

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

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

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Volume 152

Inquiry Proceedings



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 for Mr. Eddie Karst
Mr. Bruce Gibson, Esq., **for** the RCMP
Mr. Brian Beresh, Q.C., **for** Mr. Larry Fisher
Mr. David Frayer, Q.C., **for** Minister of Justice
 (Canada), The Hon. Vic Toews
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)



INDEX OF PROCEEDINGS

DESCRIPTION:

PAGE:

JOYCE IOLA MILGAARD, CONTINUED

- BY MR. HODSON	31144
- (VIDEO OF REPORTER, JOYCE MILGAARD, DAVID ASPER PLAYED)	31198
- (VIDEO ENDS)	31205
- (VIDEO OF REPORTER, DAVID ASPER AND JIM MCCLOSKEY PLAYED)	31206
- (VIDEO ENDED)	31209
- (VIDEO OF REPORTER, JOYCE MILGAARD AND KIM CAMPBELL)	31210
- (VIDEO ENDED)	31211
- (VIDEO OF ANNE PETRIE AND JIM MCCLOSKEY PLAYED)	31211
- (VIDEO ENDED)	31224



Transcript of Proceedings

(Reconvened at 9:00 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

JOYCE IOLA MILGAARD, continued:

BY MR. HODSON:

Q If I could call up 054514, please. And,
Mrs. Milgaard, yesterday we spent some time on the
(V14)- (V14)- matter, and there's just one other
issue I want to get you to comment on with respect
to your recollection, and that relates to the
events that preceded the night before the
interview with Mrs. (V14)-. I think Mr. Henderson
put in his memorandum about that there was
supposed to be a meeting, I think at Mrs. (V14)-'
hotel, and -- but I think, according to Mr.
Henderson, something went wrong and she didn't
meet. According to Mrs. (V14)-, she claims that
you avoided the meeting because she wanted to
bring her friend. Can you tell me what your
recollection is of -- we've heard about what
happened at the bus depot, but the night before,
was there supposed to be a meeting at her hotel
and can you tell us what you remember happening?

A My memory of that was that she didn't show up, and



1 that there was someone else there, but that she
2 didn't show up.

3 Q Now what Mr. Henderson's memo indicates is that
4 she was at a hotel and got a call from --
09:03 5 actually, if we can just go to the next, or just
6 the bottom of this page, Mr. Henderson says:

7 "We arrived on Saturday evening and
8 called (V14)- at her motel. She
9 initially agreed to meet with us that
09:03 10 night but said she had to cancel dinner
11 with a friend she was visiting in
12 Regina. One and a half hours passed and
13 the woman still hadn't called."

14 Then Paul drove with your son Chris -- next
09:04 15 page -- to the room registered to (V14)- (V14)-,
16 looked in the window.

17 "In the meantime, Joyce had received a
18 call from (V14)-'s friend (who we suspect
19 is the same person who initially called
09:04 20 David Asper.) ... told him we were
21 planning to meet with (V14)- the
22 following afternoon but ... time would
23 be limited ...",

24 according to Mr. Henderson this fellow:

09:04 25 "... became belligerent and, in essence,



1 told Joyce to go to hell.",
2 and then stayed at the hotel. That was according
3 to Mr. Henderson.

4 And then, according to
09:04 5 Mrs. (V14)- -- if we could go to 012058 and go to
6 page 061 -- according to Mrs. (V14)-, as she told
7 it to Rick Pearson, she describes the evening, I
8 think it was a Saturday night, she said:

9 "Harold ...",

09:05 10 was her friend:

11 "... and I communicated back and forth
12 ...",

13 call to Mr. Asper, and then -- go to the next
14 page -- and she says:

09:05 15 "That same day I got a call from Joyce
16 who said she wanted to meet me at my
17 house. I said 'no' and that I would
18 come into Regina. I phoned Harold and
19 asked that he be with me during my
09:05 20 interview with Joyce. He said he would.
21 I left for Regina the same day,
22 Saturday, and checked into the Relax
23 Inn, Regina. Joyce had given me her
24 son's phone number, Chris., and I could
09:05 25 contact her through Chris. I gave Chris



1 my hotel number. In the meantime I
2 arranged for Harold to come to the
3 hotel. While I was waiting for Harold I
4 got two calls from Joyce Milgaard, who
5 wanted to come to the hotel to interview
6 me. I said to Joyce I did not want to
7 be interviewed alone. When Harold
8 arrived he phoned Mrs. Milgaard and told
9 her he was going to be present during
09:05 10 the interview because I had gone through
11 a traumatic experience and was
12 recovering. The next thing I knew
13 Harold was standing with the phone
14 receiver, saying Joyce had hung up on
09:05 15 him. After talking with Harold, I was
16 left with the impression she wanted to
17 interview me alone and would not be
18 coming down."

19 Just on that point, was that your desire, to
09:06 20 interview her alone without her friend being
21 there; were you suspicious of the friend or
22 anything like that?

23 A I'm sorry, I have absolutely no recall of that.
24 My recollection of it was we sat around waiting --
09:06 25 after I saw that, what Paul said -- we did sit



1 around waiting for a phone call and -- back from
2 them, and I remember going to check the hotel, and
3 she had checked out.

4 Q But as far as whether, whether the meeting didn't
09:06 5 happen because -- I mean there is two conflicting
6 scenarios. Mrs. (V14)- is saying the meeting
7 didn't happen Saturday night because you wanted to
8 interview here alone and she wanted her friend
9 Harold there, Mr. Henderson's version in his memo
09:06 10 is that she didn't call back on time or wasn't at
11 the motel, or that somehow, from her end, she
12 didn't show up?

13 A That's my recollection of it too, was that we -- I
14 didn't cancel because of her wanting to have
09:07 15 someone there, I -- I believe that she never --
16 they never called back, and I remember an evening
17 that we were just waiting to do that and it never
18 got done.

19 Q And again, just on this, would you have
09:07 20 interviewed her with her friend present; was that
21 a concern to you?

22 A I see no reason why I wouldn't have.

23 Q Do you have a recollection at the time, though, I
24 mean you said earlier you were suspicious of this
09:07 25 woman; were you concerned about who she might --



1 it sounds like, at least according to her friend,
2 that you and he did not see eye to eye on the
3 phone when this interview was trying to be being
4 arranged; do you have any recollection of talking
09:07 5 to her friend?

6 A No, I don't, none at all.

7 Q Okay. If we could then turn to the second
8 application of August 14th, 1991, and we touched
9 on this a bit yesterday, and I think what the
09:08 10 application itself focused on -- and you've
11 touched on this as have other witnesses -- that
12 primarily it was the Centurion Ministries report
13 and analysis, the interviews you and Mr. Henderson
14 conducted of the victims, Centurion then put
09:08 15 together a similarity analysis of Mr. Fisher's
16 crimes, --

17 A Correct.

18 Q -- and that was the basis of going to the
19 minister; is that correct?

09:08 20 A That's correct.

21 Q And would that have been something new and
22 different from what had been put to the minister
23 on the first application?

24 A Truthfully, we felt that it was almost identical
09:08 25 to the original application, because other than



1 the fact that we had investigated and found, you
2 know, the similar facts, to point them out in it,
3 but --

4 Q It was --

09:09 5 A -- it was all information that they'd had before.

6 Q When you say "information they'd had before", let
7 me just back up and talk about -- the grounds of
8 the application would be give your son relief
9 because Larry Fisher is the perpetrator of the
09:09 10 crime, and that was part of the first application;
11 correct?

12 A That's correct.

13 Q And I think, yesterday, you told us that when the
14 minister got back to you and said, lookit, just
09:09 15 because he's a suspect isn't enough, there has to
16 be a link between Larry Fisher and Gail Miller?

17 A Right.

18 Q And I think it's on the record that in the first
19 application you did not, or on behalf of your son,
09:09 20 your counsel did not submit to the minister
21 information about the circumstances of the other
22 rapes and the similarities? What Centurion
23 Ministries put together, correct, --

24 A Right.

09:09 25 Q -- that wasn't part of the information that was



1 put forward on behalf of your son; correct?

2 A No, we put forward the information that there was
3 a rapist there in the neighbourhood, that he had
4 raped before and after Gail Miller situation, we
09:10 5 didn't do a similar fact application, if you will,
6 but -- because we assumed that, the minute they
7 got that information, that they would do that and
8 see the similar acts themselves.

9 Q No, and I was going to get to that. I think what
09:10 10 you said earlier is -- and so, again, is it a case
11 that what was put forward in the second
12 application, are you telling us that it was more
13 information that tried to connect Larry Fisher to
14 the Gail Miller murder that was not part of the
09:10 15 first application, but something you thought
16 Federal Justice would have gone out and obtained;
17 is that --

18 A Yes.

19 Q -- what you are telling us?

09:10 20 A Because they had the basics for it.

21 Q Okay. So putting aside the issue as to whether --
22 and I think you are saying they should have done
23 it -- putting aside the issue as to whether you,
24 being David Milgaard, or Federal Justice should
09:10 25 have gone out and investigated the victims and put



1 together the similarities, putting that aside, is
2 it correct that in the second application, as far
3 as what the applicant put forward, it was new
4 information that had not been provided by the
09:11 5 applicant in the previous application?

6 A It had the similar fact evidence, yes.

7 Q It added a bit more --

8 A Yes.

9 Q -- that wasn't filed by you in the first
09:11 10 application. And I appreciate you are saying you
11 didn't think you had to because you thought they
12 were going to do it, but it was information that
13 you had not given, at least in this much detail,
14 on the first application?

09:11 15 A That's correct.

16 Q And I think it's correct as well that that was the
17 only ground put forward, was this similarity? In
18 fact, the matters that were raised in the first
19 application, the secretor issue, the Ferris issue,
09:11 20 the Wilson recantation, the Cadrain information,
21 the motel incident information, had all been
22 information that had been given to the minister.
23 On the second application you didn't go back --
24 and when I say "you" I'm talking about your, the
09:12 25 group of you -- you didn't go back and say "well



1 let's address the other four points of rejection
2 in the minister's letter and give them other
3 evidence to say "you are wrong about Ferris, you
4 are wrong about Deborah Hall, you are wrong about
09:12 5 Wilson, you are wrong about Cadrain"; is that
6 correct?

7 A That's correct.

8 Q And yesterday you told us that, in addition to the
9 legal basis being put forward to the minister --
09:12 10 and when I say "legal avenue" what I am talking
11 about is where your lawyers put information to the
12 minister under Section 690 and it's considered by
13 the minister in the context of Section 690, so
14 that that's the legal route, "here's the
09:12 15 information, consider it"; and when I talk about
16 the "public" or the "media avenue" I'm talking
17 about your efforts in the public domain to
18 influence the decision, so do you understand, when
19 I talk about "legal avenue" and "public avenue",
09:12 20 what I am referring to?

21 A Yes, I do.

22 Q And I think you told us, on the first application,
23 that you went the legal avenue initially, with a
24 little bit of public, and then as the
09:13 25 application -- as time went on you upped the



1 public --

2 A Right.

3 Q -- avenue significantly? And that was, I think
4 you said, at the end, your primary focus?

09:13 5 A It was.

6 Q Is that correct? When we get to the second
7 application is it correct that, in addition to the
8 legal avenue, there was also a very significant
9 public avenue you were going to pursue?

09:13 10 A That's correct.

11 Q And I think you even said even more so this time,
12 that the publicity that you would try to bring to
13 the second application was a very important part
14 of the application; is that correct?

09:13 15 A I believe it was, yes.

16 Q And so in addition to saying, "here, minister,
17 here's the second application", you were also
18 going to go out in a very public way to put a
19 spotlight on the matter to cause the public to get
09:13 20 on your side and to cause pressure to be put on
21 the minister to give you a favourable decision; is
22 that correct?

23 A That's correct. It was at this time that John
24 Howard came forward, and the John Howard Society
09:14 25 came forward and offered to start up a fund, the



1 David Milgaard Support Fund, and people were just
2 -- everyone was calling, asking how they could
3 help and what they could do, and we had volunteers
4 come in. And I remember hours and hours of typing
09:14 5 all the transcripts into the computer, because
6 even though we were turned down I was sure that we
7 would get to Court and I wanted to have, on the
8 computer, all the transcripts, and of course in
9 those days you couldn't just scan them in, you had
09:14 10 to type them in, so we had volunteers that came in
11 and worked in my basement and took transcripts
12 home and typed them in and put them on disks for
13 us. And it just grew, support groups grew all
14 across the country, with people coming in and
09:15 15 helping.

16 Q On the second application Mr. Asper told us, I
17 think, essentially that he -- and you've described
18 for us how -- the difference between the second
19 and the first application on the type of
09:15 20 information that was put forward on the Fisher
21 rapes. I think what Mr. Asper said is to the
22 effect that, lookit, it really wasn't anything
23 different but we had to make it look different so
24 the minister simply wouldn't reject it out of hand
09:15 25 and say "we've already been there"; was that some



1 of the thinking at the time?

2 A That was the thing, that we were giving her room
3 to save face.

4 Q And so that you had to make the second application
09:14 5 look more like it was something new and different?

6 A Correct.

7 Q And some of it was new and different though?

8 A Yes.

9 Q But it was, there was an effort made to say
09:14 10 lookit, this is something you didn't have the last
11 time and to get your hook into, to be able to go
12 back and have the minister reconsider, that was
13 the strategy wasn't it?

14 A That was the strategy.

09:15 15 Q And would it also be correct to say that you
16 framed it as this sort of new information on
17 Fisher, even though Fisher was part of your first
18 application, but is it correct to say that the
19 real focus was going to be on the public campaign
09:15 20 to say once you got the hook, I think was Mr.
21 Asper's words, or once you got the foot in the
22 door by being allowed to file a second application
23 and not having it rejected out of hand because it
24 was something new, it was really the public
09:15 25 pressure that was going to go with it?



1 A That's correct.

2 Q And is that correct, so there was a great deal of
3 time spent on how do we put together a media
4 campaign that's going to make it impossible for
09:15 5 the minister not to give us a hearing or a remedy?

6 A Yes, that was our strategy.

7 Q And we've talked about the legal avenue and what
8 was in that application and we've seen that
9 material. On the public campaign, is it correct
09:15 10 to say that the primary theme of that public
11 campaign was centred upon a couple of things, one,
12 that Centurion Ministries had looked at the case
13 and were now involved and lending, trying to tread
14 a bit on their creditability?

09:16 15 A Yes, they were.

16 Q And secondly, the introduction of the allegation
17 that your son had been framed and that there was a
18 cover-up?

19 A Yes.

09:16 20 Q And that was something that would, I think your
21 words yesterday on other newsworthy matters, would
22 cause the public to sit up and take notice and
23 would cause people at the coffee table to talk
24 about it; is that correct?

09:16 25 A That's correct.



1 Q And so can you tell us a bit about how this media
2 campaign or the public campaign, whose idea was
3 it, how was it organized and how was it
4 implemented?

09:16 5 A Well, basically David Asper knew all the ins and
6 outs of the media and he provided -- we had had
7 many, many contacts, so it's a matter of just
8 strategizing on how to use them and what to do
9 with them and I can remember in particular when I
09:17 10 came home from the minister rejecting David and
11 those were hard days for us, I remember David
12 Asper and Susan went up to the prison to see David
13 and she was outraged because they wouldn't let her
14 in with him because she didn't have an appointment
09:17 15 and she felt that in a situation like that they
16 could at least have let her in, but she had to
17 wait while David Asper went in to tell David that
18 the application had been turned down and I
19 remember David Asper saying, "Joyce, he comforted
09:17 20 me, he told me that I had done a good job and he
21 comforted me," and I remember not wanting to go up
22 and see him, but I knew I had to, and when we went
23 up to see him, by that time we had started to
24 formulate plans, I had already booked an
09:18 25 appointment to be on a program the next morning



1 and we were going to come out fighting.

2 Q And again, just back on the theme, or the concept
3 of the public campaign, was it a case of your
4 group or Mr. McCloskey or others saying lookit, we
09:18 5 need to have something in the public that was
6 different than what we put forward before or was
7 -- I'm trying to understand how the concept came
8 up about frame and cover-up and whether that was,
9 was that --

09:18 10 A Well, that part really, I would have to look at
11 the dates and things on that because in my mind
12 that essentially -- if I could see the dates. Are
13 you talking about Mr. Caldwell?

14 Q No.

09:19 15 A Are you talking about that type of a thing where
16 we were -- because I think that came up much
17 later.

18 Q Okay. What I'm referring to is on August 14th,
19 1991 the application was filed with the minister?

09:19 20 A Right.

21 Q And I will take you through -- in the days before
22 and during and after August 16th, I think what at
23 least the record shows, is that the media appears
24 to have been, and maybe it's -- I'm not sure if
09:19 25 they were inundated or they inundated the public,



1 but this frame/cover-up story and this new
2 information from Centurion was widely reported in
3 newspapers across Canada and you and Mr. Asper and
4 Mr. McCloskey and perhaps others were on a number
09:19 5 of newscasts and stories publicly talking about
6 the new application and that, and so --

7 A Well, a lot of the story really was the -- I
8 believe at that point the media was chasing us in
9 a sense because they had seen me as a mother just
09:20 10 broken down and when I got this information and
11 now they had a story where we're going to fight
12 back and they all wanted to interview me, they all
13 wanted to interview David Asper and ask us, well,
14 what are you going to do about this, what can you
09:20 15 do, and so at that point I don't think we went out
16 and chased them so much as they were chasing us
17 because it was a hot story.

18 Q Right. And I guess at the time the second
19 application was filed with the minister in
09:20 20 August --

21 A Yes.

22 Q -- was it not part of your group's strategy to get
23 as much public and media attention as possible
24 about the second application, the grounds, the
09:21 25 fact that Centurion Ministries was involved and



1 basically the allegation being put forward that
2 your son was framed and there was a cover-up?

3 A Yes, I'm sure it was, and it was at that time too,
4 wasn't it, that Neil Boyd came into the picture?

09:21 5 Q Yeah, Neil Boyd was a little bit before, a little
6 bit after, so I'll deal with that.

7 A Yeah.

8 Q But I'm getting back to this, let's just back up a
9 step. So I think you are saying yes, when we
09:21 10 filed the second application we wanted to get as
11 much public attention as possible drawn to the
12 case; is that correct?

13 A That's correct.

14 Q And the nature -- and the reason I'm talking about
09:21 15 the frame and cover-up, and I'll go to the
16 newspaper articles and the media reports and we'll
17 see actually some of the newscasts, that appeared
18 to be what was put forward in all of the media
19 outlets surrounding not only here's the
09:21 20 application to the minister, here's Centurion
21 Ministries, and Centurion Ministries and others
22 are alleging a frame and cover-up?

23 A Yes.

24 Q And I'm trying to understand where, sort of where
09:22 25 this allegation of frame and cover-up, was that



1 something Centurion Ministries came up with, that
2 you came up, your lawyers came up with, or
3 collectively did you arrive at some point and say,
4 okay, you know what, we all are of the view that
09:22 5 David Milgaard was framed and there's a cover-up?
6 I'm trying to understand what your thinking was,
7 what your lawyers' thinking was, what Centurion's
8 thinking was around August, 1991 at the time this
9 was introduced to the public through the media.

09:22 10 A I don't know that we introduced that word frame.
11 I would have to see the media reports on it.

12 Q Sure.

13 A I'm not trying to be difficult, Mr. Hodson, but,
14 you know, sometimes what happens is the media
09:22 15 takes over and they start saying a lot of things.
16 Now, I don't think, at least I can tell you I
17 cannot recall my, any of us strategizing that
18 we'll go out and say David has been framed, that's
19 not part of any memory I have.

09:23 20 Q Now, we have seen and we'll see some more media
21 reports where Jim McCloskey stated to the media
22 and in the newspapers that his belief was that
23 David had been framed and that there was a
24 cover-up, and you'll recall, we've already seen
09:23 25 some of these articles?



1 A Yes.

2 Q And again, was that something that was sort of his
3 idea that he brought forward and said this is what
4 I think and --

09:23 5 A This could have arisen out of Jim's comments.

6 Q Okay. Now, again, around this time, and certainly
7 we can go through some of the articles, but was
8 it -- what was your view about whether or not at
9 this time whether your son had been framed?

09:23 10 A I think my view always was that David had been in
11 the wrong place at the wrong time and that the
12 police thought he did it. However, when the
13 Fisher evidence came to light and they went to
14 interview Mr. Fisher in 1970, that that's when the
09:24 15 cover-up took place, that they knew at that time
16 that they had a problem and they did nothing about
17 it and they just covered it up.

18 Q Okay. Let me see if we can try and summarize so
19 that I understand. And was your thinking about
09:24 20 that after the Fisher information came to light,
21 and that would have been sometime in 1990, about
22 his interviews in Winnipeg, etcetera, was that
23 sort of your thinking right through until the end
24 of, for example, the Supreme Court reference or
09:25 25 until the DNA in 1997, would that have been sort



1 of your consistent view?

2 A Yes, it was.

3 Q And you tell me if I am restating this correctly,
4 that your view would have been this, I think you
09:25 5 said that your son David was in the wrong place at
6 the wrong time and that you believed that the
7 police honestly thought David had committed the
8 crime -- and we're talking prior to October, 1970,
9 okay?

09:25 10 A Yes.

11 Q -- that the police honestly believed that your son
12 David had committed the crime at that time --

13 A I did.

14 Q -- and took whatever steps in the investigation to
09:25 15 secure whatever evidence that resulted in David's
16 conviction; is that correct?

17 A That's correct.

18 Q And I think you may have had some concerns about
19 how the police did the investigation, how they did
09:25 20 the interviews, but your thinking has been
21 consistent that the police honestly thought they
22 were investigating the person who had committed
23 the crime; is that fair?

24 A That's fair.

09:25 25 Q And would it be fair as well of Mr. Caldwell as



1 well prosecuting David at the trial to the
2 conviction, your belief would have been and is
3 that he honestly believed at that time that David
4 had committed the crime up until the time of the
09:26 5 conviction; is that fair?

6 A That's fair.

7 Q In October of 1970 Larry Fisher, and we've gone
8 through this on the record many times, Larry
9 Fisher confesses to crimes in Winnipeg, is
09:26 10 interviewed by Saskatoon police officers,
11 information then is brought to the attention of --
12 and let me use Saskatoon police and provincial
13 Crown.

14 A Correct.

09:26 15 Q The authorities. Police and Crown become aware of
16 Larry Fisher in October of 1970?

17 A That's correct.

18 Q And is it fair that your view, once you became
19 aware of that, your view became that some of these
09:26 20 people, either police and/or Crown, did or must
21 have drawn a connection between Larry Fisher and
22 Gail Miller?

23 A Yes.

24 Q And your belief was that someone, when they
09:27 25 learned about Larry Fisher, they must have said



1 Larry Fisher is somehow connected to Gail Miller,
2 that's step one, that was your belief?

3 A That's it.

4 Q And that at that point, and at that point you are
09:27 5 saying that whoever drew that connection covered
6 it up and took steps to prevent other people from
7 finding out about it?

8 A Yes.

9 Q And that's what you talk about the cover-up?

09:27 10 A That's what I talk about as a cover-up.

11 Q And let's go a bit further again about drawing the
12 connection between Larry Fisher and Gail Miller,
13 was it your view at that time, and again we're
14 talking through the early '90s, that whoever drew
09:27 15 the connection between Larry Fisher and Gail
16 Miller at that time thought that, okay, Larry
17 Fisher is the real killer and David Milgaard is
18 innocent and therefore I better cover up steps to
19 keep an innocent person in jail; was that your
09:27 20 thinking?

21 A My thinking at the time was that the chief
22 investigator had become the chief of police, Mr.
23 Caldwell had moved up in the Justice Department, I
24 figured that all of these people, that they had
09:28 25 made their careers based, their career jumps based



1 on the fact of David's conviction and they weren't
2 about to have that come forward, that they had
3 made this terrible mistake and he was a bad dude
4 anyhow and so he's probably, you know, he will be
09:28 5 out in a few years from prison and they just left
6 it. That was my truthful feeling at the time.

7 Q And again we've heard -- so that when it came to
8 light that your belief was that police and/or
9 Crown, and whether that means Mr. Caldwell or Mr.
09:28 10 Kujawa or Mr. Romanow or whoever, let's just talk
11 about the authorities being the Saskatoon City
12 Police and the provincial Crown, whoever,
13 whichever individuals in either of those groups
14 that at that time connected Larry Fisher to the
09:29 15 Gail Miller murder --

16 A Yes.

17 Q -- those people you are saying your belief was
18 that, (a), they connected it, and (b), when they
19 connected it they would have in their own minds
09:29 20 said there's a mistake, the wrong person has been
21 convicted, but we're going to cover it up; would
22 that have been your belief?

23 A Yes. I believe they were doing it to protect
24 their reputations.

09:29 25 Q And so that the reason they would not disclose the



1 mistake or the connection was because it would
2 make them look bad?

3 A Correct.

4 Q And hurt their careers?

09:29 5 A Yes.

6 Q And would it be correct to say that the premise of
7 this thinking of cover-up was, would have to be
8 that someone, either an individual or individuals,
9 would have had to have drawn a connection between
09:29 10 Larry Fisher and Gail Miller; right?

11 A Yes. It just -- it would be impossible for them
12 not to have drawn those conclusions, and then when
13 we started getting information back that the rape
14 victims hadn't been told that he was caught and
09:30 15 that, and when we subsequently found out that one
16 policeman had continued to investigate the rapes
17 after Larry Fisher had confessed to them, we
18 thought -- I mean, it just smelled so badly
19 because we were saying, well, my golly, they are
09:30 20 even hiding it in their own department, they are
21 not telling their policemen about it.

22 Q And again --

23 COMMISSIONER MacCALLUM: Who had continued
24 to investigate the rapes?

09:30 25 A One of the policemen on the police force



1 continued -- there were occurrence reports showing
2 that he had gone out and talked to the victims, he
3 talked -- I'm not sure which victim this was, Mr.
4 Hodson, you would have that information.

5 BY MR. HODSON:

6 Q I think it's Gus Weir, you are referring to Gus
7 Weir?

8 A Gus Weir, yes, Gus actually went out and talked to
9 her and gave her the information that at the very
09:31 10 end he said that he was in a mental institution,
11 but he approached Caldwell and was furious about
12 the fact that he had never been told that Larry
13 Fisher had confessed.

14 Q I think that was Mr. Karst. I think, yeah, and
09:31 15 Gus Weir has testified before the Commission about
16 what --

17 A Yes.

18 Q Let me just back up. I don't mean to cut you off
19 on that.

09:31 20 A No, but that's the basis of my --

21 COMMISSIONER MacCALLUM: Excuse me. Yes?

22 MS. KNOX: Mr. Commissioner, my
23 recollection of the evidence is there's no
24 evidence before this Commission or anywhere in
09:31 25 the record that Gus Weir ever approached my



1 client Mr. Caldwell and discussed this matter
2 with him.

3 BY MR. HODSON:

4 Q I think the evidence of Gus Weir was that he
09:31 5 contacted Mr. Karst in the late '70s.

6 A Oh, I'm sorry, it may have been Mr. Karst. I knew
7 that he had got after somebody about it.

8 Q Okay. If we can just back up again to this
9 connection, and I think the -- that in order for
09:32 10 there to be a cover-up, I think you said yes,
11 individuals, either one or more individuals would
12 have to draw the connection between Larry Fisher
13 and Gail Miller, and would it be also correct to
14 say that they would have to conclude in their own
09:32 15 mind that when they learned about Larry Fisher,
16 that the evidence presented against David at trial
17 was wrong, that Nichol John, Ron Wilson, Albert
18 Cadrain, the other incriminating evidence would
19 have to be wrong and that the jury was wrong and
09:32 20 that David was innocent and that Fisher was the
21 person who had committed the crime, or was it
22 simply a case of saying, oh, isn't this -- or was
23 it enough -- in your mind, I'm trying to
24 understand what in your mind you were thinking the
09:32 25 connection that must have been drawn by these



1 individuals between Larry Fisher and Gail Miller.

2 A In my mind if a detective had been involved in the
3 case the way Detective Karst was involved in that
4 case and had been investigating all of the things
09:33 5 that were going on at that time, when -- there was
6 no question in my mind that when he went down and
7 saw Larry Fisher, that he knew right then and
8 there that they had made a mistake and I was
9 convinced that they --

09:33 10 Q Sorry, when you say -- I'm sorry, when you say
11 made a mistake, are you saying --

12 A In convicting David.

13 Q So the mistake being that the officer or
14 individual would know then that David is innocent
09:33 15 and Fisher is the perpetrator?

16 A That's right.

17 Q Okay.

18 A And they did nothing about it.

19 Q Okay. Now -- and would it be correct to say that
09:33 20 if none of the individuals had made the
21 connection, and I appreciate your view, you say
22 they did, they must have, it's impossible not to,
23 but if --

24 A It's a year later.

09:34 25 Q If -- no, just bear with me. If the individuals



1 did not draw the connection between the two, then
2 would your position be, well, they should have?

3 A They should have and, if they didn't, why did they
4 allow Gus Weir to continue in an investigation
09:34 5 that was already solved.

6 Q Okay. And then is it correct to say, Mrs.
7 Milgaard, then when you had this thinking that
8 there must have been, individuals must have drawn
9 a connection between Larry Fisher and Gail Miller
09:34 10 and realized a mistake, that subsequent events and
11 subsequent information that you received caused
12 you to think, okay, this information, and you
13 referred to Gus Weir --

14 A That reinforced it.

09:34 15 Q -- reinforced it or corroborates or said okay,
16 when you looked at Gus Weir's information and when
17 you looked at where Larry Fisher pled guilty to,
18 things like that, to fit into this, that in your
19 mind you said this in my mind establishes that
09:35 20 people must have known and people must have drawn
21 a connection?

22 A And it was people in high places because they
23 would only be, they would be the only ones that
24 could take the steps necessary.

09:35 25 Q Now, having gone through that, would it be correct



1 to say that as far as a frame, from what you've
2 told me, would it be correct to say that you did
3 not think that when the police investigated David,
4 prosecuted and the Crown -- the Crown prosecuted
09:35 5 and your son was convicted by the jury, that at
6 that time it has not been your belief that the
7 police and/or Crown framed him; in other words,
8 set out to deliberately convict an innocent
9 person?

09:35 10 A At that time it was not.

11 Q Okay.

12 A Once Jim McCloskey got into it and started looking
13 at it, because he had been involved in so many
14 cases, I think that's when the word "frame" did
09:35 15 come into the situation and that may have been my
16 position for a time.

17 Q Based on what Mr. McCloskey would have told you?

18 A Was saying, yes.

19 Q And that was certainly his view wasn't it?

09:36 20 A It was.

21 Q And then the cover-up part, is it correct to say
22 that when you talk in the media during this time
23 frame about a cover-up, that would be essentially
24 saying that when the Fisher information came to
09:36 25 light, people who had drawn a connection between



1 Larry Fisher and Gail Miller took steps to cover
2 that information up?

3 A That's correct.

4 Q Okay. Now if we can go through -- what about --
09:36 5 so that was Mr. McCloskey's view. What about Mr.
6 Henderson, do you remember any discussions at the
7 time about where he stood on frame and cover-up or
8 did different people in your group have different
9 opinions or was it one --

09:36 10 A I think that we all sort of got to the same
11 conclusions at the end.

12 Q And so again around the time of the filing of the
13 second application, would it have been Mr.
14 Asper's, Mr. Wolch, Mr. Henderson, Mr. McCloskey's
09:37 15 and your view and your son David's view that
16 generally, lookit, we think there's been a
17 cover-up?

18 A Yes.

19 Q And what about the frame, can you recall whether
09:37 20 there was sort of a unified view that David had
21 been framed or did that vary?

22 A I think that varied because to me a frame is --
23 the cover-up was something that I really strongly
24 believed in. The frame would have meant someone
09:37 25 starting out at the outset deliberately to do it



1 and I had never ever really bought into that I
2 don't think.

3 Q Okay. I'll go through some of the media articles
4 if we could, 159897, and this is July 8, 1991,
09:38 5 "Lifers mom alleges coverup", and here:

6 "It is a coverup," she says. "Certainly
7 there were crooked cops in the Marshall
8 case. In David's case, I can't say
9 there were crooked cops, but certainly
09:38 10 there were many questionable police
11 activities."

12 And again, when you talk about cover-up, is it
13 correct that you would be talking about what
14 steps were taken after the police and/or
09:38 15 authorities became aware of Larry Fisher in
16 October of 1970?

17 A That's correct.

18 Q If we could go to 000084, and this is a memo we've
19 seen before, this is from the Miller family, and I
09:38 20 think I went through this with Mr. Asper and it's
21 my understanding that Mr. McCloskey may have had
22 contact with the Miller family; is that right,
23 around this time before the second application to
24 get their views on matters?

09:39 25 A Actually, I did.



1 Q Oh, you did?

2 A I started it, I'll never forget it, I went
3 knocking on the door and Gail Miller's brother
4 answered the door and he looked at me and I said,
09:39 5 "I'm Mrs. Milgaard," and he said, "I always knew
6 that some day you would be knocking on my door,"
7 and it was just astonishing to me, and I said, "I
8 really need to talk to you," and I went in and
9 explained to him that we had Jim McCloskey from
09:39 10 Centurion Ministries investigating and that we had
11 a lot of information that we felt the Miller
12 family should know about and I asked him if he
13 would consider talking to the family and arranging
14 them to get this information, that Reverend
09:40 15 McCloskey would be happy to come and speak with
16 them because we were desperately in need of their
17 support because we were trying to get our son's
18 case re-opened and we felt that with their help,
19 that if they knew what we knew, that they would
09:40 20 support the opening of that application, and he
21 agreed to get the family together and Jim went up
22 and made a presentation to them and they
23 subsequently, after seeing what we had, that
24 family decided to go forward, and I knew what we
09:40 25 were asking them, it meant getting right back into



1 the heat of it, but they decided to support our
2 application and I thought it was just amazing of
3 them, they were wonderful.

4 Q Okay. And so again, and I think this document was
09:40 5 filed with the application to the minister; was it
6 not?

7 A It was.

8 Q And again, around this same time frame, I think in
9 July of 1991 Neil Boyd and Kim Rossmo became
09:41 10 involved. Can you tell us your recollection of
11 how they came to be involved in the matter and
12 their contact with you?

13 A Well, just what Mr. Boyd reported here, he and Kim
14 decided to investigate a case and to do a story on
09:41 15 it and they decided on the Milgaard case, a case
16 of wrongful conviction, and they got involved and
17 he called and asked if we would be interested, and
18 of course I was interested in anybody that was
19 going to investigate and help us in my son's case.
09:42 20 They were very professional, they weren't taking
21 sides, they were really starting out and doing a
22 good job of investigating every part of it, and it
23 was the same as with Peter. Although Peter
24 Carlyle-Gordge became an advocate, you know, the
09:42 25 wonderful thing about him, I think he always kept



1 his writer's hat on, if you will, he really never
2 let that sway him, and that's what I found with
3 Boyd and Rossmo, they were very professional in
4 what they did and who they interviewed and were
09:42 5 looking at it critically.

6 Q And we see in later correspondence that they were
7 touted as being independent and not your
8 investigators?

9 A That's right.

09:43 10 Q You recall you and your counsel doing that. Was
11 that a concern of yours at the time, that they not
12 be viewed as your people, so to speak?

13 A Yes, I think it was, because they were, they were
14 really independent and I felt that it was
09:43 15 important for people to know that.

16 Q If we could call up 004633, this is an article
17 July 10th, 1991 in the *Winnipeg Sun*, and I think
18 this is when the media is first introduced to
19 Professor Boyd and we heard his evidence that he
09:43 20 arrived in Winnipeg to a great media reception?

21 A Yes.

22 Q Is it correct to say that you would have notified
23 the media and asked them to come to meet Professor
24 Boyd?

09:43 25 A I did arrange that, yes, we did.



1 Q And why did you do that?

2 A Well, it was something new and I knew that when
3 this man came to do the study, that if anyone came
4 and objectively looked at what we had looked at,
09:44 5 they had to come to the same conclusions that we
6 did, that David was innocent, so naturally he's
7 coming to me, it was -- he was sent by God as far
8 as I was concerned, he was a God send.

9 Q Now, this is July of '91 when you are, you've
09:44 10 already interviewed the victims, you are waiting
11 for Mr. McCloskey to prepare the application
12 materials, or in the course of being prepared, you
13 know you are going to be going public with the
14 campaign shortly; is that correct?

09:44 15 A Yes.

16 Q My question, back about the media, what would be
17 the purpose -- I think this is when Professor Boyd
18 is initially coming to meet with you and your son
19 and to get information, --

09:46 20 A That's right.

21 Q -- so that's the initial meeting -- what would be
22 your objective in having all the media out to see
23 Professor Boyd when he arrives, and to see
24 Professor Boyd with you, as we see in this
09:46 25 photograph?



1 A Because I wanted them to see that other people
2 were interested in probing, and that's what they
3 were going to do, they were going to probe the
4 case, they were going to have a new study, and we
09:46 5 were also, at that time, using publicity.

6 Q And, on the issue of independence, did you at any
7 time have a concern that, if Professor Boyd was
8 viewed as one of your investigators or part of
9 your group, that that might lessen, perhaps lessen
09:46 10 the effect his report might have?

11 A Yes.

12 Q And I guess the question goes back to -- and I may
13 be misreading Professor Boyd's evidence -- but I
14 think he was a bit surprised at arriving in
09:47 15 Winnipeg and having all this media attention on
16 the very first meeting, and the second issue was
17 did this type of media exposure with him and you,
18 did you have any concerns that that might cause
19 people, namely the authorities, to view Professor
09:47 20 Boyd as less than an independent outsider?

21 A No, I don't think it did.

22 Q Okay. That wasn't a concern, that lookit, if --

23 A No. Because I was meeting him? I mean he --

24 Q No, not meeting him, but meeting him with, as we
09:47 25 see here, a group of the media, and that -- I'm



1 just trying to get your sense, because I -- and
2 I'll be asking later witnesses this question --
3 whether, what their perception was of the
4 Boyd/Rossmo report and sort of how it came about,
09:47 5 and I think Professor Boyd indicated he was
6 surprised when he was greeted by the media, and so
7 I'm just trying to get your sense of that and
8 whether there was any concern that, although that
9 would be great for publicity and bring attention
09:48 10 to your case, that might it cause some people to
11 think that he's one of your investigators?

12 A No. I think that probably, at this time we were
13 really connected with the media and they were in
14 touch with us back and forth every day, so likely
09:48 15 what happened, I don't think that I picked up the
16 phone and phoned everybody and said Professor Boyd
17 was coming, but they were saying "what's
18 happening", you know, and I was saying "oh, it's
19 really exciting, there's this professor and a
09:48 20 policeman", and etcetera, etcetera, and tell them
21 about it, and then the media got involved from
22 there. I think it, I think it was just a natural
23 unfolding, I don't think -- I have no
24 recollection, Mr. Hodson, of going and phoning the
09:48 25 media to tell them about it.



1 Q Okay.

2 A I think it happened in the normal course of my
3 everyday -- because there were reporters that I
4 talked to every day, at least once a day those
09:49 5 reporters would be on the line to me to find out
6 what was happening.

7 Q All right. And, again, would it be correct to say
8 that, with Professor Boyd and Mr. Rossmo, that
9 after the initial meeting you and Mr. Asper and
09:49 10 your son David would have met with them, given
11 them information, --

12 A Yes.

13 Q -- and they --

14 A Access to everything.

09:49 15 Q -- and they, in turn, gave you information back,
16 did they not, during the course of their
17 investigation, before their report was done?

18 A Yes, they did.

19 Q So when they went and interviewed a witness they
09:49 20 would contact either you or Mr. Asper and say
21 "lookit, this is what this person told us", and I
22 think we'll see in their report they actually
23 uncovered some information from Dr. Emson that
24 they passed on to you before they released their
09:49 25 report on it, correct, --



1 A That's correct.

2 Q -- about his views on blood, blood in semen?

3 A Yes.

4 Q And so did you have a fairly good working
09:49 5 relationship with them, then, with Boyd?

6 A Yes, we did.

7 Q We'll come back to their report a bit later in the
8 chronology here. If we could go to 010080, and
9 this is a letter August 8th, 1991 from Mr. Wolch
09:50 10 to the Department of Justice in Saskatchewan, and
11 I think -- and I could be wrong on this -- but I
12 think this is the first contact by -- other than
13 Mr. -- I think it might be the first contact by
14 you or anybody on behalf of David with the
09:50 15 Attorney General of Saskatchewan related to this
16 matter. As I say, I stand to be corrected on
17 that, but I -- this is a letter, Mr. Wolch says:

18 "It was only recently brought to my
19 attention that the Attorney-General for
09:50 20 Saskatchewan was not involved in our
21 application to the Minister of Justice
22 for Canada, with the exception of
23 receiving a copy of the Minister's
24 reply."

09:50 25 And then goes on to provide various information,



1 the Ferris report, statements, etcetera. Would
2 it be correct, Mrs. Milgaard, that the decision
3 if and when to contact the Saskatchewan Attorney
4 General, that would have been something you would
09:51 5 have left up to your lawyers, as opposed to you
6 deciding?

7 A Yes. I don't -- I don't even have a memory of
8 this happening.

9 Q If we can go to 054412. This is the George
09:51 10 Lapchuk interview August 8, 1991 in Vancouver that
11 you and Paul Henderson travelled there to meet
12 with him; do you remember that event?

13 A Yes, I remember that trip very well.

14 Q And you heard Mr. Henderson's evidence about the
09:51 15 interaction with Mr. Lapchuk; is that correct?

16 A Yes.

17 Q And do you take issue with his version of events
18 as to what happened with Mr. Lapchuk?

19 A No, my -- my sense of it was very similar.

09:52 20 Q And so, just on this point, you were trying to
21 interview him to get information on the motel room
22 incident; is that correct?

23 A That's correct.

24 Q And when you first met with him he said, lookit,
09:52 25 either the Justice or the RCMP said I'm not



1 supposed to talk to you, or I don't have to talk
2 to you, or something like that?

3 A Right.

4 Q What do you recall him saying; do you have a
09:52 5 recollection of the words he used?

6 A I don't have a recollection of the words he used
7 but I remember thinking, aha, another one.

8 Q 'Another one' in what respect?

9 A Another one that's not supposed to talk to us.

09:52 10 Q And so you then went through Mr. Asper, is that
11 correct, to get some media out in Vancouver?

12 A Yes, we figured we would get him on camera saying
13 that.

14 Q So you went back with a media crew hoping to have
09:52 15 him repeat -- and the camera would have been
16 hidden I take it?

17 A That's right.

18 Q So have him come to the door, repeat it, and have
19 him on camera saying the police or the Justice
09:53 20 have told me not to talk to you; is that --

21 A Yes.

22 Q And then what did you plan on doing with that
23 footage if you would have obtained it?

24 A Showing it.

09:53 25 Q And saying here's an example of what?



1 A Of what I am running into in trying to
2 investigate.

3 Q And then, when you went back, I take it
4 Mr. Lapchuk said "come on in, I'll talk to you"?

09:53 5 A Yes. And that was -- I was happy that he was
6 going to talk to us, but it was a downer, because
7 I was -- really had thought that that would have
8 been a powerful thing to have had.

9 Q Would you have rather had the rejection or his
09:53 10 information?

11 A In light of the information that we got I would
12 probably have rather had a rejection.

13 Q That would have been a more valuable piece of
14 information for you on the re-opening?

09:53 15 A Yes, it could have.

16 Q Go to 160026, and just turn that, please. I'm
17 gonna go through some articles around August.
18 August 14th is the date of the application, and
19 I'm only going to go through some of the media
09:54 20 articles, there are many many news stories around
21 this time frame. And this would be Dan Lett
22 August 11th, 1991, and I think he is perhaps the
23 first to report on the Centurion Ministries
24 report, and he writes:

09:54 25 "Saskatoon Police covered up



1 the 1970 conviction of a serial rapist
2 whose crimes were identical to the
3 murder for which David Milgaard was
4 convicted, for fear it would prompt a
09:54 5 review for wrongful conviction, a new
6 investigation has charged."

7 To the right, please:

8 "The investigation, conducted
9 by Centurion Ministries of New Jersey,
09:55 10 details seven rapes committed by
11 convicted sexual offender Larry Fisher
12 and concludes that he, and not Milgaard,
13 was the most likely person to have raped
14 and murdered Gail Miller in 1969 ..."

09:55 15 Now let me pause there. The application to the
16 minister had eight because it had the (V14)- rape
17 included, here Mr. Lett is only reporting seven,
18 at least on August 11th, in the Centurion report;
19 can you explain that at all?

09:55 20 A I have no explanation for that, no, I'm sorry.

21 COMMISSIONER MacCALLUM: Just put your
22 question again, please, I missed it?

23 BY MR. HODSON:

24 Q This article talks about seven, it says:

09:55 25 "The investigation, conducted by



1 Centurion ... details seven rapes
2 committed by convicted sexual offender
3 Larry Fisher ...",
4 and in the application materials that went to the
09:55 5 minister three days later the application
6 actually has eight, it has the (V14)- one, number
7 one, and then the seven for which Mr. Fisher pled
8 guilty to, being the two in Winnipeg, the four in
9 Saskatoon, and (V10) (V10)- in North Battleford.

09:56 10 A Right.

11 Q And my question was to get some explanation as to
12 why Mr. Lett would be referring to the Centurion
13 report and only seven rapes when the application
14 material filed three days later has eight, it has
09:56 15 the (V14)- one added, and I think perhaps --

16 A Perhaps because we added it within the next couple
17 of days. I don't know.

18 Q And that's an assumption as opposed to a
19 recollection?

09:56 20 A I have no recollection of that.

21 Q Okay. And go back to the headline, please. So
22 *Saskatoon cops covered sex offender's tracks,*
23 *probe says,* so this would be one of the first if
24 not the first reports about Centurion Ministries'
09:56 25 investigation and conclusions; is that correct?



1 A Correct.

2 Q 160020.

3 A And I remember Jim feeling it was important that
4 we have the Miller family's support when his --
09:57 5 when we were doing this, that that's one of the
6 reasons that they asked me to go there.

7 Q What --

8 A So that, before he came out with his report, that
9 we have their backing, and I notice that that was
09:57 10 their --

11 Q Yeah. What did Mr. McCloskey, did he give you any
12 advice, or what was his view on how this should be
13 played in the media, this second application and
14 his report or the Centurion report; what did he
09:57 15 tell you about how it --

16 A It should be blasted as far and wide as we
17 possibly could, and later on I remember taking it
18 to Ottawa and giving it to all the MPs and
19 everything, you know. We -- we were trying to
09:58 20 have this circulated to the greatest of our
21 ability, all of our support group people would
22 have had it, would have been going out with it to
23 people, door to door campaigns, it was just --

24 COMMISSIONER MacCALLUM: And that's his
09:58 25 report you are speaking of?



1 A Yes.

2 BY MR. HODSON:

3 Q And --

4 A We got this out to everyone because we felt that
09:58 5 it was so important that they know that the Miller
6 family was there supporting it. That, to me, was
7 very big.

8 Q And so the report itself, I think, was the report
9 that was attached to the application to the
09:58 10 minister, is that correct, that had the analysis
11 of the Fisher crimes and similarities?

12 A Yes.

13 Q What about the message that went with that, about
14 the coverup and the allegations of wrongdoing
09:58 15 against the police and the framing and things of
16 that nature, what did Mr. McCloskey say about that
17 message?

18 A What did he say about that particular message?

19 Q Let me -- sorry.

09:59 20 A I can't tell you.

21 Q Let me --

22 A I have no idea.

23 Q Let me back up. You had said Mr. McCloskey said
24 to 'blast this everywhere as loud as you could and
09:59 25 as often as you could', or something like that?



1 A Yes.

2 Q And I think they were talking about the Centurion
3 report; correct?

4 A Yes.

09:59 5 Q And did the Centurion report -- and I don't want
6 to get too fine a point -- the written Centurion
7 report, I'm not sure that it contained the
8 allegations of frame and coverup, I think that
9 came in people talking about it, Mr. McCloskey,
09:59 10 after. So when you are talking about the
11 Centurion report, would that include Mr.
12 McCloskey's views that went along with it, his
13 analysis?

14 A I believe it did. I believe that, I think what
09:59 15 we -- the package, in my mind -- and I could be
16 wrong about this -- the package, in my mind, did
17 include the fact sheet and our views about the
18 coverup.

19 Q Okay. So certainly, when you talk about the
09:59 20 Centurion Ministries report, you are talking about
21 the similarities of the Fisher rapes, --

22 A Right.

23 Q -- you are talking about the Miller family's
24 statement, and you're talking about allegations of
10:00 25 frame and coverup?



1 A Yes.

2 Q And so here, this would be the next day in
3 Winnipeg, Mom alleges cop coverup, and so that
4 would be two days before the application.

10:00 5 And then if we could go to
6 000901. And I dealt with this a bit earlier, but
7 this would be the letter to the minister August
8 14th, '91; correct?

9 A Correct.

10:00 10 Q And in this application what Mr. Wolch says in the
11 letter:

12 "When we first made our application the
13 suggestion that Larry Fisher was the
14 perpetrator was not the main thrust and
10:00 15 we were at that time advised by your
16 Department that there were no police
17 reports available on past offences of
18 Mr. Fisher. Whereas we suggested there
19 was a distinct pattern and although the
10:01 20 similarities were never placed before
21 you, we accepted that we were at that
22 time at a dead end."

23 And were you involved in any of the discussions
24 about putting forward this position, or was this
10:01 25 something you left to your lawyers?



1 A I left that to them.

2 Q And, down at the bottom, is it correct to state
3 that -- down at the bottom -- that when they talk
4 about the Centurion report here they talk about:

10:01 5 "... somewhat surprised to learn that
6 there was ... including at least one
7 police report concerning previous
8 victims ...",

9 and was it your understanding that that would be
10:01 10 the (V5)-- (V5)--- report that had been shown to
11 Paul Henderson?

12 A Yes.

13 Q And that, as well, that this letter talks about
14 the similarities:

10:02 15 "... of all of Fisher's attacks and of
16 that committed against Gail Miller."

17 Now the (V14)- assault is included in the
18 attached materials, and am I correct in
19 understanding this application in being that your
10:02 20 counsel and David put forward that Larry Fisher
21 had in fact assaulted (V14)- (V14)-, and the
22 authorities were to look at that assault and the
23 similarities of that assault in concluding that
24 Larry Fisher was the perpetrator of the murder of
10:02 25 Gail Miller?



1 A Yes.

2 Q If we can then go ahead to 219467 -- no, I'm
3 sorry, that's the wrong document, 212289. And
4 this is an August, this is a press or a news
10:03 5 conference announcement that's put out saying on
6 August 16th, 1991 in Toronto Jim McCloskey would
7 hold a news conference and:

8 "... present his latest findings and
9 will be available for interviews at the
10:03 10 conclusion of the news conference."

11 Can you tell us, again, what -- why did you bring
12 in Mr. McCloskey to speak to the media about this
13 matter?

14 A I believe we held a news conference the same day.

10:03 15 Q Right, you and David Asper.

16 A Yeah.

17 Q And --

18 A And I believe -- and we brought Jim up to handle
19 the eastern part of the media, and why we brought
10:04 20 Jim up?

21 Q Yeah?

22 A I -- because essentially it was his report, and we
23 felt that -- I mean he, Jim McCloskey, brought a
24 lot of credibility with him, he -- he was
10:04 25 well-known for his work with wrongfully convicted,



1 he had already freed eight people, so he had a --

2 Q Credibility?

3 A -- credibility, yes, absolutely, and we felt that

4 he'd be a wonderful interview for them. Now he

10:04 5 wasn't able to get out to Winnipeg at the time, so

6 having him just come up to Toronto and do it there

7 was a wonder -- we just felt it was a wonderful

8 opportunity to get somebody else out advocating

9 for us.

10:04 10 Q And so am I correct that, around this August 16th

11 time frame, that you and Mr. Asper, I think, did a

12 number of interviews in Winnipeg; is that correct?

13 A Oh yes.

14 Q And Vancouver, was it?

10:05 15 A And Vancouver.

16 Q Mr. McCloskey did some in Toronto?

17 A Yes.

18 Q And so you said earlier that the media were

19 following you, or may have been -- well, I think

10:05 20 you were saying that it would be the media that

21 would get all this campaign planned. Let me back

22 up and ask you the question again. On August

23 16th, was it not a case of you and Mr. Asper and

24 Mr. McCloskey orchestrating a media announcement

10:05 25 of this application across Canada, both in the



1 print media, television media, and whatever media
2 you could, by having these press conferences?

3 A Yes, and we were being interviewed on *Newsworld*,
4 we were being interviewed everywhere, so that we
10:05 5 wanted the Canadian public on board with this.
6 And we felt that by having these conferences, and
7 all across the country, that we were getting our
8 message out to the public, and we felt that that
9 was important, that if enough of the people knew
10:06 10 what this contained, that we weren't going to be
11 facing another turn-down.

12 Q Right.

13 A She couldn't do it.

14 Q And so my question is this, though -- and I think
10:06 15 you may have answered it -- that at this point,
16 August 16th, 1991, it wasn't a case that the media
17 happened to catch you and Mr. Asper and Mr.
18 McCloskey and interviewed you, but rather it was
19 an orchestrated effort on your behalf to get this
10:06 20 information out as broadly as you could and as --
21 to --

22 A Yes.

23 Q -- every media station you could, television,
24 radio, newspaper, --

10:06 25 A Everything.



1 Q -- everything. And so the press conferences were
2 planned by you, and the media were invited to
3 attend, and then after the news conferences is it
4 correct to say that spurned other interest by the
10:06 5 media and it ended up with countless interviews by
6 you, Mr. Asper, Mr. McCloskey with various
7 television, radio and newspapers?

8 A That's correct.

9 Q And that was part of the plan?

10:07 10 A That was all part of the plan.

11 Q Right. I'm going to show, there is a couple of
12 news clips that I am going to show here, and just
13 for the record I can't show them all because
14 there's too many but I'm going to try and show the
10:07 15 ones -- there's an interview, I think, of you and
16 Mr. Asper, there is also one of Mr. McCloskey,
17 and, Mr. Commissioner, I think they're either on
18 August 16th, 1991 or within a day of that.

19 The first one is doc. ID 230034,
10:07 20 and this is David Asper and Joyce Milgaard
21 appearing on CBC *Midday*:

22 "REPORTER: ... dragged on for more than 20
23 years ..."

24 MR. HODSON: And this is, I think just for
10:07 25 the record, at the ten-minute mark on the video.



1 (VIDEO OF REPORTER, JOYCE MILGAARD, DAVID ASPER
2 PLAYED)

3 "MR. FISHER: I didn't have nothing to do
4 with that death.

10:08 5 REPORTER: Joining me now from Winnipeg,
6 David Asper, David Milgaard's lawyer, and his
7 mother, Joyce Milgaard, joins us from Vancouver.
8 Good afternoon to both of you.

9 JOYCE MILGAARD: Good afternoon, Ralph.

10 DAVID ASPER: Good afternoon.

11 REPORTER: Okay. David Asper, let me start
12 with you. The family of the victim, the Miller
13 family, is now saying that there may be some
14 doubt as to whether or not David Milgaard is
10:08 15 indeed guilty of this crime. Was there anything
16 that you said to them or showed them that helped
17 change their minds?

18 DAVID ASPER: Well, it was actually
19 Mrs. Milgaard initially, and then Jim McCloskey,
10:08 20 who has been leading the investigation, that
21 showed them the latest information developed with
22 relation to a serial rapist that was operating in
23 Saskatoon at the time that the Miller murder
24 occurred, and when they reviewed this new
10:08 25 evidence, the precise details of the MO of these



1 crimes, in conjunction with everything else that
2 we had provided to the Department of Justice,
3 they expressed their doubt.

4 REPORTER: All right. Now the serial
10:09 5 rapist you are talking about is Larry Fisher;
6 correct?

7 DAVID ASPER: That's right.

8 REPORTER: All right. Now Larry Fisher is
9 in jail right now in British Columbia, Joyce
10:09 10 Milgaard, a lot of people are throwing his name
11 around, what makes you so sure he's the man who
12 did this as opposed to your son?

13 JOYCE MILGAARD: Well I don't even like to
14 say that Larry Fisher is the man, and yet after
10:09 15 being out, I have just come back from a trip with
16 the investigator, I have interviewed all of Larry
17 Fisher's victims, and that's actually all these
18 women that I talked with, I'm convinced, after
19 that, that there is no question. The evidence is
10:09 20 so similar, and almost identical to that of the
21 Gail Miller case, that if you put this on a chart
22 without any names there is no question that
23 anyone looking at it would see it must have been
24 him.

10:09 25 REPORTER: All right. David Asper, let me



1 ask you, on the legal side of a question like
2 this, just because someone has committed crimes
3 that are similar, if not very similar, to another
4 crime, surely that doesn't mean that they're
10:10 5 guilty of the crime in question, you have to have
6 some sort of physical evidence attaching them to
7 the murder scene; why do you feel comfortable to
8 talk about Larry Fisher this way?

9 DAVID ASPER: First of all, under the
10:10 10 principle of similar act evidence, which is an
11 established principle in Canadian law, there need
12 not necessarily be physical evidence linking
13 someone to the crime.

14 But I want to make it very
10:10 15 clear, Ralph, that it's not our duty to prosecute
16 and to convince everybody beyond a reasonable
17 doubt that Larry Fisher did it. What we have to
18 do is disprove that David Milgaard did it. And
19 so that the cumulative effect of all of Fisher's
10:10 20 activity, if placed before a jury, would, at the
21 very least, place reasonable doubts in their
22 mind, as it did in the minds of the Miller
23 family, that David Milgaard committed it.

24 You have to remember, Fisher is
10:10 25 clothed entirely with the presumption of



1 innocence, and the burden of proof against him is
2 proof beyond a reasonable doubt. All we have to
3 do in the Milgaard case, it seems to me, is raise
4 reasonable doubt.

10:11 5 REPORTER: Now we have a situation where
6 there was appeals to the Justice Minister, Kim
7 Campbell, and, Joyce Milgaard, I know that you
8 sort of, at one point you were chasing Kim
9 Campbell down a hallway asking to have the case
10:11 10 seen and she said "if, you know, if you do this
11 you are going to endanger the chances". Well it
12 seems you've gone through the proper channels and
13 the Justice Department and the minister is saying
14 "there is no grounds for a new trial"; where does
10:11 15 that leave you?

16 JOYCE MILGAARD: Well, I think that it
17 leaves us right back in the public, and I think
18 it means that the public has got to start asking
19 questions. They have to ask questions, for
10:11 20 instance, about the four victims in Saskatoon.
21 Why were they never told that the serial rapist
22 that was operating in Saskatoon, why were they
23 never told that he had pled guilty to their
24 crimes? When I went out and met with these
10:11 25 victims, do you know, Ralph, that they had not



1 even been told that this man had been caught,
2 that he'd pled guilty.

3 REPORTER: Well why do you think they
4 haven't been told?

10:12 5 JOYCE MILGAARD: Well, take a look at where
6 the man lived, right in the neighbourhood with
7 Gail Miller and these other girls, and it's very
8 clear that anyone in Saskatoon that knew that he
9 had confessed to these crimes would also draw the
10:12 10 inferences that we are.

11 DAVID ASPER: Now if I can just jump in
12 here, Ralph, I think you to have appreciate that
13 the people who initially reached the conclusion
14 that there may have been an effort to -- by the
10:12 15 police to cover their tracks were the
16 investigators from Centurion Ministries. Now
17 these are people with extensive experience
18 dealing with wrongful convictions.

19 REPORTER: Centurion Ministries are from
10:12 20 the United States and they have had eight
21 overturned convictions in the United States;
22 right?

23 DAVID ASPER: That's right.

24 JOYCE MILGAARD: That's right.

10:12 25 DAVID ASPER: And their field investigator,



1 in this particular case Paul Henderson, is a
2 Pulitzer Prize-winning investigator,
3 investigative journalist, who has had plenty of
4 experience in this kind of case, and they're able
10:12 5 to look at what happened in this particular case
6 and relate it to what they've seen occur in other
7 cases, particularly in the United States, and
8 reach the conclusion that everything points not
9 only to a frame of David Milgaard, but to a
10:13 10 coverup.

11 REPORTER: Now, Joyce, let me ask you
12 something. There's some things that you read in
13 the report that, I don't know, your son must have
14 answered these questions for you, but there were
10:13 15 blood, bloodstains on clothes and things like
16 that. Has David ever told you why there was
17 blood on his clothes and why those clothes were
18 thrown away?

19 JOYCE MILGAARD: Well, there were no blood
10:13 20 on his clothes, and the clothes were not thrown
21 away, and --

22 REPORTER: Well the witnesses say there
23 were; is that --

24 JOYCE MILGAARD: The witnesses that said
10:13 25 that there was blood on David's clothes now have



1 come forward and said "I lied about seeing blood
2 on David's clothes, the police pressured me and
3 so I lied."

4 REPORTER: Okay. Well the Justice report
10:13 5 says that it doesn't quite go that way, that
6 there's conflicting reports, that there's
7 different things being said. It just seems that
8 there's so much grey area here that it's hard for
9 them to press for another trial, but how
10:13 10 confident are you that you are going to get
11 another trial? I mean you've already been turned
12 down by the Justice Minister, you are hoping for
13 public pressure, do you think that you will be
14 able to get your son out of prison?

10:14 15 JOYCE MILGAARD: I'm absolutely confident
16 that, as the public learns of this new
17 information, that they are going to say we must
18 have a new trial.

19 I mean, we're not asking Kim
10:14 20 Campbell to say David Milgaard is innocent, give
21 us our day in court. The procedure is so flawed
22 we don't even know what Kim Campbell got to look
23 at, we don't know what she gave to the judge; is
24 that Canadian Justice? It's so wrong.

10:14 25 DAVID ASPER: And I think I should make the



1 point that -- and it's implicit in your
2 question -- so long as there are two versions of
3 truth, if you will, that are capable of arising
4 out of the same factual circumstance -- so in
10:14 5 this case there is the Justice Department's
6 version --

7 REPORTER: Right.

8 DAVID ASPER: -- of truth and then there's
9 our version of truth -- so long as that's the
10:14 10 state of affairs that seems to me to be best
11 evidence of the rightness of the need to have
12 this thing heard in a neutral forum --

13 REPORTER: All right.

14 DAVID ASPER: -- and put it in front of a
15 judge.

16 REPORTER: We've running out of time and I
17 thank you both. Bye-bye.

18 JOYCE MILGAARD: Bye-bye.

19 DAVID ASPER: Bye-bye."

10:15 20 **(VIDEO ENDS)**

21 BY MR. HODSON:

22 Q Now am I correct that that interview would have
23 been one done on or about August 16th, the same
24 day that Mr. McCloskey was doing similar things in
10:15 25 Toronto?



1 A Yes, I'm sure it was.

2 Q And I note that Mr. Asper introduced the topic of
3 a frame and coverup being advanced by Centurion
4 Ministries, and was that something that was
10:15 5 planned to be put forward out into the public
6 domain, that "Centurion Ministries has concluded
7 that there is a frame and coverup"?

8 A I believe that was part of the strategy, yes.

9 Q And would that be to cause people to, I think your
10:14 10 words earlier were to sit up and take notice and
11 put pressure on the minister to get their
12 attention?

13 A Yes.

14 Q If we could then go to 230037, and this is around
10:14 15 the same date, and I think this is a, shows parts
16 of the press conference with Mr. McCloskey and Mr.
17 Asper's comments.

18 **(VIDEO OF REPORTER, DAVID ASPER AND JIM MCCLOSKEY**
19 **PLAYED)**

10:15 20 *NEWS ANCHOR: Good evening. In the news an*
21 *independent investigator's report on the David*
22 *Milgaard case has been handed over to Federal*
23 *Justice minister Kim Campbell. The report's*
24 *author says it lays out graphic evidence that*
10:15 25 *proves conclusively that David Milgaard did not*



1 and could not have killed Saskatoon nursing
2 assistant Gail Miller in 1969. Milgaard has
3 spent 22 years in jail for the murder and is
4 making his second application for a new trial.
10:15 5 Glen Cassie reports.

6 REPORTER: The Milgaard family and their
7 lawyers say the incredible ordeal of David
8 Milgaard and his fight for freedom began with the
9 shoddy investigation done by the Saskatoon
10:15 10 police.

11 DAVID ASPER: None of this would be
12 necessary without the Saskatoon police, and
13 that's where this whole case began.

14 REPORTER: This latest investigation led by
10:15 15 the U.S. based Centurion Ministries says
16 extensive interviews with every victim of
17 convicted rapist Larry Fisher shows that each
18 case bore a striking resemblance to that of the
19 murder of Gail Miller.

10:16 20 JIM McCLOSKEY: Then you compare how they
21 were assaulted to how Gail Miller was assaulted
22 and the timing and the age of the victim and the
23 location of the victims, to me it's indisputable.

24 REPORTER: The family says the difference
10:16 25 between this application and the one Justice



1 minister Kim Campbell turned down is the amount
2 of evidence.

3 DAVID ASPER: This kind of information so
4 radically casts her doubts about the first
10:16 5 application in a different light that it would be
6 very difficult for her to uphold the original
7 decision.

8 REPORTER: Frustration is building in the
9 Milgaard camp. David is said to be receiving
10:16 10 medical treatment for depression at the infirmary
11 at Stony Mountain Penitentiary while the fight
12 for his freedom continues outside the prison
13 walls.

14 DAVID ASPER: The Department of Justice is
10:16 15 as committed to justice as it is to avoiding a
16 mess and what's happened in this case is a very
17 big mess.

18 REPORTER: The report has also been
19 delivered to the Saskatchewan Attorney General's
10:17 20 Department in the hopes that that province might
21 re-open the case. The family says the only thing
22 in their way is the number of people who made
23 their reputation and their careers on the
24 Milgaard case.

10:17 25 Glen Cassie, CKY News Hour.



1 (VIDEO ENDED)

2 BY MR. HODSON:

3 Q And that would have been an excerpt from Mr.
4 McCloskey's news conference in Toronto that day;
10:17 5 correct?

6 A That's correct.

7 Q And then the last clip is 230173 and this is a
8 lengthy tape, we're at the one hour, is it one
9 hour and 10 minute mark, and there is I think
10:17 10 about a 10 minute segment there.

11 COMMISSIONER MacCALLUM: What's the number,
12 please?

13 MR. HODSON: 230173, and the first part of
14 that is an interview with Mr. Asper and Mrs.
10:18 15 Milgaard, a very short one, and then an interview
16 of Jim McCloskey by Anne Petrie of the CBC.

17 COMMISSIONER MacCALLUM: And this was in
18 where?

19 MR. HODSON: I think August 16th or August
10:18 20 17th, 1991.

21 COMMISSIONER MacCALLUM: In Toronto?

22 MR. HODSON: Pardon me?

23 COMMISSIONER MacCALLUM: In Toronto?

24 MR. HODSON: I believe so, yes.

10:18 25 COMMISSIONER MacCALLUM: Okay.



1 (VIDEO OF REPORTER, JOYCE MILGAARD AND KIM CAMPBELL)

2 REPORTER: At that point the Saskatoon
3 police should have known they may have convicted
4 the wrong man.

10:18 5 JOYCE MILGAARD: They covered it up. They
6 should have opened the case at that point and
7 said "Hey, we've got to take a look at this." No
8 one did that. No one wanted to have, to come
9 forward and say we've made a mistake.

10:18 10 REPORTER: Milgaard believes it's a
11 cover-up because the investigator at the Miller
12 scene, Joe Penkala, eventually became the city's
13 police chief. He's now retired. Milgaard's
14 defence lawyer is now a judge.

10:19 15 JOYCE MILGAARD: There are a lot of
16 powerful people out there that have made their
17 reputations on the David Milgaard case and you
18 can bet your bottom dollar they don't.

19 KIM CAMPBELL: Mistakes can be made.

10:19 20 REPORTER: The minister says the Milgaard
21 application will be treated like any other.

22 KIM CAMPBELL: It will be investigated
23 thoroughly and evaluated to see whether it
24 satisfies the requirements for either a new trial
10:19 25 or a referral (inaudible) the Court of Appeal.



1 REPORTER: Kim Campbell's office took more
2 than two years to respond to the last
3 application. David Milgaard's lawyer believes
4 this time the minister will be a little faster
10:19 5 because of growing publicity surrounding the
6 case.

7 Kirk Williams, CBC news.

8 **(VIDEO ENDED)**

9 **(VIDEO OF ANNE PETRIE AND JIM MCCLOSKEY PLAYED)**

10:19 10 REPORTER: Today on Coast to Coast, the
11 Justice Seekers.

12 Joyce Milgaard has left no
13 stone unturned in her quest to free her son David
14 from a Manitoba prison. She believes Milgaard
10:20 15 when he says that he didn't kill nurse Gail
16 Miller in 1969 in Saskatchewan. It's a claim
17 that he has steadfastly maintained since he was
18 convicted in 1970.

19 One of the people that Joyce
10:20 20 Milgaard turned to recently is Jim McCloskey. He
21 is the head of Centurion Ministries, it's a New
22 Jersey based group that works for people it
23 believes have been wrongly convicted. And
24 Centurion has come up with evidence that has
10:20 25 freed eight U.S. prisoners including one that was



1 days away from being executed. Jim McCloskey is
2 in Toronto today to outline his theories on the
3 Milgaard case and he joins me now to discuss that
4 and also the work that Centurion Ministries does
10:20 5 and I welcome you to our program and to Canada
6 for that matter.

7 JIM McCLOSKEY: Thank you very much. I
8 feel privileged to be here and look forward to
9 this discussion.

10:20 10 REPORTER: Tell me how you got involved in
11 a Canadian murder case?

12 JIM McCLOSKEY: Well, we've been doing this
13 kind of work that you just described for the last
14 11 years and I guess it was, time has a way of
10:21 15 blurring, but I think it was about the fall of
16 1988, Joyce Milgaard, the mother of David, was in
17 Princeton for religious work unconnected and
18 coincidental to Centurion Ministries being there
19 and David, her son, read or saw something on TV
10:21 20 about Centurion Ministries, wrote her a letter
21 and asked her, "Lookit, mom, you are in
22 Princeton, this organization is in Princeton,
23 would you please stop by and see if maybe they
24 can, would be interested in helping me out in
10:21 25 whatever way they can."



1 REPORTER: So that was 1988. This is 1991.
2 What happened in the intervening time?

3 JIM McCLOSKEY: Right. Well, I met with
4 Joyce several times and spent some time with her
10:21 5 while she was in Princeton and she handed over
6 the materials, described the facts of the case
7 and we spoke at length, but essentially I told
8 her, "I'm sorry, Joyce, I'm just not going to be
9 able to step in and do anything because we're
10:21 10 over committed on cases here in the United
11 States," and that continued up until -- we stayed
12 in touch, she kept me informed of the progress, I
13 was interested, but in the earlier part of 1990,
14 about a year and a half ago, David Asper, David
10:22 15 Milgaard's attorney got an anonymous call
16 pointing him in the direction of Linda Fisher,
17 and when Joyce got that, heard about that, she
18 telephoned me just to let me know what was going
19 on and at that point I decided, well, maybe this
10:22 20 is a good time for Centurion Ministries to step
21 in and see if we can lend some assistance here
22 and develop whatever is out there.

23 REPORTER: Maybe we can just go back to
24 Linda Fisher because not everybody watching knows
10:22 25 all the details that we're talking about. Why



1 did that twig something in you?

2 JIM McCLOSKEY: Well, it twiggged something
3 more in Joyce than it did in me at that point,
4 but Linda Fisher is the wife of a fellow by the
10:22 5 name of Larry Fisher who also lived about a block
6 from the crime. Joyce remembered when she heard
7 that name that the police interviewed him only
8 three or four days after the murder because he
9 was standing at the same bus stop that Gail
10:23 10 Miller used going to work around 6:30, quarter to
11 seven and he was simply interviewed and he gave
12 as his address the same home where Albert
13 Cadrain, one of the witnesses against David,
14 ultimately lived, and where David was visiting
10:23 15 that same morning that Gail Miller was murdered,
16 so it took on some significant, well, who is this
17 Larry Fisher and let's see if we can find out
18 something more about him, and the first step
19 would be to go see his wife.

10:23 20 REPORTER: So what have you come up with,
21 what's your new evidence that you are presenting
22 today that you think can crack this thing open
23 again?

24 JIM McCLOSKEY: Well, we've done a, what I
10:23 25 would consider a pretty exhaustive discovery,



1 investigation of Larry Fisher and all of his
2 sexual assault crimes. We went out, and I don't
3 think anybody else has taken the time to do this,
4 but we went out and interviewed all of Larry
10:24 5 Fisher's victims, the people who were actually
6 assaulted and raped by him, and I wanted to find
7 out how did Larry Fisher do this, what was his
8 method of operation in order to see if we could
9 learn as much of the details about each crime and
10:24 10 then compare that to how Gail Miller was
11 attacked, and we were able to do that and analyse
12 it and it's just the way Gail Miller was attacked
13 is virtually indistinguishable, it's seamless
14 from the way -- from other, from the other Larry
10:24 15 Fisher victims.

16 REPORTER: Okay. So give me some of those
17 details.

18 JIM McCLOSKEY: Yeah, I'll give you --

19 REPORTER: You know, if you make two
10:24 20 columns down, what do you see that matches up?

21 JIM McCLOSKEY: All right, here's what you
22 do. Gail Miller was killed on January 31st,
23 1969. Now, in the fall of 1968, only two or
24 three months prior to her murder, in Saskatoon
10:25 25 within blocks of her murder three other women



1 were sexually assaulted and eventually Larry
2 Fisher pleaded guilty to these sexual assaults.
3 Now, each of these three women, as Gail Miller
4 did, were walking alone within one or two blocks
10:25 5 of their house in the dark, were taken at knife
6 point and dragged into an alley and assaulted,
7 and also Larry Fisher lived one block from where
8 Gail Miller was assaulted.

9 REPORTER: I don't want to be coldhearted
10:25 10 about this, but I've got to be as skeptical as I
11 can. That sounds like the way a lot of rapes are
12 committed to me, I mean, that, you know, it's
13 dark, you are walking alone, somebody grabs you
14 at knife point.

10:25 15 JIM McCLOSKEY: Well, the thing is when you
16 put these things on a map of Saskatoon where they
17 occurred, you have Larry Fisher's house as the
18 centrepiece and then you go to the east of that
19 and you go to the west of that within blocks and
10:26 20 that's where all these crimes were occurring.
21 Even the police three days after Gail Miller was
22 killed made an announcement through the local
23 newspaper that they were seriously considering
24 the possibility, because of the similarities,
10:26 25 that the killer of Gail Miller was the same man



1 who was raping, who raped these three women only
2 months before in the same immediate
3 neighbourhood.

4 REPORTER: Well, if that announcement was
10:26 5 made, was that not brought up in court, was that
6 not discussed then and dismissed for some reason
7 in court?

8 JIM McCLOSKEY: That was a newspaper
9 article and it never came up in court, no.

10:26 10 REPORTER: Why did it not come up in court?

11 JIM McCLOSKEY: Well, you would have to ask
12 the people involved in that. One reason was --

13 REPORTER: I mean, you have a defence
14 lawyer, not just prosecution, surely the defence
10:26 15 would have been interested in it?

16 JIM McCLOSKEY: Well, yeah, let's not make
17 too many assumptions about how good work defence
18 lawyers can do at times, they can get pretty
19 sloppy themselves, especially if they believe
10:27 20 their client is guilty. I'm not saying this was
21 the case in this particular situation, but in
22 the, during David's trial in January of '70, one
23 year after the crime, Larry Fisher had not yet
24 been caught for and confessed to these rapes that
10:27 25 they were connecting with the Gail Miller crime,



1 so nobody really knew who did them. It would
2 be -- the Crown would not introduce that because
3 they knew David Milgaard did not do those
4 particular rapes because he was never in town, he
10:27 5 was only in town that one day that Gail Miller
6 was assaulted, so they are not going to bring
7 that up. It would be up to the defence attorney
8 to do it and I can't tell you why he did not.

9 REPORTER: Let me ask you, if you were
10:27 10 convinced -- well, presumably now you are
11 convinced, this leads you to be convinced of
12 David Milgaard's innocence?

13 JIM McCLOSKEY: No question about it.

14 REPORTER: Were you convinced before you
10:27 15 did these interviews or did it take these
16 interviews to convince you?

17 JIM McCLOSKEY: Well, a little bit of both.
18 I was very deeply provoked, all you have to do is
19 a casual reading of the transcripts to see how
10:28 20 witnesses contradicted and were inconsistent with
21 each other and vague and back and forth,
22 vacillation, but the Crown's theory is, and this
23 just absolutely seems ludicrous to me, the
24 Crown's theory is that David Milgaard, a
10:28 25 16-year-old kid, absolutely no violence in his



1 background, he drives into Saskatoon with his two
2 hippie friends to pick up a fourth friend and
3 they ask a girl for directions, she spurns -- she
4 doesn't give them directions, David Milgaard gets
10:28 5 out of the car in front of his girlfriend, with
6 whom he was intimate at the time, he starts
7 stabbing the girl with a knife and then proceeds
8 to take her around the corner and rape her in
9 minus 40 degree weather in the outside, to me
10:28 10 that's ludicrous, it doesn't make sense at all,
11 so that was -- just hearing that and reading
12 about that provoked me, and then when you go in
13 and really understand how some of these witnesses
14 were developed to give their false testimony -- I
10:29 15 see this, what happened in the Milgaard case I
16 see time in and time again in wrongful
17 convictions in the U.S., so it didn't take much
18 to provoke us to really smell a rat in this one.

19 REPORTER: Which brings me up to the
10:29 20 question I want to ask you before we take a
21 break. What is the M.O. of, to use crime
22 language, of Centurion Ministries now after this?
23 You've done your investigation. Do you now
24 pursue this in public or do you pass it over to
10:29 25 Mrs. Milgaard to see what she can do? What's



1 your role now?

2 JIM McCLOSKEY: Well, our role in this one
3 is our role in every one we take on, first as an
4 outside, objective enterprise, we are beholden to
10:29 5 one thing and one thing only and that's the truth
6 as we come to learn it as a result of the fruit
7 of our investigations. I'm not beholden to the
8 Milgaard family, nor am I to David's lawyers, I'm
9 beholden to the truth. Now, in this case, after
10:30 10 our work, we are on the same team with them
11 because we are convinced that David is innocent
12 here, so the investigation, we still have a
13 little work to do, we're not completely finished
14 yet, but the main part of it has pretty much been
10:30 15 developed.

16 Then another role that
17 Centurion Ministries plays, not only
18 investigator, we go out and serve as advocate to
19 try and tell the world why we think what we think
10:30 20 and to meet with people in authority if they care
21 to meet with us and take the gospel of David
22 Milgaard's innocence to the world.

23 REPORTER: People do get a second chance in
24 this country in the sense, particularly for David
10:30 25 Milgaard, that this case has been looked at by



1 the minister of Justice who brought in a retired
2 Supreme Court Justice in this country with
3 extensive experience in criminal litigation and
4 they both have looked at the new information and
10:31 5 said you haven't got enough to prove a
6 miscarriage of justice in the first trial.

7 JIM McCLOSKEY: Well, I can't say -- I
8 can't -- first of all, I can't explain how people
9 can be blind to this. There apparently is some
10:31 10 association between the minister and this judge
11 that she brought in. I'm not sure he was the
12 most objective party, having absolutely no --

13 REPORTER: Well, I think you have to be
14 really careful about what you are saying there.
10:31 15 I mean, Supreme Court judges are Supreme Court
16 judges.

17 JIM McCLOSKEY: Supreme Court judges might
18 be Supreme Court judges, but that doesn't mean
19 they don't have axes to grind too, and I just
10:31 20 find it unthinkable that any objective person --
21 and again, I'm not being paid by anybody, I'm
22 spending money on this thing -- any objective
23 person cannot look at these facts and come to a
24 clear understanding of David's innocence.

10:31 25 REPORTER: It's my understanding that at



1 least a portion of the judgment that was recently
2 made was available. Have you read that?

3 JIM McCLOSKEY: That what?

4 REPORTER: Have you acquainted yourself
10:32 5 with that, the decision that was made by the
6 minister of Justice?

7 JIM McCLOSKEY: Oh, yeah, sure, I read
8 that, yup. You mean by the Supreme Court
9 justice?

10:32 10 REPORTER: No, the final report that was
11 given by the minister of Justice, have you read
12 that?

13 JIM McCLOSKEY: Yeah, I read the letter
14 that she issued to David Milgaard's lawyers
10:32 15 explaining her decision.

16 REPORTER: And you found that
17 unsatisfactory?

18 JIM McCLOSKEY: Oh, yeah, completely so. I
19 mean, I was stunned by her analysis of this
10:32 20 reenactment evidence where you have two men, both
21 of whom were facing time for crimes, they come in
22 and they stated they were with David in a motel
23 in May of '69, which is indisputable, they were
24 with him in a motel, the question is what
10:32 25 happened once in that motel room, and David, when



1 asked, "Did you do that?" He, according to these
2 Crown witnesses, said, "Yes I did," and then
3 David went ahead and stabbed the pillow 12 times
4 or so admitting that he killed the girl.

10:33 5 Now, these were criminals who
6 were in trouble with the prosecution and in
7 exchange for their testimony they got sweet deals
8 on their own problems, so they had an invested
9 interest in giving testimony according to the way
10:33 10 the Crown wanted it to go.

11 Deborah Hall was also in that
12 room, the defence never called her, she was never
13 spoken to by either side before or during the
14 trial. Finally the Milgaard people spoke with
10:33 15 her in 1986 and she was, she couldn't believe
16 when she heard what the Lapchuk and Melnyk
17 testimony was, she said it didn't happen that way
18 at all. Yes, David was asked jokingly did you do
19 it, and he jokingly said no.

10:33 20 REPORTER: How come David Milgaard was in a
21 motel room with people of that ilk?

22 JIM McCLOSKEY: Well, David Milgaard at
23 that time was -- had used drug, he was a
24 marijuana smoking hippie at that time and that's
10:33 25 what was going on inside the motel room.



1 REPORTER: Let's go to Mike in Blind River.
2 Hi, Mike."

3 **(VIDEO ENDED)**

4 MR. HODSON: That's the end of that video
10:34 5 and perhaps an appropriate spot to break for the
6 morning.

7 COMMISSIONER MacCALLUM: Thank you.

8 (Adjourned at 10:34 a.m.)

9 (Reconvened at 10:56 a.m.)

10:56 10 BY MR. HODSON:

11 Q I just want to ask you a couple of questions about
12 those video casts. In addition to the ones that I
13 showed you that you and Mr. Asper were involved
14 in, I believe there were a number of other
10:57 15 interviews that you conducted with other media
16 outlets along the same lines; is that correct?

17 A Correct.

18 Q And the one clip, and again it's on, just for the
19 record, it was on doc. ID -- sorry, what was the
10:57 20 doc. ID of the last -- I'm sorry, 230173.

21 A Yes.

22 Q On that tape, that was primarily Mr. McCloskey
23 with Anne Petrie, but right at the start of that
24 there was about a minute where you and Mr. Asper
10:57 25 were talking and in that clip, which I think was



1 on August 16th, 1991, you said that lots of
2 powerful people made their reputations on the
3 Milgaard case and they do not want to see it
4 re-opened. Who were you referring to when you
10:58 5 were saying lots of powerful people?

6 A Probably the chief investigator who became the
7 chief of police.

8 Q That would be Mr. Penkala?

9 A That's correct. Mr. Caldwell, who moved up in the
10:58 10 Justice Department, and I don't know at that time
11 if I had any other suspicions.

12 Q The news article after quoting you about powerful
13 people made their reputations on the Milgaard case
14 and they do not want to see it re-opened went on
10:58 15 to say that your lawyer, Mr. Tallis, became a
16 judge. Was he one of the people that you at least
17 wanted to convey the message that he made his
18 reputation on the case and may not want to see it
19 re-opened?

10:58 20 A I honestly cannot remember my thoughts on that at
21 that time. It could very well be that that was
22 part of it.

23 Q And would it be correct to say that the message
24 you wanted to get to the public is that, and again
10:59 25 your words were that powerful people made their



1 reputations on the case, that would be people who
2 were directly involved either as police,
3 prosecutor or perhaps defence counsel; is that
4 right?

10:59 5 A That's right.

6 Q And what about Mr. Kujawa, would he have fit in
7 that category at this time?

8 A Well, I don't know whether he had already made the
9 outrageous comments that he had made at that time
10:59 10 or earlier, so I really couldn't tell you if I was
11 including him then or not.

12 Q And would it be correct to say that the message
13 you wanted to convey to the public when you made
14 the comment is that people are covering up, people
10:59 15 who are involved in the case made their reputation
16 on the case, they are powerful people and they do
17 not want to see it re-opened because it will
18 reveal mistakes or misconduct on their part?

19 A That's correct.

10:59 20 Q Then dealing with Mr. McCloskey, and it's my
21 understanding that, and he was questioned about
22 various interviews, etcetera, it's my
23 understanding that Mr. McCloskey did not interview
24 any of the witnesses, any of the police officers,
11:00 25 the Crown attorney or the defence counsel involved



1 in the original investigation and trial; is that
2 your understanding?

3 A That's my understanding. His involvement was more
4 with coming up and being with the Miller family,
11:00 5 and of course he was totally involved in the
6 instructions to Paul and I, so he would have had a
7 handle on everything that was going on because
8 everything would be discussed with him.

9 Q Right. And I understand as well that he did not
11:00 10 interview any of the Fisher victims either; is
11 that correct?

12 A That's correct.

13 Q And so would his source of information, at least
14 your understanding, would his source of
11:01 15 information be in order for him to make the
16 comments that he did, information that you, Mr.
17 Asper, Mr. Wolch and Mr. Henderson provided to
18 him?

19 A That's right, and I think -- I sort of noticed
11:01 20 that too, but Jim was speaking on behalf of
21 Centurion Ministries and what they had found and I
22 think for him that sort of seamless what Paul has
23 found is what he has found.

24 Q And again, though, as far as, and I'm not asking
11:01 25 you to speak for Mr. McCloskey, but simply from



1 your perspective as far as -- you are the one, you
2 are the individual who brought him into the
3 picture; correct?

4 A Correct.

11:01 5 Q And the information --

6 A Well, not really, David.

7 Q David Asper?

8 A My David.

9 Q Oh, David Milgaard.

11:01 10 A My David is the one that brought him into the
11 picture because he was the one that sent me to see
12 him originally.

13 Q But just so that -- from your perspective, though,
14 the information that he would have received about
11:01 15 the case, about witnesses, police conduct, Crown
16 conduct, defence counsel conduct, that would have
17 come from you, Mr. Asper, Mr. Wolch or Paul
18 Henderson?

19 A Correct.

11:02 20 Q Do you know if he ever talked to Dan Lett?

21 A Yes, I believe he did. Yes, I'm quite sure he
22 did. I think Dan probably did a story on him.

23 Q And would that have been before the press
24 conference of August 16th do you know?

11:02 25 A I have no idea.



1 Q And would you have given Mr. McCloskey all of your
2 early '80 transcripts, all of your interviews that
3 you and Mr. Carlyle-Gordge did, do you know if
4 that information was ever provided to him?

11:02 5 A I do not know.

6 Q Go to 004626, please, just carrying on, I've
7 showed you a couple of the television media
8 reports, this is the front page of the
9 *StarPhoenix*, August 16th, 1991, "Milgaard framed,
11:03 10 group contends". The story is:

11 "Saskatoon City Police framed David
12 Milgaard for the murder of Gail Miller
13 in 1969, alleges the head of a U.S.
14 group which investigates suspected cases
11:03 15 of wrongful conviction.

16 Jim McCloskey, founder ..."
17 Etcetera. And was this a position that you
18 agreed with at the time, Mrs. Milgaard?

19 A Yes, it was.

11:03 20 Q And at that time, August 16th, 1991, did you
21 believe that the police had framed your son for
22 the murder of Gail Miller?

23 A I believed, and I think I specified to you and
24 answered that question before, that he -- not
11:03 25 framed in the beginning, but that --



1 Q Okay, I'm sorry, so when you talk about -- maybe
2 we should just be clear on "frame". My
3 understanding of the word --

4 A That word framed was Jim McCloskey's word.

11:04 5 Q And so again is it -- if the word framed means to
6 take steps to deliberately convict, to
7 deliberately prosecute and convict someone you
8 know to be innocent, that's the term, is that what
9 you thought in 1991, that the police and Crown had
11:04 10 done that?

11 A I believe I pointed out to you that I did not
12 believe that they had framed David in the
13 beginning.

14 Q Right.

11:04 15 A I believed that they were doing a cover-up.

16 Q Right. And that's why I asked the question, you
17 said in the beginning. Was there at some point
18 where you became of the view that it was actually
19 further, that the police deliberately set out to
11:04 20 investigate and the Crown prosecuted someone they
21 knew to be innocent?

22 A I don't think I ever had that --

23 Q -- view?

24 A That view.

11:04 25 Q Okay.



1 A Because to me, I'm very clear in what I think
2 framed means and I would not have used that in
3 connection with this.

4 Q Right. So from Joyce Milgaard's perspective, and
11:05 5 that's why I asked you about you agreed with this
6 and you said yes, and I think that differed than
7 what you told me before and I just want to be
8 clear on that. So your evidence is that you never
9 thought that the police went out to deliberately
11:05 10 prosecute someone they knew to be innocent?

11 A That is my evidence, yes.

12 Q And that view didn't change, notwithstanding Mr.
13 McCloskey coming in and saying he thought the
14 police framed him, you didn't share that view; is
11:05 15 that correct?

16 A Yes, but I still think McCloskey had a
17 different -- I can't speak for him, so I just
18 won't go there, but I don't think that Jim thought
19 that happened at first, I think that he was
11:05 20 probably of the same view that we were, but I
21 don't know that.

22 Q I'll call up 218798, and I'm not asking you to
23 interpret or tell me what he thought, I'm only
24 asking you to tell us what you thought and
11:06 25 believed at the time.



1 A Okay.

2 Q And what you may have heard or observed from Mr.
3 McCloskey, that's all, I'm not trying to get you
4 to speak on his behalf --

11:06 5 A Okay.

6 Q -- or tell me what's on his mind. Here is the
7 same story and this is where the article says:

8 "Saskatoon police fabricated evidence to
9 frame an innocent teenager for the 1969
11:06 10 rape and murder of nurse's aide and have
11 covered up their misconduct ever since,
12 charges a Christian organization
13 investigating David Milgaard's murder
14 conviction.

11:06 15 The Saskatoon police literally
16 manufactured a case against David
17 Milgaard out of thin air, Rev --"

18 A Excuse me.

19 Q Yes?

11:06 20 A Can I tell you that that first paragraph I would
21 probably have agreed with because I believe they
22 fabricated evidence, but I wouldn't have said they
23 deliberately framed him. I think that they
24 fabricated evidence in getting Nichol and Wilson
11:07 25 to change their testimony.



1 Q And the distinction between you and what it
2 appears Mr. McCloskey is saying at this time is
3 that you are saying that the police thought that
4 David was guilty?

11:07 5 A Yes, and so they tried to change the evidence, but
6 I believe they did that, fabricated evidence is
7 true, so --

8 Q But Mr. McCloskey appears to be saying here, going
9 a step further, saying they fabricated evidence to
11:07 10 frame an innocent teenager and then literally
11 manufactured a case, but again, I'm -- do you
12 know, do you recall from your discussions with Mr.
13 McCloskey, what was your understanding of his view
14 as to whether or not he thought the police set out
11:07 15 and deliberately framed someone that they knew to
16 be innocent?

17 A I think that they felt, I think he's speaking very
18 strongly here, it's a "classic frame", but:

19 " 'The Saskatoon Police

11:09 20 literally manufactured a case against

21 David Milgaard out of thin air,' ...",

22 I believe that's true. I think they manufactured

23 a case out of thin air for David, so I can say I

24 can believe that, but whether it's a "classic

11:09 25 frame", --



1 Q Yeah.

2 A -- I would not know that.

3 Q No, and the words speak for themselves, and I'm
4 simply trying to get --

11:09 5 A Okay.

6 Q -- to figure out where your thinking was at the
7 time, and I think you've clarified that. And, if
8 we can go to the next page, there is a comment
9 here:

11:09 10 "After what McCloskey called
11 sustained 'terrorism' by police, John
12 gave a version of events which
13 apparently conflicts with physical
14 evidence.",

11:10 15 and then goes on to talk about that. And, again,
16 was that your thinking at the time? Or, I mean
17 these are Mr. McCloskey's words, would you have
18 shared those views at that time?

19 A Absolutely.

11:10 20 Q And then 077729. This is the next day in the
21 front page, 'Frame' alleged. Would it be correct,
22 Mrs. Milgaard, that the news conference and Mr.
23 McCloskey's news conference, his report and his
24 allegation of a frame and coverup, got a
11:10 25 significant amount of media attention?



1 A Absolutely.

2 Q And would it be correct to say perhaps more
3 attention than the fact that you filed a second
4 application with the minister, although they are
11:11 5 related, but when I look at the stories it seems
6 to be the story is 'frame and coverup alleged' and
7 then later on, almost not by the way, but 'oh, and
8 an application was filed with the minister for
9 relief'; would that have been your recollection of
11:11 10 how the media --

11 A Yes, at that time they were all encircling Jim and
12 his comments, because it was hot stuff.

13 Q And then 325149. And, again, this August 17th,
14 that's just the continuation of the article that
11:11 15 talks about McCloskey's -- Mr. McCloskey's press
16 conference, and so again that would have been --
17 this was the type of article that would have
18 appeared in many newspapers across Canada;
19 correct?

11:11 20 A That's correct.

21 Q If we can go --

22 COMMISSIONER MacCALLUM: 325149?

23 MR. HODSON: 325149, yes.

24 COMMISSIONER MacCALLUM: All right.

11:12 25 BY MR. HODSON:



1 Q If we can go to your book, please, 269317. The
2 page of the book is 189.

3 A I'm sorry?

4 Q 189.

11:12 5 A Thank you.

6 Q And page 269519. And there is a reference here,
7 and when he's talking -- well, let me just read
8 the first paragraph:

9 "Paul Henderson had returned
11:12 10 to the United States and was working on
11 a new case. He was, however, ready to
12 get back on the trail for us. He had
13 several leads about corruption within
14 the Saskatoon police force, and maybe
11:13 15 they would indirectly point us to
16 something that might free David."

17 And I think that is a reference to the
18 information that John McDonald had given on Vern
19 Henderson and Mr. Penkala and Operation Donut; do
11:13 20 you remember seeing that in the memo?

21 A Yes, I do.

22 Q Yeah, and that would be something unrelated to
23 David's case, correct, but information that might,
24 you thought, might have led somewhere?

11:13 25 A Yes.



1 Q And then it goes on to say -- so it appears that
2 what you're, the time frame that you are writing
3 about here in your book, is around the summer of
4 1991; is that correct?

11:13 5 A Yeah.

6 Q Because that would be right after Mr. Henderson
7 met with --

8 A I would think so, yes.

9 Q -- Vanin and others, and the quote is:

11:13 10 "'How's David taking it?'

11 Paul asked on the telephone, his voice
12 weary.

13 'I was so proud of him.'

14 'Of course, everybody's going
11:14 15 to be trying to sanitize the police
16 department's role in this.'

17 'If we can come up with a
18 dirty police department right now, that
19 would be a great advantage.'"

11:14 20 And can you tell me what, elaborate on that, or
21 what -- where did this play into the strategy at
22 the time?

23 A Well, if he was able to investigate that aspect of
24 it and come up with some solid evidence on it that
11:14 25 could be thrown in and tied in with our case, we



1 felt that would be important.

2 Q And so is it correct to say that what Mr.
3 Henderson's advice or comments here are, lookit,
4 if we can show the police department is dirty,
11:14 5 that that would be a great advantage?

6 A Yes.

7 Q And would that be related to other matters
8 unrelated to David's case, is that a -- was that
9 your understanding?

11:14 10 A That was my understanding.

11 Q Okay. If we can go to 226932. And this is a
12 *Globe and Mail* article August 17th, 1991 that
13 says:

14 "Mrs. Milgaard's mother,
11:15 15 Joyce, has been on a media blitz in
16 recent days, travelling to Vancouver and
17 then back to Winnipeg to garner support
18 for her son.

19 Yesterday she suggested
11:15 20 Saskatoon police hushed up the news of
21 Mr. Fisher's capture, fearing they would
22 be accused of wrongfully convicting Mr.
23 Milgaard."

24 And so, again, the media blitz; would that be an
11:15 25 accurate description?



1 A Absolutely. I was going from morning until night.

2 Q And then 160000. This is an article August 18,
3 1991 in the *Winnipeg Sun*, again a reference:

4 "McCloskey said he's
5 convinced Fisher killed Miller, but
6 Saskatoon police have covered up his
7 guilt to hide their 'frame-up' of
8 Milgaard for the crime."

9 And on the right-hand side, just one over, he
10 says:

11 "When Fisher, now serving a
12 20-year sentence in B.C. for rape and
13 attempted murder, confessed in 1971 to
14 four Saskatoon rapes police had earlier
15 connected to the Miller murder, police
16 kept the information from the victims,
17 fearing someone would put two and two
18 together, McCloskey said.

19 'They must have had terror in
20 their hearts,' he said.

21 'I'm sure some of the officers
22 had real grave concerns they'd got the
23 wrong guy. But nobody had the guts to
24 stand up.' "

25 And, again, would that comment -- would you have



1 shared that view at the time?

2 A Absolutely.

3 Q I now want to turn to (V4)---- (V4)---, and if we
4 can go to 054479, and this is a fax to Mr.

11:17 5 McCloskey around August 19th, '91. If we can go
6 to page 481 -- or perhaps we should go to the next
7 page, I'm sorry. It looks like Mr. Asper sent a
8 copy of this to Mr. McCloskey. Go to the next
9 page. And here's the (V4)---- (V4)--- statement.

11:17 10 Now we have been through this and heard from
11 (V4)---- (V4)---, so I won't go through it. What
12 dealings did you have with Ms. (V4)---, what is
13 your recollection of your involvement with her,
14 and the impressions you formed at the time?

11:18 15 A Well my impression, I was just so grateful that
16 she had come forward, because she didn't have to.

17 Q Okay.

18 A I mean she read it in the paper, she saw it, but
19 when she came forward and agreed to do a story on
11:18 20 it and everything, it was so helpful, because it
21 was just another major step, I felt, I -- when she
22 came forward it just seemed to be the turning
23 point in a sense, how could they ignore this, and
24 I felt very grateful to her. I did talk to her on
11:18 25 the phone a lot, and to this day we are in touch,



1 she has been Emailing me support for what you are
2 putting me through.

3 Q Did you do the same when I questioned her? Or,
4 no, actually it was Mr. Hardy who did so you don't
11:19 5 have to answer that.

6 A (Laughs)

7 Q Back, again, and we have been through the details
8 of that, was it -- I think, I think this is when
9 you or your counsel first learned of another
11:19 10 incident the morning of the murder, is that
11 correct, that came to light?

12 A That's correct.

13 Q And is it correct to say that this report from
14 (V4)---- (V4)---, she claimed that she was
11:19 15 assaulted that morning and that Larry Fisher was
16 the person who committed the assault?

17 A Yes. And I remember when she talked to me and she
18 said "and I looked at those two pictures and here,
19 here's the guy that did it, and they're saying
11:19 20 it's someone else, it wasn't David Milgaard, and
21 that's who I thought it was all these years", and
22 she was, you know, just totally amazed by it.

23 Q And did she tell you that she had, for the 20
24 years since the murder of Gail Miller, assumed or
11:19 25 thought that the person who killed Gail Miller was



1 also the person who assaulted her?

2 A Yes.

3 Q That was her belief?

4 A Yes.

11:20 5 Q And then, when she saw the pictures and saw Larry
6 Fisher, she said "no, that's the person who" --

7 A "That's the one that did it to me".

8 Q And did she also believe that Larry Fisher was
9 also the one who had killed Gail Miller; is that
11:20 10 what she told you?

11 A I think at that point she realized that it must
12 be, but when she first saw that picture, I mean
13 it, from what she told me it turned her upside
14 down, I mean it brought everything tumbling back,
11:20 15 and it was very difficult for her. And so that's
16 why I admire, so much, her coming forward with it.

17 Q If we could now go to 057451. This article is in
18 *The Globe and Mail* August 29th, 1991, I'll just
19 read through the first two paragraphs, this deals
11:21 20 with the missing police files. It says:

21 "Files that may have a
22 crucial bearing on whether David
23 Milgaard is guilty of murder have
24 disappeared from the Saskatoon Police
11:21 25 Department's computerized records system



1 and an internal investigation is under
2 way, The Globe and Mail has learned.

3 'Something went on, it's very
4 bizarre, it's something that just
11:21 5 shouldn't happen, for every detail like
6 that to vanish,' a Saskatchewan police
7 source said. 'Somebody's tampered with
8 the system.'"

9 And we've been through this issue with Mr. Vanin
11:21 10 and Mr. Asper and some others; what is your
11 recollection -- let me just start with the very
12 first step. In 1990-1991, before this article
13 arose, did you have any personal knowledge as to
14 what police files existed with respect to the
11:21 15 Larry Fisher assaults, other than what Mr. Asper
16 or Mr. Vanin told you did you know what was
17 there?

18 A Would I have had personal knowledge of it?

19 Q Yes.

11:21 20 A No. How could I have?

21 Q Well, no, that's what I am asking you. Did you
22 have any knowledge about what existed by way of
23 Larry Fisher files in 1990 or 1991?

24 A No.

11:22 25 Q And --



1 COMMISSIONER MacCALLUM: What was the date
2 of that article?

3 MR. HODSON: This was August 29th, 1991.

4 COMMISSIONER MacCALLUM: August 29th?

11:22 5 MR. HODSON: Yeah.

6 A And this is obviously something that the *Globe*
7 *Mail* learned, not us.

8 BY MR. HODSON:

9 Q No, and let me just back up. I'm just trying to
11:22 10 understand what knowledge, if any, you would have
11 had about what files were there, what files would
12 have gone missing, and if you didn't have personal
13 knowledge if your knowledge of what happened would
14 have been based on what others told you, that's
11:22 15 all.

16 A It would have been based on what others told me.

17 Q And who would those others be then?

18 A Probably Dave Roberts and Tim Appleby and --

19 Q Mr. Asper and Mr. Vanin?

11:22 20 A -- Mr. Asper, Mr. -- and Hersh, you know, we would
21 have been discussing it.

22 Q And do you have a recollection; what do you
23 remember being told -- let's go back to the first
24 application. Do you have any memory of what you
11:23 25 knew as far as what police files were in existence



1 for the Larry Fisher assaults?

2 A I have really no recollection of that, you know,

3 --

4 Q Okay.

11:23 5 A -- what I'd be having on hand at that time you
6 mean?

7 Q No.

8 A What we had?

9 Q Well in the first application there's some
11:23 10 documents that suggest that Mr. Williams had
11 discussions with Mr. Wolch and that Mr. Pearson
12 may have had some discussions with Mr. Asper about
13 what existed in the Saskatoon City Police files,
14 and mainly on the first application I think
11:23 15 Mr. Pearson's evidence is that the files were not
16 there, there was only one partial file, or perhaps
17 one file and a bit, of the four Saskatoon rapes,
18 but that was information they discovered in 1990
19 as part of your first application?

11:23 20 A Yes, and I think we've -- I can remember feeling
21 very suspicious, that it would just be pretty
22 convenient that these particular files were
23 missing, and yet they had other files on other
24 cases at that time.

11:24 25 Q Okay. So let's, let's just make sure we get the



1 time frame correct. Let's go back to when, July
2 of 1990 when the CBC informed Mr. Asper that "the
3 rapes were in Saskatoon and here are the names of
4 the victims and here's where they lived"; do you
11:24 5 remember that time frame?

6 A I do.

7 Q And then after that, during the month of July, I
8 think there was a couple discussions where -- the
9 tapes we saw yesterday -- where you and Mr. Asper
11:24 10 or you and a reporter talked about getting Mike
11 Brecht to go out and interview these women or find
12 out details?

13 A Yes.

14 Q And that, I think, was the extent of your
11:24 15 involvement, I think your lawyers had discussions
16 with Mr. Williams and Mr. Pearson about the
17 subject. So around that time frame, before your
18 first application was dealt with, do you have a
19 recollection of being aware that not all of the
11:24 20 Larry Fisher police files were there?

21 A I have no recollection of that.

22 Q At some point you became aware that the files, --

23 A Yes.

24 Q -- not all the files were there?

11:25 25 A Yes.



1 Q And are you able to tell us when, first
2 application, second application, when you would
3 have known of that?

4 A No, I cannot.

11:25 5 Q And so, when you say you became suspicious that
6 some were not there, is it possible that that was
7 around the time of this news story?

8 A Probably was.

9 Q Okay. And what I am -- let me put it to you this
11:25 10 way; Mr. Vanin has given evidence that says "I
11 never got any police files, I went in, I got a
12 copy of an index card that has Fisher's name and
13 occurrence numbers and one page from a police
14 report, and that's all I showed Mr. Henderson, and
11:25 15 that's all I told Mr. Asper, I never told him that
16 the files were there and I never told him that
17 they all went missing, I simply said 'here's what
18 I got'".

19 What Mr. Asper says in an
11:26 20 article that I'll show you in a moment is that
21 "well, we know all the files were there on August
22 16th, 1991", being two days after the application
23 was filed, "and they have gone missing". And Mr.
24 Asper doesn't know, his evidence was someone would
11:26 25 have told him that, Mr. Vanin says it's not him,



1 Mr. Vanin says the files had been gone missing
2 quite some time earlier, and that seems to be the
3 evidence from subsequent reports, and I'm trying
4 to find out whether you have any knowledge, --

11:26 5 A I have not.

6 Q -- regardless of what source, even if someone told
7 you. Do you remember anybody telling you, in
8 August of 1991, that, lookit, I know the files
9 were there recently and they've gone missing;
11:26 10 anything of that nature?

11 A Well I can remember David Asper and all of us
12 discussing it, and our -- I think we were of one
13 mind that the files had all been there, and that
14 they had subsequently disappeared.

11:26 15 Q And had all been there at what point in time,
16 though?

17 A Well, if David said August, I would have been
18 going along with that time frame too.

19 Q And so, again, would you simply -- and --

11:27 20 A But it may have been as a result of what David
21 believed, David Asper.

22 Q Right. And so, again, I'm wondering if you have
23 anything to assist us in trying to figure out --

24 A I --

11:27 25 Q -- where this information came from that suggested



1 the files were in existence in August 1991 and
2 went missing in August of 1991; do you have any
3 information on that to --

4 A I have no information on that.

11:27 5 Q And 004592. This is August 30th, *Vanishing files*
6 '*unbelievable*': lawyer, and this is where Mr.
7 Asper says:

8 "'This is unbelievable,'

9 Milgaard's lawyer, David Asper, said
11:27 10 from Winnipeg. 'The files did exist
11 prior to Aug. 16.'

12 Sometime between Aug. 16 and
13 this past Tuesday, the files went
14 missing, Asper charged."

11:28 15 And so I think, in this article, what is reported
16 is that around the time that your application
17 with the minister was filed, that the four Fisher
18 assault files, the police files, existed, and
19 that sometime between August 16th and August 29th
11:28 20 they went missing, and was that your
21 understanding, back at that time, of what had
22 happened?

23 A That was my understanding.

24 Q Based on what Mr. Asper had told you?

11:28 25 A Based on what Mr. Asper told me, yes.



1 Q And do you know where he got that information
2 from?

3 A No, I do not.

4 Q And did this cause you to be suspicious of the
11:28 5 Saskatoon City Police?

6 A Absolutely.

7 Q And what were you thinking at the time?

8 A Well, that they were trying to stop us, they were
9 hiding the evidence.

11:28 10 Q And did you think this was some evidence of the
11 coverup of information that you had earlier
12 concluded must have taken place?

13 A Yes, I think it was just all part and parcel of
14 the same thing.

11:29 15 Q And I think you may have told me this already, but
16 you did not have any direct contact with Tom Vanin
17 or any other Saskatoon City Police officer
18 regarding missing police files; is that correct?

19 A That's correct.

11:29 20 Q If we can go to 220387. And this now relates to
21 the (V4)---- (V4)--- file, I think around the time
22 that the missing files issue came out the (V4)----
23 (V4)--- matter came up, and that for a while there
24 was some question about whether (V4)---- (V4)---'s
11:29 25 file had gone missing as well; and do you remember



1 that coming up?

2 A Yes, I vaguely remember that coming up.

3 Q And just what we have by way of a record before

4 the Commission is that the (V4)---- (V4)---

11:29 5 complaint to the police, and her statement, was on

6 the Gail Miller file, as opposed to a separate

7 incident file.

8 A Okay.

9 Q And I think the evidence is that it had been on

11:30 10 that file, and had always been on that file, I

11 think.

12 A All right.

13 Q And so, here, there is a comment that is

14 attributed to you that -- it goes on to talk about

11:30 15 the (V4)---- (V4)--- complaint. And this is Peter

16 Edwards, it says:

17 "Joyce Milgaard said police

18 sources have told her that the file

19 about the attack on the Metro woman has

11:30 20 gone missing from police department

21 records.

22 An internal police

23 investigation is already under way into

24 the apparent disappearance from

11:30 25 Saskatoon police computers of key files



1 involving Fisher's possible involvement
2 in the Miller case.

3 'In light of the missing files
4 of Larry Fisher, it's interesting that
11:30 5 there isn't a file on this lady,' Joyce
6 Milgaard said."

7 Do you have any recollection of where this, (a)
8 whether this accurately quotes you, and (b) where
9 you would have got this information from that her
11:30 10 file was missing or had gone missing?

11 A No. And this is Peter Edwards?

12 Q Yes.

13 A Well Peter Edwards is pretty accurate in most of
14 the things he says, and he has said that I:

11:31 15 "Joyce Milgaard said police
16 sources have told her ..."

17 Q Is it possible that police sources would have told
18 Mr. Asper and Mr. Asper would have told you?

19 A That's possible, but I don't think I'd have said
11:31 20 that they told me, I think I would have said that
21 they told David Asper.

22 Q Right.

23 A Whether, for convenience, he put it in that way I
24 don't know.

11:31 25 Q Right. Does this assist you in recalling whether



1 you would have had --

2 A No.

3 Q -- any contact with police?

4 A No, I don't -- I don't believe I did.

11:31 5 Q And as far as information about the (V4)----

6 (V4)--- file being missing, if you didn't have any
7 contact with police sources, where else might you
8 get that information from?

9 A Well, from the lawyers.

11:32 10 Q From Mr. Asper?

11 A Yes.

12 Q And so is it correct that, if you didn't hear from
13 Mr. Vanin -- I think Mr. Vanin's evidence is that
14 he didn't talk to you around this time -- there'd

11:32 15 be no other police source that you would be
16 talking to around this time; is that correct?

17 A I have some memory of someone else I was talking
18 to at that time. I hesitate to bring it up
19 because I don't remember who it was, I can't --
11:32 20 whether it was someone saying they were a police
21 officer, and I have no real recollection of it,
22 but I know it's there in my memory.

23 Q And do you have any recollection of what was said
24 to you?

11:32 25 A I had calls from this particular source, that said



1 he was a police officer, that told me different
2 things at different times, but I didn't know for
3 sure whether he was a police officer and I -- when
4 I read this with Peter Edwards I'm wondering
11:33 5 whether, you know, it could have been one of these
6 phone conversations that I got that told me about
7 it and then subsequently Peter told -- or David
8 Asper told me about what he got, and that's why I
9 would have said this the way I did to him, because
11:33 10 I felt the man was saying he was a police source.

11 Q So do you have any recollection of anybody phoning
12 you and telling you that "the (V4)---- (V4)---
13 file has gone missing from police department
14 records"?

11:33 15 A I have recollection -- I have a recollection of
16 being told we should really get the files because
17 things are gonna be missing or things are going
18 missing, whether -- I don't remember anything
19 specifically regarding (V4)---- (V4)---.

11:34 20 Q And do you remember when this call took place?

21 A No, I don't.

22 Q And is it -- could it have been years prior, could
23 it have been around this time, any --

24 A It could have been around this time, but I
11:34 25 honestly can't say, that's why I hesitated to even



1 say anything, but --

2 Q Okay. If we could go to 048882. And this is
3 another report, and this may well have been just a
4 -- the wire service repeating what Mr. Edwards has
11:34 5 said:

6 "Milgaard's mother, Joyce

7 Milgaard, said police sources have told

8 her the file on the attack on the

9 Toronto woman has disappeared from the

11:34 10 Saskatoon police department."

11 Again, anything to add with respect to that

12 comment, other than what you've told us?

13 A No, but was, was it not that they couldn't find
14 this report?

11:35 15 Q I think the evidence is that the report had always
16 been on Gail Miller's file, there had not been a
17 separate file opened for her complaint.

18 A But -- I see, but when we tried to find the
19 report, why was it not found?

11:35 20 Q I'm -- I'm not sure that that's the case, I -- I
21 think the evidence is that is that the (V4)----
22 (V4)--- police report and statement had been on
23 the Gail Miller file --

24 A All the times?

11:35 25 Q -- at all times?



1 A Okay.

2 Q And it may have been that, if people went looking
3 for a file on (V4)---- (V4)---, they wouldn't have
4 found it because there was no such file, --

11:35 5 A Okay.

6 Q -- her complaint was on the Gail Miller file, that
7 may have been it.

8 A That may have been it? Okay.

9 Q Does that -- is that your recollection or do you
11:35 10 know?

11 A I do not know.

12 Q If we can go to 229822.

13 A Hmm.

14 Q And there is a fair bit, this is around September
11:36 15 7th, 1991, and I think you had a discussion with
16 then-Prime Minister Brian Mulroney, is that
17 correct, in Winnipeg?

18 A That's correct. We had -- you know, it's amazing.
19 Peter Edwards had been out to interview David just
11:36 20 about a week or so before this, and while -- I was
21 there during the interview and he, my David, had
22 said to me "I want you to go and see the Prime
23 Minister, mum", and Peter Edwards, on the way out,
24 said "you know, Joyce, how does he -- how can he
11:36 25 make a comment like that, how can he just expect



1 you to go and talk to the Prime Minister", and
2 here we are, Peter Edwards opened up the paper and
3 found this *Globe* story just a few days later.

4 And it was -- we were going to
11:37 5 have a vigil, because David was really down, and
6 when I talked to one of the reporters he said
7 "well, actually, the Prime Minister is going to be
8 in town", and I said "you're joking", and so we --
9 instead of having the vigil where we were going to
11:37 10 have it, and it was going to be a support for
11 David, we quickly changed the location. And I
12 remember talking to the Prime Minister's aide and
13 saying to the aide, "you know, I'm, I'm not going
14 to talk to the Prime Minister, I'm, you know,
11:37 15 just, we're just going to be here, I won't disturb
16 him at all".

17 Q Let me just pause there. Why a different approach
18 to the prime minister than to minister Kim
19 Campbell a year earlier, was there some reason
11:36 20 that the approach would be different?

21 A Well, I think we were having a vigil to support
22 David and I didn't, I really wasn't trying to make
23 a statement out of it, but then the aide said to
24 me, "But, Mrs. Milgaard, the prime minister is
11:36 25 planning on speaking to you." I said, "I beg your



1 pardon?" And he said, "oh, yes, he's going to
2 speak to you, Mrs. Milgaard," so I immediately
3 arranged with the press to refocus their cameras
4 and to get a tape recorder out so I could tape
11:37 5 whatever it was he was going to say to me, and it
6 was one of the most memorable things when he
7 walked up to me as if he had known me all his life
8 and said, "Hello, Mrs. Milgaard, how are you?"
9 And it was an incredible experience. He had had a
11:37 10 very bad day that day, I think tomatoes had been
11 pelted at him at another location, and I think he
12 needed a mom at that time, and I had no -- this
13 was told to me afterwards and made me feel a
14 little like it had been set up, but he seemed so
11:37 15 sincere, he seemed to know about the case and I
16 felt when he said he would see what he could do --
17 and my main concern was David was in such bad
18 shape then, was we were trying to get him
19 transferred to Rockwood, and so that was my main
11:38 20 concern in speaking to him, to help to get him
21 transferred, and as a result of this, when he
22 offered his help, I ended up writing to him, I
23 ended up going down to Ottawa to see him to follow
24 up on what he was going to do.

11:38 25 Q And I think the record reflects that what Mr.



1 Mulroney said is he would check into matters
2 relating to David's custody; is that correct?

3 A That's correct.

4 Q With the solicitor general?

11:38 5 A Yes.

6 Q And then with respect to the application to the
7 minister Kim Campbell his words were to the effect
8 that she's reviewing the case and he did not
9 indicate that he would get involved in your
11:38 10 dealings with her; is that a fair summary?

11 A That's a fair summary.

12 Q And --

13 A But I had asked him to hurry it up and I felt that
14 he would, and in actual fact, my understanding of
11:39 15 it is that he did speak to Kim Campbell, and
16 further that he tried -- now, I don't know where I
17 got this information, but that he actually took
18 steps to see whether as prime minister he couldn't
19 step in and do something.

11:39 20 Q And who gave you that information?

21 A I don't know. It could have been David Asper.

22 Q And so someone within your group would have told
23 you this; is that correct, as opposed --

24 A Yeah, at one point in time this sort of surfaced,
11:39 25 that this had happened.



1 Q That the prime minister had looked at what?

2 A Had actually looked at the possibilities of how he
3 could help at that point, because when I went to
4 Ottawa and called, I was at church council and
11:40 5 justice and corrections at that time and I called
6 his office and I said, you know, I've come and I'm
7 going to be in the House today and I know the
8 reporters are going to be asking me questions and
9 I -- so my question for the prime minister is,

11:40 10 "What has he done since he talked to me?" Well,
11 there was sort of dead silence on the line and
12 then they said, "Where are you?" and I told them,
13 and they said, "Well, would you wait there for an
14 hour?" and I said, "Certainly, I can do that," and
11:40 15 within that hour I received a letter signed by the
16 prime minister and had it in my hands saying what
17 he was doing.

18 Q And that related to David's move within the
19 correctional system?

11:40 20 A That's right.

21 Q Okay.

22 A But -- and I felt that very, that it was very
23 important that I had done that to initiate that
24 action right away because that sort of started the
11:41 25 ball rolling and he subsequently did get David



1 transferred. I remember the warden saying
2 whenever I went to Ottawa his phone became very
3 hot.

4 Q And so again as far as moving David within the
11:41 5 institution, I think you are saying your encounter
6 with the prime minister assisted in getting that
7 done?

8 A Absolutely. They got calls every day apparently.

9 Q As far as the application to minister Kim
11:41 10 Campbell, other than what you think Mr. Asper told
11 you, is that right, that would be the source?

12 A Right, because it seemed to me the information
13 that I got was that his office was checking out,
14 whether it was the law or the viability of it, if
11:41 15 it was possible for him as the prime minister to
16 intervene.

17 Q And so when you say his office, being the prime
18 minister's office?

19 A Yes, that's right.

11:42 20 Q And that came from Mr. Asper to you?

21 A I'm quite sure it did.

22 Q And would it have been around this time frame or
23 was this something you learned much later?

24 A Oh, this would have been later that I would have
11:42 25 learned that.



1 Q And after David was out of jail or before or at
2 what point? This is September --

3 A It would be around this time.

4 Q Okay. So September, 1991 and November 27th, '91
11:42 5 is when the minister ordered the reference. Would
6 it be in that time frame?

7 A It would have been in that time frame I believe.

8 Q That David Asper, you think it was David, told you
9 that the prime minister's office was looking into
11:42 10 whether they could intervene in some way?

11 A Yes, I think so.

12 Q If we can go to 335968, and this is a discussion
13 in September, 1991, I think mid September between
14 you and Mr. Asper, and if we could go to page
11:43 15 336044, and this is a discussion between you and
16 Mr. Asper, he says:

17 "... and if Justice has the files and if
18 the police are co-operating finally,
19 then fine, you know, that we're
11:43 20 encouraged that hopefully this time the
21 Department of Justice will have
22 everything that it needs to make an
23 intelligent decision. Okay, plain and
24 simple."

11:43 25 "What's happening in Justice,



1 apparently, is that they're -- they are
2 treating this Fisher stuff very, very
3 seriously. Now, this is --"

4 "Who did Hersh talk to?"

11:43 5 "Now, this is not, Joyce, for
6 repetition."

7 "This is very important, okay. Hersh
8 talked to Doug. If this gets out,
9 Joyce, we're in deep, deep, deep
11:44 10 trouble."

11 And you say:

12 "Okay, it won't get out from me."

13 "The thing that they're working on now
14 is the admissibility of the Fisher
11:44 15 evidence in a prosecution against David.
16 Okay. And I'm -- I've got a stack of
17 books in front of me right now, and I'm
18 preparing a Memorandum of Law on that
19 subject. And you know, the sense was
11:44 20 that it's being treated extremely
21 seriously."

22 And then you go on with some questions. And I
23 think -- I'll show you a letter in a moment that
24 suggests this is around September 11th, 1991.

11:44 25 Would it be correct, Mrs. Milgaard, that around



1 this time, in early to mid September, your
2 lawyers were having discussions with Justice
3 officials, and I think the Doug here would be
4 Doug Rutherford; is that correct?

11:44 5 A That probably was.

6 Q And I think Mr. Asper, his evidence was
7 essentially that discussions started to happen
8 between Mr. Wolch, Mr. Asper and senior justice
9 officials on a very confidential basis --

11:45 10 A Yes.

11 Q -- towards getting a reference or getting a
12 remedy; is that correct?

13 A That's correct.

14 Q And so would it be fair to say around this time
11:45 15 you would have been aware that things were in
16 motion?

17 A Yes.

18 Q To get a remedy?

19 A Yes.

11:45 20 Q And I think Mr. Asper said that for a while there
21 the media attention was pulled back so as not to
22 interfere with those discussions; is that correct?

23 A Yes, I believe it was.

24 Q And would those negotiations and discussions with
11:45 25 justice about what court to send it to, what type



1 of reference, what question to ask, those types of
2 things, was that something you relied on your
3 lawyers to negotiate and deal with?

4 A Yes, because I had no knowledge of that.

11:45 5 Q And then again to 336197 -- actually, sorry, let
6 me just go ahead to 004421 first. You'll recall
7 the conversation I just showed you is you and Mr.
8 Asper, and Mr. Asper said he was going through a
9 bunch of books because justice wanted to know
11:46 10 whether the Fisher information was admissible, and
11 I think this is the September 11th, '91 letter to
12 Bruce MacFarlane detailing the results I think of
13 Mr. Asper's research, so I just point that -- it's
14 actually a letter from Mr. Wolch, so I think that
11:46 15 might help us on the timing of the earlier call.

16 A Okay.

17 Q If we can go back to 336197 and go to page 336232,
18 and this is a discussion between you and Mr.
19 Wolch, and September, October, November, 1991, I'm
11:47 20 not sure, but it's around the time that
21 discussions were taking place, and he says:

22 "Let me tell you something that -- now
23 I've got to trust you not to tell
24 somebody this --"

11:47 25 You say:



1 "I won't tell."

2 "-- or he'll report me to the Law

3 Society --"

4 "Okay."

11:47 5 "-- but he confided in me ..."

6 And he's talking about Bruce MacFarlane,

7 "... that he was on our side before."

8 "Really?"

9 "Yes."

11:47 10 "Who was not?"

11 Mr. Wolch says:

12 "It was two to one against. You can --

13 well, the decision-makers were himself,

14 Corbett and Williams, and it was a split

11:47 15 decision, he was on side then so

16 converting him now is irrelevant."

17 And again, do you recall this conversation with

18 Mr. Wolch?

19 A Yes, I do.

11:47 20 Q And --

21 A And I'm sorry I brought it out, Mr. Wolch.

22 Q And is there -- other than this conversation, do

23 you recall any other information that Mr. Wolch or

24 Mr. Asper provided to you about what they learned

11:48 25 from justice officials about what was happening?



1 A I think they were pretty honest in keeping me
2 informed and -- now, I'm not sure if this was at
3 the time where I went through a really bad session
4 and I wasn't well and I think that they were
11:48 5 trying to encourage me by keeping me in the loop
6 of what was really happening, and if they had
7 anything like this which would make me feel good,
8 they would tell me about it.

9 Q And so again, as far as who within the Justice
11:49 10 Department, other than what Mr. Wolch or Mr. Asper
11 would have told you, did you have any other
12 knowledge about who or how these people were
13 deciding or what they were doing?

14 A No, I did not. They were the only ones I would
11:49 15 know that information from.

16 Q Right. And would it be correct to say September,
17 October, November, 1991, that even though there
18 had not been an order yet made by the minister,
19 your lawyers were telling you that it was going to
11:49 20 happen; is that correct?

21 A Yes, that's correct.

22 Q And did you still have some doubts or were you
23 feeling a little more optimistic that something
24 might happen?

11:49 25 A I still had some doubts.



1 Q But is it fair to say that you were proceeding on
2 the basis that this is going to go to court?

3 A That it would happen, yes.

4 Q And what you were being told would happen would be
11:49 5 that this matter would go to a court for some type
6 of reference; is that correct?

7 A That's correct.

8 Q And that's what you've been seeking for about 11
9 years?

11:49 10 A That's correct.

11 Q And certainly with Mr. Wolch and Mr. Asper for
12 five years; is that correct?

13 A Yes.

14 Q If we can go to 335968, please, and this is a
11:50 15 discussion between you and Mr. Asper, and if we
16 can go to page 335988, and this relates to some
17 information from Rossmo and Boyd, and I'm not sure
18 of the date, Mr. Commissioner, it might be as
19 early as August, 1990, the report came out in
11:50 20 October, 1990, so it would be sometime in that
21 time frame, and I've been through this with Mr.
22 Asper, but you tell him, you say:

23 "Oh, apparently, they had a really
24 interesting conversation with Emson."

11:50 25 COMMISSIONER MacCALLUM: August of '91?



1 MR. HODSON: '91, yes.

2 COMMISSIONER MacCALLUM: '91, yes.

3 BY MR. HODSON:

4 Q And goes on to talk about this conversation, and
11:51 5 you say:

6 "He's admitting he would testify
7 differently. If he was testifying today
8 he would testify differently."

9 And Asper says:

11:51 10 "Are we printing that? When did this
11 happen? When did this happen."

12 And you say:

13 "Boyd told me last night."

14 Asper:

11:51 15 "Well, let's get the bloody Statement."

16 "I don't think he's going to make a
17 Statement."

18 "Are they going to print it."

19 And:

11:51 20 "I don't know."

21 "Holy smokes. I mean, this is key."

22 And you say:

23 "I know, but Boyd is taking that down
24 from him."

11:51 25 Now, would it be correct that Mr. Boyd, once he



1 got this information from Dr. Emson, would have
2 phoned you and told you?

3 A Yes, and I told David.

4 Q And do you know why Mr. Boyd would have phoned you
11:51 5 with this information before his report was done?

6 A Well, I don't know whether he phoned me or if I
7 phoned him, it could have been either way, but we
8 were communicating back and forth regularly as to
9 what he was finding and it could very easily have
11:52 10 been me calling him rather than him calling me.

11 Q And -- but you kept in close contact with him to
12 find out what new information he might --

13 A Yeah, what they were getting for their report.

14 Q And then to the bottom of the next page, please,
11:52 15 and you say -- Mr. Asper says:

16 "-- but Emson now says that he would
17 testify differently."

18 You say:

19 "That's exactly what Boyd said to me."

11:52 20 The top of the next page, Asper:

21 "Man, oh, man. When does this stop?

22 Maybe we give that to Yanko."

23 Now, Yanko was a *StarPhoenix* reporter who I think

24 I saw on other tapes at the time was contacting

11:52 25 you trying to get a scoop or --



1 A Yeah, we were trying to give, to balance out --
2 that's the worst part of the media, was that
3 everybody wanted to have the prime story and so we
4 were trying to decide who we would give
11:52 5 information to as it came out and --

6 Q So here, am I correct that instead of getting this
7 information and sending it to Mr. Williams or to
8 Mr. MacFarlane or justice, the decision is which
9 reporter do we give the scoop to; is that correct?

11:53 10 A That's right.

11 Q And would that be who do we owe and who can we get
12 the biggest bang for our buck from; is that the
13 thinking?

14 A That's right.

11:53 15 Q And so here you go on to say:

16 " -- no, no, you know what, if Boyd will
17 give that to us, we've got to give that
18 to the Globe. We've got to give that to
19 Appleby. That'll be front page. That's
11:53 20 unbelievable."

21 And so that would be the thinking at the time,
22 that to get this type of information, that you
23 would go first to the media as opposed to -- would
24 you even give it to the feds?

11:53 25 A Oh, we would give it to them at the same time, but



1 our logic was we didn't want it to be something
2 that was buried.

3 Q Now, 003688 --

4 A I can't remember if I really testified as to how
11:54 5 each newspaper got a victim did I?

6 Q No. I'm not sure I'm aware of what you are
7 talking about, sorry.

8 A Okay. Well, because we're talking about the press
9 and how we're handling the press, I think it's
11:54 10 important to know that we were always at odds
11 about how we were going to do it and I had prayed
12 about it this particular night and the thought
13 came to me very clearly to give them a victim and
14 at first I didn't know --

11:54 15 Q A victim of what?

16 A A victim, and then I didn't know --

17 Q I'm sorry, are you talking about a Larry Fisher
18 victim?

19 A Yes. Well, I didn't know that either, but when
11:54 20 that thought came to me, I thought victim, what do
21 you mean, and then to give each reporter a victim,
22 and so I phoned David and I said, you know --

23 Q David Asper?

24 A Yes, I said the thought has come what we should be
11:55 25 doing is giving each one of these people an



1 exclusive, and so I went out and I contacted -- I
2 don't know that I went out, but I contacted each
3 of the victims and asked each of them if they
4 would speak to a reporter and each paper got one
11:55 5 person to talk to and it was amazing because
6 that's when they really started going out and
7 digging on their own and I think that was very
8 helpful, because they each had an exclusive story
9 with that particular person and then they expanded
11:55 10 their search out and that helped us greatly, so it
11 made a big difference in our work with the media.

12 Q And so this would have been after you would have
13 known the names of the victims?

14 A That's right.

11:56 15 Q And so this would be well after Mr. Fisher's name
16 had been publicized?

17 A Yes.

18 Q If we can go back to the Rossmo and Boyd report,
19 and again we've heard from both of them and been
11:56 20 through that, but again, what was your response,
21 if any, or reaction to the report that they
22 prepared?

23 A Oh, I really thought it was a terrific report.

24 Q And then I think it was sent off by your counsel
11:56 25 to Mr. MacFarlane, 030493?



1 A And the fact that it was an independent report was
2 so important.

3 Q And in this letter I think Mr. Wolch tells Mr.
4 MacFarlane that, that:

11:56 5 "... the authors of the report were not
6 commissioned by us in any way and were
7 fully independent."

8 A Yes.

9 Q Why were you concerned about it being independent
11:57 10 or being viewed as independent, what was wrong
11 with something coming from Joyce Milgaard or Hersh
12 Wolch or David Asper?

13 A Well, I think anyone that -- if you are looking at
14 something that the people that believe someone is
11:57 15 innocent send in, you are going to, your logical
16 thought is going to be, well, they believe that
17 he's innocent, so that's why they believe this
18 stuff they are sending in. However, if you get
19 someone -- don't forget, Rossmo was a police
11:57 20 officer, Boyd had incredible standing in his work,
21 so if you get two people of that caliber and they
22 have come out and investigated and they are now
23 giving this report completely independent of us,
24 it just adds to the credibility of the report and
11:57 25 that was important.



1 Q And when you say independent, meaning that you
2 didn't -- you didn't direct them or you didn't ask
3 them to do things, they --

4 A No, they investigated, they -- I co-operated with
11:58 5 them in getting an interview with David, in
6 getting as many interviews as possible that they
7 needed with anyone, but had no ability to direct
8 them or tell them what to think.

9 MR. HODSON: This is probably an
11:58 10 appropriate spot to break for lunch.

11 (Adjourned at 11:58 a.m.)

12 (Reconvened at 1:33 p.m.)

13 BY MR. HODSON:

14 Q If we could get 333958, please.

01:33 15 A Are we in volume 5?

16 Q Yes, we are. And this is a note, I think this
17 relates to -- you had just told us before lunch
18 about the call with the Prime Minister, and I'm
19 not sure where this -- I think this is, it looks
01:34 20 like this would be November 5, '91 or November 4,
21 '91 that you were going to Ottawa and had some
22 discussions with people in the minister's office,
23 does that -- does Peter Lugli, does that ring a
24 bell?

01:34 25 A Yes.



1 Q And who do you remember him being?

2 A Someone that had been in touch with me through the
3 minister's office.

4 Q I think that was Kim Campbell's executive
01:34 5 assistant or some functionary of hers; is that
6 right?

7 A Yes.

8 Q And if we could get, if we could get 335968,
9 please. Just give me a moment here. Yeah, this
01:35 10 is a discussion I think with Dave Yanko. If we
11 can go to page 030. And this, I think just in the
12 time frame, this might be around August-September
13 1990, and it's a discussion with, it says
14 "Unidentified Speaker Dave", I think it's Dave
01:35 15 Yanko of the *StarPhoenix*, and I think this is
16 where he is trying to get you to give him a
17 source, and here you talk about:

18 "MRS. JOYCE MILGAARD: But we're meeting
19 with Boyd tomorrow ...",
01:35 20 presumably Neil Boyd:

21 "... and going out to see David and
22 having an interview with him, but as to
23 the police source there's really, like,
24 nothing that I can do at this point
25 because I know he's well covered.



1 UNIDENTIFIED SPEAKER DAVE: Well, I
2 understand that."

3 And I think this is where he is trying to get you
4 to give him the -- your police source, being Tom
01:36 5 Vanin, so that he could get a story; is that
6 correct?

7 A I think that's correct, I'm -- with just that
8 little bit it's hard for me to say that, though.

9 Q Right. And then here you go on to say -- I'm not
01:36 10 sure where you are there, go back to the previous
11 page there -- and you say:

12 "MRS. JOYCE MILGAARD: And I know if -- you
13 know, if anything comes up -- the only
14 thing I can say is I think you're on the
15 right direction with this Kujawa because
16 I really believe -- and the other thing
17 is my son, David, for a long time, has
18 felt that, you know, and where -- he's
19 really stretching, but he keeps coming
20 back to the fact of who could it be that
21 could move all these people around? And
22 of course, Ray Hnatyshyn is a name
23 that's been coming up to him, and the
24 connection there, so I don't know, he
25 wants -- if we had money, Dave, I would



1 have people out there so fast
2 investigating all this stuff, their
3 heads would be swimming, but I just
4 don't have the money to do it.
5 Centurion Ministries can't continue to
6 help on the basis they were helping.
7 Like, they're under funded, and -- which
8 brings me back, if you're doing a piece
9 anytime, for goodness sakes mention the
10 David Milgaard Support Fund because if I
11 could get some more money, I would
12 certainly be out beating the bushes out
13 there, too."

14 And am I correct that, here, you are talking to
01:37 15 Mr. Yanko about leads that he might follow, and
16 you raise Kujawa, and I think this is the first
17 mention of Ray Hnatyshyn, who I think at this
18 time may have been the Governor-General; is that
19 correct?

01:37 20 A I believe that's correct.

21 Q And was his name -- I think if we go back to the
22 previous page, it's in the connection of your
23 David thinking who -- and perhaps even you, who
24 could it be in high places:

25 "... who could it be that could move all



1 these people around ...",
2 and was there some concern or suspicion, on your
3 part or on your son David's part, that Ray
4 Hnatyshyn could somehow be involved in, in
01:38 5 anything relating to your son's conviction or the
6 re-opening of that?

7 A I think that David, at this point, was the same as
8 I was, very suspicious of everyone, and he
9 probably was looking to find out who is in
01:38 10 government, who is in charge, and that may have
11 been where his name came up. I don't remember any
12 follow-up on that, I don't remember anything where
13 we were checking that out, it may just have been
14 because of his position that that name surfaced.

01:38 15 Q There -- to assist you, here, his -- I think there
16 was a document of Robert Bruce, who was someone
17 who was helping you out; correct?

18 A Right.

19 Q Where I think there is a document somewhere where
01:38 20 he talks about the friendship or the relationship
21 between Mr. Hnatyshyn and Mr. Caldwell; do you
22 recall that being something that either you or
23 David looked -- David Milgaard looked at or
24 considered, that --

01:39 25 A It may have been something that Bob Bruce dug up



1 and presented to David and David presented to me.

2 Q Being your David?

3 A I have no -- yes -- but I have no memory of that.

4 Q And was Mr. Hnatyshyn ever considered by you to
01:39 5 have some role or involvement, in any way, in any
6 matter affecting your son?

7 A I have no memory of that.

8 Q If we could go to 336584. And this is a
9 discussion with -- if we could go to 336586,
01:39 10 please -- and I believe this is a discussion with
11 Dave Roberts, who was a *Globe and Mail* reporter,
12 correct, at the time?

13 A Yes.

14 Q Dave Roberts?

01:39 15 A Yes.

16 Q And around this time, I'm going to take you
17 through a few articles, and then I think in
18 October of 1991 or thereabouts there was a
19 provincial election in Saskatchewan and Roy
01:40 20 Romanow was running for Premier at the time and
21 Serge Kujawa was running for a Member of the
22 Legislative Assembly; do you recall that being --
23 taking place at or about the time of your second
24 application to the minister?

01:40 25 A No, I do not.



1 Q And here's some discussions with Mr. Roberts, and
2 you are talking about, there was a story in the
3 paper about Romanow and being a friend of Tony
4 Merchant's, you say:

01:40 5 "... I was really interested in the fact
6 that ... Tony Merchant was a good friend
7 of his."

8 "That just blows my mind with all these
9 things having happened in the past with
01:40 10 Tony Merchant."

11 "And now it turns out that he's a friend
12 of his."

13 And Roberts asks:

14 "... well what happened between you and
01:40 15 Tony?"

16 And you say:

17 "Oh you maybe never ever got into that."

18 And then you go on:

19 "Okay, Tony Merchant was my lawyer."

01:41 20 "But he became my lawyer because someone
21 offered to put \$5000 on account with
22 him, if I would change lawyers and go
23 and work with Tony Merchant. Now up
24 until that time Dave, we had gone been
01:41 25 doing swimmingly you know with in



1 finding witnesses, we had Nichol, we
2 were getting her all set ... to be
3 hypnotized and all the rest of it. We
4 had located a number of people and
01:41 5 everything was fine and then ... all of
6 a sudden when I went to Tony Merchant,
7 the whole thing started to fall apart,
8 people disappeared, ... Nichol took off,
9 all our leads disintegrated and it was
01:41 10 like we were getting nowhere."

11 And:

12 "And that's when I ended up going to
13 Hersh."

14 And then to -- and again at this time, this is
01:41 15 October of 1991, would you have had, apparently,
16 concerns at this time not only about Mr.
17 Merchant's involvement being, having some
18 sinister aspect to it; is that correct?

19 A Yes.

01:41 20 Q And, as well, that you are now learning that
21 Mr. Romanow, who either was or running for Premier
22 being Tony Merchant's friend, that you thought
23 there might be something sinister there connected
24 to David's case?

01:42 25 A Yes.



1 Q And what was that?

2 A What was?

3 Q Yes?

4 A What I thought?

01:42 5 Q Yes. What was the sinister -- I'm wondering why
6 you are telling the *Globe and Mail* reporter that,
7 "lookit, here's what happened with Tony Merchant,
8 as soon as we hired him things went downhill",
9 there's other parts where you say you suspected
01:42 10 him because of Colin Thatcher's involvement, --

11 A Uh-huh.

12 Q -- and now there's a news article that says Roy
13 Romanow is a friend of Tony Merchant's, and it
14 seems that you are saying, or to Mr. Roberts,
01:42 15 "lookit, something is suspicious here, because
16 Mr. Romanow and Mr. Merchant are friends and
17 because I suspect Mr. Merchant". I'm trying to
18 understand what it was that you were suspicious
19 of?

01:42 20 A One, we were looking for people in power that
21 could move things around, okay; two, he was --
22 would be a person positioned in power; three, now
23 I find out he is connected with Anthony Merchant,
24 who I thought had been trying to -- well, who had
01:43 25 actually, while I worked with him, we'd gone --



1 everything had gone downhill, so my -- I'm working
2 on one, two, three, four, five is -- and then when
3 I read this story that he did on him in the paper
4 I thought, wow, if he's friends of Anthony
01:43 5 Merchant's maybe he's one of the ones we're
6 looking for that's involved.

7 Q And so am I correct that your suspicion would be
8 that somehow Mr. Romanow, because of his
9 involvement back in 1970-'71, was a friend of Tony
01:43 10 Merchant, and between the two of them somehow they
11 did something wrong in the early '80s that would
12 thwart your efforts to re-open; is that basically
13 --

14 A That's correct. And then when I found out about
01:43 15 (V4)---- (V4)--- being related to him, later on,
16 that --

17 Q Okay, that one you'll have to explain to me. So
18 if you're thinking, okay, Mr. Romanow is a person
19 in high places, he somehow is doing something to
01:44 20 thwart or to harm David's re-opening efforts, and
21 he is some somehow connected to Tony Merchant who
22 is also thwarting David's re-opening efforts, how
23 does Mr. Romanow's relationship -- and I
24 understand he was an uncle or some family
01:44 25 relationship to (V4)---- (V4)--- -- how did you



1 think that fit into this picture?

2 A Well later on when I found that out, and the fact
3 that she felt that nothing was ever done, like it
4 sort of -- and he had connections, that -- and she
01:44 5 felt that it had all sort of stopped, nothing was
6 done about it, there was no real follow-up on it
7 or anything I don't think --

8 COMMISSIONER MacCALLUM: What do you mean
9 by "it", ma'am, please?

01:44 10 A About the incident with (V4)---- (V4)---.

11 BY MR. HODSON:

12 Q So in 1969 because (V4)---- reported it, (V4)----
13 (V4)---, nothing happened, what was the sinister
14 or wrongful conduct of Mr. Romanow that you
01:45 15 thought was connected to (V4)---- (V4)---?

16 A Well I guess later on, when this information came
17 up that he was -- that there was a connection with
18 Merchant, I wondered if it in fact had something
19 to do with (V4)---- and that he was sweeping these
01:45 20 things under the carpet to keep her out of it. I
21 don't know.

22 Q And --

23 A It just seemed that it was strange to have these
24 connections coming up.

01:45 25 Q And, again, would it be correct to say that it was



1 a bit more than wondering on your part because
2 you're sharing these concerns with *The Globe and*
3 *Mail* reporter; would that be fair?

4 A Well you have to remember that Dave Roberts was
01:45 5 not just a *Globe and Mail* reporter to me, in -- at
6 -- by this time. He would never, ever take
7 anything that I said right there and use it, he
8 would -- he would -- we would talk about all sorts
9 of things and he would never use it, he would only
01:46 10 use what we discussed as a usable story, so I felt
11 free to share my suspicions with him. If it had
12 been a Vancouver reporter, for instance, that I
13 didn't have the close connection with, I would
14 never have said that.

01:46 15 Q And why would you tell Mr. Roberts this?

16 A Well, it was just because I'd seen that story.

17 Q No, and I -- were you hoping that he would
18 investigate it, was that why you were telling him
19 to follow up and see if there was anything to
01:46 20 this, I'm wondering what --

21 A I don't think I was telling him for that reason, I
22 think it was -- it just came to the surface, and
23 it was an odd coincidence that had happened, and I
24 sort of told him the background.

01:47 25 Q And, again, would it be a case of that if -- if



1 Mr. Roberts could follow this up and find out
2 something to confirm your suspicions, would that
3 be one of the reasons you might tell him, that he
4 might be able to go, dig, and find out whether
01:47 5 there was anything between Mr. Merchant,
6 Mr. Romanow, and (V4)---- (V4)---?

7 A When I read that conversation -- and, of course, I
8 haven't had the benefit of all of it -- my feeling
9 was that it was just a spontaneous thing that came
01:47 10 out of what he said.

11 Q Okay. If we could go to 336589. And there's some
12 redacted parts which are, I think, unrelated
13 matters, which is why there are -- okay, let's go
14 back to 587, and we'll just read the rest of this.
01:47 15 And you say:

16 "And that's when I ended up going to
17 Hersh."

18 "And then of course ... you knew that we
19 had originally thought there'd been a
01:48 20 connection with Colin Thatcher..."

21 "When I found out that Merchant was
22 Thatcher's lawyer I thought my golly,
23 have I been really stupid here, I mean
24 have I been set up. ... all this
01:48 25 information disappeared as soon as I got



1 going to Merchant and ... now you tell
2 me that he and you know by your story."

3 Roberts says:

4 "They were university chums."

5 "Together, yeah."

6 Next page:

7 "They knew each other for years, ...",
8 this is Roberts talking:

9 "... Romanow went to Merchants house a
01:48 10 couple times."

11 And so you say:

12 "Well, so if there's a connection there,
13 we're in serious trouble."

14 "Well, you knowm the other thing is
01:48 15 Serge Kujawa is gonna be in there too, I
16 don't know if he'll be the A.G. but ...
17 in fact I don't think he probably will
18 be, I think, at least not immediately
19 so."

01:48 20 And then you say:

21 "No but the point is ... Romanow was
22 ...",

23 And:

24 "He was the Attorney General when David
01:48 25 was convicted."



1 "Yeah, he was. And ... so he would have
2 had input into all of that, I'm sure he
3 doesn't want it opened up."

4 And so that's -- go back to that, please. When
01:49 5 you say:

6 "And ... so he would have had input into
7 all of that, I'm sure he doesn't want it
8 opened up.",

9 you would be referring to Mr. Romanow; is that
01:49 10 correct?

11 A Yes, correct.

12 Q And then the next page:

13 "Okay, okay, well that's interesting.
14 It's probably worth exploring, I haven't
01:49 15 talked to Romanow about the Milgaard,
16 about David. So, maybe it's time to
17 talk to him about that."

18 "Because I think, now I, you know we're
19 gonna get a couple of people that are
01:49 20 really on side ... politicians to talk
21 to him about David too."

22 Roberts says:

23 "Talk to Romanow."

24 You say yes:

01:49 25 "... and ... just sort of say ... I



1 don't see that it, but of course if he's
2 you know, Kujawa ... obviously is one
3 that can lose by it but now it, there
4 could, if there's a connection there, if
01:49 5 there is a connection there it could be
6 difficult."

7 Roberts says:

8 "I, you know, I don't know what to
9 think, I mean, I don't know how much
01:49 10 Romanow even knows about it ...",

11 You say:

12 "Well, Kujawa obviously said you know
13 that he was the brains behind Caldwell."

14 "Yeah, yeah he did."

01:49 15 "And ... so if he did that how far
16 behind was Romanow."

17 And Roberts says:

18 "... well it's worth exploring. I know
19 that ... you know I was talking, I
01:50 20 didn't get any further on the story last
21 week, I was, there was a game in
22 Saskatoon and I talked to some police
23 men there."

24 And:

01:50 25 "It's a brick wall."



1 "Well, and of course, especially if
2 we're going back into Saskatchewan. It
3 would be nice to have an A.G. that we
4 could trust."

5 And:

6 "... a person like Kujawa you mean ...",

7 You say:

8 "No",

9 "Or you mean Romanow?"

01:50 10 And then Roberts says:

11 "... I don't distrust Romanow."

12 Scroll down, please.

13 "I mean I don't know what to make of him

14 quite frankly, you know ... it's

01:50 15 interesting that he and Merchant had

16 this relationship."

17 And so it would appear that the discussion was,

18 was more than just exchange of information, it

19 appears that Mr. Roberts, you and he are

01:50 20 discussing whether there is a connection to your

21 case, and whether there is something he can

22 follow up; would that be correct?

23 A It looks like it here, yes, that he has continued

24 on with it.

01:50 25 Q Right. And here, in fact, he says:



1 "Okay Joyce ... next time I talk to
2 Romanow, I'll ask about this."

3 Correct?

4 A Correct.

01:50 5 Q And so that would be -- would it be correct to
6 say -- and I'm sorry, I should have read the whole
7 article to you before I, or the exchange to you --
8 would it be correct to say that, in this exchange
9 with Mr. Roberts, you were sharing your concerns
01:51 10 and suspicions about Tony Merchant, Roy Romanow
11 and Mr. Kujawa with the view that perhaps Mr.
12 Roberts could get some information that might help
13 you pursue these suspicions further?

14 A Yes, since he had just done that interview and had
01:51 15 a connection with him.

16 Q And then if we can go to 336658, please. And
17 this, if we could go to page 336731, and ask Mr.
18 Wilson if he knows the date of the election in
19 1991?

01:52 20 MR. WILSON: October close enough?

21 MR. HODSON: I already knew October, I was
22 looking for --

23 BY MR. HODSON:

24 Q In October of 1991, I think in the last column we
01:52 25 saw a discussion about Mr. Romanow and Mr. Kujawa,



1 here is a conversation, I think, where you
2 contacted Grant Devine's office. And there is a
3 reference in here that it was four days before the
4 election in I think October of 1991, and Grant
01:52 5 Devine was the Premier at the time, I think for
6 about four days after this call, and then was
7 replaced by Mr. Romanow's government in that
8 election. Okay? That's just a bit of background.
9 And it would appear, if we could go to the next --
01:52 10 actually just scroll down a bit. You say:

11 "MRS. JOYCE MILGAARD: Well, I know the
12 election is coming up, I know you guys
13 are scrambling out there, and part of
14 the reason I called, there looks like
15 there is every -- and this is very
16 confidential, okay, there looks like
17 there is every possible chance that this
18 case is going to be opened up before the
19 election, all right."

01:53 20 And this Alana, who I take it is somebody in
21 Grant Devine's office, says:

22 "By the federal government?"

23 You say:

24 "MRS. JOYCE MILGAARD: Yes, yes, and I just
25 think that it might be very helpful if



1 Grant Devine was taking an interest in
2 the case out there right now from the
3 point of view that, say, for instance,
4 I'm out there and he shows his support
5 for me and the Milgaard case especially
6 after what this Kujawa was saying, I
7 mean, that was crazy, him coming out
8 with the comments that he did, and I
9 certainly want to do anything in my
10 power to work against that man, so I
11 think that, I think he's been involved
12 in this case in the wrong kind of a way
13 and I think that's going to come out
14 eventually, I really do, because the
15 fact that he was handling both Fisher's
16 appeal and my son's appeal at the same
17 time, plus the fact that this Fisher
18 went there by direct indictment, there's
19 no doubt in my mind that they knew what
20 was going on and that he knew what was
21 going on. I don't think for one minute
22 when he says he didn't put two and two
23 together that that's true, I think he
24 was part of the whole system there that
25 was trying to put Fisher away after



1 David's last appeal was gone and I
2 think, you know, when the inquiry -- and
3 there will be an inquiry -- when the
4 inquiry comes, that's going to come out
5 of it, that is going to come out of it.

6 Now, this is not anything that
7 I would say publicly, you know, that I
8 would go off against the man publicly
9 because, well, I don't do things like
10 that, I don't go out on assumptions or,
11 you know, saying things that I can't
12 back up 100 percent, but there is every
13 indication I met -- I talked to the
14 Justice Department, they phoned me on
15 Monday after I had talked to Brian
16 Mulroney's office ...",

17 etcetera, about the re-opening. Now do you have
18 a recollection of this call with --

19 A Absolutely none.

01:54 20 Q It would appear, at this time, that you would have
21 had at least private concerns that Mr. Kujawa had
22 committed wrongs, or been involved in the case in
23 a wrong kind of way, and that when he said -- and
24 I think the reference to putting two plus two
01:54 25 together is that I think Mr. Kujawa had perhaps



1 stated in the media that he never put the Fisher
2 and *Milgaard* case together because -- or along
3 those lines; is that correct?

4 A I remember that part, but this call, I remember
01:55 5 nothing about it.

6 Q It would appear that you were calling the
7 government in power, who Mr. Kujawa was trying to
8 replace, saying "come on side, come on board,
9 we're trying to keep Kujawa out of power or out
01:55 10 from getting into power"; is that fair?

11 A That's probably fair, but I have, it's amazing, I
12 just have no, absolutely no recollection of this
13 at all.

14 Q Do you have a recollection of being aware that
01:55 15 Mr. Romanow was running to be Premier, and that
16 Mr. Kujawa was running to be a member of the,
17 possibly the government if Mr. Romanow won the
18 election, and having concerns that Mr. Kujawa
19 might be in government at the time that you get
01:55 20 your reference case from the Federal Justice
21 Department?

22 A I don't remember. I don't remember that, Mr.
23 Hodson, I'm sorry.

24 Q 157132. And this is just to give us a reference
01:56 25 date, this is a letter from Mr. Wolch to



1 Mr. MacFarlane that talks about a November 11th,
2 1991 meeting in Ottawa. And I think this is a
3 meeting where. This would be a couple of weeks
4 prior to the date that Kim Campbell ordered the
01:56 5 reference, and I think this was a meeting where
6 significant details about the reference were
7 talked about; do you remember that happening?

8 A Yes, I do.

9 Q And do you have any recollection of what Mr. Wolch
01:56 10 or Mr. Asper would have advised you about that
11 meeting?

12 A No, just that they were down to -- I can't
13 remember the details on it -- but that they were
14 into the nitty-gritty of it, if you will, and that
01:57 15 it definitely was going to be opened.

16 Q And that, that was my next question. So, at this
17 time, would it be correct to say that, based on
18 what your lawyers were telling you, you knew that
19 the case was going to be re-opened --

01:57 20 A Yes.

21 Q -- and that there was going to be some type of
22 reference?

23 A Yes.

24 Q And the two questions would be to what Court and,
01:57 25 secondly, to what types of questions; would that



1 be correct?

2 A That's correct.

3 Q And your lawyers were there negotiating or
4 discussing those matters?

01:57 5 A Yes.

6 Q And I take it you would leave it up to Mr. Wolch
7 and Mr. Asper to represent your son David's
8 interests in those negotiations as to what would
9 be the appropriate questions and what the Court
01:57 10 should or should not look at in a reference case?

11 A Yes.

12 Q 336312. And this is a conversation between you --
13 if you could go to page 336357 -- and a discussion
14 between you and Mr. Asper, I think, around the
01:58 15 time, I think it's sometime in November 1991,
16 about what might happen at a reference. Let me
17 just ask you generally, what were you -- what was
18 your understanding of what a Court would do on a
19 reference or what were you looking for the Court
01:58 20 to do? You talked earlier about just wanting to
21 have a Court hear the matter.

22 A Well I think I was hoping that the decision would
23 be that we should -- that David would get a new
24 trial, and that we'd have the opportunity of
01:58 25 presenting all the evidence that we had gathered



1 at that trial, and that way he could be found
2 innocent.

3 Q Okay. And would it be correct to summarize, sort
4 of in a general way, the hopes of a remedy from
01:59 5 the Justice Minister would be to have a hearing
6 and/or a new trial, but something that would allow
7 David to be acquitted by the Court?

8 A And prove his innocence, yes.

9 Q Right. So that was number one, I guess number one
01:59 10 would be to get David out of jail; is that fair?

11 A Number one was definitely to get him out of jail.

12 Q Number two would be to have some legal process
13 that would result in your son David being either
14 acquitted or some, some type of legal declaration
01:59 15 or something, that removed any cloud about him as
16 a convicted person; --

17 A That's right.

18 Q -- is that fair? And, third, would one of the
19 desires here to be to enable your son to get
01:59 20 compensation for being wrongfully convicted; would
21 that be something in your mind to say that, maybe
22 not right at the outset but once you got him out
23 of jail, once you got him cleared, his conviction
24 cleared or the cloud cleared, that, thirdly, to
02:00 25 enable him to pursue compensation for being



1 wrongfully convicted?

2 A Yes. That's something that, through the years,
3 David used to say "when I get out and when I get
4 compensated such and such", it was just sort of
02:00 5 part of the dream.

6 Q Right. And so number one, getting out of jail, is
7 it fair to say that, lookit, whatever, whatever
8 remedy the Court gave, but if David could get out
9 of jail that would be desirable?

02:00 10 A That was number one.

11 Q Number two, to remove the cloud of this conviction
12 was important?

13 A Correct, right.

14 Q And would it be fair to say that on the
02:00 15 compensation front -- and maybe this was a matter
16 that your lawyers were more concerned with than
17 you -- but that whatever happened in this Court
18 proceeding, whether it be a reference or a new
19 trial or whatever, that the end result had to be a
02:00 20 legal basis for David to seek compensation; do you
21 follow me?

22 A Yes, I believe that that would have been there
23 somewhere.

24 Q So that if David simply got out of jail, but he
02:01 25 got out as someone who was probably guilty or had



1 not been exonerated, that that would make it
2 difficult for him to get compensated?

3 A Right.

4 Q And so one of the objectives here was a process,
02:01 5 your wish list, out of jail, exonerated, and a
6 basis to go get compensation; is that correct?

7 A Yes.

8 Q And as far as the best, whether the reference or
9 questions and appeals, things like that, did you
01:59 10 leave that up to your lawyers to figure out how to
11 make sure that your interests and David's
12 interests in ensuring that he gets out of jail,
13 gets his name cleared and gets a legal basis to
14 seek compensation, was that something that was
01:59 15 told to Mr. Asper and Mr. Wolch or understood
16 between you?

17 A I think it was an understanding.

18 Q And here we have a discussion where Mr. Asper --
19 and they're talking about A, B and C and I think
02:00 20 this relates to Section 690 and the provisions of
21 the code, and I want to just ask you a couple of
22 questions about what was discussed. Mr. Asper I
23 think is explaining to you that:

24 "-- under a "B", and that has two very
02:00 25 dire consequences: (1) it does not



1 satisfy the sense for vindication;"

2 And I think "B" was an appeal, a right to file I

3 think a new appeal, I think was "B" if I'm not

4 mistaken, and then on the next page -- or sorry,

02:00 5 go back, please, under the Section 690 "B" remedy

6 saying:

7 "... that has two very dire

8 consequences: (1) it does not satisfy

9 the sense for vindication; and (2) it

02:00 10 doesn't get him compensated probably."

11 And you say:

12 "So it's important to go for the free

13 pardon?"

14 "Well, that's what I think. Ultimately

02:01 15 that's where I'm coming down to."

16 And I think from this exchange, would it be

17 correct that whatever remedy you ended up

18 getting, going to court and coming out of a

19 reference case, you wanted to get a rule that

02:01 20 allowed David to get compensated properly; is

21 that fair?

22 A Yes, that's fair.

23 Q And that would be an important consideration?

24 A Yes.

02:01 25 Q If we can then go to page 360, this is a



1 discussion with Mr. Asper about information from
2 Neil Boyd, and again this is the same transcript
3 around the same time, and he says:

4 "So there you have it. It'll go in
02:01 5 today."

6 And I think this is a letter to the minister in
7 mid November, 1991.

8 "I'm also sending with the letter an
9 excerpt of the Marshall Commission
02:01 10 Report, which I had to go and dig up,
11 and I also got Neil Boyd's conversation
12 with Wilson."

13 And you'll recall that Neil Boyd and Kim Rossmo
14 interviewed Ron Wilson for their report, I think
02:02 15 in October of 1991?

16 A Yes, I recall that.

17 Q And you ended up getting a transcript of that
18 interview?

19 A Yes, I did.

02:02 20 Q And then the next page, Mr. Asper says:

21 "I got a transcript of that
22 conversation. It's -- you know, it's
23 really nothing. You know, he says that
24 he and David had been taking acid the
02:02 25 day of the trip and he can't remember



1 whether they were coming down when they
2 left or just on their way up."

3 You say:

4 "Well, that's something that --"

02:02 5 And Asper says:

6 "I don't think that that really
7 matters."

8 You say:

9 "I don't even think that that's true."

02:02 10 Asper:

11 "Well, I don't think it matters."

12 You say:

13 "Then why are we putting this in. This
14 could be a real negative. That wasn't
02:02 15 in the report."

16 And then scroll down, I think you are talking
17 about the Boyd report; correct?

18 A Correct.

19 Q And Asper says:

02:02 20 "It wasn't in which report."

21 "His report."

22 And go on. And then you say:

23 "Don't give them something that they
24 don't need. What positive aspect is
02:02 25 there of it."



1 Asper -- scroll down, please:

2 "Oh, I mean, the whole -- I mean, he
3 gives a pretty detailed --"

4 You say:

02:03 5 "But they have the Boyd report."

6 Asper:

7 "Yeah, I know, but he -- you see, what
8 he does is, in a relaxed setting, what
9 he does is explain why he did what he
02:03 10 did ..."

11 And then if you can just pause there. Do you
12 have a recollection of this exchange?

13 A Yes. I was balancing what -- we were talking
14 about what was going in and I felt that the
02:03 15 statement of Wilson had negative connotations in
16 it whereas the Boyd report was very clear cut and
17 did not, and so I felt that that would be
18 preferable to going in rather than the other.

19 Q And when you say going in, are you talking about
02:03 20 being disclosed to Federal Justice?

21 A Being disclosed, yes.

22 Q And what was your understanding at this time, and
23 up right through until the reference, about what
24 obligation, if any, your son and his counsel had
02:03 25 with respect to disclosure of information both to



1 Federal Justice and Saskatchewan Justice and to
2 the Supreme Court?

3 A What information did we have in regards to that?

4 Q No, no, what was your understanding -- let's just

02:04 5 go back. This is November, 1991 and I think you
6 are talking about, when you say going in, I think
7 Mr. Asper had been asked by Federal Justice to get
8 a copy of Mr. Boyd's interview of Ron Wilson.

9 A Right.

02:04 10 Q So the question here was whether or not Mr. Asper
11 sent that to Federal Justice.

12 A Yes.

13 Q And presumably this is at a time when Mr. Asper
14 and Mr. Wolch are in discussions with Federal
02:04 15 Justice setting up this court reference; right?

16 A Yes, and I'm saying we've given them the Boyd
17 report.

18 Q Yes.

19 A There are some negative things in the other that
02:04 20 they could pursue. I didn't trust them to see the
21 good. If there was anything there that they could
22 see was suspicious about anything, they would be
23 off on a tangent and running and going out after
24 that, so I felt that David should put in -- not --
02:05 25 to be careful not to have anything negative going



1 in that they could go out chasing after. I didn't
2 trust them.

3 Q Okay. And the they being Federal Justice?

4 A Yes.

02:05 5 Q Okay. Go back to my question. What was your
6 understanding, Joyce Milgaard's understanding at
7 this time in November, the court case is just
8 being set up, what was your understanding going
9 into the Supreme Court reference about what
02:05 10 obligation David, your son, had through his
11 counsel about disclosing information both to
12 Federal and Saskatchewan Justice, but also to the
13 court? I'm just looking for what --

14 A I had no idea. I don't know it's something that I
02:05 15 even thought about.

16 Q And would that be something --

17 A I was leaving this to the lawyers. They knew what
18 we were supposed to do and if David Asper thought
19 he was required to do it, he definitely would do
02:06 20 it. I mean, there's no -- I mean, these were
21 honest people, there's no way they would not, they
22 would withhold something that they were supposed
23 to put in. I thought that we had a choice of what
24 we put in and so I'm saying choose this, don't
02:06 25 have the negatives.



1 Q So let's go back. When you are having this
2 discussion with Mr. Asper, is it fair to say that
3 if there was a legal obligation or any other
4 obligation on behalf of your son David Milgaard or
02:06 5 his counsel to disclose information in your
6 possession --

7 A Yes.

8 Q -- Joyce Milgaard, David's possession or your
9 group's possession, that you would rely upon your
02:06 10 lawyers to discharge whatever duty they had?

11 A Absolutely, and I would trust that they would do
12 that.

13 Q And when you are talking to Mr. Asper here, you
14 are expressing your own concerns, saying lookit,
02:06 15 thinking you have a choice?

16 A Yes.

17 Q And let me put it this way, if we have a choice,
18 then don't put it in; would that be a fair way to
19 put it?

02:06 20 A That's a fair way of putting it.

21 Q And here I think the negative information, if I
22 can call it that, is that Mr. Wilson is now saying
23 in his interview with Neil Boyd that when they
24 drove into Saskatoon on the morning that Gail
02:07 25 Miller was killed, Wilson is now saying that he



1 was high on acid and David was high on acid or
2 coming down on acid?

3 A Yes, and I really didn't believe that because from
4 the onset I had had it in my mind that if David
02:07 5 had been on drugs or anything like that, that
6 anything could happen, because I didn't really
7 realize what marijuana and things like that did to
8 people, I didn't have much of a knowledge of it,
9 and so when I learned that there were no drugs or
02:07 10 alcohol involved because they had no money for any
11 of it and that's why they were going up to get
12 Shorty to get money so they could buy that stuff,
13 that was very important to me and it was very
14 clear in my mind, so now suddenly when Wilson is
02:08 15 changing his story and saying that they were high,
16 I didn't believe it and I felt it was very
17 negative and that's why I felt it shouldn't be in
18 there.

19 Q And it was negative because it might leave the
02:08 20 suggestion that, I guess first of all, that Wilson
21 would have lied about that at trial; correct?

22 A Right.

23 Q And that if -- if the evidence was that David was
24 on acid the morning of the murder, there might be
02:08 25 negative connotations?



1 A Yes.

2 Q Some people might say, well, lookit, he was --

3 A He could have done it.

4 Q And that's what you were trying to avoid, that?

02:08 5 A That's correct.

6 Q Now, just back on this thing about not putting it
7 in because it was bad, just put in the good stuff,
8 I think that's what you said of the report?

9 A Well, we wanted the report to go in, the report
02:08 10 from Boyd, and it was a good report. It didn't
11 stress this particular part at all, it just laid
12 out the facts, and so I thought it was a
13 comprehensive, good report that could go in and
14 not have that negative attached to it.

02:09 15 Q And just so that I'm clear, though, you didn't
16 want the Boyd interview of Wilson, the transcript
17 to go to the feds or get to the court because it
18 was unfavourable to David's position, or parts of
19 it were?

02:09 20 A Yes, yes, and I naturally assumed we had a choice
21 or we wouldn't have been discussing it.

22 Q What was your understanding or expectation about
23 whether Federal Justice and Saskatchewan Justice
24 had the same choice with respect to information
02:09 25 they had?



1 A I have no idea if I had any thoughts on that at
2 that time.

3 Q Did you -- as to whether or not they were --
4 again, as far as what information would be given
02:09 5 to you or given to the court, was it your
6 understanding that they would give you everything
7 good and bad with respect to David's position or
8 their position?

9 A Well, obviously they didn't give us everything
02:10 10 because we got all kinds of things when we came
11 here, so they withheld lots of things.

12 Q Are you referring to the RCMP --

13 A Yes, reports.

14 Q -- reports. Is there anything else that you're
02:10 15 thinking of when you said that?

16 A No. When I said that, in particular I was
17 thinking of that.

18 Q Okay.

19 A There may be others that my lawyers are aware of
02:10 20 that I'm not.

21 Q And I don't mean to try and tie you to anything.

22 A No.

23 Q You brought it up and said a whole bunch of
24 things. I thought there might be something else
02:10 25 you had on your mind.



1 A No.

2 COMMISSIONER MacCALLUM: I'm not sure I
3 understood her answer, counsel. Mr. Hodson asked
4 you if you thought, since you believed that you
02:10 5 had a choice as to what to disclose, did you
6 think similarly that Federal Justice and
7 Saskatchewan Justice had a choice as well or were
8 they obliged to give everything they had? What
9 was your thinking?

02:10 10 A I honestly, Commissioner, didn't think about that
11 at the time. We were discussing something here --
12 I don't know that I had any sense of what they
13 would be required to do, but the comment that I
14 made was obviously they didn't because they didn't
02:11 15 disclose it.

16 COMMISSIONER MacCALLUM: Yes, I got your
17 comment all right, but I was interested in what
18 you expected.

19 A I don't know that I expected anything. I don't
02:11 20 think I even thought about it.

21 COMMISSIONER MacCALLUM: Okay, thank you.

22 BY MR. HODSON:

23 Q And then if we can just scroll down here --
24 actually, sorry, if we can go to page 336383 and
02:11 25 this is where the discussion continues on and I



1 think this is where Mr. Asper wrote a letter to
2 justice saying:

3 "Yeah, the last portion of the letter
4 that my understanding of Wilson's
02:11 5 interview was that it was solely for the
6 purpose of Boyd's report and that no
7 further use was to be made of it. I
8 then called Neil just to confirm that,
9 and as I was talking to Neil and he was
02:12 10 saying, "No, Wilson wants it to be used
11 because it helps David," the letter had
12 been faxed."

13 Do you have any recollection, did you have any
14 understanding whether the transcript of Neil
02:12 15 Boyd's interview of Ron Wilson, whether Ron
16 Wilson or Neil Boyd put any restrictions on you
17 about whether or how it could be used or did you
18 think you had the choice to use it how you felt
19 appropriately?

02:12 20 A I don't remember what I -- you know, what -- being
21 under any restrictions or anything like that, I
22 would leave that up to -- I mean, David was
23 working with them, so I would assume that -- David
24 Asper.

02:12 25 Q Okay.



1 A -- was working with them, that that would be him,
2 so obviously they did send it.

3 Q Send what?

4 A The interview was sent in?

02:12 5 Q Actually, no, the evidence is it was not sent in.
6 Mr. Asper sent a letter saying that Ron Wilson had
7 said it couldn't be sent in, it couldn't be used.

8 A Okay.

9 Q And again, do you have any recollection of any --
02:13 10 put it this way, if the Neil Boyd interview of Ron
11 Wilson had been favourable in the sense that it
12 was something that you wanted to go to justice and
13 before the court, I take it you would have sent it
14 or ask that it be sent by Mr. Asper?

02:13 15 A We would have asked what -- we would have asked
16 Mr. Boyd before we did anything like that I think.

17 Q And if Mr. Boyd said no, Ron Wilson would like you
18 to have it to help you, then you would have sent
19 it in; is that fair?

02:13 20 A I would think so, yes.

21 Q And then on the next page, and I think this is
22 your comment, this is really what you've told us:

23 "Yeah, but the fact of the matter is
24 that, as I said to David --"

02:13 25 I think this is your son David,



1 "-- I felt that why should we provide
2 Justice with something against David."

3 And that would have been your thinking at the
4 time, that believing you had a choice you would
02:13 5 say, lookit, I'm not going to give them something
6 that would be against David's interests?

7 A That's correct.

8 Q If we can go to 157143 --

9 A As you can see, I didn't have much faith in the
02:14 10 justice system at that time.

11 Q And because you did not want them -- you did not
12 trust them to look at the --

13 A At anything. I felt everything was being twisted
14 through the whole -- through the years everything
02:14 15 had been twisted that we brought in and so I had a
16 complete sense of distrust with all of them at
17 that point in time.

18 Q And so did that mean that with respect to
19 information that you had, that you thought might
02:14 20 be viewed unfavourably by them against David, or
21 might be twisted by them to an unfavourable view
22 against David, your thinking was, well, then I'm
23 not going to give it to them?

24 A That's right.

02:14 25 Q And did that continue through to the Supreme Court



1 hearing as well, the same fear, that if that
2 information came up before the court who is going
3 to be making the decision about your son's
4 situation, did you have the same concerns there?

02:15 5 A Well, yes. I mean, even when we got to the
6 Supreme Court and he was being cross-examined by
7 justice and, I mean, after all these years and
8 he's been in prison and he has to stand up there
9 and testify about things that had happened 23
02:15 10 years ago and seeing him put through what he was
11 put through, it wasn't what I expected.

12 Q Okay. And I'm going to come back to what happens
13 at the court, and in particular David's testimony
14 a bit later, I'll have some questions about that,
02:15 15 but again, so that I'm clear, when it got to the
16 Supreme Court making the decision, am I correct
17 that you had the same concerns about the Supreme
18 Court and Federal Justice and Saskatchewan Justice
19 taking unfavourable information against David and
02:16 20 twisting it and using it to his disadvantage?

21 A Yes.

22 Q And so your position would be therefore I'm not
23 going to give it to them?

24 A I was very defensive about everything.

02:16 25 Q And therefore you would not give information to



1 the court and to Federal or Saskatchewan Justice
2 that you felt might harm David; is that correct?

3 A Unless it was something I was required to do.

4 Q And on that, you would rely upon your lawyers to
02:16 5 tell you what you are required to do?

6 A Yes.

7 Q Okay. 157143, this is a letter to Mr. MacFarlane
8 from Mr. Asper, if we can go to page 145, and I'm
9 just wondering if this is something you would have
02:16 10 discussed with him or given him instructions on,
11 and if this is something that is lawyer talk and
12 was dealt with them, please tell me, but this is
13 where Mr. Asper puts forward to Mr. MacFarlane the
14 position about what type of reference this should
02:17 15 be and he says:

16 "Presumably this discussion is confined
17 to the parameters of Section 690 of The
18 Criminal Code, and within that section
19 we take the view that subsection (c) is
02:17 20 probably the preferable approach because
21 of its wider latitude."

22 And then talks about the Marshall case, and
23 you'll remember that earlier transcript where Mr.
24 Asper said he was going to send in the reference
02:17 25 from the Marshall case, and this is a quote from



1 the Commission of Inquiry into the Marshall
2 matter, it says:

3 "Given that all parties agreed that a
4 Section 617(c) Reference was preferable,
02:17 5 that fresh evidence should be admitted,
6 that a full airing of all issues was
7 necessary, and that appropriate
8 executive action could follow with
9 respect to any or all of those
02:17 10 issues ..."

11 And then goes on to talk about it. Do you have
12 any recollection of, at this time, your lawyers
13 talking to you and to your son David about
14 lookit, the best type of reference is under sub
02:17 15 (c) where they can look at all issues and that
16 will give you your best chance of getting out of
17 jail, a ruling that finds you innocent and a
18 basis to go get compensation, that that would be
19 the best route to go, and I think that's what Mr.
02:18 20 Asper is putting in this letter, and I'm just
21 trying to find out whether you were involved in
22 those discussions or aware of them or whether you
23 simply left it up to him?

24 A I honestly have no memory of discussing this with
02:18 25 them. It's possible we did, but I have no memory



1 of it. Since it's very legal, if you will, I
2 presume that it was something that they would do
3 in the best interests of us as the client.

4 Q And that best interest from your perspective would
02:18 5 have been a reference ruling that would have
6 allowed all issues to be aired?

7 A Yes.

8 Q Number one; number two, to get David out of jail;
9 correct?

02:18 10 A Correct.

11 Q Number three, a ruling that would either exonerate
12 him, find him innocent or remove the cloud with
13 respect to the conviction?

14 A Right.

02:19 15 Q Or give him a new trial that would allow that to
16 happen?

17 A Yes, and I guess I had no idea when we went to the
18 Supreme Court that we would not be able, that
19 there was so much that we were not allowed to
02:19 20 present.

21 Q Okay. I will get to that when we get to that
22 issue, when we get to the reference case itself,
23 but at this time when the case is being set up,
24 your desire was to get -- I mean, your list of
02:19 25 things, I think we've gone through, that would



1 have been Mr. Asper and Mr. Wolch's job to try and
2 get that if they could?

3 A That's correct.

4 Q Go to the last page -- no, sorry, 146, and here's
02:19 5 where Mr. Asper advises Mr. MacFarlane:

6 "Finally, insofar as the Wilson
7 transcript is concerned, it is our
8 understanding that although Professor
9 Boyd provided us with a copy of same,
02:20 10 his understanding with Wilson was that
11 the discussion was only for the purpose
12 of the preparation of Professor Boyd's
13 report, and consequently we are not at
14 liberty to provide it to you. Indeed,
02:20 15 we are not even supposed to have it."

16 Now, let me just pause there. I think you've
17 told us that you were not aware of any
18 restrictions that Mr. Boyd would have placed on
19 the transcript; is that correct?

02:20 20 A That's correct, I wasn't aware of it.

21 Q And were you aware of any reason that you were not
22 supposed to have a copy of the transcript? Did
23 Mr. Boyd give it to you personally or send it to
24 you?

02:20 25 A I can't remember whether it came to me or David



1 Asper, I really don't.

2 Q Were you aware of any reason that you were not
3 supposed to have it, was there anything like
4 lookit, here's a copy of it, from Mr. Boyd, but
02:20 5 I'm not supposed to give it to you, so don't tell
6 anybody you have it, anything of that nature?

7 A I can't remember anything of that nature.

8 Q And then Mr. Asper goes on to say:

9 "We can advise however that it --"

02:21 10 Being the Wilson transcript,

11 "-- really does not shed any new light
12 on anything ..."

13 And let me pause there. I take it from your
14 earlier answer you would disagree with that on
02:21 15 the basis that it does shed new light on the
16 issue of David and Ron Wilson's drug use on the
17 morning of the murder which you say you didn't
18 believe, but that would be something different
19 wouldn't it?

02:21 20 A Well, I don't know that I would have written "it
21 really does not any new shed light on anything".
22 I think it didn't shed any new light on anything
23 that was happening that day except it explained
24 why he lied. I really didn't see the other as
02:21 25 relevant in my mind, but -- like, I have no idea



1 when this was written or, you know, or that --

2 Q Okay.

3 A -- what he was putting in there, so I really can't
4 honestly comment on it.

02:22 5 Q Sure, no, that's fine, I'm just trying to get your
6 understanding, and I think you've told us what
7 your views were about what was in the transcript.

8 A Yes.

9 Q If we can go to 157840, this is the November 27th,
02:22 10 1991 letter to Mr. Wolch from the minister
11 ordering the reference, and do I understand your
12 earlier evidence that this would have been, didn't
13 come as a surprise in the sense that you knew this
14 was in the works for a while?

02:22 15 A Yes.

16 Q For a number of weeks perhaps or maybe even a
17 number of months?

18 A Not a number of months.

19 Q Early November perhaps?

02:22 20 A Yes.

21 Q And then if we can go to page 157842, this is the
22 formal order, and go to the next page, this is the
23 listing of the questions that the minister asked
24 the Supreme Court to consider, namely, whether:

02:23 25 "... does the continued conviction of



1 David Milgaard in Saskatoon ... in the
2 opinion of the Court, constitute a
3 miscarriage of justice?"

4 Did you get wrapped up at all or concerned at all
02:23 5 about what the question was and what was in this
6 order or was that something you left to your
7 lawyers to deal with?

8 A I totally left it to the lawyers.

9 Q Would it be correct to say that when this order
02:23 10 came out, that both you, your son David, Mr.
11 Asper, Mr. Wolch were pleased with what was
12 ordered?

13 A We were pleased that we were getting a chance to
14 go to the Supreme Court, yes.

02:23 15 Q Do you have any recollection of any concerns being
16 expressed at the time about, number one, the fact
17 that it was going to the Supreme Court of Canada
18 rather than some other level of court, to a Court
19 of Appeal?

02:24 20 A No, I thought it was going to the court, the
21 highest court in the land, so as far as I was
22 concerned, I felt that was good.

23 Q And as far as the type of reference that was being
24 ordered, do you recall Mr. Wolch or Mr. Asper
02:24 25 expressing at this time any concern about the type



1 of question that was being posed?

2 A I can't recall anything. They may have been
3 discussing it themselves, but we were just very
4 high that it was happening.

02:24 5 Q If we can go to 004312, and this is a letter, this
6 is just to give us a reference point, December
7 6th, 1991, this is a letter to Mr. Wolch, and I
8 think there was some meetings in early December
9 between your lawyers and lawyers for Federal
02:24 10 Justice and Saskatchewan Justice. Do you recall
11 being aware of those meetings taking place?

12 A Yes, I was.

13 Q And actually the relevant part, if you can go to
14 page 004314, and I think from the record it
02:25 15 appears, and from Mr. Asper's evidence, that once
16 the reference was ordered November 27th, 1991, I
17 think the hearings actually started January 16th
18 of 1992 with the opening remarks and I think David
19 testified on January 21 or thereabouts; does that
02:25 20 sound right?

21 A Yeah. All I know is we started to get materials,
22 all kinds of materials, and we were just totally
23 snowed under with all the stuff that we had to
24 deal with, and I can remember all of us in the war
02:25 25 room going through papers and papers and papers



1 and trying to figure out how we were going to use
2 them. It was very difficult because of the short
3 time frame we had to get prepared.

4 Q And again, and I'm not asking you to tell me
02:26 5 specifically what you got, but is it correct that
6 the Attorney General for Saskatchewan gave
7 disclosure to your counsel of documents, including
8 the prosecutor's file and police reports, and I'm
9 not asking you to agree that you got everything,
02:26 10 I'm simply saying that you got a significant --

11 A We got so much stuff that we could hardly wade
12 through it all.

13 Q And so you got a significant number of documents
14 that came from Mr. Caldwell's prosecution file; is
02:26 15 that correct?

16 A That's correct.

17 Q And you got a significant number of documents from
18 the Saskatoon City Police relating to their
19 investigation of Gail Miller?

02:26 20 A Yes.

21 Q And from Federal Justice did you also get a
22 quantity of documents or had you already received
23 those back in 1990?

24 A I think most of those we had received. It was
02:26 25 mostly all this other stuff that we got.



1 MR. HODSON: This is probably an
2 appropriate spot to break for the afternoon. Not
3 for the day, just for the afternoon.

4 (Adjourned at 2:27 p.m.)

02:46 5 (Reconvened at 2:46 p.m.)

6 BY MR. HODSON:

7 Q Just when we broke there we were in December
8 '91-January '92, the preparations, and I think you
9 told us that a significant volume of information
02:46 10 was provided to you and your counsel in very early
11 December 1991; is that correct?

12 A That's correct.

13 Q And --

14 A We just couldn't handle the amount of paper that
02:46 15 there was.

16 Q Now there's some transcript, some reference to the
17 fact that the Court, the Supreme Court came back
18 and set the starting date of mid-January, I think,
19 and said that, "lookit, if you wanted to go later,
02:47 20 Mr. Wolch, then give us a letter from your client
21 saying so, we understood that he was anxious to
22 proceed quickly"; do you remember that happening?

23 A Vaguely, but I know we wanted to proceed, David
24 wanted it done yesterday.

02:47 25 Q Yes. And this had been, if I can put it this way,



1 this had been your -- the end result you had been
2 looking for starting in 1980; correct?

3 A Yes, that's correct.

4 Q And December -- or sorry, pardon me -- the fall of
02:47 5 1985, when you went in to see Mr. Wolch and Mr.
6 Asper and filed the application December of '88,
7 this would be the result that you probably would
8 have expected earlier, is that correct, that
9 this --

02:47 10 A Much earlier, yes.

11 Q And so, as far as preparing for and running the
12 case, did you -- tell us just a little bit about
13 who was doing what as far as you and Mr. Asper and
14 Mr. Wolch; what took place during December-January
02:48 15 as far as the preparations?

16 A Well we were meeting all day and it seemed to me
17 all night, almost, on a regular basis because we
18 were going through all of these incident reports
19 and everything that was provided with us that we
02:48 20 didn't have before, and we had everybody sorting
21 them through, and we'd come up with, well,
22 somebody would find something, "well look at
23 this", and then somebody would find something,
24 "well look at that". And I know that we were
02:48 25 preparing Hersh for the case, because Hersh really



1 knew very little about the case, and so we really
2 were having to update him on almost everything.
3 And we worked with him, during the Supreme Court,
4 practically every night until late, very late,
02:49 5 going over things, but he was just amazing. Once
6 you worked with him for an hour or so he just
7 seemed to get, it seemed to click, and he got
8 everything so clearly and he was so good with it
9 the next day, but it meant that, every night, it
02:49 10 was back doing the same thing with him.

11 Q Well, when you say that he knew very little about
12 the case, that would be in December of 1991; that
13 time frame?

14 A That's right.

02:49 15 Q And was his involvement up until that point, then,
16 in a -- I'm not sure I understand why he didn't
17 know very much about the case?

18 A Well, I'm sure he knew some of it, but he didn't
19 know the -- it in the depth that David Asper knew
02:49 20 it or that I knew it, for instance, or that even
21 Bob Bruce knew it.

22 Q I see. So the December time period, in getting
23 ready for the Supreme Court, in addition there was
24 getting Mr. Wolch --

02:50 25 A Prepped.



1 Q -- prepped and getting the same knowledge that you
2 and Mr. Asper had to Mr. Wolch?

3 A Yes. But it also was a time when Mr. Wolch, it
4 was during this prep time that he came up with
02:50 5 what has been known -- now, it seems to me it
6 can't be the script document, it's the Mackie
7 document?

8 Q The Mackie document, yes.

9 A Yes. And he just totally amazed us when he came
02:50 10 up with that document that we had seen so many
11 times before and shed an absolutely different
12 light on it.

13 Q And so that was a document that you and Mr. Asper
14 had reviewed, I think you said, many times
02:50 15 previous?

16 A Absolutely.

17 Q And, when you reviewed it, saw nothing of
18 significance with it?

19 A No. And then when, suddenly, we realized the
02:50 20 significance was the date in which they sent for
21 these witnesses, and that's when they subsequently
22 changed their testimony to include all of the
23 stuff in the Mackie document, or many of the items
24 that they adopted from that.

02:51 25 Q And I think that was during the course of the



1 reference hearings; is that correct?

2 A Yes, that's right. And it was an exciting time
3 for us when he came up with that, because we
4 thought it was very powerful, and it was powerful
02:51 5 when it was presented in Court.

6 Q And that was used in the Supreme Court reference?

7 A Yes, it was.

8 Q And, again, to show that -- what, I mean what was
9 the theory there, that this was used by the police
02:51 10 to coerce witnesses?

11 A To get the witnesses to say what they wanted them
12 to say.

13 Q To get the witnesses to say what the police wanted
14 them to say?

02:51 15 A Yes, correct.

16 Q And I think, I think it was during, I remember
17 reading an article or maybe in your book that it
18 was during the course of the hearing that
19 Mr. Wolch realized the significance of this
02:51 20 document; is that right?

21 A That's correct.

22 Q And when you talk about how that was used am I
23 correct that, once this Mackie summary was
24 discovered by Mr. Wolch, that the theory that was
02:52 25 built around that document was the following; that



1 Ron Wilson, Albert Cadrain, and Nichol John -- or
2 pardon me -- Ron Wilson and Nichol John's first
3 statements in early March 1969 were the complete
4 and entire truth?

02:52 5 A Correct.

6 Q The Mackie summary document came along, and that
7 everything in the May 23rd-24th, '69 statements
8 were wrongly influenced by the police, and as a
9 result of the Mackie summary, and that, really,
02:52 10 the Mackie summary showed that the very first
11 statements given by Wilson and John were the
12 truth?

13 A Yes, that's correct.

14 Q And I think that was a position taken for some
02:52 15 time after the Supreme Court as well, and I think
16 even before this Inquiry, is that fair?

17 A Yes, that's correct.

18 Q And that's where that theory was born, for lack of
19 a better word, or came about, when Mr. Wolch
02:52 20 discovered that Mackie summary --

21 A Yes.

22 Q -- at the Supreme Court?

23 If we can go to 337207. I want
24 to go through some tapes of conversations in and
02:53 25 around the lead-up to the Supreme Court and get



1 you to comment. This is a discussion December
2 11th, I think it says December 11th, 1991, so this
3 would be, again, right in the preparation time.
4 Go to the bottom right, please, and I think
02:53 5 there's some -- actually, go to the top right,
6 please -- no, that's the wrong page. 337211,
7 please.

8 A Hmm.

9 Q And here there is a discussion about you and Mr.
02:54 10 Asper preparing, and Mr. Asper:

11 "The sooner I can get that stuff the
12 sooner I can get on it, because I'm
13 gonna start going through my own stuff
14 today, and the sooner I can get your
15 stuff the sooner I can, as I say, get it
16 separated into piles."

17 A I'm sorry, where are you, I can't --

18 Q No, right here. And then right here it says:

19 "MRS. JOYCE MILGAARD: Now what do you want
20 to do about these tapes and that, are
21 you gonna try to listen to all those
22 tapes?"

23 Do you see that right here?

24 A Yes, I can.

25 Q And Mr. Asper --



1 A There was a brightness from the window behind and
2 I couldn't see the screen.

3 Q Okay. And it says:

4 "MR. DAVID ASPER: Well, yeah, you bet."

5 You say:

6 "MRS. JOYCE MILGAARD: Okay.

7 MR. DAVID ASPER: You bet. I'm gonna sit
8 and listen to every single tape.

9 MRS. JOYCE MILGAARD: Well, you're talking
10 just the tapes from '80?

11 MR. DAVID ASPER: Huh?

12 MRS. JOYCE MILGAARD: Just the tapes from
13 '80?

14 MR. DAVID ASPER: Whatever tapes you have.
15 Yeah, I mean --

16 MRS. JOYCE MILGAARD: *(Laughs)*.

17 MR. DAVID ASPER: -- of, like of the
18 witnesses.

19 MRS. JOYCE MILGAARD: Yes, okay. Okay.

20 MR. DAVID ASPER: Umm, anybody that you
21 were --

22 MRS. JOYCE MILGAARD: I was gonna say, if
23 you were gonna listen to every single
24 tape, you won't be ready for the Supreme
25 Court in April.



1 MR. DAVID ASPER: Well, any tape that you
2 have --

3 MRS. JOYCE MILGAARD: Uh-huh.

4 MR. DAVID ASPER: -- that relates to a
5 witness --

6 MRS. JOYCE MILGAARD: Right.

7 MR. DAVID ASPER: -- I need.

8 MRS. JOYCE MILGAARD: Yeah, okay. Like
9 Mrs. Cadrain's, all her -- all my phone
10 conversations with her, and with Wilson,
11 and all those? Yeah.

12 MR. DAVID ASPER: Melnyk, Lapchuk,
13 everything.

14 MRS. JOYCE MILGAARD: Okay.

15 MR. DAVID ASPER: Okay?"

16 So am I correct that, in December of 1991, that
17 Mr. Asper was saying he's going to go through and
18 listen to all of the 1980 period interviews?

19 A Yes, yes.

02:55 20 Q And do you know if that happened, did you provide
21 those to him, or the transcripts of those?

22 A Oh, I'm sure I must have.

23 Q And that was something that was on -- something
24 that, as far as you are aware, he did do that, go
02:55 25 through and listen to the Melnyk, Lapchuk, Wilson,



1 Cadrain, and John tapes from the early '80s?

2 A I expect he did.

3 Q If we can go to 336391 and go to page 336442.

4 Again this is, I think this is early January,
02:56 5 1992, this relates to the interview of Launa
6 Edwards, I think in early 1992, January, she was
7 George Lapchuk's ex-spouse or friend, --

8 A Yes.

9 Q -- and I think she had some information that came
02:56 10 forward. And this is a discussion that you and
11 Mr. Asper had about who was gonna go and do the
12 interview, and this question was asked of Mr.
13 Asper, and since it involves a conversation with
14 you I want to get you to elaborate on what you
02:56 15 were thinking at the time or your reaction, and
16 this is -- relates to who was gonna go get the
17 statement from this woman. Mr. Asper says:

18 "... any of that in her statement. I
19 don't want any, I mean you know, I don't
02:56 20 want any of the umm, statement taking
21 that's, that's gone on up to this point
22 you know, that I believe Dave is
23 innocent ...",

24 blah, blah, blah -- actually, I think that's:

02:57 25 "... blab, blab, blab.",



1 but anyway --

2 A (Laughs)

3 Q -- and next page, next page, please. And there is
4 a comment here about who's gonna do it, and you
02:57 5 say:

6 "And the point is ... because it's
7 Centurion, if ... Centurion Ministries,
8 one of their investigators is doing it,
9 does it become tainted some how?"

10 And Asper says:

11 "Well the whole thing is tainted by
12 Centurion, if Centurion is the taint
13 then the whole thing is tainted."

14 Then, the next page, Mr. Asper says:

02:57 15 "... but on the other hand ... why
16 shouldn't that be Centurion?"

17 You say:

18 "Well."

19 And then he says:

02:57 20 "You know I mean, I have ... I you know
21 anybody ... the statements that have
22 been taken up to this point have been
23 you know, horrendously biased."

24 And he was talking about the Hend -- the
02:58 25 statements taken by Paul Henderson. Now do you



1 have a recollection of this discussion, and did
2 you have any views about what Mr. Asper was
3 saying about --

4 A I don't think he was talking about Paul
02:58 5 Henderson's statement there.

6 Q I think that was his evidence.

7 A You mean have:

8 "... you know anybody, ah, you know ..."

9 Q I think what he was saying is that if Centurion
02:58 10 goes and gets the statement from Launa Edwards and
11 somehow Centurion is tainted as being biased, then
12 that would taint the statement from her, and his
13 comment here is:

14 "... why shouldn't that be Centurion?"

02:58 15 "... the statements that have been taken
16 up to this point have been you know,
17 horrendously biased."

18 A Okay.

19 Q And I'm wondering whether you have any
02:59 20 recollection, I mean this is a discussion between
21 you and he, and did you have any concerns about
22 two things; one, any concerns about the manner in
23 which Paul Henderson or Centurion took statements;
24 and number 2, any concerns about Mr. Asper's views
02:59 25 expressed to you here?



1 A Well I think if that was his view, I'd be shocked
2 by it, because I thought that Centurion statements
3 were very professionally done and I didn't see
4 them as horrendously biased.

02:59 5 Q Do you have any recollection of this discussion or
6 this --

7 A No, I haven't. I can remember us talking. Who
8 eventually went out to Launa Edwards?

9 Q Actually, Paul Henderson and David Asper.

02:59 10 A Ah.

11 Q Paul Henderson took the statement and I think
12 David Asper was present as well, I believe.

13 A Present? Okay.

14 Q I'm not sure if he was with them, Mr. -- I think
02:59 15 in the same hotel, and I think he was present
16 around the time that the statement was taken, I'm
17 not sure if he was --

18 A Yeah. I think that he was wanting to be very
19 cautious about everything at this point.

02:59 20 Q Do you recall whether Mr. Asper or you or Mr.
21 Wolch had been made aware, by the authorities or
22 anybody in the authorities, that they had concerns
23 about any of the statements taken by Paul
24 Henderson?

03:00 25 A No, but when I read that statement from David it



1 sounds to me like he thought they did.

2 Q Right. And I think if we go back to, I mean Kim
3 Campbell's first letter February 27, 1991
4 rejecting the first application I think in some
03:00 5 respects took issue with the statements or the
6 recantation taken from Ron Wilson; would that be
7 fair?

8 A That would be fair.

9 Q And so was there maybe a concern here that if Mr.
03:00 10 Henderson was involved in taking this statement
11 that that might be viewed rightly or wrongly by
12 the authorities as tainting the substance of the
13 statement?

14 A Yes. In the same way, if they'd sent Williams out
03:00 15 to take a statement I would have thought that was
16 horrendously biased too, because of the way he
17 took statements and put the pressure on people and
18 everything.

19 Q And so were you aware at the time, then, that the
03:01 20 authorities had some doubts about the manner in
21 which Mr. Henderson took statements?

22 A I don't know that I had that opinion, no, or had
23 -- you know, I wasn't having contact with them,
24 David was.

03:01 25 Q Not your opinion about his statements, but were



1 you aware that the authorities had raised
2 questions about the manner in which Paul Henderson
3 had interviewed witnesses, do you know if that
4 would have been something that you were aware of?

03:01 5 A No, I don't think that was something that I was
6 aware of, and that's why that statement surprised
7 me.

8 Q If we could go to 335896 and go to page 335899.
9 Again, this is around I think January, 1991, a
03:01 10 discussion with you and Mr. Asper, and he says:

11 "Well the problem with Vanin is the
12 following. Pearson wrote to me with
13 our, by the way, have you heard from
14 Paul?"

03:02 15 "No."

16 Asper says:

17 "I've gotta find him fast."

18 "Why?"

19 "Because everybody wants the tape of his
03:02 20 interview with Wilson."

21 You say:

22 "Oh really. Why?"

23 Asper:

24 "Because it's part of the disclosure."

03:02 25 "But we can't find him."



1 Mr. Asper:

2 "Well, I'm trying.

3 And you say:

4 "Good! We can't find him."

03:02 5 And I'm wondering, do you have any recollection
6 of -- I'm wondering why you would have said:

7 "Good! We can't find him."?

8 COMMISSIONER MacCALLUM: Who is "him?"

9 BY MR. HODSON:

03:02 10 Q Paul Henderson.

11 A Paul Henderson. I don't -- I have no idea.

12 Q Well did you have any concerns about -- and,
13 again, you told me the other day you don't think
14 you ever had the tape, you said, I think you said
03:02 15 you may have listened to it. Now maybe I'm wrong
16 on that, maybe I should ask you again, do you
17 remember -- this is Paul Henderson's interview of
18 Ron Wilson on June 4th, 1990 when he interviewed
19 him in the course of getting Ron Wilson's
03:03 20 recantation, and there's evidence that Mr.

21 Henderson taped part of the interview but the tape
22 has never been located, and do you --

23 A That wasn't the tape that, do you remember, I was
24 taping, I was listening to a tape?

03:03 25 Q Yeah, that was the Dennis Cadrain interview.



1 A That was the Dennis Cadrain one?

2 Q Yeah.

3 A I presume that I probably listened to the tape in
4 a similar manner on the phone with Paul, --

03:03 5 Q Right.

6 A -- but I have no recollection of ever having --
7 possessing that tape.

8 Q I think that, yeah, that's what you told us, but I
9 think you said you thought you had listened to it
03:03 10 or he had played it to you at some point?

11 A I believe, at some point, he did.

12 Q And do you recall, around this time or at any time
13 -- and, again, "this time" is before the Supreme
14 Court reference -- having a desire that that tape
03:04 15 not be located and not provided to the
16 authorities?

17 A I may have, and that would explain the:

18 "Good! We can't find him."

19 Q And --

03:04 20 A That's the only thing I could think could possibly
21 be that. But David says:

22 "Well, I'm trying.",

23 and I know if David was trying and really wanted
24 him, I would be trying to help.

03:04 25 Q Is it fair -- is it fair to read this in saying



1 that you did not want the tape that Paul Henderson
2 had, of his conversation with Ron Wilson, provided
3 to the Supreme Court?

4 A No, it's not fair to say that, --

03:04 5 Q Okay.

6 A -- because I can't say that, I really don't know
7 that that would be the case.

8 Q And as far --

9 A I have no memory --

03:04 10 Q Okay.

11 A -- of not wanting that tape heard.

12 Q Okay.

13 A Does that help?

14 Q Yes, yeah, no, and the reason I ask is this
03:04 15 comment here, --

16 A Yes.

17 Q -- "Good! We can't find him.",
18 and that doesn't assist your memory at all?

19 A It doesn't.

03:05 20 Q Okay. And if we could go to 337189, and I think
21 this is a discussion -- if we could go to page
22 337197, actually, if we could maybe just go to the
23 previous page, please. This is a discussion
24 between you and Mr. Asper, and I think this is
03:05 25 after at least one meeting with the Chief Justice



1 and counsel for the Attorney General for
2 Saskatchewan, and I think at this point,
3 Mrs. Milgaard, the Attorney General for
4 Saskatchewan or the Saskatchewan Justice
03:05 5 Department became a participant in matters,
6 correct, they became a party before the Supreme
7 Court reference?

8 A Yes, I believe they did.

9 Q And what was your understanding of the role they
03:06 10 were playing and why they were there?

11 A I really don't know that I had an understanding of
12 their role there. I thought probably, possibly
13 they were going to help, but I remember that they
14 really didn't because they were the ones that were
03:06 15 up there really cross-examining my son.

16 Q There is a letter, and I think I went through it
17 with Mr. Asper, in his reporting letter I think to
18 your son David where he explained, or it was a
19 conversation explaining that the Court system is
03:06 20 adversarial, therefore someone has to be on the
21 other side, and Saskatchewan Justice is the party
22 who's going to try and defend or uphold the
23 original conviction; do you remember that being --
24 being made aware of that around the time?

03:06 25 A Probably.



1 Q And, here, there is a discussion about the
2 position that Saskatchewan was taking:

3 "... Saskatchewan is being extremely
4 fair about this ...",

03:07 5 and that's about the timing:

6 "... and they will you know if we're not
7 ready to go when the Judge wants us to
8 go, Saskatchewan is not gonna make a
9 stink and insist that we go."

03:07 10 Next page. And then he -- scroll down, please --
11 and then he says here:

12 "Now, Hersh and I - believe me said on
13 the way down to Ottawa our basic
14 strategy is to not to trust them one
03:07 15 inch. We'll be cordial, we'll be
16 pleasant you know and ... we'll throw a
17 dig in judiciously just to get them off
18 kilter ... but you know we're not going
19 to trust them. But they're being very
03:07 20 gentlemanly, very cooperative."

21 And you say:

22 "That scares me."

23 Mr. Asper says:

24 "Yeah, there's reason for that but

03:07 25 there's also as I say. If they think



1 that they may get caught up in a very
2 ugly thing they're gonna conduct
3 themselves absolutely squeaky clean."

4 And maybe if you could just shed some light about
5 what you and Mr. Asper might have been thinking
6 at this time, it sounds to me that, from this
7 exchange. That neither you nor he nor Mr. Wolch
8 trusted the lawyers for Saskatchewan Justice
9 and/or the lawyers for Federal Justice at the
03:08 10 Supreme Court hearing?

11 A Can you really blame us?

12 Q Is that correct, that you didn't?

13 A That's correct, we definitely did not.

14 Q And why not?

03:08 15 A Because of all the things that had come out of
16 Saskatchewan, we'd never had anything good come
17 out of there.

18 Q And so, when you talk 'Saskatchewan', are you
19 talking the province or the Department of Justice?

03:08 20 A All of it. I guess I tarred and feathered them
21 with the same brush as the police, Caldwell,
22 Kujawa, everybody.

23 Q And would this be an accurate description of the
24 strategy going into the Supreme Court reference
03:08 25 from your group, being you and your counsel,



1 that -- not to trust them one inch, and "them"
2 being Federal Justice and Saskatchewan Justice?

3 A That's correct.

4 Q If we could go to 335896. And I want to talk a
03:09 5 bit about -- actually if we could just go to,
6 actually, I think this is around January of 1992.
7 Go to 335911. And there was just a comment here,
8 and I'm not sure if this is actually the best
9 exchange to raise this point with you, but I
03:09 10 think, here, this is when the Supreme Court had
11 set the dates and had indicated that your son
12 David would be the first witness; do you remember
13 that happening?

14 A Yes.

03:07 15 Q And did that catch you and your counsel a little
16 off guard?

17 A Yes, I think it did.

18 Q And can you tell us why, or what was your -- and
19 again I appreciate you weren't the counsel there,
03:08 20 but you would have been talking to Mr. Asper and
21 Mr. Wolch. Can you tell us what it was that
22 caught you off guard and what concerns you might
23 have had with that?

24 A Well, because David was so fragile, I think we
03:08 25 were very concerned about him testifying and what



1 he would say and what he would remember and, you
2 know, it had been years and years in the past and
3 we had been over so many things, and I can
4 remember conversations with David and Hersh and
03:08 5 about how they were going to prepare him, or how
6 the best way to prepare him would be, and I think
7 the big thing was we seemed that we were being
8 rushed right into it. We wanted it to happen, but
9 it was like we weren't going to have time to do
03:09 10 all the things we needed to do.

11 Q Was it correct, just on that point, that the
12 court, the Supreme Court gave you the option or
13 gave your son's counsel the option of delaying the
14 matter if he wasn't ready; in other words, if you
03:09 15 are not ready to go, give us a letter and we'll go
16 later?

17 A Yes, I think there was something like that, but I
18 don't know whether there were some parameters with
19 Hersh or with David that we couldn't do that, but
03:09 20 it seemed that they were really pushing to get it
21 done.

22 Q Just -- if we can just go back to your son David's
23 condition. Was one of the concerns, I think there
24 had been some -- you said fragile. He was
03:09 25 suffering from emotional trouble at the time or



1 had been for some time; is that right?

2 A Yes, he had been, and was.

3 Q And it's also my understanding from the documents
4 and some of the transcripts that he had taken the
03:10 5 position around this time that, and please correct
6 me if I'm wrong, that basically said he didn't
7 think he needed to go to the Supreme Court because
8 he had the Dr. Ferris report and that why do I
9 need to go there and I'm not going to go?

03:10 10 A That's right, he didn't want to go, he didn't
11 think he had to go. He thought that they should
12 be able to do it without him.

13 Q Right. And that he had -- and was it also related
14 a bit to the Dr. Ferris report as well that he was
03:10 15 in part relying on?

16 A Yes, I think so.

17 Q And so why do I have to go there, why should the
18 court have to decide this when they have the Dr.
19 Ferris report, wasn't that basically his position?

03:10 20 A It was, but it wasn't a logical position, it was
21 because of the mental turmoil that he was in. He
22 wasn't being rational about a lot of things at
23 that time.

24 Q Now, you talked about his memory, and is it
03:10 25 correct to say, and I'm relying a bit upon what



1 your son David told me when I questioned him back
2 in early March, that I think his evidence was that
3 around -- first of all, he didn't remember
4 testifying at the Supreme Court, but what he said
03:11 5 basically was around that time he could not
6 distinguish what he remembered happening compared
7 to what he thought likely happened to what he was
8 told had happen or what he had hoped had happened.

9 A Yes.

03:11 10 Q Along those lines, and therefore that his memory
11 of events might not be reliable?

12 A That's right.

13 Q And --

14 A And this is, was my concern, that if he got up
03:11 15 there and said something the opposite to what we
16 knew was true, that it would look bad for him, but
17 it was important for them -- and, I mean, they
18 wanted him up there, so we had to go that route.

19 Q And wasn't it the case that in fact some of your
03:12 20 son's evidence was contradicted on significant
21 points -- let me just back up a moment. His
22 evidence about not being -- his memory about not
23 being involved in the murder of Gail Miller, let's
24 put that aside, that was his memory, that wasn't
03:12 25 challenged by other witnesses?



1 A That's right.

2 Q With respect to other facts, I think at the
3 Supreme Court your son's evidence was contradicted
4 on some very significant pieces of evidence by the
03:12 5 evidence of his lawyer Mr. Tallis and by Ron
6 Wilson?

7 A Yes.

8 Q And was your concern going in that that might
9 happen and that might make David look unreliable?

03:12 10 A Yes.

11 Q And can you -- what discussions did you have with
12 Mr. Wolch or Mr. Asper about that, what was the
13 plan to deal with that?

14 A Well, I don't know that they had a plan to deal
03:12 15 with it. We knew he had to appear. I think they
16 were going to work with him over what he had said
17 at the time I believe, but I also remember
18 somewhere in a conversation I don't want to
19 prepare him too much, I think that it should be
03:13 20 normal and natural with what he comes out with.

21 Q Was there not a couple of other -- and I'll go
22 into a couple of these conversations in a moment,
23 but were there not a couple of things that came to
24 the forefront at this time, and we're talking
03:13 25 January, 1992 when you realized David has got to



1 go testify, and there's two things that come up
2 that cause you and your lawyers concern, I think,
3 and I want your comment on this. Number one is
4 the fact that in 1986 David, your David swore an
03:13 5 affidavit that was filed with the minister where
6 he said a couple of things; one, denied throwing
7 out the compact I think?

8 A Correct.

9 Q Two, denying the motel room incident; correct?

03:14 10 A Yes.

11 Q And secondly, your counsel had not talked to
12 Mr. Tallis other than right around this time to
13 find out what Mr. Tallis was going to say about
14 what your David had told him back in 1969 and
03:14 15 1970; correct?

16 A That's correct.

17 Q And that became a revelation at the time, that
18 lookit, here's what Mr. Tallis is going to say
19 when he testifies, he's going to say David told
03:14 20 him a number of things back in 1969, 1970 and what
21 he's going to attribute to David are contradicted
22 by what David has in his affidavit, number one;
23 number 2, what David has said subsequently in
24 interviews, and number three, contradicts what we
03:14 25 as his counsel have put forward as his position



1 from time to time?

2 A That's correct.

3 Q And so that issue came up right around the time of
4 the Supreme Court reference, that --

03:14 5 A And we didn't know how to handle it or what we
6 were going to do with it.

7 Q And is it fair to say that the position that had
8 been committed to on behalf of David, not only by
9 David, but by Mr. Asper and others, i.e., the
03:14 10 motel room incident didn't happen, the compact
11 didn't happen, these things didn't happen, there
12 was no knife and a number of things, that the
13 publicly-taken position both by David and his
14 counsel now appeared that it would be contradicted
03:15 15 in some respects by the evidence of Mr. Tallis,
16 his lawyer at the time; correct?

17 A Yes.

18 Q And secondly, by Ron Wilson, the fellow who you
19 were putting forward as the --

03:15 20 A The recanting witness, yes.

21 Q And have I described that, the predicament that
22 you were in, fairly?

23 A That was the predicament we were in, and plus you
24 would never know how David is going to react or
03:15 25 how he's going to be every day in the sense of his



1 mental state.

2 **Q** If we could go to 336592, and this is one of the
3 discussions I think between you and Mr. Asper, if
4 we can go to 336594, and what we've heard evidence
03:16 5 about already, Mrs. Milgaard, is that Eugene
6 Williams had -- I mean, let me add one further
7 predicament, if I can call it, or factor. You
8 also would have learned that not only here's what
9 Mr. Tallis is going to say that might contradict
03:16 10 what David has said and is going to say, he was
11 interviewed by Federal Justice over a year ago and
12 they've known about this for some time?

13 **A** Yes.

14 **Q** Is that a factor?

03:16 15 **A** That's a factor.

16 **Q** And would it be fair to say that when you learned
17 Mr. Tallis' recollection of what David told him,
18 and at that point it was here's what his
19 recollection was, that there may have been some
03:16 20 things in there that surprised you?

21 **A** Oh, absolutely. I felt that he was wrong.

22 **Q** You felt Mr. Tallis was wrong?

23 **A** Yes.

24 **Q** About what pieces of information?

03:17 25 **A** Umm, that David had told him that. I didn't think



1 he had. I had no memory of him telling him that.

2 Q Telling him -- I'm sorry, telling him what though?

3 A I think it was about the compact.

4 Q Okay. So the compact was one that surprised you

03:17 5 when you heard Mr. Tallis say --

6 A Yes.

7 Q -- David had told him he had done that, that was
8 one that surprised you?

9 A It really did.

03:17 10 Q And let's just focus on that for a moment. David
11 had already stated that that didn't happen?

12 A That's right.

13 Q And I think you told us earlier that that was
14 incriminating at the time of trial; correct?

03:17 15 A Yes.

16 Q And so now with justice officials you have David
17 saying lookit, I didn't throw the compact out and
18 his lawyer is saying, well, he told me he did?

19 A Yes.

03:17 20 Q And then you are going in front of the Supreme
21 Court and David is going to say I didn't throw it
22 out and his lawyer is going to say he told me he
23 did and that would have been a concern; is that
24 fair?

03:18 25 A Yes, that's correct.



1 Q Was there anything else that you learned from
2 Mr. Tallis around this time that surprised you or
3 caused you concern?

4 A I can't recall anything at the moment.

03:18 5 Q And again, his recollection about how David
6 described the motel room incident, I think that
7 was fairly consistent with what you believed as
8 well?

9 A I think it was.

03:18 10 Q That David says I don't remember it, but --

11 A But I could have.

12 Q I could have, and if I did it was a joke?

13 A Yes.

14 Q And here's a discussion I think where Mr. Asper
03:18 15 says, and I think he was talking, I think Mr.
16 Asper had found out what Mr. Tallis was going to
17 say and then he went and talked to David Milgaard,
18 he says:

19 "I said to him, for example, umm, was
03:18 20 there a compact on the trip. He says I
21 don't think so, but I, I mean I don't
22 remember any compact."

23 "I said is it possible that uh, you did
24 contemplate uh, taking the ladies purse.
03:19 25 He says ya but we just chickened out



1 ..."

2 "... which he never said before."

3 And I think back in 1981 this came out in a
4 conversation with Gary Young where David said
03:19 5 yes, your David said yeah, when we pulled up to
6 stop the woman for directions I thought about
7 robbing her purse. Do you remember that?

8 A Yes, I remember that.

9 Q And that was something he told Tallis in 1970?

03:19 10 A Yes.

11 Q And it would appear that Mr. Asper just learned
12 about this when he found out that Mr. Tallis was
13 going to say this at the Supreme Court; is that
14 correct?

03:19 15 A I think that's correct.

16 Q And that was something that concerned Mr. Asper,
17 this information?

18 A Yes, it did.

19 Q And:

03:19 20 "... he started, uh, actually saying
21 things umm, that would be very helpful
22 to work with him on."

23 And then:

24 "Not knowing what Tallis has said, you
03:19 25 know, I didn't tell him ..."



1 "I didn't tell him we met with Tallis.

2 ... but, you know, it ended, we got to

3 the institution, we got out of the car

4 and I took him back and that was it.

03:19 5 But it makes it very very difficult now

6 because he is going to have to testify

7 and he will be subpoenaed."

8 And would it be fair to say at this time the

9 concern is lookit, your David is going to have to

03:20 10 testify and there's some information that

11 Mr. Tallis is going to say that David is not

12 going to agree with?

13 A That's right.

14 Q And was there also a concern that -- and I think

03:20 15 this is maybe in some later tapes -- that your

16 lawyers didn't want to tell your David what

17 Mr. Tallis was going to say because it might upset

18 him?

19 A That's correct.

03:20 20 Q And that -- can you elaborate on that, what was

21 the concern there if you went to him and said

22 lookit, Mr. Tallis is going to say you threw a

23 compact out?

24 A Well, he was so fragile, he was so mentally

03:20 25 unbalanced at that time that the slightest thing



1 could set him off and we were trying to keep him
2 calm and so felt that we just couldn't put that
3 kind of pressure on him, if you will.

4 Q If we can go to 336592, please. Was there also a
03:21 5 concern that Chief Justice Lamer had said David
6 has to be the first witness, so in other words,
7 David, your David wouldn't have the benefit of
8 hearing the evidence of the other witnesses before
9 he testified, was that a concern as well?

03:21 10 A Yes and no. In a way I thought it was good if he
11 could get up and get it over with and then we
12 would know where he was, we would know how to
13 handle it from there on.

14 Q And I'll come back to this as, when I deal with
03:21 15 some systemic issues with you later, but was it a
16 concern of yours that this hearing that you had
17 asked for to get a remedy, had you contemplated
18 that your son would have to testify at it before
19 the court, was that something that you knew was an
03:21 20 inevitability, you wish it didn't have to be, but
21 you knew it would happen?

22 A I never did, I don't think I went that far. I
23 never thought that he would be questioned on it.
24 I mean, he wasn't there, as far as I was concerned
03:22 25 he didn't do it, he wasn't there, why would they



1 be questioning him, these other people were there,
2 and I really wasn't thinking that he would have to
3 be involved in that.

4 Q Here, if we can go to page 336639, and again these
03:22 5 are conversations I think in mid January, 1992,
6 and this is a conversation I think with you and
7 your daughter Susan and this is after I think Mr.
8 Asper finds out and reports to you and says
9 lookit, here's what Mr. Tallis told us he's going
03:22 10 to say when he testifies.

11 A Okay.

12 Q And then you say, and I think you talked to your
13 daughter and there's another one with your son
14 Chris:

03:22 15 "And ah, somethings that you should know
16 that we cannot discuss with David or
17 anyone else. Okay is it that they saw
18 Tallis, okay, and ah, that um Tallis ah,
19 says that David told him things that he
03:23 20 says in the Affidavit ah, he didn't say.
21 Like for instance in the Affidavit that
22 we gave to Kim Campbell, he said that he
23 had no knowledge whatsoever of the
24 compact and he never threw it out the
03:23 25 window."



1 "He told Cal Tallis he did, and ah, but
2 he didn't know, you know, who's it was
3 and he didn't know why he did it."

4 Next page:

03:23 5 "Um, he said that um, ah he admitted
6 that he could quite probably have
7 re-enacted the crime in the motel room,
8 but he didn't know. And ah, of course
9 in the Affidavit he said he definitely
03:23 10 did not do the re-enactment."

11 "So Campbell had access to this
12 material, it was given by Cal Tallis to
13 the Justice Department not to be
14 released to anyone else except the
03:23 15 Justice minister."

16 "Or like to the Justice Department.
17 Now, he could be called to testify on
18 this and I can understand now the
19 minister may be seeing this Affidavit of
03:23 20 David's saying all these things and yet
21 Tallis is saying well he told me he did.
22 Ah, throw the compact out and he told me
23 the other, that um, you know the whole
24 thing is a mess."

03:24 25 "Um, apparently I guess you know that he



1 left the office when he was down the
2 other day."

3 If you can scroll down:

4 "David Asper is going to have him down
03:24 5 at the office, apparently, Kathy and
6 Maureen are going down to have lunch
7 with him at noon. I'm going down there
8 at 11, now David Asper says there's no
9 way we can tell him what Cal Tallis has
03:24 10 said, but I said to him, well you know
11 David, on more than one occasion, David
12 has told me, that um, ah not about the
13 compact, he's never said that to me, but
14 he's often said about the re-enactment
03:24 15 that he could have done. You know, it's
16 quite possible, he said I don't know but
17 I, I could have, but I don't
18 remember..."

19 And then the next page:

03:24 20 "... doing it. So someday or other
21 we're gonna have to, and he said yes,
22 but you know, when I talked to him and
23 got him to do that Affidavit I said if
24 you don't know, don't put anything you
03:24 25 don't know, and he put that in."



1 "So I said well, the point is that's
2 just gonna show that he's as confused as
3 he is. And as I explained to David
4 Asper, I said I used to be a
03:24 5 pathological liar and David was and is,
6 to quite a degree a liar."

7 "And at one time, I would not know the
8 difference, I would not be able to
9 distinguish between the truth and
03:25 10 reality if I went to think back to
11 something that I had lied about for a
12 long time about at home, now I would not
13 maybe know what really was the truth
14 about the situation."

03:25 15 "But that would be in little things, if
16 it was, did I rob a bank, or did I
17 murder someone, that I would know."

18 "And so, I tried to point out to him
19 these may be minor discrepancies, but
03:25 20 that doesn't make him a killer. And of
21 course David Asper agrees to that too."

22 Now, this would have been a conversation around
23 the time that you learned about what Mr. Tallis
24 had said?

03:25 25 A That's correct.



1 Q And will you just, back up here when you say:

2 "When I talked to him and got him to do
3 that Affidavit, I said if you don't
4 know, don't put anything you don't know,
03:25 5 and he put that in."

6 Are you talking about your David or David Asper
7 or both? I think this is the 1986 affidavit; is
8 that right?

9 A Well, it looks like I got him to do the affidavit.
03:26 10 Maybe I was doing it with David Asper.

11 Q And this would be the 1986 affidavit?

12 A Yes.

13 Q And right at the start of this discussion, what
14 would be your concern in telling Susan not to
03:26 15 discuss it with David or anyone else, was it a
16 concern that --

17 A Well, I wanted them to be aware that this might be
18 coming up, you know, but that we were trying to
19 decide how we were going to handle David, my David
03:26 20 on this, what we were going to do, how we were
21 going to present it to him.

22 Q And is it right that what you are saying in a way
23 here is that lookit, David may have lied about
24 things in his affidavit, he wouldn't lie --
03:26 25 wouldn't have lied about the fact that he didn't



1 kill Gail Miller, but the other things he may
2 have?

3 A That's right.

4 Q And as well an acknowledgement that the minister
03:26 5 -- when you refer to Campbell, you are referring
6 to Kim Campbell?

7 A Yes.

8 Q -- would have had David's sworn evidence and
9 Tallis' information?

03:27 10 A At the same time.

11 Q And did you, when you learned about what
12 Mr. Tallis may have told her, did you have some
13 concern that, some concern that lookit, not asking
14 you to agree with what the minister did, but
03:27 15 saying okay, well, apparently that might have
16 influenced her, that might have been something she
17 looked as a fact, that Mr. Tallis contradicted
18 what David had put in; is that fair?

19 A I may have looked at her, but I don't think I gave
03:27 20 her that much slack, Mr. Hodson.

21 Q I tried to phrase it as neutral as could. Go to
22 page 336651, and this might assist you just on
23 that latter point, I think this is the same
24 discussion that you had with -- I think "C" is
03:27 25 your son Chris, and you say:



1 "... they interviewed Tallis on the
2 weekend ah, and Tallis disclosed that
3 ah, David had told him, like David wrote
4 an Affidavit Friday with David Asper and
03:28 5 Hersh and in it he said ah, he stated
6 that he had never reenacted the crime
7 and he also said that he had ah, never
8 seen the compact or thrown it out of the
9 window. Now apparently he told Tallis
03:28 10 that he had thrown the compact out of
11 the window and he didn't know who's it
12 was and he didn't know why he done it.
13 He also told Tallis that he, he could
14 very easily reenacted the crime. So ah,
03:28 15 David Asper says that puts us in a very
16 difficult position because the minister
17 seen that she's seen his Affidavit
18 saying this, that he didn't do it and
19 now she has Tallis's information that he
03:28 20 did do it."

21 And again, the "did do to" is the motel incident?

22 A Correct.

23 Q "So anyway you cut it, that's
24 presenting him as a liar, and I said
03:28 25 well David, I was a liar years ago, and



1 I lied so much that I wouldn't know the
2 truth even now if I look back I couldn't
3 quite remember what was the truth and
4 what was a lie in some situations.

03:28 5 However, if it was, did I rob a bank, or
6 did I murder something, somebody, that I
7 would know, that I would remember cause
8 that would stand out. So the fact that
9 he's not remembering these things now
03:29 10 does not necessarily mean he's lying to
11 us now. You know, a lot of years have
12 gone by. And it may be that he really
13 believes he's telling the truth, so we,
14 we're gonna have to talk to him about it
03:29 15 but, I don't know. You see, I can
16 understand now learning some of this
17 information that the minister was
18 sitting there with that her thinking
19 well, a lot of this was unreliable."

03:29 20 So again on that last point, it appears here that
21 you are acknowledging at least that the minister
22 may have had contradicting information?

23 A That's right.

24 Q And again, just back on this comment here about
03:29 25 David, is it correct what you are saying is



1 lookit, if he's a liar on some things, that's one
2 thing, but lying on the fact of killing Gail
3 Miller, that's a different thing, so even if he
4 lies on other things, he's not lying on the
03:29 5 important fact?

6 A Yes, because I could see him getting confused with
7 small issues because he didn't really remember
8 about them, but, I mean, he would know whether he
9 had killed Gail Miller and I knew that -- well, I
03:30 10 knew -- the fact that by this time we knew the
11 facts, we knew that he was innocent, I mean, we
12 were there, we saw the scene, we went through it,
13 we knew he was innocent.

14 Q And was the concern here then the fact that --

03:30 15 A How he was going to look.

16 Q And the fact that because of positions and
17 statements that had previously been made publicly
18 and to officials --

19 A Right.

03:30 20 Q -- might now appear not to be true, or might be
21 contradicted is maybe the better way to put it?

22 A Yes.

23 Q And therefore you now had a credibility issue with
24 your David --

03:30 25 A That's correct.



1 Q -- because of positions taken previously that now
2 are going to be contradicted by other witnesses?

3 A That's correct.

4 Q And your concern here was how would that affect
03:30 5 David's credibility when it comes down to the key
6 question when he says I didn't kill Gail Miller?

7 A Right, and I wanted my family to be prepared for
8 it.

9 MR. HODSON: I see it is 3:30,

03:31 10 Mr. Commissioner. We're off for a week, and just
11 for the benefit of counsel, we will either
12 continue with Mrs. Milgaard on May 29th -- we had
13 Mr. Williams scheduled for that day and I think
14 we may reschedule that, that's something I will
03:31 15 address with Mr. Frayer tomorrow and let
16 everybody know tomorrow. I think the preference
17 is that we just continue on the 29th of May with
18 Mrs. Milgaard.

19 COMMISSIONER MacCALLUM: All right, thanks.

03:31 20 (Adjourned at 3:31 p.m.)

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Official Queen's Bench Court Reporter

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\$	004314 [1] - 31324:14 004421 [1] - 31265:6 004592 [1] - 31249:5 004626 [1] - 31229:6 004633 [1] - 31178:16 010080 [1] - 31183:8 012058 [1] - 31146:5 030 [1] - 31276:11 030493 [1] - 31273:25 048882 [1] - 31255:2 054412 [1] - 31184:9 054479 [1] - 31240:4 054514 [1] - 31144:7 057451 [1] - 31242:17 061 [1] - 31146:6 077729 [1] - 31234:20	31228:24, 31229:9, 31229:20, 31247:22, 31249:19, 31324:17 17th [3] - 31209:20, 31235:13, 31238:12 18 [1] - 31239:2 189 [2] - 31236:2, 31236:4 18th [1] - 31140:21 1968 [1] - 31215:23 1969 [10] - 31187:14, 31207:2, 31211:16, 31215:23, 31229:13, 31232:9, 31285:12, 31331:3, 31352:14, 31352:20 1970 [10] - 31163:14, 31164:8, 31165:7, 31165:16, 31175:16, 31187:1, 31211:18, 31352:15, 31352:20, 31357:9 1970-'71 [1] - 31284:9 1971 [1] - 31239:13 1980 [2] - 31327:2, 31334:18 1981 [1] - 31357:3 1985 [1] - 31327:5 1986 [4] - 31223:15, 31352:4, 31364:7, 31364:11 1988 [2] - 31212:16, 31213:1 1990 [10] - 31163:21, 31213:13, 31243:23, 31245:18, 31246:2, 31268:19, 31268:20, 31276:13, 31325:23, 31341:18 1990-1991 [1] - 31243:12 1991 [53] - 31149:8, 31159:19, 31162:8, 31175:4, 31177:9, 31178:17, 31183:9, 31184:10, 31186:22, 31194:6, 31196:16, 31197:18, 31209:20, 31213:1, 31225:1, 31229:9, 31229:20, 31230:9, 31237:4, 31238:12, 31239:3, 31242:18, 31243:23, 31244:3, 31247:22, 31248:8, 31249:1, 31249:2, 31256:15, 31262:4, 31262:13, 31263:24, 31265:19, 31267:17, 31280:18, 31282:15, 31292:19,	31292:24, 31293:4, 31297:2, 31298:15, 31303:7, 31303:15, 31306:5, 31322:10, 31324:7, 31324:16, 31326:11, 31328:12, 31332:2, 31334:16, 31339:3, 31340:9 1992 [6] - 31324:18, 31335:5, 31335:6, 31347:6, 31351:25, 31360:5 1997 [1] - 31163:25 19th [1] - 31240:5 1:33 [1] - 31275:12	31210 [1] - 31143:11 31211 [2] - 31143:13, 31143:14 31224 [1] - 31143:16 31st [1] - 31215:22 325149 [3] - 31235:13, 31235:22, 31235:23 333958 [1] - 31275:14 335896 [2] - 31340:8, 31347:4 335899 [1] - 31340:8 335911 [1] - 31347:7 335968 [3] - 31262:12, 31268:14, 31276:8 335988 [1] - 31268:16 336044 [1] - 31262:15 336197 [2] - 31265:5, 31265:17 336232 [1] - 31265:17 336312 [1] - 31298:12 336357 [1] - 31298:13 336383 [1] - 31312:24 336391 [1] - 31335:3 336442 [1] - 31335:3 336584 [1] - 31280:8 336586 [1] - 31280:9 336589 [1] - 31287:11 336592 [2] - 31354:2, 31359:4 336594 [1] - 31354:4 336639 [1] - 31360:4 336651 [1] - 31365:22 336658 [1] - 31292:16 336731 [1] - 31292:17 337189 [1] - 31343:20 337197 [1] - 31343:22 337207 [1] - 31331:23 337211 [1] - 31332:6 360 [1] - 31302:25 3:30 [1] - 31369:9 3:31 [1] - 31369:20
'	1 1 [2] - 31301:25, 31302:8 10 [2] - 31209:9, 31209:10 100 [1] - 31295:12 10:34 [1] - 31224:8 10:56 [1] - 31224:9 10th [1] - 31178:17 11 [3] - 31212:14, 31268:8, 31362:8 11:58 [1] - 31275:11 11th [7] - 31186:22, 31187:18, 31263:24, 31265:11, 31297:1, 31332:2 12 [1] - 31223:3 145 [1] - 31317:8 146 [1] - 31320:4 14th [4] - 31149:8, 31159:18, 31186:18, 31192:8 152 [1] - 31140:22 157132 [1] - 31296:24 157143 [2] - 31315:8, 31317:7 157840 [1] - 31322:9 157842 [1] - 31322:21 159897 [1] - 31175:4 16 [2] - 31249:11, 31249:12 16-year-old [1] - 31218:25 160000 [1] - 31239:2 160020 [1] - 31189:2 160026 [1] - 31186:16 16th [15] - 31159:22, 31194:6, 31195:10, 31195:23, 31196:16, 31197:18, 31205:23, 31209:19, 31225:1,	2 2 [3] - 31302:9, 31337:24, 31352:23 20 [2] - 31197:22, 31241:23 20-year [1] - 31239:12 2006 [1] - 31140:21 21 [1] - 31324:19 212289 [1] - 31194:3 218798 [1] - 31231:22 219467 [1] - 31194:2 22 [1] - 31207:3 220387 [1] - 31250:20 226932 [1] - 31238:11 229822 [1] - 31256:12 23 [1] - 31316:9 230034 [1] - 31197:19 230037 [1] - 31206:14 230173 [3] - 31209:7, 31209:13, 31224:20 23rd-24th [1] - 31331:7 269317 [1] - 31236:1 269519 [1] - 31236:6 27 [1] - 31339:3 27th [3] - 31262:4, 31322:9, 31324:16 29th [6] - 31242:18, 31244:3, 31244:4, 31249:19, 31369:12, 31369:17 2:27 [1] - 31326:4 2:46 [1] - 31326:5	3 30th [1] - 31249:5 31144 [1] - 31143:4 31198 [1] - 31143:5 31205 [1] - 31143:7 31206 [1] - 31143:8 31209 [1] - 31143:10	4 4 [1] - 31275:20 40 [1] - 31219:9 481 [1] - 31240:6 4th [1] - 31341:18 5 5 [2] - 31275:15, 31275:20 587 [1] - 31287:14
0	000084 [1] - 31175:18 000901 [1] - 31192:6 003688 [1] - 31272:3 004312 [1] - 31324:5			



6	Accordinging ^[1] - 31144:18	31177:24, 31220:18	allow ^[3] - 31172:4, 31299:6, 31319:15	31161:17, 31235:18, 31353:14
617(c) ^[1] - 31318:4 690 ^[5] - 31153:12, 31153:13, 31301:20, 31302:5, 31317:17 6:30 ^[1] - 31214:10 6th ^[1] - 31324:7	account ^[1] - 31281:21 accurate ^[3] - 31238:25, 31252:13, 31346:23 accurately ^[1] - 31252:8 accused ^[1] - 31238:22 acid ^[5] - 31303:24, 31309:1, 31309:2, 31309:24 acknowledgement ^[1] - 31365:4 acknowledging ^[1] - 31367:21 acquainted ^[1] - 31222:4 acquitted ^[2] - 31299:7, 31299:14 act ^[1] - 31200:10 action ^[2] - 31260:24, 31318:8 activities ^[1] - 31175:11 activity ^[1] - 31200:20 acts ^[1] - 31151:8 actual ^[1] - 31259:14 add ^[2] - 31255:11, 31354:6 added ^[3] - 31152:7, 31188:15, 31188:16 addition ^[5] - 31153:8, 31154:7, 31154:16, 31224:12, 31328:23 address ^[3] - 31153:1, 31214:12, 31369:15 adds ^[1] - 31274:24 Adjourned ^[4] - 31224:8, 31275:11, 31326:4, 31369:20 admire ^[1] - 31242:16 admissibility ^[1] - 31263:14 admissible ^[1] - 31265:10 admitted ^[2] - 31318:5, 31361:5 admitting ^[2] - 31223:4, 31269:6 adopted ^[1] - 31329:24 advanced ^[1] - 31206:3 advantage ^[2] - 31237:19, 31238:5 adversarial ^[1] - 31344:20 advice ^[2] - 31189:12, 31238:3 advise ^[1] - 31321:9 advised ^[2] - 31192:15, 31297:10 advises ^[1] - 31320:5 advocate ^[2] -	advocating ^[1] - 31195:8 affairs ^[1] - 31205:10 affect ^[1] - 31369:4 affecting ^[1] - 31280:6 affidavit ^[6] - 31352:5, 31352:22, 31364:7, 31364:9, 31364:11, 31364:24 Affidavit ^[8] - 31360:20, 31360:21, 31361:9, 31361:19, 31362:23, 31364:3, 31366:4, 31366:17 afternoon ^[6] - 31145:22, 31198:8, 31198:9, 31198:10, 31326:2, 31326:3 afterwards ^[1] - 31258:13 Ag ^[2] - 31288:16, 31291:3 age ^[1] - 31207:22 ago ^[4] - 31213:14, 31316:10, 31354:11, 31366:25 agree ^[3] - 31325:9, 31358:12, 31365:14 agreed ^[7] - 31145:9, 31176:21, 31229:18, 31231:5, 31232:21, 31240:19, 31318:3 agrees ^[1] - 31363:21 aha ^[1] - 31185:7 ahead ^[3] - 31194:2, 31223:3, 31265:6 aide ^[4] - 31232:10, 31257:12, 31257:13, 31257:23 air ^[3] - 31232:17, 31233:21, 31233:23 aired ^[1] - 31319:6 airing ^[1] - 31318:6 Alana ^[1] - 31293:20 Albert ^[3] - 31170:17, 31214:12, 31331:1 alcohol ^[1] - 31309:10 allegation ^[4] - 31157:16, 31161:1, 31161:25, 31234:24 allegations ^[3] - 31190:14, 31191:8, 31191:24 alleged ^[1] - 31234:21 alleged' ^[1] - 31235:6 alleges ^[3] - 31175:5, 31192:3, 31229:13 alleging ^[1] - 31161:22 alley ^[1] - 31216:6	amazed ^[2] - 31241:22, 31329:9 amazing ^[5] - 31177:2, 31256:18, 31273:5, 31296:11, 31328:5 amount ^[3] - 31208:1, 31234:25, 31326:14 analyse ^[1] - 31215:11 analysis ^[5] - 31149:13, 31149:15, 31190:10, 31191:13, 31222:19 Anchor ^[1] - 31206:20 Anne ^[4] - 31143:14, 31209:16, 31211:9, 31224:23 announcement ^[4] - 31194:5, 31195:24, 31216:22, 31217:4 anonymous ^[1] - 31213:15 answer ^[3] - 31241:5, 31312:3, 31321:14 answered ^[4] - 31176:4, 31196:15, 31203:14, 31229:24 Anthony ^[2] - 31283:23, 31284:4 anxious ^[1] - 31326:21 anyhow ^[1] - 31167:4 anytime ^[1] - 31278:9 anyway ^[2] - 31336:1, 31366:23 apart ^[1] - 31282:7 apparent ^[1] - 31251:24 Appeal ^[2] - 31210:25, 31323:19 appeal ^[5] - 31294:16, 31295:1, 31302:2, 31302:3 appeals ^[2] - 31201:6, 31301:9 appear ^[7] - 31291:17, 31293:9, 31295:20, 31296:6, 31351:15, 31357:11, 31368:20 Appearances ^[1] - 31142:1 appeared ^[3] -	appearing ^[1] - 31197:21 Appleby ^[2] - 31244:18, 31271:19 applicant ^[2] - 31152:3, 31152:5 application ^[75] - 31149:8, 31149:10, 31149:23, 31149:25, 31150:8, 31150:10, 31150:19, 31151:5, 31151:12, 31151:15, 31152:2, 31152:5, 31152:10, 31152:14, 31152:19, 31152:23, 31153:22, 31153:25, 31154:7, 31154:13, 31154:14, 31154:17, 31155:16, 31155:19, 31156:4, 31156:18, 31156:22, 31157:8, 31158:18, 31159:19, 31160:6, 31160:19, 31160:24, 31161:10, 31161:20, 31174:13, 31175:23, 31176:20, 31177:2, 31177:5, 31179:11, 31183:21, 31186:18, 31187:15, 31188:4, 31188:5, 31188:13, 31189:13, 31190:9, 31192:4, 31192:10, 31192:12, 31193:19, 31195:25, 31207:4, 31207:25, 31208:5, 31210:21, 31211:3, 31235:4, 31235:8, 31244:24, 31245:9, 31245:14, 31245:19, 31246:18, 31247:2, 31247:22, 31249:16, 31259:6, 31261:9, 31280:24, 31327:6, 31339:4 appointment ^[2] - 31158:14, 31158:25 appreciate ^[4] - 31152:10, 31171:21, 31202:12, 31347:19 approach ^[3] - 31257:17, 31257:20, 31317:20 approached ^[2] - 31169:11, 31169:25 appropriate ^[5] - 31224:5, 31275:10, 31298:9, 31318:7, 31326:2
7	7th ^[1] - 31256:15			
8	8 ^[2] - 31175:4, 31184:10 8th ^[1] - 31183:9			
9	9:00 ^[1] - 31144:2			
A	Aaron ^[1] - 31142:8 ability ^[3] - 31189:21, 31275:7, 31370:7 able ^[12] - 31156:11, 31195:5, 31203:4, 31204:14, 31213:9, 31215:11, 31237:23, 31247:1, 31287:4, 31319:18, 31349:12, 31363:8 Absolutely ^[9] - 31234:19, 31235:1, 31239:1, 31240:2, 31250:6, 31261:8, 31295:19, 31308:11, 31329:16 absolutely ^[10] - 31147:23, 31195:3, 31204:15, 31218:23, 31218:25, 31221:12, 31296:12, 31329:11, 31346:3, 31354:21 accepted ^[1] - 31192:21 Access ^[1] - 31182:14 access ^[1] - 31361:11 according ^[8] - 31144:16, 31145:24, 31146:2, 31146:4, 31146:6, 31149:1, 31223:1, 31223:9			



<p>appropriately [1] - 31313:19</p> <p>April [1] - 31333:25</p> <p>area [1] - 31204:8</p> <p>arisen [1] - 31163:5</p> <p>arising [1] - 31205:3</p> <p>arose [1] - 31243:13</p> <p>arrange [1] - 31178:25</p> <p>arranged [3] - 31147:2, 31149:4, 31258:3</p> <p>arranging [1] - 31176:13</p> <p>arrive [1] - 31162:3</p> <p>arrived [3] - 31145:7, 31147:8, 31178:20</p> <p>arrives [1] - 31179:23</p> <p>arriving [1] - 31180:14</p> <p>article [17] - 31178:16, 31187:24, 31217:9, 31225:12, 31232:7, 31235:14, 31235:17, 31238:12, 31239:2, 31242:17, 31243:12, 31244:2, 31247:20, 31249:15, 31283:12, 31292:7, 31330:17</p> <p>articles [7] - 31161:16, 31162:25, 31163:7, 31175:3, 31186:17, 31186:20, 31280:17</p> <p>aside [4] - 31151:21, 31151:23, 31152:1, 31350:24</p> <p>aspect [3] - 31237:23, 31282:18, 31304:24</p> <p>Asper [182] - 31143:6, 31143:8, 31145:20, 31146:13, 31155:16, 31155:21, 31158:5, 31158:12, 31158:17, 31158:19, 31160:3, 31160:13, 31175:20, 31182:9, 31182:20, 31185:10, 31194:15, 31195:11, 31195:23, 31196:17, 31197:6, 31197:16, 31197:20, 31198:1, 31198:6, 31198:10, 31198:11, 31198:18, 31199:7, 31199:25, 31200:9, 31202:11, 31202:23, 31202:25, 31204:25, 31205:8, 31205:14, 31205:19, 31206:2, 31206:18, 31207:11, 31208:3, 31208:14, 31209:14, 31213:14, 31224:13, 31224:24, 31227:17, 31228:7,</p>	<p>31228:17, 31240:7, 31243:10, 31243:15, 31244:19, 31244:20, 31245:12, 31246:2, 31246:9, 31247:15, 31247:19, 31247:24, 31248:11, 31248:21, 31249:7, 31249:9, 31249:14, 31249:24, 31249:25, 31252:18, 31252:21, 31253:10, 31254:8, 31259:21, 31261:10, 31261:20, 31262:8, 31262:14, 31262:16, 31264:6, 31264:8, 31264:20, 31265:8, 31266:24, 31267:10, 31268:11, 31268:15, 31268:22, 31269:9, 31269:14, 31270:15, 31270:20, 31272:23, 31274:12, 31297:10, 31298:7, 31298:14, 31301:15, 31301:18, 31301:22, 31303:1, 31303:20, 31304:5, 31304:10, 31304:19, 31305:1, 31305:6, 31306:7, 31306:10, 31306:13, 31307:18, 31308:2, 31308:13, 31313:1, 31313:24, 31314:6, 31314:14, 31317:8, 31317:13, 31317:24, 31318:20, 31320:1, 31320:5, 31321:1, 31321:8, 31323:11, 31323:24, 31327:6, 31327:13, 31328:19, 31329:2, 31329:13, 31332:10, 31332:25, 31333:4, 31333:7, 31333:11, 31333:14, 31333:17, 31333:20, 31334:1, 31334:4, 31334:7, 31334:12, 31334:15, 31334:17, 31335:11, 31335:13, 31335:17, 31336:10, 31336:14, 31337:2, 31338:9, 31338:12, 31338:20, 31340:10, 31340:16, 31340:23, 31341:1, 31343:24, 31344:17, 31345:23, 31346:5, 31347:20, 31351:12, 31353:9, 31354:3, 31356:14, 31356:16, 31357:11, 31357:16, 31360:8,</p>	<p>31362:4, 31362:8, 31363:4, 31363:21, 31364:6, 31364:10, 31366:4, 31366:15</p> <p>Asper's [6] - 31156:21, 31174:14, 31206:17, 31265:13, 31324:15, 31337:24</p> <p>assault [6] - 31193:17, 31193:22, 31193:23, 31215:2, 31241:16, 31249:18</p> <p>assaulted [10] - 31193:21, 31207:21, 31215:6, 31216:1, 31216:6, 31216:8, 31218:6, 31241:15, 31242:1</p> <p>assaults [3] - 31216:2, 31243:15, 31245:1</p> <p>Assembly [1] - 31280:22</p> <p>assist [5] - 31248:23, 31252:25, 31279:15, 31343:18, 31365:22</p> <p>assistance [1] - 31213:21</p> <p>Assistant [1] - 31141:5</p> <p>assistant [2] - 31207:2, 31276:5</p> <p>assisted [1] - 31261:6</p> <p>association [1] - 31221:10</p> <p>assume [1] - 31313:23</p> <p>assumed [3] - 31151:6, 31241:24, 31310:20</p> <p>assumption [1] - 31188:18</p> <p>assumptions [2] - 31217:17, 31295:10</p> <p>astounding [1] - 31176:7</p> <p>attached [3] - 31190:9, 31193:18, 31310:14</p> <p>attaching [1] - 31200:6</p> <p>attack [2] - 31251:19, 31255:8</p> <p>attacked [2] - 31215:11, 31215:12</p> <p>attacks [1] - 31193:15</p> <p>attempted [1] - 31239:13</p> <p>attend [1] - 31197:3</p> <p>attention [10] - 31160:23, 31161:11, 31165:11, 31180:15, 31181:9, 31183:19, 31206:12, 31234:25, 31235:3, 31264:21</p> <p>Attorney [8] - 31183:15,</p>	<p>31183:19, 31184:3, 31208:19, 31288:24, 31325:6, 31344:1, 31344:3</p> <p>attorney [3] - 31213:15, 31218:7, 31226:25</p> <p>Attorney-general [1] - 31183:19</p> <p>attribute [1] - 31352:21</p> <p>attributed [1] - 31251:14</p> <p>Audio [1] - 31141:11</p> <p>Aug [2] - 31249:11, 31249:12</p> <p>August [43] - 31149:8, 31159:18, 31159:22, 31160:20, 31162:8, 31183:9, 31184:10, 31186:17, 31186:18, 31186:22, 31187:18, 31192:7, 31194:4, 31194:6, 31195:10, 31195:22, 31196:16, 31197:18, 31205:23, 31209:19, 31225:1, 31228:24, 31229:9, 31229:20, 31235:13, 31238:12, 31239:2, 31240:5, 31242:18, 31244:3, 31244:4, 31247:21, 31248:8, 31248:17, 31249:1, 31249:2, 31249:5, 31249:19, 31268:19, 31268:25, 31276:12</p> <p>August-september [1] - 31276:12</p> <p>author [1] - 31206:24</p> <p>authorities [11] - 31165:15, 31167:11, 31175:15, 31180:19, 31193:22, 31338:21, 31338:22, 31339:12, 31339:20, 31340:1, 31342:16</p> <p>authority [1] - 31220:20</p> <p>authors [1] - 31274:5</p> <p>available [3] - 31192:17, 31194:9, 31222:2</p> <p>avenue [9] - 31153:10, 31153:16, 31153:19, 31153:23, 31154:3, 31154:8, 31154:9, 31157:7</p> <p>avoid [1] - 31310:4</p> <p>avoided [1] - 31144:19</p> <p>avoiding [1] - 31208:15</p> <p>aware [23] - 31165:15, 31165:19, 31175:15,</p>	<p>31246:19, 31246:22, 31264:15, 31272:6, 31296:14, 31311:19, 31318:22, 31320:17, 31320:20, 31320:21, 31321:2, 31324:11, 31334:24, 31338:21, 31339:19, 31340:1, 31340:4, 31340:6, 31344:24, 31364:17</p> <p>axes [1] - 31221:19</p>
B				
<p>background [3] - 31219:1, 31286:24, 31293:8</p> <p>backing [1] - 31189:9</p> <p>bad [8] - 31167:3, 31168:2, 31258:10, 31258:17, 31267:3, 31310:7, 31311:7, 31350:16</p> <p>badly [1] - 31168:18</p> <p>balance [1] - 31271:1</p> <p>balancing [1] - 31305:13</p> <p>ball [1] - 31260:25</p> <p>bang [1] - 31271:12</p> <p>bank [2] - 31363:16, 31367:5</p> <p>Based [3] - 31173:17, 31249:24, 31249:25</p> <p>based [7] - 31166:25, 31207:15, 31211:22, 31244:14, 31244:16, 31297:17</p> <p>basement [1] - 31155:11</p> <p>basic [1] - 31345:13</p> <p>basics [1] - 31151:20</p> <p>basis [12] - 31149:18, 31153:9, 31169:20, 31264:9, 31268:2, 31278:6, 31300:20, 31301:6, 31301:13, 31318:18, 31321:15, 31327:17</p> <p>Battleford [1] - 31188:9</p> <p>Bc [1] - 31239:12</p> <p>bear [1] - 31171:25</p> <p>bearing [1] - 31242:22</p> <p>beating [1] - 31278:12</p> <p>became [17] - 31145:25, 31165:18, 31165:19, 31175:15, 31177:9, 31177:24, 31210:12, 31225:6, 31225:15, 31230:18, 31246:22,</p>				



<p>31247:5, 31261:2, 31281:20, 31344:5, 31344:6, 31352:17 become [3] - 31165:15, 31166:22, 31336:9 beg [1] - 31257:25 began [2] - 31207:8, 31207:13 beginning [3] - 31229:25, 31230:13, 31230:17 behalf [8] - 31150:19, 31151:1, 31183:14, 31196:19, 31227:20, 31232:4, 31308:4, 31353:8 behind [3] - 31290:13, 31290:16, 31333:1 beholden [3] - 31220:4, 31220:7, 31220:9 Beitel [1] - 31141:7 belief [9] - 31162:22, 31165:2, 31165:24, 31166:2, 31167:8, 31167:17, 31167:22, 31173:6, 31242:3 believes [5] - 31210:10, 31211:3, 31211:14, 31211:23, 31367:13 bell [1] - 31275:24 belligerent [1] - 31145:25 Bench [4] - 31370:1, 31370:3, 31370:14, 31370:18 benefit [3] - 31287:8, 31359:7, 31369:11 Beresh [1] - 31142:11 Bessborough [1] - 31140:16 best [10] - 31205:10, 31301:8, 31318:14, 31318:16, 31318:19, 31319:3, 31319:4, 31347:8, 31348:6, 31370:6 bet [3] - 31210:18, 31333:4, 31333:7 better [3] - 31166:18, 31331:19, 31368:21 between [33] - 31150:16, 31155:18, 31165:21, 31166:12, 31166:15, 31168:9, 31170:12, 31171:1, 31172:1, 31172:9, 31173:25, 31207:25, 31221:10, 31233:1, 31249:12, 31249:19, 31262:13, 31262:15,</p>	<p>31264:8, 31265:18, 31268:15, 31279:21, 31281:14, 31284:10, 31287:5, 31298:12, 31298:14, 31301:16, 31324:9, 31337:20, 31343:24, 31354:3, 31363:9 beyond [2] - 31200:16, 31201:2 biased [5] - 31336:23, 31337:11, 31337:17, 31338:4, 31339:16 big [4] - 31190:7, 31208:17, 31273:11, 31348:7 biggest [1] - 31271:12 bit [23] - 31149:9, 31152:7, 31153:24, 31157:14, 31158:1, 31161:5, 31161:6, 31166:11, 31180:14, 31183:7, 31192:6, 31218:17, 31245:17, 31256:14, 31277:8, 31286:1, 31293:8, 31293:10, 31316:14, 31327:12, 31347:5, 31349:14, 31349:25 bizarre [1] - 31243:4 blab [3] - 31335:25 blah [3] - 31335:24 blame [1] - 31346:11 blasted [1] - 31189:16 Blind [1] - 31224:1 blind [1] - 31221:9 blitz [2] - 31238:15, 31238:24 block [2] - 31214:5, 31216:7 blocks [3] - 31215:25, 31216:4, 31216:19 blood [7] - 31183:2, 31203:15, 31203:17, 31203:19, 31203:25, 31204:1 bloodstains [1] - 31203:15 bloody [1] - 31269:15 blows [1] - 31281:8 blurring [1] - 31212:15 board [2] - 31196:5, 31296:8 Bob [2] - 31279:25, 31328:21 Bobs [1] - 31142:5 Boechler [1] - 31141:11 book [4] - 31236:1, 31236:2, 31237:3, 31330:17</p>	<p>booked [1] - 31158:24 books [2] - 31263:17, 31265:9 bore [1] - 31207:18 born [1] - 31331:18 Boswell [1] - 31141:4 bottom [6] - 31145:6, 31193:2, 31193:3, 31210:18, 31270:14, 31332:4 bought [1] - 31175:1 Boychuk [1] - 31142:8 Boyd [44] - 31161:4, 31161:5, 31177:9, 31177:13, 31178:3, 31178:19, 31178:24, 31179:17, 31179:23, 31179:24, 31180:7, 31180:20, 31181:5, 31181:16, 31182:8, 31183:5, 31268:17, 31269:13, 31269:23, 31269:25, 31270:4, 31270:19, 31271:16, 31273:18, 31274:20, 31276:19, 31276:20, 31303:2, 31303:13, 31304:17, 31305:5, 31305:16, 31306:16, 31308:23, 31310:10, 31310:16, 31313:16, 31314:10, 31314:16, 31314:17, 31320:9, 31320:18, 31320:23, 31321:4 Boyd's [6] - 31180:13, 31303:11, 31306:8, 31313:6, 31313:15, 31320:12 Boyd/rossmo [1] - 31181:4 brains [1] - 31290:13 break [4] - 31219:21, 31224:5, 31275:10, 31326:2 Brecht [1] - 31246:11 Brian [3] - 31142:11, 31256:16, 31295:15 brick [1] - 31290:25 brightness [1] - 31333:1 bring [6] - 31144:20, 31154:12, 31181:9, 31194:11, 31218:6, 31253:18 brings [2] - 31219:19, 31278:8 British [1] - 31199:9 broadly [1] - 31196:20 broke [1] - 31326:7</p>	<p>broken [1] - 31160:10 brother [1] - 31176:3 brought [15] - 31163:3, 31165:11, 31183:18, 31194:18, 31194:19, 31194:23, 31217:5, 31221:1, 31221:11, 31228:2, 31228:10, 31242:14, 31266:21, 31311:23, 31315:15 Bruce [6] - 31142:10, 31265:12, 31266:6, 31279:16, 31279:25, 31328:21 brush [1] - 31346:21 buck [1] - 31271:12 building [1] - 31208:8 built [1] - 31330:25 bunch [2] - 31265:9, 31311:23 burden [1] - 31201:1 buried [1] - 31272:2 bus [2] - 31144:22, 31214:9 bushes [1] - 31278:12 buy [1] - 31309:12 Bye [3] - 31205:17, 31205:18, 31205:19 bye [3] - 31205:17, 31205:18, 31205:19 Bye-bye [3] - 31205:17, 31205:18, 31205:19</p>	<p>31156:19, 31157:4, 31157:9, 31157:11, 31158:2, 31159:3, 31179:14, 31195:21 campaigns [1] - 31189:23 Campbell [19] - 31143:12, 31201:7, 31201:9, 31204:20, 31204:22, 31206:23, 31208:1, 31210:1, 31210:19, 31210:22, 31257:19, 31259:7, 31259:15, 31261:10, 31297:4, 31360:22, 31361:11, 31365:5, 31365:6 Campbell's [3] - 31211:1, 31276:4, 31339:3 Canada [7] - 31142:13, 31160:3, 31183:22, 31195:25, 31212:5, 31235:18, 31235:17 Canadian [4] - 31196:5, 31200:11, 31204:24, 31212:11 cancel [2] - 31145:10, 31148:14 Candace [1] - 31141:3 cannot [5] - 31162:17, 31221:23, 31225:20, 31247:4, 31360:16 capable [1] - 31205:3 capture [1] - 31238:21 car [2] - 31219:5, 31358:3 card [1] - 31247:12 care [1] - 31220:20 career [1] - 31166:25 careers [3] - 31166:25, 31168:4, 31208:23 careful [2] - 31221:14, 31306:25 Carlyle [2] - 31177:24, 31229:3 Carlyle-gordge [2] - 31177:24, 31229:3 carpet [1] - 31285:20 carrying [1] - 31229:6 case [85] - 31151:10, 31157:12, 31159:3, 31161:12, 31170:22, 31171:3, 31171:4, 31175:8, 31176:18, 31177:14, 31177:15, 31177:19, 31180:4, 31181:10, 31195:23, 31196:16, 31199:21, 31201:3, 31201:9,</p>
<p style="text-align: center;">C</p>				
<p>Cadrain [8] - 31152:20, 31153:5, 31170:18, 31214:13, 31331:1, 31335:1, 31341:25, 31342:1 Cadrain's [1] - 31334:9 Cal [3] - 31361:1, 31361:12, 31362:9 Caldwell [11] - 31142:5, 31159:13, 31164:25, 31166:23, 31167:9, 31169:11, 31170:1, 31225:9, 31279:21, 31290:13, 31346:21 Caldwell's [1] - 31325:14 caliber [1] - 31274:21 calm [1] - 31359:2 Calvin [1] - 31142:14 camera [3] - 31185:12, 31185:15, 31185:19 cameras [1] - 31258:3 camp [1] - 31208:9 campaign [9] -</p>				



<p>31203:1, 31203:4, 31203:5, 31205:5, 31206:22, 31207:13, 31207:18, 31208:16, 31208:21, 31208:24, 31210:6, 31210:17, 31211:6, 31212:3, 31212:11, 31213:6, 31217:21, 31219:15, 31220:9, 31220:25, 31225:3, 31225:13, 31225:18, 31226:1, 31226:15, 31226:16, 31228:15, 31232:16, 31233:11, 31233:20, 31233:23, 31236:11, 31236:23, 31237:25, 31238:8, 31252:2, 31255:20, 31258:15, 31259:8, 31282:24, 31286:25, 31291:21, 31293:18, 31294:2, 31294:5, 31294:12, 31295:22, 31296:2, 31296:20, 31297:19, 31298:10, 31302:19, 31307:7, 31317:22, 31317:25, 31319:22, 31319:23, 31327:12, 31327:25, 31328:1, 31328:12, 31328:17, 31343:7, 31350:19</p> <p>cases [5] - 31173:14, 31203:7, 31213:10, 31229:14, 31245:24</p> <p>Cassie[2] - 31207:5, 31208:25</p> <p>casts [2] - 31208:4, 31224:12</p> <p>casual [1] - 31218:19</p> <p>catch [2] - 31196:17, 31347:15</p> <p>category [1] - 31226:7</p> <p>Catherine[1] - 31142:5</p> <p>caught [5] - 31168:14, 31202:1, 31217:24, 31346:1, 31347:22</p> <p>caused [2] - 31172:11, 31356:3</p> <p>cautious [1] - 31338:19</p> <p>Cbc[4] - 31197:21, 31209:16, 31211:7, 31246:2</p> <p>centred [1] - 31157:11</p> <p>centrepiece [1] - 31216:18</p> <p>Centurion[48] - 31149:12, 31149:14, 31150:22, 31157:12, 31160:2, 31160:25,</p>	<p>31161:20, 31161:21, 31162:1, 31176:10, 31186:23, 31187:9, 31187:18, 31188:1, 31188:12, 31188:24, 31189:14, 31191:2, 31191:5, 31191:6, 31191:11, 31191:20, 31193:4, 31202:16, 31202:19, 31206:3, 31206:6, 31207:15, 31211:21, 31211:24, 31212:4, 31212:18, 31212:20, 31213:20, 31219:22, 31220:17, 31227:21, 31278:5, 31336:7, 31336:12, 31336:16, 31337:9, 31337:11, 31337:14, 31337:23, 31338:2</p> <p>Centurion's [1] - 31162:7</p> <p>Certainly[2] - 31175:6, 31260:14</p> <p>certainly [7] - 31163:6, 31173:19, 31175:9, 31191:19, 31268:11, 31278:12, 31294:9</p> <p>Certificate[1] - 31370:1</p> <p>certify [1] - 31370:4</p> <p>challenged [1] - 31350:25</p> <p>chance [4] - 31220:23, 31293:17, 31318:16, 31323:13</p> <p>chances [1] - 31201:11</p> <p>change [5] - 31198:17, 31231:12, 31232:25, 31233:5, 31281:22</p> <p>changed [2] - 31257:11, 31329:22</p> <p>changing [1] - 31309:15</p> <p>channels [1] - 31201:12</p> <p>charge [1] - 31279:10</p> <p>charged [2] - 31187:6, 31249:14</p> <p>charges [1] - 31232:12</p> <p>chart [1] - 31199:21</p> <p>chased [1] - 31160:16</p> <p>chasing [4] - 31160:8, 31160:16, 31201:8, 31307:1</p> <p>check [2] - 31148:2, 31259:1</p> <p>checked [2] - 31146:22, 31148:3</p> <p>checking [2] - 31261:13, 31279:13</p> <p>Cheryl[1] - 31141:5</p>	<p>chickened [1] - 31356:25</p> <p>chief [5] - 31166:21, 31166:22, 31210:13, 31225:6, 31225:7</p> <p>Chief[2] - 31343:25, 31359:5</p> <p>choice [9] - 31307:23, 31308:15, 31308:17, 31310:20, 31310:24, 31312:5, 31312:7, 31313:18, 31315:4</p> <p>choose [1] - 31307:24</p> <p>Chris[7] - 31142:8, 31145:14, 31146:24, 31146:25, 31360:14, 31365:25</p> <p>Christian[1] - 31232:12</p> <p>chronology [1] - 31183:8</p> <p>chums [1] - 31288:4</p> <p>church [1] - 31260:4</p> <p>circulated [1] - 31189:20</p> <p>circumstance [1] - 31205:4</p> <p>circumstances [1] - 31150:21</p> <p>City[6] - 31167:11, 31229:11, 31245:13, 31250:5, 31250:17, 31325:18</p> <p>city's [1] - 31210:12</p> <p>Cky[1] - 31208:25</p> <p>claim [1] - 31211:16</p> <p>claimed [1] - 31241:14</p> <p>claims [1] - 31144:18</p> <p>clarified [1] - 31234:7</p> <p>classic [2] - 31233:18, 31233:24</p> <p>clean [1] - 31346:3</p> <p>clear [10] - 31200:15, 31202:8, 31221:24, 31230:2, 31231:1, 31231:8, 31305:16, 31309:14, 31310:15, 31316:15</p> <p>cleared [4] - 31299:23, 31299:24, 31301:13</p> <p>clearly [2] - 31272:13, 31328:8</p> <p>Clerk[1] - 31141:7</p> <p>click [1] - 31328:7</p> <p>client [4] - 31170:1, 31217:20, 31319:3, 31326:20</p> <p>clip [3] - 31209:7, 31224:18, 31224:25</p> <p>clips [1] - 31197:12</p> <p>close [3] - 31270:11,</p>	<p>31286:13, 31292:20</p> <p>clothed [1] - 31200:25</p> <p>clothes [7] - 31203:15, 31203:17, 31203:20, 31203:25, 31204:2</p> <p>cloud [4] - 31299:15, 31299:24, 31300:11, 31319:12</p> <p>co [2] - 31262:18, 31275:4</p> <p>co-operated [1] - 31275:4</p> <p>co-operating [1] - 31262:18</p> <p>Coast[2] - 31211:10</p> <p>code [1] - 31301:21</p> <p>Code[1] - 31317:18</p> <p>coerce [1] - 31330:10</p> <p>coffee [1] - 31157:23</p> <p>coincidence [1] - 31286:23</p> <p>coincidental [1] - 31212:18</p> <p>coldhearted [1] - 31216:9</p> <p>Colin[2] - 31283:10, 31287:20</p> <p>collectively [1] - 31162:3</p> <p>Columbia[1] - 31199:9</p> <p>column [1] - 31292:24</p> <p>columns [1] - 31215:20</p> <p>comfortable [1] - 31200:7</p> <p>comforted [2] - 31158:19, 31158:21</p> <p>coming [21] - 31147:18, 31155:14, 31179:7, 31179:18, 31181:17, 31227:4, 31231:13, 31242:16, 31251:1, 31251:2, 31274:11, 31277:19, 31277:23, 31285:24, 31293:12, 31294:7, 31302:15, 31302:18, 31304:1, 31309:2, 31364:18</p> <p>comment [18] - 31144:10, 31226:14, 31234:8, 31239:25, 31251:13, 31255:12, 31256:25, 31312:13, 31312:17, 31314:22, 31322:4, 31332:1, 31336:4, 31337:13, 31343:15, 31347:7, 31352:3, 31367:24</p> <p>comments [7] - 31163:5, 31206:17, 31226:9, 31227:16,</p>	<p>31235:12, 31238:3, 31294:8</p> <p>Commission[10] - 31140:2, 31140:14, 31141:1, 31141:2, 31141:7, 31169:15, 31169:24, 31251:4, 31303:9, 31318:1</p> <p>commissioned [1] - 31274:6</p> <p>Commissioner[28] - 31144:3, 31168:23, 31169:21, 31169:22, 31187:21, 31189:24, 31197:17, 31209:11, 31209:17, 31209:21, 31209:23, 31209:25, 31224:7, 31235:22, 31235:24, 31244:1, 31244:4, 31268:18, 31268:25, 31269:2, 31285:8, 31312:2, 31312:10, 31312:16, 31312:21, 31341:8, 31369:10, 31369:19</p> <p>committed [16] - 31164:7, 31164:12, 31164:22, 31165:4, 31170:21, 31187:10, 31188:2, 31193:16, 31200:2, 31200:23, 31208:15, 31213:10, 31216:12, 31241:16, 31295:22, 31353:8</p> <p>communicated [1] - 31146:11</p> <p>communicating [1] - 31270:8</p> <p>compact [13] - 31352:7, 31353:10, 31355:3, 31355:4, 31355:17, 31356:20, 31356:22, 31358:23, 31360:24, 31361:22, 31362:13, 31366:8, 31366:10</p> <p>compare [2] - 31207:20, 31215:10</p> <p>compared [1] - 31350:6</p> <p>compensated [4] - 31300:4, 31301:2, 31302:10, 31302:20</p> <p>compensation [7] - 31299:20, 31299:25, 31300:15, 31300:20, 31301:6, 31301:14, 31318:18</p> <p>complaint [4] - 31251:5, 31251:15, 31255:17, 31256:6</p> <p>complete [2] -</p>
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<p>31315:16, 31331:3 completely [3] - 31220:13, 31222:18, 31274:23 comprehensive [1] - 31310:13 computer [2] - 31155:5, 31155:8 computerized [1] - 31242:25 computers [1] - 31251:25 concept [2] - 31159:2, 31159:7 concern [27] - 31148:21, 31178:11, 31180:7, 31180:22, 31181:8, 31258:17, 31258:20, 31279:2, 31323:25, 31339:9, 31350:14, 31351:8, 31352:2, 31355:23, 31356:3, 31358:9, 31358:14, 31358:21, 31359:5, 31359:9, 31359:16, 31364:14, 31364:16, 31365:13, 31368:14, 31369:4 concerned [10] - 31148:25, 31179:8, 31274:9, 31300:16, 31320:7, 31323:4, 31323:22, 31347:25, 31357:16, 31359:24 concerning [1] - 31193:7 concerns [19] - 31164:18, 31180:18, 31239:22, 31282:16, 31286:2, 31292:9, 31295:21, 31296:18, 31308:14, 31316:4, 31316:17, 31323:15, 31337:21, 31337:22, 31337:24, 31338:22, 31341:12, 31347:22, 31348:23 conclude [1] - 31170:14 concluded [2] - 31206:6, 31250:12 concludes [1] - 31187:12 concluding [1] - 31193:23 conclusion [3] - 31194:10, 31202:13, 31203:8 conclusions [4] - 31168:12, 31174:11, 31179:5, 31188:25</p>	<p>conclusively [1] - 31206:25 condition [1] - 31348:23 conduct [5] - 31228:15, 31228:16, 31285:14, 31346:2 conducted [4] - 31149:14, 31187:8, 31187:25, 31224:15 conference [10] - 31194:5, 31194:7, 31194:10, 31194:14, 31206:16, 31209:4, 31228:24, 31234:22, 31234:23, 31235:16 conferences [4] - 31196:2, 31196:6, 31197:1, 31197:3 confessed [5] - 31168:17, 31169:13, 31202:9, 31217:24, 31239:13 confesses [1] - 31165:9 confided [1] - 31266:5 confident [2] - 31204:10, 31204:15 confidential [2] - 31264:9, 31293:16 confined [1] - 31317:16 confirm [2] - 31287:2, 31313:8 conflicting [2] - 31148:5, 31204:6 conflicts [1] - 31234:13 confused [2] - 31363:2, 31368:6 Congram[1] - 31141:3 conjunction [1] - 31199:1 connect [1] - 31151:13 connected [10] - 31166:1, 31167:14, 31167:18, 31167:19, 31181:13, 31239:15, 31282:23, 31283:23, 31284:21, 31285:15 connecting [1] - 31217:25 connection [25] - 31165:21, 31166:5, 31166:12, 31166:15, 31168:1, 31168:9, 31170:9, 31170:12, 31170:25, 31171:21, 31172:1, 31172:9, 31172:21, 31173:25, 31231:3, 31277:24, 31278:22, 31285:17, 31286:13, 31287:20,</p>	<p>31288:12, 31290:4, 31290:5, 31291:20, 31292:15 connections [2] - 31285:4, 31285:24 connotations [2] - 31305:15, 31309:25 consequences [2] - 31301:25, 31302:8 consequently [1] - 31320:13 consider [4] - 31153:15, 31176:13, 31214:25, 31322:24 consideration [1] - 31302:23 considered [3] - 31153:12, 31279:24, 31280:4 considering [1] - 31216:23 consistent [3] - 31164:1, 31164:21, 31356:7 constitute [1] - 31323:2 contact [12] - 31146:25, 31175:22, 31177:12, 31182:20, 31183:12, 31183:13, 31184:3, 31250:16, 31253:3, 31253:7, 31270:11, 31339:23 contacted [4] - 31170:5, 31273:1, 31273:2, 31293:2 contacting [1] - 31270:24 contacts [1] - 31158:7 contain [1] - 31370:5 contained [2] - 31191:7, 31196:10 contemplate [1] - 31356:24 contemplated [1] - 31359:17 contends [1] - 31229:10 context [1] - 31153:13 continuation [1] - 31235:14 continue [5] - 31172:4, 31278:5, 31315:25, 31369:12, 31369:17 Continued[1] - 31143:3 continued [7] - 31144:5, 31168:16, 31168:23, 31169:1, 31213:11, 31291:23, 31322:25 continues [2] -</p>	<p>31208:12, 31312:25 contradict [1] - 31354:9 contradicted [8] - 31218:20, 31350:20, 31351:3, 31352:21, 31353:14, 31365:17, 31368:21, 31369:2 contradicting [1] - 31367:22 contradicts [1] - 31352:24 convenience [1] - 31252:23 convenient [1] - 31245:22 conversation [17] - 31265:7, 31266:17, 31266:22, 31268:24, 31269:4, 31287:7, 31293:1, 31298:12, 31303:11, 31303:22, 31335:13, 31343:2, 31344:19, 31351:18, 31357:4, 31360:6, 31363:22 conversations [6] - 31254:6, 31331:24, 31334:10, 31348:4, 31351:22, 31360:5 converting [1] - 31266:16 convey [2] - 31225:17, 31226:13 convict [3] - 31173:8, 31230:6, 31230:7 convicted [14] - 31167:21, 31173:5, 31187:4, 31187:11, 31188:2, 31194:25, 31207:17, 31210:3, 31211:18, 31211:23, 31288:25, 31299:16, 31299:20, 31300:1 convicting [2] - 31171:12, 31238:22 Conviction[1] - 31140:4 conviction [15] - 31164:16, 31165:2, 31165:5, 31167:1, 31177:16, 31187:1, 31187:5, 31229:15, 31232:14, 31279:5, 31299:23, 31300:11, 31319:13, 31322:25, 31344:23 convictions [3] - 31202:18, 31202:21, 31219:17 convince [2] -</p>	<p>31200:16, 31218:16 convinced [8] - 31171:9, 31199:18, 31218:10, 31218:11, 31218:14, 31220:11, 31239:5 cooperative [1] - 31345:20 cop [1] - 31192:3 cops [3] - 31175:7, 31175:9, 31188:22 copy [7] - 31183:23, 31240:8, 31247:12, 31306:8, 31320:9, 31320:22, 31321:4 Corbett[1] - 31266:14 cordial [1] - 31345:15 corner [1] - 31219:8 Correct[17] - 31149:17, 31156:6, 31165:14, 31168:3, 31189:1, 31192:9, 31224:17, 31228:4, 31228:19, 31292:3, 31292:4, 31300:13, 31304:18, 31319:10, 31331:5, 31352:8, 31366:22 correct [178] - 31149:19, 31149:20, 31150:11, 31150:12, 31150:23, 31151:1, 31152:2, 31152:15, 31152:16, 31153:6, 31153:7, 31154:6, 31154:7, 31154:10, 31154:14, 31154:22, 31154:23, 31156:15, 31156:18, 31157:1, 31157:2, 31157:9, 31157:24, 31157:25, 31161:12, 31161:13, 31164:16, 31164:17, 31165:17, 31168:6, 31170:13, 31171:19, 31172:6, 31172:25, 31173:2, 31173:21, 31174:3, 31175:13, 31175:17, 31178:22, 31179:14, 31182:7, 31182:25, 31183:1, 31184:2, 31184:15, 31184:22, 31184:23, 31185:11, 31188:25, 31190:10, 31191:3, 31192:8, 31193:2, 31193:18, 31195:10, 31195:12, 31197:4, 31197:8, 31199:6, 31205:22, 31209:5, 31209:6, 31224:16,</p>
--	---	---	---	--



<p>31225:9, 31225:23, 31226:12, 31226:19, 31227:11, 31227:12, 31228:3, 31231:15, 31234:21, 31235:2, 31235:19, 31235:20, 31236:23, 31237:4, 31238:2, 31241:11, 31241:12, 31241:13, 31246:1, 31250:18, 31250:19, 31253:12, 31253:16, 31256:17, 31256:18, 31259:2, 31259:3, 31259:23, 31263:25, 31264:4, 31264:12, 31264:13, 31264:22, 31267:16, 31267:20, 31267:21, 31268:6, 31268:7, 31268:10, 31268:12, 31269:25, 31271:6, 31271:9, 31277:6, 31277:7, 31278:14, 31278:19, 31278:20, 31279:17, 31280:12, 31282:18, 31284:7, 31284:14, 31285:25, 31289:10, 31289:11, 31291:22, 31292:5, 31292:8, 31296:3, 31297:17, 31298:1, 31298:2, 31299:3, 31301:6, 31302:17, 31304:17, 31309:21, 31310:5, 31315:7, 31316:16, 31317:2, 31319:9, 31320:3, 31320:19, 31320:20, 31323:9, 31325:5, 31325:15, 31325:16, 31326:11, 31326:12, 31327:2, 31327:3, 31327:8, 31330:1, 31330:15, 31330:21, 31330:23, 31331:13, 31331:17, 31334:16, 31344:6, 31346:12, 31346:13, 31347:3, 31348:11, 31349:5, 31349:25, 31352:9, 31352:15, 31352:16, 31353:2, 31353:16, 31355:14, 31355:25, 31357:14, 31357:15, 31358:19, 31363:25, 31367:25, 31368:25, 31369:3, 31370:5 corrected [1] - 31183:16 correctional [1] - 31260:19</p>	<p>corrections [1] - 31260:5 correctly [1] - 31164:3 correspondence [1] - 31178:6 corroborates [1] - 31172:15 corruption [1] - 31236:13 could' [1] - 31190:25 council [1] - 31260:4 counsel [23] - 31150:20, 31178:10, 31193:20, 31226:3, 31226:25, 31228:16, 31241:9, 31273:24, 31305:24, 31307:11, 31308:5, 31312:3, 31325:7, 31326:10, 31344:1, 31346:25, 31347:15, 31347:19, 31348:13, 31352:11, 31352:25, 31353:14, 31369:11 Counsel [2] - 31141:2, 31144:4 countless [1] - 31197:5 country [4] - 31155:14, 31196:7, 31220:24, 31221:2 couple [14] - 31157:11, 31188:16, 31197:11, 31224:11, 31229:7, 31246:8, 31288:10, 31289:19, 31297:3, 31301:21, 31351:21, 31351:22, 31351:23, 31352:6 course [17] - 31155:8, 31177:18, 31179:12, 31182:2, 31182:16, 31227:5, 31237:14, 31277:22, 31287:7, 31287:18, 31290:1, 31291:1, 31329:25, 31330:18, 31341:19, 31361:8, 31363:21 court [24] - 31204:21, 31217:5, 31217:7, 31217:9, 31217:10, 31264:25, 31268:2, 31268:5, 31302:18, 31306:15, 31307:7, 31307:13, 31310:17, 31311:5, 31314:13, 31316:2, 31316:13, 31317:1, 31323:18, 31323:20, 31323:21, 31348:12, 31349:18, 31359:19</p>	<p>Court[58] - 31141:8, 31155:7, 31163:24, 31210:25, 31221:2, 31221:15, 31221:17, 31221:18, 31222:8, 31297:24, 31298:9, 31298:18, 31298:19, 31298:21, 31299:7, 31300:8, 31300:17, 31306:2, 31307:9, 31315:25, 31316:6, 31316:16, 31316:18, 31319:18, 31322:24, 31323:2, 31323:14, 31323:17, 31323:18, 31326:17, 31328:3, 31328:23, 31330:5, 31330:6, 31331:15, 31331:22, 31331:25, 31333:25, 31342:14, 31343:3, 31344:7, 31344:19, 31346:10, 31346:24, 31347:10, 31348:12, 31349:7, 31350:4, 31351:3, 31353:4, 31355:21, 31357:13, 31370:1, 31370:3, 31370:14, 31370:18 cover [25] - 31157:18, 31159:8, 31161:2, 31161:15, 31161:22, 31161:25, 31162:5, 31162:24, 31163:15, 31166:9, 31166:10, 31166:18, 31167:21, 31168:7, 31170:10, 31173:21, 31173:23, 31174:1, 31174:7, 31174:17, 31174:23, 31175:12, 31202:15, 31210:11, 31230:15 cover-up [21] - 31157:18, 31159:8, 31161:2, 31161:15, 31161:22, 31161:25, 31162:5, 31162:24, 31163:15, 31166:9, 31166:10, 31168:7, 31170:10, 31173:21, 31173:23, 31174:7, 31174:17, 31174:23, 31175:12, 31210:11, 31230:15 covered [8] - 31163:17, 31166:5, 31186:25, 31188:22, 31210:5, 31232:11, 31239:6, 31276:25 covering [1] - 31226:14</p>	<p>coverup [13] - 31175:5, 31175:6, 31190:14, 31191:8, 31191:18, 31191:25, 31192:3, 31203:10, 31206:3, 31206:7, 31234:24, 31235:6, 31250:11 crack [1] - 31214:22 crazy [1] - 31294:7 credibility [5] - 31194:24, 31195:3, 31274:24, 31368:23, 31369:5 Credibility[1] - 31195:2 creditability [1] - 31157:14 crew [1] - 31185:14 crime [19] - 31150:10, 31164:8, 31164:12, 31164:23, 31165:4, 31170:21, 31198:15, 31200:4, 31200:5, 31200:13, 31214:6, 31215:9, 31217:23, 31217:25, 31219:21, 31239:8, 31361:7, 31366:6, 31366:14 crimes [11] - 31149:16, 31165:9, 31187:2, 31190:11, 31199:1, 31200:2, 31201:24, 31202:9, 31215:2, 31216:20, 31222:21 Criminal[1] - 31317:18 criminal [1] - 31221:3 criminals [1] - 31223:5 critically [1] - 31178:5 crooked [2] - 31175:7, 31175:9 cross [2] - 31316:6, 31344:15 cross-examined [1] - 31316:6 cross-examining [1] - 31344:15 Crown[15] - 31165:13, 31165:15, 31165:20, 31167:9, 31167:12, 31173:4, 31173:7, 31218:2, 31223:2, 31223:10, 31226:25, 31228:15, 31230:9, 31230:20 Crown's [2] - 31218:22, 31218:24 crucial [1] - 31242:22 Csr[8] - 31141:8, 31141:9, 31370:2, 31370:12, 31370:13, 31370:16, 31370:17</p>	<p>cumulative [1] - 31200:19 custody [1] - 31259:2 cut [3] - 31169:18, 31305:16, 31366:23</p>
D				
<p>Dan[3] - 31186:21, 31228:20, 31228:22 dark [2] - 31216:5, 31216:13 date [9] - 31186:18, 31206:15, 31244:1, 31268:18, 31292:18, 31296:25, 31297:4, 31326:18, 31329:20 dates [3] - 31159:11, 31159:12, 31347:11 daughter [2] - 31360:7, 31360:13 Dave[11] - 31244:18, 31276:10, 31276:14, 31277:1, 31277:25, 31280:11, 31280:14, 31281:24, 31286:4, 31335:22 David[260] - 31140:4, 31142:2, 31142:12, 31143:5, 31143:8, 31145:20, 31151:24, 31155:1, 31158:5, 31158:10, 31158:11, 31158:12, 31158:17, 31158:19, 31160:13, 31162:5, 31162:18, 31162:23, 31163:10, 31164:5, 31164:7, 31164:12, 31165:1, 31165:3, 31166:17, 31170:16, 31170:20, 31171:12, 31171:14, 31173:3, 31174:20, 31179:6, 31182:10, 31183:14, 31187:3, 31193:20, 31194:15, 31197:20, 31198:1, 31198:6, 31198:10, 31198:11, 31198:14, 31198:18, 31199:7, 31199:25, 31200:9, 31200:18, 31200:23, 31202:11, 31202:23, 31202:25, 31203:9, 31203:16, 31204:20, 31204:25, 31205:8, 31205:14, 31205:19, 31206:18, 31206:21, 31206:25, 31207:7,</p>				



<p>31207:11, 31208:3, 31208:9, 31208:14, 31210:17, 31211:3, 31211:13, 31212:16, 31212:19, 31213:14, 31214:13, 31214:14, 31218:3, 31218:12, 31218:24, 31219:4, 31220:11, 31220:21, 31220:24, 31222:14, 31222:22, 31222:25, 31223:3, 31223:18, 31223:20, 31223:22, 31228:6, 31228:7, 31228:8, 31228:9, 31228:10, 31229:11, 31230:12, 31232:13, 31232:16, 31233:4, 31233:21, 31233:23, 31236:16, 31237:10, 31241:20, 31242:22, 31248:11, 31248:17, 31248:20, 31248:21, 31249:9, 31252:21, 31254:7, 31256:19, 31256:21, 31257:5, 31257:11, 31257:22, 31258:17, 31259:21, 31260:25, 31261:4, 31262:1, 31262:8, 31263:15, 31270:3, 31272:22, 31272:23, 31274:12, 31275:5, 31276:21, 31277:17, 31278:10, 31278:23, 31279:7, 31279:23, 31280:1, 31280:2, 31288:24, 31289:16, 31289:21, 31298:23, 31299:7, 31299:10, 31299:13, 31300:3, 31300:8, 31300:20, 31300:24, 31302:20, 31303:24, 31306:24, 31307:10, 31307:18, 31308:4, 31309:1, 31309:4, 31309:23, 31313:11, 31313:22, 31313:23, 31314:24, 31314:25, 31315:2, 31315:20, 31315:22, 31316:19, 31317:2, 31318:13, 31319:8, 31320:25, 31321:16, 31323:1, 31323:10, 31324:18, 31326:23, 31328:19, 31333:4, 31333:7, 31333:11, 31333:14, 31333:17, 31333:20, 31334:1, 31334:4, 31334:7,</p>	<p>31334:12, 31334:15, 31338:9, 31338:12, 31338:25, 31339:24, 31342:21, 31342:23, 31344:18, 31347:12, 31347:24, 31348:4, 31348:19, 31350:1, 31351:9, 31351:25, 31352:4, 31352:14, 31352:19, 31352:21, 31352:22, 31352:23, 31353:8, 31353:9, 31353:13, 31353:24, 31354:10, 31354:17, 31354:25, 31355:7, 31355:10, 31355:16, 31355:21, 31356:5, 31356:10, 31356:17, 31357:4, 31357:5, 31358:9, 31358:11, 31358:16, 31359:5, 31359:7, 31360:16, 31360:19, 31362:4, 31362:8, 31362:11, 31363:3, 31363:5, 31363:21, 31364:6, 31364:10, 31364:15, 31364:19, 31364:23, 31365:18, 31366:3, 31366:4, 31366:15, 31366:25, 31367:25, 31368:24 David's [29] - 31164:15, 31167:1, 31174:15, 31175:8, 31203:25, 31204:2, 31217:22, 31220:8, 31221:24, 31236:23, 31238:8, 31259:2, 31260:18, 31279:3, 31282:24, 31284:20, 31284:22, 31295:1, 31298:7, 31301:11, 31308:8, 31310:18, 31311:7, 31315:6, 31316:13, 31348:22, 31361:20, 31365:8, 31369:5 days [15] - 31155:9, 31158:11, 31159:21, 31188:5, 31188:14, 31188:17, 31192:4, 31212:1, 31214:8, 31216:21, 31238:16, 31247:22, 31257:3, 31293:3, 31293:6 dead [2] - 31192:22, 31260:11 deal [8] - 31157:2, 31161:6, 31265:3, 31323:7, 31324:24, 31351:13, 31351:14,</p>	<p>31359:14 dealing [2] - 31202:18, 31226:20 dealings [2] - 31240:12, 31259:10 deals [2] - 31223:7, 31242:19 dealt [3] - 31192:6, 31246:18, 31317:12 death [1] - 31198:4 Deborah [2] - 31153:4, 31223:11 December [12] - 31324:6, 31324:8, 31326:7, 31326:11, 31327:4, 31327:6, 31327:14, 31328:12, 31328:22, 31332:1, 31332:2, 31334:16 December-january [1] - 31327:14 decide [3] - 31271:4, 31349:18, 31364:19 decided [5] - 31176:24, 31177:1, 31177:14, 31177:15, 31213:19 deciding [2] - 31184:6, 31267:13 decision [13] - 31153:18, 31154:21, 31184:2, 31208:7, 31222:5, 31222:15, 31262:23, 31266:13, 31266:15, 31271:8, 31298:22, 31316:3, 31316:16 decision-makers [1] - 31266:13 declaration [1] - 31299:14 deep [3] - 31263:9 deeply [1] - 31218:18 defence [9] - 31210:14, 31217:13, 31217:14, 31217:17, 31218:7, 31223:12, 31226:3, 31226:25, 31228:16 defend [1] - 31344:22 defensive [1] - 31316:24 definitely [5] - 31297:15, 31299:11, 31307:19, 31346:13, 31361:9 degree [2] - 31219:9, 31363:6 delaying [1] - 31348:13 deliberately [8] - 31173:8, 31174:25, 31230:6, 31230:7,</p>	<p>31230:19, 31231:9, 31232:23, 31233:15 delivered [1] - 31208:19 Delta [1] - 31140:16 denied [1] - 31352:6 Dennis [2] - 31341:25, 31342:1 denying [1] - 31352:9 Department [16] - 31166:23, 31183:10, 31192:16, 31199:2, 31201:13, 31208:14, 31208:20, 31225:10, 31262:21, 31267:10, 31295:14, 31296:21, 31344:5, 31346:19, 31361:13, 31361:16 department [6] - 31168:20, 31237:18, 31238:4, 31251:20, 31254:13, 31255:10 department's [1] - 31237:16 Department's [2] - 31205:5, 31242:25 depot [1] - 31144:22 depression [1] - 31208:10 depth [1] - 31328:19 described [5] - 31155:17, 31212:13, 31213:6, 31353:21, 31356:6 describes [1] - 31146:7 Description [1] - 31143:2 description [2] - 31238:25, 31346:23 desirable [1] - 31300:9 desire [3] - 31147:19, 31319:24, 31342:14 desires [1] - 31299:19 desperately [1] - 31176:16 detail [2] - 31152:13, 31243:5 detailed [1] - 31305:3 detailed [1] - 31265:12 details [10] - 31187:10, 31188:1, 31198:25, 31213:25, 31215:9, 31215:17, 31241:7, 31246:12, 31297:6, 31297:13 detective [1] - 31171:2 Detective [1] - 31171:3 develop [1] - 31213:22 developed [3] - 31198:21, 31219:14, 31220:15</p>	<p>Devine [2] - 31293:5, 31294:1 Devine's [2] - 31293:2, 31293:21 differed [1] - 31231:6 difference [4] - 31155:18, 31207:24, 31273:11, 31363:8 different [18] - 31149:22, 31155:23, 31156:5, 31156:7, 31159:6, 31174:8, 31204:7, 31208:5, 31231:17, 31254:1, 31254:2, 31257:17, 31257:20, 31321:18, 31329:11, 31368:3 differently [3] - 31269:7, 31269:8, 31270:17 difficult [8] - 31162:13, 31208:6, 31242:15, 31290:6, 31301:2, 31325:2, 31358:5, 31366:16 dig [3] - 31287:4, 31303:10, 31345:17 digging [1] - 31273:7 dinner [1] - 31145:10 dire [2] - 31301:25, 31302:7 direct [4] - 31250:16, 31275:2, 31275:7, 31294:18 direction [2] - 31213:16, 31277:15 directions [3] - 31219:3, 31219:4, 31357:6 directly [1] - 31226:2 Director [1] - 31141:3 dirty [2] - 31237:18, 31238:4 disadvantage [1] - 31316:20 disagree [1] - 31321:14 disappearance [1] - 31251:24 disappeared [5] - 31242:24, 31248:14, 31255:9, 31282:8, 31287:25 discharge [1] - 31308:10 disclose [4] - 31167:25, 31308:5, 31312:5, 31312:15 disclosed [3] - 31305:20, 31305:21, 31366:2</p>
---	--	---	---	---



<p>disclosing [1] - 31307:11</p> <p>disclosure [3] - 31305:25, 31325:7, 31340:24</p> <p>discovered [3] - 31245:18, 31330:24, 31331:20</p> <p>discovery [1] - 31214:25</p> <p>discrepancies [1] - 31363:19</p> <p>discuss [3] - 31212:3, 31360:16, 31364:15</p> <p>discussed [6] - 31170:1, 31217:6, 31227:8, 31286:10, 31301:22, 31317:10</p> <p>discussing [8] - 31244:21, 31248:12, 31291:20, 31298:4, 31310:21, 31312:11, 31318:24, 31324:3</p> <p>discussion [32] - 31212:9, 31256:15, 31262:12, 31262:15, 31265:18, 31268:15, 31276:10, 31276:13, 31280:9, 31280:10, 31291:17, 31292:25, 31298:13, 31301:18, 31303:1, 31308:2, 31312:25, 31317:16, 31320:11, 31332:1, 31332:9, 31335:10, 31337:1, 31337:20, 31338:5, 31340:10, 31343:21, 31343:23, 31345:1, 31356:14, 31364:13, 31365:24</p> <p>discussions [18] - 31174:6, 31192:23, 31233:12, 31245:11, 31245:12, 31246:8, 31246:15, 31264:2, 31264:7, 31264:22, 31264:24, 31265:21, 31275:22, 31281:1, 31306:14, 31318:22, 31351:11, 31354:3</p> <p>disintegrated [1] - 31282:9</p> <p>disks [1] - 31155:12</p> <p>dismissed [1] - 31217:6</p> <p>disprove [1] - 31200:18</p> <p>distinct [1] - 31192:19</p> <p>distinction [1] - 31233:1</p> <p>distinguish [2] - 31350:6, 31363:9</p>	<p>distrust [2] - 31291:11, 31315:16</p> <p>disturb [1] - 31257:15</p> <p>Dna [1] - 31163:25</p> <p>doc [3] - 31197:19, 31224:19, 31224:20</p> <p>Document [2] - 31141:4, 31141:5</p> <p>document [13] - 31177:4, 31194:3, 31279:16, 31279:19, 31329:6, 31329:7, 31329:8, 31329:10, 31329:13, 31329:23, 31330:20, 31330:25, 31331:6</p> <p>documents [6] - 31245:10, 31325:7, 31325:13, 31325:17, 31325:22, 31349:3</p> <p>dollar [1] - 31210:18</p> <p>domain [2] - 31153:17, 31206:6</p> <p>Don [1] - 31141:9</p> <p>Donald [2] - 31370:2, 31370:17</p> <p>done [23] - 31148:18, 31151:22, 31158:20, 31182:17, 31205:23, 31207:9, 31214:24, 31219:23, 31230:10, 31260:10, 31260:23, 31261:7, 31270:5, 31285:3, 31285:6, 31292:14, 31310:3, 31326:24, 31338:3, 31348:21, 31355:7, 31362:15, 31366:12</p> <p>Donut [1] - 31236:19</p> <p>door [7] - 31156:22, 31176:3, 31176:4, 31176:6, 31185:18, 31189:23</p> <p>doubt [6] - 31198:14, 31199:3, 31200:17, 31201:2, 31201:4, 31294:19</p> <p>doubts [5] - 31200:21, 31208:4, 31267:22, 31267:25, 31339:20</p> <p>Doug [3] - 31263:8, 31264:3, 31264:4</p> <p>Douglas [1] - 31141:2</p> <p>down [33] - 31147:18, 31155:6, 31158:18, 31160:10, 31171:6, 31193:2, 31193:3, 31196:11, 31201:9, 31204:12, 31208:1, 31215:20, 31242:14,</p>	<p>31257:5, 31258:23, 31269:23, 31291:12, 31293:10, 31297:12, 31302:15, 31304:1, 31304:16, 31305:1, 31309:2, 31312:23, 31345:10, 31345:13, 31362:1, 31362:3, 31362:4, 31362:6, 31362:7, 31369:5</p> <p>downer [1] - 31186:6</p> <p>downhill [2] - 31283:8, 31284:1</p> <p>Dr [5] - 31182:23, 31270:1, 31349:8, 31349:14, 31349:18</p> <p>dragged [2] - 31197:22, 31216:6</p> <p>draw [3] - 31170:12, 31172:1, 31202:9</p> <p>drawing [1] - 31166:11</p> <p>drawn [8] - 31161:11, 31165:21, 31168:9, 31168:12, 31170:25, 31172:8, 31172:20, 31173:25</p> <p>dream [1] - 31300:5</p> <p>drew [2] - 31166:5, 31166:14</p> <p>drives [1] - 31219:1</p> <p>drove [2] - 31145:14, 31308:24</p> <p>drug [2] - 31223:23, 31321:16</p> <p>drugs [2] - 31309:5, 31309:9</p> <p>dude [1] - 31167:3</p> <p>dug [1] - 31279:25</p> <p>during [15] - 31146:19, 31147:9, 31159:22, 31173:22, 31182:16, 31217:22, 31223:13, 31246:7, 31256:21, 31327:14, 31328:3, 31329:4, 31329:25, 31330:16, 31330:18</p> <p>duty [2] - 31200:15, 31308:10</p>	<p>easily [2] - 31270:9, 31366:14</p> <p>east [1] - 31216:18</p> <p>eastern [1] - 31194:19</p> <p>Eddie [1] - 31142:9</p> <p>Edward [1] - 31140:7</p> <p>Edwards [11] - 31251:16, 31252:11, 31252:13, 31254:4, 31255:4, 31256:19, 31256:23, 31257:2, 31335:6, 31337:10, 31338:8</p> <p>effect [4] - 31155:22, 31180:10, 31200:19, 31259:7</p> <p>effort [3] - 31156:9, 31196:19, 31202:14</p> <p>efforts [4] - 31153:17, 31284:12, 31284:20, 31284:22</p> <p>eight [6] - 31187:16, 31188:6, 31188:14, 31195:1, 31202:20, 31211:25</p> <p>either [18] - 31165:20, 31167:13, 31168:8, 31170:11, 31182:20, 31184:25, 31197:17, 31210:24, 31223:13, 31226:2, 31227:10, 31270:7, 31272:19, 31279:22, 31282:21, 31299:13, 31319:11, 31369:11</p> <p>elaborate [3] - 31237:20, 31335:14, 31358:20</p> <p>election [7] - 31280:19, 31292:18, 31293:4, 31293:8, 31293:12, 31293:19, 31296:18</p> <p>Ellerman [1] - 31141:5</p> <p>Emailing [1] - 31241:1</p> <p>emotional [1] - 31348:25</p> <p>Emson [4] - 31182:23, 31268:24, 31270:1, 31270:16</p> <p>enable [2] - 31299:19, 31299:25</p> <p>enacted [1] - 31361:7</p> <p>enactment [2] - 31361:10, 31362:14</p> <p>encircling [1] - 31235:11</p> <p>encounter [1] - 31261:5</p> <p>encourage [1] - 31267:5</p> <p>encouraged [1] -</p>	<p>31262:20</p> <p>end [9] - 31148:11, 31154:4, 31163:23, 31169:10, 31174:11, 31192:22, 31224:4, 31300:19, 31327:1</p> <p>endanger [1] - 31201:11</p> <p>Ended [6] - 31143:10, 31143:13, 31143:16, 31209:1, 31211:8, 31224:3</p> <p>ended [8] - 31197:5, 31258:22, 31258:23, 31282:12, 31287:16, 31302:17, 31303:17, 31358:2</p> <p>Ends [2] - 31143:7, 31205:20</p> <p>ensuring [1] - 31301:12</p> <p>enterprise [1] - 31220:4</p> <p>entire [1] - 31331:4</p> <p>entirely [1] - 31200:25</p> <p>especially [3] - 31217:19, 31291:1, 31294:5</p> <p>Esq [4] - 31142:7, 31142:8, 31142:10, 31142:14</p> <p>essence [1] - 31145:25</p> <p>essentially [6] - 31155:17, 31159:12, 31173:23, 31194:22, 31213:7, 31264:7</p> <p>established [1] - 31200:11</p> <p>establishes [1] - 31172:19</p> <p>etcetera [6] - 31163:22, 31181:20, 31184:1, 31226:22, 31295:17</p> <p>Etcetera [1] - 31229:17</p> <p>Eugene [1] - 31354:5</p> <p>evaluated [1] - 31210:23</p> <p>evening [4] - 31145:7, 31146:7, 31148:16, 31206:20</p> <p>event [1] - 31184:12</p> <p>events [5] - 31144:12, 31172:10, 31184:17, 31234:12, 31350:11</p> <p>eventually [4] - 31210:12, 31216:1, 31294:14, 31338:8</p> <p>everyday [1] - 31182:3</p> <p>everywhere [2] - 31190:24, 31196:4</p> <p>evidence [63] - 31152:6, 31153:3, 31163:13,</p>
--	---	---	---	---

E

Early [1] - 31322:19

early [12] - 31166:14, 31229:2, 31264:1, 31268:19, 31284:11, 31324:8, 31326:10, 31331:3, 31335:1, 31335:4, 31335:6, 31350:2



<p>31164:15, 31169:23, 31169:24, 31170:4, 31170:16, 31170:18, 31178:19, 31180:13, 31184:14, 31198:25, 31199:19, 31200:6, 31200:10, 31200:12, 31205:11, 31206:24, 31208:2, 31211:24, 31214:21, 31222:20, 31231:8, 31231:11, 31232:8, 31232:22, 31232:24, 31233:5, 31233:6, 31233:9, 31234:14, 31237:24, 31245:15, 31247:10, 31247:24, 31248:3, 31250:9, 31250:10, 31251:9, 31253:13, 31255:15, 31255:21, 31263:15, 31264:6, 31298:25, 31309:23, 31314:5, 31318:5, 31322:12, 31324:15, 31337:6, 31341:20, 31350:2, 31350:20, 31350:22, 31351:3, 31351:4, 31351:5, 31353:15, 31354:4, 31359:8, 31365:8 ex [1] - 31335:7 ex-spouse [1] - 31335:7 exactly [1] - 31270:19 examined [1] - 31316:6 examining [1] - 31344:15 example [3] - 31163:24, 31185:25, 31356:19 except [2] - 31321:23, 31361:14 exception [1] - 31183:22 excerpt [2] - 31209:3, 31303:9 exchange [8] - 31223:7, 31291:18, 31292:7, 31292:8, 31302:16, 31305:12, 31346:7, 31347:9 exciting [2] - 31181:19, 31330:2 exclusive [2] - 31273:1, 31273:8 Excuse [2] - 31169:21, 31232:18 executed [1] - 31212:1 Executive [1] - 31141:3 executive [2] - 31276:4, 31318:8 exhaustive [1] -</p>	<p>31214:25 exist [1] - 31249:10 existed [4] - 31243:14, 31243:22, 31245:13, 31249:18 existence [2] - 31244:25, 31249:1 exonerate [1] - 31319:11 exonerated [2] - 31301:1, 31301:5 expanded [1] - 31273:9 expect [2] - 31256:25, 31335:2 expectation [1] - 31310:22 expected [4] - 31312:18, 31312:19, 31316:11, 31327:8 experience [5] - 31147:11, 31202:17, 31203:4, 31221:3, 31258:9 explain [5] - 31187:19, 31221:8, 31284:17, 31305:9, 31342:17 explained [4] - 31176:9, 31321:23, 31344:18, 31363:3 explaining [3] - 31222:15, 31301:23, 31344:19 explanation [2] - 31187:20, 31188:11 exploring [2] - 31289:14, 31290:18 exposure [1] - 31180:17 expressed [3] - 31199:3, 31323:16, 31337:25 expressing [2] - 31308:14, 31323:25 extensive [3] - 31202:17, 31207:16, 31221:3 extent [1] - 31246:14 extremely [2] - 31263:20, 31345:3 eye [2] - 31149:2</p>	<p>31222:21 fact [33] - 31150:1, 31151:5, 31152:6, 31152:18, 31160:25, 31167:1, 31169:12, 31191:17, 31193:21, 31235:3, 31259:14, 31274:1, 31277:20, 31281:5, 31285:2, 31285:18, 31288:17, 31291:25, 31294:15, 31294:17, 31314:23, 31323:16, 31326:17, 31350:19, 31352:4, 31364:25, 31365:17, 31367:8, 31368:2, 31368:5, 31368:10, 31368:14, 31368:16 factor [3] - 31354:7, 31354:14, 31354:15 facts [6] - 31150:2, 31213:6, 31221:23, 31310:12, 31351:2, 31368:11 factual [1] - 31205:4 fair [36] - 31164:23, 31164:24, 31164:25, 31165:5, 31165:6, 31165:18, 31256:14, 31259:10, 31259:11, 31264:14, 31268:1, 31286:3, 31296:10, 31296:11, 31299:10, 31299:18, 31300:7, 31300:14, 31302:21, 31302:22, 31308:2, 31308:18, 31308:20, 31314:19, 31331:16, 31339:7, 31339:8, 31342:25, 31343:4, 31345:4, 31353:7, 31354:16, 31355:24, 31358:8, 31365:18 fairly [3] - 31183:4, 31353:22, 31356:7 faith [1] - 31315:9 fall [4] - 31212:15, 31215:23, 31282:7, 31327:4 false [1] - 31219:14 family [17] - 31175:19, 31175:22, 31176:12, 31176:13, 31176:21, 31176:24, 31190:6, 31198:12, 31198:13, 31200:23, 31207:6, 31207:24, 31208:21, 31220:8, 31227:4, 31284:24, 31369:7 family's [2] - 31189:4,</p>	<p>31191:23 far [24] - 31148:4, 31152:2, 31173:1, 31179:7, 31189:16, 31227:24, 31228:1, 31244:25, 31253:5, 31261:4, 31261:9, 31267:9, 31290:15, 31301:8, 31311:4, 31323:21, 31323:23, 31327:11, 31327:13, 31327:15, 31334:24, 31343:8, 31359:22, 31359:24 fast [2] - 31278:1, 31340:17 faster [1] - 31211:4 favourable [2] - 31154:21, 31314:11 fax [1] - 31240:4 faxed [1] - 31313:12 fear [2] - 31187:4, 31316:1 fearing [2] - 31238:21, 31239:17 feathered [1] - 31346:20 February [1] - 31339:3 Federal [20] - 31151:16, 31151:24, 31206:22, 31296:20, 31305:20, 31306:1, 31306:7, 31306:11, 31306:14, 31307:3, 31307:12, 31310:23, 31312:6, 31316:18, 31317:1, 31324:9, 31325:21, 31346:9, 31347:2, 31354:11 federal [1] - 31293:22 feds [2] - 31271:24, 31310:17 fellow [3] - 31145:24, 31214:4, 31353:18 felt [36] - 31149:24, 31158:15, 31176:11, 31176:18, 31178:14, 31190:4, 31194:23, 31195:3, 31195:7, 31196:6, 31196:8, 31233:17, 31238:1, 31240:21, 31240:24, 31254:10, 31258:16, 31259:13, 31260:22, 31277:18, 31285:3, 31285:5, 31286:10, 31305:14, 31305:17, 31306:24, 31309:16, 31309:17, 31313:18, 31315:1, 31315:13,</p>	<p>31317:2, 31323:22, 31354:21, 31354:22, 31359:2 Ferris [6] - 31152:19, 31153:3, 31184:1, 31349:8, 31349:14, 31349:19 few [3] - 31167:5, 31257:3, 31280:17 field [1] - 31202:25 fight [3] - 31160:11, 31207:8, 31208:11 fighting [1] - 31159:1 figure [4] - 31234:6, 31248:23, 31301:10, 31325:1 figured [2] - 31166:24, 31185:12 file [24] - 31156:22, 31245:16, 31245:17, 31250:21, 31250:25, 31251:6, 31251:7, 31251:10, 31251:18, 31252:5, 31252:10, 31253:6, 31254:13, 31255:8, 31255:16, 31255:17, 31255:23, 31256:3, 31256:4, 31256:6, 31302:2, 31325:8, 31325:14 filed [12] - 31152:9, 31159:19, 31160:19, 31161:10, 31177:5, 31188:14, 31235:3, 31235:8, 31247:23, 31249:17, 31327:6, 31352:5 files [31] - 31242:20, 31243:14, 31243:23, 31244:11, 31244:25, 31245:13, 31245:15, 31245:22, 31245:23, 31246:20, 31246:22, 31246:24, 31247:11, 31247:16, 31247:21, 31248:1, 31248:8, 31248:13, 31249:1, 31249:5, 31249:10, 31249:13, 31249:18, 31250:18, 31250:22, 31251:25, 31252:3, 31254:16, 31262:17 Files [1] - 31242:21 filing [1] - 31174:12 final [1] - 31222:10 finally [1] - 31262:18 Finally [2] - 31223:14, 31320:6 findings [1] - 31194:8 fine [4] - 31191:6,</p>
	F			
	<p>fabricated [5] - 31232:8, 31232:22, 31232:24, 31233:6, 31233:9 face [1] - 31156:3 facing [2] - 31196:11,</p>			



<p>31262:19, 31282:5, 31322:5 finished [1] - 31220:13 First[1] - 31200:9 first [50] - 31149:23, 31150:10, 31150:18, 31151:15, 31152:9, 31152:14, 31152:18, 31153:22, 31155:19, 31156:17, 31178:18, 31180:16, 31183:12, 31183:13, 31184:24, 31186:23, 31188:23, 31188:24, 31192:12, 31197:19, 31208:4, 31209:13, 31214:18, 31220:3, 31221:6, 31221:8, 31231:19, 31232:20, 31236:8, 31241:9, 31242:12, 31242:19, 31243:12, 31244:23, 31245:9, 31245:14, 31245:19, 31246:18, 31247:1, 31265:6, 31272:14, 31278:16, 31309:20, 31331:2, 31331:10, 31339:3, 31339:4, 31347:12, 31350:3, 31359:6 Fisher[81] - 31142:11, 31150:9, 31150:16, 31151:13, 31155:20, 31156:17, 31163:13, 31163:14, 31163:20, 31165:7, 31165:9, 31165:16, 31165:21, 31165:25, 31166:1, 31166:12, 31166:15, 31166:17, 31167:14, 31168:10, 31168:17, 31169:13, 31170:12, 31170:15, 31170:20, 31171:1, 31171:7, 31171:15, 31172:9, 31172:17, 31173:24, 31174:1, 31175:15, 31187:11, 31188:3, 31188:7, 31190:11, 31191:21, 31192:13, 31192:18, 31193:20, 31193:24, 31198:3, 31199:5, 31199:8, 31199:14, 31200:8, 31200:17, 31200:24, 31207:17, 31213:16, 31213:24, 31214:4, 31214:5, 31214:17, 31215:1, 31215:7, 31215:15, 31216:2, 31216:7, 31217:23,</p>	<p>31227:10, 31239:5, 31239:11, 31241:15, 31242:6, 31242:8, 31243:15, 31243:23, 31245:1, 31246:20, 31249:17, 31252:4, 31263:2, 31263:14, 31265:10, 31272:17, 31294:17, 31294:25, 31296:1 Fishers [11] - 31149:15, 31193:15, 31199:17, 31200:19, 31215:5, 31216:17, 31238:21, 31247:12, 31252:1, 31273:15, 31294:15 fist [1] - 31271:23 fit [3] - 31172:18, 31226:6, 31285:1 five [2] - 31268:12, 31284:2 flawed [1] - 31204:21 focus [3] - 31154:4, 31156:19, 31355:10 focused [1] - 31149:10 follow [9] - 31258:23, 31278:15, 31279:12, 31285:6, 31286:19, 31287:1, 31291:22, 31300:21, 31318:8 follow-up [2] - 31279:12, 31285:6 following [4] - 31145:22, 31195:19, 31330:25, 31340:12 foot [1] - 31156:21 footage [1] - 31185:23 force [2] - 31168:25, 31236:14 forefront [1] - 31351:24 foregoing [1] - 31370:4 forget [2] - 31176:2, 31274:19 formal [1] - 31322:22 formed [1] - 31240:14 formulate [1] - 31158:24 forth [4] - 31146:11, 31181:14, 31218:21, 31270:8 forum [1] - 31205:12 forward [29] - 31151:1, 31151:2, 31151:11, 31152:3, 31152:17, 31153:9, 31154:24, 31154:25, 31155:20, 31159:6, 31161:1, 31161:18, 31163:3, 31167:2, 31176:24, 31192:24, 31193:20,</p>	<p>31204:1, 31206:5, 31210:9, 31212:8, 31240:16, 31240:19, 31240:22, 31242:16, 31317:13, 31335:10, 31352:25, 31353:19 founder [1] - 31229:16 four [10] - 31153:1, 31188:8, 31201:20, 31214:8, 31239:14, 31245:17, 31249:17, 31284:2, 31293:3, 31293:6 fourth [1] - 31219:2 Fox[1] - 31142:8 fragile [3] - 31347:24, 31348:24, 31358:24 frame [38] - 31159:8, 31161:15, 31161:22, 31161:25, 31162:10, 31173:1, 31173:14, 31173:23, 31174:7, 31174:19, 31174:22, 31174:24, 31177:8, 31186:21, 31191:8, 31191:25, 31195:11, 31203:9, 31206:3, 31206:7, 31230:2, 31232:9, 31233:10, 31233:18, 31233:25, 31234:24, 31237:2, 31246:1, 31246:5, 31246:17, 31248:18, 31261:22, 31262:6, 31262:7, 31268:21, 31276:12, 31325:3, 31328:13 frame/cover [1] - 31160:1 frame/cover-up [1] - 31160:1 framed [20] - 31156:16, 31157:17, 31161:2, 31162:5, 31162:18, 31162:23, 31163:9, 31173:7, 31174:21, 31229:9, 31229:11, 31229:21, 31229:25, 31230:4, 31230:5, 31230:12, 31231:2, 31231:14, 31232:23, 31233:15 framing [1] - 31190:15 frankly [1] - 31291:14 Frayers[2] - 31142:12, 31369:15 free [4] - 31211:13, 31236:16, 31286:11, 31302:12 freed [2] - 31195:1,</p>	<p>31211:25 freedom [2] - 31207:8, 31208:12 fresh [1] - 31318:5 Friday[1] - 31366:4 friend [18] - 31144:20, 31145:11, 31145:18, 31146:10, 31147:20, 31147:21, 31148:8, 31148:20, 31149:1, 31149:5, 31219:2, 31281:3, 31281:6, 31281:11, 31282:22, 31283:13, 31284:9, 31335:7 friends [3] - 31219:2, 31283:16, 31284:4 friendship [1] - 31279:20 front [8] - 31205:14, 31219:5, 31229:8, 31234:21, 31263:17, 31271:19, 31300:15, 31355:20 fruit [1] - 31220:6 Frustration[1] - 31208:8 full [1] - 31318:6 fully [1] - 31274:7 functionary [1] - 31276:5 fund [1] - 31154:25 Fund[2] - 31155:1, 31278:10 funded [1] - 31278:7 furious [1] - 31169:11</p>	<p>31251:6, 31255:16, 31255:23, 31256:6, 31308:24, 31325:19, 31350:23, 31365:1, 31368:2, 31368:9, 31369:6 game [1] - 31290:21 garner [1] - 31238:17 Garrett[1] - 31142:6 Gary[1] - 31357:4 gathered [1] - 31298:25 General[6] - 31183:15, 31184:4, 31288:24, 31325:6, 31344:1, 31344:3 general [4] - 31183:19, 31259:4, 31278:18, 31299:4 Generals [1] - 31208:19 generally [2] - 31174:16, 31298:17 gentlemanly [1] - 31345:20 George[2] - 31184:9, 31335:7 Gibson[1] - 31142:10 girl [3] - 31219:3, 31219:7, 31223:4 girlfriend [1] - 31219:5 girls [1] - 31202:7 given [14] - 31146:23, 31152:13, 31152:22, 31182:10, 31222:11, 31229:1, 31236:18, 31247:10, 31306:16, 31311:4, 31311:5, 31317:10, 31331:11, 31361:12 Given[1] - 31318:3 Glen[2] - 31207:5, 31208:25 Globe[10] - 31238:12, 31242:18, 31243:2, 31244:6, 31257:3, 31271:18, 31280:11, 31283:6, 31286:2, 31286:5 God[2] - 31179:7, 31179:8 golly [2] - 31168:19, 31287:22 gonna [17] - 31186:17, 31254:17, 31288:15, 31289:19, 31332:13, 31332:21, 31333:7, 31333:22, 31333:23, 31335:11, 31335:16, 31336:4, 31345:8, 31346:2, 31362:21, 31363:2, 31367:14</p>
G				
<p>Gail[50] - 31150:16, 31151:4, 31151:14, 31165:22, 31166:1, 31166:12, 31166:15, 31167:15, 31168:10, 31170:13, 31171:1, 31172:9, 31174:1, 31176:3, 31187:14, 31193:16, 31193:25, 31199:21, 31202:7, 31207:2, 31207:19, 31207:21, 31211:15, 31214:9, 31214:15, 31215:10, 31215:12, 31215:22, 31216:3, 31216:8, 31216:21, 31216:25, 31217:25, 31218:5, 31229:12, 31229:22, 31241:24, 31241:25, 31242:9,</p>				



<p>goodness ^[1] - 31278:9</p> <p>gordge ^[2] - 31177:24, 31229:3</p> <p>gospel ^[1] - 31220:21</p> <p>got' ^[1] - 31247:18</p> <p>gotta ^[1] - 31340:17</p> <p>Government ^[1] - 31142:4</p> <p>government ^[6] - 31279:10, 31293:7, 31293:22, 31296:7, 31296:17, 31296:19</p> <p>Governor ^[1] - 31278:18</p> <p>Governor-general ^[1] - 31278:18</p> <p>grabs ^[1] - 31216:13</p> <p>Grant ^[4] - 31293:2, 31293:4, 31293:21, 31294:1</p> <p>graphic ^[1] - 31206:24</p> <p>grateful ^[2] - 31240:15, 31240:24</p> <p>grave ^[1] - 31239:22</p> <p>great ^[5] - 31157:2, 31178:20, 31181:9, 31237:19, 31238:5</p> <p>greatest ^[1] - 31189:20</p> <p>greatly ^[1] - 31273:10</p> <p>greeted ^[1] - 31181:6</p> <p>grew ^[2] - 31155:13</p> <p>grey ^[1] - 31204:8</p> <p>grind ^[1] - 31221:19</p> <p>gritty ^[1] - 31297:14</p> <p>ground ^[1] - 31152:17</p> <p>grounds ^[3] - 31150:7, 31160:24, 31201:14</p> <p>group ^[11] - 31152:25, 31159:4, 31174:8, 31180:9, 31180:25, 31189:21, 31211:22, 31229:10, 31229:14, 31259:22, 31346:25</p> <p>group's ^[2] - 31160:22, 31308:9</p> <p>groups ^[2] - 31155:13, 31167:13</p> <p>growing ^[1] - 31211:5</p> <p>guard ^[2] - 31347:16, 31347:22</p> <p>guess ^[9] - 31160:18, 31180:12, 31212:14, 31285:16, 31299:9, 31309:20, 31319:17, 31346:20, 31361:25</p> <p>guilt ^[1] - 31239:7</p> <p>guilty ^[11] - 31172:17, 31188:8, 31198:15, 31200:5, 31201:23, 31202:2, 31216:2, 31217:20, 31233:4,</p>	<p>31242:23, 31300:25</p> <p>Gus ^[10] - 31169:6, 31169:8, 31169:15, 31169:25, 31170:4, 31172:4, 31172:13, 31172:16</p> <p>guts ^[1] - 31239:23</p> <p>guy ^[2] - 31239:23, 31241:19</p> <p>guys ^[1] - 31293:12</p> <p style="text-align: center;">H</p> <p>half ^[2] - 31145:12, 31213:14</p> <p>Hall ^[2] - 31153:4, 31223:11</p> <p>hallway ^[1] - 31201:9</p> <p>hand ^[5] - 31155:24, 31156:23, 31239:9, 31245:5, 31336:15</p> <p>handed ^[2] - 31206:22, 31213:5</p> <p>handle ^[6] - 31194:18, 31227:7, 31326:14, 31353:5, 31359:13, 31364:19</p> <p>handling ^[2] - 31272:9, 31294:15</p> <p>hands ^[1] - 31260:16</p> <p>happy ^[2] - 31176:15, 31186:5</p> <p>hard ^[3] - 31158:11, 31204:8, 31277:8</p> <p>hardly ^[1] - 31325:11</p> <p>Hardy ^[1] - 31241:4</p> <p>harm ^[2] - 31284:20, 31317:2</p> <p>Harold ^[8] - 31146:9, 31146:18, 31147:2, 31147:3, 31147:7, 31147:13, 31147:15, 31148:9</p> <p>hat ^[1] - 31178:1</p> <p>head ^[2] - 31211:21, 31229:13</p> <p>headline ^[1] - 31188:21</p> <p>heads ^[1] - 31278:3</p> <p>hear ^[2] - 31253:12, 31298:21</p> <p>heard ^[15] - 31144:21, 31167:7, 31178:19, 31184:14, 31205:12, 31213:17, 31214:6, 31223:16, 31232:2, 31240:10, 31273:19, 31340:13, 31343:11, 31354:4, 31355:5</p> <p>hearing ^[8] - 31157:5,</p>	<p>31219:11, 31299:5, 31316:1, 31330:18, 31346:10, 31359:8, 31359:16</p> <p>hearings ^[2] - 31324:17, 31330:1</p> <p>hearts ^[1] - 31239:20</p> <p>heat ^[1] - 31177:1</p> <p>held ^[1] - 31194:14</p> <p>hell ^[1] - 31146:1</p> <p>Hello ^[1] - 31258:8</p> <p>help ^[13] - 31155:3, 31176:18, 31177:19, 31258:20, 31258:22, 31260:3, 31265:15, 31278:6, 31292:12, 31314:18, 31342:24, 31343:13, 31344:13</p> <p>helped ^[2] - 31198:16, 31273:10</p> <p>helpful ^[4] - 31240:20, 31273:8, 31293:25, 31357:21</p> <p>helping ^[4] - 31155:15, 31212:24, 31278:6, 31279:17</p> <p>helps ^[1] - 31313:11</p> <p>Hend ^[1] - 31336:24</p> <p>Henderson ^[29] - 31144:13, 31144:17, 31145:6, 31145:24, 31146:3, 31149:13, 31174:6, 31174:14, 31184:11, 31193:11, 31203:1, 31227:17, 31228:18, 31236:9, 31236:19, 31237:6, 31247:14, 31336:25, 31337:23, 31338:9, 31338:11, 31338:24, 31339:10, 31339:21, 31340:2, 31341:10, 31341:11, 31341:21, 31343:1</p> <p>Henderson's ^[6] - 31145:3, 31148:9, 31184:14, 31238:3, 31337:5, 31341:17</p> <p>hereby ^[1] - 31370:4</p> <p>herein ^[1] - 31370:6</p> <p>Hersh ^[13] - 31142:2, 31244:20, 31263:4, 31263:7, 31274:11, 31282:13, 31287:17, 31327:25, 31345:12, 31348:4, 31348:19, 31366:5</p> <p>hesitate ^[1] - 31253:18</p> <p>hesitated ^[1] - 31254:25</p> <p>he's ^[2] - 31276:25,</p>	<p>31277:18</p> <p>Hi ^[1] - 31224:2</p> <p>hidden ^[1] - 31185:16</p> <p>hide ^[1] - 31239:7</p> <p>hiding ^[2] - 31168:20, 31250:9</p> <p>high ^[7] - 31172:22, 31278:24, 31284:19, 31309:1, 31309:15, 31324:4</p> <p>highest ^[1] - 31323:21</p> <p>himself ^[1] - 31266:13</p> <p>Hinz ^[3] - 31141:8, 31370:2, 31370:13</p> <p>hippie ^[2] - 31219:2, 31223:24</p> <p>hired ^[1] - 31283:8</p> <p>Hmm ^[2] - 31256:13, 31332:8</p> <p>Hnatyshyn ^[5] - 31277:22, 31278:17, 31279:4, 31279:21, 31280:4</p> <p>Hodson ^[39] - 31141:2, 31143:4, 31144:6, 31162:13, 31169:4, 31169:5, 31170:3, 31181:24, 31187:23, 31190:2, 31197:24, 31205:21, 31209:2, 31209:13, 31209:19, 31209:22, 31209:24, 31224:4, 31224:10, 31235:23, 31235:25, 31244:3, 31244:5, 31244:8, 31269:1, 31269:3, 31275:9, 31275:13, 31285:11, 31292:21, 31292:23, 31296:23, 31312:3, 31312:22, 31326:1, 31326:6, 31341:9, 31365:20, 31369:9</p> <p>hold ^[1] - 31194:7</p> <p>Holy ^[1] - 31269:21</p> <p>home ^[4] - 31155:12, 31158:10, 31214:12, 31363:12</p> <p>Hon ^[1] - 31142:13</p> <p>honest ^[2] - 31267:1, 31307:21</p> <p>honestly ^[9] - 31164:7, 31164:11, 31164:21, 31165:3, 31225:20, 31254:25, 31312:10, 31318:24, 31322:4</p> <p>Honourable ^[1] - 31140:6</p> <p>hook ^[2] - 31156:11, 31156:20</p>	<p>hoped ^[1] - 31350:8</p> <p>hopefully ^[1] - 31262:20</p> <p>hopes ^[2] - 31208:20, 31299:4</p> <p>hoping ^[4] - 31185:14, 31204:12, 31286:17, 31298:22</p> <p>Hopkins ^[1] - 31142:14</p> <p>horrendously ^[4] - 31336:23, 31337:17, 31338:4, 31339:16</p> <p>hot ^[3] - 31160:17, 31235:12, 31261:3</p> <p>Hotel ^[1] - 31140:16</p> <p>hotel ^[9] - 31144:16, 31144:23, 31145:4, 31146:2, 31147:1, 31147:3, 31147:5, 31148:2, 31338:15</p> <p>Hour ^[1] - 31208:25</p> <p>hour ^[5] - 31209:8, 31209:9, 31260:14, 31260:15, 31328:6</p> <p>hours ^[3] - 31145:12, 31155:4</p> <p>House ^[1] - 31260:7</p> <p>house ^[4] - 31146:17, 31216:5, 31216:17, 31288:9</p> <p>Howard ^[2] - 31154:24</p> <p>hung ^[1] - 31147:14</p> <p>hurry ^[1] - 31259:13</p> <p>hurt ^[1] - 31168:4</p> <p>hushed ^[1] - 31238:20</p> <p>hypnotized ^[1] - 31282:3</p> <p style="text-align: center;">I</p> <p>Id ^[3] - 31197:19, 31224:19, 31224:20</p> <p>idea ^[9] - 31158:2, 31163:3, 31190:22, 31228:25, 31307:14, 31311:1, 31319:17, 31321:25, 31341:11</p> <p>identical ^[3] - 31149:24, 31187:2, 31199:20</p> <p>ignore ^[1] - 31240:23</p> <p>ilk ^[1] - 31223:21</p> <p>immediate ^[1] - 31217:2</p> <p>immediately ^[2] - 31258:2, 31288:18</p> <p>implemented ^[1] - 31158:4</p> <p>implicit ^[1] - 31205:1</p> <p>important ^[17] - 31154:13, 31178:15,</p>
--	---	---	---	---



31189:3, 31190:5, 31196:9, 31238:1, 31260:23, 31263:7, 31272:10, 31274:2, 31274:25, 31300:12, 31302:12, 31302:23, 31309:13, 31350:17, 31368:5 impossible [3] - 31157:4, 31168:11, 31171:22 impression [2] - 31147:16, 31240:15 impressions [1] - 31240:14 inaudible [1] - 31210:25 inch [2] - 31345:15, 31347:1 incident [10] - 31152:21, 31184:22, 31241:10, 31251:7, 31285:10, 31327:18, 31352:9, 31353:10, 31356:6, 31366:21 include [3] - 31191:11, 31191:17, 31329:22 included [2] - 31187:17, 31193:17 including [4] - 31193:6, 31211:25, 31226:11, 31325:7 inconsistent [1] - 31218:20 incredible [3] - 31207:7, 31258:9, 31274:20 incriminating [2] - 31170:18, 31355:14 Indeed [1] - 31320:14 indeed [1] - 31198:15 independence [1] - 31180:6 independent [10] - 31178:7, 31178:14, 31180:20, 31206:21, 31274:1, 31274:7, 31274:9, 31274:10, 31274:23, 31275:1 index [1] - 31247:12 Index [1] - 31143:1 indicate [1] - 31259:9 indicated [2] - 31181:5, 31347:11 indicates [1] - 31145:3 indication [1] - 31295:13 indictment [1] - 31294:18 indirectly [1] -	31236:15 indisputable [2] - 31207:23, 31222:23 indistinguishable [1] - 31215:13 individual [3] - 31168:8, 31171:14, 31228:2 individuals [8] - 31167:13, 31168:8, 31170:11, 31171:1, 31171:20, 31171:25, 31172:8 inevitability [1] - 31359:20 inferences [1] - 31202:10 infirmity [1] - 31208:10 influence [1] - 31153:18 influenced [2] - 31331:8, 31365:16 information [100] - 31150:5, 31150:6, 31150:21, 31150:25, 31151:2, 31151:7, 31151:13, 31152:4, 31152:12, 31152:20, 31152:21, 31152:22, 31153:11, 31153:15, 31155:20, 31156:16, 31160:2, 31160:10, 31163:20, 31165:11, 31168:13, 31169:4, 31169:9, 31172:11, 31172:12, 31172:16, 31173:24, 31174:2, 31176:11, 31176:14, 31179:19, 31182:11, 31182:15, 31182:23, 31183:25, 31184:21, 31186:10, 31186:11, 31186:14, 31196:20, 31198:21, 31204:17, 31208:3, 31221:4, 31227:13, 31227:15, 31227:16, 31228:5, 31228:14, 31229:4, 31236:18, 31236:23, 31239:16, 31245:18, 31248:25, 31249:3, 31249:4, 31250:1, 31250:11, 31252:9, 31253:5, 31253:8, 31259:17, 31259:20, 31261:12, 31265:10, 31266:23, 31267:15, 31268:17, 31270:1, 31270:5, 31270:12, 31271:5, 31271:7, 31271:22, 31285:16,	31287:25, 31291:18, 31292:12, 31303:1, 31305:25, 31306:3, 31307:11, 31308:5, 31308:21, 31310:24, 31311:4, 31315:19, 31316:2, 31316:19, 31316:25, 31326:9, 31335:9, 31354:24, 31357:17, 31358:10, 31365:9, 31366:19, 31367:17, 31367:22 informed [3] - 31213:12, 31246:2, 31267:2 initial [2] - 31179:21, 31182:9 initiate [1] - 31260:23 Inland [1] - 31141:11 Inn [1] - 31146:23 innocence [5] - 31201:1, 31218:12, 31220:22, 31221:24, 31299:8 innocent [22] - 31166:18, 31166:19, 31170:20, 31171:14, 31173:8, 31179:6, 31204:20, 31220:11, 31230:8, 31230:21, 31231:10, 31232:9, 31233:10, 31233:16, 31274:15, 31274:17, 31299:2, 31318:17, 31319:12, 31335:23, 31368:11, 31368:13 input [2] - 31289:2, 31289:6 Inquiry [4] - 31140:2, 31140:23, 31318:1, 31331:16 inquiry [3] - 31295:2, 31295:3, 31295:4 inside [1] - 31223:25 insist [1] - 31345:9 insofar [1] - 31320:6 instance [5] - 31201:20, 31286:12, 31294:3, 31328:20, 31360:21 instead [2] - 31257:9, 31271:6 institution [3] - 31169:10, 31261:5, 31358:3 instructions [2] - 31227:6, 31317:10 intelligent [1] - 31262:23 interaction [1] - 31184:15	interest [4] - 31197:4, 31223:9, 31294:1, 31319:4 interested [8] - 31177:17, 31177:18, 31180:2, 31212:24, 31213:13, 31217:15, 31281:5, 31312:17 interesting [4] - 31252:4, 31268:24, 31289:13, 31291:15 interests [5] - 31298:8, 31301:11, 31301:12, 31315:6, 31319:3 interfere [1] - 31264:22 internal [2] - 31243:1, 31251:22 interpret [1] - 31231:23 intervene [2] - 31261:16, 31262:10 intervening [1] - 31213:2 interview [40] - 31144:13, 31146:20, 31147:5, 31147:10, 31147:17, 31147:20, 31148:8, 31149:3, 31160:12, 31160:13, 31163:14, 31184:10, 31184:21, 31195:4, 31197:15, 31205:22, 31209:14, 31209:15, 31226:23, 31227:10, 31246:11, 31256:19, 31256:21, 31275:5, 31276:22, 31292:14, 31303:18, 31306:8, 31308:23, 31310:16, 31313:5, 31313:15, 31314:4, 31314:10, 31335:5, 31335:12, 31340:20, 31341:17, 31341:21, 31341:25 interviewed [18] - 31147:7, 31148:20, 31165:10, 31178:4, 31179:10, 31182:19, 31196:3, 31196:4, 31196:18, 31199:16, 31214:7, 31214:11, 31215:4, 31303:14, 31340:3, 31341:18, 31354:11, 31366:1 interviews [15] - 31149:13, 31163:22, 31164:20, 31194:9, 31195:12, 31197:5, 31207:16, 31218:15, 31218:16, 31224:15, 31226:22, 31229:2,	31275:6, 31334:18, 31352:24 intimate [1] - 31219:6 introduce [1] - 31218:2 introduced [4] - 31162:9, 31162:10, 31178:18, 31206:2 introduction [1] - 31157:16 inundated [2] - 31159:25 invested [1] - 31223:8 investigate [8] - 31168:16, 31168:24, 31177:14, 31177:19, 31186:2, 31230:20, 31237:23, 31286:18 investigated [6] - 31150:1, 31151:25, 31173:3, 31210:22, 31274:22, 31275:4 investigates [1] - 31229:14 investigating [6] - 31164:22, 31171:4, 31176:10, 31177:22, 31232:13, 31278:2 investigation [18] - 31164:14, 31164:19, 31172:4, 31182:17, 31187:6, 31187:8, 31187:25, 31188:25, 31198:20, 31207:9, 31207:14, 31215:1, 31219:23, 31220:12, 31227:1, 31243:1, 31251:23, 31325:19 investigations [1] - 31220:7 investigative [1] - 31203:3 investigator [7] - 31166:22, 31199:16, 31202:25, 31203:2, 31210:11, 31220:18, 31225:6 investigator's [1] - 31206:21 investigators [5] - 31178:8, 31180:8, 31181:1, 31202:16, 31336:8 invited [1] - 31197:2 involved [28] - 31157:13, 31160:25, 31171:2, 31171:3, 31173:13, 31177:10, 31177:11, 31177:16, 31181:21, 31183:20, 31192:23, 31212:10,
--	---	---	--	--



31217:12, 31224:13, 31226:2, 31226:15, 31226:25, 31227:5, 31259:9, 31279:4, 31284:6, 31294:11, 31295:22, 31309:10, 31318:21, 31339:10, 31350:23, 31360:3 involvement [9] - 31227:3, 31240:13, 31246:15, 31252:1, 31280:5, 31282:17, 31283:10, 31284:9, 31328:15 involves [1] - 31335:13 involving [1] - 31252:1 lola [2] - 31143:3, 31144:5 Irene [1] - 31141:7 irrelevant [1] - 31266:16 issue [15] - 31144:10, 31151:21, 31151:23, 31152:19, 31180:6, 31180:16, 31184:17, 31243:9, 31250:22, 31319:22, 31321:16, 31339:5, 31353:3, 31368:23 issued [1] - 31222:14 issues [6] - 31318:6, 31318:10, 31318:15, 31319:6, 31359:15, 31368:7 It'll [1] - 31303:4 items [1] - 31329:23 itself [3] - 31149:10, 31190:8, 31319:22	Jersey [2] - 31187:9, 31211:22 Jim [44] - 31143:8, 31143:14, 31162:21, 31173:12, 31176:9, 31176:21, 31189:3, 31194:6, 31194:18, 31194:20, 31194:23, 31198:19, 31206:18, 31207:20, 31209:16, 31211:9, 31211:20, 31212:1, 31212:7, 31212:12, 31213:3, 31214:2, 31214:24, 31215:18, 31215:21, 31216:15, 31217:8, 31217:11, 31217:16, 31218:13, 31218:17, 31220:2, 31221:7, 31221:17, 31222:3, 31222:7, 31222:13, 31222:18, 31223:22, 31227:20, 31229:16, 31230:4, 31231:18, 31235:11 Jim's [1] - 31163:5 Joanne [1] - 31142:3 job [3] - 31158:20, 31177:22, 31320:1 Joe [1] - 31210:12 John [8] - 31154:23, 31154:24, 31170:17, 31234:11, 31236:18, 31331:1, 31331:11, 31335:1 Johrls [1] - 31331:2 Joining [1] - 31198:5 joins [2] - 31198:7, 31212:3 joke [1] - 31356:12 joking [1] - 31257:8 jokingly [2] - 31223:18, 31223:19 journalist [1] - 31203:3 Joyce [68] - 31142:3, 31143:3, 31143:5, 31143:11, 31144:5, 31145:17, 31146:1, 31146:15, 31146:20, 31146:23, 31147:4, 31147:6, 31147:14, 31158:19, 31197:20, 31198:1, 31198:7, 31198:9, 31199:9, 31199:13, 31201:7, 31201:16, 31202:5, 31202:24, 31203:11, 31203:19, 31203:24, 31204:15, 31205:18, 31210:1, 31210:5,	31210:15, 31211:12, 31211:19, 31212:16, 31213:4, 31213:8, 31213:17, 31214:3, 31214:6, 31231:4, 31238:15, 31251:17, 31252:5, 31252:15, 31255:6, 31256:24, 31263:5, 31263:9, 31274:11, 31276:18, 31277:12, 31292:1, 31293:11, 31293:24, 31307:6, 31308:8, 31332:19, 31333:6, 31333:9, 31333:12, 31333:16, 31333:19, 31333:22, 31334:3, 31334:6, 31334:8, 31334:14 Judge [1] - 31345:7 judge [5] - 31204:23, 31205:15, 31210:14, 31221:10, 31225:16 judges [4] - 31221:15, 31221:16, 31221:17, 31221:18 judgment [1] - 31222:1 judiciously [1] - 31345:17 July [6] - 31175:4, 31177:9, 31178:17, 31179:9, 31246:1, 31246:7 jump [1] - 31202:11 jumps [1] - 31166:25 June [1] - 31341:18 jury [3] - 31170:19, 31173:5, 31200:20 Justice [66] - 31140:6, 31142:12, 31142:14, 31151:16, 31151:24, 31166:23, 31183:10, 31183:21, 31184:25, 31185:19, 31199:2, 31201:6, 31201:13, 31204:4, 31204:12, 31204:24, 31205:5, 31206:23, 31207:25, 31208:14, 31211:11, 31221:1, 31221:2, 31222:6, 31222:11, 31225:10, 31262:17, 31262:21, 31262:25, 31264:2, 31267:9, 31295:14, 31296:20, 31299:5, 31305:20, 31306:1, 31306:7, 31306:11, 31306:15, 31307:3, 31307:12, 31310:23, 31312:6,	31312:7, 31315:2, 31316:18, 31317:1, 31324:10, 31325:21, 31343:25, 31344:4, 31344:21, 31346:8, 31346:9, 31346:19, 31347:2, 31354:11, 31359:5, 31361:13, 31361:15, 31361:16 justice [15] - 31208:15, 31221:6, 31222:9, 31260:5, 31264:8, 31264:25, 31265:9, 31266:25, 31271:8, 31313:2, 31314:12, 31315:10, 31316:7, 31323:3, 31355:16	31303:13, 31339:2, 31360:22, 31365:6 kind [6] - 31203:4, 31208:3, 31212:13, 31294:12, 31295:23, 31359:3 kinds [2] - 31311:10, 31324:22 Kirk [1] - 31211:7 knife [4] - 31216:5, 31216:14, 31219:7, 31353:12 knocking [2] - 31176:3, 31176:6 knowing [1] - 31357:24 knowledge [13] - 31243:13, 31243:18, 31243:22, 31244:10, 31244:13, 31248:4, 31265:4, 31267:12, 31309:8, 31329:1, 31360:23, 31370:6 knowm [1] - 31288:14 known [8] - 31172:20, 31194:25, 31210:3, 31247:3, 31258:7, 31273:13, 31329:5, 31354:12 knows [3] - 31213:24, 31290:10, 31292:18 Knox [2] - 31142:5, 31169:22 Krogan [1] - 31142:4 Krogan-stevely [1] - 31142:4 Kujawa [20] - 31142:6, 31167:10, 31226:6, 31277:15, 31278:16, 31280:21, 31288:15, 31290:2, 31290:12, 31291:6, 31292:11, 31292:25, 31294:6, 31295:21, 31295:25, 31296:7, 31296:9, 31296:16, 31296:18, 31346:22
J	jail [14] - 31166:19, 31199:9, 31207:3, 31262:1, 31299:10, 31299:11, 31299:23, 31300:6, 31300:9, 31300:24, 31301:5, 31301:12, 31318:17, 31319:8 January [10] - 31215:22, 31217:22, 31324:17, 31324:19, 31335:4, 31335:6, 31340:9, 31347:6, 31351:25, 31360:5 january [2] - 31326:18, 31327:14 Jay [1] - 31141:11 Jerry [1] - 31141:10		K	
			Karen [3] - 31141:8, 31370:2, 31370:13 Karst [5] - 31142:9, 31169:14, 31170:5, 31170:6, 31171:3 Kathy [1] - 31362:5 keep [4] - 31166:19, 31285:20, 31296:9, 31359:1 keeping [2] - 31267:1, 31267:5 keeps [1] - 31277:19 kept [4] - 31177:25, 31213:12, 31239:16, 31270:11 key [3] - 31251:25, 31269:21, 31369:5 kid [1] - 31218:25 kill [3] - 31211:15, 31365:1, 31369:6 killed [9] - 31207:1, 31215:22, 31216:22, 31223:4, 31239:5, 31241:25, 31242:9, 31308:25, 31368:9 killer [3] - 31166:17, 31216:25, 31363:20 killing [1] - 31368:2 kilter [1] - 31345:18 Kim [23] - 31143:11, 31177:9, 31177:13, 31201:6, 31201:8, 31204:19, 31204:22, 31206:23, 31208:1, 31210:1, 31210:19, 31210:22, 31211:1, 31257:18, 31259:7, 31259:15, 31261:9, 31276:4, 31297:4,	
				L
				lack [1] - 31331:18 ladies [1] - 31356:24 lady [1] - 31252:5 laid [1] - 31310:11 Lamer [1] - 31359:5 Lana [1] - 31142:4 land [1] - 31323:21 language [1] - 31219:22 Lapchuk [7] - 31184:10, 31184:15, 31184:18,



31186:4, 31223:16, 31334:12, 31334:25 Lapchuks [1] - 31335:7 Larry [56] - 31142:11, 31150:9, 31150:16, 31151:13, 31165:7, 31165:8, 31165:16, 31165:21, 31165:25, 31166:1, 31166:12, 31166:15, 31166:16, 31167:14, 31168:10, 31168:17, 31169:12, 31170:12, 31170:15, 31171:1, 31171:7, 31172:9, 31172:17, 31174:1, 31175:15, 31187:11, 31188:3, 31192:13, 31193:20, 31193:24, 31199:5, 31199:8, 31199:14, 31199:16, 31200:8, 31200:17, 31207:17, 31214:5, 31214:17, 31215:1, 31215:4, 31215:7, 31215:14, 31216:1, 31216:7, 31216:17, 31217:23, 31241:15, 31242:5, 31242:8, 31243:15, 31243:23, 31245:1, 31246:20, 31252:4, 31272:17 last [12] - 31156:10, 31209:7, 31211:2, 31212:13, 31224:20, 31269:13, 31290:20, 31292:24, 31295:1, 31313:3, 31320:4, 31367:20 late [3] - 31170:5, 31328:4 latest [3] - 31194:8, 31198:21, 31207:14 latitude [1] - 31317:21 latter [1] - 31365:23 Laughs [3] - 31241:6, 31333:16, 31336:2 Launa [3] - 31335:5, 31337:10, 31338:8 Law [2] - 31263:18, 31266:2 law [2] - 31200:11, 31261:14 lawyer [15] - 31198:6, 31210:14, 31211:3, 31217:14, 31225:15, 31249:6, 31249:9, 31281:19, 31281:20, 31287:22, 31317:11, 31351:5, 31353:16,	31355:18, 31355:22 lawyers [31] - 31153:11, 31162:2, 31184:5, 31192:25, 31207:7, 31217:18, 31220:8, 31222:14, 31246:15, 31253:9, 31264:2, 31265:3, 31267:19, 31281:22, 31297:18, 31298:3, 31300:16, 31301:10, 31307:17, 31308:10, 31311:19, 31317:4, 31318:12, 31323:7, 31323:8, 31324:9, 31346:8, 31346:9, 31352:2, 31358:16 lawyers' [1] - 31162:7 lays [1] - 31206:24 lead [1] - 31331:25 lead-up [1] - 31331:25 leading [1] - 31198:20 leads [4] - 31218:11, 31236:13, 31278:15, 31282:9 learn [3] - 31193:5, 31215:9, 31220:6 learned [15] - 31165:25, 31170:15, 31241:9, 31243:2, 31244:7, 31261:23, 31261:25, 31266:24, 31309:9, 31354:8, 31354:16, 31356:1, 31357:11, 31363:23, 31365:11 learning [2] - 31282:20, 31367:16 learns [1] - 31204:16 least [16] - 31149:1, 31152:13, 31158:16, 31159:23, 31162:16, 31182:4, 31187:18, 31193:6, 31200:21, 31222:1, 31225:16, 31227:13, 31288:18, 31295:21, 31343:25, 31367:21 leave [5] - 31201:15, 31298:6, 31301:10, 31309:19, 31313:22 leaves [1] - 31201:17 leaving [1] - 31307:17 led [2] - 31207:14, 31236:24 left [12] - 31146:21, 31147:16, 31167:5, 31184:5, 31192:25, 31193:1, 31211:12, 31304:2, 31318:23, 31323:6, 31323:8,	31362:1 legal [14] - 31153:9, 31153:10, 31153:14, 31153:19, 31153:23, 31154:8, 31157:7, 31200:1, 31299:12, 31299:14, 31300:20, 31301:13, 31308:3, 31319:1 Legislative [1] - 31280:22 lend [1] - 31213:21 lending [1] - 31157:13 length [1] - 31213:7 lengthy [1] - 31209:8 less [1] - 31180:20 lessen [2] - 31180:9 Let [4] - 31186:21, 31187:17, 31188:12, 31228:20 letter [30] - 31153:2, 31183:9, 31183:17, 31192:7, 31192:11, 31193:13, 31212:20, 31222:13, 31260:15, 31263:23, 31265:11, 31265:14, 31274:3, 31296:25, 31303:6, 31303:8, 31313:1, 31313:3, 31313:11, 31314:6, 31317:7, 31318:20, 31322:10, 31324:5, 31324:7, 31326:20, 31339:3, 31344:16, 31344:17, 31348:15 level [1] - 31323:18 liar [5] - 31363:5, 31363:6, 31366:24, 31366:25, 31368:1 liberty [1] - 31320:14 lie [2] - 31364:24, 31367:4 lied [8] - 31204:1, 31204:3, 31309:21, 31321:24, 31363:11, 31364:23, 31364:25, 31367:1 lies [1] - 31368:4 life [1] - 31258:7 Lifers [1] - 31175:5 light [14] - 31163:13, 31163:20, 31167:8, 31173:25, 31186:11, 31208:5, 31241:11, 31252:3, 31321:11, 31321:15, 31321:21, 31321:22, 31329:12, 31346:4 likely [3] - 31181:14,	31187:13, 31350:7 limited [1] - 31145:23 Linda [3] - 31213:16, 31213:24, 31214:4 line [2] - 31182:5, 31260:11 lines [3] - 31224:16, 31296:3, 31350:10 link [1] - 31150:16 linking [1] - 31200:12 list [2] - 31301:5, 31319:24 listen [5] - 31332:21, 31333:8, 31333:23, 31334:18, 31334:25 listened [3] - 31341:15, 31342:3, 31342:9 listening [1] - 31341:24 listing [1] - 31322:23 literally [3] - 31232:15, 31233:10, 31233:20 litigation [1] - 31221:3 lived [5] - 31202:6, 31214:5, 31214:14, 31216:7, 31246:4 local [1] - 31216:22 located [3] - 31282:4, 31341:22, 31342:15 location [3] - 31207:23, 3125
---	--	---	--



<p>31244:7, 31280:11, 31283:6, 31286:3, 31286:5 main [4] - 31192:14, 31220:14, 31258:17, 31258:19 maintained [1] - 31211:17 major [1] - 31240:21 makers [1] - 31266:13 man [11] - 31179:3, 31199:11, 31199:14, 31202:1, 31202:6, 31210:4, 31216:25, 31254:10, 31270:21, 31294:10, 31295:8 Man [1] - 31270:21 Manager [2] - 31141:4, 31141:5 Manitoba [1] - 31211:14 manner [4] - 31337:22, 31339:20, 31340:2, 31342:4 manufactured [4] - 31232:16, 31233:11, 31233:20, 31233:22 map [1] - 31216:16 March [2] - 31331:3, 31350:2 marijuana [2] - 31223:24, 31309:7 mark [2] - 31197:25, 31209:9 Marshall [6] - 31142:14, 31175:7, 31303:9, 31317:22, 31317:25, 31318:1 matches [1] - 31215:20 material [3] - 31157:9, 31188:14, 31361:12 materials [6] - 31179:12, 31188:4, 31193:18, 31213:6, 31324:21, 31324:22 matter [16] - 31144:9, 31154:19, 31158:7, 31170:1, 31177:11, 31183:16, 31194:13, 31212:6, 31250:23, 31268:5, 31280:6, 31298:21, 31300:15, 31314:23, 31318:2, 31348:14 matters [10] - 31152:18, 31157:21, 31175:24, 31238:7, 31259:1, 31287:13, 31298:4, 31304:7, 31304:11, 31344:5</p>	<p>Maureen [1] - 31362:6 Mccloskey [70] - 31143:9, 31143:14, 31159:4, 31160:4, 31162:21, 31173:12, 31173:17, 31175:21, 31176:9, 31176:15, 31179:11, 31189:11, 31190:16, 31190:23, 31191:9, 31194:6, 31194:12, 31194:23, 31195:16, 31195:24, 31196:18, 31197:6, 31197:16, 31198:19, 31205:24, 31206:16, 31206:18, 31207:20, 31209:16, 31211:9, 31211:20, 31212:1, 31212:7, 31212:12, 31213:3, 31214:2, 31214:24, 31215:18, 31215:21, 31216:15, 31217:8, 31217:11, 31217:16, 31218:13, 31218:17, 31220:2, 31221:7, 31221:17, 31222:3, 31222:7, 31222:13, 31222:18, 31223:22, 31224:22, 31226:20, 31226:23, 31227:25, 31229:1, 31229:16, 31231:13, 31231:16, 31232:3, 31233:2, 31233:8, 31233:13, 31234:10, 31239:4, 31239:18, 31240:5, 31240:8 Mccloskey's [9] - 31174:5, 31174:14, 31191:12, 31209:4, 31230:4, 31234:17, 31234:23, 31235:15 Mcdonald [1] - 31236:18 Mclean [1] - 31142:3 mean [53] - 31148:5, 31148:24, 31168:18, 31169:18, 31180:23, 31194:23, 31200:4, 31204:11, 31204:19, 31216:12, 31217:13, 31221:15, 31221:18, 31222:8, 31222:19, 31234:16, 31240:18, 31242:12, 31242:14, 31245:6, 31269:21, 31272:21, 31285:8, 31287:23, 31290:9, 31291:6, 31291:9, 31291:13, 31294:7,</p>	<p>31305:2, 31307:20, 31311:21, 31313:22, 31315:18, 31316:5, 31316:7, 31319:24, 31330:8, 31333:15, 31335:19, 31336:20, 31337:7, 31337:20, 31339:2, 31350:17, 31354:6, 31356:21, 31359:24, 31367:10, 31368:8, 31368:11 meaning [1] - 31275:1 means [4] - 31167:9, 31201:18, 31230:5, 31231:2 meant [3] - 31174:24, 31176:25, 31328:9 meantime [2] - 31145:17, 31147:1 media [55] - 31153:16, 31157:3, 31158:1, 31158:6, 31159:23, 31160:8, 31160:23, 31161:16, 31161:18, 31162:9, 31162:11, 31162:14, 31162:20, 31162:21, 31173:22, 31175:3, 31178:18, 31178:20, 31178:23, 31179:16, 31179:22, 31180:15, 31180:17, 31180:25, 31181:6, 31181:13, 31181:21, 31181:25, 31185:11, 31185:14, 31186:19, 31189:13, 31194:12, 31194:19, 31195:18, 31195:20, 31195:24, 31196:1, 31196:16, 31196:23, 31197:2, 31197:5, 31224:15, 31229:7, 31234:25, 31235:10, 31238:15, 31238:24, 31264:21, 31271:2, 31271:23, 31273:11, 31296:1 medical [1] - 31208:10 meet [9] - 31144:18, 31145:9, 31145:21, 31146:16, 31178:23, 31179:18, 31184:11, 31220:20, 31220:21 meeting [18] - 31144:15, 31144:19, 31144:23, 31148:4, 31148:6, 31179:21, 31180:16, 31180:23, 31180:24, 31182:9, 31276:18, 31297:2, 31297:3, 31297:5,</p>	<p>31297:11, 31327:16, 31343:25 meetings [2] - 31324:8, 31324:11 Melnik [3] - 31223:16, 31334:12, 31334:25 Member [1] - 31280:21 member [1] - 31296:16 memo [4] - 31145:3, 31148:9, 31175:18, 31236:20 memorable [1] - 31258:6 Memorandum [1] - 31263:18 memorandum [1] - 31144:14 memory [17] - 31144:25, 31162:19, 31184:7, 31244:24, 31253:17, 31253:22, 31280:3, 31280:7, 31318:24, 31318:25, 31343:9, 31343:18, 31349:24, 31350:10, 31350:22, 31350:24, 31355:1 men [2] - 31222:20, 31290:23 mental [3] - 31169:10, 31349:21, 31354:1 mentally [1] - 31358:24 mention [2] - 31278:9, 31278:17 Merchant [17] - 31281:6, 31281:10, 31281:19, 31281:23, 31282:6, 31283:7, 31283:16, 31283:17, 31283:23, 31284:10, 31284:21, 31285:18, 31287:5, 31287:21, 31288:1, 31291:15, 31292:10 Merchant's [5] - 31281:4, 31282:17, 31282:22, 31283:13, 31284:5 Merchants [1] - 31288:9 mess [3] - 31208:16, 31208:17, 31361:24 message [7] - 31190:13, 31190:17, 31190:18, 31196:8, 31225:17, 31225:23, 31226:12 met [7] - 31182:10, 31184:24, 31201:24, 31213:3, 31237:7,</p>	<p>31295:13, 31358:1 method [1] - 31215:8 Metro [1] - 31251:19 Meyer [3] - 31141:9, 31370:2, 31370:17 mid [5] - 31262:13, 31264:1, 31303:7, 31326:18, 31360:5 mid-january [1] - 31326:18 Midday [1] - 31197:21 might [46] - 31148:25, 31180:9, 31180:10, 31180:18, 31181:10, 31183:13, 31208:20, 31221:17, 31236:16, 31236:23, 31236:24, 31253:7, 31265:15, 31267:24, 31268:18, 31270:12, 31276:12, 31278:15, 31282:23, 31287:3, 31287:4, 31292:12, 31293:25, 31296:19, 31298:16, 31309:19, 31309:24, 31310:2, 31311:24, 31315:19, 31315:21, 31317:2, 31339:11, 31346:5, 31347:22, 31350:11, 31351:8, 31351:9, 31354:9, 31358:17, 31364:17, 31365:15, 31365:16, 31365:22, 31368:20 Mike [3] - 31224:1, 31224:2, 31246:10 Milgaard [120] - 31140:4, 31142:2, 31142:3, 31143:3, 31143:5, 31143:11, 31144:5, 31144:8, 31147:4, 31147:8, 31151:24, 31155:1, 31162:5, 31166:17, 31172:7, 31176:5, 31177:15, 31184:2, 31187:3, 31187:12, 31197:20, 31198:1, 31198:7, 31198:9, 31198:14, 31198:19, 31199:10, 31199:13, 31200:18, 31200:23, 31201:3, 31201:7, 31201:16, 31202:5, 31202:24, 31203:9, 31203:19, 31203:24, 31204:15, 31204:20, 31205:18, 31206:22, 31206:25, 31207:2, 31207:6, 31207:8,</p>
---	--	--	---	---



<p>31208:9, 31208:24, 31209:15, 31210:1, 31210:5, 31210:10, 31210:15, 31210:17, 31210:20, 31211:12, 31211:14, 31211:20, 31212:3, 31212:16, 31218:3, 31218:24, 31219:4, 31219:15, 31219:25, 31220:8, 31220:25, 31223:14, 31223:20, 31223:22, 31225:3, 31225:13, 31228:9, 31229:9, 31229:12, 31229:18, 31232:17, 31233:21, 31234:22, 31238:23, 31239:8, 31241:20, 31242:23, 31251:17, 31252:6, 31252:15, 31255:7, 31257:24, 31258:2, 31258:8, 31263:25, 31274:11, 31276:18, 31277:12, 31278:10, 31279:23, 31289:15, 31293:11, 31293:24, 31294:5, 31296:2, 31308:4, 31308:8, 31323:1, 31332:19, 31333:6, 31333:9, 31333:12, 31333:16, 31333:19, 31333:22, 31334:3, 31334:6, 31334:8, 31334:14, 31344:3, 31354:5, 31356:17, 31369:12, 31369:18</p> <p>Milgaard's [13] - 31198:6, 31210:13, 31211:3, 31213:15, 31218:12, 31220:22, 31222:14, 31231:4, 31232:13, 31238:14, 31249:9, 31255:6, 31307:6</p> <p>Miller [62] - 31150:16, 31151:4, 31151:14, 31165:22, 31166:1, 31166:12, 31166:16, 31167:15, 31168:10, 31170:13, 31171:1, 31172:9, 31174:1, 31175:19, 31175:22, 31176:11, 31187:14, 31189:4, 31190:5, 31191:23, 31193:16, 31193:25, 31198:12, 31198:23, 31199:21, 31200:22, 31202:7, 31207:2, 31207:19, 31207:21, 31210:11,</p>	<p>31211:16, 31214:10, 31214:15, 31215:10, 31215:12, 31215:22, 31216:3, 31216:8, 31216:21, 31216:25, 31217:25, 31218:5, 31227:4, 31229:12, 31229:22, 31239:5, 31239:15, 31241:24, 31241:25, 31242:9, 31251:6, 31252:2, 31255:23, 31256:6, 31308:25, 31325:19, 31350:23, 31365:1, 31368:3, 31368:9, 31369:6</p> <p>Miller's [2] - 31176:3, 31255:16</p> <p>mind [20] - 31159:11, 31170:15, 31170:23, 31170:24, 31171:2, 31171:6, 31172:19, 31191:15, 31191:16, 31200:22, 31232:6, 31248:13, 31281:8, 31294:19, 31299:21, 31309:4, 31309:14, 31311:25, 31321:25</p> <p>minds [3] - 31167:19, 31198:17, 31200:22</p> <p>minister [60] - 31149:19, 31149:22, 31150:14, 31150:20, 31152:22, 31153:9, 31153:12, 31153:13, 31154:16, 31154:21, 31155:24, 31156:12, 31157:5, 31158:10, 31159:19, 31160:19, 31161:20, 31177:5, 31187:16, 31188:5, 31190:10, 31192:7, 31201:13, 31206:11, 31206:23, 31208:1, 31210:20, 31211:4, 31221:1, 31221:10, 31222:6, 31222:11, 31235:4, 31235:8, 31249:17, 31257:18, 31257:24, 31259:7, 31259:18, 31260:1, 31260:9, 31260:16, 31261:6, 31261:9, 31261:15, 31262:5, 31267:18, 31280:24, 31303:6, 31322:10, 31322:23, 31352:5, 31361:15, 31361:19, 31365:4, 31365:14, 31366:16, 31367:17, 31367:21</p>	<p>Minister [11] - 31142:12, 31183:21, 31201:6, 31204:12, 31256:16, 31256:23, 31257:1, 31257:7, 31257:14, 31275:18, 31299:5</p> <p>Minister's [2] - 31183:23, 31257:12</p> <p>minister's [5] - 31153:2, 31261:18, 31262:9, 31275:22, 31276:3</p> <p>Ministries [26] - 31149:12, 31150:23, 31157:12, 31160:25, 31161:21, 31162:1, 31176:10, 31186:23, 31187:9, 31191:20, 31202:16, 31202:19, 31206:4, 31206:6, 31207:15, 31211:21, 31212:4, 31212:18, 31212:20, 31213:20, 31219:22, 31220:17, 31227:21, 31278:5, 31336:7</p> <p>Ministries' [1] - 31188:24</p> <p>minor [1] - 31363:19</p> <p>minus [1] - 31219:9</p> <p>minute [6] - 31151:6, 31197:25, 31209:9, 31209:10, 31224:24, 31294:21</p> <p>miscarriage [2] - 31221:6, 31323:3</p> <p>misconduct [2] - 31226:18, 31232:11</p> <p>misreading [1] - 31180:13</p> <p>missed [1] - 31187:22</p> <p>missing [21] - 31242:20, 31244:12, 31245:23, 31247:17, 31247:23, 31248:1, 31248:9, 31249:2, 31249:14, 31249:20, 31250:18, 31250:22, 31250:25, 31251:20, 31252:3, 31252:10, 31253:6, 31254:13, 31254:17, 31254:18</p> <p>mistake [8] - 31167:3, 31167:20, 31168:1, 31171:8, 31171:11, 31171:13, 31172:10, 31210:9</p> <p>mistaken [1] - 31302:4</p> <p>mistakes [1] - 31226:18</p> <p>Mistakes [1] - 31210:19</p>	<p>Mo [2] - 31198:25, 31219:21</p> <p>Mom [1] - 31192:3</p> <p>mom [3] - 31175:5, 31212:21, 31258:12</p> <p>moment [7] - 31247:20, 31263:23, 31276:9, 31350:21, 31351:22, 31355:10, 31356:4</p> <p>Monday [1] - 31295:15</p> <p>money [6] - 31221:22, 31277:25, 31278:4, 31278:11, 31309:10, 31309:12</p> <p>month [1] - 31246:7</p> <p>months [4] - 31215:24, 31217:2, 31322:17, 31322:18</p> <p>morning [11] - 31144:3, 31144:4, 31158:25, 31214:15, 31224:6, 31239:1, 31241:10, 31241:15, 31308:24, 31309:24, 31321:17</p> <p>most [5] - 31187:13, 31221:12, 31252:13, 31258:6, 31325:24</p> <p>mostly [1] - 31325:25</p> <p>motel [14] - 31145:8, 31148:11, 31152:21, 31184:21, 31222:22, 31222:24, 31222:25, 31223:21, 31223:25, 31352:9, 31353:10, 31356:6, 31361:7, 31366:21</p> <p>mother [5] - 31160:9, 31198:7, 31212:16, 31238:14, 31255:6</p> <p>motion [1] - 31264:16</p> <p>Mountain [1] - 31208:11</p> <p>move [4] - 31260:18, 31277:21, 31278:25, 31283:21</p> <p>moved [2] - 31166:23, 31225:9</p> <p>moving [1] - 31261:4</p> <p>Mps [1] - 31189:18</p> <p>Mulroney [2] - 31256:16, 31259:1</p> <p>Mulroney's [1] - 31295:16</p> <p>mum [1] - 31256:23</p> <p>murder [26] - 31151:14, 31167:15, 31187:3, 31193:24, 31198:23, 31200:7, 31207:3, 31207:19, 31212:11, 31214:8, 31215:24,</p>	<p>31215:25, 31229:12, 31229:22, 31232:10, 31232:13, 31239:13, 31239:15, 31241:10, 31241:24, 31242:23, 31309:24, 31321:17, 31350:23, 31363:17, 31367:6</p> <p>murdered [2] - 31187:14, 31214:15</p> <p>must [15] - 31165:20, 31165:25, 31170:25, 31171:22, 31172:8, 31172:20, 31199:23, 31203:13, 31204:17, 31239:19, 31242:11, 31250:12, 31334:22</p>
N				
<p>name [10] - 31199:10, 31214:5, 31214:7, 31247:12, 31273:15, 31277:22, 31278:21, 31279:11, 31279:14, 31301:13</p> <p>namely [2] - 31180:19, 31322:24</p> <p>names [3] - 31199:22, 31246:3, 31273:13</p> <p>natural [2] - 31181:22, 31351:20</p> <p>naturally [2] - 31179:6, 31310:20</p> <p>nature [5] - 31161:14, 31190:16, 31248:10, 31321:6, 31321:7</p> <p>necessarily [2] - 31200:12, 31367:10</p> <p>necessary [3] - 31172:24, 31207:12, 31318:7</p> <p>need [8] - 31159:5, 31176:8, 31176:16, 31200:11, 31205:11, 31304:24, 31334:7, 31349:9</p> <p>needed [4] - 31258:12, 31275:7, 31348:10, 31349:7</p> <p>needs [1] - 31262:22</p> <p>negative [9] - 31304:14, 31305:15, 31306:19, 31306:25, 31308:21, 31309:17, 31309:19, 31309:25, 31310:14</p> <p>negatives [1] - 31307:25</p> <p>negotiate [1] - 31265:3</p>				



<p>negotiating [1] - 31298:3</p> <p>negotiations [2] - 31264:24, 31298:8</p> <p>neighbourhood [3] - 31151:3, 31202:6, 31217:3</p> <p>Neil[13] - 31161:4, 31161:5, 31177:9, 31276:20, 31303:2, 31303:11, 31303:13, 31308:23, 31313:8, 31313:9, 31313:14, 31313:16, 31314:10</p> <p>neutral [2] - 31205:12, 31365:21</p> <p>never [33] - 31148:15, 31148:16, 31148:17, 31169:12, 31175:1, 31176:2, 31178:1, 31192:20, 31201:21, 31201:23, 31217:9, 31218:4, 31223:12, 31231:8, 31247:11, 31247:15, 31247:16, 31281:17, 31286:6, 31286:9, 31286:14, 31296:1, 31341:22, 31346:16, 31353:24, 31357:2, 31359:22, 31359:23, 31360:24, 31362:13, 31366:6, 31366:7</p> <p>New [2] - 31187:9, 31211:21</p> <p>new [30] - 31149:21, 31152:3, 31156:5, 31156:7, 31156:16, 31156:24, 31160:1, 31160:6, 31179:2, 31180:4, 31187:5, 31198:24, 31201:14, 31204:16, 31204:18, 31207:4, 31210:24, 31214:21, 31221:4, 31236:11, 31270:12, 31298:23, 31299:6, 31300:18, 31302:3, 31319:15, 31321:11, 31321:15, 31321:21, 31321:22</p> <p>news [16] - 31186:20, 31194:4, 31194:7, 31194:10, 31194:14, 31197:3, 31197:12, 31206:20, 31209:4, 31211:7, 31225:12, 31234:22, 31234:23, 31238:20, 31247:7, 31283:12</p>	<p>News[2] - 31206:20, 31208:25</p> <p>newscasts [2] - 31160:5, 31161:17</p> <p>newspaper [5] - 31161:16, 31196:24, 31216:23, 31217:8, 31272:5</p> <p>newspapers [4] - 31160:3, 31162:22, 31197:7, 31235:18</p> <p>Newsworld[1] - 31196:3</p> <p>newsworthy [1] - 31157:21</p> <p>Next[3] - 31288:6, 31345:10, 31361:4</p> <p>next [26] - 31145:5, 31145:14, 31146:13, 31147:12, 31158:25, 31188:16, 31192:2, 31234:8, 31234:20, 31240:6, 31240:8, 31270:14, 31270:20, 31289:12, 31292:1, 31293:9, 31297:16, 31302:4, 31303:20, 31314:21, 31322:22, 31328:9, 31336:3, 31336:14, 31362:19</p> <p>nice [1] - 31291:3</p> <p>Nichol[6] - 31170:17, 31232:24, 31282:1, 31282:8, 31331:1, 31331:2</p> <p>night [11] - 31144:12, 31144:22, 31145:10, 31146:8, 31148:7, 31239:1, 31269:13, 31272:12, 31327:17, 31328:4, 31328:9</p> <p>nitty [1] - 31297:14</p> <p>nitty-gritty [1] - 31297:14</p> <p>nobody [2] - 31218:1, 31239:23</p> <p>none [3] - 31149:6, 31171:20, 31295:19</p> <p>None[1] - 31207:11</p> <p>noon [1] - 31362:7</p> <p>normal [2] - 31182:2, 31351:20</p> <p>North[1] - 31188:9</p> <p>note [2] - 31206:2, 31275:16</p> <p>notes [1] - 31370:6</p> <p>nothing [10] - 31163:16, 31171:18, 31198:3, 31276:24, 31285:3, 31285:5, 31285:13,</p>	<p>31296:5, 31303:23, 31329:17</p> <p>notice [3] - 31157:22, 31189:9, 31206:10</p> <p>noticed [1] - 31227:19</p> <p>notified [1] - 31178:22</p> <p>notwithstanding [1] - 31231:12</p> <p>November [13] - 31262:4, 31265:19, 31267:17, 31275:20, 31297:1, 31298:15, 31303:7, 31306:5, 31307:7, 31322:9, 31322:19, 31324:16</p> <p>nowhere [1] - 31282:10</p> <p>number [26] - 31146:24, 31147:1, 31160:4, 31188:6, 31195:12, 31208:22, 31209:11, 31224:14, 31282:4, 31299:9, 31300:6, 31300:10, 31319:8, 31322:16, 31322:17, 31322:18, 31323:16, 31325:13, 31325:17, 31337:24, 31352:20, 31352:22, 31352:23, 31352:24, 31353:12</p> <p>Number[6] - 31299:11, 31299:12, 31300:11, 31319:8, 31319:11, 31352:3</p> <p>numbers [1] - 31247:13</p> <p>nurse [1] - 31211:15</p> <p>nurse's [1] - 31232:10</p> <p>nursing [1] - 31207:1</p>	<p>occur [1] - 31203:6</p> <p>occurred [2] - 31198:24, 31216:17</p> <p>occurrence [2] - 31169:1, 31247:13</p> <p>occurring [1] - 31216:20</p> <p>October[14] - 31164:8, 31165:7, 31165:16, 31175:16, 31265:19, 31267:17, 31268:20, 31280:18, 31282:15, 31292:20, 31292:21, 31292:24, 31293:4, 31303:15</p> <p>odd [1] - 31286:23</p> <p>odds [1] - 31272:10</p> <p>offences [1] - 31192:17</p> <p>offender [2] - 31187:11, 31188:2</p> <p>offender's [1] - 31188:22</p> <p>offered [3] - 31154:25, 31258:22, 31281:21</p> <p>office [13] - 31211:1, 31260:6, 31261:13, 31261:17, 31261:18, 31262:9, 31275:22, 31276:3, 31293:2, 31293:21, 31295:16, 31362:1, 31362:5</p> <p>Officer[1] - 31141:10</p> <p>officer [6] - 31171:13, 31250:17, 31253:21, 31254:1, 31254:3, 31274:20</p> <p>officers [3] - 31165:10, 31226:24, 31239:21</p> <p>Official[5] - 31141:8, 31370:1, 31370:3, 31370:14, 31370:18</p> <p>officials [5] - 31264:3, 31264:9, 31266:25, 31355:16, 31368:18</p> <p>often [2] - 31190:25, 31362:14</p> <p>Once[2] - 31173:12, 31328:5</p> <p>once [10] - 31156:20, 31156:21, 31165:18, 31182:4, 31222:25, 31269:25, 31299:22, 31299:23, 31324:15, 31330:23</p> <p>One[5] - 31145:12, 31168:25, 31211:19, 31217:12, 31283:20</p> <p>one [89] - 31144:9, 31157:11, 31166:2, 31168:15, 31170:11,</p>	<p>31174:9, 31180:8, 31181:11, 31185:7, 31185:9, 31188:6, 31188:7, 31188:15, 31188:23, 31189:5, 31193:6, 31197:16, 31197:19, 31201:8, 31205:23, 31207:25, 31209:8, 31209:15, 31210:8, 31211:25, 31214:13, 31216:4, 31216:7, 31217:22, 31218:5, 31219:18, 31220:2, 31220:3, 31220:5, 31224:18, 31225:16, 31228:1, 31228:10, 31228:11, 31239:9, 31242:7, 31242:9, 31245:16, 31245:17, 31247:13, 31248:12, 31254:5, 31257:6, 31258:6, 31259:24, 31266:12, 31272:25, 31273:4, 31284:2, 31284:5, 31284:17, 31287:3, 31290:2, 31294:21, 31299:9, 31299:11, 31299:18, 31300:6, 31300:10, 31301:4, 31319:8, 31323:16, 31336:8, 31337:22, 31342:1, 31343:25, 31345:14, 31347:1, 31348:23, 31352:3, 31352:6, 31352:22, 31354:2, 31354:6, 31355:4, 31355:8, 31360:13, 31362:11, 31363:7, 31368:1</p> <p>one' [1] - 31185:8</p> <p>ones [6] - 31172:23, 31197:15, 31224:12, 31267:14, 31284:5, 31344:14</p> <p>onset [1] - 31309:4</p> <p>open [3] - 31208:21, 31214:22, 31284:12</p> <p>opened [13] - 31176:18, 31210:6, 31225:4, 31225:14, 31225:19, 31226:17, 31255:17, 31257:2, 31289:3, 31289:8, 31293:18, 31297:15, 31297:19</p> <p>opening [7] - 31176:20, 31186:14, 31279:6, 31284:20, 31284:22, 31295:17, 31324:18</p> <p>operated [1] - 31275:4</p>
O				
<p>objective [5] - 31179:22, 31220:4, 31221:12, 31221:20, 31221:22</p> <p>objectively [1] - 31179:4</p> <p>objectives [1] - 31301:4</p> <p>obligation [4] - 31305:24, 31307:10, 31308:3, 31308:4</p> <p>obliged [1] - 31312:8</p> <p>observed [1] - 31232:2</p> <p>obtained [2] - 31151:16, 31185:23</p> <p>obviously [6] - 31244:6, 31290:2, 31290:12, 31311:9, 31312:14, 31314:2</p> <p>occasion [1] - 31362:11</p>				



<p>operating [3] - 31198:22, 31201:22, 31262:18</p> <p>Operation [1] - 31236:19</p> <p>operation [1] - 31215:8</p> <p>opinion [3] - 31323:2, 31339:22, 31339:25</p> <p>opinions [1] - 31174:9</p> <p>opportunity [2] - 31195:8, 31298:24</p> <p>opposed [6] - 31184:5, 31188:18, 31199:12, 31251:6, 31259:23, 31271:23</p> <p>opposite [1] - 31350:15</p> <p>optimistic [1] - 31267:23</p> <p>option [2] - 31348:12, 31348:13</p> <p>orchestrated [1] - 31196:19</p> <p>orchestrating [1] - 31195:24</p> <p>ordeal [1] - 31207:7</p> <p>order [7] - 31170:9, 31215:8, 31227:15, 31267:18, 31322:22, 31323:6, 31323:9</p> <p>ordered [5] - 31262:5, 31297:4, 31323:12, 31323:24, 31324:16</p> <p>ordering [1] - 31322:11</p> <p>organization [2] - 31212:22, 31232:12</p> <p>organized [1] - 31158:3</p> <p>original [4] - 31149:25, 31208:6, 31227:1, 31344:23</p> <p>originally [2] - 31228:12, 31287:19</p> <p>Ottawa [7] - 31189:18, 31258:23, 31260:4, 31261:2, 31275:21, 31297:2, 31345:13</p> <p>outlets [2] - 31161:19, 31224:16</p> <p>outline [1] - 31212:2</p> <p>outraged [1] - 31158:13</p> <p>outrageous [1] - 31226:9</p> <p>outs [1] - 31158:6</p> <p>outset [2] - 31174:25, 31299:22</p> <p>outside [3] - 31208:12, 31219:9, 31220:4</p> <p>outsider [1] - 31180:20</p> <p>overturned [1] - 31202:21</p> <p>owe [1] - 31271:11</p>	<p>own [7] - 31167:19, 31168:20, 31170:14, 31223:8, 31273:7, 31308:14, 31332:13</p> <p>P</p> <p>package [2] - 31191:15, 31191:16</p> <p>Page [1] - 31143:2</p> <p>page [49] - 31145:6, 31145:15, 31146:6, 31146:14, 31229:8, 31234:8, 31234:21, 31236:2, 31236:6, 31240:6, 31240:7, 31240:9, 31247:13, 31262:14, 31265:17, 31268:16, 31270:14, 31270:20, 31271:19, 31276:11, 31277:11, 31278:22, 31288:6, 31289:12, 31292:17, 31298:13, 31302:4, 31302:25, 31303:20, 31312:24, 31314:21, 31317:8, 31320:4, 31322:21, 31322:22, 31324:14, 31332:6, 31335:3, 31336:3, 31336:14, 31340:8, 31343:21, 31343:23, 31345:10, 31360:4, 31361:4, 31362:19, 31365:22</p> <p>pages [1] - 31370:4</p> <p>paid [1] - 31221:21</p> <p>paper [6] - 31240:18, 31257:2, 31273:4, 31281:3, 31284:3, 31326:14</p> <p>papers [3] - 31324:25</p> <p>paragraph [2] - 31232:20, 31236:8</p> <p>paragraphs [1] - 31242:19</p> <p>parameters [2] - 31317:17, 31348:18</p> <p>parcel [1] - 31250:13</p> <p>pardon [4] - 31258:1, 31302:13, 31327:4, 31331:2</p> <p>Pardon [1] - 31209:22</p> <p>part [35] - 31150:10, 31150:25, 31151:14, 31154:13, 31156:17, 31159:10, 31160:22, 31162:19, 31173:21, 31177:22, 31180:8,</p>	<p>31194:19, 31197:9, 31197:10, 31206:8, 31209:13, 31213:13, 31220:14, 31225:22, 31226:18, 31245:19, 31250:13, 31271:2, 31279:3, 31286:1, 31293:13, 31294:24, 31296:4, 31300:5, 31310:11, 31324:13, 31340:24, 31341:21, 31349:15</p> <p>partial [1] - 31245:16</p> <p>participant [1] - 31344:5</p> <p>particular [13] - 31158:9, 31190:18, 31203:1, 31203:5, 31217:21, 31218:4, 31245:22, 31253:25, 31272:12, 31273:9, 31310:11, 31311:16, 31316:13</p> <p>particularly [2] - 31203:7, 31220:24</p> <p>parties [1] - 31318:3</p> <p>parts [4] - 31206:15, 31283:9, 31287:12, 31310:18</p> <p>party [3] - 31221:12, 31344:6, 31344:21</p> <p>pass [1] - 31219:24</p> <p>passed [2] - 31145:12, 31182:24</p> <p>past [4] - 31192:17, 31249:13, 31281:9, 31348:2</p> <p>Pat [1] - 31142:7</p> <p>pathological [1] - 31363:5</p> <p>pattern [1] - 31192:19</p> <p>Paul [23] - 31145:14, 31147:25, 31184:11, 31193:11, 31203:1, 31227:6, 31227:22, 31228:17, 31236:9, 31237:11, 31336:25, 31337:4, 31337:23, 31338:9, 31338:11, 31338:23, 31340:2, 31340:14, 31341:10, 31341:11, 31341:17, 31342:4, 31343:1</p> <p>pause [5] - 31187:15, 31257:17, 31305:11, 31320:16, 31321:13</p> <p>Pearson [4] - 31146:7, 31245:11, 31246:16, 31340:12</p> <p>Pearson's [1] -</p>	<p>31245:15</p> <p>pelted [1] - 31258:11</p> <p>Penitentiary [1] - 31208:11</p> <p>Penkala [3] - 31210:12, 31225:8, 31236:19</p> <p>people [63] - 31155:1, 31155:14, 31157:23, 31165:20, 31166:6, 31166:24, 31167:17, 31172:20, 31172:22, 31173:25, 31174:8, 31178:12, 31178:15, 31180:1, 31180:19, 31181:10, 31189:21, 31189:23, 31191:9, 31195:1, 31196:9, 31199:10, 31202:13, 31202:17, 31206:9, 31208:22, 31210:16, 31211:19, 31211:22, 31215:5, 31217:12, 31220:20, 31221:8, 31223:14, 31223:21, 31225:2, 31225:5, 31225:13, 31225:16, 31225:25, 31226:1, 31226:14, 31226:16, 31256:2, 31267:12, 31272:25, 31274:14, 31274:21, 31275:22, 31277:21, 31278:1, 31279:1, 31282:4, 31282:8, 31283:20, 31289:19, 31307:21, 31309:8, 31310:2, 31339:17, 31360:1</p> <p>People [1] - 31220:23</p> <p>percent [1] - 31295:12</p> <p>perception [1] - 31181:3</p> <p>perhaps [14] - 31160:4, 31180:9, 31186:22, 31188:15, 31224:5, 31226:3, 31235:2, 31240:6, 31245:16, 31278:23, 31292:11, 31295:25, 31322:16, 31322:19</p> <p>Perhaps [1] - 31188:16</p> <p>period [2] - 31328:22, 31334:18</p> <p>perpetrator [4] - 31150:9, 31171:15, 31192:14, 31193:24</p> <p>person [20] - 31145:19, 31164:22, 31166:19, 31167:20, 31170:21, 31173:9, 31182:21, 31187:13, 31221:20,</p>	<p>31221:23, 31241:16, 31241:25, 31242:1, 31242:6, 31273:5, 31273:9, 31283:22, 31284:18, 31291:6, 31299:16</p> <p>personal [3] - 31243:13, 31243:18, 31244:12</p> <p>personally [1] - 31320:23</p> <p>perspective [4] - 31228:1, 31228:13, 31231:4, 31319:4</p> <p>Peter [11] - 31177:23, 31251:15, 31252:11, 31252:13, 31254:4, 31254:7, 31256:19, 31256:23, 31257:2, 31275:23</p> <p>Petrie [4] - 31143:14, 31209:16, 31211:9, 31224:23</p> <p>phone [10] - 31146:24, 31147:13, 31148:1, 31149:3, 31181:16, 31240:25, 31254:6, 31261:2, 31334:9, 31342:4</p> <p>phoned [9] - 31146:18, 31147:8, 31181:16, 31270:2, 31270:4, 31270:6, 31270:7, 31272:22, 31295:14</p> <p>phoning [2] - 31181:24, 31254:11</p> <p>photograph [1] - 31179:25</p> <p>phrase [1] - 31365:21</p> <p>physical [3] - 31200:6, 31200:12, 31234:13</p> <p>pick [1] - 31219:2</p> <p>picked [1] - 31181:15</p> <p>picture [5] - 31161:4, 31228:3, 31228:11, 31242:12, 31285:1</p> <p>pictures [2] - 31241:18, 31242:5</p> <p>piece [2] - 31186:13, 31278:8</p> <p>pieces [2] - 31351:4, 31354:24</p> <p>piles [1] - 31332:16</p> <p>pillow [1] - 31223:3</p> <p>place [10] - 31163:11, 31163:15, 31164:5, 31200:21, 31250:12, 31254:20, 31265:21, 31280:23, 31324:11, 31327:14</p>
---	---	--	---	---



<p>placed [3] - 31192:20, 31200:20, 31320:18</p> <p>places [3] - 31172:22, 31278:24, 31284:19</p> <p>plain [1] - 31262:23</p> <p>plan [5] - 31185:22, 31197:9, 31197:10, 31351:13, 31351:14</p> <p>planned [3] - 31195:21, 31197:2, 31206:5</p> <p>planning [2] - 31145:21, 31257:25</p> <p>plans [1] - 31158:24</p> <p>play [1] - 31237:21</p> <p>Played [6] - 31143:6, 31143:9, 31143:15, 31198:2, 31206:19, 31211:9</p> <p>played [2] - 31189:13, 31342:10</p> <p>playing [1] - 31344:10</p> <p>plays [1] - 31220:17</p> <p>pleaded [1] - 31216:2</p> <p>pleasant [1] - 31345:16</p> <p>pleased [2] - 31323:11, 31323:13</p> <p>pled [4] - 31172:17, 31188:7, 31201:23, 31202:2</p> <p>plenty [1] - 31203:3</p> <p>plus [3] - 31294:17, 31295:24, 31353:23</p> <p>Pm [4] - 31275:12, 31326:4, 31326:5, 31369:20</p> <p>point [50] - 31147:19, 31150:2, 31160:8, 31160:15, 31162:3, 31166:4, 31184:20, 31191:6, 31196:15, 31201:8, 31205:1, 31210:2, 31210:6, 31213:19, 31214:3, 31216:6, 31216:14, 31230:17, 31236:15, 31240:23, 31242:11, 31246:22, 31248:15, 31259:24, 31260:3, 31262:2, 31265:13, 31276:24, 31279:7, 31288:21, 31294:3, 31315:17, 31324:6, 31328:15, 31335:21, 31336:6, 31336:22, 31337:16, 31338:19, 31342:10, 31342:11, 31344:2, 31347:9, 31348:11, 31354:18, 31363:1, 31363:18, 31365:23, 31367:20</p>	<p>pointed [1] - 31230:11</p> <p>pointing [1] - 31213:16</p> <p>points [3] - 31153:1, 31203:8, 31350:21</p> <p>Police [11] - 31142:7, 31165:15, 31167:12, 31186:25, 31229:11, 31233:19, 31242:24, 31245:13, 31250:5, 31250:17, 31325:18</p> <p>police [86] - 31163:12, 31164:7, 31164:11, 31164:19, 31164:21, 31165:10, 31165:12, 31165:20, 31166:22, 31167:8, 31168:25, 31173:3, 31173:7, 31175:10, 31175:14, 31185:19, 31190:15, 31192:16, 31193:7, 31202:15, 31204:2, 31207:10, 31207:12, 31210:3, 31210:13, 31214:7, 31216:21, 31225:7, 31226:2, 31226:24, 31228:15, 31229:21, 31230:9, 31230:19, 31231:9, 31231:14, 31232:8, 31232:15, 31233:3, 31233:14, 31234:11, 31236:14, 31237:15, 31237:18, 31238:4, 31238:20, 31239:6, 31239:14, 31239:15, 31242:20, 31243:6, 31243:14, 31244:25, 31246:20, 31247:11, 31247:13, 31249:18, 31250:18, 31251:5, 31251:17, 31251:20, 31251:22, 31251:25, 31252:15, 31252:17, 31253:3, 31253:7, 31253:15, 31253:20, 31254:1, 31254:3, 31254:10, 31254:13, 31255:7, 31255:10, 31255:22, 31262:18, 31274:19, 31276:23, 31277:4, 31290:22, 31325:8, 31330:9, 31330:13, 31331:8, 31346:21</p> <p>policeman [2] - 31168:16, 31181:20</p> <p>policemen [2] - 31168:21, 31168:25</p> <p>politicians [1] - 31289:20</p>	<p>portion [2] - 31222:1, 31313:3</p> <p>posed [1] - 31324:1</p> <p>position [19] - 31172:2, 31173:16, 31192:24, 31229:17, 31279:14, 31310:18, 31311:7, 31311:8, 31316:22, 31317:14, 31331:14, 31345:2, 31349:5, 31349:19, 31349:20, 31352:25, 31353:7, 31353:13, 31366:16</p> <p>positioned [1] - 31283:22</p> <p>positions [2] - 31368:16, 31369:1</p> <p>positive [1] - 31304:24</p> <p>possessing [1] - 31342:7</p> <p>possession [3] - 31308:6, 31308:8, 31308:9</p> <p>possibilities [1] - 31260:2</p> <p>possibility [1] - 31216:24</p> <p>possible [12] - 31160:23, 31161:11, 31247:6, 31252:1, 31252:17, 31252:19, 31261:15, 31275:6, 31293:17, 31318:25, 31356:23, 31362:16</p> <p>possibly [4] - 31189:17, 31296:17, 31342:20, 31344:12</p> <p>power [6] - 31283:20, 31283:22, 31294:10, 31296:7, 31296:9, 31296:10</p> <p>powerful [9] - 31186:8, 31210:16, 31225:2, 31225:5, 31225:12, 31225:25, 31226:16, 31330:4</p> <p>practically [1] - 31328:4</p> <p>prayed [1] - 31272:11</p> <p>preceded [1] - 31144:12</p> <p>precise [1] - 31198:25</p> <p>predicament [3] - 31353:21, 31353:23, 31354:7</p> <p>preferable [3] - 31305:18, 31317:20, 31318:4</p> <p>preference [1] - 31369:16</p> <p>Premier [4] - 31280:20,</p>	<p>31282:21, 31293:5, 31296:15</p> <p>premise [1] - 31168:6</p> <p>prep [1] - 31329:4</p> <p>preparation [2] - 31320:12, 31332:3</p> <p>preparations [2] - 31326:8, 31327:15</p> <p>prepare [4] - 31179:11, 31348:5, 31348:6, 31351:19</p> <p>prepared [4] - 31179:12, 31273:22, 31325:3, 31369:7</p> <p>preparing [4] - 31263:18, 31327:11, 31327:25, 31332:10</p> <p>Prepped [1] - 31328:25</p> <p>prepped [1] - 31329:1</p> <p>present [7] - 31147:9, 31148:20, 31194:8, 31319:20, 31338:12, 31338:15, 31364:21</p> <p>Present [1] - 31338:13</p> <p>presentation [1] - 31176:22</p> <p>presented [4] - 31170:16, 31280:1, 31330:5</p> <p>presenting [3] - 31214:21, 31298:25, 31366:24</p> <p>press [10] - 31194:4, 31196:2, 31197:1, 31204:9, 31206:16, 31228:23, 31235:15, 31258:3, 31272:8, 31272:9</p> <p>pressure [6] - 31154:20, 31156:25, 31204:13, 31206:11, 31339:17, 31359:3</p> <p>pressured [1] - 31204:2</p> <p>Presumably [1] - 31317:16</p> <p>presumably [3] - 31218:10, 31276:20, 31306:13</p> <p>presume [2] - 31319:2, 31342:3</p> <p>presumption [1] - 31200:25</p> <p>pretty [7] - 31214:25, 31217:18, 31220:14, 31245:21, 31252:13, 31267:1, 31305:3</p> <p>prevent [1] - 31166:6</p> <p>previous [6] - 31152:5, 31193:7, 31277:10, 31278:22, 31329:15,</p>	<p>31343:23</p> <p>previously [2] - 31368:17, 31369:1</p> <p>primarily [2] - 31149:12, 31224:22</p> <p>primary [2] - 31154:4, 31157:10</p> <p>prime [12] - 31256:16, 31257:18, 31257:24, 31259:18, 31260:1, 31260:9, 31260:16, 31261:6, 31261:15, 31261:17, 31262:9, 31271:3</p> <p>Prime [6] - 31256:22, 31257:1, 31257:7, 31257:12, 31257:14, 31275:18</p> <p>Princeton [4] - 31212:17, 31212:22, 31213:5</p> <p>principle [2] - 31200:10, 31200:11</p> <p>print [2] - 31196:1, 31269:18</p> <p>printing [1] - 31269:10</p> <p>prison [6] - 31158:12, 31167:5, 31204:14, 31208:12, 31211:14, 31316:8</p> <p>prisoners [1] - 31211:25</p> <p>private [1] - 31295:21</p> <p>privileged [1] - 31212:8</p> <p>Prize [1] - 31203:2</p> <p>Prize-winning [1] - 31203:2</p> <p>probe [2] - 31180:3, 31188:23</p> <p>probing [1] - 31180:2</p> <p>problem [2] - 31163:16, 31340:11</p> <p>problems [1] - 31223:8</p> <p>procedure [1] - 31204:21</p> <p>proceed [2] - 31326:22, 31326:23</p> <p>proceeding [2] - 31268:1, 31300:18</p> <p>Proceedings [4] - 31140:12, 31140:23, 31143:1, 31144:1</p> <p>proceeds [1] - 31219:7</p> <p>process [2] - 31299:12, 31301:4</p> <p>professional [2] - 31177:20, 31178:3</p> <p>professionally [1] - 31338:3</p> <p>professor [1] -</p>
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<p>31181:19 Professor [13] - 31178:19, 31178:23, 31179:17, 31179:23, 31179:24, 31180:7, 31180:13, 31180:19, 31181:5, 31181:16, 31182:8, 31320:8, 31320:12 program [2] - 31158:25, 31212:5 progress [1] - 31213:12 prompt [1] - 31187:4 proof [2] - 31201:1, 31201:2 proper [1] - 31201:12 properly [1] - 31302:20 prosecute [3] - 31200:15, 31230:7, 31231:10 prosecuted [3] - 31173:4, 31230:20 prosecuting [1] - 31165:1 prosecution [4] - 31217:14, 31223:6, 31263:15, 31325:14 prosecutor [1] - 31226:3 prosecutor's [1] - 31325:8 protect [1] - 31167:23 proud [1] - 31237:13 prove [2] - 31221:5, 31299:8 proves [1] - 31206:25 provide [4] - 31183:25, 31315:1, 31320:14, 31334:20 provided [11] - 31152:4, 31158:6, 31199:2, 31227:17, 31229:4, 31266:24, 31320:9, 31326:10, 31327:19, 31342:15, 31343:2 Province [1] - 31370:3 province [2] - 31208:20, 31346:19 provincial [3] - 31165:12, 31167:12, 31280:19 provisions [1] - 31301:20 provoke [1] - 31219:18 provoked [2] - 31218:18, 31219:12 public [31] - 31153:16, 31153:17, 31153:19, 31153:24, 31154:1, 31154:9, 31154:18,</p>	<p>31154:19, 31156:19, 31156:24, 31157:9, 31157:10, 31157:22, 31158:2, 31159:3, 31159:5, 31159:25, 31160:23, 31161:11, 31162:9, 31179:13, 31196:5, 31196:8, 31201:17, 31201:18, 31204:13, 31204:16, 31206:5, 31219:24, 31225:24, 31226:13 publicity [4] - 31154:12, 31180:5, 31181:9, 31211:5 publicized [1] - 31273:16 publicly [5] - 31160:5, 31295:7, 31295:8, 31353:13, 31368:17 publicly-taken [1] - 31353:13 Pulitzer [1] - 31203:2 pulled [2] - 31264:21, 31357:5 purpose [3] - 31179:17, 31313:6, 31320:11 purse [2] - 31356:24, 31357:7 pursue [5] - 31154:9, 31219:24, 31292:13, 31299:25, 31306:20 pushing [1] - 31348:20 put [57] - 31144:14, 31149:14, 31149:22, 31150:23, 31151:1, 31151:2, 31151:11, 31151:25, 31152:3, 31152:17, 31153:9, 31153:11, 31154:18, 31154:20, 31155:12, 31155:20, 31157:3, 31159:6, 31161:1, 31161:18, 31187:21, 31193:20, 31194:5, 31199:21, 31205:14, 31206:5, 31206:11, 31216:16, 31239:17, 31247:9, 31252:23, 31281:21, 31294:22, 31294:25, 31296:1, 31306:24, 31307:23, 31307:24, 31308:17, 31308:18, 31308:19, 31310:7, 31313:16, 31314:10, 31316:10, 31316:11, 31326:25, 31339:17, 31350:24, 31352:25, 31359:2, 31362:24, 31362:25,</p>	<p>31364:4, 31364:5, 31365:18, 31368:21 puts [2] - 31317:13, 31366:15 putting [12] - 31151:21, 31151:23, 31152:1, 31192:24, 31241:2, 31295:24, 31304:13, 31308:20, 31310:6, 31318:20, 31322:3, 31353:19</p> <p style="text-align: center;">Q</p> <p>Qb [1] - 31141:8 Qc [5] - 31142:2, 31142:6, 31142:8, 31142:11, 31142:12 quantity [1] - 31325:22 quarter [1] - 31214:10 Queen's [4] - 31370:1, 31370:3, 31370:14, 31370:18 quest [1] - 31211:13 questionable [1] - 31175:10 questioned [4] - 31226:21, 31241:3, 31350:1, 31359:23 questioning [1] - 31360:1 questions [14] - 31201:19, 31203:14, 31224:11, 31260:8, 31263:22, 31297:24, 31297:25, 31298:9, 31301:9, 31301:22, 31316:14, 31322:23, 31340:2 quickly [2] - 31257:11, 31326:22 quite [9] - 31204:5, 31228:21, 31248:2, 31261:21, 31291:14, 31361:6, 31362:16, 31363:6, 31367:3 quote [2] - 31237:9, 31317:25 quotes [1] - 31252:8 quoting [1] - 31225:12</p> <p style="text-align: center;">R</p> <p>radically [1] - 31208:4 radio [2] - 31196:24, 31197:7 raise [3] - 31201:3, 31278:16, 31347:9</p>	<p>raised [2] - 31152:18, 31340:1 Ralph [4] - 31198:9, 31200:15, 31201:25, 31202:12 rape [5] - 31168:13, 31187:16, 31219:8, 31232:10, 31239:12 raped [4] - 31151:4, 31187:13, 31215:6, 31217:1 rapes [14] - 31150:22, 31155:21, 31168:16, 31168:24, 31187:10, 31188:1, 31188:13, 31191:21, 31216:11, 31217:24, 31218:4, 31239:14, 31245:17, 31246:3 raping [1] - 31217:1 rapist [6] - 31151:3, 31187:1, 31198:22, 31199:5, 31201:21, 31207:17 rat [1] - 31219:18 rather [6] - 31186:9, 31186:12, 31196:18, 31270:10, 31305:18, 31323:18 rational [1] - 31349:22 Ray [3] - 31277:22, 31278:17, 31279:3 Rcmp [3] - 31142:10, 31184:25, 31311:12 re [16] - 31176:18, 31186:14, 31208:21, 31225:4, 31225:14, 31225:19, 31226:17, 31279:6, 31284:12, 31284:20, 31284:22, 31295:17, 31297:19, 31361:7, 31361:10, 31362:14 re-enacted [1] - 31361:7 re-enactment [2] - 31361:10, 31362:14 re-open [2] - 31208:21, 31284:12 re-opened [6] - 31176:18, 31225:4, 31225:14, 31225:19, 31226:17, 31297:19 re-opening [5] - 31186:14, 31279:6, 31284:20, 31284:22, 31295:17 reach [1] - 31203:8 reached [1] - 31202:13 react [1] - 31353:24</p>	<p>reaction [2] - 31273:21, 31335:15 read [16] - 31203:12, 31212:19, 31222:2, 31222:7, 31222:11, 31222:13, 31236:7, 31240:18, 31242:19, 31254:4, 31284:3, 31287:7, 31287:14, 31292:6, 31338:25, 31342:25 reading [3] - 31218:19, 31219:11, 31330:17 ready [6] - 31236:11, 31328:23, 31333:24, 31345:7, 31348:14, 31348:15 real [6] - 31156:19, 31166:17, 31239:22, 31253:21, 31285:6, 31304:14 reality [1] - 31363:10 realize [1] - 31309:7 realized [5] - 31172:10, 31242:11, 31329:19, 31330:19, 31351:25 Really [1] - 31266:8 really [62] - 31155:22, 31156:24, 31159:10, 31160:7, 31174:23, 31175:1, 31176:8, 31177:21, 31178:1, 31178:14, 31181:13, 31181:19, 31186:7, 31218:1, 31219:13, 31219:18, 31221:14, 31226:10, 31228:6, 31245:2, 31254:16, 31257:5, 31257:22, 31267:3, 31267:6, 31268:23, 31272:4, 31273:6, 31273:23, 31276:23, 31277:16, 31277:19, 31281:5, 31287:23, 31289:20, 31294:14, 31303:23, 31304:6, 31309:3, 31309:6, 31314:22, 31321:1, 31321:11, 31321:21, 31321:24, 31322:3, 31327:25, 31328:1, 31331:9, 31340:22, 31342:23, 31343:6, 31344:11, 31344:14, 31344:15, 31346:11, 31348:20, 31355:9, 31360:2, 31363:13, 31367:12, 31368:7 reason [12] - 31148:22,</p>
---	--	---	--	--



<p>31161:14, 31167:25, 31217:6, 31217:12, 31257:19, 31286:21, 31293:14, 31320:21, 31321:2, 31343:14, 31345:24</p> <p>reasonable [4] - 31200:16, 31200:21, 31201:2, 31201:4</p> <p>reasons [2] - 31189:6, 31287:3</p> <p>recalling [1] - 31252:25</p> <p>recantation [3] - 31152:20, 31339:6, 31341:20</p> <p>recanting [1] - 31353:20</p> <p>received [6] - 31145:17, 31172:11, 31228:14, 31260:15, 31325:22, 31325:24</p> <p>receiver [1] - 31147:14</p> <p>receiving [2] - 31183:23, 31208:9</p> <p>recent [1] - 31238:16</p> <p>recently [4] - 31183:18, 31211:20, 31222:1, 31248:9</p> <p>reception [1] - 31178:20</p> <p>recollection [44] - 31144:11, 31144:21, 31147:24, 31148:13, 31148:23, 31149:4, 31169:23, 31177:10, 31181:24, 31185:5, 31185:6, 31188:19, 31188:20, 31235:9, 31240:13, 31243:11, 31244:22, 31245:2, 31246:19, 31246:21, 31252:7, 31253:21, 31253:23, 31254:11, 31254:15, 31256:9, 31295:18, 31296:12, 31296:14, 31297:9, 31305:12, 31313:13, 31314:9, 31318:12, 31323:15, 31337:1, 31337:20, 31338:5, 31341:5, 31342:6, 31354:17, 31354:19, 31356:5</p> <p>reconsider [1] - 31156:12</p> <p>Reconvened [4] - 31144:2, 31224:9, 31275:12, 31326:5</p> <p>record [10] - 31150:18, 31159:23, 31165:8,</p>	<p>31169:25, 31197:13, 31197:25, 31224:19, 31251:3, 31258:25, 31324:14</p> <p>recorder [1] - 31258:4</p> <p>records [3] - 31242:25, 31251:21, 31254:14</p> <p>recovering [1] - 31147:12</p> <p>redacted [1] - 31287:12</p> <p>reenacted [2] - 31366:6, 31366:14</p> <p>reenactment [1] - 31222:20</p> <p>refer [1] - 31365:5</p> <p>Reference [1] - 31318:4</p> <p>reference [40] - 31163:24, 31236:6, 31236:17, 31239:3, 31262:5, 31264:11, 31265:1, 31268:6, 31293:3, 31295:24, 31296:20, 31296:24, 31297:5, 31297:6, 31297:22, 31298:10, 31298:16, 31298:19, 31300:18, 31301:8, 31302:19, 31305:23, 31306:15, 31307:9, 31317:14, 31317:24, 31318:14, 31319:5, 31319:22, 31322:11, 31323:23, 31324:6, 31324:16, 31326:16, 31330:1, 31330:6, 31342:14, 31344:7, 31346:24, 31353:4</p> <p>referral [1] - 31210:25</p> <p>referred [1] - 31172:13</p> <p>referring [8] - 31153:20, 31159:18, 31169:6, 31188:12, 31225:4, 31289:9, 31311:12, 31365:5</p> <p>reflects [1] - 31258:25</p> <p>refocus [1] - 31258:3</p> <p>regarding [2] - 31250:18, 31254:19</p> <p>regardless [1] - 31248:6</p> <p>regards [1] - 31306:3</p> <p>Regina [4] - 31145:12, 31146:18, 31146:21, 31146:23</p> <p>registered [1] - 31145:15</p> <p>regular [1] - 31327:17</p> <p>regularly [1] - 31270:8</p> <p>reinforced [2] - 31172:14, 31172:15</p>	<p>reject [1] - 31155:24</p> <p>rejected [1] - 31156:23</p> <p>rejecting [2] - 31158:10, 31339:4</p> <p>rejection [3] - 31153:1, 31186:9, 31186:12</p> <p>relate [1] - 31203:6</p> <p>related [6] - 31183:15, 31235:5, 31238:7, 31260:18, 31284:15, 31349:13</p> <p>relates [8] - 31144:11, 31250:20, 31268:16, 31275:17, 31301:20, 31334:4, 31335:5, 31335:16</p> <p>relating [3] - 31259:2, 31279:5, 31325:18</p> <p>relation [1] - 31198:22</p> <p>relationship [5] - 31183:5, 31279:20, 31284:23, 31284:25, 31291:16</p> <p>Relax [1] - 31146:22</p> <p>relaxed [1] - 31305:8</p> <p>released [2] - 31182:24, 31361:14</p> <p>relevant [2] - 31321:25, 31324:13</p> <p>reliable [1] - 31350:11</p> <p>relied [1] - 31265:2</p> <p>relief [1] - 31150:8</p> <p>relief' [1] - 31235:9</p> <p>religious [1] - 31212:17</p> <p>rely [2] - 31308:9, 31317:4</p> <p>relying [2] - 31349:15, 31349:25</p> <p>remarks [1] - 31324:18</p> <p>remedy [8] - 31157:5, 31264:12, 31264:18, 31299:4, 31300:8, 31302:5, 31302:17, 31359:17</p> <p>remember [67] - 31144:24, 31148:2, 31148:16, 31155:4, 31158:9, 31158:11, 31158:19, 31158:21, 31174:6, 31184:12, 31184:13, 31185:7, 31189:3, 31189:17, 31200:24, 31225:20, 31236:20, 31241:17, 31244:23, 31245:20, 31246:5, 31248:7, 31248:11, 31250:25, 31251:2, 31253:19, 31254:18, 31254:20, 31257:12, 31261:1,</p>	<p>31272:4, 31276:1, 31279:11, 31279:12, 31286:4, 31296:4, 31296:22, 31297:7, 31297:13, 31303:25, 31313:20, 31317:23, 31320:25, 31321:7, 31324:24, 31326:22, 31330:16, 31338:7, 31341:17, 31341:23, 31344:13, 31344:23, 31347:12, 31348:1, 31348:4, 31350:3, 31351:17, 31356:10, 31356:22, 31357:7, 31357:8, 31362:18, 31367:3, 31367:7, 31368:7</p> <p>remembered [2] - 31214:6, 31350:6</p> <p>remembering [1] - 31367:9</p> <p>remove [2] - 31300:11, 31319:12</p> <p>removed [1] - 31299:15</p> <p>repeat [2] - 31185:15, 31185:18</p> <p>repeating [1] - 31255:4</p> <p>repetition [1] - 31263:6</p> <p>replace [1] - 31296:8</p> <p>replaced [1] - 31293:7</p> <p>reply [1] - 31183:24</p> <p>report [69] - 31149:12, 31180:10, 31181:4, 31182:17, 31182:22, 31182:25, 31183:7, 31184:1, 31186:23, 31186:24, 31187:18, 31188:13, 31189:8, 31189:14, 31189:25, 31190:8, 31191:3, 31191:5, 31191:7, 31191:11, 31191:20, 31193:4, 31193:7, 31193:10, 31194:22, 31203:13, 31204:4, 31206:21, 31208:18, 31222:10, 31234:23, 31241:13, 31247:14, 31255:3, 31255:14, 31255:15, 31255:19, 31255:22, 31266:2, 31268:19, 31270:5, 31270:13, 31273:18, 31273:21, 31273:23, 31274:1, 31274:5, 31274:23, 31274:24, 31303:14, 31304:15, 31304:17, 31304:20, 31304:21, 31305:5,</p>	<p>31305:16, 31306:17, 31310:8, 31310:9, 31310:10, 31310:13, 31313:6, 31320:13, 31349:8, 31349:14, 31349:19</p> <p>Report [1] - 31303:10</p> <p>report's [1] - 31206:23</p> <p>reported [4] - 31160:2, 31177:13, 31249:15, 31285:12</p> <p>Reporter [54] - 31143:5, 31143:8, 31143:11, 31197:22, 31198:1, 31198:5, 31198:11, 31199:4, 31199:8, 31199:25, 31201:5, 31202:3, 31202:19, 31203:11, 31203:22, 31204:4, 31205:7, 31205:13, 31205:16, 31206:18, 31207:6, 31207:14, 31207:24, 31208:8, 31208:18, 31210:1, 31210:2, 31210:10, 31210:20, 31211:1, 31211:10, 31212:10, 31213:1, 31213:23, 31214:20, 31215:16, 31215:19, 31216:9, 31217:4, 31217:10, 31217:13, 31218:9, 31218:14, 31219:19, 31220:23, 31221:13, 31221:25, 31222:4, 31222:10, 31222:16, 31223:20, 31224:1, 31370:14, 31370:18</p> <p>reporter [10] - 31246:10, 31270:23, 31271:9, 31272:21, 31273:4, 31280:11, 31283:6, 31286:3, 31286:5, 31286:12</p> <p>reporters [4] - 31182:3, 31182:5, 31257:6, 31260:8</p> <p>Reporters [2] - 31141:8, 31370:3</p> <p>Reporters [1] - 31370:1</p> <p>reporting [2] - 31187:17, 31344:17</p> <p>reports [15] - 31161:16, 31162:11, 31162:21, 31169:1, 31188:24, 31192:17, 31204:6, 31207:5, 31229:8, 31248:3, 31311:13, 31311:14, 31325:8,</p>
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31327:18, 31360:8 represent [1] - 31298:7 reputation [3] - 31208:23, 31225:18, 31226:15 reputations [5] - 31167:24, 31210:17, 31225:2, 31225:13, 31226:1 required [4] - 31307:19, 31312:13, 31317:3, 31317:5 requirements [1] - 31210:24 reschedule [1] - 31369:14 research [1] - 31265:13 resemblance [1] - 31207:18 respect [12] - 31144:10, 31185:8, 31243:14, 31255:11, 31259:6, 31305:25, 31310:24, 31311:7, 31315:18, 31318:9, 31319:13, 31351:2 respects [2] - 31339:5, 31353:15 respond [1] - 31211:2 response [1] - 31273:20 rest [2] - 31282:3, 31287:14 restating [1] - 31164:3 restrictions [3] - 31313:16, 31313:21, 31320:18 result [8] - 31220:6, 31248:20, 31258:21, 31299:13, 31300:19, 31327:1, 31327:7, 31331:9 resulted [1] - 31164:15 results [1] - 31265:12 Retired [1] - 31142:15 retired [2] - 31210:13, 31221:1 returned [1] - 31236:9 Rev [1] - 31232:17 reveal [1] - 31226:18 revelation [1] - 31352:17 Reverend [1] - 31176:14 review [1] - 31187:5 reviewed [3] - 31198:24, 31329:14, 31329:17 reviewing [1] - 31259:8 Rick [1] - 31146:7 right-hand [1] - 31239:9	rightly [1] - 31339:11 rightness [1] - 31205:11 ring [1] - 31275:23 River [1] - 31224:1 rob [2] - 31363:16, 31367:5 robbing [1] - 31357:7 Robert [1] - 31279:16 Roberts [18] - 31244:18, 31280:11, 31280:14, 31281:1, 31281:13, 31283:14, 31286:4, 31286:15, 31287:1, 31288:3, 31288:8, 31289:22, 31290:7, 31290:17, 31291:10, 31291:19, 31292:9, 31292:12 Rockwood [1] - 31258:19 role [8] - 31220:1, 31220:2, 31220:3, 31220:16, 31237:16, 31280:5, 31344:9, 31344:12 rolling [1] - 31260:25 Romanow [24] - 31167:10, 31280:20, 31281:3, 31282:21, 31283:13, 31283:16, 31284:8, 31284:18, 31285:14, 31287:6, 31288:9, 31288:21, 31289:9, 31289:15, 31289:23, 31290:10, 31290:16, 31291:9, 31291:11, 31292:2, 31292:10, 31292:25, 31296:15, 31296:17 Romanows [2] - 31284:23, 31293:7 Ron [17] - 31170:17, 31303:14, 31306:8, 31313:15, 31314:6, 31314:10, 31314:17, 31321:16, 31331:1, 31331:2, 31339:6, 31341:18, 31341:19, 31343:2, 31351:5, 31353:18 room [12] - 31145:15, 31156:2, 31184:21, 31222:25, 31223:12, 31223:21, 31223:25, 31324:25, 31352:9, 31353:10, 31356:6, 31361:7 Rossma [7] - 31177:9, 31178:3, 31182:8,	31268:17, 31273:18, 31274:19, 31303:13 route [3] - 31153:14, 31318:19, 31350:18 Roy [3] - 31280:19, 31283:12, 31292:10 Rpr [4] - 31141:9, 31370:2, 31370:16, 31370:17 rule [1] - 31302:19 ruling [3] - 31318:17, 31319:5, 31319:11 running [9] - 31186:1, 31205:16, 31280:20, 31280:21, 31282:21, 31296:15, 31296:16, 31306:23, 31327:11 rushed [1] - 31348:8 Rutherford [1] - 31264:4	31255:10, 31290:22, 31308:24, 31323:1, 31325:18 sat [1] - 31147:24 satisfies [1] - 31210:24 satisfy [2] - 31302:1, 31302:8 Saturday [4] - 31145:7, 31146:8, 31146:22, 31148:7 save [1] - 31156:3 saw [13] - 31147:25, 31171:7, 31212:19, 31240:18, 31242:5, 31242:12, 31246:9, 31270:24, 31292:25, 31329:17, 31360:17, 31368:12 scan [1] - 31155:9 scares [1] - 31345:22 scenarios [1] - 31148:6 scene [3] - 31200:7, 31210:12, 31368:12 scheduled [1] - 31369:13 scoop [2] - 31270:25, 31271:9 scrambling [1] - 31293:13 screen [1] - 31333:2 script [1] - 31329:6 Scroll [1] - 31291:12 scroll [6] - 31293:10, 31304:16, 31305:1, 31312:23, 31345:10, 31362:3 seamless [2] - 31215:13, 31227:22 search [1] - 31273:10 second [23] - 31149:7, 31151:11, 31152:2, 31152:23, 31154:6, 31154:13, 31154:17, 31155:16, 31155:18, 31156:4, 31156:22, 31160:18, 31160:24, 31161:10, 31174:13, 31175:23, 31180:16, 31189:13, 31207:4, 31220:23, 31235:3, 31247:2, 31280:23 secondly [4] - 31157:16, 31297:25, 31352:11, 31353:18 secretor [1] - 31152:19 Section [6] - 31153:12, 31153:13, 31301:20, 31302:5, 31317:17, 31318:4 section [1] - 31317:18	secure [1] - 31164:15 Security [1] - 31141:10 see [56] - 31148:22, 31149:2, 31151:8, 31158:12, 31158:22, 31158:23, 31159:12, 31161:17, 31162:11, 31162:20, 31163:18, 31178:6, 31179:22, 31179:23, 31179:24, 31180:1, 31180:25, 31182:22, 31199:23, 31210:23, 31212:23, 31213:21, 31214:17, 31214:19, 31215:8, 31215:20, 31218:19, 31219:15, 31219:16, 31219:25, 31225:3, 31225:14, 31225:18, 31226:17, 31228:11, 31255:18, 31256:22, 31258:16, 31258:23, 31259:18, 31276:21, 31286:19, 31290:1, 31305:7, 31306:20, 31306:22, 31315:9, 31321:24, 31327:5, 31328:22, 31332:23, 31333:2, 31338:3, 31367:15, 31368:6, 31369:9 seeing [5] - 31176:23, 31204:1, 31236:20, 31316:10, 31361:19 seek [2] - 31300:20, 31301:14 Seekers [1] - 31211:11 seeking [1] - 31268:8 segment [1] - 31209:10 semen [1] - 31183:2 send [6] - 31179:8, 31264:25, 31274:15, 31314:2, 31317:24, 31320:23 Send [1] - 31314:3 sending [3] - 31271:7, 31274:18, 31303:8 senior [1] - 31264:8 sense [15] - 31160:9, 31181:1, 31181:7, 31184:19, 31219:10, 31220:24, 31240:23, 31263:19, 31302:1, 31302:9, 31312:12, 31314:11, 31315:16, 31322:13, 31353:25 sent [14] - 31179:7, 31228:11, 31240:7, 31273:24, 31306:11, 31314:4, 31314:5,
S				
sakes [1] - 31278:9 Sandra [1] - 31141:4 sanitize [1] - 31237:15 Saskatchewan [30] - 31140:17, 31142:4, 31183:10, 31183:15, 31183:20, 31184:3, 31208:19, 31211:16, 31243:6, 31280:19, 31291:2, 31306:1, 31307:12, 31310:23, 31312:7, 31316:18, 31317:1, 31324:10, 31325:6, 31344:2, 31344:4, 31344:21, 31345:2, 31345:3, 31345:8, 31346:8, 31346:16, 31347:2, 31370:4 Saskatoon [39] - 31140:17, 31142:7, 31165:10, 31165:12, 31167:11, 31186:25, 31188:9, 31188:22, 31198:23, 31201:20, 31201:22, 31202:8, 31207:1, 31207:9, 31207:12, 31210:2, 31215:24, 31216:16, 31219:1, 31229:11, 31232:8, 31232:15, 31233:19, 31236:14, 31238:20, 31239:6, 31239:14, 31242:24, 31245:13, 31245:17, 31246:3, 31250:5, 31250:17, 31251:25,				



<p>31314:6, 31314:7, 31314:13, 31314:14, 31314:18, 31329:20, 31339:14 sentence [1] - 31239:12 separate [2] - 31251:6, 31255:17 separated [1] - 31332:16 september [1] - 31276:12 September [10] - 31256:14, 31262:2, 31262:4, 31262:13, 31263:24, 31264:1, 31265:11, 31265:19, 31267:16 Serge [3] - 31142:6, 31280:21, 31288:15 serial [4] - 31187:1, 31198:22, 31199:4, 31201:21 serious [1] - 31288:13 seriously [3] - 31216:23, 31263:3, 31263:21 serve [1] - 31220:18 service [1] - 31255:4 Service [1] - 31142:7 serving [1] - 31239:11 session [1] - 31267:3 set [11] - 31173:8, 31230:19, 31233:14, 31258:14, 31282:2, 31287:24, 31307:8, 31319:23, 31326:18, 31347:11, 31359:1 setting [2] - 31305:8, 31306:15 seven [7] - 31187:10, 31187:17, 31187:24, 31188:1, 31188:7, 31188:13, 31214:11 several [2] - 31213:4, 31236:13 sex [1] - 31188:22 sexual [4] - 31187:11, 31188:2, 31215:2, 31216:2 sexually [1] - 31216:1 shape [1] - 31258:18 share [2] - 31231:14, 31286:11 shared [2] - 31234:18, 31240:1 sharing [2] - 31286:2, 31292:9 shed [6] - 31321:11, 31321:15, 31321:21, 31321:22, 31329:11,</p>	<p>31346:4 sheet [1] - 31191:17 shocked [1] - 31338:1 shoddy [1] - 31207:9 short [2] - 31209:15, 31325:2 shorthand [1] - 31370:5 shortly [1] - 31179:14 Shorty [1] - 31309:12 show [12] - 31144:25, 31145:2, 31148:12, 31197:11, 31197:12, 31197:13, 31197:14, 31238:4, 31247:20, 31263:23, 31330:8, 31363:2 showed [7] - 31198:16, 31198:21, 31224:13, 31229:7, 31247:14, 31265:7, 31331:10 showing [1] - 31169:1 Showing [1] - 31185:24 shown [1] - 31193:10 shows [4] - 31159:23, 31206:15, 31207:17, 31294:4 side [9] - 31154:20, 31200:1, 31223:13, 31239:9, 31266:7, 31266:15, 31289:20, 31296:8, 31344:21 sides [1] - 31177:21 signed [1] - 31260:15 significance [3] - 31329:18, 31329:20, 31330:19 significant [10] - 31154:8, 31214:16, 31234:25, 31297:6, 31325:10, 31325:13, 31325:17, 31326:9, 31350:20, 31351:4 significantly [1] - 31154:3 silence [1] - 31260:11 similar [11] - 31150:2, 31151:5, 31151:8, 31152:6, 31184:19, 31199:20, 31200:3, 31200:10, 31205:24, 31342:4 similarities [8] - 31150:22, 31152:1, 31190:11, 31191:21, 31192:20, 31193:14, 31193:23, 31216:24 similarity [2] - 31149:15, 31152:17 similarly [1] - 31312:6 simple [1] - 31262:24</p>	<p>simply [10] - 31155:24, 31170:22, 31214:11, 31227:25, 31234:4, 31247:17, 31248:19, 31300:24, 31318:23, 31325:10 sincere [1] - 31258:15 single [2] - 31333:8, 31333:23 sinister [4] - 31282:18, 31282:23, 31283:5, 31285:13 sit [4] - 31147:25, 31157:22, 31206:10, 31333:7 sitting [2] - 31140:15, 31367:18 situation [7] - 31151:4, 31158:15, 31173:15, 31201:5, 31217:21, 31316:4, 31363:14 situations [1] - 31367:4 skeptical [1] - 31216:10 skill [1] - 31370:6 slack [1] - 31365:20 slightest [1] - 31358:25 sloppy [1] - 31217:19 small [1] - 31368:7 smell [1] - 31219:18 smelled [1] - 31168:18 smokes [1] - 31269:21 smoking [1] - 31223:24 snowed [1] - 31324:23 Society [2] - 31154:24, 31266:3 solely [1] - 31313:5 solicitor [1] - 31259:4 solid [1] - 31237:24 solved [1] - 31172:5 someone [25] - 31145:1, 31148:15, 31165:24, 31168:8, 31174:24, 31200:2, 31200:13, 31230:7, 31230:20, 31231:10, 31233:15, 31239:17, 31241:20, 31247:24, 31248:6, 31253:17, 31253:20, 31259:22, 31274:14, 31274:19, 31279:16, 31281:20, 31300:25, 31344:20, 31363:17 Someone [1] - 31276:2 sometime [4] - 31163:21, 31249:19, 31268:20, 31298:15 Sometime [1] - 31249:12 sometimes [1] -</p>	<p>31162:14 someway [1] - 31362:20 somewhat [1] - 31193:5 somewhere [4] - 31236:24, 31279:19, 31300:23, 31351:18 son [40] - 31145:14, 31150:8, 31150:19, 31151:1, 31157:17, 31161:2, 31163:9, 31164:5, 31164:11, 31173:5, 31174:15, 31179:18, 31182:10, 31199:12, 31203:13, 31204:14, 31211:13, 31212:19, 31229:21, 31238:18, 31277:17, 31279:3, 31280:6, 31298:7, 31299:13, 31299:19, 31305:24, 31307:10, 31308:4, 31314:25, 31318:13, 31323:10, 31344:15, 31344:18, 31347:11, 31348:22, 31350:1, 31359:18, 31360:13, 31365:25 son's [9] - 31146:24, 31176:17, 31177:19, 31279:5, 31294:16, 31316:3, 31348:13, 31350:20, 31351:3 soon [2] - 31283:8, 31287:25 sooner [4] - 31332:11, 31332:12, 31332:14, 31332:15 sorry [24] - 31147:23, 31170:6, 31171:10, 31187:20, 31190:19, 31194:3, 31213:8, 31224:19, 31224:20, 31230:1, 31236:3, 31240:7, 31265:5, 31266:21, 31272:7, 31272:17, 31292:6, 31296:23, 31302:4, 31312:24, 31320:4, 31327:4, 31332:17, 31355:2 Sorry [1] - 31171:10 sort [21] - 31156:16, 31161:24, 31163:2, 31163:23, 31163:25, 31174:10, 31174:20, 31181:4, 31200:6, 31201:8, 31227:19, 31227:22, 31259:24, 31260:11, 31260:24,</p>	<p>31285:4, 31285:5, 31286:24, 31289:25, 31299:3, 31300:4 sorting [1] - 31327:20 sorts [1] - 31286:8 sound [1] - 31324:20 sounds [4] - 31149:1, 31216:11, 31339:1, 31346:6 source [11] - 31227:13, 31227:14, 31243:7, 31248:6, 31253:15, 31253:25, 31254:10, 31261:11, 31276:17, 31276:23, 31277:4 sources [5] - 31251:18, 31252:16, 31252:17, 31253:7, 31255:7 Speaker [2] - 31276:14, 31277:1 speaking [5] - 31189:25, 31227:20, 31233:17, 31257:25, 31258:20 specifically [2] - 31254:19, 31325:5 specified [1] - 31229:23 spending [1] - 31221:22 spent [4] - 31144:8, 31157:3, 31207:3, 31213:4 split [1] - 31266:14 spoken [1] - 31223:13 spontaneous [1] - 31287:9 spot [3] - 31224:5, 31275:10, 31326:2 spotlight [1] - 31154:19 spouse [1] - 31335:7 spurned [1] - 31197:4 spurns [1] - 31219:3 squeaky [1] - 31346:3 stabbed [1] - 31223:3 stabbing [1] - 31219:7 stack [1] - 31263:16 Staff [2] - 31141:1, 31141:6 stand [4] - 31183:16, 31239:24, 31316:8, 31367:8 standing [3] - 31147:13, 31214:9, 31274:20 Starphoenix [3] - 31229:9, 31270:23, 31276:15 start [8] - 31154:25, 31162:15, 31198:11, 31201:18, 31224:23,</p>
---	--	--	--	--



<p>31243:11, 31332:13, 31364:13</p> <p>started [11] - 31158:23, 31168:13, 31173:12, 31176:2, 31260:24, 31264:7, 31273:6, 31282:7, 31324:17, 31324:21, 31357:20</p> <p>starting [4] - 31174:25, 31177:21, 31326:18, 31327:2</p> <p>starts [1] - 31219:6</p> <p>state [3] - 31193:2, 31205:10, 31354:1</p> <p>Statement [2] - 31269:15, 31269:17</p> <p>statement [19] - 31191:24, 31240:9, 31251:5, 31255:22, 31257:23, 31305:15, 31335:17, 31335:18, 31335:20, 31337:5, 31337:10, 31337:12, 31338:11, 31338:16, 31338:25, 31339:10, 31339:13, 31339:15, 31340:6</p> <p>statements [15] - 31184:1, 31331:3, 31331:7, 31331:11, 31336:21, 31336:25, 31337:15, 31337:23, 31338:2, 31338:23, 31339:5, 31339:17, 31339:21, 31339:25, 31368:17</p> <p>States [5] - 31202:20, 31202:21, 31203:7, 31213:11, 31236:10</p> <p>station [1] - 31196:23</p> <p>stayed [2] - 31146:2, 31213:11</p> <p>steadfastly [1] - 31211:17</p> <p>step [9] - 31161:9, 31166:2, 31213:9, 31213:20, 31214:18, 31233:9, 31240:21, 31243:12, 31259:19</p> <p>steps [8] - 31164:14, 31166:6, 31166:18, 31172:24, 31174:1, 31175:14, 31230:6, 31259:18</p> <p>stevelly [1] - 31142:4</p> <p>still [5] - 31145:13, 31220:12, 31231:16, 31267:22, 31267:25</p> <p>stink [1] - 31345:9</p> <p>stone [1] - 31211:13</p>	<p>Stony [1] - 31208:11</p> <p>stood [1] - 31174:7</p> <p>stop [5] - 31212:23, 31214:9, 31250:8, 31270:21, 31357:6</p> <p>stopped [1] - 31285:5</p> <p>stories [3] - 31160:5, 31186:20, 31235:5</p> <p>story [22] - 31160:1, 31160:7, 31160:11, 31160:17, 31177:14, 31228:22, 31229:10, 31232:7, 31235:6, 31240:19, 31247:7, 31257:3, 31271:3, 31273:8, 31277:5, 31281:2, 31284:3, 31286:10, 31286:16, 31288:2, 31290:20, 31309:15</p> <p>strange [1] - 31285:23</p> <p>strategizing [2] - 31158:8, 31162:17</p> <p>strategy [8] - 31156:13, 31156:14, 31157:6, 31160:22, 31206:8, 31237:21, 31345:14, 31346:24</p> <p>stress [1] - 31310:11</p> <p>stretching [1] - 31277:19</p> <p>striking [1] - 31207:18</p> <p>strongly [2] - 31174:23, 31233:18</p> <p>study [2] - 31179:3, 31180:4</p> <p>stuff [13] - 31235:12, 31263:2, 31274:18, 31278:2, 31309:12, 31310:7, 31324:23, 31325:11, 31325:25, 31329:23, 31332:11, 31332:13, 31332:15</p> <p>stunned [1] - 31222:19</p> <p>stupid [1] - 31287:23</p> <p>sub [1] - 31318:14</p> <p>subject [2] - 31246:17, 31263:19</p> <p>submit [1] - 31150:20</p> <p>subpoenaed [1] - 31358:7</p> <p>subsection [1] - 31317:19</p> <p>subsequent [3] - 31172:10, 31172:11, 31248:3</p> <p>subsequently [7] - 31168:15, 31176:23, 31248:14, 31254:7, 31260:25, 31329:21,</p>	<p>31352:23</p> <p>substance [1] - 31339:12</p> <p>sudden [1] - 31282:6</p> <p>suddenly [2] - 31309:14, 31329:19</p> <p>suffering [1] - 31348:25</p> <p>suggest [1] - 31245:10</p> <p>suggested [3] - 31192:18, 31238:19, 31248:25</p> <p>suggestion [2] - 31192:13, 31309:20</p> <p>suggests [1] - 31263:24</p> <p>summarize [2] - 31163:18, 31299:3</p> <p>summary [7] - 31259:10, 31259:11, 31330:23, 31331:6, 31331:9, 31331:10, 31331:20</p> <p>summer [1] - 31237:3</p> <p>Sun [2] - 31178:17, 31239:3</p> <p>Support [3] - 31141:6, 31155:1, 31278:10</p> <p>support [11] - 31155:13, 31176:17, 31176:20, 31177:1, 31189:4, 31189:21, 31238:17, 31241:1, 31257:10, 31257:21, 31294:4</p> <p>supporting [1] - 31190:6</p> <p>supposed [10] - 31144:15, 31144:23, 31185:1, 31185:9, 31307:18, 31307:22, 31320:15, 31320:22, 31321:3, 31321:5</p> <p>Supreme [38] - 31163:24, 31221:2, 31221:15, 31221:17, 31221:18, 31222:8, 31306:2, 31307:9, 31315:25, 31316:6, 31316:16, 31316:17, 31319:18, 31322:24, 31323:14, 31323:17, 31326:17, 31328:3, 31328:23, 31330:6, 31331:15, 31331:22, 31331:25, 31333:24, 31342:13, 31343:3, 31344:6, 31346:10, 31346:24, 31347:10, 31348:12, 31349:7, 31350:4, 31351:3, 31353:4, 31355:20,</p>	<p>31357:13</p> <p>surely [2] - 31200:4, 31217:14</p> <p>surface [1] - 31286:22</p> <p>surfaced [2] - 31259:24, 31279:14</p> <p>surprise [1] - 31322:13</p> <p>surprised [8] - 31180:14, 31181:6, 31193:5, 31340:6, 31354:20, 31355:4, 31355:8, 31356:2</p> <p>surrounding [2] - 31161:19, 31211:5</p> <p>Susan [3] - 31158:12, 31360:7, 31364:14</p> <p>suspect [3] - 31145:18, 31150:15, 31283:17</p> <p>suspected [2] - 31229:14, 31283:9</p> <p>suspicion [2] - 31279:2, 31284:7</p> <p>suspensions [5] - 31225:11, 31286:11, 31287:2, 31292:10, 31292:13</p> <p>suspicious [9] - 31147:21, 31148:24, 31245:21, 31247:5, 31250:4, 31279:8, 31283:15, 31283:18, 31306:22</p> <p>sustained [1] - 31234:11</p> <p>sway [1] - 31178:2</p> <p>sweeping [1] - 31285:19</p> <p>sweet [1] - 31223:7</p> <p>swimming [1] - 31278:3</p> <p>swimmingly [1] - 31281:25</p> <p>swore [1] - 31352:4</p> <p>sworn [1] - 31365:8</p> <p>system [6] - 31242:25, 31243:8, 31260:19, 31294:24, 31315:10, 31344:19</p> <p>systemic [1] - 31359:15</p>	<p>31193:13, 31235:15, 31279:20, 31297:1, 31317:22</p> <p>Tallis [33] - 31142:14, 31225:15, 31351:5, 31352:12, 31352:13, 31352:18, 31353:15, 31354:9, 31354:22, 31355:5, 31356:2, 31356:16, 31357:9, 31357:12, 31357:24, 31358:1, 31358:11, 31358:17, 31358:22, 31360:9, 31360:18, 31361:1, 31361:12, 31361:21, 31362:9, 31363:23, 31365:12, 31365:17, 31366:1, 31366:2, 31366:9, 31366:13</p> <p>Tallis [2] - 31354:17, 31365:9</p> <p>Talliis [1] - 31366:19</p> <p>tampered [1] - 31243:7</p> <p>tangent [1] - 31306:23</p> <p>tape [17] - 31209:8, 31224:22, 31258:4, 31333:8, 31333:24, 31334:1, 31340:19, 31341:14, 31341:21, 31341:23, 31341:24, 31342:3, 31342:7, 31342:14, 31343:1, 31343:11</p> <p>taped [1] - 31341:21</p> <p>tapes [10] - 31246:9, 31270:24, 31331:24, 31332:20, 31332:22, 31333:10, 31333:12, 31333:14, 31335:1, 31358:15</p> <p>taping [1] - 31341:24</p> <p>tarred [1] - 31346:20</p> <p>Tdr [1] - 31142:5</p> <p>team [1] - 31220:10</p> <p>Technician [1] - 31141:11</p> <p>teenager [2] - 31232:9, 31233:10</p> <p>telephone [1] - 31237:11</p> <p>telephoned [1] - 31213:18</p> <p>television [4] - 31196:1, 31196:23, 31197:7, 31229:7</p> <p>ten [1] - 31197:25</p> <p>ten-minute [1] - 31197:25</p> <p>term [1] - 31230:8</p>
T				
<p>table [1] - 31157:23</p> <p>taint [2] - 31336:12, 31337:12</p> <p>tainted [4] - 31336:9, 31336:11, 31336:13, 31337:11</p> <p>tainting [1] - 31339:12</p> <p>talks [6] - 31187:24,</p>				



<p>terrible [1] - 31167:3</p> <p>terrific [1] - 31273:23</p> <p>terror [1] - 31239:19</p> <p>testified [4] - 31169:15, 31272:4, 31324:19, 31359:9</p> <p>testifies [2] - 31352:19, 31360:10</p> <p>testify [9] - 31269:6, 31269:8, 31270:17, 31316:9, 31352:1, 31358:6, 31358:10, 31359:18, 31361:17</p> <p>testifying [3] - 31269:7, 31347:25, 31350:4</p> <p>testimony [7] - 31219:14, 31223:7, 31223:9, 31223:17, 31232:25, 31316:13, 31329:22</p> <p>Testimony [1] - 31140:14</p> <p>That'll [1] - 31271:19</p> <p>Thatcher [1] - 31287:20</p> <p>Thatcher's [2] - 31283:10, 31287:22</p> <p>that's [1] - 31277:23</p> <p>theme [2] - 31157:10, 31159:2</p> <p>themselves [1] - 31151:8</p> <p>themselves [4] - 31217:19, 31234:3, 31324:3, 31346:3</p> <p>then-prime [1] - 31256:16</p> <p>theories [1] - 31212:2</p> <p>theory [5] - 31218:22, 31218:24, 31330:9, 31330:24, 31331:18</p> <p>there'd [2] - 31253:14, 31287:19</p> <p>thereabouts [2] - 31280:18, 31324:19</p> <p>therefore [6] - 31166:18, 31316:22, 31316:25, 31344:20, 31350:10, 31368:23</p> <p>there's [1] - 31276:23</p> <p>they've [3] - 31203:6, 31248:9, 31354:12</p> <p>thin [3] - 31232:17, 31233:21, 31233:23</p> <p>thinking [30] - 31156:1, 31162:6, 31162:7, 31162:8, 31163:19, 31163:23, 31164:20, 31166:20, 31166:21, 31168:7, 31170:24, 31172:7, 31185:7, 31234:6, 31234:16,</p>	<p>31250:7, 31271:13, 31271:21, 31278:23, 31284:18, 31308:15, 31311:15, 31311:17, 31312:9, 31315:3, 31315:22, 31335:15, 31346:5, 31360:2, 31367:18</p> <p>third [1] - 31299:18</p> <p>thirdly [1] - 31299:24</p> <p>thoroughly [1] - 31210:23</p> <p>thoughts [2] - 31225:20, 31311:1</p> <p>three [12] - 31188:5, 31188:14, 31214:8, 31215:24, 31215:25, 31216:3, 31216:21, 31217:1, 31283:22, 31284:2, 31319:11, 31352:24</p> <p>threw [2] - 31358:22, 31360:24</p> <p>throw [4] - 31345:16, 31355:17, 31355:21, 31361:22</p> <p>throwing [2] - 31199:10, 31352:6</p> <p>thrown [5] - 31203:18, 31203:20, 31237:25, 31366:8, 31366:10</p> <p>thrust [1] - 31192:14</p> <p>Thursday [1] - 31140:21</p> <p>thwart [2] - 31284:12, 31284:20</p> <p>thwarting [1] - 31284:22</p> <p>tie [1] - 31311:21</p> <p>tied [1] - 31237:25</p> <p>Tim [1] - 31244:18</p> <p>timing [3] - 31207:22, 31265:15, 31345:5</p> <p>Today [1] - 31211:10</p> <p>today [6] - 31212:2, 31214:22, 31260:7, 31269:7, 31303:5, 31332:14</p> <p>Toews [1] - 31142:13</p> <p>Together [1] - 31288:5</p> <p>together [9] - 31149:15, 31150:23, 31152:1, 31157:3, 31176:21, 31239:18, 31294:23, 31295:25, 31296:2</p> <p>Tom [2] - 31250:16, 31277:4</p> <p>tomatoes [1] - 31258:10</p> <p>tomorrow [3] - 31276:19, 31369:15,</p>	<p>31369:16</p> <p>Tony [13] - 31281:3, 31281:6, 31281:10, 31281:15, 31281:19, 31281:23, 31282:6, 31282:22, 31283:7, 31283:13, 31284:9, 31284:21, 31292:10</p> <p>took [17] - 31155:11, 31163:15, 31164:14, 31166:6, 31174:1, 31211:1, 31214:16, 31254:20, 31259:17, 31282:8, 31327:14, 31337:23, 31338:11, 31339:5, 31339:17, 31339:21, 31358:4</p> <p>top [2] - 31270:20, 31332:5</p> <p>topic [1] - 31206:2</p> <p>Toronto [9] - 31194:6, 31195:6, 31195:16, 31205:25, 31209:4, 31209:21, 31209:23, 31212:2, 31255:9</p> <p>totally [5] - 31227:5, 31241:22, 31323:8, 31324:22, 31329:9</p> <p>touch [4] - 31181:14, 31213:12, 31240:25, 31276:2</p> <p>touched [2] - 31149:8, 31149:11</p> <p>touted [1] - 31178:7</p> <p>towards [1] - 31264:11</p> <p>town [3] - 31218:4, 31218:5, 31257:8</p> <p>tracks [2] - 31188:22, 31202:15</p> <p>trail [1] - 31236:12</p> <p>Transcript [2] - 31140:12, 31144:1</p> <p>transcript [12] - 31303:2, 31303:17, 31303:21, 31310:16, 31313:14, 31317:23, 31320:7, 31320:19, 31320:22, 31321:10, 31322:7, 31326:16</p> <p>transcription [1] - 31370:5</p> <p>transcripts [7] - 31155:5, 31155:8, 31155:11, 31218:19, 31229:2, 31334:21, 31349:4</p> <p>transferred [3] - 31258:19, 31258:21, 31261:1</p> <p>traumatic [1] -</p>	<p>31147:11</p> <p>travelled [1] - 31184:11</p> <p>travelling [1] - 31238:16</p> <p>tread [1] - 31157:13</p> <p>treated [2] - 31210:21, 31263:20</p> <p>treating [1] - 31263:2</p> <p>treatment [1] - 31208:10</p> <p>trial [19] - 31165:1, 31170:16, 31201:14, 31204:9, 31204:11, 31204:18, 31207:4, 31210:24, 31217:22, 31221:6, 31223:14, 31227:1, 31298:24, 31299:1, 31299:6, 31300:19, 31309:21, 31319:15, 31355:14</p> <p>tried [6] - 31151:13, 31233:5, 31255:18, 31259:16, 31363:18, 31365:21</p> <p>trip [4] - 31184:13, 31199:15, 31303:25, 31356:20</p> <p>trouble [4] - 31223:6, 31263:10, 31288:13, 31348:25</p> <p>true [7] - 31233:7, 31233:22, 31294:23, 31304:9, 31350:16, 31368:20, 31370:5</p> <p>trust [9] - 31265:23, 31291:4, 31306:20, 31307:2, 31308:11, 31315:12, 31345:14, 31345:19, 31347:1</p> <p>trusted [1] - 31346:8</p> <p>truth [12] - 31205:3, 31205:8, 31205:9, 31220:5, 31220:9, 31331:4, 31331:12, 31363:9, 31363:13, 31367:2, 31367:3, 31367:13</p> <p>truthful [1] - 31167:6</p> <p>Truthfully [1] - 31149:24</p> <p>try [8] - 31154:12, 31163:18, 31197:14, 31220:19, 31311:21, 31320:1, 31332:21, 31344:22</p> <p>trying [43] - 31149:3, 31157:13, 31159:7, 31161:24, 31162:6, 31162:13, 31170:23, 31176:17, 31181:1, 31181:7, 31184:20,</p>	<p>31186:1, 31189:19, 31232:3, 31234:4, 31237:15, 31244:9, 31248:3, 31248:23, 31250:8, 31257:22, 31258:18, 31267:5, 31270:25, 31271:1, 31271:4, 31276:16, 31277:3, 31283:17, 31283:24, 31294:25, 31296:7, 31296:9, 31310:4, 31318:21, 31322:5, 31325:1, 31341:2, 31342:22, 31342:23, 31342:24, 31359:1, 31364:18</p> <p>Tuesday [1] - 31249:13</p> <p>tumbling [1] - 31242:14</p> <p>turmoil [1] - 31349:21</p> <p>turn [5] - 31149:7, 31182:15, 31186:16, 31196:11, 31240:3</p> <p>turn-down [1] - 31196:11</p> <p>turned [6] - 31155:6, 31158:18, 31204:11, 31208:1, 31211:20, 31242:13</p> <p>turning [1] - 31240:22</p> <p>turns [1] - 31281:11</p> <p>Tv [1] - 31212:19</p> <p>twig [1] - 31214:1</p> <p>twiggled [1] - 31214:2</p> <p>twisted [3] - 31315:13, 31315:15, 31315:21</p> <p>twisting [1] - 31316:20</p> <p>two [34] - 31147:4, 31148:5, 31172:1, 31188:8, 31192:4, 31205:2, 31211:2, 31215:19, 31215:23, 31216:4, 31219:1, 31222:20, 31239:17, 31241:18, 31242:19, 31247:22, 31266:12, 31274:21, 31283:21, 31284:2, 31284:10, 31294:22, 31295:24, 31297:24, 31299:12, 31300:11, 31301:24, 31302:7, 31319:8, 31337:22, 31352:1</p> <p>Two [1] - 31352:9</p> <p>type [14] - 31155:10, 31155:19, 31159:15, 31180:17, 31235:17, 31264:25, 31268:5, 31271:22, 31297:21, 31299:14, 31317:14, 31318:14, 31323:23,</p>
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31323:25 typed [1] - 31155:12 types [2] - 31265:1, 31297:25 typing [1] - 31155:4	unturned [1] - 31211:13 up [151] - 31144:7, 31144:25, 31145:2, 31147:14, 31148:12, 31150:7, 31154:25, 31157:18, 31157:22, 31158:12, 31158:21, 31158:23, 31159:8, 31159:16, 31160:1, 31161:2, 31161:8, 31161:15, 31161:22, 31161:25, 31162:1, 31162:2, 31162:5, 31162:24, 31163:15, 31163:17, 31165:4, 31166:6, 31166:9, 31166:10, 31166:18, 31166:23, 31167:21, 31168:7, 31169:18, 31170:8, 31170:10, 31173:21, 31173:23, 31174:2, 31174:7, 31174:17, 31174:23, 31175:12, 31176:21, 31178:16, 31181:15, 31184:5, 31186:25, 31190:23, 31194:18, 31194:20, 31195:6, 31195:22, 31197:5, 31206:10, 31210:5, 31210:11, 31211:24, 31213:11, 31214:20, 31215:20, 31217:5, 31217:9, 31217:10, 31218:7, 31219:2, 31219:19, 31225:9, 31226:14, 31227:4, 31230:15, 31231:22, 31232:11, 31237:17, 31237:24, 31238:20, 31239:6, 31239:24, 31244:9, 31250:23, 31251:1, 31251:2, 31253:18, 31257:2, 31258:7, 31258:14, 31258:22, 31258:23, 31258:24, 31259:13, 31277:13, 31277:23, 31279:11, 31279:12, 31279:25, 31281:23, 31282:12, 31285:6, 31285:17, 31285:24, 31286:19, 31287:1, 31287:16, 31287:24, 31289:3, 31289:8, 31291:22, 31293:12, 31293:18, 31295:12, 31298:6, 31301:10, 31302:17, 31303:10, 31303:17, 31304:2, 31305:23, 31306:15,	31307:8, 31309:11, 31311:23, 31313:22, 31316:2, 31316:8, 31318:23, 31319:23, 31323:4, 31327:21, 31328:15, 31329:4, 31329:10, 31330:3, 31331:25, 31335:21, 31336:22, 31337:16, 31344:15, 31346:1, 31350:14, 31350:18, 31350:21, 31352:1, 31353:3, 31357:5, 31359:11, 31364:1, 31364:18 up' [1] - 31239:7 update [1] - 31328:2 uphold [2] - 31208:6, 31344:22 upped [1] - 31153:25 upset [1] - 31358:17 upside [1] - 31242:13 usable [1] - 31286:10	31195:14, 31195:15, 31198:7, 31238:16, 31286:12 Vanin [11] - 31237:9, 31243:9, 31243:16, 31244:19, 31247:10, 31247:25, 31248:1, 31250:16, 31253:13, 31277:5, 31340:11 Vanin's [1] - 31253:13 vanish [1] - 31243:6 Vanishing [1] - 31249:5 varied [1] - 31174:22 various [3] - 31183:25, 31197:6, 31226:22 vary [1] - 31174:21 Vern [1] - 31236:18 version [5] - 31148:9, 31184:17, 31205:6, 31205:9, 31234:12 versions [1] - 31205:2 viability [1] - 31261:14 Vic [1] - 31142:13 victim [11] - 31169:3, 31198:12, 31207:16, 31207:22, 31272:5, 31272:13, 31272:15, 31272:16, 31272:18, 31272:20, 31272:21 victims [17] - 31149:14, 31151:25, 31168:14, 31169:2, 31179:10, 31193:8, 31199:17, 31201:20, 31201:25, 31207:23, 31215:5, 31215:15, 31227:10, 31239:16, 31246:4, 31273:3, 31273:13 Video [16] - 31143:5, 31143:7, 31143:8, 31143:10, 31143:11, 31143:13, 31143:14, 31143:16, 31198:1, 31205:20, 31206:18, 31209:1, 31210:1, 31211:8, 31211:9, 31224:3 video [3] - 31197:25, 31224:4, 31224:12 view [29] - 31162:4, 31163:8, 31163:10, 31164:1, 31164:4, 31165:18, 31165:19, 31166:13, 31171:21, 31173:19, 31174:5, 31174:15, 31174:20, 31180:19, 31189:12, 31230:18, 31230:23, 31230:24, 31231:12, 31231:14, 31231:20,	31233:13, 31240:1, 31292:11, 31294:3, 31315:21, 31317:19, 31338:1 viewed [5] - 31178:12, 31180:8, 31274:10, 31315:20, 31339:11 views [8] - 31175:24, 31183:2, 31191:12, 31191:17, 31234:18, 31322:7, 31337:2, 31337:24 vigil [3] - 31257:5, 31257:9, 31257:21 vindication [2] - 31302:1, 31302:9 violence [1] - 31218:25 virtually [1] - 31215:13 visiting [2] - 31145:11, 31214:14 voice [1] - 31237:11 Volume [1] - 31140:22 volume [2] - 31275:15, 31326:9 volunteers [2] - 31155:3, 31155:10
		V		W
		V10 [2] - 31188:9 V14 [18] - 31144:9, 31144:13, 31144:15, 31144:18, 31145:8, 31145:15, 31145:21, 31146:5, 31146:6, 31148:6, 31187:16, 31188:6, 31188:15, 31193:17, 31193:21 V14's [1] - 31145:18 V4 [43] - 31240:3, 31240:9, 31240:11, 31240:12, 31241:14, 31250:21, 31250:22, 31250:23, 31250:24, 31251:4, 31251:15, 31253:5, 31253:6, 31254:12, 31254:19, 31255:21, 31255:22, 31256:3, 31284:15, 31284:25, 31285:10, 31285:12, 31285:13, 31285:15, 31285:19, 31287:6 V5 [2] - 31193:10 vacillation [1] - 31218:22 vague [1] - 31218:21 Vaguely [1] - 31326:23 vaguely [1] - 31251:2 valuable [1] - 31186:13 Vancouver [7] - 31184:10, 31185:11,		wade [1] - 31325:11 wait [2] - 31158:17, 31260:13 waiting [5] - 31147:3, 31147:24, 31148:1, 31148:17, 31179:10 walked [1] - 31258:7 walking [2] - 31216:4, 31216:13 wall [1] - 31290:25 walls [1] - 31208:13 wants [4] - 31277:25, 31313:10, 31340:19, 31345:7 war [1] - 31324:24 warden [1] - 31261:1 watching [1] - 31213:24 weary [1] - 31237:12 weather [1] - 31219:9 week [3] - 31256:20, 31290:21, 31369:10 weekend [1] - 31366:2 weeks [2] - 31297:3, 31322:16 Weir [8] - 31169:6, 31169:7, 31169:8, 31169:15, 31169:25, 31170:4, 31172:4, 31172:13 Weir's [1] - 31172:16



<p>welcome [1] - 31212:5 well-known [1] - 31194:25 west [1] - 31216:19 whatsoever [1] - 31360:23 whereas [1] - 31305:16 Whereas [1] - 31192:18 whichever [1] - 31167:13 whole [10] - 31207:13, 31282:7, 31292:6, 31294:24, 31305:2, 31311:23, 31315:14, 31336:11, 31336:13, 31361:23 wide [1] - 31189:16 widely [1] - 31160:2 wider [1] - 31317:21 wife [2] - 31214:4, 31214:19 Wilde [1] - 31141:10 Williams [8] - 31211:7, 31245:10, 31246:16, 31266:14, 31271:7, 31339:14, 31354:6, 31369:13 Wilson [36] - 31142:6, 31152:20, 31153:5, 31170:17, 31232:24, 31292:18, 31292:20, 31303:12, 31303:14, 31305:15, 31306:8, 31308:22, 31308:25, 31309:14, 31309:20, 31310:16, 31313:10, 31313:15, 31313:16, 31314:6, 31314:11, 31314:17, 31320:6, 31320:10, 31321:10, 31331:1, 31331:2, 31331:11, 31334:10, 31334:25, 31339:6, 31340:20, 31341:18, 31343:2, 31351:6, 31353:18 Wilson's [3] - 31313:4, 31321:16, 31341:19 window [5] - 31145:16, 31333:1, 31360:25, 31366:9, 31366:11 winning [1] - 31203:2 Winnipeg [14] - 31163:22, 31165:9, 31178:17, 31178:20, 31180:15, 31188:8, 31192:3, 31195:5, 31195:12, 31198:5, 31238:17, 31239:3, 31249:10, 31256:17</p>	<p>wire [1] - 31255:4 wish [2] - 31301:5, 31359:20 withheld [1] - 31311:11 withhold [1] - 31307:22 witness [5] - 31182:19, 31334:5, 31347:12, 31353:20, 31359:6 witnesses [20] - 31149:11, 31181:2, 31203:22, 31203:24, 31214:13, 31218:20, 31219:13, 31223:2, 31226:24, 31228:15, 31282:1, 31329:21, 31330:10, 31330:11, 31330:13, 31333:18, 31340:3, 31350:25, 31359:8, 31369:2 Wolch [41] - 31142:2, 31174:14, 31183:9, 31183:17, 31192:10, 31227:17, 31228:17, 31245:11, 31264:8, 31265:14, 31265:19, 31266:11, 31266:18, 31266:21, 31266:23, 31267:10, 31268:11, 31274:3, 31274:12, 31296:25, 31297:9, 31298:6, 31301:15, 31306:14, 31322:10, 31323:11, 31323:24, 31324:7, 31326:20, 31327:5, 31327:14, 31328:24, 31329:2, 31329:3, 31330:19, 31330:24, 31331:19, 31338:21, 31346:7, 31347:21, 31351:12 Wolch's [1] - 31320:1 woman [6] - 31145:13, 31148:25, 31251:19, 31255:9, 31335:17, 31357:6 women [5] - 31199:18, 31215:25, 31216:3, 31217:1, 31246:11 won [1] - 31296:17 wonder [1] - 31195:7 wondered [1] - 31285:18 wonderful [4] - 31177:3, 31177:25, 31195:4, 31195:7 wondering [9] - 31248:22, 31254:4, 31283:5, 31286:1, 31286:20, 31317:9, 31337:19, 31341:5,</p>	<p>31341:6 word [7] - 31162:10, 31173:14, 31230:3, 31230:4, 31230:5, 31331:19 words [12] - 31156:21, 31157:21, 31173:7, 31185:5, 31185:6, 31206:10, 31225:25, 31234:3, 31234:17, 31259:7, 31348:14, 31359:6 works [2] - 31211:22, 31322:14 world [2] - 31220:19, 31220:22 worst [1] - 31271:2 worth [2] - 31289:14, 31290:18 wow [1] - 31284:4 wrapped [1] - 31323:4 writer's [1] - 31178:1 writes [1] - 31186:24 writing [2] - 31237:2, 31258:22 written [3] - 31191:6, 31321:20, 31322:1 wrongdoing [1] - 31190:14 Wrongful [1] - 31140:3 wrongful [6] - 31177:16, 31187:5, 31202:18, 31219:16, 31229:15, 31285:14 wrongfully [4] - 31194:25, 31238:22, 31299:20, 31300:1 wrongly [3] - 31211:23, 31331:8, 31339:11 wrongs [1] - 31295:22 wrote [4] - 31212:20, 31313:1, 31340:12, 31366:3</p>	<p>31316:7, 31316:10, 31348:2, 31366:25, 31367:11 Yesterday [1] - 31238:19 yesterday [7] - 31144:8, 31149:9, 31150:13, 31153:8, 31157:21, 31246:9, 31326:24 Young [1] - 31357:4 yourself [1] - 31222:4 yup [1] - 31222:8</p>
Y			
<p>Yanko [5] - 31270:22, 31270:23, 31276:10, 31276:15, 31278:15 year [5] - 31171:24, 31213:14, 31217:23, 31257:19, 31354:11 years [19] - 31167:5, 31197:23, 31207:3, 31211:2, 31212:14, 31241:21, 31241:24, 31254:22, 31268:9, 31268:12, 31288:7, 31300:2, 31315:14,</p>			

