9, 24920:20 post [1] - 24900:8 post-defence [1] - 24900:8 potential [1] - 24816:2	practice [6] - 24879:20, 24899:23, 24900:20, 24900:22, 24901:5, 24913:24 practices [1] - 24864:11 practicing [3] - 24878:4, 24879:17, 24921:13 precise [1] - 24895:20 precisely [1] - 24824:14 preclude [1] - 24834:13 preferred [1] - 24890:5 prefix [1] - 24862:8 Prehodchenko [1] - 24811:12 Prelim [1] - 24853:10 prelim [1] - 24869:20 preliminary [13] - 24849:22, 24854:16, 24863:10, 24870:4, 24870:13, 24870:15, 24891:7, 24893:2, 24893:4, 24895:24, 24911:15, 24911:18, 24918:10 preparation [3] - 24815:18, 24913:17, 24918:9 prepared [11] - 24815:2, 24817:23, 24829:14, 24832:8, 24832:11, 24840:22, 24866:7, 24867:13, 24867:19, 24877:22, 24917:15 preparing [3] - 24866:10, 24874:13, 24882:2 present [2] - 24895:8, 24917:16 press [1] - 24913:11 pressed [1] - 24827:12 pressure [3] - 24877:20, 24892:19, 24893:20 pressured [4] - 24870:5, 24870:14, 24893:8, 24896:2 pressuring [1] - 24869:22 presumably [2] - 24820:13, 24839:12 presumption [2] - 24917:8, 24917:18 previous [9] - 24847:18, 24847:24, 24858:17, 24869:5, 24879:4, 24886:9, 24909:4, 24912:5, 24915:24	previously [1] - 24822:19 Previously [1] - 24839:5 primarily [2] - 24892:14, 24913:9 Pringle [1] - 24812:12 privilege [31] - 24830:13, 24830:17, 24830:25, 24831:9, 24831:11, 24831:15, 24833:12, 24833:19, 24833:24, 24834:9, 24834:12, 24834:19, 24834:21, 24834:22, 24835:11, 24835:15, 24835:23, 24836:1, 24837:4, 24837:23, 24838:1, 24839:19, 24840:23, 24841:5, 24841:11, 24841:16, 24843:14, 24846:15, 24846:25, 24912:20, 24913:3 privy [1] - 24864:2 probative [1] - 24905:6 probe [2] - 24816:20, 24893:6 probed [2] - 24891:21, 24893:10 probing [3] - 24850:20, 24881:6, 24895:16 problem [1] - 24880:22 problems [1] - 24889:23 procedure [2] - 24816:16, 24847:10 proceed [1] - 24847:22 Proceedings [4] - 24810:12, 24810:23, 24813:1, 24814:1 proceedings [6] - 24814:11, 24824:9, 24835:2, 24857:3, 24866:12, 24921:4 produced [1] - 24866:11 professional [6] - 24860:8, 24860:15, 24878:3, 24879:4, 24914:4, 24914:7 progeny [1] - 24879:25 progressed [1] - 24900:13 promise [1] - 24862:18 proper [2] - 24844:1, 24919:20 properly [3] - 24835:11, 24890:9, 24906:19 propose [2] - 24858:1,	24863:3 prosecution [3] - 24920:12, 24921:12, 24923:2 prosecutions [1] - 24920:3 prosecutor [5] - 24864:12, 24866:21, 24909:24, 24912:7, 24921:14 prosecutors [2] - 24901:11, 24901:13 prospect [1] - 24892:6 protocol [2] - 24901:12, 24911:4 provide [5] - 24824:1, 24831:19, 24838:10, 24868:15 provided [17] - 24823:1, 24830:3, 24831:18, 24833:3, 24839:8, 24845:8, 24857:18, 24857:20, 24859:20, 24861:20, 24865:2, 24868:4, 24868:5, 24869:10, 24880:15, 24913:1, 24913:13 Province [1] - 24924:3 prudent [1] - 24906:22 psychiatric [2] - 24889:13, 24889:23 Psychiatric [1] - 24889:14 public [3] - 24831:14, 24837:24, 24841:3 publicity [2] - 24837:11, 24857:9 pure [1] - 24853:5 purpose [3] - 24817:8, 24834:16, 24841:17 purposes [4] - 24831:21, 24835:23, 24838:11, 24868:14 purse [1] - 24824:18 purse-snatching [1] - 24824:18 pursuant [1] - 24838:15 pursue [3] - 24893:18, 24903:24, 24904:18 pursued [1] - 24881:24 put [16] - 24814:20, 24817:25, 24838:14, 24838:25, 24840:9, 24859:15, 24860:20, 24862:19, 24865:23, 24893:20, 24894:9, 24902:22, 24907:10, 24907:13, 24908:22, 24920:18 putting [1] - 24910:23	Q Qb [1] - 24811:9 Qc [4] - 24812:2, 24812:7, 24812:10, 24812:12 qualification [2] - 24876:22, 24877:3 qualifications [1] - 24825:13 qualified [2] - 24830:12, 24876:20 Queen's [4] - 24924:1, 24924:3, 24924:14, 24924:18 questioned [2] - 24842:3, 24877:9 questioning [12] - 24844:12, 24845:13, 24846:7, 24846:9, 24846:12, 24870:12, 24875:15, 24876:13, 24888:12, 24896:17, 24896:19, 24911:15 questions [17] - 24814:13, 24818:23, 24819:15, 24819:21, 24819:25, 24820:6, 24820:15, 24825:19, 24841:15, 24844:14, 24861:18, 24872:18, 24874:12, 24894:9, 24911:21, 24919:22, 24923:4 quick [1] - 24916:9 quickly [1] - 24817:23 quite [18] - 24819:12, 24821:8, 24826:18, 24828:11, 24828:14, 24842:4, 24853:22, 24864:19, 24867:23, 24873:22, 24875:3, 24875:5, 24876:16, 24878:7, 24895:20, 24904:11, 24906:14, 24906:18 quotation [1] - 24891:11
				R
				raised [4] - 24842:18, 24846:16, 24865:13, 24906:19 raises [1] - 24884:19 rapes [13] - 24866:1, 24867:15, 24867:25, 24869:4, 24869:16,



24901:16, 24903:17, 24911:1, 24915:10, 24915:24, 24919:7, 24920:23 rapist [5] - 24865:16, 24903:12, 24909:4, 24921:2, 24921:16 rapists [1] - 24909:14 rare [1] - 24847:10 Rasmussen [2] - 24919:23, 24920:19 rather [6] - 24860:21, 24860:23, 24863:18, 24865:12, 24882:8, 24893:11 ravished [2] - 24905:4 Raymond [1] - 24815:2 Rcmp [23] - 24812:8, 24848:11, 24848:12, 24849:7, 24849:11, 24849:13, 24849:18, 24853:15, 24856:13, 24857:5, 24857:20, 24858:8, 24858:18, 24859:2, 24862:6, 24863:17, 24865:14, 24866:3, 24866:8, 24867:20, 24871:4, 24877:10, 24919:23 re [1] - 24857:19 re-open [1] - 24857:19 read [17] - 24815:11, 24821:8, 24829:7, 24836:6, 24843:6, 24844:23, 24853:4, 24853:7, 24854:24, 24862:23, 24864:6, 24866:14, 24895:11, 24900:24, 24913:18, 24913:21, 24914:25 reading [4] - 24845:4, 24875:3, 24913:11, 24916:9 real [1] - 24816:8 realistically [1] - 24909:10 realizes [1] - 24914:13 really [14] - 24849:5, 24853:23, 24872:14, 24885:23, 24888:21, 24889:5, 24889:20, 24891:1, 24892:16, 24893:15, 24898:17, 24909:23, 24910:13, 24915:4 reason [7] - 24850:3, 24879:23, 24884:3, 24888:22, 24890:19, 24895:22, 24906:13 reasons [1] - 24829:8	recalled [2] - 24851:4, 24854:11 receive [6] - 24815:12, 24819:20, 24845:16, 24868:10, 24879:14, 24901:9 received [17] - 24814:16, 24823:3, 24844:20, 24845:2, 24849:22, 24849:24, 24850:6, 24850:17, 24850:19, 24851:12, 24852:24, 24866:4, 24866:16, 24868:12, 24874:2, 24889:13 receiving [2] - 24821:5, 24833:6 recent [2] - 24837:13, 24921:17 recently [2] - 24815:6, 24913:13 recognize [1] - 24826:1 recognized [2] - 24905:22, 24919:3 recognizing [1] - 24880:20 recollect [4] - 24876:4, 24877:12, 24893:1, 24895:10 recollection [18] - 24819:2, 24819:10, 24819:11, 24826:23, 24828:5, 24831:22, 24835:1, 24841:20, 24853:6, 24864:10, 24864:11, 24876:13, 24877:24, 24878:1, 24896:5, 24902:5, 24921:23, 24922:18 reconsider [1] - 24861:10 Reconvened [3] - 24814:2, 24862:3, 24912:2 record [15] - 24851:13, 24852:14, 24853:14, 24858:2, 24872:22, 24875:3, 24875:6, 24876:15, 24886:5, 24886:6, 24886:19, 24912:4, 24912:9, 24914:10, 24915:7 recorded [3] - 24820:20, 24886:22, 24905:15 recording [2] - 24820:24, 24856:12 reenactment [1] - 24900:11 reference [15] -	24826:8, 24827:3, 24827:9, 24829:21, 24836:13, 24836:15, 24840:20, 24841:22, 24844:7, 24845:11, 24848:7, 24853:25, 24859:4, 24865:24, 24867:12 references [4] - 24859:9, 24866:3, 24867:14, 24867:18 referred [5] - 24814:24, 24858:9, 24858:12, 24870:16, 24904:1 referring [4] - 24822:6, 24845:10, 24905:10, 24914:19 refers [4] - 24820:5, 24832:6, 24845:6, 24916:21 reflect [1] - 24839:11 reflective [1] - 24890:24 reflects [1] - 24876:16 refreshing [1] - 24844:21 regard [2] - 24846:14, 24882:17 regarding [5] - 24846:17, 24846:19, 24857:9, 24857:10, 24857:17 Regina [8] - 24826:22, 24837:5, 24840:8, 24848:24, 24884:1, 24903:13, 24920:1, 24920:2 rein [1] - 24893:4 reiterate [1] - 24846:12 reject [1] - 24860:14 related [1] - 24917:17 relation [3] - 24827:8, 24891:9, 24911:14 relatively [1] - 24922:23 release [9] - 24829:22, 24830:10, 24830:12, 24830:18, 24830:25, 24832:8, 24832:9, 24833:19, 24833:24 released [3] - 24830:14, 24833:12, 24879:19 relevant [6] - 24844:15, 24865:4, 24868:14, 24868:17, 24905:5, 24909:20 reliability [1] - 24898:13 reluctant [2] - 24823:23, 24871:15 remember [5] - 24834:3, 24888:16, 24896:13, 24907:17,	24911:5 remove [1] - 24906:18 repeated [1] - 24857:15 repetitious [2] - 24824:10, 24908:14 report [24] - 24826:2, 24858:7, 24865:21, 24865:22, 24865:23, 24867:12, 24867:13, 24868:3, 24879:8, 24879:9, 24879:13, 24880:4, 24880:14, 24880:23, 24881:9, 24881:11, 24905:12, 24905:14, 24905:18, 24916:1, 24916:3, 24916:7, 24918:7, 24920:18 Reporter [2] - 24924:14, 24924:18 Reporters [2] - 24811:9, 24924:3 Reporters [1] - 24924:1 reports [24] - 24814:14, 24857:14, 24864:13, 24864:20, 24864:21, 24864:24, 24865:8, 24867:3, 24868:2, 24879:12, 24879:18, 24900:15, 24904:1, 24908:18, 24914:25, 24915:9, 24915:12, 24919:22, 24919:23, 24919:25, 24920:5, 24920:11, 24920:20, 24920:25 represent [1] - 24872:22 representation [1] - 24844:18 represented [1] - 24894:18 request [6] - 24830:2, 24842:14, 24842:20, 24842:21, 24863:25 requested [3] - 24829:15, 24829:16, 24913:1 require [1] - 24839:19 research [1] - 24850:7 residence [3] - 24883:1, 24888:18, 24890:23 resolved [1] - 24843:18 respect [12] - 24815:23, 24832:2, 24834:19, 24848:13, 24858:10, 24866:21, 24867:24, 24910:22, 24912:13, 24915:9, 24919:21, 24923:4	respecting [1] - 24822:10 respects [1] - 24861:9 respond [2] - 24824:25, 24859:24 response [4] - 24825:19, 24825:21, 24860:20, 24861:15 responses [1] - 24819:20 responsible [2] - 24870:23, 24903:22 restrictions [1] - 24830:9 result [4] - 24823:4, 24858:8, 24860:19, 24872:8 Retired [1] - 24812:13 retracted [1] - 24835:16 retrospect [1] - 24817:10 return [1] - 24923:19 reveal [2] - 24878:24, 24888:14 review [7] - 24815:6, 24829:14, 24833:3, 24859:21, 24861:19, 24868:13, 24921:12 reviewed [1] - 24864:24 reviewing [2] - 24832:17, 24914:11 revisit [1] - 24860:3 rewards [1] - 24892:7 rid [1] - 24887:13 Riddell [4] - 24865:21, 24865:24, 24919:23, 24920:19 Ridells [1] - 24883:24 right-handed [2] - 24873:7, 24874:5 road [2] - 24909:8, 24910:18 robbing [1] - 24824:18 Robert [1] - 24844:4 Roberts [16] - 24816:6, 24816:18, 24817:12, 24851:5, 24853:24, 24893:21, 24893:25, 24894:13, 24894:17, 24894:25, 24898:6, 24898:9, 24898:12, 24898:22, 24899:1, 24899:8 Roberts [1] - 24892:23 Rodin [1] - 24912:23 role [10] - 24859:10, 24859:25, 24860:10, 24860:11, 24892:24, 24898:22, 24912:10, 24918:22, 24918:25
---	---	---	---	---



<p>Ron^[10] - 24855:17, 24869:7, 24869:19, 24884:12, 24891:8, 24891:17, 24893:6, 24896:15, 24896:21, 24898:25</p> <p>Ronald^[1] - 24884:1</p> <p>route^[2] - 24905:25, 24907:5</p> <p>routinely^[2] - 24868:5, 24879:18</p> <p>Rpt^[4] - 24811:10, 24924:2, 24924:16, 24924:17</p> <p>rulings^[1] - 24852:25</p> <p>run^[1] - 24881:11</p>	<p>Section^[4] - 24814:11, 24815:23, 24816:16, 24817:5</p> <p>Security^[1] - 24811:11</p> <p>see^[27] - 24817:25, 24839:11, 24840:10, 24845:19, 24846:3, 24849:11, 24853:24, 24857:1, 24863:1, 24863:25, 24884:8, 24884:16, 24893:6, 24894:3, 24895:16, 24898:18, 24898:24, 24899:23, 24899:25, 24916:18, 24917:1, 24917:4, 24917:20, 24917:21, 24917:22, 24917:23, 24923:10</p> <p>seeing^[2] - 24873:9, 24902:5</p> <p>seeking^[1] - 24911:19</p> <p>seem^[1] - 24828:5</p> <p>select^[1] - 24838:16</p> <p>selected^[1] - 24838:13</p> <p>sense^[9] - 24833:19, 24835:23, 24842:25, 24870:2, 24878:18, 24882:8, 24889:17, 24900:13, 24913:7</p> <p>sent^[5] - 24819:25, 24820:6, 24821:4, 24831:2, 24920:1</p> <p>sentiment^[1] - 24914:9</p> <p>separate^[1] - 24909:3</p> <p>sequence^[3] - 24819:3, 24819:4, 24819:7</p> <p>Sergeant^[4] - 24848:23, 24849:6, 24849:13, 24878:19</p> <p>sergeant^[1] - 24849:7</p> <p>serial^[4] - 24921:2, 24921:15, 24921:21, 24922:12</p> <p>series^[2] - 24920:23, 24923:4</p> <p>serious^[5] - 24817:13, 24860:8, 24886:19, 24889:22, 24901:7</p> <p>seriously^[1] - 24842:16</p> <p>Service^[2] - 24812:6, 24920:13</p> <p>service^[1] - 24887:8</p> <p>set^[4] - 24820:7, 24822:25, 24829:22, 24920:16</p> <p>sets^[1] - 24856:14</p> <p>several^[1] - 24852:24</p> <p>sexual^[5] - 24886:23, 24901:17, 24903:4, 24903:17, 24914:20</p>	<p>sexually^[1] - 24905:4</p> <p>share^[2] - 24841:3, 24881:6</p> <p>shared^[3] - 24834:10, 24840:13, 24840:15</p> <p>Sharon^[2] - 24884:10, 24884:16</p> <p>Short^[1] - 24911:7</p> <p>short^[3] - 24819:12, 24892:8, 24922:23</p> <p>shorter^[3] - 24828:10, 24828:11, 24828:15</p> <p>shorthand^[1] - 24924:5</p> <p>shortly^[1] - 24919:10</p> <p>Shorty's^[1] - 24888:18</p> <p>shoulder^[1] - 24840:11</p> <p>show^[5] - 24827:18, 24864:12, 24904:14, 24908:9, 24913:2</p> <p>showed^[4] - 24815:8, 24832:25, 24843:7, 24845:18</p> <p>shown^[7] - 24831:17, 24839:9, 24840:5, 24857:2, 24866:12, 24905:15, 24916:4</p> <p>side^[3] - 24884:11, 24902:13, 24920:23</p> <p>signed^[1] - 24818:11</p> <p>significance^[1] - 24874:3</p> <p>significant^[5] - 24823:8, 24824:5, 24873:24, 24878:14, 24904:11</p> <p>similar^[3] - 24824:12, 24857:17, 24889:1</p> <p>similarities^[1] - 24908:17</p> <p>simply^[4] - 24846:15, 24867:3, 24907:14, 24921:8</p> <p>sinister^[1] - 24860:25</p> <p>sitting^[4] - 24810:15, 24817:20, 24830:1, 24855:3</p> <p>sittings^[1] - 24818:5</p> <p>situation^[4] - 24860:2, 24861:14, 24885:15, 24915:1</p> <p>sketches^[1] - 24875:19</p> <p>skill^[1] - 24924:6</p> <p>snatching^[1] - 24824:18</p> <p>snow^[1] - 24882:19</p> <p>so-called^[1] - 24855:23</p> <p>solely^[1] - 24894:19</p> <p>solic^[1] - 24912:18</p> <p>solicited^[1] - 24873:23</p> <p>solicitor^[1] - 24846:14</p>	<p>solicitor-client^[1] - 24846:14</p> <p>solicitor/client^[6] - 24831:9, 24831:15, 24834:19, 24837:22, 24841:5, 24841:10</p> <p>someone^[8] - 24825:6, 24826:2, 24872:12, 24873:6, 24886:12, 24889:21, 24909:4, 24911:1</p> <p>sometimes^[3] - 24900:11, 24914:8, 24921:14</p> <p>somewhat^[1] - 24904:20</p> <p>somewhere^[3] - 24872:24, 24911:7, 24922:11</p> <p>Somewhere^[1] - 24882:11</p> <p>sorry^[7] - 24822:14, 24828:13, 24836:21, 24854:5, 24896:19, 24898:1, 24904:16</p> <p>Sorry^[2] - 24879:10, 24898:20</p> <p>sort^[22] - 24817:20, 24819:13, 24821:9, 24840:8, 24876:19, 24880:24, 24881:3, 24881:12, 24882:21, 24883:15, 24885:6, 24890:24, 24893:16, 24896:23, 24897:17, 24899:11, 24902:14, 24902:21, 24903:23, 24904:18, 24909:11, 24920:15</p> <p>sound^[1] - 24818:24</p> <p>sounds^[2] - 24819:1, 24838:19</p> <p>space^[1] - 24922:23</p> <p>speaking^[3] - 24841:25, 24853:5, 24909:10</p> <p>specific^[11] - 24819:2, 24834:4, 24849:24, 24853:12, 24854:17, 24865:12, 24872:15, 24895:14, 24907:24, 24914:17, 24918:2</p> <p>specifically^[7] - 24838:20, 24855:12, 24860:4, 24876:4, 24876:9, 24895:2, 24900:23</p> <p>specifics^[1] - 24877:25</p> <p>speculate^[1] - 24817:7</p> <p>speculation^[1] -</p>	<p>24881:6</p> <p>spent^[1] - 24873:19</p> <p>spoken^[1] - 24860:10</p> <p>spring^[1] - 24901:16</p> <p>St^[1] - 24884:9</p> <p>stabbed^[2] - 24873:6, 24874:5</p> <p>stabbing^[1] - 24873:9</p> <p>Staff^[3] - 24811:1, 24811:7, 24878:18</p> <p>stage^[1] - 24898:22</p> <p>stamp^[1] - 24866:3</p> <p>stand^[9] - 24823:22, 24851:20, 24864:23, 24865:19, 24871:10, 24874:17, 24889:7, 24907:10, 24907:13</p> <p>Starphoenix^[2] - 24901:23, 24902:1</p> <p>started^[3] - 24826:9, 24840:20, 24843:15</p> <p>starting^[3] - 24818:1, 24867:22, 24901:6</p> <p>starts^[2] - 24848:4, 24875:14</p> <p>state^[2] - 24896:23, 24897:10</p> <p>statement^[20] - 24815:24, 24816:21, 24838:10, 24838:12, 24838:21, 24852:13, 24863:21, 24873:12, 24875:17, 24877:21, 24881:15, 24884:6, 24886:10, 24886:17, 24892:20, 24893:9, 24896:4, 24899:3, 24913:14, 24923:6</p> <p>statements^[17] - 24851:1, 24851:3, 24861:1, 24863:24, 24869:11, 24873:12, 24873:14, 24882:17, 24886:7, 24891:9, 24891:16, 24899:24, 24900:9, 24900:10, 24900:21, 24901:2, 24913:12</p> <p>states^[3] - 24844:8, 24846:4, 24888:15</p> <p>stating^[2] - 24839:4, 24884:2</p> <p>station^[3] - 24825:9, 24887:8, 24895:9</p> <p>statistical^[1] - 24909:12</p> <p>steps^[3] - 24828:24, 24842:7, 24843:2</p> <p>still^[3] - 24829:11, 24831:20, 24834:11</p>
S				
<p>S/sgt^[1] - 24888:13</p> <p>sacred^[1] - 24841:5</p> <p>sacosanct^[1] - 24841:11</p> <p>sanctity^[1] - 24837:22</p> <p>Sandra^[1] - 24811:4</p> <p>Saskatchewan^[3] - 24810:17, 24812:4, 24924:4</p> <p>Saskatoon^[13] - 24810:17, 24812:6, 24858:24, 24863:14, 24880:11, 24881:16, 24881:20, 24888:6, 24901:17, 24903:14, 24920:4, 24920:13, 24921:20</p> <p>satisfied^[2] - 24875:4, 24876:16</p> <p>Saturday^[1] - 24844:19</p> <p>saw^[3] - 24860:3, 24885:25, 24911:6</p> <p>Sawatsky^[1] - 24848:23</p> <p>scales^[1] - 24920:16</p> <p>Scc^[3] - 24849:25, 24851:18, 24852:1</p> <p>scheduled^[1] - 24846:6</p> <p>Scp^[1] - 24856:4</p> <p>scribbler^[1] - 24852:17</p> <p>script^[1] - 24840:9</p> <p>scroll^[1] - 24852:17</p> <p>searched^[1] - 24837:9</p> <p>second^[5] - 24822:16, 24823:15, 24826:25, 24896:15, 24916:21</p> <p>secondly^[1] - 24815:22</p> <p>Secondly^[2] - 24816:4, 24824:20</p> <p>section^[1] - 24867:20</p>				



Stinchcombe ^[1] - 24879:24 stood ^[1] - 24843:15 stopped ^[1] - 24897:1 stopping ^[1] - 24824:16 story ^[3] - 24884:11, 24884:20, 24892:8 Street ^[1] - 24882:11 street ^[2] - 24897:1, 24902:21 strengthen ^[1] - 24893:23 strongly ^[1] - 24833:14 sub ^[2] - 24816:16, 24817:5 subject ^[12] - 24814:10, 24816:25, 24825:13, 24832:9, 24835:17, 24841:20, 24841:23, 24851:11, 24866:20, 24883:14, 24892:12, 24892:19 submitting ^[1] - 24844:13 subsequent ^[4] - 24826:10, 24826:18, 24826:20 subsequently ^[1] - 24915:11 substance ^[1] - 24838:7 substantial ^[1] - 24823:20 sufficient ^[1] - 24831:19 sufficiently ^[1] - 24816:14 suggest ^[5] - 24827:19, 24833:14, 24856:9, 24874:8, 24910:10 suggested ^[5] - 24823:18, 24838:23, 24852:8, 24856:3, 24892:18 suggesting ^[5] - 24853:11, 24854:11, 24854:16, 24892:21, 24907:3 suggestion ^[10] - 24842:5, 24846:11, 24870:13, 24877:20, 24886:23, 24887:15, 24892:2, 24893:7, 24893:19, 24906:25 suggestions ^[2] - 24857:23, 24858:10 suit ^[1] - 24912:14 summarize ^[3] - 24858:3, 24859:6, 24865:11 summarized ^[3] -	24830:22, 24832:16, 24840:1 summarizes ^[3] - 24822:16, 24878:1, 24915:1 summarizing ^[1] - 24859:18 summary ^[17] - 24824:4, 24825:12, 24831:1, 24831:6, 24832:10, 24832:12, 24832:17, 24833:2, 24833:5, 24835:13, 24838:5, 24850:12, 24852:3, 24852:5, 24853:2, 24857:5, 24877:23 sums ^[1] - 24861:13 supplied ^[1] - 24851:1 support ^[4] - 24870:22, 24887:15, 24909:19, 24915:22 Support ^[1] - 24811:7 suppose ^[6] - 24863:11, 24865:5, 24878:5, 24893:11, 24898:6, 24918:18 Supreme ^[20] - 24822:22, 24826:8, 24827:2, 24827:9, 24829:21, 24831:22, 24832:3, 24834:14, 24834:20, 24835:3, 24835:24, 24840:19, 24840:24, 24841:15, 24841:22, 24843:5, 24843:16, 24848:6, 24854:23, 24855:11 surprise ^[2] - 24851:7, 24881:24 surprising ^[1] - 24887:2 surprisingly ^[1] - 24885:13 suspecting ^[1] - 24865:16 suspicion ^[3] - 24889:9, 24891:2, 24891:4 suspicious ^[1] - 24888:22	24820:14, 24822:19, 24830:9, 24830:11, 24830:15, 24833:15, 24833:22, 24834:1, 24834:3, 24835:8, 24836:5, 24837:3, 24837:7, 24837:20, 24839:5, 24839:10, 24839:15, 24841:21, 24843:21, 24844:9, 24844:12, 24844:19, 24845:7, 24846:6, 24847:16, 24848:5, 24849:21, 24850:4, 24850:9, 24850:25, 24851:17, 24852:9, 24852:12, 24852:19, 24852:23, 24854:10, 24856:4, 24856:5, 24856:7, 24856:16, 24858:1, 24858:23, 24859:19, 24861:17, 24862:5, 24862:12, 24863:11, 24866:9, 24870:2, 24872:21, 24873:2, 24877:13, 24881:22, 24891:6, 24898:16, 24902:4, 24903:16, 24907:4, 24911:21, 24912:4, 24914:1 Tallis ^[1] - 24844:17 tantamount ^[2] - 24825:10, 24825:25 tape ^[1] - 24900:20 taped ^[2] - 24820:20, 24899:25 tapes ^[1] - 24901:3 taping ^[4] - 24820:24, 24900:13, 24900:15, 24900:25 Tdr ^[2] - 24812:5, 24912:7 Technician ^[1] - 24811:12 technician ^[1] - 24894:19 Ted ^[1] - 24921:18 telephone ^[3] - 24818:3, 24820:5, 24830:16 ten ^[1] - 24814:9 tentative ^[1] - 24861:10 term ^[9] - 24861:5, 24886:20, 24902:23, 24921:10, 24921:15, 24921:17, 24921:21, 24922:3, 24922:11 terms ^[11] - 24815:20, 24816:9, 24828:23,	24829:5, 24851:23, 24860:21, 24877:3, 24892:7, 24894:24, 24901:8, 24920:14 test ^[1] - 24894:10 testified ^[10] - 24815:3, 24840:20, 24855:9, 24875:2, 24889:8, 24914:2, 24915:7, 24917:9, 24919:1, 24920:21 testify ^[4] - 24838:10, 24843:25, 24847:11, 24874:17 testifying ^[5] - 24822:22, 24823:17, 24834:13, 24846:20, 24870:6 testimony ^[13] - 24824:23, 24832:3, 24834:20, 24848:1, 24860:2, 24870:10, 24872:5, 24877:13, 24891:22, 24898:5, 24904:9, 24913:18, 24913:25 Testimony ^[3] - 24810:14, 24851:18, 24852:1 text ^[1] - 24873:21 theories ^[1] - 24815:4 theory ^[2] - 24865:24, 24868:20 thereabouts ^[1] - 24922:3 therefore ^[1] - 24847:17 thinking ^[1] - 24878:19 third ^[3] - 24904:6, 24904:15, 24908:11 Thirdly ^[1] - 24825:2 thoughts ^[1] - 24815:4 three ^[4] - 24859:9, 24892:18, 24916:11, 24923:1 Threinen ^[3] - 24921:20, 24922:2, 24922:15 threw ^[1] - 24824:24 throughout ^[3] - 24844:17, 24860:1, 24903:10 throw ^[1] - 24889:3 thrown ^[1] - 24887:16 timing ^[1] - 24910:11 Today ^[2] - 24879:17, 24899:21 today ^[3] - 24899:20, 24900:3, 24914:9 Toews ^[1] - 24812:11 token ^[3] - 24859:1, 24859:7, 24859:8	tomorrow ^[1] - 24923:14 took ^[7] - 24851:20, 24861:19, 24867:9, 24875:9, 24876:13, 24881:21, 24921:7 top ^[8] - 24845:19, 24845:21, 24866:2, 24867:22, 24870:18, 24876:3, 24898:2, 24917:3 topic ^[1] - 24902:10 touched ^[5] - 24817:25, 24818:6, 24819:21, 24852:11, 24852:18 touches ^[1] - 24847:21 tow ^[1] - 24882:15 towards ^[5] - 24880:25, 24881:1, 24886:12, 24889:24, 24908:2 town ^[1] - 24909:14 transcribed ^[1] - 24832:15 transcript ^[13] - 24829:14, 24862:16, 24864:5, 24865:10, 24867:6, 24867:21, 24869:24, 24875:7, 24875:11, 24875:13, 24895:12, 24896:16, 24896:22 Transcript ^[2] - 24810:12, 24814:1 transcription ^[1] - 24924:5 transcripts ^[1] - 24913:11 travelling ^[2] - 24882:14, 24882:18 treacherous ^[2] - 24871:23, 24897:21 tread ^[1] - 24904:20 treated ^[3] - 24847:16, 24877:17, 24911:11 treatment ^[1] - 24889:13 Trial ^[2] - 24853:10, 24875:13 trial ^[26] - 24817:5, 24829:15, 24846:21, 24849:23, 24852:25, 24854:17, 24855:4, 24855:9, 24857:11, 24857:13, 24869:20, 24870:4, 24873:14, 24873:15, 24874:6, 24875:10, 24893:5, 24893:18, 24895:24, 24896:8, 24897:2, 24903:11, 24905:16,
T				
talks ^[3] - 24820:11, 24833:12, 24897:8 Tallis ^[69] - 24812:12, 24813:3, 24814:5, 24814:6, 24814:8, 24815:7, 24818:20,				



24911:16, 24911:19, 24918:10 tried [2] - 24860:2, 24895:10 trip [2] - 24885:10, 24885:22 trouble [1] - 24885:20 trucks [1] - 24882:16 true [4] - 24870:25, 24891:17, 24903:9, 24924:5 truth [3] - 24880:8, 24880:21 truthful [1] - 24872:13 truthfully [1] - 24897:5 try [7] - 24819:23, 24860:22, 24865:11, 24867:8, 24872:25, 24893:18, 24903:23 trying [11] - 24817:21, 24871:12, 24871:16, 24871:24, 24872:12, 24872:16, 24874:13, 24878:8, 24887:12, 24893:6 turn [6] - 24881:10, 24888:10, 24896:16, 24896:21, 24897:25, 24907:21 turned [3] - 24863:6, 24918:8, 24919:6 two [16] - 24819:25, 24827:3, 24846:17, 24859:7, 24867:25, 24901:16, 24903:17, 24905:22, 24908:23, 24909:2, 24909:13, 24910:14, 24910:15, 24916:11, 24922:21 Two [1] - 24922:21 type [19] - 24816:4, 24819:14, 24840:14, 24860:8, 24864:15, 24871:23, 24876:13, 24878:20, 24879:12, 24881:2, 24886:5, 24890:3, 24891:3, 24893:14, 24897:21, 24902:24, 24910:12, 24910:16, 24910:23 types [1] - 24894:8	unable [1] - 24918:21 unaffected [1] - 24837:13 uncommon [1] - 24900:9 under [6] - 24815:24, 24816:21, 24817:4, 24872:5, 24884:25, 24891:22 understood [1] - 24843:12 undertake [1] - 24833:23 undertaking [5] - 24819:20, 24829:24, 24830:3, 24832:8, 24832:20 undoubtedly [1] - 24887:21 undue [1] - 24892:19 unique [1] - 24908:17 unjust [1] - 24825:6 unknown [1] - 24865:16 unless [4] - 24841:11, 24860:4, 24890:9, 24913:21 unlikely [1] - 24909:15 unprofessional [1] - 24857:24 unresolved [1] - 24920:23 up [43] - 24814:21, 24818:12, 24818:16, 24818:23, 24820:7, 24832:1, 24832:4, 24833:1, 24841:21, 24843:5, 24843:9, 24848:21, 24855:18, 24855:19, 24856:14, 24858:1, 24858:2, 24858:6, 24859:16, 24861:13, 24862:15, 24862:22, 24864:6, 24865:21, 24866:9, 24867:7, 24869:24, 24869:25, 24870:11, 24879:8, 24881:8, 24886:15, 24887:20, 24887:22, 24888:7, 24892:9, 24892:10, 24895:13, 24901:21, 24905:13, 24914:5, 24915:25, 24916:14 upset [1] - 24884:13 urging [1] - 24839:15 usurp [2] - 24918:22, 24918:25	V V1 [9] - 24905:14, 24906:1, 24906:6, 24915:9, 24916:22, 24919:7 V2 [5] - 24915:9, 24916:21, 24916:22, 24919:7 V4 [6] - 24907:21, 24909:2, 24909:4, 24923:6 V6 [2] - 24902:8, 24921:6 vague [1] - 24824:21 value [3] - 24817:8, 24894:13, 24895:17 various [7] - 24848:15, 24857:14, 24887:10, 24895:25, 24896:24, 24921:13, 24922:16 vehemence [1] - 24825:5 vehicle [4] - 24880:13, 24887:9, 24887:11, 24887:18 verification [1] - 24832:10 verify [1] - 24830:23 version [3] - 24852:16, 24853:19, 24855:8 versus [4] - 24878:23, 24879:21, 24896:12, 24899:20 Vic [1] - 24812:11 vicinity [2] - 24882:4, 24882:7 victim [1] - 24874:4 victims [2] - 24905:14, 24922:16 videotaped [3] - 24899:24, 24900:9, 24900:12 view [12] - 24815:21, 24817:11, 24825:20, 24830:24, 24860:10, 24890:5, 24891:2, 24898:13, 24904:5, 24914:4, 24919:12, 24919:16 viewed [5] - 24831:10, 24834:21, 24889:8, 24905:5 views [4] - 24841:23, 24857:14, 24861:11, 24898:25 visible [1] - 24917:6 visited [1] - 24912:12 voir [4] - 24815:22,	24816:3, 24816:17, 24817:4 Volume [1] - 24810:22 W waive [6] - 24834:23, 24834:24, 24836:1, 24837:4, 24839:18, 24840:23 waived [7] - 24834:10, 24835:11, 24835:15, 24838:2, 24841:11, 24841:16, 24846:25 waiver [19] - 24818:11, 24831:15, 24831:17, 24831:23, 24832:2, 24834:16, 24834:17, 24834:18, 24835:1, 24841:1, 24843:4, 24843:8, 24843:14, 24843:22, 24843:23, 24844:1, 24912:18, 24913:2 waiving [1] - 24835:22 walk [1] - 24862:16 walked [1] - 24888:4 wandering [1] - 24887:24 wants [1] - 24847:9 warning [1] - 24901:25 ways [2] - 24867:17, 24874:15 wearing [1] - 24883:17 weary [1] - 24861:12 week [2] - 24820:8, 24922:10 weekend [2] - 24837:6, 24839:15 weeks [1] - 24914:3 weighed [1] - 24909:9 weight [4] - 24898:5, 24898:8, 24910:4 west [3] - 24882:9, 24902:13, 24920:23 Western [1] - 24899:12 whichever [2] - 24842:5, 24843:1 whole [1] - 24854:25 Wilde [1] - 24811:11 Williams [39] - 24817:22, 24818:4, 24818:17, 24818:22, 24819:9, 24820:5, 24820:14, 24821:1, 24821:7, 24821:12, 24821:23, 24822:15, 24822:17, 24823:1, 24824:13, 24825:17,	24826:12, 24826:19, 24826:21, 24828:8, 24828:13, 24828:14, 24830:8, 24832:5, 24833:2, 24833:11, 24834:6, 24834:11, 24834:17, 24836:11, 24839:23, 24840:15, 24848:23, 24849:6, 24849:9, 24849:13, 24884:10, 24884:16 Williams' [4] - 24818:7, 24823:16, 24825:18, 24840:1 willing [1] - 24839:18 willingness [1] - 24837:4 Wilson [23] - 24825:8, 24855:5, 24855:17, 24869:7, 24869:11, 24869:20, 24869:23, 24870:3, 24870:24, 24871:10, 24871:12, 24880:12, 24884:1, 24884:12, 24891:8, 24891:17, 24893:6, 24896:15, 24896:22, 24897:18, 24897:21, 24898:14, 24898:25 Wilson's [4] - 24825:16, 24896:21, 24897:10, 24898:4 winded [1] - 24861:16 window [1] - 24824:25 Winnipeg [2] - 24875:17, 24877:8 wish [2] - 24845:15, 24846:22 wishes [2] - 24846:13, 24847:23 withheld [1] - 24858:15 Witness [1] - 24916:9 witness [12] - 24846:5, 24847:17, 24847:24, 24871:15, 24874:19, 24874:21, 24899:1, 24900:10, 24913:12, 24916:6, 24923:5, 24923:13 witness's [1] - 24847:23 witnesses [9] - 24836:22, 24844:7, 24847:18, 24851:7, 24853:12, 24854:17, 24855:9, 24859:17, 24863:2 Wolch [36] - 24812:2, 24821:10, 24821:14, 24822:9, 24823:4,
U				
ultimately [1] - 24885:9 Umm [3] - 24815:8, 24823:2, 24906:7 umm [2] - 24823:14, 24859:8				



<p>24826:14, 24826:17, 24826:22, 24826:24, 24827:1, 24827:7, 24827:11, 24827:15, 24827:25, 24828:7, 24828:12, 24828:16, 24828:20, 24829:20, 24831:7, 24833:8, 24835:22, 24836:12, 24836:18, 24836:23, 24837:17, 24838:6, 24838:18, 24840:5, 24840:7, 24840:13, 24840:17, 24840:19, 24840:21, 24844:4, 24846:3 Wolch's [2] - 24832:6, 24833:10 Wolff [1] - 24866:21 wonder [2] - 24844:3, 24911:23 wondered [3] - 24823:21, 24870:9, 24892:4 wondering [1] - 24892:23 word [5] - 24824:14, 24824:15, 24862:22, 24891:10, 24917:14 words [15] - 24823:16, 24825:9, 24825:18, 24825:22, 24825:24, 24826:1, 24840:1, 24843:25, 24855:19, 24880:24, 24884:12, 24908:24, 24917:21, 24917:23 world [1] - 24921:18 worry [1] - 24874:21 write [1] - 24852:6 writer [1] - 24837:10 writes [1] - 24836:23 writing [1] - 24876:1 writings [1] - 24873:21 written [3] - 24818:23, 24820:6, 24835:1 Wrongful [1] - 24810:3 wrote [2] - 24876:7, 24876:8</p>	<p>Yorkton [1] - 24889:15 yourself [2] - 24896:1, 24913:8 youth [1] - 24883:25 youths [1] - 24884:5</p>
Y	
<p>year [1] - 24826:6 years [12] - 24854:2, 24857:6, 24861:8, 24872:3, 24878:6, 24878:7, 24878:10, 24889:14, 24899:15, 24914:4, 24921:19</p>	

