

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

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

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Volume 138

Inquiry Proceedings



**Commission Staff:**

Mr. Douglas C. Hodson,	Commission Counsel
Mr. Jordan Hardy, Esq.,	Assistant Commission Counsel
Ms. Candace D. Congram,	Executive Director
Ms. Sandra Boswell,	Document Manager
Ms. Cheryl Ellerman,	Assistant Document Manager

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Mr. Hersh Wolch, Q.C.,           **for** Mr. David Milgaard

Ms. Joanne McLean,               **for** Ms. Joyce Milgaard

Ms. Lana Krogan-Stevely,       **for** Government of Saskatchewan

Mr. Robert Kennedy, Esq.,       **for** Mr. T.D.R. (Bobs) Caldwell

Mr. Garrett Wilson, Q.C.,       **for** Mr. Serge Kujawa

Mr. Rick Elson, Esq.,           **for** the Saskatoon Police Service

Mr. Chris Boychuk, Esq.,       **for** Mr. Eddie Karst

Mr. Bruce Gibson and Ms. Rochelle Wempe, **for** the RCMP

Mr. Eamon O'Keefe, Esq.,       **for** Mr. Larry Fisher

Mr. David Frayer, Q.C.,       **for** Minister of Justice

  (Canada), The Hon. Vic Toews

Marshall Hopkins, Esq.,       **for** Justice Calvin Tallis

  (Retired)



**INDEX OF PROCEEDINGS**

**DESCRIPTION:**

**PAGE:**

**NEIL BOYD, SWORN**

- BY MR. HARDY 27799

- BY MR. FRAYER 27991

**DARCY KIM ROSSMO, SWORN**

- BY MR. HARDY 28004



**Transcript of Proceedings**

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MR. HODSON: Good morning, Mr.

Commissioner. The next two witnesses are Dr. Neil Boyd and Dr. Kim Rossmo, and we've heard a bit about them and their report, and Mr. Hardy is going to be leading both of their evidence. But, before we do hear the evidence, I just wanted to briefly state the reason why we're calling them as witnesses and the scope of their evidence that might be informative both to you and other counsel.

Drs. Rossmo and Boyd did a report in October of 1991. They were independent, I think 'academics' might be the right word, although I am sure they will correct me when they're testifying. They prepared a report, that report was submitted on behalf of David Milgaard to Federal Justice officials in I think October 1991, it was filed before the Supreme Court of Canada I believe as part of argument. As well, a video tape was prepared, we have seen the video tape on two occasions, I



1 think Mr. Rossmo prepared that. In their report  
2 they conducted their own inquiry of sorts, or  
3 investigation into the conduct of the  
4 investigation and trial, and expressed some  
5 opinions. They also comment on the Section 690  
6 process and the first application, and as they --  
7 we will hear from them what they looked at, what  
8 they reviewed by way of transcripts and  
9 documents. They also conducted some of their own  
10 interviews of some of the key people and prepared  
11 that report.

12 As far as we're concerned,  
13 their report and the fruits of their  
14 investigation are relevant to at least the  
15 re-opening phase of our Inquiry, because it was  
16 information that was given to authorities. It  
17 also touches on conduct of the investigation and  
18 the criminal proceedings, and so in their  
19 evidence we will, as we've done with other  
20 information that was made available to the  
21 authorities, go into the source and get them to  
22 elaborate on that information. That is the  
23 purpose of them giving evidence.

24 In fairness to Drs. Boyd and  
25 Rossmo we have not asked them to go and read all



1 of the Inquiry evidence. Their work was done in  
2 1991, they had some follow-up commentary, we have  
3 not asked them to go and read everything that  
4 we've heard. Obviously, Mr. Commissioner, it  
5 will be your task, at the end of the day, to make  
6 decisions on the conduct of the investigation and  
7 trial, so Drs. Boyd and Rossmo are not here  
8 having read everything and to express opinions on  
9 the conduct of the investigation, trial, and the  
10 re-opening, but rather to say "here's what we did  
11 in 1991 and here's what it was based on".

12 Now, having said that, they  
13 also are able to comment on a number of matters  
14 that are relevant to this Commission of Inquiry.  
15 So in making these remarks I don't want to limit  
16 in any way questions from other counsel, nor do I  
17 want to limit in any way the evidence that Drs.  
18 Boyd and Rossmo will give, but I think we should  
19 just be aware of their state of knowledge today  
20 and their purpose that they're being called.

21 COMMISSIONER MacCALLUM: Thank you. That's  
22 helpful, yeah.

23 MR. HARDY: We'll call forward Neil Boyd.

24 **NEIL BOYD, sworn:**

25 **BY MR. HARDY:**



1 Q Good morning, Mr. Boyd.

2 A Morning.

3 Q Thank you for attending today to give testimony.

4 I understand that you are  
5 currently a resident of Bowen Island just outside  
6 of Vancouver?

7 A That's correct.

8 Q And what is your current occupation?

9 A A university professor.

10 Q And am I correct that that is in the School of  
11 Criminology?

12 A That's correct.

13 Q At Simon Fraser University?

14 A Yes.

15 Q And how long have you been occupied in that  
16 position?

17 A Almost 28 years.

18 Q And, just so we understand from the outset, what  
19 is criminology?

20 A It's an interdisciplinary study. We have lawyers,  
21 psychologists, sociologists, geographers. It's  
22 not a discipline, as such, in the way that law or  
23 psychology might be considered disciplines, my  
24 background is in law, and we bring together, if  
25 you like, a range of faculty who have these





1 different kinds of expertise to look at the  
2 problems of crime.

3 Q And, apart from being a professor, do you engage  
4 in other work in this field in addition to those  
5 duties?

6 A Umm, well I have written a number of books so I'm  
7 involved in publishing, I suppose. I consult and  
8 give expert evidence in criminal cases/civil cases  
9 in courts in Ontario and Alberta and British  
10 Columbia, and I do consulting work in workplace  
11 violence and healthy workplace, in relation to  
12 healthy workplace issues.

13 Q And in terms of being called as an expert witness  
14 previously, what expertise are you generally  
15 called upon to express?

16 A I suppose there are two areas. One has to do with  
17 drug law and drug policy, the enforcement of drug  
18 law, the changes in sentencing policy over time.  
19 The other has to do with violence and homicide.  
20 I've written one book that deals specifically with  
21 homicide called *The Last Dance: Murder in Canada*,  
22 another book called *High Society: Legal and*  
23 *Illegal Drugs in Canada*, which deals specifically  
24 with the subject matter of legal and illegal drugs  
25 and how we, as a society, respond to the problems



1           that they present.

2       Q       And you have been kind enough to provide us with a  
3               copy of your curriculum vitae, and perhaps we can  
4               turn to that document, it is 337462.

5       A       I'm sorry, is that going to appear on the --

6       Q       Yes, it will appear on your screen, that's right.

7       A       Ah, thanks.

8       Q       And you are familiar with this document, then, Mr.  
9               Boyd?

10      A       I am.

11      Q       And is this a current and accurate CV?

12      A       It is, it is, yes.

13      Q       And just very briefly, as I'm looking at the page,  
14               I see under Education you received your Masters of  
15               Law, 1979, --

16      A       That's right.

17      Q       -- from Osgoode Law School?

18      A       Yes.

19      Q       And as you mentioned, Professor, School of  
20               Criminology, underneath the heading Professional  
21               History, since 1989. If we move to the next page,  
22               similarly Assistant and Associate Professor at the  
23               School of Criminology since 1979. And I'll move,  
24               please, to the next page. See the heading Books,  
25               and on the page following there is reference, I



1 believe, to the book that you just mentioned to  
2 us, *The Last Dance: Murder in Canada*, there is a  
3 version from 1988, as well a version from 1992?

4 A Right.

5 Q And you touched upon it, but can you tell us  
6 briefly what that book was about?

7 A Umm, it was a look at murder and murderers, trying  
8 to understand how and why murder rates have gone  
9 up and down over time, and whether asking the  
10 question in 1988 as one might ask today, whether  
11 we are a more violent society, that is whether we  
12 have a higher rate of homicide and, if we do, why  
13 that is the case. I looked at, in addition, 100  
14 cases of people who had been convicted of murder  
15 selected from the files of the National Archives  
16 1867 to 1967, and then I suppose one of the key  
17 pieces of work was to interview 40 men or women  
18 who had been convicted of homicide and to ask them  
19 why and how the homicide occurred, what the  
20 aftermath had been, to try to get, from the  
21 perspective of the murderer, what -- a better  
22 understanding of the crime. And so that book was  
23 really a description, if you like, of murder in  
24 Canada circa 1988.

25 Q And moving down the page I see, under the heading



1 Articles, there are a number of articles listed.  
2 And if we move to the next page, please, at the  
3 top or near the top, third item down:

4 "Milgaard v. The Queen: Finding  
5 Justice - Problems and Process', (with  
6 D. Kim Rossmo)",

7 and that's dated February 1992, and I take it  
8 this report followed your review and  
9 investigation of the *David Milgaard* case?

10 A It did, yes.

11 Q And I see the date noted as February 1992, and I  
12 believe -- and perhaps you can advise me -- was  
13 there an earlier version of that report provided  
14 in October of 1991?

15 A There was.

16 Q Okay. And --

17 A The report itself was completed in October of  
18 1991, it was published by the Criminology Research  
19 Centre in February of 1992.

20 Q Okay. And there are, as I say, a number of other  
21 articles listed, and am I correct that the  
22 majority of your other articles relate to, in the  
23 main, relate to various items or views on the  
24 criminalization of drug use in Canada?

25 A Drugs, pornography, sexuality, and violence.



1 Q Okay.

2 A So sex, drugs and violence, I suppose.

3 Q So do I understand correctly then, Mr. Boyd, that  
4 your involvement in the *David Milgaard* case began  
5 in approximately 1991?

6 A Yes, that's correct.

7 Q And how did you become involved in reviewing this  
8 matter?

9 A Kim Rossmo was -- in the summer of 1990 Kim Rossmo  
10 had been a, he was a Ph.D. student in the School  
11 of Criminology, he was taking the directed  
12 readings with me on surgical homicide and serial  
13 homicide, and during the course of writing the  
14 book *The Last Dance: Murder in Canada* I'd become  
15 intrigued by wrongful conviction and I'd become  
16 convinced that there were a number of cases that I  
17 had looked at in which people had been wrongfully  
18 convicted going back into the '50's, and so I  
19 brought in a case of a file, I had a full file  
20 from the National Archives, Bobby Cook, who was  
21 the last person hanged in Alberta for crime, and  
22 gave the file to Kim and said -- I told him I  
23 thought this was a person who had been wrongfully  
24 convicted. He went away, and about a week or so  
25 later came back and said that he didn't think that



1 the person had been wrongfully convicted, that --  
2 and he explained, gave me a number of reasons as  
3 to why this was the case. He said, "you know, but  
4 if you want to look at a wrongful conviction or  
5 the possibility of a wrongful conviction, at  
6 least, there is a case that, when I was growing up  
7 in Saskatoon, the *Milgaard* case", and he said, "I  
8 don't know about that one, maybe there is  
9 something to that, I'm not sure. But, you know,  
10 if you -- that would be an interesting case to  
11 look at".

12 Q So am I correct, then, you were, yourself and Dr.  
13 Rossmo were specifically looking for a case of  
14 possible wrongful conviction, then, at the time?

15 A I don't know that we were looking. I think I was  
16 interested in the issue of wrongful conviction,  
17 that I was intrigued that he would -- Kim was  
18 able, as a police officer, to take the file away,  
19 the *Cook* file away, come back with a number of  
20 suggestions indicating why he thought that I was  
21 wrong, that in fact this wasn't a wrongful  
22 conviction, and at the same time opened this other  
23 window, and I recognized that that might be an  
24 interesting opportunity to work with him on a  
25 wrongful conviction because I would learn a good



1 deal more about police procedure and police work  
2 and it would be an interesting process. I'd  
3 enjoyed the time with Kim in the course and it  
4 presented itself as an interesting opportunity to  
5 me.

6 Q And we'll hear from Dr. Rossmo, but you mentioned  
7 that, at the time, he was also a member of the  
8 Vancouver Police Department?

9 A He was. I think at that point, I think he began  
10 there in 1979-'80, something like that, so he'd  
11 been a serving member of the Vancouver Police  
12 Department for about ten years.

13 Q And he, at that time he was currently a member as  
14 well, --

15 A He was, yes.

16 Q -- during his time with you?

17 A Yes.

18 Q And in terms of the *Milgaard* case, then, what was  
19 your knowledge of the case prior to becoming  
20 involved?

21 A Not very much at all really. I think that Kim had  
22 seen a program on *Fifth Estate* that had piqued his  
23 interest and he told me about it. I knew very  
24 little at that point, you know, the point at which  
25 we first talked about it, which I guess was late



1 1990-very early '91.

2 Q You hadn't seen, or do you recall whether you had  
3 followed any reporting in the media, or any  
4 coverage?

5 A I think I did see the piece by Gillian Findlay on  
6 CBC subsequent to my discussions with Kim.

7 Q And did you have an awareness of the first Section  
8 690 application at the time you had come in, and  
9 the dismissal of that application by the Federal  
10 Minister of Justice?

11 A Probably, but I can't recall the specifics.

12 Q But this wasn't a matter that, for example, you  
13 referred to in your teachings, or anything of that  
14 nature, up to that point?

15 A Certainly not at that point, no.

16 Q And then what did you do to initiate and formalize  
17 your involvement?

18 A Umm, well we talked a little bit about how one  
19 might look at the *Milgaard* case as a wrongful  
20 conviction, about the process that one might  
21 undertake, and we talked about needing to get the,  
22 if we were going to do it properly we would need  
23 to get the trial transcript, we would try to  
24 interview any of the witnesses who would speak to  
25 us, and I recognized that that was going to be a





1 time-consuming and costly process. I also  
2 recognized that there was an internal granting  
3 agency within the university that I might apply  
4 to, and that would allow us to have a little bit  
5 of travel funding and would allow me to pay Kim a  
6 little bit for his time, and so I applied to that  
7 grant, internal granting agency, and was  
8 successful.

9 Q And do you recall what the parameters of that  
10 grant were?

11 A Umm, I think it had to do with it was related to  
12 homicide and it was related to wrongful conviction  
13 and to investigation of claims of wrongful  
14 conviction, but I can't recall the specific title  
15 that I used in making the grant application.

16 Q And, apart from that process, who else did you  
17 contact to formalize your involvement; did you get  
18 in touch with David Milgaard or somebody on his  
19 behalf?

20 A Umm, I think that we must have contacted, at a  
21 fairly early time, the -- well I did, I think,  
22 write to David Milgaard in prison. You know, we  
23 began to sort of make a list of people that we  
24 wanted to speak to, obviously he was very high on  
25 the list. And we, one of the things that we



1           needed to do was to get a copy of the trial  
2           transcript, we thought that was the first step to  
3           try to determine what happened at trial, and to  
4           read the trial transcript and the Court of Appeal  
5           transcript.

6       Q       And in, we have been speaking of 1991, but can we  
7           be any more specific about -- was it 1991 that you  
8           began?

9       A       As I recall -- yeah, as I recall, we really didn't  
10          get underway until May, June, July of 1991. I  
11          know that when we were interviewing, for example,  
12          Ron Wilson in Kelowna, that that was about I think  
13          the early -- August, September if I'm, of '91.

14      Q       It might be October.

15      A       Might be October for Ron Wilson?

16      Q       We'll look at that. But is that your recollection  
17          generally?

18      A       Yeah. It certainly was the summer, things really  
19          got underway in the summer of 1991.

20      Q       Okay. And just from the outset, what did you  
21          decide was going to be the objective of your  
22          involvement?

23      A       One of the things, working with Kim, and I had the  
24          same view myself having been through discussions  
25          around the Cook case and others, that we knew that



1           there were adversaries. We quickly learned that  
2           David Asper and Hersch Wolch, Joyce Milgaard were  
3           very actively involved in promoting David's  
4           innocence and we learned that the Department of  
5           Justice was taking the opposing view that he was  
6           properly convicted. We didn't want to be  
7           perceived in any way as an ally of either side, we  
8           wanted very much an independent study and have to  
9           say from the outset we regarded it as an  
10          interesting puzzle. We didn't really care, you  
11          know, what the outcome was in the sense that we  
12          didn't, you know, we weren't there to act as  
13          advocates for David, we were there to try to find  
14          out what happened.

15        Q       And in terms of your initial source material,  
16                you've mentioned at some point obtaining the trial  
17                transcripts. Do you recall whether there was any  
18                other information you obtained at an early point  
19                in your review in terms of documents?

20        A       There were -- yeah, we have, Kim has kept a much  
21                better file than I have, but we have, you know,  
22                files of all the documents that we looked at and  
23                there was certainly letters from Justice around  
24                the 690 application, there were, there was a  
25                statement that, there was Centurion Ministries



1 interviews done with Ron Wilson, we made efforts  
2 of course to contact a great number of witnesses  
3 to try and get them to speak to us, and I think  
4 throughout our approach was we're doing an  
5 independent study, you know, we are not aligned  
6 with the Department of Justice, we have not  
7 aligned with Joyce Milgaard or David Asper or  
8 Hersh Wolch and we want to take a fresh look.

9 Q Okay. And perhaps to assist us in attempting to  
10 construct a bit of a time line, I'm going to show  
11 you a couple of media pieces. The first is a very  
12 short media clip I believe from a news report out  
13 of Winnipeg, and we'll try and place a date on it,  
14 but I'll show you the clip first, and it's 230147  
15 and it begins at two minutes 12 seconds and it's  
16 about a 30 second clip. If we could play that,  
17 please.

18 "NEWS REPORTER: Simon Fraser University  
19 criminologist Neil Boyd is also getting  
20 involved, armed with a grant from the  
21 university and the help of a former  
22 police investigator.

23 NEIL BOYD: The reason that we're  
24 attracted to it is because of the  
25 enormous amount of publicity and because



1                   we have seen something of the evidence  
2                   and because we are concerned that there  
3                   may not be, that he may be innocent.  
4                   This may be a case of not even proof  
5                   beyond a reasonable doubt, but the case  
6                   of an innocent man spending 23 years of  
7                   his life in jail."

8                   And there's a press clipping as well that seems  
9                   to be associated with that same interview, if we  
10                  could turn perhaps, please, to 004633, it's a  
11                  little bit blurry, but it appears to be a picture  
12                  from the same clip that we just watched, and  
13                  you'll see the date at the top is July 10th, 1991  
14                  and from the first paragraph it would appear that  
15                  we have the sense that it was the day prior  
16                  placing that meeting at July 9th, 1991, and would  
17                  that sound about right to you, Mr. Boyd?

18        A           Yes.

19        Q           And does that assist you in terms of seeing that  
20                   meeting, and we'll talk about it in a moment, but  
21                   do you have any sense of how long you had been  
22                   working on the matter up to this point in time?

23        A           Not long, probably a month, something like that.  
24                   I mean, not a great deal of time at that point.

25        Q           And in terms of the video, do you recognize where



1           that was and what the circumstances were?

2           A        I do, I recall arriving in Winnipeg and there was  
3                   a great scrum of reporters and wondered who they  
4                   were going to talk to. I was a bit surprised when  
5                   I found that it was me. I was looking for other  
6                   people on the plane who might actually be the  
7                   subject of interest and I realized in retrospect  
8                   that Joyce Milgaard had arranged this and that --  
9                   and I was a bit taken aback. The first time I had  
10                  seen this article, and I think my comment about  
11                  publicity has to do with the publicity that I saw  
12                  at the airport, but it did strike me as  
13                  surprising, the degree of interest that people had  
14                  in the case at the time, and as we found out as we  
15                  went through it, of course, it became very much  
16                  front page news throughout the next year, eight  
17                  months.

18          Q        And you've touched on it already, but you do  
19                   mention in the video that you were attracted to  
20                   the matter because of the enormous amount of  
21                   publicity and perhaps you started to give us an  
22                   explanation. Was that a motivating factor for  
23                   your involvement?

24          A        I don't think we, you know, I don't think I looked  
25                   around for, it sounds a little like a media-hungry



1 approach, but, you know, I think the reality was  
2 that it came about because Kim expressed his  
3 interest, I was interested in looking at a case of  
4 wrongful conviction and it happened that this one  
5 was receiving a lot of attention, so it was an  
6 interesting opportunity, that that would certainly  
7 be a fair comment.

8 Q And in the video as well you mention that you've  
9 seen something of the evidence and that you are  
10 concerned, and we'll see that point made in this  
11 article as well, and do you recall by this point  
12 in time what precisely those views were based  
13 upon, what you had reviewed?

14 A Well, I'm trying to recall whether or not we had  
15 read the trial transcript at that point.  
16 Certainly everything changed for me once I, you  
17 know, I had a very focused idea of the case once I  
18 completed the trial transcript and the Court of  
19 Appeal transcript.

20 Q Okay. And we'll look at another article in a  
21 moment that might suggest that you hadn't yet read  
22 the transcript at this point in time.

23 A Right.

24 Q And I'm not saying that's the case, we'll look at  
25 it in a moment.



1 A It's quite likely.

2 Q But is that possible, and if that was, do you know  
3 what your views would have been based upon then in  
4 terms of what you expressed where you say that you  
5 had some concerns about the matter?

6 A Well, I think there had certainly been summaries,  
7 we had been given some evidence, we had seen the  
8 Gillian Findlay report, that raised a number of  
9 issues. I think that, you know, you're probably  
10 right to say that at that point we hadn't in any  
11 sense concluded, we hadn't -- we had barely begun  
12 the investigation.

13 Q And you mentioned Gillian Findlay and I think  
14 we'll hear perhaps from Dr. Rossmo, but had you  
15 perhaps seen a *Fifth Estate* piece by this time?

16 A Yes.

17 Q Okay. I'm just going to review a couple of  
18 portions of this article with you, I'll read some  
19 of this to you, it states in the second paragraph:

20 "Boyd, a professor at Simon Fraser  
21 University, and his research partner,  
22 Vancouver city policeman Kim Rossmo,  
23 plan to interview witnesses and police  
24 as well as reviewing all the evidence in  
25 this case.





1 "This case is still very open.  
2 At this point, I'm inclined to have  
3 reasonable doubt about David's guilt,"  
4 Boyd said.

5 Milgaard, 39, has served 21  
6 years in prison for the 1969 murder of  
7 Saskatoon nursing assistant Gail Miller,  
8 although he insists he's innocent.

9 His mother, Joyce, who's been  
10 working to free him, met Boyd at the  
11 airport yesterday and whisked him off  
12 for separate meetings with her son and  
13 his lawyer, David Asper."

14 Is this the first time that you were meeting with  
15 Joyce Milgaard do you recall?

16 A I believe it was, yes.

17 Q And on this occasion did you meet with David Asper  
18 and David Milgaard as well?

19 A Yes, I think so, yes. Yes.

20 Q And do you recall what those meetings consisted  
21 of, what occurred at those meetings?

22 A We were really setting the, setting the stage,  
23 trying to ensure that it would be possible to  
24 interview David as obviously a key witness, to be  
25 able to undertake the kind of investigation that



1 we were interested in doing.

2 Q And we'll touch upon that a little bit further,  
3 I'm just going to move up to this next paragraph,  
4 it states:

5 "Joyce Milgaard called Boyd "someone who  
6 can look at the case straight on" and  
7 said the two obtained David's permission  
8 for the research during a visit to Stony  
9 Mountain Penitentiary yesterday  
10 afternoon."

11 And was that the case, that permission had been  
12 sought and obtained from Mr. Milgaard?

13 A Yes.

14 Q And you recall that meeting then at the Stony  
15 Mountain Penitentiary?

16 A I do. I think it was a relatively brief meeting,  
17 but yes.

18 Q And just down the page a little bit further  
19 starting here:

20 "She said David and his lawyer agreed to  
21 give the researchers access to all  
22 documents pertaining to the case.

23 "We want to help them and  
24 provide access to the documents. We  
25 have nothing to hide," said Milgaard,



1 adding her son's mood was "quite strong"  
2 yesterday."

3 Do you recall whether you obtained materials  
4 during this same visit?

5 A I think that that's how we got the trial  
6 transcript. I know that I looked into the cost of  
7 obtaining the trial transcript and it was quite  
8 prohibitive and I think it was through Joyce  
9 Milgaard that we were able to obtain a copy of the  
10 trial transcript.

11 Q Okay. And maybe you've referred to some of them  
12 already, but in terms of some of the other  
13 materials that you were mentioning, some of the  
14 materials from Centurion Ministries and otherwise,  
15 would those have been gathered at this point in  
16 time as well or do you recall?

17 A I think so, I think anything that they had, I'm  
18 sure that anything that they thought pointed to  
19 David's innocence they would provide us with.

20 Q Okay. And if we can just move over to the last  
21 column of the article, one other portion I'll  
22 bring to your attention, actually starting in this  
23 paragraph, and this is you speaking:

24 "I was looking for a wrongful conviction  
25 case to research and the one I was



1 looking at was a 1960 homicide in  
2 Alberta for which Bobby Cook was hanged.  
3 But there's not much I can do about that  
4 if I prove it was a wrongful  
5 conviction," Boyd said.

6 He admitted it was the  
7 "enormous publicity" surrounding  
8 Milgaard that attracted him to the case.

9 "Something could be done if  
10 indeed it should be done. Unlike the  
11 Bobby Cook case, with this one there is  
12 something you can do," he said."

13 I think maybe we've covered this, but  
14 notwithstanding the comments here, I take it what  
15 you've told us, you didn't have a preconceived  
16 notion that this was in fact a wrongful  
17 conviction?

18 A No, not at all. The case was getting a lot of  
19 attention, so it was possible, it seemed to us, to  
20 be able to move in and, you know, get a lot of  
21 information, increase insight, and if it was a  
22 wrongful conviction, there was a possibility that  
23 something could be done about it.

24 Q Okay. I'll turn your attention to another article  
25 which touches on some of those points, 159895.



1           You'll see this an article I believe relating to  
2           the same visit with the same date, July 10th,  
3           1991, I'll bring your attention again to a couple  
4           of portions of the article beginning with the  
5           first few paragraphs, it states:

6                   "A Vancouver criminologist has begun  
7                   investigating the David Milgaard case  
8                   but cautioned yesterday that he carries  
9                   no preconceived notion of Milgaard's  
10                  innocence.

11                   "I do believe there are people  
12                   in prison wrongfully convicted," Neil  
13                   Boyd said moments before entering Stony  
14                   Mountain Institution to meet Milgaard.

15                   But he added, "We may come to  
16                   the conclusion he is guilty."

17                   Boyd said he fears people will  
18                   misinterpret his intervention in the  
19                   case of Milgaard, imprisoned since 1970  
20                   for the murder of a nursing assistant in  
21                   Saskatoon."

22           And do you recall making these points clear at or  
23           around this time, Mr. Boyd?

24       A       Yes. Obviously I don't recall the specific  
25           interview with that specific person, but I do



1 recall making points such as this.

2 Q And you mention fear of misinterpretation. What  
3 misinterpretation were you afraid people may have?

4 A Well, that we had an agenda, that we were in the  
5 Asper/Wolch/Milgaard camp in the sense that we  
6 were being hired by them or we were in some way  
7 acting on their behalf, and I guess I felt that  
8 because we were, this was one of the venues that  
9 was open to us, we were able to get documents, we  
10 were able to be provided with some information by  
11 these people.

12 Q Okay. Just at the top of the next column it  
13 states:

14 "A criminology professor at Simon Fraser  
15 University, lawyer, and author of three  
16 non-fiction books on Canada's criminal  
17 justice system, Boyd said he has a  
18 research grant to study Milgaard's case.

19 He said this case could turn  
20 out like a 1980s murder in Houston,  
21 Tex., in which the documentary feature  
22 film The Thin Blue Line persuaded a  
23 court to free a wrongfully convicted  
24 man.

25 "This could well be the



1 Canadian equivalent of The Thin Blue  
2 Line, Boyd said."

3 I just wasn't sure, and I don't know if you  
4 recall, but when you were referring to this in  
5 that last quote, were you talking about your work  
6 or were you talking generally about the Milgaard  
7 case?

8 A I think I was talking about the Milgaard case.

9 Q Okay. And if we move up to the next column,  
10 please, just at the top, I'll read another portion  
11 to you, it states:

12 "The vast majority of Canadians  
13 convicted of murder, probably more than  
14 95 percent, are guilty, Boyd said. The  
15 Milgaard case is one of the few in which  
16 there is substantial doubt, he said.

17 Boyd said he would spend  
18 lengthy interview sessions with David  
19 Milgaard, then read and re-read every  
20 court transcript and investigator's  
21 report he could get his hands on before  
22 beginning interviews with witnesses and  
23 others involved in the case."

24 And this is the article I was referring to  
25 previously, Mr. Boyd. So it would appear that



1           perhaps you did not yet at this point have the  
2           transcripts, or up to this point in time?

3       A       That's correct.

4       Q       And you would agree with that, or does that --

5       A       Yes, I agree with that.

6       Q       And you mention your intended approach, and at  
7           that time that was your intended approach in that  
8           second paragraph in terms of your review of this  
9           matter?

10      A       Yes.

11      Q       And just one more portion of that article, if you  
12           move down the page, please, it says, it notes:

13                   "He said he hopes to uncover new  
14                   evidence previously overlooked although  
15                   he doubted anything short of political  
16                   pressure or a change in government could  
17                   get Milgaard a new trial. An active New  
18                   Democrat, Boyd predicted a federal NDP  
19                   or Liberal government would grant  
20                   Milgaard a new trial.

21                   "I see a lot of problems with  
22                   the justice system that have to be  
23                   addressed," he said."

24           Was that an accurate account of your views at the  
25           time, Mr. Boyd?





1       A       I don't know that I was really an active New  
2               Democrat; in fact, Jack Layton has driven me to  
3               the Liberals, but I'm not really an active Liberal  
4               in that sense, in the sense that I'm a member of  
5               the party even. It's certainly true that -- well,  
6               I may have -- I probably did say that at the time.  
7               I'm not sure I agree with the sentiments I  
8               expressed around the specific political parties,  
9               that I would agree with those today necessarily,  
10              but, you know, the point that I see a lot of  
11              problems with the justice system have to be  
12              addressed, I already at that point had some  
13              concerns about Section 690 of the code and how it  
14              was working, so --

15       Q       I guess the question then, did your political  
16               persuasions cause you to have a bias against the  
17               Justice Department's handling of this matter at  
18               the time?

19       A       No, I don't think I've ever really been, never  
20               sought nomination from any of the political  
21               parties. I don't think that a partisan political  
22               view informed my attitudes or my research at that  
23               time either.

24       Q       Okay. And just this last portion, it states:

25               "Boyd said he is uncertain if his



1 research will lead to a book and has no  
2 deal with the Milgaard family.

3 "We don't know what happened  
4 yet," he said, "it's a bit of a crap  
5 shoot, the two of us."

6 He might not like me."

7 And I'm assuming you are referring to David  
8 Milgaard there?

9 A Yes.

10 Q And were you considering the possibility of a book  
11 at this point in time?

12 A I was. My literary agent at the time was very  
13 keen on my pursuing a book on the Milgaard case  
14 and phoning me and trying to get me to fly to  
15 Winnipeg regularly and get the book deal wrapped  
16 up and so on and so forth and it was a time, the  
17 "High Society" book was just coming out and she  
18 was particularly interested in, and I was somewhat  
19 interested at that time in writing a book about  
20 the case because it seemed a very interesting  
21 case.

22 COMMISSIONER MacCALLUM: Mr. Boyd, do I  
23 read into the first paragraph that you had an  
24 intention to exert political pressure to get  
25 action in this matter because you doubted that



1           you could find evidence?

2       A       No. I mean -- it says hopes to uncover new  
3           evidence previously overlooked. Doubted anything  
4           short of political pressure -- no, my interest was  
5           not in exerting political pressure in the sense  
6           that I wanted to have any partisan interest in  
7           getting Milgaard a new trial. I was probably  
8           expressing a view that I held at the time which  
9           was somewhat cynical that the government of the  
10          day, which was the Conservative government, given  
11          their actions to date, were unlikely, in fact, I  
12          thought they would be unlikely to grant Milgaard a  
13          new trial and that one would have to wait for a  
14          federal NDP or Liberal government to have that  
15          happen. Now, as it turns out I was wrong and  
16          Brian Mulroney, who was the Conservative prime  
17          minister, actually played a key role in moving  
18          things along, so I wasn't interested in personally  
19          exerting political pressure in order to move this  
20          case along.

21                   COMMISSIONER MacCALLUM: Okay.

22       BY MR. HARDY:

23       Q       I'm going to turn your attention to another  
24           article that is about a month down the road from  
25           the two that we've been looking at, if we can



1 turn, please, to 159891. You'll see it's a  
2 Vancouver Sun article, August 9th, 1991,  
3 "Convict's mother fighting for retrial." If we  
4 could focus in on the bottom of that column,  
5 please. I'll read again some portions of this to  
6 you.

7 "Simon Fraser University criminologist  
8 Neil Boyd says there are several  
9 questions in his mind he would like to  
10 see resolved and is currently  
11 investigating the case with Ph.D.  
12 student Kim Rossmo.

13 Rossmo -- also a Vancouver  
14 police constable -- and Boyd hope to  
15 publish a report on the case before the  
16 end of the year.

17 Boyd said he tried to contact  
18 David Milgaard in prison a few months  
19 ago, and was later contacted by his  
20 mother Joyce, whom he met earlier this  
21 week."

22 And you made some reference to possibly trying to  
23 contact David Milgaard at the outset of your  
24 review, and if we count back a few months from  
25 this August date, I guess that puts us somewhere



1           around May or June of 1991. Is that the case, is  
2           that what had happened initially, there had been  
3           some attempt to contact David Milgaard?

4       A       I believe I wrote him a letter asking for  
5           assistance and I believe that's what I'm referring  
6           to in this article.

7       Q       And in terms of the mention of a meeting with  
8           Joyce, it indicates that you met with her earlier  
9           this week, which would be in August, and we  
10          referred to the earlier meeting with Joyce, so I  
11          take it this was likely a second meeting with  
12          Joyce in relation to the matter that's being  
13          referred to here?

14      A       Yes, I assume that that's the meeting that Kim  
15          Rossmo and I had with Joyce and with David.

16      Q       Okay. And perhaps I wasn't clear in my question,  
17          I think the first article we looked at was of  
18          course referring to, and the video showed a  
19          meeting with Joyce Milgaard in July?

20      A       Right.

21      Q       This article is referring to another meeting in  
22          August and my assumption is this was a second  
23          meeting with Joyce Milgaard at that time?

24      A       Yes, that's correct.

25      Q       And do you recall anything of that second meeting



1 or what may have happened at that second meeting?

2 A Not specifically, no, I don't.

3 Q And was that something that was occurring on an  
4 ongoing basis, were you meeting with Joyce  
5 Milgaard or those on behalf of David Milgaard on  
6 an ongoing basis or do you recall?

7 A I don't think it could have been on an ongoing  
8 basis because of where we were based and they were  
9 based. We did meet in Winnipeg and I think we  
10 also met with Joyce Milgaard in Vancouver at some  
11 point, I think that she was in Vancouver and we  
12 met with her at that time.

13 Q Okay. I'm going to read on to the next paragraph  
14 where we had left off:

15 "Boyd said the case interested him for  
16 several reasons. One was the nature of  
17 the era.

18 "We're talking about the late  
19 '60s and early '70s. These were times  
20 of great social change. David and his  
21 companions were marginal ... socially  
22 and economically. My allegation is that  
23 this is significant in how and why he  
24 was convicted," Boyd said in an  
25 interview. (David had dropped out of



1 school and was considered a hippie --"

2 It says Milgaard said, it may mean Boyd said. Is  
3 this accurate in terms of one of the areas that  
4 interested you about this case?

5 A Well, yes. After we read the trial transcript, we  
6 had a great many questions about how and why the  
7 jury and ultimately the Appeal Court Justices  
8 believed that he was properly convicted and so one  
9 of the questions I had was did this have to do  
10 with the fact that these three kids came into  
11 Saskatoon that morning, three sort of hippie kids  
12 were seen as already morally suspect in terms of  
13 the era, in terms of what Chief Kettles had at one  
14 point made comments about hippies not being  
15 welcome in Saskatoon, and so the character of  
16 young people, it was, you know, a time of intense  
17 social conflict and the character of young people  
18 in the late '60s and early '70s who adopted some  
19 of those attitudes, those behaviours were  
20 questioned and were perhaps unfairly characterized  
21 and it seemed to me that that may have had  
22 something to do with the case and how and why  
23 people might have thought that David Milgaard was  
24 responsible for this crime.

25 Q And we'll look at your eventual conclusions, but



1           perhaps you can give us an early view on that.  
2           What did you eventually conclude in terms of this  
3           particular factor and the role that it may have  
4           played in this case?

5           A       I think it was something of a factor. I think  
6                   that, you know, in retrospect, it would be much  
7                   less significant than it might have been in 1969,  
8                   the fact that three hippie kids came into  
9                   Saskatoon in the early morning of late January and  
10                  then went off to buy marijuana in Edmonton and  
11                  have a kind of crazy party weekend, that that kind  
12                  of behaviour at the time was seen as a good deal  
13                  more threatening than it is today, and certainly  
14                  it's very clear that our attitudes towards illegal  
15                  drugs have shifted dramatically in the intervening  
16                  years, that the penalties have changed, the  
17                  attitudes of society generally have changed, main  
18                  stream music that you hear in shopping centres now  
19                  would be seen as outrageous by the standards of  
20                  1969 in terms of the lyrics and in terms of the  
21                  ethics that were said to be espoused in that  
22                  music.

23           Q       Read forward where we had just left off, that  
24                   portion of the article continues:

25                               "Boyd said he also was interested in the





1                   grey area around the appeal for a  
2                   retrial.

3                                 "It's not clear where the  
4                   burden of proof lies when an application  
5                   is made to retry someone," Boyd said.  
6                   "Is it when you raise reasonable doubt,  
7                   or is the onus on the convicted person  
8                   to prove he or she did not commit the  
9                   crime?"

10                   And this was an area of interest for you as well,  
11                   Mr. Boyd?

12           A        Yes, and it still is. Certainly the Supreme  
13                   Court's decision in Milgaard speaks to that issue  
14                   to a significant extent.

15           Q        In terms of your review, did you eventually come  
16                   to a better understanding of what the standard of  
17                   review for the minister was in considering a  
18                   Section 690 application?

19           A        Well, we certainly read the minister's letters and  
20                   had some sense of her position, but I'm not sure  
21                   that until I read the Supreme Court decision that  
22                   I really had a clear sense of what the standard is  
23                   now with respect to wrongful conviction.

24           Q        And I guess what I'm speaking of is in terms of  
25                   your consideration of the standard that it was



1           applying for the minister in considering a Section  
2           690 application in the first place, and you've  
3           mentioned Ms. Campbell's letter, and perhaps we  
4           can just turn briefly to that letter, 001529, it's  
5           her letter to Mr. Wolch dated February 27th, 1991  
6           which we've previously reviewed in the course of  
7           the Inquiry. And you've read this letter,  
8           Mr. Boyd?

9       A       I have.

10      Q       I'll just read this third paragraph to you:

11                   "Section 690 of the *Criminal Code*  
12                   provides that the Minister of Justice  
13                   may direct a new trial if after inquiry  
14                   the Minister is satisfied that in the  
15                   circumstances a new trial is justified;  
16                   similarly, the Minister of Justice may  
17                   refer the case to an appellate court for  
18                   hearing. The purpose of this procedure  
19                   is to permit a review of cases where new  
20                   evidence or information raising doubts  
21                   concerning the correctness of a  
22                   conviction has arisen after the full  
23                   judicial process, including appeals, has  
24                   been exhausted. I wish to emphasize  
25                   that it is not the function of the



1 Minister of Justice to retry the case.  
2 The remedy is an extraordinary one, as  
3 the normal judicial process is designed  
4 to ensure that no miscarriage of justice  
5 has occurred. Ministers of Justice  
6 traditionally have declined to act where  
7 the basis upon which the application has  
8 been brought relates to matters or  
9 issues which were considered by the jury  
10 at trial. For instance, relief is  
11 commonly declined where the applicant  
12 points to the unsavoury character of a  
13 witness when that issue was placed  
14 squarely before the jury. Ministers of  
15 Justice in the past intervened and  
16 referred the case to the courts where it  
17 can be demonstrated that a reasonable  
18 basis exists to conclude that a  
19 miscarriage of justice has likely  
20 occurred."

21 And do you recall whether you came to understand  
22 that this was the standard review or the apparent  
23 standard of review that the minister was  
24 applying?

25 A Yes.



1 Q And did you -- and I want to turn the discussion  
2 then to the standard of review that you were  
3 applying for purposes of your own review. Were  
4 you applying a similar standard in considering  
5 this matter and in considering whether it should  
6 be re-opened?

7 A Not really, no. You know, we are interested, we  
8 were and are interested in whether a miscarriage  
9 of justice has occurred, but it seems to me there  
10 is another question which is, you know, a more  
11 basic kind of question, is David Milgaard  
12 responsible for the crime, is he innocent. For  
13 example, with this standard, that does not allow  
14 you to go back to the trial transcript, to look at  
15 the trial transcript to consider the evidence that  
16 was introduced in 1970 and to conclude, on the  
17 basis of hindsight, on the basis of greater  
18 knowledge in 2006 than was in existence in 1970,  
19 that that verdict was not a good verdict, that  
20 it -- that even though there wasn't, you might not  
21 say that there's a miscarriage of justice, but you  
22 might say there's good reasons for supposing that  
23 he ought not to have been convicted on that  
24 evidence.

25 Q And in terms of what you have just told us, and I



1 don't know if there is a way to simply state it,  
2 but what did you consider the standard to be, for  
3 your purposes, in reaching a conclusion on the  
4 question of whether there -- whether or not there  
5 should be a re-opening?

6 A Umm, well as I said earlier, I think that the  
7 Supreme Court sets the standard in Milgaard by  
8 saying 'balance of probabilities, more likely  
9 innocent than guilty'. For us it was really, as I  
10 said earlier, a more of a puzzle, was David  
11 Milgaard responsible for committing this crime,  
12 and that was what we geared our report towards.  
13 We were also, though, interested in Section 690,  
14 how it's applied, we were interested in Larry  
15 Fisher when he arose as a suspect of interest, and  
16 then we were interested in, of course, the trial  
17 itself and how the evidence came in and how it was  
18 evaluated.

19 Q Okay. Now we've talked about some of the things  
20 you did in the context of your review already in  
21 your review of the transcripts and other  
22 documents, and I think you've made mention of  
23 various interviews that you conducted during your  
24 investigation as well?

25 A Yes.



1 Q And we'll get into some of the specifics of that,  
2 but can you give us a bit of a summary list of  
3 some of the individuals that you interviewed?

4 A Well we contacted, we contacted everybody we  
5 thought was relevant, but only certain people  
6 agreed to be interviewed. We interviewed Ron  
7 Wilson, we interviewed Linda Fisher, we  
8 interviewed David Milgaard, we interviewed -- I  
9 should have a list in front of me.

10 Q Yeah, and I don't mean to put you on the spot,  
11 we'll refer to some materials that assist us in  
12 that respect, I was just wanting, at the outset,  
13 to get a general sense of your recollection on  
14 that, Mr. Boyd. And am I correct, and I think the  
15 materials will generally indicate this, but the  
16 bulk of these interviews were taking place in  
17 September and October of 1991?

18 A That's correct.

19 Q Okay. And I think some other things were ongoing  
20 in terms of your review as well. Am I correct  
21 that you made a visit to Saskatoon for  
22 investigation purposes at some point in time?

23 A We did. We thought it was very important to look  
24 at the trail of the evidence, to look at -- to  
25 follow the physical evidence, essentially, --



1 Q Okay.

2 A -- and so in addition to -- that was one of the  
3 primary reasons for visiting Saskatoon.

4 Q And again, I think the materials will indicate  
5 that that visit to Saskatoon likely took place  
6 over a weekend, and I think the dates were  
7 September 7th to 10th of 1991; and does that sound  
8 generally accurate?

9 A That sounds accurate.

10 Q And you started to mention some of the things that  
11 you were doing while you were there, you mentioned  
12 visiting the crime scene, do you recall what else  
13 you did while you were in Saskatoon?

14 A I recall that we were trying to get information  
15 around the bus schedule, that we were visiting the  
16 crime scene, that we were looking at all of the --  
17 some key landmarks, if you like, the key  
18 distances, the Trav-a-leer Motel, the Danchuks'  
19 house, the various sites of Larry Fisher's sexual  
20 assaults, the Cadrain house, the two suggested  
21 sites that the car had been stuck on 20th and in  
22 the back alley, we --

23 Q And you conducted some of your interviews, I  
24 assume, while you were in Saskatoon on this  
25 weekend as well?



1       A       We probably did. I'm blanking on which interviews  
2               we did.

3       Q       Okay.

4       A       I'm sure if you suggest the names I'll recall.

5       Q       And am I correct that you also visited the  
6               courthouse and took a look at exhibits and --

7       A       I think we interviewed Eddie Karst, actually, I  
8               remember one, yeah.

9       Q       I'm sorry?

10      A       Yeah, I just recall we did an interview, we went  
11             to Eddie Karst's home and we interviewed Eddie  
12             Karst.

13      Q       While you were in Saskatoon on this occasion?

14      A       Yes.

15      Q       And you visited the courthouse, as well, and took  
16             a look at the exhibits; is that --

17      A       We did. We were able to -- I remember looking at  
18             the address, Gail Miller's address.

19      Q       And I have been covering this with you a bit, and  
20             I'm going back to the question and forgive me for  
21             continuing to pursue this, but I just want to try  
22             and get a clear sense -- and, again, maybe we'll  
23             take this time period as a reference point, the  
24             point when you are in Saskatoon or generally  
25             conducting your activities in September. In terms





1 of the world of your document sources, do you  
2 have -- can you give us a sense of what those  
3 were, a summary of that collection of documents?

4 A Well as I said, certainly the trial transcript,  
5 the appeal transcript, any reports, the letters  
6 having to do with any Section 690 applications, we  
7 ultimately had a transcript of our interview with  
8 Ron Wilson.

9 Q And maybe I'll ask a question; did you have the  
10 original police file, the original police  
11 investigation file into the Gail Miller murder  
12 investigation?

13 A I can't recall the specifics that we --

14 Q Okay. And do you recall whether you had the  
15 original prosecution file?

16 A I don't think we had the original prosecution  
17 file.

18 Q Okay, and perhaps the better question is do you  
19 recall making attempts to obtain that sort of  
20 material, contacting the police or Sask. Justice  
21 in terms of obtaining that type of material?

22 A Oh, I think we, yeah, we made attempts to file the  
23 freedom of information requests to obtain  
24 material, and I am assuming that we made similar  
25 kinds of attempts to obtain any materials that we



1           thought were relevant, but I'm afraid I just  
2           cannot recall the specifics.

3           Q       Okay, no. You had mentioned you had the reports  
4                   of Centurion Ministries and I should state, Mr.  
5                   Boyd, you did and were kind enough to provide us  
6                   what I think remains of your original file on this  
7                   matter and we've entered that collection as a  
8                   single document into our database, and for  
9                   reference it is 337594. And I'm not gonna review  
10                  all of those documents, we will be referring to  
11                  some of the notes that are included in that  
12                  collection, but as I reviewed the material that  
13                  currently exists on that file it appears to be,  
14                  for the most part, correspondence and attachments  
15                  relating to the first Section 690 application that  
16                  had been brought by or brought on behalf of Mr.  
17                  Milgaard and then various correspondence going  
18                  back and forth between Mr. Milgaard's counsel and  
19                  other parties relating to that matter?

20          A       I think so. I should say it's a very small  
21                   section of all of the material that I had at one  
22                   time.

23          Q       Okay.

24          A       Most of the material that I had outside of the  
25                   trial transcript which I've kept, and any of the



1 reports that we've produced, but most of the  
2 material was destroyed.

3 Q So I want to turn to a discussion of -- actually,  
4 just before I move on, you mentioned the freedom  
5 of information request, and yesterday when I met  
6 with yourself and Dr. Rossmo I received a copy of  
7 a document that the other parties won't yet have  
8 but that is in our database now, and maybe we'll  
9 take a quick look at that. It's 337673. And do  
10 you recognize your writing and signature on that  
11 document, Mr. Boyd?

12 A I do.

13 Q And is this the freedom of information or access  
14 to information request that you referred to a  
15 moment ago?

16 A Yes.

17 Q And perhaps we will just take a look. It was  
18 directed to the Department of Justice Canada, and  
19 the two points that you are requesting:

20 "(1) All correspondence between the Ministry  
21 of the Attorney General, Saskatchewan,  
22 and the Department of Justice, Canada,  
23 relating to the criminal cases of David  
24 Milgaard and Larry Fisher, 1970-1972,  
25 1985-1991.",



1 and then secondly:

2 "(2) All correspondence between the Saskatoon  
3 Police and the Department of Justice,  
4 Canada, relating to the criminal cases  
5 of David Milgaard and Larry Fisher,  
6 1970-1972, 1985-1991."

7 And this was a request, then, that was actually  
8 sent?

9 A Yes, as far as I know, yes.

10 Q And in terms of the two descriptions, they're  
11 somewhat particular, what was your interest here?

12 A That, I think it's almost a very general. We were  
13 trying to get anything and it strikes me in  
14 retrospect that we were, in looking at the  
15 relationship between Saskatoon and the Department  
16 of Justice, we were really interested in both  
17 separately, but I think we were casting the net  
18 relatively wide in the hope that anything that was  
19 relevant to those cases within those time periods  
20 might come back to us.

21 Q In terms of communications between the parties  
22 that are noted?

23 A Yes, and -- yeah, and in terms -- and I think that  
24 it was the federal nature of the access to  
25 information that required that we position our



1 request in that way.

2 Q And I just notice, 1969 isn't mentioned in terms  
3 of the time period, and was there a reason for  
4 that?

5 A Umm, we -- yeah. As will become apparent, I  
6 suppose we had more concerns about the '70 to '72  
7 period, about the arrest and the ultimate  
8 conviction of Larry Fisher than we did about any  
9 police conduct in relation to the conviction of  
10 David Milgaard.

11 Q And what happened in terms of this request; was  
12 there a response?

13 A No, I don't recall any response. You know, there  
14 may have been a letter indicating that there would  
15 be -- that there was nothing to disclose or that  
16 it would not be possible to disclose or that there  
17 -- that this was ongoing, but certainly I didn't  
18 get anything back. What I do recall is that I got  
19 a letter indicating that -- that -- to acknowledge  
20 the receipt of the application.

21 Q Okay. And we've, I don't think we have anything  
22 in our database that can inform us better on that  
23 but I wanted to ask you that, Mr. Boyd.

24 So, turning to some of the  
25 interviews that you have mentioned, you indicated



1           that you interviewed David Milgaard?

2       A       Yes.

3       Q       And can you tell us about that; what happened  
4           during your interview with David Milgaard?

5       A       Umm, well we met him at Stony Mountain and we  
6           asked him if he had committed the crime, I don't  
7           think that either of us thought that that was  
8           going to be a really critical interview in terms  
9           of determination of guilt or innocence, we really  
10          wanted to get more a sense of who David Milgaard  
11          was or is and we wanted to ask him, you know, ask  
12          him those questions, see what his responses were  
13          like. But I don't think, for either of us, a lot  
14          turned on the comments that David Milgaard made to  
15          us.

16      Q       Did you get into specific points of evidence with  
17           him in terms of his recollection of, for example,  
18           the events of January 31st, 1969?

19      A       I think we did. I think we, as I recall, we asked  
20           about the motel re-enactment. For a while we were  
21           kind of interested in that and how it appeared to  
22           have developed a kind of relevance that,  
23           ultimately, we didn't see as really critical, but  
24           we probably asked him about that issue. You know,  
25           we certainly did ask him about the date in



1 question and about his responsibility for the  
2 crime. I don't think that he provided us with  
3 anything that was particularly surprising or  
4 particularly new in terms of information.

5 Q Do you recall what, what his comments were with  
6 respect to the motel re-enactment or alleged motel  
7 re-enactment?

8 A I don't. I just remember that, you know, we -- it  
9 didn't -- nothing that he said really had a  
10 significant impact beyond the fact that, you know,  
11 we wanted him to tell us, in a number of different  
12 ways, about his responsibility for the crime and  
13 about what happened that morning, and he certainly  
14 did that.

15 Q Did you meet with David on more than one occasion  
16 or was it simply a single interview?

17 A I met with David, I think I met with David after  
18 he was released on a number of occasions briefly,  
19 but I don't know whether we met with David again  
20 before we released the report, I don't think so.

21 Q Okay. What about Nichol John?

22 A I tried to get in touch with Nichol John, I got a  
23 phone number for her, found her name was Nichol  
24 Demyen and lived in Kelowna, got a phone number  
25 for her, called her, tried a number of different



1 techniques to -- engaged in a bit of a  
2 conversation with her, tried to get her to talk to  
3 us, said I thought it was really important and  
4 that we really wanted to hear her side, and she  
5 refused to meet with us. I think, as I recall,  
6 that Kim Rossmo also, after I had tried, made a  
7 subsequent attempt to get her to talk to us.

8 Q Did you mention, though, that there was some  
9 discussion with her on the telephone?

10 A There was. I started the conversation sort of  
11 talking around the *Milgaard* case, I can't re --  
12 it, the call lasted maybe, I don't know, 10 or 15  
13 minutes, it went on for a little while, but as  
14 soon as I started to get into Milgaard I got shot  
15 down pretty quickly.

16 Q And do you know whether you have any notes or --

17 A I don't think I kept any notes. If I did keep  
18 notes I -- they're, now, long since gone.

19 Q I'm going to refer you to one document, it's  
20 actually a portion of Ron Wilson's interview, the  
21 interview that was conducted by yourself and Dr.  
22 Rossmo, I believe, in October, and if we could  
23 turn to that document, please, it's 154640, and  
24 it's page 25 of this document. And you can see,  
25 perhaps if you take a brief look at this page





1           there's some discussion amongst yourself, Dr.  
2           Rossmo, and Ron Wilson about Nichol John, and some  
3           mention is made of an attempt to talk to her here  
4           in the middle of the page, and you indicate:

5                     "We did talk to her."

6           And Dr. Rossmo indicates:

7                     "She wouldn't meet with us."

8           And then in this portion here there is reference  
9           to the fact that she didn't remember a lot, and  
10          then you state:

11                    "Well, she remembers some things, but  
12                    uh...she says things like, 'Well, I  
13                    didn't say it was David Milgaard I saw  
14                    doing the stabbing.'"

15          And was that information that you had gathered  
16          from Nichol John or information that Nichol John  
17          had told you?

18        A        It certainly looks like, from the transcript, that  
19                it's information she gave to me, that she said  
20                "well" -- and it strikes me that she may have said  
21                something like that. It's, to me it's consistent  
22                with her approach generally in relation to this  
23                case, which is, you know, sort of exculpatory with  
24                respect to any responsibility on her part for  
25                anything that ever happened to David Milgaard, so



1           if she gets an opportunity to let herself off the  
2           hook, she will do so; "well I didn't say it was  
3           David Milgaard I saw doing the stabbing", I mean  
4           she could have said something to me if I said,  
5           "well, you know, you said you didn't remember  
6           anything at trial". I can't recall the specifics  
7           of the context in which I made -- you know,  
8           whether -- I assume, in reading that, that I am  
9           referring to something she said to me but I don't  
10          recall --

11        Q           Okay.

12        A           -- with any --

13                   COMMISSIONER MacCALLUM: What is the source  
14                   of this, is it a transcript of a --

15                   MR. HARDY: It is the transcript of Mr.  
16                   Boyd and Dr. Rossmo's interview of Ron Wilson,  
17                   and we're going to get to that, it's October  
18                   1991.

19                   COMMISSIONER MacCALLUM: But was it on a  
20                   tape?

21                   MR. HARDY: We -- I'm going to ask some  
22                   questions about that.

23                   COMMISSIONER MacCALLUM: Okay.

24                   MR. HARDY: We don't have a tape --

25                   COMMISSIONER MacCALLUM: Oh, okay.



1 MR. HARDY: -- but I understand it was  
2 taken from a recording of that meeting.

3 BY MR. HARDY:

4 Q And you can -- and just in terms of that comment,  
5 and maybe you've told us as much as you can  
6 recall, but one might read into it the suggestion  
7 that Nichol John seemed to be saying that she did  
8 have a recollection of seeing someone stab someone  
9 and that she was just clarifying that it wasn't --  
10 she hadn't said it was David Milgaard?

11 A That, it certainly appears that way. She's  
12 saying, you know, that "I may have seen a stabbing  
13 but I didn't say it was David Milgaard who was  
14 doing the stabbing".

15 Q Can you recall anything better than that in terms  
16 of --

17 A I can't.

18 Q -- that comment?

19 A I can't.

20 Q Okay. And what were your conclusions, maybe  
21 you've referred to them in some respect, but what  
22 were your conclusions, by this point, in terms of  
23 the role that Nichol John had played in this  
24 entire matter?

25 A Well I think she had a critical role in the



1 conviction of David Milgaard insofar as the way in  
2 which her evidence came before the jury, if you  
3 like, you know, the statement that she made to  
4 police, the fact that it looked so much at trial  
5 as if what she was saying was that -- or the  
6 action she was taking at trial, rather, was one of  
7 protecting David Milgaard, that she had originally  
8 been truthful, but now at trial she was basically  
9 opting to say -- to say nothing to try to protect  
10 David Milgaard, and I think that that -- that --  
11 that was a critical factor in his conviction.

12 Q And Ron Wilson we'll cover shortly when we review  
13 the transcript that we've just referred to. What  
14 about Albert Cadrain, in your efforts and  
15 investigation, did you --

16 A Well --

17 Q -- speak with Mr. Cadrain?

18 A -- we were going to speak with Albert Cadrain but  
19 we spoke with his brother Dennis, and we had read  
20 a lot of material by that time, and Dennis pretty  
21 much convinced us that it was pointless to talk to  
22 Albert, that, you know, Albert what is not in any  
23 sense reliable and his visions and his perceptions  
24 of reality were very much out of whack and that it  
25 might be troubling to Albert Cadrain to talk to



1 us, and that it would be of no value, and we  
2 accepted that point of view from Dennis Cadrain  
3 and decided not to pursue Albert.

4 Q And was Dennis speaking in terms of Albert's  
5 present, or present at that point in time, is that  
6 what he was referring to?

7 A I think Dennis told us that not only did he think  
8 Albert was that way today, you know, that -- this  
9 was of course. 1991 -- but that Albert was that  
10 way at the time of the incident.

11 Q And in terms of your meeting with Dennis Cadrain,  
12 then, did you cover anything else of relevance for  
13 purposes of your review?

14 A Umm, well I think Dennis Cadrain made one of the  
15 most interesting comments that we heard, which  
16 was, you know, "What do you think the likelihood  
17 was of the killer living in the, in the basement  
18 of the Cadrain home?"

19 COMMISSIONER MacCALLUM: Say that again,  
20 sir, I missed it?

21 A He made one of the most interesting comments, he  
22 said, "What do you think the likelihood was of the  
23 killer living in the basement of the Cadrain home,  
24 of -- you know, where David and his friends were  
25 going to visit Albert that morning, was it 1 in a



1 million, 1 in 2 million?", and in retrospect  
2 that's also another factor that led to the  
3 conviction, that very unusual coincidence.

4 BY MR. HARDY:

5 Q And am I correct then, at this point in time when  
6 you were speaking with Dennis, at least, you would  
7 have been in possession of Dennis's statement and  
8 Albert Cadrain's statement to -- or statements to  
9 Mr. Henderson?

10 A I believe so. I think so, yes.

11 Q Did you speak with any of the witnesses that were  
12 involved with the alleged motel re-enactment?

13 A No, I think we -- I think I tried to contact  
14 Lapchuk but, you know, we also got to the point  
15 with the hotel re-enactment, we became convinced  
16 after some time that there really wasn't much to  
17 it and that the entire incident was something of  
18 red herring that had been blown out of proportion,  
19 so we weren't -- and I think, additionally,  
20 Lapchuk had never been asked, you know, whether he  
21 thought it was a joke, whether he thought it was  
22 serious, whether -- you know, so I can't recall  
23 whether we made efforts to contact Lapchuk, but we  
24 didn't see them as ultimately critical.

25 Q Okay. What about police officers, did you --



1           you've mentioned Eddie Karst, and maybe we can  
2           start with Mr. Karst. That interview took place  
3           in Saskatoon as you recall?

4       A       It did.

5       Q       And what do you recall of that meeting?

6       A       Well he was the only police officer who would  
7           speak to us, so we certainly appreciated that, and  
8           I remember that we were interested in the possible  
9           connection between Larry Fisher and his  
10          responsibility for the crime and we did ask Mr.  
11          Karst about whether -- why nobody had been sent to  
12          Winnipeg to interview Larry Fisher in connection  
13          with the Saskatoon rapes and a possible connection  
14          given his arrest in Winnipeg, given Larry Fisher's  
15          arrest in Winnipeg.

16      Q       And do you recall what Mr. Karst's response was to  
17           that?

18      A       I recall that it was similar to -- well, yeah, I  
19           recall that he said to us that he didn't know why,  
20           that it did seem a reasonable thing that that  
21           probably should have been done.

22      Q       And I think I've heard you mention you were aware  
23           of the interview by Mr. Karst with Gillian  
24           Findlay, at least at some point in time you became  
25           aware of that interview, --



1 A Yes.

2 Q -- and were aware of the comments or position of  
3 Mr. Karst at that point in time in the context of  
4 that interview, and he has also testified in terms  
5 of sort of the matters that followed from that?

6 A Right.

7 Q Was that the type of response that you received as  
8 well?

9 A We did. We received pretty much a similar  
10 response to the response that Gillian Findlay  
11 received.

12 Q In the sense that Mr. Karst didn't recall, at that  
13 point in time, that he had attended in Winnipeg to  
14 interview Mr. Fisher?

15 A That's correct.

16 Q Okay. And you, of course, didn't have any other  
17 information to pursue that?

18 A No. It was, I think, several months after that  
19 that we found out that he had, in fact, gone to  
20 Winnipeg.

21 Q Okay. Anything else important that you gathered  
22 from Mr. Karst, from your recall?

23 A Umm, well he was certainly open and friendly and  
24 accessible and we didn't have the sense that he  
25 was hiding anything from us, I think that's fair





1 to say.

2 Q Did he assist you in terms of reaching some  
3 conclusions about the areas that you were looking  
4 into?

5 A Not really, no, no. We, you know, we had, and to  
6 a significant extent still have, unanswered  
7 questions about that era of time, if you like,  
8 between 1970 and 1972. I can't say that his  
9 responses really focused us in a different  
10 direction or changed our perceptions in any  
11 particular way.

12 Q What about in considering the Gail Miller murder  
13 investigation; did the interview with Mr. Karst  
14 help you get a better sense of the actual  
15 investigation, did it help you reach some views on  
16 the investigation that was conducted by the police  
17 into the Gail Miller murder investigation or Gail  
18 Miller murder?

19 A Not that I recall, no.

20 Q And you mentioned other police officers perhaps  
21 not agreeing to an interview; do you recall the  
22 specifics in that respect?

23 A I think that we tried to get in touch with Joe  
24 Penkala, we did speak with Lorne Huff in Winnipeg  
25 by phone. In terms of the police, I think we



1           probably approached Saskatoon Police Department  
2           more generally, and I seem to recall that Eddie  
3           Karst was the only one who would speak with us,  
4           but I -- I, again, I can't recall the specifics  
5           of, you know, the mechanisms that we went through.  
6           You tend to recall the people you met with in  
7           person and you -- we also tend to recall the  
8           people who I thought were really critical  
9           witnesses who would not speak with us, and Nichol  
10          John was one, for example, I've already mentioned.

11        Q       But you mentioned a recollection of actually  
12                contacting the Saskatoon Police Service, or do you  
13                have a memory of that?

14        A       I -- umm, perhaps Dr. Rossmo will remember the  
15                specifics of that more clearly than I do. I  
16                thought that we made attempts to contact other  
17                police officers than Eddie Karst, certainly there  
18                were more involved, and he was involved in the  
19                investigation but -- of the murder, but there were  
20                many others in different levels of responsibility  
21                and seniority and I would have thought that we  
22                made efforts but I can't recall the specifics.

23        Q       And you had mentioned Mr. Penkala; do you remember  
24                anything in specific or in particular?

25        A       No, I didn't. I think that we saw him as a key



1 person because he would be making decisions about  
2 what to do in relation to, for example, with  
3 Fisher and so forth.

4 Q But you don't recall an actual attempt?

5 A No, I don't recall the specifics. I think that we  
6 may have but I don't recall the specifics well  
7 enough.

8 Q And I understand that you did speak with Dr. Harry  
9 Emson, the pathologist?

10 A We did, yes.

11 Q Yes. And what do you recall of that meeting?

12 A I think what we really wanted to talk to Dr. Emson  
13 about was his evidence at trial in relation to the  
14 forensic evidence that he gave, provided. We had  
15 spoken with James Ferris, and I believe that at  
16 that point or later we spoke with Peter  
17 Markesteyn, and we had heard from both of them  
18 that the likelihood that there was contamination  
19 by blood of the semen and, therefore, that the  
20 secretor status would be unreliable, that that was  
21 extremely unlikely. So we asked Dr. Emson about  
22 that and whether he was right when he gave  
23 evidence back in 1970 in relation to that issue,  
24 and what he said to us was no, that was not  
25 correct, from what he knows today he would have to



1 say that that's a very unlikely event. And so, to  
2 us, that meant that at trial, of course, the best  
3 evidence would have suggested that Milgaard was  
4 not a match.

5 Q And do you recall whether you had the sense as to  
6 whether Dr. Emson had already considered this  
7 aspect and the fact that he was wrong on his  
8 original evidence or can you recall how the  
9 conversation went? Did this sort of come as news  
10 to him in terms of the positions of Markesteyn and  
11 Ferris on that point?

12 A I can't recall. I remember that we were pleased  
13 that he made the statement to us and I don't think  
14 going into the conversation that we had any clear  
15 sense of what his response would be, but he did  
16 acknowledge that -- and he suggested, I recall he  
17 did suggest that the base of knowledge that  
18 existed around this issue today is quite different  
19 from the base of knowledge that existed around it  
20 in 1970.

21 Q And I guess that was my last question on that  
22 point, whether you had the sense of whether he was  
23 indicating that he should have known better in  
24 1970 or was this a matter of him stating I now  
25 know better?



1       A       I think he was saying I now know better. I don't  
2               think he said to us I should have known better in  
3               1970.

4       Q       What about Mr. Milgaard's trial counsel, former  
5               Justice Cal Tallis, did you speak with him?

6       A       No, we didn't speak with him.

7       Q       Do you recall attempts to speak with him?

8       A       I don't think I attempted to speak with him. I  
9               think I thought that he was -- I think at the time  
10              he was a Court of Appeal justice and I just  
11              thought that it was, you know, it would be  
12              difficult, inappropriate. I don't think I pursued  
13              him as an interview subject.

14      Q       Okay. What about the original prosecutor, Mr.  
15              Caldwell?

16      A       Yes, I did phone him and I recall a telephone  
17              conversation with him in which I asked him if he  
18              would be willing to give us an interview and he  
19              said no, that he's the subject of a 690  
20              application, and I remember asking him  
21              additionally that, well, once that's resolved, you  
22              know, once -- will you then grant us an interview,  
23              and he indicated that no, he would not be willing  
24              to grant us an interview in that circumstance  
25              either.



1 Q And that was the extent of that communication  
2 then?

3 A It was a relatively brief conversation. That was  
4 the extent of it.

5 Q And just for reference sake, I'm going to refer to  
6 a document, 332321, I should have marked the  
7 source, I believe this may have come from the  
8 Department of Justice, the Federal Department of  
9 Justice, you'll see it's a telephone attendance  
10 note to Bobs, who we know to be Mr. Caldwell, from  
11 yourself, and the date is August 29th, and I  
12 presume that's 1991, which would have been just  
13 prior to your plan to meet or to visit Saskatoon,  
14 and referenced is Simon Fraser, professor of  
15 criminology, September 7th to 10th, and we  
16 recognize that now as Mr. Caldwell's writing.  
17 Again, I don't think probably, Mr. Boyd, that you  
18 can comment on this particularly, other than  
19 perhaps the date. Would it have been perhaps  
20 prior or just prior to your visit to Saskatoon  
21 that you would have been making the contact  
22 referred to?

23 A That's right. As I recall, we were trying to line  
24 up our interviews so that when we got to Saskatoon  
25 we would have a full schedule.



1 Q Okay. And I'll move forward, what about Linda  
2 Fisher, did you meet with Linda Fisher?

3 A We did meet with Linda Fisher outside of Saskatoon  
4 as I recall, we drove out into the country  
5 somewhere close to where she was living or where  
6 she was living and we met with her.

7 Q And I haven't seen any transcript or notes from  
8 that meeting, and I assume it's your presumption  
9 that those, if they did exist, no longer exist, or  
10 you are not aware of the existence of any notes  
11 relating to that meeting?

12 A That's correct. We probably made some notes, but  
13 I'm not aware of where they are.

14 Q Okay. And what do you recall covering with Ms.  
15 Fisher?

16 A We were particularly interested in her claims with  
17 respect to the morning of January, 1969 and what  
18 she, the claims that she made to the police, I  
19 believe it was in 1980, when we went in to  
20 indicate that she believed her ex-husband was  
21 responsible for the crime, so we wanted to cover  
22 both the morning of January 31st, 1969 with her  
23 and we also wanted to cover her subsequent visit  
24 to a police station to provide evidence in  
25 relation to the matter.



1 Q And you would have been in possession then of Ms.  
2 Fisher's statement to Paul Henderson at the time?

3 A I believe so, yes.

4 Q And I think in terms of the file materials that I  
5 referenced earlier, a copy of that statement is on  
6 those file materials. Do you recall whether you  
7 had a copy of Eugene Williams' interview of Ms.  
8 Fisher, and I know you are aware of Mr. Williams'  
9 role in the matter. Do you recall whether you had  
10 a copy of that?

11 A I don't recall. No, I don't recall.

12 Q And did you learn anything new or significant  
13 beyond what Paul Henderson had already gathered  
14 from Ms. Fisher?

15 A No. I think we were really trying to get a sense  
16 of who she was and, if anything, kind of flesh out  
17 the description of both of those events, of the  
18 morning of the murder when, and how he responded  
19 to her, and also when she went to the police, and  
20 she did that, I can't recall the specifics, but  
21 what she said about the morning, about her  
22 thoughts when a news item came on the radio and  
23 she accused him of committing the murder and she  
24 had been doing it in gest and she said that he  
25 immediately was pale and became quite upset by





1           this and she was surprised and it took her a  
2           while, she said, to come to the realization that  
3           in fact he was the one responsible for the murder,  
4           and his reaction was a reaction of somebody who  
5           had been caught out, and she delivered, I mean,  
6           she said that to us in a way that we thought was  
7           compelling, it was believable to us.

8           Q       Do you recall whether at that time you were in  
9                   possession of original police material relating to  
10                  her visit to the Saskatoon Police Department in  
11                  1980?

12          A       We had some documentation in relation to that  
13                  visit, but I can't recall what it was.

14          Q       What about Larry Fisher, were there attempts to  
15                  speak with Larry Fisher?

16          A       I did write to Larry Fisher I think on a couple of  
17                  occasions to try to speak to him about the crime  
18                  and he was certainly at the time I think just a  
19                  short distance away in Mountain Penitentiary in  
20                  British Columbia and so Kim Rossmo and I would  
21                  have been quite interested and willing to go out  
22                  there to speak with him, but we never received any  
23                  response.

24          Q       And perhaps we'll refer to one of the letters that  
25                  we have for reference sake, 337452, it looks like



1 a letter from yourself to Larry Fisher as you've  
2 been telling us about, Mr. Boyd?

3 A Yes.

4 Q You'll see the middle paragraph, you indicate:

5 "You probably don't want to talk to  
6 anyone about the Gail Miller murder, and  
7 we're not asking you to do that, though  
8 we'd certainly be interested if you  
9 were. What we'd like to talk to you  
10 about is the motivation for sexual  
11 assault, the adequacy of treatment in  
12 Canadian penitentiaries, and the future  
13 that faces sex offenders on release."

14 And would that be your genuine interest or were  
15 you trying to get a foot in the door?

16 A We were trying any possible way we could to get in  
17 the door and if he was going to talk to us about  
18 that, perhaps he would talk to us about his own  
19 motivations.

20 MR. HARDY: I see the time,  
21 Mr. Commissioner. This is probably a good time  
22 for the morning break.

23 (Adjourned at 10:29 a.m.)

24 (Reconvened at 10:48 a.m.)

25 BY MR. HARDY:



1 Q You mentioned earlier, Mr. Boyd, that you had  
2 spoken with Lorne Huff?

3 A That's correct, yes.

4 Q And what do you recall of that meeting?

5 A We didn't meet with him in person, it was a  
6 telephone conversation. I don't recall the  
7 specifics.

8 Q And we have a note from the file materials, your  
9 file materials that we've heard referred to  
10 earlier. Actually, I should clarify that. This  
11 may actually be a note from Dr. Rossmo's file  
12 materials. The document is 337446. Do you  
13 recognize the handwriting on that document?

14 A Yes. It's a mixture of my handwriting and Kim  
15 Rossmo's handwriting.

16 Q And is your writing the Lorne Huff --

17 A That's correct.

18 Q -- mention, and then the questions that follow?

19 A Yes.

20 Q And when you take a look at that document, does  
21 that refresh your memory at all in terms of what  
22 you covered with Mr. Huff?

23 A Yes.

24 Q And what do you recall of that discussion?

25 A Well, I'm just going to recall what's written



1 here, we did ask him, obviously, "- why did Fisher  
2 confess?" "- why, after a guilty plea, did it  
3 take so long to get him into court?" "- Fisher  
4 take things from his victims?" That was I think a  
5 question that Kim asked.

6 Q And I think you've told us the answers, or the  
7 notes that appear to be the answers, and they are  
8 slightly darker, those are Dr. Rossmo's notes?

9 A Yes.

10 Q And do any of those notes refresh your memory in  
11 terms of some of the answers you obtained from  
12 Mr. Huff?

13 A Yes.

14 Q In what respect?

15 A Well, I recall that there was some mention that he  
16 was beat up in Remand Centre; that is, Larry  
17 Fisher, that the police department, Fort Garry  
18 Police Department, that Lawrence Greenberg was his  
19 lawyer, that some of the records were destroyed,  
20 that he couldn't remember whether Fisher took  
21 things from the victims. Largely I'm relying on  
22 what's written there, but when I see what's  
23 written, it does refresh my memory with respect to  
24 the discussion.

25 Q Do you recall anything further in terms of the



1 note where it mentions, "Beat up in Remand Centre  
2 - guards"?

3 A No, other than I know there were allegations made  
4 by Larry Fisher that he had been beaten up in the  
5 Remand Centre.

6 Q And do you recall how that was relevant at all in  
7 considering Mr. Huff's information or --

8 A I think it -- we knew that it had been suggested  
9 that he, that his guilty pleas with respect to the  
10 Saskatchewan offences, two of the Saskatchewan  
11 offences might have been motivated by that, by a  
12 beating, but the specifics, we never had any  
13 information about how those two things were  
14 connected.

15 Q And under the question, "- why did Fisher  
16 confess?" I see "his child" and then "hung  
17 himself" and a reference to "Huntington". Do you  
18 recall what those notes related to?

19 A No, I don't.

20 Q And Lawrence Greenberg is written down, lawyer,  
21 and you understood that Lawrence Greenberg was Mr.  
22 Fisher's lawyer then at the time that these  
23 charges were dealt with?

24 A That's correct.

25 Q And do you recall contacting Mr. Greenberg or



1 attempting to contact Mr. Greenberg?

2 A No, I don't.

3 Q Do you recall any further investigation into the,  
4 these questions that are mentioned on this page?

5 A Well, yes, the questions of why Larry Fisher  
6 confessed and the subsequent actions in relation  
7 to his guilty pleas, the first two charges, the  
8 later two charges in Saskatoon, those are and  
9 remain questions of interest.

10 Q But in terms of further investigation beyond  
11 what's mentioned here, do you recall anything in  
12 particular?

13 A With Lorne Huff?

14 Q That you conducted in terms of contacting anyone  
15 in relation to answers to these questions or  
16 conducting other interviews?

17 A Not that comes to mind, no.

18 Q Okay. Do you recall whether you spoke with any of  
19 Larry Fisher's victims, the sexual assault  
20 victims?

21 A No.

22 Q And you would have been aware of the circumstances  
23 of these other victims and the attacks by Larry  
24 Fisher from the Centurion Ministries material I  
25 understood?



1 A Yes, that's correct.

2 Q And would that be the extent of the material you  
3 had with respect to those matters and the  
4 information from these victims?

5 A I believe so.

6 Q Okay. What about any other public officials, and  
7 perhaps I can start with Mr. Kujawa, do you recall  
8 attempts to speak with Mr. Kujawa?

9 A No, I did not.

10 Q Did you understand his role or his involvement in  
11 some of the areas that you were inquiring about  
12 with Mr. Huff?

13 A Over time we did come to understand his  
14 involvement. We did not understand his  
15 involvement when we began.

16 Q And maybe more generally, do you recall contacting  
17 anyone on behalf of the Department of Justice in  
18 Saskatchewan with inquiries relating to your  
19 investigation?

20 A I don't recall.

21 Q Okay. Do you think contact was made with the  
22 Department of Justice in Saskatchewan respecting  
23 your review?

24 A I don't recall.

25 Q And you've mentioned you did meet with Dr. Ferris?



1 A Yes, we met with Dr. Ferris in Vancouver.

2 Q And you would have had his reports --

3 A Yes.

4 Q -- that he had provided to Mr. Milgaard's counsel?

5 A Yeah.

6 Q And would I assume correctly that you were simply  
7 confirming the contents of those reports with him?

8 A Yes, and we were asking him as well of course  
9 about Dr. Emson's evidence at trial.

10 Q And did anything new or relevant perhaps not  
11 mentioned in the reports come out of your  
12 interview with Dr. Ferris?

13 A No, I think that the interview with Dr. Ferris  
14 confirmed our suspicions that the best available  
15 evidence at the time of trial which would have  
16 excluded, in terms of secreter status, would have  
17 excluded David Milgaard.

18 Q Okay. And we'll cover that, I know that you  
19 covered that in a report and we'll take a look at  
20 that. You mentioned Dr. Markesteyn and you would  
21 have been in possession of his report at the time  
22 as well; is that your recollection?

23 A That is my recollection, yes.

24 Q And do you remember covering anything new with Dr.  
25 Markesteyn not otherwise covered in his report?





1 A No, I don't.

2 Q And I think we'll see it in your own report, but  
3 there's some mention that you had brought to the  
4 attention of Dr. Markesteyn the question of  
5 whether or not the frozen semen sample found at  
6 the scene was perhaps dog urine, and we can look  
7 at this later, but maybe first, do you have a  
8 recollection of what your view was on that  
9 particular argument?

10 A I think our view was that it was unlikely.

11 Q And do you recall on what basis that view was  
12 held?

13 A No, I don't.

14 Q Again, we'll look at some more materials that will  
15 perhaps refresh us a bit more on that.

16 In the course of your  
17 investigation, do you recall making direct contact  
18 with anyone on behalf of the Federal Department of  
19 Justice for interview purposes?

20 A I can't recall whether we tried to contact Eugene  
21 Williams, I don't believe that we did. I believe  
22 that the only contact we made there was through a  
23 freedom of information request.

24 Q Do you remember considering that or thinking that  
25 that could be helpful or do you have any



1 recollection of what your thoughts were?

2 A I think because the Section 690 application was  
3 ongoing, it was highly unlikely that we were going  
4 to be able to be engaged in any kind of fruitful  
5 discussions with people in the Department of  
6 Justice, that that simply wouldn't have been a  
7 possibility.

8 Q And what about Paul Henderson, did you meet with  
9 Paul Henderson?

10 A We did.

11 Q And what was covered during that meeting?

12 A We were interested in his report and we were  
13 interested in his objectivity, we felt that he had  
14 been hired to produce the report and we wanted to  
15 meet him for ourselves and test some of the  
16 assumptions in the report and get a sense as to  
17 his credibility.

18 Q And what conclusions then did you reach on those  
19 fronts following your meeting with him?

20 A We had no reason to believe that the report was  
21 not credible, we believed that the evidence that  
22 he provided in the report was credible evidence.

23 Q Okay.

24 A And he seemed to be a person who had been  
25 thorough. We were also interested in his



1 perceptions of Ron Wilson.

2 Q And again we'll touch on that I think a little bit  
3 further when we get into the interview with Ron  
4 Wilson, which we know was in October, and again  
5 we're going to get to that interview shortly, but  
6 just a couple of other events in September that I  
7 wanted to touch upon. There's a letter, 212299,  
8 you'll see it's to yourself from John MacNeil, who  
9 we understand was a consultant assisting the  
10 Milgaards in their efforts, I believe he was based  
11 in Ontario, and the date of the letter is  
12 September 3, 1991, so this also predates your  
13 visit to Saskatoon that you've referred to, and  
14 you'll see the text of the letter, generally it  
15 seems that Mr. MacNeil was forwarding to you a  
16 couple of binders of materials and he references a  
17 discussion that he had had with you. Do you have  
18 any recollection of what this communication  
19 related to, Mr. Boyd?

20 A I don't.

21 Q And do you have any recollection of what the two  
22 binders of materials that Mr. MacNeil -- consisted  
23 of that were forwarded to you apparently?

24 A No, I don't.

25 Q None of that refreshes your memory then on contact



1 with Mr. MacNeil or those materials?

2 A I vaguely remember the contact, but I don't  
3 remember the specifics of what was -- I assume  
4 that I received those binders, but I don't  
5 remember the, I don't recall the specifics of what  
6 was in the binders.

7 Q Okay. And there's another news piece, and again  
8 this is respecting your visit to Saskatoon, and  
9 we'll take a brief look at that, it's 327539,  
10 you'll see it's a CBC radio piece titled, "Yet  
11 more evidence that David Milgaard could well be  
12 innocent of murder," the date being September  
13 10th, 1991. I'll read just a couple of portions  
14 of this to you, the first few paragraphs:

15 "There is more support --"

16 This is the announcer:

17 "There is more support for a judicial  
18 review of the David Milgaard murder  
19 case.

20 Two researchers from British  
21 Columbia say there is strong evidence  
22 Milgaard is innocent of the crime.

23 They spent the past weekend  
24 gathering information in Saskatoon where  
25 a young woman was raped and murdered 22



1                   years ago.

2                               Now, they are heading to  
3                   Winnipeg where Milgaard's mother and  
4                   lawyer lead a fight to have him freed."

5       And do you recall what was happening in Winnipeg  
6       or why you were heading to Winnipeg?

7       A       I assume that that was the meeting with David  
8       Milgaard at Stony Mountain and with -- but --

9       Q       And perhaps you can't recall, the earlier meetings  
10       that we referenced with Joyce Milgaard were in  
11       July, early July, there was another one in early  
12       August.

13       A       Yeah, but I don't recall a second time, so I'm a  
14       little puzzled by that. I'm not sure.

15       Q       No recollection of that?

16       A       No.

17       Q       I'll read the next portion following, Neil Boyd  
18       states:

19                               "I am interested in, naturally, the  
20                   possibility that there was a wrongful  
21                   conviction here."

22       The reporter:

23                               "Neil Boyd has written about murder and  
24                   lectures on criminology at Simon Fraser  
25                   University in B.C.



1 He and his partner, student --"  
2 It should state Kim Rossmo,  
3 "-- spent the weekend in Saskatoon  
4 backtracking over the murder of Gail  
5 Miller."

6 Next page at the top:

7 "They visited the alley where the young  
8 nurse was raped and killed 22 years ago.  
9 And, looked over exhibits presented in  
10 the trial that found Milgaard guilty.

11 Boyd says they've reached an  
12 independent conclusion."

13 And you state:

14 "We believe that there is good reason to  
15 have a second look at this case."

16 And had you concluded by this point in time that  
17 the case should be re-opened?

18 A I think so, yes. Yes, we did.

19 Q Am I correct though that your investigation wasn't  
20 complete yet at this point in time; is that right?

21 A What was the date of this?

22 Q This is September 10th, 1991, and there's only a  
23 couple of reference points we can go by, but some  
24 of the interviews, as I understand it, were taking  
25 place through September and then we know of course



1           you met with Ron Wilson in October.

2       A       Well, that's correct.

3       Q       Were you comfortable providing this conclusion to  
4           the media prior to the completion of your  
5           investigation?

6       A       Yes. I think the statement made is there's good  
7           reason to have a second look at this case. I  
8           think it's fair to say that after we completed the  
9           trial transcript, the reading of the trial  
10          transcripts and the appeal court judgment and we  
11          went to Saskatoon and basically reconstructed the  
12          physical evidence to the extent that we could, we  
13          were pretty convinced that if David Milgaard was  
14          guilty, he was guilty in a way different from the  
15          theory presented by the Crown at trial.

16      Q       Okay.

17      A       So that alone was good reason to have a second  
18          look at the case.

19      Q       And would I presume correctly as well that you  
20          would have been relying upon some of the work  
21          conducted by individuals like Paul Henderson up to  
22          this point in time in reaching that conclusion?

23      A       Well, in part, but I also think that for me at  
24          least, and I think for Kim as well, the trial  
25          transcript alone and the appeal court transcript



1           were sufficient to believe that there was good  
2           reason to have a second look.

3           Q       Okay. And we'll get into this a little bit more  
4           in terms of your analysis, but eventually your  
5           report presents certain views and it includes a  
6           critique of the trial evidence which I think you  
7           are referring to now, also makes reference to a  
8           forensics argument based upon Dr. Ferris and the  
9           change in position by Dr. Emson, as well the  
10          recantation of Ron Wilson, and then lastly the  
11          identification of Larry Fisher as a suspect, and  
12          am I hearing you correctly then that in terms of a  
13          conclusion that you are giving here at this point  
14          in time, September 10th, 1991, that in large part  
15          it related to that first aspect, the critique of  
16          your review of the trial evidence?

17          A       Yes. I think that at that point we had of course  
18          in our minds the possibility that Larry Fisher was  
19          responsible for this crime, so we were not, in  
20          making these kind of statements we were not only  
21          relying upon the trial transcript, we wouldn't  
22          have segmented it, but I'm just making the point  
23          that that alone was a compelling piece of  
24          information.

25          Q       Okay. And just continuing on from that portion,





1 the reporter states:

2 "They weren't able to interview  
3 officials from the Saskatoon Police  
4 Department.

5 Rothmoe is a police officer in  
6 Vancouver. He says it's unfortunate  
7 police in Saskatoon are silent on this  
8 case.

9 Even so --"

10 Actually, I'm going to pause there for a moment,  
11 and maybe we've covered it, but do you have  
12 anything else that you can recall in terms of  
13 what Dr. Rossmo is stating, and we will ask him,  
14 where he indicates that unfortunately the police  
15 in Saskatoon are silent on the case? Do you know  
16 where that was coming from?

17 A Well, it seems clear that we made attempts to  
18 contact and that they were not successful. I'm  
19 quite sure that we did in the sense that I recall  
20 being disappointed that Eddie Karst was the only  
21 one of the police officers who had any involvement  
22 who would speak with us.

23 Q Okay.

24 A But I don't recall the specifics.

25 Q And just continuing on from where I left off:



1 "Even so, he has concluded police didn't  
2 botch the investigation or frame  
3 Milgaard."

4 And Rossmo states:

5 "We don't see any indication of a  
6 coverup or a framing job that occurred."

7 And was this similarly your view by this point in  
8 your investigation?

9 A That was certainly our view of the conviction of  
10 David Milgaard in 1970.

11 Q And so when you refer to the investigation, you  
12 are referring to the investigation into the death  
13 of Gail Miller?

14 A Yes.

15 Q Okay. And the eventual identification of David  
16 Milgaard as the suspect?

17 A Yes.

18 Q And the eventual charging of Mr. Milgaard?

19 A Yes.

20 Q A couple of other events in September that I'll  
21 refer to. Am I correct that shortly following  
22 this time period you made an appearance on the  
23 *Shirley Show*?

24 A Yes.

25 Q And she was doing a piece covering the David



1 Milgaard matter?

2 A Yes.

3 Q Do you recall how that came about?

4 A I just recall getting a call to go to Toronto to  
5 be on that program.

6 Q Okay.

7 A I don't recall much more than that.

8 Q Do you recall what your role was or what your  
9 intended role was for the show?

10 A I think my role was to talk as one of the authors  
11 of an independent study about the case.

12 Q And again this is in September, so that your  
13 report isn't concluded yet, you are in the course  
14 of your investigation?

15 A Right.

16 Q Okay. And the context of the transcript from that  
17 appearance, and I'm not going to review it all,  
18 but it looks to be that you are making some  
19 comments about the decision, the original decision  
20 of the Minister of Justice in terms of rejecting  
21 the first application?

22 A Uh-huh.

23 Q Does that fit with your recollection?

24 A Quite likely at that point we did have a good deal  
25 of information at our disposal.



1       Q       Okay. And I'll just refer you to a couple of  
2       portions of the transcript. We won't watch the  
3       video. The document is 335020 and the page number  
4       is page number 13, I'll read this section to you,  
5       Mr. Boyd, you are speaking:

6               "I think a lot has been made of course,  
7               and I'm, you know as impartial observer,  
8               I can't really draw any conclusions  
9               about the extent or the nature of  
10              coercion. What I can say is there are  
11              an awful lot of unanswered questions and  
12              it seems to me, very unlikely that a  
13              person like Ron Wilson would recant  
14              twenty years after the fact. I mean,  
15              what's he got to gain from saying, look,  
16              you know, it wasn't as I said it was at  
17              trial. He, he possibly faces a perjury  
18              charge, um, I think the Minister's  
19              letter on the issue on the issue of Ron  
20              Wilson's..."

21       Shirley interrupts you:

22              "Oh, hold on, let's go back to Ron  
23              Wilson. What did, what has he  
24              recanted?"

25       You say:



1 "Basically he says that I, he didn't see  
2 any blood, he, David Milgaard didn't say  
3 "I fixed her", um, and that uh, uh, he  
4 didn't see any knife in David Milgaard's  
5 ..."

6 And you are cut off again. Do you recall what  
7 you were going to state with that last comment?

8 A I assume David Milgaard's hand on the morning of  
9 the murder.

10 Q I'm sorry?

11 A I assume, to complete the thought, it would be  
12 didn't see any knife in David Milgaard's hand on  
13 the morning of the murder.

14 Q Okay. In relation to -- and again this is tough  
15 because we're going back, but all I can ask for is  
16 your recollection. Are you talking about while  
17 they are in Saskatoon?

18 A Yes.

19 Q Okay. And we'll cover this aspect a little bit  
20 further, I'll just read forward, Shirley states:

21 "Yeah, there is the issue of the knife  
22 that David Milgaard was supposed to have  
23 a paring knife in his hand that had the  
24 same, that the color of the handle,  
25 which was purple, was the same color



1                   that was found next to uh, Gail Miller  
2                   and that, that it wasn't in David's  
3                   possession."

4                   And I'm going to try and help us reconstruct  
5                   this, but I take it at this point in time, in  
6                   terms of Ron Wilson's evidence and information,  
7                   you would have had his original trial testimony  
8                   and you would have had as well his statement to  
9                   Paul Henderson?

10          A           Yes.

11          Q           And in Paul Henderson's statement, as we know, Ron  
12                   Wilson indicates that he did not see David in  
13                   possession of a knife on the trip from Regina to  
14                   Saskatoon?

15          A           Uh-huh.

16          Q           And were you under that impression at this point  
17                   in time?

18          A           I assume I was, yes.

19          Q           That that was Ron Wilson's position?

20          A           Yes, yes.

21          Q           And again, you hadn't yet met with Ron Wilson at  
22                   this point in time?

23          A           No, we hadn't.

24          Q           And then just concluding at the paragraph that  
25                   follows, you are stating:



1 "Yeah, now what's interesting about Kim  
2 Campbell's testimony is that she says  
3 that the fact that uh, Ron Wilson wasn't  
4 sure whether he first implicated David  
5 Milgaard in Regina or Saskatoon really  
6 is critical to his credibility. Now,  
7 what Ron Wilson has done is to recant on  
8 the, the much more salient points of his  
9 earlier testimony and he also, through  
10 his lawyer Ken Watson, offered to take a  
11 lie detector test, a polygraph and uh,  
12 ultimately it seemed surprising to me  
13 that the Department of Justice would not  
14 want to pursue that avenue given the  
15 polygraph can give you a good reading as  
16 to credibility. So I'm left with more  
17 questions than answers. It, it's, it's  
18 the existence of those questions that  
19 leads me to believe that, that there's,  
20 there are many flaws in the letter of  
21 February, '91."

22 And would that be an accurate account of your  
23 view on these issues at the time, Mr. Boyd?

24 A Yes.

25 Q You tended to believe Mr. Wilson's recantations to



1 Mr. Henderson?

2 A Yes.

3 Q And you were obviously critical of the minister's  
4 rejection of this aspect in her letter?

5 A Yes.

6 Q Just one other portion, if we turn to page 19,  
7 please, it says PB, but I think, and I've  
8 confirmed from the video, this last portion of the  
9 transcript is yourself speaking on the show and  
10 you indicate:

11 "Well, I would say that, you know, the  
12 key here is whether there has been proof  
13 beyond a reasonable doubt.

14 I don't work for the Milgaard  
15 family, I don't work for the department  
16 of justice, I've been working on this  
17 case with a Vancouver City Police  
18 officer. We have so many doubts and so  
19 many questions that we'd really like to  
20 see the case re-opened. We really don't  
21 know what happened, we're inclined to  
22 believe that David Milgaard didn't  
23 commit this crime and we're inclined to  
24 believe that it is more probable that  
25 Larry Fisher did. But, but there is so





1                   many questions that need to be  
2                   addressed..."

3                   And in terms of that first portion of your  
4                   comment, "The key here is whether there has been  
5                   proof beyond a reasonable doubt," do you recall  
6                   why you were stating that or what your view was  
7                   in that respect?

8           A       Well, I suppose I was thinking that that's the  
9                   standard of criminal conviction and it doesn't  
10                  appear to be met in this case.

11          Q       So were you applying that standard in terms of  
12                   considering whether the case should be re-opened?

13          A       No, I don't think.

14          Q       In your mind?

15          A       I think I was simply trying to get viewers to see  
16                   that this person hadn't been properly convicted  
17                   and that there does not appear to be proof beyond  
18                   a reasonable doubt.

19          Q       So, in effect, you would --

20          A       I --

21          Q       You disagreed with what the jury had concluded,  
22                   then, in the original trial?

23          A       That's correct.

24          Q       And we'll get into that a little bit more shortly.  
25                   Just another September news piece that I'll bring



1 to your attention, the document is 218782. This  
2 looks to be by Peter Edwards and he's writing, and  
3 just in the first paragraph he states:

4 "David Milgaard is probably  
5 innocent of the murder and rape that has  
6 sent him to prison for the past 22  
7 years, the authors of a new study  
8 conclude."

9 And on the next page, please, here it states:

10 "Boyd and Rossmo say they  
11 were frustrated by a high amount of  
12 closed and missing files concerning the  
13 case. This ranges from police reports  
14 on Fisher from the early 1970s to  
15 information used by Campbell during the  
16 Justice Department's 1991 review of the  
17 case."

18 And this was an accurate indication of your  
19 experience with respect to those matters?

20 A Yes.

21 Q And we've probed this a little bit, do you -- but  
22 do you recall any other particulars in terms of  
23 the closed and missing files that are mentioned  
24 here, beyond what's stated?

25 A Police files on the four Saskatoon assaults,



1 letters, correspondence regarding the conviction  
2 of Larry Fisher and the issue of why he pled  
3 guilty in Regina rather than Saskatoon, why the  
4 victims weren't notified, a lot of information  
5 that -- 'closed or missing files' is proxy for  
6 information that we were not able to obtain.

7 Q Okay. And do you recall, were those conclusions  
8 that you had reached by your own efforts, or was  
9 that something that you were being advised about  
10 by counsel for Mr. Milgaard?

11 A Well, I think these were conclusions, these were  
12 conclusions of our own. I don't think we -- we --  
13 we certainly received a lot of material but our  
14 views were not their views.

15 Q Okay. And, of course, we referred to the earlier  
16 access to information requests that you had made,  
17 and you have indicated you didn't receive a  
18 response to that; would that be part of what you  
19 are referring to here?

20 A Yes.

21 Q Okay. I'll read on from there. The next portion  
22 states:

23 "One of the files they would like to  
24 study concerns another attack possibly  
25 committed by Fisher at roughly the same



1 time and location as where Miller's body  
2 was found on Jan. 31, 1969.

3 This victim said she was able  
4 to fend off her attacker. The foiled  
5 attack could have left the killer in an  
6 intense, murderous rage when he found  
7 Miller, the study's authors said."

8 And we'll follow this up with Dr. Rossmo, because  
9 this might fall more squarely with him, but do  
10 you recall what this related to?

11 A To the possibility that Larry Fisher had been  
12 involved in another attack either before or after  
13 the Gail Miller murder.

14 Q And do you recall the name of this victim that's  
15 referred to?

16 A If you said, I -- if you said the name I'd say  
17 yes, that's true.

18 Q Was it (V4)---- (V4)---?

19 A Yes, that's right.

20 Q And that does refresh your mind?

21 A Yes.

22 Q That is the victim that you believe was being  
23 referred to here?

24 A Yes.

25 Q And, again, I've got some questions for Dr. Rossmo



1 in that aspect but I'll move forward in this  
2 article. It says afterwards:

3 "Unlike the Centurion study,  
4 Boyd and Rossmo stop short of accusing  
5 Saskatoon police and the federal Justice  
6 Department of an orchestrated coverup.

7 'Human beings are much more  
8 likely to be incompetent than  
9 conspirators,' Boyd said."

10 Q And, again, would that be accurate in terms of  
11 your position --

12 A I think so.

13 Q -- on this aspect at the time?

14 A Yes.

15 Q And continuing from there forward:

16 "Justice Minister Kim  
17 Campbell's reasoning for turning down a  
18 new trial was harshly criticized by  
19 Boyd.

20 Crown witness Ron Wilson should  
21 be taken very seriously when he now says  
22 that he gave false evidence in Court to  
23 wrongly convict Milgaard, Boyd said.

24 'There's nothing in it for  
25 him,' Boyd said. 'He risks a possible



1 perjury charge, in fact.'".

2 And do you recall whether this was your most  
3 significant concern respecting Ms. Campbell's  
4 letter, or was this just one of?

5 A I think it was one of many concerns. A reporter  
6 asks you, "Should the recantation of Ron Wilson be  
7 taken very seriously", and my response is, of  
8 course, "Yes".

9 My concerns with the letter go  
10 to a range of issues well beyond Ron Wilson's  
11 recantation.

12 Q Okay. And just before we get into the interview  
13 with Ron Wilson there's one further document that  
14 we'll look at, and it seems to relate to  
15 consideration given at or around this time period,  
16 again in September, to the possibility of a book  
17 on this matter that you were considering, and do  
18 you have some recollection of this aspect?

19 A I do, yes.

20 Q Okay. And maybe we can look at the document and  
21 that can serve as our reference point. The ID is  
22 163096. Were your plans at this point in time,  
23 Mr. Boyd, to write a book?

24 A I was interested in writing a book. I had just  
25 finished a book that was being published by Key



1 Porter and had come out in the, that was coming  
2 out in the fall of 1991, so I was interested in  
3 another writing project.

4 Q Okay. And that document will be up just in a  
5 moment. I'm sorry, did I say 163096. And you  
6 have had a chance to review this document prior to  
7 testimony today, Mr. Boyd?

8 A I have, yes.

9 Q And maybe you can tell me at the outset, we're  
10 going to review some portions, but what is this  
11 document?

12 A It's a book proposal from my agent at the time,  
13 Denise Bukowski.

14 Q And that's The Bukowski Agency referred to at the  
15 top?

16 A That's correct.

17 Q And was this the title of a book that you were  
18 contemplating at the time?

19 A Yes.

20 Q And who wrote this document?

21 A I wrote it in -- I wrote a draft and my agent, you  
22 might say, spiced it up a bit.

23 Q Okay. And when you say "spiced it up" I want to  
24 be fair before we get into it; what are you  
25 referring to?



1       A       I think tried to -- dramatized it for the purpose  
2               of sale of the proposal.

3       Q       Okay. And I'll turn your attention to some of the  
4               comments in the proposal. If we turn to the next  
5               page, please, you will see the first sub-heading  
6               is about the book and states part-way through that  
7               paragraph:

8                        "What most people do not know is that  
9                        long before the question of Milgaard's  
10                      guilt became a public issue,  
11                      criminologist Neil Boyd has been  
12                      investigating the case, with the full  
13                      cooperation of David, his mother, and  
14                      his lawyers, as well as all the parties  
15                      involved in the case."

16              And, for example, were those your words, Mr.  
17              Boyd?

18       A       No.

19       Q       And --

20       A       Well I was not, did not have the full cooperation,  
21               obviously, of all of the parties involved in the  
22               case.

23       Q       And I assume we'd agree that it's inaccurate in  
24               terms of suggesting that it, that your  
25               involvement, somehow preceded the --





1 A That's correct.

2 Q -- public --

3 A It overstates my involvement.

4 Q Okay. And then the next sentence:

5 "With the assistance of police officer  
6 and Ph.D. candidate Kim Rossmo, he has  
7 unearthed information that has lead key  
8 power-brokers in this case to change  
9 their minds."

10 And do you recall what was being referred to  
11 there?

12 A No, that sentence, I don't think any of that is my  
13 language in the sense that I would not say:

14 "With the assistance of Ph.D. candidate  
15 Kim Rossmo ...",  
16 it was a jointly offered effort and I don't think  
17 I would use a phrase, I did not use a phrase such  
18 as leading:

19 "... key power-brokers ... to change  
20 their minds."

21 Q Okay, and maybe I should back up, and again I just  
22 want to be clear on it. Mr. Boyd, am I getting  
23 the sense that you would have written some form of  
24 document relating this proposal, is that right?

25 A That's correct.



1 Q And then it would have been taken by your agent --

2 A And edited.

3 Q -- and edited?

4 A Yeah.

5 Q Okay. And some of the things, already, that we're  
6 referring to are some of the editing that was  
7 done?

8 A Some of the editing that was done at the time.

9 Q And you don't know, and if we changed the wording  
10 in terms of the substance of that last comment  
11 about certain individuals changing their minds on  
12 the matter, do you know what that might be  
13 referring to?

14 A No.

15 Q And you've referred already --

16 A I mean I suppose, you know, if you wanted to  
17 describe Ron Wilson as a key power-broker, I don't  
18 think that really makes sense in the context of  
19 things.

20 Q Okay. And could it have been Dr. Emson that you  
21 were referring to there?

22 A That's a possibility.

23 Q Okay. I'll move down to the next paragraph. It  
24 states:

25 "Boyd and Rossmo have investigated ...",



1           sorry this portion:

2                   "Boyd and Rossmo have investigated this  
3                   crime using the transcripts of the  
4                   preliminary hearing and trial,  
5                   interviews with witnesses, examination  
6                   of exhibits, and consultation with  
7                   counsel for the defence and Crown."

8           And, again, it would be -- that'd be incorrect  
9           insofar as --

10       A       Unless a telephone call counts as consultation  
11       with the Crown.

12       Q       Okay. So in terms, that's reference to the  
13       telephone conversation with Bobs Caldwell that you  
14       mentioned earlier, --

15       A       Yes.

16       Q       -- but obviously incorrect in terms of --

17       A       In terms of --

18       Q       -- mentioning con --

19       A       -- the common understanding of "consultation".

20       Q       Okay. And no con -- you didn't have any contact  
21       with former Justice Tallis; --

22       A       No, --

23       Q       -- correct?

24       A       -- I didn't.

25       Q       Okay. If we move down the page a little bit



1 further. Oh, I'm sorry, you are actually closer  
2 to the portion starting here. I'll read this to  
3 you:

4 "As a result, Neil Boyd has concluded  
5 the following to date:

6 -- that there is virtually no evidence  
7 connecting David Milgaard to the  
8 crime;

9 -- that it is very unlikely that he  
10 committed it;

11 -- that Larry Fisher, who is currently  
12 serving time for a series of rapes,  
13 is the more likely perpetrator.

14 -- that through incompetence or design,  
15 provincial and federal officials have  
16 failed to see that justice is done in  
17 this case, despite repeated appeals  
18 to them to do so."

19 And would that be an accurate summary of your  
20 conclusions on the matter at the time?

21 A It's not far off.

22 Q Any clarification that you want to make?

23 A When you say "virtually no evidence", there was in  
24 fact some evidence connecting David Milgaard to  
25 the crime, and I understand why he was convicted



1 in 1970, but -- so I'm not sure that I -- I think  
2 it's a little bald to state there was virtually no  
3 evidence connecting him to the crime. There was  
4 some, it just wasn't very good evidence, it  
5 wasn't --

6 Q Okay. And on a bit of a tangent, I had meant to  
7 ask you earlier, did you have any concerns in  
8 terms of some of your public comments and  
9 statements about identifying Larry Fisher, or if I  
10 can use the term 'pointing the finger at Larry  
11 Fisher', so to speak, as the guilty party; did you  
12 have concerns about publicly stating that at all  
13 or --

14 A No.

15 Q -- expressing those views?

16 A No.

17 Q Okay.

18 A Others had gone before and the evidence, best  
19 evidence, suggested that he was the perpetrator.

20 Q Okay. And if we turn to the next page it looks  
21 like it's a chapter outline?

22 A Right.

23 Q And take a look at this, number 2, The Trial. It  
24 states:

25 "Through recreation of the police



1 investigation and the trial, this  
2 chapter demonstrates why David Milgaard  
3 was convicted despite weaknesses in the  
4 case against him. For example:

5 -- the judge failed to instruct the jury  
6 adequately and permitted the leading  
7 of witnesses to offer potentially  
8 misleading evidence;"

9 And with respect to that comment I'll pause. Is  
10 that an accurate account of your view with  
11 respect to that particular criticism?

12 A No.

13 Q And was that, then, something that was added by  
14 the agent?

15 A Umm, I -- you know, I can't be specific about  
16 that --

17 Q Okay.

18 A -- because I can't remember. But, certainly, one  
19 can disagree with the both elements of both of  
20 those claims in terms of failing to instruct and  
21 permitting:

22 "... the leading of witnesses to offer  
23 potentially misleading evidence."

24 Q Okay. And in fairness, Mr. Boyd, I think when we  
25 get to your report, at least on one aspect



1 relating to the forensics, you do take some issue  
2 with the instruction to the jury, perhaps, by the  
3 judge in relation to that matter, or the lack of  
4 instruction?

5 A Uh-huh. Well the best or the most appropriate  
6 direction might have been that the best available  
7 evidence with respect to secretor status was  
8 exculpatory.

9 Q Okay. The next point you make:  
10 "-- the chief of police harshly  
11 condemned 'hippies' and 'drug users'  
12 who practiced 'free love';",  
13 and that's information that you had gathered?

14 A Yes.

15 Q And do you recall from what source?

16 A Newspaper accounts.

17 Q Okay. And then next three points:  
18 "-- after hours of police interrogation  
19 that implied he committed the crime,  
20 and during prolonged daily use of  
21 LSD, one of Milgaard's travelling  
22 companions began to point the finger  
23 at David. He has recently recanted  
24 his testimony.

25 -- the forensic evidence at the trial



1                   was at best exculpatory and at worst  
2                   irrelevant;  
3                -- evidence of witnesses was either  
4                   irrelevant, contradictory,  
5                   unreliable, or later recanted."

6               And perhaps they're generalizations but, on that  
7               basis, are those points accurate summaries of  
8               views you held at the time?

9       A       Umm, to the -- yes, to a certain extent, although  
10              the point "after hours of police interrogation"  
11              implies that there was -- in -- the police conduct  
12              was inappropriate, and I'm not sure that that was  
13              the case.

14      Q       Okay. And you would --

15      A       I wasn't sure, at the time, that that was the  
16              case.

17      Q       Right. And we had already referred to some public  
18              comments you had made prior to this relating to  
19              police conduct --

20      A       Yes, yeah.

21      Q       -- and not necessarily having great concern with  
22              that conduct?

23      A       Right. And I, frankly, don't recall prolonged  
24              daily use of LSD by Ron Wilson.

25      Q       Okay.





1 COMMISSIONER MacCALLUM: Excuse me, were  
2 these given as examples of matters which  
3 contributed to the conviction?

4 A Yeah, points that would demonstrate why he was  
5 convicted. Umm --

6 COMMISSIONER MacCALLUM: Well when did the  
7 chief of police -- can -- did he give such  
8 evidence that he harshly condemned --

9 A It was more a statement regarding the context of  
10 attitudes towards young hippies in Saskatoon at  
11 the time.

12 COMMISSIONER MacCALLUM: No, but when did  
13 he state this?

14 A Oh.

15 COMMISSIONER MacCALLUM: Before the trial  
16 or during the trial?

17 A Well, before the trial and well before the event  
18 itself, sometime during the 1960s, I don't recall  
19 the specific date.

20 COMMISSIONER MacCALLUM: Oh, okay.

21 BY MR. HARDY:

22 Q The last point under this subheading The Trial you  
23 state:

24 "-- some members of the Saskatoon Police  
25 force, and perhaps the provincial and



1 federal governments, have been  
2 covering up evidence of a connection  
3 between the Milgaard and Fisher cases  
4 since 1970."

5 And was this your view at the time?

6 A No, it wasn't, and it isn't today. I -- that --  
7 in the sense that our -- we had and have  
8 questions, we do not point the finger at any  
9 particular individual and say that that person  
10 has -- or persons have covered up evidence, we  
11 don't have any proof of that kind of wrongdoing.

12 Q So that this was misstated to the extent that you  
13 had questions respecting those matters at this  
14 point in time?

15 A Yes, I think our report is quite clear on that  
16 point, --

17 Q Good.

18 A -- our final report.

19 Q Good. And if we can turn, lastly, to page 5 of  
20 the document under the sub-heading About the  
21 Author, it states:

22 "Since taking an interest in this case  
23 Neil Boyd has assumed centre stage in  
24 media coverage of it, first locally and  
25 now nationally. On Monday September 16



1                   he taped a segment of the *Shirley* show  
2                   devoted exclusively to this case, and on  
3                   September 21 he appeared on *On the Line*  
4                   on CBC Newsworld ...",

5                   and also a reference there to the *Toronto Star*.  
6                   And did you share this view of your role at the  
7                   time?

8           A       No.

9           Q       Okay. And that falls into the category that you  
10           were describing to us earlier in terms of the  
11           'spicing-up' of --

12          A       Yes.

13          Q       -- this presentation?

14          A       Yes.

15          Q       And then lastly, if we go to the bottom of the  
16                   page, please, under Market and Competition --  
17                   sorry just up, that paragraph there -- it states:

18                   "There will be other books based on this  
19                   case (we already know of one to be  
20                   released by McClelland & Stewart this  
21                   fall, written by two CBC Winnipeg  
22                   television producers) but there will be  
23                   none that have the cooperation of the  
24                   Milgaard family and lawyers. David  
25                   Milgaard's mother has publicly declared



1 her resentment of the fact that M&S  
2 claimed that their book had the family's  
3 cooperation and authorization. She has  
4 recently told the author that she is  
5 eager to proceed with this book."

6 And was that accurate at the time, what I just  
7 read to you?

8 A I don't think so. There was never any agreement  
9 and I wasn't interested in writing a book that was  
10 somebody else's book, in other words I, if I was  
11 going to write a book about the case it was not  
12 going to be the case as seen through the eyes of  
13 Joyce Milgaard, it was in all likelihood going to  
14 be a book seen through my eyes or through the eyes  
15 of Neil Boyd and Kim Rossmo.

16 Q Okay. And do you recall any communications with  
17 Joyce Milgaard, then, about this possibility or  
18 the discussion that's referred to here?

19 A I think we talked but I can't -- I know that that  
20 may have been a sticking point, that -- but I  
21 can't recall the specifics. I do know that the --  
22 that that claim -- that I wasn't interested in  
23 writing a book other than my own book, and that I  
24 don't think Joyce Milgaard was going to give me  
25 some sort of unilateral cooperation on that basis,



1 I don't think that was the arrangement at all.

2 Q And do you have any recollection of the other book  
3 possibility that's mentioned in that paragraph  
4 with McClelland & Stewart?

5 A No, I don't, I can't -- I may have at the time but  
6 I don't recall now.

7 Q Okay. And, Mr. Boyd, ultimately did your  
8 intention to write a book influence how you  
9 approached this matter, --

10 A No.

11 Q -- your investigation?

12 A No, it -- the book was, I think, an issue that was  
13 much more keenly advanced by my agent than it was  
14 by myself, and in fact it was shortly after this  
15 experience that I -- we parted ways, and I have a  
16 new literary agent, Dean Cook, who I'm still with  
17 today.

18 Q Okay. There is a different document, and we don't  
19 have to turn to it, but it shows a fax cover sheet  
20 for the document that we've just reviewed that's  
21 directed to Lorne Milgaard from Denise Bukowski  
22 that's dated September 30th, 1991. Do you have  
23 any recollection of why the document was being  
24 faxed to Lorne Milgaard?

25 A Well I -- it seems to me, and this is just a



1 recollection, but that my agent must have thought  
2 that I should get an exclusive from the family,  
3 and that we could proceed with the book on that  
4 basis, but ultimately that couldn't work because I  
5 wasn't interested in writing a book that had any  
6 kind of editorial control other than my own, but,  
7 you know, I don't recall the -- this is obviously  
8 something that she did and, as I indicated, that  
9 it was kind of a tense period between myself and  
10 my agent at that point and we decided to part ways  
11 after that submission.

12 Q What ultimately happened to any thoughts towards  
13 writing a book for yourself?

14 A I decided that it just -- you know, I would have  
15 had -- it had been a, it was and had been, was and  
16 is a very interesting experience in working with  
17 Kim Rossmo, and I really didn't have any desire,  
18 after that experience with the Three Hippies  
19 proposal, to go any further, and went on to other  
20 things.

21 Q So we'll turn, now, to your interview of Ron  
22 Wilson. And I think the date of that interview,  
23 we'll see from the document, was October 7th,  
24 1991. And again, perhaps just to confirm, prior  
25 to that interview you would have reviewed, of



1 course, Mr. Wilson's trial transcript and his  
2 preliminary hearing transcript?

3 A Yes.

4 Q And you would have had his statement to Paul  
5 Henderson?

6 A Yes.

7 Q And am I correct, as well, that you had a  
8 transcript of the interview of Ron Wilson that had  
9 been conducted by Eugene Williams as well?

10 A I don't recall.

11 Q And I think we'll see in the transcript that there  
12 is some reference to that that perhaps makes that  
13 more clear?

14 A Okay.

15 Q Based upon all that you had gathered going into  
16 that interview do you recall, prior to the  
17 interview, what your assessment was of Mr. Wilson  
18 and perhaps his credibility?

19 A Umm, well I was interested in the validity of the  
20 recantation, because it seemed to me that -- and  
21 it seemed to Kim Rossmo as well -- that Paul  
22 Henderson had been hired by the Milgaard family,  
23 that there was some issue of independence, that we  
24 wanted to see for ourselves what he was about. I  
25 found it surprising that two people, Nichol John



1 and Ron Wilson, could have lied about their  
2 teenage companion and known that he was wrongfully  
3 in jail for more than 20 years for a crime that he  
4 didn't commit, and so I wanted to get a measure of  
5 this person, and so -- we also wanted to know how  
6 did this come about, how did you come from a  
7 position of denying any involvement shortly after  
8 the murder to the point in May of 1969 where you  
9 indicated to police that he had committed this  
10 crime.

11 Q I'll turn to a transcript of the interview, it's  
12 154640, and do you recognize that document Mr.  
13 Boyd?

14 A I do.

15 Q Is that your handwriting in the top right-hand  
16 corner?

17 A It is.

18 Q And do you know who recorded this interview?

19 A I think it was one of the people that I hired.  
20 When I had written a book about homicide, a book  
21 about drugs, I'd interviewed drug dealers, I'd  
22 interviewed murderers, and so I'd hired somebody  
23 to transcribe the interviews, and I think this was  
24 a woman who I'd hired to do some of the drug  
25 dealer interviews, and so I'd hired her to





1 transcribe the tape-recorded interview.

2 Q And was it a matter of it being tape-recorded at  
3 the time or actually transcribed at the time of  
4 the interview?

5 A It was tape-recorded and later transcribed.

6 Q Okay. And do you recall why -- and I only ask the  
7 question 'why' because I don't think we see  
8 similar evidence of your other meetings with  
9 witnesses -- why, in particular, this interview  
10 was recorded and transcribed?

11 A I think we thought of it as quite a critical  
12 interview because it was a critical part of the  
13 Section 690 application, it was a critical part of  
14 the disagreement, the trustworthiness of the  
15 recantation, and so it became kind of a focal  
16 point. You know, we hadn't been able to make  
17 contact with Nichol John, we had been able to make  
18 contact with Ron Wilson, so we wanted to be very  
19 careful about the procedure. And we also were --  
20 we did have to go through Ken Watson, who was the  
21 lawyer for Ron Wilson, in order to set up a  
22 procedure that was satisfactory to him and to his  
23 client, so there was just a lot more time and  
24 resources invested in that particular interview.

25 Q And who did you understand this transcript was



1 going to be provided to?

2 A Well, to -- it was going to become a basis of the  
3 report, and we, I think the agreement was that we  
4 would send it back, once it had been transcribed  
5 send it back to counsel for Ron Wilson to ensure  
6 that it was acceptable, and once we were given  
7 that green light we were essentially given the  
8 green light to use it in whatever context we  
9 wanted.

10 Q And do you recall whether that green light was  
11 obtained?

12 A Yes.

13 Q And it was obtained?

14 A Yes.

15 Q And do you recall whether it was your  
16 understanding that this transcript would be  
17 provided to the Department of Justice, the federal  
18 Department of Justice, in the course of their  
19 review?

20 A Umm, I'm not sure that that was ever agreed upon.

21 Q Okay. And so it's your recollection, though,  
22 that, following receipt of the green light from  
23 Mr. Wilson's counsel, that you would have then  
24 sent the transcript to somebody?

25 A Sent a transcript to -- yes --



1 Q To Mr. Milgaard's counsel?

2 A Quite likely. It's quite possible.

3 Q Do you have a recollection of that?

4 A No.

5 Q And who was present at this interview then?

6 A Myself, Kim Rossmo, Ron Wilson, and his counsel.

7 Q And I should note, I'm going to come back to the  
8 issue of the transcript, there are some other  
9 documents that we'll look at in terms of who it  
10 was provided to and the understandings, but that  
11 happens a little bit later in time.

12 I'm going to refer you to some  
13 of the other portions of the transcript. If we  
14 could turn to page 2, please, and I assume you  
15 have some familiarity with the areas that were  
16 covered so I won't read too many specific portions  
17 to you, but you will see on this page, Mr. Boyd,  
18 that yourself and Dr. Rossmo begin to ask Mr.  
19 Wilson some questions about drug use and in terms  
20 of whether or not they perhaps had been using  
21 drugs prior to their departure from Regina on the  
22 trip to Saskatoon on January 31st, and if we move  
23 to the next page at the top of the page you ask  
24 the question:

25 "But you think you took acid within, say



1 24 hours of leaving Regina."

2 Ron Wilson:

3 "Yeah."

4 You ask:

5 "All of you?"

6 Ron Wilson:

7 "Just David and me."

8 You ask:

9 "Not Nicole?"

10 Ron Wilson:

11 "Not that I remember."

12 And in terms of this area of questioning, was  
13 this of particular interest for you, Mr. Boyd, in  
14 your considerations?

15 A Well I was trying to get some assessment of his  
16 character, of what he'd been doing at the time,  
17 tried to get some perspective of what he was like  
18 and how people might have reacted to him as well.

19 Q What about the questions relating to drug use on  
20 the trip itself, from Regina to Saskatoon, or  
21 their use just prior to?

22 A Partly, that was just to get a context, and partly  
23 it was to understand a little bit better who these  
24 people were and what kinds of activities they were  
25 engaging in when they came into Saskatoon.



1 Q And was there something more than that, in terms  
2 of your reference particularly to acid, or the  
3 question relating to acid?

4 A Well I -- the question about Nichol John, I think,  
5 was prompted by wondering whether some of the  
6 unusual -- you know, whether any of her conduct  
7 might have been traced to drug use, specifically  
8 to LSD use.

9 Q And did that concern specifically relate, as well,  
10 to Ron Wilson?

11 A To some extent. I mean I wouldn't -- I don't  
12 think that I put great significance then, nor do I  
13 now, in terms of the pattern of drug use --

14 Q Okay.

15 A -- except insofar as reaction to it might be  
16 concerned.

17 Q Turn to the next page, which is page 4, and just  
18 at the top of the page, and we'll see that what's  
19 being discussed there is David's version of events  
20 coming into Saskatoon, and I think probably his  
21 affidavit, or perhaps one of those versions that  
22 he had previously been provided -- that he had  
23 previously provided is being referred to, and Ron  
24 Wilson indicates that there was one point that he  
25 had left out:



1 "When we made the U-turn after we asked  
2 the lady for directions."

3 he indicates that they had gotten stuck. And I  
4 am just curious; do you recall, going into this  
5 meeting with Ron Wilson, whether you were  
6 expecting him to confirm that they had been stuck  
7 on a first occasion, as described here, when  
8 making a U-turn?

9 A No, I don't recall the U-turn. I do recall the  
10 issue of being stuck, but for a very short period  
11 of time as opposed to the period of time that was  
12 described at trial.

13 Q And I ask that in part because I don't think it's  
14 mentioned in the Paul Henderson statement, and so  
15 I realize we're trying to capture your state of  
16 mind going into the interview, but I was just  
17 curious whether that information was a surprise to  
18 you at the time or whether you were expecting Mr.  
19 Wilson to confirm that?

20 A I can't recall.

21 Q Okay. And if we move to page 5, he's still at the  
22 top of the page talking about the issue of being  
23 stuck on the first occasion and he refers to being  
24 struck at a 'T' intersection. Do you recall him  
25 giving you that description?



1 A Vaguely, yes.

2 Q Do you recall whether you recognized at the time  
3 that that was at variance with his testimony at  
4 the original trial?

5 A Yes, I remember that, yeah.

6 Q Did you find him credible on this description?

7 A My impression, I found him cred -- I found him  
8 credible on the issue of his general recantation.  
9 I didn't find him credible with respect to  
10 specifics and it struck me that he was the kind of  
11 person who, he was a fairly weak person and who  
12 might respond favourably to any suggestions that  
13 you made to a point. I mean, he already crossed  
14 an important line in his recantation to Paul  
15 Henderson, so that was the big question. The  
16 other question was one of what is this person  
17 about and how is it that somebody could get to the  
18 point of knowing, of putting a person in jail,  
19 knowing for 20 years he had done that and never  
20 doing anything about it, and through the course of  
21 the time that we spent with him, I got some sense  
22 of that, and, you know, I don't think he knew in  
23 great detail all of the specifics of that morning  
24 and I think one can see in his varying statements  
25 inconsistency, but again, not on the critical



1 issues.

2 Q And beginning at about page 6, that's the next  
3 page, he takes you through and you take him  
4 through a longer discussion of the issue of being  
5 stuck on that first occasion and also of he and  
6 David splitting up from his recollection and he  
7 tells you that, by page 7, sorry, he tells you  
8 that they were away for no more than two minutes,  
9 and then in the middle of the page starting here,  
10 you ask the question:

11 "Do you think there's anything...do you  
12 think he could have killed somebody  
13 while you were...on his way from the  
14 car?"

15 Ron Wilson:

16 "No."

17 Yourself:

18 "Do you think it's impossible?"

19 Ron Wilson:

20 "Totally."

21 Dr. Rossmo:

22 "And you were with him every other  
23 time?"

24 Ron Wilson:

25 "Yup."





1 Dr. Rossmo:

2 "So, in your mind, you believe he didn't  
3 do it?"

4 Ron Wilson:

5 "Exactly."

6 Dr. Rossmo:

7 "D'you think this...you're positive of  
8 this?"

9 I'm wondering, Mr. Boyd, did you consider this  
10 information to be the main thrust of Mr. Wilson's  
11 recantation?

12 A That's certainly part of it. I would have to look  
13 at the entire interview in context, but that's  
14 certainly a critical part.

15 Q And you believed him in terms of this version?

16 A I did, yes.

17 Q And I think this was consistent as well with what  
18 he had told Paul Henderson and Eugene Williams  
19 just on that particular aspect?

20 A Yes.

21 Q And if we turn to page 11, you'll see at the top  
22 of the page Dr. Rossmo is asking some questions  
23 about Paul Henderson and the work that he had  
24 conducted. Do you recall being similarly  
25 interested in Ron's perspective on Paul Henderson?



1 A Yes.

2 Q And in what respect?

3 A Well, again, it was knowing the context in which  
4 Paul Henderson got in touch, knowing the context  
5 in which the questions were asked and how he  
6 responded and why. I mean, why would this one  
7 man, Paul Henderson, get Ron Wilson to change his  
8 statement after all these years.

9 Q And did you come to have any concerns about Paul  
10 Henderson's dealings with Ron Wilson?

11 A No, not at -- no, no. I mean, that was a concern  
12 right from the start in terms of our knowing that  
13 he was somebody hired by the Milgaard family, that  
14 he obviously could be seen as lacking objectivity  
15 in that particular respect, but we found nothing  
16 that led us to believe that we ought not to trust  
17 the recantation.

18 Q Okay. And just continuing on to the bottom of  
19 that page, Dr. Rossmo asks some questions of  
20 Mr. Wilson of his thoughts on the Eugene Williams'  
21 interview and I think it becomes evident here that  
22 perhaps you both have had a review of that  
23 transcript, and on the next page, page 12, Dr.  
24 Rossmo states in the middle of the page:

25 "It looked more like a cross-examination



1 at trial..."

2 And then you state a little bit further down:

3 "We did find that a little  
4 disappointing, considering the role that  
5 he should have..."

6 I take it that this was an accurate account of  
7 your views on this particular aspect at the time?

8 A Yes.

9 Q And what was your concern regarding Eugene  
10 Williams' approach?

11 A Lack of impartiality.

12 Q And you mention a role that perhaps he should have  
13 had. What role did you think he should have in  
14 his investigation or in his efforts?

15 A Again, I can only say generally it seemed that  
16 there was a lack of impartiality.

17 Q And can you give us any particulars of what had  
18 led you to that conclusion?

19 A I -- you know, I think it's again looking at the  
20 evidence as a whole and not developing with any,  
21 to any serious extent the arguments that might lie  
22 in favour of the validity of the recantation; that  
23 is to say, not at least taking on those arguments  
24 and explaining why they were not tenable, why, you  
25 know, why risking perjury, why wasn't that an



1           important consideration, so the tenor of the  
2           commentary seemed dismissive.

3                       On the other hand, when I look  
4           at that now, I think, well, why wouldn't Eugene  
5           Williams want to put Ron Wilson through a  
6           cross-examination of a sort, wouldn't that be an  
7           appropriate thing to do, so as I say, that's how I  
8           felt at the time. When I look at it in retrospect  
9           I think, no, that's actually his task, is to be  
10          very tough with Ron Wilson and to ensure that  
11          under kind of cross-examination that the  
12          recantation stands up.

13       Q       Okay.

14                       COMMISSIONER MacCALLUM: Who is Ken W?

15       A       Oh, KW is Ken Watson I believe.

16                       COMMISSIONER MacCALLUM: Oh, Ken Watson.

17       A       Counsel for Ron Wilson.

18                       COMMISSIONER MacCALLUM: Was he invited to  
19          make comments or did he do that on his own?

20       A       I think he did that on his own. I'm not sure that  
21          we --

22       BY MR. HARDY:

23       Q       Turn to page 18 of that document, please, part of  
24          the way through the page beginning here, you begin  
25          to press Mr. Wilson on how he testified the way he



1           did at trial, you state:

2                    "But you must've know, though, that you  
3                    weren't away from the car very long, and  
4                    it's just like you said, that it was  
5                    impossible for David Milgaard to have  
6                    committed the crime."

7           Ron Wilson:

8                    "Exactly. But, uh...the way questioning  
9                    and stuff...it's kinds of you or him.  
10                   Like, they're looking for somebody to  
11                   pin this on."

12          Yourself:

13                    "Right."

14          Mr. Wilson:

15                    "To me...I don't want it to be me,  
16                    right. So, okay, you want this guy, you  
17                    got him, that type of thing. That's how  
18                    everything turned around."

19          And I'll continue with that on the next page, if  
20          we can move to the next page starting at the top,  
21          you ask:

22                    "When you were testifying in court, did  
23                    you feel you were lying?"

24          Mr. Wilson:

25                    "I felt I was and I felt I wasn't. I



1                   figured, well, somehow it was getting  
2                   put together, so it's got to be right."

3           Yourself:

4                   "Did you look at David Milgaard at all,  
5                   or how did you feel about that whole  
6                   menage?"

7           Mr. Wilson:

8                   "Uhh, I had no choice but to look at  
9                   David. He was right in front of you.  
10                  Kind of tried not to look at him."

11          Dr. Rossmo:

12                  "Did it not bother you...let me just  
13                  back up a second, here. So, at trial  
14                  you knew what you were saying wasn't  
15                  correct, that you hadn't actually seen  
16                  that stuff, right?"

17          Mr. Wilson:

18                  "Exactly."

19          Dr. Rossmo:

20                  "But, at that time, did you think that  
21                  David Milgaard had done the murder?"

22          Mr. Wilson:

23                  "I was starting to think he had, yeah."

24          Dr. Rossmo:

25                  "So what you are saying, I see what



1                   you're saying now, and correct me if I'm  
2                   wrong, but what you're saying is, 'I  
3                   lied, but it did actually happen,  
4                   therefore it's not...it's also the  
5                   truth, in a way'."

6           Mr. Wilson:

7                   "Yeah, I was starting to believe it."

8           Mr. Boyd:

9                   "Mmm, okay."

10          Mr. Watson:

11                   "You see what he's at, what he's getting  
12                   at."

13          Dr. Rossmo:

14                   "Did it bother you that David was going  
15                   to be put away for life?"

16          Mr. Wilson:

17                   "Not really. At that point in time I  
18                   didn't give a shit."

19          Dr. Rossmo:

20                   "Okay, now, did you not give a shit  
21                   because you thought that he had done it,  
22                   or did you not give a shit because you  
23                   didn't like him, or care for him, or did  
24                   you not give a shit because of your mind  
25                   being messed up on drugs,



1 or...(inaudible)

2 Mr. Wilson:

3 "I would say I did not give a shit  
4 because it wasn't me...and y'know, I was  
5 happy for that. I just wanted to get  
6 the hell out of there, and whatever  
7 happened, happened. And I figured,  
8 well, okay, in two years he'll be out on  
9 parole, no big deal."

10 And do you recall Ron giving these answers to the  
11 questions that are being posed?

12 A Very clearly, yes.

13 Q Did you find him sincere on these explanations?

14 A Yes.

15 Q And how did you work this information into your  
16 own conclusions as you were considering this  
17 matter?

18 A Well, it made the recantation more clear, it made  
19 him more clear as a human being, that he was a  
20 very weak person who at the time was just wanting  
21 to get the police off his back. I believe there's  
22 another section in the interview that, the section  
23 I remember best I suppose, it says something like  
24 talking with Nichol John we just decided, okay,  
25 let's sink him, and here are two weak people more





1           concerned about their own self interest and not  
2           particularly concerned that they may be sending an  
3           innocent person to jail, that they just don't want  
4           to deal with the police questions any more and  
5           they are happy for that.

6       Q       Okay.

7       A       And that seemed credible and still seems credible  
8           today.

9       Q       Move to page 21, please, you ask the question near  
10           the top of the page:

11                   "How do you feel about how the police  
12                   dealt with you before the trial? Ed  
13                   Karst, for example."

14       Mr. Wilson:

15                   "I was talking to Ken earlier today.  
16                   They all treated me nice. What I tried  
17                   to get across to Williams, which I never  
18                   could, was that, like when you're  
19                   watching TV ...you've got that bad cop  
20                   who wants to beat this out of you and  
21                   stuff...it doesn't happen that way.  
22                   Like I had...later on in my dealings,  
23                   bad cops. But these guys were nice. I  
24                   think, now that you look back on it...  
25                   being nice gets them further ahead than



1                   being nasty to you."

2                   Yourself:

3                   "Yeah. So there wasn't anything about  
4                   the way in which they conducted  
5                   questioning that uh..."

6                   Mr. Wilson:

7                   "I mean, they were questioning me like I  
8                   was a suspect also and that part always  
9                   scared me."

10                  And how did you consider this information from  
11                  Mr. Wilson?

12           A       That didn't surprise us. We didn't -- we had no  
13                  evidence upon which to believe that the police  
14                  were more than persistent. There was some  
15                  evidence, there is some evidence with respect to  
16                  Nichol John being in police cells overnight, it's  
17                  unclear as to how and why that happened, but we  
18                  did not and don't have any evidence that the  
19                  police conduct in relation to Wilson particularly  
20                  went beyond persistent questioning.

21           Q       And you would have had Paul Henderson's, or the  
22                  statement of Paul Henderson at the time. How did  
23                  you reconcile that with the comments and the  
24                  statement about, I believe it was manipulation and  
25                  pressure by the police?



1           A           You know, we know from the track record of Ron  
2                       Wilson that he is a person who puts self interest  
3                       first in many circumstances. I tend to believe  
4                       this interpretation. He said it on more than one  
5                       occasion. I don't believe that the police  
6                       officers who were pursuing David Milgaard at the  
7                       time thought then that they had the wrong person.  
8                       I think they saw in Wilson and John two key  
9                       witnesses.

10          Q           And I guess what I'm wondering about is in terms  
11                       of assessing his credibility, even on some of  
12                       these key points, given that there appeared to be  
13                       this difference between his statement to Paul  
14                       Henderson and now the statement to you, and you've  
15                       given us a description of your thoughts, but do  
16                       you have anything to add to that in terms of your  
17                       assessment of his credibility?

18          A           Well, only that he's a person who is going to tell  
19                       people what they want to hear to a significant  
20                       extent.

21          Q           Okay. Turn to page 27, one question you have here  
22                       for Mr. Wilson, you state:

23                       "One comment you made, I want to pick up  
24                       on this story, but I'm curious, you said  
25                       you're paying for it now. For something



1                   that you did to Paul Henderson and  
2                   then...how's that?"

3           Mr. Wilson:

4                   "Well, my life's been turned totally  
5                   upside down. I don't have a job  
6                   anymore, I just about lost my wife  
7                   'cause I started drinking quite heavy  
8                   again."

9           Do you recall what this related to and why you  
10          were interested in this particular aspect?

11       A       Well, the idea that he would benefit in any way, I  
12               mean, from the recantation, it seemed on the face  
13               of it at least that he had suffered more than he  
14               gained from recanting the story, but, you know,  
15               we're not again talking about somebody whose life  
16               has been much more than a series of ups and downs.  
17               More downs than up.

18       Q       Turn to page 45, please, I won't read the specific  
19               portions to you, but you'll see that Dr. Rossmo  
20               asks Mr. Wilson at one point whether he saw a  
21               knife with Mr. Milgaard on the trip from Regina to  
22               Saskatoon and Mr. Wilson confirms that he did and  
23               he goes on to describe the knife. Do you recall  
24               receiving that information from Mr. Wilson?

25       A       Yes.



1       Q       And do you recall recognizing that this  
2               contradicted the information that was contained in  
3               the statement he had given to Paul Henderson?

4       A       Yes.

5       Q       And how did you reconcile or consider that change  
6               of position?

7       A       There was really no way of knowing how to explain  
8               the difference.

9       Q       And can you help us any further than that, did it  
10              help you in your own assessment? You've indicated  
11              that you had belief in the recantation, and given  
12              that this was perhaps one part of that recantation  
13              and --

14      A       We saw it as a red-herring in relation to the  
15              general issue of the trustworthiness or  
16              reliability of the recantation.

17      Q       And so this part of the recantation as contained  
18              in Paul Henderson's statement, I take it you  
19              didn't believe that aspect?

20      A       We didn't know what to believe, we just didn't see  
21              the presence or absence of the hunting knife as a  
22              critical issue.

23      Q       Okay. And maybe I should be more particular then,  
24              what part of the recantation did you effectively  
25              believe then, to Paul Henderson?



1       A       We didn't believe that Ron Wilson saw anything  
2               untoward in David Milgaard's behaviour that  
3               morning, he saw nothing that would suggest that  
4               David Milgaard had committed a murder.

5       Q       And so was it a general assessment then of that  
6               nature?

7       A       Yes.

8       Q       Okay. Turn to page 52, just at the bottom of the  
9               page you have another question for Mr. Wilson, you  
10              state:

11                     "Did you uh, do you think it's got  
12                     anything to do with drugs and hippies,  
13                     the conviction...was that part of it?  
14                     Is that something that wouldn't have  
15                     much to do..."

16       Mr. Wilson says:

17                     "I would say...to the public and to the  
18                     jury, yeah, because when I was there for  
19                     the preliminary...okay, I was in custody  
20                     and I was allowed to get a drink of  
21                     water with the handcuffs on and a cop  
22                     beside me and a lot of people coming out  
23                     of the courtroom were calling me a  
24                     junkie and a hippie, and y'know...

25                     'Cause I described what some drugs are



1                   like in the court. So, right away I'm a  
2                   junkie. Okay, fine."

3                   And we touched on this earlier, Mr. Boyd, but  
4                   this was an area of interest for you?

5       A       Well, it was because, as I said, after I read the  
6                   trial transcript, I was very surprised that a jury  
7                   and ultimately the appeal court would see the  
8                   conviction as appropriate, so was wondering about  
9                   the way in which these three kids were viewed and  
10                  the way in which the era, if you like, viewed this  
11                  kind of conduct, if that had -- trying to figure  
12                  out what kind of impact that might have given that  
13                  when you reread the trial transcript with the  
14                  benefit of hindsight, it's very difficult to  
15                  understand why the -- why there was a conviction.

16       Q       Okay.

17       A       I mean, I understand why there was a conviction,  
18                  Nichol John, etcetera, etcetera, but it's  
19                  difficult when looking at it analytically and  
20                  carefully to understand why there was a  
21                  conviction.

22       Q       I'm not going to refer you to any further specific  
23                  portions. When you look back on that interview  
24                  and your consideration of it at the time, did you  
25                  feel that you had learned anything new or



1           important in terms of something that needed to  
2           come to the attention of the authorities?

3       A       Well, I think that we were comfortable that the  
4           recant -- that there were more reasons, many more  
5           reasons to believe the recantation than not to  
6           believe the recantation, and when -- I think, as  
7           I've said earlier, it's one part of a very big  
8           puzzle and when you put all those parts of the  
9           puzzle together, this is consistent with what  
10          happened. I mean, from the trial transcript to  
11          the emergence of Larry Fisher to the recantation  
12          of Ron Wilson, they are all a piece, and it's  
13          difficult for me to, although I understand the  
14          need to, it's difficult for me to look at some of  
15          these things separately because they have more  
16          value taken as a whole, the whole is greater than  
17          the sum of the parts.

18               MR. HARDY: This is probably a good time to  
19           break, Mr. Commissioner, for lunch.

20               COMMISSIONER MacCALLUM: Okay.

21               *(Adjourned at 12:01 p.m.)*

22               *(Reconvened at 1:30 p.m.)*

23       BY MR. HARDY:

24       Q       Good afternoon, Mr. Boyd. To pick up where we  
25           left off before the lunch break, we finished up





1 with the Ron Wilson interview, that was in  
2 October, and it would be in October as well that  
3 you completed and released your report that we've  
4 been referring to?

5 A Yes.

6 Q And have we missed anything in terms of your  
7 preparation for purposes of completing that  
8 report?

9 A I don't think so, no.

10 Q And who was the report prepared for?

11 A Umm, I don't think we had a specific audience in  
12 mind other than that by the time we had concluded,  
13 we thought that what we had to say was important,  
14 that it touched on the issue of the conviction of  
15 David Milgaard and it was determined not long  
16 after that David Asper and Hersh Wolch would  
17 submit it to the Supreme Court of Canada as part  
18 of their representation of David Milgaard.

19 Q And was that a use that you were expecting the  
20 report might be put to?

21 A No, I can't say that it was, certainly that wasn't  
22 anticipated at the outset and, you know, I can't  
23 say more than that really.

24 Q And we'll turn to the report, it's 000864, and you  
25 recognize that report, Mr. Boyd?



1 A I do.

2 Q It has the October, 1991 date referred to, your  
3 name and Dr. Rossmo's name as well, and am I  
4 correct, is the report, in effect, a presentation  
5 in favour of re-opening Mr. Milgaard's case?

6 A It is.

7 Q And as I review the report, and we referred to  
8 this earlier, but perhaps at the outset we can  
9 summarize it. It looks like it has been broken  
10 up, in effect, into four parts, and you can  
11 correct me if I'm wrong on this, or if you want to  
12 qualify this in any respect, but it appears to me  
13 that it starts off with a critique of the original  
14 trial evidence?

15 A That's correct.

16 Q A consideration of that trial evidence?

17 A Yes.

18 Q You go on to comments respecting the forensics  
19 issue, and in part relying on Dr. Ferris' report,  
20 and as well on the information that you had  
21 gathered from Dr. Emson?

22 A Yes.

23 Q Then you go on to a discussion of the recantation  
24 of Ron Wilson?

25 A Yes.



1       Q       And then lastly the identification of Larry Fisher  
2               as a better suspect I think it would be fair to  
3               say the report states?

4       A       Yes.

5       Q       Okay. Just before we turn away from the first  
6               page, in terms of the writing of the report, was  
7               this truly then a joint effort between yourself  
8               and Dr. Rossmo?

9       A       It was. I think Kim Rossmo had more of the  
10              responsibility in the area of sexual assaults and  
11              Larry Fisher and I had more the responsibility  
12              related to the trial, the 690, and I think we both  
13              had input into the recantation.

14      Q       So if we turn, and we'll just move slowly through  
15              the report, if we turn to page 1, you start off  
16              with an introduction of sorts and a summary of the  
17              case and what had happened, process wise, up to  
18              that point in time. That continues on to page  
19              number 2, and I think that's pretty  
20              straightforward, and at page 2 I believe it's  
21              where that first part that I referred to begins  
22              and you engage a summary of the trial evidence  
23              under the subheading, "The case for the Crown at  
24              trial," and a little bit later at page 11, we  
25              don't need to turn to that right now, you talk



1           about the problems for the case, for the Crown at  
2           trial, and would it be fair to say that you focus  
3           in this part on some of the arguments that we've  
4           now become quite familiar with that arise from the  
5           trial evidence, and what I see is a focus on some  
6           arguments such as the fact that from the evidence  
7           it appears that there was a very small window of  
8           opportunity on a timing analysis for David  
9           Milgaard to have committed this crime?

10        A       Yes.

11        Q       And also the -- you rely upon the observations of  
12               certain witnesses such as the Danchuks and  
13               Mr. Rasmussen?

14        A       Yes.

15        Q       And as well the plausibility and consistency of  
16               the evidence of Ron Wilson and Nichol John  
17               respecting the period of time when it is suggested  
18               that the murder took place?

19        A       Yes.

20        Q       And as well the validity of Albert Cadrain's  
21               testimony?

22        A       Yes.

23        Q       And I don't want to oversimplify that, but I think  
24               you've stated it for us earlier, in effect you  
25               were setting out a different interpretation of the



1 evidence than apparently the interpretation that  
2 was applied by the jury, or at least your  
3 interpretation led you to a different conclusion  
4 than obviously the jury concluded on these points?

5 A I think, yes. I mean, it has to do with what the  
6 jury thought was the most salient and what we  
7 thought was most salient, and I can say more about  
8 that, but I'm not sure that you want that at this  
9 point.

10 Q Well, go ahead, what are you referring to?

11 A Well, we saw the physical evidence as critical to  
12 understanding the validity of the conviction and I  
13 think, if we look at 1969, we see a very different  
14 emphasis on physical evidence. I think today  
15 there's a clear acknowledgement of the weakness of  
16 eye witness testimony, that what people say they  
17 saw or what people say is much less reliable than  
18 physical evidence, and I think in 1969, '70 that  
19 was much less well established than it is today.  
20 We have the work of Elizabeth Loftus, another  
21 experimental psychologist, that work has been  
22 introduced into courts to establish the liability,  
23 the weakness inherent in eye witness testimony, so  
24 what we were able to do with the benefit of  
25 hindsight is say, you know, this evidence from



1           these two teenagers isn't very reliable, we have  
2           the recantation of one, we have the other who, for  
3           various reasons, ought also to be suspect, and  
4           then we have the problems that you mentioned in  
5           relation to time, what's more compelling, and when  
6           we step back and look at it, it seems unlikely  
7           that the murder could have occurred given the  
8           theory the Crown advanced and we became  
9           particularly convinced of that once we went to  
10          Saskatoon and recognized the time lines and  
11          recognized that -- I mean, even some of the  
12          evidence, for example, Nichol John saying that he  
13          started stabbing a woman and then took her around  
14          the corner. Well, that doesn't explain the coat  
15          and the fact that there were no knife wounds,  
16          knife marks in the coat, how did that happen then.  
17          It's inconsistent with what she saw. You can go  
18          on and on with this.

19                   I mean, the Danchuks, 45 minutes  
20          sitting in the room and David doing most of the  
21          talking and no sign of, not even blood, but no  
22          obvious discomfort. This is a young man, a  
23          16-year-old who's alleged to have raped and  
24          murdered a woman within the previous 20 minutes  
25          and it just, it was all so inconsistent, it was so



1           improbable, so these were the kinds of things that  
2           we were considering in this part of the paper.

3           Q       And you had mentioned the recantation of one of  
4           the witnesses, but leaving aside the recantation,  
5           am I hearing you correctly that this was, these  
6           were your views on a reading of the trial  
7           transcript?

8           A       After I read the trial transcript, I was pretty  
9           convinced that he was not responsible for the  
10          crime or, if he was responsible, he was  
11          responsible in, for reasons that had not been  
12          articulated by the Crown or that I could not  
13          see -- the theory of the Crown did not make sense  
14          to me, that this was -- also the notion that this  
15          was a purse snatching that turned into a  
16          rape/murder, in terms of what we know about  
17          criminology today, it's extremely unlikely to  
18          think of a 16-year-old doing this, and then of  
19          course there's the other considerations, how  
20          likely is it that Nichol John and Ron Wilson,  
21          teenagers, having seen a young man get out of the  
22          car, knowing that he's raped and murdered a woman,  
23          he gets back in, they go to the Trav-a-leer Motel,  
24          they chat amiably at the Danchuks' half an hour  
25          later, they go on to party in Edmonton for several



1 days after, it just doesn't make any sense, but  
2 again, I understand I think how or why it happened  
3 at the trial, you've got Nichol John making this  
4 statement to police, eventually, apparently  
5 doesn't want to say anything, it gets read in, you  
6 know, people pay attention to things they ought  
7 not to have paid attention to, and hopefully today  
8 with a focus on physical evidence it wouldn't  
9 happen. No guarantees though, but hopefully it  
10 wouldn't happen.

11 Q And I should ask you, when you say you reviewed  
12 the transcript, do you recall whether you had the  
13 closing arguments of the prosecutor and defence  
14 counsel while you were reviewing the transcript?

15 A I thought we had the closing arguments of -- we  
16 had the charge to the jury, I'm not sure that we  
17 had the closing arguments of Crown and defence  
18 counsel, I don't believe we had the closing  
19 arguments of defence counsel.

20 Q And were you aware, or did you become aware, that  
21 the kind of arguments that you are referring to  
22 were some of the arguments that were presented by  
23 defence counsel in his closing?

24 A Yes, I have become aware of that.

25 Q But that's something you weren't necessarily aware





1 of at the time?

2 A No, at the time of the report I wasn't aware of  
3 it.

4 Q And in what way did you think that this critique,  
5 the critique that we have been talking of, was  
6 important for purposes of your report?

7 A I thought it was -- it -- one of the pieces of the  
8 puzzle, if you like. We have more than just what  
9 -- we have more to look at than just what went on  
10 at trial, but what went on at trial, or not so  
11 much what went on as the evidence that was led at  
12 trial was very problematic in a number of very  
13 important respects. So it was important to put  
14 that on the table first because I think you only  
15 get to the point, you only get to the conclusion  
16 that David Milgaard's innocence is more probable  
17 than his guilt -- which is the test that the  
18 Supreme Court set out -- you only get to that  
19 point once you look at everything combined, or at  
20 least at that point it seems to me that the  
21 evidence is quite overwhelming. If you were just  
22 to look at the evidence presented at trial many,  
23 many doubts are raised, but it's the entire  
24 package that points in the direction of innocence  
25 being more probable than guilt.



1 Q And when you say "the entire package" you are  
2 referring to --

3 A The other parts of the report.

4 Q -- the other parts that we've talked about and  
5 will talk about more in your report?

6 A That's correct.

7 Q But in terms of this initial portion, the critique  
8 of the case at trial, did you think that this was  
9 the type of information that needed to be  
10 considered on a Section 690 application?

11 A Umm, well you are asking a question about the  
12 philosophy of the 690 application, in a sense. I  
13 mean the 690 application says 'miscarriage of  
14 justice' and, you know, it -- is this a -- is it a  
15 miscarriage of justice if undue attention is given  
16 to statements of witnesses that ought not to have  
17 been relied upon in retrospect, or insofar as  
18 Section 690 is worded to be concerned, it's first  
19 concerned about miscarriage of justice. This  
20 isn't a Section 690 issue. If you ask the broader  
21 question, is this a question should something like  
22 this be reviewed or is this appropriately taken  
23 into account in consideration of a person's  
24 innocence, yes. And it may be, it's my view that  
25 Section 690, to the extent that it focusses only



1 on a miscarriage of justice, may do some  
2 individuals a disservice because human beings are  
3 fallible, we make mistakes with the best of  
4 intentions.

5 We know from surveys, for  
6 example, that when you ask judges what they think  
7 'beyond a reasonable doubt' means in probabilistic  
8 terms, they say, "about 95 percent", which opens  
9 the door to the reality that we necessarily  
10 convict, in certain circumstances at least,  
11 innocent people. So we have to, I think we go  
12 into the process of thinking about wrongful  
13 conviction with the understanding that a certain  
14 number of convictions will necessarily be  
15 wrongful.

16 Q And what about Ms. Campbell's comment in her  
17 letter that we reviewed earlier on, though, that  
18 it is not the function or was not the function of  
19 the Minister to retry the case?

20 A That's true insofar as the section is, the Section  
21 690 is concerned, but I don't think that -- you  
22 know, if you are asking me if we focus exclusively  
23 on the trial evidence, her argument is a little  
24 stronger, but we're also bringing into play the  
25 recantation of Ron Wilson and additional forensic



1 evidence.

2 Q Okay. So would it be fair to say, then, that the  
3 critique of the trial evidence alone, you weren't  
4 suggesting, was sufficient, necessarily, for a  
5 re-opening of the case?

6 A Well I would suggest that it was, in the sense  
7 that I think that if you had have a person in jail  
8 who you believe is innocent, you should re-open  
9 the case. Unfortunately Section 690, insofar as  
10 it is concerned with a miscarriage of justice,  
11 doesn't speak to the more fundamental question of  
12 innocence or guilt.

13 Q Okay. I'll refer you to page 13 of the report,  
14 please. And you begin on this page under the  
15 sub-heading *18 years later: The first Section 690*  
16 *Application*, and you go on to summarize the first  
17 application, you include reference to the Ferris  
18 reports, the affidavit of Deborah Hall, the  
19 identification of Larry Fisher as a suspect, Ron  
20 Wilson's recantation to Paul Henderson, and as  
21 well you include questions about the reliability  
22 of Albert Cadrain's evidence at trial.

23 And if we move to page 15,  
24 please, you'll see the sub-heading at the bottom  
25 of the page *The Milgaard Conviction Revisited: a*



1           *Coincidence of Errors, Omissions and Human*  
2           *Frailties*, and it's under this analysis that you  
3           include your analysis of the forensic evidence and  
4           the recantation of Ron Wilson, and we'll review  
5           both of those aspects.

6                       If you turn to the next page,  
7           please, *The Forensic Evidence* you note at the top,  
8           and then in the first paragraph it's stated, you  
9           state:

10                   "The Minister's conclusions with respect  
11                   to the forensic evidence are inaccurate;  
12                   the forensic evidence tendered at trial  
13                   did not totally exonerate Milgaard, but  
14                   it was not neutral, neither in the way  
15                   in which it was presented, nor in the  
16                   probabilities that it produced."

17           And moving down, skipping one paragraph, moving  
18           to this paragraph you state:

19                   "The sequence with respect to the  
20                   assembly of the forensic evidence is  
21                   critical. On February 4, 1969, four  
22                   days after the murder, police find two  
23                   pale yellowish clumps in the snow. They  
24                   package them appropriately and send them  
25                   to the Crime Detection Laboratory in



1 Regina. In one of two vials nothing of  
2 value is found, but in the other,  
3 seminal fluid and seven pubic hairs are  
4 detected. When the semen is analysed,  
5 it is found to come from a type 'A'  
6 secretor.

7 On April 18, Saskatoon Police  
8 Lieutenant Joe Penkala asked David  
9 Milgaard to provide two saliva samples  
10 to determine whether or not he was a  
11 secretor. When these were analyzed no  
12 antigens were found, and it was  
13 accordingly presumed that Milgaard was a  
14 non-secretor. The only way, then, to  
15 reasonably connect Milgaard to the semen  
16 sample was through the possibility that  
17 his blood had contaminated the sample.  
18 Accordingly, the sample was sent back to  
19 the lab in June, with a request to check  
20 for blood. The RCMP serologist  
21 suspected that blood was present, but  
22 could not scientifically confirm this  
23 suspicion."

24 And then moving down to the next paragraph you  
25 continue:



1 "At trial, the theory of the Crown was  
2 that there was blood in the sample -  
3 blood from David Milgaard. This theory  
4 was bolstered by Dr. Emson's claims that  
5 blood within ejaculate would be 'a quite  
6 common occurrence'. Dr. Emson now  
7 indicates that he would have to vary  
8 that evidence from what he said at  
9 trial. He now knows that such shedding  
10 of blood in the urethra is not a common  
11 event."

12 And again, we referred to this, but that was  
13 information that you had gathered from Dr. Emson?

14 A That's correct.

15 Q And moving to the next page, at the top:

16 "Vancouver forensic pathologist James  
17 Ferris addressed this issue in his 1988  
18 report on the *Milgaard* case, calling the  
19 contamination of a seminal sample with  
20 the assailant's own blood unlikely, 'I  
21 have also spoken to a number of personal  
22 contacts in other forensic science  
23 laboratories and on the basis of their  
24 experiences and my own experience, we  
25 are not familiar with a single case



1                   where seminal fluid or stains have been  
2                   found to be contaminated by blood from  
3                   the alleged assailant.'"

4                   And I'm going to pause there for a moment. In  
5                   terms of your meeting with Dr. Ferris and the  
6                   discussion of these issues, do you recall asking  
7                   him whether this aspect should have been known in  
8                   1969?

9           A       No.

10          Q       And when I say "this aspect" I mean the fact that  
11                   it would not, in his view, be common, as Dr. Emson  
12                   had testified at trial, to have blood in --

13          A       I don't recall.

14          Q       -- semen?

15          A       I don't recall whether we asked him of the state  
16                   of knowledge in 1969.

17          Q       And I think I don't need to read this next  
18                   portion, but you go on, and you continue on with  
19                   this page to talk about the integrity of the  
20                   sample and whether or not it was semen from the  
21                   assailant, or you raise, -- you don't raise that  
22                   question but you identify that that question was  
23                   raised. And at the bottom of the page -- maybe we  
24                   can just go out to the full page -- you  
25                   apparently, you are talking about Dr. Markesteyn,





1           and I think we referred to this earlier, but you  
2           apparently dismiss the suggestion that the  
3           substance may have been dog urine, and you rely on  
4           Mr. Molchanko's evidence at trial in that respect?

5       A       That's correct.

6       Q       Where he had found, or had testified that there  
7           were pubic hairs in that sample?

8       A       Yes.

9       Q       And am I correct that you contacted and spoke with  
10          Dr. Markesteyn about this aspect?

11      A       Yes, we did.

12      Q       And do you recall what he had to say in response?

13      A       He agreed that it was more probable that it was a  
14          human semen stain given the pubic hairs.

15      Q       Okay. And if we move to the next page, the first  
16          full paragraph you state:

17                    "What seems most probable, then, is that  
18                    the seminal stain is related to the  
19                    assailant. While it may have been  
20                    contaminated by blood or another  
21                    substance, there was no evidence at  
22                    trial to suggest such contamination. If  
23                    there was blood in the sample, it was  
24                    most likely to come from the victim,  
25                    Gail Miller. Miller had type 'O' blood



1                   and this blood type would not influence  
2                   readings of 'A' antigens."

3                   And was your assessment of probabilities here,  
4                   Mr. Boyd, based simply on common sense?

5       A       Well, our assessment of the paragraphs leading up  
6                   to this one and of this one, I mean, essentially  
7                   based on the knowledge passed on to us by the  
8                   three experts in the field, Emson, Markesteyn, and  
9                   Ferris.

10      Q       And I'm talking in particular about the conclusion  
11                   that, if there was blood in the sample, it would  
12                   more likely be blood from the victim?

13      A       That makes sense, and just in terms of what we  
14                   know about attacks, that, you know, it's not going  
15                   to be shedding of the blood into the urethra by  
16                   the assailant, it's -- if there is any blood in  
17                   the sample, well where would it come from with a  
18                   very vicious homicide, it would come from the  
19                   victim.

20      Q       And again, as I say, that's a --

21      A       It's a matter -- sorry.

22      Q       As I say, that was an assessment you were putting  
23                   forward on the basis of common sense; am I  
24                   gathering that correctly?

25      A       I think a little more than common sense, I mean



1 knowledge of homicide crime scenes I suppose, and  
2 the likely -- you know, it's almost  
3 common-sensical I suppose, yes.

4 Q I guess, in the sense that nobody was able to tell  
5 you whether it was Markesteyn, Ferris, or from the  
6 original evidence at trial, if there -- presuming  
7 there was blood in the sample, where that blood  
8 came from? What you were doing was engaging in a  
9 thought process in an attempt to determine where  
10 that blood most likely would come from, if indeed  
11 there was blood?

12 A That's correct.

13 Q And were you aware -- and I think you've advised  
14 us that you don't think you had the closing  
15 argument of Justice Tallis; were you aware or did  
16 you become aware of the fact that he had made this  
17 type of argument on this aspect in his closing at  
18 trial?

19 A I have become aware, yes.

20 Q Okay. But you weren't aware of that at the time?

21 A No.

22 Q And if we move down the page, starting here, you  
23 state:

24 "But the best interpretation of the  
25 forensic data, in 1969, and at the



1                   current time, is that it tends to  
2                   exclude David Milgaard. The seminal  
3                   stain is likely human, there was no  
4                   direct evidence of contamination, and if  
5                   there was blood in the vial, it was most  
6                   likely Gail Miller's blood."

7                   And I'll skip down to the last paragraph, you  
8                   state:

9                   "The jury was not instructed by Chief  
10                  Justice Bence as to how to interpret the  
11                  forensic evidence introduced by the  
12                  prosecutor. In retrospect, if this  
13                  evidence was considered to be relevant  
14                  to put to the jury, they would have to  
15                  have been told that it probably excluded  
16                  David Milgaard."

17                 And was that the main point of your critique on  
18                 the forensics aspect?

19                 A        Yes, I mean I think that the forensic evidence at  
20                 trial tended to exclude David Milgaard.

21                 Q        But in terms of your comment about how the jury  
22                 should have been instructed in relation to that  
23                 evidence?

24                 A        I think that flows from the paragraphs above.

25                 Q        And I'm just wondering, if I read that as -- again



1           you state:

2                   "In retrospect, if this evidence was  
3                   considered to be relevant to put to the  
4                   jury, they would have to have been told  
5                   that it probably excluded David  
6                   Milgaard."

7           And given what we knew of the evidence, or know  
8           of the evidence as it was presented, could the  
9           judge instruct in that fashion given Dr. Emson's  
10          evidence that bleeding into the urethra was a  
11          common occurrence?

12        A       No, no, I'm looking at -- I'm making the  
13                assumption there that the corrected view, Dr.  
14                Emson's revised view, would be what would be put  
15                to the jury.

16        Q       So it's not so much a critique of what happened,  
17                then, it --

18        A       No, that's correct.

19        Q       It's with the new information that you gathered,  
20                --

21        A       Yes, yeah.

22        Q       -- now, --

23        A       Yeah.

24        Q       -- you are stating that a different instruction  
25                would have been appropriate?



1 A That's correct.

2 Q Okay. And I guess, regardless of that, was it not  
3 still possible -- and I know we're engaging in  
4 areas where we can't really answer the question --  
5 but in your own view, when you are doing an  
6 assessment of this based upon the evidence, and  
7 maybe even with that correction, was it not still  
8 possible for a jury, listening to the body of  
9 evidence, to conclude that the semen came from Mr.  
10 Milgaard?

11 A It's possible if you believe Nichol John and Ron  
12 Wilson and if you discount the evidence in  
13 relation to time lines and all of the other  
14 physical evidence, it's possible that that  
15 evidence would be seen as, at the very least, not  
16 inconsistent with the view that Mr. Milgaard was  
17 responsible.

18 Q And again we don't know, of course, but it could  
19 be possible that they were even convinced of the  
20 probabilities that you speak of, but as you say,  
21 perhaps were compelled for other reasons to their  
22 ultimate conclusion?

23 A That's possible, yes.

24 Q Do you recall whether you reviewed Mr. Caldwell's  
25 closing arguments on this particular issue?



1       A       I don't recall.

2       Q       And I -- we can go to them and take a look at  
3               them, and I don't want to oversimplify it, but I  
4               think it's fair to say that he argued, at the very  
5               least, that the forensic evidence didn't eliminate  
6               Mr. Milgaard, it didn't identify him as the sole  
7               person but that it didn't eliminate him as well,  
8               and would you have any reason to disagree with  
9               that conclusion?

10      A       I think that is a fair assessment if you accept  
11               the erroneous interpretation regarding the  
12               shedding of blood.

13      Q       Okay, and sorry if I've lost you there, can you  
14               explain that to me?

15      A       Well, if you accept Dr. Emson's evidence as it was  
16               presented at trial, that's a reasonable  
17               interpretation.

18      Q       But did it -- I think I just heard you say that,  
19               even if we had Dr. Emson's corrected evidence,  
20               technically speaking David Milgaard wasn't  
21               eliminated as a suspect with respect to this  
22               evidence; is that fair to say?

23      A       Well if he is a non-secretor, and the perpetrator  
24               is a secretor, then he is effectively eliminated.

25      Q       Okay. And I don't want to go -- I think we're



1           losing each other on this particular aspect and I  
2           think we've covered the ground that I had wanted  
3           to cover with you, and my point was that if we  
4           accept Dr. Emson's corrected version that it would  
5           not be a common occurrence for blood to be in the  
6           semen of a male and sort of insert that aspect  
7           into the trial evidence as we know it, and if you  
8           think about that for a moment, is it your view  
9           that the correct interpretation of the forensic  
10          evidence, then, is capable of eliminating David  
11          Milgaard or was capable, would have been capable  
12          of eliminating David Milgaard as a suspect?

13        A       Perhaps not eliminating if one accepts that there  
14        is a very slight chance of contamination.

15        Q       Okay. Thanks for bearing with me through that.  
16        So how significant, in your view, was Dr. Emson's  
17        change in evidence?

18        A       I think it was, again, just one more piece of the  
19        puzzle.

20        Q       And on the same page you will see, at the bottom  
21        of the page you begin to speak about the  
22        credibility of Ron Wilson's recantation, and just  
23        to give this some context I'll read a portion of  
24        this to you starting underneath that sub-heading.

25                       "The Minister of Justice did not believe





1 the recantation given by Ron Wilson to  
2 private investigator Paul Henderson in  
3 June of 1990, and later confirmed before  
4 Department of Justice investigator  
5 Eugene Williams in July of that year.  
6 The Minister said that Wilson  
7 exaggerated the length of his polygraph  
8 testing with police, and she rejected  
9 his claim of undue police pressure. She  
10 noted that testimony at trial from  
11 Albert Cadrain and Nichol John  
12 contradicted Wilson's retraction.

13 Wilson had told Paul Henderson,  
14 an investigator working for David  
15 Milgaard, that he had been subject to a  
16 six hour 'sweat session' by police, at  
17 the close of which he provided his  
18 statement of May 24, 1969. In fact, the  
19 session of polygraph testing and  
20 questioning lasted somewhere between  
21 three and a half and five hours.

22 Wilson's claims of manipulation  
23 and pressure by police are difficult to  
24 assess. The police were persistent in  
25 their pursuit of Wilson, John and



1                   Cadrain, but this would not be  
2                   unexpected, given their perception that  
3                   David Milgaard was responsible for such  
4                   a serious crime. On the other hand,  
5                   Wilson, Cadrain, and John were also  
6                   unsophisticated, socially and  
7                   economically disadvantaged teenagers,  
8                   and some of the tactics police employed  
9                   may have inadvertently helped to produce  
10                  the inconsistency of the statements that  
11                  these three witnesses provided between  
12                  January and May of 1969. Nichol John  
13                  was kept in police cells overnight  
14                  before making her statement, an event  
15                  which has not been adequately  
16                  explained."

17                You then go on to speak about Ron Wilson's  
18                interview with Williams and his comments about  
19                the police:

20                   "... "They all treated me nice. What I  
21                   tried to get across to Williams, which I  
22                   never could, was that, like when you're  
23                   watching TV...you've got that bad cop  
24                   who wants to beat this out of you and  
25                   stuff - it doesn't happen that way."



1           And we read that portion earlier on.

2                       And if we move to page 22,  
3           please, you continue on with your discussion  
4           respecting Mr. Wilson's recantation, and you  
5           state:

6                       "According to Ron Wilson, he was simply  
7                       interested in getting free from police  
8                       questioning on May 24th, 1969, going  
9                       home, and 'getting loaded'. He was not  
10                      forced to implicate David Milgaard, but  
11                      implicating Milgaard was the easiest way  
12                      to remove himself from a persistently  
13                      stressful situation - two months of  
14                      questioning by police. Wilson was a 17  
15                      year old delinquent who would usually  
16                      place his own interests first. He was  
17                      involved in drugs and crime until the  
18                      early Eighties, using and selling heroin  
19                      and LSD, and for ten years a member of  
20                      the Regina motorcycle club, the Apollos.

21                      Ron Wilson sketches a picture  
22                      of disenfranchised street youth in 1969,  
23                      on the fringes of the fledgling hippie  
24                      culture and on the edge of a criminal  
25                      lifestyle. They were all involved in



1 using illegal drugs. 'Friends' were  
2 passing acquaintances who you ran into  
3 in the park, spent a few days with, and  
4 who would then disappear for months.  
5 Loyalties and allegiances were  
6 non-existent, the primary concern being  
7 only to look out for yourself -  
8 survival, 'better him than me'."

9 And, again, was this an accurate account of your  
10 view on Ron Wilson and why, perhaps, he had lied  
11 at trial?

12 A Yes, the paragraphs you've just read I think  
13 accurately state my view then and now.

14 Q Okay. And just skipping down one paragraph you  
15 state:

16 "The Minister's conclusion that Ron  
17 Wilson's recantation is 'simply not  
18 credible' is difficult to support.  
19 Wilson's reasons for lying now are not  
20 easy to find; he risks a perjury charge  
21 related to his statements at trial, and  
22 there is no evidence or suspicion that  
23 he has received any financial benefits  
24 from his recantation. He seems, rather,  
25 to have suffered both personally and



1                   financially since his statement to Paul  
2                   Henderson."

3                   And was this your rationalization for concluding  
4                   that Mr. Wilson's recantations were truthful?

5       A       Yes. I think it's also important, again, to put  
6                   things into context, that we're looking at a lot  
7                   of other evidence which is supportive of a similar  
8                   kind of conclusion, that it -- none of these  
9                   pieces of the puzzle, as I have described them,  
10                  can be viewed in isolation. When you look at them  
11                  as a whole the portrait, if you like, becomes  
12                  quite overwhelming.

13       Q       And I understand your point on that, Mr. Boyd, but  
14                  just in terms of this section that we're dealing  
15                  with, the recantation of Ron Wilson, given what  
16                  you had learned about Ron Wilson did you  
17                  understand how someone might question his -- the  
18                  credibility of his recantation?

19       A       Yes, although I think this last paragraph speaks  
20                  directly to why I find it more credible that the  
21                  recantation was truthful than the original  
22                  statement at trial.

23       Q       And I guess just understanding, though, if you had  
24                  an appreciation for how someone might find -- or  
25                  might take issue with his credibility, and again,



1 sort of on a higher level, if someone has  
2 questionable credibility should that person's  
3 information be relied upon for purposes of a  
4 Section 690 application or a re-opening?

5 A Umm, in context? Perhaps sometimes yes, depending  
6 on the context, but also in context yes, that is  
7 in relation to other pieces of evidence.

8 Q And, again, you are referring to this as a total  
9 package then?

10 A Yes.

11 Q And do you recall, just in terms of your  
12 discussion on Ron Wilson, there is not very much  
13 reference to your own interview of Mr. Wilson; do  
14 you recall why that was the case?

15 A Umm, I don't think that we saw that interview as  
16 front and centre in terms of why we made the  
17 judgements that we made in this report.

18 Q Okay. Turn to page 25 of the report, please. You  
19 have the sub-heading *The Alternative Scenario:*  
20 *Larry Fisher*, and in your mind, or at the time you  
21 were including this in your report, how did this  
22 information fit into your presentation?

23 A Well, there was an alternative scenario of, you  
24 know, there was another possible perpetrator of  
25 this crime, and knowing what we do in criminology



1 of the prevalence of violent serial rapists we  
2 knew that it was very unlikely that there were two  
3 operating in the Riversdale neighbourhood of  
4 Saskatoon in 1969, and when we learned of  
5 convictions that were both geographically and  
6 temporally close to the time and place of the Gail  
7 Miller murder, on the face of that information  
8 alone he would begin to appear to be a better  
9 suspect.

10 Q And did you feel that this information was  
11 important for purposes of considering a  
12 re-opening?

13 A Yes, I did, yeah.

14 Q Okay. Now I'm going to cover that section --

15 A I mean it goes beyond just the recognition, of  
16 course, that there -- that there were these  
17 convictions, the entire picture associated with  
18 Larry Fisher, his apprehension and so forth.

19 Q Right. And I'm going to cover this portion more  
20 so with Dr. Rossmo. Would it be fair to say that  
21 this was an area that he focused on more so in  
22 terms of your investigation?

23 A Yes, I think he has a very clear global expertise  
24 today in this area, and this was a part of the  
25 paper that he was largely responsible for writing,



1 so I think most of the questioning would be most  
2 appropriately put to him.

3 Q Okay. And I'll turn to page 33. There's just one  
4 further paragraph in this section that I'll put to  
5 you. Page 33 of the report, please, this  
6 paragraph. You write:

7 "Does this mean that Larry Fisher killed  
8 Gail Miller? While he is definitely a  
9 good suspect, such similarities are not  
10 proof. And at the same time, while the  
11 profile of this murder does not fit a 16  
12 year old teenager with no previous  
13 history of violence or sex offences, and  
14 well outside his 'comfort zone', it does  
15 not prove David Milgaard's innocence.  
16 Profiling deals with probabilities, not  
17 with proof beyond a reasonable doubt.  
18 What is more probable here, given all  
19 the available evidence, is that Larry  
20 Fisher committed this crime, and that  
21 David Milgaard did not."

22 And would that be an accurate summary of what you  
23 had concluded regarding Larry Fisher?

24 A Yes.

25 Q You go on to a conclusion at the end of the





1 report, and I think it's -- it covers what we have  
2 already been summarizing, and if we move to the  
3 next page just at the end of the conclusion you  
4 write:

5 "There are persistent questions that  
6 remain. Why have Saskatoon Police been  
7 unwilling to talk about this case? In  
8 what way does the case of David Milgaard  
9 tie in to the case of Larry Fisher? Why  
10 were Fisher's rape victims in Saskatoon  
11 never notified? Why did Larry Fisher  
12 plead guilty in Regina, rather than  
13 Saskatoon? Was the possibility of a  
14 mistake in the Gail Miller murder  
15 recognized after Fisher's arrest in  
16 Winnipeg in 1970? And if so, what did  
17 the various authorities do, in response  
18 to this possibility?"

19 I take it then, at the time that you wrote this  
20 report and at the time you released this report,  
21 these were still live questions that you had?

22 A That's correct.

23 Q And did -- do you recall; was there any further  
24 investigation into those questions by yourself?

25 A Well we submitted a freedom of information request



1 to try to get at some of those questions. I think  
2 all of those questions remain with us today. It's  
3 still not clear to me why Larry Fisher first,  
4 after being caught in Winnipeg for rape, decided  
5 to plead guilty to two charges and later pled  
6 guilty to all four charges in Regina; it's still  
7 not clear to me why he pled guilty in Regina  
8 rather than Saskatoon; it's not clear to me why at  
9 least three of the rape victims appear to have  
10 never been notified, and so yeah, those questions  
11 were there at the time and they remain today.

12 Q And, just to be clear, did you pursue those  
13 questions further after the release of this  
14 report?

15 A I think we've always been interested in the  
16 answers to those questions. I don't think it  
17 would be fair to say we pursued this vigorously  
18 other than whenever we had the opportunity to try  
19 to find out more. They remain questions that many  
20 people don't have good answers for.

21 Q In terms of --

22 A I don't think anybody has good answers for those  
23 questions.

24 Q In terms of further independent investigation I  
25 guess is what I'm referring to; did you make



1 further inquiries in relation to these questions?

2 A Not in any organized or systematic way.

3 Q Okay. The next section in the report, and the  
4 concluding section of the report, is entitled  
5 *Section 690 Applications: The Need For Reform*.  
6 The first sentence:

7 "The *Milgaard* case provides empirical  
8 support for the inadequate operation of  
9 section 690 of the *Criminal Code*."

10 If we move to the next page, the section reading  
11 here:

12 "Section 690 has been criticized on the  
13 ground that it fails to provide the  
14 appellant with any kind of procedural  
15 fairness. Under the terms of this  
16 section of the *Criminal Code* the  
17 Department of Justice is given unlimited  
18 discretion with respect to the  
19 investigation of a criminal conviction;  
20 there is no responsibility of disclosure  
21 to the appellant. This was a problem in  
22 the *Milgaard* case; counsel for *Milgaard*  
23 were unaware of the form of the  
24 investigation, or of the responses of  
25 witnesses to Justice Department



1                   inquiries. Several of those  
2                   interviewed - Dennis Cadrain, Ron Wilson  
3                   and his counsel, Ken Watson, and Dr.  
4                   Ferris - did not feel that Justice  
5                   Department counsel Eugene Williams was  
6                   impartial in his assessment of  
7                   Milgaard's guilt."

8                   Is that, or was that, an accurate account of your  
9                   concerns at that time respecting how Section 690  
10                  operated in the *David Milgaard* case?

11          A           That was an accurate assessment, yes.

12          Q           And do you recall what Dennis Cadrain and Dr.  
13                       Ferris had said in particular about concerns  
14                       relating to Eugene Williams?

15          A           I don't recall specifics beyond claims that there  
16                       was a lack of impartiality and a sense of a rush  
17                       to judgement or of having already formed judgement  
18                       about his guilt.

19          Q           Okay. And just continuing on in the next  
20                       paragraph:

21                       "In 1989 a Royal Commission on the  
22                       Donald Marshall prosecution concluded  
23                       that Section 690 should be replaced by  
24                       the independent review mechanism. In  
25                       specific terms the Commissioners wrote,



1 "We recommend that this review body have  
2 investigative power so that it may have  
3 complete and full access to any review  
4 documents and material required in any  
5 particular case, and that it have  
6 coercive power so witnesses can be  
7 compelled to provide information."

8 If the case of David Milgaard  
9 is ever to provide a measure or a symbol  
10 of justice in our country, this kind of  
11 review mechanism will need to be  
12 entrenched within Canadian law. Based  
13 on the best available evidence, it would  
14 appear that David Milgaard did not  
15 murder Gail Miller. Innocence or guilt  
16 is, however, a matter to be decided in a  
17 judicial forum, and so we leave this  
18 issue for others. The Department of  
19 Justice should re-open the Milgaard  
20 case, providing for the power to call  
21 witnesses, and for advocacy in front of  
22 a disinterested appellate tribunal."

23 And is that an accurate account of your  
24 concluding views on this matter, Mr. Boyd, or  
25 what those views were at the time?



1 A Yes, it certainly was at the time.

2 Q And I'm finished with the review of the report in  
3 terms of its substance, unless there was anything  
4 else that you wanted to specifically highlight  
5 about the report?

6 A No. I mean, there are some issues, I suppose the  
7 Supreme Court decision, but that's separate  
8 obviously from the report.

9 Q Okay. And I think maybe we'll touch on those a  
10 little bit in terms of some concerns you had, I  
11 understand, following from the Supreme Court  
12 decision?

13 A Well, just -- I mean, again, the test, I  
14 understand the test set out in the Supreme Court  
15 decision, that David Milgaard would have to  
16 establish his innocence on a balance of  
17 probabilities and they failed to do that, and that  
18 does concern me because I do see that as -- while  
19 I can't object to the test, you don't want to  
20 create yet another level of appeals, so you put a  
21 fairly high standard of innocence on a balance of  
22 probabilities, that a claimant has to make that  
23 standard. It does seem to me that it could not  
24 have, that it's not a reasonable reading of the  
25 evidence and I recall being very surprised by the



1 decision, as I was surprised I suppose by the  
2 decision of Kim Campbell, the February, '91  
3 letter, decision not to re-open, because it seems  
4 to me to reflect an inability to properly weigh  
5 the evidence, and it may simply be that it's bad  
6 advice at some level, it may be that the Supreme  
7 Court Justices can't be expected to take the  
8 hundreds of hours that it would necessarily be  
9 required to sift through the evidence and come to  
10 a conclusion, I don't know, but I do remember a  
11 profound sense of disappointment, now vindicated  
12 by the DNA findings I suppose, I can't say  
13 vindicated, it's their judgment, but nonetheless,  
14 it does seem to me contrary to the available  
15 evidence at that point.

16 Q Who did you initially provide your report to?

17 A I don't know that initially -- I think that Hersh  
18 Wolch and David Asper wanted to see a copy of the  
19 report and I don't know the timing. I do know we  
20 provided them with a copy of the report.

21 Q Okay.

22 COMMISSIONER MacCALLUM: You did?

23 A Yes, we did.

24 COMMISSIONER MacCALLUM: Yes.

25 BY MR. HARDY:



1 Q And did you have an understanding of what was  
2 going to be done with the report at that time?

3 A No, I didn't, I don't think we did. I think they  
4 wanted to see the report and then we learned that  
5 they would be submitting it as part of their  
6 representations to the Supreme Court of Canada.

7 Q Okay. And I'll show you a letter from Mr. Wolch  
8 to the Department of Justice, the document is  
9 157128. It would appear that this is when the  
10 report was provided to the Department of Justice  
11 by Mr. Wolch, you'll note in the first paragraph:

12 "I am pleased to enclose herewith the  
13 analysis of Professor Boyd into the  
14 Milgaard case."

15 And then he makes some comments about that, and I  
16 assume that you would have no reason to dispute  
17 the date of this particular correspondence, being  
18 October 24th, 1991?

19 A I don't.

20 Q And we have a couple of newspaper articles that  
21 seem to indicate that the report was first  
22 released to the press. Was that your  
23 understanding at the time, that your report was  
24 going to be released?

25 A I can't recall the timing of what --





1 Q Okay. And I'll reference those documents, 004539,  
2 we don't need to turn to that one, but perhaps we  
3 can turn to 229840, this one that I'm referring  
4 to, you'll see it's a *Winnipeg Free Press* article,  
5 October 17th, 1991, "Re-Open case: report. 'No  
6 evidence' to tie Milgaard to slaying," and it's by  
7 Dan Lett. There's one portion I'll highlight  
8 further if we can, maybe we can read that just  
9 fine there, it states:

10 "The minister made certain --"

11 And this is yourself speaking:

12 "The minister made certain claims in the  
13 spring of 1991 and I think we've

14 dismantled and destroyed those claims,"

15 Boyd said from his home in Vancouver."

16 Do you recall making those comments to Dan Lett  
17 or speaking with Dan Lett?

18 A I don't recall the language "dismantled and  
19 destroyed", but I do recall speaking to Dan Lett.

20 Q I was going to ask you if that was your view on  
21 the report at the time.

22 A It seems a little overstated perhaps, but I'm not  
23 going to dispute that I said that.

24 Q Okay. And we talked about the transcript of your  
25 interview with Ron Wilson a little bit earlier,



1           and do you recall whether there was any, and  
2           perhaps you've already answered this, and correct  
3           me if I'm wrong, but I think you told us that you  
4           had some contact with Mr. Wilson's lawyer about  
5           obtaining the green light to release that report.  
6           Did I hear you correctly on that?

7       A       Yes. I'm not sure if it was to release or to use.

8       Q       Okay.

9       A       I can't recall the specifics, whether we wanted --  
10           it seems we were able to use the report, or use  
11           the --

12                   COMMISSIONER MacCALLUM: Interview?

13       A       -- interview for our report, or whether there was  
14           any plan to release it more widely.

15       BY MR. HARDY:

16       Q       And did I hear your evidence correctly as well  
17           that you did then provide the transcript of the  
18           interview to Mr. Milgaard's counsel?

19       A       I don't recall.

20       Q       Okay. I'm going to refer you to a transcript of a  
21           discussion between Joyce Milgaard, David Asper and  
22           I think another individual and see if that  
23           refreshes your memory at all in terms of the use  
24           that the transcript was going to be put to. If we  
25           could turn, please, to, and I may not have the



1 correct identifier here, it's tape 47, the  
2 transcript from tape 47, the database page number  
3 is 336361 -- that's right -- and again this is a  
4 transcript of a conversation between Mr. Asper and  
5 Joyce Milgaard. We received, the Commission has  
6 received this and this conversation has been  
7 transcribed and I'm going to read a portion to  
8 you. Mr. David Asper:

9 "I got a transcript of that  
10 conversation. It's -- you know, it's  
11 really nothing. You know, he says that  
12 he and David had been taking acid the  
13 day of the trip and he can't remember  
14 whether they were coming down when they  
15 left or just on their way up."

16 And it seems apparent that they are speaking of  
17 the, your interview with Ron Wilson, and you'll  
18 see that a little bit further down, Mr. Boyd.

19 Mrs. Joyce Milgaard:

20 "Well, that's something that --"

21 Mr. Asper:

22 "I don't think that that really  
23 matters."

24 Mrs. Milgaard:

25 "I don't even think that that's true."



1 Mr. Asper:

2 "Well, I don't think it matters, and --"

3 Mrs. Milgaard:

4 "Then why are we putting this in. This  
5 could be a real negative. That wasn't  
6 in the Report."

7 Mr. Asper:

8 "It wasn't in which Report."

9 Mrs. Milgaard:

10 "His Report."

11 Mr. Asper:

12 "Wilson's Report."

13 Mrs. Milgaard:

14 "Boyd's Report."

15 Mr. Asper:

16 "Yeah. Well --"

17 Mrs. Milgaard:

18 "Don't give them something that they  
19 don't need. What positive aspect is  
20 there of it."

21 Mr. Asper:

22 "Oh, I mean, the whole -- I mean, he  
23 gives a pretty detailed --"

24 Mrs. Milgaard:

25 "But they have the Boyd Report."



1           If we move forward, please, to page 336383 --  
2           yeah, that's right -- and starting here, it looks  
3           like it picks up maybe on a different  
4           conversation and Mr. Asper says:

5                     "I sent a lengthy letter to Justice  
6                     today."

7           Mrs. Milgaard:

8                     "Mhmm, with the stuff."

9           Mr. Asper:

10                    "Yeah, the last portion of the letter  
11                    that my understanding of Wilson's  
12                    interview was that it was solely for the  
13                    purpose of Boyd's Report and that no  
14                    further use was to be made of it."

15          Mrs. Milgaard:

16                    "Mhmm."

17          Mr. Asper:

18                    "I then called Neil just to confirm  
19                    that, and as I was talking to Neil and  
20                    he was saying, "No, Wilson wants it to  
21                    be used because it helps David," the  
22                    letter had been faxed."

23          And I'll take a look at the letter in just a  
24          moment, but is any of this refreshing your memory  
25          in terms of a discussion with Mr. Asper or



1 discussions surrounding the release of this  
2 transcript?

3 A It sounds quite probable that I said that to David  
4 Asper.

5 Q That --

6 A I don't recall the specifics.

7 Q That you indicated that Ron Wilson wanted the  
8 transcript to be used because he thought it helped  
9 David?

10 A It seems probable that -- certainly Ron Wilson  
11 indicated to us that he wanted to do whatever he  
12 could to help David at that point.

13 Q I'll show you a copy of the letter that's referred  
14 to, 333998, if you turn to page 5 of that  
15 document, please, this is the paragraph I'm  
16 referring to, it states:

17 "Finally, insofar --"

18 And this is Mr. Asper writing to Bruce  
19 MacFarlane, the Department of Justice, Federal  
20 Department of Justice:

21 "Finally, insofar as the Wilson  
22 transcript is concerned, it is our  
23 understanding that although Professor  
24 Boyd provided us with a copy of same,  
25 his understanding with Wilson was that



1 the discussion was only for the purpose  
2 of the preparation of Professor Boyd's  
3 report, and consequently we are not at  
4 liberty to provide it to you. Indeed,  
5 we are not even supposed to have it. We  
6 can advise however that it really does  
7 not shed any new light on anything  
8 except perhaps to explain in greater  
9 depth why he lied at David Milgaard's  
10 trial. The reason is a combination of  
11 selfishness and fear."

12 And does that representation made by Mr. Asper  
13 fit with your recollection of your position on  
14 that transcript at the time, Mr. Boyd?

15 A Apparently not, given the early commentary.

16 Q Okay. And so in terms of what we gather from  
17 this, you don't dispute what appears to be the  
18 case and that being that this letter may have been  
19 sent before Mr. Asper spoke with you about this  
20 issue of confidentiality and that when you spoke  
21 with Mr. Asper you actually advised him that  
22 Mr. Wilson had wanted the transcript to be used  
23 because he thought it helped David?

24 A That seems most likely.

25 Q Okay. And did you continue to be involved in this



1 matter in any respect following this time period,  
2 Mr. Boyd?

3 A Only to speak to the media occasionally about  
4 developments, to follow the Supreme Court decision  
5 and then in 1997 the decision regarding DNA. I  
6 used the report in my introductory law class in  
7 talking about wrongful convictions in part of one  
8 lecture and I continue to do that today, and  
9 obviously I'm interested in this Inquiry and its  
10 outcome.

11 Q Were you ever contacted by anyone on behalf of the  
12 Federal Department of Justice respecting your  
13 report?

14 A No.

15 Q And once the second Section 690 application was  
16 granted and the matter was referred to the Supreme  
17 Court of Canada for review, were you involved at  
18 all in terms of preparations for the reference  
19 case?

20 A No, I don't believe I was.

21 Q And we'll hear from Dr. Rossmo, but I understand  
22 that he undertook a task relating to a video  
23 reenactment of the trial testimony of Ron Wilson  
24 and Nichol John overlapped on the path that Gail  
25 Miller would have taken and the timing of Gail





1 Miller's trip to the bus stop that morning. Were  
2 you involved at all in that video reenactment?

3 A No, I was not.

4 Q And you've told us you were aware, though, that  
5 the report, your report was going to be filed as a  
6 part of the case on behalf of David Milgaard?

7 A I was, yes.

8 Q And I won't turn to that document, but 002641  
9 would confirm that. Were you ever under the  
10 impression that you were going to be called as a  
11 witness at the reference case?

12 A I thought it was a possibility.

13 Q And did you receive a communication in that  
14 respect? When you say possibility, did it become  
15 a real possibility or --

16 A Oh, I thought it was not all that likely, but I  
17 thought it was a possibility.

18 Q Did you follow the hearings?

19 A I did, yes.

20 Q You've told us a little bit about your reaction to  
21 the Supreme Court decision. Do you have anything  
22 to add to what you advised us earlier?

23 A No, I don't. One of the things that strikes me I  
24 suppose is that -- this doesn't really relate to  
25 the Supreme Court decision so much, but the



1           inability of people to admit mistakes, it's been  
2           one of the lessons that I've learned from this  
3           experience, and very early on we saw a pattern  
4           and, you know, who would talk to us and who  
5           wouldn't and not always a perfect kind of pattern,  
6           but -- and I wouldn't want to read that much into  
7           it, but it astonished me as the evidence became  
8           more and more clear, and I understand even today  
9           with the DNA evidence, there are still people who  
10          claim that it may have been a tag team attack or  
11          something equally absurd, so yes, I'm not going to  
12          say much more about the Supreme Court decision.

13        Q       And am I correct that you were not contacted by  
14               the RCMP in the course of their investigations  
15               into certain allegations of wrongdoing concerning  
16               the David Milgaard matter?

17        A       That's correct.

18        Q       And that was in 1993. Were you aware of that RCMP  
19               investigation that was ongoing?

20        A       I became aware of it after the fact.

21        Q       There's a press article I wanted to briefly  
22               reference, 281694, I see this is actually a very  
23               long document and it's page 283 of that document,  
24               so the document is 281694 and page 283 of that  
25               document.



1 COMMISSIONER MacCALLUM: Do you have the  
2 Bates number for that page number?

3 MR. HARDY: Yeah, the number of the  
4 document I believe is 281694, the Bates number  
5 for the page is 281976.

6 COMMISSIONER MacCALLUM: 976, thank you.

7 BY MR. HARDY:

8 Q That's right. You'll see it's an article dated  
9 October 13th, 1992, sorry for my scribble, and  
10 just a short portion of this article that I wanted  
11 to refer you to starting about here, this would be  
12 after Mr. Milgaard was released, it states:

13 "Milgaard was in B.C. to meet with Neil  
14 Boyd, a Simon Fraser University  
15 criminologist, and student Kim Rossmo,  
16 who have written a magazine article  
17 calling for an independent 'judicial  
18 inquiry' into his conviction.

19 "There are too many  
20 unanswered questions," Boyd said.

21 The professor said he is not  
22 surprised Milgaard is having difficulty  
23 readjusting to his new life."

24 Do you recall, it refers to you apparently  
25 continuing or meeting with Mr. Milgaard following



1 his release. Do you recall what that related to?

2 A Not specifically. I did meet with David Milgaard  
3 on at least a couple of instances after his  
4 release, met with him in Vancouver. The meetings  
5 were not of any particular importance.

6 Q And the article refers to plans for a magazine  
7 article at that time. Were there some plans of  
8 that nature?

9 A Kim Rossmo and I were under contract to *Saturday*  
10 *Night*, to write a magazine article for them about  
11 the Milgaard case. We did that, we were paid by  
12 them and then after about six months they decided  
13 they would not run the article, so we rewrote the  
14 article, submitted to *Canadian Lawyer*, and that  
15 article ran, I don't recall exactly when, sometime  
16 not too long from this date I assume.

17 Q And that's I think the last document I was going  
18 to show to you, that document is 335878, and I  
19 think it's a copy of the very article you were  
20 referring to, and the date we have for it is  
21 February of 1994. Does that sound right?

22 A That sounds right.

23 Q Does that look like the article you are referring  
24 to?

25 A That is the article.



1 Q Titled "David Milgaard, the Supreme Court and  
2 Section 690, a wrongful conviction revisited."  
3 And I think we've covered most of the aspects that  
4 are referred to in this article, Mr. Boyd, unless  
5 there's anything in particular that you had wanted  
6 to highlight, otherwise I'm not going to  
7 specifically refer to any portions. Is there  
8 anything from there that you wanted to otherwise  
9 mention?

10 A No. I think the article reflected a kind of  
11 pessimism and cynicism about how, what had  
12 transpired, that the Supreme Court had not been  
13 able to see what we thought was quite obvious on  
14 the face of the evidence, that his innocence was  
15 more probable than his guilt and then Saskatchewan  
16 had made the decision not to prosecute which made  
17 any kind of compensation problematic or any kind  
18 of real exoneration problematic, and then we had  
19 of course all of these questions that I alluded to  
20 earlier about the arrest of Larry Fisher in 1970  
21 in Winnipeg and the manner in which the four  
22 Saskatoon rapes were handled, the manner in which  
23 the convictions and -- rather, his guilty pleas  
24 were handled, and as I say, those questions remain  
25 with us today.



1 Q There are a few other documents I'm not going to  
2 turn to and maybe I can just reference, but I  
3 understand that you had some further media contact  
4 respecting the Milgaard matter on issues such as  
5 compensation for Mr. Milgaard when that arose as a  
6 question?

7 A Likely I did. I don't recall the specifics, but  
8 I'm sure that I was asked about the  
9 appropriateness of the compensation package.

10 Q And am I correct as well that there were perhaps  
11 some comments you provided in relation to the  
12 Larry Fisher criminal proceedings once those  
13 started in relation to the Gail Miller murder?

14 A That's quite likely.

15 Q And again I don't have, I apologize,  
16 Mr. Commissioner, I should have written down those  
17 document ID numbers, the parties have them, but  
18 I'll get those for you, I'm not going to  
19 specifically refer to them.

20 Thank you, Mr. Boyd, those are  
21 all the questions I have for you. My friends may  
22 have some questions for you as well.

23 MR. HODSON: I'm wondering,  
24 Mr. Commissioner, it's 2:30, we might break. I'm  
25 not sure who has questions. Maybe we can give an



1 opportunity to counsel, (a), to see who has  
2 questions, and (b), to jostle on order.

3 COMMISSIONER MacCALLUM: All right.

4 MR. HODSON: Or we can go -- I'm not  
5 sure --

6 COMMISSIONER MacCALLUM: Unless nobody has.  
7 Are there questions?

8 MR. HODSON: Yes, there likely are, so I  
9 think maybe if we can just break now.

10 COMMISSIONER MacCALLUM: We can take a 15  
11 minute break, yeah.

12 *(Adjourned at 2:31 p.m.)*

13 *(Reconvened at 2:49 p.m.)*

14 COMMISSIONER MacCALLUM: Mr. Strayer?

15 MR. FRAYER: Thank you, sir. Professor  
16 Boyd, my name is David Frayer and I'm appearing  
17 on behalf of the Minister of Justice.

18 COMMISSIONER MacCALLUM: Sorry, Mr. Frayer.  
19 I called you Strayer. No disrespect.

20 MR. FRAYER: Oh. Now retired from the  
21 bench. I wish I had his pension.

22 **BY MR. FRAYER:**

23 **Q** Professor Boyd, I just have a few questions to ask  
24 you with respect to some of the evidence that  
25 you've given and just a portion of your report.



1                   One of the things you mentioned  
2                   this morning was, and I hope I've quoted you  
3                   correctly, that the reenactment witnesses, that  
4                   is, Lapchuk and Melnyk, you said there really  
5                   wasn't much to it, they were a red-herring and  
6                   their evidence was blown out of proportion. Could  
7                   you expand on that, sir?

8           A        Yes.

9           Q        And tell us how you arrived at that observation?

10          A        I think the question was with respect to their  
11                   reenactment of David's conduct in the hotel room,  
12                   did -- two questions, did events occur as they  
13                   suggested, which was to say did, when asked about  
14                   the murder did David reenact it in some form by  
15                   stabbing a pillow and say "yes, I did it, yes, I  
16                   did it," and how was it interpreted, and we heard  
17                   from Deborah Hall that she thought it was a sick  
18                   joke. Lapchuk and Melnyk, I don't know that they  
19                   were ever asked whether they thought it could have  
20                   been in gest, but they did indicate quite clearly  
21                   that he did go through with that kind of a  
22                   reenactment. In light of all the other evidence  
23                   it seemed to us, to the extent that one spent a  
24                   lot of time on the relevance of Lapchuk and Melnyk  
25                   and the characters that they, at least one of them





1           were, was, that it was really not all that  
2           important to the determination of guilt or  
3           innocence of David Milgaard.

4           Q       Okay. You'll agree, though, that their evidence  
5           at trial and the manner in which it was introduced  
6           would have had a pretty compelling effect on the  
7           jury's deliberations ultimately because it appears  
8           to have been one of the key pieces of evidence, if  
9           I can describe it as that, that the Crown based  
10          their theory on?

11          A       I guess. I'm not sure how critical it was, you  
12          may be right, but I have always thought in looking  
13          at the transcript and talking to people who were  
14          involved that the really critical piece of  
15          evidence was the statement to police by Nichol  
16          John read in at trial.

17          Q       I think others might differ in their view of just  
18          how important that evidence was at trial,  
19          Professor Boyd, but I have your observation in  
20          that respect. Another area of examination I would  
21          like to take you to is the materials that you had  
22          in your possession when you first started this  
23          exercise in the middle part of 1991, and I think  
24          you said this morning that the report of the  
25          Centurion Ministries and the work of McCloskey and



1 Henderson formed a fairly large part of the  
2 materials that you were provided with in addition  
3 to transcripts of the preliminary inquiry and  
4 trial and so on. Could it be said that the  
5 Centurion Ministries work was a fairly significant  
6 source for you in terms of your preparation of the  
7 report?

8 A Well, I think it was important in two respects,  
9 one in that it identified Larry Fisher, and  
10 secondly, in that it provided information relating  
11 to the recantation of Ron Wilson, and those are  
12 both important issues, so I think it would be fair  
13 to say that the evidence that they provided was a  
14 critical part of our assessment. We had to  
15 determine how reliable they were insofar as we  
16 wanted to keep our distance from advocates of  
17 either kind, whether the advocates were for the  
18 Milgaard family or the Department of Justice.

19 Q Would it surprise you, sir, and I appreciate you  
20 didn't have the benefit of hearing one of the  
21 communications between Joyce Milgaard and David  
22 Asper where David Asper said that the statements  
23 that have been taken up to this point by Centurion  
24 have been horrendously biased. Did you see any  
25 evidence of horrendous bias at any time during the



1 course of reviewing materials that Centurion  
2 Ministries provided?

3 A Not that I recall. I mean, I could look at it I  
4 suppose in hindsight and perhaps have a different  
5 judgment, but I don't recall anything being  
6 horrendously biased in terms of -- there's  
7 certainly a difference of opinion, or a difference  
8 of opinion expressed by Ron Wilson with respect to  
9 police conduct to Paul Henderson as opposed to the  
10 kind of opinion he expressed to us about police  
11 conduct, I'm thinking of the Saskatoon police in  
12 relation to the original conviction, so I'm not  
13 sure what Mr. Asper is speaking of.

14 Q But you would take issue likely with that  
15 interpretation of the work of Centurion  
16 Ministries? Horrendously biased, you wouldn't use  
17 it I take it?

18 A I would have no reason to use that language.

19 Q Okay. And with respect to the interview of Paul,  
20 by Paul Henderson of Ron Wilson, we've heard  
21 evidence to the effect that on the date that that  
22 interview took place, that it was a taped  
23 interview and that Mr. Wilson and Mr. Henderson  
24 were together for approximately eight hours out in  
25 British Columbia and that the result of that



1 particular interview was a written statement of  
2 some six and a half pages. Did you ever become  
3 aware of the fact that Mr. Henderson had actually  
4 taped the interview of Ron Wilson or did you just  
5 have the six and a half page statement that Mr.  
6 Henderson had taken from Mr. Wilson?

7 A I can't recall what we had in front of us, I'm  
8 sorry.

9 Q The tape cannot be located as I understand it,  
10 although I understand there's some commitment by  
11 Mr. Henderson to produce it if he can find it, but  
12 is your recollection that, is it your  
13 recollection --

14 A If the tape can't -- yeah, my recollection is then  
15 that we must have relied upon those pages.

16 Q Okay. You don't have any independent recollection  
17 of whether it was a combination of the six and a  
18 half page statement and the taped interview that  
19 may have been given to you by Mr. Henderson?

20 A No, I don't.

21 Q Okay. So the likelihood is you didn't have it,  
22 but you can't remember specifically?

23 A Well, it would seem to me surprising that if  
24 everybody else doesn't have it, that we are the  
25 lone --



1 Q Because that would be of some significance to you  
2 I would think, wouldn't it, if he spent eight  
3 hours with him and the end result of that eight  
4 hours was six and a half pages of written work?

5 A Yes. I mean, certainly it's always better in  
6 those circumstances to have the full tape and I  
7 suppose one of the strengths of our work with  
8 Mr. Wilson is that we have a full tape of the  
9 interview.

10 Q It would have been helpful. With respect to your  
11 observations in your report, I want to take you to  
12 040520, this is page 23 of your report, Professor  
13 Boyd, if I can have that up on the screen, please,  
14 and I want to emphasize this area here with  
15 respect to polygraph, if I can just have that  
16 brought up, please, and you report in here:

17 "It seems surprising that the Department  
18 of Justice did not pursue polygraph  
19 testing of Ron Wilson, given that his  
20 credibility was the key issue. Counsel  
21 Ken Watson, representing Ron Wilson,  
22 indicated in August of 1990 that his  
23 client would be willing to take a  
24 polygraph, provided that an independent  
25 examiner were agreed upon, and that the



1 results of his previous polygraph tests  
2 at trial were made available."

3 Were you ever made aware of the fact that no such  
4 results were found anywhere, that --

5 A I have been made aware of that subsequent to the  
6 writing of this report.

7 Q Subsequent to that. And I appreciate that these  
8 are terms and conditions imposed by Mr. Watson on  
9 Mr. Williams?

10 A Right.

11 Q And then it goes on:

12 "Crown Counsel Eugene Williams wrote in  
13 response, "After further consideration  
14 of all of the circumstances and  
15 following a review of the materials  
16 obtained to date, it appears that there  
17 may be limited value in performing a  
18 polygraph test on your client at this  
19 time. Consequently, this avenue of  
20 investigation will not be pursued  
21 further."

22 So with respect to that, if Mr. Williams and  
23 Mr. Watson couldn't agree upon the terms and  
24 conditions being imposed specifically on Mr.  
25 Williams with respect to that test, does it



1 surprise you that it never took place?

2 A No, it doesn't surprise me.

3 Q So that with respect to that, and I understand the  
4 evidence to be that indeed because of the  
5 discussions that took place between Mr. Watson and  
6 Mr. Williams and because of the conditions imposed  
7 by Mr. Watson that couldn't be met by Mr.  
8 Williams, that no further attempts were made at a  
9 polygraph test?

10 A True.

11 Q Right.

12 A Yes, fair enough.

13 Q So -- thank you. Now if I can go to 163097,  
14 please. Once again, if we can just emphasize this  
15 area near the bottom of that page, this is the --  
16 about the book that you talked about this morning,  
17 Professor Boyd, in the fact that most of what's  
18 found in here, or a lot of what's found in here is  
19 the work of your literary agent as opposed to your  
20 own, --

21 A That's correct.

22 Q -- and you take an issue with a fair amount of  
23 things that are contained in here, and that as a  
24 result of this, and perhaps other things, the  
25 relationship with that particular agent terminated



1 after this?

2 A That's correct.

3 Q I believe that to be your evidence; is that  
4 correct?

5 A That is correct.

6 Q And with respect to the bullet that says that:

7 "-- that through incompetence or design,  
8 provincial and federal officials have  
9 failed to see that justice is done in  
10 this case, despite repeated appeals  
11 to them to do so."

12 So it appears that you are either alleging that  
13 both provincial and federal officials, I assume  
14 being the provincial Attorney General of  
15 Saskatchewan and the Federal Minister of Justice,  
16 are either incompetent or that there is some  
17 design, conspiracy, or something of that nature  
18 to ensure that David Milgaard doesn't get  
19 justice; is that -- am I reading that correctly?  
20 These aren't your words.

21 A Those are, were not and are not my sentiments,  
22 those are not -- that is not the language I would  
23 use to express my --

24 Q I'm sorry, sir, but was that a feeling that you  
25 held about federal and provincial officials, that





1           they were either incompetent or they had some  
2           design in place?

3           A       I don't think I ever suggested that federal or  
4           provincial officials were incompetent in relation  
5           to this matter. I think that they misinterpreted  
6           the evidence in terms, I've made that point in  
7           relation to the Section 690 appeals, and I've made  
8           some comments about my disappointment with respect  
9           to how the matter was handled by the Supreme Court  
10          of Canada as well.

11          Q       Yeah. Thank you, sir, those are my questions.

12                   COMMISSIONER MacCALLUM: What about design;  
13           would you ever suggest that they deliberately did  
14           anything wrong?

15          A       Either, that would be the even less likely,  
16           "through incompetence or design". I have said  
17           earlier that I have a number of questions about  
18           what happened after Larry Fisher was arrested,  
19           questions that relate to the confession of Larry  
20           Fisher, to the guilty pleas in Regina as opposed  
21           to Saskatoon, and to the fact that most of the  
22           witnesses appear not to be notified that an  
23           attacker had been found. I have questions about  
24           that. I'm not making specific allegations about  
25           design or incompetence, I don't think there are --



1 to me it's a matter of probability; you have  
2 unexplained confession; you have unexplained or  
3 not fully explained, at the very least, guilty  
4 pleas in Regina rather than in Saskatoon; you have  
5 no mention in the press that this serial rapist  
6 has been apprehended; you have no notification of  
7 the victims. If it had been one of those three  
8 pieces of information in isolation I could say,  
9 "Well, this is probably an entirely innocent  
10 oversight". I have questions about how that  
11 happened. I'm not going to make allegations about  
12 individuals having designs, but I really don't  
13 understand how that could occur as of -- if it was  
14 just coincidence it's kind of a lottery-style  
15 coincidence.

16 COMMISSIONER MacCALLUM: You will  
17 understand, sir, that our concern here is with  
18 the quality of the information which came to the  
19 attention of the authorities, and what I want to  
20 know from you is what degree of circulation was  
21 intended for this piece of work by your agent or  
22 publicist, was it simply to be circulated to  
23 potential publishers or was it --

24 A Yes.

25 COMMISSIONER MacCALLUM: -- to receive



1 wider circulation?

2 A Yes. I had forgotten completely about it until it  
3 was recently -- a couple of weeks ago.

4 COMMISSIONER MacCALLUM: So, as far as you  
5 know, it didn't get beyond your office and to  
6 potential publishers; is that it?

7 A I think it -- yes. I mean I don't think it ever,  
8 it was never publicly released, certainly, and I'm  
9 not even sure if it went to a -- I can't recall  
10 the timeline, but I'm not sure that it ever went  
11 to a publisher, because I think our disagreements  
12 became quite intense after this revision and, you  
13 know, I don't know whether it even went to a  
14 publisher.

15 COMMISSIONER MacCALLUM: Okay. Anything  
16 arising?

17 MR. FRAYER: No. Thank you, --

18 COMMISSIONER MacCALLUM: Thank you.

19 MR. FRAYER: -- Mr. Commissioner.

20 COMMISSIONER MacCALLUM: Thank you.

21 MR. HODSON: It does not appear there's any  
22 other questions for Mr. Boyd.

23 COMMISSIONER MacCALLUM: Any redirect?

24 MR. HARDY: No.

25 COMMISSIONER MacCALLUM: No? Thank you



1           very much. Mr. Boyd, thank you very much for  
2           coming.

3       A       Thank you.

4                   MR. HARDY: We'll call our next witness,  
5           Dr. Kim Rossmo.

6       **DARCY KIM ROSSMO, sworn:**

7       A       Can I sit down please?

8                   COMMISSIONER MacCALLUM: Yes, please, Mr.  
9           Rossmo.

10      **BY MR. HARDY:**

11      Q       Good afternoon, Dr. Rossmo.

12      A       Good afternoon.

13      Q       We should confirm, I understand you have been  
14           present for the testimony of Neil Boyd?

15      A       Yes I have.

16      Q       And you're currently a resident of Austin, Texas?

17      A       That is correct.

18      Q       And what is your current occupation?

19      A       Research Professor, Department of Criminal  
20           Justice, Texas State University.

21      Q       And what is your expertise?

22      A       I'm a criminologist, former police officer, my  
23           areas of expertise are the geography of crime and  
24           criminal investigations.

25      Q       You've provided us a couple of documents



1           respecting your academic and work background, I'll  
2           refer to at least one of those, 337453. You are  
3           familiar with that document, Dr. Rossmo?

4       A       It's my CV, curriculum vitae, up to March of this  
5           year.

6       Q       And it is accurate?

7       A       Up to March of this year, yes, it is.

8       Q       And I'll just review a couple of portions. I see  
9           at the top, under the Professional sub-heading, as  
10          you've mentioned, presently a Research Professor  
11          at Texas State University, and you mention your  
12          duties:

13                   "- research focus on the criminal  
14                   investigative function and the geography  
15                   of crime  
16                   - currently studying the geographic and  
17                   geological features associated with  
18                   criminal land border crossings, and  
19                   spatial patterns of insurgency  
20                   bombings",

21          and:

22                   "- teaching of graduate and  
23                   undergraduate courses",

24          and that would be accurate information?

25       A       The land border project is now complete, so I'm no



1 longer studying that.

2 Q And if we move down the page, starting here, I  
3 note from 1978 to 2001 you were a detective  
4 inspector with the Vancouver Police Department; is  
5 that correct?

6 A I was with -- I was with the Vancouver Police  
7 Department from 1978 to 2001, and a detective  
8 inspector for the last five of those years.

9 Q Okay. And it mentions, a couple of the bullets  
10 underneath that heading:

11 "Formerly officer i/c Geographic  
12 Profiling Section".

13 Actually I'm going to pause there for just a  
14 moment, what is 'geographic profiling'?

15 A Geographic profiling is a criminal investigative  
16 methodology that analyses crime locations to  
17 determine the most likely area of offender  
18 residence. More generally, it's concerned with  
19 the geographic and environmental features of  
20 crimes, and how those may be used in a criminal  
21 investigation.

22 Q So is it twofold, then, in terms of what you have  
23 just described for us?

24 A I could give you a few more folds, but it's a  
25 support methodology often used for suspect



1 prioritisation and focusing a criminal  
2 investigation.

3 Q So it's beyond what you initially stated, and that  
4 is a study that assists in determining offender  
5 residence, is that correct?

6 A That's its primary function but not its only  
7 function.

8 Q Okay. And it mentions following that:

9 "Duties involved providing geographic  
10 profiling services in cases of serial  
11 crime (e.g., murder, rape, arson,  
12 bombing, robbery) for local, national,  
13 and international police agencies,  
14 including the Royal Canadian Mounted  
15 Police, the Federal Bureau of  
16 Investigation, and Scotland Yard ..."

17 And, again, you mention 1995 to 2001; and that's  
18 accurate information?

19 A Correct.

20 Q And the next bullet states:

21 "- past duties included assignments in  
22 offender profiling, organized crime  
23 intelligence, patrol, hostage  
24 negotiation, emergency response team,  
25 prostitution task force, vice, planning



1                   and research, crime prevention,  
2                   community liaison, Expo 86 Squad, VIP  
3                   security, detention annex,  
4                   communications (1978 to 1995)"?

5       A           Correct.

6       Q           That's accurate as well?

7       A           Yes.

8       Q           So, just so we're clear, in terms of the  
9                   geographic profiling work in the context of your  
10                  work with the Vancouver Police Department, for  
11                  what years did that work come into effect for you?

12      A           The very first time I did an operational profile  
13                  was 1990, it became my half-time duties I believe  
14                  in 1992, full-time duties in 1995, so it was an  
15                  evolving demand on my time. It actually was an  
16                  outgrowth of my doctoral dissertation research and  
17                  investigators heard about it and began to ask for  
18                  help in cases, and then that spread, first of all  
19                  I was providing support for our own department,  
20                  then for other Canadian police agencies, then in  
21                  the U.S., and then other countries.

22      Q           And we'll get to this, but just so we understand  
23                  from the outset, in terms of your evolution in  
24                  respect of that expertise, where were you at at  
25                  the time that you were reviewing the David





1           Milgaard case in I think 1991, if that's accurate,  
2           from your recollection?

3           A       At that point in time I was about three years into  
4           my Ph.D. program. I had finished my course work  
5           and was preparing for my comprehensive exams. I  
6           had read a great deal and I had done some work, we  
7           hadn't developed the computer model that we used,  
8           commonplace now, so I would say late beginnings.

9           Q       And are you, when you are telling me that, are you  
10          referring to the geographic profiling aspect that  
11          we have been discussing?

12          A       Correct.

13          Q       Okay. I'll turn to the next page of this  
14          document, and I note under Academic you received  
15          your Ph.D. in Criminology in 1986 from Simon  
16          Fraser University, and mention is made of the  
17          David Milgaard matter:

18                   "- conducted an independent review of  
19                   the David Milgaard murder conviction  
20                   (1992)".

21          And in terms of listening to the testimony of Mr.  
22          Boyd, and otherwise recalling the matter, would  
23          it be correct that that work was actually  
24          conducted in 1991 from your recollection?

25          A       Yes. I had a project, as you can see there, in



1 Japan that I worked on, which was during May of  
2 1991, and prior to that I was still involved in my  
3 course work. Since I was a full-time police  
4 officer and a full-time Ph.D. student, I'm pretty  
5 confident that I would not have had time to become  
6 involved with the Milgaard review that we did  
7 until June, a minimum of June 1991, though I could  
8 not tell you if it was June or July when we began  
9 work on it.

10 Q Okay. And I should have mentioned, in your  
11 dissertation it mentions:

12 "Geographic Profiling: Target Patterns  
13 of Serial Murderers, an examination of  
14 the hunting styles and geographic  
15 patterns of serial murderers, rapists,  
16 and arsonists; this study led to the  
17 development and international  
18 implementation of geographic profiling,  
19 an investigative methodology used in  
20 cases of serial crime."

21 And do I take it that you were a bit of a pioneer  
22 in this area, then, Dr. Rossmo?

23 A Umm, yes, I coined the term "geographic  
24 profiling", I've written a number of articles  
25 including a book on it, and we have patents on the



1 software that we developed in Canada and the  
2 United States. This is a system that has been  
3 implemented, first of all, by the RCMP, and then  
4 the Ontario Provincial Police, the ATF in the  
5 United States, it's implemented in the Netherlands  
6 now, Sweden, Germany, England, a variety of U.S.  
7 states and Canadian provinces.

8 Q And I'm not -- and I know you'd be reluctant to  
9 toot your own horn -- but in terms of looking for  
10 an expert in geographic profiling, are you near  
11 the top of the list in terms of who someone might  
12 want to go to?

13 A I consider myself competent in that regard.

14 Q Okay. And I think that's probably most of what I  
15 wanted to review with you on this document.  
16 Perhaps just a brief mention of the next page,  
17 page 3, and I won't review them but under  
18 publications I see there are numerous books --  
19 continuing on to the next page -- numerous books  
20 and articles on the topic of geographic profiling.  
21 And then if we go to the next page we see, again,  
22 reference to the David Milgaard matter, 1994,  
23 February, *Canadian Lawyer* magazine, and is that  
24 perhaps the article that we briefly referenced at  
25 the tail end of Mr. Boyd's --



1 A Yes it is.

2 Q -- evidence? And have you provided expert  
3 testimony in Court proceedings in this area,  
4 geographic profiling?

5 A I've provided expertise -- expert testimony in a  
6 case, it was Jane Doe versus the Metropolitan  
7 Toronto Police, and I was declared an expert in  
8 serial violent crime and its investigative  
9 technique. I believe the wording may be on my CV.

10 Q Okay. And --

11 A And most --

12 Q Sorry?

13 A Most part, though, the type of work I do is  
14 investigative support, it's not -- it rarely gets  
15 to the courtroom.

16 Q Okay. The other document I had mentioned, and we  
17 don't need to refer to it, but you have also  
18 kindly provided us with a copy of your biography,  
19 which I think covers some of the same ground, and  
20 that's document 337460. And as I mentioned you've  
21 listened, then, to the evidence of Mr. Boyd, Dr.  
22 Rossmo?

23 A Yes, I have.

24 Q And are you in general agreement with the evidence  
25 that he has provided?



1 A Not 100 percent, but 98 percent.

2 Q And we'll get into it, but are there any  
3 particular areas, from the outset, that you want  
4 to qualify, or clarify, or add comment on?

5 A A lot of time was spent discussing the book and  
6 the book proposal. My fairly clear memory of it  
7 was that this was an idea that Neil was very  
8 ambivalent about, he was not enthusiastic about  
9 the book because he saw a number of potential  
10 pitfalls, and we were actually much more  
11 interested in the publication of our article for  
12 *Saturday Night* magazine which, as he described,  
13 didn't happen. The publication of this  
14 Criminology Research Centre report, the one that  
15 you referred to earlier, really just places it in  
16 a library, we were interested in communicating our  
17 findings to the larger community, and we thought  
18 the *Saturday Night* magazine article would be the  
19 best way to do that. So, really, the book was a  
20 pretty minor issue in the whole thing and not one  
21 that Neil had a lot of enthusiasm for.

22 Furthermore, I have all my files  
23 on this matter, I believe they're about 90  
24 separate documents. Prior to coming here I had  
25 the opportunity to review 80 of them, the other 10



1           were lengthier, like the trial transcript, but I  
2           know what was -- what I didn't review and I know  
3           what I did review; I don't have a copy of his book  
4           proposal so that, to me, suggests that it had a  
5           fairly limited distribution.

6           Q       And, as you've brought up that topic, maybe we'll  
7           deal with it now. Do you have any recollection of  
8           Mr. Boyd's dealings with Mrs. Milgaard, or  
9           otherwise, in relation to the book at the time?

10          A       Yes, and that was the -- one of the major issues.  
11          Another major issue was that a competing book was  
12          coming out. We didn't have all the facts and  
13          information that we wanted for our report, let  
14          alone a book, and Neil could not obtain the  
15          family's cooperation without losing some editorial  
16          control, and so he backed away from the project.  
17          And, as I said, he was not that enthusiastic about  
18          it to start with.

19          Q       And you've mentioned your file materials, and I  
20          should state, Mr. Commissioner, Dr. Rossmo brought  
21          with him yesterday from Texas that collection of  
22          material, and he has it with him presently. We  
23          haven't had a chance to upload those materials  
24          onto the database. I've reviewed the documents.  
25          For the most part, we have copies of the documents



1           referred to, we looked at some of them in the  
2           context of Mr. Boyd's evidence. But, obviously,  
3           those documents are available for the parties'  
4           review. Dr. Rossmo has kindly indicated that we  
5           can have the documents for purposes of offering  
6           them for others' review, and they will be  
7           available. I don't expect to be finished with Dr.  
8           Rossmo by the end of the afternoon and they will  
9           be available at that time.

10           COMMISSIONER MacCALLUM: All right, thanks.

11           BY MR. HARDY:

12           Q        You heard Mr. Boyd's testimony as to how the two  
13                   of you became involved in the matter, Dr. Rossmo;  
14                   do you have anything to add to that aspect?

15           A        After I reviewed the murder case from Stettler,  
16                   Alberta, and saw no reason to think that it might  
17                   be a wrongful conviction, I happened to see a  
18                   *Fifth Estate* CBC television show on the David  
19                   Milgaard/Larry Fisher matter. It intrigued me for  
20                   three reasons; one, I was from Saskatoon  
21                   originally, I had grown up here; two, it was a  
22                   predatory sexually violent crime and yet, just  
23                   based on the relatively short television  
24                   broadcast, it didn't seem to fit the notion of a  
25                   16-year-old youth from another city with a short



1 window of opportunity; and the third thing was it  
2 was, from an analytic perspective, intriguing  
3 because there was either/or proposition here. I  
4 guess there was always the possibility that there  
5 was a third party involved but, in a way, it made  
6 it a lot easier to approach because you could  
7 assess the viability of Fisher versus Milgaard.  
8 And I brought it to his attention, and I didn't  
9 realize -- know what he was going to do with it,  
10 but when he came up with the funding we set into a  
11 plan, what we were going to do in terms of our  
12 information collecting. We were kindly provided  
13 with a number of materials, eventually, by either  
14 Joyce Milgaard or the law firm of Wolch and Asper,  
15 but there were things that we wanted to check out  
16 ourself. That occurred over the summer and early  
17 fall, ultimately leading to the writing of the  
18 report.

19 At that time I was a serving  
20 police officer, my job really was more on the  
21 lines of putting people in jail, not getting them  
22 out. I said to Neil that "if we do this, we have  
23 to do it going in without any biases". Neil fully  
24 agreed with that, and at no time did I feel that  
25 there was any pressure or drift towards anything





1           that was not supported by the evidence.

2                       I should mention that in some of  
3           our deliberations we had the advantage of the  
4           perspective of Neil's wife, Isobel Otter, who  
5           accompanied us to Saskatoon. She actually  
6           prepared the map at the back of the report that we  
7           did. And many times we would discuss and go back  
8           and forth, and "what does this mean", and "how  
9           does this fit in with this", and so I think that  
10          we, to the best as you humanly can, approached it  
11          with an unbiased perspective and tried to let our  
12          opinion be gradually formed as the information  
13          came to our attention, and Neil and I never had  
14          any conflicts over that, and in the end we  
15          ultimately came to the same conclusions. And I  
16          read that report before coming here and there is  
17          nothing in there that I would disagree with today.

18        Q        Okay. So you had no preconceived notions ahead of  
19                  time, then, that this was, in fact, a wrongful  
20                  conviction?

21        A        I was intrigued because it didn't seem to be a  
22                  normal type of crime, as I described to you when I  
23                  saw the *Fifth Estate* show. What I remembered  
24                  about my decision-making process was, after  
25                  reading the trial transcript, I didn't come to the



1 conclusion that Milgaard was likely innocent or  
2 guilty, I -- but I did feel that it would probably  
3 be a case where he would not be convicted today  
4 based on that evidence, and then after our visit  
5 to the crime sites in Saskatoon, at that point I  
6 was starting to become fairly convinced that it  
7 appeared unlikely that he had done it.

8 Q So once your work started, how did you view your  
9 role in the review, as distinct from Mr. Boyd's?

10 A It was parallel, but we did have our own areas of  
11 expertise. Neil's a lawyer, and I think he was  
12 very interested in the Section 690 and its  
13 possible reform, I was interested in the  
14 geographic and environmental aspects and the  
15 hunting behaviour of serial predators, so in terms  
16 of our expertise that we brought to the table, it  
17 was somewhat different in terms of our  
18 decision-making and agreeing what was going to be  
19 put on the report, it was an equal basis. And I  
20 think, if it reached a point where we diverged, we  
21 probably would have prepared one opinion versus  
22 the other and included them both in the report.

23 Q Sorry, I don't know if I caught that last part?

24 A Let's say Professor Boyd felt one way about  
25 something and I felt the other way about it, we



1 would have prepared divergent opinions and  
2 included them in the report, but that did not  
3 happen.

4 Q Okay. And you have been touching on it, but give  
5 us a sense, then, of the standard of review that  
6 you were applying to this case? When you were  
7 engaging your work, what was the standard that you  
8 were applying, were you looking at this as if it  
9 was a fresh investigation in some respects, or how  
10 were you approaching the matter?

11 A Well, first of all, you have to realize that we  
12 were limited by the information available to us;  
13 police files, the Crown counsel reports, the  
14 ability to talk to some of the witnesses and  
15 victims, some of the players, those things were  
16 not all open to us. We did talk to who we could  
17 talk to, we looked at the physical evidence, we  
18 looked at all the reports we could get, we visited  
19 the -- all the relevant sites. We tried to  
20 approach it as we approach a police investigation,  
21 but I want to be clear that in a real police  
22 investigation you don't have those, those  
23 handicaps available to you.

24 Also understand that we were  
25 doing this from a -- with a number of questions



1           that might not be of interest to say a lawyer or a  
2           judge in a courtroom but were still interesting to  
3           us as academics, such as the surrounding social  
4           milieu, you know, hippies and the Temperance  
5           Colony of Saskatoon, etcetera, etcetera. So there  
6           were things that we explored that were maybe  
7           further afield, and there were other areas that  
8           were truncated because we didn't have access to  
9           the documents and the information, and you also  
10          have to understand that we had a limited amount of  
11          time to devote to the project as well.

12        Q       And, again, in -- I mean when you were looking at  
13           it were you saying to yourself, "I'm gathering  
14           together this information, I'm gathering together  
15           this evidence, and I'm asking the question do I  
16           have a reasonable doubt about David Milgaard's  
17           guilt", or were you looking at it from the point  
18           of view that you suspect Larry Fisher is guilty  
19           and that leads you to your conclusion, or how were  
20           you -- how were you approaching it, what standards  
21           were you --

22        A       We were pushing it trying to find out what went  
23           on, what had actually occurred, not in the  
24           negotiated reality of a courtroom but, factually,  
25           what had actually occurred. Could we say that



1 "this appears to be David Milgaard's  
2 responsibility", could we say that, "it's Larry  
3 Fisher's", could we say it didn't belong to any of  
4 them. But we didn't know the conclusion before we  
5 began.

6 I mentioned to you before the  
7 option of either/or scenario made it just an even  
8 more intriguing project, and that actually ended  
9 up being fairly important in the end with our  
10 report, but we may have well come to the  
11 conclusion that "we can't say anything here", but  
12 that's not the conclusion we came to. I'm just  
13 saying we didn't know our destination. We knew  
14 what we wanted to get, we knew where we wanted to  
15 get to, we didn't know if we would be able to get  
16 there, and I'm -- I think that both Neil and I  
17 were happy with where we were able to get.

18 Q Where you say, "We knew where we wanted to get  
19 to", what do you mean when you say that?

20 A Well, ideally, to determine beyond a reasonable  
21 doubt who was responsible for the murder of Gail  
22 Miller.

23 Q And so maybe I'm just asking the question in a  
24 different way, but what did you consider was the  
25 objective of your involvement?



1       A       To understand what went on with this particular  
2               case, to explore the possibility of a wrongful  
3               conviction, or the hyping of a wrongful conviction  
4               that was, in itself, incorrect.

5       Q       And so in terms of process, I think you've  
6               confirmed some of this for us already, but you  
7               considered a review of the original transcripts an  
8               important step?

9       A       It was one of the first, I don't know if it's the  
10              first step, it was one of the first steps.

11      Q       And can you be any more specific in terms of other  
12              source material that you would have had in your  
13              possession --

14      A       Yes, we had a --

15      Q       -- in conducting your review?

16      A       Yes, we had reports from Dr. Markesteyn, Dr.  
17              Ferris; we had lots of correspondence involving  
18              the various individuals, Asper, Wolch, Joyce  
19              Milgaard; we had the *Fifth Estate* video; we had  
20              Eugene Williams, the transcript of Eugene  
21              Williams' interview with Ron Wilson; we had Peter  
22              Edwards' interview with Larry Fisher's mother; we  
23              had some of the copies of the -- of witness  
24              statements, including Nichol John, Ron Wilson; we  
25              had notes that David Milgaard had prepared



1 following his arrest; we had the application  
2 under, I guess it was section 617 originally --

3 Q Originally.

4 A -- to Joe Clark; we had a lot of newspaper  
5 clippings and magazine articles; we had a  
6 Centurion Ministries summary report and we had a  
7 Centurion Ministries binder which included the  
8 interviews with the Fisher victims; some  
9 information about Centurion Ministries and some  
10 newspaper clippings about Centurion Ministries all  
11 packaged together; we had -- or we eventually  
12 obtained things like bus schedules, maps of  
13 Saskatoon including older maps, like I believe we  
14 had a map from like 1973, which is the closest we  
15 could get to 1969; other material, I think I have  
16 a list of the 80 documents I reviewed which I have  
17 given you.

18 Q Do you have the material that you have referred to  
19 with you? Is that the collection that I've now  
20 advised the Commission about?

21 A Yes, I do.

22 Q Okay.

23 A I do not have the 10 documents I did not review,  
24 they were left home partly because of the volume  
25 and weight of them, like the trial transcript.



1 Q And just so we have a sense again, and forgive me  
2 if I've already asked this or you have clarified  
3 this, but what documents did you not bring with  
4 you?

5 A Again, they're on the list, but they included  
6 Eugene Williams' interview with Wilson -- I want  
7 to be clear, these are all documents I had read at  
8 the time, but I did not reread again just prior to  
9 coming here -- the trial transcripts, a big  
10 envelope of newspaper clippings. I did not look  
11 at the photographs or slides that we took at the  
12 time, I did not look at the Centurion Ministries  
13 binder that I just mentioned to you, I made -- I  
14 know there is a couple of other things. Again  
15 they're on the list that I provided you.

16 Q Yeah, and, I'm sorry, Dr. Rossmo, I didn't bring  
17 that list, it was a handwritten note that you had  
18 provided to me, but I understand what you are  
19 referring to, and if I can add clarification  
20 after, referring to that list, I will do so.

21 Did you meet with Joyce Milgaard  
22 and David Asper then early in the process?

23 A I remember meeting with them in Winnipeg and I  
24 believe we met with one or both of them in  
25 Vancouver.





1       Q       And how did they assist you and what did you rely  
2               upon from them?

3       A       Primarily in the provision of documents, they  
4               facilitated access to meeting David Milgaard at  
5               Stony Mountain prison, it seems to me there were a  
6               number of questions over time that I had for them.  
7               For example, one of the documents I have here,  
8               something called an RCMP profile sheet which was  
9               sent to me by David Asper, and it's clear from the  
10              accompanying letter that it's something that he  
11              had mentioned to me and I said I would very much  
12              like to see that, so he provided it at a later  
13              point in time. You have a question/answering  
14              document provision, facilitating access, and they  
15              may well have assisted Neil in some of the  
16              contacts with the people we did talk to.

17      Q       Were you relying upon the views otherwise that  
18               they were expressing in relation to the issues  
19               that you were considering?

20      A       I was interested in hearing their views, but we  
21               formed our own views, and there are things where I  
22               agree with them on and there's things where I  
23               don't agree with them on, so -- the same with I  
24               think any two individuals that are looking at a  
25               fairly voluminous amount of information are going



1 to have different perspectives on things. We  
2 formed, Neil and I formed our own opinions and we  
3 tried again as much as possible to base that on  
4 the facts that we could confirm.

5 Q And you listened to Mr. Boyd's testimony regarding  
6 the various interviews and witness contacts that  
7 he recalled. Do you recall any others that  
8 weren't mentioned?

9 A Well, we interviewed Dennis Cadrain, we were  
10 considering interviewing Albert Cadrain, but as he  
11 said, that was something we didn't do. We  
12 interviewed Joyce Milgaard, David Milgaard, we  
13 interviewed Dr. Emson, Dr. Ferris and Dr.  
14 Markesteyn, we interviewed Ron Wilson, we tried to  
15 interview Nichol John, we talked to Detective Huff  
16 on the telephone, we spoke to Linda Fisher. There  
17 was a woman who lived on 20th Street right next to  
18 the alley who I spoke to briefly regarding traffic  
19 conditions on 20th Street and also on the church  
20 bell at St. Mary's. We spoke to Eddie Karst. We  
21 tried to speak to other police officers. Bobs  
22 Caldwell. I believe we also tried to talk to Cal  
23 Tallis, but I should stress those contacts were  
24 made by Neil. It is my recollection that we did  
25 try to talk to Cal Tallis and possibly others, but



1 we were not successful.

2 Q And I'm going to cover that in a little bit more  
3 detail with you. Before we get into that, you've  
4 mentioned --

5 A I'm sorry, we also tried to talk to Larry Fisher,  
6 but were not successful.

7 Q Right. You mentioned the visit to Saskatoon and I  
8 think you referred to some of your recollection of  
9 that. What was the purpose of that visit and what  
10 tasks did you accomplish during your visit to  
11 Saskatoon, I believe in early September of 1991?

12 A We interviewed Linda Fisher, we looked at the  
13 location of the Miller murder, we looked at the  
14 locations of the other four rapes, attempted rapes  
15 that Larry Fisher had been convicted of, we spoke  
16 to Dr. Emson, we went to the courthouse and looked  
17 at the physical evidence related to the case, we  
18 spoke to Sergeant Karst and we explored the other  
19 geographic features like the location of the  
20 Trav-a-leer hotel, of the Cadrain/Fisher house,  
21 the Danchuks, etcetera, did some measurements and  
22 some timing regarding movements between these  
23 locations and spent some time in the Saskatoon  
24 Public Library looking through microfiche for the  
25 Saskatoon StarPhoenix.



1       Q       And you mentioned a little earlier on some  
2               photographs that were taken, and I don't think  
3               you've brought those with you, but what were those  
4               in relation to?

5       A       We took pictures of each of the rape locations  
6               associated with Larry Fisher and then also took  
7               pictures of the location where Gail Miller was  
8               murdered. I was interested in this from a  
9               micro-environmental context. A crime location has  
10              to serve a function for the offender. For a crime  
11              to occur, the offender has to intersect with the  
12              victim in time and space and it has to be done at,  
13              in a location such that they have a degree of  
14              cover or protection. They are going to be  
15              concerned about access and escape. It was  
16              interesting when we looked at the Fisher rapes,  
17              they, for the most part, tend to be in older  
18              residential neighbourhoods that had garages off  
19              the alley, lots of high fences and trees and  
20              vegetation, being older vegetation the trees were  
21              usually fully developed, it made it difficult for  
22              anyone looking out their back window of their  
23              house to see into the alley, so this provided him  
24              some cover. Victims were encountered on the  
25              street and dragged into the alley or into, in some



1 cases, at least in one case an empty yard, very  
2 similar in terms of their environments compared to  
3 the Gail Miller, and you can compare that to other  
4 type of rape locations. Breaking into a victims'  
5 home at night-time, attacking a victim while she's  
6 getting into a car, driving the car to another  
7 location, transporting the victim, etcetera, so  
8 from a micro-environmental perspective, the Miller  
9 murder crime scene fit with the Fisher rapes very  
10 closely, which is interesting and suggestive, but  
11 is hardly compelling.

12 Q And just so I'm certain, and I know it's difficult  
13 to do this, Dr. Rossmo, but when you are speaking  
14 of those, or those observations and some of that  
15 knowledge, was that information you had at the  
16 time, that you were applying at the time in terms  
17 of considering the locations of the other rapes  
18 and attempted rape?

19 A I'm not sure what you mean by information.

20 Q I just want to be sure that we're capturing your  
21 mindset and expertise as it was at the time that  
22 you were reviewing this matter as opposed to you  
23 offering thoughts now in terms of the expertise  
24 that you've gained through the years since.

25 A No, that was the state of my knowledge at that



1 time.

2 Q Okay.

3 A Analytically this actually involved two parts,  
4 part one was how does this all fit in terms of  
5 David Milgaard and what we know about what  
6 occurred with the investigation and at trial and  
7 that information, but the second part is something  
8 that you might call crime link, these are  
9 comparative case analyses. We know Larry Fisher  
10 because he was convicted, did these four rapes.  
11 How closely does this, if we consider it unsolved,  
12 the Gail Miller murder, fit into that pattern, and  
13 there's a number of things that have to be  
14 considered here, similarities and differences, and  
15 then you also have to look at what we call your  
16 background level, how common were stranger sexual  
17 assaults in Saskatoon at that time. Most rapes  
18 involve acquaintances, so when we take a look at  
19 actual very low number of such predatory attacks,  
20 then we want to see, you know, is there anything  
21 distinguishing about these, there's some elements  
22 that are helpful, some elements that are not, so  
23 these are some of the things we were considering  
24 in this two-pronged approach.

25 Q And again, you were considering those aspects at



1           that time?

2       A       Yes.

3       Q       And I'm correct then, you were taking the lead  
4               obviously in terms of looking into the Larry  
5               Fisher aspect?

6       A       Well, again, this project was a joint  
7               collaboration where things were discussed, but you  
8               are correct, that was probably my primary  
9               responsibility, but there was nothing written or  
10              done that both of us didn't review and agree to.

11      Q       And we'll briefly touch on your recollection of  
12               some of the interviews and see if you have  
13               anything to add to what Mr. Boyd advised us. Do  
14               you recall meeting with David Milgaard?

15      A       Yes, I do.

16      Q       And what do you recall of that meeting or do you  
17               recall anything significant or that you considered  
18               significant at the time?

19      A       Only one thing, and I think Neil has already  
20               stated this, that much of what went on in this  
21               matter went out without David Milgaard's knowledge  
22               or awareness. I wanted to ask him if he had done,  
23               if he had killed Gail Miller and I did and he  
24               answered no and I believed him. For what that is  
25               worth, there is no magic formula or wand to



1           determine when someone is lying or telling the  
2           truth, but he appeared to be credible. We were  
3           trying to get a sense of how this could go wrong  
4           and if you look at our questions, a lot of our  
5           questions of everyone was sort of focused on that  
6           perspective. I mean, we were interested in what  
7           David Milgaard had, why would your friends turn on  
8           you, you know, this type of thing.

9       Q       How many times did you meet with Mr. Milgaard?

10      A       Only once.

11      Q       Just the one time?

12      A       Correct.

13      Q       And in terms of the time frame that we were  
14           talking about with Mr. Boyd this morning, can you  
15           place that meeting within that time frame or  
16           within the time frame generally?

17      A       Well, this is September, 1991 when we went to  
18           Winnipeg.

19      Q       Okay. And no further recollection other than  
20           that? And I don't think a lot turns on it  
21           necessarily.

22      A       I would have it in my daytime -- I might have it  
23           in my daytime calendar. I don't know.

24      Q       What about Nichol John, what's your recollection  
25           of attempts to contact Nichol John or discussions





1 with Nichol John?

2 A I know that Neil Boyd telephoned her. I may have  
3 telephoned her as a follow-up, but actually I  
4 don't remember talking to her.

5 Q You have no recollection of talking to her  
6 yourself?

7 A No.

8 Q Do you recall learning what Neil Boyd may have  
9 learned from Nichol John?

10 A It was primarily a dead-end, that she didn't want  
11 to meet with us.

12 Q Do you recall --

13 A I don't recall any useful information coming out  
14 of our attempts to contact Nichol John.

15 Q Nothing of substance that you can recall?

16 A Nothing, period.

17 Q I don't know if this document is going to assist  
18 us at all, but I'll bring it up in any event for  
19 reference sake, 053353, and I apologize I didn't  
20 better inform myself as to the source of this  
21 document, but I noted the note at the top,  
22 received from Nichol Demyen, it appears perhaps  
23 June 4th, 1993, and there's a reference, Kim  
24 Rossmo, September 20th, 1991, Kim Rossmo,  
25 September 29th, 1991. If you turn to the next



1 page, please, you'll see there's reference to a  
2 number of other individuals including Neil Boyd,  
3 professor, and your name again stated, Kim Rossmo,  
4 that's September 3rd, 1991, and I don't know if  
5 that refreshes your memory, and I'm not suggesting  
6 for a moment that the document necessarily  
7 indicates this, but it seems to indicate there may  
8 have been contact from you at the end of September  
9 on a couple of occasions. Can you recall --

10 A Could you tell me the source of the document and  
11 whose handwriting this is?

12 MR. HARDY: Sure. Actually, I don't know  
13 whose handwriting this is.

14 MR. HODSON: I think I can assist. This  
15 was a document the RCMP obtained in 1993 in an  
16 interview with Nichol John where she indicated  
17 here are the people who contacted me, names and  
18 dates, and I think it was primarily media people,  
19 and so that's the source, the RCMP produced it to  
20 us.

21 A So Nichol John's notes of people who had contacted  
22 her?

23 MR. HODSON: To the RCMP, and I think the  
24 date on the top left on the first page indicates  
25 it was 1993. I don't recall who the officer was,



1 but I think that's the source of it.

2 A Could you go to the next page then again, please?

3 BY MR. HARDY:

4 Q Sure, page 1, if we could go back, please.

5 A Well, the dates are certainly consistent with when  
6 we were doing this. I have no reason to doubt  
7 this, so -- I don't remember phoning her. I know  
8 that Neil Boyd remembers me phoning her. I just  
9 -- I can't say that I remember phoning her.

10 Q Okay. And you'll recall, I showed Mr. Boyd that  
11 portion of the transcript of the interview with  
12 Mr. Wilson this morning, and if you would like we  
13 can go back to that, it's document 154640, it's  
14 page 25, and again I covered this with Mr. Boyd,  
15 there's some comment perhaps in terms of  
16 information that Mr. Boyd may have received from  
17 Nichol John and in quotes you'll note:

18 "Well, I didn't say it was David

19 Milgaard I saw doing the stabbing."

20 Assuming that came from Nichol John, and you  
21 heard that earlier today. Do you recall anything  
22 of that nature in terms of that type of  
23 information being gathered from Miss John?

24 A I recall that at some point, at some time Nichol  
25 John said to somebody that, umm, just what -- this



1 comment here about "I didn't necessarily say it  
2 was David Milgaard," and I actually remember  
3 looking through her statement and it's clear that  
4 she does say it was David Milgaard, but as to the  
5 origin of it, until you, you know, you pointed  
6 this out to me, I couldn't have told you where  
7 that originated from.

8 Q But you don't fit this in in terms of Neil Boyd  
9 telling you this is something that Nichol John  
10 advised --

11 A It's definitely possible. I'm just saying I  
12 cannot remember that.

13 Q Okay. What about Albert Cadrain, I think you've  
14 mentioned it already, but did your -- did your  
15 account or does your account match Mr. Boyd's in  
16 terms of not contacting with Mr. Cadrain?

17 A That's correct.

18 Q And for the same reasons he mentioned, it was  
19 Dennis' persuasion?

20 A Correct.

21 Q And did you have anything to add in terms of  
22 recollection of your meeting with Dennis Cadrain?

23 A No, I don't think so.

24 Q And let's talk about police officers for a moment.  
25 Do you recall meeting with Eddie Karst?



1 A Yes, I do.

2 Q And anything further of significance beyond what  
3 Mr. Boyd advised us in terms of your recollection  
4 of that meeting?

5 A I have certain strong opinions regarding  
6 responsibilities of public officials. Having been  
7 one myself for many years, I was quite, and I want  
8 to start off by saying I have a very, had a very  
9 high regard for the Saskatoon Police Force when I  
10 lived here and still have a high regard for them.  
11 I was disappointed at the lack of co-operation  
12 from members of the criminal justice system and  
13 Eddie Karst is the only one that had the gumption  
14 to meet with us and, you know, I'm aware of the  
15 inconsistency regarding his statement to us and  
16 the statement that he took in Winnipeg. I don't  
17 know, I perhaps was more critical of that until  
18 some of our conversations with you when you asked  
19 us things from 1991 that I cannot remember, I  
20 don't know what happened there, but I have to say  
21 the man did meet with us, appeared to be genuine  
22 and was co-operative and he is the only one from  
23 the police that did that.

24 Q And let's follow through with that a little bit.  
25 I take it you have a recollection of trying to



1 make contact with other police officers?

2 A Yes.

3 Q And give us the specifics in that respect.

4 A I know Neil tried to contact Penkala.

5 Q And what do you recall -- let's take it just one  
6 by one. What do you recall happened in respect of  
7 that contact?

8 A Well, none of them -- remember, I didn't make  
9 these contacts myself other than Huff, I had a  
10 conversation with Huff in Winnipeg, but no other  
11 police officer wanted to meet with us.

12 Q Again, I just want to take it one by one. We're  
13 talking about Mr. Penkala. You have a  
14 recollection of Neil actually contacting Mr.  
15 Penkala?

16 A Of Neil telling me that he had tried to contact  
17 Penkala.

18 Q And what else do you recall in that respect?

19 A That was refused.

20 Q And did you have a sense at that time that he had  
21 been successful in actually reaching Mr. Penkala,  
22 but Mr. Penkala --

23 A Yes, I believe so.

24 Q -- had refused to speak with him?

25 A Yes.



1 Q And what about other officers in that respect?

2 A I can't remember specific names without reference.  
3 I know there was a Short that was involved with  
4 this, I can't remember if we tried to contact him.  
5 My general impression though is we tried to  
6 contact everyone we could, so I can't see us not  
7 contacting someone that was still alive and still  
8 around when that opportunity was presented to us,  
9 but I do remember a general sense of growing  
10 frustration and disappointment that people from  
11 the criminal justice system were unwilling to talk  
12 with us, so -- and it was not just one or two  
13 people, there were more than that, I was  
14 disappointed in that.

15 Q But --

16 A I think I even made some note of that in our  
17 report.

18 Q Sticking with the Saskatoon Police Department for  
19 a while, we'll be able to cover the others  
20 shortly --

21 A Can I add one thing here, I'm sorry. Also,  
22 because we had no specific standing here, some of  
23 our requests for information were routed through  
24 David Asper and Hersh Wolch because as Milgaard's  
25 lawyers they were more likely to get access to the



1 information, so some of that frustration could  
2 have come from them not being willing, not being  
3 able to provide us information because they were  
4 unable to get it themselves.

5 Q And I guess I wanted to get to that, and are you  
6 able to differentiate between your own efforts and  
7 the efforts that you understood were being  
8 undertaken by Mr. Asper?

9 A No. Beyond what I've told you, no, I don't -- I  
10 cannot break it down.

11 Q And are there any other, and we'll stick with the  
12 Saskatoon Police Department for the moment, but  
13 any other former officers that you specifically  
14 recall attempting to contact?

15 A I didn't contact anybody.

16 Q Or that you learned that Mr. Boyd had attempted to  
17 contact?

18 A I'm sorry, I can't remember.

19 Q Okay. And this is a bit of a tangent, but do you  
20 recall asking for or making a request for the  
21 original police investigation file on the Gail  
22 Miller murder?

23 A I know that's something I would have wanted to  
24 look at and I would have wanted to look at the  
25 investigation files related to the Fisher rapes





1 and that request would have gone through Wolch's  
2 and Asper's law office because an investigation  
3 report tends to be confidential, so we had --  
4 there's no way we were going to get it, so we --  
5 but my understanding is they were unable to get it  
6 except for a few pieces such as some of the  
7 witness statements and the RCMP profile sheet I  
8 mentioned to you. There was some discussion about  
9 some of the police files being lost.

10 Q You don't recall then, and I think you've answered  
11 this already, but you didn't contact the Saskatoon  
12 Police Department yourself then requesting  
13 materials?

14 A No.

15 Q And what about the original prosecution file, is  
16 that something that you wanted to see or do you  
17 recall making efforts to obtain that?

18 A Beyond the transcripts and -- I'm not sure what  
19 you mean by the prosecution file. I was  
20 interested in the police reports that have been  
21 prepared, I'm sure a prosecution file includes  
22 lots of other things, but I remember wanting the  
23 police reports.

24 Q Do you recall, for example, a thought of  
25 contacting Saskatchewan Justice for assistance in



1 terms of obtaining materials?

2 A Well, Neil had submitted an FOI request I think  
3 more related, though, to the later period  
4 involving the rest of Larry Fisher. I'm not sure  
5 why Saskatchewan Justice would have copies of the  
6 police reports though.

7 Q And I'm not saying that you should assume that at  
8 the time, I'm just covering any possible contacts  
9 you may have made in terms of pursuit of this type  
10 of material, including the prosecution file.

11 A Well, from my experience, police would do an  
12 initial investigation report of a crime and then  
13 they would do a report to Crown counsel if someone  
14 becomes charged, and I don't recall seeing a  
15 report to Crown counsel, so I'm pretty certain  
16 that Wolch and Asper didn't have that either.

17 Q Okay. These were the types of requests, though,  
18 that you felt you had routed through Mr. Asper and  
19 Mr. Wolch?

20 A Yes.

21 COMMISSIONER MacCALLUM: So you did not  
22 contact Saskatchewan Justice yourself?

23 A No, I did not.

24 COMMISSIONER MacCALLUM: Okay.

25 BY MR. HARDY:



1 Q And anything further to add in terms of the  
2 contact with Dr. Harry Emson?

3 A He was co-operative and professional and seemed to  
4 have no difficulty admitting that he had made a  
5 mistake during his initial assessment regarding  
6 the blood gluc -- the semen.

7 Q And what about Linda Fisher, this would have been,  
8 I take it, an area of interest, or one of the  
9 witnesses who you may have been particularly  
10 interested in speaking with?

11 A I thought she was very credible, very forthright.  
12 It's obvious that their marriage had broken up,  
13 but I also thought that she was reasonably fair  
14 and balanced, didn't try to stick anything on  
15 Larry that didn't appear to be warranted, her  
16 statements seemed to be consistent.

17 Q And you would have been in possession then of the  
18 statement of Linda Fisher to Paul Henderson at  
19 that time?

20 A Yes.

21 Q And do you recall, I had asked Mr. Boyd, do you  
22 recall whether you had the transcript of the  
23 interview of Ms. Fisher by Eugene Williams?

24 A No, I have not read that.

25 Q And do you recall being in possession at the time



1 of original police material from the 1980 time  
2 period, or from 1980 relating to Linda Fisher  
3 attending at the Saskatoon Police Department and  
4 giving a statement?

5 A No, I do not have that material.

6 Q And for your purposes, was there anything of  
7 particular relevance that you gathered from Linda  
8 Fisher that you weren't already aware of perhaps  
9 through Paul Henderson's dealings?

10 A No, I don't think so. We may have fleshed out a  
11 few details. Part of our purposes of talking to  
12 these people again was to, you know, assess the  
13 credibility, reliability and the degree of bias in  
14 Paul Henderson's interviews, and for the most part  
15 we didn't find any, we found them to be pretty  
16 good representations of what we were told later  
17 on.

18 Q And we'll get into it a little bit further, but  
19 you say for the most part. Are there any concerns  
20 that stick out in your mind in terms of Mr.  
21 Henderson's work?

22 A Well, as Neil Boyd has already pointed out, Larry  
23 -- Wilson's comments about his treatment by the  
24 police to us were at variance with what he told  
25 Paul Henderson or what Paul Henderson recorded,



1           though the simplest explanation for that to me is  
2           in his first admission Wilson needs to blame  
3           somebody, so yes, I'm going to tell you the truth,  
4           but, you know, it was the fault of the police, and  
5           by the time he gets around talking to us he starts  
6           to shed that and is becoming a little more  
7           forthright, though with Wilson it is really  
8           difficult to know what went on and I don't know if  
9           Mr. Wilson knows exactly what went on. If we look  
10          through a series of statements that he's given  
11          over time, recognizing that now we have several  
12          years' time that we're looking back on this, the  
13          fact that he was involved with drugs, the fact  
14          that he was a fairly weak personality, he could  
15          talk to you, appeared to be very credible because  
16          he believes what he's telling you, it may not be a  
17          reflection totally of the truth, so we have to say  
18          that while his recanting of his testimony is  
19          important, to also recognize that, you know, he's  
20          not really a fountain of strength and truth and  
21          reliability himself.

22        Q       We'll touch on his interview specifically in a  
23                moment. What about your recollection in terms of  
24                attempts to speak with Larry Fisher?

25        A       I know he was contacted by letter by Neil Boyd and



1 we never heard anything from him.

2 Q What were you hoping to cover with him?

3 A If I had the opportunity to talk to him, I would  
4 have liked to talk to him about how he selected  
5 his victims, how he approached them, how often he  
6 was looking for victims that weren't attacked,  
7 there was some information that he committed some  
8 indecent assaults in Winnipeg in addition to those  
9 two rapes, I would have liked to know more about  
10 those, why he selected the areas and locations  
11 that he did, what he was doing -- of course, if he  
12 was willing to talk to us about the January 31st,  
13 1969 time frame, what he was doing at that time  
14 period, like to know about access to vehicles, his  
15 commuting to work at the university, anything that  
16 might have set him off or angered him regarding  
17 his victims and any number of things.

18 Q And Paul Henderson, did you specifically meet with  
19 and interview or discuss matters with Paul  
20 Henderson?

21 A I remember meeting him. I don't remember any  
22 lengthy interview or discussion with him.

23 Q And we referred as well, and I think it was, and  
24 tell me if I'm right, I think it was a page  
25 perhaps from your file materials in relation to



1 Lorne Huff, if you recall that page of notes we  
2 looked at. Was that from your materials, Dr.  
3 Rossmo?

4 A Yes.

5 Q And we can turn to that page, please, the document  
6 is 337456. What do you recall learning from  
7 Mr. Huff? Sorry, that's not it, perhaps 457.  
8 337446.

9 A This is a piece of paper with Neil Boyd's  
10 handwriting and my handwriting on. It appears  
11 that Neil had some questions on here that I have  
12 written some rough notes on regarding answers  
13 after or during my conversation with Huff. For  
14 example, one of the problems is some records have  
15 been lost because the Fort Garry Police Department  
16 had amalgamated with the Winnipeg Police  
17 Department in 1974, and his attacks took place in  
18 Fort Garry, at least one of them did. He couldn't  
19 remember if Larry Fisher took things from his  
20 victims. One of the explanations for why Larry  
21 Fisher confessed was he wanted to be close, go  
22 back to Saskatchewan to be closer to his daughter,  
23 who may have -- I have a note here "Huntington",  
24 and we believe that she is, may have suffered from  
25 Huntington's disease, we have the note here that



1 Lawrence Greenberg was his lawyer, that Milgaard  
2 was -- or sorry -- that Fisher was beat up in the  
3 Remand Centre, the records being destroyed. I  
4 have some other notes here, I'm not sure what they  
5 meant, \$10,000, about guards, hung himself, and I  
6 don't know what they have -- what they mean.

7 Q And just a couple of the points you've mentioned,  
8 in terms of the amalgamation and the records that  
9 you referred to, do you recall attempting to  
10 obtain records from the Fort Garry Police  
11 Department, or otherwise, in relation to this  
12 matter?

13 A What I recall is asking Lorne Huff if those  
14 records would be available and he said they had  
15 been destroyed.

16 Q Okay. And the reference -- and I brought it to  
17 Mr. Boyd's attention -- "beat up in Remand Centre  
18 - guards"; do you recall what that related to?

19 A No, I don't know, other than that Fisher was beat  
20 up at the Remand Centre. I don't know what the  
21 "guards" reference is.

22 Q Okay. And in terms of just that first portion,  
23 "beat up in Remand Centre", do you know why you  
24 were making notes of that or do you recall that?

25 A I think that was one of the catalysts for him





1           wanting to leave Manitoba, go to Saskatchewan, in  
2           addition to his daughter.

3       Q       Okay.

4       A       But I'm not sure.

5       Q       It's just beside this question, I don't know if  
6           it's a part of it and I don't know if you can tell  
7           us which notes are associated with which question,  
8           but it's beside the question "why did Fisher  
9           confess", and I don't know if that assists you in  
10          refreshing your memory as to the meaning of the  
11          note or the purpose of the note?

12      A       Well if Larry Fisher, if it's correct that Larry  
13          Fisher wanted to go to Saskatchewan, then the  
14          confession was his entrée to getting moved to  
15          Prince Albert, I think is where he ended up.

16      Q       And do you recall any attempt to contact Lawrence  
17          Greenberg?

18      A       No.

19      Q       Okay.

20      A       He would have been bound by solicitor/client  
21          privilege.

22      Q       But you didn't contact him respecting the matter?

23      A       No.

24      Q       You understood that he was Mr. Fisher's lawyer  
25          during the course of the proceedings as they were



1           dealt with --

2       A       Yes.

3       Q       -- out of Manitoba and then in Saskatchewan --

4       A       Yes.

5       Q       -- in the 19 -- or in the early 1970 time period.

6           And did you speak with the other sexual assault  
7           victims that are noted in the Centurion Ministries  
8           reports?

9       A       No, we did not. We didn't have access to their  
10           names and, even if we did have access to their  
11           names, we wouldn't have spoken to them.

12       Q       And I think, and we can review the material, but I  
13           think the names perhaps are included in the  
14           materials that I understood were in your  
15           possession, or am I wrong in that? I took a quick  
16           look through, and by all means take a moment and  
17           take a look, if you need to?

18       A       I believe the first time I was aware of their  
19           names was in the RCMP profile sheet.

20       Q       I could be wrong.

21       A       They were not in the Centurion Ministries reports,  
22           they're not in our reports.

23       Q       Do you have the summary of the Centurion  
24           Ministries report in your possession?

25       A       I have the summary, yes. Yeah, the names are in



1 the RCMP profile sheet.

2 Q But I'm talking about material that you may have  
3 had at the time?

4 A That's my recollection, February 5th, 19 -- or  
5 shortly after February 5th, 1992 was sort of the  
6 first point that I knew of the victims' names.  
7 There wasn't a whole lot of information related to  
8 those crimes.

9 Q Do you recall seeing statements as a part of the  
10 Centurion Ministries reports from individuals, and  
11 I'll name them to see if it refreshes your memory  
12 at all, (V3)-- (V3) (V3)-----, (V2) (V2)-  
13 (V2)-----, (V1)--- (V1)-, (V7)--- (V7)---, (V8)--  
14 (V8)---; do any of those names refresh your memory  
15 as to knowledge of those victims at the time?

16 A The only information we have from, -- well, I know  
17 those names now. The Centurion Ministries report,  
18 remember the yellow binder I mentioned to you --  
19 and I do want to stress that I did not review that  
20 binder before coming here -- that was the sole  
21 source of information. There were summaries of  
22 what had happened in those attacks by Larry  
23 Fisher, but I'm pretty sure that binder did not  
24 include the victims' names.

25 Q Okay, and I think you went on to say that even if



1           it did, you wouldn't have contacted the victims?

2       A       No.

3       Q       And can you inform us further in that respect?

4           And I'm not suggesting for a moment that you  
5           should have, but you were obviously interested in  
6           this aspect of the investigation, and one might  
7           suggest that that would be a source of information  
8           that you may want to go to; what would have led  
9           you to that conclusion at the time?

10      A       Oh, absolutely, it was a very important source of  
11           information. But the victims were already  
12           initially interviewed by the police once or more  
13           than once, they had been interviewed by Paul  
14           Henderson. We saw no reason, in our other  
15           follow-up interviews, to conclude that Paul  
16           Henderson was biased, or not competent, or not a  
17           good interviewer. It's traumatic to go back to  
18           sexual assault victims and repeatedly interview  
19           them, in fact some places in the United States  
20           have laws how often you can re-interview a sexual  
21           assault victim. So I think, for the purposes of  
22           what we were doing and the information available,  
23           it would have been unwise for us to do that.

24                           In the event that this was  
25           re-opened, those victims may well have been --



1 and, of course, we're now looking at this from  
2 1991's perspective -- may well have been  
3 interviewed yet again, so I think it would have  
4 been inappropriate for us to go back and talk to  
5 those victims.

6 Q And were you in effect, then, relying upon the  
7 information that had been gathered by Centurion  
8 Ministries from the victims?

9 A Yes, I believe we actually have a footnote to that  
10 effect in our report.

11 Q Right.

12 A It wasn't ideal, but it was the best we could do.

13 Q And in terms of your interest in the Larry Fisher  
14 aspect of the investigation, have I missed anyone;  
15 were there any other contacts, in particular, that  
16 you recall making?

17 A I can't think of any at the moment, if you have a  
18 name you can prompt me with it, but --

19 Q Well we'll continue through and, if any names come  
20 up, we can cover it at that point. So in terms of  
21 your involvement through August and I guess  
22 September of 1991 we looked at a number of media  
23 articles; I take it that you had some interaction  
24 with the media during the course of your  
25 investigation?



1       A       Some.

2       Q       And I'll refer you just to a couple of documents.  
3               The first one would be 009479. I see it's a *CBC*  
4               *Newsworld* report, it's dated August 9th, 1991, and  
5               if we turn, please, to page 3 of that document  
6               it's speaking of your involvement in the matter,  
7               yours and Mr. Boyd's, and at the bottom of the  
8               page the reporter asks:

9                       "And Rossmo, who's also a full-time  
10                      police officer, says there's a lot of  
11                      evidence to review."

12       Next page, there is a quote from yourself.

13               "KIM ROSSMO: Recently we'd been back in  
14               Saskatoon and had a conversation with  
15               some RCMP officers who were wondering  
16               about it. It was not open and shut in  
17               their minds, either."

18       Do you recall specifically what that comment  
19       related to?

20       A       Not specifically, or who they were. Bear in mind,  
21               though, I am a serving police officer at this time  
22               with many friends who are from various  
23               jurisdictions, Vancouver, the RCMP, the Saskatoon  
24               Police, and I recall talking to some people who  
25               were absolutely convinced David Milgaard was



1 guilty, and talking to other people that had a lot  
2 of questions about it, and I think maybe the point  
3 I was trying to make here was that the police  
4 attitude and response was not monolithic.

5 Q And that was your perception at the time?

6 A Yes, that it was --

7 Q That --

8 A -- an issue that other people besides myself, in  
9 the policing community, were wondering about; --

10 Q Okay?

11 A -- was this -- was the correct person convicted  
12 here.

13 Q And does the fact that it's Saskatoon RCMP  
14 officers referred to here -- or I think that's the  
15 import of the comment -- assist you in terms of  
16 recalling who those officers may have been?

17 A No, I'm sorry.

18 Q Okay. I'll refer to another media piece, it's  
19 327539. This is a piece that we reviewed with Mr.  
20 Boyd, you will recall a CBC radio transcript from  
21 September 10th, 1991, this would be just at the  
22 tail end, I guess, of your visit to Saskatoon.  
23 And if we turn to the next page, you'll recall I  
24 put a couple of these comments to Mr. Boyd:

25 "Boyd says they've reached an



1 independent conclusion."

2 Boyd states:

3 "We believe that there is good reason to  
4 have a second look at this case."

5 And was that a view that you shared at this point  
6 in time, Dr. Rossmo?

7 A I'm sorry, could you give me the date, again, for  
8 this document?

9 Q It is September 10th, 1991, is the date of this  
10 report, and as I said, this would be at the tail  
11 end, I believe, of your visit to Saskatoon that  
12 we've discussed?

13 A I think, as I said earlier, after coming to  
14 Saskatoon and looking at the locations, inspecting  
15 some of the timing of the movements, I began to  
16 have real doubts about the viability of the Crown  
17 theory, but we still had work to do, including  
18 talking to Ron Wilson and discussing some of this.  
19 But I say, at this point in time, our opinions are  
20 starting to crystalize.

21 Q And perhaps we should clarify, and I don't know if  
22 your perception on matters were different than Mr.  
23 Boyd's, he is speaking of there being good reason  
24 to have a second look at this case, and I think  
25 what we discussed with Mr. Boyd was the question





1 of a re-opening, and was that something that you  
2 were even directing your mind to or -- and, again,  
3 it kind of gets us back to the standard that you  
4 were applying to yourself at the time in terms of  
5 your review, but can you assist us at all; were  
6 you similarly concluding that the case should be  
7 re-opened at this point in time?

8 A Umm, at this time, or very shortly after this  
9 time. You know, I'm sure that if Joyce Milgaard  
10 had had a magic button she could have pressed to  
11 release David from prison, she would have. If I  
12 had that same magic button I would not have  
13 pressed it, partly because there were people that  
14 we were not able to talk to, and we could not put  
15 the time or effort or resources that a murder  
16 inquiry really involves, and there was lots of  
17 evidence or information that we hadn't had a  
18 chance to review.

19 If I did have a magic button  
20 that would have prompted a second, another review  
21 of the case, either through the Supreme Court or  
22 some other Court of Appeal, by the conclusion of  
23 our report I would have pressed that button.

24 Q And would that, similarly, be the case at this  
25 point in time then?



1       A       It's hard for me to answer, because I'm not  
2               exactly sure what steps we had gone through in  
3               Saskatoon during this interview, but probably very  
4               close.

5       Q       Okay. Just in terms of the next portion, the  
6               reporter states:

7                        "They weren't able to interview  
8                        officials from the Saskatoon Police  
9                        Department.

10                               Rothmoe is a police officer in  
11                               Vancouver. He says it's unfortunate  
12                               police in Saskatoon are silent on this  
13                               case."

14       And have we covered the extent of your  
15       recollection in terms of that comment, Dr.  
16       Rossmo?

17       A       Again, I felt frustration. Obviously, I'm a big  
18               supporter of the police, but I also hold police to  
19               high standards in terms of our professionalism,  
20               and I had become extremely frustrated by any  
21               attempt to not communicate or to discuss things  
22               that -- which sometimes stems from the  
23               paramilitary nature of policing. I've never  
24               agreed with that and I never had a -- I have never  
25               thought that it has led to the best



1 decision-making, so I was disappointed in this,  
2 and I'm still disappointed in the direction of  
3 people, but it's not just the police here, it also  
4 had to do with the prosecutor. And I want to  
5 note, though, the next sentence where I felt that  
6 we didn't think the police had botched the  
7 investigation or framed Milgaard during the 1969  
8 up-to-January-1970 time period.

9 Q You're saying you are restating that or you're  
10 confirming the accuracy of that --

11 A Yes.

12 Q -- view at this time?

13 A Yes.

14 Q And I, so far, perhaps I should back up, I've been  
15 putting examples of your frustrations in terms of  
16 your frustrations in contacting certain officials  
17 in terms of witness contacts. Were there any  
18 other examples that we haven't covered where you  
19 had tried to contact somebody who fits that  
20 description, either currently at the time with the  
21 Saskatoon Police Force or otherwise, and you were  
22 refused, or any --

23 A Well, obviously, Nichol John. That was also very  
24 frustrating. The individual played a key role in  
25 the case and seems to have abdicated all



1 responsibility for her actions, but again, I'm not  
2 sure I would hold a semi-street teenager to the,  
3 you know, to the same level that I would hold  
4 police and criminal justice officials.

5 Q But no other examples in terms of the Saskatoon  
6 Police Department?

7 A I can't recall any other names at this time.

8 Q And we'll turn as well to 218782, please. Again  
9 --

10 A Actually, sorry, two names that do come to mind  
11 were Mackie and Short, so I would be surprised if  
12 we tried to talk to Eddie Karst and not have tried  
13 to talk to them.

14 Q And do you have any further recollection of where  
15 --

16 A I know that we didn't talk to them, I know that  
17 Detective Mackie would have been alive at the time  
18 because I know he has talked to this Commission, I  
19 don't know about Detective Short.

20 Q Okay. This is another article that we reviewed  
21 with Mr. Boyd, again by Peter Edwards, and you'll  
22 see the first sentence:

23 "David Milgaard is probably innocent of  
24 the murder and rape that has sent him to  
25 prison for the past 22 years, the



1 authors of a new study conclude."

2 If we move down the page a little bit further  
3 I'll show you a couple of other portions of this  
4 article. It states:

5 "Like the Centurion  
6 investigation, the Simon Fraser study  
7 finds the probable killer of nurses aide  
8 Gail Miller on Jan. 31, 1969 was serial  
9 rapist Larry Fisher."

10 And then down a little bit further, starting  
11 here:

12 "Fisher is due to be released  
13 in 1994 and has a very high chance of  
14 committing more rapes, the study's  
15 authors said.

16 'We feel he is a very high  
17 risk, if he is released,' Boyd said.

18 'The impulses will still be  
19 there,' said Rossmo. 'But will he have  
20 learned that he will probably go to jail  
21 (if he rapes again)?... I would not  
22 feel comfortable with him out on the  
23 street again.

24 Fisher is in the most dangerous  
25 10 percent of rapists and was more than



1                   capable for the vicious knife-point  
2                   murder of Miller, Rossmo said."

3                   And do you recall comments of that nature being  
4                   made to the press at that time, Dr. Rossmo?

5           A        I'm not sure I remember the interview, but I don't  
6                   see anything there inconsistent with what I would  
7                   say or what I believed.

8           Q        And is this --

9           A        I'm not sure what the ellipses mean, or what I  
10                   said between those two points, but I think the  
11                   main issues I would say I agree with.

12          Q        This was accurate information, as far as you were  
13                   concerned, that was being provided at the time?

14          A        Well the best predictor of future behaviour is  
15                   past behaviour, so we have a man who is a  
16                   confirmed serial rapist, multiple attacks in a  
17                   short time period with a knife, he escaped --  
18                   sorry -- he is incarcerated, refuses any sort of  
19                   counselling or treatment, is released, and within  
20                   the matter of a small number of weeks he again  
21                   attacks a woman and, for all intents and purposes,  
22                   murders her. The fact that she lived had nothing  
23                   to do with his actions, it was just good fortune.  
24                   Again, he is back in prison, he's still not  
25                   getting treatment, there is no reason to think



1           he's going to self-rehabilitate. Yes, he is  
2           dangerous.

3                       When he was released and he came  
4           to Saskatoon, he was in the same general  
5           neighbourhood as my sister, and I had some  
6           concerns about that. The likely -- in fact, I  
7           even believe there was some information about some  
8           attack on prostitutes, and they were looking at  
9           Fisher as being a possible suspect.

10       Q       And, kind of a difficult question to ask, but did  
11           you have any concerns about publicly identifying  
12           Fisher as the likely killer of Gail Miller, for  
13           example, to the media and otherwise at the  
14           time, --

15       A       Well --

16       Q       -- and I guess given the context that your  
17           investigation --

18       A       -- I don't --

19       Q       -- wasn't complete at the time of this?

20       A       What was the date of this?

21       Q       This is September 21st.

22       A       Yeah. First of all, the media will summarize and  
23           condense what you actually say, so my opinion  
24           then, my opinion now, is exactly what we said in  
25           this report; that Larry Fisher is a much better



1 suspect than David Milgaard, established motives,  
2 similar modus operandi, greater opportunity in  
3 terms of both time and knowledge of the area to  
4 commit the crime, so that's what I would prefer to  
5 go with rather than a summary of our statements.

6 Q Okay. Return to the next page of that article,  
7 please, beginning at the top. It states:

8 "The Crown's case against  
9 Milgaard in his 1970 trial said Miller  
10 was killed in a purse-snatching gone  
11 wildly wrong.

12 That theory has been dismissed  
13 by Boyd and Rossmo. Rossmo said that  
14 the killer who repeatedly slashed Miller  
15 had a deep-seeded hatred of women.

16 'It just doesn't fit  
17 (Milgaard's personality),' Rossmo said.  
18 'He's got no history of that type of  
19 sexual deviation... This (Miller's  
20 killer) would appear to be someone who  
21 is a psychopath... Someone with no  
22 empathy towards women.' "

23 And would those have been views that you were  
24 expressing at the time, Dr. Rossmo?

25 A Yes, and I would hold the same views now. The





1           purse-snatching theory is incredibly weak, and I  
2           think if you do any canvass of purse-snatchings  
3           and then see this type of actions afterwards, you  
4           would be hard-pressed to come up with other  
5           examples. Where violence has been used against  
6           purse-snatchers, it's been because the  
7           purse-snatchers resist and the violence is usually  
8           to the point of knocking the victim down or giving  
9           them the purse. This was a sex crime, this was a  
10          violent sex crime.

11        Q           And these are views, obviously, --

12        A           The purse, taking of the purse and the robbery,  
13                    was after, was secondary to the sexual anger  
14                    motive.

15        Q           And these were views, then, and the type of  
16                    analysis that you were applying at that time; is  
17                    that correct?

18        A           Correct.

19        Q           If we move forward just a bit further down the  
20                    article starting here, sorry, here:

21                               "Fisher lived near most of  
22                               his victims, which Rossmo said is  
23                               typical of many serial rapists, who like  
24                               to operate inside 'comfort zone' of an  
25                               area they know well. Fisher lived less



1                   than two blocks from Miller's home.

2                   Milgaard had just arrived in  
3                   Saskatoon the morning of Miller's murder  
4                   and was in town to visit a friend and  
5                   was in her neighbourhood to visit a  
6                   friend.

7                   'He's (serial rapist) got to  
8                   know the area,' Rossmo said. 'Larry  
9                   Fisher was certainly very familiar with  
10                  that area, David Milgaard wasn't.'

11                 And again, we'll look at this in terms of your  
12                 report and your final conclusions, but this was  
13                 obviously something you knew about serial rapists  
14                 at the time, or you felt comfortable expressing  
15                 at the time?

16                 A       Yes, and knowing what I know now, with my  
17                         experience now, I would say the exact same thing  
18                         but probably even with a stronger emphasis.

19                 Q       Okay. And at the bottom of the page it states:

20                         "One of the files they would  
21                         like to study concerns another attack  
22                         possibly committed by Fisher at roughly  
23                         the same time and location as where  
24                         Miller's body was found on Jan. 31,  
25                         1969.



1                   This victim said she was able  
2                   to fend off her attacker. The foiled  
3                   attack could have left the killer in an  
4                   intense, murderous rage when he found  
5                   Miller, the study's authors said.

6                   'You've got to imagine the  
7                   bottled up rage and frustration,' Rossmo  
8                   said. 'This (attack) is the only way he  
9                   can vent it.'

10                  And do you recall what this aspect related to, or  
11                  what information you had gathered on this point?

12       A       Umm, I don't know what information I knew about  
13                  this case at this time, and quite frankly I don't  
14                  know much about this case at this time. This is  
15                  the 7:07 a.m. attack on -- and help me with the  
16                  name?

17       Q       (V4)---- (V4)---?

18       A       (V4)---, thank you, of which there is a lot of  
19                  discussion and debate on. And, again, it is  
20                  really difficult to make valid interpretations  
21                  without having, you know, the original police  
22                  file, and with the statement of the victim. I'm  
23                  not sure of the actions.

24                       I'm not sure I would -- my  
25                  thoughts on this is either this could be a bogus



1 report made by Ms. (V4)--- -- and I'm not saying  
2 that it is, I'm just considering the possibilities  
3 -- because it's not uncommon to have people come  
4 up with, "Oh, I was also attacked that same day,  
5 or that same time, by the same offender." For  
6 example, during the Abbotsford killer case we had  
7 no shortage of people who were being attacked by  
8 the same man, and they were fraudulent. So that's  
9 a possibility.

10 Another possibility, it was a  
11 different offender attacking the same  
12 neighbourhood at the same time. I consider that  
13 probability to be very, very low.

14 The third possibility is this  
15 was an attack by Fisher prior to killing Gail  
16 Miller, the fourth probability it was an attack by  
17 Larry Fisher after killing Gail Miller. There is  
18 problems with both of those because you have to  
19 stretch some of the time elements, and I'm not  
20 sure, I would really want to go -- I can tell you  
21 what I think is the most probable, but I really  
22 don't think that I would be adding much without  
23 having had the opportunity to properly review the  
24 file.

25 Q Just in terms of those last two scenarios, being



1           that you brought it up, an attack of the nature,  
2           as you understand it, against someone following a  
3           killing, as we understand it, in respect of Gail  
4           Miller; would it be more likely for one to have  
5           happened prior to the other in your experience?  
6           And I realize I'm dipping away from what I said I  
7           was going to do, but I'll ask you, in any event,  
8           your view on that?

9        A     Okay. I've consulted on at least 200 crime series  
10       involving 3,000 crimes, probably 4,000 crime  
11       locations, and have easily studied another  
12       thousand. I find it incredibly rare that an  
13       offender who has committed a violent attack and  
14       has had sex to completion would -- and is probably  
15       covered in blood would then go and do something  
16       like this here, a secondary attack after. But I  
17       have seen many cases where an attempted attack  
18       occurred, and for whatever reason the offender is  
19       fought off or abandons it or is scared away, and  
20       then immediately attacks another victim.

21                       So, in my mind, the most likely  
22       scenario, based on the offender's behaviour, would  
23       be that the Miller murder occurred after this, but  
24       there are some issues in both scenarios with the  
25       timing.



1 Q And just going back, then, to the point in time  
2 when you were making these comments; how had you  
3 learned of this particular file?

4 A I don't know. My best guess is that it would have  
5 been brought to our attention by maybe David  
6 Asper.

7 Q And do you recall what you were advised about this  
8 particular case at that time?

9 A All I remember is that there was a similar attack  
10 at the same time period, I believe there was some  
11 possible connection with Fisher's uncle who lived  
12 in the area, and possibly about Fisher having  
13 access to a car. But I don't recall ever reading  
14 any documentation on this, so it was one of those  
15 kind of questions floating out there, that it  
16 would be nice to know more about this, but I never  
17 received the type of information that would allow  
18 it to congeal into anything of any real value.

19 Q And do you recall -- and to be fair, we've got a  
20 transcript of a short discussion, I don't know if  
21 it informs us a whole lot on this aspect -- but it  
22 suggests -- you're not involved in the  
23 conversation -- but it suggests that perhaps Joyce  
24 Milgaard or Mr. Asper has contacted you for your  
25 opinions, at the time, in relation to the



1 possibility that this attack took place after the  
2 Gail Miller killing; do you have any recollection  
3 of discussions of that nature?

4 A Not really, but it certainly could have happened.  
5 I do remember some conversations about this, but  
6 they don't stick in my mind, and again I'm not  
7 sure what I could have -- other than what I have  
8 told you here today, I'm not sure what I could  
9 have said without knowing a lot more of the  
10 details. My opinion isn't worth very much without  
11 having some facts to base it on.

12 Q Okay. Just the last portion of this report near  
13 the bottom:

14 "Rossmo said his work  
15 studying the Milgaard case give him an  
16 odd feeling because of his experience as  
17 a police officer.

18 'Normally, I try to put people  
19 in jail, not get them out', Rossmo  
20 said."

21 And I think you've referred to this, and the  
22 quote may be out of context, but did you see your  
23 role in this matter as trying to get Mr. Milgaard  
24 out of prison?

25 A No. I think, as a police officer, you're



1 interested in justice, and if our job is to put  
2 people in jail, it's to put the right people in  
3 jail.

4 You have to remember, with a  
5 wrongful conviction, you've given the real  
6 offender a get-out-of-jail-free card, and (V10)  
7 (V10)- is somebody who might not have been  
8 victimized if the Milgaard wrongful conviction  
9 hadn't happened. The police were probably -- the  
10 police had, I think, a reasonable chance of  
11 eventually coming across -- or no, the police  
12 already had come across Larry Fisher, and Larry  
13 Fisher was clearly not stopping his rapes in the  
14 Riversdale and Pleasant Hill areas of Saskatoon,  
15 so they might well have caught him. So a wrongful  
16 conviction isn't -- we just -- we have to  
17 recognize who's being victimized, it's not just  
18 the poor individual in jail for a crime he didn't  
19 do, but other potential victims when the real  
20 killer is still out there.

21 So I don't see -- you know, I  
22 think that this, while this is a somewhat strange  
23 process and I did receive some criticism from some  
24 detectives over involvement, I don't see it at all  
25 being inconsistent with what we are supposed to do





1 in policing.

2 Q And when you say "criticism from detectives", who  
3 is that, and in what context?

4 A I was criticized by some of our major crime  
5 detectives or homicide detectives, they felt that  
6 the words to the effect "this is not something  
7 that we do", and my response to them was that we  
8 had a fundamental difference of opinion about what  
9 being a police officer really meant.

10 Q I realize we're just a touch early, Mr.  
11 Commissioner, but this is probably a good time to  
12 break.

13 COMMISSIONER MacCALLUM: All right.

14 (Adjourned at 4:30 p.m.)

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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:**

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

\_\_\_\_\_, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

\_\_\_\_\_, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



\$	'you've <sup>[1]</sup> - 28067:6	1867 <sup>[1]</sup> - 27803:16 19 <sup>[3]</sup> - 27888:6, 28050:5, 28051:4 1960 <sup>[1]</sup> - 27820:1 1960s <sup>[1]</sup> - 27905:18 1967 <sup>[1]</sup> - 27803:16 1969 <sup>[25]</sup> - 27817:6, 27832:7, 27832:20, 27845:2, 27846:18, 27863:17, 27863:22, 27892:2, 27912:8, 27941:13, 27941:18, 27949:21, 27952:8, 27952:16, 27955:25, 27961:18, 27962:12, 27963:8, 27963:22, 27967:4, 28023:15, 28046:13, 28059:7, 28061:8, 28066:25 1970 <sup>[15]</sup> - 27821:19, 27836:16, 27836:18, 27857:8, 27859:23, 27860:20, 27860:24, 27861:3, 27882:10, 27901:1, 27906:4, 27969:16, 27989:20, 28050:5, 28064:9 1970-1972 <sup>[2]</sup> - 27843:24, 27844:6 1970s <sup>[1]</sup> - 27890:14 1972 <sup>[1]</sup> - 27857:8 1973 <sup>[1]</sup> - 28023:14 1974 <sup>[1]</sup> - 28047:17 1978 <sup>[3]</sup> - 28006:3, 28006:7, 28008:4 1979 <sup>[2]</sup> - 27802:15, 27802:23 1979-'80 <sup>[1]</sup> - 27807:10 1980 <sup>[4]</sup> - 27863:19, 27865:11, 28044:1, 28044:2 1980s <sup>[1]</sup> - 27822:20 1985-1991 <sup>[2]</sup> - 27843:25, 27844:6 1986 <sup>[1]</sup> - 28009:15 1988 <sup>[4]</sup> - 27803:3, 27803:10, 27803:24, 27951:17 1989 <sup>[2]</sup> - 27802:21, 27972:21 1990 <sup>[4]</sup> - 27805:9, 27961:3, 27997:22, 28008:13 1990-very <sup>[1]</sup> - 27808:1 1991 <sup>[49]</sup> - 27797:16, 27797:22, 27799:2, 27799:11, 27804:14, 27804:18, 27805:5, 27810:6, 27810:7, 27810:10, 27810:19,	27813:13, 27813:16, 27821:3, 27828:2, 27829:1, 27834:5, 27838:17, 27839:7, 27850:18, 27853:9, 27862:12, 27875:12, 27876:13, 27878:22, 27880:14, 27890:16, 27895:2, 27909:22, 27910:24, 27938:2, 27976:18, 27977:5, 27977:13, 27993:23, 28009:1, 28009:24, 28010:2, 28010:7, 28027:11, 28032:17, 28033:24, 28033:25, 28034:4, 28037:19, 28053:22, 28054:4, 28055:21, 28056:9 1991's <sup>[1]</sup> - 28053:2 1992 <sup>[8]</sup> - 27803:3, 27804:7, 27804:11, 27804:19, 27987:9, 28008:14, 28009:20, 28051:5 1993 <sup>[4]</sup> - 27986:18, 28033:23, 28034:15, 28034:25 1994 <sup>[3]</sup> - 27988:21, 28011:22, 28061:13 1995 <sup>[3]</sup> - 28007:17, 28008:4, 28008:14 1997 <sup>[1]</sup> - 27984:5 1:30 <sup>[1]</sup> - 27936:22	27963:2, 28060:25 229840 <sup>[1]</sup> - 27977:3 23 <sup>[2]</sup> - 27813:6, 27997:12 230147 <sup>[1]</sup> - 27812:14 24 <sup>[2]</sup> - 27916:1, 27961:18 24th <sup>[2]</sup> - 27963:8, 27976:18 25 <sup>[3]</sup> - 27848:24, 27966:18, 28035:14 25th <sup>[1]</sup> - 27793:21 27 <sup>[1]</sup> - 27931:21 27799 <sup>[1]</sup> - 27796:4 27991 <sup>[1]</sup> - 27796:5 27th <sup>[1]</sup> - 27834:5 28 <sup>[1]</sup> - 27800:17 28004 <sup>[1]</sup> - 27796:7 281694 <sup>[3]</sup> - 27986:22, 27986:24, 27987:4 281976 <sup>[1]</sup> - 27987:5 283 <sup>[2]</sup> - 27986:23, 27986:24 29th <sup>[2]</sup> - 27862:11, 28033:25 2:30 <sup>[1]</sup> - 27990:24 2:31 <sup>[1]</sup> - 27991:12 2:49 <sup>[1]</sup> - 27991:13
\$10,000 <sup>[1]</sup> - 28048:5	0			
'	000864 <sup>[1]</sup> - 27937:24 001529 <sup>[1]</sup> - 27834:4 002641 <sup>[1]</sup> - 27985:8 004539 <sup>[1]</sup> - 27977:1 004633 <sup>[1]</sup> - 27813:10 009479 <sup>[1]</sup> - 28054:3 040520 <sup>[1]</sup> - 27997:12 053353 <sup>[1]</sup> - 28033:19			
'60s <sup>[2]</sup> - 27830:19, 27831:18 '70 <sup>[2]</sup> - 27845:6, 27941:18 '70s <sup>[2]</sup> - 27830:19, 27831:18 '72 <sup>[1]</sup> - 27845:6 '91 <sup>[4]</sup> - 27808:1, 27810:13, 27887:21, 27975:2 'a' <sup>[2]</sup> - 27950:5, 27954:2 'academics' <sup>[1]</sup> - 27797:17 'balance' <sup>[1]</sup> - 27837:8 'better' <sup>[1]</sup> - 27964:8 'beyond' <sup>[1]</sup> - 27947:7 'but' <sup>[1]</sup> - 28061:19 'closed' <sup>[1]</sup> - 27891:5 'comfort' <sup>[2]</sup> - 27968:14, 28065:24 'drug' <sup>[1]</sup> - 27903:11 'free' <sup>[1]</sup> - 27903:12 'friends' <sup>[1]</sup> - 27964:1 'geographic' <sup>[1]</sup> - 28006:14 'getting' <sup>[1]</sup> - 27963:9 'he' <sup>[1]</sup> - 27893:25 'hippies' <sup>[1]</sup> - 27903:11 'human' <sup>[1]</sup> - 27893:7 'it' <sup>[1]</sup> - 28064:16 'judicial' <sup>[1]</sup> - 27987:17 'larry' <sup>[1]</sup> - 28066:8 'milgaard' <sup>[1]</sup> - 27804:4 'miscarriage' <sup>[1]</sup> - 27946:13 'no' <sup>[1]</sup> - 27977:5 'normally' <sup>[1]</sup> - 28071:18 'o' <sup>[1]</sup> - 27953:25 'pointing' <sup>[1]</sup> - 27901:10 'simply' <sup>[1]</sup> - 27964:17 'spicing' <sup>[1]</sup> - 27907:11 'spicing-up' <sup>[1]</sup> - 27907:11 'sweat' <sup>[1]</sup> - 27961:16 't' <sup>[1]</sup> - 27918:24 'the' <sup>[1]</sup> - 28061:18 'this' <sup>[1]</sup> - 28067:8 'we' <sup>[1]</sup> - 28061:16 'well' <sup>[1]</sup> - 27849:12 'why' <sup>[1]</sup> - 27913:7	1 1 <sup>[5]</sup> - 27843:20, 27853:25, 27854:1, 27939:15, 28035:4 10 <sup>[4]</sup> - 27848:12, 28013:25, 28023:23, 28061:25 100 <sup>[2]</sup> - 27803:13, 28013:1 10:29 <sup>[1]</sup> - 27866:23 10:48 <sup>[1]</sup> - 27866:24 10th <sup>[9]</sup> - 27813:13, 27821:2, 27839:7, 27862:15, 27876:13, 27878:22, 27880:14, 28055:21, 28056:9 11 <sup>[2]</sup> - 27921:21, 27939:24 12 <sup>[2]</sup> - 27812:15, 27922:23 12:01 <sup>[1]</sup> - 27936:21 13 <sup>[2]</sup> - 27884:4, 27948:13 138 <sup>[1]</sup> - 27793:22 13th <sup>[1]</sup> - 27987:9 15 <sup>[3]</sup> - 27848:12, 27948:23, 27991:10 154640 <sup>[3]</sup> - 27848:23, 27912:12, 28035:13 157128 <sup>[1]</sup> - 27976:9 159891 <sup>[1]</sup> - 27828:1 159895 <sup>[1]</sup> - 27820:25 16 <sup>[2]</sup> - 27906:25, 27968:11 16-year-old <sup>[3]</sup> - 27942:23, 27943:18, 28015:25 163096 <sup>[2]</sup> - 27894:22, 27895:5 163097 <sup>[1]</sup> - 27999:13 17 <sup>[1]</sup> - 27963:14 17th <sup>[1]</sup> - 27977:5 18 <sup>[3]</sup> - 27924:23, 27948:15, 27950:7	2 2 <sup>[6]</sup> - 27844:2, 27854:1, 27901:23, 27915:14, 27939:19, 27939:20 20 <sup>[3]</sup> - 27912:3, 27919:19, 27942:24 200 <sup>[1]</sup> - 28069:9 2001 <sup>[3]</sup> - 28006:3, 28006:7, 28007:17 2006 <sup>[2]</sup> - 27793:21, 27836:18 20th <sup>[4]</sup> - 27839:21, 28026:17, 28026:19, 28033:24 21 <sup>[3]</sup> - 27817:5, 27907:3, 27929:9 212299 <sup>[1]</sup> - 27875:7 218782 <sup>[2]</sup> - 27890:1, 28060:8 21st <sup>[1]</sup> - 28063:21 22 <sup>[5]</sup> - 27876:25, 27878:8, 27890:6,	3 3 <sup>[3]</sup> - 27875:12, 28011:17, 28054:5 3,000 <sup>[1]</sup> - 28069:10 30 <sup>[1]</sup> - 27812:16 30th <sup>[1]</sup> - 27909:22 31 <sup>[3]</sup> - 27892:2, 28061:8, 28066:24 31st <sup>[4]</sup> - 27846:18, 27863:22, 27915:22, 28046:12 327539 <sup>[2]</sup> - 27876:9, 28055:19 33 <sup>[2]</sup> - 27968:3, 27968:5 332321 <sup>[1]</sup> - 27862:6 333998 <sup>[1]</sup> - 27982:14 335020 <sup>[1]</sup> - 27884:3 335878 <sup>[1]</sup> - 27988:18 336361 <sup>[1]</sup> - 27979:3 336383 <sup>[1]</sup> - 27981:1 337446 <sup>[2]</sup> - 27867:12, 28047:8 337452 <sup>[1]</sup> - 27865:25 337453 <sup>[1]</sup> - 28005:2 337456 <sup>[1]</sup> - 28047:6 337460 <sup>[1]</sup> - 28012:20 337462 <sup>[1]</sup> - 27802:4 337594 <sup>[1]</sup> - 27842:9	



<b>337673</b> [1] - 27843:9 <b>39</b> [1] - 27817:5 <b>3rd</b> [1] - 28034:4	<b>8</b>	<b>access</b> [15] - 27818:21, 27818:24, 27843:13, 27844:24, 27891:16, 27973:3, 28020:8, 28025:4, 28025:14, 28028:15, 28039:25, 28046:14, 28050:9, 28050:10, 28070:13 <b>accessible</b> [1] - 27856:24 <b>accompanied</b> [1] - 28017:5 <b>accompanying</b> [1] - 28025:10 <b>accomplish</b> [1] - 28027:10 <b>According</b> [1] - 27963:6 <b>accordingly</b> [1] - 27950:13 <b>Accordingly</b> [1] - 27950:18 <b>account</b> [10] - 27824:24, 27887:22, 27902:10, 27923:6, 27946:23, 27964:9, 27972:8, 27973:23, 28036:15 <b>accounts</b> [1] - 27903:16 <b>accuracy</b> [1] - 28059:10 <b>accurate</b> [24] - 27802:11, 27824:24, 27831:3, 27839:8, 27839:9, 27887:22, 27890:18, 27893:10, 27900:19, 27902:10, 27904:7, 27908:6, 27923:6, 27964:9, 27968:22, 27972:8, 27972:11, 27973:23, 28005:6, 28005:24, 28007:18, 28008:6, 28009:1, 28062:12 <b>accurately</b> [1] - 27964:13 <b>accused</b> [1] - 27864:23 <b>accusing</b> [1] - 27893:4 <b>acid</b> [4] - 27915:25, 27917:2, 27917:3, 27979:12 <b>acknowledge</b> [2] - 27845:19, 27860:16 <b>acknowledgement</b> [1] - 27941:15 <b>acquaintances</b> [2] - 27964:2, 28030:18 <b>act</b> [2] - 27811:12, 27835:6 <b>acting</b> [1] - 27822:7 <b>action</b> [2] - 27826:25, 27852:6	<b>actions</b> [6] - 27827:11, 27870:6, 28060:1, 28062:23, 28065:3, 28067:23 <b>active</b> [3] - 27824:17, 27825:1, 27825:3 <b>actively</b> [1] - 27811:3 <b>activities</b> [2] - 27840:25, 27916:24 <b>actual</b> [3] - 27857:14, 27859:4, 28030:19 <b>add</b> [9] - 27931:16, 27985:22, 28013:4, 28015:14, 28024:19, 28031:13, 28036:21, 28039:21, 28043:1 <b>added</b> [2] - 27821:15, 27902:13 <b>adding</b> [2] - 27819:1, 28068:22 <b>addition</b> [6] - 27801:4, 27803:13, 27839:2, 27994:2, 28046:8, 28049:2 <b>additional</b> [1] - 27947:25 <b>additionally</b> [2] - 27854:19, 27861:21 <b>address</b> [2] - 27840:18 <b>addressed</b> [4] - 27824:23, 27825:12, 27889:2, 27951:17 <b>adequacy</b> [1] - 27866:11 <b>adequately</b> [2] - 27902:6, 27962:15 <b>Adjourned</b> [4] - 27866:23, 27936:21, 27991:12, 28073:14 <b>admission</b> [1] - 28045:2 <b>admit</b> [1] - 27986:1 <b>admitted</b> [1] - 27820:6 <b>admitting</b> [1] - 28043:4 <b>adopted</b> [1] - 27831:18 <b>advanced</b> [2] - 27909:13, 27942:8 <b>advantage</b> [1] - 28017:3 <b>adversaries</b> [1] - 27811:1 <b>advice</b> [1] - 27975:6 <b>advise</b> [2] - 27804:12, 27983:6 <b>advised</b> [9] - 27891:9, 27955:13, 27983:21, 27985:22, 28023:20, 28031:13, 28036:10, 28037:3, 28070:7 <b>advocacy</b> [1] - 27973:21 <b>advocates</b> [3] -	27811:13, 27994:16, 27994:17 <b>affidavit</b> [2] - 27917:21, 27948:18 <b>afield</b> [1] - 28020:7 <b>afraid</b> [2] - 27822:3, 27842:1 <b>aftermath</b> [1] - 27803:20 <b>afternoon</b> [5] - 27818:10, 27936:24, 28004:11, 28004:12, 28015:8 <b>afterwards</b> [2] - 27893:2, 28065:3 <b>agencies</b> [2] - 28007:13, 28008:20 <b>agency</b> [2] - 27809:3, 27809:7 <b>Agency</b> [1] - 27895:14 <b>agenda</b> [1] - 27822:4 <b>agent</b> [12] - 27826:12, 27895:12, 27895:21, 27898:1, 27902:14, 27909:13, 27909:16, 27910:1, 27910:10, 27999:19, 27999:25, 28002:21 <b>ago</b> [5] - 27828:19, 27843:15, 27877:1, 27878:8, 28003:3 <b>agree</b> [11] - 27824:4, 27824:5, 27825:7, 27825:9, 27896:23, 27993:4, 27998:23, 28025:22, 28025:23, 28031:10, 28062:11 <b>agreed</b> [7] - 27818:20, 27838:6, 27914:20, 27953:13, 27997:25, 28016:24, 28058:24 <b>agreeing</b> [2] - 27857:21, 28018:18 <b>agreement</b> [3] - 27908:8, 27914:3, 28012:24 <b>ahead</b> [3] - 27929:25, 27941:10, 28017:18 <b>aide</b> [1] - 28061:7 <b>airport</b> [2] - 27814:12, 27817:11 <b>Albert</b> [16] - 27852:14, 27852:18, 27852:22, 27852:25, 27853:3, 27853:8, 27853:9, 27853:25, 27854:8, 27940:20, 27948:22, 27961:11, 28026:10, 28036:13, 28049:15 <b>Albert's</b> [1] - 27853:4
<b>4</b>	<b>80</b> [2] - 28013:25, 28023:16 <b>86</b> [1] - 28008:2			
<b>4</b> [2] - 27917:17, 27949:21 <b>4,000</b> [1] - 28069:10 <b>40</b> [1] - 27803:17 <b>45</b> [2] - 27932:18, 27942:19 <b>457</b> [1] - 28047:7 <b>47</b> [2] - 27979:1, 27979:2 <b>4:30</b> [1] - 28073:14 <b>4th</b> [1] - 28033:23	<b>9</b>	<b>90</b> [1] - 28013:23 <b>95</b> [2] - 27823:14, 27947:8 <b>976</b> [1] - 27987:6 <b>98</b> [1] - 28013:1 <b>9:00</b> [1] - 27797:2 <b>9th</b> [3] - 27813:16, 27828:2, 28054:4		
<b>5</b>	<b>A</b>			
<b>5</b> [3] - 27906:19, 27918:21, 27982:14 <b>50's</b> [1] - 27805:18 <b>52</b> [1] - 27934:8 <b>5th</b> [2] - 28051:4, 28051:5	<b>aback</b> [1] - 27814:9 <b>abandons</b> [1] - 28069:19 <b>Abbotsford</b> [1] - 28068:6 <b>abdicated</b> [1] - 28059:25 <b>ability</b> [2] - 28019:14, 28074:7 <b>able</b> [26] - 27799:13, 27806:18, 27817:25, 27819:9, 27820:20, 27822:9, 27822:10, 27840:17, 27874:4, 27881:2, 27891:6, 27892:3, 27913:16, 27913:17, 27941:24, 27955:4, 27978:10, 27989:13, 28021:15, 28021:17, 28039:19, 28040:3, 28040:6, 28057:14, 28058:7, 28067:1 <b>absence</b> [1] - 27933:21 <b>absolutely</b> [2] - 28052:10, 28054:25 <b>absurd</b> [1] - 27986:11 <b>Academic</b> [1] - 28009:14 <b>academic</b> [1] - 28005:1 <b>academics</b> [1] - 28020:3 <b>accept</b> [3] - 27959:10, 27959:15, 27960:4 <b>acceptable</b> [1] - 27914:6 <b>accepted</b> [1] - 27853:2 <b>accepts</b> [1] - 27960:13			
<b>6</b>				
<b>6</b> [1] - 27920:2 <b>617</b> [1] - 28023:2 <b>690</b> [33] - 27798:5, 27808:8, 27811:24, 27825:13, 27833:18, 27834:2, 27834:11, 27837:13, 27841:6, 27842:15, 27861:19, 27874:2, 27913:13, 27939:12, 27946:10, 27946:12, 27946:13, 27946:18, 27946:20, 27946:25, 27947:21, 27948:9, 27948:15, 27966:4, 27971:5, 27971:9, 27971:12, 27972:9, 27972:23, 27984:15, 27989:2, 28001:7, 28018:12				
<b>7</b>				
<b>7</b> [1] - 27920:7 <b>7:07</b> [1] - 28067:15 <b>7th</b> [3] - 27839:7, 27862:15, 27910:23				

<p><b>Alberta</b> [4] - 27801:9, 27805:21, 27820:2, 28015:16</p> <p><b>aligned</b> [2] - 27812:5, 27812:7</p> <p><b>alive</b> [2] - 28039:7, 28060:17</p> <p><b>allegation</b> [1] - 27830:22</p> <p><b>allegations</b> [4] - 27869:3, 27986:15, 28001:24, 28002:11</p> <p><b>alleged</b> [4] - 27847:6, 27854:12, 27942:23, 27952:3</p> <p><b>allegiances</b> [1] - 27964:5</p> <p><b>alleging</b> [1] - 28000:12</p> <p><b>alley</b> [6] - 27839:22, 27878:7, 28026:18, 28028:19, 28028:23, 28028:25</p> <p><b>allow</b> [4] - 27809:4, 27809:5, 27836:13, 28070:17</p> <p><b>allowed</b> [1] - 27934:20</p> <p><b>alluded</b> [1] - 27989:19</p> <p><b>ally</b> [1] - 27811:7</p> <p><b>Almost</b> [1] - 27800:17</p> <p><b>almost</b> [2] - 27844:12, 27955:2</p> <p><b>alone</b> [6] - 27879:17, 27879:25, 27880:23, 27948:3, 27967:8, 28014:14</p> <p><b>Alternative</b> [1] - 27966:19</p> <p><b>alternative</b> [1] - 27966:23</p> <p><b>amalgamated</b> [1] - 28047:16</p> <p><b>amalgamation</b> [1] - 28048:8</p> <p><b>ambivalent</b> [1] - 28013:8</p> <p><b>amiably</b> [1] - 27943:24</p> <p><b>amount</b> [6] - 27812:25, 27814:20, 27890:11, 27999:22, 28020:10, 28025:25</p> <p><b>analysed</b> [1] - 27950:4</p> <p><b>analyses</b> [2] - 28006:16, 28030:9</p> <p><b>analysis</b> [6] - 27880:4, 27940:8, 27949:2, 27949:3, 27976:13, 28065:16</p> <p><b>analytic</b> [1] - 28016:2</p> <p><b>Analytically</b> [1] - 28030:3</p>	<p><b>analytically</b> [1] - 27935:19</p> <p><b>analyzed</b> [1] - 27950:11</p> <p><b>anger</b> [1] - 28065:13</p> <p><b>angered</b> [1] - 28046:16</p> <p><b>annex</b> [1] - 28008:3</p> <p><b>announcer</b> [1] - 27876:16</p> <p><b>answer</b> [2] - 27958:4, 28058:1</p> <p><b>answered</b> [3] - 27978:2, 28031:24, 28041:10</p> <p><b>answers</b> [10] - 27868:6, 27868:7, 27868:11, 27870:15, 27887:17, 27928:10, 27970:16, 27970:20, 27970:22, 28047:12</p> <p><b>anticipated</b> [1] - 27937:22</p> <p><b>antigens</b> [2] - 27950:12, 27954:2</p> <p><b>anything...do</b> [1] - 27920:11</p> <p><b>apart</b> [2] - 27801:3, 27809:16</p> <p><b>Apollos</b> [1] - 27963:20</p> <p><b>apologize</b> [2] - 27990:15, 28033:19</p> <p><b>apparent</b> [3] - 27835:22, 27845:5, 27979:16</p> <p><b>appeal</b> [5] - 27833:1, 27841:5, 27879:10, 27879:25, 27935:7</p> <p><b>Appeal</b> [5] - 27810:4, 27815:19, 27831:7, 27861:10, 28057:22</p> <p><b>appeals</b> [5] - 27834:23, 27900:17, 27974:20, 28000:10, 28001:7</p> <p><b>appear</b> [15] - 27802:5, 27802:6, 27813:14, 27823:25, 27868:7, 27889:10, 27889:17, 27967:8, 27970:9, 27973:14, 27976:9, 28001:22, 28003:21, 28043:15, 28064:20</p> <p><b>appearance</b> [2] - 27882:22, 27883:17</p> <p><b>Appearances</b> [1] - 27795:1</p> <p><b>appeared</b> [7] - 27846:21, 27907:3, 27931:12, 28018:7, 28032:2, 28037:21, 28045:15</p> <p><b>appearing</b> [1] - 27991:16</p>	<p><b>appellant</b> [2] - 27971:14, 27971:21</p> <p><b>appellate</b> [2] - 27834:17, 27973:22</p> <p><b>applicant</b> [1] - 27835:11</p> <p><b>Application</b> [1] - 27948:16</p> <p><b>application</b> [22] - 27798:6, 27808:8, 27808:9, 27809:15, 27811:24, 27833:4, 27833:18, 27834:2, 27835:7, 27842:15, 27845:20, 27861:20, 27874:2, 27883:21, 27913:13, 27946:10, 27946:12, 27946:13, 27948:17, 27966:4, 27984:15, 28023:1</p> <p><b>applications</b> [1] - 27841:6</p> <p><b>Applications</b> [1] - 27971:5</p> <p><b>applied</b> [3] - 27809:6, 27837:14, 27941:2</p> <p><b>apply</b> [1] - 27809:3</p> <p><b>applying</b> [10] - 27834:1, 27835:24, 27836:3, 27836:4, 27889:11, 28019:6, 28019:8, 28029:16, 28057:4, 28065:16</p> <p><b>appreciate</b> [2] - 27994:19, 27998:7</p> <p><b>appreciated</b> [1] - 27855:7</p> <p><b>appreciation</b> [1] - 27965:24</p> <p><b>apprehended</b> [1] - 28002:6</p> <p><b>apprehension</b> [1] - 27967:18</p> <p><b>approach</b> [10] - 27812:4, 27815:1, 27824:6, 27824:7, 27849:22, 27923:10, 28016:6, 28019:20, 28030:24</p> <p><b>approached</b> [4] - 27858:1, 27909:9, 28017:10, 28046:5</p> <p><b>approaching</b> [2] - 28019:10, 28020:20</p> <p><b>appropriate</b> [4] - 27903:5, 27924:7, 27935:8, 27957:25</p> <p><b>appropriately</b> [3] - 27946:22, 27949:24, 27968:2</p> <p><b>appropriateness</b> [1] -</p>	<p>27990:9</p> <p><b>April</b> [2] - 27793:21, 27950:7</p> <p><b>Archives</b> [2] - 27803:15, 27805:20</p> <p><b>area</b> [19] - 27833:1, 27833:10, 27916:12, 27935:4, 27939:10, 27967:21, 27967:24, 27993:20, 27997:14, 27999:15, 28006:17, 28010:22, 28012:3, 28043:8, 28064:3, 28065:25, 28066:8, 28066:10, 28070:12</p> <p><b>areas</b> [12] - 27801:16, 27831:3, 27857:3, 27871:11, 27915:15, 27958:4, 28004:23, 28013:3, 28018:10, 28020:7, 28046:10, 28072:14</p> <p><b>argued</b> [1] - 27959:4</p> <p><b>argument</b> [6] - 27797:24, 27873:9, 27880:8, 27947:23, 27955:15, 27955:17</p> <p><b>arguments</b> [11] - 27923:21, 27923:23, 27940:3, 27940:6, 27944:13, 27944:15, 27944:17, 27944:19, 27944:21, 27944:22, 27958:25</p> <p><b>arise</b> [1] - 27940:4</p> <p><b>arisen</b> [1] - 27834:22</p> <p><b>arising</b> [1] - 28003:16</p> <p><b>armed</b> [1] - 27812:20</p> <p><b>arose</b> [2] - 27837:15, 27990:5</p> <p><b>arranged</b> [1] - 27814:8</p> <p><b>arrangement</b> [1] - 27909:1</p> <p><b>arrest</b> [6] - 27845:7, 27855:14, 27855:15, 27969:15, 27989:20, 28023:1</p> <p><b>arrested</b> [1] - 28001:18</p> <p><b>arrived</b> [2] - 27992:9, 28066:2</p> <p><b>arriving</b> [1] - 27814:2</p> <p><b>arson</b> [1] - 28007:11</p> <p><b>arsonists</b> [1] - 28010:16</p> <p><b>article</b> [40] - 27814:10, 27815:11, 27815:20, 27816:18, 27819:21, 27820:24, 27821:1, 27821:4, 27823:24, 27824:11, 27827:24,</p>	<p>27828:2, 27829:6, 27829:17, 27829:21, 27832:24, 27893:2, 27977:4, 27986:21, 27987:8, 27987:10, 27987:16, 27988:6, 27988:7, 27988:10, 27988:13, 27988:14, 27988:15, 27988:19, 27988:23, 27988:25, 27989:4, 27989:10, 28011:24, 28013:11, 28013:18, 28060:20, 28061:4, 28064:6, 28065:20</p> <p><b>Articles</b> [1] - 27804:1</p> <p><b>articles</b> [8] - 27804:1, 27804:21, 27804:22, 27976:20, 28010:24, 28011:20, 28023:5, 28053:23</p> <p><b>articulated</b> [1] - 27943:12</p> <p><b>aside</b> [1] - 27943:4</p> <p><b>aspect</b> [27] - 27860:7, 27880:15, 27885:19, 27888:4, 27893:1, 27893:13, 27894:18, 27902:25, 27921:19, 27923:7, 27932:10, 27933:19, 27952:7, 27952:10, 27953:10, 27955:17, 27956:18, 27960:1, 27960:6, 27980:19, 28009:10, 28015:14, 28031:5, 28052:6, 28053:14, 28067:10, 28070:21</p> <p><b>aspects</b> [4] - 27949:5, 27989:3, 28018:14, 28030:25</p> <p><b>Asper</b> [37] - 27811:2, 27812:7, 27817:13, 27817:17, 27937:16, 27975:18, 27978:21, 27979:4, 27979:8, 27979:21, 27980:1, 27980:7, 27980:11, 27980:15, 27980:21, 27981:4, 27981:9, 27981:17, 27981:25, 27982:4, 27982:18, 27983:12, 27983:19, 27983:21, 27994:22, 27995:13, 28016:14, 28022:18, 28024:22, 28025:9, 28039:24, 28040:8, 28042:16, 28042:18, 28070:6, 28070:24</p>
--	---	---	---	--



<p><b>Asper's</b> [1] - 28041:2  <b>Asper/wolch/milgaard</b>  [1] - 27822:5  <b>assailant</b> [4] - 27952:3,  27952:21, 27953:19,  27954:16  <b>assailant's</b> [1] -  27951:20  <b>assault</b> [5] - 27866:11,  27870:19, 28050:6,  28052:18, 28052:21  <b>assaults</b> [5] - 27839:20,  27890:25, 27939:10,  28030:17, 28046:8  <b>assembly</b> [1] -  27949:20  <b>assess</b> [3] - 27961:24,  28016:7, 28044:12  <b>assessing</b> [1] -  27931:11  <b>assessment</b> [14] -  27911:17, 27916:15,  27931:17, 27933:10,  27934:5, 27954:3,  27954:5, 27954:22,  27958:6, 27959:10,  27972:6, 27972:11,  27994:14, 28043:5  <b>assignments</b> [1] -  28007:21  <b>assist</b> [9] - 27812:9,  27813:19, 27838:11,  27857:2, 28025:1,  28033:17, 28034:14,  28055:15, 28057:5  <b>assistance</b> [4] -  27829:5, 27897:5,  27897:14, 28041:25  <b>Assistant</b> [3] - 27794:3,  27794:6, 27802:22  <b>assistant</b> [2] - 27817:7,  27821:20  <b>assisted</b> [1] - 28025:15  <b>assisting</b> [1] - 27875:9  <b>assists</b> [2] - 28007:4,  28049:9  <b>Associate</b> [1] -  27802:22  <b>associated</b> [5] -  27813:9, 27967:17,  28005:17, 28028:6,  28049:7  <b>assume</b> [16] - 27829:14,  27839:24, 27850:8,  27863:8, 27872:6,  27876:3, 27877:7,  27885:8, 27885:11,  27886:18, 27896:23,  27915:14, 27976:16,  27988:16, 28000:13,</p>	<p>28042:7  <b>assumed</b> [1] - 27906:23  <b>assuming</b> [2] - 27826:7,  27841:24  <b>Assuming</b> [1] -  28035:20  <b>assumption</b> [2] -  27829:22, 27957:13  <b>assumptions</b> [1] -  27874:16  <b>astonished</b> [1] -  27986:7  <b>Atf</b> [1] - 28011:4  <b>attachments</b> [1] -  27842:14  <b>attack</b> [17] - 27891:24,  27892:5, 27892:12,  27986:10, 28063:8,  28066:21, 28067:3,  28067:8, 28067:15,  28068:15, 28068:16,  28069:1, 28069:13,  28069:16, 28069:17,  28070:9, 28071:1  <b>attacked</b> [3] - 28046:6,  28068:4, 28068:7  <b>attacker</b> [3] - 27892:4,  28001:23, 28067:2  <b>attacking</b> [2] - 28029:5,  28068:11  <b>attacks</b> [8] - 27870:23,  27954:14, 28030:19,  28047:17, 28051:22,  28062:16, 28062:21,  28069:20  <b>attempt</b> [7] - 27829:3,  27848:7, 27849:3,  27859:4, 27955:9,  28049:16, 28058:21  <b>attempted</b> [5] -  27861:8, 28027:14,  28029:18, 28040:16,  28069:17  <b>attempting</b> [4] -  27812:9, 27870:1,  28040:14, 28048:9  <b>attempts</b> [12] -  27841:19, 27841:22,  27841:25, 27858:16,  27861:7, 27865:14,  27871:8, 27881:17,  27999:8, 28032:25,  28033:14, 28045:24  <b>attendance</b> [1] -  27862:9  <b>attended</b> [1] - 27856:13  <b>attending</b> [2] - 27800:3,  28044:3  <b>attention</b> [18] - 27815:5,  27819:22, 27820:19,</p>	<p>27820:24, 27821:3,  27827:23, 27873:4,  27890:1, 27896:3,  27936:2, 27944:6,  27944:7, 27946:15,  28002:19, 28016:8,  28017:13, 28048:17,  28070:5  <b>attitude</b> [1] - 28055:4  <b>attitudes</b> [5] -  27825:22, 27831:19,  27832:14, 27832:17,  27905:10  <b>Attorney</b> [2] - 27843:21,  28000:14  <b>attracted</b> [3] -  27812:24, 27814:19,  27820:8  <b>audience</b> [1] - 27937:11  <b>Audio</b> [1] - 27794:12  <b>August</b> [10] - 27810:13,  27828:2, 27828:25,  27829:9, 27829:22,  27862:11, 27877:12,  27997:22, 28053:21,  28054:4  <b>Austin</b> [1] - 28004:16  <b>Author</b> [1] - 27906:21  <b>author</b> [2] - 27822:15,  27908:4  <b>authorities</b> [5] -  27798:16, 27798:21,  27936:2, 27969:17,  28002:19  <b>authorization</b> [1] -  27908:3  <b>authors</b> [6] - 27883:10,  27890:7, 27892:7,  28061:1, 28061:15,  28067:5  <b>available</b> [14] -  27798:20, 27872:14,  27903:6, 27968:19,  27973:13, 27975:14,  27998:2, 28015:3,  28015:7, 28015:9,  28019:12, 28019:23,  28048:14, 28052:22  <b>avenue</b> [2] - 27887:14,  27998:19  <b>aware</b> [27] - 27799:19,  27855:22, 27855:25,  27856:2, 27863:10,  27863:13, 27864:8,  27870:22, 27944:20,  27944:24, 27944:25,  27945:2, 27955:13,  27955:15, 27955:16,  27955:19, 27955:20,  27985:4, 27986:18,</p>	<p>27986:20, 27996:3,  27998:3, 27998:5,  28037:14, 28044:8,  28050:18  <b>awareness</b> [2] -  27808:7, 28031:22  <b>awful</b> [1] - 27884:11</p>	<p><b>beaten</b> [1] - 27869:4  <b>beating</b> [1] - 27869:12  <b>became</b> [12] - 27814:15,  27854:15, 27855:24,  27864:25, 27896:10,  27913:15, 27942:8,  27986:7, 27986:20,  28003:12, 28008:13,  28015:13  <b>become</b> [15] - 27805:7,  27805:14, 27805:15,  27845:5, 27914:2,  27940:4, 27944:20,  27944:24, 27955:16,  27955:19, 27985:14,  27996:2, 28010:5,  28018:6, 28058:20  <b>becomes</b> [3] -  27922:21, 27965:11,  28042:14  <b>becoming</b> [2] -  27807:19, 28045:6  <b>began</b> [10] - 27805:4,  27807:9, 27809:23,  27810:8, 27871:15,  27903:22, 28008:17,  28010:8, 28021:5,  28056:15  <b>begin</b> [5] - 27915:18,  27924:24, 27948:14,  27960:21, 27967:8  <b>beginning</b> [5] -  27821:4, 27823:22,  27920:2, 27924:24,  28064:7  <b>beginnings</b> [1] -  28009:8  <b>begins</b> [2] - 27812:15,  27939:21  <b>begun</b> [2] - 27816:11,  27821:6  <b>behalf</b> [10] - 27797:20,  27809:19, 27822:7,  27830:5, 27842:16,  27871:17, 27873:18,  27984:11, 27985:6,  27991:17  <b>behaviour</b> [6] -  27832:12, 27934:2,  28018:15, 28062:14,  28062:15, 28069:22  <b>behaviours</b> [1] -  27831:19  <b>beings</b> [2] - 27893:7,  27947:2  <b>Beitel</b> [1] - 27794:8  <b>belief</b> [1] - 27933:11  <b>believable</b> [1] - 27865:7  <b>believes</b> [1] - 28045:16  <b>bell</b> [1] - 28026:20</p>
---	--	--	--	---



<p><b>belong</b> [1] - 28021:3  <b>Bence</b> [1] - 27956:10  <b>Bench</b> [4] - 28074:1, 28074:3, 28074:14, 28074:20  <b>bench</b> [1] - 27991:21  <b>benefit</b> [4] - 27932:11, 27935:14, 27941:24, 27994:20  <b>benefits</b> [1] - 27964:23  <b>beside</b> [3] - 27934:22, 28049:5, 28049:8  <b>best</b> [17] - 27860:2, 27872:14, 27901:18, 27903:5, 27903:6, 27904:1, 27928:23, 27947:3, 27955:24, 27973:13, 28013:19, 28017:10, 28053:12, 28058:25, 28062:14, 28070:4, 28074:6  <b>better</b> [17] - 27803:21, 27811:21, 27833:16, 27841:18, 27845:22, 27851:15, 27857:14, 27860:23, 27860:25, 27861:1, 27861:2, 27916:23, 27939:2, 27967:8, 27997:5, 28033:20, 28063:25  <b>between</b> [20] - 27842:18, 27843:20, 27844:2, 27844:15, 27844:21, 27855:9, 27857:8, 27906:3, 27910:9, 27931:13, 27939:7, 27961:20, 27962:11, 27978:21, 27979:4, 27994:21, 27999:5, 28027:22, 28040:6, 28062:10  <b>beyond</b> [17] - 27813:5, 27847:10, 27864:13, 27870:10, 27888:13, 27889:5, 27889:17, 27890:24, 27894:10, 27930:20, 27967:15, 27968:17, 27972:15, 28003:5, 28007:3, 28021:20, 28037:2  <b>Beyond</b> [2] - 28040:9, 28041:18  <b>bias</b> [3] - 27825:16, 27994:25, 28044:13  <b>biased</b> [4] - 27994:24, 27995:6, 27995:16, 28052:16  <b>biases</b> [1] - 28016:23  <b>big</b> [5] - 27919:15, 27928:9, 27936:7,</p>	<p>28024:9, 28058:17  <b>binder</b> [5] - 28023:7, 28024:13, 28051:18, 28051:20, 28051:23  <b>binders</b> [4] - 27875:16, 27875:22, 27876:4, 27876:6  <b>biography</b> [1] - 28012:18  <b>bit</b> [39] - 27797:8, 27808:18, 27809:4, 27809:6, 27812:10, 27813:11, 27814:4, 27814:9, 27818:2, 27818:18, 27826:4, 27838:2, 27840:19, 27848:1, 27873:15, 27875:2, 27880:3, 27885:19, 27889:24, 27890:21, 27895:22, 27899:25, 27901:6, 27915:11, 27916:23, 27923:2, 27939:24, 27974:10, 27977:25, 27979:18, 27985:20, 28010:21, 28027:2, 28037:24, 28040:19, 28044:18, 28061:2, 28061:10, 28065:19  <b>blame</b> [1] - 28045:2  <b>blanking</b> [1] - 27840:1  <b>bleeding</b> [1] - 27957:10  <b>blocks</b> [1] - 28066:1  <b>blood</b> [31] - 27859:19, 27885:2, 27942:21, 27950:17, 27950:20, 27950:21, 27951:2, 27951:3, 27951:5, 27951:10, 27951:20, 27952:2, 27952:12, 27953:20, 27953:23, 27953:25, 27954:1, 27954:11, 27954:12, 27954:15, 27954:16, 27955:7, 27955:10, 27955:11, 27956:5, 27956:6, 27959:12, 27960:5, 28043:6, 28069:15  <b>blown</b> [2] - 27854:18, 27992:6  <b>Blue</b> [2] - 27822:22, 27823:1  <b>blurry</b> [1] - 27813:11  <b>Bobby</b> [3] - 27805:20, 27820:2, 27820:11  <b>Bobs</b> [4] - 27795:5, 27862:10, 27899:13, 28026:21  <b>body</b> [4] - 27892:1,</p>	<p>27958:8, 27973:1, 28066:24  <b>bogus</b> [1] - 28067:25  <b>bolstered</b> [1] - 27951:4  <b>bombing</b> [1] - 28007:12  <b>bombings</b> [1] - 28005:20  <b>book</b> [45] - 27801:20, 27801:22, 27803:1, 27803:6, 27803:22, 27805:14, 27826:1, 27826:10, 27826:13, 27826:15, 27826:17, 27826:19, 27894:16, 27894:23, 27894:24, 27894:25, 27895:12, 27895:17, 27896:6, 27908:2, 27908:5, 27908:9, 27908:10, 27908:11, 27908:14, 27908:23, 27909:2, 27909:8, 27909:12, 27910:3, 27910:5, 27910:13, 27912:20, 27999:16, 28010:25, 28013:5, 28013:6, 28013:9, 28013:19, 28014:3, 28014:9, 28014:11, 28014:14  <b>Books</b> [1] - 27802:24  <b>books</b> [5] - 27801:6, 27822:16, 27907:18, 28011:18, 28011:19  <b>border</b> [2] - 28005:18, 28005:25  <b>Boswell</b> [1] - 27794:5  <b>botch</b> [1] - 27882:2  <b>botched</b> [1] - 28059:6  <b>bother</b> [2] - 27926:12, 27927:14  <b>bottled</b> [1] - 28067:7  <b>bottom</b> [11] - 27828:4, 27907:15, 27922:18, 27934:8, 27948:24, 27952:23, 27960:20, 27999:15, 28054:7, 28066:19, 28071:13  <b>bound</b> [1] - 28049:20  <b>Bowen</b> [1] - 27800:5  <b>Boychuk</b> [1] - 27795:8  <b>Boyd</b> [129] - 27796:3, 27797:7, 27797:15, 27798:24, 27799:7, 27799:18, 27799:23, 27799:24, 27800:1, 27802:9, 27805:3, 27812:19, 27812:23, 27813:17, 27816:20, 27817:4, 27817:10, 27818:5, 27820:5,</p>	<p>27821:13, 27821:17, 27821:23, 27822:17, 27823:2, 27823:14, 27823:17, 27823:25, 27824:18, 27824:25, 27825:25, 27826:22, 27828:8, 27828:14, 27828:17, 27830:15, 27830:24, 27831:2, 27832:25, 27833:5, 27833:11, 27834:8, 27838:14, 27842:5, 27843:11, 27845:23, 27850:16, 27862:17, 27866:2, 27867:1, 27875:19, 27877:17, 27877:23, 27878:11, 27884:5, 27887:23, 27890:10, 27893:4, 27893:9, 27893:19, 27893:23, 27893:25, 27894:23, 27895:7, 27896:11, 27896:17, 27897:22, 27898:25, 27899:2, 27900:4, 27902:24, 27906:23, 27908:15, 27909:7, 27912:13, 27915:17, 27916:13, 27921:9, 27927:8, 27935:3, 27936:24, 27937:25, 27954:4, 27965:13, 27973:24, 27976:13, 27977:15, 27979:18, 27980:25, 27982:24, 27983:14, 27984:2, 27987:14, 27987:20, 27989:4, 27990:20, 27991:16, 27991:23, 27993:19, 27997:13, 27999:17, 28003:22, 28004:1, 28004:14, 28009:22, 28012:21, 28018:24, 28031:13, 28032:14, 28033:2, 28033:8, 28034:2, 28035:8, 28035:10, 28035:14, 28035:16, 28036:8, 28037:3, 28040:16, 28043:21, 28044:22, 28045:25, 28055:20, 28055:24, 28055:25, 28056:2, 28056:25, 28060:21, 28061:17, 28064:13  <b>Boyd's</b> [12] - 27983:2, 28011:25, 28014:8, 28015:2, 28015:12, 28018:9, 28026:5, 28036:15, 28047:9, 28048:17, 28054:7,</p>	<p>28056:23  <b>Boyd's</b> [2] - 27980:14, 27981:13  <b>break</b> [8] - 27866:22, 27936:19, 27936:25, 27990:24, 27991:9, 27991:11, 28040:10, 28073:12  <b>Breaking</b> [1] - 28029:4  <b>Brian</b> [1] - 27827:16  <b>brief</b> [5] - 27818:16, 27848:25, 27862:3, 27876:9, 28011:16  <b>briefly</b> [9] - 27797:11, 27802:13, 27803:6, 27834:4, 27847:18, 27986:21, 28011:24, 28026:18, 28031:11  <b>bring</b> [7] - 27800:24, 27819:22, 27821:3, 27889:25, 28024:3, 28024:16, 28033:18  <b>bringing</b> [1] - 27947:24  <b>British</b> [4] - 27801:9, 27865:20, 27876:20, 27995:25  <b>broadcast</b> [1] - 28015:24  <b>broader</b> [1] - 27946:20  <b>broken</b> [2] - 27938:9, 28043:12  <b>broker</b> [1] - 27898:17  <b>brokers</b> [2] - 27897:8, 27897:19  <b>brother</b> [1] - 27852:19  <b>brought</b> [14] - 27805:19, 27835:8, 27842:16, 27873:3, 27997:16, 28014:6, 28014:20, 28016:8, 28018:16, 28028:3, 28048:16, 28069:1, 28070:5  <b>Bruce</b> [2] - 27795:9, 27982:18  <b>Bukowski</b> [3] - 27895:13, 27895:14, 27909:21  <b>bulk</b> [1] - 27838:16  <b>bullet</b> [2] - 28000:6, 28007:20  <b>bullets</b> [1] - 28006:9  <b>burden</b> [1] - 27833:4  <b>Bureau</b> [1] - 28007:15  <b>bus</b> [3] - 27839:15, 27985:1, 28023:12  <b>button</b> [4] - 28057:10, 28057:12, 28057:19, 28057:23  <b>buy</b> [1] - 27832:10</p>
---	---	--	---	--



<p><b>C</b></p> <p><b>Cadrain</b> [20] - 27839:20, 27852:14, 27852:17, 27852:18, 27852:25, 27853:2, 27853:11, 27853:14, 27853:18, 27853:23, 27961:11, 27962:1, 27962:5, 27972:2, 27972:12, 28026:9, 28026:10, 28036:13, 28036:16, 28036:22</p> <p><b>Cadrain's</b> [3] - 27854:8, 27940:20, 27948:22</p> <p><b>Cadrain/fisher</b> [1] - 28027:20</p> <p><b>Cal</b> [3] - 27861:5, 28026:22, 28026:25</p> <p><b>Caldwell</b> [5] - 27795:5, 27861:15, 27862:10, 27899:13, 28026:22</p> <p><b>Caldwells</b> [2] - 27862:16, 27958:24</p> <p><b>calendar</b> [1] - 28032:23</p> <p><b>Calvin</b> [1] - 27795:13</p> <p><b>camp</b> [1] - 27822:5</p> <p><b>Campbell</b> [2] - 27890:15, 27975:2</p> <p><b>Campbells</b> [5] - 27834:3, 27887:2, 27893:17, 27894:3, 27947:16</p> <p><b>Canada</b> [16] - 27795:12, 27797:23, 27801:21, 27801:23, 27803:2, 27803:24, 27804:24, 27805:14, 27843:18, 27843:22, 27844:4, 27937:17, 27976:6, 27984:17, 28001:10, 28011:1</p> <p><b>Canada's</b> [1] - 27822:16</p> <p><b>Canadian</b> [8] - 27823:1, 27866:12, 27973:12, 27988:14, 28007:14, 28008:20, 28011:7, 28011:23</p> <p><b>Canadians</b> [1] - 27823:12</p> <p><b>Candace</b> [1] - 27794:4</p> <p><b>candidate</b> [2] - 27897:6, 27897:14</p> <p><b>cannot</b> [5] - 27842:2, 27996:9, 28036:12, 28037:19, 28040:10</p> <p><b>canvass</b> [1] - 28065:2</p> <p><b>capable</b> [4] - 27960:10, 27960:11, 28062:1</p>	<p><b>capture</b> [1] - 27918:15</p> <p><b>capturing</b> [1] - 28029:20</p> <p><b>car</b> [7] - 27839:21, 27920:14, 27925:3, 27943:22, 28029:6, 28070:13</p> <p><b>card</b> [1] - 28072:6</p> <p><b>care</b> [2] - 27811:10, 27927:23</p> <p><b>careful</b> [1] - 27913:19</p> <p><b>carefully</b> [1] - 27935:20</p> <p><b>carries</b> [1] - 27821:8</p> <p><b>case</b> [129] - 27803:13, 27804:9, 27805:4, 27805:19, 27806:3, 27806:6, 27806:7, 27806:10, 27806:13, 27807:18, 27807:19, 27808:19, 27810:25, 27813:4, 27813:5, 27814:14, 27815:3, 27815:17, 27815:24, 27816:25, 27817:1, 27818:6, 27818:11, 27818:22, 27819:25, 27820:8, 27820:11, 27820:18, 27821:7, 27821:19, 27822:18, 27822:19, 27823:7, 27823:8, 27823:15, 27823:23, 27826:13, 27826:20, 27826:21, 27827:20, 27828:11, 27828:15, 27829:1, 27830:15, 27831:4, 27831:22, 27832:4, 27834:17, 27835:1, 27835:16, 27848:11, 27849:23, 27876:19, 27878:15, 27878:17, 27879:7, 27879:18, 27881:8, 27881:15, 27883:11, 27888:17, 27888:20, 27889:10, 27889:12, 27890:13, 27890:17, 27896:12, 27896:15, 27896:22, 27897:8, 27900:17, 27902:4, 27904:13, 27904:16, 27906:22, 27907:2, 27907:19, 27908:11, 27908:12, 27938:5, 27939:17, 27939:23, 27940:1, 27946:8, 27947:19, 27948:5, 27948:9, 27951:18, 27951:25, 27966:14, 27969:7, 27969:8, 27969:9,</p>	<p>27971:7, 27971:22, 27972:10, 27973:5, 27973:8, 27973:20, 27976:14, 27977:5, 27983:18, 27984:19, 27985:6, 27985:11, 27988:11, 28000:10, 28009:1, 28012:6, 28015:15, 28018:3, 28019:6, 28022:2, 28027:17, 28029:1, 28030:9, 28056:4, 28056:24, 28057:6, 28057:21, 28057:24, 28058:13, 28059:25, 28064:8, 28067:13, 28067:14, 28068:6, 28070:8, 28071:15</p> <p><b>cases</b> [13] - 27801:8, 27803:14, 27805:16, 27834:19, 27843:23, 27844:4, 27844:19, 27906:3, 27907:10, 28008:18, 28010:20, 28029:1, 28069:17</p> <p><b>cases/civil</b> [1] - 27801:8</p> <p><b>casting</b> [1] - 27844:17</p> <p><b>catalysts</b> [1] - 28048:25</p> <p><b>category</b> [1] - 27907:9</p> <p><b>caught</b> [4] - 27865:5, 27970:4, 28018:23, 28072:15</p> <p><b>cautioned</b> [1] - 27821:8</p> <p><b>Cbc</b> [7] - 27808:6, 27876:10, 27907:4, 27907:21, 28015:18, 28054:3, 28055:20</p> <p><b>cells</b> [2] - 27930:16, 27962:13</p> <p><b>centre</b> [2] - 27906:23, 27966:16</p> <p><b>Centre</b> [9] - 27804:19, 27868:16, 27869:1, 27869:5, 28013:14, 28048:3, 28048:17, 28048:20, 28048:23</p> <p><b>centres</b> [1] - 27832:18</p> <p><b>Centurion</b> [22] - 27811:25, 27819:14, 27842:4, 27870:24, 27893:3, 27993:25, 27994:5, 27994:23, 27995:1, 27995:15, 28023:6, 28023:7, 28023:9, 28023:10, 28024:12, 28050:7, 28050:21, 28050:23, 28051:10, 28051:17, 28053:7, 28061:5</p>	<p><b>certain</b> [14] - 27838:5, 27880:5, 27898:11, 27904:9, 27940:12, 27947:10, 27947:13, 27977:10, 27977:12, 27986:15, 28029:12, 28037:5, 28042:15, 28059:16</p> <p><b>Certainly</b> [3] - 27808:15, 27815:16, 27833:12</p> <p><b>certainly</b> [32] - 27810:18, 27811:23, 27815:6, 27816:6, 27825:5, 27832:13, 27833:19, 27841:4, 27845:17, 27846:25, 27847:13, 27849:18, 27851:11, 27855:7, 27856:23, 27858:17, 27865:18, 27866:8, 27882:9, 27891:13, 27902:18, 27921:12, 27921:14, 27937:21, 27974:1, 27982:10, 27995:7, 27997:5, 28003:8, 28035:5, 28066:9, 28071:4</p> <p><b>Certificates</b> [1] - 28074:1</p> <p><b>certify</b> [1] - 28074:4</p> <p><b>chance</b> [6] - 27895:6, 27960:14, 28014:23, 28057:18, 28061:13, 28072:10</p> <p><b>change</b> [8] - 27824:16, 27830:20, 27880:9, 27897:8, 27897:19, 27922:7, 27933:5, 27960:17</p> <p><b>changed</b> [5] - 27815:16, 27832:16, 27832:17, 27857:10, 27898:9</p> <p><b>changes</b> [1] - 27801:18</p> <p><b>changing</b> [1] - 27898:11</p> <p><b>chapter</b> [2] - 27901:21, 27902:2</p> <p><b>character</b> [4] - 27831:15, 27831:17, 27835:12, 27916:16</p> <p><b>characterized</b> [1] - 27831:20</p> <p><b>characters</b> [1] - 27992:25</p> <p><b>charge</b> [4] - 27884:18, 27894:1, 27944:16, 27964:20</p> <p><b>charged</b> [1] - 28042:14</p> <p><b>charges</b> [5] - 27869:23, 27870:7, 27870:8,</p>	<p>27970:5, 27970:6</p> <p><b>charging</b> [1] - 27882:18</p> <p><b>chat</b> [1] - 27943:24</p> <p><b>check</b> [2] - 27950:19, 28016:15</p> <p><b>Cheryl</b> [1] - 27794:6</p> <p><b>Chief</b> [2] - 27831:13, 27956:9</p> <p><b>chief</b> [2] - 27903:10, 27905:7</p> <p><b>child</b> [1] - 27869:16</p> <p><b>choice</b> [1] - 27926:8</p> <p><b>Chris</b> [1] - 27795:8</p> <p><b>church</b> [1] - 28026:19</p> <p><b>circa</b> [1] - 27803:24</p> <p><b>circulated</b> [1] - 28002:22</p> <p><b>circulation</b> [2] - 28002:20, 28003:1</p> <p><b>circumstance</b> [1] - 27861:24</p> <p><b>circumstances</b> [7] - 27814:1, 27834:15, 27870:22, 27931:3, 27947:10, 27997:6, 27998:14</p> <p><b>City</b> [1] - 27888:17</p> <p><b>city</b> [2] - 27816:22, 28015:25</p> <p><b>claim</b> [3] - 27908:22, 27961:9, 27986:10</p> <p><b>claimant</b> [1] - 27974:22</p> <p><b>claimed</b> [1] - 27908:2</p> <p><b>claims</b> [9] - 27809:13, 27863:16, 27863:18, 27902:20, 27951:4, 27961:22, 27972:15, 27977:12, 27977:14</p> <p><b>clarification</b> [2] - 27900:22, 28024:19</p> <p><b>clarified</b> [1] - 28024:2</p> <p><b>clarify</b> [3] - 27867:10, 28013:4, 28056:21</p> <p><b>clarifying</b> [1] - 27851:9</p> <p><b>Clark</b> [1] - 28023:4</p> <p><b>class</b> [1] - 27984:6</p> <p><b>clear</b> [26] - 27821:22, 27829:16, 27832:14, 27833:3, 27833:22, 27840:22, 27860:14, 27881:17, 27897:22, 27906:15, 27911:13, 27928:18, 27928:19, 27941:15, 27967:23, 27970:3, 27970:7, 27970:8, 27970:12, 27986:8, 28008:8, 28013:6, 28019:21, 28024:7, 28025:9, 28036:3</p>
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<p><b>clearly</b> [4] - 27858:15, 27928:12, 27992:20, 28072:13</p> <p><b>Clerk</b> [1] - 27794:8</p> <p><b>client</b> [3] - 27913:23, 27997:23, 27998:18</p> <p><b>clip</b> [4] - 27812:12, 27812:14, 27812:16, 27813:12</p> <p><b>clipping</b> [1] - 27813:8</p> <p><b>clippings</b> [3] - 28023:5, 28023:10, 28024:10</p> <p><b>close</b> [5] - 27863:5, 27961:17, 27967:6, 28047:21, 28058:4</p> <p><b>closed</b> [2] - 27890:12, 27890:23</p> <p><b>closely</b> [2] - 28029:10, 28030:11</p> <p><b>closer</b> [2] - 27900:1, 28047:22</p> <p><b>closest</b> [1] - 28023:14</p> <p><b>closing</b> [8] - 27944:13, 27944:15, 27944:17, 27944:18, 27944:23, 27955:14, 27955:17, 27958:25</p> <p><b>club</b> [1] - 27963:20</p> <p><b>clumps</b> [1] - 27949:23</p> <p><b>co</b> [3] - 28037:11, 28037:22, 28043:3</p> <p><b>co-operation</b> [1] - 28037:11</p> <p><b>co-operative</b> [2] - 28037:22, 28043:3</p> <p><b>coat</b> [2] - 27942:14, 27942:16</p> <p><b>code</b> [1] - 27825:13</p> <p><b>Code</b> [3] - 27834:11, 27971:9, 27971:16</p> <p><b>coercion</b> [1] - 27884:10</p> <p><b>coercive</b> [1] - 27973:6</p> <p><b>coincidence</b> [3] - 27854:3, 28002:14, 28002:15</p> <p><b>Coincidence</b> [1] - 27949:1</p> <p><b>coined</b> [1] - 28010:23</p> <p><b>collaboration</b> [1] - 28031:7</p> <p><b>collecting</b> [1] - 28016:12</p> <p><b>collection</b> [5] - 27841:3, 27842:7, 27842:12, 28014:21, 28023:19</p> <p><b>Colony</b> [1] - 28020:5</p> <p><b>color</b> [2] - 27885:24, 27885:25</p> <p><b>Columbia</b> [4] -</p>	<p>27801:10, 27865:20, 27876:21, 27995:25</p> <p><b>column</b> [4] - 27819:21, 27822:12, 27823:9, 27828:4</p> <p><b>combination</b> [2] - 27983:10, 27996:17</p> <p><b>combined</b> [1] - 27945:19</p> <p><b>comfortable</b> [4] - 27879:3, 27936:3, 28061:22, 28066:14</p> <p><b>coming</b> [15] - 27826:17, 27881:16, 27895:1, 27917:20, 27934:22, 27979:14, 28004:2, 28013:24, 28014:12, 28017:16, 28024:9, 28033:13, 28051:20, 28056:13, 28072:11</p> <p><b>comment</b> [20] - 27798:5, 27799:13, 27814:10, 27815:7, 27851:4, 27851:18, 27862:18, 27885:7, 27889:4, 27898:10, 27902:9, 27931:23, 27947:16, 27956:21, 28013:4, 28035:15, 28036:1, 28054:18, 28055:15, 28058:15</p> <p><b>commentary</b> [3] - 27799:2, 27924:2, 27983:15</p> <p><b>comments</b> [23] - 27820:14, 27831:14, 27846:14, 27847:5, 27853:15, 27853:21, 27856:2, 27883:19, 27896:4, 27901:8, 27904:18, 27924:19, 27930:23, 27938:18, 27962:18, 27976:15, 27977:16, 27990:11, 28001:8, 28044:23, 28055:24, 28062:3, 28070:2</p> <p><b>Commission</b> [11] - 27793:2, 27793:14, 27794:1, 27794:2, 27794:3, 27794:8, 27799:14, 27972:21, 27979:5, 28023:20, 28060:18</p> <p><b>Commissioner</b> [51] - 27797:3, 27797:6, 27799:4, 27799:21, 27826:22, 27827:21, 27850:13, 27850:19, 27850:23, 27850:25,</p>	<p>27853:19, 27866:21, 27905:1, 27905:6, 27905:12, 27905:15, 27905:20, 27924:14, 27924:16, 27924:18, 27936:19, 27936:20, 27975:22, 27975:24, 27978:12, 27987:1, 27987:6, 27990:16, 27990:24, 27991:3, 27991:6, 27991:10, 27991:14, 27991:18, 28001:12, 28002:16, 28002:25, 28003:4, 28003:15, 28003:18, 28003:19, 28003:20, 28003:23, 28003:25, 28004:8, 28014:20, 28015:10, 28042:21, 28042:24, 28073:11, 28073:13</p> <p><b>Commissioners</b> [1] - 27972:25</p> <p><b>commit</b> [4] - 27833:8, 27888:23, 27912:4, 28064:4</p> <p><b>commitment</b> [1] - 27996:10</p> <p><b>committed</b> [12] - 27846:6, 27891:25, 27900:10, 27903:19, 27912:9, 27925:6, 27934:4, 27940:9, 27968:20, 28046:7, 28066:22, 28069:13</p> <p><b>committing</b> [3] - 27837:11, 27864:23, 28061:14</p> <p><b>common</b> [11] - 27899:19, 27951:6, 27951:10, 27952:11, 27954:4, 27954:23, 27954:25, 27955:3, 27957:11, 27960:5, 28030:16</p> <p><b>common-sensical</b> [1] - 27955:3</p> <p><b>commonly</b> [1] - 27835:11</p> <p><b>commonplace</b> [1] - 28009:8</p> <p><b>communicate</b> [1] - 28058:21</p> <p><b>communicating</b> [1] - 28013:16</p> <p><b>communication</b> [3] - 27862:1, 27875:18, 27985:13</p> <p><b>communications</b> [4] - 27844:21, 27908:16,</p>	<p>27994:21, 28008:4</p> <p><b>community</b> [3] - 28008:2, 28013:17, 28055:9</p> <p><b>commuting</b> [1] - 28046:15</p> <p><b>companion</b> [1] - 27912:2</p> <p><b>companions</b> [2] - 27830:21, 27903:22</p> <p><b>comparative</b> [1] - 28030:9</p> <p><b>compare</b> [1] - 28029:3</p> <p><b>compared</b> [1] - 28029:2</p> <p><b>compelled</b> [2] - 27958:21, 27973:7</p> <p><b>compelling</b> [5] - 27865:7, 27880:23, 27942:5, 27993:6, 28029:11</p> <p><b>compensation</b> [3] - 27989:17, 27990:5, 27990:9</p> <p><b>competent</b> [2] - 28011:13, 28052:16</p> <p><b>competing</b> [1] - 28014:11</p> <p><b>Competition</b> [1] - 27907:16</p> <p><b>complete</b> [5] - 27878:20, 27885:11, 27973:3, 28005:25, 28063:19</p> <p><b>completed</b> [4] - 27804:17, 27815:18, 27879:8, 27937:3</p> <p><b>completely</b> [1] - 28003:2</p> <p><b>completing</b> [1] - 27937:7</p> <p><b>completion</b> [2] - 27879:4, 28069:14</p> <p><b>comprehensive</b> [1] - 28009:5</p> <p><b>computer</b> [1] - 28009:7</p> <p><b>con</b> [2] - 27899:18, 27899:20</p> <p><b>concern</b> [8] - 27894:3, 27904:21, 27917:9, 27922:11, 27923:9, 27964:6, 27974:18, 28002:17</p> <p><b>concerned</b> [14] - 27798:12, 27813:2, 27815:10, 27917:16, 27929:1, 27929:2, 27946:18, 27946:19, 27947:21, 27948:10, 27982:22, 28006:18, 28028:15, 28062:13</p>	<p><b>concerning</b> [3] - 27834:21, 27890:12, 27986:15</p> <p><b>concerns</b> [16] - 27816:5, 27825:13, 27845:6, 27891:24, 27894:5, 27894:9, 27901:7, 27901:12, 27922:9, 27972:9, 27972:13, 27974:10, 28044:19, 28063:6, 28063:11, 28066:21</p> <p><b>conclude</b> [7] - 27832:2, 27835:18, 27836:16, 27890:8, 27958:9, 28052:15, 28061:1</p> <p><b>concluded</b> [10] - 27816:11, 27878:16, 27882:1, 27883:13, 27889:21, 27900:4, 27937:12, 27941:4, 27968:23, 27972:22</p> <p><b>concluding</b> [5] - 27886:24, 27965:3, 27971:4, 27973:24, 28057:6</p> <p><b>conclusion</b> [25] - 27821:16, 27837:3, 27878:12, 27879:3, 27879:22, 27880:13, 27923:18, 27941:3, 27945:15, 27954:10, 27958:22, 27959:9, 27964:16, 27965:8, 27968:25, 27969:3, 27975:10, 28018:1, 28020:19, 28021:4, 28021:11, 28021:12, 28052:9, 28056:1, 28057:22</p> <p><b>conclusions</b> [14] - 27831:25, 27851:20, 27851:22, 27857:3, 27874:18, 27884:8, 27891:7, 27891:11, 27891:12, 27900:20, 27928:16, 27949:10, 28017:15, 28066:12</p> <p><b>condemned</b> [2] - 27903:11, 27905:8</p> <p><b>condense</b> [1] - 28063:23</p> <p><b>conditions</b> [4] - 27998:8, 27998:24, 27999:6, 28026:19</p> <p><b>conduct</b> [14] - 27798:3, 27798:17, 27799:6, 27799:9, 27845:9, 27904:11, 27904:19, 27904:22, 27917:6,</p>
--	---	---	--	--



<p>27930:19, 27935:11, 27992:11, 27995:9, 27995:11 <b>conducted</b> [13] - 27798:2, 27798:9, 27837:23, 27839:23, 27848:21, 27857:16, 27870:14, 27879:21, 27911:9, 27921:24, 27930:4, 28009:18, 28009:24 <b>conducting</b> [3] - 27840:25, 27870:16, 28022:15 <b>confess</b> [3] - 27868:2, 27869:16, 28049:9 <b>confessed</b> [2] - 27870:6, 28047:21 <b>confession</b> [3] - 28001:19, 28002:2, 28049:14 <b>confident</b> [1] - 28010:5 <b>confidential</b> [1] - 28041:3 <b>confidentiality</b> [1] - 27983:20 <b>confirm</b> [8] - 27910:24, 27918:6, 27918:19, 27950:22, 27981:18, 27985:9, 28004:13, 28026:4 <b>confirmed</b> [5] - 27872:14, 27888:8, 27961:3, 28022:6, 28062:16 <b>confirming</b> [2] - 27872:7, 28059:10 <b>confirms</b> [1] - 27932:22 <b>conflict</b> [1] - 27831:17 <b>conflicts</b> [1] - 28017:14 <b>congeal</b> [1] - 28070:18 <b>Congram</b>[1] - 27794:4 <b>connect</b> [1] - 27950:15 <b>connected</b> [1] - 27869:14 <b>connecting</b> [3] - 27900:7, 27900:24, 27901:3 <b>connection</b> [5] - 27855:9, 27855:12, 27855:13, 27906:2, 28070:11 <b>Consequently</b>[1] - 27998:19 <b>consequently</b> [1] - 27983:3 <b>Conservative</b>[2] - 27827:10, 27827:16 <b>consider</b> [9] - 27836:15, 27837:2,</p>	<p>27921:9, 27930:10, 27933:5, 28011:13, 28021:24, 28030:11, 28068:12 <b>consideration</b> [7] - 27833:25, 27894:15, 27924:1, 27935:24, 27938:16, 27946:23, 27998:13 <b>considerations</b> [2] - 27916:14, 27943:19 <b>considered</b> [10] - 27800:23, 27831:1, 27835:9, 27860:6, 27946:10, 27956:13, 27957:3, 28022:7, 28030:14, 28031:17 <b>considering</b> [20] - 27826:10, 27833:17, 27834:1, 27836:4, 27836:5, 27857:12, 27869:7, 27873:24, 27889:12, 27894:17, 27923:4, 27928:16, 27943:2, 27967:11, 28025:19, 28026:10, 28029:17, 28030:23, 28030:25, 28068:2 <b>consisted</b> [2] - 27817:20, 27875:22 <b>consistency</b> [1] - 27940:15 <b>consistent</b> [5] - 27849:21, 27921:17, 27936:9, 28035:5, 28043:16 <b>conspiracy</b> [1] - 28000:17 <b>conspirators</b> [1] - 27893:9 <b>constable</b> [1] - 27828:14 <b>construct</b> [1] - 27812:10 <b>consult</b> [1] - 27801:7 <b>consultant</b> [1] - 27875:9 <b>consultation</b> [3] - 27899:6, 27899:10, 27899:19 <b>consulted</b> [1] - 28069:9 <b>consulting</b> [1] - 27801:10 <b>consuming</b> [1] - 27809:1 <b>contact</b> [40] - 27809:17, 27812:2, 27828:17, 27828:23, 27829:3, 27854:13, 27854:23, 27858:16, 27862:21,</p>	<p>27870:1, 27871:21, 27873:17, 27873:20, 27873:22, 27875:25, 27876:2, 27881:18, 27899:20, 27913:17, 27913:18, 27978:4, 27990:3, 28032:25, 28033:14, 28034:8, 28038:1, 28038:4, 28038:7, 28038:16, 28039:4, 28039:6, 28040:14, 28040:15, 28040:17, 28041:11, 28042:22, 28043:2, 28049:16, 28049:22, 28059:19 <b>contacted</b> [12] - 27809:20, 27828:19, 27838:4, 27953:9, 27984:11, 27986:13, 28034:17, 28034:21, 28045:25, 28052:1, 28070:24 <b>contacting</b> [10] - 27841:20, 27858:12, 27869:25, 27870:14, 27871:16, 28036:16, 28038:14, 28039:7, 28041:25, 28059:16 <b>contacts</b> [8] - 27951:22, 28025:16, 28026:6, 28026:23, 28038:9, 28042:8, 28053:15, 28059:17 <b>contain</b> [1] - 28074:5 <b>contained</b> [3] - 27933:2, 27933:17, 27999:23 <b>contaminated</b> [3] - 27950:17, 27952:2, 27953:20 <b>contamination</b> [5] - 27859:18, 27951:19, 27953:22, 27956:4, 27960:14 <b>contemplating</b> [1] - 27895:18 <b>contents</b> [1] - 27872:7 <b>context</b> [22] - 27837:20, 27850:7, 27856:3, 27883:16, 27898:18, 27905:9, 27914:8, 27916:22, 27921:13, 27922:3, 27922:4, 27960:23, 27965:6, 27966:5, 27966:6, 28008:9, 28015:2, 28028:9, 28063:16, 28071:22, 28073:3 <b>continue</b> [7] -</p>	<p>27925:19, 27950:25, 27952:18, 27963:3, 27983:25, 27984:8, 28053:19 <b>continues</b> [2] - 27832:24, 27939:18 <b>continuing</b> [8] - 27840:21, 27880:25, 27881:25, 27893:15, 27922:18, 27972:19, 27987:25, 28011:19 <b>contract</b> [1] - 27988:9 <b>contradicted</b> [2] - 27933:2, 27961:12 <b>contradictory</b> [1] - 27904:4 <b>contrary</b> [1] - 27975:14 <b>contributed</b> [1] - 27905:3 <b>control</b> [2] - 27910:6, 28014:16 <b>conversation</b> [16] - 27848:2, 27848:10, 27860:9, 27860:14, 27861:17, 27862:3, 27867:6, 27899:13, 27979:4, 27979:6, 27979:10, 27981:4, 28038:10, 28047:13, 28054:14, 28070:23 <b>conversations</b> [2] - 28037:18, 28071:5 <b>convict</b> [2] - 27893:23, 27947:10 <b>Convict's</b> [1] - 27828:3 <b>convicted</b> [21] - 27803:14, 27803:18, 27805:18, 27805:24, 27806:1, 27811:6, 27821:12, 27822:23, 27823:13, 27830:24, 27831:8, 27833:7, 27836:23, 27889:16, 27900:25, 27902:3, 27905:5, 28018:3, 28027:15, 28030:10, 28055:11 <b>Conviction</b>[2] - 27793:4, 27948:25 <b>conviction</b> [46] - 27805:15, 27806:4, 27806:5, 27806:14, 27806:16, 27806:22, 27806:25, 27808:20, 27809:12, 27809:14, 27815:4, 27819:24, 27820:5, 27820:17, 27820:22, 27833:23, 27834:22, 27845:8, 27845:9, 27852:1,</p>	<p>27852:11, 27854:3, 27877:21, 27882:9, 27889:9, 27891:1, 27905:3, 27935:8, 27935:15, 27935:17, 27935:21, 27937:14, 27941:12, 27947:13, 27971:19, 27987:18, 27989:2, 27995:12, 28009:19, 28015:17, 28017:20, 28022:3, 28072:5, 28072:8, 28072:16 <b>conviction...was</b> [1] - 27934:13 <b>convictions</b> [5] - 27947:14, 27967:5, 27967:17, 27984:7, 27989:23 <b>convinced</b> [9] - 27805:16, 27852:21, 27854:15, 27879:13, 27942:9, 27943:9, 27958:19, 28018:6, 28054:25 <b>Cook</b>[6] - 27805:20, 27806:19, 27810:25, 27820:2, 27820:11, 27909:16 <b>cooperation</b> [6] - 27896:13, 27896:20, 27907:23, 27908:3, 27908:25, 28014:15 <b>cop</b> [3] - 27929:19, 27934:21, 27962:23 <b>copies</b> [3] - 28014:25, 28022:23, 28042:5 <b>cops</b> [1] - 27929:23 <b>copy</b> [14] - 27802:3, 27810:1, 27819:9, 27843:6, 27864:5, 27864:7, 27864:10, 27975:18, 27975:20, 27982:13, 27982:24, 27988:19, 28012:18, 28014:3 <b>corner</b> [2] - 27912:16, 27942:14 <b>correct</b> [64] - 27797:18, 27800:7, 27800:10, 27800:12, 27804:21, 27805:6, 27806:12, 27824:3, 27829:24, 27838:14, 27838:18, 27838:20, 27840:5, 27854:5, 27856:15, 27859:25, 27863:12, 27867:3, 27867:17, 27869:24, 27871:1, 27878:19, 27879:2,</p>
---	--	--	--	--



<p>27882:21, 27889:23, 27895:16, 27897:1, 27897:25, 27899:23, 27911:7, 27926:15, 27927:1, 27938:4, 27938:11, 27938:15, 27946:6, 27951:14, 27953:5, 27953:9, 27955:12, 27957:18, 27958:1, 27960:9, 27969:22, 27978:2, 27979:1, 27986:13, 27986:17, 27990:10, 27999:21, 28000:2, 28000:4, 28000:5, 28004:17, 28006:5, 28007:5, 28009:23, 28031:3, 28031:8, 28036:17, 28049:12, 28055:11, 28065:17, 28074:5</p> <p><b>Correct</b><sup>[6]</sup> - 28007:19, 28008:5, 28009:12, 28032:12, 28036:20, 28065:18</p> <p><b>corrected</b> <sup>[3]</sup> - 27957:13, 27959:19, 27960:4</p> <p><b>correction</b> <sup>[1]</sup> - 27958:7</p> <p><b>correctly</b> <sup>[10]</sup> - 27805:3, 27872:6, 27879:19, 27880:12, 27943:5, 27954:24, 27978:6, 27978:16, 27992:3, 28000:19</p> <p><b>correctness</b> <sup>[1]</sup> - 27834:21</p> <p><b>correspondence</b> <sup>[7]</sup> - 27842:14, 27842:17, 27843:20, 27844:2, 27891:1, 27976:17, 28022:17</p> <p><b>cost</b> <sup>[1]</sup> - 27819:6</p> <p><b>costly</b> <sup>[1]</sup> - 27809:1</p> <p><b>Counsel</b><sup>[6]</sup> - 27794:2, 27794:3, 27797:4, 27924:17, 27997:20, 27998:12</p> <p><b>counsel</b> <sup>[23]</sup> - 27797:14, 27799:16, 27842:18, 27861:4, 27872:4, 27891:10, 27899:7, 27914:5, 27914:23, 27915:1, 27915:6, 27944:14, 27944:18, 27944:19, 27944:23, 27971:22, 27972:3, 27972:5, 27978:18, 27991:1, 28019:13, 28042:13,</p>	<p>28042:15</p> <p><b>counselling</b> <sup>[1]</sup> - 28062:19</p> <p><b>count</b> <sup>[1]</sup> - 27828:24</p> <p><b>countries</b> <sup>[1]</sup> - 28008:21</p> <p><b>country</b> <sup>[2]</sup> - 27863:4, 27973:10</p> <p><b>counts</b> <sup>[1]</sup> - 27899:10</p> <p><b>couple</b> <sup>[22]</sup> - 27812:11, 27816:17, 27821:3, 27865:16, 27875:6, 27875:16, 27876:13, 27878:23, 27882:20, 27884:1, 27976:20, 27988:3, 28003:3, 28004:25, 28005:8, 28006:9, 28024:14, 28034:9, 28048:7, 28054:2, 28055:24, 28061:3</p> <p><b>course</b> <sup>[33]</sup> - 27805:13, 27807:3, 27812:2, 27814:15, 27829:18, 27834:6, 27837:16, 27853:9, 27856:16, 27860:2, 27872:8, 27873:16, 27878:25, 27880:17, 27883:13, 27884:6, 27891:15, 27894:8, 27911:1, 27914:18, 27919:20, 27943:19, 27958:18, 27967:16, 27986:14, 27989:19, 27995:1, 28009:4, 28010:3, 28046:11, 28049:25, 28053:1, 28053:24</p> <p><b>courses</b> <sup>[1]</sup> - 28005:23</p> <p><b>court</b> <sup>[9]</sup> - 27822:23, 27823:20, 27834:17, 27868:3, 27879:10, 27879:25, 27925:22, 27935:1, 27935:7</p> <p><b>Court</b><sup>[31]</sup> - 27794:9, 27797:23, 27810:4, 27815:18, 27831:7, 27833:21, 27837:7, 27861:10, 27893:22, 27937:17, 27945:18, 27974:7, 27974:11, 27974:14, 27975:7, 27976:6, 27984:4, 27984:17, 27985:21, 27985:25, 27986:12, 27989:1, 27989:12, 28001:9, 28012:3, 28057:21, 28057:22, 28074:1, 28074:3, 28074:14, 28074:20</p>	<p><b>Courts</b> <sup>[1]</sup> - 27833:13</p> <p><b>courthouse</b> <sup>[3]</sup> - 27840:6, 27840:15, 28027:16</p> <p><b>courtroom</b> <sup>[4]</sup> - 27934:23, 28012:15, 28020:2, 28020:24</p> <p><b>courts</b> <sup>[3]</sup> - 27801:9, 27835:16, 27941:22</p> <p><b>cover</b> <sup>[16]</sup> - 27852:12, 27853:12, 27863:21, 27863:23, 27872:18, 27885:19, 27909:19, 27960:3, 27967:14, 27967:19, 28027:2, 28028:14, 28028:24, 28039:19, 28046:2, 28053:20</p> <p><b>coverage</b> <sup>[2]</sup> - 27808:4, 27906:24</p> <p><b>covered</b> <sup>[14]</sup> - 27820:13, 27867:22, 27872:19, 27872:25, 27874:11, 27881:11, 27906:10, 27915:16, 27960:2, 27989:3, 28035:14, 28058:14, 28059:18, 28069:15</p> <p><b>covering</b> <sup>[6]</sup> - 27840:19, 27863:14, 27872:24, 27882:25, 27906:2, 28042:8</p> <p><b>covers</b> <sup>[2]</sup> - 27969:1, 28012:19</p> <p><b>coverup</b> <sup>[2]</sup> - 27882:6, 27893:6</p> <p><b>crap</b> <sup>[1]</sup> - 27826:4</p> <p><b>crazy</b> <sup>[1]</sup> - 27832:11</p> <p><b>create</b> <sup>[1]</sup> - 27974:20</p> <p><b>cred</b> <sup>[1]</sup> - 27919:7</p> <p><b>credibility</b> <sup>[12]</sup> - 27874:17, 27887:6, 27887:16, 27911:18, 27931:11, 27931:17, 27960:22, 27965:18, 27965:25, 27966:2, 27997:20, 28044:13</p> <p><b>credible</b> <sup>[11]</sup> - 27874:21, 27874:22, 27919:6, 27919:8, 27919:9, 27929:7, 27965:20, 28032:2, 28043:11, 28045:15</p> <p><b>credible</b> <sup>[1]</sup> - 27964:18</p> <p><b>Crime</b><sup>[1]</sup> - 27949:25</p> <p><b>crime</b> <sup>[56]</sup> - 27801:2, 27803:22, 27805:21, 27831:24, 27833:9, 27836:12, 27837:11, 27839:12, 27839:16,</p>	<p>27846:6, 27847:2, 27847:12, 27855:10, 27863:21, 27865:17, 27876:22, 27880:19, 27888:23, 27899:3, 27900:8, 27900:25, 27901:3, 27903:19, 27912:3, 27912:10, 27925:6, 27940:9, 27943:10, 27955:1, 27962:4, 27963:17, 27966:25, 27968:20, 28004:23, 28005:15, 28006:16, 28007:11, 28007:22, 28008:1, 28010:20, 28012:8, 28015:22, 28017:22, 28018:5, 28028:9, 28028:10, 28029:9, 28030:8, 28042:12, 28064:4, 28065:9, 28065:10, 28069:9, 28069:10, 28072:18, 28073:4</p> <p><b>crimes</b> <sup>[3]</sup> - 28006:20, 28051:8, 28069:10</p> <p><b>Criminal</b><sup>[4]</sup> - 27834:11, 27971:9, 27971:16, 28004:19</p> <p><b>criminal</b> <sup>[18]</sup> - 27798:18, 27801:8, 27822:16, 27843:23, 27844:4, 27889:9, 27963:24, 27971:19, 27990:12, 28004:24, 28005:13, 28005:18, 28006:15, 28006:20, 28007:1, 28037:12, 28039:11, 28060:4</p> <p><b>criminalization</b> <sup>[1]</sup> - 27804:24</p> <p><b>criminologist</b> <sup>[6]</sup> - 27812:19, 27821:6, 27828:7, 27896:11, 27987:15, 28004:22</p> <p><b>criminology</b> <sup>[6]</sup> - 27800:19, 27822:14, 27862:15, 27877:24, 27943:17, 27966:25</p> <p><b>Criminology</b><sup>[7]</sup> - 27800:11, 27802:20, 27802:23, 27804:18, 27805:11, 28009:15, 28013:14</p> <p><b>critical</b> <sup>[20]</sup> - 27846:8, 27846:23, 27851:25, 27852:11, 27854:24, 27858:8, 27887:6, 27888:3, 27913:11, 27913:12, 27913:13,</p>	<p>27919:25, 27921:14, 27933:22, 27941:11, 27949:21, 27993:11, 27993:14, 27994:14, 28037:17</p> <p><b>criticism</b> <sup>[3]</sup> - 27902:11, 28072:23, 28073:2</p> <p><b>criticized</b> <sup>[3]</sup> - 27893:18, 27971:12, 28073:4</p> <p><b>critique</b> <sup>[9]</sup> - 27880:6, 27880:15, 27938:13, 27945:4, 27945:5, 27946:7, 27948:3, 27956:17, 27957:16</p> <p><b>cross</b> <sup>[3]</sup> - 27922:25, 27924:6, 27924:11</p> <p><b>cross-examination</b> <sup>[3]</sup> - 27922:25, 27924:6, 27924:11</p> <p><b>crossed</b> <sup>[1]</sup> - 27919:13</p> <p><b>crossings</b> <sup>[1]</sup> - 28005:18</p> <p><b>Crown</b><sup>[17]</sup> - 27879:15, 27893:20, 27899:7, 27899:11, 27939:23, 27940:1, 27942:8, 27943:12, 27943:13, 27944:17, 27951:1, 27993:9, 27998:12, 28019:13, 28042:13, 28042:15, 28056:16</p> <p><b>Crown's</b> <sup>[1]</sup> - 28064:8</p> <p><b>crystalize</b> <sup>[1]</sup> - 28056:20</p> <p><b>Csr</b><sup>[8]</sup> - 27794:9, 27794:10, 28074:2, 28074:12, 28074:13, 28074:18, 28074:19</p> <p><b>culture</b> <sup>[1]</sup> - 27963:24</p> <p><b>curious</b> <sup>[3]</sup> - 27918:4, 27918:17, 27931:24</p> <p><b>current</b> <sup>[4]</sup> - 27800:8, 27802:11, 27956:1, 28004:18</p> <p><b>curriculum</b> <sup>[2]</sup> - 27802:3, 28005:4</p> <p><b>custody</b> <sup>[1]</sup> - 27934:19</p> <p><b>cut</b> <sup>[1]</sup> - 27885:6</p> <p><b>Cv</b><sup>[3]</sup> - 27802:11, 28005:4, 28012:9</p> <p><b>cynical</b> <sup>[1]</sup> - 27827:9</p> <p><b>cynicism</b> <sup>[1]</sup> - 27989:11</p>
<b>D</b>				
<p><b>D'you</b> <sup>[1]</sup> - 27921:7</p> <p><b>daily</b> <sup>[2]</sup> - 27903:20, 27904:24</p>				



<p><b>Dan</b> [4] - 27977:7, 27977:16, 27977:17, 27977:19</p> <p><b>Dance</b> [3] - 27801:21, 27803:2, 27805:14</p> <p><b>Danchuks</b> [3] - 27940:12, 27942:19, 28027:21</p> <p><b>Danchuks'</b> [2] - 27839:18, 27943:24</p> <p><b>dangerous</b> [2] - 28061:24, 28063:2</p> <p><b>Darcy</b> [2] - 27796:6, 28004:6</p> <p><b>darker</b> [1] - 27868:8</p> <p><b>data</b> [1] - 27955:25</p> <p><b>database</b> [5] - 27842:8, 27843:8, 27845:22, 27979:2, 28014:24</p> <p><b>date</b> [25] - 27804:11, 27812:13, 27813:13, 27821:2, 27827:11, 27828:25, 27846:25, 27862:11, 27862:19, 27875:11, 27876:12, 27878:21, 27900:5, 27905:19, 27910:22, 27938:2, 27976:17, 27988:16, 27988:20, 27995:21, 27998:16, 28034:24, 28056:7, 28056:9, 28063:20</p> <p><b>dated</b> [5] - 27804:7, 27834:5, 27909:22, 27987:8, 28054:4</p> <p><b>dates</b> [3] - 27839:6, 28034:18, 28035:5</p> <p><b>daughter</b> [2] - 28047:22, 28049:2</p> <p><b>David</b> [154] - 27793:4, 27795:2, 27795:11, 27797:21, 27804:9, 27805:4, 27809:18, 27809:22, 27811:2, 27811:13, 27812:7, 27817:13, 27817:17, 27817:18, 27817:24, 27818:20, 27821:7, 27823:18, 27826:7, 27828:18, 27828:23, 27829:3, 27829:15, 27830:5, 27830:20, 27830:25, 27831:23, 27836:11, 27837:10, 27838:8, 27843:23, 27844:5, 27845:10, 27846:1, 27846:4, 27846:10, 27846:14, 27847:15, 27847:17, 27847:19, 27849:13,</p>	<p>27849:25, 27850:3, 27851:10, 27851:13, 27852:1, 27852:7, 27852:10, 27853:24, 27872:17, 27876:11, 27876:18, 27877:7, 27879:13, 27882:10, 27882:15, 27882:25, 27885:2, 27885:4, 27885:8, 27885:12, 27885:22, 27886:12, 27887:4, 27888:22, 27890:4, 27896:13, 27900:7, 27900:24, 27902:2, 27903:23, 27907:24, 27916:7, 27920:6, 27925:5, 27926:4, 27926:9, 27926:21, 27927:14, 27931:6, 27934:2, 27934:4, 27937:15, 27937:16, 27937:18, 27940:8, 27942:20, 27945:16, 27950:8, 27951:3, 27956:2, 27956:16, 27956:20, 27957:5, 27959:20, 27960:10, 27960:12, 27961:14, 27962:3, 27963:10, 27968:15, 27968:21, 27969:8, 27972:10, 27973:8, 27973:14, 27974:15, 27975:18, 27978:21, 27979:8, 27979:12, 27981:21, 27982:3, 27982:9, 27982:12, 27983:9, 27983:23, 27985:6, 27986:16, 27988:2, 27989:1, 27991:16, 27992:14, 27993:3, 27994:21, 27994:22, 28000:18, 28008:25, 28009:17, 28009:19, 28011:22, 28015:18, 28020:16, 28021:1, 28022:25, 28024:22, 28025:4, 28025:9, 28026:12, 28030:5, 28031:14, 28031:21, 28032:7, 28035:18, 28036:2, 28036:4, 28039:24, 28054:25, 28057:11, 28060:23, 28064:1, 28066:10, 28070:5</p> <p><b>David's</b> [7] - 27811:3, 27817:3, 27818:7, 27819:19, 27886:2, 27917:19, 27992:11</p> <p><b>days</b> [3] - 27944:1,</p>	<p>27949:22, 27964:3</p> <p><b>daytime</b> [2] - 28032:22, 28032:23</p> <p><b>dead</b> [1] - 28033:10</p> <p><b>dead-end</b> [1] - 28033:10</p> <p><b>deal</b> [10] - 27807:1, 27813:24, 27826:2, 27826:15, 27832:12, 27883:24, 27928:9, 27929:4, 28009:6, 28014:7</p> <p><b>dealer</b> [1] - 27912:25</p> <p><b>dealers</b> [1] - 27912:21</p> <p><b>dealing</b> [1] - 27965:14</p> <p><b>dealings</b> [4] - 27922:10, 27929:22, 28014:8, 28044:9</p> <p><b>deals</b> [3] - 27801:20, 27801:23, 27968:16</p> <p><b>dealt</b> [3] - 27869:23, 27929:12, 28050:1</p> <p><b>Dean</b> [1] - 27909:16</p> <p><b>death</b> [1] - 27882:12</p> <p><b>debate</b> [1] - 28067:19</p> <p><b>Deborah</b> [2] - 27948:18, 27992:17</p> <p><b>decide</b> [1] - 27810:21</p> <p><b>decided</b> [7] - 27853:3, 27910:10, 27910:14, 27928:24, 27970:4, 27973:16, 27988:12</p> <p><b>decision</b> [19] - 27833:13, 27833:21, 27883:19, 27974:7, 27974:12, 27974:15, 27975:1, 27975:2, 27975:3, 27984:4, 27984:5, 27985:21, 27985:25, 27986:12, 27989:16, 28017:24, 28018:18, 28059:1</p> <p><b>decision-making</b> [3] - 28017:24, 28018:18, 28059:1</p> <p><b>decisions</b> [2] - 27799:6, 27859:1</p> <p><b>declared</b> [2] - 27907:25, 28012:7</p> <p><b>declined</b> [2] - 27835:6, 27835:11</p> <p><b>deep</b> [1] - 28064:15</p> <p><b>deep-seeded</b> [1] - 28064:15</p> <p><b>defence</b> [5] - 27899:7, 27944:13, 27944:17, 27944:19, 27944:23</p> <p><b>definitely</b> [2] - 27968:8, 28036:11</p> <p><b>degree</b> [4] - 27814:13,</p>	<p>28002:20, 28028:13, 28044:13</p> <p><b>deliberately</b> [1] - 28001:13</p> <p><b>deliberations</b> [2] - 27993:7, 28017:3</p> <p><b>delinquent</b> [1] - 27963:15</p> <p><b>delivered</b> [1] - 27865:5</p> <p><b>demand</b> [1] - 28008:15</p> <p><b>Democrat</b> [2] - 27824:18, 27825:2</p> <p><b>demonstrate</b> [1] - 27905:4</p> <p><b>demonstrated</b> [1] - 27835:17</p> <p><b>demonstrates</b> [1] - 27902:2</p> <p><b>Demyen</b> [2] - 27847:24, 28033:22</p> <p><b>Denise</b> [2] - 27895:13, 27909:21</p> <p><b>Dennis</b> [12] - 27852:19, 27852:20, 27853:2, 27853:4, 27853:7, 27853:11, 27853:14, 27854:6, 27972:2, 27972:12, 28026:9, 28036:22</p> <p><b>Dennis'</b> [1] - 28036:19</p> <p><b>Dennis's</b> [1] - 27854:7</p> <p><b>denying</b> [1] - 27912:7</p> <p><b>department</b> [3] - 27868:17, 27888:15, 28008:19</p> <p><b>Department</b> [47] - 27807:8, 27807:12, 27811:4, 27812:6, 27843:18, 27843:22, 27844:3, 27844:15, 27858:1, 27862:8, 27865:10, 27868:18, 27871:17, 27871:22, 27873:18, 27874:5, 27881:4, 27887:13, 27893:6, 27914:17, 27914:18, 27961:4, 27971:17, 27971:25, 27972:5, 27973:18, 27976:8, 27976:10, 27982:19, 27982:20, 27984:12, 27994:18, 27997:17, 28004:19, 28006:4, 28006:7, 28008:10, 28039:18, 28040:12, 28041:12, 28044:3, 28047:15, 28047:17, 28048:11, 28058:9, 28060:6</p> <p><b>Department's</b> [2] -</p>	<p>27825:17, 27890:16</p> <p><b>departure</b> [1] - 27915:21</p> <p><b>depth</b> [1] - 27983:9</p> <p><b>describe</b> [3] - 27898:17, 27932:23, 27993:9</p> <p><b>described</b> [7] - 27918:7, 27918:12, 27934:25, 27965:9, 28006:23, 28013:12, 28017:22</p> <p><b>describing</b> [1] - 27907:10</p> <p><b>description</b> [6] - 27803:23, 27864:17, 27918:25, 27919:6, 27931:15, 28059:20</p> <p><b>Description</b> [1] - 27796:2</p> <p><b>descriptions</b> [1] - 27844:10</p> <p><b>design</b> [7] - 27900:14, 28000:7, 28000:17, 28001:2, 28001:12, 28001:16, 28001:25</p> <p><b>designed</b> [1] - 27835:3</p> <p><b>designs</b> [1] - 28002:12</p> <p><b>desire</b> [1] - 27910:17</p> <p><b>despite</b> [3] - 27900:17, 27902:3, 28000:10</p> <p><b>destination</b> [1] - 28021:13</p> <p><b>destroyed</b> [6] - 27843:2, 27868:19, 27977:14, 27977:19, 28048:3, 28048:15</p> <p><b>detail</b> [2] - 27919:23, 28027:3</p> <p><b>detailed</b> [1] - 27980:23</p> <p><b>details</b> [2] - 28044:11, 28071:10</p> <p><b>detected</b> [1] - 27950:4</p> <p><b>Detection</b> [1] - 27949:25</p> <p><b>detective</b> [2] - 28006:3, 28006:7</p> <p><b>Detective</b> [3] - 28026:15, 28060:17, 28060:19</p> <p><b>detectives</b> [4] - 28072:24, 28073:2, 28073:5</p> <p><b>detector</b> [1] - 27887:11</p> <p><b>detention</b> [1] - 28008:3</p> <p><b>determination</b> [2] - 27846:9, 27993:2</p> <p><b>determine</b> [7] - 27810:3, 27950:10, 27955:9, 27994:15, 28006:17, 28021:20,</p>
--	--	--	--	---



<p>28032:1  <b>determined</b> [1] - 27937:15  <b>determining</b> [1] - 28007:4  <b>developed</b> [4] - 27846:22, 28009:7, 28011:1, 28028:21  <b>developing</b> [1] - 27923:20  <b>development</b> [1] - 28010:17  <b>developments</b> [1] - 27984:4  <b>deviation</b> [1] - 28064:19  <b>devote</b> [1] - 28020:11  <b>devoted</b> [1] - 27907:2  <b>differ</b> [1] - 27993:17  <b>difference</b> [5] - 27931:13, 27933:8, 27995:7, 28073:8  <b>differences</b> [1] - 28030:14  <b>different</b> [19] - 27801:1, 27847:11, 27847:25, 27857:9, 27858:20, 27860:18, 27879:14, 27909:18, 27940:25, 27941:3, 27941:13, 27957:24, 27981:3, 27995:4, 28018:17, 28021:24, 28026:1, 28056:22, 28068:11  <b>differentiate</b> [1] - 28040:6  <b>difficult</b> [12] - 27861:12, 27935:14, 27935:19, 27936:13, 27936:14, 27961:23, 27964:18, 28028:21, 28029:12, 28045:8, 28063:10, 28067:20  <b>difficulty</b> [2] - 27987:22, 28043:4  <b>dipping</b> [1] - 28069:6  <b>direct</b> [3] - 27834:13, 27873:17, 27956:4  <b>directed</b> [3] - 27805:11, 27843:18, 27909:21  <b>directing</b> [1] - 28057:2  <b>direction</b> [4] - 27857:10, 27903:6, 27945:24, 28059:2  <b>directions</b> [1] - 27918:2  <b>directly</b> [1] - 27965:20  <b>Director</b> [1] - 27794:4  <b>disadvantaged</b> [1] - 27962:7  <b>disagree</b> [3] - 27902:19, 27959:8, 28017:17</p>	<p><b>disagreed</b> [1] - 27889:21  <b>disagreement</b> [1] - 27913:14  <b>disagreements</b> [1] - 28003:11  <b>disappear</b> [1] - 27964:4  <b>disappointed</b> [5] - 27881:20, 28037:11, 28039:14, 28059:1, 28059:2  <b>disappointing</b> [1] - 27923:4  <b>disappointment</b> [3] - 27975:11, 28001:8, 28039:10  <b>discipline</b> [1] - 27800:22  <b>disciplines</b> [1] - 27800:23  <b>disclose</b> [2] - 27845:15, 27845:16  <b>disclosure</b> [1] - 27971:20  <b>discomfort</b> [1] - 27942:22  <b>discount</b> [1] - 27958:12  <b>discretion</b> [1] - 27971:18  <b>discuss</b> [3] - 28017:7, 28046:19, 28058:21  <b>discussed</b> [4] - 27917:19, 28031:7, 28056:12, 28056:25  <b>discussing</b> [3] - 28009:11, 28013:5, 28056:18  <b>discussion</b> [20] - 27836:1, 27843:3, 27848:9, 27849:1, 27867:24, 27868:24, 27875:17, 27908:18, 27920:4, 27938:23, 27952:6, 27963:3, 27966:12, 27978:21, 27981:25, 27983:1, 28041:8, 28046:22, 28067:19, 28070:20  <b>discussions</b> [7] - 27808:6, 27810:24, 27874:5, 27982:1, 27999:5, 28032:25, 28071:3  <b>disease</b> [1] - 28047:25  <b>disenfranchised</b> [1] - 27963:22  <b>disinterested</b> [1] - 27973:22  <b>dismantled</b> [2] - 27977:14, 27977:18</p>	<p><b>dismiss</b> [1] - 27953:2  <b>dismissal</b> [1] - 27808:9  <b>dismissed</b> [1] - 28064:12  <b>dismissive</b> [1] - 27924:2  <b>disposal</b> [1] - 27883:25  <b>dispute</b> [3] - 27976:16, 27977:23, 27983:17  <b>disrespect</b> [1] - 27991:19  <b>dissertation</b> [2] - 28008:16, 28010:11  <b>disservice</b> [1] - 27947:2  <b>distance</b> [2] - 27865:19, 27994:16  <b>distances</b> [1] - 27839:18  <b>distinct</b> [1] - 28018:9  <b>distinguishing</b> [1] - 28030:21  <b>distribution</b> [1] - 28014:5  <b>diverged</b> [1] - 28018:20  <b>divergent</b> [1] - 28019:1  <b>Dna</b> [3] - 27975:12, 27984:5, 27986:9  <b>doctoral</b> [1] - 28008:16  <b>document</b> [55] - 27802:4, 27802:8, 27841:1, 27842:8, 27843:7, 27843:11, 27848:19, 27848:23, 27848:24, 27862:6, 27867:12, 27867:13, 27867:20, 27884:3, 27890:1, 27894:13, 27894:20, 27895:4, 27895:6, 27895:11, 27895:20, 27897:24, 27906:20, 27909:18, 27909:20, 27909:23, 27910:23, 27912:12, 27924:23, 27976:8, 27982:15, 27985:8, 27986:23, 27986:24, 27986:25, 27987:4, 27988:17, 27988:18, 27990:17, 28005:3, 28009:14, 28011:15, 28012:16, 28012:20, 28025:14, 28033:17, 28033:21, 28034:6, 28034:10, 28034:15, 28035:13, 28047:5, 28054:5, 28056:8  <b>Document</b> [2] - 27794:5, 27794:6  <b>documentary</b> [1] - 27822:21</p>	<p><b>documentation</b> [2] - 27865:12, 28070:14  <b>documents</b> [27] - 27798:9, 27811:19, 27811:22, 27818:22, 27818:24, 27822:9, 27837:22, 27841:3, 27842:10, 27915:9, 27973:4, 27977:1, 27990:1, 28004:25, 28013:24, 28014:24, 28014:25, 28015:3, 28015:5, 28020:9, 28023:16, 28023:23, 28024:3, 28024:7, 28025:3, 28025:7, 28054:2  <b>Doe</b> [1] - 28012:6  <b>dog</b> [2] - 27873:6, 27953:3  <b>Don</b> [1] - 27794:10  <b>Donald</b> [3] - 27972:22, 28074:2, 28074:19  <b>done</b> [21] - 27798:19, 27799:1, 27812:1, 27820:9, 27820:10, 27820:23, 27855:21, 27887:7, 27898:7, 27898:8, 27900:16, 27919:19, 27926:21, 27927:21, 27976:2, 28000:9, 28009:6, 28018:7, 28028:12, 28031:10, 28031:22  <b>door</b> [3] - 27866:15, 27866:17, 27947:9  <b>doubt</b> [11] - 27813:5, 27817:3, 27823:16, 27833:6, 27888:13, 27889:5, 27889:18, 27968:17, 28020:16, 28021:21, 28035:6  <b>doubt'</b> [1] - 27947:7  <b>doubted</b> [2] - 27824:15, 27826:25  <b>Doubted</b> [1] - 27827:3  <b>doubts</b> [4] - 27834:20, 27888:18, 27945:23, 28056:16  <b>Douglas</b> [1] - 27794:2  <b>down</b> [28] - 27803:9, 27803:25, 27804:3, 27818:18, 27824:12, 27827:24, 27848:15, 27869:20, 27893:17, 27898:23, 27899:25, 27923:2, 27932:5, 27949:17, 27950:24, 27955:22, 27956:7, 27964:14, 27979:14,</p>	<p>27979:18, 27990:16, 28004:7, 28006:2, 28040:10, 28061:2, 28061:10, 28065:8, 28065:19  <b>downs</b> [2] - 27932:16, 27932:17  <b>Dr</b> [88] - 27797:6, 27797:7, 27806:12, 27807:6, 27816:14, 27843:6, 27848:21, 27849:1, 27849:6, 27850:16, 27858:14, 27859:8, 27859:12, 27859:21, 27860:6, 27867:11, 27868:8, 27871:25, 27872:1, 27872:9, 27872:12, 27872:13, 27872:20, 27872:24, 27873:4, 27880:8, 27880:9, 27881:13, 27892:8, 27892:25, 27898:20, 27915:18, 27920:21, 27921:1, 27921:6, 27921:22, 27922:19, 27922:23, 27926:11, 27926:19, 27926:24, 27927:13, 27927:19, 27932:19, 27938:3, 27938:19, 27938:21, 27939:8, 27951:4, 27951:6, 27951:13, 27952:5, 27952:11, 27952:25, 27953:10, 27957:9, 27957:13, 27959:15, 27959:19, 27960:4, 27960:16, 27967:20, 27972:3, 27972:12, 27984:21, 28004:5, 28004:11, 28005:3, 28010:22, 28012:21, 28014:20, 28015:4, 28015:7, 28015:13, 28022:16, 28024:16, 28026:13, 28027:16, 28029:13, 28043:2, 28047:2, 28056:6, 28058:15, 28062:4, 28064:24  <b>draft</b> [1] - 27895:21  <b>dragged</b> [1] - 28028:25  <b>dramatically</b> [1] - 27832:15  <b>dramatized</b> [1] - 27896:1  <b>draw</b> [1] - 27884:8  <b>drift</b> [1] - 28016:25  <b>drink</b> [1] - 27934:20  <b>drinking</b> [1] - 27932:7</p>
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<p><b>driven</b> [1] - 27825:2  <b>driving</b> [1] - 28029:6  <b>dropped</b> [1] - 27830:25  <b>drove</b> [1] - 27863:4  <b>Drs</b> [4] - 27797:15,  27798:24, 27799:7,  27799:17  <b>drug</b> [10] - 27801:17,  27804:24, 27912:21,  27912:24, 27915:19,  27916:19, 27917:7,  27917:13  <b>Drugs</b> [2] - 27801:23,  27804:25  <b>drugs</b> [11] - 27801:24,  27805:2, 27832:15,  27912:21, 27915:21,  27927:25, 27934:12,  27934:25, 27963:17,  27964:1, 28045:13  <b>due</b> [1] - 28061:12  <b>during</b> [21] - 27805:13,  27807:16, 27818:8,  27819:4, 27837:23,  27846:4, 27874:11,  27890:15, 27903:20,  27905:16, 27905:18,  27994:25, 28010:1,  28027:10, 28043:5,  28047:13, 28049:25,  28053:24, 28058:3,  28059:7, 28068:6  <b>Duties</b> [1] - 28007:9  <b>duties</b> [5] - 27801:5,  28005:12, 28007:21,  28008:13, 28008:14</p>	<p>27840:7, 27840:11,  27855:1, 27858:2,  27858:17, 27881:20,  28026:20, 28036:25,  28037:13, 28060:12  <b>edge</b> [1] - 27963:24  <b>edited</b> [2] - 27898:2,  27898:3  <b>editing</b> [2] - 27898:6,  27898:8  <b>editorial</b> [2] - 27910:6,  28014:15  <b>Edmonton</b> [2] -  27832:10, 27943:25  <b>Education</b> [1] -  27802:14  <b>Edward</b> [1] - 27793:7  <b>Edwards</b> [2] - 27890:2,  28060:21  <b>Edwards'</b> [1] - 28022:22  <b>effect</b> [10] - 27889:19,  27938:4, 27938:10,  27940:24, 27993:6,  27995:21, 28008:11,  28053:6, 28053:10,  28073:6  <b>effectively</b> [2] -  27933:24, 27959:24  <b>effort</b> [3] - 27897:16,  27939:7, 28057:15  <b>efforts</b> [10] - 27812:1,  27852:14, 27854:23,  27858:22, 27875:10,  27891:8, 27923:14,  28040:6, 28040:7,  28041:17  <b>Eg</b> [1] - 28007:11  <b>eight</b> [4] - 27814:16,  27995:24, 27997:2,  27997:3  <b>Eighties</b> [1] - 27963:18  <b>either</b> [17] - 27811:7,  27825:23, 27846:7,  27846:13, 27861:25,  27892:12, 27904:3,  27994:17, 28000:12,  28000:16, 28001:1,  28016:13, 28042:16,  28054:17, 28057:21,  28059:20, 28067:25  <b>Either</b> [1] - 28001:15  <b>either/or</b> [2] - 28016:3,  28021:7  <b>ejaculate</b> [1] - 27951:5  <b>elaborate</b> [1] -  27798:22  <b>elements</b> [4] -  27902:19, 28030:21,  28030:22, 28068:19  <b>eliminate</b> [2] - 27959:5,</p>	<p>27959:7  <b>eliminated</b> [2] -  27959:21, 27959:24  <b>eliminating</b> [3] -  27960:10, 27960:12,  27960:13  <b>Elizabeth</b> [1] - 27941:20  <b>Ellerman</b> [1] - 27794:6  <b>ellipses</b> [1] - 28062:9  <b>Elson</b> [1] - 27795:7  <b>emergence</b> [1] -  27936:11  <b>emergency</b> [1] -  28007:24  <b>empathy</b> [1] - 28064:22  <b>emphasis</b> [2] -  27941:14, 28066:18  <b>emphasize</b> [3] -  27834:24, 27997:14,  27999:14  <b>empirical</b> [1] - 27971:7  <b>employed</b> [1] - 27962:8  <b>empty</b> [1] - 28029:1  <b>Emson</b> [14] - 27859:9,  27859:12, 27859:21,  27860:6, 27880:9,  27898:20, 27938:21,  27951:6, 27951:13,  27952:11, 27954:8,  28026:13, 28027:16,  28043:2  <b>Emson's</b> [8] - 27872:9,  27951:4, 27957:9,  27957:14, 27959:15,  27959:19, 27960:4,  27960:16  <b>enactment</b> [5] -  27846:20, 27847:6,  27847:7, 27854:12,  27854:15  <b>enclose</b> [1] - 27976:12  <b>encountered</b> [1] -  28028:24  <b>end</b> [13] - 27799:5,  27828:16, 27968:25,  27969:3, 27997:3,  28011:25, 28015:8,  28017:14, 28021:9,  28033:10, 28034:8,  28055:22, 28056:11  <b>ended</b> [2] - 28021:8,  28049:15  <b>enforcement</b> [1] -  27801:17  <b>engage</b> [2] - 27801:3,  27939:22  <b>engaged</b> [2] - 27848:1,  27874:4  <b>engaging</b> [4] -  27916:25, 27955:8,</p>	<p>27958:3, 28019:7  <b>England</b> [1] - 28011:6  <b>enjoyed</b> [1] - 27807:3  <b>enormous</b> [3] -  27812:25, 27814:20,  27820:7  <b>ensure</b> [5] - 27817:23,  27835:4, 27914:5,  27924:10, 28000:18  <b>entered</b> [1] - 27842:7  <b>entering</b> [1] - 27821:13  <b>enthusiasm</b> [1] -  28013:21  <b>enthusiastic</b> [2] -  28013:8, 28014:17  <b>entire</b> [6] - 27851:24,  27854:17, 27921:13,  27945:23, 27946:1,  27967:17  <b>entirely</b> [1] - 28002:9  <b>entitled</b> [1] - 27971:4  <b>entrenched</b> [1] -  27973:12  <b>entrée</b> [1] - 28049:14  <b>envelope</b> [1] - 28024:10  <b>environmental</b> [4] -  28006:19, 28018:14,  28028:9, 28029:8  <b>environments</b> [1] -  28029:2  <b>equal</b> [1] - 28018:19  <b>equally</b> [1] - 27986:11  <b>equivalent</b> [1] - 27823:1  <b>era</b> [4] - 27830:17,  27831:13, 27857:7,  27935:10  <b>erroneous</b> [1] -  27959:11  <b>Errors</b> [1] - 27949:1  <b>escape</b> [1] - 28028:15  <b>escaped</b> [1] - 28062:17  <b>espoused</b> [1] -  27832:21  <b>Esq</b> [6] - 27794:3,  27795:5, 27795:7,  27795:8, 27795:10,  27795:13  <b>essentially</b> [3] -  27838:25, 27914:7,  27954:6  <b>establish</b> [2] -  27941:22, 27974:16  <b>established</b> [2] -  27941:19, 28064:1  <b>Estate</b> [5] - 27807:22,  27816:15, 28015:18,  28017:23, 28022:19  <b>etcetera</b> [6] - 27935:18,  28020:5, 28027:21,  28029:7</p>	<p><b>ethics</b> [1] - 27832:21  <b>Eugene</b> [15] - 27864:7,  27873:20, 27911:9,  27921:18, 27922:20,  27923:9, 27924:4,  27961:5, 27972:5,  27972:14, 27998:12,  28022:20, 28024:6,  28043:23  <b>evaluated</b> [1] -  27837:18  <b>event</b> [7] - 27860:1,  27905:17, 27951:11,  27962:14, 28033:18,  28052:24, 28069:7  <b>events</b> [6] - 27846:18,  27864:17, 27875:6,  27882:20, 27917:19,  27992:12  <b>eventual</b> [3] - 27831:25,  27882:15, 27882:18  <b>eventually</b> [7] -  27832:2, 27833:15,  27880:4, 27944:4,  28016:13, 28023:11,  28072:11  <b>evidence</b> [147] -  27797:9, 27797:10,  27797:12, 27798:19,  27798:23, 27799:1,  27799:17, 27801:8,  27813:1, 27815:9,  27816:7, 27816:24,  27824:14, 27827:1,  27827:3, 27834:20,  27836:15, 27836:24,  27837:17, 27838:24,  27838:25, 27846:16,  27852:2, 27859:13,  27859:14, 27859:23,  27860:3, 27860:8,  27863:24, 27872:9,  27872:15, 27874:21,  27874:22, 27876:11,  27876:21, 27879:12,  27880:6, 27880:16,  27886:6, 27893:22,  27900:6, 27900:23,  27900:24, 27901:3,  27901:4, 27901:18,  27901:19, 27902:8,  27902:23, 27903:7,  27903:25, 27904:3,  27905:8, 27906:2,  27906:10, 27913:8,  27923:20, 27930:13,  27930:15, 27930:18,  27938:14, 27938:16,  27939:22, 27940:5,  27940:6, 27940:16,</p>
<b>E</b>				
<p><b>eager</b> [1] - 27908:5  <b>Eamon</b> [1] - 27795:10  <b>early</b> [19] - 27808:1,  27809:21, 27810:13,  27811:18, 27830:19,  27831:18, 27832:1,  27832:9, 27877:11,  27890:14, 27963:18,  27983:15, 27986:3,  28016:16, 28024:22,  28027:11, 28050:5,  28073:10  <b>easier</b> [1] - 28016:6  <b>easiest</b> [1] - 27963:11  <b>easily</b> [1] - 28069:11  <b>easy</b> [1] - 27964:20  <b>economically</b> [2] -  27830:22, 27962:7  <b>Ed</b> [1] - 27929:12  <b>Eddie</b> [12] - 27795:8,</p>				



27941:1, 27941:11, 27941:14, 27941:18, 27941:25, 27942:12, 27944:8, 27945:11, 27945:21, 27945:22, 27947:23, 27948:1, 27948:3, 27948:22, 27949:3, 27949:11, 27949:12, 27949:20, 27951:8, 27953:4, 27953:21, 27955:6, 27956:4, 27956:11, 27956:13, 27956:19, 27956:23, 27957:2, 27957:7, 27957:8, 27957:10, 27958:6, 27958:9, 27958:12, 27958:14, 27958:15, 27959:5, 27959:15, 27959:19, 27959:22, 27960:7, 27960:10, 27960:17, 27964:22, 27965:7, 27966:7, 27968:19, 27973:13, 27974:25, 27975:5, 27975:9, 27975:15, 27978:16, 27986:7, 27986:9, 27989:14, 27991:24, 27992:6, 27992:22, 27993:4, 27993:8, 27993:15, 27993:18, 27994:13, 27994:25, 27995:21, 27999:4, 28000:3, 28001:6, 28012:2, 28012:21, 28012:24, 28015:2, 28017:1, 28018:4, 28019:17, 28020:15, 28027:17, 28054:11, 28057:17 <b>Evidence</b> <sup>[1]</sup> - 27949:7 <b>evidence</b> <sup>[1]</sup> - 27977:6 <b>evident</b> <sup>[1]</sup> - 27922:21 <b>evolution</b> <sup>[1]</sup> - 28008:23 <b>evolving</b> <sup>[1]</sup> - 28008:15 <b>ex</b> <sup>[1]</sup> - 27863:20 <b>ex-husband</b> <sup>[1]</sup> - 27863:20 <b>exact</b> <sup>[1]</sup> - 28066:17 <b>exactly</b> <sup>[4]</sup> - 27988:15, 28045:9, 28058:2, 28063:24 <b>Exactly</b> <sup>[3]</sup> - 27921:5, 27925:8, 27926:18 <b>exaggerated</b> <sup>[1]</sup> - 27961:7 <b>examination</b> <sup>[6]</sup> - 27899:5, 27922:25, 27924:6, 27924:11,	27993:20, 28010:13 <b>examiner</b> <sup>[1]</sup> - 27997:25 <b>example</b> <sup>[16]</sup> - 27808:12, 27810:11, 27836:13, 27846:17, 27858:10, 27859:2, 27896:16, 27902:4, 27929:13, 27942:12, 27947:6, 28025:7, 28041:24, 28047:14, 28063:13, 28068:6 <b>examples</b> <sup>[5]</sup> - 27905:2, 28059:15, 28059:18, 28060:5, 28065:5 <b>exams</b> <sup>[1]</sup> - 28009:5 <b>except</b> <sup>[3]</sup> - 27917:15, 27983:8, 28041:6 <b>exclude</b> <sup>[2]</sup> - 27956:2, 27956:20 <b>excluded</b> <sup>[4]</sup> - 27872:16, 27872:17, 27956:15, 27957:5 <b>exclusive</b> <sup>[1]</sup> - 27910:2 <b>exclusively</b> <sup>[2]</sup> - 27907:2, 27947:22 <b>exculpatory</b> <sup>[3]</sup> - 27849:23, 27903:8, 27904:1 <b>Excuse</b> <sup>[1]</sup> - 27905:1 <b>Executive</b> <sup>[1]</sup> - 27794:4 <b>exercise</b> <sup>[1]</sup> - 27993:23 <b>exert</b> <sup>[1]</sup> - 27826:24 <b>exerting</b> <sup>[2]</sup> - 27827:5, 27827:19 <b>exhausted</b> <sup>[1]</sup> - 27834:24 <b>exhibits</b> <sup>[4]</sup> - 27840:6, 27840:16, 27878:9, 27899:6 <b>exist</b> <sup>[2]</sup> - 27863:9 <b>existed</b> <sup>[2]</sup> - 27860:18, 27860:19 <b>existence</b> <sup>[3]</sup> - 27836:18, 27863:10, 27887:18 <b>existent</b> <sup>[1]</sup> - 27964:6 <b>exists</b> <sup>[2]</sup> - 27835:18, 27842:13 <b>exonerate</b> <sup>[1]</sup> - 27949:13 <b>exoneration</b> <sup>[1]</sup> - 27989:18 <b>expand</b> <sup>[1]</sup> - 27992:7 <b>expect</b> <sup>[1]</sup> - 28015:7 <b>expected</b> <sup>[1]</sup> - 27975:7 <b>expecting</b> <sup>[3]</sup> - 27918:6, 27918:18, 27937:19 <b>experience</b> <sup>[10]</sup> - 27890:19, 27909:15, 27910:16, 27910:18,	27951:24, 27986:3, 28042:11, 28066:17, 28069:5, 28071:16 <b>experiences</b> <sup>[1]</sup> - 27951:24 <b>experimental</b> <sup>[1]</sup> - 27941:21 <b>expert</b> <sup>[6]</sup> - 27801:8, 27801:13, 28011:10, 28012:2, 28012:5, 28012:7 <b>expertise</b> <sup>[11]</sup> - 27801:1, 27801:14, 27967:23, 28004:21, 28004:23, 28008:24, 28012:5, 28018:11, 28018:16, 28029:21, 28029:23 <b>experts</b> <sup>[1]</sup> - 27954:8 <b>explain</b> <sup>[4]</sup> - 27933:7, 27942:14, 27959:14, 27983:8 <b>explained</b> <sup>[3]</sup> - 27806:2, 27962:16, 28002:3 <b>explaining</b> <sup>[1]</sup> - 27923:24 <b>explanation</b> <sup>[2]</sup> - 27814:22, 28045:1 <b>explanations</b> <sup>[2]</sup> - 27928:13, 28047:20 <b>explore</b> <sup>[1]</sup> - 28022:2 <b>explored</b> <sup>[2]</sup> - 28020:6, 28027:18 <b>Expo</b> <sup>[1]</sup> - 28008:2 <b>express</b> <sup>[3]</sup> - 27799:8, 27801:15, 28000:23 <b>expressed</b> <sup>[6]</sup> - 27798:4, 27815:2, 27816:4, 27825:8, 27995:8, 27995:10 <b>expressing</b> <sup>[5]</sup> - 27827:8, 27901:15, 28025:18, 28064:24, 28066:14 <b>extent</b> <sup>[15]</sup> - 27833:14, 27857:6, 27862:1, 27862:4, 27871:2, 27879:12, 27884:9, 27904:9, 27906:12, 27917:11, 27923:21, 27931:20, 27946:25, 27992:23, 28058:14 <b>extraordinary</b> <sup>[1]</sup> - 27835:2 <b>extremely</b> <sup>[3]</sup> - 27859:21, 27943:17, 28058:20 <b>eye</b> <sup>[2]</sup> - 27941:16, 27941:23 <b>eyes</b> <sup>[3]</sup> - 27908:12,	27908:14  <b>F</b>  <b>face</b> <sup>[3]</sup> - 27932:12, 27967:7, 27989:14 <b>faces</b> <sup>[2]</sup> - 27866:13, 27884:17 <b>facilitated</b> <sup>[1]</sup> - 28025:4 <b>facilitating</b> <sup>[1]</sup> - 28025:14 <b>fact</b> <sup>[35]</sup> - 27806:21, 27820:16, 27825:2, 27827:11, 27831:10, 27832:8, 27847:10, 27849:9, 27852:4, 27856:19, 27860:7, 27865:3, 27884:14, 27887:3, 27894:1, 27900:24, 27908:1, 27909:14, 27940:6, 27942:15, 27952:10, 27955:16, 27961:18, 27986:20, 27996:3, 27998:3, 27999:17, 28001:21, 28017:19, 28045:13, 28052:19, 28055:13, 28062:22, 28063:6 <b>factor</b> <sup>[5]</sup> - 27814:22, 27832:3, 27832:5, 27852:11, 27854:2 <b>facts</b> <sup>[3]</sup> - 28014:12, 28026:4, 28071:11 <b>factually</b> <sup>[1]</sup> - 28020:24 <b>faculty</b> <sup>[1]</sup> - 27800:25 <b>failed</b> <sup>[4]</sup> - 27900:16, 27902:5, 27974:17, 28000:9 <b>failing</b> <sup>[1]</sup> - 27902:20 <b>fails</b> <sup>[1]</sup> - 27971:13 <b>fair</b> <sup>[17]</sup> - 27815:7, 27856:25, 27879:8, 27895:24, 27939:2, 27940:2, 27948:2, 27959:4, 27959:10, 27959:22, 27967:20, 27970:17, 27994:12, 27999:12, 27999:22, 28043:13, 28070:19 <b>fairly</b> <sup>[11]</sup> - 27809:21, 27919:11, 27974:21, 27994:1, 27994:5, 28013:6, 28014:5, 28018:6, 28021:9, 28025:25, 28045:14 <b>fairness</b> <sup>[3]</sup> - 27798:24, 27902:24, 27971:15 <b>fall</b> <sup>[4]</sup> - 27892:9,	27895:2, 27907:21, 28016:17 <b>fallible</b> <sup>[1]</sup> - 27947:3 <b>falls</b> <sup>[1]</sup> - 27907:9 <b>false</b> <sup>[1]</sup> - 27893:22 <b>familiar</b> <sup>[5]</sup> - 27802:8, 27940:4, 27951:25, 28005:3, 28066:9 <b>familiarity</b> <sup>[1]</sup> - 27915:15 <b>family</b> <sup>[7]</sup> - 27826:2, 27888:15, 27907:24, 27910:2, 27911:22, 27922:13, 27994:18 <b>family's</b> <sup>[2]</sup> - 27908:2, 28014:15 <b>far</b> <sup>[6]</sup> - 27798:12, 27844:9, 27900:21, 28003:4, 28059:14, 28062:12 <b>fashion</b> <sup>[1]</sup> - 27957:9 <b>fault</b> <sup>[1]</sup> - 28045:4 <b>favour</b> <sup>[2]</sup> - 27923:22, 27938:5 <b>favourably</b> <sup>[1]</sup> - 27919:12 <b>fax</b> <sup>[1]</sup> - 27909:19 <b>faxed</b> <sup>[2]</sup> - 27909:24, 27981:22 <b>fear</b> <sup>[2]</sup> - 27822:2, 27983:11 <b>fears</b> <sup>[1]</sup> - 27821:17 <b>feature</b> <sup>[1]</sup> - 27822:21 <b>features</b> <sup>[3]</sup> - 28005:17, 28006:19, 28027:19 <b>February</b> <sup>[11]</sup> - 27804:7, 27804:11, 27804:19, 27834:5, 27887:21, 27949:21, 27975:2, 27988:21, 28011:23, 28051:4, 28051:5 <b>federal</b> <sup>[11]</sup> - 27824:18, 27827:14, 27844:24, 27893:5, 27900:15, 27906:1, 27914:17, 28000:8, 28000:13, 28000:25, 28001:3 <b>Federal</b> <sup>[8]</sup> - 27797:21, 27808:9, 27862:8, 27873:18, 27982:19, 27984:12, 28000:15, 28007:15 <b>felt</b> <sup>[12]</sup> - 27822:7, 27874:13, 27924:8, 27925:25, 28018:24, 28018:25, 28042:18, 28058:17, 28059:5, 28066:14, 28073:5 <b>fences</b> <sup>[1]</sup> - 28028:19 <b>fend</b> <sup>[2]</sup> - 27892:4,
--	--	---	--	---



<p>28067:2</p> <p><b>Ferris</b><sup>[16]</sup> - 27859:15, 27860:11, 27871:25, 27872:1, 27872:12, 27872:13, 27880:8, 27948:17, 27951:17, 27952:5, 27954:9, 27955:5, 27972:4, 27972:13, 28022:17, 28026:13</p> <p><b>Ferris</b><sup>[1]</sup> - 27938:19</p> <p><b>few</b><sup>[11]</sup> - 27821:5, 27823:15, 27828:18, 27828:24, 27876:14, 27964:3, 27990:1, 27991:23, 28006:24, 28041:6, 28044:11</p> <p><b>fiction</b><sup>[1]</sup> - 27822:16</p> <p><b>field</b><sup>[2]</sup> - 27801:4, 27954:8</p> <p><b>Fifth</b><sup>[5]</sup> - 27807:22, 27816:15, 28015:18, 28017:23, 28022:19</p> <p><b>fight</b><sup>[1]</sup> - 27877:4</p> <p><b>fighting</b><sup>[1]</sup> - 27828:3</p> <p><b>figure</b><sup>[1]</sup> - 27935:11</p> <p><b>figured</b><sup>[2]</sup> - 27926:1, 27928:7</p> <p><b>file</b><sup>[28]</sup> - 27805:19, 27805:22, 27806:18, 27806:19, 27811:21, 27841:10, 27841:11, 27841:15, 27841:17, 27841:22, 27842:6, 27842:13, 27864:4, 27864:6, 27867:8, 27867:9, 27867:11, 28014:19, 28040:21, 28041:15, 28041:19, 28041:21, 28042:10, 28046:25, 28067:22, 28068:24, 28070:3</p> <p><b>filed</b><sup>[2]</sup> - 27797:22, 27985:5</p> <p><b>files</b><sup>[11]</sup> - 27803:15, 27811:22, 27890:12, 27890:23, 27890:25, 27891:23, 28013:22, 28019:13, 28040:25, 28041:9, 28066:20</p> <p><b>files'</b><sup>[1]</sup> - 27891:5</p> <p><b>film</b><sup>[1]</sup> - 27822:22</p> <p><b>final</b><sup>[2]</sup> - 27906:18, 28066:12</p> <p><b>Finally</b><sup>[2]</sup> - 27982:17, 27982:21</p> <p><b>financial</b><sup>[1]</sup> - 27964:23</p> <p><b>financially</b><sup>[1]</sup> - 27965:1</p> <p><b>findings</b><sup>[2]</sup> - 27975:12, 28013:17</p>	<p><b>Findlay</b><sup>[5]</sup> - 27808:5, 27816:8, 27816:13, 27855:24, 27856:10</p> <p><b>fine</b><sup>[2]</sup> - 27935:2, 27977:9</p> <p><b>finger</b><sup>[3]</sup> - 27901:10, 27903:22, 27906:8</p> <p><b>finished</b><sup>[5]</sup> - 27894:25, 27936:25, 27974:2, 28009:4, 28015:7</p> <p><b>firm</b><sup>[1]</sup> - 28016:14</p> <p><b>first</b><sup>[56]</sup> - 27798:6, 27807:25, 27808:7, 27810:2, 27812:11, 27812:14, 27813:14, 27814:9, 27817:14, 27821:5, 27826:23, 27829:17, 27834:2, 27842:15, 27870:7, 27873:7, 27876:14, 27880:15, 27883:21, 27887:4, 27889:3, 27890:3, 27896:5, 27906:24, 27918:7, 27918:23, 27920:5, 27931:3, 27939:5, 27939:21, 27945:14, 27946:18, 27948:15, 27948:16, 27949:8, 27953:15, 27963:16, 27970:3, 27971:6, 27976:11, 27976:21, 27993:22, 28008:12, 28008:18, 28011:3, 28019:11, 28022:9, 28022:10, 28034:24, 28045:2, 28048:22, 28050:18, 28051:6, 28054:3, 28060:22</p> <p><b>First</b><sup>[1]</sup> - 28063:22</p> <p><b>Fisher</b><sup>[100]</sup> - 27795:10, 27837:15, 27838:7, 27843:24, 27844:5, 27845:8, 27855:9, 27855:12, 27856:14, 27859:3, 27863:2, 27863:3, 27863:15, 27864:8, 27864:14, 27865:14, 27865:15, 27865:16, 27866:1, 27868:1, 27868:3, 27868:17, 27868:20, 27869:4, 27869:15, 27870:5, 27870:24, 27880:11, 27880:18, 27888:25, 27890:14, 27891:2, 27891:25, 27892:11, 27900:11, 27901:9, 27906:3, 27936:11, 27939:1,</p>	<p>27939:11, 27948:19, 27966:20, 27967:18, 27968:7, 27968:20, 27968:23, 27969:9, 27969:11, 27970:3, 27989:20, 27990:12, 27994:9, 28001:18, 28001:20, 28015:19, 28016:7, 28020:18, 28023:8, 28026:16, 28027:5, 28027:12, 28027:15, 28028:6, 28028:16, 28029:9, 28030:9, 28031:5, 28040:25, 28042:4, 28043:7, 28043:18, 28043:23, 28044:2, 28044:8, 28045:24, 28047:19, 28047:21, 28048:2, 28048:19, 28049:8, 28049:12, 28049:13, 28051:23, 28053:13, 28061:9, 28061:12, 28061:24, 28063:9, 28063:12, 28063:25, 28065:21, 28066:22, 28068:15, 28068:17, 28070:12, 28072:12, 28072:13</p> <p><b>Fisher</b><sup>[1]</sup> - 27901:11</p> <p><b>Fishers</b><sup>[11]</sup> - 27839:19, 27855:14, 27864:2, 27869:22, 27870:19, 27969:10, 27969:15, 28021:3, 28022:22, 28049:24, 28070:11</p> <p><b>fit</b><sup>[11]</sup> - 27883:23, 27966:22, 27968:11, 27983:13, 28015:24, 28017:9, 28029:9, 28030:4, 28030:12, 28036:8, 28064:16</p> <p><b>fits</b><sup>[1]</sup> - 28059:19</p> <p><b>Fitzpatrick</b><sup>[1]</sup> - 27794:12</p> <p><b>five</b><sup>[2]</sup> - 27961:21, 28006:8</p> <p><b>fixed</b><sup>[1]</sup> - 27885:3</p> <p><b>flaws</b><sup>[1]</sup> - 27887:20</p> <p><b>fledgling</b><sup>[1]</sup> - 27963:23</p> <p><b>flesh</b><sup>[1]</sup> - 27864:16</p> <p><b>fleshed</b><sup>[1]</sup> - 28044:10</p> <p><b>floating</b><sup>[1]</sup> - 28070:15</p> <p><b>flows</b><sup>[1]</sup> - 27956:24</p> <p><b>fluid</b><sup>[2]</sup> - 27950:3, 27952:1</p> <p><b>fly</b><sup>[1]</sup> - 27826:14</p> <p><b>focal</b><sup>[1]</sup> - 27913:15</p> <p><b>focus</b><sup>[6]</sup> - 27828:4,</p>	<p>27940:2, 27940:5, 27944:8, 27947:22, 28005:13</p> <p><b>focused</b><sup>[4]</sup> - 27815:17, 27857:9, 27967:21, 28032:5</p> <p><b>focusing</b><sup>[1]</sup> - 28007:1</p> <p><b>focusses</b><sup>[1]</sup> - 27946:25</p> <p><b>Foi</b><sup>[1]</sup> - 28042:2</p> <p><b>foiled</b><sup>[2]</sup> - 27892:4, 28067:2</p> <p><b>folds</b><sup>[1]</sup> - 28006:24</p> <p><b>follow</b><sup>[9]</sup> - 27799:2, 27838:25, 27867:18, 27892:8, 27984:4, 27985:18, 28033:3, 28037:24, 28052:15</p> <p><b>follow-up</b><sup>[3]</sup> - 27799:2, 28033:3, 28052:15</p> <p><b>followed</b><sup>[3]</sup> - 27804:8, 27808:3, 27856:5</p> <p><b>following</b><sup>[13]</sup> - 27802:25, 27874:19, 27877:17, 27882:21, 27900:5, 27914:22, 27974:11, 27984:1, 27987:25, 27998:15, 28007:8, 28023:1, 28069:2</p> <p><b>follows</b><sup>[1]</sup> - 27886:25</p> <p><b>foot</b><sup>[1]</sup> - 27866:15</p> <p><b>footnote</b><sup>[1]</sup> - 28053:9</p> <p><b>Force</b><sup>[2]</sup> - 28037:9, 28059:21</p> <p><b>force</b><sup>[2]</sup> - 27905:25, 28007:25</p> <p><b>forced</b><sup>[1]</sup> - 27963:10</p> <p><b>foregoing</b><sup>[1]</sup> - 28074:4</p> <p><b>Forensic</b><sup>[1]</sup> - 27949:7</p> <p><b>forensic</b><sup>[14]</sup> - 27859:14, 27903:25, 27947:25, 27949:3, 27949:11, 27949:12, 27949:20, 27951:16, 27951:22, 27955:25, 27956:11, 27956:19, 27959:5, 27960:9</p> <p><b>forensics</b><sup>[4]</sup> - 27880:8, 27903:1, 27938:18, 27956:18</p> <p><b>forgive</b><sup>[2]</sup> - 27840:20, 28024:1</p> <p><b>forgotten</b><sup>[1]</sup> - 28003:2</p> <p><b>form</b><sup>[3]</sup> - 27897:23, 27971:23, 27992:14</p> <p><b>formalize</b><sup>[2]</sup> - 27808:16, 27809:17</p> <p><b>formed</b><sup>[6]</sup> - 27972:17, 27994:1, 28017:12, 28025:21, 28026:2</p>	<p><b>former</b><sup>[5]</sup> - 27812:21, 27861:4, 27899:21, 28004:22, 28040:13</p> <p><b>Formerly</b><sup>[1]</sup> - 28006:11</p> <p><b>formula</b><sup>[1]</sup> - 28031:25</p> <p><b>Fort</b><sup>[4]</sup> - 27868:17, 28047:15, 28047:18, 28048:10</p> <p><b>forth</b><sup>[5]</sup> - 27826:16, 27842:18, 27859:3, 27967:18, 28017:8</p> <p><b>forthright</b><sup>[2]</sup> - 28043:11, 28045:7</p> <p><b>fortune</b><sup>[1]</sup> - 28062:23</p> <p><b>forum</b><sup>[1]</sup> - 27973:17</p> <p><b>forward</b><sup>[9]</sup> - 27799:23, 27832:23, 27863:1, 27885:20, 27893:1, 27893:15, 27954:23, 27981:1, 28065:19</p> <p><b>forwarded</b><sup>[1]</sup> - 27875:23</p> <p><b>forwarding</b><sup>[1]</sup> - 27875:15</p> <p><b>fought</b><sup>[1]</sup> - 28069:19</p> <p><b>fountain</b><sup>[1]</sup> - 28045:20</p> <p><b>four</b><sup>[7]</sup> - 27890:25, 27938:10, 27949:21, 27970:6, 27989:21, 28027:14, 28030:10</p> <p><b>fourth</b><sup>[1]</sup> - 28068:16</p> <p><b>Frailties</b><sup>[1]</sup> - 27949:2</p> <p><b>frame</b><sup>[5]</sup> - 27882:2, 28032:13, 28032:15, 28032:16, 28046:13</p> <p><b>framed</b><sup>[1]</sup> - 28059:7</p> <p><b>framing</b><sup>[1]</sup> - 27882:6</p> <p><b>frankly</b><sup>[2]</sup> - 27904:23, 28067:13</p> <p><b>Fraser</b><sup>[10]</sup> - 27800:13, 27812:18, 27816:20, 27822:14, 27828:7, 27862:14, 27877:24, 27987:14, 28009:16, 28061:6</p> <p><b>fraudulent</b><sup>[1]</sup> - 28068:8</p> <p><b>Frayer</b><sup>[9]</sup> - 27795:11, 27796:5, 27991:15, 27991:16, 27991:18, 27991:20, 27991:22, 28003:17, 28003:19</p> <p><b>Free</b><sup>[1]</sup> - 27977:4</p> <p><b>free</b><sup>[4]</sup> - 27817:10, 27822:23, 27963:7, 28072:6</p> <p><b>freed</b><sup>[1]</sup> - 27877:4</p> <p><b>freedom</b><sup>[5]</sup> - 27841:23, 27843:4, 27843:13, 27873:23, 27969:25</p> <p><b>fresh</b><sup>[2]</sup> - 27812:8,</p>
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<p>28019:9  <b>friend</b> [2] - 28066:4, 28066:6  <b>friendly</b> [1] - 27856:23  <b>friends</b> [4] - 27853:24, 27990:21, 28032:7, 28054:22  <b>fringes</b> [1] - 27963:23  <b>front</b> [6] - 27814:16, 27838:9, 27926:9, 27966:16, 27973:21, 27996:7  <b>fronts</b> [1] - 27874:19  <b>frozen</b> [1] - 27873:5  <b>fruitful</b> [1] - 27874:4  <b>fruits</b> [1] - 27798:13  <b>frustrated</b> [2] - 27890:11, 28058:20  <b>frustrating</b> [1] - 28059:24  <b>frustration</b> [4] - 28039:10, 28040:1, 28058:17, 28067:7  <b>frustrations</b> [2] - 28059:15, 28059:16  <b>full</b> [14] - 27805:19, 27834:22, 27862:25, 27896:12, 27896:20, 27952:24, 27953:16, 27973:3, 27997:6, 27997:8, 28008:14, 28010:3, 28010:4, 28054:9  <b>full-time</b> [4] - 28008:14, 28010:3, 28010:4, 28054:9  <b>fully</b> [3] - 28002:3, 28016:23, 28028:21  <b>function</b> [7] - 27834:25, 27947:18, 28005:14, 28007:6, 28007:7, 28028:10  <b>fundamental</b> [2] - 27948:11, 28073:8  <b>funding</b> [2] - 27809:5, 28016:10  <b>Furthermore</b> [1] - 28013:22  <b>future</b> [2] - 27866:12, 28062:14</p>	<p>27956:6, 27967:6, 27968:8, 27969:14, 27973:15, 27984:24, 27984:25, 27990:13, 28021:21, 28028:7, 28029:3, 28030:12, 28031:23, 28040:21, 28061:8, 28063:12, 28068:15, 28068:17, 28069:3, 28071:2  <b>gain</b> [1] - 27884:15  <b>gained</b> [2] - 27932:14, 28029:24  <b>garages</b> [1] - 28028:18  <b>Garrett</b> [1] - 27795:6  <b>Garry</b> [4] - 27868:17, 28047:15, 28047:18, 28048:10  <b>gather</b> [1] - 27983:16  <b>gathered</b> [13] - 27819:15, 27849:15, 27856:21, 27864:13, 27903:13, 27911:15, 27938:21, 27951:13, 27957:19, 28035:23, 28044:7, 28053:7, 28067:11  <b>gathering</b> [4] - 27876:24, 27954:24, 28020:13, 28020:14  <b>geared</b> [1] - 27837:12  <b>General</b> [2] - 27843:21, 28000:14  <b>general</b> [9] - 27838:13, 27844:12, 27919:8, 27933:15, 27934:5, 28012:24, 28039:5, 28039:9, 28063:4  <b>generalizations</b> [1] - 27904:6  <b>generally</b> [14] - 27801:14, 27810:17, 27823:6, 27832:17, 27838:15, 27839:8, 27840:24, 27849:22, 27858:2, 27871:16, 27875:14, 27923:15, 28006:18, 28032:16  <b>genuine</b> [2] - 27866:14, 28037:21  <b>geographers</b> [1] - 27800:21  <b>geographic</b> [13] - 28005:16, 28006:19, 28007:9, 28008:9, 28009:10, 28010:14, 28010:18, 28010:23, 28011:10, 28011:20, 28012:4, 28018:14, 28027:19</p>	<p><b>Geographic</b> [3] - 28006:11, 28006:15, 28010:12  <b>geographically</b> [1] - 27967:5  <b>geography</b> [2] - 28004:23, 28005:14  <b>geological</b> [1] - 28005:17  <b>Germany</b> [1] - 28011:6  <b>gest</b> [2] - 27864:24, 27992:20  <b>get-out-of-jail-free</b> [1] - 28072:6  <b>Gibson</b> [1] - 27795:9  <b>Gillian</b> [5] - 27808:5, 27816:8, 27816:13, 27855:23, 27856:10  <b>given</b> [33] - 27798:16, 27816:7, 27827:10, 27855:14, 27887:14, 27894:15, 27905:2, 27914:6, 27914:7, 27931:12, 27931:15, 27933:3, 27933:11, 27935:12, 27942:7, 27946:15, 27953:14, 27957:7, 27957:9, 27961:1, 27962:2, 27965:15, 27968:18, 27971:17, 27983:15, 27991:25, 27996:19, 27997:19, 28023:17, 28045:10, 28063:16, 28072:5  <b>global</b> [1] - 27967:23  <b>gluc</b> [1] - 28043:6  <b>gonna</b> [1] - 27842:9  <b>government</b> [5] - 27824:16, 27824:19, 27827:9, 27827:10, 27827:14  <b>Government</b> [1] - 27795:4  <b>governments</b> [1] - 27906:1  <b>gradually</b> [1] - 28017:12  <b>graduate</b> [1] - 28005:22  <b>grant</b> [9] - 27809:7, 27809:10, 27809:15, 27812:20, 27822:18, 27824:19, 27827:12, 27861:22, 27861:24  <b>granted</b> [1] - 27984:16  <b>granting</b> [2] - 27809:2, 27809:7  <b>great</b> [9] - 27812:2, 27813:24, 27814:3, 27830:20, 27831:6,</p>	<p>27904:21, 27917:12, 27919:23, 28009:6  <b>greater</b> [4] - 27836:17, 27936:16, 27983:8, 28064:2  <b>green</b> [5] - 27914:7, 27914:8, 27914:10, 27914:22, 27978:5  <b>Greenberg</b> [7] - 27868:18, 27869:20, 27869:21, 27869:25, 27870:1, 28048:1, 28049:17  <b>grey</b> [1] - 27833:1  <b>ground</b> [3] - 27960:2, 27971:13, 28012:19  <b>growing</b> [2] - 27806:6, 28039:9  <b>grown</b> [1] - 28015:21  <b>guarantees</b> [1] - 27944:9  <b>guards</b> [4] - 27869:2, 28048:5, 28048:18, 28048:21  <b>guess</b> [19] - 27807:25, 27822:7, 27825:15, 27828:25, 27833:24, 27860:21, 27931:10, 27955:4, 27958:2, 27965:23, 27970:25, 27993:11, 28016:4, 28023:2, 28040:5, 28053:21, 28055:22, 28063:16, 28070:4  <b>guilt</b> [12] - 27817:3, 27846:9, 27896:10, 27945:17, 27945:25, 27948:12, 27972:7, 27972:18, 27973:15, 27989:15, 27993:2, 28020:17  <b>guilty</b> [20] - 27821:16, 27823:14, 27868:2, 27869:9, 27870:7, 27878:10, 27879:14, 27891:3, 27901:11, 27969:12, 27970:5, 27970:6, 27970:7, 27989:23, 28001:20, 28002:3, 28018:2, 28020:18, 28055:1  <b>guilty</b> [1] - 27837:9  <b>gumption</b> [1] - 28037:13  <b>guy</b> [1] - 27925:16  <b>guys</b> [1] - 27929:23</p>	<p><b>H</b></p> <p><b>had...later</b> [1] - 27929:22  <b>hairs</b> [3] - 27950:3, 27953:7, 27953:14  <b>half</b> [7] - 27943:24, 27961:21, 27996:2, 27996:5, 27996:18, 27997:4, 28008:13  <b>half-time</b> [1] - 28008:13  <b>Hall</b> [2] - 27948:18, 27992:17  <b>hand</b> [6] - 27885:8, 27885:12, 27885:23, 27912:15, 27924:3, 27962:4  <b>handcuffs</b> [1] - 27934:21  <b>handicaps</b> [1] - 28019:23  <b>handle</b> [1] - 27885:24  <b>handled</b> [3] - 27989:22, 27989:24, 28001:9  <b>handling</b> [1] - 27825:17  <b>hands</b> [1] - 27823:21  <b>handwriting</b> [8] - 27867:13, 27867:14, 27867:15, 27912:15, 28034:11, 28034:13, 28047:10  <b>handwritten</b> [1] - 28024:17  <b>hanged</b> [2] - 27805:21, 27820:2  <b>happy</b> [3] - 27928:5, 27929:5, 28021:17  <b>hard</b> [2] - 28058:1, 28065:4  <b>hard-pressed</b> [1] - 28065:4  <b>hardly</b> [1] - 28029:11  <b>Hardy</b> [30] - 27794:3, 27796:4, 27796:7, 27797:8, 27799:23, 27799:25, 27827:22, 27850:15, 27850:21, 27850:24, 27851:1, 27851:3, 27854:4, 27866:20, 27866:25, 27905:21, 27924:22, 27936:18, 27936:23, 27975:25, 27978:15, 27987:3, 27987:7, 28003:24, 28004:4, 28004:10, 28015:11, 28034:12, 28035:3, 28042:25  <b>Harry</b> [2] - 27859:8,</p>
<b>G</b>				
<p><b>Gail</b> [32] - 27817:7, 27840:18, 27841:11, 27857:12, 27857:17, 27866:6, 27878:4, 27882:13, 27886:1, 27892:13, 27953:25,</p>				



<p>28043:2  <b>harshly</b> [3] - 27893:18,  27903:10, 27905:8  <b>hatred</b> [1] - 28064:15  <b>heading</b> [13] -  27802:20, 27802:24,  27803:25, 27877:2,  27877:6, 27896:5,  27906:20, 27948:15,  27948:24, 27960:24,  27966:19, 28005:9,  28006:10  <b>healthy</b> [2] - 27801:11,  27801:12  <b>hear</b> [10] - 27797:10,  27798:7, 27807:6,  27816:14, 27832:18,  27848:4, 27931:19,  27978:6, 27978:16,  27984:21  <b>heard</b> [13] - 27797:7,  27799:4, 27853:15,  27855:22, 27859:17,  27867:9, 27959:18,  27992:16, 27995:20,  28008:17, 28015:12,  28035:21, 28046:1  <b>hearing</b> [7] - 27834:18,  27880:12, 27899:4,  27911:2, 27943:5,  27994:20, 28025:20  <b>hearings</b> [1] - 27985:18  <b>heavy</b> [1] - 27932:7  <b>held</b> [4] - 27827:8,  27873:12, 27904:8,  28000:25  <b>hell</b> [1] - 27928:6  <b>help</b> [10] - 27812:21,  27818:23, 27857:14,  27857:15, 27886:4,  27933:9, 27933:10,  27982:12, 28008:18,  28067:15  <b>helped</b> [3] - 27962:9,  27982:8, 27983:23  <b>helpful</b> [4] - 27799:22,  27873:25, 27997:10,  28030:22  <b>helps</b> [1] - 27981:21  <b>Henderson</b> [41] -  27854:9, 27864:2,  27864:13, 27874:8,  27874:9, 27879:21,  27886:9, 27888:1,  27911:5, 27911:22,  27918:14, 27919:15,  27921:18, 27921:23,  27921:25, 27922:4,  27922:7, 27930:22,  27931:14, 27932:1,</p>	<p>27933:3, 27933:25,  27948:20, 27961:2,  27961:13, 27965:2,  27994:1, 27995:9,  27995:20, 27995:23,  27996:3, 27996:6,  27996:11, 27996:19,  28043:18, 28044:25,  28046:18, 28046:20,  28052:14, 28052:16  <b>Henderson's</b> [7] -  27886:11, 27922:10,  27930:21, 27933:18,  28044:9, 28044:14,  28044:21  <b>hereby</b> [1] - 28074:4  <b>herein</b> [1] - 28074:6  <b>herewith</b> [1] - 27976:12  <b>heroin</b> [1] - 27963:18  <b>herring</b> [3] - 27854:18,  27933:14, 27992:5  <b>herself</b> [1] - 27850:1  <b>Hersh</b> [6] - 27795:2,  27811:2, 27812:8,  27937:16, 27975:17,  28039:24  <b>hide</b> [1] - 27818:25  <b>hiding</b> [1] - 27856:25  <b>high</b> [9] - 27809:24,  27890:11, 27974:21,  28028:19, 28037:9,  28037:10, 28058:19,  28061:13, 28061:16  <b>High</b> [2] - 27801:22,  27826:17  <b>higher</b> [2] - 27803:12,  27966:1  <b>highlight</b> [3] - 27974:4,  27977:7, 27989:6  <b>highly</b> [1] - 27874:3  <b>Hill</b> [1] - 28072:14  <b>himself</b> [4] - 27869:17,  27963:12, 28045:21,  28048:5  <b>hindsight</b> [4] -  27836:17, 27935:14,  27941:25, 27995:4  <b>Hinz</b> [3] - 27794:9,  28074:2, 28074:13  <b>hippie</b> [5] - 27831:1,  27831:11, 27832:8,  27934:24, 27963:23  <b>Hippies</b> [1] - 27910:18  <b>hippies</b> [4] - 27831:14,  27905:10, 27934:12,  28020:4  <b>hired</b> [8] - 27822:6,  27874:14, 27911:22,  27912:19, 27912:22,  27912:24, 27912:25,</p>	<p>27922:13  <b>History</b> [1] - 27802:21  <b>history</b> [2] - 27968:13,  28064:18  <b>Hodson</b> [8] - 27794:2,  27797:5, 27990:23,  27991:4, 27991:8,  28003:21, 28034:14,  28034:23  <b>hold</b> [5] - 27884:22,  28058:18, 28060:2,  28060:3, 28064:25  <b>home</b> [8] - 27840:11,  27853:18, 27853:23,  27963:9, 27977:15,  28023:24, 28029:5,  28066:1  <b>homicide</b> [13] -  27801:19, 27801:21,  27803:12, 27803:18,  27803:19, 27805:12,  27805:13, 27809:12,  27820:1, 27912:20,  27954:18, 27955:1,  28073:5  <b>Hon</b> [1] - 27795:12  <b>Honourable</b> [1] -  27793:6  <b>hook</b> [1] - 27850:2  <b>hope</b> [3] - 27828:14,  27844:18, 27992:2  <b>hopefully</b> [2] - 27944:7,  27944:9  <b>hopes</b> [2] - 27824:13,  27827:2  <b>hoping</b> [1] - 28046:2  <b>Hopkins</b> [1] - 27795:13  <b>horn</b> [1] - 28011:9  <b>horrendous</b> [1] -  27994:25  <b>horrendously</b> [2] -  27994:24, 27995:6  <b>Horrendously</b> [1] -  27995:16  <b>hostage</b> [1] - 28007:23  <b>hotel</b> [3] - 27854:15,  27992:11, 28027:20  <b>Hotel</b> [1] - 27793:16  <b>hour</b> [2] - 27943:24,  27961:16  <b>hours</b> [8] - 27903:18,  27904:10, 27916:1,  27961:21, 27975:8,  27995:24, 27997:3,  27997:4  <b>house</b> [4] - 27839:19,  27839:20, 28027:20,  28028:23  <b>Houston</b> [1] - 27822:20  <b>Huff</b> [14] - 27857:24,</p>	<p>27867:2, 27867:16,  27867:22, 27868:12,  27870:13, 27871:12,  28026:15, 28038:9,  28038:10, 28047:1,  28047:7, 28047:13,  28048:13  <b>Huff's</b> [1] - 27869:7  <b>Human</b> [1] - 27949:1  <b>human</b> [4] - 27928:19,  27947:2, 27953:14,  27956:3  <b>humanly</b> [1] - 28017:10  <b>hundreds</b> [1] - 27975:8  <b>hung</b> [2] - 27869:16,  28048:5  <b>hungry</b> [1] - 27814:25  <b>hunting</b> [3] - 27933:21,  28010:14, 28018:15  <b>Huntington</b> [2] -  27869:17, 28047:23  <b>Huntington's</b> [1] -  28047:25  <b>husband</b> [1] - 27863:20  <b>hyping</b> [1] - 28022:3</p>	<p><b>implemented</b> [2] -  28011:3, 28011:5  <b>implicate</b> [1] - 27963:10  <b>implicated</b> [1] - 27887:4  <b>implicating</b> [1] -  27963:11  <b>implied</b> [1] - 27903:19  <b>implies</b> [1] - 27904:11  <b>import</b> [1] - 28055:15  <b>importance</b> [1] -  27988:5  <b>important</b> [20] -  27838:23, 27848:3,  27856:21, 27919:14,  27924:1, 27936:1,  27937:13, 27945:6,  27945:13, 27965:5,  27967:11, 27993:2,  27993:18, 27994:8,  27994:12, 28021:9,  28022:8, 28045:19,  28052:10  <b>imposed</b> [3] - 27998:8,  27998:24, 27999:6  <b>impossible</b> [2] -  27920:18, 27925:5  <b>impression</b> [4] -  27886:16, 27919:7,  27985:10, 28039:5  <b>imprisoned</b> [1] -  27821:19  <b>improbable</b> [1] -  27943:1  <b>impulses</b> [1] - 28061:18  <b>inability</b> [2] - 27975:4,  27986:1  <b>inaccurate</b> [2] -  27896:23, 27949:11  <b>inadequate</b> [1] -  27971:8  <b>inadvertently</b> [1] -  27962:9  <b>inappropriate</b> [3] -  27861:12, 27904:12,  28053:4  <b>incarcerated</b> [1] -  28062:18  <b>incident</b> [2] - 27853:10,  27854:17  <b>inclined</b> [3] - 27817:2,  27888:21, 27888:23  <b>include</b> [4] - 27948:17,  27948:21, 27949:3,  28051:24  <b>included</b> [7] -  27842:11, 28007:21,  28018:22, 28019:2,  28023:7, 28024:5,  28050:13  <b>includes</b> [2] - 27880:5,</p>
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<p>28041:21  <b>including</b> [9] -  27834:23, 27966:21,  28007:14, 28010:25,  28022:24, 28023:13,  28034:2, 28042:10,  28056:17  <b>incompetence</b> [4] -  27900:14, 28000:7,  28001:16, 28001:25  <b>incompetent</b> [4] -  27893:8, 28000:16,  28001:1, 28001:4  <b>inconsistency</b> [3] -  27919:25, 27962:10,  28037:15  <b>inconsistent</b> [5] -  27942:17, 27942:25,  27958:16, 28062:6,  28072:25  <b>incorrect</b> [3] - 27899:8,  27899:16, 28022:4  <b>increase</b> [1] - 27820:21  <b>incredibly</b> [2] -  28065:1, 28069:12  <b>indecent</b> [1] - 28046:8  <b>indeed</b> [3] - 27820:10,  27955:10, 27999:4  <b>Indeed</b> [1] - 27983:4  <b>independence</b> [1] -  27911:23  <b>independent</b> [12] -  27797:17, 27811:8,  27812:5, 27878:12,  27883:11, 27970:24,  27972:24, 27987:17,  27996:16, 27997:24,  28009:18, 28056:1  <b>Index</b> [1] - 27796:1  <b>indicate</b> [9] - 27838:15,  27839:4, 27849:4,  27863:20, 27866:4,  27888:10, 27976:21,  27992:20, 28034:7  <b>indicated</b> [11] -  27845:25, 27861:23,  27891:17, 27910:8,  27912:9, 27933:10,  27982:7, 27982:11,  27997:22, 28015:4,  28034:16  <b>indicates</b> [9] - 27829:8,  27849:6, 27881:14,  27886:12, 27917:24,  27918:3, 27951:7,  28034:7, 28034:24  <b>indicating</b> [4] -  27806:20, 27845:14,  27845:19, 27860:23  <b>indication</b> [2] -</p>	<p>27882:5, 27890:18  <b>individual</b> [4] -  27906:9, 27978:22,  28059:24, 28072:18  <b>individuals</b> [9] -  27838:3, 27879:21,  27898:11, 27947:2,  28002:12, 28022:18,  28025:24, 28034:2,  28051:10  <b>influence</b> [2] - 27909:8,  27954:1  <b>inform</b> [3] - 27845:22,  28033:20, 28052:3  <b>information</b> [84] -  27798:16, 27798:20,  27798:22, 27811:18,  27820:21, 27822:10,  27834:20, 27839:14,  27841:23, 27843:5,  27843:13, 27843:14,  27844:25, 27847:4,  27849:15, 27849:16,  27849:19, 27856:17,  27869:7, 27869:13,  27871:4, 27873:23,  27876:24, 27880:24,  27883:25, 27886:6,  27890:15, 27891:4,  27891:6, 27891:16,  27897:7, 27903:13,  27918:17, 27921:10,  27928:15, 27930:10,  27932:24, 27933:2,  27938:20, 27946:9,  27951:13, 27957:19,  27966:3, 27966:22,  27967:7, 27967:10,  27969:25, 27973:7,  27994:10, 28002:8,  28002:18, 28005:24,  28007:18, 28014:13,  28016:12, 28017:12,  28019:12, 28020:9,  28020:14, 28023:9,  28025:25, 28029:15,  28029:19, 28030:7,  28033:13, 28035:16,  28035:23, 28039:23,  28040:1, 28040:3,  28046:7, 28051:7,  28051:16, 28051:21,  28052:7, 28052:11,  28052:22, 28053:7,  28057:17, 28062:12,  28063:7, 28067:11,  28067:12, 28070:17  <b>informative</b> [1] -  27797:13  <b>informed</b> [1] - 27825:22</p>	<p><b>informs</b> [1] - 28070:21  <b>inherent</b> [1] - 27941:23  <b>initial</b> [4] - 27811:15,  27946:7, 28042:12,  28043:5  <b>initiate</b> [1] - 27808:16  <b>Inland</b> [1] - 27794:12  <b>Innocence</b> [1] -  27973:15  <b>innocence</b> [13] -  27811:4, 27819:19,  27821:10, 27846:9,  27945:16, 27945:24,  27946:24, 27948:12,  27968:15, 27974:16,  27974:21, 27989:14,  27993:3  <b>innocent</b> [14] - 27813:3,  27813:6, 27817:8,  27836:12, 27837:9,  27876:12, 27876:22,  27890:5, 27929:3,  27947:11, 27948:8,  28002:9, 28018:1,  28060:23  <b>input</b> [1] - 27939:13  <b>inquiries</b> [3] -  27871:18, 27971:1,  27972:1  <b>inquiring</b> [1] - 27871:11  <b>Inquiry</b> [7] - 27793:2,  27793:23, 27798:15,  27799:1, 27799:14,  27834:7, 27984:9  <b>inquiry</b> [4] - 27798:2,  27834:13, 27994:3,  28057:16  <b>inquiry</b> [1] - 27987:18  <b>insert</b> [1] - 27960:6  <b>inside</b> [1] - 28065:24  <b>insight</b> [1] - 27820:21  <b>insists</b> [1] - 27817:8  <b>insofar</b> [9] - 27852:1,  27899:9, 27917:15,  27946:17, 27947:20,  27948:9, 27982:17,  27982:21, 27994:15  <b>inspecting</b> [1] -  28056:14  <b>inspector</b> [2] - 28006:4,  28006:8  <b>instance</b> [1] - 27835:10  <b>instances</b> [1] - 27988:3  <b>Institution</b> [1] -  27821:14  <b>instruct</b> [3] - 27902:5,  27902:20, 27957:9  <b>instructed</b> [2] -  27956:9, 27956:22  <b>instruction</b> [3] -</p>	<p>27903:2, 27903:4,  27957:24  <b>insurgency</b> [1] -  28005:19  <b>integrity</b> [1] - 27952:19  <b>intelligence</b> [1] -  28007:23  <b>intended</b> [4] - 27824:6,  27824:7, 27883:9,  28002:21  <b>intense</b> [4] - 27831:16,  27892:6, 28003:12,  28067:4  <b>intention</b> [2] -  27826:24, 27909:8  <b>intentions</b> [1] - 27947:4  <b>intents</b> [1] - 28062:21  <b>interaction</b> [1] -  28053:23  <b>interdisciplinary</b> [1] -  27800:20  <b>interest</b> [19] - 27807:23,  27814:7, 27814:13,  27815:3, 27827:4,  27827:6, 27833:10,  27837:15, 27844:11,  27866:14, 27870:9,  27906:22, 27916:13,  27929:1, 27931:2,  27935:4, 28020:1,  28043:8, 28053:13  <b>interested</b> [46] -  27806:16, 27815:3,  27818:1, 27826:18,  27826:19, 27827:18,  27830:15, 27831:4,  27832:25, 27836:7,  27836:8, 27837:13,  27837:14, 27837:16,  27844:16, 27846:21,  27855:8, 27863:16,  27865:21, 27866:8,  27874:12, 27874:13,  27874:25, 27877:19,  27894:24, 27895:2,  27908:9, 27908:22,  27910:5, 27911:19,  27921:25, 27932:10,  27963:7, 27970:15,  27984:9, 28013:11,  28013:16, 28018:12,  28018:13, 28025:20,  28028:8, 28032:6,  28041:20, 28043:10,  28052:5, 28072:1  <b>interesting</b> [14] -  27806:10, 27806:24,  27807:2, 27807:4,  27811:10, 27815:6,  27826:20, 27853:15,</p>	<p>27853:21, 27887:1,  27910:16, 28020:2,  28028:16, 28029:10  <b>interests</b> [1] - 27963:16  <b>internal</b> [2] - 27809:2,  27809:7  <b>international</b> [2] -  28007:13, 28010:17  <b>interpret</b> [1] - 27956:10  <b>interpretation</b> [9] -  27931:4, 27940:25,  27941:1, 27941:3,  27955:24, 27959:11,  27959:17, 27960:9,  27995:15  <b>interpretations</b> [1] -  28067:20  <b>interpreted</b> [1] -  27992:16  <b>interrogation</b> [2] -  27903:18, 27904:10  <b>interrupts</b> [1] -  27884:21  <b>intersect</b> [1] - 28028:11  <b>intersection</b> [1] -  27918:24  <b>intervened</b> [1] -  27835:15  <b>intervening</b> [1] -  27832:15  <b>intervention</b> [1] -  27821:18  <b>interview</b> [86] -  27803:17, 27808:24,  27813:9, 27816:23,  27817:24, 27821:25,  27823:18, 27830:25,  27840:10, 27841:7,  27846:4, 27846:8,  27847:16, 27848:20,  27848:21, 27850:16,  27855:2, 27855:12,  27855:23, 27855:25,  27856:4, 27856:14,  27857:13, 27857:21,  27861:13, 27861:18,  27861:22, 27861:24,  27864:7, 27872:12,  27872:13, 27873:19,  27875:3, 27875:5,  27881:2, 27894:12,  27910:21, 27910:22,  27910:25, 27911:8,  27911:16, 27911:17,  27912:11, 27912:18,  27913:1, 27913:4,  27913:9, 27913:12,  27913:24, 27915:5,  27918:16, 27921:13,  27922:21, 27928:22,</p>
---	--	---	--	---



<p>27935:23, 27937:1, 27962:18, 27966:13, 27966:15, 27977:25, 27978:13, 27978:18, 27979:17, 27981:12, 27995:19, 27995:22, 27995:23, 27996:1, 27996:4, 27996:18, 27997:9, 28022:21, 28022:22, 28024:6, 28026:15, 28034:16, 28035:11, 28043:23, 28045:22, 28046:19, 28046:22, 28052:18, 28052:20, 28058:3, 28058:7, 28062:5</p> <p><b>Interview</b> [1] - 27978:12</p> <p><b>interviewed</b> [20] - 27838:3, 27838:6, 27838:7, 27838:8, 27840:7, 27840:11, 27846:1, 27912:21, 27912:22, 27972:2, 28026:9, 28026:12, 28026:13, 28026:14, 28027:12, 28052:12, 28052:13, 28053:3</p> <p><b>interviewer</b> [1] - 28052:17</p> <p><b>interviewing</b> [2] - 27810:11, 28026:10</p> <p><b>interviews</b> [19] - 27798:10, 27812:1, 27823:22, 27837:23, 27838:16, 27839:23, 27840:1, 27845:25, 27862:24, 27870:16, 27878:24, 27899:5, 27912:23, 27912:25, 28023:8, 28026:6, 28031:12, 28044:14, 28052:15</p> <p><b>intrigued</b> [4] - 27805:15, 27806:17, 28015:19, 28017:21</p> <p><b>intriguing</b> [2] - 28016:2, 28021:8</p> <p><b>introduced</b> [4] - 27836:16, 27941:22, 27956:11, 27993:5</p> <p><b>introduction</b> [1] - 27939:16</p> <p><b>introductory</b> [1] - 27984:6</p> <p><b>invested</b> [1] - 27913:24</p> <p><b>investigated</b> [2] - 27898:25, 27899:2</p> <p><b>investigating</b> [3] - 27821:7, 27828:11, 27896:12</p>	<p><b>investigation</b> [57] - 27798:3, 27798:4, 27798:14, 27798:17, 27799:6, 27799:9, 27804:9, 27809:13, 27816:12, 27817:25, 27837:24, 27838:22, 27841:11, 27841:12, 27852:15, 27857:13, 27857:15, 27857:16, 27857:17, 27858:19, 27870:3, 27870:10, 27871:19, 27873:17, 27878:19, 27879:5, 27882:2, 27882:8, 27882:11, 27882:12, 27883:14, 27902:1, 27909:11, 27923:14, 27967:22, 27969:24, 27970:24, 27971:19, 27971:24, 27986:19, 27998:20, 28006:21, 28007:2, 28019:9, 28019:20, 28019:22, 28030:6, 28040:21, 28040:25, 28041:2, 28042:12, 28052:6, 28053:14, 28053:25, 28059:7, 28061:6, 28063:17</p> <p><b>Investigation</b> [1] - 28007:16</p> <p><b>investigations</b> [2] - 27986:14, 28004:24</p> <p><b>investigative</b> [6] - 27973:2, 28005:14, 28006:15, 28010:19, 28012:8, 28012:14</p> <p><b>investigator</b> [4] - 27812:22, 27961:2, 27961:4, 27961:14</p> <p><b>investigator's</b> [1] - 27823:20</p> <p><b>investigators</b> [1] - 28008:17</p> <p><b>invited</b> [1] - 27924:18</p> <p><b>involve</b> [1] - 28030:18</p> <p><b>involved</b> [27] - 27801:7, 27805:7, 27807:20, 27811:3, 27812:20, 27823:23, 27854:12, 27858:18, 27892:12, 27896:15, 27896:21, 27963:17, 27963:25, 27983:25, 27984:17, 27985:2, 27993:14, 28007:9, 28010:2, 28010:6, 28015:13, 28016:5, 28030:3, 28039:3, 28045:13,</p>	<p>28070:22</p> <p><b>involvement</b> [16] - 27805:4, 27808:17, 27809:17, 27810:22, 27814:23, 27871:10, 27871:14, 27871:15, 27881:21, 27896:25, 27897:3, 27912:7, 28021:25, 28053:21, 28054:6, 28072:24</p> <p><b>involves</b> [1] - 28057:16</p> <p><b>involving</b> [3] - 28022:17, 28042:4, 28069:10</p> <p><b>Irene</b> [1] - 27794:8</p> <p><b>irrelevant</b> [2] - 27904:2, 27904:4</p> <p><b>Island</b> [1] - 27800:5</p> <p><b>Isobel</b> [1] - 28017:4</p> <p><b>isolation</b> [2] - 27965:10, 28002:8</p> <p><b>issue</b> [35] - 27806:16, 27833:13, 27835:13, 27846:24, 27859:23, 27860:18, 27884:19, 27885:21, 27891:2, 27896:10, 27903:1, 27909:12, 27911:23, 27915:8, 27918:10, 27918:22, 27919:8, 27920:4, 27933:15, 27933:22, 27937:14, 27938:19, 27946:20, 27951:17, 27958:25, 27965:25, 27973:18, 27983:20, 27995:14, 27997:20, 27999:22, 28013:20, 28014:11, 28055:8</p> <p><b>issues</b> [14] - 27801:12, 27816:9, 27835:9, 27887:23, 27894:10, 27920:1, 27952:6, 27974:6, 27990:4, 27994:12, 28014:10, 28025:18, 28062:11, 28069:24</p> <p><b>item</b> [2] - 27804:3, 27864:22</p> <p><b>items</b> [1] - 27804:23</p> <p><b>itself</b> [6] - 27804:17, 27807:4, 27837:17, 27905:18, 27916:20, 28022:4</p> <p><b>It's</b> [1] - 27979:10</p> <p><b>it's</b> [1] - 27979:10</p>	<p><b>J</b></p> <p><b>Jack</b>[1] - 27825:2</p> <p><b>jail</b> [12] - 27813:7, 27912:3, 27919:18, 27929:3, 27948:7, 28016:21, 28061:20, 28071:19, 28072:2, 28072:3, 28072:6, 28072:18</p> <p><b>James</b>[2] - 27859:15, 27951:16</p> <p><b>Jan</b>[3] - 27892:2, 28061:8, 28066:24</p> <p><b>Jane</b>[1] - 28012:6</p> <p><b>January</b>[7] - 27832:9, 27846:18, 27863:17, 27863:22, 27915:22, 27962:12, 28046:12</p> <p><b>Japan</b>[1] - 28010:1</p> <p><b>Jerry</b>[1] - 27794:11</p> <p><b>Joanne</b>[1] - 27795:3</p> <p><b>job</b> [4] - 27882:6, 27932:5, 28016:20, 28072:1</p> <p><b>Joe</b>[3] - 27857:23, 27950:8, 28023:4</p> <p><b>John</b>[41] - 27847:21, 27847:22, 27849:2, 27849:16, 27851:7, 27851:23, 27858:10, 27875:8, 27911:25, 27913:17, 27917:4, 27928:24, 27930:16, 27931:8, 27935:18, 27940:16, 27942:12, 27943:20, 27944:3, 27958:11, 27961:11, 27961:25, 27962:5, 27962:12, 27984:24, 27993:16, 28022:24, 28026:15, 28032:24, 28032:25, 28033:1, 28033:9, 28033:14, 28034:16, 28035:17, 28035:20, 28035:23, 28035:25, 28036:9, 28059:23</p> <p><b>Johrls</b> [1] - 28034:21</p> <p><b>joint</b> [2] - 27939:7, 28031:6</p> <p><b>jointly</b> [1] - 27897:16</p> <p><b>joke</b> [2] - 27854:21, 27992:18</p> <p><b>Jordan</b>[1] - 27794:3</p> <p><b>jostle</b> [1] - 27991:2</p> <p><b>Joyce</b>[31] - 27795:3, 27811:2, 27812:7, 27814:8, 27817:9,</p>	<p>27817:15, 27818:5, 27819:8, 27828:20, 27829:8, 27829:10, 27829:12, 27829:15, 27829:19, 27829:23, 27830:4, 27830:10, 27877:10, 27908:13, 27908:17, 27908:24, 27978:21, 27979:5, 27979:19, 27994:21, 28016:14, 28022:18, 28024:21, 28026:12, 28057:9, 28070:23</p> <p><b>judge</b> [4] - 27902:5, 27903:3, 27957:9, 28020:2</p> <p><b>judgement</b> [2] - 27972:17</p> <p><b>judgements</b> [1] - 27966:17</p> <p><b>judges</b> [1] - 27947:6</p> <p><b>judgment</b> [3] - 27879:10, 27975:13, 27995:5</p> <p><b>judicial</b> [4] - 27834:23, 27835:3, 27876:17, 27973:17</p> <p><b>July</b>[9] - 27810:10, 27813:13, 27813:16, 27821:2, 27829:19, 27877:11, 27961:5, 28010:8</p> <p><b>June</b>[8] - 27810:10, 27829:1, 27950:19, 27961:3, 28010:7, 28010:8, 28033:23</p> <p><b>junkie</b> [2] - 27934:24, 27935:2</p> <p><b>jurisdictions</b> [1] - 28054:23</p> <p><b>jury</b> [19] - 27831:7, 27835:9, 27835:14, 27852:2, 27889:21, 27902:5, 27903:2, 27934:18, 27935:6, 27941:2, 27941:4, 27941:6, 27944:16, 27956:9, 27956:14, 27956:21, 27957:4, 27957:15, 27958:8</p> <p><b>jury's</b> [1] - 27993:7</p> <p><b>justice</b> [21] - 27822:17, 27824:22, 27825:11, 27835:4, 27835:19, 27836:9, 27836:21, 27861:10, 27888:16, 27900:16, 27946:15, 27946:19, 27947:1, 27948:10, 27973:10, 28000:9, 28000:19,</p>
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28037:12, 28039:11, 28060:4, 28072:1 <b>Justice</b> <sup>[57]</sup> - 27793:6, 27795:11, 27795:13, 27797:21, 27804:5, 27808:10, 27811:5, 27811:23, 27812:6, 27825:17, 27834:12, 27834:16, 27835:1, 27835:5, 27835:15, 27841:20, 27843:18, 27843:22, 27844:3, 27844:16, 27861:5, 27862:8, 27862:9, 27871:17, 27871:22, 27873:19, 27874:6, 27883:20, 27887:13, 27890:16, 27893:5, 27893:16, 27899:21, 27914:17, 27914:18, 27955:15, 27956:10, 27960:25, 27961:4, 27971:17, 27971:25, 27972:4, 27973:19, 27976:8, 27976:10, 27981:5, 27982:19, 27982:20, 27984:12, 27991:17, 27994:18, 27997:18, 28000:15, 28004:20, 28041:25, 28042:5, 28042:22 <b>justice'</b> <sup>[1]</sup> - 27946:14 <b>Justices</b> <sup>[2]</sup> - 27831:7, 27975:7 <b>justified</b> <sup>[1]</sup> - 27834:15	<b>Ken</b> <sup>[8]</sup> - 27887:10, 27913:20, 27924:14, 27924:15, 27924:16, 27929:15, 27972:3, 27997:21 <b>Kennedy</b> <sup>[1]</sup> - 27795:5 <b>kept</b> <sup>[4]</sup> - 27811:20, 27842:25, 27848:17, 27962:13 <b>Kettles</b> <sup>[1]</sup> - 27831:13 <b>key</b> <sup>[17]</sup> - 27798:10, 27803:16, 27817:24, 27827:17, 27839:17, 27858:25, 27888:12, 27889:4, 27897:7, 27897:19, 27898:17, 27931:8, 27931:12, 27993:8, 27997:20, 28059:24 <b>Key</b> <sup>[1]</sup> - 27894:25 <b>kids</b> <sup>[4]</sup> - 27831:10, 27831:11, 27832:8, 27935:9 <b>killed</b> <sup>[5]</sup> - 27878:8, 27920:12, 27968:7, 28031:23, 28064:10 <b>killer</b> <sup>[10]</sup> - 27853:17, 27853:23, 27892:5, 28061:7, 28063:12, 28064:14, 28064:20, 28067:3, 28068:6, 28072:20 <b>killing</b> <sup>[4]</sup> - 28068:15, 28068:17, 28069:3, 28071:2 <b>Kim</b> <sup>[41]</sup> - 27796:6, 27797:7, 27804:6, 27805:9, 27805:22, 27806:17, 27807:3, 27807:21, 27808:6, 27809:5, 27810:23, 27811:20, 27815:2, 27816:22, 27828:12, 27829:14, 27848:6, 27865:20, 27867:14, 27868:5, 27878:2, 27879:24, 27887:1, 27893:16, 27897:6, 27897:15, 27908:15, 27910:17, 27911:21, 27915:6, 27939:9, 27975:2, 27987:15, 27988:9, 28004:5, 28004:6, 28033:23, 28033:24, 28034:3, 28054:13 <b>Kind</b> <sup>[1]</sup> - 27926:10 <b>kind</b> <sup>[34]</sup> - 27802:2, 27817:25, 27832:11, 27836:11, 27842:5,	27846:21, 27846:22, 27864:16, 27874:4, 27880:20, 27906:11, 27910:6, 27910:9, 27913:15, 27919:10, 27924:11, 27935:11, 27935:12, 27944:21, 27965:8, 27971:14, 27973:10, 27986:5, 27989:10, 27989:17, 27992:21, 27994:17, 27995:10, 28002:14, 28057:3, 28063:10, 28070:15 <b>kindly</b> <sup>[3]</sup> - 28012:18, 28015:4, 28016:12 <b>kinds</b> <sup>[5]</sup> - 27801:1, 27841:25, 27916:24, 27925:9, 27943:1 <b>knife</b> <sup>[12]</sup> - 27885:4, 27885:12, 27885:21, 27885:23, 27886:13, 27932:21, 27932:23, 27933:21, 27942:15, 27942:16, 28062:1, 28062:17 <b>knife-point</b> <sup>[1]</sup> - 28062:1 <b>knocking</b> <sup>[1]</sup> - 28065:8 <b>knowing</b> <sup>[10]</sup> - 27919:18, 27919:19, 27922:3, 27922:4, 27922:12, 27933:7, 27943:22, 27966:25, 28066:16, 28071:9 <b>knowledge</b> <sup>[14]</sup> - 27799:19, 27807:19, 27836:18, 27860:17, 27860:19, 27952:16, 27954:7, 27955:1, 28029:15, 28029:25, 28031:21, 28051:15, 28064:3, 28074:6 <b>known</b> <sup>[4]</sup> - 27860:23, 27861:2, 27912:2, 27952:7 <b>knows</b> <sup>[3]</sup> - 27859:25, 27951:9, 28045:9 <b>Krogan</b> <sup>[1]</sup> - 27795:4 <b>Krogan-stevely</b> <sup>[1]</sup> - 27795:4 <b>Kujawa</b> <sup>[3]</sup> - 27795:6, 27871:7, 27871:8 <b>Kw</b> <sup>[1]</sup> - 27924:15	27951:23 <b>Laboratory</b> <sup>[1]</sup> - 27949:25 <b>lack</b> <sup>[4]</sup> - 27903:3, 27923:16, 27972:16, 28037:11 <b>Lack</b> <sup>[1]</sup> - 27923:11 <b>lacking</b> <sup>[1]</sup> - 27922:14 <b>lady</b> <sup>[1]</sup> - 27918:2 <b>Lana</b> <sup>[1]</sup> - 27795:4 <b>land</b> <sup>[2]</sup> - 28005:18, 28005:25 <b>landmarks</b> <sup>[1]</sup> - 27839:17 <b>language</b> <sup>[4]</sup> - 27897:13, 27977:18, 27995:18, 28000:22 <b>Lapchuk</b> <sup>[6]</sup> - 27854:14, 27854:20, 27854:23, 27992:4, 27992:18, 27992:24 <b>large</b> <sup>[2]</sup> - 27880:14, 27994:1 <b>Largely</b> <sup>[1]</sup> - 27868:21 <b>largely</b> <sup>[1]</sup> - 27967:25 <b>larger</b> <sup>[1]</sup> - 28013:17 <b>Larry</b> <sup>[66]</sup> - 27795:10, 27837:14, 27839:19, 27843:24, 27844:5, 27845:8, 27855:9, 27855:12, 27855:14, 27865:14, 27865:15, 27865:16, 27866:1, 27868:16, 27869:4, 27870:5, 27870:19, 27870:23, 27880:11, 27880:18, 27888:25, 27891:2, 27892:11, 27900:11, 27901:9, 27901:10, 27936:11, 27939:1, 27939:11, 27948:19, 27966:20, 27967:18, 27968:7, 27968:19, 27968:23, 27969:9, 27969:11, 27970:3, 27989:20, 27990:12, 27994:9, 28001:18, 28001:19, 28020:18, 28021:2, 28022:22, 28027:5, 28027:15, 28028:6, 28030:9, 28031:4, 28042:4, 28043:15, 28044:22, 28045:24, 28047:19, 28047:20, 28049:12, 28051:22, 28053:13, 28061:9, 28063:25, 28068:17, 28072:12 <b>Last</b> <sup>[3]</sup> - 27801:21,	27803:2, 27805:14 <b>last</b> <sup>[17]</sup> - 27805:21, 27819:20, 27823:5, 27825:24, 27860:21, 27885:7, 27888:8, 27898:10, 27905:22, 27956:7, 27965:19, 27981:10, 27988:17, 28006:8, 28018:23, 28068:25, 28071:12 <b>lasted</b> <sup>[2]</sup> - 27848:12, 27961:20 <b>lastly</b> <sup>[4]</sup> - 27880:10, 27906:19, 27907:15, 27939:1 <b>late</b> <sup>[5]</sup> - 27807:25, 27830:18, 27831:18, 27832:9, 28009:8 <b>law</b> <sup>[8]</sup> - 27800:22, 27800:24, 27801:17, 27801:18, 27973:12, 27984:6, 28016:14, 28041:2 <b>Law</b> <sup>[2]</sup> - 27802:15, 27802:17 <b>Lawrence</b> <sup>[5]</sup> - 27868:18, 27869:20, 27869:21, 28048:1, 28049:16 <b>laws</b> <sup>[1]</sup> - 28052:20 <b>Lawyer</b> <sup>[2]</sup> - 27988:14, 28011:23 <b>lawyer</b> <sup>[14]</sup> - 27817:13, 27818:20, 27822:15, 27868:19, 27869:20, 27869:22, 27877:4, 27887:10, 27913:21, 27978:4, 28018:11, 28020:1, 28048:1, 28049:24 <b>lawyers</b> <sup>[4]</sup> - 27800:20, 27896:14, 27907:24, 28039:25 <b>Layton</b> <sup>[1]</sup> - 27825:2 <b>lead</b> <sup>[4]</sup> - 27826:1, 27877:4, 27897:7, 28031:3 <b>leading</b> <sup>[6]</sup> - 27797:9, 27897:18, 27902:6, 27902:22, 27954:5, 28016:17 <b>leads</b> <sup>[2]</sup> - 27887:19, 28020:19 <b>learn</b> <sup>[2]</sup> - 27806:25, 27864:12 <b>learned</b> <sup>[11]</sup> - 27811:1, 27811:4, 27935:25, 27965:16, 27967:4, 27976:4, 27986:2, 28033:9, 28040:16,
<b>K</b>				
<b>Karen</b> <sup>[3]</sup> - 27794:9, 28074:2, 28074:13 <b>Karst</b> <sup>[20]</sup> - 27795:8, 27840:7, 27840:12, 27855:1, 27855:2, 27855:11, 27855:23, 27856:3, 27856:12, 27856:22, 27857:13, 27858:3, 27858:17, 27881:20, 27929:13, 28026:20, 28027:18, 28036:25, 28037:13, 28060:12 <b>Karst's</b> <sup>[2]</sup> - 27840:11, 27855:16 <b>keen</b> <sup>[1]</sup> - 27826:13 <b>keenly</b> <sup>[1]</sup> - 27909:13 <b>keep</b> <sup>[2]</sup> - 27848:17, 27994:16 <b>Kelowna</b> <sup>[2]</sup> - 27810:12, 27847:24				
		<b>L</b>		
		<b>lab</b> <sup>[1]</sup> - 27950:19 <b>laboratories</b> <sup>[1]</sup> -		



28061:20, 28070:3 <b>learning</b> [2] - 28033:8, 28047:6 <b>least</b> [21] - 27798:14, 27806:6, 27854:6, 27855:24, 27879:24, 27902:25, 27923:23, 27932:13, 27941:2, 27945:20, 27947:10, 27958:15, 27959:5, 27970:9, 27988:3, 27992:25, 28002:3, 28005:2, 28029:1, 28047:18, 28069:9 <b>leave</b> [2] - 27973:17, 28049:1 <b>leaving</b> [2] - 27916:1, 27943:4 <b>lecture</b> [1] - 27984:8 <b>lectures</b> [1] - 27877:24 <b>led</b> [8] - 27854:2, 27922:16, 27923:18, 27941:3, 27945:11, 28010:16, 28052:8, 28058:25 <b>leer</b> [3] - 27839:18, 27943:23, 28027:20 <b>left</b> [11] - 27830:14, 27832:23, 27881:25, 27887:16, 27892:5, 27917:25, 27936:25, 27979:15, 28023:24, 28034:24, 28067:3 <b>Legal</b> [1] - 27801:22 <b>legal</b> [1] - 27801:24 <b>length</b> [1] - 27961:7 <b>lengthier</b> [1] - 28014:1 <b>lengthy</b> [3] - 27823:18, 27981:5, 28046:22 <b>less</b> [5] - 27832:7, 27941:17, 27941:19, 28001:15, 28065:25 <b>lessons</b> [1] - 27986:2 <b>Let</b> [4] - 27977:7, 27977:16, 27977:17, 27977:19 <b>letter</b> [27] - 27829:4, 27834:3, 27834:4, 27834:5, 27834:7, 27845:14, 27845:19, 27866:1, 27875:7, 27875:11, 27875:14, 27884:19, 27887:20, 27888:4, 27894:4, 27894:9, 27947:17, 27975:3, 27976:7, 27981:5, 27981:10, 27981:22, 27981:23, 27982:13, 27983:18, 28025:10, 28045:25	<b>letters</b> [5] - 27811:23, 27833:19, 27841:5, 27865:24, 27891:1 <b>level</b> [5] - 27966:1, 27974:20, 27975:6, 28030:16, 28060:3 <b>levels</b> [1] - 27858:20 <b>liability</b> [1] - 27941:22 <b>liaison</b> [1] - 28008:2 <b>Liberal</b> [3] - 27824:19, 27825:3, 27827:14 <b>Liberals</b> [1] - 27825:3 <b>liberty</b> [1] - 27983:4 <b>Library</b> [1] - 28027:24 <b>library</b> [1] - 28013:16 <b>lie</b> [2] - 27887:11, 27923:21 <b>lied</b> [4] - 27912:1, 27927:3, 27964:10, 27983:9 <b>lies</b> [1] - 27833:4 <b>Lieutenant</b> [1] - 27950:8 <b>life</b> [4] - 27813:7, 27927:15, 27932:15, 27987:23 <b>life's</b> [1] - 27932:4 <b>lifestyle</b> [1] - 27963:25 <b>light</b> [7] - 27914:7, 27914:8, 27914:10, 27914:22, 27978:5, 27983:7, 27992:22 <b>likelihood</b> [5] - 27853:16, 27853:22, 27859:18, 27908:13, 27996:21 <b>Likely</b> [1] - 27990:7 <b>likely</b> [29] - 27816:1, 27829:11, 27835:19, 27837:8, 27839:5, 27883:24, 27893:8, 27900:13, 27915:2, 27943:20, 27953:24, 27954:12, 27955:2, 27955:10, 27956:3, 27956:6, 27983:24, 27985:16, 27990:14, 27991:8, 27995:14, 28001:15, 28006:17, 28018:1, 28039:25, 28063:6, 28063:12, 28069:4, 28069:21 <b>limit</b> [2] - 27799:15, 27799:17 <b>limited</b> [4] - 27998:17, 28014:5, 28019:12, 28020:10 <b>Linda</b> [10] - 27838:7, 27863:1, 27863:2, 27863:3, 28026:16, 28027:12, 28043:7,	28043:18, 28044:2, 28044:7 <b>Line</b> [3] - 27822:22, 27823:2, 27907:3 <b>line</b> [3] - 27812:10, 27862:23, 27919:14 <b>lines</b> [3] - 27942:10, 27958:13, 28016:21 <b>link</b> [1] - 28030:8 <b>list</b> [10] - 27809:23, 27809:25, 27838:2, 27838:9, 28011:11, 28023:16, 28024:5, 28024:15, 28024:17, 28024:20 <b>listed</b> [2] - 27804:1, 27804:21 <b>listened</b> [2] - 28012:21, 28026:5 <b>listening</b> [2] - 27958:8, 28009:21 <b>literary</b> [3] - 27826:12, 27909:16, 27999:19 <b>live</b> [1] - 27969:21 <b>lived</b> [7] - 27847:24, 28026:17, 28037:10, 28062:22, 28065:21, 28065:25, 28070:11 <b>living</b> [4] - 27853:17, 27853:23, 27863:5, 27863:6 <b>loaded</b> [1] - 27963:9 <b>local</b> [1] - 28007:12 <b>locally</b> [1] - 27906:24 <b>located</b> [1] - 27996:9 <b>location</b> [8] - 27892:1, 28027:13, 28027:19, 28028:7, 28028:9, 28028:13, 28029:7, 28066:23 <b>locations</b> [9] - 28006:16, 28027:14, 28027:23, 28028:5, 28029:4, 28029:17, 28046:10, 28056:14, 28069:11 <b>Loftus</b> [1] - 27941:20 <b>lone</b> [1] - 27996:25 <b>look</b> [66] - 27801:1, 27803:7, 27806:4, 27806:11, 27808:19, 27810:16, 27812:8, 27815:20, 27815:24, 27818:6, 27831:25, 27836:14, 27838:23, 27838:24, 27840:6, 27840:16, 27843:9, 27843:17, 27848:25, 27867:20, 27872:19, 27873:6, 27873:14,	27876:9, 27878:15, 27879:7, 27879:18, 27880:2, 27884:15, 27894:14, 27894:20, 27901:23, 27915:9, 27921:12, 27924:3, 27924:8, 27926:4, 27926:8, 27926:10, 27929:24, 27935:23, 27936:14, 27941:13, 27942:6, 27945:9, 27945:19, 27945:22, 27959:2, 27964:7, 27965:10, 27981:23, 27988:23, 27995:3, 28024:10, 28024:12, 28030:15, 28030:18, 28032:4, 28040:24, 28045:9, 28050:16, 28050:17, 28056:4, 28056:24, 28066:11 <b>looked</b> [19] - 27798:7, 27803:13, 27805:17, 27811:22, 27814:24, 27819:6, 27829:17, 27852:4, 27878:9, 27922:25, 28015:1, 28019:17, 28019:18, 28027:12, 28027:13, 28027:16, 28028:16, 28047:2, 28053:22 <b>looking</b> [32] - 27802:13, 27806:13, 27806:15, 27814:5, 27815:3, 27819:24, 27820:1, 27827:25, 27839:16, 27840:17, 27844:14, 27857:3, 27923:19, 27925:10, 27935:19, 27957:12, 27965:6, 27993:12, 28011:9, 28019:8, 28020:12, 28020:17, 28025:24, 28027:24, 28028:22, 28031:4, 28036:3, 28045:12, 28046:6, 28053:1, 28056:14, 28063:8 <b>looks</b> [7] - 27849:18, 27865:25, 27883:18, 27890:2, 27901:20, 27938:9, 27981:2 <b>Lorne</b> [8] - 27857:24, 27867:2, 27867:16, 27870:13, 27909:21, 27909:24, 28047:1, 28048:13 <b>losing</b> [2] - 27960:1, 28014:15 <b>lost</b> [4] - 27932:6,	27959:13, 28041:9, 28047:15 <b>lottery</b> [1] - 28002:14 <b>lottery-style</b> [1] - 28002:14 <b>love</b> [1] - 27903:12 <b>low</b> [2] - 28030:19, 28068:13 <b>Loyalties</b> [1] - 27964:5 <b>Lsd</b> [4] - 27903:21, 27904:24, 27917:8, 27963:19 <b>lunch</b> [2] - 27936:19, 27936:25 <b>lying</b> [3] - 27925:23, 27964:19, 28032:1 <b>lyrics</b> [1] - 27832:20
<b>M</b>				
<b>M&amp;s</b> [1] - 27908:1 <b>Maccallum</b> [43] - 27793:7, 27797:3, 27799:21, 27826:22, 27827:21, 27850:13, 27850:19, 27850:23, 27850:25, 27853:19, 27905:1, 27905:6, 27905:12, 27905:15, 27905:20, 27924:14, 27924:16, 27924:18, 27936:20, 27975:22, 27975:24, 27978:12, 27987:1, 27987:6, 27991:3, 27991:6, 27991:10, 27991:14, 27991:18, 28001:12, 28002:16, 28002:25, 28003:4, 28003:15, 28003:18, 28003:20, 28003:23, 28003:25, 28004:8, 28015:10, 28042:21, 28042:24, 28073:13 <b>Macfarlane</b> [1] - 27982:19 <b>Mackie</b> [2] - 28060:11, 28060:17 <b>Macneil</b> [4] - 27875:8, 27875:15, 27875:22, 27876:1 <b>magazine</b> [7] - 27987:16, 27988:6, 27988:10, 28011:23, 28013:12, 28013:18, 28023:5 <b>magic</b> [4] - 28031:25, 28057:10, 28057:12, 28057:19				



<p><b>main</b> [5] - 27804:23, 27832:17, 27921:10, 27956:17, 28062:11</p> <p><b>major</b> [3] - 28014:10, 28014:11, 28073:4</p> <p><b>majority</b> [2] - 27804:22, 27823:12</p> <p><b>male</b> [1] - 27960:6</p> <p><b>man</b> [8] - 27813:6, 27822:24, 27922:7, 27942:22, 27943:21, 28037:21, 28062:15, 28068:8</p> <p><b>Manager</b> [2] - 27794:5, 27794:6</p> <p><b>manipulation</b> [2] - 27930:24, 27961:22</p> <p><b>Manitoba</b> [2] - 28049:1, 28050:3</p> <p><b>manner</b> [3] - 27989:21, 27989:22, 27993:5</p> <p><b>map</b> [2] - 28017:6, 28023:14</p> <p><b>maps</b> [2] - 28023:12, 28023:13</p> <p><b>March</b> [2] - 28005:4, 28005:7</p> <p><b>marginal</b> [1] - 27830:21</p> <p><b>marijuana</b> [1] - 27832:10</p> <p><b>marked</b> [1] - 27862:6</p> <p><b>Markesteyn</b> [11] - 27859:17, 27860:10, 27872:20, 27872:25, 27873:4, 27952:25, 27953:10, 27954:8, 27955:5, 28022:16, 28026:14</p> <p><b>Market</b> [1] - 27907:16</p> <p><b>marks</b> [1] - 27942:16</p> <p><b>marriage</b> [1] - 28043:12</p> <p><b>Marshall</b> [2] - 27795:13, 27972:22</p> <p><b>Mary's</b> [1] - 28026:20</p> <p><b>Masters</b> [1] - 27802:14</p> <p><b>match</b> [2] - 27860:4, 28036:15</p> <p><b>material</b> [23] - 27811:15, 27841:20, 27841:21, 27841:24, 27842:12, 27842:21, 27842:24, 27843:2, 27852:20, 27865:9, 27870:24, 27871:2, 27891:13, 27973:4, 28014:22, 28022:12, 28023:15, 28023:18, 28042:10, 28044:1, 28044:5, 28050:12, 28051:2</p>	<p><b>materials</b> [28] - 27819:3, 27819:13, 27819:14, 27838:11, 27838:15, 27839:4, 27841:25, 27864:4, 27864:6, 27867:8, 27867:9, 27867:12, 27873:14, 27875:16, 27875:22, 27876:1, 27993:21, 27994:2, 27995:11, 27998:15, 28014:19, 28014:23, 28016:13, 28041:13, 28042:1, 28046:25, 28047:2, 28050:14</p> <p><b>matter</b> [49] - 27801:24, 27805:8, 27808:12, 27813:22, 27814:20, 27816:5, 27824:9, 27825:17, 27826:25, 27829:12, 27836:5, 27842:7, 27842:19, 27851:24, 27860:24, 27863:25, 27864:9, 27883:1, 27894:17, 27898:12, 27900:20, 27903:3, 27909:9, 27913:2, 27928:17, 27954:21, 27973:16, 27973:24, 27984:1, 27984:16, 27986:16, 27990:4, 28001:5, 28001:9, 28002:1, 28009:17, 28009:22, 28011:22, 28013:23, 28015:13, 28015:19, 28019:10, 28029:22, 28031:21, 28048:12, 28049:22, 28054:6, 28062:20, 28071:23</p> <p><b>matters</b> [11] - 27799:13, 27835:8, 27856:5, 27871:3, 27890:19, 27905:2, 27906:13, 27979:23, 27980:2, 28046:19, 28056:22</p> <p><b>Mcclelland</b> [2] - 27907:20, 27909:4</p> <p><b>Mccloskey</b> [1] - 27993:25</p> <p><b>Mclean</b> [1] - 27795:3</p> <p><b>me'</b> [1] - 27964:8</p> <p><b>me...and</b> [1] - 27928:4</p> <p><b>me...i</b> [1] - 27925:15</p> <p><b>mean</b> [41] - 27813:24, 27827:2, 27831:2, 27838:10, 27850:3, 27865:5, 27884:14, 27898:16, 27917:11, 27919:13, 27922:6,</p>	<p>27922:11, 27930:7, 27932:12, 27935:17, 27936:10, 27941:5, 27942:11, 27942:19, 27946:13, 27952:10, 27954:6, 27954:25, 27956:19, 27967:15, 27968:7, 27974:6, 27974:13, 27980:22, 27995:3, 27997:5, 28003:7, 28017:8, 28020:12, 28021:19, 28029:19, 28032:6, 28041:19, 28048:6, 28062:9</p> <p><b>meaning</b> [1] - 28049:10</p> <p><b>means</b> [2] - 27947:7, 28050:16</p> <p><b>meant</b> [4] - 27860:2, 27901:6, 28048:5, 28073:9</p> <p><b>measure</b> [2] - 27912:4, 27973:9</p> <p><b>measurements</b> [1] - 28027:21</p> <p><b>mechanism</b> [2] - 27972:24, 27973:11</p> <p><b>mechanisms</b> [1] - 27858:5</p> <p><b>media</b> [14] - 27808:3, 27812:11, 27812:12, 27814:25, 27879:4, 27906:24, 27984:3, 27990:3, 28034:18, 28053:22, 28053:24, 28055:18, 28063:13, 28063:22</p> <p><b>media-hungry</b> [1] - 27814:25</p> <p><b>meet</b> [22] - 27817:17, 27821:14, 27830:9, 27847:15, 27848:5, 27849:7, 27862:13, 27863:2, 27863:3, 27867:5, 27871:25, 27874:8, 27874:15, 27987:13, 27988:2, 28024:21, 28032:9, 28033:11, 28037:14, 28037:21, 28038:11, 28046:18</p> <p><b>meeting</b> [37] - 27813:16, 27813:20, 27817:14, 27818:14, 27818:16, 27829:7, 27829:10, 27829:11, 27829:14, 27829:19, 27829:21, 27829:23, 27829:25, 27830:1, 27830:4, 27851:2,</p>	<p>27853:11, 27855:5, 27859:11, 27863:8, 27863:11, 27867:4, 27874:11, 27874:19, 27877:7, 27918:5, 27952:5, 27987:25, 28024:23, 28025:4, 28031:14, 28031:16, 28032:15, 28036:22, 28036:25, 28037:4, 28046:21</p> <p><b>meetings</b> [6] - 27817:12, 27817:20, 27817:21, 27877:9, 27913:8, 27988:4</p> <p><b>Melnyk</b> [3] - 27992:4, 27992:18, 27992:24</p> <p><b>member</b> [5] - 27807:7, 27807:11, 27807:13, 27825:4, 27963:19</p> <p><b>members</b> [2] - 27905:24, 28037:12</p> <p><b>memory</b> [12] - 27858:13, 27867:21, 27868:10, 27868:23, 27875:25, 27978:23, 27981:24, 28013:6, 28034:5, 28049:10, 28051:11, 28051:14</p> <p><b>men</b> [1] - 27803:17</p> <p><b>menage</b> [1] - 27926:6</p> <p><b>mention</b> [21] - 27814:19, 27815:8, 27822:2, 27824:6, 27829:7, 27837:22, 27839:10, 27848:8, 27849:3, 27855:22, 27867:18, 27868:15, 27873:3, 27923:12, 27989:9, 28002:5, 28005:11, 28007:17, 28009:16, 28011:16, 28017:2</p> <p><b>mentioned</b> [46] - 27802:19, 27803:1, 27807:6, 27811:16, 27816:13, 27834:3, 27839:11, 27842:3, 27843:4, 27845:2, 27845:25, 27855:1, 27857:20, 27858:10, 27858:11, 27858:23, 27867:1, 27870:4, 27870:11, 27871:25, 27872:11, 27872:20, 27890:23, 27899:14, 27909:3, 27918:14, 27942:4, 27943:3, 27992:1, 28005:10, 28010:10, 28012:16,</p>	<p>28012:20, 28014:19, 28021:6, 28024:13, 28025:11, 28026:8, 28027:4, 28027:7, 28028:1, 28036:14, 28036:18, 28041:8, 28048:7, 28051:18</p> <p><b>mentioning</b> [2] - 27819:13, 27899:18</p> <p><b>mentions</b> [4] - 27869:1, 28006:9, 28007:8, 28010:11</p> <p><b>messed</b> [1] - 27927:25</p> <p><b>met</b> [19] - 27817:10, 27828:20, 27829:8, 27830:10, 27830:12, 27843:5, 27846:5, 27847:17, 27847:19, 27858:6, 27863:6, 27872:1, 27879:1, 27886:21, 27889:10, 27988:4, 27999:7, 28024:24</p> <p><b>methodology</b> [3] - 28006:16, 28006:25, 28010:19</p> <p><b>Metropolitan</b> [1] - 28012:6</p> <p><b>Meyer</b> [3] - 27794:10, 28074:2, 28074:19</p> <p><b>micro</b> [2] - 28028:9, 28029:8</p> <p><b>micro-environmental</b> [2] - 28028:9, 28029:8</p> <p><b>microfiche</b> [1] - 28027:24</p> <p><b>middle</b> [5] - 27849:4, 27866:4, 27920:9, 27922:24, 27993:23</p> <p><b>might</b> [45] - 27797:13, 27797:17, 27800:23, 27803:10, 27806:23, 27808:19, 27808:20, 27809:3, 27810:14, 27814:6, 27815:21, 27826:6, 27831:23, 27832:7, 27836:20, 27836:22, 27844:20, 27851:6, 27852:25, 27869:11, 27892:9, 27895:22, 27898:12, 27903:6, 27916:18, 27917:7, 27917:15, 27919:12, 27923:21, 27935:12, 27937:20, 27965:17, 27965:24, 27965:25, 27990:24, 27993:17, 28011:11, 28015:16, 28020:1, 28030:8, 28032:22,</p>
---	--	---	---	--



28046:16, 28052:6, 28072:7, 28072:15 <b>Might</b> [1] - 27810:15 <b>Milgaard</b> [206] - 27793:4, 27795:2, 27795:3, 27797:21, 27804:9, 27805:4, 27806:7, 27807:18, 27808:19, 27809:18, 27809:22, 27811:2, 27812:7, 27814:8, 27817:5, 27817:15, 27817:18, 27818:5, 27818:12, 27818:25, 27819:9, 27820:8, 27821:7, 27821:14, 27821:19, 27823:6, 27823:8, 27823:15, 27823:19, 27824:17, 27824:20, 27826:2, 27826:8, 27826:13, 27827:7, 27827:12, 27828:18, 27828:23, 27829:3, 27829:19, 27829:23, 27830:5, 27830:10, 27831:2, 27831:23, 27833:13, 27836:11, 27837:7, 27837:11, 27838:8, 27842:17, 27843:24, 27844:5, 27845:10, 27846:1, 27846:4, 27846:10, 27846:14, 27848:11, 27848:14, 27849:13, 27849:25, 27850:3, 27851:10, 27851:13, 27852:1, 27852:7, 27852:10, 27860:3, 27872:17, 27876:11, 27876:18, 27876:22, 27877:8, 27877:10, 27878:10, 27879:13, 27882:3, 27882:10, 27882:16, 27882:18, 27883:1, 27885:2, 27885:22, 27887:5, 27888:14, 27888:22, 27890:4, 27891:10, 27893:23, 27900:7, 27900:24, 27902:2, 27906:3, 27907:24, 27908:13, 27908:17, 27908:24, 27909:21, 27909:24, 27911:22, 27922:13, 27925:5, 27926:4, 27926:21, 27931:6, 27932:21, 27934:4, 27937:15, 27937:18, 27940:9, 27948:25, 27949:13, 27950:9,	27950:13, 27950:15, 27951:3, 27951:18, 27956:2, 27956:16, 27956:20, 27957:6, 27958:10, 27958:16, 27959:6, 27959:20, 27960:11, 27960:12, 27961:15, 27962:3, 27963:10, 27963:11, 27968:21, 27969:8, 27971:7, 27971:22, 27972:10, 27973:8, 27973:14, 27973:19, 27974:15, 27976:14, 27977:6, 27978:21, 27979:5, 27979:19, 27979:24, 27980:3, 27980:9, 27980:13, 27980:17, 27980:24, 27981:7, 27981:15, 27985:6, 27986:16, 27987:12, 27987:13, 27987:22, 27987:25, 27988:2, 27988:11, 27989:1, 27990:4, 27990:5, 27993:3, 27994:18, 27994:21, 28000:18, 28009:1, 28009:17, 28009:19, 28010:6, 28011:22, 28014:8, 28016:7, 28016:14, 28018:1, 28022:19, 28022:25, 28024:21, 28025:4, 28026:12, 28030:5, 28031:14, 28032:7, 28032:9, 28035:19, 28036:2, 28036:4, 28048:1, 28054:25, 28057:9, 28059:7, 28060:23, 28064:1, 28064:9, 28066:2, 28066:10, 28070:24, 28071:15, 28071:23, 28072:8 <b>Milgaard's</b> [25] - 27821:9, 27822:18, 27842:18, 27861:4, 27872:4, 27877:3, 27885:4, 27885:8, 27885:12, 27896:9, 27903:21, 27907:25, 27915:1, 27934:2, 27938:5, 27945:16, 27968:15, 27972:7, 27978:18, 27983:9, 28020:16, 28021:1, 28031:21, 28039:24, 28064:17 <b>Milgaard/larry</b> [1] - 28015:19	<b>Milgaards</b> [1] - 27875:10 <b>milieu</b> [1] - 28020:4 <b>Miller</b> [38] - 27817:7, 27841:11, 27857:12, 27857:17, 27857:18, 27866:6, 27878:5, 27882:13, 27886:1, 27892:7, 27892:13, 27953:25, 27967:7, 27968:8, 27969:14, 27973:15, 27984:25, 27990:13, 28021:22, 28027:13, 28028:7, 28029:3, 28029:8, 28030:12, 28031:23, 28040:22, 28061:8, 28062:2, 28063:12, 28064:9, 28064:14, 28067:5, 28068:16, 28068:17, 28069:4, 28069:23, 28071:2 <b>Miller's</b> [8] - 27840:18, 27892:1, 27956:6, 27985:1, 28064:19, 28066:1, 28066:3, 28066:24 <b>million</b> [2] - 27854:1 <b>mind</b> [15] - 27828:9, 27870:17, 27889:14, 27892:20, 27918:16, 27921:2, 27927:24, 27937:12, 27966:20, 28044:20, 28054:20, 28057:2, 28060:10, 28069:21, 28071:6 <b>minds</b> [5] - 27880:18, 27897:9, 27897:20, 27898:11, 28054:17 <b>mindset</b> [1] - 28029:21 <b>minimum</b> [1] - 28010:7 <b>Minister</b> [13] - 27795:11, 27808:10, 27834:12, 27834:14, 27834:16, 27835:1, 27883:20, 27893:16, 27947:19, 27960:25, 27961:6, 27991:17, 28000:15 <b>minister</b> [6] - 27827:17, 27833:17, 27834:1, 27835:23, 27977:10, 27977:12 <b>minister's</b> [2] - 27833:19, 27888:3 <b>Minister's</b> [3] - 27884:18, 27949:10, 27964:16 <b>Ministers</b> [2] - 27835:5, 27835:14	<b>Ministries</b> [19] - 27811:25, 27819:14, 27842:4, 27870:24, 27993:25, 27994:5, 27995:2, 27995:16, 28023:6, 28023:7, 28023:9, 28023:10, 28024:12, 28050:7, 28050:21, 28050:24, 28051:10, 28051:17, 28053:8 <b>Ministry</b> [1] - 27843:20 <b>minor</b> [1] - 28013:20 <b>minute</b> [1] - 27991:11 <b>minutes</b> [5] - 27812:15, 27848:13, 27920:8, 27942:19, 27942:24 <b>miscarriage</b> [8] - 27835:4, 27835:19, 27836:8, 27836:21, 27946:15, 27946:19, 27947:1, 27948:10 <b>misinterpret</b> [1] - 27821:18 <b>misinterpretation</b> [2] - 27822:2, 27822:3 <b>misinterpreted</b> [1] - 28001:5 <b>misleading</b> [2] - 27902:8, 27902:23 <b>Miss</b> [1] - 28035:23 <b>missed</b> [3] - 27853:20, 27937:6, 28053:14 <b>missing</b> [3] - 27890:12, 27890:23, 27891:5 <b>misstated</b> [1] - 27906:12 <b>mistake</b> [2] - 27969:14, 28043:5 <b>mistakes</b> [2] - 27947:3, 27986:1 <b>mixture</b> [1] - 27867:14 <b>Mmhm</b> [2] - 27981:8, 27981:16 <b>model</b> [1] - 28009:7 <b>modus</b> [1] - 28064:2 <b>Molchanko's</b> [1] - 27953:4 <b>moment</b> [17] - 27813:20, 27815:21, 27815:25, 27843:15, 27881:10, 27895:5, 27952:4, 27960:8, 27981:24, 28006:14, 28034:6, 28036:24, 28040:12, 28045:23, 28050:16, 28052:4, 28053:17 <b>moments</b> [1] - 27821:13	<b>Monday</b> [1] - 27906:25 <b>monolithic</b> [1] - 28055:4 <b>month</b> [2] - 27813:23, 27827:24 <b>months</b> [7] - 27814:17, 27828:18, 27828:24, 27856:18, 27963:13, 27964:4, 27988:12 <b>mood</b> [1] - 27819:1 <b>morally</b> [1] - 27831:12 <b>Morning</b> [1] - 27800:2 <b>morning</b> [24] - 27797:3, 27797:4, 27797:5, 27800:1, 27831:11, 27832:9, 27847:13, 27853:25, 27863:17, 27863:22, 27864:18, 27864:21, 27866:22, 27885:8, 27885:13, 27919:23, 27934:3, 27985:1, 27992:2, 27993:24, 27999:16, 28032:14, 28035:12, 28066:3 <b>most</b> [31] - 27842:14, 27843:1, 27853:15, 27853:21, 27894:2, 27896:8, 27903:5, 27941:6, 27941:7, 27942:20, 27953:17, 27953:24, 27955:10, 27956:5, 27968:1, 27983:24, 27989:3, 27999:17, 28001:21, 28006:17, 28011:14, 28012:11, 28014:25, 28028:17, 28044:14, 28044:19, 28061:24, 28065:21, 28068:21, 28069:21 <b>Most</b> [3] - 27842:24, 28012:13, 28030:17 <b>Motel</b> [2] - 27839:18, 27943:23 <b>motel</b> [4] - 27846:20, 27847:6, 27854:12 <b>mother</b> [7] - 27817:9, 27828:3, 27828:20, 27877:3, 27896:13, 27907:25, 28022:22 <b>motivated</b> [1] - 27869:11 <b>motivating</b> [1] - 27814:22 <b>motivation</b> [1] - 27866:10 <b>motivations</b> [1] - 27866:19 <b>motive</b> [1] - 28065:14
--	---	---	---	---





<p><b>motives</b> [1] - 28064:1</p> <p><b>motorcycle</b> [1] - 27963:20</p> <p><b>Mountain</b> [7] - 27818:9, 27818:15, 27821:14, 27846:5, 27865:19, 27877:8, 28025:5</p> <p><b>Mounted</b> [1] - 28007:14</p> <p><b>move</b> [28] - 27802:21, 27802:23, 27804:2, 27818:3, 27819:20, 27820:20, 27823:9, 27824:12, 27827:19, 27843:4, 27863:1, 27893:1, 27898:23, 27899:25, 27915:22, 27918:21, 27925:20, 27939:14, 27948:23, 27953:15, 27955:22, 27963:2, 27969:2, 27971:10, 27981:1, 28006:2, 28061:2, 28065:19</p> <p><b>Move</b> [1] - 27929:9</p> <p><b>moved</b> [1] - 28049:14</p> <p><b>movements</b> [2] - 28027:22, 28056:15</p> <p><b>moving</b> [6] - 27803:25, 27827:17, 27949:17, 27950:24, 27951:15</p> <p><b>Mulroney</b> [1] - 27827:16</p> <p><b>multiple</b> [1] - 28062:16</p> <p><b>Murder</b> [3] - 27801:21, 27803:2, 27805:14</p> <p><b>murder</b> [50] - 27803:7, 27803:8, 27803:14, 27803:23, 27817:6, 27821:20, 27822:20, 27823:13, 27841:11, 27857:12, 27857:17, 27857:18, 27858:19, 27864:18, 27864:23, 27865:3, 27866:6, 27876:12, 27876:18, 27877:23, 27878:4, 27885:9, 27885:13, 27890:5, 27892:13, 27912:8, 27926:21, 27934:4, 27940:18, 27942:7, 27949:22, 27967:7, 27968:11, 27969:14, 27973:15, 27990:13, 27992:14, 28007:11, 28009:19, 28015:15, 28021:21, 28027:13, 28029:9, 28030:12, 28040:22, 28057:15, 28060:24, 28062:2, 28066:3,</p>	<p>28069:23</p> <p><b>murdered</b> [4] - 27876:25, 27942:24, 27943:22, 28028:8</p> <p><b>murderer</b> [1] - 27803:21</p> <p><b>Murderers</b> [1] - 28010:13</p> <p><b>murderers</b> [3] - 27803:7, 27912:22, 28010:15</p> <p><b>murderous</b> [2] - 27892:6, 28067:4</p> <p><b>murders</b> [1] - 28062:22</p> <p><b>music</b> [2] - 27832:18, 27832:22</p> <p><b>must</b> [3] - 27809:20, 27910:1, 27996:15</p> <p><b>must've</b> [1] - 27925:2</p>	<p>28034:6, 28036:1</p> <p><b>need</b> [10] - 27808:22, 27889:1, 27936:14, 27939:25, 27952:17, 27973:11, 27977:2, 27980:19, 28012:17, 28050:17</p> <p><b>Need</b> [1] - 27971:5</p> <p><b>needed</b> [3] - 27810:1, 27936:1, 27946:9</p> <p><b>needing</b> [1] - 27808:21</p> <p><b>needs</b> [1] - 28045:2</p> <p><b>negative</b> [1] - 27980:5</p> <p><b>negotiated</b> [1] - 28020:24</p> <p><b>negotiation</b> [1] - 28007:24</p> <p><b>neighbourhood</b> [4] - 27967:3, 28063:5, 28066:5, 28068:12</p> <p><b>neighbourhoods</b> [1] - 28028:18</p> <p><b>Neil</b> [42] - 27796:3, 27797:7, 27799:23, 27799:24, 27812:19, 27812:23, 27821:12, 27828:8, 27877:17, 27877:23, 27896:11, 27900:4, 27906:23, 27908:15, 27981:18, 27981:19, 27987:13, 28004:14, 28013:7, 28013:21, 28014:14, 28016:22, 28016:23, 28017:13, 28021:16, 28025:15, 28026:2, 28026:24, 28031:19, 28033:2, 28033:8, 28034:2, 28035:8, 28036:8, 28038:4, 28038:14, 28038:16, 28042:2, 28044:22, 28045:25, 28047:9, 28047:11</p> <p><b>Neil's</b> [2] - 28017:4, 28018:11</p> <p><b>net</b> [1] - 27844:17</p> <p><b>Netherlands</b> [1] - 28011:5</p> <p><b>neutral</b> [1] - 27949:14</p> <p><b>never</b> [18] - 27825:19, 27854:20, 27865:22, 27869:12, 27908:8, 27919:19, 27929:17, 27962:22, 27969:11, 27970:10, 27999:1, 28003:8, 28017:13, 28046:1, 28058:23, 28058:24, 28070:16</p> <p><b>new</b> [21] - 27824:13,</p>	<p>27824:17, 27824:20, 27827:2, 27827:7, 27827:13, 27834:13, 27834:15, 27834:19, 27847:4, 27864:12, 27872:10, 27872:24, 27890:7, 27893:18, 27909:16, 27935:25, 27957:19, 27983:7, 27987:23, 28061:1</p> <p><b>New</b> [2] - 27824:17, 27825:1</p> <p><b>news</b> [6] - 27812:12, 27814:16, 27860:9, 27864:22, 27876:7, 27889:25</p> <p><b>News</b> [1] - 27812:18</p> <p><b>Newspaper</b> [1] - 27903:16</p> <p><b>newspaper</b> [4] - 27976:20, 28023:4, 28023:10, 28024:10</p> <p><b>Newsworld</b> [2] - 27907:4, 28054:4</p> <p><b>next</b> [47] - 27797:6, 27802:21, 27802:24, 27804:2, 27814:16, 27818:3, 27822:12, 27823:9, 27830:13, 27877:17, 27886:1, 27890:9, 27891:21, 27896:4, 27897:4, 27898:23, 27901:20, 27903:9, 27903:17, 27915:23, 27917:17, 27920:2, 27922:23, 27925:19, 27925:20, 27949:6, 27950:24, 27951:15, 27952:17, 27953:15, 27969:3, 27971:3, 27971:10, 27972:19, 28004:4, 28007:20, 28009:13, 28011:16, 28011:19, 28011:21, 28026:17, 28033:25, 28035:2, 28055:23, 28058:5, 28059:5, 28064:6</p> <p><b>Next</b> [2] - 27878:6, 28054:12</p> <p><b>nice</b> [5] - 27929:16, 27929:23, 27929:25, 27962:20, 28070:16</p> <p><b>Nichol</b> [39] - 27847:21, 27847:22, 27847:23, 27849:2, 27849:16, 27851:7, 27851:23, 27858:9, 27911:25, 27913:17, 27917:4, 27928:24, 27930:16,</p>	<p>27935:18, 27940:16, 27942:12, 27943:20, 27944:3, 27958:11, 27961:11, 27962:12, 27984:24, 27993:15, 28022:24, 28026:15, 28032:24, 28032:25, 28033:1, 28033:9, 28033:14, 28033:22, 28034:16, 28034:21, 28035:17, 28035:20, 28035:24, 28036:9, 28059:23</p> <p><b>Nicole</b> [1] - 27916:9</p> <p><b>night</b> [1] - 28029:5</p> <p><b>Night</b> [3] - 27988:10, 28013:12, 28013:18</p> <p><b>night-time</b> [1] - 28029:5</p> <p><b>nobody</b> [3] - 27855:11, 27955:4, 27991:6</p> <p><b>nomination</b> [1] - 27825:20</p> <p><b>non</b> [4] - 27822:16, 27950:14, 27959:23, 27964:6</p> <p><b>non-existent</b> [1] - 27964:6</p> <p><b>non-fiction</b> [1] - 27822:16</p> <p><b>non-secretor</b> [2] - 27950:14, 27959:23</p> <p><b>none</b> [3] - 27907:23, 27965:8, 28038:8</p> <p><b>None</b> [1] - 27875:25</p> <p><b>nonetheless</b> [1] - 27975:13</p> <p><b>normal</b> [2] - 27835:3, 28017:22</p> <p><b>not...it's</b> [1] - 27927:4</p> <p><b>note</b> [18] - 27862:10, 27867:8, 27867:11, 27869:1, 27915:7, 27949:7, 27976:11, 28006:3, 28009:14, 28024:17, 28033:21, 28035:17, 28039:16, 28047:23, 28047:25, 28049:11, 28059:5</p> <p><b>noted</b> [5] - 27804:11, 27844:22, 27961:10, 28033:21, 28050:7</p> <p><b>notes</b> [20] - 27824:12, 27842:11, 27848:16, 27848:17, 27848:18, 27863:7, 27863:10, 27863:12, 27868:7, 27868:8, 27868:10, 27869:18, 28022:25, 28034:21, 28047:1, 28047:12, 28048:4,</p>
---	---	--	---	--



<p>28048:24, 28049:7, 28074:6</p> <p><b>Nothing</b> [2] - 28033:15, 28033:16</p> <p><b>nothing</b> [12] - 27818:25, 27845:15, 27847:9, 27852:9, 27893:24, 27922:15, 27934:3, 27950:1, 27979:11, 28017:17, 28031:9, 28062:22</p> <p><b>notice</b> [1] - 27845:2</p> <p><b>notification</b> [1] - 28002:6</p> <p><b>notified</b> [4] - 27891:4, 27969:11, 27970:10, 28001:22</p> <p><b>notion</b> [4] - 27820:16, 27821:9, 27943:14, 28015:24</p> <p><b>notions</b> [1] - 28017:18</p> <p><b>notwithstanding</b> [1] - 27820:14</p> <p><b>number</b> [38] - 27799:13, 27801:6, 27804:1, 27804:20, 27805:16, 27806:2, 27806:19, 27812:2, 27816:8, 27847:11, 27847:18, 27847:23, 27847:24, 27847:25, 27884:3, 27884:4, 27901:23, 27939:19, 27945:12, 27947:14, 27951:21, 27979:2, 27987:2, 27987:3, 27987:4, 28001:17, 28010:24, 28013:9, 28016:13, 28019:25, 28025:6, 28030:13, 28030:19, 28034:2, 28046:17, 28053:22, 28062:20</p> <p><b>numbers</b> [1] - 27990:17</p> <p><b>numerous</b> [2] - 28011:18, 28011:19</p> <p><b>nurse</b> [1] - 27878:8</p> <p><b>nurses</b> [1] - 28061:7</p> <p><b>nursing</b> [2] - 27817:7, 27821:20</p>	<p>27992:9, 27993:19</p> <p><b>observations</b> [3] - 27940:11, 27997:11, 28029:14</p> <p><b>observer</b> [1] - 27884:7</p> <p><b>obtain</b> [8] - 27819:9, 27841:19, 27841:23, 27841:25, 27891:6, 28014:14, 28041:17, 28048:10</p> <p><b>obtained</b> [10] - 27811:18, 27818:7, 27818:12, 27819:3, 27868:11, 27914:11, 27914:13, 27998:16, 28023:12, 28034:15</p> <p><b>obtaining</b> [5] - 27811:16, 27819:7, 27841:21, 27978:5, 28042:1</p> <p><b>obvious</b> [3] - 27942:22, 27989:13, 28043:12</p> <p><b>Obviously</b> [3] - 27799:4, 27821:24, 28058:17</p> <p><b>obviously</b> [17] - 27809:24, 27817:24, 27868:1, 27888:3, 27896:21, 27899:16, 27910:7, 27922:14, 27941:4, 27974:8, 27984:9, 28015:2, 28031:4, 28052:5, 28059:23, 28065:11, 28066:13</p> <p><b>occasion</b> [7] - 27817:17, 27840:13, 27847:15, 27918:7, 27918:23, 27920:5, 27931:5</p> <p><b>occasionally</b> [1] - 27984:3</p> <p><b>occasions</b> [4] - 27797:25, 27847:18, 27865:17, 28034:9</p> <p><b>occupation</b> [2] - 27800:8, 28004:18</p> <p><b>occupied</b> [1] - 27800:15</p> <p><b>occur</b> [3] - 27992:12, 28002:13, 28028:11</p> <p><b>occurred</b> [13] - 27803:19, 27817:21, 27835:5, 27835:20, 27836:9, 27882:6, 27942:7, 28016:16, 28020:23, 28020:25, 28030:6, 28069:18, 28069:23</p> <p><b>occurrence</b> [2] - 27957:11, 27960:5</p> <p><b>occurrence'</b> [1] -</p>	<p>27951:6</p> <p><b>occurring</b> [1] - 27830:3</p> <p><b>October</b> [18] - 27797:16, 27797:22, 27804:14, 27804:17, 27810:14, 27810:15, 27838:17, 27848:22, 27850:17, 27875:4, 27879:1, 27910:23, 27937:2, 27938:2, 27976:18, 27977:5, 27987:9</p> <p><b>odd</b> [1] - 28071:16</p> <p><b>offences</b> [3] - 27869:10, 27869:11, 27968:13</p> <p><b>offender</b> [10] - 28006:17, 28007:4, 28007:22, 28028:10, 28028:11, 28068:5, 28068:11, 28069:13, 28069:18, 28072:6</p> <p><b>offender's</b> [1] - 28069:22</p> <p><b>offenders</b> [1] - 27866:13</p> <p><b>offer</b> [2] - 27902:7, 27902:22</p> <p><b>offered</b> [2] - 27887:10, 27897:16</p> <p><b>offering</b> [2] - 28015:5, 28029:23</p> <p><b>office</b> [2] - 28003:5, 28041:2</p> <p><b>Officer</b> [1] - 27794:11</p> <p><b>officer</b> [17] - 27806:18, 27855:6, 27881:5, 27888:18, 27897:5, 28004:22, 28006:11, 28010:4, 28016:20, 28034:25, 28038:11, 28054:10, 28054:21, 28058:10, 28071:17, 28071:25, 28073:9</p> <p><b>officers</b> [13] - 27854:25, 27857:20, 27858:17, 27881:21, 27931:6, 28026:21, 28036:24, 28038:1, 28039:1, 28040:13, 28054:15, 28055:14, 28055:16</p> <p><b>Official</b> [5] - 27794:9, 28074:1, 28074:3, 28074:14, 28074:20</p> <p><b>officials</b> [12] - 27797:21, 27871:6, 27881:3, 27900:15, 28000:8, 28000:13, 28000:25, 28001:4, 28037:6, 28058:8, 28059:16, 28060:4</p> <p><b>often</b> [3] - 28006:25,</p>	<p>28046:5, 28052:20</p> <p><b>old</b> [2] - 27963:15, 27968:12</p> <p><b>older</b> [3] - 28023:13, 28028:17, 28028:20</p> <p><b>Omissions</b> [1] - 27949:1</p> <p><b>Once</b> [1] - 27999:14</p> <p><b>once</b> [14] - 27815:16, 27815:17, 27861:21, 27861:22, 27914:4, 27914:6, 27942:9, 27945:19, 27984:15, 27990:12, 28018:8, 28032:10, 28052:12, 28052:13</p> <p><b>One</b> [9] - 27801:16, 27810:23, 27830:16, 27891:23, 27931:23, 27985:23, 27992:1, 28047:20, 28066:20</p> <p><b>one</b> [109] - 27801:20, 27803:10, 27803:16, 27806:8, 27808:18, 27808:20, 27809:25, 27815:4, 27819:21, 27819:25, 27820:11, 27822:8, 27823:15, 27824:11, 27827:13, 27831:3, 27831:8, 27831:13, 27835:2, 27839:2, 27840:8, 27842:21, 27847:15, 27848:19, 27851:6, 27852:6, 27853:14, 27853:21, 27858:3, 27858:10, 27865:3, 27865:24, 27877:11, 27881:21, 27883:10, 27888:6, 27894:4, 27894:5, 27894:13, 27902:18, 27902:25, 27903:21, 27907:19, 27912:19, 27917:21, 27917:24, 27919:16, 27919:24, 27922:6, 27931:4, 27931:21, 27932:20, 27933:12, 27936:7, 27942:2, 27943:3, 27945:7, 27949:17, 27950:1, 27954:6, 27960:13, 27960:18, 27964:14, 27968:3, 27977:2, 27977:3, 27977:7, 27984:7, 27986:2, 27992:23, 27992:25, 27993:8, 27994:9, 27994:20, 27997:7, 28002:7, 28005:2, 28013:14, 28013:20,</p>	<p>28014:10, 28015:20, 28018:21, 28018:24, 28022:9, 28022:10, 28024:24, 28025:7, 28029:1, 28030:4, 28031:19, 28032:11, 28037:7, 28037:13, 28037:22, 28038:5, 28038:6, 28038:12, 28039:12, 28039:21, 28043:8, 28047:14, 28047:18, 28048:25, 28052:6, 28054:3, 28069:4, 28070:14</p> <p><b>ongoing</b> [7] - 27830:4, 27830:6, 27830:7, 27838:19, 27845:17, 27874:3, 27986:19</p> <p><b>Ontario</b> [3] - 27801:9, 27875:11, 28011:4</p> <p><b>onus</b> [1] - 27833:7</p> <p><b>open</b> [9] - 27817:1, 27822:9, 27856:23, 27948:8, 27973:19, 27975:3, 27977:5, 28019:16, 28054:16</p> <p><b>opened</b> [7] - 27806:22, 27836:6, 27878:17, 27888:20, 27889:12, 28052:25, 28057:7</p> <p><b>opening</b> [8] - 27798:15, 27799:10, 27837:5, 27938:5, 27948:5, 27966:4, 27967:12, 28057:1</p> <p><b>opens</b> [1] - 27947:8</p> <p><b>operandi</b> [1] - 28064:2</p> <p><b>operate</b> [1] - 28065:24</p> <p><b>operated</b> [1] - 27972:10</p> <p><b>operating</b> [1] - 27967:3</p> <p><b>operation</b> [2] - 27971:8, 28037:11</p> <p><b>operational</b> [1] - 28008:12</p> <p><b>operative</b> [2] - 28037:22, 28043:3</p> <p><b>opinion</b> [9] - 27995:7, 27995:8, 27995:10, 28017:12, 28018:21, 28063:23, 28063:24, 28071:10, 28073:8</p> <p><b>opinions</b> [7] - 27798:5, 27799:8, 28019:1, 28026:2, 28037:5, 28056:19, 28070:25</p> <p><b>opportunity</b> [13] - 27806:24, 27807:4, 27815:6, 27850:1, 27940:8, 27970:18, 27991:1, 28013:25,</p>
<p style="text-align: center;"><b>O</b></p>				
<p><b>O'keefe</b> [1] - 27795:10</p> <p><b>object</b> [1] - 27974:19</p> <p><b>objective</b> [2] - 27810:21, 28021:25</p> <p><b>objectivity</b> [2] - 27874:13, 27922:14</p> <p><b>observation</b> [2] -</p>				



28016:1, 28039:8, 28046:3, 28064:2, 28068:23 <b>opposed</b> [5] - 27918:11, 27995:9, 27999:19, 28001:20, 28029:22 <b>opposing</b> [1] - 27811:5 <b>opting</b> [1] - 27852:9 <b>option</b> [1] - 28021:7 <b>or...(inaudible</b> [1] - 27928:1 <b>orchestrated</b> [1] - 27893:6 <b>order</b> [3] - 27827:19, 27913:21, 27991:2 <b>organized</b> [2] - 27971:2, 28007:22 <b>origin</b> [1] - 28036:5 <b>original</b> [21] - 27841:10, 27841:15, 27841:16, 27842:6, 27860:8, 27861:14, 27865:9, 27883:19, 27886:7, 27889:22, 27919:4, 27938:13, 27955:6, 27965:21, 27995:12, 28022:7, 28040:21, 28041:15, 28044:1, 28067:21 <b>originally</b> [3] - 27852:7, 28015:21, 28023:2 <b>Originally</b> [1] - 28023:3 <b>originated</b> [1] - 28036:7 <b>Osgoode</b> [1] - 27802:17 <b>others'</b> [1] - 28015:6 <b>otherwise</b> [10] - 27819:14, 27872:25, 27989:6, 27989:8, 28009:22, 28014:9, 28025:17, 28048:11, 28059:21, 28063:13 <b>Otter</b> [1] - 28017:4 <b>ought</b> [5] - 27836:23, 27922:16, 27942:3, 27944:6, 27946:16 <b>ourself</b> [1] - 28016:16 <b>ourselves</b> [2] - 27874:15, 27911:24 <b>out'</b> [1] - 28071:19 <b>outcome</b> [2] - 27811:11, 27984:10 <b>outgrowth</b> [1] - 28008:16 <b>outline</b> [1] - 27901:21 <b>outrageous</b> [1] - 27832:19 <b>outset</b> [10] - 27800:18, 27810:20, 27811:9, 27828:23, 27838:12,	27895:9, 27937:22, 27938:8, 28008:23, 28013:3 <b>outside</b> [4] - 27800:5, 27842:24, 27863:3, 27968:14 <b>overlapped</b> [1] - 27984:24 <b>overlooked</b> [2] - 27824:14, 27827:3 <b>overnight</b> [2] - 27930:16, 27962:13 <b>oversight</b> [1] - 28002:10 <b>oversimplify</b> [2] - 27940:23, 27959:3 <b>overstated</b> [1] - 27977:22 <b>overstates</b> [1] - 27897:3 <b>overwhelming</b> [2] - 27945:21, 27965:12 <b>own</b> [26] - 27798:2, 27798:9, 27836:3, 27866:18, 27873:2, 27891:8, 27891:12, 27908:23, 27910:6, 27924:19, 27924:20, 27928:16, 27929:1, 27933:10, 27951:20, 27951:24, 27958:5, 27963:16, 27966:13, 27999:20, 28008:19, 28011:9, 28018:10, 28025:21, 28026:2, 28040:6  <b>P</b>  <b>package</b> [5] - 27945:24, 27946:1, 27949:24, 27966:9, 27990:9 <b>packaged</b> [1] - 28023:11 <b>Page</b> [2] - 27796:2, 27968:5 <b>page</b> [107] - 27802:13, 27802:21, 27802:24, 27802:25, 27803:25, 27804:2, 27814:16, 27818:18, 27824:12, 27848:24, 27848:25, 27849:4, 27870:4, 27878:6, 27884:3, 27884:4, 27888:6, 27890:9, 27896:5, 27899:25, 27901:20, 27906:19, 27907:16, 27915:14, 27915:17,	27915:23, 27917:17, 27917:18, 27918:21, 27918:22, 27920:2, 27920:3, 27920:7, 27920:9, 27921:21, 27921:22, 27922:19, 27922:23, 27922:24, 27924:23, 27924:24, 27925:19, 27925:20, 27929:9, 27929:10, 27931:21, 27932:18, 27934:8, 27934:9, 27939:6, 27939:15, 27939:18, 27939:20, 27939:24, 27948:13, 27948:14, 27948:23, 27948:25, 27949:6, 27951:15, 27952:19, 27952:23, 27952:24, 27953:15, 27955:22, 27960:20, 27960:21, 27963:2, 27966:18, 27968:3, 27969:3, 27971:10, 27979:2, 27981:1, 27982:14, 27986:23, 27986:24, 27987:2, 27987:5, 27996:5, 27996:18, 27997:12, 27999:15, 28006:2, 28009:13, 28011:16, 28011:17, 28011:19, 28011:21, 28034:1, 28034:24, 28035:2, 28035:4, 28035:14, 28046:24, 28047:1, 28047:5, 28054:5, 28054:8, 28054:12, 28055:23, 28061:2, 28064:6, 28066:19 <b>pages</b> [4] - 27996:2, 27996:15, 27997:4, 28074:4 <b>paid</b> [2] - 27944:7, 27988:11 <b>pale</b> [2] - 27864:25, 27949:23 <b>paper</b> [3] - 27943:2, 27967:25, 28047:9 <b>paragraph</b> [28] - 27813:14, 27816:19, 27818:3, 27819:23, 27824:8, 27826:23, 27830:13, 27834:10, 27866:4, 27886:24, 27890:3, 27896:7, 27898:23, 27907:17, 27909:3, 27949:8, 27949:17, 27949:18, 27950:24, 27953:16,	27956:7, 27964:14, 27965:19, 27968:4, 27968:6, 27972:20, 27976:11, 27982:15 <b>paragraphs</b> [5] - 27821:5, 27876:14, 27954:5, 27956:24, 27964:12 <b>parallel</b> [1] - 28018:10 <b>parameters</b> [1] - 27809:9 <b>paramilitary</b> [1] - 28058:23 <b>paring</b> [1] - 27885:23 <b>park</b> [1] - 27964:3 <b>parole</b> [1] - 27928:9 <b>Part</b> [1] - 28044:11 <b>part</b> [42] - 27797:23, 27842:14, 27849:24, 27879:23, 27880:14, 27891:18, 27896:6, 27910:10, 27913:12, 27913:13, 27918:13, 27921:12, 27921:14, 27924:23, 27930:8, 27933:12, 27933:17, 27933:24, 27934:13, 27936:7, 27937:17, 27938:19, 27939:21, 27940:3, 27943:2, 27967:24, 27976:5, 27984:7, 27985:6, 27993:23, 27994:1, 27994:14, 28012:13, 28014:25, 28018:23, 28028:17, 28030:4, 28030:7, 28044:14, 28044:19, 28049:6, 28051:9 <b>part-way</b> [1] - 27896:6 <b>parted</b> [1] - 27909:15 <b>particular</b> [32] - 27832:3, 27844:11, 27857:11, 27858:24, 27870:12, 27873:9, 27902:11, 27906:9, 27913:9, 27913:24, 27916:13, 27921:19, 27922:15, 27923:7, 27932:10, 27933:23, 27954:10, 27958:25, 27960:1, 27972:13, 27973:5, 27976:17, 27988:5, 27989:5, 27996:1, 27999:25, 28013:3, 28022:1, 28044:7, 28053:15, 28070:3, 28070:8 <b>particularly</b> [10] - 27826:18, 27847:3,	27847:4, 27862:18, 27863:16, 27917:2, 27929:2, 27930:19, 27942:9, 28043:9 <b>particulars</b> [2] - 27890:22, 27923:17 <b>parties</b> [8] - 27825:8, 27825:21, 27842:19, 27843:7, 27844:21, 27896:14, 27896:21, 27990:17 <b>parties'</b> [1] - 28015:3 <b>partisan</b> [2] - 27825:21, 27827:6 <b>Partly</b> [1] - 27916:22 <b>partly</b> [3] - 27916:22, 28023:24, 28057:13 <b>partner</b> [2] - 27816:21, 27878:1 <b>parts</b> [6] - 27936:8, 27936:17, 27938:10, 27946:3, 27946:4, 28030:3 <b>party</b> [5] - 27825:5, 27832:11, 27901:11, 27943:25, 28016:5 <b>passed</b> [1] - 27954:7 <b>passing</b> [1] - 27964:2 <b>past</b> [6] - 27835:15, 27876:23, 27890:6, 28007:21, 28060:25, 28062:15 <b>patents</b> [1] - 28010:25 <b>path</b> [1] - 27984:24 <b>pathologist</b> [2] - 27859:9, 27951:16 <b>patrol</b> [1] - 28007:23 <b>pattern</b> [4] - 27917:13, 27986:3, 27986:5, 28030:12 <b>Patterns</b> [1] - 28010:12 <b>patterns</b> [2] - 28005:19, 28010:15 <b>Paul</b> [40] - 27864:2, 27864:13, 27874:8, 27874:9, 27879:21, 27886:9, 27886:11, 27911:4, 27911:21, 27918:14, 27919:14, 27921:18, 27921:23, 27921:25, 27922:4, 27922:7, 27922:9, 27930:21, 27930:22, 27931:13, 27932:1, 27933:3, 27933:18, 27933:25, 27948:20, 27961:2, 27961:13, 27965:1, 27995:9, 27995:19, 27995:20, 28043:18, 28044:9,
--	---	---	--	--



<p>28044:14, 28044:25, 28046:18, 28046:19, 28052:13, 28052:15 <b>pause</b> [4] - 27881:10, 27902:9, 27952:4, 28006:13 <b>pay</b> [2] - 27809:5, 27944:6 <b>paying</b> [1] - 27931:25 <b>Pb</b> [1] - 27888:7 <b>penalties</b> [1] - 27832:16 <b>penitentiaries</b> [1] - 27866:12 <b>Penitentiary</b> [3] - 27818:9, 27818:15, 27865:19 <b>Penkala</b> [9] - 27857:24, 27858:23, 27950:8, 28038:4, 28038:13, 28038:15, 28038:17, 28038:21, 28038:22 <b>pension</b> [1] - 27991:21 <b>people</b> [51] - 27798:10, 27803:14, 27805:17, 27809:23, 27814:6, 27814:13, 27821:11, 27821:17, 27822:3, 27822:11, 27831:16, 27831:17, 27831:23, 27838:5, 27858:6, 27858:8, 27874:5, 27896:8, 27911:25, 27912:19, 27916:18, 27916:24, 27928:25, 27931:19, 27934:22, 27941:16, 27941:17, 27944:6, 27947:11, 27970:20, 27986:1, 27986:9, 27993:13, 28016:21, 28025:16, 28034:17, 28034:18, 28034:21, 28039:10, 28039:13, 28044:12, 28054:24, 28055:1, 28055:8, 28057:13, 28059:3, 28068:3, 28068:7, 28071:18, 28072:2 <b>perceived</b> [1] - 27811:7 <b>percent</b> [5] - 27823:14, 27947:8, 28013:1, 28061:25 <b>perception</b> [3] - 27962:2, 28055:5, 28056:22 <b>perceptions</b> [3] - 27852:23, 27857:10, 27875:1 <b>perfect</b> [1] - 27986:5 <b>performing</b> [1] -</p>	<p>27998:17 <b>Perhaps</b> [3] - 27960:13, 27966:5, 28011:16 <b>perhaps</b> [58] - 27802:3, 27804:12, 27812:9, 27813:10, 27814:21, 27816:14, 27816:15, 27824:1, 27829:16, 27831:20, 27832:1, 27834:3, 27841:18, 27843:17, 27848:25, 27857:20, 27858:14, 27862:19, 27865:24, 27866:18, 27871:7, 27872:10, 27873:6, 27873:15, 27877:9, 27903:2, 27904:6, 27905:25, 27910:24, 27911:12, 27911:18, 27915:20, 27917:21, 27922:22, 27923:12, 27933:12, 27938:8, 27958:21, 27964:10, 27977:2, 27977:22, 27978:2, 27983:8, 27990:10, 27995:4, 27999:24, 28011:24, 28033:22, 28035:15, 28037:17, 28044:8, 28046:25, 28047:7, 28050:13, 28056:21, 28059:14, 28070:23 <b>period</b> [18] - 27840:23, 27845:3, 27845:7, 27882:22, 27894:15, 27910:9, 27918:10, 27918:11, 27940:17, 27984:1, 28033:16, 28042:3, 28044:2, 28046:14, 28050:5, 28059:8, 28062:17, 28070:10 <b>periods</b> [1] - 27844:19 <b>perjury</b> [4] - 27884:17, 27894:1, 27923:25, 27964:20 <b>permission</b> [2] - 27818:7, 27818:11 <b>permit</b> [1] - 27834:19 <b>permitted</b> [1] - 27902:6 <b>permitting</b> [1] - 27902:21 <b>perpetrator</b> [4] - 27900:13, 27901:19, 27959:23, 27966:24 <b>persistent</b> [4] - 27930:14, 27930:20, 27961:24, 27969:5 <b>persistently</b> [1] - 27963:12</p>	<p><b>person</b> [25] - 27805:21, 27805:23, 27806:1, 27821:25, 27833:7, 27858:7, 27859:1, 27867:5, 27874:24, 27884:13, 27889:16, 27906:9, 27912:5, 27919:11, 27919:16, 27919:18, 27928:20, 27929:3, 27931:2, 27931:7, 27931:18, 27948:7, 27959:7, 28055:11 <b>person's</b> [2] - 27946:23, 27966:2 <b>personal</b> [1] - 27951:21 <b>personality</b> [2] - 28045:14, 28064:17 <b>personally</b> [2] - 27827:18, 27964:25 <b>persons</b> [1] - 27906:10 <b>perspective</b> [9] - 27803:21, 27916:17, 27921:25, 28016:2, 28017:4, 28017:11, 28029:8, 28032:6, 28053:2 <b>perspectives</b> [1] - 28026:1 <b>persuaded</b> [1] - 27822:22 <b>persuasion</b> [1] - 28036:19 <b>persuasions</b> [1] - 27825:16 <b>pertaining</b> [1] - 27818:22 <b>pessimism</b> [1] - 27989:11 <b>Peter</b> [4] - 27859:16, 27890:2, 28022:21, 28060:21 <b>Ph.d</b> [7] - 27805:10, 27828:11, 27897:6, 27897:14, 28009:4, 28009:15, 28010:4 <b>phase</b> [1] - 27798:15 <b>philosophy</b> [1] - 27946:12 <b>phone</b> [4] - 27847:23, 27847:24, 27857:25, 27861:16 <b>phoning</b> [4] - 27826:14, 28035:7, 28035:8, 28035:9 <b>photographs</b> [2] - 28024:11, 28028:2 <b>phrase</b> [2] - 27897:17 <b>physical</b> [9] - 27838:25, 27879:12, 27941:11,</p>	<p>27941:14, 27941:18, 27944:8, 27958:14, 28019:17, 28027:17 <b>pick</b> [2] - 27931:23, 27936:24 <b>picks</b> [1] - 27981:3 <b>picture</b> [3] - 27813:11, 27963:21, 27967:17 <b>pictures</b> [2] - 28028:5, 28028:7 <b>piece</b> [14] - 27808:5, 27816:15, 27876:7, 27876:10, 27880:23, 27882:25, 27889:25, 27936:12, 27960:18, 27993:14, 28002:21, 28047:9, 28055:18, 28055:19 <b>pieces</b> [8] - 27803:17, 27812:11, 27945:7, 27965:9, 27966:7, 27993:8, 28002:8, 28041:6 <b>pillow</b> [1] - 27992:15 <b>pin</b> [1] - 27925:11 <b>pioneer</b> [1] - 28010:21 <b>piqued</b> [1] - 27807:22 <b>pitfalls</b> [1] - 28013:10 <b>place</b> [16] - 27812:13, 27834:2, 27838:16, 27839:5, 27855:2, 27878:25, 27940:18, 27963:16, 27967:6, 27995:22, 27999:1, 27999:5, 28001:2, 28032:15, 28047:17, 28071:1 <b>placed</b> [1] - 27835:13 <b>places</b> [2] - 28013:15, 28052:19 <b>placing</b> [1] - 27813:16 <b>plan</b> [4] - 27816:23, 27862:13, 27978:14, 28016:11 <b>plane</b> [1] - 27814:6 <b>planning</b> [1] - 28007:25 <b>plans</b> [3] - 27894:22, 27988:6, 27988:7 <b>plausibility</b> [1] - 27940:15 <b>play</b> [2] - 27812:16, 27947:24 <b>played</b> [4] - 27827:17, 27832:4, 27851:23, 28059:24 <b>players</b> [1] - 28019:15 <b>plea</b> [1] - 27868:2 <b>plead</b> [2] - 27969:12, 27970:5 <b>pleas</b> [5] - 27869:9,</p>	<p>27870:7, 27989:23, 28001:20, 28002:4 <b>Pleasant</b> [1] - 28072:14 <b>pleased</b> [2] - 27860:12, 27976:12 <b>pled</b> [3] - 27891:2, 27970:5, 27970:7 <b>Pm</b> [5] - 27936:21, 27936:22, 27991:12, 27991:13, 28073:14 <b>point</b> [95] - 27807:9, 27807:24, 27808:14, 27808:15, 27811:16, 27811:18, 27813:22, 27813:24, 27815:10, 27815:11, 27815:15, 27815:22, 27816:10, 27817:2, 27819:15, 27824:1, 27824:2, 27825:10, 27825:12, 27826:11, 27830:11, 27831:14, 27838:22, 27840:23, 27840:24, 27851:22, 27853:2, 27853:5, 27854:5, 27854:14, 27855:24, 27856:3, 27856:13, 27859:16, 27860:11, 27860:22, 27878:16, 27878:20, 27879:22, 27880:13, 27880:17, 27880:22, 27882:7, 27883:24, 27886:5, 27886:16, 27886:22, 27889:21, 27894:22, 27903:9, 27903:22, 27904:10, 27905:22, 27906:8, 27906:14, 27906:16, 27908:20, 27910:10, 27912:8, 27913:16, 27917:24, 27919:13, 27919:18, 27927:17, 27932:20, 27939:18, 27941:9, 27945:15, 27945:19, 27945:20, 27956:17, 27960:3, 27965:13, 27975:15, 27982:12, 27994:23, 28001:6, 28009:3, 28018:5, 28018:20, 28020:17, 28025:13, 28035:24, 28051:6, 28053:20, 28055:2, 28056:5, 28056:19, 28057:7, 28057:25, 28062:1, 28065:8, 28067:11, 28070:1 <b>pointed</b> [3] - 27819:18, 28036:5, 28044:22</p>
---	---	--	--	--



<p><b>pointless</b> [1] - 27852:21</p> <p><b>points</b> [16] - 27820:25, 27821:22, 27822:1, 27835:12, 27843:19, 27846:16, 27878:23, 27887:8, 27903:17, 27904:7, 27905:4, 27931:12, 27941:4, 27945:24, 28048:7, 28062:10</p> <p><b>Police</b> [32] - 27795:7, 27807:8, 27807:11, 27844:3, 27858:1, 27858:12, 27865:10, 27868:18, 27881:3, 27888:17, 27890:25, 27905:24, 27950:7, 27969:6, 28006:4, 28006:6, 28007:15, 28008:10, 28011:4, 28012:7, 28037:9, 28039:18, 28040:12, 28041:12, 28044:3, 28047:15, 28047:16, 28048:10, 28054:24, 28058:8, 28059:21, 28060:6</p> <p><b>police</b> [102] - 27806:18, 27807:1, 27812:22, 27816:23, 27828:14, 27841:10, 27841:20, 27845:9, 27852:4, 27854:25, 27855:6, 27857:16, 27857:20, 27857:25, 27858:17, 27863:18, 27863:24, 27864:19, 27865:9, 27868:17, 27881:5, 27881:7, 27881:14, 27881:21, 27882:1, 27890:13, 27893:5, 27897:5, 27901:25, 27903:10, 27903:18, 27904:10, 27904:11, 27904:19, 27905:7, 27912:9, 27928:21, 27929:4, 27929:11, 27930:13, 27930:16, 27930:19, 27930:25, 27931:5, 27944:4, 27949:22, 27961:8, 27961:9, 27961:16, 27961:23, 27961:24, 27962:8, 27962:13, 27962:19, 27963:7, 27963:14, 27993:15, 27995:9, 27995:10, 27995:11, 28004:22, 28007:13, 28008:20, 28010:3, 28016:20, 28019:13, 28019:20,</p>	<p>28019:21, 28026:21, 28036:24, 28037:23, 28038:1, 28038:11, 28040:21, 28041:9, 28041:20, 28041:23, 28042:6, 28042:11, 28044:1, 28044:24, 28045:4, 28052:12, 28054:10, 28054:21, 28055:3, 28058:10, 28058:12, 28058:18, 28059:3, 28059:6, 28060:4, 28067:21, 28071:17, 28071:25, 28072:9, 28072:10, 28072:11, 28073:9</p> <p><b>policeman</b> [1] - 27816:22</p> <p><b>policing</b> [3] - 28055:9, 28058:23, 28073:1</p> <p><b>policy</b> [2] - 27801:17, 27801:18</p> <p><b>political</b> [9] - 27824:15, 27825:8, 27825:15, 27825:20, 27825:21, 27826:24, 27827:4, 27827:5, 27827:19</p> <p><b>polygraph</b> [10] - 27887:11, 27887:15, 27961:7, 27961:19, 27997:15, 27997:18, 27997:24, 27998:1, 27998:18, 27999:9</p> <p><b>poor</b> [1] - 28072:18</p> <p><b>pornography</b> [1] - 27804:25</p> <p><b>Porter</b> [1] - 27895:1</p> <p><b>portion</b> [29] - 27819:21, 27823:10, 27824:11, 27825:24, 27832:24, 27848:20, 27849:8, 27877:17, 27880:25, 27888:6, 27888:8, 27889:3, 27891:21, 27899:1, 27900:2, 27946:7, 27952:18, 27960:23, 27963:1, 27967:19, 27977:7, 27979:7, 27981:10, 27987:10, 27991:25, 28035:11, 28048:22, 28058:5, 28071:12</p> <p><b>portions</b> [13] - 27816:18, 27821:4, 27828:5, 27876:13, 27884:2, 27895:10, 27915:13, 27915:16, 27932:19, 27935:23, 27989:7, 28005:8, 28061:3</p>	<p><b>portrait</b> [1] - 27965:11</p> <p><b>posed</b> [1] - 27928:11</p> <p><b>position</b> [10] - 27800:16, 27833:20, 27844:25, 27856:2, 27880:9, 27886:19, 27893:11, 27912:7, 27933:6, 27983:13</p> <p><b>positions</b> [1] - 27860:10</p> <p><b>positive</b> [2] - 27921:7, 27980:19</p> <p><b>possession</b> [12] - 27854:7, 27864:1, 27865:9, 27872:21, 27886:3, 27886:13, 27993:22, 28022:13, 28043:17, 28043:25, 28050:15, 28050:24</p> <p><b>possibilities</b> [1] - 28068:2</p> <p><b>possibility</b> [24] - 27806:5, 27820:22, 27826:10, 27874:7, 27877:20, 27880:18, 27892:11, 27894:16, 27898:22, 27908:17, 27909:3, 27950:16, 27969:13, 27969:18, 27985:12, 27985:14, 27985:15, 27985:17, 28016:4, 28022:2, 28068:9, 28068:10, 28068:14, 28071:1</p> <p><b>possible</b> [23] - 27806:14, 27816:2, 27817:23, 27820:19, 27845:16, 27855:8, 27855:13, 27866:16, 27893:25, 27915:2, 27958:3, 27958:8, 27958:11, 27958:14, 27958:19, 27958:23, 27966:24, 28018:13, 28026:3, 28036:11, 28042:8, 28063:9, 28070:11</p> <p><b>possibly</b> [6] - 27828:22, 27884:17, 27891:24, 28026:25, 28066:22, 28070:12</p> <p><b>potential</b> [4] - 28002:23, 28003:6, 28013:9, 28072:19</p> <p><b>potentially</b> [2] - 27902:7, 27902:23</p> <p><b>power</b> [6] - 27897:8, 27897:19, 27898:17, 27973:2, 27973:6, 27973:20</p>	<p><b>power-broker</b> [1] - 27898:17</p> <p><b>power-brokers</b> [2] - 27897:8, 27897:19</p> <p><b>practiced</b> [1] - 27903:12</p> <p><b>preceded</b> [1] - 27896:25</p> <p><b>precisely</b> [1] - 27815:12</p> <p><b>preconceived</b> [3] - 27820:15, 27821:9, 28017:18</p> <p><b>predates</b> [1] - 27875:12</p> <p><b>predators</b> [1] - 28018:15</p> <p><b>predatory</b> [2] - 28015:22, 28030:19</p> <p><b>predicted</b> [1] - 27824:18</p> <p><b>predictor</b> [1] - 28062:14</p> <p><b>prefer</b> [1] - 28064:4</p> <p><b>preliminary</b> [3] - 27899:4, 27911:2, 27994:3</p> <p><b>preliminary...okay</b> [1] - 27934:19</p> <p><b>preparation</b> [3] - 27937:7, 27983:2, 27994:6</p> <p><b>preparations</b> [1] - 27984:18</p> <p><b>prepared</b> [10] - 27797:19, 27797:24, 27798:1, 27798:10, 27937:10, 28017:6, 28018:21, 28019:1, 28022:25, 28041:21</p> <p><b>preparing</b> [1] - 28009:5</p> <p><b>presence</b> [1] - 27933:21</p> <p><b>present</b> [6] - 27802:1, 27853:5, 27915:5, 27950:21, 28004:14</p> <p><b>presentation</b> [3] - 27907:13, 27938:4, 27966:22</p> <p><b>presented</b> [9] - 27807:4, 27878:9, 27879:15, 27944:22, 27945:22, 27949:15, 27957:8, 27959:16, 28039:8</p> <p><b>presently</b> [2] - 28005:10, 28014:22</p> <p><b>presents</b> [1] - 27880:5</p> <p><b>press</b> [6] - 27813:8, 27924:25, 27976:22, 27986:21, 28002:5, 28062:4</p> <p><b>Press</b> [1] - 27977:4</p> <p><b>pressed</b> [4] - 28057:10,</p>	<p>28057:13, 28057:23, 28065:4</p> <p><b>pressure</b> [9] - 27824:16, 27826:24, 27827:4, 27827:5, 27827:19, 27930:25, 27961:9, 27961:23, 28016:25</p> <p><b>presume</b> [2] - 27862:12, 27879:19</p> <p><b>presumed</b> [1] - 27950:13</p> <p><b>presuming</b> [1] - 27955:6</p> <p><b>presumption</b> [1] - 27863:8</p> <p><b>pretty</b> [13] - 27848:15, 27852:20, 27856:9, 27879:13, 27939:19, 27943:8, 27980:23, 27993:6, 28010:4, 28013:20, 28042:15, 28044:15, 28051:23</p> <p><b>prevalence</b> [1] - 27967:1</p> <p><b>prevention</b> [1] - 28008:1</p> <p><b>previous</b> [3] - 27942:24, 27968:12, 27998:1</p> <p><b>previously</b> [7] - 27801:14, 27823:25, 27824:14, 27827:3, 27834:6, 27917:22, 27917:23</p> <p><b>Primarily</b> [1] - 28025:3</p> <p><b>primarily</b> [2] - 28033:10, 28034:18</p> <p><b>primary</b> [4] - 27839:3, 27964:6, 28007:6, 28031:8</p> <p><b>prime</b> [1] - 27827:16</p> <p><b>Prince</b> [1] - 28049:15</p> <p><b>prioritisation</b> [1] - 28007:1</p> <p><b>prison</b> [10] - 27809:22, 27817:6, 27821:12, 27828:18, 27890:6, 28025:5, 28057:11, 28060:25, 28062:24, 28071:24</p> <p><b>private</b> [1] - 27961:2</p> <p><b>privilege</b> [1] - 28049:21</p> <p><b>probabilistic</b> [1] - 27947:7</p> <p><b>probabilities</b> [7] - 27837:8, 27949:16, 27954:3, 27958:20, 27968:16, 27974:17, 27974:22</p>
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<p><b>probability</b> [3] - 28002:1, 28068:13, 28068:16</p> <p><b>probable</b> [11] - 27888:24, 27945:16, 27945:25, 27953:13, 27953:17, 27968:18, 27982:3, 27982:10, 27989:15, 28061:7, 28068:21</p> <p><b>probed</b> [1] - 27890:21</p> <p><b>problem</b> [1] - 27971:21</p> <p><b>problematic</b> [3] - 27945:12, 27989:17, 27989:18</p> <p><b>problems</b> [8] - 27801:2, 27801:25, 27824:21, 27825:11, 27940:1, 27942:4, 28047:14, 28068:18</p> <p><b>Problems</b> [1] - 27804:5</p> <p><b>procedural</b> [1] - 27971:14</p> <p><b>procedure</b> [4] - 27807:1, 27834:18, 27913:19, 27913:22</p> <p><b>proceed</b> [2] - 27908:5, 27910:3</p> <p><b>Proceedings</b> [4] - 27793:12, 27793:23, 27796:1, 27797:1</p> <p><b>proceedings</b> [4] - 27798:18, 27990:12, 28012:3, 28049:25</p> <p><b>process</b> [14] - 27798:6, 27807:2, 27808:20, 27809:1, 27809:16, 27834:23, 27835:3, 27939:17, 27947:12, 27955:9, 28017:24, 28022:5, 28024:22, 28072:23</p> <p><b>Process'</b> [1] - 27804:5</p> <p><b>produce</b> [3] - 27874:14, 27962:9, 27996:11</p> <p><b>produced</b> [3] - 27843:1, 27949:16, 28034:19</p> <p><b>producers</b> [1] - 27907:22</p> <p><b>Professional</b> [2] - 27802:20, 28005:9</p> <p><b>professional</b> [1] - 28043:3</p> <p><b>professionalism</b> [1] - 28058:19</p> <p><b>Professor</b> [13] - 27802:19, 27802:22, 27976:13, 27982:23, 27983:2, 27991:15, 27991:23, 27993:19,</p>	<p>27997:12, 27999:17, 28004:19, 28005:10, 28018:24</p> <p><b>professor</b> [7] - 27800:9, 27801:3, 27816:20, 27822:14, 27862:14, 27987:21, 28034:3</p> <p><b>profile</b> [6] - 27968:11, 28008:12, 28025:8, 28041:7, 28050:19, 28051:1</p> <p><b>profiling</b> [10] - 28006:15, 28007:10, 28007:22, 28008:9, 28009:10, 28010:18, 28010:24, 28011:10, 28011:20, 28012:4</p> <p><b>Profiling</b> [3] - 27968:16, 28006:12, 28010:12</p> <p><b>profiling'</b> [1] - 28006:14</p> <p><b>profound</b> [1] - 27975:11</p> <p><b>program</b> [3] - 27807:22, 27883:5, 28009:4</p> <p><b>prohibitive</b> [1] - 27819:8</p> <p><b>project</b> [7] - 27895:3, 28005:25, 28009:25, 28014:16, 28020:11, 28021:8, 28031:6</p> <p><b>prolonged</b> [2] - 27903:20, 27904:23</p> <p><b>promoting</b> [1] - 27811:3</p> <p><b>prompt</b> [1] - 28053:18</p> <p><b>prompted</b> [2] - 27917:5, 28057:20</p> <p><b>pronged</b> [1] - 28030:24</p> <p><b>proof</b> [8] - 27813:4, 27833:4, 27888:12, 27889:5, 27889:17, 27906:11, 27968:10, 27968:17</p> <p><b>properly</b> [6] - 27808:22, 27811:6, 27831:8, 27889:16, 27975:4, 28068:23</p> <p><b>proportion</b> [2] - 27854:18, 27992:6</p> <p><b>proposal</b> [7] - 27895:12, 27896:2, 27896:4, 27897:24, 27910:19, 28013:6, 28014:4</p> <p><b>proposition</b> [1] - 28016:3</p> <p><b>prosecute</b> [1] - 27989:16</p> <p><b>prosecution</b> [7] - 27841:15, 27841:16, 27972:22, 28041:15, 28041:19, 28041:21,</p>	<p>28042:10</p> <p><b>prosecutor</b> [4] - 27861:14, 27944:13, 27956:12, 28059:4</p> <p><b>prostitutes</b> [1] - 28063:8</p> <p><b>prostitution</b> [1] - 28007:25</p> <p><b>protect</b> [1] - 27852:9</p> <p><b>protecting</b> [1] - 27852:7</p> <p><b>protection</b> [1] - 28028:14</p> <p><b>prove</b> [3] - 27820:4, 27833:8, 27968:15</p> <p><b>provide</b> [13] - 27802:2, 27818:24, 27819:19, 27842:5, 27863:24, 27950:9, 27971:13, 27973:7, 27973:9, 27975:16, 27978:17, 27983:4, 28040:3</p> <p><b>provided</b> [33] - 27804:13, 27822:10, 27847:2, 27859:14, 27872:4, 27874:22, 27914:1, 27914:17, 27915:10, 27917:22, 27917:23, 27961:17, 27962:11, 27975:20, 27976:10, 27982:24, 27990:11, 27994:2, 27994:10, 27994:13, 27995:2, 27997:24, 28004:25, 28012:2, 28012:5, 28012:18, 28012:25, 28016:12, 28024:15, 28024:18, 28025:12, 28028:23, 28062:13</p> <p><b>provides</b> [2] - 27834:12, 27971:7</p> <p><b>providing</b> [4] - 27879:3, 27973:20, 28007:9, 28008:19</p> <p><b>Province</b> [1] - 28074:3</p> <p><b>provinces</b> [1] - 28011:7</p> <p><b>provincial</b> [7] - 27900:15, 27905:25, 28000:8, 28000:13, 28000:14, 28000:25, 28001:4</p> <p><b>Provincial</b> [1] - 28011:4</p> <p><b>provision</b> [2] - 28025:3, 28025:14</p> <p><b>proxy</b> [1] - 27891:5</p> <p><b>psychologist</b> [1] - 27941:21</p> <p><b>psychologists</b> [1] - 27800:21</p> <p><b>psychology</b> [1] -</p>	<p>27800:23</p> <p><b>psychopath</b> [1] - 28064:21</p> <p><b>pubic</b> [3] - 27950:3, 27953:7, 27953:14</p> <p><b>public</b> [7] - 27871:6, 27896:10, 27897:2, 27901:8, 27904:17, 27934:17, 28037:6</p> <p><b>Public</b> [1] - 28027:24</p> <p><b>publication</b> [2] - 28013:11, 28013:13</p> <p><b>publications</b> [1] - 28011:18</p> <p><b>publicist</b> [1] - 28002:22</p> <p><b>publicity</b> [5] - 27812:25, 27814:11, 27814:21, 27820:7</p> <p><b>publicly</b> [4] - 27901:12, 27907:25, 28003:8, 28063:11</p> <p><b>publish</b> [1] - 27828:15</p> <p><b>published</b> [2] - 27804:18, 27894:25</p> <p><b>publisher</b> [2] - 28003:11, 28003:14</p> <p><b>publishers</b> [2] - 28002:23, 28003:6</p> <p><b>publishing</b> [1] - 27801:7</p> <p><b>purple</b> [1] - 27885:25</p> <p><b>purpose</b> [8] - 27798:23, 27799:20, 27834:18, 27896:1, 27981:13, 27983:1, 28027:9, 28049:11</p> <p><b>purposes</b> [14] - 27836:3, 27837:3, 27838:22, 27853:13, 27873:19, 27937:7, 27945:6, 27966:3, 27967:11, 28015:5, 28044:6, 28044:11, 28052:21, 28062:21</p> <p><b>purse</b> [9] - 27943:15, 28064:10, 28065:1, 28065:2, 28065:6, 28065:7, 28065:9, 28065:12</p> <p><b>purse-snatchers</b> [2] - 28065:6, 28065:7</p> <p><b>purse-snatching</b> [2] - 28064:10, 28065:1</p> <p><b>purse-snatchings</b> [1] - 28065:2</p> <p><b>pursue</b> [6] - 27840:21, 27853:3, 27856:17, 27887:14, 27970:12, 27997:18</p> <p><b>pursued</b> [3] - 27861:12,</p>	<p>27970:17, 27998:20</p> <p><b>pursuing</b> [2] - 27826:13, 27931:6</p> <p><b>pursuit</b> [2] - 27961:25, 28042:9</p> <p><b>pushing</b> [1] - 28020:22</p> <p><b>put</b> [22] - 27838:10, 27917:12, 27924:5, 27926:2, 27927:15, 27936:8, 27937:20, 27945:13, 27956:14, 27957:3, 27957:14, 27965:5, 27968:2, 27968:4, 27974:20, 27978:24, 28018:19, 28055:24, 28057:14, 28071:18, 28072:1, 28072:2</p> <p><b>puts</b> [2] - 27828:25, 27931:2</p> <p><b>putting</b> [5] - 27919:18, 27954:22, 27980:4, 28016:21, 28059:15</p> <p><b>puzzle</b> [7] - 27811:10, 27837:10, 27936:8, 27936:9, 27945:8, 27960:19, 27965:9</p> <p><b>puzzled</b> [1] - 27877:14</p>
				<b>Q</b>
				<p><b>Qb</b> [1] - 27794:9</p> <p><b>Qc</b> [3] - 27795:2, 27795:6, 27795:11</p> <p><b>qualify</b> [2] - 27938:12, 28013:4</p> <p><b>quality</b> [1] - 28002:18</p> <p><b>Queen</b> [1] - 27804:4</p> <p><b>Queen's</b> [4] - 28074:1, 28074:3, 28074:14, 28074:20</p> <p><b>question/answering</b> [1] - 28025:13</p> <p><b>questionable</b> [1] - 27966:2</p> <p><b>questioned</b> [1] - 27831:20</p> <p><b>questioning</b> [9] - 27916:12, 27925:8, 27930:5, 27930:7, 27930:20, 27961:20, 27963:8, 27963:14, 27968:1</p> <p><b>questions</b> [62] - 27799:16, 27828:9, 27831:6, 27831:9, 27846:12, 27850:22, 27857:7, 27867:18, 27870:4, 27870:5,</p>



<p>27870:9, 27870:15, 27884:11, 27887:17, 27887:18, 27888:19, 27889:1, 27892:25, 27906:8, 27906:13, 27915:19, 27916:19, 27921:22, 27922:5, 27922:19, 27928:11, 27929:4, 27948:21, 27969:5, 27969:21, 27969:24, 27970:1, 27970:2, 27970:10, 27970:13, 27970:16, 27970:19, 27970:23, 27971:1, 27987:20, 27989:19, 27989:24, 27990:21, 27990:22, 27990:25, 27991:2, 27991:7, 27991:23, 27992:12, 28001:11, 28001:17, 28001:19, 28001:23, 28002:10, 28003:22, 28019:25, 28025:6, 28032:4, 28032:5, 28047:11, 28055:2, 28070:15</p> <p><b>quick</b> [2] - 27843:9, 28050:15</p> <p><b>quickly</b> [2] - 27811:1, 27848:15</p> <p><b>Quite</b> [2] - 27883:24, 27915:2</p> <p><b>quite</b> [22] - 27816:1, 27819:1, 27819:7, 27860:18, 27864:25, 27865:21, 27881:19, 27906:15, 27913:11, 27915:2, 27932:7, 27940:4, 27945:21, 27951:5, 27965:12, 27982:3, 27989:13, 27990:14, 27992:20, 28003:12, 28037:7, 28067:13</p> <p><b>quote</b> [3] - 27823:5, 28054:12, 28071:22</p> <p><b>quoted</b> [1] - 27992:2</p> <p><b>quotes</b> [1] - 28035:17</p>	<p><b>raising</b> [1] - 27834:20</p> <p><b>Ramada</b> [1] - 27793:16</p> <p><b>ran</b> [2] - 27964:2, 27988:15</p> <p><b>range</b> [2] - 27800:25, 27894:10</p> <p><b>ranges</b> [1] - 27890:13</p> <p><b>rape</b> [9] - 27890:5, 27969:10, 27970:4, 27970:9, 28007:11, 28028:5, 28029:4, 28029:18, 28060:24</p> <p><b>rape/murder</b> [1] - 27943:16</p> <p><b>raped</b> [4] - 27876:25, 27878:8, 27942:23, 27943:22</p> <p><b>rapes</b> [15] - 27855:13, 27900:12, 27989:22, 28027:14, 28028:16, 28029:9, 28029:17, 28030:10, 28030:17, 28040:25, 28046:9, 28061:14, 28061:21, 28072:13</p> <p><b>rapist</b> [4] - 28002:5, 28061:9, 28062:16, 28066:7</p> <p><b>rapists</b> [5] - 27967:1, 28010:15, 28061:25, 28065:23, 28066:13</p> <p><b>rare</b> [1] - 28069:12</p> <p><b>rarely</b> [1] - 28012:14</p> <p><b>Rasmussen</b> [1] - 27940:13</p> <p><b>rate</b> [1] - 27803:12</p> <p><b>rates</b> [1] - 27803:8</p> <p><b>rather</b> [9] - 27799:10, 27852:6, 27891:3, 27964:24, 27969:12, 27970:8, 27989:23, 28002:4, 28064:5</p> <p><b>rationalization</b> [1] - 27965:3</p> <p><b>Rcmp</b> [15] - 27795:9, 27950:20, 27986:14, 27986:18, 28011:3, 28025:8, 28034:15, 28034:19, 28034:23, 28041:7, 28050:19, 28051:1, 28054:15, 28054:23, 28055:13</p> <p><b>re</b> [25] - 27798:15, 27799:10, 27823:19, 27836:6, 27837:5, 27846:20, 27847:6, 27847:7, 27848:11, 27854:12, 27854:15, 27878:17, 27888:20, 27889:12, 27938:5,</p>	<p>27948:5, 27948:8, 27966:4, 27967:12, 27973:19, 27975:3, 28052:20, 28052:25, 28057:1, 28057:7</p> <p><b>Re</b> [1] - 27977:5</p> <p><b>re-enactment</b> [5] - 27846:20, 27847:6, 27847:7, 27854:12, 27854:15</p> <p><b>re-interview</b> [1] - 28052:20</p> <p><b>Reopen</b> [1] - 27977:5</p> <p><b>re-open</b> [3] - 27948:8, 27973:19, 27975:3</p> <p><b>re-opened</b> [6] - 27836:6, 27878:17, 27888:20, 27889:12, 28052:25, 28057:7</p> <p><b>re-opening</b> [8] - 27798:15, 27799:10, 27837:5, 27938:5, 27948:5, 27966:4, 27967:12, 28057:1</p> <p><b>re-read</b> [1] - 27823:19</p> <p><b>reach</b> [2] - 27857:15, 27874:18</p> <p><b>reached</b> [4] - 27878:11, 27891:8, 28018:20, 28055:25</p> <p><b>reaching</b> [4] - 27837:3, 27857:2, 27879:22, 28038:21</p> <p><b>reacted</b> [1] - 27916:18</p> <p><b>reaction</b> [4] - 27865:4, 27917:15, 27985:20</p> <p><b>read</b> [45] - 27798:25, 27799:3, 27799:8, 27810:4, 27815:15, 27815:21, 27816:18, 27823:10, 27823:19, 27826:23, 27828:5, 27830:13, 27831:5, 27833:19, 27833:21, 27834:7, 27834:10, 27851:6, 27852:19, 27876:13, 27877:17, 27884:4, 27885:20, 27891:21, 27900:2, 27908:7, 27915:16, 27932:18, 27935:5, 27943:8, 27944:5, 27952:17, 27956:25, 27960:23, 27963:1, 27964:12, 27977:8, 27979:7, 27986:6, 27993:16, 28009:6, 28017:16, 28024:7, 28043:24</p> <p><b>Read</b> [1] - 27832:23</p>	<p><b>reading</b> [9] - 27850:8, 27879:9, 27887:15, 27943:6, 27971:10, 27974:24, 28000:19, 28017:25, 28070:13</p> <p><b>readings</b> [2] - 27805:12, 27954:2</p> <p><b>readjusting</b> [1] - 27987:23</p> <p><b>real</b> [8] - 27980:5, 27985:15, 27989:18, 28019:21, 28056:16, 28070:18, 28072:5, 28072:19</p> <p><b>reality</b> [4] - 27815:1, 27852:24, 27947:9, 28020:24</p> <p><b>realization</b> [1] - 27865:2</p> <p><b>realize</b> [5] - 27918:15, 28016:9, 28019:11, 28069:6, 28073:10</p> <p><b>realized</b> [1] - 27814:7</p> <p><b>really</b> [54] - 27803:23, 27807:21, 27810:9, 27810:18, 27811:10, 27817:22, 27825:1, 27825:3, 27825:19, 27833:22, 27836:7, 27837:9, 27844:16, 27846:8, 27846:9, 27846:23, 27847:9, 27848:3, 27848:4, 27854:16, 27857:5, 27857:9, 27858:8, 27859:12, 27864:15, 27884:8, 27887:5, 27888:19, 27888:20, 27898:18, 27910:17, 27927:17, 27933:7, 27937:23, 27958:4, 27979:11, 27979:22, 27983:6, 27985:24, 27992:4, 27993:1, 27993:14, 28002:12, 28013:15, 28013:19, 28016:20, 28045:7, 28045:20, 28057:16, 28067:20, 28068:20, 28068:21, 28071:4, 28073:9</p> <p><b>reason</b> [19] - 27797:11, 27812:23, 27845:3, 27874:20, 27878:14, 27879:7, 27879:17, 27880:2, 27959:8, 27976:16, 27983:10, 27995:18, 28015:16, 28035:6, 28052:14, 28056:3, 28056:23, 28062:25, 28069:18</p>	<p><b>reasonable</b> [15] - 27813:5, 27817:3, 27833:6, 27835:17, 27855:20, 27888:13, 27889:5, 27889:18, 27947:7, 27959:16, 27968:17, 27974:24, 28020:16, 28021:20, 28072:10</p> <p><b>reasonably</b> [2] - 27950:15, 28043:13</p> <p><b>reasoning</b> [1] - 27893:17</p> <p><b>reasons</b> [12] - 27806:2, 27830:16, 27836:22, 27839:3, 27936:4, 27936:5, 27942:3, 27943:11, 27958:21, 27964:19, 28015:20, 28036:18</p> <p><b>recalled</b> [1] - 28026:7</p> <p><b>recalling</b> [2] - 28009:22, 28055:16</p> <p><b>recant</b> [3] - 27884:13, 27887:7, 27936:4</p> <p><b>recantation</b> [38] - 27880:10, 27894:6, 27894:11, 27911:20, 27913:15, 27919:8, 27919:14, 27921:11, 27922:17, 27923:22, 27924:12, 27928:18, 27932:12, 27933:11, 27933:12, 27933:16, 27933:17, 27933:24, 27936:5, 27936:6, 27936:11, 27938:23, 27939:13, 27942:2, 27943:3, 27943:4, 27947:25, 27948:20, 27949:4, 27960:22, 27961:1, 27963:4, 27964:17, 27964:24, 27965:15, 27965:18, 27965:21, 27994:11</p> <p><b>recantations</b> [2] - 27887:25, 27965:4</p> <p><b>recanted</b> [3] - 27884:24, 27903:23, 27904:5</p> <p><b>recanting</b> [2] - 27932:14, 28045:18</p> <p><b>receipt</b> [2] - 27845:20, 27914:22</p> <p><b>receive</b> [4] - 27891:17, 27985:13, 28002:25, 28072:23</p> <p><b>received</b> [15] - 27802:14, 27843:6, 27856:7, 27856:9,</p>
<b>R</b>				
<p><b>radio</b> [3] - 27864:22, 27876:10, 28055:20</p> <p><b>rage</b> [3] - 27892:6, 28067:4, 28067:7</p> <p><b>raise</b> [3] - 27833:6, 27952:21</p> <p><b>raised</b> [3] - 27816:8, 27945:23, 27952:23</p>	<p><b>raising</b> [1] - 27834:20</p> <p><b>Ramada</b> [1] - 27793:16</p> <p><b>ran</b> [2] - 27964:2, 27988:15</p> <p><b>range</b> [2] - 27800:25, 27894:10</p> <p><b>ranges</b> [1] - 27890:13</p> <p><b>rape</b> [9] - 27890:5, 27969:10, 27970:4, 27970:9, 28007:11, 28028:5, 28029:4, 28029:18, 28060:24</p> <p><b>rape/murder</b> [1] - 27943:16</p> <p><b>raped</b> [4] - 27876:25, 27878:8, 27942:23, 27943:22</p> <p><b>rapes</b> [15] - 27855:13, 27900:12, 27989:22, 28027:14, 28028:16, 28029:9, 28029:17, 28030:10, 28030:17, 28040:25, 28046:9, 28061:14, 28061:21, 28072:13</p> <p><b>rapist</b> [4] - 28002:5, 28061:9, 28062:16, 28066:7</p> <p><b>rapists</b> [5] - 27967:1, 28010:15, 28061:25, 28065:23, 28066:13</p> <p><b>rare</b> [1] - 28069:12</p> <p><b>rarely</b> [1] - 28012:14</p> <p><b>Rasmussen</b> [1] - 27940:13</p> <p><b>rate</b> [1] - 27803:12</p> <p><b>rates</b> [1] - 27803:8</p> <p><b>rather</b> [9] - 27799:10, 27852:6, 27891:3, 27964:24, 27969:12, 27970:8, 27989:23, 28002:4, 28064:5</p> <p><b>rationalization</b> [1] - 27965:3</p> <p><b>Rcmp</b> [15] - 27795:9, 27950:20, 27986:14, 27986:18, 28011:3, 28025:8, 28034:15, 28034:19, 28034:23, 28041:7, 28050:19, 28051:1, 28054:15, 28054:23, 28055:13</p> <p><b>re</b> [25] - 27798:15, 27799:10, 27823:19, 27836:6, 27837:5, 27846:20, 27847:6, 27847:7, 27848:11, 27854:12, 27854:15, 27878:17, 27888:20, 27889:12, 27938:5,</p>	<p>27948:5, 27948:8, 27966:4, 27967:12, 27973:19, 27975:3, 28052:20, 28052:25, 28057:1, 28057:7</p> <p><b>Re</b> [1] - 27977:5</p> <p><b>re-enactment</b> [5] - 27846:20, 27847:6, 27847:7, 27854:12, 27854:15</p> <p><b>re-interview</b> [1] - 28052:20</p> <p><b>Reopen</b> [1] - 27977:5</p> <p><b>re-open</b> [3] - 27948:8, 27973:19, 27975:3</p> <p><b>re-opened</b> [6] - 27836:6, 27878:17, 27888:20, 27889:12, 28052:25, 28057:7</p> <p><b>re-opening</b> [8] - 27798:15, 27799:10, 27837:5, 27938:5, 27948:5, 27966:4, 27967:12, 28057:1</p> <p><b>re-read</b> [1] - 27823:19</p> <p><b>reach</b> [2] - 27857:15, 27874:18</p> <p><b>reached</b> [4] - 27878:11, 27891:8, 28018:20, 28055:25</p> <p><b>reaching</b> [4] - 27837:3, 27857:2, 27879:22, 28038:21</p> <p><b>reacted</b> [1] - 27916:18</p> <p><b>reaction</b> [4] - 27865:4, 27917:15, 27985:20</p> <p><b>read</b> [45] - 27798:25, 27799:3, 27799:8, 27810:4, 27815:15, 27815:21, 27816:18, 27823:10, 27823:19, 27826:23, 27828:5, 27830:13, 27831:5, 27833:19, 27833:21, 27834:7, 27834:10, 27851:6, 27852:19, 27876:13, 27877:17, 27884:4, 27885:20, 27891:21, 27900:2, 27908:7, 27915:16, 27932:18, 27935:5, 27943:8, 27944:5, 27952:17, 27956:25, 27960:23, 27963:1, 27964:12, 27977:8, 27979:7, 27986:6, 27993:16, 28009:6, 28017:16, 28024:7, 28043:24</p> <p><b>Read</b> [1] - 27832:23</p>	<p><b>reading</b> [9] - 27850:8, 27879:9, 27887:15, 27943:6, 27971:10, 27974:24, 28000:19, 28017:25, 28070:13</p> <p><b>readings</b> [2] - 27805:12, 27954:2</p> <p><b>readjusting</b> [1] - 27987:23</p> <p><b>real</b> [8] - 27980:5, 27985:15, 27989:18, 28019:21, 28056:16, 28070:18, 28072:5, 28072:19</p> <p><b>reality</b> [4] - 27815:1, 27852:24, 27947:9, 28020:24</p> <p><b>realization</b> [1] - 27865:2</p> <p><b>realize</b> [5] - 27918:15, 28016:9, 28019:11, 28069:6, 28073:10</p> <p><b>realized</b> [1] - 27814:7</p> <p><b>really</b> [54] - 27803:23, 27807:21, 27810:9, 27810:18, 27811:10, 27817:22, 27825:1, 27825:3, 27825:19, 27833:22, 27836:7, 27837:9, 27844:16, 27846:8, 27846:9, 27846:23, 27847:9, 27848:3, 27848:4, 27854:16, 27857:5, 27857:9, 27858:8, 27859:12, 27864:15, 27884:8, 27887:5, 27888:19, 27888:20, 27898:18, 27910:17, 27927:17, 27933:7, 27937:23, 27958:4, 27979:11, 27979:22, 27983:6, 27985:24, 27992:4, 27993:1, 27993:14, 28002:12, 28013:15, 28013:19, 28016:20, 28045:7, 28045:20, 28057:16, 28067:20, 28068:20, 28068:21, 28071:4, 28073:9</p> <p><b>reason</b> [19] - 27797:11, 27812:23, 27845:3, 27874:20, 27878:14, 27879:7, 27879:17, 27880:2, 27959:8, 27976:16, 27983:10, 27995:18, 28015:16, 28035:6, 28052:14, 28056:3, 28056:23, 28062:25, 28069:18</p>	<p><b>reasonable</b> [15] - 27813:5, 27817:3, 27833:6, 27835:17, 27855:20, 27888:13, 27889:5, 27889:18, 27947:7, 27959:16, 27968:17, 27974:24, 28020:16, 28021:20, 28072:10</p> <p><b>reasonably</b> [2] - 27950:15, 28043:13</p> <p><b>reasoning</b> [1] - 27893:17</p> <p><b>reasons</b> [12] - 27806:2, 27830:16, 27836:22, 27839:3, 27936:4, 27936:5, 27942:3, 27943:11, 27958:21, 27964:19, 28015:20, 28036:18</p> <p><b>recalled</b> [1] - 28026:7</p> <p><b>recalling</b> [2] - 28009:22, 28055:16</p> <p><b>recant</b> [3] - 27884:13, 27887:7, 27936:4</p> <p><b>recantation</b> [38] - 27880:10, 27894:6, 27894:11, 27911:20, 27913:15, 27919:8, 27919:14, 27921:11, 27922:17, 27923:22, 27924:12, 27928:18, 27932:12, 27933:11, 27933:12, 27933:16, 27933:17, 27933:24, 27936:5, 27936:6, 27936:11, 27938:23, 27939:13, 27942:2, 27943:3, 27943:4, 27947:25, 27948:20, 27949:4, 27960:22, 27961:1, 27963:4, 27964:17, 27964:24, 27965:15, 27965:18, 27965:21, 27994:11</p> <p><b>recantations</b> [2] - 27887:25, 27965:4</p> <p><b>recanted</b> [3] - 27884:24, 27903:23, 27904:5</p> <p><b>recanting</b> [2] - 27932:14, 28045:18</p> <p><b>receipt</b> [2] - 27845:20, 27914:22</p> <p><b>receive</b> [4] - 27891:17, 27985:13, 28002:25, 28072:23</p> <p><b>received</b> [15] - 27802:14, 27843:6, 27856:7, 27856:9,</p>



<p>27856:11, 27865:22, 27876:4, 27891:13, 27964:23, 27979:5, 27979:6, 28009:14, 28033:22, 28035:16, 28070:17</p> <p><b>receiving</b> [2] - 27815:5, 27932:24</p> <p><b>Recently</b> [1] - 28054:13</p> <p><b>recently</b> [3] - 27903:23, 27908:4, 28003:3</p> <p><b>recognition</b> [1] - 27967:15</p> <p><b>recognize</b> [8] - 27813:25, 27843:10, 27862:16, 27867:13, 27912:12, 27937:25, 28045:19, 28072:17</p> <p><b>recognized</b> [7] - 27806:23, 27808:25, 27809:2, 27919:2, 27942:10, 27942:11, 27969:15</p> <p><b>recognizing</b> [2] - 27933:1, 28045:11</p> <p><b>recollection</b> [44] - 27810:16, 27838:13, 27846:17, 27851:8, 27858:11, 27872:22, 27872:23, 27873:8, 27874:1, 27875:18, 27875:21, 27877:15, 27883:23, 27885:16, 27894:18, 27909:2, 27909:23, 27910:1, 27914:21, 27915:3, 27920:6, 27983:13, 27996:12, 27996:13, 27996:14, 27996:16, 28009:2, 28009:24, 28014:7, 28026:24, 28027:8, 28031:11, 28032:19, 28032:24, 28033:5, 28036:22, 28037:3, 28037:25, 28038:14, 28045:23, 28051:4, 28058:15, 28060:14, 28071:2</p> <p><b>recommend</b> [1] - 27973:1</p> <p><b>reconcile</b> [2] - 27930:23, 27933:5</p> <p><b>reconstruct</b> [1] - 27886:4</p> <p><b>reconstructed</b> [1] - 27879:11</p> <p><b>Reconvened</b> [4] - 27797:2, 27866:24, 27936:22, 27991:13</p> <p><b>record</b> [1] - 27931:1</p>	<p><b>recorded</b> [6] - 27912:18, 27913:1, 27913:2, 27913:5, 27913:10, 28044:25</p> <p><b>recording</b> [1] - 27851:2</p> <p><b>records</b> [6] - 27868:19, 28047:14, 28048:3, 28048:8, 28048:10, 28048:14</p> <p><b>recreation</b> [1] - 27901:25</p> <p><b>red</b> [3] - 27854:18, 27933:14, 27992:5</p> <p><b>red-herring</b> [2] - 27933:14, 27992:5</p> <p><b>redirect</b> [1] - 28003:23</p> <p><b>reenact</b> [1] - 27992:14</p> <p><b>reenactment</b> [5] - 27984:23, 27985:2, 27992:3, 27992:11, 27992:22</p> <p><b>refer</b> [19] - 27834:17, 27838:11, 27848:19, 27862:5, 27865:24, 27882:11, 27882:21, 27884:1, 27915:12, 27935:22, 27948:13, 27978:20, 27987:11, 27989:7, 27990:19, 28005:2, 28012:17, 28054:2, 28055:18</p> <p><b>reference</b> [29] - 27802:25, 27828:22, 27840:23, 27842:9, 27849:8, 27862:5, 27865:25, 27869:17, 27878:23, 27880:7, 27894:21, 27899:12, 27907:5, 27911:12, 27917:2, 27948:17, 27966:13, 27977:1, 27984:18, 27985:11, 27986:22, 27990:2, 28011:22, 28033:19, 28033:23, 28034:1, 28039:2, 28048:16, 28048:21</p> <p><b>referenced</b> [4] - 27862:14, 27864:5, 27877:10, 28011:24</p> <p><b>references</b> [1] - 27875:16</p> <p><b>referred</b> [36] - 27808:13, 27819:11, 27829:10, 27829:13, 27835:16, 27843:14, 27851:21, 27852:13, 27862:22, 27867:9, 27875:13, 27891:15, 27892:15, 27892:23,</p>	<p>27895:14, 27897:10, 27898:15, 27904:17, 27908:18, 27917:23, 27938:2, 27938:7, 27939:21, 27951:12, 27953:1, 27982:13, 27984:16, 27989:4, 28013:15, 28015:1, 28023:18, 28027:8, 28046:23, 28048:9, 28055:14, 28071:21</p> <p><b>referring</b> [29] - 27823:4, 27823:24, 27826:7, 27829:5, 27829:18, 27829:21, 27842:10, 27850:9, 27853:6, 27880:7, 27882:12, 27891:19, 27895:25, 27898:6, 27898:13, 27898:21, 27937:4, 27941:10, 27944:21, 27946:2, 27966:8, 27970:25, 27977:3, 27982:16, 27988:20, 27988:23, 28009:10, 28024:19, 28024:20</p> <p><b>refers</b> [3] - 27918:23, 27987:24, 27988:6</p> <p><b>reflect</b> [1] - 27975:4</p> <p><b>reflected</b> [1] - 27989:10</p> <p><b>reflection</b> [1] - 28045:17</p> <p><b>Reform</b> [1] - 27971:5</p> <p><b>reform</b> [1] - 28018:13</p> <p><b>refresh</b> [6] - 27867:21, 27868:10, 27868:23, 27873:15, 27892:20, 28051:14</p> <p><b>refreshes</b> [4] - 27875:25, 27978:23, 28034:5, 28051:11</p> <p><b>refreshing</b> [2] - 27981:24, 28049:10</p> <p><b>refused</b> [4] - 27848:5, 28038:19, 28038:24, 28059:22</p> <p><b>refuses</b> [1] - 28062:18</p> <p><b>regard</b> [3] - 28011:13, 28037:9, 28037:10</p> <p><b>regarded</b> [1] - 27811:9</p> <p><b>regarding</b> [14] - 27891:1, 27905:9, 27923:9, 27959:11, 27968:23, 27984:5, 28026:5, 28026:18, 28027:22, 28037:5, 28037:15, 28043:5, 28046:16, 28047:12</p> <p><b>regardless</b> [1] - 27958:2</p>	<p><b>Regina</b> [14] - 27886:13, 27887:5, 27891:3, 27915:21, 27916:1, 27916:20, 27932:21, 27950:1, 27963:20, 27969:12, 27970:6, 27970:7, 28001:20, 28002:4</p> <p><b>regularly</b> [1] - 27826:15</p> <p><b>rehabilitate</b> [1] - 28063:1</p> <p><b>rejected</b> [1] - 27961:8</p> <p><b>rejecting</b> [1] - 27883:20</p> <p><b>rejection</b> [1] - 27888:4</p> <p><b>relate</b> [6] - 27804:22, 27804:23, 27894:14, 27917:9, 27985:24, 28001:19</p> <p><b>related</b> [18] - 27809:11, 27809:12, 27869:18, 27875:19, 27880:15, 27892:10, 27932:9, 27939:12, 27953:18, 27964:21, 27988:1, 28027:17, 28040:25, 28042:3, 28048:18, 28051:7, 28054:19, 28067:10</p> <p><b>relates</b> [1] - 27835:8</p> <p><b>relating</b> [17] - 27821:1, 27842:15, 27842:19, 27843:23, 27844:4, 27863:11, 27865:9, 27871:18, 27897:24, 27903:1, 27904:18, 27916:19, 27917:3, 27972:14, 27984:22, 27994:10, 28044:2</p> <p><b>relation</b> [31] - 27801:11, 27829:12, 27845:9, 27849:22, 27859:2, 27859:13, 27859:23, 27863:25, 27865:12, 27870:6, 27870:15, 27885:14, 27903:3, 27930:19, 27933:14, 27942:5, 27956:22, 27958:13, 27966:7, 27971:1, 27990:11, 27990:13, 27995:12, 28001:4, 28001:7, 28014:9, 28025:18, 28028:4, 28046:25, 28048:11, 28070:25</p> <p><b>relationship</b> [2] - 27844:15, 27999:25</p> <p><b>relatively</b> [4] - 27818:16, 27844:18, 27862:3, 28015:23</p> <p><b>release</b> [9] - 27866:13,</p>	<p>27970:13, 27978:5, 27978:7, 27978:14, 27982:1, 27988:1, 27988:4, 28057:11</p> <p><b>released</b> [13] - 27847:18, 27847:20, 27907:20, 27937:3, 27969:20, 27976:22, 27976:24, 27987:12, 28003:8, 28061:12, 28061:17, 28062:19, 28063:3</p> <p><b>relevance</b> [4] - 27846:22, 27853:12, 27992:24, 28044:7</p> <p><b>relevant</b> [10] - 27798:14, 27799:14, 27838:5, 27842:1, 27844:19, 27869:6, 27872:10, 27956:13, 27957:3, 28019:19</p> <p><b>reliability</b> [4] - 27933:16, 27948:21, 28044:13, 28045:21</p> <p><b>reliable</b> [4] - 27852:23, 27941:17, 27942:1, 27994:15</p> <p><b>relied</b> [3] - 27946:17, 27966:3, 27996:15</p> <p><b>relief</b> [1] - 27835:10</p> <p><b>reluctant</b> [1] - 28011:8</p> <p><b>rely</b> [3] - 27940:11, 27953:3, 28025:1</p> <p><b>relying</b> [6] - 27868:21, 27879:20, 27880:21, 27938:19, 28025:17, 28053:6</p> <p><b>remain</b> [6] - 27870:9, 27969:6, 27970:2, 27970:11, 27970:19, 27989:24</p> <p><b>remains</b> [1] - 27842:6</p> <p><b>Remand</b> [7] - 27868:16, 27869:1, 27869:5, 28048:3, 28048:17, 28048:20, 28048:23</p> <p><b>remarks</b> [1] - 27799:15</p> <p><b>remedy</b> [1] - 27835:2</p> <p><b>remember</b> [44] - 27840:8, 27840:17, 27847:8, 27849:9, 27850:5, 27855:8, 27858:14, 27858:23, 27860:12, 27861:20, 27868:20, 27872:24, 27873:24, 27876:2, 27876:3, 27876:5, 27902:18, 27916:11, 27919:5, 27928:23, 27975:10, 27979:13,</p>
--	--	--	--	---





<p>27996:22, 28024:23, 28033:4, 28035:7, 28035:9, 28036:2, 28036:12, 28037:19, 28038:8, 28039:2, 28039:4, 28039:9, 28040:18, 28041:22, 28046:21, 28047:19, 28051:18, 28062:5, 28070:9, 28071:5, 28072:4</p> <p><b>remembered</b> [1] - 28017:23</p> <p><b>remembers</b> [2] - 27849:11, 28035:8</p> <p><b>remove</b> [1] - 27963:12</p> <p><b>repeated</b> [2] - 27900:17, 28000:10</p> <p><b>repeatedly</b> [2] - 28052:18, 28064:14</p> <p><b>replaced</b> [1] - 27972:23</p> <p><b>Report</b> [7] - 27980:6, 27980:8, 27980:10, 27980:12, 27980:14, 27980:25, 27981:13</p> <p><b>report</b> [112] - 27797:8, 27797:16, 27797:20, 27798:1, 27798:11, 27798:13, 27804:8, 27804:13, 27804:17, 27812:12, 27816:8, 27823:21, 27828:15, 27837:12, 27847:20, 27872:19, 27872:21, 27872:25, 27873:2, 27874:12, 27874:14, 27874:16, 27874:20, 27874:22, 27880:5, 27883:13, 27902:25, 27906:15, 27906:18, 27914:3, 27937:3, 27937:8, 27937:10, 27937:20, 27937:24, 27937:25, 27938:4, 27938:7, 27938:19, 27939:3, 27939:6, 27939:15, 27945:2, 27945:6, 27946:3, 27946:5, 27948:13, 27951:18, 27966:17, 27966:18, 27966:21, 27968:5, 27969:1, 27969:20, 27970:14, 27971:3, 27971:4, 27974:2, 27974:5, 27974:8, 27975:16, 27975:19, 27975:20, 27976:2, 27976:4, 27976:10, 27976:21, 27976:23, 27977:5,</p>	<p>27977:21, 27978:5, 27978:10, 27978:13, 27983:3, 27984:6, 27984:13, 27985:5, 27991:25, 27993:24, 27994:7, 27997:11, 27997:12, 27997:16, 27998:6, 28013:14, 28014:13, 28016:18, 28017:6, 28017:16, 28018:19, 28018:22, 28019:2, 28021:10, 28023:6, 28039:17, 28041:3, 28042:12, 28042:13, 28042:15, 28050:24, 28051:17, 28053:10, 28054:4, 28056:10, 28057:23, 28063:25, 28066:12, 28068:1, 28071:12</p> <p><b>reporter</b> [5] - 27877:22, 27881:1, 27894:5, 28054:8, 28058:6</p> <p><b>Reporter</b> [3] - 27812:18, 28074:14, 28074:20</p> <p><b>Reporters</b> [2] - 27794:9, 28074:3</p> <p><b>reporters</b> [1] - 27814:3</p> <p><b>Reporters</b> [1] - 28074:1</p> <p><b>reporting</b> [1] - 27808:3</p> <p><b>reports</b> [18] - 27841:5, 27842:3, 27843:1, 27872:2, 27872:7, 27872:11, 27890:13, 27948:18, 28019:13, 28019:18, 28022:16, 28041:20, 28041:23, 28042:6, 28050:8, 28050:21, 28050:22, 28051:10</p> <p><b>representation</b> [2] - 27937:18, 27983:12</p> <p><b>representations</b> [2] - 27976:6, 28044:16</p> <p><b>representing</b> [1] - 27997:21</p> <p><b>request</b> [11] - 27843:5, 27843:14, 27844:7, 27845:1, 27845:11, 27873:23, 27950:19, 27969:25, 28040:20, 28041:1, 28042:2</p> <p><b>requesting</b> [2] - 27843:19, 28041:12</p> <p><b>requests</b> [4] - 27841:23, 27891:16, 28039:23, 28042:17</p> <p><b>required</b> [3] - 27844:25, 27973:4, 27975:9</p> <p><b>reread</b> [2] - 27935:13,</p>	<p>28024:8</p> <p><b>Research</b> [4] - 27804:18, 28004:19, 28005:10, 28013:14</p> <p><b>research</b> [9] - 27816:21, 27818:8, 27819:25, 27822:18, 27825:22, 27826:1, 28005:13, 28008:1, 28008:16</p> <p><b>researchers</b> [2] - 27818:21, 27876:20</p> <p><b>resentment</b> [1] - 27908:1</p> <p><b>residence</b> [2] - 28006:18, 28007:5</p> <p><b>resident</b> [2] - 27800:5, 28004:16</p> <p><b>residential</b> [1] - 28028:18</p> <p><b>resist</b> [1] - 28065:7</p> <p><b>resolved</b> [2] - 27828:10, 27861:21</p> <p><b>resources</b> [2] - 27913:24, 28057:15</p> <p><b>respect</b> [47] - 27833:23, 27838:12, 27847:6, 27849:24, 27851:21, 27857:22, 27863:17, 27868:14, 27868:23, 27869:9, 27871:3, 27889:7, 27890:19, 27902:9, 27902:11, 27903:7, 27919:9, 27922:2, 27922:15, 27930:15, 27938:12, 27949:10, 27949:19, 27953:4, 27959:21, 27971:18, 27984:1, 27985:14, 27991:24, 27992:10, 27993:20, 27995:8, 27995:19, 27997:10, 27997:15, 27998:22, 27998:25, 27999:3, 28000:6, 28001:8, 28008:24, 28038:3, 28038:6, 28038:18, 28039:1, 28052:3, 28069:3</p> <p><b>respecting</b> [12] - 27871:22, 27876:8, 27894:3, 27906:13, 27938:18, 27940:17, 27963:4, 27972:9, 27984:12, 27990:4, 28005:1, 28049:22</p> <p><b>respects</b> [3] - 27945:13, 27994:8, 28019:9</p> <p><b>respond</b> [2] - 27801:25, 27919:12</p>	<p><b>responded</b> [2] - 27864:18, 27922:6</p> <p><b>response</b> [16] - 27845:12, 27845:13, 27855:16, 27856:7, 27856:10, 27860:15, 27865:23, 27891:18, 27894:7, 27953:12, 27969:17, 27998:13, 28007:24, 28055:4, 28073:7</p> <p><b>responses</b> [3] - 27846:12, 27857:9, 27971:24</p> <p><b>responsibilities</b> [1] - 28037:6</p> <p><b>responsibility</b> [11] - 27847:1, 27847:12, 27849:24, 27855:10, 27858:20, 27939:10, 27939:11, 27971:20, 28021:2, 28031:9, 28060:1</p> <p><b>responsible</b> [13] - 27831:24, 27836:12, 27837:11, 27863:21, 27865:3, 27880:19, 27943:9, 27943:10, 27943:11, 27958:17, 27962:3, 27967:25, 28021:21</p> <p><b>rest</b> [1] - 28042:4</p> <p><b>restating</b> [1] - 28059:9</p> <p><b>result</b> [4] - 27900:4, 27995:25, 27997:3, 27999:24</p> <p><b>results</b> [2] - 27998:1, 27998:4</p> <p><b>Retired</b> [1] - 27795:14</p> <p><b>retired</b> [1] - 27991:20</p> <p><b>retraction</b> [1] - 27961:12</p> <p><b>retiral</b> [2] - 27828:3, 27833:2</p> <p><b>retrospect</b> [8] - 27814:7, 27832:6, 27844:14, 27854:1, 27924:8, 27946:17, 27956:12, 27957:2</p> <p><b>retry</b> [3] - 27833:5, 27835:1, 27947:19</p> <p><b>Return</b> [1] - 28064:6</p> <p><b>review</b> [59] - 27804:8, 27811:19, 27816:17, 27824:8, 27828:24, 27833:15, 27833:17, 27834:19, 27835:22, 27835:23, 27836:2, 27836:3, 27837:20, 27837:21, 27838:20,</p>	<p>27842:9, 27852:12, 27853:13, 27871:23, 27876:18, 27880:16, 27883:17, 27890:16, 27895:6, 27895:10, 27914:19, 27922:22, 27938:7, 27949:4, 27972:24, 27973:1, 27973:3, 27973:11, 27974:2, 27984:17, 27998:15, 28005:8, 28009:18, 28010:6, 28011:15, 28011:17, 28013:25, 28014:2, 28014:3, 28015:4, 28015:6, 28018:9, 28019:5, 28022:7, 28022:15, 28023:23, 28031:10, 28050:12, 28051:19, 28054:11, 28057:5, 28057:18, 28057:20, 28068:23</p> <p><b>reviewed</b> [15] - 27798:8, 27815:13, 27834:6, 27842:12, 27909:20, 27910:25, 27944:11, 27946:22, 27947:17, 27958:24, 28014:24, 28015:15, 28023:16, 28055:19, 28060:20</p> <p><b>reviewing</b> [6] - 27805:7, 27816:24, 27944:14, 27995:1, 28008:25, 28029:22</p> <p><b>revised</b> [1] - 27957:14</p> <p><b>revision</b> [1] - 28003:12</p> <p><b>revisited</b> [1] - 27989:2</p> <p><b>Revisited</b> [1] - 27948:25</p> <p><b>rewrote</b> [1] - 27988:13</p> <p><b>Rick</b> [1] - 27795:7</p> <p><b>right-hand</b> [1] - 27912:15</p> <p><b>risk</b> [1] - 28061:17</p> <p><b>risking</b> [1] - 27923:25</p> <p><b>risks</b> [2] - 27893:25, 27964:20</p> <p><b>Riversdale</b> [2] - 27967:3, 28072:14</p> <p><b>road</b> [1] - 27827:24</p> <p><b>robbery</b> [2] - 28007:12, 28065:12</p> <p><b>Robert</b> [1] - 27795:5</p> <p><b>Rochelle</b> [1] - 27795:9</p> <p><b>role</b> [16] - 27827:17, 27832:3, 27851:23, 27851:25, 27864:9, 27871:10, 27883:8, 27883:9, 27883:10, 27907:6, 27923:4,</p>
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27923:12, 27923:13, 28018:9, 28059:24, 28071:23 <b>Ron</b> <sup>[99]</sup> - 27810:12, 27810:15, 27812:1, 27838:6, 27841:8, 27848:20, 27849:2, 27850:16, 27852:12, 27875:1, 27875:3, 27879:1, 27880:10, 27884:13, 27884:19, 27884:22, 27886:6, 27886:11, 27886:19, 27886:21, 27887:3, 27887:7, 27893:20, 27894:6, 27894:10, 27894:13, 27898:17, 27904:24, 27910:21, 27911:8, 27912:1, 27913:18, 27913:21, 27914:5, 27915:6, 27916:2, 27916:6, 27917:23, 27918:5, 27920:15, 27920:19, 27920:24, 27921:4, 27922:7, 27922:10, 27924:5, 27924:10, 27924:17, 27925:7, 27928:10, 27931:1, 27934:1, 27936:12, 27937:1, 27938:24, 27940:16, 27943:20, 27947:25, 27948:19, 27949:4, 27958:11, 27960:22, 27961:1, 27962:17, 27963:6, 27963:21, 27964:10, 27964:16, 27965:15, 27965:16, 27966:12, 27972:2, 27977:25, 27979:17, 27982:7, 27982:10, 27984:23, 27994:11, 27995:8, 27995:20, 27996:4, 27997:19, 27997:21, 28022:21, 28022:24, 28026:14, 28056:18 <b>Rorts</b> <sup>[1]</sup> - 27921:25 <b>room</b> <sup>[2]</sup> - 27942:20, 27992:11 <b>Rossmo</b> <sup>[91]</sup> - 27796:6, 27797:7, 27797:15, 27798:1, 27798:25, 27799:7, 27799:18, 27804:6, 27805:9, 27806:13, 27807:6, 27816:14, 27816:22, 27828:12, 27828:13, 27829:15, 27843:6, 27848:6, 27848:22,	27849:2, 27849:6, 27858:14, 27865:20, 27878:2, 27881:13, 27882:4, 27890:10, 27892:8, 27892:25, 27893:4, 27897:6, 27897:15, 27898:25, 27899:2, 27908:15, 27910:17, 27911:21, 27915:6, 27915:18, 27920:21, 27921:1, 27921:6, 27921:22, 27922:19, 27922:24, 27926:11, 27926:19, 27926:24, 27927:13, 27927:19, 27932:19, 27939:8, 27939:9, 27967:20, 27984:21, 27987:15, 27988:9, 28004:5, 28004:6, 28004:9, 28004:11, 28005:3, 28010:22, 28012:22, 28014:20, 28015:4, 28015:8, 28015:13, 28024:16, 28029:13, 28033:24, 28034:3, 28047:3, 28054:9, 28054:13, 28056:6, 28058:16, 28061:19, 28062:2, 28062:4, 28064:13, 28064:17, 28064:24, 28065:22, 28066:8, 28067:7, 28071:14, 28071:19 <b>Rossmds</b> <sup>[5]</sup> - 27850:16, 27867:11, 27867:15, 27868:8, 27938:3 <b>Rothmo</b> <sup>[2]</sup> - 27881:5, 28058:10 <b>rough</b> <sup>[1]</sup> - 28047:12 <b>roughly</b> <sup>[2]</sup> - 27891:25, 28066:22 <b>routed</b> <sup>[2]</sup> - 28039:23, 28042:18 <b>Royal</b> <sup>[2]</sup> - 27972:21, 28007:14 <b>Rpr</b> <sup>[4]</sup> - 27794:10, 28074:2, 28074:18, 28074:19 <b>run</b> <sup>[1]</sup> - 27988:13 <b>rush</b> <sup>[1]</sup> - 27972:16	<b>salient</b> <sup>[3]</sup> - 27887:8, 27941:6, 27941:7 <b>saliva</b> <sup>[1]</sup> - 27950:9 <b>sample</b> <sup>[12]</sup> - 27873:5, 27950:16, 27950:17, 27950:18, 27951:2, 27951:19, 27952:20, 27953:7, 27953:23, 27954:11, 27954:17, 27955:7 <b>samples</b> <sup>[1]</sup> - 27950:9 <b>Sandra</b> <sup>[1]</sup> - 27794:5 <b>Sask</b> <sup>[1]</sup> - 27841:20 <b>Saskatchewan</b> <sup>[17]</sup> - 27793:17, 27795:4, 27843:21, 27869:10, 27871:18, 27871:22, 27989:15, 28000:15, 28041:25, 28042:5, 28042:22, 28047:22, 28049:1, 28049:13, 28050:3, 28074:4 <b>Saskatoon</b> <sup>[88]</sup> - 27793:17, 27795:7, 27806:7, 27817:7, 27821:21, 27831:11, 27831:15, 27832:9, 27838:21, 27839:3, 27839:5, 27839:13, 27839:24, 27840:13, 27840:24, 27844:2, 27844:15, 27855:3, 27855:13, 27858:1, 27858:12, 27862:13, 27862:20, 27862:24, 27863:3, 27865:10, 27870:8, 27875:13, 27876:8, 27876:24, 27878:3, 27879:11, 27881:3, 27881:7, 27881:15, 27885:17, 27886:14, 27887:5, 27890:25, 27891:3, 27893:5, 27905:10, 27905:24, 27915:22, 27916:20, 27916:25, 27917:20, 27932:22, 27942:10, 27950:7, 27967:4, 27969:6, 27969:10, 27969:13, 27970:8, 27989:22, 27995:11, 28001:21, 28002:4, 28015:20, 28017:5, 28018:5, 28020:5, 28023:13, 28027:7, 28027:11, 28027:23, 28027:25, 28030:17, 28037:9, 28039:18, 28040:12, 28041:11, 28044:3,	28054:14, 28054:23, 28055:13, 28055:22, 28056:11, 28056:14, 28058:3, 28058:8, 28058:12, 28059:21, 28060:5, 28063:4, 28066:3, 28072:14 <b>satisfactory</b> <sup>[1]</sup> - 27913:22 <b>satisfied</b> <sup>[1]</sup> - 27834:14 <b>Saturday</b> <sup>[3]</sup> - 27988:9, 28013:12, 28013:18 <b>saw</b> <sup>[19]</sup> - 27814:11, 27849:13, 27850:3, 27858:25, 27931:8, 27932:20, 27933:14, 27934:1, 27934:3, 27941:11, 27941:17, 27942:17, 27966:15, 27986:3, 28013:9, 28015:16, 28017:23, 28035:19, 28052:14 <b>say...to</b> <sup>[1]</sup> - 27934:17 <b>scared</b> <sup>[2]</sup> - 27930:9, 28069:19 <b>Scenario</b> <sup>[1]</sup> - 27966:19 <b>scenario</b> <sup>[3]</sup> - 27966:23, 28021:7, 28069:22 <b>scenarios</b> <sup>[2]</sup> - 28068:25, 28069:24 <b>scene</b> <sup>[4]</sup> - 27839:12, 27839:16, 27873:6, 28029:9 <b>scenes</b> <sup>[1]</sup> - 27955:1 <b>schedule</b> <sup>[2]</sup> - 27839:15, 27862:25 <b>schedules</b> <sup>[1]</sup> - 28023:12 <b>school</b> <sup>[1]</sup> - 27831:1 <b>School</b> <sup>[5]</sup> - 27800:10, 27802:17, 27802:19, 27802:23, 27805:10 <b>science</b> <sup>[1]</sup> - 27951:22 <b>scientifically</b> <sup>[1]</sup> - 27950:22 <b>scope</b> <sup>[1]</sup> - 27797:12 <b>Scotland</b> <sup>[1]</sup> - 28007:16 <b>screen</b> <sup>[2]</sup> - 27802:6, 27997:13 <b>scribble</b> <sup>[1]</sup> - 27987:9 <b>scrum</b> <sup>[1]</sup> - 27814:3 <b>second</b> <sup>[18]</sup> - 27812:16, 27816:19, 27824:8, 27829:11, 27829:22, 27829:25, 27830:1, 27877:13, 27878:15, 27879:7, 27879:17, 27880:2, 27926:13, 27984:15, 28030:7, 28056:4, 28056:24,	28057:20 <b>secondary</b> <sup>[2]</sup> - 28065:13, 28069:16 <b>secondly</b> <sup>[2]</sup> - 27844:1, 27994:10 <b>seconds</b> <sup>[1]</sup> - 27812:15 <b>secreter</b> <sup>[1]</sup> - 27872:16 <b>secretor</b> <sup>[7]</sup> - 27859:20, 27903:7, 27950:6, 27950:11, 27950:14, 27959:23, 27959:24 <b>section</b> <sup>[14]</sup> - 27842:21, 27884:4, 27928:22, 27947:20, 27965:14, 27967:14, 27968:4, 27971:3, 27971:4, 27971:9, 27971:10, 27971:16, 28023:2 <b>Section</b> <sup>[28]</sup> - 27798:5, 27808:7, 27825:13, 27833:18, 27834:1, 27834:11, 27837:13, 27841:6, 27842:15, 27874:2, 27913:13, 27946:10, 27946:18, 27946:20, 27946:25, 27947:20, 27948:9, 27948:15, 27966:4, 27971:5, 27971:12, 27972:9, 27972:23, 27984:15, 27989:2, 28001:7, 28006:12, 28018:12 <b>Security</b> <sup>[1]</sup> - 27794:11 <b>security</b> <sup>[1]</sup> - 28008:3 <b>see</b> <sup>[83]</sup> - 27802:14, 27803:25, 27804:11, 27808:5, 27813:13, 27815:10, 27821:1, 27824:21, 27825:10, 27828:1, 27828:10, 27846:12, 27846:23, 27848:24, 27854:24, 27862:9, 27866:4, 27866:20, 27868:22, 27869:16, 27873:2, 27875:8, 27875:14, 27876:10, 27882:5, 27885:1, 27885:4, 27885:12, 27886:12, 27888:20, 27889:15, 27896:5, 27900:16, 27910:23, 27911:11, 27911:24, 27913:7, 27915:17, 27917:18, 27919:24, 27921:21, 27926:25, 27927:11, 27932:19, 27933:20, 27935:7, 27940:5, 27941:13, 27943:13,
	<b>S</b>			
	<b>sake</b> <sup>[3]</sup> - 27862:5, 27865:25, 28033:19 <b>sale</b> <sup>[1]</sup> - 27896:2			



<p>27948:24, 27960:20, 27974:18, 27975:18, 27976:4, 27977:4, 27978:22, 27979:18, 27986:22, 27987:8, 27989:13, 27991:1, 27994:24, 28000:9, 28005:8, 28009:25, 28011:18, 28011:21, 28015:17, 28025:12, 28028:23, 28030:20, 28031:12, 28034:1, 28039:6, 28041:16, 28051:11, 28054:3, 28060:22, 28062:6, 28065:3, 28071:22, 28072:21, 28072:24 <b>See</b> [1] - 27802:24 <b>seeded</b> [1] - 28064:15 <b>seeing</b> [4] - 27813:19, 27851:8, 28042:14, 28051:9 <b>seem</b> [8] - 27855:20, 27858:2, 27974:23, 27975:14, 27976:21, 27996:23, 28015:24, 28017:21 <b>segment</b> [1] - 27907:1 <b>segmented</b> [1] - 27880:22 <b>selected</b> [3] - 27803:15, 28046:4, 28046:10 <b>self</b> [3] - 27929:1, 27931:2, 28063:1 <b>self-rehabilitate</b> [1] - 28063:1 <b>selfishness</b> [1] - 27983:11 <b>selling</b> [1] - 27963:18 <b>semen</b> [10] - 27859:19, 27873:5, 27950:4, 27950:15, 27952:14, 27952:20, 27953:14, 27958:9, 27960:6, 28043:6 <b>semi</b> [1] - 28060:2 <b>semi-street</b> [1] - 28060:2 <b>seminal</b> [5] - 27950:3, 27951:19, 27952:1, 27953:18, 27956:2 <b>send</b> [3] - 27914:4, 27914:5, 27949:24 <b>sending</b> [1] - 27929:2 <b>seniority</b> [1] - 27858:21 <b>sense</b> [45] - 27811:11, 27813:15, 27813:21, 27816:11, 27822:5, 27825:4, 27827:5, 27833:20, 27833:22,</p>	<p>27838:13, 27840:22, 27841:2, 27846:10, 27852:23, 27856:12, 27856:24, 27857:14, 27860:5, 27860:15, 27860:22, 27864:15, 27874:16, 27881:19, 27897:13, 27897:23, 27898:18, 27906:7, 27919:21, 27943:13, 27944:1, 27946:12, 27948:6, 27954:4, 27954:13, 27954:23, 27954:25, 27955:4, 27972:16, 27975:11, 28019:5, 28024:1, 28032:3, 28038:20, 28039:9 <b>sensical</b> [1] - 27955:3 <b>Sent</b> [1] - 27914:25 <b>sent</b> [9] - 27844:8, 27855:11, 27890:6, 27914:24, 27950:18, 27981:5, 27983:19, 28025:9, 28060:24 <b>sentence</b> [5] - 27897:4, 27897:12, 27971:6, 28059:5, 28060:22 <b>sentencing</b> [1] - 27801:18 <b>sentiments</b> [2] - 27825:7, 28000:21 <b>separate</b> [3] - 27817:12, 27974:7, 28013:24 <b>separately</b> [2] - 27844:17, 27936:15 <b>September</b> [28] - 27810:13, 27838:17, 27839:7, 27840:25, 27862:15, 27875:6, 27875:12, 27876:12, 27878:22, 27878:25, 27880:14, 27882:20, 27883:12, 27889:25, 27894:16, 27906:25, 27907:3, 27909:22, 28027:11, 28032:17, 28033:24, 28033:25, 28034:4, 28034:8, 28053:22, 28055:21, 28056:9, 28063:21 <b>sequence</b> [1] - 27949:19 <b>Serge</b> [1] - 27795:6 <b>Sergeant</b> [1] - 28027:18 <b>serial</b> [13] - 27805:12, 27967:1, 28002:5, 28007:10, 28010:15, 28010:20, 28012:8, 28018:15, 28061:8,</p>	<p>28062:16, 28065:23, 28066:7, 28066:13 <b>Serial</b> [1] - 28010:13 <b>series</b> [4] - 27900:12, 27932:16, 28045:10, 28069:9 <b>serious</b> [3] - 27854:22, 27923:21, 27962:4 <b>seriously</b> [2] - 27893:21, 27894:7 <b>serologist</b> [1] - 27950:20 <b>serve</b> [2] - 27894:21, 28028:10 <b>served</b> [1] - 27817:5 <b>Service</b> [2] - 27795:7, 27858:12 <b>services</b> [1] - 28007:10 <b>serving</b> [4] - 27807:11, 27900:12, 28016:19, 28054:21 <b>session</b> [1] - 27961:19 <b>session</b> [1] - 27961:16 <b>sessions</b> [1] - 27823:18 <b>set</b> [5] - 27913:21, 27945:18, 27974:14, 28016:10, 28046:16 <b>sets</b> [1] - 27837:7 <b>setting</b> [3] - 27817:22, 27940:25 <b>seven</b> [1] - 27950:3 <b>Sever</b> [1] - 27972:1 <b>several</b> [5] - 27828:8, 27830:16, 27856:18, 27943:25, 28045:11 <b>sex</b> [6] - 27805:2, 27866:13, 27968:13, 28065:9, 28065:10, 28069:14 <b>sexual</b> [10] - 27839:19, 27866:10, 27870:19, 27939:10, 28030:16, 28050:6, 28052:18, 28052:20, 28064:19, 28065:13 <b>sexuality</b> [1] - 27804:25 <b>sexually</b> [1] - 28015:22 <b>share</b> [1] - 27907:6 <b>shared</b> [1] - 28056:5 <b>shed</b> [2] - 27983:7, 28045:6 <b>shedding</b> [3] - 27951:9, 27954:15, 27959:12 <b>sheet</b> [5] - 27909:19, 28025:8, 28041:7, 28050:19, 28051:1 <b>shifted</b> [1] - 27832:15 <b>Shirley</b> [4] - 27882:23, 27884:21, 27885:20, 27907:1</p>	<p><b>shit</b> [5] - 27927:18, 27927:20, 27927:22, 27927:24, 27928:3 <b>shoot</b> [1] - 27826:5 <b>shopping</b> [1] - 27832:18 <b>short</b> [10] - 27812:12, 27824:15, 27827:4, 27865:19, 27918:10, 27987:10, 28015:23, 28015:25, 28062:17, 28070:20 <b>Short</b> [3] - 28039:3, 28060:11, 28060:19 <b>shortage</b> [1] - 28068:7 <b>shorthand</b> [1] - 28074:5 <b>shortly</b> [9] - 27852:12, 27875:5, 27882:21, 27889:24, 27909:14, 27912:7, 28039:20, 28051:5, 28057:8 <b>shot</b> [2] - 27848:14, 27893:4 <b>Show</b> [1] - 27882:23 <b>show</b> [11] - 27812:10, 27812:14, 27883:9, 27888:9, 27907:1, 27976:7, 27982:13, 27988:18, 28015:18, 28017:23, 28061:3 <b>showed</b> [2] - 27829:18, 28035:10 <b>shows</b> [1] - 27909:19 <b>shut</b> [1] - 28054:16 <b>sick</b> [1] - 27992:17 <b>side</b> [2] - 27811:7, 27848:4 <b>sift</b> [1] - 27975:9 <b>sign</b> [1] - 27942:21 <b>signature</b> [1] - 27843:10 <b>significance</b> [3] - 27917:12, 27997:1, 28037:2 <b>significant</b> [12] - 27830:23, 27832:7, 27833:14, 27847:10, 27857:6, 27864:12, 27894:3, 27931:19, 27960:16, 27994:5, 28031:17, 28031:18 <b>silent</b> [3] - 27881:7, 27881:15, 28058:12 <b>similar</b> [9] - 27836:4, 27841:24, 27855:18, 27856:9, 27913:8, 27965:7, 28029:2, 28064:2, 28070:9 <b>similarities</b> [2] - 27968:9, 28030:14</p>	<p><b>similarly</b> [6] - 27802:22, 27834:16, 27882:7, 27921:24, 28057:6, 28057:24 <b>Simon</b> [10] - 27800:13, 27812:18, 27816:20, 27822:14, 27828:7, 27862:14, 27877:24, 27987:14, 28009:15, 28061:6 <b>simplest</b> [1] - 28045:1 <b>simply</b> [9] - 27837:1, 27847:16, 27872:6, 27874:6, 27889:15, 27954:4, 27963:6, 27975:5, 28002:22 <b>sincere</b> [1] - 27928:13 <b>single</b> [3] - 27842:8, 27847:16, 27951:25 <b>sink</b> [1] - 27928:25 <b>sister</b> [1] - 28063:5 <b>sit</b> [1] - 28004:7 <b>sites</b> [4] - 27839:19, 27839:21, 28018:5, 28019:19 <b>sitting</b> [2] - 27793:15, 27942:20 <b>situation</b> [1] - 27963:13 <b>six</b> [6] - 27961:16, 27988:12, 27996:2, 27996:5, 27996:17, 27997:4 <b>sketches</b> [1] - 27963:21 <b>skill</b> [1] - 28074:6 <b>skip</b> [1] - 27956:7 <b>skipping</b> [2] - 27949:17, 27964:14 <b>slashed</b> [1] - 28064:14 <b>slaying</b> [1] - 27977:6 <b>slides</b> [1] - 28024:11 <b>slight</b> [1] - 27960:14 <b>slightly</b> [1] - 27868:8 <b>slowly</b> [1] - 27939:14 <b>small</b> [3] - 27842:20, 27940:7, 28062:20 <b>snatchers</b> [2] - 28065:6, 28065:7 <b>snatching</b> [3] - 27943:15, 28064:10, 28065:1 <b>snatchings</b> [1] - 28065:2 <b>snow</b> [1] - 27949:23 <b>social</b> [3] - 27830:20, 27831:17, 28020:3 <b>socially</b> [2] - 27830:21, 27962:6 <b>Society</b> [2] - 27801:22, 27826:17 <b>society</b> [3] - 27801:25,</p>
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<p>27803:11, 27832:17  <b>sociologists</b> [1] - 27800:21  <b>software</b> [1] - 28011:1  <b>sole</b> [2] - 27959:6, 28051:20  <b>solely</b> [1] - 27981:12  <b>solicitor/client</b> [1] - 28049:20  <b>Someone</b> [1] - 28064:21  <b>someone</b> [13] - 27818:5, 27833:5, 27851:8, 27965:17, 27965:24, 27966:1, 28011:11, 28032:1, 28039:7, 28042:13, 28064:20, 28069:2  <b>sometime</b> [2] - 27905:18, 27988:15  <b>sometimes</b> [2] - 27966:5, 28058:22  <b>somewhat</b> [5] - 27826:18, 27827:9, 27844:11, 28018:17, 28072:22  <b>somewhere</b> [3] - 27828:25, 27863:5, 27961:20  <b>son</b> [1] - 27817:12  <b>son's</b> [1] - 27819:1  <b>soon</b> [1] - 27848:14  <b>Sorry</b> [4] - 27991:18, 28012:12, 28018:23, 28047:7  <b>sorry</b> [23] - 27802:5, 27840:9, 27885:10, 27895:5, 27899:1, 27900:1, 27907:17, 27920:7, 27954:21, 27959:13, 27987:9, 27996:8, 28000:24, 28024:16, 28027:5, 28039:21, 28040:18, 28048:2, 28055:17, 28056:7, 28060:10, 28062:18, 28065:20  <b>sort</b> [14] - 27809:23, 27831:11, 27841:19, 27848:10, 27849:23, 27856:5, 27860:9, 27908:25, 27924:6, 27960:6, 27966:1, 28032:5, 28051:5, 28062:18  <b>sorts</b> [2] - 27798:2, 27939:16  <b>sought</b> [2] - 27818:12, 27825:20  <b>sound</b> [3] - 27813:17, 27839:7, 27988:21</p>	<p><b>sounds</b> [4] - 27814:25, 27839:9, 27982:3, 27988:22  <b>source</b> [14] - 27798:21, 27811:15, 27850:13, 27862:7, 27903:15, 27994:6, 28022:12, 28033:20, 28034:10, 28034:19, 28035:1, 28051:21, 28052:7, 28052:10  <b>sources</b> [1] - 27841:1  <b>space</b> [1] - 28028:12  <b>spatial</b> [1] - 28005:19  <b>speaking</b> [17] - 27810:6, 27819:23, 27833:24, 27853:4, 27854:6, 27884:5, 27888:9, 27959:20, 27977:11, 27977:17, 27977:19, 27979:16, 27995:13, 28029:13, 28043:10, 28054:6, 28056:23  <b>speaks</b> [2] - 27833:13, 27965:19  <b>specific</b> [18] - 27809:14, 27810:7, 27821:24, 27821:25, 27825:8, 27846:16, 27858:24, 27902:15, 27905:19, 27915:16, 27932:18, 27935:22, 27937:11, 27972:25, 28001:24, 28022:11, 28039:2, 28039:22  <b>specifically</b> [17] - 27801:20, 27801:23, 27806:13, 27830:2, 27917:7, 27917:9, 27974:4, 27988:2, 27989:7, 27990:19, 27996:22, 27998:24, 28040:13, 28045:22, 28046:18, 28054:18, 28054:20  <b>specifics</b> [25] - 27808:11, 27838:1, 27841:13, 27842:2, 27850:6, 27857:22, 27858:4, 27858:15, 27858:22, 27859:5, 27859:6, 27864:20, 27867:7, 27869:12, 27876:3, 27876:5, 27881:24, 27908:21, 27919:10, 27919:23, 27972:15, 27978:9, 27982:6, 27990:7, 28038:3</p>	<p><b>spend</b> [1] - 27823:17  <b>spending</b> [1] - 27813:6  <b>spent</b> [8] - 27876:23, 27878:3, 27919:21, 27964:3, 27992:23, 27997:2, 28013:5, 28027:23  <b>spiced</b> [2] - 27895:22, 27895:23  <b>splitting</b> [1] - 27920:6  <b>spoken</b> [4] - 27859:15, 27867:2, 27951:21, 28050:11  <b>spot</b> [1] - 27838:10  <b>spread</b> [1] - 28008:18  <b>spring</b> [1] - 27977:13  <b>Squad</b> [1] - 28008:2  <b>squarely</b> [2] - 27835:14, 27892:9  <b>St</b> [1] - 28026:20  <b>stab</b> [1] - 27851:8  <b>stabbing</b> [7] - 27849:14, 27850:3, 27851:12, 27851:14, 27942:13, 27992:15, 28035:19  <b>Staff</b> [2] - 27794:1, 27794:7  <b>stage</b> [2] - 27817:22, 27906:23  <b>stain</b> [3] - 27953:14, 27953:18, 27956:3  <b>stains</b> [1] - 27952:1  <b>standard</b> [17] - 27833:16, 27833:22, 27833:25, 27835:22, 27835:23, 27836:2, 27836:4, 27836:13, 27837:2, 27837:7, 27889:9, 27889:11, 27974:21, 27974:23, 28019:5, 28019:7, 28057:3  <b>standards</b> [3] - 27832:19, 28020:20, 28058:19  <b>standing</b> [1] - 28039:22  <b>stands</b> [1] - 27924:12  <b>Star</b> [1] - 27907:5  <b>Starphoenix</b> [1] - 28027:25  <b>start</b> [6] - 27855:2, 27871:7, 27922:12, 27939:15, 28014:18, 28037:8  <b>started</b> [9] - 27814:21, 27839:10, 27848:10, 27848:14, 27932:7, 27942:13, 27990:13, 27993:22, 28018:8</p>	<p><b>starting</b> [16] - 27818:19, 27819:22, 27900:2, 27920:9, 27925:20, 27926:23, 27927:7, 27955:22, 27960:24, 27981:2, 27987:11, 28006:2, 28018:6, 28056:20, 28061:10, 28065:20  <b>starts</b> [2] - 27938:13, 28045:5  <b>state</b> [28] - 27797:11, 27799:19, 27837:1, 27842:4, 27849:10, 27878:2, 27878:13, 27885:7, 27901:2, 27905:13, 27905:23, 27918:15, 27923:2, 27925:1, 27931:22, 27934:10, 27949:9, 27949:18, 27952:15, 27953:16, 27955:23, 27956:8, 27957:1, 27963:5, 27964:13, 27964:15, 28014:20, 28029:25  <b>State</b> [2] - 28004:20, 28005:11  <b>statement</b> [35] - 27811:25, 27852:3, 27854:7, 27854:8, 27860:13, 27864:2, 27864:5, 27879:6, 27886:8, 27886:11, 27905:9, 27911:4, 27918:14, 27922:8, 27930:22, 27930:24, 27931:13, 27931:14, 27933:3, 27933:18, 27944:4, 27961:18, 27962:14, 27965:1, 27965:22, 27993:15, 27996:1, 27996:5, 27996:18, 28036:3, 28037:15, 28037:16, 28043:18, 28044:4, 28067:22  <b>statements</b> [14] - 27854:8, 27880:20, 27901:9, 27919:24, 27946:16, 27962:10, 27964:21, 27994:22, 28022:24, 28041:7, 28043:16, 28045:10, 28051:9, 28064:5  <b>states</b> [30] - 27816:19, 27818:4, 27821:5, 27822:13, 27823:11, 27825:24, 27877:18, 27881:1, 27882:4,</p>	<p>27885:20, 27890:3, 27890:9, 27891:22, 27896:6, 27898:24, 27901:24, 27906:21, 27907:17, 27922:24, 27939:3, 27977:9, 27982:16, 27987:12, 28007:20, 28011:7, 28056:2, 28058:6, 28061:4, 28064:7, 28066:19  <b>States</b> [3] - 28011:2, 28011:5, 28052:19  <b>stating</b> [6] - 27860:24, 27881:13, 27886:25, 27889:6, 27901:12, 27957:24  <b>station</b> [1] - 27863:24  <b>status</b> [3] - 27859:20, 27872:16, 27903:7  <b>stems</b> [1] - 28058:22  <b>step</b> [4] - 27810:2, 27942:6, 28022:8, 28022:10  <b>steps</b> [2] - 28022:10, 28058:2  <b>Stettler</b> [1] - 28015:15  <b>stevelly</b> [1] - 27795:4  <b>Stewart</b> [2] - 27907:20, 27909:4  <b>stick</b> [4] - 28040:11, 28043:14, 28044:20, 28071:6  <b>sticking</b> [1] - 27908:20  <b>Sticking</b> [1] - 28039:18  <b>still</b> [22] - 27817:1, 27833:12, 27857:6, 27909:16, 27918:21, 27929:7, 27958:3, 27958:7, 27969:21, 27970:3, 27970:6, 27986:9, 28010:2, 28020:2, 28037:10, 28039:7, 28056:17, 28059:2, 28061:18, 28062:24, 28072:20  <b>Stony</b> [6] - 27818:8, 27818:14, 27821:13, 27846:5, 27877:8, 28025:5  <b>stop</b> [2] - 27893:4, 27985:1  <b>stopping</b> [1] - 28072:13  <b>story</b> [2] - 27931:24, 27932:14  <b>straight</b> [1] - 27818:6  <b>straightforward</b> [1] - 27939:20  <b>strange</b> [1] - 28072:22  <b>stranger</b> [1] - 28030:16</p>
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<p><b>Strayer</b> [2] - 27991:14, 27991:19</p> <p><b>stream</b> [1] - 27832:18</p> <p><b>Street</b> [2] - 28026:17, 28026:19</p> <p><b>street</b> [4] - 27963:22, 28028:25, 28060:2, 28061:23</p> <p><b>strength</b> [1] - 28045:20</p> <p><b>strengths</b> [1] - 27997:7</p> <p><b>stress</b> [2] - 28026:23, 28051:19</p> <p><b>stressful</b> [1] - 27963:13</p> <p><b>stretch</b> [1] - 28068:19</p> <p><b>strike</b> [1] - 27814:12</p> <p><b>strikes</b> [3] - 27844:13, 27849:20, 27985:23</p> <p><b>strong</b> [3] - 27819:1, 27876:21, 28037:5</p> <p><b>stronger</b> [2] - 27947:24, 28066:18</p> <p><b>struck</b> [2] - 27918:24, 27919:10</p> <p><b>stuck</b> [6] - 27839:21, 27918:3, 27918:6, 27918:10, 27918:23, 27920:5</p> <p><b>student</b> [5] - 27805:10, 27828:12, 27878:1, 27987:15, 28010:4</p> <p><b>studied</b> [1] - 28069:11</p> <p><b>study</b> [13] - 27800:20, 27811:8, 27812:5, 27822:18, 27883:11, 27890:7, 27891:24, 27893:3, 28007:4, 28010:16, 28061:1, 28061:6, 28066:21</p> <p><b>study's</b> [3] - 27892:7, 28061:14, 28067:5</p> <p><b>studying</b> [3] - 28005:16, 28006:1, 28071:15</p> <p><b>stuff</b> [3] - 27926:16, 27962:25, 27981:8</p> <p><b>stuff...it</b> [1] - 27929:21</p> <p><b>stuff...it's</b> [1] - 27925:9</p> <p><b>style</b> [1] - 28002:14</p> <p><b>styles</b> [1] - 28010:14</p> <p><b>sub</b> [7] - 27896:5, 27906:20, 27948:15, 27948:24, 27960:24, 27966:19, 28005:9</p> <p><b>sub-heading</b> [7] - 27896:5, 27906:20, 27948:15, 27948:24, 27960:24, 27966:19, 28005:9</p> <p><b>subheading</b> [2] - 27905:22, 27939:23</p>	<p><b>subject</b> [5] - 27801:24, 27814:7, 27861:13, 27861:19, 27961:15</p> <p><b>submission</b> [1] - 27910:11</p> <p><b>submit</b> [1] - 27937:17</p> <p><b>submitted</b> [4] - 27797:20, 27969:25, 27988:14, 28042:2</p> <p><b>submitting</b> [1] - 27976:5</p> <p><b>subsequent</b> [5] - 27808:6, 27848:7, 27863:23, 27870:6, 27998:5</p> <p><b>Subsequent</b> [1] - 27998:7</p> <p><b>substance</b> [5] - 27898:10, 27953:3, 27953:21, 27974:3, 28033:15</p> <p><b>substantial</b> [1] - 27823:16</p> <p><b>successful</b> [5] - 27809:8, 27881:18, 28027:1, 28027:6, 28038:21</p> <p><b>suffered</b> [3] - 27932:13, 27964:25, 28047:24</p> <p><b>sufficient</b> [2] - 27880:1, 27948:4</p> <p><b>suggest</b> [8] - 27815:21, 27840:4, 27860:17, 27934:3, 27948:6, 27953:22, 28001:13, 28052:7</p> <p><b>suggested</b> [8] - 27839:20, 27860:3, 27860:16, 27869:8, 27901:19, 27940:17, 27992:13, 28001:3</p> <p><b>suggesting</b> [4] - 27896:24, 27948:4, 28034:5, 28052:4</p> <p><b>suggestion</b> [2] - 27851:6, 27953:2</p> <p><b>suggestions</b> [2] - 27806:20, 27919:12</p> <p><b>suggestive</b> [1] - 28029:10</p> <p><b>suggests</b> [3] - 28014:4, 28070:22, 28070:23</p> <p><b>sum</b> [1] - 27936:17</p> <p><b>summaries</b> [3] - 27816:6, 27904:7, 28051:21</p> <p><b>summarize</b> [3] - 27938:9, 27948:16, 28063:22</p> <p><b>summarizing</b> [1] -</p>	<p>27969:2</p> <p><b>summary</b> [10] - 27838:2, 27841:3, 27900:19, 27939:16, 27939:22, 27968:22, 28023:6, 28050:23, 28050:25, 28064:5</p> <p><b>summer</b> [4] - 27805:9, 27810:18, 27810:19, 28016:16</p> <p><b>Sun</b> [1] - 27828:2</p> <p><b>support</b> [7] - 27876:15, 27876:17, 27964:18, 27971:8, 28006:25, 28008:19, 28012:14</p> <p><b>Support</b> [1] - 27794:7</p> <p><b>supported</b> [1] - 28017:1</p> <p><b>supporter</b> [1] - 28058:18</p> <p><b>supportive</b> [1] - 27965:7</p> <p><b>suppose</b> [16] - 27801:7, 27801:16, 27803:16, 27805:2, 27845:6, 27889:8, 27898:16, 27928:23, 27955:1, 27955:3, 27974:6, 27975:1, 27975:12, 27985:24, 27995:4, 27997:7</p> <p><b>supposed</b> [3] - 27885:22, 27983:5, 28072:25</p> <p><b>supposing</b> [1] - 27836:22</p> <p><b>Supreme</b> [20] - 27797:23, 27833:12, 27833:21, 27837:7, 27937:17, 27945:18, 27974:7, 27974:11, 27974:14, 27975:6, 27976:6, 27984:4, 27984:16, 27985:21, 27985:25, 27986:12, 27989:1, 27989:12, 28001:9, 28057:21</p> <p><b>surgical</b> [1] - 27805:12</p> <p><b>surprise</b> [5] - 27918:17, 27930:12, 27994:19, 27999:1, 27999:2</p> <p><b>surprised</b> [7] - 27814:4, 27865:1, 27935:6, 27974:25, 27975:1, 27987:22, 28060:11</p> <p><b>surprising</b> [6] - 27814:13, 27847:3, 27887:12, 27911:25, 27996:23, 27997:17</p> <p><b>surrounding</b> [3] - 27820:7, 27982:1,</p>	<p>28020:3</p> <p><b>surveys</b> [1] - 27947:5</p> <p><b>survival</b> [1] - 27964:8</p> <p><b>suspect</b> [16] - 27831:12, 27837:15, 27880:11, 27882:16, 27930:8, 27939:2, 27942:3, 27948:19, 27959:21, 27960:12, 27967:9, 27968:9, 28006:25, 28020:18, 28063:9, 28064:1</p> <p><b>suspected</b> [1] - 27950:21</p> <p><b>suspicion</b> [2] - 27950:23, 27964:22</p> <p><b>suspensions</b> [1] - 27872:14</p> <p><b>Sweden</b> [1] - 28011:6</p> <p><b>Sworn</b> [2] - 27796:3, 27796:6</p> <p><b>sworn</b> [2] - 27799:24, 28004:6</p> <p><b>symbol</b> [1] - 27973:9</p> <p><b>system</b> [6] - 27822:17, 27824:22, 27825:11, 28011:2, 28037:12, 28039:11</p> <p><b>systematic</b> [1] - 27971:2</p>	<p><b>task</b> [4] - 27799:5, 27924:9, 27984:22, 28007:25</p> <p><b>tasks</b> [1] - 28027:10</p> <p><b>Tdr</b> [1] - 27795:5</p> <p><b>teaching</b> [1] - 28005:22</p> <p><b>teachings</b> [1] - 27808:13</p> <p><b>team</b> [2] - 27986:10, 28007:24</p> <p><b>technically</b> [1] - 27959:20</p> <p><b>Technician</b> [1] - 27794:12</p> <p><b>technique</b> [1] - 28012:9</p> <p><b>techniques</b> [1] - 27848:1</p> <p><b>teenage</b> [1] - 27912:2</p> <p><b>teenager</b> [2] - 27968:12, 28060:2</p> <p><b>teenagers</b> [3] - 27942:1, 27943:21, 27962:7</p> <p><b>telephone</b> [7] - 27848:9, 27861:16, 27862:9, 27867:6, 27899:10, 27899:13, 28026:16</p> <p><b>telephoned</b> [2] - 28033:2, 28033:3</p> <p><b>television</b> [3] - 27907:22, 28015:18, 28015:23</p> <p><b>Temperance</b> [1] - 28020:4</p> <p><b>temporally</b> [1] - 27967:6</p> <p><b>ten</b> [2] - 27807:12, 27963:19</p> <p><b>tenable</b> [1] - 27923:24</p> <p><b>tend</b> [4] - 27858:6, 27858:7, 27931:3, 28028:17</p> <p><b>tended</b> [2] - 27887:25, 27956:20</p> <p><b>tendered</b> [1] - 27949:12</p> <p><b>tends</b> [2] - 27956:1, 28041:3</p> <p><b>tenor</b> [1] - 27924:1</p> <p><b>tense</b> [1] - 27910:9</p> <p><b>term</b> [2] - 27901:10, 28010:23</p> <p><b>terminated</b> [1] - 27999:25</p> <p><b>terms</b> [143] - 27801:13, 27807:18, 27811:15, 27811:19, 27813:19, 27813:25, 27816:4, 27819:12, 27824:8, 27829:7, 27831:3,</p>
<b>T</b>				
<p><b>table</b> [2] - 27945:14, 28018:16</p> <p><b>tactics</b> [1] - 27962:8</p> <p><b>tag</b> [1] - 27986:10</p> <p><b>tail</b> [3] - 28011:25, 28055:22, 28056:10</p> <p><b>Tallis</b> [6] - 27795:13, 27861:5, 27899:21, 27955:15, 28026:23, 28026:25</p> <p><b>tangent</b> [2] - 27901:6, 28040:19</p> <p><b>tape</b> [13] - 27797:24, 27797:25, 27850:20, 27850:24, 27913:1, 27913:2, 27913:5, 27979:1, 27979:2, 27996:9, 27996:14, 27997:6, 27997:8</p> <p><b>tape-recorded</b> [3] - 27913:1, 27913:2, 27913:5</p> <p><b>taped</b> [4] - 27907:1, 27995:22, 27996:4, 27996:18</p> <p><b>Target</b> [1] - 28010:12</p>				



27831:12, 27831:13, 27832:2, 27832:20, 27833:15, 27833:24, 27836:25, 27838:20, 27840:25, 27841:21, 27844:10, 27844:21, 27844:23, 27845:2, 27845:11, 27846:8, 27846:17, 27847:4, 27851:4, 27851:15, 27851:22, 27853:4, 27853:11, 27856:4, 27857:2, 27857:25, 27860:10, 27864:4, 27867:21, 27868:11, 27868:25, 27870:10, 27870:14, 27872:16, 27880:4, 27880:12, 27881:12, 27883:20, 27886:6, 27889:3, 27889:11, 27890:22, 27893:10, 27896:24, 27898:10, 27899:12, 27899:16, 27899:17, 27901:8, 27902:20, 27907:10, 27915:9, 27915:19, 27916:12, 27917:1, 27917:13, 27921:15, 27922:12, 27931:10, 27931:16, 27936:1, 27937:6, 27939:6, 27943:16, 27946:7, 27947:8, 27952:5, 27954:13, 27956:21, 27965:14, 27966:11, 27966:16, 27967:22, 27970:21, 27970:24, 27971:15, 27972:25, 27974:3, 27974:10, 27978:23, 27981:25, 27983:16, 27984:18, 27994:6, 27995:6, 27998:8, 27998:23, 28001:6, 28006:22, 28008:8, 28008:23, 28009:21, 28011:9, 28011:11, 28016:11, 28018:15, 28018:17, 28022:5, 28022:11, 28029:2, 28029:16, 28029:23, 28030:4, 28031:4, 28032:13, 28035:15, 28035:22, 28036:8, 28036:16, 28036:21, 28037:3, 28042:1, 28042:9, 28043:1, 28044:20, 28045:23, 28048:8, 28048:22, 28053:13, 28053:20, 28055:15, 28057:4,	28058:5, 28058:15, 28058:19, 28059:15, 28059:17, 28060:5, 28064:3, 28066:11, 28068:25 <b>test</b> [9] - 27874:15, 27887:11, 27945:17, 27974:13, 27974:14, 27974:19, 27998:18, 27998:25, 27999:9 <b>testified</b> [4] - 27856:4, 27924:25, 27952:12, 27953:6 <b>testifying</b> [2] - 27797:19, 27925:22 <b>testimony</b> [19] - 27800:3, 27886:7, 27887:2, 27887:9, 27895:7, 27903:24, 27919:3, 27940:21, 27941:16, 27941:23, 27961:10, 27984:23, 28004:14, 28009:21, 28012:3, 28012:5, 28015:12, 28026:5, 28045:18 <b>Testimony</b> [1] - 27793:14 <b>testing</b> [3] - 27961:8, 27961:19, 27997:19 <b>tests</b> [1] - 27998:1 <b>Tex</b> [1] - 27822:21 <b>Texas</b> [4] - 28004:16, 28004:20, 28005:11, 28014:21 <b>text</b> [1] - 27875:14 <b>that'd</b> [1] - 27899:8 <b>that's</b> [2] - 27979:20, 27979:25 <b>themselves</b> [1] - 28040:4 <b>then...how's</b> [1] - 27932:2 <b>theory</b> [9] - 27879:15, 27942:8, 27943:13, 27951:1, 27951:3, 27993:10, 28056:17, 28064:12, 28065:1 <b>therefore</b> [2] - 27859:19, 27927:4 <b>they've</b> [2] - 27878:11, 28055:25 <b>Thin</b> [2] - 27822:22, 27823:1 <b>thinking</b> [4] - 27873:24, 27889:8, 27947:12, 27995:11 <b>third</b> [5] - 27804:3, 27834:10, 28016:1, 28016:5, 28068:14	<b>this...you're</b> [1] - 27921:7 <b>thorough</b> [1] - 27874:25 <b>thoughts</b> [7] - 27864:22, 27874:1, 27910:12, 27922:20, 27931:15, 28029:23, 28067:25 <b>thousand</b> [1] - 28069:12 <b>threatening</b> [1] - 27832:13 <b>Three</b> [1] - 27910:18 <b>three</b> [13] - 27822:15, 27831:10, 27831:11, 27832:8, 27903:17, 27935:9, 27954:8, 27961:21, 27962:11, 27970:9, 28002:7, 28009:3, 28015:20 <b>throughout</b> [2] - 27812:4, 27814:16 <b>thrust</b> [1] - 27921:10 <b>tie</b> [2] - 27969:9, 27977:6 <b>time-consuming</b> [1] - 27809:1 <b>timeline</b> [1] - 28003:10 <b>timing</b> [7] - 27940:8, 27975:19, 27976:25, 27984:25, 28027:22, 28056:15, 28069:25 <b>title</b> [2] - 27809:14, 27895:17 <b>titled</b> [1] - 27876:10 <b>Titled</b> [1] - 27989:1 <b>today</b> [28] - 27799:19, 27800:3, 27803:10, 27825:9, 27832:13, 27853:8, 27859:25, 27860:18, 27895:7, 27906:6, 27909:17, 27929:8, 27929:15, 27941:14, 27941:19, 27943:17, 27944:7, 27967:24, 27970:2, 27970:11, 27981:6, 27984:8, 27986:8, 27989:25, 28017:17, 28018:3, 28035:21, 28071:8 <b>Toews</b> [1] - 27795:12 <b>together</b> [7] - 27800:24, 27926:2, 27936:9, 27995:24, 28020:14, 28023:11 <b>Tony</b> [1] - 27794:12 <b>took</b> [20] - 27839:5, 27840:6, 27840:15, 27855:2, 27865:1,	27868:20, 27915:25, 27940:18, 27942:13, 27995:22, 27999:1, 27999:5, 28024:11, 28028:5, 28028:6, 28037:16, 28047:17, 28047:19, 28050:15, 28071:1 <b>toot</b> [1] - 28011:9 <b>top</b> [21] - 27804:3, 27813:13, 27822:12, 27823:10, 27878:6, 27895:15, 27912:15, 27915:23, 27917:18, 27918:22, 27921:21, 27925:20, 27929:10, 27949:7, 27951:15, 28005:9, 28011:11, 28033:21, 28034:24, 28064:7 <b>topic</b> [2] - 28011:20, 28014:6 <b>Toronto</b> [3] - 27883:4, 27907:5, 28012:7 <b>total</b> [1] - 27966:8 <b>Totally</b> [1] - 27920:20 <b>totally</b> [3] - 27932:4, 27949:13, 28045:17 <b>touch</b> [11] - 27809:18, 27818:2, 27847:22, 27857:23, 27875:2, 27875:7, 27922:4, 27974:9, 28031:11, 28045:22, 28073:10 <b>touched</b> [4] - 27803:5, 27814:18, 27935:3, 27937:14 <b>touches</b> [2] - 27798:17, 27820:25 <b>touching</b> [1] - 28019:4 <b>tough</b> [2] - 27885:14, 27924:10 <b>towards</b> [6] - 27832:14, 27837:12, 27905:10, 27910:12, 28016:25, 28064:22 <b>town</b> [1] - 28066:4 <b>traced</b> [1] - 27917:7 <b>track</b> [1] - 27931:1 <b>traditionally</b> [1] - 27835:6 <b>traffic</b> [1] - 28026:18 <b>trail</b> [1] - 27838:24 <b>transcribe</b> [2] - 27912:23, 27913:1 <b>transcribed</b> [5] - 27913:3, 27913:5, 27913:10, 27914:4, 27979:7 <b>transcript</b> [71] -	27808:23, 27810:2, 27810:4, 27810:5, 27815:15, 27815:18, 27815:19, 27815:22, 27819:6, 27819:7, 27819:10, 27823:20, 27831:5, 27836:14, 27836:15, 27841:4, 27841:5, 27841:7, 27842:25, 27849:18, 27850:14, 27850:15, 27852:13, 27863:7, 27879:9, 27879:25, 27880:21, 27883:16, 27884:2, 27888:9, 27911:1, 27911:2, 27911:8, 27911:11, 27912:11, 27913:25, 27914:16, 27914:24, 27914:25, 27915:8, 27915:13, 27922:23, 27935:6, 27935:13, 27936:10, 27943:7, 27943:8, 27944:12, 27944:14, 27977:24, 27978:17, 27978:20, 27978:24, 27979:2, 27979:4, 27979:9, 27982:2, 27982:8, 27982:22, 27983:14, 27983:22, 27993:13, 28014:1, 28017:25, 28022:20, 28023:25, 28035:11, 28043:22, 28055:20, 28070:20 <b>Transcript</b> [2] - 27793:12, 27797:1 <b>transcription</b> [1] - 28074:5 <b>transcripts</b> [10] - 27798:8, 27811:17, 27824:2, 27837:21, 27879:10, 27899:3, 27994:3, 28022:7, 28024:9, 28041:18 <b>transpired</b> [1] - 27989:12 <b>transporting</b> [1] - 28029:7 <b>traumatic</b> [1] - 28052:17 <b>Trav</b> [3] - 27839:18, 27943:23, 28027:20 <b>Trava-leer</b> [3] - 27839:18, 27943:23, 28027:20 <b>travel</b> [1] - 27809:5 <b>travelling</b> [1] - 27903:21 <b>treated</b> [2] - 27929:16,
--	--	--	---	--



<p>27962:20  <b>treatment</b> [4] -  27866:11, 28044:23,  28062:19, 28062:25  <b>trees</b> [2] - 28028:19,  28028:20  <b>trial</b> [109] - 27798:4,  27799:7, 27799:9,  27808:23, 27810:1,  27810:3, 27810:4,  27811:16, 27815:15,  27815:18, 27819:5,  27819:7, 27819:10,  27824:17, 27824:20,  27827:7, 27827:13,  27831:5, 27834:13,  27834:15, 27835:10,  27836:14, 27836:15,  27837:16, 27841:4,  27842:25, 27850:6,  27852:4, 27852:6,  27852:8, 27859:13,  27860:2, 27861:4,  27872:9, 27872:15,  27878:10, 27879:9,  27879:15, 27879:24,  27880:6, 27880:16,  27880:21, 27884:17,  27886:7, 27889:22,  27893:18, 27899:4,  27902:1, 27903:25,  27905:15, 27905:16,  27905:17, 27911:1,  27918:12, 27919:4,  27923:1, 27925:1,  27926:13, 27929:12,  27935:6, 27935:13,  27936:10, 27938:14,  27938:16, 27939:12,  27939:22, 27939:24,  27940:2, 27940:5,  27943:6, 27943:8,  27944:3, 27945:10,  27945:12, 27945:22,  27946:8, 27947:23,  27948:3, 27948:22,  27949:12, 27951:1,  27951:9, 27952:12,  27953:4, 27953:22,  27955:6, 27955:18,  27956:20, 27959:16,  27960:7, 27961:10,  27964:11, 27964:21,  27965:22, 27983:10,  27984:23, 27993:5,  27993:16, 27993:18,  27994:4, 27998:2,  28014:1, 28017:25,  28023:25, 28024:9,  28030:6, 28064:9  <b>Trial</b> [2] - 27901:23,</p>	<p>27905:22  <b>tribunal</b> [1] - 27973:22  <b>tried</b> [27] - 27828:17,  27847:22, 27847:25,  27848:2, 27848:6,  27854:13, 27857:23,  27873:20, 27896:1,  27916:17, 27926:10,  27929:16, 27962:21,  28017:11, 28019:19,  28026:3, 28026:14,  28026:21, 28026:22,  28027:5, 28038:4,  28038:16, 28039:4,  28039:5, 28059:19,  28060:12  <b>trip</b> [6] - 27886:13,  27915:22, 27916:20,  27932:21, 27979:13,  27985:1  <b>troubling</b> [1] - 27852:25  <b>True</b> [1] - 27999:10  <b>true</b> [5] - 27825:5,  27892:17, 27947:20,  27979:25, 28074:5  <b>truly</b> [1] - 27939:7  <b>truncated</b> [1] - 28020:8  <b>trust</b> [1] - 27922:16  <b>trustworthiness</b> [2] -  27913:14, 27933:15  <b>truth</b> [5] - 27927:5,  28032:2, 28045:3,  28045:17, 28045:20  <b>truthful</b> [3] - 27852:8,  27965:4, 27965:21  <b>try</b> [15] - 27803:20,  27808:23, 27810:3,  27811:13, 27812:3,  27812:13, 27840:21,  27852:9, 27865:17,  27886:4, 27970:1,  27970:18, 28026:25,  28043:14, 28071:18  <b>trying</b> [20] - 27803:7,  27815:14, 27817:23,  27826:14, 27828:22,  27839:14, 27844:13,  27862:23, 27864:15,  27866:15, 27866:16,  27889:15, 27916:15,  27918:15, 27935:11,  28020:22, 28032:3,  28037:25, 28055:3,  28071:23  <b>Tuesday</b> [1] - 27793:21  <b>Turn</b> [6] - 27917:17,  27924:23, 27931:21,  27932:18, 27934:8,  27966:18  <b>turn</b> [43] - 27802:4,</p>	<p>27813:10, 27820:24,  27822:19, 27827:23,  27828:1, 27834:4,  27836:1, 27843:3,  27848:23, 27888:6,  27896:3, 27896:4,  27901:20, 27906:19,  27909:19, 27910:21,  27912:11, 27915:14,  27918:1, 27918:8,  27918:9, 27921:21,  27937:24, 27939:5,  27939:14, 27939:15,  27939:25, 27949:6,  27968:3, 27977:2,  27977:3, 27978:25,  27982:14, 27985:8,  27990:2, 28009:13,  28032:7, 28033:25,  28047:5, 28054:5,  28055:23, 28060:8  <b>turned</b> [4] - 27846:14,  27925:18, 27932:4,  27943:15  <b>turning</b> [2] - 27845:24,  27893:17  <b>turns</b> [2] - 27827:15,  28032:20  <b>Tv</b> [1] - 27929:19  <b>Tv..you've</b> [1] -  27962:23  <b>twenty</b> [1] - 27884:14  <b>two</b> [41] - 27797:6,  27797:25, 27801:16,  27812:15, 27818:7,  27826:5, 27827:25,  27839:20, 27843:19,  27844:10, 27869:10,  27869:13, 27870:7,  27870:8, 27875:21,  27907:21, 27911:25,  27920:8, 27928:8,  27928:25, 27931:8,  27942:1, 27949:22,  27950:1, 27950:9,  27963:13, 27967:2,  27970:5, 27992:12,  27994:8, 28015:12,  28015:21, 28025:24,  28030:3, 28030:24,  28039:12, 28046:9,  28060:10, 28062:10,  28066:1, 28068:25  <b>Two</b> [1] - 27876:20  <b>two-pronged</b> [1] -  28030:24  <b>twofold</b> [1] - 28006:22  <b>type</b> [18] - 27841:21,  27856:7, 27925:17,  27946:9, 27950:5,</p>	<p>27953:25, 27954:1,  27955:17, 28012:13,  28017:22, 28029:4,  28032:8, 28035:22,  28042:9, 28064:18,  28065:3, 28065:15,  28070:17  <b>types</b> [1] - 28042:17  <b>typical</b> [1] - 28065:23</p>	<p>27924:11, 27939:23,  27948:14, 27949:2,  27985:9, 27988:9,  28005:9, 28009:14,  28011:17, 28023:2  <b>Under</b> [1] - 27971:15  <b>undergraduate</b> [1] -  28005:23  <b>underneath</b> [3] -  27802:20, 27960:24,  28006:10  <b>understandings</b> [1] -  27915:10  <b>understood</b> [5] -  27869:21, 27870:25,  28040:7, 28049:24,  28050:14  <b>undertake</b> [2] -  27808:21, 27817:25  <b>undertaken</b> [1] -  28040:8  <b>undertook</b> [1] -  27984:22  <b>underway</b> [2] -  27810:10, 27810:19  <b>undue</b> [2] - 27946:15,  27961:9  <b>unearthed</b> [1] - 27897:7  <b>unexpected</b> [1] -  27962:2  <b>unexplained</b> [2] -  28002:2  <b>unfairly</b> [1] - 27831:20  <b>unfortunate</b> [2] -  27881:6, 28058:11  <b>Unfortunately</b> [1] -  27948:9  <b>unfortunately</b> [1] -  27881:14  <b>unilateral</b> [1] -  27908:25  <b>United</b> [3] - 28011:2,  28011:5, 28052:19  <b>university</b> [4] -  27800:9, 27809:3,  27812:21, 28046:15  <b>University</b> [10] -  27800:13, 27812:18,  27816:21, 27822:15,  27828:7, 27877:25,  27987:14, 28004:20,  28005:11, 28009:16  <b>unless</b> [2] - 27974:3,  27989:4  <b>Unless</b> [2] - 27899:10,  27991:6  <b>Unlike</b> [2] - 27820:10,  27893:3  <b>unlikely</b> [13] -  27827:11, 27827:12,</p>
---	---	--	--	--



27859:21, 27860:1, 27873:10, 27874:3, 27884:12, 27900:9, 27942:6, 27943:17, 27951:20, 27967:2, 28018:7 <b>unlimited</b> [1] - 27971:17 <b>unreliable</b> [2] - 27859:20, 27904:5 <b>unsavoury</b> [1] - 27835:12 <b>unsolved</b> [1] - 28030:11 <b>unsophisticated</b> [1] - 27962:6 <b>untoward</b> [1] - 27934:2 <b>unusual</b> [2] - 27854:3, 27917:6 <b>unwilling</b> [2] - 27969:7, 28039:11 <b>unwise</b> [1] - 28052:23 <b>up</b> [59] - 27799:2, 27803:9, 27806:6, 27808:14, 27813:22, 27818:3, 27823:9, 27824:2, 27826:16, 27862:24, 27868:16, 27869:1, 27869:4, 27879:21, 27892:8, 27895:4, 27895:22, 27895:23, 27897:21, 27906:2, 27906:10, 27907:17, 27913:21, 27920:6, 27924:12, 27926:13, 27927:25, 27931:23, 27932:17, 27936:24, 27936:25, 27938:10, 27939:17, 27954:5, 27979:15, 27981:3, 27994:23, 27997:13, 27997:16, 28005:4, 28014:6, 28015:21, 28016:10, 28021:9, 28033:3, 28033:18, 28043:12, 28048:2, 28048:17, 28048:20, 28048:23, 28049:15, 28052:15, 28053:20, 28059:14, 28065:4, 28067:7, 28068:4, 28069:1 <b>Up</b> [1] - 28005:7 <b>up'</b> [1] - 27907:11 <b>up-to-january-1970</b> [1] - 28059:8 <b>upload</b> [1] - 28014:23 <b>ups</b> [1] - 27932:16 <b>upset</b> [1] - 27864:25 <b>upside</b> [1] - 27932:5 <b>urethra</b> [3] - 27951:10,	27954:15, 27957:10 <b>urine</b> [2] - 27873:6, 27953:3 <b>useful</b> [1] - 28033:13 <b>users'</b> [1] - 27903:11  <b>V</b>  <b>V1</b> [2] - 28051:13 <b>V10</b> [2] - 28072:6, 28072:7 <b>V2</b> [3] - 28051:12, 28051:13 <b>V3</b> [3] - 28051:12 <b>V4</b> [6] - 27892:18, 28067:17, 28067:18, 28068:1 <b>V7</b> [2] - 28051:13 <b>V8</b> [2] - 28051:13, 28051:14 <b>Vaguely</b> [1] - 27919:1 <b>vaguely</b> [1] - 27876:2 <b>valid</b> [1] - 28067:20 <b>validity</b> [4] - 27911:19, 27923:22, 27940:20, 27941:12 <b>value</b> [5] - 27853:1, 27936:16, 27950:2, 27998:17, 28070:18 <b>Vancouver</b> [21] - 27800:6, 27807:8, 27807:11, 27816:22, 27821:6, 27828:2, 27828:13, 27830:10, 27830:11, 27872:1, 27881:6, 27888:17, 27951:16, 27977:15, 27988:4, 28006:4, 28006:6, 28008:10, 28024:25, 28054:23, 28058:11 <b>variance</b> [2] - 27919:3, 28044:24 <b>variety</b> [1] - 28011:6 <b>various</b> [9] - 27804:23, 27837:23, 27839:19, 27842:17, 27942:3, 27969:17, 28022:18, 28026:6, 28054:22 <b>vary</b> [1] - 27951:7 <b>varying</b> [1] - 27919:24 <b>vast</b> [1] - 27823:12 <b>vegetation</b> [2] - 28028:20 <b>vehicles</b> [1] - 28046:14 <b>vent</b> [1] - 28067:9 <b>venues</b> [1] - 27822:8 <b>verdict</b> [2] - 27836:19 <b>version</b> [6] - 27803:3,	27804:13, 27917:19, 27921:15, 27960:4 <b>versions</b> [1] - 27917:21 <b>versus</b> [3] - 28012:6, 28016:7, 28018:21 <b>viability</b> [2] - 28016:7, 28056:16 <b>vial</b> [1] - 27956:5 <b>vials</b> [1] - 27950:1 <b>Vic</b> [1] - 27795:12 <b>vice</b> [1] - 28007:25 <b>vicious</b> [2] - 27954:18, 28062:1 <b>victim</b> [14] - 27892:3, 27892:14, 27892:22, 27953:24, 27954:12, 27954:19, 28028:12, 28029:5, 28029:7, 28052:21, 28065:8, 28067:1, 28067:22, 28069:20 <b>victimized</b> [2] - 28072:8, 28072:17 <b>victims</b> [26] - 27868:4, 27868:21, 27870:19, 27870:20, 27870:23, 27871:4, 27891:4, 27969:10, 27970:9, 28002:7, 28019:15, 28023:8, 28046:5, 28046:6, 28046:17, 28047:20, 28050:7, 28051:15, 28052:1, 28052:11, 28052:18, 28052:25, 28053:5, 28053:8, 28065:22, 28072:19 <b>Victims</b> [1] - 28028:24 <b>victims'</b> [3] - 28029:4, 28051:6, 28051:24 <b>video</b> [11] - 27797:24, 27797:25, 27813:25, 27814:19, 27815:8, 27829:18, 27884:3, 27888:8, 27984:22, 27985:2, 28022:19 <b>view</b> [33] - 27810:24, 27811:5, 27825:22, 27827:8, 27832:1, 27853:2, 27873:8, 27873:10, 27873:11, 27882:7, 27882:9, 27887:23, 27889:6, 27902:10, 27906:5, 27907:6, 27946:24, 27952:11, 27957:13, 27957:14, 27958:5, 27958:16, 27960:8, 27960:16, 27964:10, 27964:13, 27977:20,	27993:17, 28018:8, 28020:18, 28056:5, 28059:12, 28069:8 <b>viewed</b> [3] - 27935:9, 27935:10, 27965:10 <b>viewers</b> [1] - 27889:15 <b>views</b> [21] - 27804:23, 27815:12, 27816:3, 27824:24, 27857:15, 27880:5, 27891:14, 27901:15, 27904:8, 27923:7, 27943:6, 27973:24, 27973:25, 28025:17, 28025:20, 28025:21, 28064:23, 28064:25, 28065:11, 28065:15 <b>vigorously</b> [1] - 27970:17 <b>vindicated</b> [2] - 27975:11, 27975:13 <b>violence</b> [7] - 27801:11, 27801:19, 27804:25, 27805:2, 27968:13, 28065:5, 28065:7 <b>violent</b> [6] - 27803:11, 27967:1, 28012:8, 28015:22, 28065:10, 28069:13 <b>Vip</b> [1] - 28008:2 <b>virtually</b> [3] - 27900:6, 27900:23, 27901:2 <b>visions</b> [1] - 27852:23 <b>visit</b> [21] - 27818:8, 27819:4, 27821:2, 27838:21, 27839:5, 27853:25, 27862:13, 27862:20, 27863:23, 27865:10, 27865:13, 27875:13, 27876:8, 28018:4, 28027:7, 28027:9, 28027:10, 28055:22, 28056:11, 28066:4, 28066:5 <b>visited</b> [4] - 27840:5, 27840:15, 27878:7, 28019:18 <b>visiting</b> [3] - 27839:3, 27839:12, 27839:15 <b>vitae</b> [2] - 27802:3, 28005:4 <b>Volume</b> [1] - 27793:22 <b>volume</b> [1] - 28023:24 <b>voluminous</b> [1] - 28025:25  <b>W</b>  <b>wait</b> [1] - 27827:13	<b>wand</b> [1] - 28031:25 <b>wants</b> [3] - 27929:20, 27962:24, 27981:20 <b>warranted</b> [1] - 28043:15 <b>watch</b> [1] - 27884:2 <b>watched</b> [1] - 27813:12 <b>watching</b> [2] - 27929:19, 27962:23 <b>water</b> [1] - 27934:21 <b>Watson</b> [11] - 27887:10, 27913:20, 27924:15, 27924:16, 27927:10, 27972:3, 27997:21, 27998:8, 27998:23, 27999:5, 27999:7 <b>way'</b> [1] - 27927:5 <b>ways</b> [3] - 27847:12, 27909:15, 27910:10 <b>weak</b> [5] - 27919:11, 27928:20, 27928:25, 28045:14, 28065:1 <b>weakness</b> [2] - 27941:15, 27941:23 <b>weaknesses</b> [1] - 27902:3 <b>week</b> [3] - 27805:24, 27828:21, 27829:9 <b>weekend</b> [5] - 27832:11, 27839:6, 27839:25, 27876:23, 27878:3 <b>weeks</b> [2] - 28003:3, 28062:20 <b>weigh</b> [1] - 27975:4 <b>weight</b> [1] - 28023:25 <b>welcome</b> [1] - 27831:15 <b>Wempe</b> [1] - 27795:9 <b>were...on</b> [1] - 27920:13 <b>whack</b> [1] - 27852:24 <b>whisked</b> [1] - 27817:11 <b>whole</b> [9] - 27923:20, 27926:5, 27936:16, 27965:11, 27980:22, 28013:20, 28051:7, 28070:21 <b>wide</b> [1] - 27844:18 <b>widely</b> [1] - 27978:14 <b>wider</b> [1] - 28003:1 <b>wife</b> [2] - 27932:6, 28017:4 <b>Wilde</b> [1] - 27794:11 <b>wildly</b> [1] - 28064:11 <b>Williams</b> [18] - 27873:21, 27911:9, 27921:18, 27924:5, 27929:17, 27961:5, 27962:18, 27962:21, 27972:5, 27972:14, 27998:9, 27998:12,
--	---	---	--	--





<p>27998:22, 27998:25, 27999:6, 27999:8, 28022:20, 28043:23 <b>Williams'</b> [6] - 27864:7, 27864:8, 27922:20, 27923:10, 28022:21, 28024:6 <b>willing</b> [6] - 27861:18, 27861:23, 27865:21, 27997:23, 28040:2, 28046:12 <b>Wilson</b> [123] - 27795:6, 27810:12, 27810:15, 27812:1, 27838:7, 27841:8, 27849:2, 27850:16, 27852:12, 27875:1, 27875:4, 27879:1, 27880:10, 27884:13, 27884:23, 27886:12, 27886:21, 27887:3, 27887:7, 27893:20, 27894:6, 27894:13, 27898:17, 27904:24, 27910:22, 27911:8, 27911:17, 27912:1, 27913:18, 27913:21, 27914:5, 27915:6, 27915:19, 27916:2, 27916:6, 27916:10, 27917:10, 27917:24, 27918:5, 27918:19, 27920:15, 27920:19, 27920:24, 27921:4, 27922:7, 27922:10, 27922:20, 27924:5, 27924:10, 27924:17, 27924:25, 27925:7, 27925:14, 27925:24, 27926:7, 27926:17, 27926:22, 27927:6, 27927:16, 27928:2, 27929:14, 27930:6, 27930:11, 27930:19, 27931:2, 27931:8, 27931:22, 27932:3, 27932:20, 27932:22, 27932:24, 27934:1, 27934:9, 27934:16, 27936:12, 27937:1, 27938:24, 27940:16, 27943:20, 27947:25, 27949:4, 27958:12, 27961:1, 27961:6, 27961:13, 27961:25, 27962:5, 27963:6, 27963:14, 27963:21, 27964:10, 27965:15, 27965:16, 27966:12, 27966:13, 27972:2, 27977:25, 27979:17, 27981:20,</p>	<p>27982:7, 27982:10, 27982:21, 27982:25, 27983:22, 27984:23, 27994:11, 27995:8, 27995:20, 27995:23, 27996:4, 27996:6, 27997:8, 27997:19, 27997:21, 28022:21, 28022:24, 28024:6, 28026:14, 28035:12, 28045:2, 28045:7, 28045:9, 28056:18 <b>Wilson's</b> [20] - 27848:20, 27884:20, 27886:6, 27886:19, 27887:25, 27894:10, 27911:1, 27914:23, 27921:10, 27948:20, 27960:22, 27961:12, 27961:22, 27962:17, 27963:4, 27964:17, 27964:19, 27965:4, 27978:4, 28044:23 <b>Wilson's</b> [2] - 27980:12, 27981:11 <b>window</b> [4] - 27806:23, 27940:7, 28016:1, 28028:22 <b>Winnipeg</b> [24] - 27812:13, 27814:2, 27826:15, 27830:9, 27855:12, 27855:14, 27855:15, 27856:13, 27856:20, 27857:24, 27877:3, 27877:5, 27877:6, 27907:21, 27969:16, 27970:4, 27977:4, 27989:21, 28024:23, 28032:18, 28037:16, 28038:10, 28046:8, 28047:16 <b>wise</b> [1] - 27939:17 <b>wish</b> [2] - 27834:24, 27991:21 <b>witness</b> [12] - 27801:13, 27817:24, 27835:13, 27893:20, 27941:16, 27941:23, 27985:11, 28004:4, 28022:23, 28026:6, 28041:7, 28059:17 <b>witnesses</b> [25] - 27797:6, 27797:12, 27808:24, 27812:2, 27816:23, 27823:22, 27854:11, 27858:9, 27899:5, 27902:7, 27902:22, 27904:3, 27913:9, 27931:9, 27940:12, 27943:4,</p>	<p>27946:16, 27962:11, 27971:25, 27973:6, 27973:21, 27992:3, 28001:22, 28019:14, 28043:9 <b>Wolch</b> [13] - 27795:2, 27811:2, 27812:8, 27834:5, 27937:16, 27975:18, 27976:7, 27976:11, 28016:14, 28022:18, 28039:24, 28042:16, 28042:19 <b>Wolch's</b> [1] - 28041:1 <b>woman</b> [7] - 27876:25, 27912:24, 27942:13, 27942:24, 27943:22, 28026:17, 28062:21 <b>women</b> [3] - 27803:17, 28064:15, 28064:22 <b>wondered</b> [1] - 27814:3 <b>wondering</b> [8] - 27917:5, 27921:9, 27931:10, 27935:8, 27956:25, 27990:23, 28054:15, 28055:9 <b>word</b> [1] - 27797:18 <b>worded</b> [1] - 27946:18 <b>wording</b> [2] - 27898:9, 28012:9 <b>words</b> [4] - 27896:16, 27908:10, 28000:20, 28073:6 <b>workplace</b> [3] - 27801:10, 27801:11, 27801:12 <b>world</b> [1] - 27841:1 <b>worst</b> [1] - 27904:1 <b>worth</b> [2] - 28031:25, 28071:10 <b>wounds</b> [1] - 27942:15 <b>wrapped</b> [1] - 27826:15 <b>write</b> [8] - 27809:22, 27865:16, 27894:23, 27908:11, 27909:8, 27968:6, 27969:4, 27988:10 <b>writing</b> [17] - 27805:13, 27826:19, 27843:10, 27862:16, 27867:16, 27890:2, 27894:24, 27895:3, 27908:9, 27908:23, 27910:5, 27910:13, 27939:6, 27967:25, 27982:18, 27998:6, 28016:17 <b>written</b> [17] - 27801:6, 27801:20, 27867:25, 27868:22, 27868:23, 27869:20, 27877:23, 27897:23, 27907:21,</p>	<p>27912:20, 27987:16, 27990:16, 27996:1, 27997:4, 28010:24, 28031:9, 28047:12 <b>wrongdoing</b> [2] - 27906:11, 27986:15 <b>Wrongful</b> [1] - 27793:3 <b>wrongful</b> [28] - 27805:15, 27806:4, 27806:5, 27806:14, 27806:16, 27806:21, 27806:25, 27808:19, 27809:12, 27809:13, 27815:4, 27819:24, 27820:4, 27820:16, 27820:22, 27833:23, 27877:20, 27947:12, 27947:15, 27984:7, 27989:2, 28015:17, 28017:19, 28022:2, 28022:3, 28072:5, 28072:8, 28072:15 <b>wrongfully</b> [6] - 27805:17, 27805:23, 27806:1, 27821:12, 27822:23, 27912:2 <b>wrongly</b> [1] - 27893:23 <b>wrote</b> [7] - 27829:4, 27895:20, 27895:21, 27969:19, 27972:25, 27998:12</p>	<p>27819:2, 27821:8, 27843:5, 28014:21 <b>you...let</b> [1] - 27926:12 <b>young</b> [7] - 27831:16, 27831:17, 27876:25, 27878:7, 27905:10, 27942:22, 27943:21 <b>yourself</b> [20] - 27806:12, 27843:6, 27848:21, 27849:1, 27862:11, 27866:1, 27875:8, 27888:9, 27910:13, 27915:18, 27939:7, 27964:7, 27969:24, 27977:11, 28020:13, 28033:6, 28041:12, 28042:22, 28054:12, 28057:4 <b>Yourself</b> [4] - 27920:17, 27925:12, 27926:3, 27930:2 <b>youth</b> [2] - 27963:22, 28015:25 <b>Yup</b> [1] - 27920:25</p>
<b>Z</b>				
<p><b>zone'</b> [2] - 27968:14, 28065:24</p>				

