

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
TCU Place at
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On Monday, June 26th, 2006

Volume 169

Inquiry Proceedings



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Mr. Chris Boychuk, Esq., **for** Mr. Eddie Karst
Ms. Rochelle Wempe, **for** the RCMP
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 (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. WOLCH	34850
- BY MS. MCLEAN	34915



Transcript of Proceedings

(Reconvened at 1:01 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Afternoon.

COMMISSIONER MacCALLUM: Mr. Wolch?

JOYCE IOLA MILGAARD, continued:

BY MR. WOLCH:

Q Thank you, Mr. Commissioner. Mrs. Milgaard, for the record, I'm Hersh Wolch, your son's counsel.

A Thank you.

Q Mrs. Milgaard, during some of the questioning you indicated that at some point in your life you turned very strongly towards faith and religion. When approximately was that?

A In the middle '60s.

Q Can you get the mike a little closer? Perhaps it might be easier.

A '65, starting around that time.

Q Okay. And how old would you have been then approximately?

A 35.

Q Okay. So it was quite a few years ago?

A Yes, it was.

Q Your current age is what?

A Unknown. I was born in 1930, so --



1 Q You are 76?

2 A 76, yes.

3 Q And when you started getting personally involved
4 in a deep way in your son's case, did you have any
01:04 5 training at all in terms of police investigation,
6 investigation, police work, anything like that?

7 A Absolutely not. I was a mom, pure and simple.

8 Q Okay. Your son was in jail and you understood him
9 to be wrongly convicted?

01:04 10 A Yes.

11 Q And you firmly believed that. You had no
12 training, and would it be fair to say that your
13 resources were extremely limited?

14 A They were very limited.

01:04 15 Q And in addition to investigating his case and
16 trying to free him, you had the normal parental
17 obligations of a mother with children?

18 A That's right.

19 Q And as you understood it, I take it, you obviously
01:04 20 had the normal duties of any citizen to obey the
21 law?

22 A Yes.

23 Q But you had no responsibility to any professional
24 organization, special legislation or anything like
01:05 25 that?



1 A Not that I'm aware of.

2 Q And in the years that you were working on the
3 case, you ended up in either confrontation or
4 dialogue with police and Crown?

01:05 5 A I certainly did.

6 Q And you understood they have obligations that you
7 don't have?

8 A That's correct.

9 Q That is, the Crown attorney is a lawyer to your
01:05 10 knowledge?

11 A Yes.

12 Q And would have obligations to the minister and to
13 the Law Society?

14 A Yes.

01:05 15 Q And police have certain acts that they must obey?

16 A Yes.

17 Q And they also have experience and training?

18 A Yes, they do.

19 Q Now, one of the first incidents that has been
01:06 20 referred to several times has been Peter
21 Carlyle-Gordge speaking to Mr. Caldwell?

22 A Correct.

23 Q And looking at his report?

24 A Yes.

01:06 25 Q And would it be fair to say that your



1 understanding of his access to Mr. Caldwell was
2 basically an appeal to Mr. Caldwell that there
3 might be a book written or something that would be
4 perhaps, and I don't mean this in a bad way, that
01:06 5 would satisfy his ego or make him look better or
6 give him some publicity or something like that?

7 A Yes, it was, it was based on that.

8 Q It wasn't an appeal to his sense of justice or to
9 his looking into it as a lawyer, more to his being
01:07 10 a person who might get into the limelight?

11 A Correct.

12 MS. KNOX: Mr. Commissioner, in the context
13 of that, there is a very clear file indication
14 that there was an invitation to Mr. Caldwell for
01:07 15 her lawyer to come look at this file and no need
16 for the guise of somebody having to trick him
17 into giving the access that I think the record
18 and the question should reflect, that there was a
19 standing offer to a lawyer to look at the file
01:07 20 that was not taken up.

21 COMMISSIONER MacCALLUM: This is
22 Carlyle-Gordge he's talking about.

23 MR. WOLCH: This is cross-examination. My
24 Friend can argue later.

01:07 25 COMMISSIONER MacCALLUM: That's all right,



1 yeah.

2 BY MR. WOLCH:

3 Q The fact of the matter was that as you understood
4 it, and tell me if you did or didn't, Mr. Caldwell
01:07 5 had been obliged to turn matters over to
6 Mr. Tallis during the defence of David?

7 A Yes, as I understood it.

8 Q Did you have any reason to believe that he would
9 have held back from Mr. Tallis important
01:08 10 information?

11 A Are you talking now?

12 Q At that time.

13 A At that time?

14 Q Not now. At that time.

01:08 15 A At that time, no, of course not.

16 Q You would assume that Mr. Tallis had whatever was
17 relevant?

18 A Yes, I did.

19 Q Because there wouldn't be gems in the file that
01:08 20 could point to the real killer or to David's
21 innocence?

22 A That's right.

23 Q In fact, if we can pull up 000798, this is a
24 letter of September the 9th, 1969 from Mr.

01:08 25 Caldwell to Mr. Tallis in which he points out --



1 if I can highlight that little bit there:

2 "The duty of a prosecuting counsel or
3 solicitor ... is this: if he knows of a
4 credible witness who can speak to
01:09 5 material facts which tend to show the
6 prisoner to be innocent, he must either
7 call that witness himself or make his
8 statement available to the defence."

9 Do you see that?

01:09 10 A Yes, I do.

11 Q If we just scroll down a little bit and highlight
12 this portion here:

13 "The only material that could possibly
14 fall into this category, as far as I am
01:09 15 concerned, arose early in the
16 investigation."

17 And he goes into Les Spence and others. Now,
18 there's no mention in there of (V4)---- (V4)---,
19 the Merrimans, the Avenue O witnesses, the
01:09 20 roommates of Gail Miller, there's nothing in
21 there about that. Do you see that?

22 A I do.

23 Q So what I'm saying is that you would have no
24 reason back in those days to believe that
01:10 25 Mr. Tallis hadn't received everything?



1 A No, I would not have known.

2 Q And you wouldn't expect yourself or anybody on
3 your behalf to find things in the file that hadn't
4 been given to Mr. Tallis?

01:10 5 A No.

6 Q And while we heard a moment ago from Mr.
7 Caldwell's lawyer about some invitation for
8 lawyers to come down and look at the file, do you
9 know if that invitation was given to Mr. Tallis
01:11 10 when he was defending your son?

11 A Not that I'm aware of, and I would certainly think
12 that if he had got that invitation, he would have
13 followed through on it.

14 Q Yes, but Mr. Tallis would have gotten a letter
01:11 15 that says there is nothing on the file that he's
16 not aware of that would tend to exonerate David.

17 A That's right.

18 Q But we know on the file were people that cast
19 great doubt on the Crown theory as to how the
01:11 20 offence was committed and (V4)---- (V4)--- who
21 cast great doubt on what was happening that
22 morning in the general area?

23 A Yes.

24 Q And when you've been examined here, you've been
01:12 25 asked many times, and as have other witnesses,



1 about the fact that you had thought that Mr.
2 Caldwell had not given Justice Tallis Ron Wilson's
3 statements which you believed from information
4 gleaned from Mr. Asper and that accusation might
01:12 5 have hurt Mr. Caldwell's feelings or damaged his
6 reputation, but clearly that's only one element of
7 a number of non-disclosures and one that was
8 wrong?

9 A That's --

01:13 10 Q Do you follow me?

11 A I follow you, yes.

12 Q It doesn't alter all the other material
13 non-disclosures that are serious?

14 A That's right.

01:13 15 Q And questions were put to you here that you've
16 learned here certain explanations, perhaps such as
17 the knife -- or not the knife, I mean the Wilson
18 statement, you've heard some explanations here
19 that are not in your book that might have been
01:13 20 favourable to certain people, but isn't the fact
21 also you've heard things here that might be
22 unfavourable to some people?

23 A Oh, yes, I have.

24 Q So that is if you were going to write or revise
01:13 25 your book, some people might be happy about some



1 things you found out you may have been wrong on,
2 but they might not be happy about some things you
3 found out about that might seriously go to their
4 reputations as well?

01:14 5 A Absolutely.

6 Q And to be more specific, if we could pull up
7 006846, this is a letter from Mr. Caldwell to the
8 Miller family. Were you aware of this letter when
9 you wrote your book?

01:14 10 A No, I was not.

11 Q And in this letter dated February 7th of '72, if I
12 could just highlight that portion there, it says,
13 regarding the leave to appeal to the Supreme
14 Court:

01:14 15 "I appeared on this application before a
16 panel of three judges..."

17 Well, we've learned here Mr. Caldwell didn't
18 appear; correct?

19 A That's correct.

01:14 20 Q That's a falsehood given to the Miller family?

21 A Right.

22 Q And had that come out earlier, there would have
23 been headlines, Crown counsel misleads Miller
24 family, claims he appeared on an action he didn't,
01:15 25 that would have been very damaging to his



1 reputation; do you agree?

2 A Right, I agree. He might have got the same
3 headline I did.

4 Q But there's something that didn't come out to
01:15 5 damage his reputation that could be in a revised
6 edition?

7 A Right.

8 Q He's taking credit for doing a court appearance he
9 didn't do; correct?

01:15 10 A Correct.

11 Q Also, the final matter regarding Mr. Caldwell that
12 I might draw your attention to is you were
13 questioned about his letters to the parole board
14 and the suggestion was made that, well, he was
01:16 15 just doing what they wanted, letters from people,
16 and it was nothing special about it and you were
17 over-reacting. And I'm not trying to quote
18 exactly but that was the sense I got from the
19 questioning?

01:16 20 A I got the same sense, yes.

21 Q And at one point I heard you, in
22 cross-examination, to say that you couldn't quite
23 put your finger on what there was about it that
24 really got to you in particular, and perhaps I
01:16 25 might help you on that. David was maintaining his



1 innocence; was he not?

2 A Yes, he was.

3 Q He was saying "I didn't do it", and that is
4 certainly a barrier, to some degree, to parole?

01:16 5 A Absolutely.

6 Q And what is really crucial is, is there an air of
7 reality to his maintaining his innocence, by that
8 I mean is if the parole board looks at a
9 questionable case, a Steven Truscott for that
01:17 10 matter, they may not be as anxious to place a
11 great deal of emphasis on the denial of guilt as
12 they would on somebody in a cold case, like
13 absolutely caught, maintaining innocence; do you
14 see what I'm getting at?

01:17 15 A I do.

16 Q You knew the case against David to be weak?

17 A Yes.

18 Q And if David was maintaining his innocence on a
19 weak case the parole board might have looked at
01:17 20 him a little differently than if they thought it
21 was an air-tight case?

22 A Yes.

23 Q So what I am suggesting is that the focus should
24 not be on whether Mr. Caldwell should have written
01:17 25 or shouldn't have written but, really, on what he



1 said is much more important; do you agree with
2 that?

3 A Yes.

4 Q If we could have 004139, this is the letter that
01:18 5 he wrote on June the 14th of '72 to Mr. Street,
6 the Chairman of the National Parole Board. And
7 I'll leave the first page, and if we can turn to
8 the second page, and this is part of the
9 recitation of the facts for the parole board, and
01:18 10 if we can go to this paragraph here.

11 "Upon reaching the end of
12 this block, the car became stuck ...",
13 and I'll read fast so it won't be exactly
14 accurate:

01:19 15 "... occupants set off in different
16 directions ... with Milgaard heading
17 back towards the sidewalk on which Miss
18 Miller ...",

19 was:

01:19 20 "... walking. Milgaard ... confronted
21 ... Miller, grabbed her, grabbed at her
22 purse, and pulled a knife on her, taking
23 her down an adjacent alley ... around a
24 90-degree turn in this T-shaped alley,
01:19 25 stabbing her as this went on. Nichol



1 John observed this part of the episode,
2 and ran away, eventually getting back
3 into the car."

4 Now he's telling the parole board that Nichol
01:19 5 John saw the crime?

6 A Yes.

7 Q Nichol John didn't testify to that; did she?

8 A No, she did not.

9 Q And if we can go down that page a bit, to this
01:19 10 portion here:

11 "The body of Ms. Miller was
12 found in the T alley around the corner
13 from where she had last been seen by
14 Nichol John being led by Milgaard. Her
01:20 15 throat had been slashed approximately
16 fifteen times...",
17 etcetera. So he's telling the parole board that
18 Nichol John saw the crime committed, his friend
19 saw it committed, specifically?

01:20 20 A Yes.

21 Q And that's not the evidence before the Court?

22 A And that's not the truth.

23 Q No, but it wasn't the evidence either?

24 A No.

01:20 25 Q So, if David is maintaining his innocence, the



1 parole board is being told that a specific
2 eyewitness, a friend, saw the crime committed?

3 A Yes.

4 Q Correct?

01:20 5 A That's correct.

6 Q And you might agree with me that somebody reading
7 that would assume that that was the evidence in
8 the case tendered in Court?

9 A I certainly would have been if I'd been on the
01:20 10 parole board.

11 COMMISSIONER MacCALLUM: Mr. Wolch, was
12 this the letter in which -- where he enclosed the
13 reasons in the Court of Appeal? What he would
14 have -- what he says here is obviously what he
01:21 15 said but I think he, as well, he enclosed the
16 reasons of the Court of Appeal?

17 MR. WOLCH: I'm not sure if he did in this
18 letter or not.

19 COMMISSIONER MacCALLUM: Okay.

01:21 20 MS. KNOX: I think he did in both.

21 MR. WOLCH: I'm looking at his letter --

22 MS. KNOX: First page, gave the citation.

23 MR. WOLCH: Well, no, the question is did
24 he enclose, the answer is "no".

01:21 25 COMMISSIONER MacCALLUM: Yeah, he did in



1 one of the letters.

2 MR. WOLCH: I'm sorry, I was referring to
3 this.

4 COMMISSIONER MacCALLUM: But your point, of
01:21 5 course, is he said what he said.

6 MR. WOLCH: That's right.

7 COMMISSIONER MacCALLUM: And it appears to
8 be the theory of the Crown as opposed to the
9 evidence.

01:22 10 MR. WOLCH: Right.

11 BY MR. WOLCH:

12 Q And my point is that this would damage David?

13 A It would.

14 Q Because, to anybody reading this -- and the parole
15 board isn't going to sit there and study the -- at
16 length -- here's a letter saying "the eyewitness
17 saw the crime"?

18 A And I'll never forget that one man on the parole
19 board, I mean he almost leaped across the table at
01:22 20 us, and he was so incensed, and now I can sort of
21 understand, if he was reading stuff from -- like
22 this from Mr. Caldwell, how he would have been.

23 Q Yes. I might say, sir, that it was, the judgement
24 for the Court of Appeal was enclosed.

01:22 25 COMMISSIONER MacCALLUM: It was?



1 MR. WOLCH: It was, yes.

2 COMMISSIONER MacCALLUM: Yes, uh-huh.

3 MR. WOLCH: Along with the photographs.

4 COMMISSIONER MacCALLUM: Right.

01:22 5 BY MR. WOLCH:

6 Q And then on page 141, if we can highlight that
7 paragraph there:

8 "In preparing this case, I
9 had the privilege of reading Milgaard's
01:23 10 entire psychiatric history ... very well
11 documented since his early youth. He
12 had been in constant trouble since
13 kindergarten days, and the file even
14 contains predictions by social workers
01:23 15 who had examined Milgaard, that he would
16 one day kill somebody."

17 A In all of the psychiatric files that I got access
18 to through -- I have never found anything like
19 that in them, and I think we got access to all of
01:23 20 them.

21 Q But here is that:

22 "... social workers had predicted ...",
23 that is more than one worker had made more than
24 one prediction that David would go out and kill?

01:23 25 A Absolutely untrue.



1 Q If we can go down to this portion here.

2 COMMISSIONER MacCALLUM: Well, just so
3 we're clear on the evidence that has been
4 adduced, there was a comment to that effect by a
01:24 5 social worker; was there not?

6 MR. WOLCH: No, no, I have never seen one
7 anywhere.

8 MS. KNOX: Mr. Commissioner, Dr. McDonald
9 testified that that report was in the file, it
01:24 10 can't be located now but Dr. McDonald testified
11 the report that my client referred to did exist,
12 and it appeared to be a case conference note or
13 something of a group with respect to that
14 finding.

01:24 15 MR. WOLCH: No written ones.

16 MS. KNOX: But there was clear evidence
17 from Dr. McDonald that it existed, he relayed it
18 to Mr. Caldwell. It's not part of the file that
19 we were provided by Mrs. Milgaard, Dr. McDonald's
01:24 20 file is no longer in existence.

21 MR. WOLCH: Or any -- or the penal
22 institution or anywhere else.

23 COMMISSIONER MacCALLUM: Well, --

24 MR. WOLCH: It's never been seen.

01:24 25 COMMISSIONER MacCALLUM: -- just be careful



1 that we're not misstating the evidence.

2 MR. WOLCH: It's never been seen by anybody
3 here or anybody --

4 COMMISSIONER MacCALLUM: Well, we have,
01:25 5 there's evidence from Dr. McDonald.

6 MS. KNOX: It came from Dr. McDonald.

7 MR. WOLCH: Well, that, or he may have been
8 told by Mr. Caldwell.

9 MS. KNOX: That is not the evidence. It's
01:25 10 Dr. McDonald's evidence that it was in the
11 report, and he showed the file to Mr. Caldwell
12 and they discussed it, as I recall. But,
13 clearly, it was part of the file that he made
14 available to Mr. Caldwell.

01:25 15 COMMISSIONER MacCALLUM: Right.

16 MR. WOLCH: Okay.

17 BY MR. WOLCH:

18 Q "Having been intimately involved in this
19 case from the time of the killing until
01:25 20 the final disposition ... in the Supreme
21 Court ... I ... came to know a great
22 deal about the personality of the
23 accused ... While I no longer have his
24 psychiatric history available to me, it
01:25 25 was an extremely lengthy record of



1 continuing trouble with educational
2 institutions, persons attempting to help
3 him, etcetera. Albert Cadrain, whose
4 evidence was very important ..., knew
01:25 5 Milgaard ... and told ... police and
6 myself of episodes in Calgary wherein
7 Milgaard had young girls in his living
8 quarters to whom he would supply heroin
9 to the point ...",

10 that:

11 "... at which these girls completely
12 lost their senses. One of these
13 episodes involved Milgaard inviting
14 Cadrain to have sexual intercourse with
01:26 15 a girl in this state whom Milgaard had
16 in a bathtub filled with water. This
17 was only one example of the almost
18 unbelievable life style of Milgaard
19 before this offence, which I came to
01:26 20 know as a result of preparing for the
21 prosecution of this trial."

22 You see how damaging that would be to David?

23 A Yes.

24 Q And there is no mention there about being unable
01:26 25 to corroborate any of that or --



1 A And, I mean, it was so obvious that Cadrain
2 himself was suffering from many delusions, with
3 the Virgin Mary and all others, that I think this
4 is just another episode, if in fact it ever even
01:26 5 happened.

6 MS. KNOX: Mr. Commissioner, again with
7 respect to the evidence on the record, the stuff
8 about the Virgin Mary was not stuff that was
9 known to Mr. Caldwell, that was revealed by
01:26 10 Albert -- or Dennis Cadrain some years later.
11 But there's clear evidence that, when he was
12 writing these letters, Mr. Caldwell had no idea
13 there was any question or any issue as to Albert
14 Cadrain's mental health, or him seeing visions,
01:27 15 or anything of that nature.

16 MR. WOLCH: This was something that was
17 supposed to be corroborated but wasn't. We can
18 go through all that, but there was a witness
19 supposedly, and that witness did not corroborate.

01:27 20 A That's right.

21 COMMISSIONER MacCALLUM: Yes.

22 MS. KNOX: Mr. Commissioner, the witness
23 was about the Calgary bathtub incident, it wasn't
24 anything about the Virgin Mary or visions or
01:27 25 anything of that nature.



1 MR. WOLCH: I'm not talking about that.

2 BY MR. WOLCH:

3 Q If you can just scroll down a little farther than
4 that, please, I'm sorry, to the next page, please.

01:28 5 You see:

6 "As noted above, his past behaviour,
7 which was well documented from his
8 psychiatric file, had been compounded of
9 one endless series of trouble with the
01:28 10 authorities of every variety. He has a
11 sociopathic personality, and in my view
12 there is not just a possibility, but
13 rather a certainty, that he will return
14 to crime on his release, since he is
01:28 15 unqualified for any other occupation."

16 David had no criminal record; correct?

17 A That's correct.

18 Q He was 16 and working?

19 A Yes.

01:28 20 Q Yet Mr. Caldwell is saying he's "unqualified for
21 any other occupation", do you see that, and "a
22 certainty that he will return to crime"?

23 A Yes.

24 Q "While dealing with this point,
01:29 25 it is ironic to note that the only



1 occupation which Milgaard held with any
2 degree of success in past was that of a
3 door-to-door salesman of magazine
4 subscriptions, etcetera, which is a
01:29 5 circumstance which should be of great
6 comfort to the housewives of the nation
7 if he is eventually allowed to return to
8 this trade."

9 Now "the only occupation he held with a degree of
01:29 10 success", I remind you that he was 16?

11 A That's right.

12 Q And if we could just scroll down further, to that
13 portion there:

14 "I, of course, cannot comment
01:30 15 on any efforts made by Milgaard to
16 improve himself while in prison,
17 although my last information was that he
18 was a resident of the hospital wing in
19 the Saskatchewan Penitentiary for his
01:30 20 own protection. I know of no one in the
21 community who would be prepared to
22 assist him if he were released on
23 parole, and I cannot think of any form
24 of steady employment to which Milgaard
01:30 25 would be suited out of custody.



1 From the above you will not be
2 surprised to learn that I would be
3 unalterably opposed to this individual
4 ever gaining his freedom again, since I
01:30 5 feel that it could confidently be
6 predicted that he would return
7 immediately to a life of crime, which
8 might well soon lead again to another
9 senseless and brutal killing of the sort
01:30 10 described above. For my part, I hope
11 never to be confronted with such a case
12 again."

13 So what I am suggesting to you is that it wasn't
14 the fact that he had written to the parole board
01:31 15 which concerned you as much as the contents of
16 what he said?

17 A Yes.

18 Q It was not just that Nichol John had seen the
19 offence, it was that David had this terrible
01:31 20 psychiatric record, and here is the prosecutor
21 saying "I can predict, virtually with certainty,
22 he will do it again"?

23 A And then, of course, the pictures that he sent as
24 well.

01:31 25 Q So in dealing with Mr. Caldwell, you have been



1 pointed out time and time again that one of your
2 contentions regarding him was in error, but the
3 fact of the matter is many may very well be
4 accurate?

01:32 5 A That's right.

6 Q Just to conclude this portion, I don't want to go
7 over it again, but there's clear lack of
8 disclosure on key points?

9 A Yes.

01:32 10 Q There may very well be strong tunnel vision?

11 A Yes.

12 Q There seems to be a desire to perhaps have a book
13 about himself to -- and also to embellish whether
14 he appeared in the Supreme Court, which may be
01:33 15 damaging to his reputation if people are aware of
16 that?

17 A Yes.

18 Q There's letters to the parole board that strayed
19 from a factual, professional opinion, to matters
01:33 20 that either weren't evidence or weren't correct?

21 A That's right.

22 Q So it may very well be that, if Mr. Caldwell's
23 reputation has been tarnished or damaged, it may
24 very well be, subject to findings, be
01:33 25 well-deserved?



1 A Yes.

2 Q I want to turn to the period in time just after
3 the Supreme Court. The Supreme Court rendered its
4 decision in April of '92 --

01:34 5 A Uh-huh.

6 Q -- and I think it's clear that it did create
7 either controversy or problems on some fronts?

8 A Yes.

9 Q I'll get into more detail as to what I'm getting
01:34 10 at. From your point of view it did set David
11 free?

12 A It did, but it whitewashed everybody else.

13 Q Well, let me go through that a bit. It set David
14 free in the sense that there was an order for a
01:34 15 new trial, and it was stayed, David ended up with
16 no conviction for the murder?

17 A That's right.

18 Q And there were some points in it which caused some
19 degree of debate, and I would like to turn to the
01:35 20 decision briefly, 058828 at 32. I mean the Court
21 did say:

22 "However, fresh evidence has
23 been presented to us. Ronald Wilson, a
24 key witness at the trial, has recanted
01:35 25 part of his testimony. Additional



1 evidence has been presented with respect
2 to the alleged motel room confession.

3 More importantly, there was evidence led
4 as to sexual assaults committed by Larry
01:36 5 Fisher which came to light in October
6 1970, when Fisher made a confession."

7 That's a paragraph I would assume you are fairly
8 familiar with?

9 A Yes, very familiar.

01:36 10 Q And this, of course, led you and others to wonder,
11 well, if it came to light in October 1970, why
12 didn't anybody bring it to David's attention, his
13 counsel's attention, your attention, or anybody
14 from -- who could be assisted by this?

01:36 15 A That's right.

16 Q And then the Court, at 35, says in this paragraph
17 here:

18 "While there is some evidence
19 which implicates Milgaard in the murder
01:37 20 of Gail Miller, the fresh evidence
21 presented to us, particularly as to the
22 locations and the pattern of the sexual
23 assaults committed by Fisher, could well
24 affect a jury's assessment of the guilt
01:37 25 or innocence of Milgaard. The continued



1 conviction of Milgaard would amount to a
2 miscarriage of justice if an opportunity
3 was not provided for a jury to consider
4 the fresh evidence."

01:37 5 So that's the paragraph of most importance to
6 David's conviction being quashed in the end, or
7 stayed, or whatever?

8 A Yes.

9 Q And that's relatively understandable, --

01:37 10 A It is.

11 Q -- you can read that and understand what it means.
12 But, if you can go to 36, there is a bizarre
13 paragraph -- and that's my opinion, and perhaps I
14 can be chastised for calling the decision of the
01:37 15 Supreme Court bizarre -- but I think what is most
16 bizarre is the last paragraph:

17 "However, if a stay is not
18 entered, a new trial proceeds and a
19 verdict of guilty is returned, then we
01:38 20 would recommend that the Minister of
21 Justice consider granting a conditional
22 pardon to David Milgaard with respect to
23 any sentence imposed."

24 And I'm going to suggest to you that's extremely
01:38 25 bizarre in the sense that, if David was to get a



1 new trial and a jury convicted him and he was
2 truly guilty of a rape and murder and had denied
3 it forever, why would he be deserving of a
4 pardon? You see what I am getting at?

01:38 5 A Yes, I do.

6 Q You see the problem with the logic of that?

7 A Yes.

8 Q That if he was to go through a trial and a fresh
9 jury said "beyond a reasonable doubt, you killed
01:38 10 Gail Miller", which implies you have denied it all
11 these years, and gone through all this trouble and
12 done all that, you should get a pardon; doesn't
13 make any sense, does it?

14 A No, it doesn't.

01:39 15 Q The only rational way it makes sense is if the
16 Court believes David is innocent?

17 A Yes, then it would be understandable.

18 Q But, otherwise, it doesn't make any sense --

19 A That's right.

01:39 20 Q -- to give a break to a convicted murderer/rapist;
21 doesn't make any sense?

22 A No.

23 COMMISSIONER MacCALLUM: Well, giving a
24 break to somebody who has been in jail for 24
01:39 25 years is not nonsensical.



1 MR. WOLCH: Except he's still denying a
2 crime that's so terrible, I mean otherwise why
3 not leave it to the parole board or somebody
4 else, I'm just saying it's a bizarre point to
01:39 5 add.

6 BY MR. WOLCH:

7 Q In any event, with that decision, from your
8 perspective, you had accomplished considerable
9 with David having his conviction quashed and
01:40 10 getting freed, however, you were aware of the fact
11 that the Supreme Court reference made it -- the
12 judges made it clear that police misconduct was
13 not an issue?

14 A That's right.

01:40 15 Q And they also made it clear, no matter what, they
16 would not find Fisher to be guilty?

17 A That's right.

18 Q And, at the end of the day, the police were saying
19 they'd been exonerated?

01:40 20 A Yes.

21 Q And Fisher was saying he'd been exonerated?

22 A Yes.

23 Q And you were in a position, like many others, to
24 look at the case against David and the case
01:41 25 against Fisher; correct?



1 A Yes.

2 Q And, in looking at the case against David, you
3 knew that Wilson had recanted?

4 A Yes.

01:41 5 Q You knew that Nichol John's version, which wasn't
6 even evidence, was impossible?

7 A Correct.

8 Q You knew Cadrain at least had become, if not was,
9 mentally disturbed?

01:41 10 A Yes.

11 Q You knew that the motel incident appeared to be a
12 joke, or not a serious response, and now we know
13 for a fact it was?

14 A That's right.

01:41 15 Q And then you knew about the Merrimans, you knew
16 about all the other evidence that wasn't
17 disclosed, the (V4)---- (V4)---, etcetera,
18 etcetera; so you knew all that, --

19 A Yes.

01:41 20 Q -- the case against David.

21 On the other hand, regarding Mr.
22 Fisher, you knew the similar act evidence was
23 compelling?

24 A Yes.

01:42 25 Q You knew the evidence of (V4)---- (V4)--- and her



1 picking out Fisher, etcetera?

2 A And, having interviewed all of them myself, there
3 was a sameness about their situation, that they
4 seemed so identical, so similar.

01:42 5 Q You also heard Fisher testify.

6 A That's right.

7 Q Where he accepted that virtually everything that
8 would have happened to Gail Miller was something
9 he had done to somebody else?

01:42 10 A That's right.

11 Q Then you had the bus stop evidence?

12 A Correct.

13 Q And Linda Fisher's evidence?

14 A Yes.

01:42 15 Q And there was a number of jailhouse informants?

16 A Yes.

17 Q And when you put it all together you were
18 convinced, yourself, beyond any doubt, reasonable
19 or otherwise, that Fisher had killed Gail Miller?

01:42 20 A Yes, I was.

21 Q There wasn't a speck of doubt in your mind?

22 A None whatsoever.

23 Q And what you were faced with was the Attorney
24 General for Saskatchewan, Mr. Mitchell, was
01:43 25 publicly saying that David was guilty?



1 A Yes. I couldn't believe it when I read that in
2 the paper.

3 Q It was in *The Globe and Mail*?

4 A Yes.

01:43 5 Q He actually said David was guilty given all this
6 background. Mr. Kujawa was criticizing the
7 Supreme Court?

8 A That's correct.

9 Q And, sometime thereafter, Kim Campbell wrote a
01:43 10 book in which she devoted a chapter in which she
11 was very unfavourable to David?

12 A That's correct.

13 Q And you knew that there was a guilty guy out there
14 who was gonna be free?

01:43 15 A Yes.

16 Q And you wanted an inquiry; correct?

17 A I did.

18 Q You wanted an inquiry to find out what had
19 happened, why this evidence that had come to light
01:44 20 in 1970 didn't come into your circle of light, you
21 --

22 A That's right.

23 Q -- wanted to know that? And you would have hoped,
24 did you not, that you might encourage somebody to
01:44 25 try to pursue Larry Fisher?



1 A Yes, I did.

2 Q Would it be fair to say that, from your point of
3 view, nobody seemed to care -- I'm talking about
4 people in authority -- about Larry Fisher?

01:44 5 A I couldn't believe it, I -- they seemed like they
6 were just prepared to let him go.

7 Q When you talked to somebody who was not in
8 authority, they would clearly indicate to you on
9 the facts Fisher did it, David didn't?

01:45 10 A Yes.

11 Q It seemed so obvious, we've gone through that, but
12 yet the authorities didn't seem to care?

13 A And no one was doing anything.

14 Q So you wanted an inquiry for a number of reasons,
01:45 15 you wanted exoneration for David?

16 A Yes.

17 Q You wanted accountability?

18 A Yes.

19 Q And, it was mentioned, compensation?

01:45 20 A Yes.

21 Q But compensation is more than just money, isn't
22 it, it's a statement from the authorities that
23 this person is innocent?

24 A That's right, that someone -- that if they
01:45 25 compensate you, they are saying they did something



1 wrong and the mistake was made.

2 Q So that compensation is, as I say, more than
3 money?

4 A Yes, absolutely.

01:46 5 Q And one of the most crucial things you wanted from
6 an inquiry was to get the authorities moving in
7 the direction of Larry Fisher in doing something?

8 A Yes.

9 Q That goes hand in hand with exoneration of David
01:46 10 doesn't it?

11 A Well, yes, because if they have the real killer in
12 jail at that point, people know then there's no
13 question.

14 Q So you were faced with a situation where David was
01:46 15 in a bit of limbo and there was a guilty, horrific
16 murderer on the loose?

17 A Yes.

18 Q Now, Mr. Breckenridge wrote a letter in, towards
19 the end, I think it was March 21st of '92, I could
01:47 20 be wrong on that from my memory, but he wrote a
21 letter alleging wrongdoing?

22 A Yes.

23 Q Now, to put it in perspective, between the time
24 the reference was directed, and I think that was
01:47 25 in November, to April when the decision was



1 rendered, the work load was enormous?

2 A Oh, yes.

3 Q Working right through the night on many occasions?

4 A Yes, we were.

01:47 5 Q Not going to bed, just worked through the night,
6 worked through the day and just keep going because
7 of the volume of work?

8 A Correct.

9 Q And much of that was done in Ottawa?

01:47 10 A Yes, it was.

11 Q And in terms of letters coming in, there were
12 hundreds of letters coming in from various people
13 across the country?

14 A That's right.

01:47 15 Q And had there been an inquiry ordered,
16 Breckenridge's letter would have just been one
17 other facet of material given to whoever was
18 looking into the situation?

19 A That's right.

01:48 20 Q But when no inquiry was ordered, Breckenridge's
21 letter, and Breckenridge's position, was a
22 catalyst to get things moving?

23 A Yes, it was.

24 Q And Breckenridge was an employee of the Government
01:48 25 of Saskatchewan in the Attorney General's



1 Department?

2 A That's correct.

3 Q And he would have had access to sensitive files?

4 A Yes.

01:48 5 Q And the Province of Saskatchewan had hired him?

6 A Yes.

7 Q And you had no reason to believe that the province
8 would turn over sensitive files to a, quote, "nut
9 case"?

01:49 10 A That's right.

11 COMMISSIONER MacCALLUM: Who are you
12 quoting there from by the way?

13 MR. WOLCH: I think that term was used
14 several times by many people here.

01:49 15 COMMISSIONER MacCALLUM: Well, let's be
16 careful about -- the man is not here to defend
17 himself.

18 MR. WOLCH: Oh, I agree, I -- that was a
19 term used by others in questioning Mrs. Milgaard.
01:49 20 I wouldn't use that term. I said in quote.

21 COMMISSIONER MacCALLUM: Well, okay.

22 MR. WOLCH: That wasn't my term.

23 BY MR. WOLCH:

24 Q Now, it was your hope that this investigation
01:50 25 would cause somebody to think, you know, maybe we



1 should follow up on Fisher or do something?

2 A Yes.

3 Q And there are lots of police techniques that may
4 have led to Larry Fisher?

01:50 5 A Yes.

6 Q There are informants, there are what they call
7 reverse stings that seem to be used more and more,
8 there is the potential DNA getting more advanced?

9 A Yes.

01:50 10 Q There's all those things that could be done, and
11 it was your hope that this inquiry, and by inquiry
12 I'm talking about the McCrank-Fraser inquiry,
13 would lead somewhere?

14 A Yes.

01:50 15 Q And I believe, and I haven't got the page, I'm
16 sorry, but you were criticized at this inquiry for
17 you putting critical of their findings and what
18 they did. Do you recall that?

19 A I'm sorry?

01:51 20 Q You were critical of their findings?

21 A Yes, I was.

22 Q And I think you were criticized here for being
23 critical of them?

24 A Yes.

01:51 25 Q Do you recall what you found offensive about their



1 investigation? If you don't, you don't.

2 A Do I recall what I found offensive about whose
3 investigation?

4 Q The Fraser-McCrank.

01:51 5 A No.

6 Q But you were upset then that it appeared to be
7 exonerating everybody and it was also mentioned
8 here many times how it seems to have cleared
9 people?

01:52 10 A It cleared everybody.

11 Q I want to deal with that report a bit and firstly
12 I would like to draw your attention to a document,
13 003998. Now, these are notes, and perhaps
14 Commission Counsel might be able to help me with
01:52 15 this, it says it's by, and where I was looking it
16 seems to be Mr. MacFarlane, but I'm confident it's
17 not who is the author, I think it's somebody in
18 the Saskatchewan government.

19 MR. HODSON: I believe they may be Richard
01:52 20 Quinney's, now deceased. I think they may be his
21 notes.

22 BY MR. WOLCH:

23 Q Now, these notes of October the 8th of '92, the
24 author says he or she had lunch with Chief Egan,
01:53 25 Bob -- I'm not sure who that is, Wars?



1 MR. HODSON: Wass, W-A-S-S.

2 BY MR. WOLCH:

3 Q Wass, Rick Pearson, who we all know as being a
4 witness here, Murray Johnston, who I believe was a
01:53 5 prosecutor if I have it right. I could be
6 corrected. Is that Alistair Johnston? No. In
7 any event, Murray Sawatsky will be a witness here,
8 and then we have the authors of the report, Neil
9 McCrank and Bruce Fraser. It says:

01:53 10 Neil was a bit uncomfortable with the Feds
11 referring this matter to them as they are
12 staunch proponents of provincial
13 jurisdiction in this area.

14 So it would appear that the, as of October the
01:54 15 8th, the federal government had referred the
16 matter to Alberta.

17 I suggest this is an optics thing.

18 If we can just go a little further.

19 He needs letter from Cotter re double
01:54 20 referral which he could live with.

21 Wants copy to Chief Egan to establish his
22 involvement on behalf of us as well as Feds.
23 Scope of investigation.

24 Agree obstruction of justice but perhaps go
01:54 25 beyond Mike Breckenridge's statement.



1 Ask Wolch what else they have - expect
2 nothing.

3 Do you see that?

4 A Yes, I do.

01:54 5 Q So before they are even doing it, they've got the
6 investigator, the government and they are being
7 told to expect nothing. Sort of a sign.

8 Then do review and release to Feds --

9 COMMISSIONER MacCALLUM: Mr. Wolch, I'm
01:55 10 just trying to digest what that means, whether it
11 means don't expect Wolch to give you anything or
12 expected Wolch doesn't have anything else to give
13 you. Which is it?

14 MR. WOLCH: I think they are saying expect
01:55 15 not to have anything to be given. I look at it
16 as a message there's nothing there.

17 MS. KROGAN-STEVELY: Well, I could stand up
18 here, Mr. Commissioner, and speculate five other
19 things and I don't think my speculations would be
01:55 20 any more appropriate than Mr. Wolch's.

21 MR. WOLCH: Well, no, but the next witness
22 will have been at this meeting.

23 MS. KROGAN-STEVELY: And maybe he should be
24 the one that's answering that --

01:55 25 COMMISSIONER MacCALLUM: Yes, that's right.



1 MS. KROGAN-STEVELY: -- and not having Mr.
2 Wolch speculating.

3 COMMISSIONER MacCALLUM: Yeah. I was just
4 pointing out that it's not entirely crystal
01:55 5 clear.

6 MR. WOLCH: No, no, I agree, and he will be
7 the next witness and we can ask him what he
8 thought about it.

9 COMMISSIONER MacCALLUM: Yes.

01:55 10 BY MR. WOLCH:

11 Q Then do review and release statements to
12 Feds and Saskatchewan jointly.

13 Then go a little further.

14 We would do joint announcement with Feds.

01:55 15 He wants Brent to call him.

16 If we can go to the next page, I need 999. If I
17 can just stop for a moment. Perhaps that's why I
18 thought it was MacFarlane in CaseVault because of
19 those memos there, but here's the next page I
20 want.

21 Get MacFarlane to wait a few days.

22 Apparently Cotter asked Tait to continue
23 investigation more or less for us.

24 Would be confined to allegation.

01:56 25 Would be of a criminal nature.



1 At end send to Alberta for review.

2 Alberta report to Feds and Saskatchewan

3 concurrently.

4 Later do a joint release.

01:56 5 Did not have authority.

6 At request of Saskatchewan agreed to endorse

7 the continued investigation which would be

8 supervised by the department AG of Alberta.

9 Report received from Alberta and shared to

01:56 10 Saskatchewan.

11 I think that might be get police investigation

12 done, I'm not sure if that's what it says, and

13 then October the 8th:

14 Spoke to Bruce and we appear now to be on

01:57 15 the same wavelength.

16 So this appears to be the meeting leading up to

17 that investigation of which we'll hear

18 considerable from the next witness, but if we can

19 just go back a page of the -- I'm sorry, that's

01:57 20 the page, to the top, October 8 of '92:

21 Uncomfortable with Feds referring the matter

22 to them.

23 Okay. Now I want to deal with the report very

24 briefly because I feel much of it will come from

01:57 25 the next witness, 032806. Yes, that's good. It



1 starts off a little bit puzzling because it
2 starts off at the very beginning, in late
3 September '92, Brent Cotter, Deputy Minister of
4 Justice and Deputy AG contacted Neil McCrank and
01:58 5 sought assistance of the Alberta Department of
6 Justice.

7 I just point out the other memo
8 says in October, October the 8th the reference
9 had been from the Feds, so I'm not sure, you
01:58 10 can't answer me on that, but I just point that
11 out. I'm sure somebody else will be able to
12 answer that.

13 Anyway, the assistant was to
14 provide legal advice to the RCMP, to assess and
01:58 15 analyse findings to determine any basis to pursue
16 criminal charges, I guess members of the police
17 and department. The usual standard is reasonable
18 likelihood of conviction, public interest to
19 proceed.

01:58 20 Scroll down. Provide this
21 opinion directly to Saskatchewan Justice of
22 Canada to the offices of their respective
23 deputies and if charges are warranted, Alberta
24 Justice would handle the prosecution.

01:59 25 That's not what you were



1 seeking was it?

2 A No.

3 COMMISSIONER MacCALLUM: What were you
4 seeking, ma'am?

01:59 5 A I wanted it completely opened up. I felt that
6 there was information in 1970 that should have
7 been used in 1970 and that any number of -- it
8 could have changed our entire family's life
9 if somebody in --

01:59 10 COMMISSIONER MacCALLUM: Oh, you wanted a
11 public inquiry you mean?

12 A Yes, yes.

13 COMMISSIONER MacCALLUM: And not an
14 investigation into the allegations of criminal
01:59 15 wrongdoing?

16 A That's right.

17 BY MR. WOLCH:

18 Q You didn't want the narrow focus of that, you
19 wanted generally --

01:59 20 A I wanted them to look at it all.

21 Q Yeah, and you wanted it to lead to the likely
22 conclusion that Fisher did it and --

23 A And get Fisher off the street.

24 Q Right, that's where you wanted it to go, and if
02:00 25 you can turn to 807, this is the matter of



1 interest, an investigation team of 12 members was
2 assembled under the direction of Sawatsky and
3 there was two prosecutors, so there's 12 available
4 here, and yet when Mr. Williams sought help to
02:00 5 look into the whole case, he had one officer?

6 A Yes.

7 Q He had Mr. Pearson?

8 A That's correct.

9 Q And here there's 12?

02:00 10 A Yes.

11 Q I just want to draw your attention to where this
12 report is coming from, and would it be fair to say
13 that if any piece of evidence in the entire case
14 was disturbing to you, it would be the Mackie
02:01 15 summary and how it was handled, that's a crucial
16 point to you?

17 A It was very crucial. When I read that summary, I
18 felt it was unbelievable that we had missed it all
19 that time, but that it had been done and that they
02:01 20 had operated on that premise that was so wrong.

21 Q But here's how this report deals with it at 813,
22 it is further suggested that support for this
23 allegation is provided -- and this is the
24 allegation of coercion of statements -- is
02:02 25 provided by a five page police report prepared



1 just prior to the interviews of John and Wilson,
2 which allegedly illustrates the fact the evidence
3 of witnesses John and Wilson was fabricated by the
4 police. The RCMP investigation indicates this
02:02 5 summary was prepared during a meeting of the
6 investigators, and members of the RCMP, Inspector
7 Riddell and Staff Sergeant Edmondson, after
8 Cadrain had made his statements to police. This
9 summary appears to be an attempt to pull together
02:02 10 all of the known information from the
11 investigation and develop a theory of how the
12 murder occurred. The summary ends with direction
13 as to how the investigation should proceed from
14 that point, which would be to conduct further
02:03 15 interviews of Nichol and Ronald. The RCMP suspect
16 the first three pages were prepared by Detective
17 Mackie and the last two pages, being the summary,
18 were prepared by Lieutenant Penkala for the
19 reasons set out in the RCMP report. It is the
02:03 20 summary the accusers say corroborate the
21 allegation. Upon a review of the summary and a
22 comparison with the crucial statements obtained
23 from John and Wilson and to an independent report
24 prepared by Riddell of the RCMP, it would appear
02:03 25 the summary is a combination of conjecture and



1 suggestions, and that the conjecture vaguely
2 corresponds to some of the points made in the
3 statements by John and Wilson. It is more an
4 indication of good police work than it is coercion
02:03 5 of witnesses. We do not see that this document is
6 supportive of anything, except an indication the
7 police were on the right track.

8 A It's mind-boggling that they could take the
9 absolute opposite view of what was given in the
02:04 10 Supreme Court.

11 Q So what they are saying here is --

12 COMMISSIONER MacCALLUM: I don't understand
13 that, ma'am. They could take an opposite view --

14 A An opposite view. Like, when this was brought
02:04 15 forward in the Supreme Court --

16 COMMISSIONER MacCALLUM: Yes.

17 A -- and this document was read out, I mean, it was
18 very clear there and the interpretation of it was
19 that they had made that summary and then they had
02:04 20 gone out and they got the witnesses to say
21 everything that was in the summary.

22 COMMISSIONER MacCALLUM: It was very clear
23 to whom?

24 A To the judges.

02:04 25 COMMISSIONER MacCALLUM: In the Supreme



1 Court?

2 A In the Supreme Court.

3 COMMISSIONER MacCALLUM: Did they say that?

4 A No, but the questioning did.

02:04 5 COMMISSIONER MacCALLUM: What questioning?

6 A When they were questioning about the report at the
7 time. I felt that it was -- it had come -- well,
8 of course to us when we saw that report it was so
9 clear what had happened. Hersh actually saw it,
02:05 10 we had seen it many times, but we had never really
11 seen the importance of it before, and this is an
12 indication, it says here the police were on the
13 right track. Well, they weren't, they were on the
14 wrong track.

02:05 15 COMMISSIONER MacCALLUM: Did the Supreme
16 Court mention this in the judgment?

17 A I don't believe it was mentioned in the judgment.

18 COMMISSIONER MacCALLUM: Well, I'm not
19 trying to be difficult, ma'am, but you are being
02:05 20 asked to comment in substance upon what the
21 Supreme Court thought of this and that's your
22 evidence that you knew, so I'm trying to find out
23 how you knew.

24 A Well, perhaps I shouldn't say I knew, perhaps I
02:05 25 should have said I felt it was very important.



1 COMMISSIONER MacCALLUM: This is the --
2 clearly this is the opinion of the McCrank-Fraser
3 inquiry?

4 A Yes, and I think it was --

02:06 5 COMMISSIONER MacCALLUM: And you don't
6 agree with it?

7 A I don't agree with it at all.

8 COMMISSIONER MacCALLUM: All right.

9 BY MR. WOLCH:

02:06 10 Q I'm more concerned with the following: The Mackie
11 summary in many ways predicts what they will say.

12 A That's right.

13 Q Right. Now, if they are telling the truth --

14 A Yes.

02:06 15 Q -- then the Mackie summary may very well be good
16 police work?

17 A Yes.

18 Q If they are telling not the truth, then a
19 reasonable person could conclude that the police
02:06 20 got them to adopt their prediction of what they
21 would say?

22 A That's right.

23 Q Right.

24 A And that's what they did.

02:06 25 Q This report only assumes that they were on the



1 right track, it doesn't say what their finding
2 would be if they were on the wrong track, which
3 they were.

4 A Correct. So here's another good example of tunnel
02:07 5 vision I think.

6 Q Because it only assumes they were telling the
7 truth?

8 A That's right.

9 Q Period. And as I understand it, everybody
02:07 10 involved in this report never got their hands on
11 the Rasmussen report that was so important?

12 A That's right.

13 MR. HODSON: Sorry, did you say they did
14 not have the Rasmussen report?

02:07 15 MR. WOLCH: Correct. Am I wrong about
16 that?

17 MR. HODSON: Yeah. They had the Rasmussen
18 report.

19 MR. WOLCH: I didn't think they did. I
02:08 20 thought we found it here.

21 MR. HODSON: No. If you are referring to
22 the 1969 Rasmussen reports, were found in
23 September of 1993 and were considered by
24 Inspector Sawatsky and by Mr. McCrank and Mr.
02:08 25 Fraser.



1 MR. WOLCH: Okay. Then I'm wrong. I
2 didn't see any mention of it and I assumed you
3 didn't have it. I only learned of it here,
4 that's all I know, that's where I learned of it.

5 BY MR. WOLCH:

6 Q I don't have very many more questions, Mrs.
7 Milgaard, but I do want to turn to some other
8 areas.

9 I believe, I think Mr. Wilson
02:09 10 questioned you about AIDWYC and how that
11 organization was operating and what they did, I
12 don't recall the exact questions, but I know he
13 raised it with you.

14 A Yes.

02:09 15 Q I believe Mr. Wilson is the author of a book
16 called *Deny, Deny, Deny*. Are you familiar with
17 that book or heard of it?

18 A No, I'm not.

19 Q I have a copy here. At page 347 of the book --
02:10 20 now, I'm not sure if the monitor is working or
21 not, I heard it might be down. Is that correct?

22 COMMISSIONER MacCALLUM: Mr. Wolch, perhaps
23 we better be sure whether we're talking about Ron
24 Wilson, Sidney Wilson or Garrett Wilson.

02:10 25 MR. WOLCH: Garrett Wilson.



1 COMMISSIONER MacCALLUM: Garrett Wilson,
2 okay.

3 MR. WOLCH: We have a lot of authors here,
4 we have Mr. Wilson, we have Kim Campbell, we have
02:11 5 Mr. Breckenridge.

6 MR. HODSON: We'll just take a moment here.
7 We did have a technical issue here. I think we
8 might be able to just fix it.

9 (Off record momentarily)

10 BY MR. WOLCH:

11 Q Now, on page 347 there's quite a few references
12 to, actually to David Milgaard, and I'll skip most
13 of them, but there is a paragraph here I would
14 like to emphasize. I'm sorry, this paragraph
02:12 15 here:

16 "The Association in Defence of the
17 Wrongly Convicted (AIDWYC) is a
18 highly-regarded legal organization
19 centered in Toronto that has succeeded
02:12 20 in overturning convictions in a number
21 of celebrated cases, notably David
22 Milgaard in Saskatchewan, Guy Paul Morin
23 in Toronto, and, most recently, in June,
24 2000, Thomas Sophonow in Winnipeg.

02:12 25 AIDWYC has performed excellent work on



1 behalf of those individuals whose causes
2 it undertakes, after, of course, making
3 a thorough examination of the evidence
4 to ascertain if the claim of innocence
02:13 5 is supportable."

6 I won't go into the rest of it, but that's the
7 point I wish to make, is that -- do you agree
8 with that assessment of AIDWYC?

9 A Yes, I do.

02:13 10 Q Another point that has been made is that Mr.
11 Kujawa might have been amenable to defence lawyers
12 coming to see him and that he gets along fine with
13 everybody and things like that have been asked on
14 a number of occasions. If we could turn to 279.
02:13 15 You are aware who Mr. Allbright is, he was the
16 lawyer for Mr. Thatcher, he was also the judge in
17 the Larry Fisher case?

18 A Yes.

19 Q It says here, Mr. Wilson says:

02:14 20 "Kujawa and Allbright made sure that
21 they did not encounter each other after
22 court. They disrobed at separate times.
23 There was real hostility between the
24 two."

02:14 25 And the last paragraph:



1 "This time there would be no patching up
2 until well after the trial was
3 concluded. At a time when both counsel
4 had mostly finished their functions and
02:14 5 had little to do but wait, their
6 professional camaraderie had vanished.
7 It would make the waiting seem much
8 longer."

9 Do you see that?

02:14 10 A Yes, I do.

11 Q Mr. Wilson also asked you, or questioned you about
12 your being suspicious of Mr. Merchant and
13 Mr. Thatcher and it made you worry about having
14 Mr. Merchant as your counsel?

02:15 15 A That's correct.

16 Q If we can turn to page 301, at the bottom of the
17 page, and I want to emphasize that I respect Mr.
18 Merchant, I'm not doing this for any other person
19 but to show that you had some foundation for being
02:15 20 worried at the time. It says:

21 "In April 1986, the Crown and Tony
22 Merchant cleaned up the outstanding
23 charges dealing with the abduction of
24 Stephanie the day after the murder, more
02:15 25 than three years earlier. Because of



1 Colin's conviction --"

2 If you can just turn the page --

3 "-- for the murder, the prosecution had
4 dropped the abduction and mischief
02:16 5 charges against him. Merchant at one
6 time faced two charges of abduction and
7 one of mischief. One abduction charge,
8 based upon valid custody of Stephanie by
9 Tony Wilson, failed when the court held
02:16 10 that JoAnn's custody order did not apply
11 to her husband after she had die. The
12 other abduction charge was dropped and
13 Merchant pleaded guilty to the mischief
14 charge, receiving an absolute discharge.
02:16 15 The Crown came under heavy criticism for
16 this result, particularly from the legal
17 community."

18 Do you see that?

19 A Yes, I do. I wasn't aware of it.

02:16 20 Q What I am saying is you have a general feeling,
21 with Merchant and Thatcher, there was something --

22 A That something was going on, yes.

23 Q -- about it back then?

24 COMMISSIONER MacCALLUM: And just, would
02:16 25 you explain for the record, I believe this



1 relates to a domestic matter in which Mr.
2 Merchant acted for Mr. Thatcher; is that correct?

3 MR. WOLCH: I believe so, yes.

4 COMMISSIONER MacCALLUM: And --

02:17 5 MR. WOLCH: As I say, I'm not here to --

6 COMMISSIONER MacCALLUM: -- arising out of
7 that Mr. Merchant was, you say, was charged with
8 obstruction?

9 A Yes.

02:17 10 MR. WOLCH: Charged criminally, yes.

11 BY MR. WOLCH:

12 Q I'm just saying switching lawyers, under all those
13 circumstances, would not be, you know -- or would
14 be understandable?

02:17 15 A Yes.

16 Q Now I'm afraid I'm not finished with books by
17 Garrett Wilson, Mr. Commissioner, as I have
18 another one here called *Diefenbaker for the*
19 *Defence*.

02:18 20 A Okay.

21 Q You know who John Diefenbaker was?

22 A Yes, I do.

23 Q Now Mr. Wilson took strong, strong exception, I
24 think, to David being out selling magazines. I
02:18 25 think his words were "not a noble calling done by



1 an unsavoury lot", I'm paraphrasing, but --

2 A That's correct.

3 Q And are you aware that John Diefenbaker was out
4 selling bibles door to door?

02:19 5 A Actually, a number of very prominent people have
6 started their life in the magazine business.

7 Q I'll try and do it a little faster by not putting
8 it up, but according to Mr. Wilson Diefenbaker and
9 Stanley Mighton, a successful lawyer in North
02:19 10 Battleford, were out selling bibles, and Watrous,
11 Saskatchewan was one of their places of selling,
12 and that they both did quite well according to the
13 author, in fact they were referred to as their
14 'western giants' by the bible company and even won
02:19 15 a couple of suitcases.

16 A Hmm.

17 Q In fact, Diefenbaker took nine orders out of nine
18 calls one day, and he attributed his success to
19 the model, because I think they were saying that
02:20 20 sales people whine all the time --

21 A Yes.

22 Q -- about not getting sales, and he was quoted as
23 saying "stop bawling, get right in there and do
24 some mauling", was --

02:20 25 COMMISSIONER MacCALLUM: Do some what?



1 MR. WOLCH: Mauling, M-A-U-L-I-N-G.

2 BY MR. WOLCH:

3 Q So Diefenbaker's motto was "stop bawling, get
4 right in there and do some mauling". And the
02:20 5 author describes how they had influenced people,
6 they had rehearsed the whole sales pitch, and if
7 resistance was strong here's how he would prey on
8 these nice ladies to get them convinced they
9 should buy, and when they weren't selling bibles
02:20 10 they were playing pool for money with the local
11 sharks.

12 So David was out selling
13 *Maclean's*, --

14 A That's correct.

02:21 15 Q -- and Diefenbaker was out selling bibles?

16 A That's correct.

17 Q Mr. Wilson also took umbrage with you for
18 suggesting that, I think I'm right, that
19 politicians might be corrupt, that "how dare you
02:21 20 accuse people of, or politicians, of possibly
21 being corrupt"; do you recall that type of
22 question?

23 A Yes, I do.

24 Q I have here another book by Garrett Wilson, *Guilty*
02:21 25 *Addictions*, and if I could have the back portion



1 placed on the monitor I only have one paragraph to
2 put to you. Now this is by Stevie Cameron, a
3 person who's fairly well known for a number of
4 reasons, I won't go into it, but here's what she
02:22 5 says:

6 "My house is littered with
7 the page proofs of Garrett Wilson's
8 wonderful new book; I carried them
9 around from room to room, unwilling to
02:22 10 put them down. This is not just an
11 entertaining and well-plotted read but
12 an insider's guide to an elite of
13 corrupt politicians, greedy business
14 people and baffled police involved in an
02:22 15 extraordinary story. But there is
16 something else that makes this book so
17 compelling and that's Wilson's ability
18 to share his passion for his province
19 and make the reader feel at home in his
02:23 20 world."

21 And I take it his world, according to this, is
22 with the elite of corrupt politicians?

23 A That's what it reads like.

24 Q Mr. Commissioner, I have about maybe ten minutes
02:23 25 left, but I wouldn't mind the break at this point



1 so I can --

2 COMMISSIONER MacCALLUM: All right, sure.

3 (*Adjourned at 2:23 p.m.*)

4 (*Reconvened at 2:43 p.m.*)

02:44 5 BY MR. WOLCH:

6 Q Mrs. Milgaard, you will be pleased to know that I
7 am through with the books that Mr. Wilson
8 authored, and which I got from the Saskatoon
9 Public Library.

02:44 10 A Thank you.

11 Q I might add that they really haven't been asking
12 very much for them back, but there must be a
13 reason.

14 You were asked a quite a few
02:44 15 questions about the role of the media, you were
16 questioned quite a bit about the role of the
17 media?

18 A Yes.

19 Q The media played an absolutely crucial role in
02:44 20 freeing David and leading to the ultimate
21 conviction of Fisher; did it not?

22 A Yes, it did.

23 Q It could easily be said that the tip leading to
24 Fisher, to begin with, would have been inspired by
02:44 25 the public notice in the media?



1 A I'm sure it was.

2 Q And even after that the media did a lot to
3 investigate Fisher, and find out what crimes he
4 committed, and assisted in many, many ways?

02:45 5 A They found information that, with our resources
6 being so limited, we could never have had access
7 to.

8 Q And would it be your belief that the case never
9 would have been re-opened without the pressure
02:45 10 from the media?

11 A I'm absolutely certain of it.

12 Q The media provided a great deal of information and
13 it also, to some degree, exposed the views of
14 certain people in authority?

02:46 15 A Yes, it did.

16 Q For example, and I won't go through them, but for
17 example there was "people believe Elvis is alive",
18 "the system is more important than the
19 individual" -- and I'm paraphrasing -- and things
02:46 20 like that --

21 A Yes.

22 Q -- that were being said that caused the public to
23 get annoyed?

24 A And they were outraged when they would hear the
02:46 25 comments like that, and that helped us very much.



1 Q And the media, through being involved, gave you
2 access to people you wouldn't normally have access
3 to. For example, going to see Prime Minister
4 Chretien, unless he knew who you were and all the
02:46 5 background you would never get there?

6 A That's right.

7 Q And I'm hoping we'll learn more about it later,
8 but we still don't know exactly what role former
9 Prime Minister Mulroney played, but he certainly
02:47 10 did meet with you?

11 A He most certainly did.

12 Q And he was kind and gracious?

13 A He was, and he did -- he was responsible for David
14 being moved over to Rockwood --

02:47 15 Q And he --

16 A -- Institution. The warden there told me that,
17 every time I spoke to the Prime Minister, his
18 phone got hot.

19 Q And it's -- it may very well be that he influenced
02:47 20 Kim Campbell in her decision; we don't know?

21 A I -- we don't know for sure, but it was after his
22 involvement that we got the case moved to the
23 Supreme Court.

24 Q So we haven't had access to a great deal of
02:47 25 material from Justice McIntyre on, --



1 A No.

2 Q -- but it may very well be that Mr. Mulroney went
3 to Kim Campbell and said "do the right thing"?

4 A He said he did.

02:48 5 Q He said he did?

6 A Oh yes, he has said that publicly, I believe.

7 Q Perhaps I can help you on that. Can we turn to
8 229807. Now I'm, unfortunately I haven't got the
9 previous article, but this article here by Gordon
02:48 10 Sinclair, Jr. And this will probably be dealt
11 with later, so I won't go through it in the
12 greatest of detail, but if you can just highlight
13 that portion.

14 Now, to give you some background
02:49 15 on this, Mr. Mulroney had spoken and referred to
16 his meeting with you as being a cold, wintery
17 night or whatever?

18 A Yes.

19 Q And he remembered this, but it wasn't a cold
02:49 20 wintery night, it was a nice September night I
21 think?

22 A Warm and sunny.

23 Q Yeah. So Sinclair is phoning Mulroney, and he
24 says:

02:49 25 "A week-and-a-half later, my



1 office phone rang. It was Mulroney and
2 he was prepared to talk about what he
3 did.

4 'I told the appropriate people
02:49 5 I thought a review of this particular
6 case was warranted, and I wanted
7 appropriate action taken to bring this
8 about,' he said.

9 What had initiated his action,
02:49 10 he said, was a meeting he had in
11 Winnipeg with David's mother, Joyce
12 Milgaard.

13 'There was just something so
14 forlorn, but very loving, about a woman
02:49 15 standing on a very cold evening in
16 Manitoba on behalf of her son, ...'".

17 Now we know it wasn't a cold evening, but
18 nevertheless, --

19 A No.

02:50 20 Q -- here you have the former Prime Minister of
21 Canada saying to a reporter that he did
22 intervene, --

23 A Yes.

24 Q -- and "the appropriate people" would have to be
02:50 25 Kim Campbell's office, there's nobody else that



1 could review the case?

2 A That's right.

3 Q And if it wasn't for the media you wouldn't have
4 been with the Prime Minister, you wouldn't have
02:50 5 been talking to him and you wouldn't even know
6 what he said, because it's a reporter that got
7 this from him?

8 A That's right.

9 Q And we don't know if there's any documents from
02:50 10 Mulroney to Campbell, or not, at this point in
11 time?

12 A No.

13 Q But we do know that, when the application was made
14 to Justice, solicitor/client privilege had to be
02:50 15 waived from David regarding Mr. Tallis?

16 A Yes.

17 Q And it's been waived for --

18 A Everything.

19 Q -- everything, you've even provided Commission
02:51 20 with taped conversations with your own counsel?

21 A That's correct.

22 Q And you appreciate how important it is to maintain
23 the sanctity of solicitor/client privilege,
24 particularly of people who are accused of crimes,
02:51 25 so they can confide in their lawyers?



1 A That's right.

2 Q And might you agree with me that that sanctity is
3 more important to protect than memos between
4 government-paid lawyers to government-paid
02:51 5 lawyers?

6 A I would think so.

7 Q My final question is not really a question,
8 Mrs. Milgaard, but you have devoted much of your
9 life to freeing your son?

02:52 10 A I have.

11 Q And you succeeded, at great personal sacrifice, to
12 obtain his freedom?

13 A Yes.

14 Q And you devoted yourself, as well, to seeing to it
02:52 15 that the real killer was caught?

16 A That's true.

17 Q And you succeeded there as well?

18 A Yes.

19 Q Thank you.

02:52 20 **BY MS. McLEAN:**

21 Q For the record, Mrs. Milgaard, we've met?

22 A Yes, we have.

23 Q Could I have document 338038, please.

24 COMMISSIONER MacCALLUM: For the record,
02:53 25 this is Ms. McLean, Mrs. Milgaard.



1 I know it's embarrassing to
2 state that but, if you are looking for something
3 on the record, it helps.

4 MS. McLEAN: I'm sorry.

02:53 5 BY MS. McLEAN:

6 Q You were asked some questions about almost three
7 weeks ago now, I guess, by Mr. Wilson about your
8 education at Tenacre, and you have, I understand,
9 received some communication from them clarifying
02:53 10 your date of graduation from the Tenacre School of
11 Nursing; is that right?

12 A That's correct.

13 Q And this document here indicates that the date of
14 your graduation from the Tenacre School of
02:53 15 Christian Science Nursing was October the 20th of
16 1990?

17 A That's correct.

18 Q And that, I think you've said, is a five -- it
19 took you five years to complete that program, --

02:53 20 A Yes.

21 Q -- which would have you starting there in about
22 1985?

23 A That's correct.

24 Q And does that accord with your recollections, now,
02:54 25 of when you would have gone there, or where you



1 had been before?

2 A Yes, it would.

3 Q And you preceded that, I think, by being in the
4 United Kingdom taking a course preparatory to
02:54 5 going to Tenacre?

6 A That's correct.

7 Q Okay. And now if we could have 038335. Oh, I'm
8 sorry, just before we leave that I should indicate
9 that that Email is from Bre or Bre Cosseboom, who
02:54 10 is the Tenacre School of Christian Science
11 Nursing?

12 A Yes. I called them because I couldn't find
13 anything in my notes, and I've not been really
14 good on dates, and when I was asked these
02:54 15 questions I just couldn't remember when the dates
16 were, but I knew I had graduated and unfortunately
17 I didn't have the records, so I called and she was
18 kind enough to Email me this reply.

19 Q Okay. 338035, please. And these are photographs
02:55 20 that you've provided through me to the Commission.
21 The top one appears to be --

22 A I actually have a diploma in my hand for Mr.
23 Wilson to see.

24 Q Okay. And appear to be wearing some sort of
02:55 25 nurse's uniform?



1 A That's correct.

2 Q And that is, as I understand it, taken on the date
3 of your graduation from the Tenacre School of
4 Christian Science Nursing?

02:55 5 A That's correct.

6 Q And the next photo below that is you with your
7 husband and your daughters?

8 A My daughter and daughter-in-law, yes.

9 Q Sorry, on the day of the graduation, and again you
02:55 10 are holding the diploma still?

11 A That's right.

12 Q Thank you. Could I have 338034, and can we rotate
13 it? That is a picture of your son, David
14 Milgaard, --

02:56 15 A That's correct.

16 Q -- standing in front of a plane?

17 A That's right.

18 Q And can you tell us when that photograph was
19 taken?

02:56 20 A No, I wouldn't have a date in mind, it would have
21 been when he gave me the plane.

22 Q Okay. And why did he give you a plane?

23 A Well what happened, as a result of a conversation
24 we had one day in visiting, his friend Chuck, he
02:57 25 kept, he always kept saying "when I get out", you



1 know, and he said to Chuck "when I get out, and I
2 get compensated, I'm going to buy you a
3 motorcycle". And I looked at David and I said
4 "well, if Chuck gets motorcycle, I should get an
02:57 5 airplane", because I was taking flying lessons at
6 the time.

7 And so years later, after he had
8 the compensation, the financial advisor came to me
9 with this book on airplanes and said to me "your
02:57 10 son wants you to read this and then go and pick
11 out the plane you'd like to have", I said "get out
12 of here", and he said "no, I'm serious, he has set
13 a special account aside just for that", and that
14 triggered back to the memory of that conversation
02:57 15 and I knew where that had come from.

16 Q Okay. So is that the plane that David bought you?

17 A Yes, it is.

18 Q And do you still own it now?

19 A No, I don't.

02:58 20 Q And what --

21 A When the, after the affair with the insurance
22 rates going up and the -- in the United States,
23 when they had that disaster with the airplane,
24 rates skyrocketed for insurance and everything and
02:58 25 so I found it was just too expensive to keep up.



1 Q When you had the plane where did you keep it?

2 A At St. Andrews.

3 Q And where is that located, province?

02:58 4 A Just near Winnipeg, not far from where we live, in
5 Petersfield.

6 Q And do you remember being cross-examined by Mr.
7 Wilson at the end of May where he was asking you
8 about your lessons in flying?

9 A Yes, I do.

02:58 10 Q As a result of that cross-examination, did you
11 make contact with anybody?

12 A Well I -- I tried to. A number of flying clubs
13 changed hands, and everything, and eventually,
14 though, I found the owners where I had originally
02:59 15 started flying, at Central Air, and talked to them
16 on the phone. And it was amazing, she said, "oh,
17 I remember you, you're the one whose son was
18 innocent and you were trying to get him out of
19 prison", and it's --

02:59 20 Q More media coverage I guess?

21 A Yes.

22 Q Could we have 338033, please? It might just help
23 to speed this along here. This is a letter dated
24 June the 9th to Commission Counsel, here, from a
02:59 25 Grace Boklaschuk?



1 A Yes.

2 Q And it indicates that she and her husband were the
3 owners of Central Aero-Flight at St. Andrews
4 Airport during the period of 1978 to 1982. Is
03:00 5 that who you mean when you say you spoke to people
6 that owned the place?

7 A Yes, these were the people I spoke with.

8 Q And that letter indicates to Commission Counsel
9 that:

03:00 10 "We operated a flying school as well as
11 aircraft leasing and maintenance. Our
12 flying school offered training for
13 private, commercial and
14 instrument-training pilots. Joyce
03:00 15 Milgaard was a private pilot student in
16 training during late 1979 to 1980. She
17 had reached the point in her training
18 where she had successfully achieved solo
19 flight. This was 26 years ago and I no
03:00 20 longer have the confirming
21 documentation. There were personal
22 reasons for the interruption in her
23 training."

24 And those 'personal reasons', as I understand it
03:00 25 Mrs. Milgaard, were that that was the time period



1 when David had escaped and been shot?

2 A Yes, in 1980 he had escaped.

3 Q The letter continues:

4 "I am presently employed as a

03:00 5 Senior Program Officer with Agriculture

6 Canada - Farm Income Programs.",

7 and then she provides both her Email and

8 residence telephone numbers for the assistance of
9 counsel.

03:01 10 A And I was grateful that she had remembered all of
11 the information and that I had soloed and they
12 made a special day of it, that particular day when
13 I soloed, and I was sorry that I couldn't get the
14 information to Mr. Wilson at the time.

03:01 15 Q Okay. Well maybe this will be enough to get a
16 different headline about whether or not you're a
17 liar.

18 If we could move on to a
19 different area, you were asked in
03:01 20 cross-examination by Ms. Knox and others, I
21 believe, about some efforts that you were making
22 to have witnesses contacted, and I think what's
23 been suggested to you, and that you've gone along
24 with, is that the witnesses Nichol John, Ron
03:01 25 Wilson, those are the people I'm talking about, --



1 A Okay.

2 Q -- were contacted in 1981 at your request, and I
3 want to just go through some of the documents that
4 relate to that. If I could have 032248, please.
03:02 5 This goes back to 1969, June the 2nd, and that is
6 within days of David's arrest, which I believe was
7 on the 29th, and it is in fact the day that he
8 arrived back in Saskatoon, if I'm not incorrect.
9 If I could just have a moment here.

03:02 10 There's an account by the, it's
11 Officer McCorriston who's writing an account for
12 the chief of police of your visit to David, and it
13 contains as much as he could possibly write about
14 what you had said to David, what David said back,
03:03 15 and what you were going to be doing next. And
16 there is a notation there that:

17 "Mrs. Milgaard stated she
18 would be contacting Nicole John and Ron
19 Wilson to find out their stories on this
03:03 20 matter."

21 And you probably don't remember saying that
22 specifically, but do you recall that that was
23 your intention back in '69, that you wanted to
24 actually go to the witnesses and speak to them
03:03 25 yourself?



1 A Yes, I did.

2 Q And if we could go to page 2 of that same
3 document, please. This is by an Officer Barrett,
4 again it's a notation to Chief of Police Kettles,
03:03 5 and it's got the same date of June the 2nd, 1969.
6 Once again, they are standing guard over David in
7 the interview room while you're visiting him, and
8 taking note of the conversations. It says:

9 "During the course of
03:04 10 conversation Mrs. Milgaard asked David
11 'Shorty's' last name and address, so
12 that she might interview him in
13 connection with the case. She also
14 intimated that she was going to
03:04 15 interview Wilson and Nichol John
16 regarding the case.

17 Mrs. Milgaard was advised by me
18 "...",

19 and that would be Officer Barrett:

03:04 20 "... that before she attempts to
21 interview any Police witnesses, she
22 either speak to the Chief of Police, or
23 her son's lawyer or the Agent for the
24 Attorney General, regarding the matter."

03:04 25 Do you recall any conversation with the officers



1 about you interviewing any witnesses?

2 A Yes, I do, and it seems to me that he said I
3 shouldn't interview any of them and that, you
4 know, go and speak to the chief of police or
03:04 5 others and they would give me all the reasons why.

6 Q And did you follow up on that or not?

7 A No. I felt well, if that was the procedure, then
8 that's what I should do.

9 Q Okay. Now if we go to 1981 -- 047947, please --

03:05 10 Ms. Knox suggested to you the record shows that
11 you wanted the police to interview or contact the
12 witnesses in 1981, so I just want to show you some
13 of these documents. This one is a letter from the
14 police to Mr. Young, and it seems to be a letter
03:05 15 that's written in response to a telephone call
16 that Mr. Young had with the police?

17 A All right.

18 Q And it was his request, Mr. Young's request on the
19 telephone to interview police officers and it
03:05 20 says:

21 "I have given consideration to the
22 request of Mr. O'Brien and yourself to
23 be given permission to interview the
24 police officers involved in the
03:06 25 investigation of the murder charge



1 against David Milgaard in 1970 and to
2 have access to the complete police file.
3 I am sorry to say that I cannot agree to
4 such a request."

03:06 5 In document, please, 106833, January 12th, this
6 seems to be after being told that he can't
7 interview police officers. Mr. Young then writes
8 to the police on January the 12th, it's addressed
9 to the chief of police John Gibbon, and he asks
03:06 10 for assistance in locating the witnesses. The
11 first paragraph deals again with the request to
12 speak with one or more of the officers, indicates
13 that he hopes that he can get information that
14 might lead to the exoneration of David?

03:07 15 A Yes.

16 Q The next paragraph:

17 "Further, I wish to confirm our
18 telephone conversation of January 12,
19 1981 whereby I inquired into the
03:07 20 possibility of obtaining the assistance
21 of the Saskatoon City Police in locating
22 the following individuals:"

23 And it names Ronald Wilson, Nichol John and
24 Albert Cadrain.

03:07 25 "It is possible that the family will



1 want to try to speak to other
2 individuals involved in the
3 investigation and trial process, however
4 for the time being I simply wish to ask
03:07 5 for the assistance of the police with
6 respect to locating the three people
7 mentioned above."

8 There's no suggestion in there that it was a
9 request to have them interviewed was there?

03:07 10 A No, there isn't.

11 Q January 13th, document, please, 097430, this is a
12 document from the chief of police John Gibbon to
13 then Superintendent Penkala dated January the 13th
14 of 1981 and it refers at first to the request from
03:09 15 the family of David Milgaard for access to our
16 file and the opportunity to interview our members,
17 and then he attaches the reply.

18 "Mr. Young of the law firm..."

19 Of the law firm where Mr. Young worked,

03:09 20 "...contacted me again yesterday and he
21 says he is anxious to contact three of
22 the persons that gave evidence at the
23 Milgaard trial in 1970. He named them
24 as Nichol John, Albert (Shorty) Cadrain
03:09 25 and Ron Wilson. I pointed out to Mr.



1 Young that I would find out whether
2 these persons still lived in Saskatoon
3 and whether there were any restrictions
4 on our giving out their present location
03:10 5 if indeed we know same."

6 Again, there's nothing in there that suggests
7 that there's any request that the police
8 interview these people?

9 A That's right.

03:10 10 Q "In that regard I pointed out to Mr.
11 Young that it was standard police
12 practice not to reveal persons'
13 whereabouts if that person indicated
14 such a wish to us. For instance, I
03:10 15 pointed out to him that if we received a
16 complaint of a missing person, should we
17 locate that missing person, we would not
18 reveal that person's whereabouts unless
19 we were given permission."

03:10 20 Moving down:

21 "Would you review the file in this
22 regard and let me know where the three
23 witnesses might be in Saskatoon. Having
24 indicated to Mr. Young that I am not
03:10 25 prepared to make our file or our members



1 available, I do not want to appear to be
2 an obstructionist if indeed there are
3 some valid reasons for enquiries to be
4 carried out on behalf of the Defendant,
03:11 5 however, I do want to make sure that any
6 witnesses who were involved in the case
7 are not subjected to any needless
8 harassment."

9 That again is simply an inquiry as to the
03:11 10 whereabouts of these people?

11 A Yes.

12 Q January the 16th, three days later, the document
13 is 106840, and this is the direction from the then
14 superintendent to Mr. Karst, and it says:

03:11 15 "Ed

16 Please contact Wilson and John, if
17 possible and confirm whether or not they
18 wish their names and addresses released
19 to lawyer for the Milgaard family. I'm
03:11 20 sure they won't, however, the chief
21 would like to know that specifically so
22 that he can tell the lawyer."

23 Now, that's something that you were not aware of
24 at the time that Mr. Young was making these
03:12 25 requests?



1 A That's true.

2 Q But it seems that the intention here of Mr.
3 Penkala at any rate was not to send out a regular
4 policeman, a beat constable, a cadet, but to send
03:12 5 out one of the main investigators on the case?

6 A That's right.

7 Q Now, regardless -- at this point, regardless of
8 how they got there, it's now established that the
9 witnesses did not testify truthfully at trial?

03:12 10 A Correct.

11 Q And specifically in the statements that were given
12 in May of 1969, Nichol John did not see David stab
13 anybody?

14 A That's correct.

03:13 15 Q She did not see him attack anybody, she didn't see
16 him steal a purse, put it in the garbage can,
17 Ronald Wilson did not see him do anything, he did
18 not see blood on him and David didn't kill
19 anybody?

03:13 20 A That's correct.

21 Q And that is all factually undisputed. So these
22 witnesses came to tell things at the trial and in
23 police statements that weren't true. Now, if they
24 had told those untruths because of police
03:13 25 pressure, do you think a visit by the police that



1 had been involved in that might convey a message
2 to you that you shouldn't talk to Mrs. Milgaard
3 and her family?

4 A I think it would have a very strong message to
03:13 5 them to that effect.

6 Q And do you think they would at least get the
7 message that it's a good idea not to talk to you?

8 A Yes.

9 Q Document 106839, please, and this is Mr. Karst on
03:13 10 January the 16th reporting on his visits to
11 Mr. Cadrain and to Nichol John, or not necessarily
12 his visit, his conversations with them. He's
13 indicating to the chief of police:

14 "I contacted Albert Cadrain... He
03:14 15 requested his whereabouts not be
16 divulged to anyone with regards to this
17 matter for obvious reasons. (He had
18 been threatened by Milgaard at the
19 trial.) I assured him this department
03:14 20 would make every effort to abide by his
21 request."

22 And then:

23 "...contacted Inspector Walters of the
24 Regina City Police, who assisted with
03:14 25 the original investigation of Wilson and



1 John."

2 So again, the officers that had been dealing with
3 them in 1969?

4 A Right.

03:14 5 Q "After making inquiries, he advised
6 me of the following:"

7 And there's an address provided for Ronald Wilson
8 and there's an address provided for Nichol
9 John's -- sorry, a telephone number provided for
03:15 10 Nichol John's parents, some uncertainty as to
11 what Nichol John's current married name might be,
12 and the suggestion that she could be located
13 through them?

14 A Yes.

03:15 15 Q So with respect to items number 1 and 2 on the
16 bottom of this letter, that is exactly the
17 information that your lawyer was seeking from the
18 police; is it not?

19 A Yes, it was.

03:15 20 Q January the 21st, document 106841, so some five
21 days later Mr. Karst writes again to the chief of
22 police and indicates that he has contacted Ronald
23 Wilson:

24 "He states that he does not
03:15 25 want his name, or any information as to



1 his whereabouts, released to the lawyer
2 or anyone else representing the Milgaard
3 family.

4 I have also located and spoken
03:15 5 to Nicole... She also states that she
6 does not want her name to be given to
7 any lawyer or representative of the
8 Milgaard family. As a matter of fact,
9 she states that she doesn't understand
03:16 10 how anyone could even consider releasing
11 her name to the lawyer."

12 Above and beyond what your lawyer had asked?

13 A Yes.

14 Q January the 23rd, 106842 is the document number,
03:16 15 please, this is the reply that Mr. Young received
16 from the police to his request for assistance in
17 locating the witnesses that you wanted to
18 interview:

19 "As indicated to you we would contact
03:16 20 the three people noted in your
21 letter..."

22 That's certainly what the police did, it's not
23 what Mr. Young had asked for,

24 "...and ascertain whether they wish to
03:16 25 have their whereabouts known to you and



1 I might say that this is a standard
2 procedure wherever we receive a request
3 to locate persons and I'm treating this
4 in that vein.

03:17 5 We have now been in contact
6 with Mr. Cadrain and Mr. Wilson and Ms.
7 Nichol John and all three of them are
8 most emphatic that they do not want
9 their whereabouts made known to yourself
03:17 10 or to the Milgaard family and we will
11 respect those wishes."

12 Now, moving on, you certainly got that
13 information from Mr. Young; did you not?

14 A Yes.

03:17 15 Q And then you went out and tried to find Nichol
16 John and interview her anyway?

17 A Yes.

18 Q And then you went on to try and interview Mr.
19 Wilson anyway?

03:17 20 A Yes.

21 Q If we can go back to this letter for a second:

22 "As indicated to you previously, I
23 recognize that cases can be re-opened,
24 however, I also recognize that certain
03:17 25 procedures should be followed. If the



1 Milgaard family have reasons sufficient
2 to cause a review of this case, we are
3 certainly prepared to co-operate by
4 making our file available to a
03:17 5 representative of the Attorney's General
6 Department. We would, of course, point
7 out that the three witnesses you are
8 trying to locate have indicated they do
9 not wish their whereabouts made known,
03:18 10 but it would then be up to the
11 representative of the Attorney General
12 to decide whether those people should be
13 interviewed and by whom."

14 Does this sound like a bit of a catch-22, if
03:18 15 you've got the evidence to cause a re-opening of
16 the case, you can get access to material that
17 might potentially allow you to re-open the case?

18 A Yes, but if you haven't, you can go nowhere.

19 Q And at that time you had a firm belief, correctly
03:18 20 held, that your son was absolutely innocent?

21 A Yes.

22 Q And you knew that the evidence against him
23 emanated from his former friends?

24 A Yes.

03:18 25 Q And people that he had associated with in 1969 and



1 1970?

2 A That's correct.

3 Q If the case is ever going to be re-opened, that
4 evidence will have to be recanted or otherwise
03:19 5 proved false?

6 A That's right.

7 Q And assuming that you can get them to recant or
8 assuming that you can otherwise prove their
9 evidence false, the police are prepared to give
03:19 10 you their addresses so that you can then go and
11 speak to them?

12 A Yes.

13 Q And what you were seeking all along there was
14 information that might help to exonerate your son?

03:19 15 A Yes, I was.

16 Q 025335, I hope, January the 26th is three days
17 after the letter to Mr. Young and it's a letter
18 from Larry Leslie, counsel to Nichol John,
19 complaining that you had gone to see Nichol John
03:20 20 on January the 25th?

21 A That's correct.

22 Q So am I correct that after being effectively
23 stonewalled by that police response, you used
24 whatever other resources were available to get to
03:20 25 the witnesses?



1 A We did.

2 Q Can you make any suggestions there that might help
3 future families or future Davids in a situation
4 like that?

03:20 5 A Well, I think that it's very important to have
6 people that are open to the possibility that
7 someone could be innocent, people that are open to
8 looking for evidence to help prove innocence. In
9 our case and in most cases of wrongful conviction
03:21 10 what happens is the stone wall goes up, literally,
11 and you can get no information, and it's so
12 important, this is why an independent board where
13 people can be briefed on, you know, just the
14 thought that there could be innocence here, they
03:21 15 may have a few facts but not a lot, but that they
16 can at least take the proper steps and go out and
17 interview without having their minds prejudiced in
18 the first place, that they are going out and -- it
19 didn't matter what we seemed to give to the
03:21 20 Justice Department or to anyone showing David's
21 innocence, they would then come back and say,
22 well, we still have this or we still have that,
23 and so it was a matter of trying to knock
24 everything down, and so I think it's important to
03:22 25 have that sense of independence, a place that



1 people can go to for help where they are confident
2 that they will get it, where they are not thinking
3 that, oh, the police are just going to cover this
4 up or whitewash it or anything, but if it's an
03:22 5 independent board where they can have the
6 confidence in, then you are not going to get
7 mothers going all across the country doing what I
8 was doing, it can be done efficiently and properly
9 and in a much better fashion than I did it, and
03:22 10 probably take a lot less time.

11 Q And what about having them investigate the
12 entirety of the case and not just what you've been
13 able to cobble together to present?

14 A Well, I think that's the important issue, is that
03:23 15 it must be a complete look at the case. You can't
16 just look at certain facets of it and say, well,
17 they did this right and they did that right and
18 they did the other, in the meantime there may be
19 10 things they did wrong, and so it's important
03:23 20 for it to be a complete look at the case.

21 Q You weren't here last week when Mr. Williams was
22 testifying. Have you had an opportunity to review
23 the transcripts of his evidence?

24 A No, I'm sorry, I have not.

03:23 25 Q Okay. I'm not going to ask you, we can deal with



1 that in submissions.

2 In your cross-examination with
3 Mr. Wilson last month, do you remember him asking
4 questions about the Roger Warren case? He
03:23 5 prefaced it by talking about how AIDWYC sometimes
6 makes mistakes too?

7 A Yes.

8 Q And Roger Warren was the case, I think it's the --
9 is it the Westray Mine disaster?

10 COMMISSIONER MacCALLUM: No.

11 MS. McLEAN: It's not Westray? It's up
12 north somewhere. Yellowknife.

13 COMMISSIONER MacCALLUM: Giant Mine,
14 Yellowknife.

15 A Uh-huh.

16 BY MS. McLEAN:

17 Q And this is a case that got an awful lot of
18 publicity again because of a support group that
19 reeled in the media?

03:24 20 A That's right.

21 Q Is there a difference with AIDWYC between
22 investigating and endorsing or adopting a case?

23 A Well, in AIDWYC we first investigate it and we
24 don't adopt it until we are convinced that there
03:24 25 is innocence there.



1 Q So when Mr. Wilson referred to the newspaper
2 accounts of AIDWYC lawyers going up to Yellowknife
3 and interviewing and investigating Mr. Warren's
4 case and then later to AIDWYC dropping it, I'm not
03:25 5 quite sure what his point was, but is that an
6 indication of AIDWYC not being satisfied on the
7 question of innocence?

8 A That would be the way it would be handled if they
9 were not satisfied with the innocence.

03:25 10 Q Okay. But if you've got a case where somebody has
11 made a, or has confessed to a crime, and Mr.
12 Warren in this case did --

13 A Yes.

14 Q -- and he was claiming at some point that he had
03:25 15 made a false confession to the police?

16 A That's correct.

17 Q Are false confessions a phenomenon that occur in
18 cases of wrongful convictions?

19 A Very many of them are false confessions because of
03:25 20 their treatment by the police and they get to the
21 stage where they just feel they have no other
22 choice than to confess just to get them away from
23 them. We see that in lots of cases.

24 Q And it is a recognized phenomenon?

03:26 25 A It is.



1 Q And there are experts that testify; in fact, I
2 think one of them testified at the Sophonow
3 Inquiry?

4 A He did.

03:26 5 Q On false confessions?

6 A That's right.

7 Q And in this case, the Warren case, the confession
8 was actually true?

9 A That's right.

03:26 10 Q And that's given by his own testimony later at a
11 civil case. Mr. Makin's article in *The Globe and*
12 *Mail* referred to AIDWYC quietly dropping out and
13 abandoning a year-long investigation, and again,
14 that is an investigation, it's not a case where
03:26 15 AIDWYC had thrown support behind Mr. Warren?

16 A That's correct.

17 Q Could we have 338307, please. This is from the
18 AIDWYC web site. If anybody wants to go there,
19 and I know they do, www.AIDWYC.org, and this is
03:27 20 out there indicating that:

21 "At this time AIDWYC only handles
22 homicide cases."

23 And that's simply a function of resources; is it
24 not?

03:27 25 A That's right. We just don't -- there are so many



1 cases out there of wrongful convictions that we
2 had to set a criteria where we could make a start
3 and it had to be in the homicide cases where
4 people are still in prison.

03:27 5 Q

"While we recognize that there
6 are many cases in which the
7 reasonableness of a guilty verdict may
8 be questioned, AIDWYC has chosen to
9 devote itself exclusively to cases in
03:27 10 which the board is convinced--and will
11 be able to prove--that the accused is
12 factually innocent. This process
13 ensures quality control of all cases and
14 speaks clearly to the integrity of our
03:28 15 process.

16 Factual innocence is where
17 proof exists (through DNA or other
18 means) that the person was not involved
19 in any way with the murder.

03:28 20 For a case to be considered, an
21 applicant must file a formal request
22 with AIDWYC. Our intake form requires
23 the applicant to agree to DNA testing if
24 applicable."

03:28 25 Why is that?



1 A Well, if they are not willing to have a DNA test
2 done, that would be very suspicious to me. If
3 there's -- if it's at all possible to use DNA
4 testing, they should be willing to take a test.

03:28 5 Q And that would be sending some message about their
6 guilt or innocence?

7 A Yes, it would, definitely.

8 Q "An initial review of the
9 applicant's case involves reading
03:29 10 transcripts, obtaining any files in the
11 possession of the Crown attorney's
12 office, reviewing all witness
13 statements, forensic reports,
14 interviewing witnesses, the applicant,
03:29 15 forensic experts and any other relevant
16 persons. This work is done by volunteer
17 lawyers and law students.

18 During this time, the
19 supervising lawyer presents the case on
03:29 20 an ongoing basis to AIDWYC's Review
21 Committee. The Review Committee is
22 comprised of lawyer members of the Board
23 and other lawyers working on cases. The
24 Review Committee offers advice and
03:29 25 mentoring with the supervising lawyer.



1 Once the investigative stage is
2 complete, the case is presented to the
3 Review Committee for possible approval.

4 Once the Review Committee
03:29 5 approves the case, it is then submitted
6 for a further review to the Board for
7 final adoption."

8 Is that the way it works?

9 A That's the way it works.

03:30 10 Q Okay. And some of the cases, not an exhaustive
11 list, which AIDWYC has endorsed and adopted,
12 Robert Baltovich, who was released on bail in
13 March of 2000 after eight years in custody on a
14 murder, his retrial is pending in the court in
03:30 15 Ontario?

16 A Yes.

17 Q Jim Driskell?

18 A In Winnipeg, yes.

19 Q About to be the subject of a wrongful conviction
03:30 20 inquiry starting this summer?

21 A That's correct.

22 Q William Mullins-Johnson, another one that is
23 pending resolution originating from Ontario, and
24 this is one that was Dr. Charles Smith on the
03:31 25 pathology?



1 A Yes, that's right.

2 Q Romeo Phillion?

3 A Yes.

03:31 4 Q The first person released after 32 years on an
5 application under the now 696.1?

6 A That's right.

7 Q Is that getting to be the norm?

03:31 8 A It is, and in fact the norm now, I found that if a
9 case is adopted by AIDWYC, it seems to be
10 fast-tracked by the Justice Department, which is
11 good.

12 Q And what about the question of bail pending the
13 resolution of the Justice Department's --

14 A They are letting them out on bail.

03:31 15 Q And they means the court?

16 A The courts are now releasing them. I believe they
17 have seen the value of the work that our
18 organization is doing and the steps to which they
19 take to verify innocence ahead of time so that I
03:32 20 think there's more of a thought there, well, this
21 really could be a wrongful conviction, we will let
22 him out on bail.

23 Q Okay. And another one released on bail pending
24 ministerial review is Kyle Unger?

03:32 25 A Yes.



1 Q And that's another Manitoba case?

2 A It is.

3 Q The Lamer Inquiry looked into Dalton, Druken and
4 Parsons in Newfoundland?

03:32 5 A Yes.

6 Q Mr. Parsons and Mr. -- actually, all three of them
7 were represented by members of AIDWYC?

8 A Yes, they are.

9 Q And Steven Truscott?

03:32 10 A Yes. And with Steven, I must say that we did make
11 an exception. When his son came to see me and
12 asked if we would help with his father's case, I
13 mean, he wasn't in prison, and that's part of our
14 criteria, is they have to be in prison at the time
03:33 15 that they are applying, but I felt that they were
16 in prison, any fact, still, their whole family was
17 in prison, and that it was really important for us
18 to try to help, and fortunately the board took
19 that under advisement and they decided to go ahead
03:33 20 and work with that case.

21 Q And he's being represented in the Ontario Court of
22 Appeal now by AIDWYC lawyers?

23 A Yes, he is.

24 Q Some of the past cases also include a fellow by
03:33 25 the name of Michel Dumont in Quebec?



1 A Yes.

2 Q That's a fellow that was convicted wrongly of a
3 sexual assault?

4 A That's correct.

03:33 5 Q He was ultimately acquitted by the Court of Appeal
6 of Quebec and he is now seeking compensation?

7 A Yes, he is.

8 Q Did you notice an article in the, in May of this
9 year in the newspaper about the compensation
03:34 10 attempts of Mr. Dumont?

11 A Yes, I did. I'm in touch with him frequently.

12 Q And he's effectively been told, has he not, that
13 compensation depends on delivering up the rapist?

14 A Yes.

03:34 15 Q Sound a little familiar to you?

16 A It brought back memories.

17 Q So he's acquitted by the Court of Appeal, but he
18 can't be compensated unless he can deliver the
19 real killer?

03:34 20 A That's right.

21 Q Or sorry, the real rapist?

22 A Rapist.

23 Q In your case, the real killer?

24 A Yes.

03:34 25 Q Other cases AIDWYC's been involved in that were



1 murder trials is Peter Frumusa?

2 A Yes.

3 Q Charges withdrawn in 1998. Clayton Johnson,
4 acquitted by the Court of Appeal and received
03:35 5 compensation from Nova Scotia?

6 A Yes. I met with Clayton and his family and just,
7 it was a -- tried to help them as best I could
8 when they were going through it.

9 Q Michael McTaggart obtained a settlement in Ontario
03:35 10 with the Halton Police?

11 A Yes.

12 Q Guy Paul Morin?

13 A Very familiar with Guy Paul. That's how I got
14 involved in AIDWYC.

03:35 15 Q Thomas Sophonow?

16 A Yes.

17 Q Similar situation there with Mr. Sophonow with the
18 need to prove something?

19 A Yes.

03:35 20 Q You recall that he was acquitted by the Manitoba
21 Court of Appeal after three murder trials?

22 A Yes, I was aware of that.

23 Q And that was in, if I recall, and I should, is
24 1985?

03:36 25 A Yeah, I think it would have been.



1 Q In 19 -- yes, December, '85. In 1997, '98

2 Mr. Sophonow came to AIDWYC and what he was

3 seeking then was his name?

4 A Yes. He had talked to David and David had asked

03:36 5 us to help.

6 Q And what he wanted was the release of exhibits for

7 DNA testing in order to clear his name in that

8 case?

9 A That's right.

03:36 10 Q Ultimately he was cleared?

11 A Yes.

12 Q Compensated at the end of an inquiry?

13 A Yes, he was.

14 Q It's not a bad track record, really.

03:37 15 A No, I think it's very good.

16 Q What, apart from AIDWYC, what would have helped

17 you, your family, or could help other people now?

18 You talk about an independent board to review the

19 cases?

03:37 20 A I think that anyone watching what the family has

21 had to go through in questioning, and things like

22 that, would be very fearful of having an inquiry,

23 in a way, because I had no idea I would feel like

24 I'd been on trial, but I have felt like that way

03:37 25 here. And I think that it's important that



1 questions be asked, and I know that it's a search
2 for the truth, but we knew the truth before we
3 came here, the DNA proof was there in David's
4 case. And I guess I'd like to see the system
03:38 5 changed so that maybe the family would not have to
6 be so involved and that, rather than it being so
7 adversarial, that, together, people would be
8 trying to improve the system, that the police, the
9 government and everyone would be working hand in
03:39 10 hand to make something -- to make the system
11 better, to make the system work, and that's --

12 Q And one of those --

13 A -- a dream I have.

14 Q And one of those things that would work towards
03:39 15 that would be an independent board that's doing
16 the investigating so the family doesn't have to be
17 the one out there --

18 A That's right.

19 Q -- doing it --

20 A That's very important.

21 Q -- and exposing themselves to --

22 A That's right, to criticism, etcetera.

23 Q Funding, I presume, is something that --

24 A Yes. I mean, without the money to do the things
03:39 25 that are required, to have even the -- to be able



1 to make a presentation to the government now you
2 have to have all the transcripts and all of the
3 things that are required. It makes -- it puts a
4 tremendous onus on the person. I get calls all
03:40 5 the time from people all across Canada and the
6 States that tell me they are wrongfully convicted
7 of any number of different things, and some of the
8 major causes or problems that they have is "I have
9 no money, you know, I just don't know what to do,
03:40 10 can you tell me how you did it".

11 Q How you did it?

12 A Yeah. And I'm just hoping they are not going to
13 spend 30 years doing it too.

14 Q All right. So how you did it was you had
03:40 15 volunteer lawyers?

16 A Yes.

17 Q And their own personal pockets?

18 A That's right.

19 Q You had the media?

03:40 20 A Yes.

21 Q You had journalists volunteering their free time
22 and expertise?

23 A They did.

24 Q You had a volunteer group consisting of the David
03:40 25 Milgaard support group?



1 A Yes.

2 Q Your entire family?

3 A Yes.

4 Q Two Prime Ministers?

03:40 5 A Oh, yes. But don't forget the church groups. You
6 know, all --

7 Q That's -- sorry?

8 A -- all across the country, it was amazing, it was
9 so ecumenical. I can remember one lady phoning me
03:41 10 and saying "I know you are a Christian Scientist
11 but I'm praying for you anyhow", and that was sort
12 of the gist of the whole ecumenical movement. The
13 United Church had special days of prayer for
14 David, their Church Council on Justice and
03:41 15 Correction got involved, which they'd never done
16 before, and, I mean, you don't have that kind of
17 support, but we did, and we were so fortunate with
18 all of these people that were coming on board and
19 helping.

03:41 20 Q You had professors, law professors?

21 A Many of them.

22 Q Criminologists?

23 A Yes.

24 Q Other support groups?

03:41 25 A Right across the country. Practically every major



1 city had a David Milgaard support group.

2 Q John Howard Society?

3 A Oh, yes, they opened up a private fund for David
4 and people poured money in across the country.

03:42 5 Q Some police officers?

6 A Yes. And without those police officers who felt
7 that they had to do what they were doing because
8 they were fearful that someone had been wrongfully
9 convicted, came forward, and I'm eternally
03:42 10 grateful to them.

11 Q Private investigators?

12 A Yes, a lot of them worked for nothing too.

13 Q Authors?

14 A Yes.

03:42 15 Q And your life savings?

16 A Yes.

17 Q And for other people that aren't so lucky, what's
18 out there?

19 A AIDWYC at the present time, but hopefully after
03:42 20 this Commission, --

21 Q And --

22 A -- perhaps there will be another future for them.

23 Q And AIDWYC is not funded?

24 A No, it's not, but a funded one.

03:43 25 Q So you've got, in other situations you've got



1 nobody, unless you are very lucky, you've got
2 nobody to do the investigation to get the case to
3 the point of making an application under what I
4 keep calling 690 but which is now 690.6.1?

03:43 5 A 690.6.1, yes.

6 Q And then who is going to do the application itself
7 in the way of counsel, who's going to prepare it,
8 who's going to go in and argue it. Now Ontario
9 and Manitoba have got some funding, now, through
03:43 10 Legal Aid?

11 A Yes. That's something new too.

12 Q Okay. And you've mentioned, also, the cost of
13 transcripts?

14 A The --

03:43 15 Q Cost of transcripts?

16 A Yes.

17 Q The Department of Justice requires two true copies
18 of transcripts be filed --

19 A Yes.

03:43 20 Q -- on an 690 application?

21 A That's correct.

22 Q And it's an astronomical amount of money to get
23 when you're in custody?

24 A It is.

03:44 25 Q And under the rules now, that are spelled out, the



1 Department of Justice requires that everything be
2 submitted to them.

3 A That's right.

4 Q Before the investigation will even start?

03:44 5 A Yes.

6 Q So that certainly contributes, I would think, to
7 the delay?

8 A Oh, absolutely.

9 Q And costs as well?

03:44 10 A And costs.

11 Q And I take it you would support DNA testing as a
12 matter of course, and not by request of the Prime
13 Minister?

14 A Yes, as a matter of course.

03:44 15 Q And that would include, as well, a necessity of
16 preservation of all forensic exhibits that could
17 be related to the case?

18 A Yes. And I really believe that it would be
19 helpful if we had DNA of every person that's
03:44 20 incarcerated, so that it's available in a DNA bank
21 for uses in all kinds of cases, so that if they
22 are looking for someone they can find them.

23 Q And if you are looking to not have the real killer
24 walking around free after he's released from
03:45 25 custody?



1 A That's right.

2 Q Now you've -- you've testified that you've made
3 some mistakes in your investigation of the case
4 and in trying to put together the various clues
03:45 5 that you got along the way?

6 A Many, I'm afraid, yes.

7 Q If not for you and your mistakes, David would
8 still be in custody?

9 A Yes, he would.

03:45 10 Q And you're not a police officer, a lawyer, a
11 private investigator -- although maybe you are
12 now -- but you have no qualifications officially?

13 A I have no qualifications officially.

14 Q So whatever mistakes and wrong turns and wild
03:45 15 goose chases, and whatever else, you did get the
16 case re-opened?

17 A I did.

18 Q You got him out of jail?

19 A Yes.

03:46 20 Q Got him DNA?

21 A Yes.

22 Q Got him exonerated?

23 A Yes.

24 Q Got him compensated?

03:46 25 A Yes.



1 Q After 23 years of imprisonment, with -- when he
2 gets out he's got no visible means of support
3 either; does he?

4 A That's right.

03:46 5 Q And all the family's resources are thrown in
6 there?

7 A Yes.

8 Q So is there something else that we could maybe
9 recommend for when these lucky/unlucky individuals
03:46 10 are released?

11 A I think there should be a partial compensation
12 immediately just to provide them with help when
13 they get out. I mean, if they are letting someone
14 out and they know that they are going to have to
03:46 15 be compensated, there should be an immediate
16 up-front payment there for them because, by that
17 time, many -- many of the people are without any
18 kind of funds at all and it should be implicit, in
19 a case where the conviction has been overturned,
03:47 20 that they should have some money right up front.

21 Q What about counseling, from a psychological or
22 social adjustment perspective, when you come back
23 out into society?

24 A Oh, it would be so important.

03:47 25 Unfortunately my son, because of



1 being psychoanalysed so many times he didn't want
2 to have any kind of counseling or anything like
3 that, but I think that it's important to have some
4 kind of counseling set up and prepared for things
03:47 5 like that, so that it becomes norm and they won't
6 think that they are being abnormal because they're
7 getting counseling, but because anybody that's
8 gone through what they have gone through needs
9 help.

03:47 10 Q So you take away the stigma of seeking assistance,
11 that there is something wrong with you, it's --

12 A No, it's -- it's something to do with a wrongful
13 conviction, it just comes with the territory,
14 "here, this comes with it".

03:48 15 Q Okay. And finally, this was a suggestion made to
16 you a few weeks ago, that you had written the book
17 and done what you had done for money, for the
18 compensation?

19 A Oh, you know, I don't know what I'd have done with
03:48 20 my life if I hadn't had to work on David's case
21 but, you know, I was a very good magazine
22 salesperson, maybe I could have been Prime
23 Minister. Who knows what could have happened
24 along the way, I don't, but I do know that money
03:49 25 was never my objective in any of this and I wrote



1 the book mainly because Peter Edwards kept
2 hounding me to do a book with him. He said "it
3 important to get the information out there for
4 people about what's going on".

03:49 5 Q And to the extent that there are errors that have
6 been pointed out to you in your book, if there is
7 a future edition you, I imagine, intend to correct
8 those errors?

9 A I don't expect there to be a future edition, but
03:49 10 if there were I certainly would, however --

11 Q And make the appropriate additions?

12 A The appropriate additions. The thing is that,
13 when I wrote the book and told what went on, I was
14 telling what went on at that time. Like if I was
03:50 15 talking about 1980, I was talking about what went
16 on in 1980, if I was talking in '89, that's what
17 I'd be talking about. I wasn't talking about it
18 from my 1999 perspective, I was talking about it
19 back then, so the story was as it was evolving,
03:50 20 and that's what I believed at those times. And so
21 someone can look at that and take it out of
22 context and say "oh, but you knew that in 1999"
23 and yes I did, but I was telling the story of
24 1980, and so there is a lot of conflicting things
03:50 25 like that. So I don't think I'd write another



1 book.

2 Q So its title as well, *A Mother's Story*, it's the
3 story of --

4 A And it was a story.

03:50 5 Q -- David's arrest, imprisonment, release, and
6 exoneration?

7 A And, you know, the reason I wrote the book was
8 because of my family. Everybody saw me, Joyce
9 Milgaard, out there. They never saw my family,
03:51 10 they never saw what my family went through, but I
11 did, and I saw every one of them beat up over the
12 various things that happened to them, and I felt
13 that, in that book, I could tell people how my
14 kids had supported me and how my husband had
03:51 15 supported me and how the world had supported me.
16 It wasn't for money.

17 Q And you've been attending this Inquiry for the
18 last 18 months. Now, unlike the lawyers here, you
19 are not being paid to sit here every day?

03:51 20 A That's correct, I'm not.

21 Q But, for the record, you are having your expenses
22 reimbursed?

23 A Yes, I am.

24 Q Why are you here?

03:51 25 A Because I have hope that this Inquiry will change



1 things for the future of wrongful convictions,
2 that's my main reason to be here, none other.

3 Q Thank you. I have no further questions.

4 A Thank you.

03:52 5 MR. HODSON: I think Mr. Wilson wishes to
6 address --

7 COMMISSIONER MacCALLUM: Mr. Wilson, what
8 is the subject that you wish to raise, please?

9 MR. WILSON: Well I was -- I seek leave to
03:52 10 ask just a couple of questions arising out of the
11 documentation that was produced today in response
12 to my cross-examination a month ago.

13 COMMISSIONER MacCALLUM: Well, exactly
14 what, sir?

03:52 15 MR. WILSON: Well, the aircraft and the
16 school of nursing, that's all.

17 COMMISSIONER MacCALLUM: I really think I
18 have a fairly firm grasp on the evidence in
19 respect to those two.

03:52 20 MR. WILSON: I realize it's not critical.

21 COMMISSIONER MacCALLUM: Yes, thank you,
22 Mr. Wilson.

23 MR. WILSON: Thank you.

24 COMMISSIONER MacCALLUM: We'll let it pass.

03:53 25 Mrs. Milgaard, thank you very



1 much for testifying, you may stand down.

2 And counsel, just before -- you
3 can take your seat --

4 A Okay, thank you.

03:53 5 COMMISSIONER MacCALLUM: -- just before we
6 conclude for the day, it has not escaped my
7 notice that Mrs. Milgaard has again taken the
8 opportunity to criticize the conduct of the
9 Inquiry, and she has a perfect right to do so.

03:53 10 She was asked what help other
11 people could look for besides the independent
12 board, and she feels that -- she complains that
13 she feels like she has been on trial here, and
14 that the system should change so as that she
03:53 15 wouldn't be put in a position that she finds
16 herself here, the family would not have to be so
17 involved, and that an inquiry like this should
18 not be so adversarial. And I just want to remind
19 you that Mrs. Milgaard pushed for this Inquiry,
03:54 20 demanded it for a long time as well as did her
21 son, no objection was taken to the Terms of
22 Reference, which have involved, the third arm of
23 which has involved her most closely, of course;
24 that she applied for standing, she didn't have to
03:54 25 be here; and that the adversarial nature of what



1 we have been going through for the last 18 months
2 arises, in large part, to the advocacy of her
3 counsel. I'm not speaking about you personally.

4 A Mr. Commissioner, may I --

03:54 5 COMMISSIONER MacCALLUM: No, you may not, I
6 I've heard enough. Thank you.

7 MS. McLEAN: May I?

8 A I --

9 COMMISSIONER MacCALLUM: I'll hear from
03:54 10 your counsel.

11 MS. McLEAN: If I could just have one
12 second?

13 *(Discussion off the record)*

14 MS. McLEAN: Mr. Commissioner, those
03:55 15 comments, I'm advised, are as I took them when
16 she said them; is her feelings about the, what
17 she has undergone in cross-examination, and there
18 was some very adversarial cross-examination of
19 Mrs. Milgaard last month, and what she was
03:55 20 speaking of is not having to be as involved in an
21 investigation such as to make yourself a witness.
22 It was not a criticism of the Inquiry and it was
23 not meant in that vein at all.

24 COMMISSIONER MacCALLUM: Thank you.

03:55 25 Mr. Hodson, are we adjourned



1 for the day?

2 MR. HODSON: Yes. We'll have Murray
3 Sawatzky here tomorrow morning at 9:00.

4 COMMISSIONER MacCALLUM: Thank you.

03:55 5 (*Adjourned at 3:55 p.m.*)



OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

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

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



<p>'</p> <p>'60s [1] - 34850:15 '65 [1] - 34850:18 '69 [1] - 34923:23 '72 [2] - 34858:11, 34861:5 '85 [1] - 34949:1 '89 [1] - 34959:16 '92 [5] - 34874:4, 34883:19, 34887:23, 34891:20, 34892:3 '98 [1] - 34949:1 'personal [1] - 34921:24 'shorty's [1] - 34924:11 'there [1] - 34913:13 'western [1] - 34906:14</p>	<p>19 [1] - 34949:1 1930 [1] - 34850:25 1969 [7] - 34854:24, 34899:22, 34923:5, 34924:5, 34930:12, 34932:3, 34935:25 1970 [8] - 34875:6, 34875:11, 34881:20, 34893:6, 34893:7, 34926:1, 34927:23, 34936:1 1978 [1] - 34921:4 1979 [1] - 34921:16 1980 [5] - 34921:16, 34922:2, 34959:15, 34959:16, 34959:24 1981 [5] - 34923:2, 34925:9, 34925:12, 34926:19, 34927:14 1982 [1] - 34921:4 1985 [2] - 34916:22, 34948:24 1986 [1] - 34903:21 1990 [1] - 34916:16 1993 [1] - 34899:23 1997 [1] - 34949:1 1998 [1] - 34948:3 1999 [2] - 34959:18, 34959:22 1:01 [1] - 34850:2</p>	<p>3</p> <p>30 [1] - 34951:13 301 [1] - 34903:16 32 [2] - 34874:20, 34945:4 338033 [1] - 34920:22 338034 [1] - 34918:12 338035 [1] - 34917:19 338038 [1] - 34915:23 338307 [1] - 34941:17 347 [2] - 34900:19, 34901:11 34850 [1] - 34849:4 34915 [1] - 34849:5 35 [2] - 34850:21, 34875:16 36 [1] - 34876:12 3:55 [1] - 34964:5</p>	<p>A</p> <p>abandoning [1] - 34941:13 abduction [5] - 34903:23, 34904:4, 34904:6, 34904:7, 34904:12 abide [1] - 34931:20 ability [2] - 34908:17, 34965:7 able [6] - 34887:14, 34892:11, 34901:8, 34938:13, 34942:11, 34950:25 abnormal [1] - 34958:6 absolute [2] - 34896:9, 34904:14 absolutely [6] - 34860:13, 34883:4, 34909:19, 34910:11, 34935:20, 34955:8 Absolutely [4] - 34851:7, 34858:5, 34860:5, 34865:25 accepted [1] - 34880:7 access [12] - 34853:1, 34853:17, 34865:17, 34865:19, 34885:3, 34910:6, 34911:2, 34911:24, 34926:2, 34927:15, 34935:16 accomplished [1] - 34878:8 accord [1] - 34916:24 according [3] - 34906:8, 34906:12, 34908:21 account [3] - 34919:13, 34923:10, 34923:11 accountability [1] - 34882:17 accounts [1] - 34940:2 accurate [2] - 34861:14, 34873:4 accusation [1] - 34857:4 accuse [1] - 34907:20 accused [3] - 34867:23, 34914:24, 34942:11 accusers [1] - 34895:20 achieved [1] - 34921:18 acquitted [4] - 34947:5, 34947:17, 34948:4, 34948:20 act [1] - 34879:22 acted [1] - 34905:2 action [3] - 34858:24, 34913:7, 34913:9</p>	<p>acts [1] - 34852:15 add [2] - 34878:5, 34909:11 Addictions [1] - 34907:25 addition [1] - 34851:15 Additional [1] - 34874:25 additions [2] - 34959:11, 34959:12 address [4] - 34924:11, 34932:7, 34932:8, 34961:6 addressed [1] - 34926:8 addresses [2] - 34929:18, 34936:10 adduced [1] - 34866:4 adjacent [1] - 34861:23 Adjourned [2] - 34909:3, 34964:5 adjourned [1] - 34963:25 adjustment [1] - 34957:22 adopt [2] - 34898:20, 34939:24 adopted [2] - 34944:11, 34945:9 adopting [1] - 34939:22 adoption [1] - 34944:7 advanced [1] - 34886:8 adversarial [4] - 34950:7, 34962:18, 34962:25, 34963:18 advice [2] - 34892:14, 34943:24 advised [3] - 34924:17, 34932:5, 34963:15 advisement [1] - 34946:19 advisor [1] - 34919:8 advocacy [1] - 34963:2 Aero [1] - 34921:3 Aero-flight [1] - 34921:3 affair [1] - 34919:21 affect [1] - 34875:24 afraid [2] - 34905:16, 34956:6 afternoon [1] - 34850:3 Afternoon [1] - 34850:4 Ag [2] - 34891:8, 34892:4 age [1] - 34850:24 Agent [1] - 34924:23 ago [6] - 34850:22, 34856:6, 34916:7, 34921:19, 34958:16, 34961:12 agree [12] - 34859:1,</p>
<p>0</p> <p>000798 [1] - 34854:23 003998 [1] - 34887:13 004139 [1] - 34861:4 006846 [1] - 34858:7 025335 [1] - 34936:16 032248 [1] - 34923:4 032806 [1] - 34891:25 038335 [1] - 34917:7 047947 [1] - 34925:9 058828 [1] - 34874:20 097430 [1] - 34927:11</p>	<p>2</p> <p>2 [2] - 34924:2, 34932:15 2000 [2] - 34901:24, 34944:13 2006 [1] - 34846:21 20th [1] - 34916:15 21st [2] - 34883:19, 34932:20 229807 [1] - 34912:8 23 [1] - 34957:1 23rd [1] - 34933:14 24 [1] - 34877:24 25th [1] - 34936:20 26 [1] - 34921:19 26th [2] - 34846:21, 34936:16 279 [1] - 34902:14 29th [1] - 34923:7 2:23 [1] - 34909:3 2:43 [1] - 34909:4 2nd [2] - 34923:5, 34924:5</p>	<p>6</p> <p>690 [2] - 34954:4, 34954:20 690.6.1 [2] - 34954:4, 34954:5 696.1 [1] - 34945:5</p>	<p>7</p> <p>76 [2] - 34851:1, 34851:2 7th [1] - 34858:11</p>	<p>8</p> <p>8 [1] - 34891:20 807 [1] - 34893:25 813 [1] - 34894:21 8th [4] - 34887:23, 34888:15, 34891:13, 34892:8</p>
<p>1</p> <p>1 [1] - 34932:15 10 [1] - 34938:19 106833 [1] - 34926:5 106839 [1] - 34931:9 106840 [1] - 34929:13 106841 [1] - 34932:20 106842 [1] - 34933:14 12 [4] - 34894:1, 34894:3, 34894:9, 34926:18 12th [2] - 34926:5, 34926:8 13th [2] - 34927:11, 34927:13 141 [1] - 34865:6 14th [1] - 34861:5 16 [2] - 34870:18, 34871:10 169 [1] - 34846:22 16th [2] - 34929:12, 34931:10 18 [2] - 34960:18, 34963:1</p>	<p>2</p> <p>2 [2] - 34924:2, 34932:15 2000 [2] - 34901:24, 34944:13 2006 [1] - 34846:21 20th [1] - 34916:15 21st [2] - 34883:19, 34932:20 229807 [1] - 34912:8 23 [1] - 34957:1 23rd [1] - 34933:14 24 [1] - 34877:24 25th [1] - 34936:20 26 [1] - 34921:19 26th [2] - 34846:21, 34936:16 279 [1] - 34902:14 29th [1] - 34923:7 2:23 [1] - 34909:3 2:43 [1] - 34909:4 2nd [2] - 34923:5, 34924:5</p>	<p>9</p> <p>90-degree [1] - 34861:24 999 [1] - 34890:16 9:00 [1] - 34964:3 9th [2] - 34854:24, 34920:24</p>	<p>9</p> <p>90-degree [1] - 34861:24 999 [1] - 34890:16 9:00 [1] - 34964:3 9th [2] - 34854:24, 34920:24</p>	<p>9</p> <p>90-degree [1] - 34861:24 999 [1] - 34890:16 9:00 [1] - 34964:3 9th [2] - 34854:24, 34920:24</p>



<p>34859:2, 34861:1, 34863:6, 34885:18, 34890:6, 34898:6, 34898:7, 34902:7, 34915:2, 34926:3, 34942:23 Agree^[1] - 34888:24 agreed^[1] - 34891:6 Agriculture^[1] - 34922:5 ahead^[2] - 34945:19, 34946:19 Aid^[1] - 34954:10 Aidwyc^[25] - 34900:10, 34901:17, 34901:25, 34902:8, 34939:5, 34939:21, 34939:23, 34940:2, 34940:4, 34940:6, 34941:12, 34941:15, 34941:18, 34941:21, 34942:8, 34942:22, 34944:11, 34945:9, 34946:7, 34946:22, 34948:14, 34949:2, 34949:16, 34953:19, 34953:23 Aidwyc's^[2] - 34943:20, 34947:25 Air^[1] - 34920:15 air^[2] - 34860:6, 34860:21 air-tight^[1] - 34860:21 aircraft^[2] - 34921:11, 34961:15 airplane^[2] - 34919:5, 34919:23 airplanes^[1] - 34919:9 Airport^[1] - 34921:4 Albert^[6] - 34868:3, 34869:10, 34869:13, 34926:24, 34927:24, 34931:14 Alberta^[7] - 34888:16, 34891:1, 34891:2, 34891:8, 34891:9, 34892:5, 34892:23 Alistair^[1] - 34888:6 alive^[1] - 34910:17 Allbright^[2] - 34902:15, 34902:20 allegation^[4] - 34890:24, 34894:23, 34894:24, 34895:21 allegations^[1] - 34893:14 alleged^[1] - 34875:2 allegedly^[1] - 34895:2 alleging^[1] - 34883:21 alley^[3] - 34861:23, 34861:24, 34862:12</p>	<p>allow^[1] - 34935:17 allowed^[1] - 34871:7 almost^[3] - 34864:19, 34868:17, 34916:6 alter^[1] - 34857:12 amazing^[2] - 34920:16, 34952:8 amenable^[1] - 34902:11 amount^[2] - 34876:1, 34954:22 analyse^[1] - 34892:15 Andrews^[2] - 34920:2, 34921:3 announcement^[1] - 34890:14 annoyed^[1] - 34910:23 answer^[3] - 34863:24, 34892:10, 34892:12 answering^[1] - 34889:24 anxious^[2] - 34860:10, 34927:21 anyhow^[1] - 34952:11 Anyway^[1] - 34892:13 anyway^[2] - 34934:16, 34934:19 apart^[1] - 34949:16 Appeal^[8] - 34863:13, 34863:16, 34864:24, 34946:22, 34947:5, 34947:17, 34948:4, 34948:21 appeal^[3] - 34853:2, 34853:8, 34858:13 appear^[6] - 34858:18, 34888:14, 34891:14, 34895:24, 34917:24, 34929:1 appearance^[1] - 34859:8 Appearances^[1] - 34848:1 appeared^[6] - 34858:15, 34858:24, 34866:12, 34873:14, 34879:11, 34887:6 applicable^[1] - 34942:24 applicant^[3] - 34942:21, 34942:23, 34943:14 applicant's^[1] - 34943:9 application^[6] - 34858:15, 34914:13, 34945:5, 34954:3, 34954:6, 34954:20 applied^[1] - 34962:24 apply^[1] - 34904:10</p>	<p>applying^[1] - 34946:15 appreciate^[1] - 34914:22 appropriate^[6] - 34889:20, 34913:4, 34913:7, 34913:24, 34959:11, 34959:12 approval^[1] - 34944:3 approves^[1] - 34944:5 April^[3] - 34874:4, 34883:25, 34903:21 area^[3] - 34856:22, 34888:13, 34922:19 areas^[1] - 34900:8 argue^[2] - 34853:24, 34954:8 arises^[1] - 34963:2 arising^[2] - 34905:6, 34961:10 arm^[1] - 34962:22 arose^[1] - 34855:15 arrest^[2] - 34923:6, 34960:5 arrived^[1] - 34923:8 article^[4] - 34912:9, 34941:11, 34947:8 ascertain^[2] - 34902:4, 34933:24 aside^[1] - 34919:13 Asper^[1] - 34857:4 assault^[1] - 34947:3 assaults^[2] - 34875:4, 34875:23 assembled^[1] - 34894:2 assess^[1] - 34892:14 assessment^[2] - 34875:24, 34902:8 assist^[1] - 34871:22 assistance^[7] - 34892:5, 34922:8, 34926:10, 34926:20, 34927:5, 34933:16, 34958:10 Assistant^[2] - 34847:3, 34847:6 assistant^[1] - 34892:13 assisted^[3] - 34875:14, 34910:4, 34931:24 associated^[1] - 34935:25 Association^[1] - 34901:16 assume^[3] - 34854:16, 34863:7, 34875:7 assumed^[1] - 34900:2 assumes^[2] - 34898:25, 34899:6 assuming^[2] - 34936:7, 34936:8</p>	<p>assured^[1] - 34931:19 astronomical^[1] - 34954:22 attaches^[1] - 34927:17 attack^[1] - 34930:15 attempt^[1] - 34895:9 attempting^[1] - 34868:2 attempts^[2] - 34924:20, 34947:10 attending^[1] - 34960:17 attention^[6] - 34859:12, 34875:12, 34875:13, 34887:12, 34894:11 Attorney^[4] - 34880:23, 34884:25, 34924:24, 34935:11 attorney^[1] - 34852:9 attorney's^[1] - 34943:11 Attorney's^[1] - 34935:5 attributed^[1] - 34906:18 Audio^[1] - 34847:13 author^[5] - 34887:17, 34887:24, 34900:15, 34906:13, 34907:5 authored^[1] - 34909:8 authorities^[4] - 34870:10, 34882:12, 34882:22, 34883:6 authority^[4] - 34882:4, 34882:8, 34891:5, 34910:14 authors^[2] - 34888:8, 34901:3 Authors^[1] - 34953:13 available^[8] - 34855:8, 34867:14, 34867:24, 34894:3, 34929:1, 34935:4, 34936:24, 34955:20 Avenue^[1] - 34855:19 aware^[11] - 34852:1, 34856:11, 34856:16, 34858:8, 34873:15, 34878:10, 34902:15, 34904:19, 34906:3, 34929:23, 34948:22 awful^[1] - 34939:17</p>	<p>34949:14 baffled^[1] - 34908:14 bail^[5] - 34944:12, 34945:12, 34945:14, 34945:22, 34945:23 Baltovich^[1] - 34944:12 bank^[1] - 34955:20 Barrett^[2] - 34924:3, 34924:19 barrier^[1] - 34860:4 based^[2] - 34853:7, 34904:8 basis^[2] - 34892:15, 34943:20 bathtub^[2] - 34868:16, 34869:23 Battleford^[1] - 34906:10 bawling^[2] - 34906:23, 34907:3 beat^[2] - 34930:4, 34960:11 became^[1] - 34861:12 become^[1] - 34879:8 becomes^[1] - 34958:5 bed^[1] - 34884:5 begin^[1] - 34909:24 beginning^[1] - 34892:2 behalf^[5] - 34856:3, 34888:22, 34902:1, 34913:16, 34929:4 behaviour^[1] - 34870:6 behind^[1] - 34941:15 Beitel^[1] - 34847:9 belief^[2] - 34910:8, 34935:19 believes^[1] - 34877:16 below^[1] - 34918:6 Bench^[4] - 34965:1, 34965:3, 34965:14, 34965:20 best^[2] - 34948:7, 34965:6 better^[4] - 34853:5, 34900:23, 34938:9, 34950:11 between^[4] - 34883:23, 34902:23, 34915:3, 34939:21 beyond^[4] - 34877:9, 34880:18, 34888:25, 34933:12 bible^[1] - 34906:14 bibles^[4] - 34906:4, 34906:10, 34907:9, 34907:15 bit^[10] - 34855:1, 34855:11, 34862:9, 34874:13, 34883:15, 34887:11, 34888:10,</p>
B				
<p>background^[3] - 34881:6, 34911:5, 34912:14 bad^[2] - 34853:4,</p>				



34892:1, 34909:16, 34935:14 bizarre [5] - 34876:12, 34876:15, 34876:16, 34876:25, 34878:4 block [1] - 34861:12 blood [1] - 34930:18 Board [3] - 34861:6, 34943:22, 34944:6 board [21] - 34859:13, 34860:8, 34860:19, 34861:9, 34862:4, 34862:17, 34863:1, 34863:10, 34864:15, 34864:19, 34872:14, 34873:18, 34878:3, 34937:12, 34938:5, 34942:10, 34946:18, 34949:18, 34950:15, 34952:18, 34962:12 Bob [1] - 34887:25 Bobs [1] - 34848:5 body [1] - 34862:11 bogging [1] - 34896:8 Boklaschuk [1] - 34920:25 book [21] - 34853:3, 34857:19, 34857:25, 34858:9, 34873:12, 34881:10, 34900:15, 34900:17, 34900:19, 34907:24, 34908:8, 34908:16, 34919:9, 34958:16, 34959:1, 34959:2, 34959:6, 34959:13, 34960:1, 34960:7, 34960:13 books [2] - 34905:16, 34909:7 born [1] - 34850:25 Boswell [1] - 34847:5 bottom [2] - 34903:16, 34932:16 bought [1] - 34919:16 Boychuk [1] - 34848:8 Bre [2] - 34917:9 break [3] - 34877:20, 34877:24, 34908:25 Breckenridge [3] - 34883:18, 34884:24, 34901:5 Breckenridge's [4] - 34884:16, 34884:20, 34884:21, 34888:25 Brent [2] - 34890:15, 34892:3 briefed [1] - 34937:13 briefly [2] - 34874:20, 34891:24 bring [2] - 34875:12,	34913:7 brought [2] - 34896:14, 34947:16 Bruce [2] - 34888:9, 34891:14 brutal [1] - 34872:9 bus [1] - 34880:11 business [2] - 34906:6, 34908:13 buy [2] - 34907:9, 34919:2 C cadet [1] - 34930:4 Cadrain [11] - 34868:3, 34868:14, 34869:1, 34869:10, 34879:8, 34895:8, 34926:24, 34927:24, 34931:11, 34931:14, 34934:6 Cadrain's [1] - 34869:14 Caldwell [21] - 34848:5, 34852:21, 34853:1, 34853:2, 34853:14, 34854:4, 34854:25, 34857:2, 34858:7, 34858:17, 34859:11, 34860:24, 34864:22, 34866:18, 34867:8, 34867:11, 34867:14, 34869:9, 34869:12, 34870:20, 34872:25 Caldwells [3] - 34856:7, 34857:5, 34873:22 Calgary [2] - 34868:6, 34869:23 Calvin [1] - 34848:12 camaraderie [1] - 34903:6 Cameron [1] - 34908:2 Campbell [5] - 34881:9, 34901:4, 34911:20, 34912:3, 34914:10 Campbell's [1] - 34913:25 Canada [5] - 34848:11, 34892:22, 34913:21, 34922:6, 34951:5 Candace [1] - 34847:4 cannot [3] - 34871:14, 34871:23, 34926:3 car [2] - 34861:12, 34862:3 care [2] - 34882:3, 34882:12 careful [2] - 34866:25, 34885:16	Carlyle [2] - 34852:21, 34853:22 Carlyle-gordge [2] - 34852:21, 34853:22 carried [2] - 34908:8, 34929:4 case [66] - 34851:4, 34851:15, 34852:3, 34860:9, 34860:12, 34860:16, 34860:19, 34860:21, 34863:8, 34865:8, 34866:12, 34867:19, 34872:11, 34878:24, 34879:2, 34879:20, 34885:9, 34894:5, 34894:13, 34902:17, 34910:8, 34911:22, 34913:6, 34914:1, 34924:13, 34924:16, 34929:6, 34930:5, 34935:2, 34935:16, 34935:17, 34936:3, 34937:9, 34938:12, 34938:15, 34938:20, 34939:4, 34939:8, 34939:17, 34939:22, 34940:4, 34940:10, 34940:12, 34941:7, 34941:11, 34941:14, 34942:20, 34943:9, 34943:19, 34944:2, 34944:5, 34945:9, 34946:1, 34946:12, 34946:20, 34947:23, 34949:8, 34950:4, 34954:2, 34955:17, 34956:3, 34956:16, 34957:19, 34958:20 cases [17] - 34901:21, 34934:23, 34937:9, 34940:18, 34940:23, 34941:22, 34942:1, 34942:3, 34942:6, 34942:9, 34942:13, 34943:23, 34944:10, 34946:24, 34947:25, 34949:19, 34955:21 Casevault [1] - 34890:18 cast [2] - 34856:18, 34856:21 catalyst [1] - 34884:22 catch-22 [1] - 34935:14 category [1] - 34855:14 Catherine [1] - 34848:5 caught [2] - 34860:13, 34915:15 caused [2] - 34874:18, 34910:22	causes [2] - 34902:1, 34951:8 celebrated [1] - 34901:21 centered [1] - 34901:19 Central [2] - 34920:15, 34921:3 certain [7] - 34852:15, 34857:16, 34857:20, 34910:11, 34910:14, 34934:24, 34938:16 certainly [11] - 34852:5, 34856:11, 34860:4, 34863:9, 34911:9, 34911:11, 34933:22, 34934:12, 34935:3, 34955:6, 34959:10 certainty [3] - 34870:13, 34870:22, 34872:21 Certificates [1] - 34965:1 certify [1] - 34965:4 Chairman [1] - 34861:6 change [2] - 34960:25, 34962:14 changed [3] - 34893:8, 34920:13, 34950:5 chapter [1] - 34881:10 charge [4] - 34904:7, 34904:12, 34904:14, 34925:25 charged [1] - 34905:7 Charged [1] - 34905:10 charges [5] - 34892:16, 34892:23, 34903:23, 34904:5, 34904:6 Charges [1] - 34948:3 Charles [1] - 34944:24 chases [1] - 34956:15 chastised [1] - 34876:14 Cheryl [1] - 34847:6 Chief [4] - 34887:24, 34888:21, 34924:4, 34924:22 chief [7] - 34923:12, 34925:4, 34926:9, 34927:12, 34929:20, 34931:13, 34932:21 children [1] - 34851:7 choice [1] - 34940:22 chosen [1] - 34942:8 Chretien [1] - 34911:4 Chris [1] - 34848:8 Christian [4] - 34916:15, 34917:10, 34918:4, 34952:10 Chuck [3] - 34918:24, 34919:1, 34919:4	church [1] - 34952:5 Church [2] - 34952:13, 34952:14 circle [1] - 34881:20 circumstance [1] - 34871:5 circumstances [1] - 34905:13 citation [1] - 34863:22 citizen [1] - 34851:20 city [1] - 34953:1 City [2] - 34926:21, 34931:24 civil [1] - 34941:11 claim [1] - 34902:4 claiming [1] - 34940:14 claims [1] - 34858:24 clarifying [1] - 34916:9 Clayton [2] - 34948:3, 34948:6 cleaned [1] - 34903:22 clear [13] - 34853:13, 34866:3, 34866:16, 34869:11, 34873:7, 34874:6, 34878:12, 34878:15, 34890:5, 34896:18, 34896:22, 34897:9, 34949:7 cleared [3] - 34887:8, 34887:10, 34949:10 clearly [5] - 34857:6, 34867:13, 34882:8, 34898:2, 34942:14 Clerk [1] - 34847:9 client [1] - 34866:11 closely [1] - 34962:23 closer [1] - 34850:16 clubs [1] - 34920:12 clues [1] - 34956:4 co [1] - 34935:3 co-operate [1] - 34935:3 cobble [1] - 34938:13 coercion [2] - 34894:24, 34896:4 cold [5] - 34860:12, 34912:16, 34912:19, 34913:15, 34913:17 Colin's [1] - 34904:1 combination [1] - 34895:25 comfort [1] - 34871:6 coming [5] - 34884:11, 34884:12, 34894:12, 34902:12, 34952:18 comment [3] - 34866:4, 34871:14, 34897:20 comments [2] - 34910:25, 34963:15 commercial [1] -
--	--	---	--	---



<p>34921:13 Commission [12] - 34846:2, 34846:14, 34847:1, 34847:2, 34847:3, 34847:9, 34887:14, 34914:19, 34917:20, 34920:24, 34921:8, 34953:20 Commissioner [70] - 34850:3, 34850:5, 34850:8, 34853:12, 34853:21, 34853:25, 34863:11, 34863:19, 34863:25, 34864:4, 34864:7, 34864:25, 34865:2, 34865:4, 34866:2, 34866:8, 34866:23, 34866:25, 34867:4, 34867:15, 34869:6, 34869:21, 34869:22, 34877:23, 34885:11, 34885:15, 34885:21, 34889:9, 34889:18, 34889:25, 34890:3, 34890:9, 34893:3, 34893:10, 34893:13, 34896:12, 34896:16, 34896:22, 34896:25, 34897:3, 34897:5, 34897:15, 34897:18, 34898:1, 34898:5, 34898:8, 34900:22, 34901:1, 34904:24, 34905:4, 34905:6, 34905:17, 34906:25, 34908:24, 34909:2, 34915:24, 34939:10, 34939:13, 34961:7, 34961:13, 34961:17, 34961:21, 34961:24, 34962:5, 34963:4, 34963:5, 34963:9, 34963:14, 34963:24, 34964:4 committed [7] - 34856:20, 34862:18, 34862:19, 34863:2, 34875:4, 34875:23, 34910:4 Committee [5] - 34943:21, 34943:24, 34944:3, 34944:4 communication [1] - 34916:9 community [2] - 34871:21, 34904:17 company [1] - 34906:14 comparison [1] - 34895:22 compelling [2] -</p>	<p>34879:23, 34908:17 compensate [1] - 34882:25 compensated [4] - 34919:2, 34947:18, 34956:24, 34957:15 Compensated [1] - 34949:12 compensation [10] - 34882:19, 34882:21, 34883:2, 34919:8, 34947:6, 34947:9, 34947:13, 34948:5, 34957:11, 34958:18 complaining [1] - 34936:19 complains [1] - 34962:12 complaint [1] - 34928:16 complete [5] - 34916:19, 34926:2, 34938:15, 34938:20, 34944:2 completely [2] - 34868:11, 34893:5 compounded [1] - 34870:8 comprised [1] - 34943:22 concerned [3] - 34855:15, 34872:15, 34898:10 conclude [3] - 34873:6, 34898:19, 34962:6 concluded [1] - 34903:3 conclusion [1] - 34893:22 concurrently [1] - 34891:3 conditional [1] - 34876:21 conduct [2] - 34895:14, 34962:8 conference [1] - 34866:12 confess [1] - 34940:22 confessed [1] - 34940:11 confession [4] - 34875:2, 34875:6, 34940:15, 34941:7 confessions [3] - 34940:17, 34940:19, 34941:5 confide [1] - 34914:25 confidence [1] - 34938:6 confident [2] -</p>	<p>34887:16, 34938:1 confidently [1] - 34872:5 confined [1] - 34890:24 confirm [2] - 34926:17, 34929:17 confirming [1] - 34921:20 conflicting [1] - 34959:24 confrontation [1] - 34852:3 confronted [2] - 34861:20, 34872:11 Congram [1] - 34847:4 conjecture [2] - 34895:25, 34896:1 connection [1] - 34924:13 consider [3] - 34876:3, 34876:21, 34933:10 considerable [2] - 34878:8, 34891:18 consideration [1] - 34925:21 considered [2] - 34899:23, 34942:20 consisting [1] - 34951:24 constable [1] - 34930:4 constant [1] - 34865:12 contact [6] - 34920:11, 34925:11, 34927:21, 34929:16, 34933:19, 34934:5 contacted [7] - 34892:4, 34922:22, 34923:2, 34927:20, 34931:14, 34931:23, 34932:22 contacting [1] - 34923:18 contain [1] - 34965:5 contains [2] - 34865:14, 34923:13 contentions [1] - 34873:2 contents [1] - 34872:15 context [2] - 34853:12, 34959:22 continue [1] - 34890:22 Continued [1] - 34849:3 continued [3] - 34850:6, 34875:25, 34891:7 continues [1] - 34922:3 continuing [1] - 34868:1 contributes [1] - 34955:6</p>	<p>control [1] - 34942:13 controversy [1] - 34874:7 conversation [5] - 34918:23, 34919:14, 34924:10, 34924:25, 34926:18 conversations [3] - 34914:20, 34924:8, 34931:12 convey [1] - 34931:1 convicted [6] - 34851:9, 34877:1, 34877:20, 34947:2, 34951:6, 34953:9 Convicted [1] - 34901:17 Conviction [1] - 34846:4 conviction [12] - 34874:16, 34876:1, 34876:6, 34878:9, 34892:18, 34904:1, 34909:21, 34937:9, 34944:19, 34945:21, 34957:19, 34958:13 convictions [4] - 34901:20, 34940:18, 34942:1, 34961:1 convinced [4] - 34880:18, 34907:8, 34939:24, 34942:10 copies [1] - 34954:17 copy [2] - 34888:21, 34900:19 corner [1] - 34862:12 correct [41] - 34852:8, 34858:18, 34858:19, 34859:9, 34863:5, 34870:16, 34870:17, 34873:20, 34878:25, 34881:8, 34881:12, 34881:16, 34885:2, 34894:8, 34900:21, 34903:15, 34905:2, 34906:2, 34907:14, 34907:16, 34914:21, 34916:12, 34916:17, 34916:23, 34917:6, 34918:1, 34918:5, 34918:15, 34930:14, 34930:20, 34936:2, 34936:21, 34936:22, 34940:16, 34941:16, 34944:21, 34947:4, 34954:21, 34959:7, 34960:20, 34965:5 Correct [10] - 34852:22, 34853:11, 34859:10, 34863:4, 34879:7,</p>	<p>34880:12, 34884:8, 34899:4, 34899:15, 34930:10 corrected [1] - 34888:6 Correction [1] - 34952:15 correctly [1] - 34935:19 corresponds [1] - 34896:2 corroborate [3] - 34868:25, 34869:19, 34895:20 corroborated [1] - 34869:17 corrupt [4] - 34907:19, 34907:21, 34908:13, 34908:22 Cosseboom [1] - 34917:9 cost [1] - 34954:12 Cost [1] - 34954:15 costs [2] - 34955:9, 34955:10 Cotter [3] - 34888:19, 34890:22, 34892:3 Council [1] - 34952:14 Counsel [6] - 34847:2, 34847:3, 34850:4, 34887:14, 34920:24, 34921:8 counsel [12] - 34850:9, 34855:2, 34858:23, 34903:3, 34903:14, 34914:20, 34922:9, 34936:18, 34954:7, 34962:2, 34963:3, 34963:10 counsel's [1] - 34875:13 counseling [4] - 34957:21, 34958:2, 34958:4, 34958:7 country [5] - 34884:13, 34938:7, 34952:8, 34952:25, 34953:4 couple [2] - 34906:15, 34961:10 course [13] - 34854:15, 34864:5, 34871:14, 34872:23, 34875:10, 34897:8, 34902:2, 34917:4, 34924:9, 34935:6, 34955:12, 34955:14, 34962:23 court [5] - 34859:8, 34902:22, 34904:9, 34944:14, 34945:15 Court [33] - 34847:10, 34858:14, 34862:21, 34863:8, 34863:13,</p>
---	---	--	--	---



<p>34863:16, 34864:24, 34867:21, 34873:14, 34874:3, 34874:20, 34875:16, 34876:15, 34877:16, 34878:11, 34881:7, 34896:10, 34896:15, 34897:1, 34897:2, 34897:16, 34897:21, 34911:23, 34946:21, 34947:5, 34947:17, 34948:4, 34948:21, 34965:1, 34965:3, 34965:14, 34965:20</p> <p>courts [1] - 34945:16</p> <p>cover [1] - 34938:3</p> <p>coverage [1] - 34920:20</p> <p>create [1] - 34874:6</p> <p>credible [1] - 34855:4</p> <p>credit [1] - 34859:8</p> <p>crime [9] - 34862:5, 34862:18, 34863:2, 34864:17, 34870:14, 34870:22, 34872:7, 34878:2, 34940:11</p> <p>crimes [2] - 34910:3, 34914:24</p> <p>criminal [4] - 34870:16, 34890:25, 34892:16, 34893:14</p> <p>criminally [1] - 34905:10</p> <p>Criminologists [1] - 34952:22</p> <p>criteria [2] - 34942:2, 34946:14</p> <p>critical [4] - 34886:17, 34886:20, 34886:23, 34961:20</p> <p>criticism [3] - 34904:15, 34950:22, 34963:22</p> <p>criticize [1] - 34962:8</p> <p>criticized [2] - 34886:16, 34886:22</p> <p>criticizing [1] - 34881:6</p> <p>cross [9] - 34853:23, 34859:22, 34920:6, 34920:10, 34922:20, 34939:2, 34961:12, 34963:17, 34963:18</p> <p>cross-examination [8] - 34853:23, 34859:22, 34920:10, 34922:20, 34939:2, 34961:12, 34963:17, 34963:18</p> <p>cross-examined [1] - 34920:6</p> <p>Crown [8] - 34852:4, 34852:9, 34856:19, 34858:23, 34864:8,</p>	<p>34903:21, 34904:15, 34943:11</p> <p>crucial [6] - 34860:6, 34883:5, 34894:15, 34894:17, 34895:22, 34909:19</p> <p>crystal [1] - 34890:4</p> <p>Csr [8] - 34847:10, 34847:11, 34965:2, 34965:12, 34965:13, 34965:18, 34965:19</p> <p>current [2] - 34850:24, 34932:11</p> <p>custody [7] - 34871:25, 34904:8, 34904:10, 34944:13, 34954:23, 34955:25, 34956:8</p>	<p>34914:15, 34918:13, 34919:3, 34919:16, 34922:1, 34923:12, 34923:14, 34924:6, 34924:10, 34926:1, 34926:14, 34927:15, 34930:12, 34930:18, 34949:4, 34951:24, 34952:14, 34953:1, 34953:3, 34956:7</p> <p>David's [9] - 34854:20, 34875:12, 34876:6, 34913:11, 34923:6, 34937:20, 34950:3, 34958:20, 34960:5</p> <p> Davids [1] - 34937:3</p> <p>days [8] - 34855:24, 34865:13, 34890:21, 34923:6, 34929:12, 34932:21, 34936:16, 34952:13</p> <p>deal [7] - 34860:11, 34867:22, 34887:11, 34891:23, 34910:12, 34911:24, 34938:25</p> <p>dealing [4] - 34870:24, 34872:25, 34903:23, 34932:2</p> <p>deals [2] - 34894:21, 34926:11</p> <p>dealt [1] - 34912:10</p> <p>debate [1] - 34874:19</p> <p>deceased [1] - 34887:20</p> <p>December [1] - 34949:1</p> <p>decide [1] - 34935:12</p> <p>decided [1] - 34946:19</p> <p>decision [6] - 34874:4, 34874:20, 34876:14, 34878:7, 34883:25, 34911:20</p> <p>deep [1] - 34851:4</p> <p>Defence [2] - 34901:16, 34905:19</p> <p>defence [3] - 34854:6, 34855:8, 34902:11</p> <p>defend [1] - 34885:16</p> <p>Defendant [1] - 34929:4</p> <p>defending [1] - 34856:10</p> <p>definitely [1] - 34943:7</p> <p>degree [5] - 34860:4, 34871:2, 34871:9, 34874:19, 34910:13</p> <p>delay [1] - 34955:7</p> <p>deliver [1] - 34947:18</p> <p>delivering [1] - 34947:13</p> <p>delusions [1] - 34869:2</p> <p>demand [1] - 34914:15, 34918:13, 34919:3, 34919:16, 34922:1, 34923:12, 34923:14, 34924:6, 34924:10, 34926:1, 34926:14, 34927:15, 34930:12, 34930:18, 34949:4, 34951:24, 34952:14, 34953:1, 34953:3, 34956:7</p>	<p>34962:20</p> <p>denial [1] - 34860:11</p> <p>denied [2] - 34877:2, 34877:10</p> <p>Dennis [1] - 34869:10</p> <p>Deny [3] - 34900:16</p> <p>denying [1] - 34878:1</p> <p>Department [7] - 34885:1, 34892:5, 34935:6, 34937:20, 34945:10, 34954:17, 34955:1</p> <p>department [3] - 34891:8, 34892:17, 34931:19</p> <p>Department's [1] - 34945:13</p> <p>deputies [1] - 34892:23</p> <p>Deputy [2] - 34892:3, 34892:4</p> <p>described [1] - 34872:10</p> <p>describes [1] - 34907:5</p> <p>Description [1] - 34849:2</p> <p>deserved [1] - 34873:25</p> <p>deserving [1] - 34877:3</p> <p>desire [1] - 34873:12</p> <p>detail [2] - 34874:9, 34912:12</p> <p>Detective [1] - 34895:16</p> <p>determine [1] - 34892:15</p> <p>develop [1] - 34895:11</p> <p>devote [1] - 34942:9</p> <p>devoted [3] - 34881:10, 34915:8, 34915:14</p> <p>dialogue [1] - 34852:4</p> <p>die [1] - 34904:11</p> <p>Diefenbaker [6] - 34905:18, 34905:21, 34906:3, 34906:8, 34906:17, 34907:15</p> <p>Diefenbaker's [1] - 34907:3</p> <p>difference [1] - 34939:21</p> <p>different [4] - 34861:15, 34922:16, 34922:19, 34951:7</p> <p>differently [1] - 34860:20</p> <p>difficult [1] - 34897:19</p> <p>digest [1] - 34889:10</p> <p>diploma [2] - 34917:22, 34918:10</p> <p>directed [1] - 34883:24</p> <p>direction [4] - 34883:7, 34894:2, 34895:12, 34929:13</p>	<p>directions [1] - 34861:16</p> <p>directly [1] - 34892:21</p> <p>Director [1] - 34847:4</p> <p>disaster [2] - 34919:23, 34939:9</p> <p>discharge [1] - 34904:14</p> <p>disclosed [1] - 34879:17</p> <p>disclosure [1] - 34873:8</p> <p>disclosures [2] - 34857:7, 34857:13</p> <p>discussed [1] - 34867:12</p> <p>Discussion [1] - 34963:13</p> <p>disposition [1] - 34867:20</p> <p>disrobed [1] - 34902:22</p> <p>disturbed [1] - 34879:9</p> <p>disturbing [1] - 34894:14</p> <p>divulged [1] - 34931:16</p> <p>Dna [11] - 34886:8, 34942:17, 34942:23, 34943:1, 34943:3, 34949:7, 34950:3, 34955:11, 34955:19, 34955:20, 34956:20</p> <p>Document [3] - 34847:5, 34847:6, 34931:9</p> <p>document [12] - 34887:12, 34896:5, 34896:17, 34915:23, 34916:13, 34924:3, 34926:5, 34927:11, 34927:12, 34929:12, 34932:20, 34933:14</p> <p>documentation [2] - 34921:21, 34961:11</p> <p>documented [2] - 34865:11, 34870:7</p> <p>documents [3] - 34914:9, 34923:3, 34925:13</p> <p>domestic [1] - 34905:1</p> <p>Don [1] - 34847:11</p> <p>Donald [2] - 34965:2, 34965:19</p> <p>done [14] - 34877:12, 34880:9, 34884:9, 34886:10, 34891:12, 34894:19, 34905:25, 34938:8, 34943:2, 34943:16, 34952:15, 34958:17, 34958:19</p> <p>door [4] - 34871:3,</p>
---	--	--	--	---



<p>34906:4 door-to-door [1] - 34871:3 double [1] - 34888:19 doubt [5] - 34856:19, 34856:21, 34877:9, 34880:18, 34880:21 Douglas [1] - 34847:2 down [13] - 34855:11, 34856:8, 34861:23, 34862:9, 34866:1, 34870:3, 34871:12, 34892:20, 34900:21, 34908:10, 34928:20, 34937:24, 34962:1 Dr [8] - 34866:8, 34866:10, 34866:17, 34866:19, 34867:5, 34867:6, 34867:10, 34944:24 draw [3] - 34859:12, 34887:12, 34894:11 dream [1] - 34950:13 Driskell [1] - 34944:17 dropped [2] - 34904:4, 34904:12 dropping [2] - 34940:4, 34941:12 Druken [1] - 34946:3 Dumont [2] - 34946:25, 34947:10 during [5] - 34850:11, 34854:6, 34895:5, 34921:4, 34921:16 During [2] - 34924:9, 34943:18 duties [1] - 34851:20 duty [1] - 34855:2</p>	<p>34931:5 effectively [2] - 34936:22, 34947:12 efficiently [1] - 34938:8 effort [1] - 34931:20 efforts [2] - 34871:15, 34922:21 Egan [2] - 34887:24, 34888:21 ego [1] - 34853:5 eight [1] - 34944:13 either [7] - 34852:3, 34855:6, 34862:23, 34873:20, 34874:7, 34924:22, 34957:3 element [1] - 34857:6 elite [2] - 34908:12, 34908:22 Ellerman [1] - 34847:6 Elson [1] - 34848:7 Elvis [1] - 34910:17 Email [3] - 34917:9, 34917:18, 34922:7 emanated [1] - 34935:23 embarrassing [1] - 34916:1 embellish [1] - 34873:13 emphasis [1] - 34860:11 emphasize [2] - 34901:14, 34903:17 emphatic [1] - 34934:8 employed [1] - 34922:4 employee [1] - 34884:24 employment [1] - 34871:24 enclose [1] - 34863:24 enclosed [3] - 34863:12, 34863:15, 34864:24 encounter [1] - 34902:21 encourage [1] - 34881:24 end [7] - 34861:11, 34876:6, 34878:18, 34883:19, 34891:1, 34920:7, 34949:12 ended [2] - 34852:3, 34874:15 endless [1] - 34870:9 endorse [1] - 34891:6 endorsed [1] - 34944:11 endorsing [1] - 34939:22 ends [1] - 34895:12</p>	<p>enormous [1] - 34884:1 enquiries [1] - 34929:3 ensures [1] - 34942:13 entered [1] - 34876:18 entertaining [1] - 34908:11 entire [4] - 34865:10, 34893:8, 34894:13, 34952:2 entirely [1] - 34890:4 entirety [1] - 34938:12 Enweani [1] - 34847:3 episode [2] - 34862:1, 34869:4 episodes [2] - 34868:6, 34868:13 error [1] - 34873:2 errors [2] - 34959:5, 34959:8 escaped [3] - 34922:1, 34922:2, 34962:6 Esq [3] - 34848:7, 34848:8, 34848:12 Esson [1] - 34847:12 establish [1] - 34888:21 established [1] - 34930:8 etcetera [7] - 34862:17, 34868:3, 34871:4, 34879:17, 34879:18, 34880:1, 34950:22 eternally [1] - 34953:9 evening [2] - 34913:15, 34913:17 event [2] - 34878:7, 34888:7 eventually [3] - 34862:2, 34871:7, 34920:13 evidence [39] - 34862:21, 34862:23, 34863:7, 34864:9, 34866:3, 34866:16, 34867:1, 34867:5, 34867:9, 34867:10, 34868:4, 34869:7, 34869:11, 34873:20, 34874:22, 34875:1, 34875:3, 34875:18, 34875:20, 34876:4, 34879:6, 34879:16, 34879:22, 34879:25, 34880:11, 34880:13, 34881:19, 34894:13, 34895:2, 34897:22, 34902:3, 34927:22, 34935:15, 34935:22, 34936:4, 34936:9, 34937:8, 34938:23, 34961:18</p>	<p>evolving [1] - 34959:19 exact [1] - 34900:12 exactly [5] - 34859:18, 34861:13, 34911:8, 34932:16, 34961:13 examination [9] - 34853:23, 34859:22, 34902:3, 34920:10, 34922:20, 34939:2, 34961:12, 34963:17, 34963:18 examined [3] - 34856:24, 34865:15, 34920:6 example [5] - 34868:17, 34899:4, 34910:16, 34910:17, 34911:3 excellent [1] - 34901:25 Except [1] - 34878:1 except [1] - 34896:6 exception [2] - 34905:23, 34946:11 exclusively [1] - 34942:9 Executive [1] - 34847:4 exhaustive [1] - 34944:10 exhibits [2] - 34949:6, 34955:16 exist [1] - 34866:11 existed [1] - 34866:17 existence [1] - 34866:20 exists [1] - 34942:17 exonerate [2] - 34856:16, 34936:14 exonerated [3] - 34878:19, 34878:21, 34956:22 exonerating [1] - 34887:7 exoneration [4] - 34882:15, 34883:9, 34926:14, 34960:6 expect [6] - 34856:2, 34889:1, 34889:7, 34889:11, 34889:14, 34959:9 expected [1] - 34889:12 expenses [1] - 34960:21 expensive [1] - 34919:25 experience [1] - 34852:17 expertise [1] - 34951:22 experts [2] - 34941:1, 34943:15 explain [1] - 34904:25 explanations [2] -</p>	<p>34857:16, 34857:18 exposed [1] - 34910:13 exposing [1] - 34950:21 extent [1] - 34959:5 extraordinary [1] - 34908:15 extremely [3] - 34851:13, 34867:25, 34876:24 eyewitness [2] - 34863:2, 34864:16</p>
F				
				<p>fabricated [1] - 34895:3 faced [3] - 34880:23, 34883:14, 34904:6 facet [1] - 34884:17 facets [1] - 34938:16 fact [17] - 34854:3, 34854:23, 34857:1, 34857:20, 34869:4, 34872:14, 34873:3, 34878:10, 34879:13, 34895:2, 34906:13, 34906:17, 34923:7, 34933:8, 34941:1, 34945:8, 34946:16 facts [4] - 34855:5, 34861:9, 34882:9, 34937:15 factual [1] - 34873:19 Factual [1] - 34942:16 factually [2] - 34930:21, 34942:12 failed [1] - 34904:9 fair [4] - 34851:12, 34852:25, 34882:2, 34894:12 fairly [3] - 34875:7, 34908:3, 34961:18 faith [1] - 34850:13 fall [1] - 34855:14 false [6] - 34936:5, 34936:9, 34940:15, 34940:17, 34940:19, 34941:5 falsehood [1] - 34858:20 familiar [5] - 34875:8, 34875:9, 34900:16, 34947:15, 34948:13 families [1] - 34937:3 family [22] - 34858:8, 34858:20, 34858:24, 34926:25, 34927:15, 34929:19, 34931:3, 34933:3, 34933:8, 34934:10, 34935:1,</p>



<p>34946:16, 34948:6, 34949:17, 34949:20, 34950:5, 34950:16, 34952:2, 34960:8, 34960:9, 34960:10, 34962:16 family's [2] - 34893:8, 34957:5 far [2] - 34855:14, 34920:4 Farm[1] - 34922:6 fashion [1] - 34938:9 fast [2] - 34861:13, 34945:10 fast-tracked [1] - 34945:10 faster [1] - 34906:7 father's [1] - 34946:12 favourable [1] - 34857:20 fearful [2] - 34949:22, 34953:8 February[1] - 34858:11 federal [1] - 34888:15 Feds[8] - 34888:10, 34888:22, 34889:8, 34890:12, 34890:14, 34891:2, 34891:21, 34892:9 feelings [2] - 34857:5, 34963:16 fellow [2] - 34946:24, 34947:2 felt [9] - 34893:5, 34894:18, 34897:7, 34897:25, 34925:7, 34946:15, 34949:24, 34953:6, 34960:12 few [6] - 34850:22, 34890:21, 34901:11, 34909:14, 34937:15, 34958:16 fifteen [1] - 34862:16 file [21] - 34853:13, 34853:15, 34853:19, 34854:19, 34856:3, 34856:8, 34856:15, 34856:18, 34865:13, 34866:9, 34866:18, 34866:20, 34867:11, 34867:13, 34870:8, 34926:2, 34927:16, 34928:21, 34928:25, 34935:4, 34942:21 filed [1] - 34954:18 files [4] - 34865:17, 34885:3, 34885:8, 34943:10 filled [1] - 34868:16 final [4] - 34859:11,</p>	<p>34867:20, 34915:7, 34944:7 finally [1] - 34958:15 financial [1] - 34919:8 findings [4] - 34873:24, 34886:17, 34886:20, 34892:15 fine [1] - 34902:12 finger [1] - 34859:23 finished [2] - 34903:4, 34905:16 firm [4] - 34927:18, 34927:19, 34935:19, 34961:18 firmly [1] - 34851:11 first [8] - 34852:19, 34861:7, 34895:16, 34926:11, 34927:14, 34937:18, 34939:23, 34945:4 First[1] - 34863:22 firstly [1] - 34887:11 Fisher[22] - 34875:5, 34875:6, 34875:23, 34878:16, 34878:21, 34878:25, 34879:22, 34880:1, 34880:5, 34880:19, 34881:25, 34882:4, 34882:9, 34883:7, 34886:1, 34886:4, 34893:22, 34893:23, 34902:17, 34909:21, 34909:24, 34910:3 Fishers [1] - 34880:13 Fitzgerald[1] - 34847:13 five [5] - 34889:18, 34894:25, 34916:18, 34916:19, 34932:20 fix [1] - 34901:8 flight [2] - 34921:3, 34921:19 flying [6] - 34919:5, 34920:8, 34920:12, 34920:15, 34921:10, 34921:12 focus [2] - 34860:23, 34893:18 follow [4] - 34857:10, 34857:11, 34886:1, 34925:6 followed [2] - 34856:13, 34934:25 following [3] - 34898:10, 34926:22, 34932:6 foregoing [1] - 34965:4 forensic [3] - 34943:13, 34943:15, 34955:16</p>	<p>forever [1] - 34877:3 forget [2] - 34864:18, 34952:5 forlorn [1] - 34913:14 form [2] - 34871:23, 34942:22 formal [1] - 34942:21 former [3] - 34911:8, 34913:20, 34935:23 fortunate [1] - 34952:17 fortunately [1] - 34946:18 forward [2] - 34896:15, 34953:9 foundation [1] - 34903:19 fraser [2] - 34886:12, 34898:2 Fraser[3] - 34887:4, 34888:9, 34899:25 Fraser-mccrank [1] - 34887:4 Fraye[1] - 34848:10 free [6] - 34851:16, 34874:11, 34874:14, 34881:14, 34951:21, 34955:24 freed [1] - 34878:10 freedom [2] - 34872:4, 34915:12 freeing [2] - 34909:20, 34915:9 frequently [1] - 34947:11 fresh [4] - 34874:22, 34875:20, 34876:4, 34877:8 Friend[1] - 34853:24 friend [3] - 34862:18, 34863:2, 34918:24 friends [1] - 34935:23 front [3] - 34918:16, 34957:16, 34957:20 fronts [1] - 34874:7 Frumusa[1] - 34948:1 function [1] - 34941:23 functions [1] - 34903:4 fund [1] - 34953:3 funded [2] - 34953:23, 34953:24 Funding[1] - 34950:23 funding [1] - 34954:9 funds [1] - 34957:18 future [6] - 34937:3, 34953:22, 34959:7, 34959:9, 34961:1</p>	<p>G</p> <p>Gail[5] - 34855:20, 34875:20, 34877:10, 34880:8, 34880:19 gaining [1] - 34872:4 garbage [1] - 34930:16 Garrett[7] - 34848:6, 34900:24, 34900:25, 34901:1, 34905:17, 34907:24, 34908:7 gems [1] - 34854:19 General[4] - 34880:24, 34924:24, 34935:5, 34935:11 general [2] - 34856:22, 34904:20 Generals [1] - 34884:25 generally [1] - 34893:19 Giant[1] - 34939:13 giants' [1] - 34906:14 Gibbon[2] - 34926:9, 34927:12 girl [1] - 34868:15 girls [2] - 34868:7, 34868:11 gist [1] - 34952:12 given [14] - 34856:4, 34856:9, 34857:2, 34858:20, 34881:5, 34884:17, 34889:15, 34896:9, 34925:21, 34925:23, 34928:19, 34930:11, 34933:6, 34941:10 gleaned [1] - 34857:4 Globe[2] - 34881:3, 34941:11 gonna [1] - 34881:14 goose [1] - 34956:15 gordge [2] - 34852:21, 34853:22 Gordon[1] - 34912:9 Government[2] - 34848:4, 34884:24 government [7] - 34887:18, 34888:15, 34889:6, 34915:4, 34950:9, 34951:1 government-paid [2] - 34915:4 grabbed [2] - 34861:21 Grace[1] - 34920:25 gracious [1] - 34911:12 graduated [1] - 34917:16 graduation [4] - 34916:10, 34916:14, 34918:3, 34918:9</p>	<p>granting [1] - 34876:21 grasp [1] - 34961:18 grateful [2] - 34922:10, 34953:10 great [8] - 34856:19, 34856:21, 34860:11, 34867:21, 34871:5, 34910:12, 34911:24, 34915:11 greatest [1] - 34912:12 greedy [1] - 34908:13 group [5] - 34866:13, 34939:18, 34951:24, 34951:25, 34953:1 groups [2] - 34952:5, 34952:24 guard [1] - 34924:6 guess [4] - 34892:16, 34916:7, 34920:20, 34950:4 guide [1] - 34908:12 guilt [3] - 34860:11, 34875:24, 34943:6 guilty [9] - 34876:19, 34877:2, 34878:16, 34880:25, 34881:5, 34881:13, 34883:15, 34904:13, 34942:7 Guilty[1] - 34907:24 guise [1] - 34853:16 guy [1] - 34881:13 Guy[3] - 34901:22, 34948:12, 34948:13</p>
				<p>H</p> <p>half [1] - 34912:25 Halton [1] - 34948:10 hand [6] - 34879:21, 34883:9, 34917:22, 34950:9, 34950:10 handle [1] - 34892:24 handled [2] - 34894:15, 34940:8 handles [1] - 34941:21 hands [2] - 34899:10, 34920:13 happy [2] - 34857:25, 34858:2 harassment [1] - 34929:8 heading [1] - 34861:16 headline [2] - 34859:3, 34922:16 headlines [1] - 34858:23 health [1] - 34869:14 hear [3] - 34891:17, 34910:24, 34963:9</p>



<p>heard [8] - 34856:6, 34857:18, 34857:21, 34859:21, 34880:5, 34900:17, 34900:21, 34963:6</p> <p>heavy [1] - 34904:15</p> <p>held [5] - 34854:9, 34871:1, 34871:9, 34904:9, 34935:20</p> <p>help [18] - 34859:25, 34868:2, 34887:14, 34894:4, 34912:7, 34920:22, 34936:14, 34937:2, 34937:8, 34938:1, 34946:12, 34946:18, 34948:7, 34949:5, 34949:17, 34957:12, 34958:9, 34962:10</p> <p>helped [2] - 34910:25, 34949:16</p> <p>helpful [1] - 34955:19</p> <p>helping [1] - 34952:19</p> <p>helps [1] - 34916:3</p> <p>hereby [1] - 34965:4</p> <p>herein [1] - 34965:6</p> <p>heroin [1] - 34868:8</p> <p>herself [1] - 34962:16</p> <p>Hersh [3] - 34848:2, 34850:9, 34897:9</p> <p>highlight [5] - 34855:1, 34855:11, 34858:12, 34865:6, 34912:12</p> <p>highly [1] - 34901:18</p> <p>highly-regarded [1] - 34901:18</p> <p>himself [5] - 34855:7, 34869:2, 34871:16, 34873:13, 34885:17</p> <p>Hinz [3] - 34847:10, 34965:2, 34965:13</p> <p>hired [1] - 34885:5</p> <p>history [2] - 34865:10, 34867:24</p> <p>Hmm [1] - 34906:16</p> <p>Hodson [10] - 34847:2, 34887:19, 34888:1, 34899:13, 34899:17, 34899:21, 34901:6, 34961:5, 34963:25, 34964:2</p> <p>holding [1] - 34918:10</p> <p>home [1] - 34908:19</p> <p>homicide [2] - 34941:22, 34942:3</p> <p>Hon [1] - 34848:11</p> <p>Honourable [1] - 34846:6</p> <p>hope [5] - 34872:10, 34885:24, 34886:11,</p>	<p>34936:16, 34960:25</p> <p>hoped [1] - 34881:23</p> <p>hopefully [1] - 34953:19</p> <p>hopes [1] - 34926:13</p> <p>hoping [2] - 34911:7, 34951:12</p> <p>Hopkins [1] - 34848:12</p> <p>horrific [1] - 34883:15</p> <p>hospital [1] - 34871:18</p> <p>hostility [1] - 34902:23</p> <p>hot [1] - 34911:18</p> <p>hounding [1] - 34959:2</p> <p>house [1] - 34908:6</p> <p>housewives [1] - 34871:6</p> <p>Howard [1] - 34953:2</p> <p>Hugh [1] - 34847:12</p> <p>hundreds [1] - 34884:12</p> <p>hurt [1] - 34857:5</p> <p>husband [4] - 34904:11, 34918:7, 34921:2, 34960:14</p>	<p>34957:1, 34960:5</p> <p>improve [2] - 34871:16, 34950:8</p> <p>incarcerated [1] - 34955:20</p> <p>incensed [1] - 34864:20</p> <p>incident [2] - 34869:23, 34879:11</p> <p>incidents [1] - 34852:19</p> <p>include [2] - 34946:24, 34955:15</p> <p>Income [1] - 34922:6</p> <p>incorrect [1] - 34923:8</p> <p>indeed [2] - 34928:5, 34929:2</p> <p>independence [1] - 34937:25</p> <p>independent [6] - 34895:23, 34937:12, 34938:5, 34949:18, 34950:15, 34962:11</p> <p>Index [1] - 34849:1</p> <p>indicate [2] - 34882:8, 34917:8</p> <p>indicated [6] - 34850:12, 34928:13, 34928:24, 34933:19, 34934:22, 34935:8</p> <p>indicates [6] - 34895:4, 34916:13, 34921:2, 34921:8, 34926:12, 34932:22</p> <p>indicating [2] - 34931:13, 34941:20</p> <p>indication [5] - 34853:13, 34896:4, 34896:6, 34897:12, 34940:6</p> <p>individual [2] - 34872:3, 34910:19</p> <p>individuals [4] - 34902:1, 34926:22, 34927:2, 34957:9</p> <p>influenced [2] - 34907:5, 34911:19</p> <p>informants [2] - 34880:15, 34886:6</p> <p>information [16] - 34854:10, 34857:3, 34871:17, 34893:6, 34895:10, 34910:5, 34910:12, 34922:11, 34922:14, 34926:13, 34932:17, 34932:25, 34934:13, 34936:14, 34937:11, 34959:3</p> <p>initial [1] - 34943:8</p> <p>initiated [1] - 34913:9</p> <p>Inland [1] - 34847:13</p> <p>innocence [17] -</p>	<p>34854:21, 34860:1, 34860:7, 34860:13, 34860:18, 34862:25, 34875:25, 34902:4, 34937:8, 34937:14, 34937:21, 34939:25, 34940:7, 34940:9, 34942:16, 34943:6, 34945:19</p> <p>innocent [7] - 34855:6, 34877:16, 34882:23, 34920:18, 34935:20, 34937:7, 34942:12</p> <p>inquired [1] - 34926:19</p> <p>inquiries [1] - 34932:5</p> <p>inquiry [17] - 34881:16, 34881:18, 34882:14, 34883:6, 34884:15, 34884:20, 34886:11, 34886:12, 34886:16, 34893:11, 34898:3, 34929:9, 34944:20, 34949:12, 34949:22, 34962:17</p> <p>Inquiry [9] - 34846:2, 34846:23, 34941:3, 34946:3, 34960:17, 34960:25, 34962:9, 34962:19, 34963:22</p> <p>insider's [1] - 34908:12</p> <p>Inspector [3] - 34895:6, 34899:24, 34931:23</p> <p>inspired [1] - 34909:24</p> <p>instance [1] - 34928:14</p> <p>institution [1] - 34866:22</p> <p>Institution [1] - 34911:16</p> <p>institutions [1] - 34868:2</p> <p>instrument [1] - 34921:14</p> <p>instrument-training [1] - 34921:14</p> <p>insurance [2] - 34919:21, 34919:24</p> <p>intake [1] - 34942:22</p> <p>integrity [1] - 34942:14</p> <p>intend [1] - 34959:7</p> <p>intention [2] - 34923:23, 34930:2</p> <p>intercourse [1] - 34868:14</p> <p>interest [2] - 34892:18, 34894:1</p> <p>interpretation [1] - 34896:18</p> <p>interruption [1] - 34921:22</p> <p>intervene [1] -</p>	<p>34913:22</p> <p>interview [15] - 34924:7, 34924:12, 34924:15, 34924:21, 34925:3, 34925:11, 34925:19, 34925:23, 34926:7, 34927:16, 34928:8, 34933:18, 34934:16, 34934:18, 34937:17</p> <p>interviewed [3] - 34880:2, 34927:9, 34935:13</p> <p>interviewing [3] - 34925:1, 34940:3, 34943:14</p> <p>interviews [2] - 34895:1, 34895:15</p> <p>intimated [1] - 34924:14</p> <p>intimately [1] - 34867:18</p> <p>investigate [3] - 34910:3, 34938:11, 34939:23</p> <p>investigating [4] - 34851:15, 34939:22, 34940:3, 34950:16</p> <p>investigation [25] - 34851:5, 34851:6, 34855:16, 34885:24, 34887:1, 34887:3, 34888:23, 34890:23, 34891:7, 34891:11, 34891:17, 34893:14, 34894:1, 34895:4, 34895:11, 34895:13, 34925:25, 34927:3, 34931:25, 34941:13, 34941:14, 34954:2, 34955:4, 34956:3, 34963:21</p> <p>investigative [1] - 34944:1</p> <p>investigator [2] - 34889:6, 34956:11</p> <p>investigators [3] - 34895:6, 34930:5, 34953:11</p> <p>invitation [4] - 34853:14, 34856:7, 34856:9, 34856:12</p> <p>inviting [1] - 34868:13</p> <p>involved [19] - 34851:3, 34867:18, 34868:13, 34899:10, 34908:14, 34911:1, 34925:24, 34927:2, 34929:6, 34931:1, 34942:18, 34947:25, 34948:14,</p>
---	---	---	--	--



34950:6, 34952:15, 34962:17, 34962:22, 34962:23, 34963:20 involvement [2] - 34888:22, 34911:22 involves [1] - 34943:9 lola [2] - 34849:3, 34850:6 Irene [1] - 34847:9 ironic [1] - 34870:25 issue [4] - 34869:13, 34878:13, 34901:7, 34938:14 items [1] - 34932:15 itself [2] - 34942:9, 34954:6	34951:21 Joyce [6] - 34848:3, 34849:3, 34850:6, 34913:11, 34921:14, 34960:8 Jr [1] - 34912:10 judge [1] - 34902:16 judgement [1] - 34864:23 judges [3] - 34858:16, 34878:12, 34896:24 judgment [2] - 34897:16, 34897:17 June [6] - 34846:21, 34861:5, 34901:23, 34920:24, 34923:5, 34924:5 jurisdiction [1] - 34888:13 jury [3] - 34876:3, 34877:1, 34877:9 jury's [1] - 34875:24 justice [3] - 34853:8, 34876:2, 34888:24 Justice [17] - 34846:6, 34848:10, 34848:12, 34857:2, 34876:21, 34892:4, 34892:6, 34892:21, 34892:24, 34911:25, 34914:14, 34937:20, 34945:10, 34945:13, 34952:14, 34954:17, 34955:1	34872:9 Kim [5] - 34881:9, 34901:4, 34911:20, 34912:3, 34913:25 kind [6] - 34911:12, 34917:18, 34952:16, 34957:18, 34958:2, 34958:4 kindergarten [1] - 34865:13 kinds [1] - 34955:21 Kingdom [1] - 34917:4 knife [3] - 34857:17, 34861:22 knock [1] - 34937:23 knowledge [2] - 34852:10, 34965:6 known [7] - 34856:1, 34869:9, 34895:10, 34908:3, 34933:25, 34934:9, 34935:9 knows [2] - 34855:3, 34958:23 Knox [12] - 34848:5, 34853:12, 34863:20, 34863:22, 34866:8, 34866:16, 34867:6, 34867:9, 34869:6, 34869:22, 34922:20, 34925:10 Krogan [4] - 34848:4, 34889:17, 34889:23, 34890:1 Krogan-stevely [4] - 34848:4, 34889:17, 34889:23, 34890:1 Kujawa [4] - 34848:6, 34881:6, 34902:11, 34902:20 Kyle [1] - 34945:24	late [2] - 34892:2, 34921:16 law [6] - 34851:21, 34918:8, 34927:18, 34927:19, 34943:17, 34952:20 Law [1] - 34852:13 lawyer [19] - 34852:9, 34853:9, 34853:15, 34853:19, 34856:7, 34902:16, 34906:9, 34924:23, 34929:19, 34929:22, 34932:17, 34933:1, 34933:7, 34933:11, 34933:12, 34943:19, 34943:22, 34943:25, 34956:10 lawyers [12] - 34856:8, 34902:11, 34905:12, 34914:25, 34915:4, 34915:5, 34940:2, 34943:17, 34943:23, 34946:22, 34951:15, 34960:18 lead [4] - 34872:8, 34886:13, 34893:21, 34926:14 leading [3] - 34891:16, 34909:20, 34909:23 leaped [1] - 34864:19 learn [2] - 34872:2, 34911:7 learned [4] - 34857:16, 34858:17, 34900:3, 34900:4 leasing [1] - 34921:11 least [3] - 34879:8, 34931:6, 34937:16 leave [5] - 34858:13, 34861:7, 34878:3, 34917:8, 34961:9 led [4] - 34862:14, 34875:3, 34875:10, 34886:4 left [1] - 34908:25 Legal [1] - 34954:10 legal [3] - 34892:14, 34901:18, 34904:16 legislation [1] - 34851:24 length [1] - 34864:16 lengthy [1] - 34867:25 Les [1] - 34855:17 Leslie [1] - 34936:18 less [2] - 34890:23, 34938:10 lessons [2] - 34919:5, 34920:8 letter [25] - 34854:24, 34856:14, 34858:7,	34858:8, 34858:11, 34861:4, 34863:12, 34863:18, 34863:21, 34864:16, 34883:18, 34883:21, 34884:16, 34884:21, 34888:19, 34920:23, 34921:8, 34922:3, 34925:13, 34925:14, 34932:16, 34933:21, 34934:21, 34936:17 letters [7] - 34859:13, 34859:15, 34864:1, 34869:12, 34873:18, 34884:11, 34884:12 letting [2] - 34945:14, 34957:13 liar [1] - 34922:17 Library [1] - 34909:9 Lieutenant [1] - 34895:18 life [8] - 34850:12, 34868:18, 34872:7, 34893:8, 34906:6, 34915:9, 34953:15, 34958:20 light [4] - 34875:5, 34875:11, 34881:19, 34881:20 likelihood [1] - 34892:18 likely [1] - 34893:21 limbo [1] - 34883:15 limelight [1] - 34853:10 limited [3] - 34851:13, 34851:14, 34910:6 Linda [1] - 34880:13 list [1] - 34944:11 literally [1] - 34937:10 littered [1] - 34908:6 live [2] - 34888:20, 34920:4 lived [1] - 34928:2 living [1] - 34868:7 load [1] - 34884:1 local [1] - 34907:10 locate [3] - 34928:17, 34934:3, 34935:8 located [4] - 34866:10, 34920:3, 34932:12, 34933:4 locating [4] - 34926:10, 34926:21, 34927:6, 34933:17 location [1] - 34928:4 locations [1] - 34875:22 logic [1] - 34877:6 look [13] - 34853:5, 34853:15, 34853:19, 34856:8, 34878:24,
J				
jail [4] - 34851:8, 34877:24, 34883:12, 34956:18 jailhouse [1] - 34880:15 January [11] - 34926:5, 34926:8, 34926:18, 34927:11, 34927:13, 34929:12, 34931:10, 34932:20, 34933:14, 34936:16, 34936:20 Jim [1] - 34944:17 Joan rs [1] - 34904:10 Joanne [1] - 34848:3 John [28] - 34862:1, 34862:5, 34862:7, 34862:14, 34862:18, 34872:18, 34895:1, 34895:3, 34895:23, 34896:3, 34905:21, 34906:3, 34922:24, 34923:18, 34924:15, 34926:9, 34926:23, 34927:12, 34927:24, 34929:16, 34930:12, 34931:11, 34932:1, 34934:7, 34934:16, 34936:18, 34936:19, 34953:2 Joh rs [4] - 34879:5, 34932:9, 34932:10, 34932:11 Johnson [1] - 34948:3 johnson [1] - 34944:22 Johnston [2] - 34888:4, 34888:6 joint [2] - 34890:14, 34891:4 jointly [1] - 34890:12 joke [1] - 34879:12 journalists [1] -	K			
Karen [3] - 34847:10, 34965:2, 34965:13 Karst [4] - 34848:8, 34929:14, 34931:9, 34932:21 keep [4] - 34884:6, 34919:25, 34920:1, 34954:4 kept [3] - 34918:25, 34959:1 Kettles [1] - 34924:4 key [2] - 34873:8, 34874:24 kids [1] - 34960:14 kill [3] - 34865:16, 34865:24, 34930:18 killed [2] - 34877:9, 34880:19 killer [6] - 34854:20, 34883:11, 34915:15, 34947:19, 34947:23, 34955:23 killing [2] - 34867:19,	L			
lack [1] - 34873:7 ladies [1] - 34907:8 lady [1] - 34952:9 Lamer [1] - 34946:3 Lana [1] - 34848:4 large [1] - 34963:2 Larry [7] - 34875:4, 34881:25, 34882:4, 34883:7, 34886:4, 34902:17, 34936:18 last [11] - 34862:13, 34871:17, 34876:16, 34895:17, 34902:25, 34924:11, 34938:21, 34939:3, 34960:18, 34963:1, 34963:19				



34889:15, 34893:20, 34894:5, 34938:15, 34938:16, 34938:20, 34959:21, 34962:11 looked [3] - 34860:19, 34919:3, 34946:3 looking [10] - 34852:23, 34853:9, 34863:21, 34879:2, 34884:18, 34887:15, 34916:2, 34937:8, 34955:22, 34955:23 looks [1] - 34860:8 loose [1] - 34883:16 lost [1] - 34868:12 loving [1] - 34913:14 lucky [2] - 34953:17, 34954:1 lucky/unlucky [1] - 34957:9 lunch [1] - 34887:24	34887:16, 34890:18, 34890:21 Mackie [4] - 34894:14, 34895:17, 34898:10, 34898:15 Maclean's [1] - 34907:13 magazine [3] - 34871:3, 34906:6, 34958:21 magazines [1] - 34905:24 Mail [2] - 34881:3, 34941:12 main [2] - 34930:5, 34961:2 maintain [1] - 34914:22 maintaining [5] - 34859:25, 34860:7, 34860:13, 34860:18, 34862:25 maintenance [1] - 34921:11 major [2] - 34951:8, 34952:25 Makin's [1] - 34941:11 man [2] - 34864:18, 34885:16 Manager [1] - 34847:5 Manitoba [4] - 34913:16, 34946:1, 34948:20, 34954:9 March [2] - 34883:19, 34944:13 married [1] - 34932:11 Marshall [1] - 34848:12 Mary [3] - 34869:3, 34869:8, 34869:24 material [6] - 34855:5, 34855:13, 34857:12, 34884:17, 34911:25, 34935:16 matter [18] - 34854:3, 34859:11, 34860:10, 34873:3, 34878:15, 34888:11, 34888:16, 34891:21, 34893:25, 34905:1, 34923:20, 34924:24, 34931:17, 34933:8, 34937:19, 34937:23, 34955:12, 34955:14 matters [2] - 34854:5, 34873:19 mauling [2] - 34906:24, 34907:4 Mauling [2] - 34907:1 Mccorriston [1] - 34923:11 Mccrank [5] - 34886:12, 34888:9, 34892:4,	34898:2, 34899:24 mccrank [1] - 34887:4 Mccrank-fraser [2] - 34886:12, 34898:2 Mcdonald [5] - 34866:8, 34866:10, 34866:17, 34867:5, 34867:6 Mcdonald's [2] - 34866:19, 34867:10 Mcintyre [1] - 34911:25 Mclean [11] - 34848:3, 34849:5, 34915:20, 34915:25, 34916:4, 34916:5, 34939:11, 34939:16, 34963:7, 34963:11, 34963:14 Mctaggart [1] - 34948:9 mean [14] - 34853:4, 34857:17, 34860:8, 34864:19, 34869:1, 34874:20, 34878:2, 34893:11, 34896:17, 34921:5, 34946:13, 34950:24, 34952:16, 34957:13 means [6] - 34876:11, 34889:10, 34889:11, 34942:18, 34945:15, 34957:2 meant [1] - 34963:23 meantime [1] - 34938:18 media [12] - 34909:15, 34909:17, 34909:19, 34909:25, 34910:2, 34910:10, 34910:12, 34911:1, 34914:3, 34920:20, 34939:19, 34951:19 meet [1] - 34911:10 meeting [5] - 34889:22, 34891:16, 34895:5, 34912:16, 34913:10 members [7] - 34892:16, 34894:1, 34895:6, 34927:16, 34928:25, 34943:22, 34946:7 memo [1] - 34892:7 memories [1] - 34947:16 memory [2] - 34883:20, 34919:14 memos [2] - 34890:19, 34915:3 mental [1] - 34869:14 mentally [1] - 34879:9 mention [4] - 34855:18, 34868:24, 34897:16,	34900:2 mentioned [5] - 34882:19, 34887:7, 34897:17, 34927:7, 34954:12 mentoring [1] - 34943:25 Merchant [9] - 34903:12, 34903:14, 34903:18, 34903:22, 34904:5, 34904:13, 34904:21, 34905:2, 34905:7 Merrimans [2] - 34855:19, 34879:15 message [5] - 34889:16, 34931:1, 34931:4, 34931:7, 34943:5 met [2] - 34915:21, 34948:6 Meyer [3] - 34847:11, 34965:2, 34965:19 Michael [1] - 34948:9 Michel [1] - 34946:25 middle [1] - 34850:15 might [35] - 34850:17, 34853:3, 34853:10, 34857:4, 34857:19, 34857:21, 34857:25, 34858:2, 34858:3, 34859:2, 34859:12, 34859:25, 34860:19, 34863:6, 34864:23, 34872:8, 34881:24, 34887:14, 34891:11, 34900:21, 34901:8, 34902:11, 34907:19, 34909:11, 34915:2, 34920:22, 34924:12, 34926:14, 34928:23, 34931:1, 34932:11, 34934:1, 34935:17, 34936:14, 34937:2 Mighton [1] - 34906:9 Mike [1] - 34888:25 mike [1] - 34850:16 Milgaard [56] - 34846:4, 34848:2, 34848:3, 34849:3, 34850:6, 34850:8, 34850:11, 34861:16, 34861:20, 34862:14, 34865:15, 34866:19, 34868:5, 34868:7, 34868:13, 34868:15, 34868:18, 34871:1, 34871:15, 34871:24, 34875:19, 34875:25, 34876:1, 34876:22, 34885:19,	34900:7, 34901:12, 34901:22, 34909:6, 34913:12, 34915:8, 34915:21, 34915:25, 34918:14, 34921:15, 34921:25, 34923:17, 34924:10, 34924:17, 34926:1, 34927:15, 34927:23, 34929:19, 34931:2, 34931:18, 34933:2, 34933:8, 34934:10, 34935:1, 34951:25, 34953:1, 34960:9, 34961:25, 34962:7, 34962:19, 34963:19 Milgaard's [1] - 34865:9 Miller [11] - 34855:20, 34858:8, 34858:20, 34858:23, 34861:18, 34861:21, 34862:11, 34875:20, 34877:10, 34880:8, 34880:19 mind [4] - 34880:21, 34896:8, 34908:25, 34918:20 mind-boggling [1] - 34896:8 minds [1] - 34937:17 Mine [2] - 34939:9, 34939:13 Minister [10] - 34848:10, 34876:20, 34892:3, 34911:3, 34911:9, 34911:17, 34913:20, 34914:4, 34955:13, 34958:23 minister [1] - 34852:12 ministerial [1] - 34945:24 Ministers [1] - 34952:4 minutes [1] - 34908:24 mis carriage [1] - 34876:2 mischievous [3] - 34904:4, 34904:7, 34904:13 misconduct [1] - 34878:12 misleads [1] - 34858:23 Miss [1] - 34861:17 missed [1] - 34894:18 missing [2] - 34928:16, 34928:17 misstating [1] - 34867:1 mistake [1] - 34883:1 mistakes [4] - 34939:6, 34956:3, 34956:7, 34956:14 Mitchell [1] - 34880:24
M				
ma'am [3] - 34893:4, 34896:13, 34897:19 Maccallum [61] - 34846:7, 34850:3, 34850:5, 34853:21, 34853:25, 34863:11, 34863:19, 34863:25, 34864:4, 34864:7, 34864:25, 34865:2, 34865:4, 34866:2, 34866:23, 34866:25, 34867:4, 34867:15, 34869:21, 34877:23, 34885:11, 34885:15, 34885:21, 34889:9, 34889:25, 34890:3, 34890:9, 34893:3, 34893:10, 34893:13, 34896:12, 34896:16, 34896:22, 34896:25, 34897:3, 34897:5, 34897:15, 34897:18, 34898:1, 34898:5, 34898:8, 34900:22, 34901:1, 34904:24, 34905:4, 34905:6, 34906:25, 34909:2, 34915:24, 34939:10, 34939:13, 34961:7, 34961:13, 34961:17, 34961:21, 34961:24, 34962:5, 34963:5, 34963:9, 34963:24, 34964:4 Macfarlane [3] -				



model [1] - 34906:19 mom [1] - 34851:7 moment [4] - 34856:6, 34890:17, 34901:6, 34923:9 momentarily [1] - 34901:9 Monar [1] - 34847:3 Monday [1] - 34846:21 money [11] - 34882:21, 34883:3, 34907:10, 34950:24, 34951:9, 34953:4, 34954:22, 34957:20, 34958:17, 34958:24, 34960:16 monitor [2] - 34900:20, 34908:1 month [3] - 34939:3, 34961:12, 34963:19 months [2] - 34960:18, 34963:1 Morin [2] - 34901:22, 34948:12 morning [2] - 34856:22, 34964:3 most [9] - 34876:5, 34876:15, 34883:5, 34901:12, 34901:23, 34911:11, 34934:8, 34937:9, 34962:23 mostly [1] - 34903:4 motel [2] - 34875:2, 34879:11 mother [2] - 34851:17, 34913:11 Mother's [1] - 34960:2 mothers [1] - 34938:7 motorcycle [2] - 34919:3, 34919:4 motto [1] - 34907:3 move [1] - 34922:18 moved [2] - 34911:14, 34911:22 movement [1] - 34952:12 moving [3] - 34883:6, 34884:22, 34934:12 Moving [1] - 34928:20 Mullins [1] - 34944:22 Mullins-johnson [1] - 34944:22 Mulroney [6] - 34911:9, 34912:2, 34912:15, 34912:23, 34913:1, 34914:10 murder [11] - 34874:16, 34875:19, 34877:2, 34895:12, 34903:24, 34904:3, 34925:25, 34942:19, 34944:14,	34948:1, 34948:21 murderer [1] - 34883:16 murderer/rapist [1] - 34877:20 Murray [3] - 34888:4, 34888:7, 34964:2 must [6] - 34852:15, 34855:6, 34909:12, 34938:15, 34942:21, 34946:10 N name [8] - 34924:11, 34932:11, 34932:25, 34933:6, 34933:11, 34946:25, 34949:3, 34949:7 named [1] - 34927:23 names [2] - 34926:23, 34929:18 narrow [1] - 34893:18 nation [1] - 34871:6 National [1] - 34861:6 nature [4] - 34869:15, 34869:25, 34890:25, 34962:25 near [1] - 34920:4 necessarily [1] - 34931:11 necessity [1] - 34955:15 need [3] - 34853:15, 34890:16, 34948:18 needless [1] - 34929:7 needs [2] - 34888:19, 34958:8 Neil [3] - 34888:8, 34888:10, 34892:4 never [15] - 34864:18, 34865:18, 34866:6, 34866:24, 34867:2, 34872:11, 34897:10, 34899:10, 34910:6, 34910:8, 34911:5, 34952:15, 34958:25, 34960:9, 34960:10 nevertheless [1] - 34913:18 new [5] - 34874:15, 34876:18, 34877:1, 34908:8, 34954:11 Newfoundland [1] - 34946:4 newspaper [2] - 34940:1, 34947:9 next [10] - 34870:4, 34889:21, 34890:7, 34890:16, 34890:19,	34891:18, 34891:25, 34918:6, 34923:15, 34926:16 nice [2] - 34907:8, 34912:20 Nichol [21] - 34861:25, 34862:4, 34862:7, 34862:14, 34862:18, 34872:18, 34879:5, 34895:15, 34922:24, 34924:15, 34926:23, 34927:24, 34930:12, 34931:11, 34932:8, 34932:10, 34932:11, 34934:7, 34934:15, 34936:18, 34936:19 Nicole [2] - 34923:18, 34933:5 night [5] - 34884:3, 34884:5, 34912:17, 34912:20 nine [2] - 34906:17 noble [1] - 34905:25 nobody [4] - 34882:3, 34913:25, 34954:1, 34954:2 non [2] - 34857:7, 34857:13 non-disclosures [2] - 34857:7, 34857:13 none [1] - 34961:2 None [1] - 34880:22 nonsensical [1] - 34877:25 norm [3] - 34945:7, 34945:8, 34958:5 normal [2] - 34851:16, 34851:20 normally [1] - 34911:2 North [1] - 34906:9 north [1] - 34939:12 notably [1] - 34901:21 notation [2] - 34923:16, 34924:4 note [3] - 34866:12, 34870:25, 34924:8 noted [2] - 34870:6, 34933:20 notes [5] - 34887:13, 34887:21, 34887:23, 34917:13, 34965:6 nothing [8] - 34855:20, 34856:15, 34859:16, 34889:2, 34889:7, 34889:16, 34928:6, 34953:12 notice [3] - 34909:25, 34947:8, 34962:7 Nova [1] - 34948:5 November [1] -	34883:25 nowhere [1] - 34935:18 number [13] - 34857:7, 34880:15, 34882:14, 34893:7, 34901:20, 34902:14, 34906:5, 34908:3, 34920:12, 34932:9, 34932:15, 34933:14, 34951:7 numbers [1] - 34922:8 nurse's [1] - 34917:25 nursing [1] - 34961:16 Nursing [4] - 34916:11, 34916:15, 34917:11, 34918:4 nut [1] - 34885:8 O O'Brien [1] - 34925:22 obey [2] - 34851:20, 34852:15 objection [1] - 34962:21 objective [1] - 34958:25 obligations [3] - 34851:17, 34852:6, 34852:12 obliged [1] - 34854:5 observed [1] - 34862:1 obstruction [2] - 34888:24, 34905:8 obstructionist [1] - 34929:2 obtain [1] - 34915:12 obtained [2] - 34895:22, 34948:9 obtaining [2] - 34926:20, 34943:10 obvious [3] - 34869:1, 34882:11, 34931:17 obviously [2] - 34851:19, 34863:14 occasions [2] - 34884:3, 34902:14 occupants [1] - 34861:15 occupation [4] - 34870:15, 34870:21, 34871:1, 34871:9 occur [1] - 34940:17 occurred [1] - 34895:12 October [9] - 34875:5, 34875:11, 34887:23, 34888:14, 34891:13, 34891:20, 34892:8, 34916:15 offence [3] - 34856:20, 34868:19, 34872:19	offensive [2] - 34886:25, 34887:2 offer [1] - 34853:19 offered [1] - 34921:12 offers [1] - 34943:24 office [3] - 34913:1, 34913:25, 34943:12 Officer [5] - 34847:12, 34922:5, 34923:11, 34924:3, 34924:19 officer [2] - 34894:5, 34956:10 officers [8] - 34924:25, 34925:19, 34925:24, 34926:7, 34926:12, 34932:2, 34953:5, 34953:6 offices [1] - 34892:22 Official [5] - 34847:10, 34965:1, 34965:3, 34965:14, 34965:20 officially [2] - 34956:12, 34956:13 old [1] - 34850:19 Once [3] - 34924:6, 34944:1, 34944:4 one [42] - 34852:19, 34857:6, 34857:7, 34859:21, 34864:1, 34864:18, 34865:16, 34865:23, 34865:24, 34866:6, 34868:17, 34870:9, 34871:20, 34873:1, 34882:13, 34883:5, 34884:16, 34889:24, 34894:5, 34904:5, 34904:7, 34905:18, 34906:11, 34906:18, 34908:1, 34917:21, 34918:24, 34920:17, 34925:13, 34926:12, 34930:5, 34941:2, 34944:22, 34944:24, 34945:23, 34950:12, 34950:14, 34950:17, 34952:9, 34953:24, 34960:11, 34963:11 One [2] - 34868:12, 34904:7 ones [1] - 34866:15 ongoing [1] - 34943:20 Ontario [5] - 34944:15, 34944:23, 34946:21, 34948:9, 34954:8 onus [1] - 34951:4 open [3] - 34935:17, 34937:6, 34937:7 opened [6] - 34893:5, 34910:9, 34934:23,
--	--	--	--	---



<p>34936:3, 34953:3, 34956:16 opening [1] - 34935:15 operate [1] - 34935:3 operated [2] - 34894:20, 34921:10 operating [1] - 34900:11 opinion [4] - 34873:19, 34876:13, 34892:21, 34898:2 opportunity [4] - 34876:2, 34927:16, 34938:22, 34962:8 opposed [2] - 34864:8, 34872:3 opposite [3] - 34896:9, 34896:13, 34896:14 optics [1] - 34888:17 order [3] - 34874:14, 34904:10, 34949:7 ordered [2] - 34884:15, 34884:20 orders [1] - 34906:17 organization [4] - 34851:24, 34900:11, 34901:18, 34945:18 original [1] - 34931:25 originally [1] - 34920:14 originating [1] - 34944:23 otherwise [5] - 34877:18, 34878:2, 34880:19, 34936:4, 34936:8 Ottawa [1] - 34884:9 outraged [1] - 34910:24 outstanding [1] - 34903:22 over-reacting [1] - 34859:17 overturned [1] - 34957:19 overturning [1] - 34901:20 own [5] - 34871:20, 34914:20, 34919:18, 34941:10, 34951:17 owned [1] - 34921:6 owners [2] - 34920:14, 34921:3</p>	<p>34870:4, 34886:15, 34890:16, 34890:19, 34891:19, 34891:20, 34894:25, 34900:19, 34901:11, 34903:16, 34903:17, 34904:2, 34908:7, 34924:2 pages [3] - 34895:16, 34895:17, 34965:4 paid [3] - 34915:4, 34960:19 panel [1] - 34858:16 paper [1] - 34881:2 paragraph [13] - 34861:10, 34865:7, 34875:7, 34875:16, 34876:5, 34876:13, 34876:16, 34901:13, 34901:14, 34902:25, 34908:1, 34926:11, 34926:16 paraphrasing [2] - 34906:1, 34910:19 pardon [3] - 34876:22, 34877:4, 34877:12 parental [1] - 34851:16 parents [1] - 34932:10 parole [15] - 34859:13, 34860:4, 34860:8, 34860:19, 34861:9, 34862:4, 34862:17, 34863:1, 34863:10, 34864:14, 34864:18, 34871:23, 34872:14, 34873:18, 34878:3 Parole [1] - 34861:6 Parsons [2] - 34946:4, 34946:6 part [8] - 34861:8, 34862:1, 34866:18, 34867:13, 34872:10, 34874:25, 34946:13, 34963:2 partial [1] - 34957:11 particular [3] - 34859:24, 34913:5, 34922:12 particularly [3] - 34875:21, 34904:16, 34914:24 pass [1] - 34961:24 passion [1] - 34908:18 past [3] - 34870:6, 34871:2, 34946:24 patching [1] - 34903:1 pathology [1] - 34944:25 pattern [1] - 34875:22 Paul [3] - 34901:22, 34948:12, 34948:13</p>	<p>payment [1] - 34957:16 Pearson [2] - 34888:3, 34894:7 penal [1] - 34866:21 pending [4] - 34944:14, 34944:23, 34945:12, 34945:23 Penitentiary [1] - 34871:19 Penkala [3] - 34895:18, 34927:13, 34930:3 people [46] - 34856:18, 34857:20, 34857:22, 34857:25, 34859:15, 34873:15, 34882:4, 34883:12, 34884:12, 34885:14, 34887:9, 34906:5, 34906:20, 34907:5, 34907:20, 34908:14, 34910:14, 34910:17, 34911:2, 34913:4, 34913:24, 34914:24, 34921:5, 34921:7, 34922:25, 34927:6, 34928:8, 34929:10, 34933:20, 34935:12, 34935:25, 34937:6, 34937:7, 34937:13, 34938:1, 34942:4, 34949:17, 34950:7, 34951:5, 34952:18, 34953:4, 34953:17, 34957:17, 34959:4, 34960:13, 34962:11 perfect [1] - 34962:9 performed [1] - 34901:25 Perhaps [3] - 34850:16, 34890:17, 34912:7 perhaps [11] - 34853:4, 34857:16, 34859:24, 34873:12, 34876:13, 34887:13, 34888:24, 34897:24, 34900:22, 34953:22 period [3] - 34874:2, 34921:4, 34921:25 Period [1] - 34899:9 permission [2] - 34925:23, 34928:19 person [12] - 34853:10, 34882:23, 34898:19, 34903:18, 34908:3, 34928:13, 34928:16, 34928:17, 34942:18, 34945:4, 34951:4, 34955:19 person's [1] - 34928:18 personal [3] -</p>	<p>34915:11, 34921:21, 34951:17 personality [2] - 34867:22, 34870:11 personally [2] - 34851:3, 34963:3 persons [5] - 34868:2, 34927:22, 34928:2, 34934:3, 34943:16 persons' [1] - 34928:12 perspective [4] - 34878:8, 34883:23, 34957:22, 34959:18 Peter [3] - 34852:20, 34948:1, 34959:1 Petersfield [1] - 34920:5 phenomenon [2] - 34940:17, 34940:24 Phillion [1] - 34945:2 phone [3] - 34911:18, 34913:1, 34920:16 phoning [2] - 34912:23, 34952:9 photo [1] - 34918:6 photograph [1] - 34918:18 photographs [2] - 34865:3, 34917:19 pick [1] - 34919:10 picking [1] - 34880:1 picture [1] - 34918:13 pictures [1] - 34872:23 piece [1] - 34894:13 pilot [1] - 34921:15 pilots [1] - 34921:14 pitch [1] - 34907:6 Place [1] - 34846:16 place [4] - 34860:10, 34921:6, 34937:18, 34937:25 placed [1] - 34908:1 places [1] - 34906:11 plane [6] - 34918:16, 34918:21, 34918:22, 34919:11, 34919:16, 34920:1 played [2] - 34909:19, 34911:9 playing [1] - 34907:10 pleaded [1] - 34904:13 pleased [1] - 34909:6 plotted [1] - 34908:11 Pm [4] - 34850:2, 34909:3, 34909:4, 34964:5 pockets [1] - 34951:17 point [25] - 34850:12, 34854:20, 34859:21, 34864:4, 34864:12,</p>	<p>34868:9, 34870:24, 34874:10, 34878:4, 34882:2, 34883:12, 34892:7, 34892:10, 34894:16, 34895:14, 34902:7, 34902:10, 34908:25, 34914:10, 34921:17, 34930:7, 34935:6, 34940:5, 34940:14, 34954:3 pointed [5] - 34873:1, 34927:25, 34928:10, 34928:15, 34959:6 pointing [1] - 34890:4 points [4] - 34854:25, 34873:8, 34874:18, 34896:2 Police [7] - 34848:7, 34924:4, 34924:21, 34924:22, 34926:21, 34931:24, 34948:10 police [51] - 34851:5, 34851:6, 34852:4, 34852:15, 34868:5, 34878:12, 34878:18, 34886:3, 34891:11, 34892:16, 34894:25, 34895:4, 34895:8, 34896:4, 34896:7, 34897:12, 34898:16, 34898:19, 34908:14, 34923:12, 34925:4, 34925:11, 34925:14, 34925:16, 34925:19, 34925:24, 34926:2, 34926:7, 34926:8, 34926:9, 34927:5, 34927:12, 34928:7, 34928:11, 34930:23, 34930:24, 34930:25, 34931:13, 34932:18, 34932:22, 34933:16, 34933:22, 34936:9, 34936:23, 34938:3, 34940:15, 34940:20, 34950:8, 34953:5, 34953:6, 34956:10 policeman [1] - 34930:4 politicians [4] - 34907:19, 34907:20, 34908:13, 34908:22 pool [1] - 34907:10 portion [8] - 34855:12, 34858:12, 34862:10, 34866:1, 34871:13, 34873:6, 34907:25, 34912:13 position [3] - 34878:23, 34884:21, 34962:15 possession [1] -</p>
P				
<p>Page [1] - 34849:2 page [19] - 34861:7, 34861:8, 34862:9, 34863:22, 34865:6,</p>				



<p>34943:11 possibility [3] - 34870:12, 34926:20, 34937:6 possible [4] - 34926:25, 34929:17, 34943:3, 34944:3 possibly [3] - 34855:13, 34907:20, 34923:13 potential [1] - 34886:8 potentially [1] - 34935:17 poured [1] - 34953:4 Practically [1] - 34952:25 practice [1] - 34928:12 prayer [1] - 34952:13 praying [1] - 34952:11 preceded [1] - 34917:3 predict [1] - 34872:21 predicted [2] - 34865:22, 34872:6 prediction [2] - 34865:24, 34898:20 predictions [1] - 34865:14 predicts [1] - 34898:11 prefaced [1] - 34939:5 prejudiced [1] - 34937:17 premise [1] - 34894:20 preparatory [1] - 34917:4 prepare [1] - 34954:7 prepared [12] - 34871:21, 34882:6, 34894:25, 34895:5, 34895:16, 34895:18, 34895:24, 34913:2, 34928:25, 34935:3, 34936:9, 34958:4 preparing [2] - 34865:8, 34868:20 present [3] - 34928:4, 34938:13, 34953:19 presentation [1] - 34951:1 presented [4] - 34874:23, 34875:1, 34875:21, 34944:2 presently [1] - 34922:4 presents [1] - 34943:19 preservation [1] - 34955:16 pressure [2] - 34910:9, 34930:25 presume [1] - 34950:23 previous [1] - 34912:9 previously [1] - 34934:22</p>	<p>prey [1] - 34907:7 Prime [8] - 34911:3, 34911:9, 34911:17, 34913:20, 34914:4, 34952:4, 34955:12, 34958:22 prison [7] - 34871:16, 34920:19, 34942:4, 34946:13, 34946:14, 34946:16, 34946:17 prisoner [1] - 34855:6 private [4] - 34921:13, 34921:15, 34953:3, 34956:11 Private [1] - 34953:11 privilege [3] - 34865:9, 34914:14, 34914:23 problem [1] - 34877:6 problems [2] - 34874:7, 34951:8 procedure [2] - 34925:7, 34934:2 procedures [1] - 34934:25 proceed [2] - 34892:19, 34895:13 Proceedings [4] - 34846:12, 34846:23, 34849:1, 34850:1 proceeds [1] - 34876:18 process [3] - 34927:3, 34942:12, 34942:15 produced [1] - 34961:11 professional [3] - 34851:23, 34873:19, 34903:6 professors [2] - 34952:20 program [1] - 34916:19 Program [1] - 34922:5 Programs [1] - 34922:6 prominent [1] - 34906:5 proof [2] - 34942:17, 34950:3 proofs [1] - 34908:7 proper [1] - 34937:16 properly [1] - 34938:8 proponents [1] - 34888:12 prosecuting [1] - 34855:2 prosecution [3] - 34868:21, 34892:24, 34904:3 prosecutor [2] - 34872:20, 34888:5 prosecutors [1] - 34894:3</p>	<p>protect [1] - 34915:3 protection [1] - 34871:20 prove [4] - 34936:8, 34937:8, 34942:11, 34948:18 proven [1] - 34936:5 provide [2] - 34892:14, 34957:12 Provide [1] - 34892:20 provided [10] - 34866:19, 34876:3, 34894:23, 34894:25, 34910:12, 34914:19, 34917:20, 34932:7, 34932:8, 34932:9 provides [1] - 34922:7 Province [2] - 34885:5, 34965:3 province [3] - 34885:7, 34908:18, 34920:3 provincial [1] - 34888:12 psychiatric [5] - 34865:10, 34865:17, 34867:24, 34870:8, 34872:20 psychoanalysed [1] - 34958:1 psychological [1] - 34957:21 public [4] - 34892:18, 34893:11, 34909:25, 34910:22 Public [1] - 34909:9 publicity [2] - 34853:6, 34939:18 publicly [2] - 34880:25, 34912:6 pull [3] - 34854:23, 34858:6, 34895:9 pulled [1] - 34861:22 pure [1] - 34851:7 purse [2] - 34861:22, 34930:16 pursue [2] - 34881:25, 34892:15 pushed [1] - 34962:19 put [9] - 34857:15, 34859:23, 34880:17, 34883:23, 34908:2, 34908:10, 34930:16, 34956:4, 34962:15 puts [1] - 34951:3 putting [2] - 34886:17, 34906:7 puzzling [1] - 34892:1</p>	<p>Q</p> <p>Qb [1] - 34847:10 Qc [3] - 34848:2, 34848:6, 34848:10 qualifications [2] - 34956:12, 34956:13 quality [1] - 34942:13 quarters [1] - 34868:8 quashed [2] - 34876:6, 34878:9 Quebec [2] - 34946:25, 34947:6 Queen's [4] - 34965:1, 34965:3, 34965:14, 34965:20 questionable [1] - 34860:9 questioned [5] - 34859:13, 34900:10, 34903:11, 34909:16, 34942:8 questioning [7] - 34850:11, 34859:19, 34885:19, 34897:4, 34897:5, 34897:6, 34949:21 questions [10] - 34857:15, 34900:6, 34900:12, 34909:15, 34916:6, 34917:15, 34939:4, 34950:1, 34961:3, 34961:10 quietly [1] - 34941:12 Quinney's [1] - 34887:20 quite [7] - 34850:22, 34859:22, 34901:11, 34906:12, 34909:14, 34909:16, 34940:5 quote [3] - 34859:17, 34885:8, 34885:20 quoted [1] - 34906:22 quoting [1] - 34885:12</p>	<p>rate [1] - 34930:3 rates [2] - 34919:22, 34919:24 rather [2] - 34870:13, 34950:6 rational [1] - 34877:15 Rcmp [7] - 34848:9, 34892:14, 34895:4, 34895:6, 34895:15, 34895:19, 34895:24 re [7] - 34888:19, 34910:9, 34934:23, 34935:15, 34935:17, 34936:3, 34956:16 re-open [1] - 34935:17 re-opened [4] - 34910:9, 34934:23, 34936:3, 34956:16 re-opening [1] - 34935:15 reached [1] - 34921:17 reaching [1] - 34861:11 reacting [1] - 34859:17 read [7] - 34861:13, 34876:11, 34881:1, 34894:17, 34896:17, 34908:11, 34919:10 reader [1] - 34908:19 reading [5] - 34863:6, 34864:14, 34864:21, 34865:9, 34943:9 reads [1] - 34908:23 real [8] - 34854:20, 34883:11, 34902:23, 34915:15, 34947:19, 34947:21, 34947:23, 34955:23 reality [1] - 34860:7 realize [1] - 34961:20 really [12] - 34859:24, 34860:6, 34860:25, 34897:10, 34909:11, 34915:7, 34917:13, 34945:21, 34946:17, 34949:14, 34955:18, 34961:17 reason [6] - 34854:8, 34855:24, 34885:7, 34909:13, 34960:7, 34961:2 reasonable [4] - 34877:9, 34880:18, 34892:17, 34898:19 reasonableness [1] - 34942:7 reasons [10] - 34863:13, 34863:16, 34882:14, 34895:19, 34908:4, 34921:22, 34925:5, 34929:3,</p>
			<p>R</p> <p>raise [1] - 34961:8 raised [1] - 34900:13 ran [1] - 34862:2 rang [1] - 34913:1 rape [1] - 34877:2 rapist [2] - 34947:13, 34947:21 Rapist [1] - 34947:22 Rasmussen [4] - 34899:11, 34899:14, 34899:17, 34899:22</p>	



<p>34931:17, 34935:1 reasons' [1] - 34921:24 recant [1] - 34936:7 recanted [3] - 34874:24, 34879:3, 34936:4 receive [1] - 34934:2 received [6] - 34855:25, 34891:9, 34916:9, 34928:15, 34933:15, 34948:4 receiving [1] - 34904:14 recently [1] - 34901:23 recitation [1] - 34861:9 recognize [3] - 34934:23, 34934:24, 34942:5 recognized [1] - 34940:24 recollections [1] - 34916:24 recommend [2] - 34876:20, 34957:9 Reconvened [2] - 34850:2, 34909:4 record [15] - 34850:9, 34853:17, 34867:25, 34869:7, 34870:16, 34872:20, 34901:9, 34904:25, 34915:21, 34915:24, 34916:3, 34925:10, 34949:14, 34960:21, 34963:13 records [1] - 34917:17 reeled [1] - 34939:19 Reference [1] - 34962:22 reference [3] - 34878:11, 34883:24, 34892:8 references [1] - 34901:11 referral [1] - 34888:20 referred [7] - 34852:20, 34866:11, 34888:15, 34906:13, 34912:15, 34940:1, 34941:12 referring [4] - 34864:2, 34888:11, 34891:21, 34899:21 refers [1] - 34927:14 reflect [1] - 34853:18 regard [2] - 34928:10, 34928:22 regarded [1] - 34901:18 regarding [7] - 34858:13, 34859:11, 34873:2, 34879:21, 34914:15, 34924:16, 34924:24</p>	<p>regardless [2] - 34930:7 regards [1] - 34931:16 Regina [1] - 34931:24 regular [1] - 34930:3 rehearsed [1] - 34907:6 reimbursed [1] - 34960:22 relate [1] - 34923:4 related [1] - 34955:17 relates [1] - 34905:1 relatively [1] - 34876:9 relayed [1] - 34866:17 release [6] - 34870:14, 34889:8, 34890:11, 34891:4, 34949:6, 34960:5 released [8] - 34871:22, 34929:18, 34933:1, 34944:12, 34945:4, 34945:23, 34955:24, 34957:10 releasing [2] - 34933:10, 34945:16 relevant [2] - 34854:17, 34943:15 religion [1] - 34850:13 remember [6] - 34917:15, 34920:6, 34920:17, 34923:21, 34939:3, 34952:9 remembered [2] - 34912:19, 34922:10 remind [2] - 34871:10, 34962:18 rendered [2] - 34874:3, 34884:1 reply [3] - 34917:18, 34927:17, 34933:15 report [20] - 34852:23, 34866:9, 34866:11, 34867:11, 34887:11, 34888:8, 34891:2, 34891:23, 34894:12, 34894:21, 34894:25, 34895:19, 34895:23, 34897:6, 34897:8, 34898:25, 34899:10, 34899:11, 34899:14, 34899:18 Report [1] - 34891:9 Reporter [2] - 34965:14, 34965:20 reporter [2] - 34913:21, 34914:6 Reporters [2] - 34847:10, 34965:3 Reporters [1] - 34965:1 reporting [1] - 34931:10 reports [2] - 34899:22,</p>	<p>34943:13 representative [3] - 34933:7, 34935:5, 34935:11 represented [2] - 34946:7, 34946:21 representing [1] - 34933:2 reputation [5] - 34857:6, 34859:1, 34859:5, 34873:15, 34873:23 reputations [1] - 34858:4 request [15] - 34891:6, 34923:2, 34925:18, 34925:22, 34926:4, 34926:11, 34927:9, 34927:14, 34928:7, 34931:21, 34933:16, 34934:2, 34942:21, 34955:12 requested [1] - 34931:15 requests [1] - 34929:25 required [2] - 34950:25, 34951:3 requires [3] - 34942:22, 34954:17, 34955:1 residence [1] - 34922:8 resident [1] - 34871:18 resistance [1] - 34907:7 resolution [2] - 34944:23, 34945:13 resources [5] - 34851:13, 34910:5, 34936:24, 34941:23, 34957:5 respect [9] - 34866:13, 34869:7, 34875:1, 34876:22, 34903:17, 34927:6, 34932:15, 34934:11, 34961:19 respective [1] - 34892:22 response [4] - 34879:12, 34925:15, 34936:23, 34961:11 responsibility [1] - 34851:23 responsible [1] - 34911:13 rest [1] - 34902:6 restrictions [1] - 34928:3 result [4] - 34868:20, 34904:16, 34918:23, 34920:10 Retired [1] - 34848:13 retrial [1] - 34944:14</p>	<p>return [4] - 34870:13, 34870:22, 34871:7, 34872:6 returned [1] - 34876:19 reveal [2] - 34928:12, 34928:18 revealed [1] - 34869:9 reverse [1] - 34886:7 review [13] - 34889:8, 34890:11, 34891:1, 34895:21, 34913:5, 34914:1, 34928:21, 34935:2, 34938:22, 34943:8, 34944:6, 34945:24, 34949:18 Review [5] - 34943:20, 34943:21, 34943:24, 34944:3, 34944:4 reviewing [1] - 34943:12 revise [1] - 34857:24 revised [1] - 34859:5 Richard [1] - 34887:19 Rick [2] - 34848:7, 34888:3 Riddell [2] - 34895:7, 34895:24 Robert [1] - 34944:12 Rochelle [1] - 34848:9 Rockwood [1] - 34911:14 Roger [2] - 34939:4, 34939:8 role [4] - 34909:15, 34909:16, 34909:19, 34911:8 Romeo [1] - 34945:2 Ron [5] - 34857:2, 34900:23, 34922:24, 34923:18, 34927:25 Ronald [6] - 34874:23, 34895:15, 34926:23, 34930:17, 34932:7, 34932:22 room [4] - 34875:2, 34908:9, 34924:7 roommates [1] - 34855:20 rotate [1] - 34918:12 Rpr [4] - 34847:11, 34965:2, 34965:18, 34965:19 rules [1] - 34954:25</p>	<p>salesman [1] - 34871:3 salesperson [1] - 34958:22 sameness [1] - 34880:3 sanctity [2] - 34914:23, 34915:2 Sandra [1] - 34847:5 Saskatchewan [15] - 34846:17, 34848:4, 34871:19, 34880:24, 34884:25, 34885:5, 34887:18, 34890:12, 34891:2, 34891:6, 34891:10, 34892:21, 34901:22, 34906:11, 34965:4 Saskatoon [7] - 34846:17, 34848:7, 34909:8, 34923:8, 34926:21, 34928:2, 34928:23 satisfied [2] - 34940:6, 34940:9 satisfy [1] - 34853:5 savings [1] - 34953:15 saw [11] - 34862:5, 34862:18, 34862:19, 34863:2, 34864:17, 34897:8, 34897:9, 34960:8, 34960:9, 34960:10, 34960:11 Sawatsky [3] - 34888:7, 34894:2, 34899:24 Sawatzky [1] - 34964:3 school [3] - 34921:10, 34921:12, 34961:16 School [4] - 34916:10, 34916:14, 34917:10, 34918:3 Science [3] - 34916:15, 34917:10, 34918:4 Scientist [1] - 34952:10 Scope [1] - 34888:23 Scotia [1] - 34948:5 scroll [3] - 34855:11, 34870:3, 34871:12 Scroll [1] - 34892:20 search [1] - 34950:1 seat [1] - 34962:3 second [3] - 34861:8, 34934:21, 34963:12 Security [1] - 34847:12 see [25] - 34855:9, 34855:21, 34860:14, 34868:22, 34870:5, 34870:21, 34877:4, 34877:6, 34889:3, 34896:5, 34900:2, 34902:12, 34903:9, 34904:18, 34911:3,</p>
S				
<p>sacrifice [1] - 34915:11 sales [3] - 34906:20, 34906:22, 34907:6</p>				



<p>34917:23, 34930:12, 34930:15, 34930:17, 34930:18, 34936:19, 34940:23, 34946:11, 34950:4 seeing [2] - 34869:14, 34915:14 seek [1] - 34961:9 seeking [7] - 34893:1, 34893:4, 34932:17, 34936:13, 34947:6, 34949:3, 34958:10 seem [3] - 34882:12, 34886:7, 34903:7 selling [7] - 34905:24, 34906:4, 34906:10, 34906:11, 34907:9, 34907:12, 34907:15 send [3] - 34891:1, 34930:3, 34930:4 sending [1] - 34943:5 Senior [1] - 34922:5 sense [10] - 34853:8, 34859:18, 34859:20, 34874:14, 34876:25, 34877:13, 34877:15, 34877:18, 34877:21, 34937:25 senseless [1] - 34872:9 senses [1] - 34868:12 sensitive [2] - 34885:3, 34885:8 sent [1] - 34872:23 sentence [1] - 34876:23 separate [1] - 34902:22 September [4] - 34854:24, 34892:3, 34899:23, 34912:20 Serge [1] - 34848:6 Sergeant [1] - 34895:7 series [1] - 34870:9 serious [3] - 34857:13, 34879:12, 34919:12 seriously [1] - 34858:3 Service [1] - 34848:7 set [7] - 34861:15, 34874:10, 34874:13, 34895:19, 34919:12, 34942:2, 34958:4 settlement [1] - 34948:9 several [2] - 34852:20, 34885:14 sexual [4] - 34868:14, 34875:4, 34875:22, 34947:3 shaped [1] - 34861:24 share [1] - 34908:18 shared [1] - 34891:9 sharks [1] - 34907:11</p>	<p>shorthand [1] - 34965:5 Shorty [1] - 34927:24 shot [1] - 34922:1 show [3] - 34855:5, 34903:19, 34925:12 showed [1] - 34867:11 showing [1] - 34937:20 shows [1] - 34925:10 sidewalk [1] - 34861:17 Sidney [1] - 34900:24 sign [1] - 34889:7 similar [2] - 34879:22, 34880:4 Similar [1] - 34948:17 simple [1] - 34851:7 simply [3] - 34927:4, 34929:9, 34941:23 Sinclair [2] - 34912:10, 34912:23 sit [2] - 34864:15, 34960:19 site [1] - 34941:18 sitting [1] - 34846:15 situation [5] - 34880:3, 34883:14, 34884:18, 34937:3, 34948:17 situations [1] - 34953:25 skill [1] - 34965:6 skip [1] - 34901:12 skyrocketed [1] - 34919:24 slashed [1] - 34862:15 Smith [1] - 34944:24 social [4] - 34865:14, 34865:22, 34866:5, 34957:22 society [1] - 34957:23 Society [2] - 34852:13, 34953:2 sociopathic [1] - 34870:11 solicitor [1] - 34855:3 solicitor/client [2] - 34914:14, 34914:23 solo [1] - 34921:18 soloed [2] - 34922:11, 34922:13 someone [6] - 34882:24, 34937:7, 34953:8, 34955:22, 34957:13, 34959:21 sometime [1] - 34881:9 sometimes [1] - 34939:5 somewhere [2] - 34886:13, 34939:12 son [12] - 34851:8, 34856:10, 34913:16, 34915:9, 34918:13,</p>	<p>34919:10, 34920:17, 34935:20, 34936:14, 34946:11, 34957:25, 34962:21 son's [3] - 34850:9, 34851:4, 34924:23 soon [1] - 34872:8 Sophonow [5] - 34901:24, 34941:2, 34948:15, 34948:17, 34949:2 sorry [14] - 34864:2, 34870:4, 34886:16, 34886:19, 34891:19, 34901:14, 34916:4, 34917:8, 34922:13, 34926:3, 34932:9, 34938:24, 34947:21, 34952:7 Sorry [2] - 34899:13, 34918:9 Sort [1] - 34889:7 sort [4] - 34864:20, 34872:9, 34917:24, 34952:11 sought [2] - 34892:5, 34894:4 Sound [1] - 34947:15 sound [1] - 34935:14 speaking [3] - 34852:21, 34963:3, 34963:20 speaks [1] - 34942:14 special [5] - 34851:24, 34859:16, 34919:13, 34922:12, 34952:13 specific [2] - 34858:6, 34863:1 specifically [4] - 34862:19, 34923:22, 34929:21, 34930:11 speck [1] - 34880:21 speculate [1] - 34889:18 speculating [1] - 34890:2 speculations [1] - 34889:19 speed [1] - 34920:23 spelled [1] - 34954:25 Spence [1] - 34855:17 spend [1] - 34951:13 spoken [2] - 34912:15, 34933:4 St [2] - 34920:2, 34921:3 stab [1] - 34930:12 stabbing [1] - 34861:25 Staff [3] - 34847:1, 34847:8, 34895:7</p>	<p>stage [2] - 34940:21, 34944:1 stand [2] - 34889:17, 34962:1 standard [3] - 34892:17, 34928:11, 34934:1 standing [5] - 34853:19, 34913:15, 34918:16, 34924:6, 34962:24 Stanley [1] - 34906:9 start [2] - 34942:2, 34955:4 started [3] - 34851:3, 34906:6, 34920:15 starting [3] - 34850:18, 34916:21, 34944:20 starts [2] - 34892:1, 34892:2 state [2] - 34868:15, 34916:2 statement [4] - 34855:8, 34857:18, 34882:22, 34888:25 statements [9] - 34857:3, 34890:11, 34894:24, 34895:8, 34895:22, 34896:3, 34930:11, 34930:23, 34943:13 states [3] - 34932:24, 34933:5, 34933:9 States [2] - 34919:22, 34951:6 staunch [1] - 34888:12 stay [1] - 34876:17 stayed [2] - 34874:15, 34876:7 steady [1] - 34871:24 steal [1] - 34930:16 Stephanie [2] - 34903:24, 34904:8 steps [2] - 34937:16, 34945:18 stevelly [4] - 34848:4, 34889:17, 34889:23, 34890:1 Steven [3] - 34860:9, 34946:9, 34946:10 Stevie [1] - 34908:2 stigma [1] - 34958:10 still [10] - 34878:1, 34911:8, 34918:10, 34919:18, 34928:2, 34937:22, 34942:4, 34946:16, 34956:8 stings [1] - 34886:7 stone [1] - 34937:10 stonewalled [1] -</p>	<p>34936:23 stop [4] - 34880:11, 34890:17, 34906:23, 34907:3 stories [1] - 34923:19 Story [1] - 34960:2 story [5] - 34908:15, 34959:19, 34959:23, 34960:3, 34960:4 strayed [1] - 34873:18 Street [1] - 34861:5 street [1] - 34893:23 strong [5] - 34873:10, 34905:23, 34907:7, 34931:4 strongly [1] - 34850:13 stuck [1] - 34861:12 student [1] - 34921:15 students [1] - 34943:17 study [1] - 34864:15 stuff [3] - 34864:21, 34869:7, 34869:8 style [1] - 34868:18 subject [3] - 34873:24, 34944:19, 34961:8 subjected [1] - 34929:7 submissions [1] - 34939:1 submitted [2] - 34944:5, 34955:2 subscriptions [1] - 34871:4 substance [1] - 34897:20 succeeded [3] - 34901:19, 34915:11, 34915:17 success [3] - 34871:2, 34871:10, 34906:18 successful [1] - 34906:9 successfully [1] - 34921:18 suffering [1] - 34869:2 sufficient [1] - 34935:1 suggest [2] - 34876:24, 34888:17 suggested [3] - 34894:22, 34922:23, 34925:10 suggesting [3] - 34860:23, 34872:13, 34907:18 suggestion [4] - 34859:14, 34927:8, 34932:12, 34958:15 suggestions [2] - 34896:1, 34937:2 suggests [1] - 34928:6 suitcases [1] -</p>
---	--	--	---	---



<p>34906:15 suited [1] - 34871:25 summary [13] - 34894:15, 34894:17, 34895:5, 34895:9, 34895:12, 34895:17, 34895:20, 34895:21, 34895:25, 34896:19, 34896:21, 34898:11, 34898:15 summer [1] - 34944:20 sunny [1] - 34912:22 superintendent [1] - 34929:14 Superintendent [1] - 34927:13 supervised [1] - 34891:8 supervising [2] - 34943:19, 34943:25 supply [1] - 34868:8 support [9] - 34894:22, 34939:18, 34941:15, 34951:25, 34952:17, 34952:24, 34953:1, 34955:11, 34957:2 Support [1] - 34847:8 supportable [1] - 34902:5 supported [3] - 34960:14, 34960:15 supportive [1] - 34896:6 supposed [1] - 34869:17 supposedly [1] - 34869:19 Supreme [15] - 34858:13, 34867:20, 34873:14, 34874:3, 34876:15, 34878:11, 34881:7, 34896:10, 34896:15, 34896:25, 34897:2, 34897:15, 34897:21, 34911:23 surprised [1] - 34872:2 suspect [1] - 34895:15 suspicious [2] - 34903:12, 34943:2 switching [1] - 34905:12 system [6] - 34910:18, 34950:4, 34950:8, 34950:10, 34950:11, 34962:14</p>	<p>table [1] - 34864:19 Tait[1] - 34890:22 Tallis[11] - 34848:12, 34854:6, 34854:9, 34854:16, 34854:25, 34855:25, 34856:4, 34856:9, 34856:14, 34857:2, 34914:15 taped [1] - 34914:20 tarnished [1] - 34873:23 Tcu[1] - 34846:16 Tdr[1] - 34848:5 team [1] - 34894:1 technical [1] - 34901:7 Technician[1] - 34847:13 techniques [1] - 34886:3 telephone [5] - 34922:8, 34925:15, 34925:19, 34926:18, 34932:9 ten [1] - 34908:24 Tenacre[6] - 34916:8, 34916:10, 34916:14, 34917:5, 34917:10, 34918:3 tend [2] - 34855:5, 34856:16 tendered [1] - 34863:8 term [4] - 34885:13, 34885:19, 34885:20, 34885:22 terms [2] - 34851:5, 34884:11 Terms[1] - 34962:21 terrible [2] - 34872:19, 34878:2 territory [1] - 34958:13 test [2] - 34943:1, 34943:4 testified [4] - 34866:9, 34866:10, 34941:2, 34956:2 testify [4] - 34862:7, 34880:5, 34930:9, 34941:1 testifying [2] - 34938:22, 34962:1 testimony [2] - 34874:25, 34941:10 Testimony[1] - 34846:14 testing [4] - 34942:23, 34943:4, 34949:7, 34955:11 Thatcher[4] - 34902:16, 34903:13, 34904:21, 34905:2</p>	<p>themselves [1] - 34950:21 theory [3] - 34856:19, 34864:8, 34895:11 thereafter [1] - 34881:9 they've [1] - 34889:5 thinking [1] - 34938:2 third [1] - 34962:22 Thomas[2] - 34901:24, 34948:15 thorough [1] - 34902:3 threatened [1] - 34931:18 three [14] - 34858:16, 34895:16, 34903:25, 34916:6, 34927:6, 34927:21, 34928:22, 34929:12, 34933:20, 34934:7, 34935:7, 34936:16, 34946:6, 34948:21 throat [1] - 34862:15 thrown [2] - 34941:15, 34957:5 tight [1] - 34860:21 tip [1] - 34909:23 title [1] - 34960:2 today [1] - 34961:11 Toews[1] - 34848:11 together [5] - 34880:17, 34895:9, 34938:13, 34950:7, 34956:4 tomorrow [1] - 34964:3 Tony[3] - 34847:13, 34903:21, 34904:9 took [6] - 34905:23, 34906:17, 34907:17, 34916:19, 34946:18, 34963:15 top [2] - 34891:20, 34917:21 Toronto[2] - 34901:19, 34901:23 touch [1] - 34947:11 towards [4] - 34850:13, 34861:17, 34883:18, 34950:14 track [6] - 34896:7, 34897:13, 34897:14, 34899:1, 34899:2, 34949:14 tracked [1] - 34945:10 trade [1] - 34871:8 training [8] - 34851:5, 34851:12, 34852:17, 34921:12, 34921:14, 34921:16, 34921:17, 34921:23 Transcript[2] - 34846:12, 34850:1</p>	<p>transcription [1] - 34965:5 transcripts [6] - 34938:23, 34943:10, 34951:2, 34954:13, 34954:15, 34954:18 treating [1] - 34934:3 treatment [1] - 34940:20 tremendous [1] - 34951:4 trial [14] - 34868:21, 34874:15, 34874:24, 34876:18, 34877:1, 34877:8, 34903:2, 34927:3, 34927:23, 34930:9, 34930:22, 34931:19, 34949:24, 34962:13 trials [2] - 34948:1, 34948:21 trick [1] - 34853:16 tried [3] - 34920:12, 34934:15, 34948:7 triggered [1] - 34919:14 trouble [4] - 34865:12, 34868:1, 34870:9, 34877:11 true [6] - 34915:16, 34930:1, 34930:23, 34941:8, 34954:17, 34965:5 truly [1] - 34877:2 Truscott[2] - 34860:9, 34946:9 truth [6] - 34862:22, 34898:13, 34898:18, 34899:7, 34950:2 truthfully [1] - 34930:9 try [5] - 34881:25, 34906:7, 34927:1, 34934:18, 34946:18 trying [10] - 34851:16, 34859:17, 34889:10, 34897:19, 34897:22, 34920:18, 34935:8, 34937:23, 34950:8, 34956:4 tunnel [2] - 34873:10, 34899:4 turn [12] - 34854:5, 34861:7, 34861:24, 34874:2, 34874:19, 34885:8, 34893:25, 34900:7, 34902:14, 34903:16, 34904:2, 34912:7 turned [1] - 34850:13 turns [1] - 34956:14 Two[1] - 34952:4</p>	<p>two [6] - 34894:3, 34895:17, 34902:24, 34904:6, 34954:17, 34961:19 type [1] - 34907:21</p>
U				
<p>ultimate [1] - 34909:20 ultimately [1] - 34947:5 Ultimately [1] - 34949:10 umbrage [1] - 34907:17 unable [1] - 34868:24 unalterably [1] - 34872:3 unbelievable [2] - 34868:18, 34894:18 uncertainty [1] - 34932:10 Uncomfortable [1] - 34891:21 uncomfortable [1] - 34888:10 under [7] - 34894:2, 34904:15, 34905:12, 34945:5, 34946:19, 34954:3, 34954:25 undergone [1] - 34963:17 understandable [3] - 34876:9, 34877:17, 34905:14 understood [5] - 34851:8, 34851:19, 34852:6, 34854:3, 34854:7 undertakes [1] - 34902:2 undisputed [1] - 34930:21 unfavourable [2] - 34857:22, 34881:11 Unfortunately [1] - 34957:25 unfortunately [2] - 34912:8, 34917:16 Unger [1] - 34945:24 uniform [1] - 34917:25 United [3] - 34917:4, 34919:22, 34952:13 Unknown [1] - 34850:25 unless [4] - 34911:4, 34928:18, 34947:18, 34954:1 unlike [1] - 34960:18 unqualified [2] - 34870:15, 34870:20</p>				



<p>unsavoury [1] - 34906:1</p> <p>untrue [1] - 34865:25</p> <p>untruths [1] - 34930:24</p> <p>unwilling [1] - 34908:9</p> <p>up [26] - 34852:3, 34853:20, 34854:23, 34858:6, 34874:15, 34886:1, 34889:17, 34891:16, 34893:5, 34903:1, 34903:22, 34906:8, 34919:22, 34919:25, 34925:6, 34935:10, 34937:10, 34938:4, 34939:11, 34940:2, 34947:13, 34953:3, 34957:16, 34957:20, 34958:4, 34960:11</p> <p>up-front [1] - 34957:16</p> <p>upset [1] - 34887:6</p> <p>uses [1] - 34955:21</p> <p>usual [1] - 34892:17</p>	<p>visit [3] - 34923:12, 34930:25, 34931:12</p> <p>visiting [2] - 34918:24, 34924:7</p> <p>visits [1] - 34931:10</p> <p>volume [1] - 34884:7</p> <p>Volume [1] - 34846:22</p> <p>volunteer [3] - 34943:16, 34951:15, 34951:24</p> <p>volunteering [1] - 34951:21</p>	<p>W</p> <p>wait [2] - 34890:21, 34903:5</p> <p>waiting [1] - 34903:7</p> <p>waived [2] - 34914:15, 34914:17</p> <p>walking [2] - 34861:20, 34955:24</p> <p>wall [1] - 34937:10</p> <p>Walters [1] - 34931:23</p> <p>Wants [1] - 34888:21</p> <p>wants [3] - 34890:15, 34919:10, 34941:18</p> <p>warden [1] - 34911:16</p> <p>Warm [1] - 34912:22</p> <p>warranted [2] - 34892:23, 34913:6</p> <p>Warren [5] - 34939:4, 34939:8, 34940:12, 34941:7, 34941:15</p> <p>Warren's [1] - 34940:3</p> <p>Wars [1] - 34887:25</p> <p>Wass [3] - 34888:1, 34888:3</p> <p>watching [1] - 34949:20</p> <p>water [1] - 34868:16</p> <p>Watrous [1] - 34906:10</p> <p>wavelength [1] - 34891:15</p> <p>ways [2] - 34898:11, 34910:4</p> <p>weak [2] - 34860:16, 34860:19</p> <p>wearing [1] - 34917:24</p> <p>web [1] - 34941:18</p> <p>week [2] - 34912:25, 34938:21</p> <p>week-and-a-half [1] - 34912:25</p> <p>weeks [2] - 34916:7, 34958:16</p> <p>well-deserved [1] - 34873:25</p> <p>well-plotted [1] - 34908:11</p>	<p>Wempe [1] - 34848:9</p> <p>Westray [2] - 34939:9, 34939:11</p> <p>whatsoever [1] - 34880:22</p> <p>whereabouts [8] - 34928:13, 34928:18, 34929:10, 34931:15, 34933:1, 34933:25, 34934:9, 34935:9</p> <p>whereby [1] - 34926:19</p> <p>wherein [1] - 34868:6</p> <p>whine [1] - 34906:20</p> <p>whitewash [1] - 34938:4</p> <p>whitewashed [1] - 34874:12</p> <p>whole [4] - 34894:5, 34907:6, 34946:16, 34952:12</p> <p>wild [1] - 34956:14</p> <p>William [1] - 34944:22</p> <p>Williams [2] - 34894:4, 34938:21</p> <p>willig [2] - 34943:1, 34943:4</p> <p>Wilson [50] - 34848:6, 34857:17, 34874:23, 34879:3, 34895:1, 34895:3, 34895:23, 34896:3, 34900:9, 34900:15, 34900:24, 34900:25, 34901:1, 34901:4, 34902:19, 34903:11, 34904:9, 34905:17, 34905:23, 34906:8, 34907:17, 34907:24, 34909:7, 34916:7, 34917:23, 34920:7, 34922:14, 34922:25, 34923:19, 34924:15, 34926:23, 34927:25, 34929:16, 34930:17, 34931:25, 34932:7, 34932:23, 34934:6, 34934:19, 34939:3, 34940:1, 34961:5, 34961:7, 34961:9, 34961:15, 34961:20, 34961:22, 34961:23</p> <p>Wilson's [3] - 34857:2, 34908:7, 34908:17</p> <p>wing [1] - 34871:18</p> <p>Winnipeg [4] - 34901:24, 34913:11, 34920:4, 34944:18</p> <p>wintery [2] - 34912:16, 34912:20</p> <p>wish [8] - 34902:7, 34926:17, 34927:4, 34928:14, 34929:18, 34933:24, 34935:9, 34961:8</p> <p>wishes [2] - 34934:11, 34961:5</p> <p>withdrawn [1] - 34948:3</p> <p>witness [14] - 34855:4, 34855:7, 34869:18, 34869:19, 34869:22, 34874:24, 34888:4, 34888:7, 34889:21, 34890:7, 34891:18, 34891:25, 34943:12, 34963:21</p> <p>witnesses [20] - 34855:19, 34856:25, 34895:3, 34896:5, 34896:20, 34922:22, 34922:24, 34923:24, 34924:21, 34925:1, 34925:12, 34926:10, 34928:23, 34929:6, 34930:9, 34930:22, 34933:17, 34935:7, 34936:25, 34943:14</p> <p>Wolch [63] - 34848:2, 34849:4, 34850:5, 34850:7, 34850:9, 34853:23, 34854:2, 34863:11, 34863:17, 34863:21, 34863:23, 34864:2, 34864:6, 34864:10, 34864:11, 34865:1, 34865:3, 34865:5, 34866:6, 34866:15, 34866:21, 34866:24, 34867:2, 34867:7, 34867:16, 34867:17, 34869:16, 34870:1, 34870:2, 34878:1, 34878:6, 34885:13, 34885:18, 34885:22, 34885:23, 34887:22, 34888:2, 34889:1, 34889:9, 34889:11, 34889:12, 34889:14, 34889:21, 34890:2, 34890:6, 34890:10, 34893:17, 34898:9, 34899:15, 34899:19, 34900:1, 34900:5, 34900:22, 34900:25, 34901:3, 34901:10, 34905:3, 34905:5, 34905:10, 34905:11, 34907:1, 34907:2, 34909:5</p> <p>Wolch's [1] - 34889:20</p>	<p>woman [1] - 34913:14</p> <p>won [1] - 34906:14</p> <p>wonder [1] - 34875:10</p> <p>wonderful [1] - 34908:8</p> <p>words [1] - 34905:25</p> <p>worker [2] - 34865:23, 34866:5</p> <p>workers [2] - 34865:14, 34865:22</p> <p>works [2] - 34944:8, 34944:9</p> <p>world [3] - 34908:20, 34908:21, 34960:15</p> <p>worried [1] - 34903:20</p> <p>worry [1] - 34903:13</p> <p>write [3] - 34857:24, 34923:13, 34959:25</p> <p>writes [2] - 34926:7, 34932:21</p> <p>writing [2] - 34869:12, 34923:11</p> <p>written [7] - 34853:3, 34860:24, 34860:25, 34866:15, 34872:14, 34925:15, 34958:16</p> <p>wrongdoing [2] - 34883:21, 34893:15</p> <p>wrongful [7] - 34937:9, 34940:18, 34942:1, 34944:19, 34945:21, 34958:12, 34961:1</p> <p>Wrongful [1] - 34846:3</p> <p>wrongfully [2] - 34951:6, 34953:8</p> <p>Wrongly [1] - 34901:17</p> <p>wrongly [2] - 34851:9, 34947:2</p> <p>wrote [8] - 34858:9, 34861:5, 34881:9, 34883:18, 34883:20, 34958:25, 34959:13, 34960:7</p> <p>www.aidwyc.org [1] - 34941:19</p>
				<p>Y</p> <p>year [2] - 34941:13, 34947:9</p> <p>year-long [1] - 34941:13</p> <p>years [13] - 34850:22, 34852:2, 34869:10, 34877:11, 34877:25, 34903:25, 34916:19, 34919:7, 34921:19, 34944:13, 34945:4, 34951:13, 34957:1</p> <p>Yellowknife [3] -</p>



34939:12, 34939:14,
34940:2
yesterday [1] -
34927:20
young [1] - 34868:7
Young [13] - 34925:14,
34925:16, 34926:7,
34927:18, 34927:19,
34928:1, 34928:11,
34928:24, 34929:24,
34933:15, 34933:23,
34934:13, 34936:17
Young's [1] - 34925:18
yourself [7] - 34856:2,
34880:18, 34915:14,
34923:25, 34925:22,
34934:9, 34963:21
youth [1] - 34865:11

