

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
Radisson Hotel at
Saskatoon, Saskatchewan

On Tuesday, October 4th, 2005

Volume 80

Inquiry Proceedings



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Mr. Alexander Pringle, Q.C., **for** Justice Calvin Tallis
(Retired)



INDEX OF PROCEEDINGS

DESCRIPTION:

PAGE:

THOMAS DAVID ROBERTS CALDWELL, CONTINUED

- BY MR. HODSON

15897



1 Transcript of Proceedings

2 (Reconvened at 9:00 a.m.)

3 THOMAS DAVID ROBERTS CALDWELL, continued:

4 BY MR. HODSON:

5 Q If I could call up 105605, please. Yesterday when
6 we adjourned, Mr. Caldwell, I was taking you
7 through this document and there's a few entries
8 that I want to go to, but before I do, I just want
9 to maybe restate what I had covered a bit
10 yesterday.

11 This was a document that Mr.
12 Ullrich prepared, we've called it the Ullrich
13 police summary, which I think the evidence is that
14 it was a summary of the case, if I can call it
15 that, that the police put together and delivered
16 to you sometime in July of 1969. I think
17 yesterday you told us that you then took that case
18 and you developed your own Crown theory, if I can
19 call it that, or Crown summary of the case that
20 you ultimately took to trial, and when I was going
21 through this document with the purpose of asking
22 you, Mr. Caldwell, at the time you received the
23 police case, if I can call it that, and I think
24 you testified yesterday that you would have viewed
25 it with a critical eye in the sense of looking at



1 it, trying to figure the case out. Is that a fair
2 summary of what you said yesterday?

3 A I think so, sir.

4 Q And I was going through this and asking you some
5 questions trying to find out what, back in July of
6 1969, August of 1969, either you remember
7 considering or whether you think you would have
8 considered; in other words, not what you ended up
9 calling it at trial, but what, when you first got
10 the case, sort of your reaction and your issues
11 and your concerns. Do you understand that that's
12 where I wish to go? If we could go to page 607,
13 please, and I think we left off about that, the
14 service station, and if we could call out this
15 part of the police summary, and it talks about:

16 "The four --"

17 And that would be Milgaard, Wilson, John and
18 Cadrain,

19 "-- then started for Calgary, Milgaard
20 driving. A short distance out of
21 Saskatoon John found a compact case in
22 the car. When she asked whose it was,
23 Milgaard took it and threw it out the
24 window. This articles has not been
25 recovered."



1 Do you remember, Mr. Caldwell, this part of the
2 case, the compact?

3 A I believe so, sir.

4 Q And can you tell us what significance, if any, did
5 you place on that piece of evidence at the time?

6 A Well, I would assume that if that compact was
7 identified in due course as having been the
8 property of Gail Miller and been thrown away by,
9 in this instance, Mr. Milgaard, it would be some
10 evidence that he had been at or about Gail Miller
11 at the time of the offence, or shortly thereafter.

12 Q Now, it says here this article has not been
13 recovered and I think we heard evidence already
14 that the police sent a dog out in the ditches to
15 try and find it, although it was three months
16 after the fact, it wasn't located, and I take it
17 that's something you would have known at the time,
18 that the compact had not been recovered?

19 A I would assume so, sir.

20 Q And you would have known as well that Gail
21 Miller's purse had been recovered I think by
22 Detective McCorrison?

23 A I would have known that.

24 Q And the contents of that purse?

25 A Yes, I believe that's so, sir.



1 Q Do you recall, and there's a few notes that I will
2 go through a bit later that will touch on this,
3 but do you have any recollection of, or do you
4 think you would have gone back and said okay, if
5 that's Gail Miller's compact in the car, let's
6 check what's in her purse when her purse was
7 found, and I understand, Mr. Caldwell, that in her
8 purse there were items, similar items of a compact
9 or cosmetic bag or whatever the distinction may
10 be. Do you follow my questioning? In other
11 words, if there was a compact bag in her purse,
12 that that might suggest that maybe this wasn't her
13 compact?

14 A It could, but life since then I think has taught
15 me that there may well be two or three or four
16 compacts legitimately carried by ladies at one
17 time.

18 Q And again I'll take you to some notes, but do you
19 think, sir, that's something you would have
20 considered at the time as an issue, if I could
21 call it, that lookit, can we explain, if the Crown
22 or the police theory is that this is likely Gail
23 Miller's compact, let's rationalize that with what
24 we found in her purse?

25 A I wouldn't see it as an issue I don't think, Mr.



1 Hodson.

2 Q But would it be fair to say that this was part of
3 the Crown theory, that the suggestion or the
4 inference that this may have been or was Gail
5 Miller's compact?

6 A Oh, certainly, yup.

7 Q And the next paragraph talks about driving, and we
8 saw some reference to this with the tow truck
9 drivers, etcetera, the fact that Mr. Milgaard
10 drove at speeds up to 100 miles an hour on side
11 roads, what significance did you place on that in
12 the case?

13 A It could be an indication of guilt in the sense of
14 a desire to quickly depart Saskatoon where he knew
15 an offence had occurred, would be one way of
16 looking at it.

17 Q And I think we saw reference to that earlier. So
18 the behaviour of Mr. Milgaard after the time of
19 the offence was a matter that was considered by
20 both the police and the Crown and --

21 A I would hope so, Mr. Hodson. I can't see that you
22 would not look at that.

23 Q And then scroll down, it talks about the police
24 saying:

25 "At Calgary Milgaard told Wilson that



1 while in Saskatoon he had hit a girl,
2 grabbed her purse. When she fought he
3 had jabbed her a few times with a knife.
4 He had put her purse in a trash can and
5 that he thought she would be alright."

6 Now, the significance of that I take it is pretty
7 obvious, Mr. Caldwell?

8 A I would think so, sir.

9 Q And this would be an admission by the accused to
10 one of his travelling companions that he had
11 stolen a purse and jabbed a woman with a knife?

12 A Yeah, hit a girl, grabbed her purse, she fought,
13 he jabbed her a few times, had put her purse in a
14 trash can, all would be certainly incriminating
15 admissions, I would think, by anyone.

16 Q Right. And then if we can scroll down, the police
17 summary states:

18 "Wilson told John and she replied she
19 already knew. This does not seem to be
20 the complete truth as police feel sure
21 Wilson knew something, if not all, the
22 story while still in Saskatoon."

23 And again I touched on this yesterday, and I
24 think this is the third reference in the police
25 summary that talks about, at least from the



1 police perspective, doubting Wilson's -- even
2 with Wilson's May 23rd and May 24th statements,
3 still doubting whether he's giving the complete
4 story. Do you agree?

5 A That's quite possible, sir.

6 Q And do you have a recollection, Mr. Caldwell, of
7 what if anything you did to address that?

8 A Well, not that specific instance, if you would, or
9 phrase. I think Mr. Wilson clearly gave varying
10 evidence I would think even in the proceedings,
11 you know, standing alone.

12 Q Did you have, and let's just jump ahead a bit to
13 the preliminary hearing and the trial, and
14 Mr. Wilson's evidence, do you recall whether you
15 had concerns about his credibility?

16 A Only in a general sense that I would have for the,
17 her -- pardon me, him, Nichol John, as other
18 occupants of the car, as friends of the accused at
19 that point, those would be things that, you know,
20 I would be aware of, but it wouldn't prevent me
21 from proceeding with their evidence.

22 Q So the fact that they were friends of the accused,
23 would that tend to suggest that they might be more
24 favourable to him?

25 A Well, you just want to be alert to that fact, sir.



1 Q If we can scroll down, it says:

2 "In Calgary Milgaard approached Cadrain
3 about obtaining a gun and getting rid of
4 Wilson and John. Det. Karst had this
5 information."

6 What significance, if any, did you place on this
7 piece of information?

8 A It seems to be a free-standing item. I believe it
9 got into evidence at the trial.

10 Q I believe that's correct, yes.

11 A And it could be interpreted, if you will, as his
12 knowledge that these two were, that being Wilson
13 and John, were witnesses to a crime, if he can get
14 a gun and get rid of them, that would presumably
15 lessen the likelihood of him being convicted
16 somewhere along the road.

17 Q Do you recall at the time whether this statement
18 was viewed as perhaps indicative of guilt on the
19 part of Mr. Milgaard or whether you or others,
20 being the police, thought that this was a serious
21 threat on the part of Mr. Milgaard?

22 A I didn't take it as not being serious, but I don't
23 think it was, you know, on overwhelming factor.

24 Q Did you have any concerns about the credibility of
25 Mr. Cadrain's information on this point?



1 A The way I'm reading this, it was Mr. Milgaard who
2 spoke to Mr. Cadrain as I recall it and I, you
3 know, I can't assume that there was nothing behind
4 it. I can't imagine why he would say that if it
5 wasn't -- didn't have a basis in his mind.

6 Q Okay. So you are saying you couldn't understand
7 why Mr. Cadrain would say that if there wasn't a
8 basis?

9 A Yeah, that would be my thought.

10 Q Okay. And I think, and it's not in this summary,
11 but it is certainly in his statement, I think as
12 part of this Mr. Cadrain also told the police I
13 believe that Mr. Milgaard told him he was in the
14 Mafia. Do you remember --

15 A I remember that being mentioned somewhere along
16 the --

17 Q And how did you assess the significance of that,
18 if at all?

19 A I guess I didn't. I would find that difficult to
20 believe and it may have well been just braggadocio
21 I suppose.

22 Q Scroll down, there's a reference here about
23 marijuana, drug use, did that -- where, if at all,
24 did that fit into your assessment of the case, Mr.
25 Caldwell, the fact that there was some evidence



1 that, on this trip and perhaps even the morning of
2 the murder, that Mr. Milgaard and the others, his
3 travelling companions, may have been on drugs or
4 had consumed drugs?

5 A Well, from my knowledge now I gather that was a
6 very common thing among young people of every
7 description and the fact that that was allegedly
8 happening, I wouldn't place a lot of weight in
9 that, Mr. Hodson, in terms of guilt or anything.

10 Q You wouldn't have?

11 A Would not, no.

12 Q So the fact that they may or may not have been on
13 drugs, as far as your assessment of the case,
14 didn't play a significant role; is that --

15 A I wouldn't think so for those reasons.

16 Q And then we talk here about Sharon Williams and I
17 know there's a lengthy statement from Sharon
18 Williams in your materials. Do you have a
19 recollection of reviewing that and putting any
20 significance on -- now, she was the lady, the
21 young lady in Edmonton that Mr. Milgaard went to
22 see shortly after the trip to Saskatoon and she
23 gave a statement and we've heard evidence here
24 about her relationship with Mr. Milgaard.

25 A I undoubtedly read the statement and considered



1 it, sir.

2 **Q** Do you have any recollection of what importance if
3 any it played in your assessment of the case?

4 **A** At this point I don't, Mr. Hodson.

5 **Q** Okay. And then here it says:

6 "Early in March Cadrain returned to
7 Saskatoon at which time he officially
8 learned of Miller's death. After some
9 thought he came to the police with his
10 story."

11 And it says officially learned and there's some
12 evidence in his statements and elsewhere that
13 Mr. Cadrain may have been first informed of the
14 murder while he was in Regina, being questioned
15 by the Regina police. Do you have a recollection
16 if that played any part in your consideration of
17 Mr. Cadrain's evidence, how he learned of the
18 murder in his dealings with the Regina police?

19 **A** I don't think so. I'm of the view that he did
20 learn from the Regina police and then he came to
21 Saskatoon, as we know, talked to Saskatoon City
22 Police. The fact that he presumably did learn of
23 it from Regina and then -- it doesn't detract in
24 my assessment of his evidence that the term
25 officially I think is --



1 Q Do you recall there, yeah, do you recall there
2 being anything significant or unusual about the
3 manner in which Mr. Cadrain learned of the murder
4 and/or any of his dealings with the Regina City
5 Police?

6 A No, no I don't.

7 Q So that is the completion of the three-page police
8 summary, and that would be the summary that Mr.
9 Ullrich prepared outlining the police theory, if I
10 can call it that; is that fair?

11 A That's fine, sir, yeah.

12 Q Then, if I can call up the next page, which is
13 105608. And this is the Ullrich witness summary,
14 I think is what we've called it, and I think you
15 told us that this is what Mr. Ullrich would put
16 together based upon the court brief file; is that
17 right?

18 A That's my -- that's my understanding.

19 Q And I think, what you told us yesterday, he would
20 identify who the key people were and the evidence
21 they had to provide; is that a fair --

22 A That's fair.

23 Q And that, in providing this summary, he would
24 refer to -- and we see here with Adeline Nyczai --
25 statement numbers. And I think we've heard



1 evidence that the statements were all numbered 1
2 to 95; is that right?

3 A I believe so, sir.

4 Q And then as well, we'll see this with reference to
5 page numbers, if we can just call out for Nichol
6 John that reference is made to page numbers, and I
7 believe those correspond with police investigation
8 reports that have these numbers on the page, and
9 where the police investigation reports provide
10 information about the witness; is that correct?

11 A That's -- would be my understanding now, yup.

12 Q Yeah. And I take it this would be a fairly
13 important document --

14 A Yes.

15 Q -- for your preparation and presentation of the
16 case?

17 A Certainly, yes.

18 Q And was this your guide, if I can call it that, to
19 help you determine who to call and what evidence
20 they may provide?

21 A I would think you could call it that very, very
22 honestly, sir.

23 Q And so we'll just go through some of the key ones.
24 And I think the first one, Adeline Nyczai, was the
25 -- a roommate of Gail Miller's, and I think she



1 ended up being called to testify, and her evidence
2 was, I think, to place what time Ms. Miller left
3 the house; is that correct? And I think that was
4 the basis of her evidence, usually left work about
5 7:00 a.m. and observed her 6:35-6:45?

6 A I would assume that's what she said, sir.

7 Q And I take it, as part of your case to the jury,
8 you would be trying to identify the likely time
9 that Gail Miller was murdered?

10 A I would think so.

11 Q And you talked yesterday about, and I'm not sure
12 if this was your word, but about the elasticity of
13 time estimates, that some people may have
14 different versions, but would it be fair to say
15 that you are trying to pinpoint when she was last
16 seen alive to indicate that the murder could not
17 have taken place before that, obviously?

18 A Yeah. I'd be working with the times they gave to
19 the police in these statements and seeing how, if
20 at all, they fit together or clashed or whatever.

21 Q And we touched on this yesterday, but obviously if
22 the evidence indicated a time frame for the murder
23 and that conflicted with the time frame where the
24 accused, Mr. Milgaard, was somewhere else, that
25 would obviously be a problem for the prosecution;



1 is that right?

2 A Well it's, it's -- it would be a fact that the
3 witnesses gave, and I would have to look at that
4 and see if it seemed overwhelming to me or not.

5 Q I see.

6 A Clearly, in this case, I can't think I did that.

7 Q Okay. If we could then go down to Nichol John and
8 just call out this part, please. And I see a
9 reference, here, that the police put in:

10 "Since Jan. 31/69 was charged with
11 shoplifting in Regina ... one year
12 suspended sentence."

13 And her probation officer with an address and
14 phone number?

15 A Uh-huh.

16 Q And I take it the police, this would be background
17 information so you would know that one of your
18 witnesses was in trouble with the law; is that the
19 --

20 A Well, just knowing as much as we could about her,
21 and that happened to be something that they found
22 out.

23 Q Do you recall whether you ever phoned Don, I think
24 it says Robinson, I think it was Robertson, but do
25 you recall phoning the probation officer for



1 Nichol John?

2 A I don't recall that, it's not beyond the realm,
3 and the police may well have, Mr. Hodson, spoken
4 to him it seems to me.

5 Q Yeah. Do you have a recollection, yourself, of
6 calling?

7 A No. No.

8 Q And is that something you think you likely would
9 have done?

10 A I wouldn't think so, because that would be an
11 investigator job, and I may have asked them to do
12 it.

13 Q I see. And then we talk about statements 81 and
14 94. Maybe, just for the record, we'll show that
15 this -- if we could call up 006645. We'll see the
16 statements are 81 and 94, and here is the second
17 statement, and there is the 94 number that I think
18 the police put on; is that right?

19 A Yes sir.

20 Q And Mr. Commissioner, I don't propose to go
21 through all of these numbers to show that they
22 match, but I can say that in the Ullrich witness
23 summary the witness statement numbers correspond
24 with the witness statements that were numbered by
25 the police.



1 A I would assume that to be the case, Mr. Hodson.

2 Q Yeah.

3 A Unless you --

4 Q Yeah, sure.

5 A -- point out something else.

6 Q Yeah. If we could just go back to the previous
7 document. So from here, again if we call out
8 Nichol John, and I think you told us yesterday
9 that certainly I think the first go-round, when
10 you first received this, that certainly the
11 statements referenced in the witness summary were
12 provided to you; is that correct? Maybe not all
13 at once but they were provided to you?

14 A The two that are quoted or numbered there I'm sure
15 were provided to me.

16 Q Yeah. And I think -- and please correct me if I'm
17 wrong -- but I thought the evidence was yesterday,
18 or perhaps I read it in a document somewhere, that
19 when this witness summary was provided, that these
20 statements referred to in the witness summary were
21 provided, and I think you said at a later date you
22 asked for the rest of them and ended up getting
23 all of them; is that correct?

24 A In -- yeah, subject again to some error, that's
25 what I believe happened.



1 Q Subject to what?

2 A To some error on my part as we go on here.

3 Q I see. And then certainly, if we can go to the
4 page numbers, if we take a look at those page
5 numbers, for example we could call up -- you will
6 see here that it says 'refer to pages 273 to 277',
7 if we could call up 009233. And this is a report
8 of March 7th, and you will see the number 273 in
9 the top right, and this is the report that talks
10 about or includes reference to Nichol John in the
11 police report. It's actually Mr. Karst's report
12 about his interview of David Milgaard.

13 A Uh-huh.

14 Q And in fact if you can go to 009254, actually
15 just, if you could go back to the witness summary
16 for a moment. You will see, here, the next one is
17 page 355356. If we could call up 009254, and you
18 will see this has got 355 in the top, is that --

19 A I see it.

20 Q The ref --

21 A I see it.

22 Q That would be the reference, I think, in the
23 witness summary to this. And would you have read
24 the police reports at the time, and when you
25 received them, Mr. Caldwell, in preparation for



1 the preliminary hearing and trial?

2 A I would.

3 Q You would have read them at least once; is that --

4 A I would be sure I had read them once at least.

5 Q And if we could go, this just deals with Nichol
6 John and this is Mr. Karst's April 18th report, if
7 we can go to the next page, please. And you will
8 recall, Mr. Caldwell, that initially both Nichol
9 John and Ron Wilson gave statements to the police
10 in early March 1969 saying basically that they
11 were with Mr. Milgaard that morning, he wasn't out
12 of their sight for more than maybe a minute or
13 two, and that he did not commit the murder as far
14 as they were concerned?

15 A Now, Mr. Hodson, were those the statements to
16 Inspector Riddell?

17 Q Yes, they were.

18 A Okay. That I do recall.

19 Q Yeah. So you would have known at the time that,
20 when they were first questioned, Mr. Wilson and
21 Ms. John both gave an account of that morning,
22 January 31, and both said words to the effect that
23 Mr. Milgaard did not or could not have committed
24 the murder?

25 A I would have --



1 Q Is that a fair --

2 A That's right.

3 Q And so here's a police report of April 18th, and
4 just so that we have the time frame here, Nichol
5 John's first statement was March 11th, 1969 to
6 Mr. Riddell, she gave a second statement on May
7 24th, 1969 to Ray Mackie, and so those were the
8 two statements. The second statement is where she
9 provided a number of incriminating statements,
10 including stating that she had witnessed the
11 murder, okay, so that's the second statement; do
12 you understand that?

13 A Okay. Was that the one that was in the time frame
14 of the polygraph test?

15 Q Yes, it was.

16 A Okay.

17 Q It was the day after, yes.

18 A All right.

19 Q So that's the second statement. So here's
20 Mr. Karst's report of April 18th, right in the
21 middle of those two, if I can call it that. And I
22 take it you would have read this report?

23 A I'm sure I would.

24 Q If we can just go back to the front page of that
25 for a moment, page 1, and that's your handwriting



1 at the top, 'Karst 1'?

2 A That's right, sir.

3 Q And can you describe what, what does that mean
4 when you put Karst, and 1 I think is a page
5 number?

6 A That's what that means, if -- page 1 of whatever
7 followed, 2, 3, 4, etcetera.

8 Q Okay. If you can go to the next page, please.

9 A That's an example there, Mr. Hodson.

10 Q Yeah. And so there is a reference here, this is
11 Mr. Karst, after having interviewed Nichol John he
12 says:

13 "Although there are many unanswered
14 questions with regards to Milgaard's
15 activities on that particular morning,
16 if one is to believe the girl,
17 NicholJohn, and it appears that she is
18 very convincing with her story, then
19 there is no way in which Milgaard can be
20 connected with this crime."

21 And I take it, sir, you would have read that at
22 the time?

23 A I -- I'm sure I did.

24 Q Well, can you tell us, what significance would
25 that statement have played in your assessment of



1 not only the case, but of Nichol John's evidence?

2 A Well that was Detective Karst's, if you will,
3 summary as of that time of his views, of course,
4 which appears to me to be favourable to Mr.
5 Milgaard. And I think it, it's clear that as time
6 went on, and particularly after the second
7 statement, I for one didn't -- didn't, if you
8 will, believe the -- what's suggested here, that
9 he couldn't be connected with the crime.

10 Q So that, after Nichol John gave her second
11 statement, your view was that he was connected to
12 the crime?

13 A Oh, yes, that's right.

14 Q All right.

15 A But not necessarily just based on that, Mr.
16 Hodson, I don't know what happened in the interim.

17 Q I appreciate that. But just to go back to as the
18 prosecutor when you are assessing the case, if I
19 can call it that, let's say it's July-August of
20 '69, during the prelim, after the prelim, would
21 this, the fact that the police at one point in the
22 investigation had said (a) if Nichol John, who I
23 think you would agree was probably the key
24 witness?

25 A She -- yeah.



1 Q And that she had originally said that Mr. Milgaard
2 was not involved, and that she was very convincing
3 with her story according to Mr. Karst, and that if
4 she was believed, then Mr. Milgaard could not have
5 done it; and would that have played any role in
6 your assessment?

7 A Well I certainly, you know, valued what Mr. Karst
8 said at that stage of the proceedings, but I don't
9 think that that state of affairs lasted very long,
10 for the reasons we just started talking about.

11 Q Okay, yeah, and we'll go through a bit later.

12 A That's correct.

13 Q And a month later she gave a statement indicating
14 that she witnessed the murder, correct, I think
15 May 24th?

16 A Yeah, I'm sure that's so.

17 Q And let's just talk about when you first looked at
18 the case and looked at that; did you, did you take
19 her second statement as being the truth then?

20 A I -- the post --

21 Q Post-polygraph?

22 A Yeah, I did, sir.

23 Q Okay. And then, I'll get into this a bit later,
24 but we know that at the preliminary hearing Nichol
25 John did not repeat the incriminating information



1 from her post-polygraph statement?

2 A Uh-huh.

3 Q And similarly, at trial, she did the same and
4 claimed that she couldn't remember any -- those
5 incriminating events, nor could she remember
6 telling the police about them, and she did say
7 that it was her signature on the statement and
8 that she would have told the police the truth, I
9 think that's --

10 A Uh-huh.

11 Q I stand to be corrected, but I think that's a
12 summary of what happened.

13 A Uh-huh.

14 Q When that happened, when Ms. John did not testify
15 about the incriminating statements, did you ever
16 go back to this report or to this thought at the
17 time and say, 'okay, well maybe, maybe the second
18 statement isn't the truth'?

19 A No. I think, Mr. Hodson, by that time I was
20 satisfied that the second statement was the
21 truthful state of affairs, and I notice in my
22 report on the preliminary inquiry I believe I set
23 out that she had given a statement, I had
24 interviewed her two or three times, and that in
25 the preliminary inquiry she had not, in effect,



1 recited what was in her second statement. Now I,
2 again, stand to be corrected --

3 Q Uh-huh.

4 A -- but at that point she hadn't -- she hadn't come
5 around in that fashion at the end of the prelim,
6 as I recall it.

7 Q And we'll go through that.

8 A Yeah, that's --

9 Q I'm just trying to get a sense, Mr. Caldwell,
10 where this type of police information, where it
11 would play a role in your thinking, if anywhere?

12 A Well once the -- her second statement was in, and
13 assuming that I knew the circumstances surrounding
14 it, the first one would be, in my view, simply no
15 longer this -- the case as suggested here by
16 Detective Karst that it was then, I wouldn't
17 believe that it was the case now, if you want to
18 put it awkwardly.

19 Q So at that time, then, you would have formed the
20 belief that her original statement to Inspector
21 Riddell was not true?

22 A That's right.

23 Q And why was that?

24 A Well I don't recall a lot of the details in it at
25 this moment, but it seemed to me that it included



1 things that could be proven wrong by, if you will,
2 third-party witnesses. I don't know what they
3 were, but I got the distinct feeling that her --
4 that statement was broadly wrong.

5 Q Okay. If we could go back, and just go back to
6 the witness summary, 105608. And again, this is
7 just summarizing Nichol's evidence, and it talks
8 about the elevator break-in and that Mr. Milgaard
9 returned to the call -- returned to the car with a
10 flashlight, and I touched on this a bit yesterday,
11 but what -- the elevator break-in, what
12 significance did that have, Mr. Caldwell?

13 A I wouldn't think, on the murder charge if you
14 will, much if any. It's an offence but it's
15 largely, I would have thought, disconnected with
16 what occurred later.

17 Q Go to the next page. And then it, the first
18 paragraph, summarizes that she can identify -- or
19 that:

20 "... enroute to Saskatoon ... that
21 Milgaard was in possession of a knife
22 - can describe the knife."

23 And also:

24 "- can identify the knife found at scene
25 of the murder as same kind of knife."



1 And I take it that that would be pretty important
2 evidence, Mr. Caldwell?

3 A I would think so.

4 Q And then next:

5 "- Also enroute to Saskatoon Milgaard
6 spoke of wanting to snatch a purse from
7 someone."

8 So this is Nichol John saying, according to this
9 summary, that Mr. Milgaard in the car said he
10 wanted to snatch a purse from someone.

11 A I see that there.

12 Q And what significance, if any, did that have in
13 your case?

14 A That -- as -- I guess only in the sense that the
15 evidence that we had to work with was that he
16 ended up snatching a purse from someone in the
17 sense of the Gail Miller attack and --

18 Q And would this go to motive then?

19 A Well it's something he said which I don't think
20 would have been too significant of its own accord,
21 but if you view it in that light it could, I
22 suppose.

23 Q Then it talks here about:

24 "Drove around in city for 10-15 minutes.
25 (can state area of scene of murder as



1 being area they drove around in. Was
2 taken around this area by D/Sgt. Mackie
3 since and can say area appears to be the
4 same)".

5 So I take it that this, this evidence, would be
6 placing the Milgaard vehicle in the area of the
7 murder at or about the time of the murder; is
8 that --

9 A That's how I would take it.

10 Q And if we can scroll down, please. And then this
11 is summarizing what Ms. John has said about
12 getting stuck:

13 "- Wilson continued about 1/2 block
14 where he attempted to make a U-turn at a
15 alley and became stuck in the alley
16 entrance. There being a funeral home at
17 the alley entrance (this probably would
18 be Westwood Funeral Chapel ...)".

19 And so I take it, again, this would put,
20 according to Ms. John, would put the vehicle in
21 the back alley or near the back alley where Gail
22 Miller's body was found?

23 A Umm, that's correct:

24 "U-turn at a alley and became stuck in
25 the alley entrance",



1 which I would take it to be the alley and what I
2 thought and believed was Avenue N.

3 Q Yes.

4 A And, and clearly that was the location of the only
5 funeral home, Mr. Hodson, that's involved, as I
6 hear it. So that's how I --

7 Q So this would put the vehicle at the location
8 where I think, in accordance with the Crown
9 theory, is where the car got stuck?

10 A That would be my understanding.

11 Q Yeah. And then if we can go down, and this is a
12 note the police put in, or -- I'm sorry, it says:

13 "- Wilson and Milgaard attempted to push
14 the car free, but were unable to.

15 Note - this area still seems uncertain.

16 Both Wilson and John who originally

17 claimed to know nothing of the murder

18 but maintain they were stuck and two men

19 came to assist in pushing them free.

20 The police have been unable to locate

21 these two men. Police believe the first

22 lack of knowledge and now the

23 uncertainty surrounding the facts at the

24 alley entrance may mean Wilson and John

25 either are not telling the entire truth



1 or are more involved in offence than
2 they wish to say."

3 And I touched on this a bit yesterday, Mr.
4 Caldwell, but it would certainly appear from that
5 that the police have some doubts about what
6 Wilson and John are saying about the -- about
7 getting stuck and getting unstuck; do you see
8 that?

9 A Yeah, I just -- let me read it off this --

10 Q Sure.

11 A -- if you will. (*Witness reading*) The fact that
12 the police were unable to locate these other two
13 men who are named, or not named but mentioned
14 here, would have, to my way of thinking, have no
15 significance. I can understand how that would
16 happen legitimately. The -- I can understand,
17 also, how lack of knowledge and then uncertainty
18 could be read as meaning that Wilson and John were
19 either untruthful or more involved, in other
20 words, that could be the case. There's nothing in
21 that set of facts that drove me, if you will, to
22 doubt what they did say, Mr. Hodson.

23 Q Okay.

24 A But, certainly, that's a legitimate position.

25 Q Right, and the --



1 A And it was that of the police, as I read it, as
2 opposed to anyone else.

3 Q Yes. And did you share that view?

4 A Well had I -- had we gone through it at that time
5 and place, I wouldn't have been concerned about
6 the inability to locate the two men --

7 Q Yes.

8 A -- and I would -- the credibility of Wilson and
9 John could only be determined by the process of
10 calling them as witnesses, I would think, at that
11 stage, either prelim and the trial.

12 Q So in this case, if there is some uncertainty --
13 let me just back up. I think what the police are
14 saying is -- and please correct me if I'm wrong --
15 is that 'lookit, the fact that Wilson and John
16 first denied any knowledge about this and now they
17 do have some knowledge but they are uncertain
18 about what happened at the alley entrance either
19 means they are not telling the entire truth, which
20 could mean they are, maybe they are not involved
21 but they are not telling everything'?

22 A Uh-huh.

23 Q 'Or are more involved in the offence and are not
24 saying because they are more involved'.

25 A It could mean those, either of those, Mr. Hodson.



1 Q And I think what you said, in that situation,
2 your -- as prosecutor would you then just say
3 'fine, that's for the jury to decide'?

4 A Well, to the extent that it -- at that point I
5 accepted the so-called second statements of Wilson
6 and John --

7 Q I see.

8 A -- as correct. Now whether or not, Mr. Hodson,
9 they ended up being, let's say, believed by the
10 judge at the prelim or the jury at the Queen's
11 Bench trial, there would be no reason for me not
12 to proceed with them if I had faith, if you will,
13 in them myself, --

14 Q Okay.

15 A -- which I think I did.

16 Q And I appreciate that, Mr. Caldwell, but if there
17 is a situation, we're saying 'fine, Wilson and
18 John have both given second statements', if I can
19 call it that, --

20 A Uh-huh.

21 Q -- you believe they are truthful, and the first
22 statements are not truthful, and if you still had
23 the same, 'concerns' might be too strong a word,
24 but if in your mind you are thinking the same way
25 the police are thinking, that, you know, it's odd



1 they haven't -- that it's uncertainty at the alley
2 entrance, in other words 'maybe we're not getting
3 everything'; would that cause you to change
4 anything you do as far as the case or putting them
5 on the stand?

6 A I don't think so. I had a certain view of their
7 evidence that, at that point, as I understood it
8 would be. The only thing that's left after that
9 is either me let's say not calling them, and there
10 was no, no justification for that; (b) the Court
11 assessing what it thought of them if I did, if and
12 when I did call them, and of course that's not a
13 question of -- that can sometimes be unpredictable
14 depending on how they testify.

15 Q Right. And so is it, when you called Wilson and
16 John at the prelim and at the trial then, were
17 there some areas where you still had, in your
18 mind, saying 'okay, there's some things that are a
19 bit unclear here that I can't put my finger on but
20 nothing significant enough to prevent me from
21 calling them', is that --

22 A I think that's fair, sir.

23 Q If you go down to the bottom it says :

24 "She observed Milgaard in the alley to
25 the right of their car:



1 - he had hold of the girl he had spoken
2 to moments earlier
3 - he grabbed at her purse
4 - he pulled the knife from one of his
5 pockets
6 - he held the knife in his right hand
7 - he was stabbing at the girl with the
8 knife
9 - they went around a corner in the
10 alley".

11 Now the fact that it says here that he held the
12 knife in his right hand; were you aware at the
13 time, Mr. Caldwell, of preparing and presenting
14 the case, that Mr. Milgaard was left-handed?

15 A I found some questions over that in the material I
16 have been looking at recently. I wouldn't be
17 surprised if he was. I don't think I knew, Mr.
18 Hodson.

19 Q And would that be a factor? Let's just go back to
20 that time and assume for the moment that you would
21 have been aware, from the police or otherwise,
22 that he was left-handed?

23 A Okay, uh-huh.

24 Q Would that be, would that be something that would
25 cause you to question a bit further Ms. John's



1 observation that he has a knife in his right hand?

2 A No, I don't think so. I -- presumably it would
3 have been very simple to have someone testify
4 which hand he used, would -- and I wouldn't be
5 deterred from calling her based on the fact that
6 she testified that he had the knife in his right
7 hand, if that's what you are asking, sir.

8 Q Yes.

9 A Because that's something, one more thing for
10 either the judge or the jury to sort out at the
11 end of the day, 'maybe we don't believe her
12 because of that and other things, or maybe we do'.

13 Q I see. If we can go to the next page. And then
14 again at the top John says she ran from the car:

15 "- John believes she observed Milgaard
16 putting a purse into a garbage can where
17 there was two garbage cans and not sure
18 which one."

19 And, again, we will see later in the McCorrison
20 summary that he found a -- Gail Miller's purse in
21 a garbage can in that back alley; correct?

22 A I believe so.

23 Q And, again, I take it that this would be a
24 significant piece of evidence, then, for the
25 Crown?



1 A Well, it certainly would.

2 Q And then just a couple points here:

3 "- John does not recall Wilson returning
4 to the car."

5 "- Not sure if Milgaard said anything."

6 And then talks about driving, again, to the
7 Danchuk's. If we can just scroll down:

8 "- Nichol John ...",

9 and, again, this is a summary of what's in her
10 statement, I don't think we need to go to her
11 statement, but in that statement she said she:

12 "Observed no blood on Milgaard's clothes
13 or hands."

14 Did that cause you to -- cause any pause in your
15 mind, Mr. Caldwell, or any --

16 A This is still Nichol John, is it?

17 Q Yes, yes.

18 A No, that wouldn't. It -- the fact that she did
19 not see it, if she's being truthful she didn't see
20 it, and one could conclude from that that there
21 was none there. Other witnesses might have said
22 "I saw both", and the Court could conclude from
23 that that they believed that or disbelieved it,
24 but that wouldn't necessarily reflect on John in
25 my view.



1 Q I see. The fact that Wilson and Cadrain saw blood
2 and were with Mr. Milgaard for at least, you know,
3 probably the same amount of time in the same area
4 as Nichol John was; is that fair?

5 A I would think so.

6 Q And -- and the fact that Nichol John had witnessed
7 him stabbing a girl, would you consider that she
8 might be more likely to look for blood on his
9 clothes?

10 A Well I -- the reaction that's up a little there,
11 Mr. Hodson, the evidence I think was that:

12 "- she moved toward Wilson who was in
13 driver's seat, to get away from
14 Milgaard."

15 I think there was evidence that, --

16 Q Yes.

17 A -- rightly or wrongly, she was frightened of him
18 at that point, therefore I personally wouldn't
19 have expected her to be "eh just a minute, let me
20 check your clothing for blood", even visually.

21 Q Okay. And then, if you can scroll down, it talks
22 again about:

23 "John while looking for a map in the
24 glove compartment of the car found a
25 cosmetic case:



1 - can describe the cosmetic case and
2 contents

3 - asked whose it was

4 - nobody knew whose it was"

5 "- Milgaard grabbed the case and threw
6 it out of the car ..."

7 What was that -- and I think you told us the fact
8 of the cosmetic case in the car was significant;
9 is that fair?

10 A I thought it was one more thing that could be
11 evidence.

12 Q What about her evidence that Mr. Milgaard grabbed
13 it and threw it out the window?

14 A Well that would be significant evidence, it -- I
15 would think you could argue that, in the light of
16 what had happened so far, if you will, if those
17 other things had come to light, this would be one
18 other way of getting rid of evidence somewhat
19 parallel to the purse thing, Mr. Hodson.

20 Q Okay. If you can go down to the bottom:

21 "- can describe clothing worn by
22 Milgaard at time of murder. Wearing a
23 tooke. Never saw clothes after he
24 changed ...".

25 Do you remember, and I think we've -- we touched



1 on it in Mr. Ullrich's police summary, the toque
2 that was found next door to the Cadrain's, and I
3 believe the evidence at trial was that the -- a
4 blue toque was found, Mrs. Gerse said there was
5 blood on it, they tested it and I think said it
6 was blood but they couldn't determine the type of
7 blood --

8 A Uh-huh.

9 Q -- and I don't believe there was any evidence led
10 at trial that directly connected that as being Mr.
11 Milgaard's toque?

12 A I wouldn't think so, and I think there's some
13 further -- realize that we're not basically
14 interested in what's come out here, but I think
15 there was evidence about the toque in the inquiry,
16 if I'm not mistaken.

17 Q Yes, we heard from Mrs. Gerse?

18 A Yes, and I don't think, if you ask me, it was
19 connected with anybody.

20 Q And that may well have been, I think, the judge's
21 direction to the jury, that at the time of, at
22 this time when the police give you the case and
23 you are looking at it, would it be fair to say
24 that what the police found was that there was a
25 toque next door to Cadrain's?



1 A Yes.

2 Q And that would be significant; is that correct?

3 A That's right.

4 Q That's where Mr. Milgaard was that morning?

5 A That's right, yeah, and --

6 Q Sorry, go ahead.

7 A Yeah. Mr. Hodson, at that point in this matter
8 Mr. Fisher had not emerged, certainly in my view,
9 as a person living in the Cadrain house, that was
10 a remarkable thing and it certainly caught my
11 attention when I did learn it, so the point of
12 that was that one would possibly assume that all
13 of Gail Miller's items leading up to the Cadrain
14 house were Milgaard's discards, if you will.

15 Q No, and I will ask you about Mr. Fisher a bit
16 later, and what I'm getting at, Mr. Caldwell, was
17 what was in your mind at the time, and so back in
18 1969 I think you are saying at the time did you
19 know that Larry Fisher also lived in the Cadrain
20 basement?

21 A Not at the time of the -- I didn't learn that
22 until much, much later.

23 Q Okay. So at the time, let's just go back to the
24 toque, at the time you knew that Mr. Milgaard was
25 at the Cadrain house that morning?



1 A That was the evidence.

2 Q Yeah, and you've told us you didn't know who Mr.
3 Fisher was and you didn't know whether he was
4 there at the time?

5 A Well, I don't think I did.

6 Q And let's just focus on Mr. Milgaard for a moment.
7 The wallet we know was found on April 4th by
8 Mr. Beauchamp, given to Mr. Mackie, a couple of
9 doors down, and that was evidence put in at the
10 trial; correct?

11 A I believe so, yes.

12 Q And I think the Crown theory was that items
13 belonging to Gail Miller near the Cadrain house
14 tended to incriminate Mr. Milgaard?

15 A Absolutely. That would be the only use in my view
16 at that time you could argue.

17 Q Yeah. And secondly, the toque, although it's not
18 Gail Miller's, if it could be established that
19 this toque was Mr. Milgaard's, the fact that it
20 was found next to the Cadraings and had blood on it
21 would be a significant piece of evidence?

22 A It would be some evidence. I don't know if there
23 was any attempt, or successful or otherwise, to
24 type it, Mr. Hodson, but if that were the case, it
25 would be a piece of evidence.



1 Q And I think in fairness, and we'll see this in a
2 couple of occasions later, I think at this time I
3 think the police point out that Nichol John says
4 he was wearing a toque and Mrs. Danchuk I think in
5 her statements, or her evidence may have said he
6 was wearing a toque, but not a blue one, I think a
7 striped one or something of that nature, so I
8 guess my only point here is that at this time the
9 fact of pursuing whether or not you could
10 establish or call evidence that would link the
11 toque found by Mrs. Gerse to David Milgaard was
12 something that you would look at pursuing; is that
13 fair?

14 A Well, yeah, yeah.

15 Q Next page. I now turn to Ron Wilson and I take
16 it, sir, I'm not asking you to rank witnesses in
17 terms of importance, but Mr. Wilson would have
18 been a key witness for the Crown?

19 A Yes, he would.

20 Q And again we see reference to statements 78 and
21 93. If we could call up -- and those are, the
22 first statement being the March -- yeah, the March
23 3rd statement to Riddell and 93 are the two
24 statements of May 23 and May 24. If we could call
25 up 006709, and I take it, Mr. Caldwell, you would



1 have, when you got the file or in your
2 preparations, you would have read what the key
3 witnesses had to say to the police?

4 A I would have.

5 Q And would it be fair to say that you spent some
6 time reviewing that?

7 A You mean recently or --

8 Q No, at the time.

9 A Oh. I would have read them all and awaited the
10 next --

11 Q And would you try and understand or try to
12 rationalize how these people could, on the
13 firsthand, say they have no knowledge and then
14 later say they have knowledge?

15 A Well, that, Mr. Hodson, was not an unheard of
16 situation in criminal cases in general. I think
17 quite frequently people tended to tell untruths
18 and eventually change that to what in some cases
19 was the truth.

20 Q So had you encountered this before with witnesses?

21 A Oh, I think so. Yes, undoubtedly.

22 Q And what about -- did you ever take a look at this
23 with a view of saying, okay, well, when Wilson is
24 on the stand, defence counsel may in fact
25 cross-examine him on this point?



1 A Well, I would have -- that would certainly be open
2 to defence counsel.

3 Q And is that something that you would consider and
4 say how does the witness explain that or how do I
5 deal with that in front of the jury?

6 A Well, I would have taken the position that I, in
7 effect, believed Wilson's second statement, call
8 him with the expectation that he would give that
9 evidence, and what became of him in
10 cross-examination was, remained to be determined.
11 I mean, he could have collapsed, he could have
12 hung in very well.

13 Q And are you telling us that that's something that
14 Mr. Wilson would have to deal with, the fact that
15 he gave an earlier inconsistency?

16 A Well, in the final analysis it would be I would
17 say.

18 Q Would you look at the first statement with a view
19 to saying in assessing -- let me back up. You
20 obviously would have looked at the two statements;
21 correct?

22 A Yes, right.

23 Q Or the two sets of statements. And you decided or
24 your view was the second one was truthful?

25 A That's correct.



1 Q Did you ever look at it saying, with the view of
2 saying, well, maybe the first one is truthful and
3 the second one is not?

4 A I don't think so, Mr. Hodson, or if I did, it was
5 to, with the realization on my part that by that
6 time I felt the second statement was correct and
7 was supported by some other evidence --

8 Q And --

9 A -- of some description.

10 Q And can you tell us just generally, did you in
11 your mind come to some rationale as to why
12 Mr. Wilson would have initially denied witnessing
13 or hearing anything and then later incriminating
14 Mr. Milgaard?

15 A Well, there was an element of fear on his part, of
16 Mr. Milgaard as there was with some other
17 witnesses, that could be one factor. He possibly
18 was afraid he might be charged at the end of the
19 evidence based on what he said. I don't know.
20 There would be factors. I don't know what --

21 Q And again, and let's just go back to Nichol John
22 and the same situation, did you in your mind try
23 and rationalize why she would first deny seeing or
24 hearing anything and then later giving an
25 incriminating statement?



1 A Well, I knew that had happened. I don't know if
2 we mentioned this, but I -- during one of my
3 interviews of Nichol John she ran out of my office
4 in the court house based -- and I was certain that
5 she was fearful of Mr. Milgaard.

6 Q Okay.

7 A From what she told me and her actions.

8 Q Okay. Was that something in your mind, Mr.
9 Caldwell, at the time, that explained in part to
10 you why her statements might have differed from
11 the first to the second?

12 A Well, it would as a reluctance to come out with
13 what I believed was a true account.

14 Q So again if we could just go back to Mr. Wilson.
15 So this is his first statement, if we could go to
16 page 006712, and did you know of Inspector Riddell
17 at the time of the RCMP?

18 A I knew of him. I don't feel I ever met him for
19 some reason.

20 Q And he would have been a senior officer with the
21 RCMP; is that fair?

22 A Yeah, he was an inspector, and I think he was in
23 charge of what's called CIB in Regina. Ah --

24 Q Go ahead if you want to --

25 A Yeah, I think --



1 Q -- if you are going to get your water.

2 A So my understanding, sir, is that he would have
3 been at Regina subdivision, the sort of head
4 office of the RCMP, as a CIB officer.

5 Q And so here's Mr. Wilson's first statement, we've
6 been through this many times, I'll just go to the,
7 these two points. In his first statement he says:

8 "I never knew of Dave to have a knife.

9 I am convinced that Dave Milgaard never
10 left our company during the morning we
11 were in Saskatoon."

12 And then at the bottom:

13 "All during this trip there was never
14 any mention about the murder of a girl
15 in Saskatoon. In fact, I didn't even
16 know about this murder until the police
17 told me today."

18 And then if we can call up 009231, and you'll see
19 at the top this is your page 5 of statement
20 number 78, that's your handwriting?

21 A That's right.

22 Q And 78, the one before, was the March 3rd
23 statement I just read to you about Mr. Wilson, and
24 these are Mr. Riddell's notes that he took, we
25 believe, at or about the time of taking the



1 statement. If we can scroll down to number 5,
2 Inspector Riddell says:

3 "During the interview with Wilson, he
4 appeared straightforward with nothing to
5 hide. He was not sure of the exact
6 times --"

7 Etcetera, and again, Mr. Caldwell, is this
8 something -- presumably you would have read it at
9 the time back when you were preparing the case?

10 A Well, I assume I read that summary as well as the
11 Wilson statement.

12 Q And again can you tell us, the fact that Inspector
13 Riddell would have given his assessment after
14 interviewing Wilson that he appeared
15 straightforward with nothing to hide, did that
16 play any part in your assessment of the case or of
17 Mr. Wilson's evidence?

18 A Well, I concluded that in my view the statements
19 certainly given by Wilson, if not John, and if not
20 Milgaard, were -- couldn't be reconciled with what
21 were the known facts, so I, in that sense, Mr.
22 Hodson, I wouldn't place, what did you ask me,
23 much strength in it or -- I wouldn't -- because I
24 don't think it was true is what I'm saying.

25 Q And so is it fair to say that in light of what you



1 subsequently learned, your view was that
2 Mr. Wilson was not straightforward with nothing to
3 hide?

4 A At that point he certainly -- that's correct, he
5 certainly wasn't.

6 Q If we can go back to 105608, and again this is
7 just a summary of Mr. Wilson's evidence, and we'll
8 go through this, this is what the police
9 summarize, and they talk about:

10 "- having acid on his clothing and
11 changed clothes at his home late Jan.
12 30th. or early Jan. 31st.

13 - Milgaard did not change clothes."

14 Do you remember there being an issue, Mr.
15 Caldwell, about whether or not Mr. Wilson and Mr.
16 Milgaard changed clothes in Regina the night
17 before the murder or --

18 A I don't know that it was an issue. It seems to me
19 that we went into that and I think eventually some
20 pants were tested as to whether or not they had
21 acid damage. There were various pairs of pants
22 appeared as you know, sir, as time went on.

23 Q Was there some suggestion that if Mr. Milgaard had
24 changed his pants the night before the murder
25 because of acid on them, that there would be no



1 need to change his pants the next morning at
2 Cadraains' house unless there was blood on them?

3 A I suppose one could argue that.

4 Q And that in fact if Mr. Milgaard had not changed
5 his pants in Regina, then the morning of the
6 murder one of the reasons he changed his pants is
7 because they had acid on them rather than blood, I
8 think those were the two competing theories, if I
9 can call it that. Do you recall that?

10 A Well, not in so many words, but I can understand
11 that that would be arguable, if you want.

12 Q Okay. And we'll see this when we went into
13 Shirley Wilson's evidence, I think Mrs. Wilson --
14 Mr. Tallis asked her to come to the prelim and you
15 called her; is that right?

16 A I believe that's right.

17 Q We'll touch on that a bit later.

18 A All right.

19 Q If we can scroll down, and again we see the
20 evidence about the elevator and I note that the
21 flashlight was recovered. Would that -- again,
22 anything change with your assessment of the
23 elevator incident now that the flashlight was
24 turned over that was taken from there?

25 A Where did it surface, do we know that?



1 Q I believe the evidence indicates that Ron Wilson
2 had the flashlight and gave it to Detective Mackie
3 and the elevator agent identified it as being one
4 taken from the elevator.

5 A Well, I suppose that would, in a small way,
6 corroborate that it had happened, but I wouldn't
7 put much weight on it. I don't know, is that what
8 you are asking, sir?

9 Q Yes.

10 A Okay.

11 Q And then:

12 "- enroute to Saskatoon observed
13 Milgaard in possession of a knife which
14 he can identify, exhibits H and N, as
15 being same kind."

16 H and N are the handle and the blade?

17 A Okay.

18 Q Again, the same view as you held with Miss John,
19 the fact that Mr. Wilson could identify the knife
20 was significant?

21 A I wouldn't think so.

22 Q And then scroll down:

23 "- enroute to Saskatoon they discussed
24 breaking and entering, rolling someone
25 or purse snatching for money."



1 Did you have thoughts at the time, Mr. Caldwell,
2 as to whether Mr. Wilson may have been involved
3 with Mr. Milgaard in the snatching of purses or
4 breaking and entering?

5 A Well, I don't think I had any evidence of that. I
6 think it's -- the file shows that there was some
7 discussion of whether or not, if that happened,
8 they would or would not be accomplices or parties
9 to the offence, but I don't believe I had anything
10 to base against Wilson for breaking and entering,
11 rolling someone or purse snatching for money.

12 Q Okay.

13 A Although I appreciate it's a discussion there.

14 Q And then if we can scroll down a bit, they
15 summarize Wilson as spoke to a girl for
16 directions, became stuck making a U-turn:

17 "- location believed to be 200 blk. Ave.
18 N south."

19 And I think at this stage the statements of
20 Mr. Wilson reflect that they became stuck in the
21 vicinity of where, I think the words were of
22 where he was driven around.

23 A Where he which, sir?

24 Q I think Mr. Wilson's statement at the time to the
25 police was not specific as to exactly here's where



1 we got stuck, but in this vicinity, and at trial
2 he ended up testifying, I think he put the S mark
3 on the map as to saying here's where we got stuck.

4 A Oh, okay.

5 Q And I'm wondering at this time what you made of
6 Mr. Wilson's statements or evidence that lookit,
7 this is where I think we got stuck.

8 A Well, what -- that one sentence "became stuck
9 making a U-turn, location believed to be 200 blk.
10 Ave. N south," on the face of it, sir, matches
11 what my view of the evidence was as I then knew
12 it. In other words, I felt it happened there
13 essentially.

14 Q Okay. Now, at the trial, and I will take you to
15 this a bit later, I believe in your opening
16 address to the jury and as well probably in your
17 closing address, identified that some --
18 discrepancies may be too strong a word -- but the
19 fact that Wilson and John were saying they got
20 stuck not in exactly the same spot. Do you
21 remember that?

22 A I may well have.

23 Q And again, is that something that it is what it
24 is?

25 A I don't think one could improve on that by



1 pressing, leading your own witness and trying to
2 change it. I felt, Mr. Hodson, that both those
3 were, if you will, legitimate views of what had
4 happened on the part of each of them, as to the
5 getting stuck in the location that is.

6 Q Okay. And then if we can scroll down, it says:

7 "- on returning to the car, John was was
8 in the car and hysterical --"

9 And again keep in mind this is a summary of what
10 Mr. Wilson said,

11 "John told of seeing Milgaard take a
12 girl into the lane and stab her with a
13 knife."

14 And so here Ron Wilson, and this is in his
15 statement as well, he's saying that when he got
16 back to the car Nichol John was hysterical and
17 Nichol John told him at that time that she saw
18 Milgaard take a girl into the lane and stab her
19 with a knife, and do you recall a bit earlier
20 when I went through the police note where the
21 police said that they think Wilson knew more than
22 he was saying and they think he knew at the time
23 about the murder?

24 A Uh-huh.

25 Q It would appear here that Wilson is saying oh,



1 yes, I knew -- I knew about the murder right then
2 because Nichol -- or I knew then that Nichol John
3 claimed to have seen David Milgaard stab a girl;
4 correct?

5 A Yes, the -- told --

6 "- John told of seeing Milgaard taking a
7 girl into the lane and stab her with a
8 knife.

9 - Milgaard returned to the car, kind of
10 running and breathing heavily."

11 And saying "I got her" or "I fixed her" could be
12 taken as Wilson reciting what John told him
13 there, which would be all or part of a murder I
14 would assume.

15 Q Right. So a part of the body of evidence at the
16 time you received the case from the police, and
17 the summary states this and this is reflected in
18 the statements --

19 A Uh-huh.

20 Q -- we have Nichol John saying that, and I just
21 referred to this on the previous page, that when
22 Wilson got back to the car she can't recall saying
23 anything to Mr. Wilson; right? That was in her
24 statement?

25 A Ah -- uh-huh.



1 Q And she does say in Calgary, I believe she says in
2 Calgary Ron Wilson told her -- just hang on a
3 minute. Let me go ahead to Mr. Wilson. And then
4 Mr. Wilson says two things in his statement; one,
5 he says that in Calgary the next day or after the
6 day of the murder he told Nichol John about David
7 Milgaard admitting that he stabbed a girl. Do you
8 remember that part of the evidence?

9 A I do, yeah.

10 Q So Mr. Wilson said to Mr. Roberts and in his
11 statement, when I got to Calgary David told me
12 that he grabbed a girl, jabbed her with a knife,
13 put a purse in a garbage can.

14 A Uh-huh.

15 Q Wilson then says and I told Nichol John that and
16 Nichol told me she already knew.

17 A Yeah.

18 Q And the fact that here we have Ron Wilson saying
19 that, at or about the time of the murder Nichol
20 John told him that she had just witnessed a
21 murder, or witnessed a stabbing, did you ever look
22 at that and say, okay, how could, or why would Ron
23 Wilson tell Nichol in Calgary that David had
24 stabbed a girl when the day before, according to
25 Ron Wilson, Nichol had already told him? In other



1 words, the way that Mr. Wilson knew was from
2 Nichol John. Do you follow --

3 A I think so.

4 Q Did you ever look at that and try and ask either
5 of the witnesses about that or try and rationalize
6 that?

7 A I'm sure I didn't ask either of the witnesses
8 about it, and I could imagine either version being
9 correct, Mr. Hodson, in the eyes of the person who
10 said it, that is --

11 Q If Mr. Wilson had been told on the morning of the
12 murder by Nichol when he got back into the car
13 that I saw David grab a girl and stab her --

14 A Uh-huh.

15 Q -- would it be reasonable for the next day, when
16 Mr. Milgaard tells him, this is according to
17 Mr. Wilson, that he tells him, oh, I stabbed a
18 girl, or jabbed a girl with a knife, would it make
19 sense for him to go and then tell Nichol, lookit,
20 David stabbed a girl, when he already knew,
21 according to his own evidence, that she knew?

22 A Well, I don't think that would, you know, cause
23 you to disbelieve his evidence or anything of that
24 sort. It may be -- those may be both true
25 memories by each of them and the difference



1 clearly is who knew what when as I would see it,
2 so I'm not sure that I --

3 Q Well let's just take -- forget Nichol John for a
4 moment, let's just take Ron Wilson's statement on
5 its own.

6 A Uh-huh.

7 Q In one breath he says I knew about the murder that
8 morning -- I knew about the stabbing, let's talk
9 about a stabbing.

10 A Uh-huh.

11 Q I knew about the stabbing right when it happened,
12 when I got back to the car Nichol John told me,
13 she told me she saw David grab a girl and stab
14 her. The next breath he says in Calgary David
15 Milgaard told me that he stabbed a girl or jabbed
16 a girl --

17 A Uh-huh.

18 Q -- and took her purse. I then went and I told
19 Nickey and Nickey told me she already knew, and
20 I'm not sure if anybody asked Mr. Wilson, well,
21 why did you go tell her when you knew, Mr. Wilson,
22 that she must have known because she told you
23 that.

24 A I wouldn't think I asked him that, Mr. Hodson, or
25 got an answer to it. You know, in the best of all



1 worlds it should be one or the other and I think
2 this was a fairly unusual factual situation
3 that --

4 Q And so that -- I'm sorry?

5 A No, that they were going through.

6 Q I'm wondering, though, if that would have caused
7 you to look at Mr. Wilson's statement and say,
8 okay, this doesn't make sense, how can he be, on
9 the one hand, saying he was told by Nichol and the
10 next day telling her.

11 A Was this post polygraph?

12 Q Yes, it was.

13 A Okay. Well, the -- Wilson, as we know, was the
14 only person who was tested by Inspector Roberts as
15 I recall and at the end of that Inspector Roberts
16 I think came to an opinion as to what Wilson had
17 said that was and was not truthful. Now, what --
18 Wilson, as I recall, then gave a so-called, the
19 second statement as I recall. That's the state of
20 affairs that I believe to be correct and I don't
21 think I went to him and said what you've just
22 explained, if A, B, C, how come you had to do
23 that.

24 Q And is that something that you would expect then
25 to unfold at trial?



1 A Well, I would -- I think that's all that would be
2 left because I think it had been explored with
3 Wilson, there would be -- we had the assistance of
4 a polygraph operator saying this is what I believe
5 he believes to be true, that was, you know, given
6 to me in the form of a statement, and I don't know
7 where I could go from there. Rather than having
8 at that point faith that that was the true
9 account, I would simply call him at the trial
10 would be my response.

11 Q And if we can scroll down:

12 "In approx. 15 minutes Milgaard returned
13 to the car, kind of running and
14 breathing heavily."

15 A And again, if we can pause there, this would be
16 the police summary of Mr. Wilson's information at
17 the time, that Mr. Milgaard was away from the car
18 for approximately 15 minutes?

19 A Yup.

20 Q Do you recall dealing with that issue, about how
21 long Mr. Milgaard was away from the car?

22 A Well, only to the extent of calling what evidence
23 we had about it, which is what I think we're
24 looking at here.

25 Q And was that -- was that an important piece of



1 evidence, the time that he was away?

2 A Well, arguably 15 minutes would, you know,
3 couldn't give time for the things that we believed
4 to happen did happen. I don't know how much
5 further you could go in trying to nail down 15
6 minutes.

7 Q But let me just -- for example, that if it was two
8 minutes, if the evidence that you had was that Mr.
9 Milgaard was away from the car for two minutes,
10 would it be fair to say, well, that -- and that's
11 believable --

12 A Yeah.

13 Q -- that that would not be enough time to commit
14 the offence?

15 A I would think that's so.

16 Q And so the time within -- or the evidence before
17 the jury as far as the time that Mr. Milgaard was
18 away from the car would be an important part of
19 the case?

20 A I would think so, sir.

21 Q And then if we can just scroll down, again
22 Milgaard said "I got her" or "I fixed her". I
23 take that as an admission, would be viewed as an
24 admission?

25 A I would assume so.



1 Q And then here we talk about Marie Indyk again:

2 "There is evidence from Marie Indyk of a
3 girl who comes running and stopping
4 within 3-4 feet of her, then going north
5 on Ave. O."

6 And it goes on to describe him as a ghost because
7 she could not hear him walk and then talks about
8 the evidence of Milgaard obtaining a map at the
9 Trav-a-leer and not wearing shoes, and again I
10 think we touched on this yesterday, about
11 Ms. Indyk. Do you have anything to add about
12 that, Mr. Caldwell?

13 A I don't think so.

14 Q Go to the next page, please. And then we see here
15 that Mr. Wilson identifies Milgaard's trousers
16 appear to be bloody, and again I take it the same,
17 that the evidence corroborating what Mr. Cadrain
18 had said he saw?

19 A This is --

20 Q This is Ron Wilson, this is the police summary of
21 Ron Wilson's evidence --

22 A Okay.

23 Q -- that they obtained from him.

24 A And Milgaard trouser's ripped at the seat, there
25 appeared to be blood on his trousers, what were



1 you --

2 **Q** Sorry, the question was according to Wilson,
3 Wilson also says he saw blood on Milgaard's
4 trousers. My question was, again I take it that
5 would be -- would that be corroboration then of
6 Mr. Cadrain's --

7 **A** Well, I would think so.

8 **Q** And then as well Wilson describes that:

9 "- Milgaard took the compact and threw
10 it out the window."

11 Again, would that be the same value as Nichol
12 John's evidence about the compact?

13 **A** Yeah, I would think so.

14 **Q** And then we have:

15 "- enroute to Calgary John screamed
16 several times for no apparent reason."

17 What significance if any did that have in the
18 Crown theory?

19 **A** I don't know that I assigned -- A, called the
20 evidence, or B, assigned any value to it, but it
21 could certainly be evidence that she was terrified
22 by something that had happened shortly before.

23 **Q** And then we've got the Calgary incident where
24 Milgaard told him that he hit a girl, grabbed her
25 purse, she fought, he jabbed her a few times with



1 the knife, put her purse in a trash can, that he
2 thought she would be all right, and:

3 "- Wilson told John and she already
4 knew."

5 So we just touched on that, that's -- again, I
6 take it that Mr. Wilson's evidence about what Mr.
7 Milgaard told him in Calgary would be a
8 significant piece of evidence to the Crown?

9 A I would certainly think so.

10 Q Then if we can scroll down, and here's another
11 police note, it says:

12 "Wilson at first told police he knew
13 nothing of this offence however has
14 since told the story as set out in the
15 brief. There still remains areas,
16 especially at time of actual offence,
17 which seem in doubt as far as Wilson is
18 concerned."

19 Are you able to tell us what that meant or what
20 meaning you put on that?

21 A Well, one meaning could be that the length of time
22 Milgaard was away from the car would fit into that
23 definition if you ask me, which seem in doubt as
24 far as Wilson is concerned. I can't -- that would
25 be the obvious one that would spring out to me,



1 sir.

2 Q So when you have the note from the police saying
3 'there is still areas that seem in doubt', as the
4 prosecutor, what would you do to try and nail
5 down, if I can call it that, with Mr. Wilson any
6 uncertainty that he might have?

7 A Well, again, if -- this being post-polygraph and
8 post-statement too, I would think that I wouldn't
9 be thinking in terms of approaching Mr. Wilson and
10 quizzing him about that.

11 Q Why not?

12 A Because I felt, at that time, I had -- he was
13 telling the truth as he perceived it.

14 Q Okay. But the police are putting in this note
15 that -- a couple things; (1) they are not sure
16 that Wilson is telling the police everything; --

17 A Well that --

18 Q -- (2) that he may know more about the morning of
19 the murder than he is letting on; (3) that he may
20 be covering because he played a part in it; and
21 (4) there still remains areas, especially at the
22 time of the actual offence, which seemed in doubt
23 as far as Wilson is concerned. And I think what
24 the police note here is saying Wilson's -- there
25 is some things that Wilson is doubting. Is that a



1 fair read of that?

2 A That, that could well be. I don't know if we can
3 --

4 Q And so again, and you may have already answered
5 this, as the prosecutor with these notes from the
6 police in the police summary, did you do anything
7 to specifically address these notes that the
8 police gave about their concerns, or notes about
9 Ron Wilson's --

10 A I wouldn't think so, Mr. Hodson, because I don't
11 know what I could do about it. I could call him
12 in and say "what about these four aspects", and I
13 felt, I didn't see how that could be constructive
14 at that point.

15 Q And do you have a recollection, again, of
16 interviewing Ron Wilson before the preliminary
17 hearing?

18 A I must have done it. At this moment I can't
19 recall it but I believe there are notes to that
20 effect.

21 Q What would be your practice, sir, at the time,
22 about interviewing Crown witnesses before the
23 prelim?

24 A Well in the case of the three, Wilson -- pardon
25 me -- John and Cadrain, who I believe the file



1 shows that, in any event, I'm sure I had a police
2 officer there with me during the interview, I
3 think there are notes to that effect, and I'm sure
4 that would have happened simply to pre -- you
5 know, to prevent, again, accusations later on
6 "that's not what I told you, I denied it",
7 etcetera. So that I did invariably.

8 Now I also spoke to witnesses to
9 the general effect that "when you are testifying,
10 if you are not sure of something say so, if you
11 don't know something say so, if you are sure of
12 something I suggest you stick with it unless it
13 clearly has to be changed for other -- for factual
14 reasons". So I'm sure I gave that admonition to
15 all of them, certainly for the trial, if not --
16 and I suspect for the prelim.

17 Q And again just generally, when -- let's take Ron
18 Wilson, for example, and I take it you don't
19 recall what you specifically asked him or talked
20 to him about, --

21 A That's right.

22 Q -- is that fair, in preparation?

23 A No, that's right.

24 Q What, based on your practice, what would you --
25 what would you go through with him other -- and



1 you've talked to us about what you would tell him
2 about his evidence or your --

3 A Well I would have his then-statement, --

4 Q Yes.

5 A -- I guess that would be the first one, and I
6 would go through it with him --

7 Q Yes.

8 A -- and see whether he confirmed that, denied it,
9 whatever. And I can't recall, you know, blow for
10 blow --

11 Q Okay.

12 A -- but I'm sure I did that.

13 Q So let's take at the preliminary hearing, are you
14 telling us your practice would be to take his
15 statement and go through and ask him, "is this
16 what you believe or is this ..."

17 A Yeah. I would interview him and see what he said
18 about all the items and, in all likelihood, I
19 would make that guide sheet of mine at the time
20 with the questions I proposed to cover in the
21 prelim with him.

22 Q I see.

23 COMMISSIONER MacCALLUM: Which statement
24 are you referring to?

25 BY MR. HODSON:



1 Q I was going to ask him that. Now which statement
2 would you have referred Mr. Wilson to?

3 A Well I think the first, not the Riddell
4 statement, --

5 Q Right.

6 A -- but the first of the --

7 Q The police?

8 A -- yeah, the first of the two police statements.

9 Q The post-polygraph statements?

10 A That's -- that's right.

11 Q And so do you think you would have shown him the
12 Riddell statement at all?

13 A I don't think so.

14 Q And why not?

15 A Because I didn't think it was anywhere near
16 correct.

17 Q Okay. So you would take his post-polygraph
18 statement or statements, there was two of them,
19 there was the follow-up one; do you think you
20 would have shown him that one as well?

21 A Umm, --

22 Q He -- and let me just help you out.

23 A Yeah.

24 Q He gave a statement on May 23rd, after the
25 polygraph, and then the next morning he added a



1 paragraph or two, I think, to his May 23rd
2 statement.

3 A I would have, if that's what it was, --

4 Q Yes.

5 A -- I would have shown both of them to him.

6 Q And, in fairness, those in some places have been
7 referred to as one statement even though they are
8 on different dates.

9 A I understand, and they both went to Mr. Tallis, as
10 a matter of interest.

11 Q Yeah. So you think those two statements you would
12 have gone through with Mr. Wilson?

13 A Yes I do.

14 Q Based on your practices at the time, sir, would
15 you have probed him further and said "lookit,
16 here's the types of questions you might get on
17 cross-examination", or anything of that nature?

18 A I would think that that three-part thing I just
19 recited was intended to cover cross-examination,
20 because that's where people would sometimes
21 abandon ship --

22 Q Yes.

23 A -- or say they didn't know what was going on. So
24 that would be the way I dealt with
25 cross-examination, I believe.



1 Q And so the three, the comments about the three, I
2 think you said if you are unsure, and you are
3 sure, or if you don't know; those are the three?

4 A Yes. If you are sure, I guess beginning with "if
5 you are not sure of something say so, then if you
6 don't know something", was an important category,
7 "say so", and in the third place "if you are sure
8 of something you should by and large stick with
9 that".

10 Q Now we've heard some evidence or seen references
11 to Mr. Wilson suggesting that, in different ways
12 and in different times, that you told him or
13 encouraged him to stretch the time that Mr.
14 Milgaard was away from the vehicle. We've heard
15 that allegation or that evidence before; is that
16 fair?

17 A That's right.

18 Q Did you encourage or tell Mr. Wilson to stretch
19 the time that Mr. Milgaard was away from the
20 vehicle?

21 A No, absolutely not.

22 Q Are you -- do you have a recollection of talking
23 to -- with him about the time that he was away
24 from the vehicle, Mr. Milgaard?

25 A I don't, Mr. Hodson, at this point. I'm satisfied



1 I talked to him --

2 Q What would have been your practice at the time as
3 far as dealing with a witness on that type of
4 subject if an issue came up about the time?

5 A Well you would simply say "lookit, whatever you
6 remember is what you are -- I want you to say in
7 this thing". That may or may not be what's in the
8 statement, all things being equal it would be, but
9 I wouldn't encourage anybody to alter that in that
10 manner.

11 Q And when you interview a witness for trial would
12 you then also have an interview or would you use
13 the preliminary hearing transcripts?

14 A I would think so.

15 Q And I believe there's reference on the file where
16 you in fact obtained copies, and did you in fact
17 provide the transcript to witnesses to read?

18 A Yes, it -- all the prelim witnesses received that
19 evidence for them to read to themselves.

20 Q What would be your practice, at the time, about
21 dealing with a witness where the witness may have
22 given inconsistent information, let's say between
23 a statement and the preliminary hearing evidence?
24 How would you, again for trial, how -- what would
25 be your practice in dealing with that witness?



1 A Well, in that sort of special category, you
2 would -- I would assume I would have his original
3 statement, and then I would have the prelim
4 evidence that he gave, and go through it and say
5 "look, how come in A you did -- you said this, and
6 in B you said this", and attempt to come to what
7 he felt was truthful, and then attempt to have
8 that, you know, examined in chief at the trial.

9 Q Okay. If we can just go down. And then again, I
10 won't go through all of these witnesses, Mr. Pratt
11 is the elevator agent, here we have Mrs. Indyk
12 that the police have put in and refers to
13 statements and page numbers, and if we can just go
14 to the next page. And just for the record, Mr.
15 Caldwell, Ms. Indyk, I don't believe, was called
16 at the trial, I believe she testified at the
17 prelim.

18 A Okay. I was hoping -- I think this is the -- this
19 is --

20 Q This is the lady near the church, and what it says
21 is:

22 "Observed a female approaching. (police
23 believe this could have been John)",
24 then it goes on, described her:

25 "- she appeared to be frightened.



1 - she turned and walked north on Ave.

2 O.",

3 and then:

4 "Observed a male walking north on Ave. O
5 also."

6 - describes male's walk as that of a
7 ghost as she could hear no steps,
8 whereas the girl's steps were crisp and
9 sharp in the cold snow.

10 Could this have been Milgaard with no
11 shoes?"

12 And, again, I take it the police are raising that
13 as a question, saying maybe that's who she
14 encountered, and then that she may be able to
15 identify the coat, and:

16 "May be able to identify female as
17 John."

18 And I believe the police, in fact, got Nichol
19 John's coat to try and --

20 A Oh.

21 Q Were you aware of that?

22 A Well, no, but I'm sure that happened if you say
23 so.

24 Q And we'll touch on Mrs. Indyk again, it's dealt
25 with in your notes. We go to Mr. Diewold, and



1 here was the fellow, he was the church caretaker
2 and he testified at trial, and I note here that
3 there is no statement taken from this witness but
4 reference is made to pages in two police reports,
5 and I think those police reports -- we don't need
6 to go to them -- but the police reports is where
7 the police record the information that Mr. Diewold
8 provided.

9 A All right.

10 Q And I take it there were occasions, Mr. Caldwell,
11 where the witness information was captured by the
12 police in an investigation report rather than in a
13 witness statement?

14 A I, that would be a good example, I would --
15 frankly wasn't aware of that but I understand
16 that.

17 Q And, again, Mr. Diewold said they opened the
18 church at approximately 7:00 a.m., and you know
19 where this church, this church is really facing
20 the east-west alley between Avenue N and O;
21 correct?

22 A I'm not -- it's -- I believe that's right, and
23 it's I believe on Avenue O, if I'm not mistaken.
24 Yeah.

25 Q It's on Avenue O, and I think where Mr. Diewold



1 was looking down the alley would be, if Nichol
2 John said their vehicle was stuck behind the
3 funeral home in the entrance to that alley, --

4 A Uh-huh.

5 Q -- that's where Mr. Diewold would be looking?

6 A Should be right in his line of sight, assuming he
7 could see through the fog etcetera, but --

8 Q Right. And so what he says, he:

9 "Observed an auto in the north lane,
10 1400 blk. 20th. St. west in vicinity of
11 Westwood Funeral Chapel."

12 I maybe got my directions wrong. In any event,
13 I'm sorry:

14 "- auto was facing west in east-west
15 lane".

16 So that would be a car entering the lane from
17 Avenue N facing Avenue O; --

18 A As I read that, it would.

19 Q -- is that correct? And that:

20 "- headlights were on
21 - was still there approx. 7:10 a.m.
22 - someone passed in front of the auto."

23 And I take it that would be an important piece of
24 evidence, again, on the basis of that's the
25 location where the body was found; correct?



1 A It's, yeah, it's immediately, to my way of
2 thinking, south of where the body was --

3 Q Yes.

4 A -- X number of yards --

5 Q Yes.

6 A -- in the north-south lane.

7 Q And, secondly, he is looking down the lane where
8 another witness, Nichol John, said their vehicle
9 is stuck; is that --

10 A As I understand it.

11 Q And, thirdly, the time that he sees it is
12 important; is that fair?

13 A Well I would assume so.

14 Q Yeah. That, again, the time that he was looking
15 down there would be important whether it fit or
16 didn't fit with other known facts?

17 A Yeah, I would think.

18 Q And then, as well, he talks about:

19 " -- A lady came in the church."

20 And you will see the police:

21 "Note - this is general area Wilson and
22 John claim they became stuck."

23 "- The car would be approx. one block
24 east of the location Diewold would be
25 observing it from."



1 And I think that's what you told us; is that
2 right?

3 A That's my understanding.

4 Q Okay. This is probably a good spot to break.

5 (*Adjourned at 10:29 a.m.*)

6 (*Reconvened at 10:50 a.m.*)

7 BY MR. HODSON:

8 Q Just go back to 105614, is the page number, we'll
9 just finish have up this police summary. Again, I
10 don't propose to go through them, Mr. Caldwell.
11 This is the information on the Danchuks, and I
12 think you told us yesterday that -- and please
13 correct me if I'm wrong -- that you called them as
14 witnesses, and basically to say that they saw Mr.
15 Milgaard after the time of the murder and didn't
16 notice anything unusual, or didn't notice any
17 blood; is that fair?

18 A I think that was their evidence, sir.

19 Q Next page, please. And Campbell, McQuhae, and
20 we'll see a few others, the tow truck drivers, and
21 I think the police evidence there was a couple
22 things; that they suggested that Mr. Milgaard may
23 have been in a hurry, and secondly, the fact about
24 cleaning out the car; do you remember that?

25 A I -- yes.



1 Q And, again, would it -- would the cleaning out of
2 the car, was that significant to the Crown's
3 theory?

4 A Well what you could suggest, that it was part of
5 the disposing of anything that could be
6 incriminating, you could suggest that.

7 Q And I don't believe so, but perhaps you could
8 confirm, there was never anything found in Ron
9 Wilson's car that was linked --

10 A Yeah, --

11 Q -- to Gail Miller --

12 A -- I think that's right.

13 Q -- or to a criminal offence; is that fair?

14 A I think that's right.

15 Q If we go down to the bottom we see Albert Henry
16 Cadrain, and I think you would agree that, in
17 addition to Mr. Wilson and Ms. John, that Cadrain
18 was a key witness at the trial?

19 A Right, that's correct.

20 Q And, again, we see a summary of what Cadrain has
21 to say, that:

22 "- Milgaard stated that they had to
23 leave town right away.

24 - Milgaard seemed excited."

25 Again, you've talked about that, that would fit



1 in with the theory that he was trying to get away
2 from something; is that fair?

3 A It would fit in with it.

4 Q And that he:

5 "Observed blood",
6 we've touched on that. The next page, now
7 Cadrain says at the top:

8 "- Milgaard changed clothing, putting
9 some of Wilson's clothes, changing
10 in front of everyone."

11 And, again, Nichol John would have been there at
12 the time; did you consider why she wouldn't have
13 seen what Cadrain and Wilson saw when Milgaard
14 changed clothes?

15 A Well I would simply -- this is what Cadrain says
16 he saw, I presume Nichol John's statement covered
17 that same time frame, and I can't -- I can't think
18 why they were -- what's wrong with it, in a word,
19 except for the modesty factor I guess.

20 Q If we could scroll down, please. Again, Cadrain
21 talks here, on the trip to Calgary:

22 "- Milgaard faked car trouble in front of
23 a transport truck on the highway, talked
24 to driver and gave packages from trunk
25 of car to driver."



1 What did you make of that?

2 A I didn't, Mr. Hodson, I'm not -- I assume that
3 went into evidence?

4 Q I believe it did.

5 A But if it did I, I couldn't put any, any
6 significance on it.

7 Q If you could scroll down. It also says, and this
8 is under Cadrain and I'm assuming this is
9 Cadrain's version of events, that:

10 "Wilson and John seemed frightened of
11 Milgaard."

12 Was that your, do you recall, was that your
13 assessment of these witnesses?

14 A That's right.

15 Q And what about Cadrain; did you ever determine
16 whether he was afraid of Mr. Milgaard?

17 A Well, I don't think in the same sense. I'm sure
18 he was, you know, cautious of him, but he joined
19 this trip, of course, after the crew had arrived
20 in Saskatoon, and went on from there.

21 Q What caused you to think that Mr. Wilson and Ms.
22 John were afraid of Mr. Milgaard?

23 A Well their actions at times when I interviewed
24 them, the -- in the case of Nichol John, the way
25 she performed in the examination-in-chief in the



1 trial, among other things.

2 Q And --

3 A I'm sure they made it clear that they, you know,
4 were afraid of him.

5 Q And that was your assessment at the time?

6 A It was, yeah.

7 Q If we can go to the next page, please. And here
8 we have Mr. Davis and just, here's the reference
9 to wanting to clean out the car, and again I think
10 you've touched on that. If we can then go to page
11 -- I don't propose to go through this, if we can
12 go to page 60 -- or pardon me -- 620. And it
13 looks down here, with Officer Kleiv, that Mr.
14 Ullrich has put together the exhibits on the next
15 page. So the police would gather up the physical
16 evidence and assign an exhibit letter to it, and
17 say 'here's what we think you need'; is that
18 correct?

19 A That's basically -- that's right.

20 Q And can we just talk briefly about, we see this
21 mentioned down at the bottom on a number of these
22 police officers who were called as witnesses, the
23 issue of continuity, which I think we're probably
24 all familiar with, but if you could just briefly
25 tell us, back in 1969, what you needed to do with



1 police officers as far as continuity so we can get
2 it on the record?

3 A Well we, we manufactured a, what amounts to a
4 two-page chart that had a hinge down it made of
5 tape, which I'm sure is on the -- in -- on the
6 material, which started on the left edge with
7 Item, Where Found, Who Found By, the Date, and
8 everyone who handled it, Mr. Hodson, thereon was
9 recited.

10 Q Let me just -- maybe I can just put it to you this
11 way. Did you as prosecutor, if you were putting
12 in a piece of physical evidence, have to call
13 every person who had possession or control of that
14 physical evidence from the time it was recovered
15 until it was presented in Court to establish
16 continuity?

17 A That, that was the point of departure, but you
18 could -- quite often counsel would agree to omit a
19 number of those things --

20 Q Right.

21 A -- when they were satisfied.

22 Q So, and I don't wish to go through this because I
23 don't think there's any issues about
24 continuity, --

25 A Uh-huh.



1 Q -- but I take it a fair bit of your time as
2 prosecutor would be to ensure that you called all
3 of the police and other witnesses to establish,
4 for example, the wallet, --

5 A Yeah.

6 Q -- person who found it, and gave it to Mackie, who
7 gave it to Kleiv, who gave it back to Mackie?

8 A Uh-huh.

9 Q That was part of your job, as prosecutor, to prove
10 that?

11 A That's right.

12 Q Right. If we can go to page -- next page, please.
13 We see here with Dr. Emson, who was the
14 pathologist; prior to the David Milgaard
15 prosecution had you worked with Dr. Emson before?

16 A I must have, umm, because I came here in 1962 and
17 he -- he was around, certainly, at the time of
18 this.

19 Q Okay. And if we can go to 105624, please. And I
20 note in these summaries that the police officers,
21 essentially their evidence, and we'll see that at
22 the preliminary hearing and trial, essentially the
23 evidence of the police officers was the handling
24 of physical evidence; is that fair?

25 A You mean the identification officers?



1 Q No, and for example Mr. Karst and Mr. Mackie, I
2 think their evidence was primarily related to
3 physical exhibits; is that fair?

4 A I assume so.

5 Q Okay.

6 A Along with whatever testimony they had to give
7 other than that.

8 Q Okay. But, normally, would a police investigator
9 have much evidence, direct evidence?

10 A Well --

11 Q Let me rephrase it this way. I mean, you wouldn't
12 call a police officer to say "tell me what Shorty
13 Cadrain told you, tell me what Nichol John told
14 you, tell me what Wilson told you", you would put
15 that in through other people?

16 A Through those three witnesses initially.

17 Q Yes.

18 A And then, by and large, you couldn't do that other
19 thing, Mr. Hodson.

20 Q Right.

21 A In other words, you would call the three
22 witnesses, and I don't know of any way in which
23 you could then say "tell me what Cadrain,
24 etcetera, told to policemen".

25 Q Right. No, and I'm not suggesting you could, I'm



1 just trying to establish that a number of police
2 officers were called at the preliminary hearing
3 and trial, but primarily to deal with the handling
4 of physical exhibits?

5 A I would think so.

6 Q Yeah. And then, if we can go to Detective Karst,
7 there is reference here to a statement that he
8 took from Mr. Milgaard; do you remember reading
9 Mr. Milgaard's statement that he gave to the
10 police?

11 A Umm, I undoubtedly did.

12 Q And do you recall whether you had made any
13 impressions about that statement as far as your
14 assessment of the case against him?

15 A Well, I don't recall the details now, I don't --
16 at that time I didn't believe it represented an
17 accurate account of what had happened.

18 Q And why was that?

19 A Well I'd have to see it, sir, versus the evidence
20 that I knew about then.

21 Q Well I think, and if I can summarize it, it's a
22 lengthy statement, but he indicated he was in
23 Saskatoon and, I think, did -- although he wasn't
24 specifically asked in the first statement, he was,
25 in a later statement he denied being involved, but



1 just recounted his activities that morning,
2 acknowledged he was driving around in back alleys.

3 A Uh-huh.

4 Q Again, do you have a recollection of what effect,
5 if any, Mr. Milgaard's statements had in your
6 assessment of the case against him?

7 A Well I wouldn't think I could use them against
8 him, put that way, because they were not
9 admissions and they -- one or both of them trailed
10 off at the end, it seems to me, into sketches and
11 --

12 Q Yes.

13 A -- things like that?

14 Q Okay.

15 A And so, unless I wanted to put them into the
16 Crown's case as admissions if -- which then would
17 have to be proven in the usual fashion.

18 Q Yeah. And I think we can correctly state that
19 neither statement contained any admission of
20 responsibility --

21 A Oh, I would be -- yeah.

22 Q -- for the offence?

23 A I'm sure that's right.

24 Q And let's assume, well, they are a denial
25 statement.



1 A Yeah.

2 Q And my question is in, not as to whether you would
3 put it in as evidence, but in assessing the
4 Crown's case and factoring everything into the
5 mix, what, if any, significance did you place on
6 Mr. Milgaard's statements to the police?

7 A Well I -- I -- I would have to have a case, you
8 know, without them, if I may put it that way, so I
9 wouldn't think that they'd -- they would have much
10 effect on my views.

11 Q And so, the fact that he denied involvement and
12 went through explaining his version of the
13 morning, would it be fair to say that you believed
14 Mr. Wilson and Ms. John's version of events?

15 A I would think so.

16 Q If we go to page 627, and here's a category, it
17 says:

18 "The following are not listed as
19 witnesses. If required, please advise."
20 And then it goes on to list a number of people.
21 Can you tell us what would the -- would Mr.
22 Ullrich initially indicate who he thought would
23 need to be witnesses, and 'here are some other
24 people you might want to call', or explain that?

25 A I think that's how it worked, exactly.



1 Q And the decision to call a witness would be your
2 decision; is that fair?

3 A Yeah, what -- I could add to his list, subtract
4 from it, add people from this list or from the
5 police force at large as time went on.

6 Q Okay. And we have Simon Doell, we see here, who
7 talks about Gail Miller getting on the bus at
8 Avenue N. Was that an important part or a part
9 of, again, the Crown's theory?

10 A I don't know at this point, Mr. Hodson, was he
11 called? That's something I don't know.

12 Q I believe so. I stand to be corrected. Mr.
13 Doell, I don't think, was -- I don't think
14 testified at trial? I can check that.

15 A Umm, --

16 Q But --

17 A All right.

18 MS. KNOX: He did testify at the
19 preliminary inquiry but I don't think he
20 testified --

21 MR. ELSON: Not at the trial.

22 BY MR. HODSON:

23 Q Yeah, he testified at the preliminary inquiry but
24 not at the trial.

25 A That, if you would like to check it, I can go back



1 to it.

2 Q Yeah. No, I'm just wondering if -- do you have a
3 recollection, today, of any role his evidence
4 played?

5 A I don't, sir.

6 Q And then, down at the bottom, Celine Cadrain. It
7 says:

8 "- was present at residence Jan. 31st.
9 when Milgaard and other came to her
10 residence.

11 - can corroborate evidence of her
12 brother Albert, who is listed as a
13 witness."

14 And if we look at Celine Cadrain's statement, she
15 talks about the events that morning, but in her
16 statement she says that she did not see blood on
17 Mr. Milgaard's clothing. And I think, in
18 fairness, I think she may have seen Mr. Milgaard
19 after he had changed clothes, or there was a
20 suggestion that that may have been the case.

21 A Uh-huh.

22 Q Do you recall where or how Celine Cadrain's
23 statement fit in, if at all, to the Crown's
24 theory?

25 A Well, number 1, was she called?



1 Q No.

2 A Okay. Well then I would have read the statement
3 and presumably didn't think she should be called.
4 I don't know, at this point, why that was.

5 Q Again, the fact that she did not -- that she
6 observed Mr. Milgaard at Cadrain's house yet
7 didn't see blood, do you recall that being a
8 significant fact?

9 A I don't at the moment, but I get -- apparently
10 there is a suggestion that there may have been
11 at -- two different times that we're talking about
12 here?

13 Q I believe that that suggestion has been made, yes.

14 A Well I can't tell you, sir, more than that --

15 Q Okay.

16 A -- unless we pursue it in more detail. I'm happy
17 to do that.

18 Q If we can go to 006301. And this is a document,
19 you can't see it very well, just call out at the
20 top Statements Taken on the Gail Miller Case, and
21 then it lists the name of the statements, the
22 number which corresponds with the police number on
23 the statement, address, and a brief summary.

24 A Uh-huh.

25 Q Would this be an index of the statements that the



1 city police gave you?

2 A It appears that way at a -- at this glance.

3 Q Yeah. And I'm going to suggest to you that
4 there's X's on those statements, which I think
5 correspond with the witness statements numbers in
6 the Ullrich witness summary, and I'm wondering if
7 --

8 A Oh, I see, okay.

9 Q -- what that means is that, initially, you would
10 have got only those witness statements listed in
11 the summary?

12 A I can't say that offhand, Mr. Hodson. I assume I
13 may have got them all, but they would be
14 differentiated by the method you just mentioned of
15 X's.

16 Q Call up 009431, I'll just identify a couple of
17 documents here. This "Re: List of exhibits &
18 continuity," is this something the police would
19 have prepared to let you know who had what and
20 when, the continuity?

21 A Yeah, I've noted, "Re exhibits Kleiv has handled
22 only." In other words, this evidently refers only
23 to ones that he handled. I don't know when that
24 typing document was compiled. I assume it came to
25 us in that form.



1 Q Okay. If we could call up 006674, and I think
2 this is the exhibit board you talked about.

3 A Okay.

4 Q And that's a document I think you used at trial
5 to -- I'll just call out the top part -- to talk
6 about the description of the item, location and
7 who had it, and we see over here continuity?

8 A That's right, and as you know, there's a second
9 page.

10 Q Yeah, there's a number of pages.

11 A Yeah, that's what it was.

12 Q I don't think we need to go through them. This is
13 a document from your file that's --

14 A Yeah, it's one that was not an exhibit, I
15 discovered it was for our own use.

16 Q Yes.

17 A And fortunately it survived.

18 Q Yeah. We're done with that document. So I've
19 gone through, Mr. Caldwell, what the police gave
20 you initially, and that was the police summary,
21 the witness summary and I think you've said that
22 you would have received the witness statements
23 referred to in the witness summary, ultimately you
24 received them all?

25 A Uh-huh.



1 Q Correct?

2 A That would be my memory.

3 Q And secondly, you would have received the police
4 reports that were referenced in the witness
5 summary; correct?

6 A Yes.

7 Q And so you would have read through all that
8 presumably to -- fairly early on, would that be --

9 A I would think essentially when they arrived.

10 Q And then if we can just maybe go back and
11 summarize what at this time, going into the
12 preliminary hearing, would be the key evidence,
13 and let me just go through and outline this, I
14 think we've covered all this. Number 1, Albert
15 Cadrain seeing blood on Mr. Milgaard and as well
16 as evidence that Mr. Milgaard was in a hurry, that
17 he threw the compact out the window and that he
18 asked Cadrain to get a gun to kill --

19 A Mr. Hodson, is this something I wrote or are you
20 just --

21 Q No. Well, I just went through this -- I just want
22 to go through, Mr. Caldwell, and again at this
23 time, this is what Mr. Cadrain's version of events
24 was.

25 A All right.



1 Q I just went through the summary for these people.
2 So Mr. Cadrain, you would agree, had evidence that
3 was incriminating against Mr. Milgaard; is that
4 fair?

5 A Uh-huh, right.

6 Q And Nichol John was, had given a statement saying
7 she had witnessed the murder; correct?

8 A That's correct.

9 Q And Mr. Wilson had given evidence, or given a
10 statement, pardon me, that Milgaard had admitted
11 to him that he stabbed a girl?

12 A Yes.

13 Q And that Wilson had heard Nichol John tell him
14 when he got back in the car that Mr. Milgaard had
15 stabbed a girl?

16 A Yes.

17 Q And you had Mr. Milgaard who had given a couple of
18 statements denying any involvement?

19 A Yes.

20 Q If we can just talk about the physical evidence at
21 the time. Would it be correct to say that --
22 well, let's put aside the frozen lumps of snow and
23 the blood issue for a moment --

24 A All right.

25 Q -- putting that aside, I believe the record



1 suggests that there was no other physical evidence
2 that linked David Milgaard to Gail Miller; is that
3 fair?

4 A Well, I assume that's correct, sir.

5 Q In other words, there was nothing -- and let's put
6 aside the frozen lumps of snow for the moment.

7 A Uh-huh.

8 Q There was nothing at the murder scene or on Gail
9 Miller's body that could be directly linked to
10 David Milgaard by way of physical evidence. The
11 knife, we've heard about the knife and the
12 identification of the knife, but, for example,
13 fibres or hairs or things of that nature.

14 A I assume that's correct.

15 Q And secondly, that in the Wilson vehicle and on
16 Mr. Milgaard, when he was questioned, there was
17 nothing sort of related to him, nothing on his
18 clothing or in the vehicle that he was in that
19 linked either the vehicle or him or his clothing
20 to the Gail Miller murder scene; is that correct?

21 A That's Mr. Wilson you are talking about or --

22 Q No, Mr. Milgaard.

23 A Mr. Milgaard. I assume that's right.

24 Q Okay. So as far as the physical evidence -- and
25 then the frozen lumps of snow, and we'll get into



1 that in a bit of detail, but the -- what was found
2 at the scene -- maybe you can just tell us what
3 your understanding was of how the frozen lumps of
4 snow that Mr. Penkala found were either evidence
5 for or against or neutral with respect to Mr.
6 Milgaard.

7 A Well, Mr. Hodson, without actually reading all
8 that, I --

9 Q Okay. We'll go through it. Maybe we'll just --
10 what we've already heard is that the frozen lumps
11 were identified as being human semen, human
12 spermatozoa, and that it was identified to be from
13 a person who was blood type A and a secretor. Do
14 you remember that?

15 A I take that as --

16 Q And at the time the blood tests done on Mr.
17 Milgaard showed that he was blood type A and the
18 test as to whether or not he secreted antigens
19 into his bodily fluids when Mr. Paynter conducted
20 that, he did not find any antigens and I think his
21 evidence before this Inquiry was that that didn't
22 mean that Mr. Milgaard was a non-secretor, what it
23 meant was that he didn't find any antigens in his
24 bodily fluids. Some, at least in the documents at
25 the time, termed that to be a non-secretor.



1 A Yeah. I believe that what he said at that time
2 was that Mr. Milgaard was a non-secretor. I think
3 all that more detailed evidence came along later.

4 Q Yes.

5 A And I made a point of putting that into evidence
6 with the knowledge that it pointed away from Mr.
7 Milgaard.

8 Q Okay. And so -- and I think we have seen evidence
9 that much later on when Mr. Milgaard was tested,
10 that in fact he is an A secretor, but that wasn't
11 established at the time; is that fair?

12 A That's my understanding, sir.

13 Q And that as well I think, and we'll get into this,
14 is that there was evidence called at the
15 preliminary hearing and trial seeking to explain
16 how an antigen from blood could find its way into
17 semen if the donor was a non-secretor, and I think
18 if I can summarize it, if Mr. Milgaard's blood got
19 into his semen, that that would explain why
20 antigens were found in a frozen lump of snow; is
21 that a fair summary?

22 A I take that to be right.

23 Q And if he had been known at the time to be an A
24 secretor, then the reasons his antigens might be
25 in his semen is because he's a secretor; is that



1 fair?

2 A I assume so.

3 Q So apart from the blood issue then, I think that
4 the physical evidence, and again I think we talked
5 about the knife being -- Mr. Wilson and Ms. John
6 testified about the knife being seen in Mr.
7 Milgaard's possession, but no other physical
8 evidence; is that fair?

9 A Ah, yeah, in the --

10 Q Physical evidence in the sense of maybe
11 forensic. I'm not sure if that was used at the
12 time. I'm talking fibres, blood, things of that
13 nature.

14 A I think you are right.

15 Q And then if we can go look at the evidence that
16 was supportive, I guess, of the Crown theory that
17 Mr. Milgaard had committed the crime, and to look
18 at the other side of the coin for a moment, the
19 fact that, and I don't think you had any evidence,
20 that you had a witness that could corroborate the
21 story of Wilson and John, that they were in behind
22 the funeral home; is that correct?

23 A I think you are right, sir.

24 Q So in other words, that you had Wilson and John,
25 their version was that they were there?



1 A Yeah.

2 Q And yet Mr. Milgaard's statement saying they
3 weren't there, but you didn't have any third party
4 who could say I saw their vehicle or I saw them in
5 the area; is that fair?

6 A I think that's correct.

7 Q And then as far as the blood sighting we have, and
8 we touched on this yesterday, the Danchuks, who
9 said afterwards they saw Mr. Milgaard and noticed
10 no blood and nothing unusual, that would be
11 something that might be a factor in saying, well,
12 that might suggest he didn't commit the crime; is
13 that fair?

14 A Yeah, it could be.

15 Q And Mr. Rasmussen at the Trav-a-leer Motel also
16 observed Mr. Milgaard and saw no blood on him;
17 correct?

18 A Same -- same reasoning there I assume.

19 Q Now let's talk about the time element to commit
20 this offence given -- let me just sort of walk
21 through and I want to know sort of how you dealt
22 with this and what you thought at the time. I
23 think it was known that Gail Miller likely left
24 her house at about 6:45 a.m., plus or minus five
25 minutes?



1 A I'm sure that's right. I can't obviously say for
2 sure.

3 Q I would suggest that that's the case, 6:45 to
4 seven, somewhere in that time frame.

5 A Yeah.

6 Q And I appreciate your evidence yesterday that you
7 said times are somewhat varied based on who's
8 telling the time; is that --

9 A Well, yeah, not with any element of
10 untruthfulness, but --

11 Q So we have that time frame that is important, what
12 time she left; correct?

13 A That's right.

14 Q And then we also have evidence from the
15 Trav-a-leer Motel, Mr. Rasmussen, that says he saw
16 Mr. Milgaard that morning, and I think it was
17 concluded that that would have had to have been
18 after the murder had taken place; is that --

19 A I assume that, sir, as well.

20 Q And the time frame I think Rasmussen was shortly
21 after seven and I think his evidence at trial was
22 as late as 7:30 a.m., so that would be an
23 important time frame?

24 A I would agree.

25 Q And then the Danchuks who said they saw the



1 Milgaards at about 7:40, so that would be after
2 the Trav-a-leer?

3 A I would agree.

4 Q And so did you consider, in assessing this case,
5 whether it was, whether there was an issue as to
6 whether or not, if Mr. Milgaard was the
7 perpetrator, that he in fact could have done all
8 these things to Gail Miller in that time frame?

9 A Implicitly I must have concluded that it was not
10 out of the question I assume.

11 Q And you say that because otherwise you wouldn't
12 have proceeded?

13 A Well, there could be a decision, if I viewed the
14 time business that way, I could have been -- had,
15 in effect, had to make that decision. I didn't do
16 that obviously.

17 Q And was that an issue, and I think we'll see that
18 in the submissions to the jury, was that an issue
19 that was raised by defence counsel?

20 A I can't tell you in terms of cross-examination and
21 so on.

22 Q Submissions to the jury?

23 A I would assume it was.

24 Q And --

25 A I haven't read Mr. Tallis' closing recently, sir.



1 Q I believe there is reference made to the timing,
2 so again I'm just wondering from your -- would it
3 be fair to say you were mindful of that, that the
4 time frame was important, and would you go so far
5 as to say may have been typed or --

6 A Oh, yeah, I would, and subject, without repeating
7 it to my, what I said yesterday, that I found time
8 and again that these times are not usually, you
9 know, precisely measurable.

10 Q And then we talked yesterday about the coat and
11 the stab marks, and I don't want to go over that,
12 but again I think you said it was unusual and that
13 the fact that if Nichol John saw David Milgaard
14 stabbing the girl and those were the stab marks
15 that went through the coat and in fact caused the
16 death, that her uniform would have to be off
17 before that could happen?

18 A That would be my understanding.

19 Q And I think in fairness, Mr. Caldwell, and we'll
20 see this in your jury, opening remarks to the
21 jury, I think your position to the jury was that
22 the Crown could not explain that?

23 A I think that's right.

24 Q So that was out there as something that was,
25 couldn't be explained, and did you consider that



1 that might be something that was favourable to the
2 accused; in other words, that might cast some
3 doubt on whether or not what Ms. John said was
4 true?

5 A It could very well have done that.

6 Q We talked about the right hand, left hand, the
7 fact that Mr. Milgaard was left-handed and that
8 two things, I think Nichol John said she saw him
9 jabbing the girl with the knife in his right hand
10 and I think Dr. Emson's evidence was that the
11 wounds in Gail Miller's body were consistent with
12 an assailant who was right-handed?

13 A Uh-huh.

14 Q You recall that?

15 A I do.

16 Q And again, would that be something that you might
17 put on the other side of the ledger saying, well,
18 that might suggest that Mr. Milgaard may not have
19 done it?

20 A Yes, yes.

21 Q What about -- I talked about timing. Did you ever
22 consider or think about -- the version of events
23 from Wilson and John were that they stopped Gail
24 Miller and I think the Crown theory was walking
25 down Avenue N?



1 A That's right.

2 Q Towards 20th Street, stopped and asked her for
3 directions, then drove up, did a U-turn, got
4 stuck, got out, tried to push the vehicle,
5 couldn't, and then Mr. Milgaard left the vehicle.
6 Do you remember that basically?

7 A I believe that's --

8 Q And John and Wilson differed on where the vehicle
9 got stuck?

10 A Uh-huh.

11 Q But did you ever consider the time frame for that
12 vehicle to do the U-turn, get stuck, try and push
13 it out, and I think Mr. Wilson's evidence was
14 about 30 seconds, that by the time Mr. Milgaard
15 was done that, that Ms. Miller would be at 20th
16 Street at the bus stop likely?

17 A I can't recall specifically considering that.
18 It's certainly an arguable point when you raise it
19 that way.

20 Q And so I'm just wondering whether that was
21 something, or again would that be something that
22 you would let the jury sort out?

23 A Yeah, to that -- that's correct because we didn't
24 have any evidence to expand or improve on that, we
25 had that set of facts, and that, Mr. Hodson, would



1 be what would have to happen. The jury might well
2 have, who knows, disbelieved them based on that.

3 Q Okay. But again from your perspective, did you
4 ever go back to Wilson and John or to the police
5 and say lookit, how could -- how could Gail --
6 Gail Miller would be at the bus stop by the time
7 Mr. Milgaard left the vehicle on 20th Street, a
8 busy street, this doesn't fit. Do you recall
9 anything of that nature?

10 A I don't. I don't recall me going back and putting
11 that to the investigators.

12 Q Would you -- and again your practices at the
13 time -- when you sat down and reviewed this case,
14 do you think you would have got into those types
15 of details, sort of challenging matters trying to
16 get everything explained?

17 A Well, I guess internally in reading the thing
18 myself I would consider all those things. I'm not
19 sure if I went beyond that to, in effect, bounce
20 them off someone else, one of the investigators or
21 whoever.

22 Q Did you -- and also, did you ever consider, and
23 again at the time you were sort of reviewing the
24 case and perhaps assessing Nichol John, that if
25 she in fact saw Mr. Milgaard stab a girl, that she



1 then ended up going on a trip with him for the
2 next three days, did you find that to be unusual?

3 A Well, unusual in the overall sense, but the
4 evidence as it was in the case was that she got
5 back in the car, I think this was Wilson's
6 evidence, that John was over as far as she could
7 on the seat, in effect to get away from him, and
8 if there wasn't evidence I certainly -- I think
9 there may be some evidence to the effect that she
10 was not prepared to try to get away from him on,
11 you know, in that setting, because of fear of him.

12 Q Okay.

13 A And I hope -- that would be, you know, make sense
14 to me.

15 Q Because one theory I think we've heard or read
16 somewhere is that if she had witnessed him
17 stabbing a girl, that she might not want to spend
18 the next two or three days with him?

19 A Well, that may be, but there has to be a sensible
20 opportunity for her to escape intact herself as a
21 person in that scenario who has just seen an
22 attempted murder or murder.

23 Q And what about at the Cadrain house, did you ever
24 consider that?

25 A I -- that would be one in a sort of sequence of



1 events when she was still along. I don't recall
2 ever considering that, Mr. Hodson.

3 Q What about as well, and I don't think we need to
4 bring up the statement, but Nichol John on her May
5 24th, 1969 statement, and this is after she is
6 interviewed by Inspector Roberts, not polygraphed,
7 but interviewed --

8 A No.

9 Q -- she gave the statement to Raymond Mackie the
10 next day and in it she uses words to the effect
11 that, 'I didn't remember that I had witnessed a
12 murder until yesterday,' being when she was with
13 Mr. Roberts.

14 A Uh-huh.

15 Q And I'm wondering, did that ever cause you concern
16 as to how someone could not remember a murder?

17 A Well, I think it's a phenomenon that very
18 unpleasant sights can trigger a layman, if you
19 will, to block the memory because it is so
20 unpleasant, and I'm probably misstating it,
21 there's something called hysterical amnesia, Mr.
22 Hodson, that could have happened here, and what
23 happened to her on the -- was this on the day of
24 the polygraph or thereabouts?

25 Q Well, she didn't have the polygraph.



1 A Yeah, I understand that.

2 Q The evidence is that when she was interviewed by
3 Inspector Roberts, shown the nurse's uniform, that
4 she then, according to Inspector Roberts, and I
5 think to Nichol John in her statement, said that
6 she then recalled witnessing the murder.

7 A Yeah, and I undoubtedly knew that and I would -- I
8 couldn't discount that as something that would
9 bring back her memory because of the shock of
10 looking at the state of the uniform.

11 Q Okay. If we could go to 007049, I want to go
12 through some of your notes, Mr. Caldwell, and I'm
13 wondering, Mr. Commissioner, Mr. Caldwell's
14 original notes have I think different coloured ink
15 for different notes and I understand from his
16 counsel that she may wish to have sort of the
17 colour version of his notes for him to look at
18 when I ask questions, which is quite fine.
19 Perhaps if --

20 A I think that would be helpful, Mr. Hodson.

21 Q Yeah. I don't think we need them up on the screen
22 unless there's something in particular, but I
23 think, does he want to look at his file?

24 MR. KNOX: I'm just wondering if you are
25 talking about the notes from file number 1?



1 MR. HODSON: Yes.

2 A Thank you.

3 BY MR. HODSON:

4 Q And find page 30 in the top right-hand corner.
5 Did you find it?

6 A Not readily, sir.

7 Q These numberings, by the way, were done by the
8 RCMP I believe.

9 A Yes, I think so. I have that, sir, that page.

10 Q And it says at the top, 'Thursday, August 7,' and
11 I think that's 1969. Is that correct?

12 A Yes. Yup.

13 Q And it says 'questions re facts' and at the top we
14 see F1 and then the next page is F2, F3. Does
15 that refer to facts?

16 A I think so.

17 Q And so this would be August 7th, the prelim starts
18 on August 18th. Do I take it these are your notes
19 that you made regarding the facts?

20 A That's how I see it, sir.

21 Q And if we can go through, number 1, 'summary,
22 P.2 --?' do you know what that refers to?

23 A Summary, page 2, question mark, I've noted 'ask
24 R.M.,' which would be Ray Mackie, 'Monday, August
25 11th.' I hope something else shows up about that.



1 Q That's fine, I don't know if anything turns on it.
2 And again point 2, and you've got a check mark,
3 are check marks when something has been done?

4 A Not necessarily. I see they run out halfway down
5 the page, but I would think it would mean that
6 with these, Mr. Hodson.

7 COMMISSIONER MacCALLUM: Sorry?

8 A I would think, Mr. Commissioner, that that would
9 mean that it had been done with respect to these
10 three or four or five check marks.

11 COMMISSIONER MacCALLUM: Oh, okay.

12 BY MR. HODSON:

13 Q And, 'ask R.M. Monday August 11,' would that be
14 Ray Mackie?

15 A It would.

16 Q And is it fair to conclude that you would have
17 asked Mr. Mackie about some of these questions re:
18 the facts?

19 A Yes.

20 Q So number 2 is, 'outline page 3, anyone (mother
21 etc) describe Miller's compact as John can,' and
22 then it looks like different coloured ink?

23 A Yeah.

24 Q It may in fact be the answer from Mr. Mackie,
25 'sister better'.



1 A All those are my writing and I assume that answer
2 came from him.

3 Q So can we take it from that you are trying to find
4 somebody who can tell you or tell the Court what
5 was in Gail Miller's compact?

6 A Describe it. Her sister would be better for that
7 than whatever else we had.

8 Q Okay, right.

9 A Is that --

10 Q Yeah. Then it says, 'Peggy Miller, Gail's letters
11 - did she find? Significance of this
12 would Milgaard be having intercourse with Gail.'
13 I assuming SI is sexual intercourse?

14 A Yes.

15 Q 'With Gail in Swift Current. If this is true, did
16 PM,' who I think is Peggy Miller, 'think this up.'

17 A Yeah.

18 Q And you will recall that Peggy Miller gave a
19 statement to the police that Gail Miller knew
20 David Milgaard from Swift Current. Do you
21 remember that?

22 A I -- yeah.

23 Q And it's got a note here, 'asked Ray Mackie' and
24 then this ink, 'R. thinks so'?

25 A That indicates -- I put that question to him and



1 he felt that was so.

2 Q So on August the 7th, 1969, it appears from these
3 notes that you have asked Mr. Mackie about Peggy
4 Miller's statement about Gail knowing David
5 Milgaard and Mr. Mackie says that he thinks she
6 may have made this, think this up?

7 A Yeah. The left hand, Mr. Hodson, it was evidently
8 Monday, August 11th and the list was made on the
9 other date.

10 Q Yes.

11 A Do you see those checks?

12 Q Yeah.

13 A And that's what I would say that means.

14 Q Do I take it from this, though, that on August
15 11th, then, at this point you had satisfied
16 yourself that Peggy Miller's statement that Gail
17 Miller knew David Milgaard from Swift Current was
18 not likely correct?

19 A Uh, I think that's implicit in that.

20 Q And that was based on Ray Mackie telling you that?

21 A Yeah, because he was the one with the knowledge.

22 Q If we could scroll down, please, and then it's
23 got, 'Need Fogel to give body temp and estimate
24 time of death.' Fogel was the coroner; is that
25 right?



1 A That's right, Dr. Sidney Fogel.

2 Q And then I, which I think is -- you tell me if I'm
3 not using the correct full names, but, 'Ian
4 McDonald re Dr. Andrew, Yorkton, and his medical
5 history.'

6 A That's all correct, sir.

7 Q And what does that refer to?

8 A Oh, I assume someone suggested that a Dr. Andrew
9 of Yorkton had a medical history, or some of it,
10 on David Milgaard is the way I take that.

11 Q Is --

12 A That would be part of the whole effort of being
13 ready to deal with any defence of drunkenness or
14 insanity in the murder trial if it happened.

15 Q So would this be you getting Dr. McDonald to get
16 this information or --

17 A It would, but I can't see any evidence that
18 anything happened on that. There's no check mark.

19 Q And then number 6, it says M, which I'm assuming
20 is Milgaard, 'Milgaard's statement to Karst - how
21 many useful admissions in it to use versus
22 Milgaard if he testifies - such (a) as he didn't
23 know what he did with clothes; - (b) denied there
24 was blood on clothes; (c) in alleys trying to find
25 St. Mary's cathedral and Cadraains. Get declared



1 voluntary and then don't tender and save for
2 cross-examination'?

3 A Yeah. There wasn't a procedure, and there's a
4 reported case, I think Mr. Halyk was involved, in
5 which the Crown could have statements proven
6 voluntary and hold them in case the accused
7 testified, and I think that's what that refers to,
8 there may be a citation show up later.

9 Q So would this be a note of yours saying, to
10 consider doing it, you've got a question mark that
11 maybe you will get, prove that Mr. Milgaard's
12 statements were voluntary and use it in
13 cross-examination if he were to testify?

14 A That would be it. It says, 'get declared
15 voluntary, then don't tender, save for
16 cross-examination,' the bottom.

17 Q And down at the bottom, number 7, I'm assuming
18 that's 'seminal fluid on panties indicates sexual
19 intercourse took place at time of killing,' and
20 then, '- lack of signs on her,' and I'm assuming
21 that's private parts?

22 A That is.

23 Q Correct?

24 A Yeah.

25 Q 'Ask Emson if this mitigates against sexual



1 intercourse then, or was it post death and
2 therefore post,' and then 'resistance?', and then
3 in a different coloured pen it says 'could be from
4 previous sexual intercourse.' Can you tell us
5 what that refers to?

6 A Somebody must have -- that question was put to
7 someone and they came back and told me that one of
8 the explanations could be previous sexual
9 intercourse. I don't see it there, but I would
10 have assumed that would be Dr. Emson, Mr. Hodson.

11 Q And so would this be a note where -- it says
12 'questions re facts,' at the top, trying to sort
13 out how it was that Gail Miller didn't have injury
14 on her private parts?

15 A Well, that was a question, yeah.

16 Q And then the writing at the bottom, can you tell
17 from your file, is this something you wrote in
18 later, did someone give you that information or do
19 you know?

20 A Yeah, somebody did. I can't -- there's no date or
21 anything on it, but someone definitely did.

22 Q Next page, please, 7049. So we see now F1 was the
23 previous page, F2, and we go to number 8 --

24 A Just a minute, sir. Oh, yeah. Okay.

25 Q And, 'whole significance of seminal fluid probably



1 being ex secretor group A'?

2 A That would be my shorthand for from a secretor of
3 group A, the ex part.

4 Q Ex being from?

5 A Ex being from A.

6 Q Okay, from a secretor group A. 'See page 290 -
7 Paynter, Emson and Paynter re'.

8 A Yeah.

9 Q And if you can call up 009 -- and you'll see here
10 this 290 -- I'll call you to the police report,
11 009374 is the doc ID, and go to 009384, and you'll
12 see up at the top there's 289. If you go to the
13 next page, please, you'll see 290?

14 A I see that.

15 Q And then it looks as though this is Paynter's
16 remarks about a secretor; is that correct?

17 A That's right.

18 Q So you would have made a reference to, I take it,
19 the police file then from your question re:
20 facts?

21 A Well, yeah. This -- Paynter's report would be
22 part of the police file in that sense and he
23 explains what the -- what you can read into that
24 if you will.

25 Q If we can go back to the handwritten note, please,



1 007049, number 9. M, who I presume is Mil --

2 A Yeah.

3 Q Milgaard's statements. Number 1, "Karst -
4 Winnipeg - March 3.' 2, 'Barrett - Saskatoon -
5 April 18th,' and then a question mark, 'are there
6 more?' and then it looks like again different
7 coloured pen, 'no more statements, more
8 conversations.' Can you tell us what that means?

9 A Somebody advised me and I wrote that, 'No more
10 statements, more conversations'. It doesn't
11 identify who, but I would assume it would have
12 been either Karst or Barrett, but I can't be
13 positive of that.

14 Q And if we can go down to number 10, you write,
15 'Has Wilson been eliminated as rapist?'

16 A Uh-huh.

17 Q '(Blood and saliva taken for test (P. 374)';
18 do you know what that refers to?

19 A Well at that stage I apparently wanted to know if
20 he had been eliminated scientifically, because it
21 goes on to talk about blood and saliva taken for a
22 test, and that would be one of the things I would
23 think I would want to be reassured of.

24 Q So is this a note where you are wanting to follow
25 up to make sure that Wilson was eliminated as the



1 rapist?

2 A That would -- yeah, or not, as the case may be.

3 Q And then, if you will see at page 374, if we call
4 up 009261 you will see at the top right 374, and
5 this is a police report that says Wilson's blood
6 type is group B; do you see that?

7 A Yeah.

8 Q And so can we infer, from that, that your note,
9 you are simply referring to the report that
10 confirms Mr. Wilson's --

11 A I would -- oh yeah, I see the page is the same,
12 yes, I would think that.

13 Q Go back to the notes, please. And number 11 it
14 says, 'Area search for Dodge Chrysler '67-8 cream
15 that helped them when first stuck'.

16 A Yes.

17 Q And that's the description of the vehicle that Ron
18 Wilson said came along and the two fellas helped
19 him push out.

20 A Uh-huh.

21 Q Could you tell us what that 11 refers to?

22 A Well that would be my note to follow up whether or
23 not they did an area search for the vehicle, and
24 presumably whether or not it showed up. There is
25 no indication that that happened in the note, Mr.



1 Hodson, it might be later.

2 Q Okay. Number 12, 'He told someone he got rid
3 of' --

4 A Brother?

5 MS. KNOX: 'Clothes'.

6 A Oh, I'm sorry, 'clothes'.

7 BY MR. HODSON:

8 Q 'Told someone he got rid of clothes because
9 battery acid on them, who', and then it says
10 'Cadrain's or Karst's first statement', 'Albert
11 Cadrain or Karst's first statement.'

12 Now do you know what that refers
13 to?

14 A Oh, that --

15 Q And let me just maybe, let me just go through the
16 note and I'll come back.

17 A Sure, that's fine.

18 Q I think this is referring to Mr. Milgaard. 'He
19 told someone he got rid of clothes because battery
20 acid on them, who?', and then you've got 'Cadrain
21 or Karst, get this declared admissible and hold in
22 case he testifies'. Now --

23 A That had would be the same situation I just
24 mentioned a moment ago.

25 Q And then it says, 'Call Mrs. Wilson in rebuttal



1 about acid, clothes changed in Regina pre leaving
2 for Saskatoon.'

3 So do I take it, from that, what
4 you are saying is Mr. Milgaard told someone he got
5 rid of his clothes at Cadrain's because the
6 battery acid was on them, and you say 'who', and I
7 think that comes from Cadrain's first statement.

8 A Uh-huh.

9 Q You then say get this declaration that Mr.
10 Milgaard made admissible and hold in case he
11 testifies?

12 A Uh-huh.

13 Q And then, if he does, call Mrs. Wilson in rebuttal
14 to say that he had changed his clothes in
15 Regina --

16 A I see.

17 Q -- for the acid; is that --

18 A That would make sense in that it would rebut the
19 statement that he still had acid, just, damaged
20 clothing in Saskatoon, as I read it.

21 Q Yeah. And if you will recall earlier I had
22 mentioned that there was some theory that, or an
23 issue about whether Mr. Milgaard had changed his
24 clothes in Regina before he left or not.

25 A Uh-huh.



1 Q Because, if he did, then he wouldn't need to
2 change them the next morning because of the acid?

3 A I can assume that's right, sir.

4 Q And then 13, it says, 'Why M', who I presume is
5 Milgaard --

6 A Yeah.

7 Q -- 'walking without shoes? They ever show up?'
8 And it says 'not known' and 'no'.

9 A Yeah, that's what I --

10 Q So would you follow up, when you have these
11 comments here, would you follow up with Mackie, or
12 other police officers, and ask these questions?

13 A I, yeah, I would. The, going back to the page 1,
14 that, 'Ask R.M.', is Ray Mackie, 'Monday, August
15 11th', and I evidently asked him questions 1, 2,
16 3, 4, and I don't see -- but that's what I would
17 do is follow it up with some police officer,
18 depending on who you would expect to have the
19 evidence.

20 Q And then, if we can go down to the 14, 'Do we have
21 Nichol John's coat?', and an answer, 'Yes,
22 P. 393'. We don't need to call it up, --

23 A Okay.

24 Q -- that's the report that deals with it.

25 And then 15, 'What known re:



1 Milgaard assaulting another girl in Regina (Karst
2 at page 392)', and then it says, 'This was Nichol
3 John in park previous summer and at Champs Hotel
4 or Wascana previous afternoon or evening'; is that
5 right?

6 A Yeah. I think, above it, it says, 'That a.m. in
7 previous afternoon'. Oh, 'That a.m.', I think
8 it's 'or', Mr. Hodson.

9 Q Okay. It says, 'Nichol John in park previous
10 summer' and, 'Previous afternoon or evening Champs
11 Hotel or Wascana'?

12 A And 'Wascana', I think, is 'Wascana Hotel'.

13 Q I'm sorry.

14 A No, I --

15 Q And then it says, 'Karst page 392'?

16 A Yeah.

17 Q And if we could call up --

18 A Okay.

19 Q -- document 009264, and this is the May 25th
20 police report of Mackie, your note said page 392.
21 If we can go to 391, which is 009268 at the
22 bottom, and this is Mackie's report -- or pardon
23 me, Mr. Karst' report, it says:

24 "Inquiries have been made in Regina in
25 regards to Milgaards whereabouts,



1 however, no one had any information to
2 offer with regards to his present
3 employment or residence, in fact, it was
4 revealed to me by the Wilson youth that
5 Milgaard assaulted another girl in
6 Regina and that he was being sought by
7 various members of the Criminal Element
8 in that Centre, and if the Police didn't
9 get to Milgaard before they do, they
10 didn't need to worry about him."

11 And then you will see, up at the top, 392;
12 correct?

13 A That's right.

14 Q And so if we can just go back to 007049.

15 A Is that the --

16 Q And just down at the bottom you will see that --
17 that's the page 3 -- I take it that your note was
18 referring to that police report that I just read
19 to you?

20 A I assume, yeah, it would have to be.

21 Q And why would you be trying to get information
22 about whether Mr. Milgaard had assaulted another
23 girl?

24 A Well just, I would think, under the general
25 heading of trying to assess his, oh, not



1 polygraph episode in the case, and that was the
2 one of Inspector Roberts. Now, 'What did
3 polygraph test produce?', I talked to someone,
4 maybe even him, and the answer was, 'Only helped
5 Wilson - not used on John'. I think, clearly, it
6 was only used on Wilson, was what we meant in that
7 note.

8 Q Had you ever been involved with polygraph before
9 this case?

10 A No, sir.

11 Q Did you have an understanding, at the time, as to
12 what or how it worked or what it did?

13 A It was extremely limited, and so-called lie
14 detector, but I hope it was more than that.

15 Q And what was your understanding of what, what the
16 polygraph accomplished?

17 A I would assume or understand that it would tell
18 the operator if certain questions were being
19 answered truthfully by the subject.

20 Q And as far as Ron Wilson and his polygraph and the
21 statement that he gave after his meeting with
22 Inspector Roberts, what did you understand what
23 statements that Mr. Wilson had made, what did you
24 understand was tested by Inspector Roberts?

25 A I would have to look back at it, but --



1 Q Just generally?

2 A Yeah. I would assume that he was, he was testing
3 or dealing with the first statement, which could
4 -- didn't seem to add up with the known evidence,
5 and as a result of Mr. -- of the test, he -- it
6 ended up with Mr. Wilson giving, if you will, a
7 new or a second statement, did it not, is my
8 memory.

9 Q Did you understand, as far as the incriminating
10 statement where Mr. Wilson said that Mr. Milgaard
11 had admitted jabbing a girl with a knife in
12 Saskatoon, you recall Mr. Wilson's incriminating
13 statement; correct?

14 A Yes. Now if it -- is it the post-polygraph,
15 so-called?

16 Q Yes.

17 A Yes, I do.

18 Q And what did -- did you understand that that
19 statement was tested?

20 A Umm, no, I thought that was the -- wasn't that the
21 statement that he gave after the test?

22 Q Yes. Well, let me rephrase it this way.

23 A Okay.

24 Q When Inspector Roberts -- let me back up. Did
25 in -- did you understand Inspector Roberts to say



1 "what Mr. Wilson told me is not true" or -- and/or
2 "what Mr. Wilson has told me now is true"?

3 A Well, it would be the latter, I would think. He
4 made -- like we've heard that it's characteristic
5 to ask questions that people are bound to tell
6 untruths to and then go on to the other evidence,
7 I think we heard.

8 Q Let me ask it this way. Did you understand that
9 Mr. Wilson's incriminating statement, the
10 statement that incriminated Mr. Milgaard, did you
11 understand at the time that that statement had
12 been verified by way of the polygraph examination?

13 A Either that or it had -- it had actually been --
14 come out of the polygraph examination.

15 Q Right.

16 A I can't at the moment, without looking back --

17 Q Okay. We'll maybe go -- I think there's some
18 notes here later about some questions.

19 A Okay.

20 Q And then at the bottom here it says, I'm not sure
21 what the letter C is, 'Why does Milgaard tell Barb
22 Berard who tells M John that he is going to be
23 picked up for murder', and I think that's Barbara
24 Wispinski, and there is a reference in Nichol
25 John's March 11th statement to Riddell where she



1 says that Barb Berard told her that she heard from
2 David Milgaard that he thought he was going to be
3 picked up for murder.

4 A Uh-huh.

5 Q And then it says, 'R.M.', who I presume is Ray
6 Mackie, 'May be post-Winnipeg (B doesn't know)',
7 which I'm assuming is Berard, --

8 A Yeah.

9 Q -- and, 'Therefore of no significance'?

10 A That's what Mackie undoubtedly told me.

11 Q And so do I have that correct in that Mackie is
12 saying, 'Lookit, Berard would have talked to Mr.
13 Milgaard after Milgaard was questioned in Winnipeg
14 and that might explain why --'

15 A Yeah.

16 Q '-- why he said that and therefore of no
17 significance', is that --

18 A Yeah, it says 'may be', and that would be the
19 explanation if it was, in fact, done in that
20 order.

21 Q And if we can then go to 007052, which is the next
22 page, and this has got L1 at the top, which is
23 that -- and Questions re Law; is that how you put
24 your notes?

25 A Well, this once I did, and --



1 Q And then it says Questions re Law. Would this be
2 around the time, August of '69, when you were
3 doing the facts?

4 A Umm --

5 Q It follows your notes F1, F2, F3 --

6 A Yeah.

7 Q -- in your file.

8 A Okay. See if they are --

9 Q I'm not sure if anything turns on the date.

10 A No, but see if there are dates on those. Yeah, I
11 see Thursday, August 7th is the first page.

12 MS. KNOX: There's numbers to identify by
13 the RCMP numbers, 27, so it's towards the back of
14 the file.

15 BY MR. HODSON:

16 Q I see. Have you got the document?

17 A Yes. Yeah, that's the one I have, Mr. --

18 Q And so can you tell us, would this have been
19 around the time that you -- within a -- within
20 days or weeks of when you did your questions on
21 the facts?

22 A I assume so.

23 Q And it says, number 1, 'Get in evidence via John
24 that Wilson told her that Milgaard told him of
25 killing? Exception to hearsay?'



1 A Uh-huh.

2 Q Can you tell us what that refers to?

3 A Well, let's see. Ordinarily that, I guess one
4 civilian talking to another in that fashion would
5 be presumed to be hearsay. I evidently thought it
6 might be an exception to that for some legal
7 reason, I can't see what I came up with, if
8 anything.

9 Q So this would be -- certainly Wilson could testify
10 as to what Mr. Milgaard told him; right?

11 A Oh, certainly. It might be a -- to see, if that
12 could happen, that it would in effect corroborate
13 Wilson I suppose.

14 Q Right. So you were looking at can you get in, as
15 an exception to hearsay, can you get Nichol John
16 to say that "Wilson told me that Milgaard told
17 him"?

18 A Umm, is that -- yeah, essentially.

19 Q Yeah. And then it says, 'Conversation on way
20 Saskatoon re purse snatch admissible as motive
21 or', and then question mark?

22 A Yeah.

23 Q And then different pen, it looks like, 'Karst was
24 told this by Wilson and likely in Nichol John's
25 statement also'.



1 A Yeah.

2 Q Can you tell me what that refers to?

3 A Well that's the conversation that's been mentioned
4 earlier on the way to Saskatoon. I evidently
5 spoke to Karst, who related that he -- Wilson told
6 him that, and that it was -- had likely been, or
7 would likely be in Nichol John's statement as
8 well.

9 Q Okay. And if we could then go to 007040, please.
10 And this is a letter of July 1, '69, from the RCMP
11 to Superintendent Wood, and this references the
12 elevator break-in, and Mr. Weafer says they have
13 been instructed to lay a charge for break enter
14 and theft:

15 "... against Milgaard and have done so.
16 The charge will be held here pending the
17 outcome of your proceedings against the
18 individual."

19 And then 2:

20 "You may wish to advise your prosecutor
21 of the additional Information laid ...",
22 in co-operation, etcetera. And this was on your
23 prosecutor's file, so I take it that you would
24 have been aware that Mr. Milgaard, that a charge
25 had been laid for -- for the break-in at the



1 elevator?

2 A When I got that letter I would have.

3 Q And then if you can go to 009226, and this is on
4 your file as well, and I think it's referred to
5 by -- I'm not sure if that's the police report
6 number or not, but this is the RCMP investigation
7 report that they prepared relating to the elevator
8 break-in, and it appears that this was -- if I can
9 go to the next page -- received by the Saskatoon
10 Police on June 11th, '69, and then it appears sent
11 on to you on your file sometime shortly after
12 that; is that --

13 A Well, I'm not sure about that last statement, sir.

14 Q Did --

15 A Are you saying it was on my file --

16 Q Yes.

17 A -- as it were?

18 Q Yeah. This, the letter from Weafer to Wood is on
19 your file --

20 A Uh-huh.

21 Q -- as is this RCMP report, and it looks like the
22 RCMP report went to the city police, and that the
23 city police would have given you this, perhaps as
24 part of the court brief. In fact, I can go back
25 and probably identify that for you. Are you



1 doubting that that was on your file?

2 A I -- I -- I'm sure, if you can show me, not a
3 question of, you know, that it was on my file.
4 There have been, there have been discoveries in
5 this case that various RCMP things did not come to
6 the city police, as I understand it, but went
7 cross-country and up to F Division or
8 headquarters, or whatever the terminology was. I
9 just caution on that, Mr. Hodson, because I
10 understand that's happened.

11 Q Well it appears that this information would have
12 been given to you --

13 A Okay.

14 Q -- in June or July of 1969 on your file?

15 A Okay.

16 Q And I take it you are saying you can't tell me
17 whether it was or it wasn't?

18 A Well I don't, I don't dispute that it was, if it's
19 in the material you've --

20 Q And I guess my question is -- or let me back up.
21 We have heard a fair bit of evidence in this
22 Inquiry that the RCMP were involved in assisting
23 the Saskatoon City Police in the investigation of
24 the Gail Miller murder; you are aware of that?

25 A Uh-huh, right.



1 Q And Riddell and Edmondson are names that have come
2 up?

3 A Yes.

4 Q Back in 1969 and '70, in the prosecution of Mr.
5 Milgaard, do you recall receiving any RCMP reports
6 from any of the RCMP officers who were involved in
7 the investigation of the Gail Miller murder?

8 A I, not off the top, I don't.

9 Q And if it may assist you, Mr. Caldwell, two
10 things; I think we've heard evidence from the
11 Saskatoon City Police that they didn't get them;
12 and secondly I can tell you that, based on the
13 file that we've been provided as being your file,
14 there is no -- the RCMP reports are not on that.

15 A Well, Mr. Hodson, I think I learned all of that,
16 if you will, relatively recently --

17 Q Yeah.

18 A -- during the Inquiry, and it's what I understand
19 to be the situation, so that's why I don't wish to
20 --

21 Q Yeah.

22 A You know.

23 Q And I guess my question concerns as to why you
24 would get an RCMP report regarding the elevator
25 break-in but not RCMP reports relating to the Gail



1 Miller murder investigation; are you able to
2 answer that?

3 A Yes, well I knew Corporal Weafer, when I started
4 prosecuting in Regina I think he was on highway
5 patrol. He undoubtedly knew I was prosecuting,
6 and that would be a very straightforward
7 explanation, I -- of one way it could have
8 happened.

9 Q Do you recall back, as part of the prosecution,
10 being aware that the RCMP had their own reports,
11 or seeking to get their reports on the Gail Miller
12 murder investigation?

13 A Umm, I, umm, I know about the inspector -- pardon
14 me -- I'm not sure, sir, of that. Maybe you could
15 expand on that a bit?

16 Q No, I'm just wondering if you could recall, there
17 is no reference that the police, the Saskatoon
18 City Police, had them or sent them to you --

19 A No.

20 Q -- and I'm just wondering if you have a
21 recollection of whether you would have asked any
22 RCMP officer at the time for any reports?

23 A No, I don't think so, and I would have expected
24 that any -- anything that mattered would have come
25 to me through the city police even if the RCMP



1 were investigating it.

2 Q I see. So that if there was a report you would
3 expect to get it from the city police?

4 A Yes, if it went anywhere, and as opposed to what I
5 call cross-country.

6 Q I see.

7 A Yeah.

8 Q And I think, in fact, this report that's on your
9 file appears to have been sent to the city police?

10 A I, yeah, oh yeah. That's got the police
11 department received date stamp on it.

12 Q Yeah. This is probably a good spot to break.

13 *(Adjourned at 11:59 a.m.)*

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

15 BY MR. HODSON:

16 Q If we can go to 007045. I now wish to turn, Mr.
17 Caldwell, to the preliminary hearing which we know
18 began on August 18th, 1969 and your dealings with
19 Mr. Tallis, defence counsel, and I think this is a
20 document from your files, it's dated August 11th,
21 '69, tentative witness order, and again just so
22 that we can identify for other counsel, I take it
23 this "S" is a summary, is the Ullrich summary, I
24 think that corresponds with the page numbers?

25 A I would assume that, sir.



1 Q And then I see here when we get to John, Wilson
2 and Cadrain, you've got a note here, 'put ahead of
3 John and Wilson in prelim.' Do you know what
4 that -- was there any reasoning there about
5 putting Cadrain ahead of those two or can you
6 explain what that note is, or do you know?

7 A Well, it -- their -- John and Wilson's evidence
8 both went up to the time Cadrain joined the group
9 and followed it afterward. I can -- I can't see
10 any advantage in that for anyone. I notice it
11 ends, sir, with a question mark after prelim, so
12 the evidence will show, but I may have decided to
13 leave him where I would think he would belong
14 after John and Wilson.

15 Q Okay. And if we can go to page 007047, this would
16 be the third page, and again I think it lists all
17 of the witnesses that you in fact did call, and
18 down at the bottom, please -- actually, just
19 scroll up for a moment, please. It looks like
20 here we talk Peggy Miller, compact, question mark.
21 Were you still trying to decide whether you were
22 going to call her?

23 A I must have been. Now, I don't know whether I did
24 or not.

25 Q I believe you did.



1 A Okay.

2 Q The compact. Scroll down to the bottom. And then
3 there are some names. It says Aline Cadrain. I
4 think that is Celine Cadrain?

5 A I would assume so.

6 Q And then you've got question mark and then no. Do
7 you know what that -- and Fogel, Mrs. Miller,
8 you've got no. Would this be possible witnesses
9 and you decided against calling them?

10 A That's what I take it from that, sir.

11 Q Do you recall what went into your decision not to
12 call Celine Cadrain?

13 A No. Is this a sister?

14 Q Yes.

15 A The sister we were speaking about yesterday?

16 Q Yes. Celine was home on the morning of January
17 31, 1969 and I think her statement indicated that
18 she was in bed when Mr. Milgaard and his friends
19 arrived, that she was up later.

20 A I take it I would have decided that she had no, if
21 you will, useful evidence.

22 Q And then if we can go to 006942, and this looks to
23 be a more formal list of witnesses; is that
24 correct?

25 A Yes. That looks like an Ullrich product to me.



1 Q And then again it's got, I see subpoenaed, page in
2 summary. If we can go to the next page, please,
3 it's got here by Dr. Ian McDonald, excused by Mr.
4 Caldwell?

5 A That's what it says.

6 Q And I take it that you didn't call Mr. McDonald?

7 A No. If this is still prelim, I certainly didn't.

8 Q Yes.

9 A And not at the trial either, as you know, or at
10 least -- and that at the end, sir, it says letter
11 which I assume means I wrote him to not attend or
12 words to that effect.

13 Q Go to 007043, please, and these are notes I think
14 all from your correspondence file, and this is
15 August 15th, '69?

16 A Right.

17 MS. KNOX: I wonder, Mr. Commissioner, if
18 he could be directed to the RCMP number that's at
19 the top because that will allow him to find it in
20 his own file and he has indicated a preference
21 for working with the coloured photocopy, but he
22 can only identify it in his file by the RCMP
23 number.

24 BY MR. HODSON:

25 Q Sure, that's fine. If you could -- and again, if



1 you wish to see the originals of these, Mr.
2 Caldwell, you may -- I can't tell in advance
3 whether you do or you don't, so --

4 A Okay.

5 Q So if you look at number 35 --

6 A I have that 35 here now in paper form.

7 Q Right. And if you look at the top, it says
8 'Superintendent Corey: Re Wilson,' and 'appeared
9 Magistrate Court Edmonton this a.m. before
10 magistrate John Coughlan, charged conspiracy to
11 commit fraud, 408(1)(d), sentenced three months,
12 Fort Saskatchewan jail. Second charge, Public
13 Health Act, possession LSD, sentenced one month
14 concurrent.' And we heard some evidence before,
15 Mr. Caldwell, that at the time of the prelim
16 Mr. Wilson was in jail in, I think, Fort
17 Saskatchewan; is that correct?

18 A That's my memory. I assume this would be in
19 support of getting him back, just knowing where he
20 was.

21 Q And I'll show you an affidavit in a moment that
22 was used to get him back. So does that sound
23 correct, that Mr. Wilson was incarcerated at the
24 time?

25 A It does to me.



1 Q Next if we could call up 009426, and I'm not sure,
2 this is not in the correspondence 1 file, I'm not
3 sure what folder this -- I'm not sure if you need
4 to see the original of this, Mr. Caldwell, or not.
5 Perhaps Ms. Knox can look for it and we can go
6 through this. If you want to refer to the
7 original just let me know, but I think it's fairly
8 straightforward.

9 A Very good.

10 MR. HODSON: Ms. Knox, did you want me to
11 wait until you find --

12 MS. KNOX: You go ahead. If he needs it,
13 I'll get it.

14 A That would be fine by me, sir.

15 BY MR. HODSON:

16 Q And this is August the 12th, '69, so this would be
17 about six days before the start of the prelim, and
18 presumably Joe P is Joe Penkala?

19 A That's correct.

20 Q And then if we can just go through, and I'll maybe
21 just read this and ask you some questions.

22 A Okay.

23 Q 'Scene: Knife blade and frozen blood in snow, two
24 frozen lumps of yellowish stuff. Joe collects two
25 lumps later and sends lab,' and then is that --



1 what does that refer to, check?

2 A Well, I think it's evidence.

3 Q 'Evidence if sperm and whether --'

4 A 'Whether could establish a blood group.'

5 Q Okay. And then it says lab, appears to say lab
6 reported, '1. Was sperm. 2. Group A type'?

7 A Yes. Yeah, that's what I see it as.

8 Q Would these be notes of a meeting or a discussion
9 with Mr. Penkala?

10 A I assume so if -- could you give me the top of it
11 again briefly?

12 Q Sure.

13 A Yeah, it starts with Joe P and the date, so I
14 assume it would be a meeting with him on those
15 topics.

16 Q I think your counsel maybe has the original there.

17 A Okay, thank you.

18 Q So if we can scroll down, and this would be
19 shortly before the prelim, so I take it it would
20 make sense that you were checking out the evidence
21 or reviewing the evidence?

22 A Yeah, that's correct.

23 Q And then you put a star, 'you can determine blood
24 group from sperm if he's a secretor. If a
25 secretor, you secrete blood antigens into all body



1 fluids. If not, you don't.' And then question
2 mark. 'Got blood sample from Milgaard, it's type
3 A. Must also establish he's a secretor. Took
4 saliva test, they proved he was not a secretor.
5 Asked lab to retest. Paynter got exhibits back,
6 it looks like a question mark. 'Examined further
7 and has now found there was actual blood in the
8 sperm.'

9 A Those two things, Mr. Hodson, neither the first or
10 this were question marks, if you --

11 Q I'm sorry.

12 A Yeah. I don't think --

13 Q I'm sorry, you are right, that's an arrow I guess.
14 Okay, I'm sorry.

15 A But that's, in effect, a little arrow head at the
16 bottom.

17 Q And then the next page, it says, 'now - explain
18 conditions under which blood get in sperm. Emson
19 or urologist'.

20 A 'Could get in sperm'.

21 Q And are you able to explain what this note would
22 refer to other than what it states?

23 A Well, it was under that general heading of
24 figuring out a sperm secretor's blood, and I
25 apparently got that far and thought that either



1 Dr. Emson or an urologist would be the logical
2 people to explain that in evidence.

3 Q If we can just go back to the previous pages. Is
4 it fair to summarize this, at least according to
5 this note, that based on the two lumps that Mr.
6 Penkala found, the lab said yes, it had sperm, and
7 it was of group A type?

8 A Uh-huh.

9 Q And then scroll down, you can determine blood
10 group from sperm if he's a secretor; in other
11 words --

12 A That's --

13 Q If the sperm has A antigens in, then you know it's
14 from an A secretor, and 'if you are a secretor,
15 you secrete blood antigens into the fluids. If
16 not, you don't.' And it says you got a sample
17 from Milgaard, type A, 'must also establish he's a
18 secretor. Took saliva tests, proved he wasn't a
19 secretor,' and then you go back and said retest,
20 and when you retested Paynter said there was
21 actual blood in the semen, and I think then the
22 next page, and please correct me if I'm wrong, but
23 the analysis here is that the reason that an A
24 antigen might be in the frozen semen from a
25 non-secretor would be if the donor had blood in



1 the semen?

2 A That's how I read it, sir.

3 Q So if you can't establish that Mr. Milgaard is a
4 secretor and you have to try and find a way to
5 establish, or as to explain why A antigens would
6 be in the semen; is that correct?

7 A That's how I read it.

8 Q And then when Paynter came back and said, well,
9 there's blood in the semen, that would explain how
10 antigens got in there; correct?

11 A That's my memory of it.

12 Q That's fair.

13 A Yeah.

14 Q And then so here the note is, well, how do you
15 explain that the blood would be in the semen, the
16 donor's blood; correct, and that's where you end
17 off. If we can go to the next page.

18 A Okay.

19 Q Next page, please, at the top, 'now - explain
20 conditions under which blood could get in sperm.
21 Emson or urologist.' Was it fair to say at this
22 point, after talking to Mr. Penkala, you've
23 recognized that one issue at trial, or at the
24 prelim, will be to explain conditions under which
25 blood could get into the sperm?



1 A Yes, it would.

2 Q And then it goes on to say, 'also her pubic hairs
3 were frozen in the seminal fluid lumps.' And then
4 it looks, it goes on to another note, and again
5 this is August 12th, Corey, who I'm assuming is
6 Deputy Chief Corey, 'Ronald Wilson in Edmonton and
7 charged with conspiracy to commit fraud, plead
8 guilty, sentenced August 15th, '69. Asked Corey
9 to get details from Edmonton on Friday re sentence
10 so we can get order for witness.' Is that --

11 A That's all correct.

12 Q And then if we can go to 007042, and this is
13 document number 36 in the top right-hand corner?

14 A I have that.

15 Q And it refers to Mr. Tallis' June 10th letter, and
16 maybe we'll just go back because I don't think we
17 looked at that today and I'll just quickly call
18 that up, 007063. So this is June 10th and you
19 remember when we went through this yesterday, this
20 was the day after I think Mr. Tallis first
21 appeared in Court, the evidence we went through
22 yesterday is that you were not in Court until July
23 3rd, and then July 8th was the engagement letter
24 from the city police, and so it was around early
25 July you became involved as prosecutor, and this



1 was the letter that Mr. Tallis wrote and we went
2 through it, this is where he asks for copies of
3 any witness statements and related reports on the
4 matter.

5 A Yes.

6 Q If we can then go ahead to 007042, this appears to
7 be your reply, and I take it at sometime between
8 June 10th and August 15th you would have received
9 the police file, the Ullrich summary and the
10 Ullrich --

11 A I would have in one way or another, either all at
12 once or in installments as the case may be.

13 Q Now, this refers in the letter and as well to a
14 telephone conversation. Do you know, either by
15 recollection or by practice, would you and
16 Mr. Tallis have talked on the telephone a fair bit
17 during the course of this file?

18 A I would think so. Any time it appeared useful,
19 one or other would phone the other one.

20 Q And would you always make a note of that?

21 A I hope so, because it often involved, say,
22 undertakings on my part, names of witnesses,
23 numbers, so I would do my best to record that.

24 Q Okay. And so here we see copies of statements,
25 and this is August 15th, so this is the



1 preliminary hearing, so at this stage Albert
2 Cadrain's March 2 statement, and there's a note
3 that I'll show you in a moment that talks about
4 his second statement.

5 A Right.

6 Q And Ron Wilson's original statement to Mr.
7 Riddell, March 3rd, is sent to Mr. Tallis; is that
8 correct?

9 A That looks like it.

10 Q And then his second, two statements put together
11 on one statement is sent?

12 A That's correct.

13 Q And then Nichol John, her two statements; is that
14 correct?

15 A That's correct.

16 Q So apart from the fact that Mr. Cadrain had a
17 second statement, and I'll show you a note that it
18 was sent, you would have sent to him on this date
19 before the preliminary hearing all of the witness
20 statements for the three key witnesses?

21 A That's the way I read it, sir.

22 Q And again, the March 3rd statement that Mr. Wilson
23 gave that you said this was the statement where he
24 denied knowing anything about the murder and
25 claimed that Mr. Milgaard could not have done it,



1 why would you send that to Mr. Tallis?

2 A Well, because that would be, among other things, a
3 piece of evidence pointing away from Mr.
4 Milgaard's guilt. It would fall under the heading
5 of things Mr. Tallis had requested in that
6 respect, and second, if it was a different set of
7 assertions that he made in the other statement,
8 Mr. Tallis should have that so he would be aware
9 of that, could pursue it, possibly cross-examine
10 on it.

11 Q And then it goes on, if we can scroll down:

12 "I also enclose a copy of the autopsy
13 report on Miss Gail Miller, prepared by
14 Dr. Emson."

15 And again I think that Mr. Tallis in his June
16 10th letter had asked for related reports. Would
17 the autopsy report be something then that he
18 would have asked for do you know?

19 A If he simply said related reports, I certainly
20 would have sent the autopsy report as, you know,
21 as soon as I got it. Related reports I suppose
22 could mean lab reports.

23 Q And I'll get to that in a moment.

24 A Okay.

25 Q And it says:



1 "The above are the only statements from
2 the two witnesses, Wilson and John,
3 which I have at present."

4 And then I think that was the case, correct,
5 there was no other statements?

6 A My memory is that's right, sir.

7 Q If we can then go to 007039, and that has the
8 number 39 in the top right corner, and this is --
9 can you find that?

10 A Yes.

11 Q And we'll see it's August 17th, '69, and that is
12 the day before the prelim starts, and there's a
13 note that says, 'Now: 1. Second Cadrain
14 statement number 75 to Cal,' and check marked and
15 crossed out. So would that have been sent to
16 Mr. Tallis?

17 A That must mean it was sent as of then because I
18 crossed it off the list, as it were.

19 Q And then statements from --

20 A This is Diewold.

21 Q Right, Diewold, McQuhae, Shawchuk, Gerse, Hounjet,
22 Pyra, Brand and Edmondson, and I believe these are
23 people on your witness list where you may not have
24 had statements or --

25 A That may well be. I would need to look at it a



1 little further, but --

2 Q Okay. I'm not sure if much turns on that, but at
3 this point do you know if you would have had all
4 the statements or just some of the statements?

5 A Not just from this document, sir, I couldn't tell.
6 Maybe we could --

7 Q Sure, I'll go through some others in a moment.

8 A Okay.

9 Q So then if we go to 007038, and that's document 40
10 in the top right?

11 A Yeah, thanks, I have it.

12 Q And this is August 20th. Now, there's a document
13 I can show you a bit later, but it's my
14 understanding that the preliminary hearing,
15 although it started on August 18th and finished on
16 September 11th, it didn't sit every day?

17 A No, that's correct, so it was intermittent as we
18 saw the other day.

19 Q And I think you said that was due to schedules so
20 that it was off and on, if I can call it that?

21 A That's exactly right.

22 Q And there will be a document, Mr. Commissioner,
23 that I think identifies the dates that the hearing
24 actually sat, if that's relevant. And so here is
25 your letter and the follow-up to your August 15th



1 letter:

2 "I now enclose a copy of the second
3 statement by Albert H. Cadrain, dated
4 March 5, 1969."

5 So I take it that's when that statement was sent?

6 A Yeah. Well, dated -- I'm sending it on August
7 20th.

8 Q Yes, but that's the second statement of Cadrain
9 that was not sent in the August --

10 A That's my understanding.

11 Q And then it says:

12 "As well as copies of the Crime
13 Detection Laboratory Reports concerning
14 the examination of the exhibits in this
15 case, for your use."

16 And what Crime Detection Laboratory Reports would
17 you have sent?

18 A Well, I would have sent all the ones I had
19 received and for some reason or other I didn't
20 recite them in this letter. I'm sorry, that could
21 become clear.

22 Q Sure. If we can call up 009374 and that is,
23 Ms. Knox, I think is in the exhibits folder.
24 Perhaps your counsel has the original, you can
25 show that to Mr. Caldwell. In your files there's



1 a list of Milgaard lab reports stapled together
2 starting at 009374.

3 A I have that now, Mr. Hodson.

4 Q Yeah. Now, would those be the lab reports that
5 you would have sent to Mr. Tallis?

6 A I would assume they were since in this -- or this
7 thing they are stapled together in certain order.
8 Some have more than one report from one witness.
9 On the face of it I assume that's what I sent.

10 Q If we can go to 009390, please, which is part of
11 the stapled group of reports, this is a lab
12 report, it's got Paynter at the top, and it
13 relates to -- no, sorry, I've got -- no, 009391.

14 A Is that one of these as well?

15 Q No, I'm sorry, 009386, and if you could find that
16 in your collection there.

17 A Okay.

18 Q It's got 349 in the top right corner. Do you see
19 that?

20 A I have one with 383 in the top right corner. I
21 think I need to keep going.

22 Q You go 386 in the bottom right.

23 A Is this, Mr. Hodson, it looks like it, but I don't
24 spot that number offhand.

25 Q Yes.



1 A Okay, thanks.

2 Q Now, you have in front of you the original lab
3 report and is that part of the group of lab
4 reports stapled together under the title Milgaard
5 lab reports?

6 A Yes, it is.

7 Q Now, let's just go through this. It's got Paynter
8 at the top and I think you had told us earlier
9 that's where you've identified the police witness
10 where a report related to; is that --

11 A That's right.

12 Q And it's got different file. Is that your
13 handwriting?

14 A That is.

15 Q And we see here that this is (V2) (V2)- (V2)-----
16 and (V1)--- (V1)- alleged rape?

17 A That's correct.

18 Q And then a question mark and omit and a line
19 through it. Is that your --

20 A Yeah. I'm not convinced those are both mine, the
21 question mark and the omit as well, sir.

22 Q And up here, different file, and can you tell me,
23 do you have a recollection first of all of dealing
24 with this lab report at the time?

25 A I'm sure I did, Mr. Hodson, and I can't say now I



1 have a recollection of it, but I would be happy to
2 expand once you get to --

3 Q Sure. It relates to the (V2) (V2)- (V2)----- and
4 (V1)--- (V1)- and at that time, in 1969, would you
5 have been familiar with the rape files or the rape
6 matters relating to (V2) (V2)- (V2)----- and
7 (V1)--- (V1)-?

8 A Well, only if a charge had been laid against
9 someone and that file had come to our office would
10 be one way I would be --

11 Q Okay.

12 A Are those two episodes --

13 Q These are two -- just for your -- the (V1)- and
14 (V2)----- rapes occurred in late October and
15 November of 1968, there was no charge laid until
16 December of 1970.

17 A Okay.

18 Q So at the time -- let's just go to August of 1969
19 and that time period up until the trial of Mr.
20 Milgaard was concluded.

21 A Uh-huh.

22 Q At the time would the names, or did the names
23 (V2)----- and (V1)- mean anything to you?

24 A No, they didn't.

25 Q And are you able to tell us -- it looks from this,



1 sir, and please, you told us you have no
2 recollection, but it appears you put a note,
3 different file, omit and put a line through it.
4 Can you explain what, based on your practice, what
5 you think that might have meant?

6 A Yeah. I think in this case I concluded that this
7 report had nothing to do with and no part in or on
8 the David Milgaard prosecution file and I would
9 have expected, Mr. Hodson, that if it meant
10 something, some investigator would have phoned or
11 showed up saying hey, what did you do about that
12 (V2)----- and (V1)-.

13 Q Yeah. Are you able to tell us, Mr. Caldwell,
14 whether this report, this page would have been in
15 the lab reports that you sent to Mr. Tallis on
16 August 20th, 1969?

17 A That I can't tell you. I would hope possibly he
18 could -- we don't have a letter setting that out,
19 eh?

20 Q Well, we do, we have -- the letter I just brought
21 up was 007038 that says you are enclosing copies
22 of the Crime Detection Laboratory Reports
23 concerning the examination of the exhibits in this
24 case.

25 A Now, the -- I can't tell from what I have before



1 me that I sent it to Mr. Tallis. It may well be
2 that in view of my view on it being a different
3 file, episode completely, that I may not have sent
4 it to him for that reason and --

5 Q Okay. At that time would you have known on August
6 20th, would you have done -- can you give us an
7 indication as to when you might have put this -- I
8 mean, obviously this Paynter writing up here, can
9 you tell us what Paynter number 3 would be?

10 A Well, that's the third page of evidence that I had
11 organized behind his name. Pardon me, Paynter,
12 page 1, if you will, on that one, Mr. Hodson, 384.

13 Q Sure, if we can call up 009384. So here, this
14 would be Paynter 1?

15 A Yeah.

16 Q Would this be page 1 of the Paynter reports?

17 A Yeah. The way I had them organized, if I was
18 going to examine him in chief, I would, all things
19 being equal, go through this sequence, page 1, 2,
20 etcetera.

21 Q Let's go through it, let's go to the next page,
22 and we'll see P.2, I presume that's Paynter 2?

23 A That's right.

24 Q And the next page is the one we were talking
25 about, (V1)-, (V2)-----, Paynter 3?



1 A Yes.

2 Q And then the next page --

3 A Four.

4 Q Paynter 4. Carrying on, next page --

5 A I have five for him.

6 Q And then 00939 -- yeah, carry on, then the next
7 page.

8 A 389 is Paynter 6 in my file.

9 Q Here we have Paynter 7 and I see we also have omit
10 here, and just for your information, this is the
11 lab reports relating to, I believe, checking the
12 blue seat cover and trousers in Mr. Wilson's car.

13 A That's the way I read it as well, sir.

14 Q And so it looks here that you would -- do you know
15 why you would put omit in there?

16 A Well, I believe it went on to say conclusions, no
17 blood was found on those two things, 2, no seminal
18 fluid was found on them, and they would be of no,
19 in my view, evidentiary value in that situation.

20 Q So does that mean that when you call Paynter that
21 you wouldn't refer to this information?

22 A I would expect so, unless I went through it just
23 for continuity sake.

24 Q If we can go to the next page, and again this is
25 Paynter 8, and it looks again you've got 'omit'



1 and 'put in' and then 'yes', so same type of note
2 as to what Paynter evidence you are putting in?

3 A Yeah, the same type of note. There's a bracket
4 around double A to double H saying in car as you
5 see on the left edge there.

6 Q Yes?

7 A In writing. I had the, I think the 'omit' refers
8 to all of that, and then 'put in' is written over
9 and then there is a 'yes' pointing down on the
10 left hand, 'also put in' --

11 Q When would you normally make these notes?

12 A I would hope around the time I got the lab
13 reports.

14 Q And that left one, sir, says 'second check of
15 seminal fluid this time for presence of actual
16 blood'?

17 A Yes.

18 Q It's not under that topic you were just
19 discussing.

20 A Okay.

21 Q So if we could go back to 007038?

22 A Right.

23 Q And the letter of August 20th then, as far as the
24 Crime Detection Laboratory reports concerning the
25 examination of exhibits in this case, I think you



1 told us -- please correct me if I'm wrong -- that
2 you are not sure whether or not the (V1)-,
3 (V2)----- lab report would have been sent to Mr.
4 Tallis?

5 A I -- that's my position, I can't tell from that,
6 and I don't know independent of that.

7 Q Okay. If we could then go to 007037. This is a
8 letter August 21st, 1969, the following day, from
9 Mr. Tallis, and we'll go through that. It says:

10 "You have been kind enough to make
11 available to me certain statements of
12 prosecution witnesses and various
13 reports which may be relevant to this
14 particular prosecution. In the event
15 that I do want further witness
16 statements, I will first make a request
17 of you before raising it in Court.
18 However, in the light of our
19 conversation on the afternoon of
20 Wednesday, August 20th, I would
21 certainly want you to make it a point to
22 check to see whether or not there are
23 any witnesses that you do not propose to
24 call who may be able to give evidence of
25 assistance to the defence. If the City



1 Police Department have not turned over
2 all of their material to you in this
3 connection I would be obliged if you
4 would look into this matter prior to the
5 completion of the preliminary hearing.

6 I might mention that I have
7 always thought that the procedure in the
8 case of this kind is correctly
9 summarized by Lord Denning in the case
10 of Dallison vs Caffery ...

11 I shall be pleased to hear from
12 you in this connection."

13 Now it's dated August 20th, which is the same
14 date of the letter where you sent over the lab
15 reports; are you able to tell us what that may
16 have related to, Mr. Caldwell?

17 A I can't, but I would assume it would be under the
18 general heading of Lab Reports and Witnesses,
19 unless I made a note of it in the file, sir, which
20 I'm not aware of that at the moment. But it
21 prompted Mr. Tallis to say:

22 "... I would certainly want you to make
23 it a point to check to see ...",
24 etcetera:

25 "... whether ... there are any witnesses



1 that you do not propose to call who may
2 be able to give evidence of assistance
3 to the defence."

4 I think that triggered that second look of mine,
5 or first look, through all the witness
6 statements.

7 Q Does this assist your recollection, Mr.
8 Caldwell, --

9 A Yeah.

10 Q -- as to whether or not this letter may have
11 prompted you to get all of the witness statements
12 from the city police?

13 A It may well have. Umm --

14 Q We'll go to some other documents.

15 A Yeah.

16 Q Okay.

17 A I think there should be a note of that somewhere.

18 Q If we could then go to 007035, and this is a note,
19 if you look for 42 in the top right-hand corner of
20 your file.

21 A I have that, sir.

22 Q And it's a note of August 22nd, '69, so again this
23 is after the prelim started, and it's got, 'Lab
24 witnesses - phone Corporal Stewart', and then
25 talks about Kirby and McDonald, Paynter and



1 Molchanko. It looks as though on August 22nd you
2 are making some notes about when these lab
3 witnesses are going to be called?

4 A That's how it looks.

5 Q And we've got Paynter here, and it says paint --
6 'P and M not required to September 2nd', so do I
7 take it, from that, that that's when Paynter would
8 likely have been called at the preliminary
9 hearing?

10 A Well on the, based on that, I would have assumed
11 that to be the case. We could check that via --

12 Q Yeah.

13 A -- the transcript.

14 Q I can check it by the --

15 A Okay. That would be good, sir.

16 Q Does that assist you at all in determining whether
17 or not you would have made notes on Paynter's lab
18 reports prior to August 20th, being the date that
19 you sent them to Mr. Tallis?

20 A Umm, I'm not sure I follow you on that, sir.

21 Q Okay. I had asked you earlier, August 20th you
22 sent a letter to Mr. Tallis that said 'I'm
23 enclosing the crime detection lab reports', --

24 A Right.

25 Q -- and it related to exhibits in this case, and we



1 looked at a collection of lab reports that were
2 stapled on your file --

3 A Right.

4 Q -- that included the (V2)----- and (V1)-
5 statement, and it had your writing on there,
6 'Omit', and I had asked you the question as to
7 when you would have put that 'omit' on, and
8 whether it was before or after you would have sent
9 it to Mr. Tallis on August 20th?

10 A Now that is -- just on the face of this I don't
11 think I can tell, Mr. Hodson, but it could have
12 been either.

13 Q That's fine. And then, if we go down to the
14 bottom, it says 'now'?

15 A Yes.

16 Q And I take it 'now' means it's a note for you to
17 do something immediately?

18 A A series of things.

19 Q 'Cal re money in purse'?

20 A Yeah.

21 Q And then 'at 5:00 p.m.'; can you tell us what
22 that --

23 A That was to tell Cal Tallis about the money in the
24 purse, which I assume was Gail Miller's, advised
25 in the evening of 20 -- August 22nd, '69, same



1 start with -- and then taxi driver, and I'm not
2 sure what -- I think there was a taxi driver who
3 surfaced as one of the possibly helpful witnesses.

4 Q Yeah, MacRae Fraser.

5 A Yeah, okay.

6 Q I think there is a letter to that.

7 A Okay.

8 Q So that would be, again, related to Mr. Tallis,
9 that information about the taxi driver?

10 A It would.

11 Q Okay.

12 A And then 'phone lab, get order for Wilson', it was
13 a matter of getting him there for Court. I'm not
14 just sure what -- evidently I did phone the lab,
15 maybe it's on that issue up above about witnesses,
16 Mr. Hodson.

17 Q Okay. If we can then go to 007036, please.

18 A Yeah.

19 Q And this is tentative witnesses, again same date,
20 tentative witnesses next week. So this looks as
21 though John and Cadrain are going to be the
22 following week and then after that, --

23 A Oh yeah.

24 Q -- presumably into September, I see we have
25 Paynter down here; is that correct?



1 A Umm, yes. This was the business of only having
2 limited times available, it looks --

3 Q I see.

4 A -- to me.

5 Q 007030.

6 A Yeah, I have that here, Mr. Hodson.

7 Q And this is just a draft of your affidavit, I
8 don't need to go through it, --

9 A Okay.

10 Q -- but I think this is the affidavit that you
11 swore to enable you to get an order to transport
12 Mr. Wilson to the preliminary hearing; is that
13 right?

14 A Yes.

15 Q If we could then go to 007029, and that has the
16 number 47 in the top right-hand corner.

17 A Okay, I have that as well.

18 Q And this is August 25, '69, and these are notes of
19 yours, Mr. Caldwell?

20 A Yeah, they are.

21 Q And can you tell us what -- and I'll go through
22 them in detail --

23 A Sure.

24 Q -- but are they just reminder notes, or notes of
25 meetings, or are you able to tell?



1 A Yeah, I can read them through, sir.

2 Q I can make --

3 A Oh, yes, be my guest. So 'Nichol John's coat to
4 lab, question mark, Joe me re', I wanted to ask
5 Joe Penkala about that evidently.

6 Q Okay. Carry on?

7 A 'Emson', I'm sorry, 're knife wounds, at 8:45',
8 may, I'm not just sure if that's when he is apt to
9 show up at work or what that was. And then the
10 next, item 3 is a note of my interviews with -- or
11 proposed ones with the three -- or three of the
12 main witnesses, the first heading 'order' I have
13 Wilson, and then 'Wednesday' where it formerly
14 read Tuesday, 'interviewed Monday 9:00 p.m.', and
15 the last I -- I don't know if that's 'EDM' or --
16 but, whatever it is, that says 'with Karst'. This
17 was an example of me keeping track of having a
18 policeman with me when I interviewed.

19 Q Does that say '9:00 p.m.'?

20 A It does to me, yeah.

21 Q Yeah. And would Mr. Wilson have been in custody
22 at that time when you interviewed him?

23 A Oh, he may well -- if he was in custody, yeah,
24 that would fit with that.

25 Q Okay. Do you remember if he was?



1 A No, I don't, but if we could look at this
2 affidavit.

3 Q Well he was certainly in custody when he was
4 brought in and presumably he would have been
5 retained in custody?

6 A Oh yeah, I think so, because he was under a
7 sentence, --

8 Q Yes.

9 A -- sir, not just a --

10 Q So if we assume, and I think the assumption is
11 correct, that Mr. Wilson would have been in jail
12 cells when he was brought into Saskatoon for the
13 prelim, do you have a recollection of meeting him
14 in -- at the police station in the jail cells?

15 A I don't.

16 Q And then this note here, I think you said, can you
17 tell what that reference is?

18 A The John one, it said 'Wednesday', that was
19 changed to 'Thursday'.

20 Q No, I'm just talking about what I've got circled
21 here on the screen; what is that?

22 A 'ED'.

23 Q It appears that these were the officers that went
24 on the interviews with you?

25 A That's, that's right.



1 Q Is that correct?

2 A Yes, it is, but I can't quite decipher the
3 heading, unless we went to Edmonton, which I don't
4 think we did. But maybe that will come later,
5 sir.

6 Q Okay. And then, does this assist you, did you
7 interview Wilson, John, Cadrain, with Karst,
8 Karst, and Mackie; does that sound correct?

9 A That's right.

10 Q And do you have any recollections of any of those
11 interviews?

12 A Oh, no, not beyond the fact that they were done
13 with those three police officers, one -- each
14 individually, of course.

15 Q And if we can go down to 'meeting Tuesday a.m.
16 9:45 advised Penkala, Karst, Short, Oleksyn'; am I
17 right that a meeting would have been held on the
18 Tuesday the 26th of August?

19 A Yeah, it looks that way.

20 Q And then at the bottom it says, 'A.H. Cadrain', in
21 fact if we can just, umm, umm -- hang on a second
22 here. Actually, if we can just -- yeah, 'A.H.
23 Cadrain, Ed Schellenberg in Calgary when M giving
24 drugs', I presume 'M' is 'Milgaard'?

25 A Yes.



1 Q 'And having S.I.', sexual intercourse, 'with young
2 girls'?

3 A That's the note.

4 Q 'Going to school at E.D. Feehan, goes to Sion'?
5 And then does that -- 'lives across from E.D.
6 Feehan'?

7 A Yeah, it should read 'lives across from E.D.
8 Feehan, goes to Sion', it ended up.

9 Q And then scroll down, 'A.H. Cadrain at Jackfish
10 Lake, Armand Blanchette, phone, to show Friday
11 a.m. unless he hears from Wednesday'?

12 A 'Us Wednesday'. No, that was Mr. Cadrain, I
13 believe that was on a farm, and that's the thing I
14 mentioned before, I believe, about him hitchhiking
15 to Saskatoon.

16 Q If we could call up 007028, and that's got number
17 48 in the corner.

18 A I have that, sir.

19 Q And in the top right-hand corner it says,
20 'Interview with Cadrain'; is that your
21 handwriting?

22 A That's -- is.

23 Q And this is a police report prepared by Detective
24 Ullrich, and I'll just go through parts of it, it
25 says:



1 "On August 25/'69 I ...",

2 met -- this being Ullrich:

3 "... with Det/Sgt. ... Mackie and Mr.

4 Caldwell, the prosecutor interviewed the

5 witness Albert Henry Cadrain in Mr.

6 Caldwell's office."

7 A I think, Mr. Hodson, I think it's:

8 "... I with ..."

9 those fellows. Other than that it's --

10 Q Yes, I'm sorry, what did I say?

11 A 'I met', I think you said.

12 Q Oh:

13 "... I with Det/Sgt. ... Mackie ..."?

14 A Yes.

15 Q So is this -- this appears to be Mr. Ullrich's
16 report?

17 A It is.

18 Q Now would he be present in your interviews of
19 witnesses?

20 A In this instance, he was, and he may have been in
21 others.

22 Q So would this be your interview of Mr. Cadrain
23 prior to him giving evidence at the preliminary
24 hearing; is that correct?

25 A That's how I take it, yup.



1 Q And it looks as though some information was
2 provided, and I'll go through that, it says:

3 "Mr. Cadrain repeated the story he had
4 formerly given to the police with some
5 additional information."

6 A That --

7 Q And then I take it that that would be, 'the story
8 he had formerly given the police' would be his
9 statements, is that fair?

10 A Yes, I would say so.

11 Q And then the additional information is:

12 "He stated that the first -- he first
13 met Milgaard in Calgary in the spring of
14 1968 at which time Milgaard on more than
15 one occasion had given teen age females
16 drugs, had placed them into a bath tub
17 containing water and had sexual
18 intercourse with them. The water was to
19 dispose of any blood which might appear
20 as a result of the act. Cadrain claimed
21 that he observed this act on more than
22 one occasion, that some of the females
23 were virgins and blood appeared.
24 Milgaard on one occasion invited him to
25 come in stating, "Your next." Cadrain



1 states that Ed Schellenberg who lives
2 with his mother near E.D. Feehan
3 Collegiate was present in Calgary at the
4 time and could corroborate his story."

5 And then scroll down. It says here:

6 "Mr. Caldwell wants Schellenberg
7 interviewed and a statement obtained for
8 him."

9 'Obtained for him'. Do you have a recollection
10 of this?

11 A I do, in this instance, of that.

12 Q And tell us what you remember and why you asked to
13 get a statement?

14 A Well this, this was a new piece of information,
15 and it would come under the heading of what I
16 would call very, I guess, abhorrent sexual
17 behaviour, which I would want to have that reduced
18 to a statement in case we got into some issue
19 about insanity, or what have you, later on.

20 Q So would the reason you would ask the police to
21 follow up with Mr. Schellenberg and to get a
22 statement would be to use in the, possibly use in
23 the prosecution?

24 A Well, it could be, but just to find out what that
25 was all about and have it on the file if it did



1 amount to anything.

2 Q And were there any concerns about the credibility
3 of this story from Mr. Cadrain; would that be a
4 reason you might want to check with
5 Mr. Schellenberg?

6 A Well, not in this case, I didn't -- I felt I had
7 no qualms with credibility, Mr. Cadrain's
8 credibility. It would be more to see if that,
9 that account of the thing was correct, if so it
10 could be reduced to writing and kept for the
11 moment.

12 Q And so you would have Mr. Cadrain's version of
13 events, and did you then ask the police to go out
14 and ask to get Mr. Schellenberg's?

15 A Apparently I did, and I think very, very recently
16 it's been discovered that that was pursued, Mr.
17 Hodson. I think you maybe are aware of that.

18 Q I will maybe call up 045348. Do you have a
19 recollection, at the time, of hearing back from
20 the police?

21 A No, no, I'm -- I didn't.

22 Q We'll maybe just call this up.

23 A Okay.

24 Q This is a statement that Edward Schellenberg gave
25 to the RCMP December 14th, 1993, and if you can go



1 to page 045351, and this is a question and answer
2 of Mr. Schellenberg. He is asked:

3 "Q Are you aware of an incident in Calgary
4 involving Albert Cadrain and David
5 Milgaard?

6 A An incident. There are a couple of
7 things I remember Albert telling me
8 about David. One of those things that
9 Albert told me involved David having
10 sex with a girl in a bath tub. I seem
11 to recall Albert saying something
12 about blood in the bath tub. I don't
13 remember them saying anything but I
14 drew that it had something to do with
15 a virgin."

16 And then if you can go to page 045354. And then
17 I think it's talking about:

18 "Q Where were you living when the police
19 came to talk to you."

20 Actually, if we can just go back up. In any
21 event, actually, we can go back down:

22 "Q Where were you living when the police
23 came to talk to you.

24 A Devon, Alberta. There were two
25 Saskatoon City Policemen. They were



1 plain clothesmen. I do not recall
2 their names.

3 Q When, roughly, would that have been?

4 A That would have been in 1969. It was
5 after David was arrested. I know I
6 was there for the summer months.
7 Sometime between June, July and August
8 of 1969.

9 Q Did the police tell you why they had
10 come to see you?

11 A Said they wanted to some information
12 about David Milgaard and I believe I
13 told them about those two incidents.
14 The bath tub incident and the milk
15 truck incident."

16 And then it goes on to talk about some other
17 things. Now I wasn't been able to find any
18 police report about the police follow-up with
19 Mr. Schellenberg, Mr. Caldwell, and I may have
20 missed it but I don't think there's any police
21 report on the follow-up nor any statement.

22 A No.

23 Q Do you have any recollection of hearing
24 information such as I've read from the 1993
25 interview of Mr. Schellenberg?



1 A No. The first I saw or heard of this, Mr. Hodson,
2 would be within the last week or two I think in
3 com -- looking at some Commission materials.

4 Q All right.

5 A I didn't get anything back.

6 Q So, to your recollection, did you hear anything
7 back from the police?

8 A Not at all, no.

9 Q If we could go to 007 -- or let me just pause
10 there. If all that Mr. Schellenberg said is 'I
11 didn't witness anything, I just know that Mr.
12 Cadrain told me', would that be of any value to
13 you?

14 A I wouldn't think so in any form.

15 Q Pardon me?

16 A I wouldn't think so in any form.

17 Q If we can go to 007027, and this is page 49 in the
18 top right.

19 A I have it.

20 Q And, again, your notes, and just down at the
21 bottom it says 'read Sharon -- S. Williams
22 statement', I take it that is the Sharon Williams
23 statement?

24 A I take it that, sir.

25 Q Do you have a recollection of her statement and



1 whether that played any role in your assessment of
2 the Crown's case?

3 A Umm, I know she gave a statement, I can't recall
4 any particulars at this point, and I don't think
5 it, in any sense, entered into evidence in the
6 Crown's case.

7 Q This talks about Emson and it says, 'Knife wounds
8 caused by double or single-edged? Bleeding', what
9 is that?

10 A It says, 'from vaginal area'.

11 Q 'From vaginal area? Low'?

12 A That's, 'How get blood in sperm'.

13 Q 'No injuries to private parts', and, 'Indicating
14 sexual intercourse post-death and
15 post-resistance?' Can you tell us what that
16 related to?

17 A Well those were evidently questions I wanted to
18 ask Dr. Emson with what he could say about what
19 sort of knife caused the wounds, whether there was
20 the bleeding mentioned, how one got blood in sperm
21 in general terms, and whether the lack of injuries
22 to the private parts could indicate sexual
23 intercourse post-death and post-resistance is the
24 way I put it.

25 Q And was that an issue, Mr. Caldwell, that you were



1 trying to sort out for the purposes of trial to,
2 'explain' may be the wrong word, but I believe Dr.
3 Emson's evidence was that there was no injury to
4 Gail Miller's genitalia; is that correct?

5 A That's my recollection.

6 Q And -- and that would be, one theory would be that
7 there was no forced intercourse, was that --

8 A That could well be, and I think I just wanted to
9 pursue those.

10 Q With Dr. Emson?

11 A Yeah.

12 Q Explanations from him as to how that could be?

13 A Yeah, because he was the person who had the, you
14 know, the most knowledge in that area, if you
15 will, pathology.

16 Q If we could then go to 007025, and this is number
17 51 in the top right-hand corner, --

18 A Okay.

19 Q -- August 29, '69. And this, this looks like
20 Friday, September 5 is when Paynter is going to
21 testify; does that look correct?

22 A Yeah, that's correct.

23 Q And you will see, just so that we keep this in
24 sequence, this is -- next, to page 007024, and
25 this says, 'now Tuesday-Wednesday', I'm not sure



1 whether that follows your earlier statements?

2 A Umm --

3 Q I think it's probably the last week in August, but
4 are you able to tell from that what days those
5 are?

6 A Umm, unless they do by reference to that one
7 numbered 51.

8 Q Okay. And we can maybe go through, I'll maybe
9 just go through it.

10 A Okay.

11 Q I'm not sure if much turns on the precise date.
12 It says, 'Send letter and case, explanation to
13 letter pointing out' -- maybe you could just go
14 through and tell us what that is?

15 A Yes, yeah. It's, 'Now Tuesday-Wednesday, read
16 letter and case, reply to letter pointing out re
17 taxi driver, will look up any rumour, etcetera'.
18 I crossed out C. That would be in reference to
19 Mr. Tallis' request for me to reread the matters
20 looking for possible evidence helpful to the
21 defence, and the case would be the Dallison vs
22 Caffery that he mentioned in that letter.

23 Q Right.

24 A Then -- do you wish me to go on with it, sir?

25 Q No, that's fine.



1 A Okay.

2 Q So this would be the, re: the letter from Mr.
3 Tallis, --

4 A That's right.

5 Q -- read the case and reply to his letter?

6 A Yeah, and that would involve me getting and
7 reading those statements, as you can imagine.

8 Q What does this mean, 'will look up any rumour'?

9 A I suspect Mr. Tallis may have received some
10 rumours about what had gone on in some aspect of
11 this and asked, must have been asking me if I
12 could run down any rumour, in effect through the
13 police department, not about them but about the
14 case.

15 Q Okay. And I'll show you some documents in a bit
16 that may touch on that. Then if you could carry
17 on with number 2?

18 A Yeah, 'phone Roberts re tapes, etcetera, of
19 polygraph test'.

20 Q Can you tell us what that refers to?

21 A That's Inspector Roberts in Calgary as someone,
22 maybe Mr. Tallis, had asked me whether whatever
23 tapes were made as part of that enterprise.

24 Q When you mean 'tapes' are you talking about audio
25 tapes?



1 A Umm, I can't tell just from the -- I can't
2 remember what techniques were involved, but it
3 could be audio tapes, it could be ones that the
4 machine printed out as part of the test, I
5 suppose.

6 Q Were you aware at the time, Mr. Caldwell, that
7 Mr. Chartier, Officer Chartier, had been recording
8 Inspector Roberts' interview of Nichol John?

9 A I found that out somewhere along the way.

10 Q And when you say 'somewhere' are you talking
11 during the course of the prosecution?

12 A I would think so.

13 Q And can you tell us what you remember hearing or
14 learning?

15 A Well I either read or learned that Detective
16 Chartier and Morrison were in the Sheraton
17 Cavalier, had bored a hole through the wall
18 between two rooms and were, I assume, audio
19 recording whatever Mr. -- or Inspector Roberts was
20 doing with respect to -- I don't know if both of
21 -- it would essentially be Wilson, I suppose, but
22 I don't know that.

23 Q And where did you learn that from?

24 A I think it's somewhere in print in the police
25 reports.



1 Q And did you -- and is that something you learned
2 at the time, back in '69?

3 A Umm, I would -- I have a feeling I did learn it
4 then.

5 Q And so the audio tape; did you ever listen to the
6 audio tapes?

7 A No, I don't even know that it existed, it -- you
8 mean the Chartier ones? I did not --

9 Q Yes.

10 A -- because I just don't -- or didn't, I should
11 say.

12 Q Now later on, and I will be touching on this in
13 more detail, we know that at the preliminary
14 hearing and at trial Nichol John did not repeat in
15 evidence part of her eyewitness testimony and her
16 incriminating statements; correct?

17 A Yup, that's correct.

18 Q Did you ever investigate whether or not you could
19 get the tape of Inspector Roberts' interview of
20 her that might have her on tape recounting her
21 eyewitness --

22 A Well first of all, sir, if I'm not mistaken it was
23 Wilson who Mr. -- or Inspector Roberts subjected
24 to the polygraph; --

25 Q Yes.



1 A -- was it not? Now did -- is the evidence that
2 Nichol came in later and said something to him or
3 gave him a statement?

4 Q The evidence that I think we've heard, Mr.
5 Caldwell, is that Inspector Roberts interviewed
6 Ron Wilson and Nichol John on the same day, Ron
7 Wilson first, --

8 A Yeah.

9 Q -- conducted the polygraph, sent him away; Nichol
10 John came in, did not have the polygraph, but
11 during the course of questioning admitted to
12 Inspector Roberts that she had witnessed the
13 murder; and then I think Mr. Wilson came back and
14 Mr. Roberts, according to his evidence before the
15 Supreme Court, spent some time with both of them.

16 A Okay.

17 Q And I believe Officer Chartier's evidence before
18 the Inquiry is that he thinks he set up the tape
19 for the day, although I don't know that he was
20 specific on --

21 A Uh-huh.

22 Q -- exactly what he may have recorded?

23 A Okay.

24 Q And, I guess, were you aware that Nichol John's --
25 that the interview by Inspector Roberts of Nichol



1 John may have been captured on audio tape?

2 A I don't think I was. It could have been, but I
3 don't think it -- I thought there was a written
4 statement that I'm aware of.

5 Q Well Ms. John gave a written statement the next
6 day.

7 A Yeah, right.

8 Q What about with Ron Wilson, is that something that
9 you would have -- would that have been of value to
10 you as a prosecutor, to have the recording of the
11 police interview of Wilson and John when they
12 first gave certain parts of the incriminating
13 evidence?

14 A Well only to the extent that it would, if you
15 will, supplement what Inspector Roberts said, and
16 I wouldn't -- I wouldn't know that that was
17 something I needed to have because I had no, you
18 know, no reason to mistrust him, for instance.

19 Q When you, at the trial when you engaged in the
20 section 9(2) procedure, which we'll get into, --

21 A Uh-huh.

22 Q -- one of the elements of that was to establish
23 proof that Ms. John gave the statement, the
24 earlier statement; correct?

25 A Umm, that's one of the things that you had to do.



1 Q And would the fact that you might have a tape
2 recording of what she said to Inspector Roberts be
3 of assistance in that exercise?

4 A It could have been. I didn't feel that what I did
5 have to work with there was, you know,
6 insufficient in that respect, and I think that was
7 simply the policeman's evidence; was it not?

8 Q Well I -- we will get into that.

9 A Yeah.

10 Q I guess my question is whether or not you pursued
11 getting a copy of the tape of either the Wilson or
12 John interviews?

13 A The audio tape, if any, --

14 Q Yes.

15 A -- I did not pursue. I'm not sure I knew it --
16 I'm sure I didn't have it played and I didn't end
17 up getting it.

18 Q And then if we could go down, number 3, it says
19 'McD', which I presume is McDonald, 're John and
20 hysterical amnesia off/on'; can you tell us what
21 that means?

22 A Well I knew a very limited amount about the three
23 or four different kinds of amnesia from the
24 *Hartridge* murder trial, and obviously, here,
25 evidently I wanted to ask Dr. McDonald about



1 Nichol John and hysterical amnesia. I think the
2 'off/on' would refer to the episode in which,
3 having been shown the clothing of Gail Miller, she
4 now recalled something which she didn't moments
5 before, is the -- is my reading of that, sir.

6 Q Now this is -- Nichol John testified on September
7 the 4th, '69 at the preliminary hearing, and I'm
8 not sure, but it appears that these notes may have
9 been prior to that. And so does this, would this
10 note relate to the issue of her remembering the
11 murder when she met with Inspector Roberts, is
12 that what you think that refers to?

13 A Well, yeah, but not that Dr. McDonald was in any
14 way a witness or involved in that, but whether
15 that would be a sensible explanation of why one
16 minute she couldn't remember and having been --
17 shortly thereafter shown the clothes, she
18 purported to remember and described the murder to
19 some extent.

20 Q Okay. Number 4, it says, 'Ullrich et al,' and
21 then it's got Karst underneath. It has, 're pro
22 defence evidence'; is that right?

23 A Yeah, that's correct.

24 Q Can you tell us what that means?

25 A I don't know, it's 'Ullrich et al re --' or 'pro



1 defence evidence'.

2 Q I'm assuming that's what it says.

3 A Yeah, it's I guess whether they have any knowledge
4 of the, of evidence falling under Mr. Tallis'
5 request letter to me; in other words, that would
6 have to be -- that could be characterized as pro
7 defence evidence.

8 Q And so did you go to Ullrich and other police
9 officers and ask?

10 A Yeah. I see a check mark there, which means I
11 did, and then underneath it in fine red pen,
12 that's also my writing, and I put Karst there
13 which makes me think I asked him as well.

14 Q And then scroll down, number 5, 'interview Emson,'
15 I believe that's --

16 A Yeah, that's right, 're different knives making
17 wounds'.

18 Q What's that refer to?

19 A Well, to -- I suppose the likelihood that the
20 broken knife found at or about the scene could be
21 responsible for the wounds and that would be the
22 jumping off part. I think there may have been
23 other knives that -- yeah, it says here different
24 knives making wounds. There were one or two other
25 knives in a sense involved there, sir, as you



1 know.

2 Q And then it's, 'read S. Williams statement,' which
3 we've touched on, that's Sharon Williams?

4 A Yeah, Sharon Williams.

5 Q And then, 'Nichol John coat to lab?'

6 A Yeah. It doesn't look as if I pursued that, at
7 least not by the check mark that isn't there.

8 Q And then number 8, 'results, interviews with
9 Schellenberg, interviews with girlfriend of
10 Mrs. Danchuk'?

11 A Yes.

12 Q Firstly with Schellenberg, what does that note
13 tell you, if anything?

14 A Well, I would be looking to find the results of
15 the interviews with Mr. Schellenberg, which the
16 way I'm reading this I don't think ever happened
17 in the sense that he was in Calgary at some point.
18 I'm not quite sure if -- how that played out.

19 Q I see.

20 A I clearly didn't end up with much in the way of
21 results out of that.

22 Q And then do you know what this reference is to the
23 girlfriend of Mrs. Danchuk?

24 A No, I don't. Someone must have mentioned that --
25 I don't know if it could be under the heading of



1 things Mr. Schellenberg reported Mr. Cadrain of
2 saying, for instance, that's the only suggestion I
3 can make, and I don't see it off the top.

4 Q And then if we can go to, 'write Weafer,' and he
5 was the Craik, or the Aylesbury RCMP officer?

6 A That's right.

7 Q And what is this, we can't see it very well.
8 Maybe you can read it from your original.

9 A That says Elmer Dennis Elliott. He's one of the
10 people I think who could have been a suspect.

11 Q Okay.

12 A And then Karst, it says Spence and Elliott. I
13 would think those were indications of me speaking
14 to those two officers about these two fellows in
15 their capacity of possible suspects, but only
16 possible in that sense.

17 Q Okay.

18 A Under the Mr. Tallis letter heading, sir.

19 Q Okay. If we can now go to --

20 COMMISSIONER MacCALLUM: Sorry, your last
21 remark, sir?

22 A Pardon me, the Mr. Tallis letter heading, Mr.
23 Commissioner. In other words, his request to me
24 to look for things that might be useful to the
25 defence.



1 COMMISSIONER MacCALLUM: Thank you.

2 BY MR. HODSON:

3 Q If we could next call up 007022. This has I think
4 number 54 in the top right-hand corner and this is
5 September 3rd, 1969; is that correct?

6 A That's right.

7 Q And you've got that document in front of it?

8 A I do.

9 Q And Inspector Roberts, it looks like that's his
10 phone number, Calgary city police; is that right?

11 A That's right, and his home number.

12 Q Would this be a phone call with him?

13 A Yes, it must be. Now, I'm not sure if D-E-T
14 number -- it sounds like detachment, but for the
15 moment I don't know what that is.

16 Q Fair enough.

17 A Okay.

18 Q If you can just go through and tell us what this
19 note refers to?

20 A It says, 'there's a chart that remains in R's --'
21 for Robert's, '-- possession re the interviews.
22 Did on Wilson; not on John.' Meaning he did and
23 didn't do those respectively. 'Interpretation of
24 chart: He could send chart and he could look at
25 it.' And he says, 'will call back at 1:30 our



1 time.' Now, then there's an asterisk saying, 'Re
2 Wilson lying on two questions'.

3 Q Can we just pause there. Does this relate to a
4 second call with Mr. Roberts then?

5 A The way I'm reading it, I think it's still the
6 first, sir.

7 Q Okay, carry on.

8 A Okay. 'Wilson lied on two questions. Don't let
9 out --' okay, it must have been the second because
10 by this time he said don't -- they don't, in
11 effect, let out charts unless subpoenaed to Court.
12 Chief's orders. 'Chart doesn't have questions.'
13 So that would trigger me that in fact it was a
14 call back to me. '3. Clothes from,' and it says,
15 'ask Wood and back to some guy.' I would assume
16 those were the clothes that were given to Mr.
17 Roberts for the use, the use -- in I think
18 interviewing John if I'm not mistaken.

19 Q If I may, I believe, Mr. Caldwell, and correct me
20 if I'm wrong, there was an issue that certainly
21 Inspector Roberts had Gail Miller's coat when he
22 was interviewing Nichol John.

23 A Okay.

24 Q And there was an issue about continuity and as to
25 whether or not you had to call Mr. Roberts for



1 that purpose only.

2 A Okay.

3 Q Do you remember that?

4 A I don't, but I'm not surprised.

5 Q Okay. If you could then carry on and tell us what
6 these notes refer to?

7 A Yeah. 'Clothes from,' blank, 'ask Wood' means to
8 ask Superintendent Wood, 'and back to some guy,'
9 that must have been what Roberts told me I should
10 ask Wood where the clothes went after the use they
11 made of them. Now, (a), these are, I gather, his
12 questions. '(a), are you holding back anything re
13 G.M.?' is Gail Miller. '(b), did you ever
14 intentionally hurt anyone?' and I noted a yes in
15 the next line. It says, '(c), have you lied to
16 any question on this test?' The way that's
17 written, I can't tell whether it applies to the
18 (b) or (c), Mr. Hodson.

19 Q If you can go to the next page, 007023, I think
20 it's got page 2.

21 A I have that.

22 Q And if you could go through that, please.

23 A This would still be Mr. -- or Inspector Roberts.
24 I've written Wilson questions, "I re the --" oh
25 yeah, G.M.M. would be shorthand for Gail Miller



1 murder, 'are you deliberately holding back any
2 information about that.' '2, have you lied to any
3 question on this test?' and then in brackets,
4 '(could refer to - did you ever hurt anyone - or
5 to the question whether he was holding back.'
6 Then he went on to advise me, 'Wilson didn't see
7 it, Wilson didn't do it.' I assume those are
8 Wilson's answers to Mr. -- to the inspector. Then
9 the question, 'You know for sure who did it?' and
10 the answer 'yes' underlined. Then the next thing
11 Mr. Roberts, Inspector Roberts told me, 'W --' for
12 Wilson, '-- told Roberts that in Calgary Dave told
13 him: I took her purse, I poked her with knife a
14 few times,' is how I read that.

15 Q Based on this note, Mr. Caldwell, are you able to
16 tell us what it was that you understood, what
17 statements of Wilson were determined to be true or
18 which statements were determined to be deceptive
19 or untruthful based on your discussions with
20 Mr. --

21 A I could only go by what these notes tell me.

22 Q Yes.

23 A And I guess I'll -- well, the two things under the
24 number 2, six or eight lines down, 'W didn't see
25 it, W didn't do it,' and then he evidently, 'You



1 know for sure who did it?' and he answered yes to
2 that.

3 Q And what did you understand that to mean?

4 A Well, that Wilson didn't, neither didn't nor saw
5 the murder take place, and indeed that he did know
6 for sure who did it, according to Wilson.

7 Q Okay. And did Inspector Roberts tell you that
8 Mr. Wilson was tested on the polygraph for the
9 question, "You know for sure who did it?"

10 A He didn't tell me that in so many words, but I
11 would -- I suppose it could have been on it or off
12 it.

13 Q And again, what was your -- let me just go back.
14 When you were done your call with Inspector
15 Roberts, what did you understand -- let me
16 rephrase it this way. We've heard some evidence,
17 particularly Inspector Roberts' evidence at the
18 Supreme Court, that what may have been tested is
19 Mr. Wilson's denial of any knowledge that was
20 determined to be deceptive, and then he gave
21 incriminating evidence, or as well we've heard
22 that when Mr. Wilson gave incriminating evidence,
23 that his statement giving incriminating evidence
24 was tested and found to be true. Do you
25 understand the difference between the two?



1 A I believe so.

2 Q And what is your recollection, sir, of what you
3 understood from Inspector Roberts was tested?

4 A Well, I guess, number 1, I was not at nor did I
5 ever read the Supreme Court evidence, sir, and I
6 realize you are not --

7 Q Yes, I want to know what your understanding was at
8 the time.

9 A Okay.

10 Q And let me phrase it this way. Did you understand
11 that Mr. Wilson's statement incriminating David
12 Milgaard had been tested by Inspector Roberts and
13 found to be truthful according to Mr. Roberts?

14 A That's how I -- the only way I could interrupt
15 what he said.

16 Q Okay.

17 A I don't think it involves interpretation, but
18 that's how I took his advice to mean.

19 Q And can you tell us, as the prosecutor, what if
20 any effect did that have on the way you viewed Ron
21 Wilson's evidence?

22 A Well, it was, in a sense, the first impartial, if
23 you will, scientific person to assess Wilson as to
24 the topic of credibility, and I certainly felt
25 that was much better than nothing, and I had no



1 reason to, you know, to doubt Mr. Roberts' work.

2 I never dealt with this topic before and he

3 clearly was in the business at that time.

4 Q If we can go to 007021, please, and this is a
5 note, number 55 in the top right-hand corner, and
6 again Emson, can you tell us what this refers to?

7 A Yes. It's -- I must have -- oh, Emson, and then
8 I've written, '1. Stabs - one or more knives?'
9 - single or double-edged? - left hand - right
10 hand, can he tell? - significance of no injuries
11 to genitalia.' And then there's a date, evidently
12 September 4th, 1969. I take it from that, sir,
13 that I phoned him and those check marks mean I
14 covered all those things with him. The next
15 thing, he said, 'Friday at five is O.K. Next
16 week: Any time but Thursday morning.' I don't
17 know if that means for me to come up and interview
18 him or --

19 Q What is this, these bottom notes?

20 A 'E: Bleeding from vagina,' and that would refer
21 again to Dr. Emson, I assume, to ask him that
22 question, and the next one is 'show him pics,'
23 which I assume would be --

24 Q Let's go back to the top here, one or more knives.

25 A Okay.



1 Q What -- do you recall, Mr. Caldwell, being
2 concerned about whether or not one or more knives
3 was used in the attack on Gail Miller?

4 A Yes.

5 Q And why was that?

6 A Well, at the time of the original investigation,
7 if you will, my memory is the one and only knife
8 was the broken one which could, in effect, be
9 matched handle and blade.

10 Q Yes.

11 A Was taken to be and assumed to be the murder
12 weapon. Now, I know other ones appeared in due
13 course. I understand there's quite a bit of
14 evidence early in the Inquiry, and I happened not
15 to be here for that, about those knives.

16 Q I think, and if I may, we've heard that Officer
17 Oliver located a knife I think on March 2nd, 1969
18 in the vicinity of the body, a bone-handled
19 hunting knife?

20 A Yeah. It was, I believe, the one that was over a
21 fence on the lower stringer of the fence, if I'm
22 not mistaken.

23 Q Yes.

24 A And I -- there was some discussion of what was
25 done with that at some --



1 Q And I'll deal with that --

2 A Yeah, okay.

3 Q -- a bit later.

4 A I'm aware of that one.

5 Q Would it be fair to say at this point one or more
6 knives, would that be asking Dr. Emson that
7 question?

8 A Yeah, it would be.

9 Q And do you remember what he told you?

10 A No, I don't.

11 Q And single or double-edged, I presume that refers
12 to a knife?

13 A Yeah, and to have made those wounds, could he, you
14 know, narrow it down to either of those.

15 Q And do you remember if the other knife or knives
16 found were double-edged knives?

17 A I don't, sir. I'm sure he said something in the
18 trial about --

19 Q Yes, he did.

20 A Okay, I'm glad --

21 Q And then left hand, right hand, can you tell, is
22 that asking Dr. Emson --

23 A Yeah, it is.

24 Q And would that be based on the fact that Mr.
25 Milgaard was left-handed?



1 A Well, yeah, it was understood that Mr. Milgaard
2 was left-handed and if he could -- I still don't
3 see how being one handed would eliminate the
4 wounds being made by a person using his, if you
5 will, off hand, but --

6 Q It appears that you had raised this with Emson?

7 A Oh, yeah, I had.

8 Q Would this have come from discussions with
9 Mr. Tallis do you know?

10 A I can't see anything to point that way.

11 Q And then, 'significance of no injuries to
12 genitalia?'

13 A Yeah, that's the -- the situation evidently was
14 that there were none, as I recall his evidence,
15 and I'm asking what the significance of that is in
16 terms of, you know, would that be an invariable
17 finding in most cases or not.

18 MR. HODSON: This is probably an
19 appropriate spot to break.

20 *(Adjourned at 2:47 p.m.)*

21 *(Reconvened at 3:06 p.m.)*

22 BY MR. HODSON:

23 Q Mr. Caldwell, I would now like to turn to Nichol
24 John and the preliminary hearing, and before we
25 get to her evidence at the preliminary hearing, do



1 you recall learning about a statement Nichol John
2 made to some other witnesses in the hearing room,
3 or in a waiting room?

4 A Pardon me. Yes, sir.

5 Q Can you tell us what you -- perhaps I can call up
6 003847. And tell us what you remember about that.
7 Is this your handwritten note, sir?

8 A Yes, it is.

9 Q And maybe we can just go through. You can read
10 the top part of that note.

11 A This -- my note says:

12 "Mrs. Miller, Mary Marcoux and Albert
13 Cadrain all heard Nichol John say 'I
14 don't know why he didn't kill me too - I
15 was right there & saw it all, but I'm
16 not going to say nothing'."

17 Now, there was, I believe, a witness waiting room
18 involved in this and I believe possibly Peggy
19 Miller was also present, but that isn't revealed
20 in this note. I went by this room and one or
21 other of those three told me this indicating that
22 all three of them heard it and I wrote it down as
23 promptly as possible on whatever I had available.
24 I had thought, Mr. Hodson, that it was in that NB
25 for trial list, which I kept in a spring back



1 binder on foolscap, and that may surface
2 somewhere else, but either this was my original
3 note and I transferred it to that other one or
4 vice versa.

5 Q Okay. Do you have a recollection of the event
6 though?

7 A Yes, I do. It was pretty striking.

8 Q And why was it pretty striking?

9 A Well, because this was an admission, if you will,
10 by Nichol John that she saw it all, she was right
11 there, she didn't know why he didn't kill me too,
12 and I'm not going to say nothing, which could only
13 be in the context of Gail Miller as far as I could
14 see.

15 Q And you said this was in a waiting room, and was
16 this at or associated with the preliminary
17 hearing?

18 A Yes.

19 Q And do you know if this was before she had
20 testified?

21 A I'm not sure, but I think it could be, could be
22 established somehow.

23 Q And would there be any reason for her to be in a
24 witness waiting room after she testified?

25 A I wouldn't think so. She may have been hanging



1 around the scene.

2 Q We'll go to some documents later where this 'see
3 in person' page, item 5, and I think, Mr.
4 Caldwell, in your notes you have a document as
5 part of your preparation where it has NB for
6 trial, which is important.

7 A Uh-huh.

8 Q Correct?

9 A Yes.

10 Q And then as well you have a list of 'see in
11 person' items?

12 A Okay, I didn't realize that, but --

13 Q We'll go to that a bit later, but just so that we
14 note that that -- and I think your evidence is
15 either this is the original note or a note that
16 you transcribed?

17 A Yes, that's right, one or the --

18 Q Do you have a recollection of, when you heard this
19 information, of writing it down somewhere?

20 A I wrote it as soon as I could while the wording
21 was fresh in my mind, presumably right there in
22 that same area.

23 Q Okay. If we could then go to 030692. Now, this
24 is Nichol John's transcript from her preliminary
25 hearing evidence, and I believe it was September



1 the 4th that she testified. The date is not
2 stated on there, but I believe it's Thursday,
3 September the 4th. Prior to her testifying at the
4 preliminary hearing, Mr. Caldwell, and I think we
5 saw an earlier note that said you would have
6 interviewed her with Mr. Karst I believe?

7 A Yeah, I believe that was the person.

8 Q Prior to her giving evidence at the preliminary
9 hearing, I take it you would have interviewed her;
10 is that fair?

11 A Oh, yes, yeah.

12 Q And I think you said -- do you have a recollection
13 of that?

14 A One part of it I do. Somewhere I recorded that I
15 interviewed her some three times. Now, I believe
16 that was in my report on the preliminary hearing.

17 Q Yes.

18 A The one I recollect was the one that I mentioned
19 that took place in my office in which she
20 essentially ran out of the building in tears, that
21 one I remember.

22 Q And who else was present at that meeting?

23 A I would think it was Ullrich and it may have --
24 and one other policeman. I'm not sure that that's
25 recorded anywhere. There would have been one or



1 more policemen then.

2 Q Do you recall why she ran out of your office?

3 A Well, the basic -- I think it was in escape or
4 whether it was out of fear of having to go through
5 and testify about this whole episode, because I
6 was trying to interview her about it.

7 Q Do you have a recollection of, and let's talk
8 prior to the preliminary hearing, do you have a
9 recollection in the course of your interview with
10 Nichol John of her ever telling you that she
11 witnessed the murder?

12 A No.

13 Q And is it possible she did and you don't recall
14 or --

15 A No. If she had said that, I don't think I would
16 have forgotten that.

17 Q And so from that, would it be fair to say then as
18 before you put her on the stand at the preliminary
19 hearing, had you in previous interviews asked
20 her -- let me just back up. I think you said your
21 practice would be to go through the statement that
22 the witness had given; correct?

23 A That would be correct.

24 Q So you went through the statement with Nichol John
25 and she had not repeated to you that she witnessed



1 the murder; is that what you are telling us?

2 A Yeah. I don't think it was in that -- that that
3 was in the statement, Mr. Hodson, that she had
4 witnessed the murder, unless I'm mistaken.

5 Q I believe you are, sir.

6 A Oh.

7 Q I shouldn't say witnessed the murder, the
8 statement says she witnessed David Milgaard grab a
9 girl, stab her and drag her down the alley, and it
10 also says in the statement that when she met with
11 Inspector Roberts, that's the first time she
12 realized she had witnessed a murder.

13 A Okay, thank you, because I was misplacing that.

14 Q So with that, I'm trying to understand, Mr.
15 Caldwell, whether you have any memory -- first of
16 let's talk about memory -- about whether you are
17 able to remember Nichol John in your meetings with
18 her, whether it's before the prelim or otherwise,
19 whether she ever repeated to you that she had
20 witnessed Mr. Milgaard grab a girl and stab her?

21 A I don't believe she did.

22 Q And what about some of the other incriminating
23 information in her statement, do you remember
24 if -- do you have a recollection of what she would
25 have said about that?



1 A Well, I think it was -- wasn't that a sequence of
2 three or four or five things?

3 Q Yes. Let me just, maybe just help you out a bit
4 here.

5 A Okay.

6 Q We know at the trial and at the prelim she did not
7 repeat, and I think, and I stand to be corrected,
8 there was about seven items that were
9 incriminating to Mr. Milgaard in this statement
10 and at the preliminary hearing and trial she did
11 not repeat those.

12 A That's -- I think I'm thinking about the same
13 sequence you are, sir.

14 Q Right. So whether it's seven or not, one of
15 those, in fact, was the witnessing of the
16 stabbing, okay.

17 A Yes.

18 Q And so of those incriminating statements that she
19 did not repeat at trial, in the course of any of
20 your interviews with her do you know if she
21 repeated those to you?

22 A I don't feel that she did.

23 Q And did that cause you some concern?

24 A Well, it did because I felt that the crux of the
25 matter, the episode we've just been talking about



1 now, was, A, was truthful.

2 Q Yes.

3 A And that I expected her to testify to it. I could
4 certainly understand why she would be unhappy
5 about doing so.

6 Q Did -- what did you attribute to the fact that she
7 wasn't able to repeat the incriminating pieces of
8 information in her statement to you when you
9 interviewed her?

10 A Well, I -- I -- under the overall heading of being
11 afraid of David Milgaard was the jumping off
12 point.

13 Q What -- tell us, what significance if any did you
14 place on the comment she made in the hearing, the
15 witness hearing room you just told us about?

16 A Well, I thought that was very significant. If in
17 fact that's what she had seen, it was very, you
18 know, compelling evidence of the attack in one way
19 or another.

20 Q And I think your note says as well, it says:

21 "I don't know why he didn't kill me too
22 - I was right there and saw it all, but
23 I'm not going to say nothing."

24 A That's right.

25 Q And again, did you have concerns then, Mr.



1 Caldwell, that she might not repeat what's in her
2 statement at trial or at the prelim?

3 A Now, maybe my counsel may assist me here, I'm sure
4 this episode I believe took place at the prelim if
5 I'm not mistaken.

6 Q Okay.

7 A Yeah, because I was having trouble dating it or
8 slotting it in.

9 Q Okay.

10 A Now, I would be concerned that, from her overall
11 demeanour, that she might not say at the prelim or
12 trial what I, you know, understood to be the
13 correct, the truth on her part on what she did
14 know, which we'll say those five or six or seven
15 items.

16 Q Right.

17 A And I seem to have -- can you tell me the page of
18 that and I'll get it out?

19 Q Sure. If we can call up -- do you want the notes?

20 A Either one.

21 Q 003847. It will come up on the screen.

22 A Okay.

23 Q Maybe we can just call out the top part.

24 MS. KNOX: For Mr. Caldwell's assistance, I
25 don't believe we've ever located the original in



1 his green ink that this was apparently made in,
2 unless I'm missing it somewhere. I don't believe
3 we've been able to locate his original copy of
4 that and there's only the photocopies found
5 elsewhere in the files.

6 MR. HODSON: That's correct.

7 A So that's -- I guess I'm glad to know that, if you
8 want to put it that way, but --

9 BY MR. HODSON:

10 Q Sorry, did you want to see this note?

11 A No, I have it here, sir, on the screen.

12 Q Okay. My question -- I'm sorry, I think you had
13 asked to see this did you?

14 A Yeah, I did. I didn't have it on my screen.

15 Q Okay. And let me just ask you again, did it occur
16 to you during this time period that Nichol John
17 would not, first of all, tell, repeat the
18 incriminating information to you in interviews and
19 she didn't repeat it at the preliminary hearing or
20 the trial?

21 A Uh-huh.

22 Q Did you ever consider, sir, that maybe she hadn't
23 seen what she said she saw in her statement?

24 A Well, by this time, Mr. Hodson, I, for what it's
25 worth, I was satisfied that she had seen that, and



1 the route in which we got to that was, as you
2 recall, post polygraph by Mr. Wilson. In other
3 words, I know she wasn't tested, but after that
4 and after being shown the uniform by Mr. Roberts I
5 believe is when she made the most incriminating
6 statement, which I took to be true.

7 Q Did you go back to Mr. Mackie who took the
8 statement and say, look, what's going on here,
9 she's not -- she's not repeating what she told
10 you, can you explain that?

11 A Well, I didn't do that and I did learn through
12 this episode that she was very upset for some
13 reason with Sergeant Ray Mackie. That may have
14 had something to do with her running out of my
15 office.

16 Q And tell us what you recall or what causes you to
17 say that she was upset with Mr. Mackie?

18 A Well, some other officer advised me of that.
19 Nothing that he had done, but she simply didn't
20 like him.

21 Q And that's something you knew at the time back
22 then?

23 A I found it out about then.

24 Q Okay. What about Inspector Roberts, did you ever
25 go back and say lookit, she's -- what she told you



1 in the interview about witnessing a murder she's
2 now not repeating to me and didn't repeat at the
3 preliminary hearing, can you assist us in why that
4 might be?

5 A Well, I would be -- I clearly didn't do that and I
6 would be reluctant for some reasons, one including
7 the fact that Inspector Roberts was in Calgary
8 ordinarily, just came here for that one function,
9 I wouldn't -- I would be reluctant I think to try
10 and enlist him to go back with her and reinforce
11 that or get something else.

12 Q Let me phrase it a bit differently.

13 A Okay.

14 Q Not to go back and talk to her --

15 A Yeah.

16 Q -- but perhaps to satisfy, in your mind, to give
17 you some explanation as to why Nichol John would
18 have told Inspector Roberts on the 23rd of May,
19 and put in a written statement on the May 24th,
20 that she witnessed the murder?

21 A Uh-huh.

22 Q And yet, when it came time to testify at the
23 prelim, she wouldn't or didn't tell you that?

24 A Well I -- that was unfortunate, but I couldn't see
25 any way that --



1 Q Yeah, now --

2 A -- to cope with it, Mr. Hodson.

3 Q Well was it a case of, and again whether it's by
4 your recollection or what you are able to tell us
5 likely occurred, was it a case of Nichol John
6 saying, 'Lookit, I don't remember that', or was it
7 a case of saying, 'I don't -- I'm not prepared to
8 talk to you'?

9 A I don't know. The 'I don't remember', I don't
10 recall that being said. I got a very strong
11 impression that she was not willing to talk to me
12 in that sense.

13 Q So --

14 A I mean, she spoke with me, but I got the feeling
15 that she was not going to, you know, willingly
16 tell what I believed, then, to be an accurate
17 story.

18 Q And then when you called her -- if we could go to
19 the preliminary hearing transcript 030692 -- when
20 you called her to testify at the preliminary
21 hearing, what was your expectation as to what she
22 was going to say about the key parts in her
23 statement, the incriminating parts in her
24 statement?

25 A Well I am not, I'm not sure what my expectations



1 were, but I simply had to -- I couldn't not call
2 her as a witness, and I had to do that, and I
3 think, again, there's some mention that three
4 interviews hadn't produced her --

5 Q Sure, and I'll get to that.

6 A Okay.

7 Q But when you called her as a witness were you
8 putting her on thinking that, once she is under
9 oath in the courtroom, she might repeat from her
10 statement?

11 A Yeah, I would say that.

12 Q And so there was something --

13 A Did you say 'repeat her' --

14 Q I'm sorry, --

15 A Yeah.

16 Q -- that she would testify at the prelim consistent
17 with what she put in her May 24th statement?

18 A Well I would -- that's what you would expect with,
19 you know, with all witnesses off the top, as it
20 were.

21 Q If we could then go to 030704, this is the
22 transcript, and just quickly go through a couple
23 of the questions. You can see here, this is you
24 asking her questions, and then:

25 "Q And what happened there?



1 A Dave got out of the car to see what
2 was wrong, ... we were stuck ...".

3 "Q ... can you relate the alley to any
4 particular buildings ...

5 A Yes, behind the funeral home."

6 And then to the next page, actually go to 706,
7 actually, sorry, 705. And then down at the
8 bottom she said:

9 "Q And you said both he and Ron got out?

10 A Yes.

11 Q Was there any discussion as to what they
12 were going to do ...

13 A Yes, they were going to get help."

14 Next page:

15 "Q And you were stuck still?

16 A Yes.

17 Q Was Dave still sitting to your right and
18 Ron to your left?

19 A Yes.

20 Q When they got out, did you get out?

21 A No.

22 Q What happened after they got out?

23 A Ron went in one direction and Dave
24 went in another.

25 Q What happened then?



1 A I don't recall."

2 A I see.

3 Q And I take it that was the question, Mr. Caldwell,
4 where, in accordance with what she had in her
5 statement, that is where she had previously said
6 that that's when she saw Mr. Milgaard grab a girl;
7 is that --

8 A I would say it would start there and that's where
9 the, in effect, 9(2) process would have started,
10 sir, later --

11 Q Yeah.

12 A -- that is.

13 Q This is at the preliminary hearing, --

14 A Yeah, I know.

15 Q -- and I've read the transcript, and if we can
16 actually go to the next page. And a couple of
17 questions here:

18 "Q I see. Did Dave say anything when he
19 got back in the car?

20 A I can't recall.

21 Q Okay, and did you notice anything about
22 him, particularly his condition when he
23 got back in the car?

24 A He was cold. That's all."

25 And can't estimate how long he was gone, and at



1 this point in the preliminary hearing you did not
2 challenge her with her previous statements, --

3 A Umm --

4 Q -- this isn't in the transcript?

5 A No, I was -- she was, pardon me, my witness to
6 begin with and I, as you know, could not, in
7 effect, cross-examine her. I was -- ordinarily
8 you would go with the rules relating to
9 examination-in-chief.

10 Q Was there a legal or tactical or other reason that
11 you did not utilize section 9(2) of the *Evidence*
12 *Act* at the preliminary hearing?

13 A Well I know I didn't do it and at this point, sir,
14 I'm not sure why. I suspect that I was not ready
15 to cope with it at that point.

16 Q I see. And did you think you needed this evidence
17 from her in order to secure the committal?

18 A I -- I'm not sure. I felt that it was evidence
19 that she knew of, I may well have got a committal
20 for trial in the absence of that evidence, but it
21 --

22 Q And prior -- sorry?

23 A No, that's all.

24 Q And, prior to this, you had provided her May 24th
25 statement to Mr. Tallis?



1 A Yes.

2 Q Do you recall having any discussion with Mr.
3 Tallis about the fact that Nichol John was not
4 repeating --

5 A No, --

6 Q -- her --

7 A -- I don't, sir.

8 Q Would it be a fair assumption that you likely
9 would have talked to him about it?

10 A It could have happened but I don't think there's
11 any notes anywhere to indicate on that.

12 Q Right. But he would know, I presume, that she had
13 given a sworn statement saying that she had
14 witnessed the murder; correct?

15 A Yeah, I think she -- Mr. Tallis had so-called --

16 Q Yeah.

17 A -- both or all three of her statements, --

18 Q Yeah.

19 A -- in my understanding.

20 Q And then, when you put her on the stand at the
21 preliminary hearing, she says, 'I don't recall
22 what happened after they got out of the car', and
23 I'm wondering; would that not be something that
24 you and defence counsel would discuss after the
25 fact, 'What about this witness and' --



1 A Oh, you mean at the end of the prelim or
2 something?

3 Q Yeah, or at some point?

4 A It could well have been. I don't recall it
5 happening, however.

6 Q If we could then go to 048305. And this is a
7 document that the Commission has received, I'm not
8 sure from where, I believe it may have been from
9 the Milgaards, but it's a page of a memorandum
10 September 9th, 1969, and it I believe is Mr.
11 Tallis' memorandum to file.

12 A I see.

13 Q Now we don't have Mr. Tallis' file, but we do have
14 this page, there -- and it's not clear, it
15 looks -- if we just go down to the bottom for a
16 moment. It appears to end mid-sentence so it
17 appears that there is more to this memo. But in
18 any event, if we can go back up to the top, and
19 this is September 8th, '69. It says:

20 "On this date I met with Mr. Caldwell
21 for approximately one hour to review
22 this file and discuss the questions of
23 additional witnesses that are to be
24 called. I made notes of this in my
25 brief book and these notes appear in the



1 Luboff brief case where you pencilled on
2 my name in white letters. Pull out
3 those notes."

4 If I can pause there, and I think you told us
5 this yesterday, that it was your practice to,
6 with defence counsel on occasion to go through
7 and un -- go through your file and show them
8 parts of your file?

9 A Umm, yeah, I -- I -- I don't -- I think this looks
10 as if it could be directed to Mr. Disbury, the way
11 -- it doesn't say so but --

12 Q Okay. Well, and again, I'm not asking you to --

13 A No.

14 Q -- to -- that question, Mr. Caldwell.

15 A Yeah, okay.

16 Q My question is about your dealings with defence
17 counsel.

18 A Okay.

19 Q And yesterday I thought you told us that on
20 occasion, with police investigation reports, you
21 might share them and let defence counsel look at
22 them but not give them copies?

23 A That is right.

24 Q And here, whether this is to Mr. Disbury or to the
25 file or to himself, it appears that Mr. Tallis is



1 saying that he met with you for an hour to review
2 the file and discuss the question of additional
3 witnesses?

4 A Yeah.

5 Q Do you have any recollection of that? Now I do
6 have some notes that I will be going to.

7 A Okay.

8 Q Maybe --

9 A I don't recall it, Mr. Hodson, but I have no doubt
10 that it happened based on this.

11 Q And based on your practices at the time would you
12 have -- or let me ask you this. What would you
13 have shared with Mr. Tallis in a meeting like this
14 by way of what would you have shown him?

15 A Well it's, it says:

16 "... review the file ...",

17 "... discuss the question of additional
18 witnesses that are to be called."

19 I gather the main subject matter were these
20 whatever additional witnesses were that I
21 proposed to call. Umm, off -- you know, I can't
22 say what those are based on this.

23 Q Sure. We'll just carry on, and the memorandum
24 says:

25 "The following points will have to be



1 carefully briefed in preparation for
2 this trial:

3 1. The admissibility of evidence with
4 respect to commission of other offences
5 by the accused both before and after the
6 alleged murder."

7 And do you know what that -- what that would be?

8 And I appreciate this isn't your document, --

9 A Yeah.

10 Q -- but would you have discussed other offences
11 with Mr. Tallis?

12 A It could possibly be the Aylesbury elevator
13 business, or it somehow came up, and it could have
14 come from me, but I don't know what the topic was
15 or what was proposed to be done.

16 Q There was a reference in an earlier note of yours
17 about checking about another, about an assault in
18 Regina, and I think you made a note of Nichol
19 John?

20 A Yeah.

21 Q Was that something you would have discussed, was
22 that something you considered putting in evidence,
23 or --

24 A I don't -- I can't, well, recall ever deciding to
25 put that in evidence. I can't even remember what



1 the assault was offhand.

2 Q Okay. I had showed you a note earlier today about
3 where you made a note --

4 A Yeah.

5 Q -- of a police report about a suggestion that Mr.
6 Milgaard had assaulted a girl in Regina, and your
7 note indicated Nichol John.

8 A Oh, all right, that --

9 Q Yeah.

10 A I remember that episode from --

11 Q And was that something, do you remember whether
12 that was going to be a part of your case at all?

13 A I -- it's hard to understand how it would be,
14 except possibly under the heading of reasons why
15 John was, you know, afraid of him.

16 Q Okay. And if we can go down, paragraph 2 talks
17 about:

18 "The admissibility in evidence of
19 objects found but which cannot be
20 identified or specifically linked to the
21 particular crime - in this connection I
22 am thinking of such items as the toque
23 and so forth. When dealing with items
24 of this nature it seems to me that the
25 main grouping of the evidence or its



1 admissibility will centre around
2 relevance.

3 3. In this particular case it will be
4 important to have complete production of
5 statements of Crown witnesses and in
6 this connection I may want to have
7 production of the lie detector
8 material."

9 And then it goes on about:

10 "The admissibility of so-called self
11 serving evidence will be very important
12 ...",

13 but I don't know what else is said.

14 If we can then go to 007014,
15 and this is page 60 in the top right-hand corner,
16 do you have that note?

17 A That's it? Yes, sir.

18 Q And it appears that there's three pages here, are
19 there, 60, 59, and 58 in the top right; is that
20 correct?

21 A That's right.

22 Q And so this is September 8th, '69, this is the
23 same date as Mr. Tallis' memo indicates that he
24 met with you, correct?

25 A I -- yes.



1 Q And would these be your notes? And just actually
2 scroll down for a moment. Actually, go back, go
3 back to the full page.

4 A Okay.

5 Q It says, 'Tallis not requiring', 'Cal wants';
6 would these be notes of your meeting with Mr.
7 Tallis?

8 A Umm, they -- oh, yeah, I assume they -- they had
9 to be a meeting or a phone call. Is it the same
10 date that's mentioned in his memo, Mr. Hodson, or
11 not?

12 Q Yes it is.

13 A Okay, well, in that case I assume that it's a
14 meeting with him.

15 Q Yeah. Mr. Tallis' memo indicates that on
16 September 8th he met with you for about an hour to
17 --

18 A Yeah.

19 Q -- review the file.

20 A Yeah.

21 Q Do you think these are your notes of that meeting?

22 A I would think so.

23 Q And if we could just go through, I think number 1,
24 and on this date there were still two days left in
25 the prelim, 'Witnesses to recall Wednesday 12 noon



1 Kliev, Reid, Penkala McCorriston, Oleksyn'. Do
2 you know what the 'E' refers to; the exhibits?

3 A Not offhand, but I hope I'll --

4 Q Okay. If we can go down to number 2, 'Remaining
5 Crown witnesses', and you have got 'MacLeod', who
6 I think was the RCMP lab person, and you have got
7 a note here that says 'Tallis not requiring'?

8 A That would be what he told me, and he would have
9 undoubtedly been excused as a result.

10 Q And then, 'Fleming, Mackie, Mackie, Shawchuk,
11 Gerse, Karst, Edmondson, Pratt, and Emson'; do you
12 know what these 'E' and 'C' would refer to?

13 A Not offhand, but I hope something will come up.

14 Q Okay. I'm not sure if anything turns on it.
15 Paragraph 3, it says, 'Cal wants Mrs. Wilson,
16 Roberts', and then beside 'Mrs. Wilson' it says
17 'asked D/C', which I assume is deputy chief, 'to
18 subpoena'?

19 A That's right.

20 Q And then, here, 'I to phone'?

21 A Yeah, I was to phone Roberts.

22 Q So can you tell us what -- what does this note
23 tell us?

24 A Oh, well he's, that's the third heading that he
25 wants to -- Mrs. Wilson, presumably, to attend,



1 and I've arranged to subpoena her, presumably Mr.
2 Roberts to attend, and I -- I was to phone him.
3 That may -- we -- may be the phone call we've
4 already seen, I'm not sure.

5 Q Well if I can assist you, Mr. Caldwell, --

6 A Yeah.

7 Q -- I will be showing you notes that suggest that
8 you did subpoena Shirley Wilson --

9 A Okay.

10 Q -- to attend at the preliminary hearing, and in
11 fact arranged to have Inspector Roberts fly in, he
12 didn't testify at the preliminary hearing but the
13 documents suggest that you and Mr. Tallis
14 interviewed him.

15 A That, I'm sure, happened.

16 Q Okay. So can -- and then --

17 A And then at the bottom, Mr. Hodson, the, '2
18 Danchuk statements, 2 accused statements', and, '2
19 MacRae Fraser statements', the checks presumably
20 mean that I was getting them.

21 Q And I have a letter here that I'll show you that
22 appends them as a follow-up.

23 A That's good.

24 Q Your counsel has advised me that the 'E' may refer
25 to 'advised Elmer'; is that --



1 A Umm, that could, that could well be the case, in
2 that he'd be the way, the person I would deal with
3 in getting witnesses.

4 Q And if we can just call up 007026, this may assist
5 you. You see here, 'advised Elmer'; does that
6 help you out at all?

7 A That could -- appears to mean that I told Elmer,
8 we'll say, Wilson could be on Wednesday or
9 Thursday.

10 Q No, no, I am just -- Mr. Caldwell, I think I had
11 asked you the question earlier as to what the
12 initial 'E' meant on your earlier note?

13 A Okay. I can't come up with anything better, for
14 the moment, than that.

15 Q Okay.

16 A What my counsel suggested.

17 Q If we could go back to 007014. If we can go down
18 to the bottom, and so do we take it from that that
19 Mr. Tallis had asked you to have Mrs. Wilson and
20 Mr. Roberts brought in?

21 A Yeah, that's how I read it.

22 Q And if we can go to the next page, please. And
23 this is, 'G.W. Pratt, elevator agent, Aylesbury',
24 and then a note, 'Looked like the one but no
25 identification mark on it, if busy at elevator



1 can't come, told him I'd call him Tuesday'; do you
2 know what this relates to?

3 A That could be the flashlight.

4 Q Okay.

5 A But I'm not sure.

6 Q Okay. Then if we go to the third page which is
7 number 58 in the top right-hand corner?

8 A Yeah, this --

9 Q And then at the top it says, 'Possible', is that
10 'possible witness' evidence'?

11 A Yeah, 'Witnesses with evidence which', quote,
12 '"Tends to show prisoner innocent"', close quote.

13 Q And then it says 'Source, Witness', does it --
14 what does that --

15 A Yeah. The left hand, left hand is the Source,
16 evidently the second column Witness, Does It Show
17 This, so Ullrich -- then the witness 'Dennis
18 Elliott' and, 'It does not show that', in other
19 words there's nothing indicating, in his evidence,
20 that it would tend to show the prisoner innocent.
21 The next one is 'Karst' who evidently was -- you
22 know -- is 'L. Spence, Elliott', and then I have,
23 'As above'.

24 Q Okay, before we go through the rest, --

25 A Okay.



1 Q -- and then maybe just go back to the full page.

2 A Okay.

3 Q And there's some other references to statements
4 and names --

5 A Okay.

6 Q -- and I'll go through some of those.

7 A Okay.

8 Q Are these notes of your meeting with Mr. Tallis or
9 are you able to tell us?

10 A Well the, they run under the same general heading,
11 unless there is a -- do we have a note, I'm sorry,
12 you told me the date he said the meeting was?

13 Q These are, well, the notes are from the same date
14 as Mr. Tallis'. Mr. Tallis has a September 8th
15 memo and these are part of your notes, --

16 A Yeah.

17 Q -- well, the first page says September 8th.

18 A I assume they are from that meeting then.

19 Q And do you have a recollection of that or are you
20 --

21 A No, I don't, sir.

22 Q Would it be your practice then, if you were
23 meeting with Mr. Tallis, to go through the file
24 and identify some possible witnesses which tend to
25 show prisoner innocent?



1 A Well that's what he was wanting me to do and I
2 was, you know, trying to do that.

3 Q And I guess my question is are you able to tell us
4 whether these would be notes showing this is what
5 you went and showed Mr. Tallis, these
6 statements -- and I'll go through them with you --

7 A Okay.

8 Q -- or whether these are your own notes that you
9 went -- from when you went through the file; are
10 you able to tell us?

11 A Umm, maybe we could go through them and --

12 Q Sure.

13 A -- it will become apparent.

14 Q So here we've got Elliott and Spence, we've heard
15 about those people.

16 A Uh-huh.

17 Q There is a follow-up letter which I will go to
18 when we're done this --

19 A Okay.

20 Q -- that identifies some of those statements. We
21 then have 'Nicholas Canton, statement number 23,
22 suspects Spence'. 'Orlee Lehne, number 25, says
23 falling out with Spence, number 25'.

24 If we can call up 006369, and
25 this is the Orlee Lehne statement, you will see



1 the number 25 --

2 A Yes.

3 Q -- that's referenced in your notes, and you will
4 see here:

5 "She advised me she had a falling out
6 with her boy friend Les Spence of Purdue
7 ..."

8 So do you see that? Orlee Lehne is saying,
9 giving a statement January 31 that Gail Miller
10 had advised her she had had a falling out with
11 her boyfriend, Les Spence. If we can go back to
12 the note.

13 A Oh, umm --

14 Q And just go back to the note. So you've got a
15 note here, 'Orlee Lehne, number 25, says falling
16 out with Les Spence'?

17 A Yeah, that's a nutshell of --

18 Q So my question is, is that something you think you
19 would have shown Mr. Tallis at the meeting, or --

20 A Well it -- if I can -- can we have that back and
21 I'll read the last one you showed me?

22 Q You want the statement back?

23 A Yeah, the police report thing that was on a moment
24 ago.

25 Q Okay. If we can go back to 006369.



1 A Okay.

2 Q That's statement 25, Orlee Lehne.

3 A Now what's further down on that?

4 Q If we can, yeah, scroll down.

5 A The way I'm reading that, sir, is that it would be
6 a -- nothing, you know, to support the theory that
7 that would fall into the category of evidence
8 tending to -- what --

9 Q Okay. But I guess let's go back, --

10 A Okay.

11 Q -- you've looked at the statement, let's go back
12 to your note.

13 A Then it says 'Orlee Lehne, number 25, says falling
14 out with Les Spence'.

15 Q And my question is this, Mr. Caldwell. I'm trying
16 to get you to tell us, this page of notes, are
17 these notes of a meeting with Mr. Tallis where you
18 may have gone through the statements with him, or
19 are they your notes when you went through the file
20 by yourself and made notes of possible witnesses
21 which tend to show the prisoner innocent? And I'm
22 not suggesting that they are or they are not.

23 A Yeah. I can't tell from this materials, sir.
24 They are certainly the one, and it may well be
25 that Mr. Tallis and I discussed them, based on



1 what I've just heard here.

2 **Q** Was it your practice, at the time, to go through
3 the file and identify these things and show them
4 to defence counsel?

5 **A** Well, in a case like this, I would have no
6 hesitation in doing it because it's a very
7 important trial, of course.

8 **Q** So, but we don't have -- you can't help us out as
9 to --

10 **A** Not --

11 **Q** Let me put it this way.

12 **A** Yeah.

13 **Q** These are your notes?

14 **A** Yeah.

15 **Q** And they would be notes of your review of
16 statements and police reports; is that fair?

17 **A** Yeah.

18 **Q** And you can't tell us whether or not you shared it
19 with Mr. Tallis or not?

20 **A** Not at this time.

21 **Q** That's fine. And if we can just scroll down, you
22 will see, 'Leonard Balzer, number 30', and it says
23 -- maybe you can just read that?

24 **A** Oh, that is, 'Cab fare with knives going to kill
25 girlfriend.' Somebody he was giving a taxi ride



1 to -- evidently with -- that person had knives and
2 was going to kill girlfriend. You know, that --

3 Q Yes.

4 A -- could be something that could fit into that
5 category.

6 Q You had mentioned earlier, when we had talked
7 about a note where you were going to read Mr.
8 Tallis' letter and check on rumours, and you had
9 said that there may have been some rumours that
10 Mr. Tallis wanted you to check?

11 A It could be he could have put some of these to me
12 and asked me to see if we had statements covering
13 them or something of that sort.

14 Q And then the next one says, 'See page 117, Morris
15 Tkachuk'. And if we can call up 183170, and you
16 will see it says 117, we'll go to 117 of the
17 police report, and you'll see if we go to the next
18 page, please, page 117, call out the bottom. And
19 this is McCorriston's report, I think of February
20 3rd or 5th:

21 "7:52 A.M. Checked at the rear of a new
22 apartment block construction at the
23 south west corner ..."

24 "George Weinmeyer ... He is a painter
25 and arrived work at approximately 7:40



1 A.M. ... He stated a drywall employee
2 had been there from approximately 6:00
3 A.M. that date."

4 And:

5 "His name was not known however further
6 investigation revealed this person to be
7 Morris Tkachuk ... He states he arrived
8 at work at approximately 5:50 A.M. Jan.
9 31st."

10 And this is at the apartment block that is just
11 at the end of the T alley.

12 A Okay.

13 Q "... stated he had been working on the
14 second floor ... and could not have seen
15 toward the ..."

16 alley.

17 And then if we could call up,
18 just to add to that if we could call up 006373,
19 which is a statement from a George Weinmeyer.

20 And what George Weinmeyer says:

21 "On Friday January 31 I arrived for work
22 at 7:40 a.m.",

23 and then scroll down to the bottom, it says:

24 "Anyway Jack Hicks and I were discussing
25 a drywall applicator whose first name is



1 Morris I believe.

2 He works for Mechanical Drywall

3 ..."

4 And then the next page. It says:

5 "I believe that this person said he
6 arrived at 6 AM and came in a taxi.

7 He then said on Monday Feb. 3rd
8 that his dad had brought him to work."

9 And then down at the bottom:

10 "The only thing really is the fact that
11 I don't think he was at work at 6 AM. I
12 feel I would have heard him in the
13 building although he could have been
14 there."

15 So that's the information on Morris Tkachuk. And
16 I'm just wondering whether that, would that be
17 something you would share with Mr. Tallis, or are
18 you able to tell us?

19 A I would think that would be very farfetched, sir,
20 as something that could possibly point away from
21 the accused and to Tkachuk, and that would be the
22 only use you could make of it, I would think.

23 Q Could you tell us why you would have made a note
24 then? Go back to 007016.

25 A And is that where --



1 Q Can you tell us what -- why you would have made
2 that note?

3 A Oh, okay.

4 Q And, again, this document talks about, it looks
5 like, other suspects?

6 A Yeah, 'See page 117 re Morris Tkachuk', presumably
7 that would be followed by looking at the thing we
8 just did, and it wouldn't amaze me if I didn't
9 think that could in any way be -- you know,
10 provide evidence leading away from the suspect, to
11 put it awkwardly.

12 Q And, again, and I'm wondering what would cause you
13 to put this on the note as --

14 A Umm --

15 Q -- compared to others that don't get on the note?

16 A Well he's -- he's -- he's on there in one sense --

17 Q Yeah.

18 A -- and various other --

19 Q Let me just back up.

20 A Okay.

21 Q I'm not suggesting, Mr. Caldwell, that you should
22 have disclosed this --

23 A No, no.

24 Q -- to Mr. Tallis.

25 A Okay.



1 Q I'm simply asking for you to tell us how it is
2 that you made this note and why you would have put
3 this information on there?

4 A On the --

5 Q Yes.

6 A On my page? Well it, again, it would be -- I
7 suppose he could fit into that category that we
8 have been looking for, people that might have
9 evidence pointing away from the guilt of the
10 accused.

11 Q Yes, and why would you be making notes of that?

12 A Well it would be at Mr. Tallis' request.

13 Q And then what would you do with this information?

14 A Well I would, I assume that I passed it to him
15 either in print or in the meeting we've been
16 spoken, --

17 Q Okay.

18 A -- or otherwise.

19 Q Okay. If we go back to page 117, if we could call
20 up 183170 and go to the next page, we see 117 at
21 the top. And I read before, this information of
22 McCorriston's about Morris Tkachuk, now I want to
23 call back up the full page.

24 A Okay.

25 Q And we see as well on that same page, at the top,



1 a reference to:

2 "6:49 A.M. checked in 300 Blk. Ave. O.
3 South, Larry Fisher 334 Avenue O South.
4 Works at Masonery Contractors ...",
5 and we've read through that before.

6 A Uh-huh.

7 Q Again, at the time, Mr. Caldwell, would that
8 information there, the entry that Mr. McCorriston
9 made about Larry Fisher; would that be of any
10 significance to you at that time?

11 A No, it -- he was simply one of a series of people
12 who -- who Detective McCorriston interviewed at
13 these various times, got essentially name and
14 address of them. This is what I believe I found
15 on the request of Mr. Williams later when I was
16 asked to search the file --

17 Q Okay.

18 A -- for the name Larry Fisher. At this point I
19 didn't know the name of Larry Fisher in any shape
20 or form and the address, equally, did not mean
21 anything to me.

22 Q But when you talk about Mr. Williams, was this in
23 1989 or '90?

24 A Yeah, the one we've spoke of earlier, I think.

25 Q And, I'll touch on that a bit later, --



1 A Yeah.

2 Q -- but Mr. Williams phoned you and asked you to
3 what?

4 A To search the pros -- Gail Miller -- or Milgaard
5 prosecution file for the name Larry Fisher.

6 Q And at that time, before you checked the file, did
7 the name Larry Fisher mean anything to you?

8 A Not whatsoever.

9 Q Now, this page, this information, or this police
10 report that has the information at the bottom on
11 Morris Tkachuk, are you able to tell us whether
12 you would have shown this page to Mr. Tallis?

13 A I'm not at this point, sir.

14 Q Is it possible you did?

15 A It's possible, yeah.

16 Q If we can go back to 007016, just go back, and I
17 don't propose to call these up. I think Murray
18 Harris, number 32 -- these two statements, Murray
19 Harris and Lloyd Miller, are two statements that
20 talk about a fellow with a knife at a party Gail
21 Miller was at and another individual who was at a
22 party. I can give you the doc IDs, statement 32,
23 Mr. Harris' is 006383, and the Lloyd Miller
24 statement is 006389. And the last one, Raymond
25 LaPlante, is 006432, statement 47, and again, I



1 don't think we need to go through them, but those
2 statements, Mr. Caldwell, have in them information
3 about, I think in a couple of cases, parties where
4 Gail Miller was at and a fellow pulled a knife,
5 things of that nature.

6 A Okay.

7 Q And so is it fair to say that that might have been
8 information that you took out of the statements
9 as -- again we can go to the top heading --

10 A Yeah, it could be.

11 Q Go back to the full page, please.

12 A It could be that.

13 Q Would those all be possible witnesses with
14 evidence which tends to show prisoner innocent?

15 A I -- yeah, I believe by that definition they
16 would.

17 Q Would there be any other reason for you to make
18 these notes other than to provide, or as part of
19 your request from Mr. Tallis to review the file?

20 A No, I can't think of any, and I certainly feel I
21 would have conveyed all this to him, be it of
22 whatever strength or weakness, Mr. Hodson.

23 Q If I can then go to 007011. I'm sorry, page 63,
24 Mr. Caldwell, if you want to -- I think it's the
25 typed statement. I don't know if you need to see



1 the original, but you certainly may.

2 A It's a letter. I have it here, sir.

3 Q Yes. And this is a letter, this is September 9th,
4 so this is the day after what appears to be the
5 meeting between you and Mr. Tallis. You remember
6 his memo was September 8th, your notes were
7 September 8th?

8 A Yeah.

9 Q Do you want to read the letter?

10 A Yeah. I see that, at a glance, that I passed a
11 good deal of this onto him, but I'm happy to --

12 Q I can go through it with you. If you wanted to
13 read it yourself, I can let you read it before I
14 ask the questions.

15 A Well, in answer to your letter and --

16 Q We can maybe just go --

17 A That's fine, you go ahead, sir, however you would
18 like.

19 Q And again this talks about his letter of August
20 21, '69 and your letter, you say:

21 "I have obtained all the statements
22 obtained from civilian witnesses in
23 relation to this investigation,
24 totalling ninety-five."

25 And so I think we had identified earlier that



1 that was the number of civilian statements?

2 A Yeah, and I read them as it says here.

3 Q And just for the record, Mr. Caldwell, there
4 was -- there ended up being 98 statements.

5 A Okay.

6 Q Actually 99 statements, 98, being three additional
7 ones from Melnyk, Lapchuk and Ute Frank came
8 later.

9 A Okay.

10 Q And there's two statements from MacRae Fraser, one
11 is 31 and one is 31A, so just so that we're all on
12 the same page.

13 A Okay. Those three, as we all know --

14 Q -- relate?

15 A Yeah, and also went to Mr. Tallis.

16 Q And we'll deal with those later.

17 A Okay, that's fine.

18 Q So it says here that you would have gone through
19 and read all 95 civilian witness statements?

20 A That's what I did.

21 Q "... and have read these statements
22 over to see whether any of these
23 witnesses would, in my opinion, "... be
24 able to give evidence of assistance to
25 the defence ..." as suggested in your



1 letter."

2 You say:

3 "I have also noted the statement in
4 Dallison vs. Caffrey."

5 A Yes.

6 Q And then you quote it, stating:

7 "The duty of a prosecuting counsel or
8 solicitor, as I have always understood
9 it, is this: If he knows of a credible
10 witness who can speak to material facts
11 which tend to show the prisoner to be
12 innocent, he must either call that
13 witness himself or make his statement
14 available to the defence."

15 A Yeah.

16 Q And, Mr. Caldwell, at the time would this quote
17 from Dallison vs. Caffrey that you set out, was
18 that what you understood your duty to be at the
19 time?

20 A I think Mr. Tallis --

21 Q He did.

22 A -- sent it to me and I'm in effect adopting it. I
23 didn't see anything, you know, objectionable about
24 it.

25 Q And the quote from Dallison vs. Caffrey, was that



1 basically your understanding of your obligation at
2 the time?

3 A Yeah, it would be.

4 Q And then you go on to say:

5 "The only material that could possibly
6 fall into this category, as far as I am
7 concern, arose early in the
8 investigation."

9 And you go on to talk about Les Spence, the
10 Nicholas Canton information, Orlee Lehne comment,
11 and talked about the fallings out, and then
12 scroll down, you talk about one Dennis Elliott
13 had taken Gail Miller out on the evening of
14 January 30th and was to have taken her out the
15 next evening. He saw a man unknown to be parked
16 in a vehicle across the street.

17 "Both Dennis Elliott and Leslie Spence
18 were eliminated as suspects in the
19 murder to the satisfaction of the
20 investigators ..."

21 So I take it you would have informed Mr. Tallis
22 that here's what the police had on Spence and
23 Elliott as suspects and they were eliminated and
24 as well that Elliott saw a man unknown to him
25 parked in a vehicle across the street when he



1 took Gail Miller home?

2 A I put that in the letter.

3 Q Yeah. And then the next page, you say:

4 "You will understand that in my opinion,
5 none of the above constitutes evidence
6 "... which tends to show the prisoner
7 innocent ...". However, you may have a
8 different opinion on this and,
9 therefore, I have supplied the above
10 information as possibly coming closest
11 to evidence in that category which I
12 have been able to find on the file. I
13 have also spoken to some of the
14 investigators who are most familiar with
15 the file and they suggested the names of
16 Elliott and Spence."

17 And again, would that have happened?

18 A Yes, yeah.

19 Q And then you say:

20 "You will recall asking me earlier about
21 a taxi driver who was supposed to have
22 driven Gail Miller and a man to work on
23 the morning of January 31st, and I some
24 time ago supplied you with copies of the
25 two statements by MacRae Fraser to read.



1 I now enclose copies of these statements
2 for your file, and, as you will recall
3 from reading the statements, it appears
4 that Fraser is of the opinion that this
5 incident took place either on January
6 30th or 29th and not January 31st."

7 It suggests here, Mr. Caldwell, that prior to
8 this you had let Mr. Tallis read the statements
9 before you gave him copies?

10 A I would take it that way.

11 Q And then it says you also asked for and I now
12 enclose copies of the statements from the
13 Danchuks, scroll down, copies of the statements
14 taken from the accused. You say:

15 "As I mentioned to you, I may or may not
16 attempt to have either or both of these
17 statements ruled voluntary, either for
18 the purposes of putting them in as
19 confessions or holding them for
20 cross-examination purposes, at the
21 trial."

22 And I think we saw a note about that a little
23 earlier; correct?

24 A Yeah, correct.

25 Q And it says:



1 "The above material is forwarded to you
2 in addition to the various copies of
3 statements and reports which I sent to
4 you earlier in this connection. I wish
5 to emphasize, however, that if you have
6 any specific inquiries to make of me
7 concerning specific persons whom you may
8 learn of who supposedly can shed any
9 light on the case I will be pleased to
10 track these down for you, to the best of
11 my abilities, in the file or through the
12 investigators. If you have any such
13 requests to make I will be pleased to
14 hear from you in due course."

15 And again, can you elaborate on that, Mr.
16 Caldwell?

17 A Just -- just in the same spirit, if he -- give him
18 everything that appears to fall under that
19 heading. If he comes up in future with a
20 suggestion of other persons, in effect, who would
21 fall into that category, I'm volunteering to do my
22 best to track them down in the sense that through
23 the police department is the sort of jumping off
24 point for that. Does that --

25 Q Yes. And then it says:



1 "As requested by yourself, I have added
2 the names of Inspector Roberts of the
3 Calgary Police Department, and,
4 Mrs. Shirley Wilson of Regina, to the
5 list of Crown witnesses as required by
6 the Legal Aid Plan, and I hope that both
7 of these persons will be in Saskatoon
8 Wednesday."

9 And then:

10 "The various Police Officers who were to
11 check their notes for further
12 information will be attending at my
13 office at 12:00 noon on September 10th,
14 at which time we will be able to
15 interview them and you should be able to
16 recall any of them you wish on the
17 afternoon of that date."

18 I take it from this that Mr. Tallis had asked you
19 to have the police check notes for further
20 information?

21 A That's right, and at that meeting the plan would
22 be that if he felt there was any need to or want
23 to recall any of them, it could be done evidently
24 on that afternoon.

25 Q And were you making these officers available to be



1 interviewed by Mr. Tallis?

2 A Yeah, that's what it says I take it.

3 Q Do you know if that happened?

4 A I don't, but I would expect, Mr. Hodson, that it
5 did happen, because it would matter to him and I
6 don't know why it wouldn't have happened.

7 MR. HODSON: Okay. This might be an
8 appropriate spot to break for the day,
9 Mr. Commissioner. I think we're moving on to a
10 different area. I appreciate it's four o'clock,
11 but I think it has been a long day.

12 (Adjourned at 4:00 p.m.)

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'	16125:12 'ed' [1] - 16065:22 'edm' [1] - 16064:15 'emson' [1] - 16064:7 'evidence' [1] - 16039:3 'examined' [1] - 16040:6 'explain' [1] - 16076:2 'fine' [2] - 15928:3, 15928:17 'fleming' [1] - 16123:10 'friday' [1] - 16094:15 'from' [2] - 16075:10, 16075:11 'get' [2] - 16011:14, 16026:23 'going' [1] - 16067:4 'got' [1] - 16040:2 'has' [1] - 16014:15 'he' [2] - 16016:2, 16016:18 'here' [1] - 15984:23 'how' [1] - 16075:12 'ian' [1] - 16010:3 'if' [1] - 16041:14 'indicating' [1] - 16075:13 'interpretation' [1] - 16088:23 'interview' [2] - 16067:20, 16085:14 'interviewed' [1] - 16064:14 'it' [1] - 16126:18 'karst' [3] - 15917:1, 16019:15, 16027:23 'karst' [1] - 16126:21 'knife' [1] - 16075:7 'lab' [1] - 16059:23 'leonard' [1] - 16131:22 'lives' [2] - 16067:5, 16067:7 'looked' [1] - 16125:24 'lookit' [3] - 15927:15, 16025:12, 16110:6 'm' [1] - 16066:24 'macleod' [1] - 16123:5 'may' [2] - 16025:6, 16025:18 'maybe' [2] - 15929:2, 15931:11 'mcd' [1] - 16083:19 'meeting' [1] - 16066:15 'milgaard' [1] - 16066:24 'monday' [2] - 16006:24, 16018:14 'mrs' [1] - 16123:16 'must' [1] - 16041:17 'need' [1] - 16009:23	'nichol' [3] - 16019:9, 16064:3, 16086:5 'nicholas' [1] - 16128:21 'no' [3] - 16014:7, 16014:9, 16075:13 'no' [1] - 16018:8 'not' [1] - 16018:8 'now' [5] - 16040:17, 16042:19, 16047:13, 16076:25, 16077:15 'now' [2] - 16061:14, 16061:16 'obtained' [1] - 16070:9 'off/on' [1] - 16084:2 'okay' [2] - 15920:17, 15929:18 'omit' [4] - 16055:25, 16056:7, 16061:6, 16061:7 'only' [2] - 16021:21, 16022:4 'or' [1] - 15927:23 'or' [1] - 16019:8 'order' [1] - 16064:12 'orlee' [3] - 16128:22, 16129:15, 16130:13 'outline' [1] - 16007:20 'peggy' [1] - 16008:10 'phone' [2] - 16062:12, 16078:18 'possible' [1] - 16126:10 'possible' [1] - 16126:9 'previous' [1] - 16019:10 'pro' [1] - 16084:25 'put' [3] - 16034:2, 16056:1, 16056:8 'questions' [2] - 16006:13, 16012:12 're' [5] - 16064:7, 16083:19, 16084:21, 16085:16, 16089:1 'read' [2] - 16074:21, 16086:2 'refer' [1] - 15914:6 'remaining' [1] - 16123:4 'repeat' [1] - 16111:13 'resistance' [1] - 16012:2 'results' [1] - 16086:8 'ronald' [1] - 16043:6 'scene' [1] - 16038:23 'second' [1] - 16056:14 'see' [5] - 16013:6, 16100:2, 16100:10, 16132:14, 16135:6 'seminal' [1] - 16011:18 'send' [1] - 16077:12 'show' [1] - 16094:22 'significance' [1] -	16097:11 'sister' [1] - 16007:25 'somewhere' [1] - 16079:10 'source' [1] - 16126:13 'summary' [1] - 16006:21 'superintendent' [1] - 16037:8 'tallis' [2] - 16122:5, 16123:7 'tapes' [1] - 16078:24 'that' [2] - 16019:6, 16019:7 'the' [1] - 16069:7 'there' [1] - 15961:3 'therefore' [1] - 16025:9 'think' [1] - 16008:16 'this' [1] - 16019:2 'thursday' [1] - 16006:10 'thursday' [1] - 16065:19 'to' [1] - 16123:17 'told' [1] - 16016:8 'ullrich' [2] - 16084:20, 16084:25 'us' [1] - 16067:12 'walking' [1] - 16018:7 'wascana' [1] - 16019:12 'wascana' [1] - 16019:12 'wednesday' [2] - 16064:13, 16065:18 'what' [3] - 16018:25, 16022:2, 16115:25 'whether' [1] - 16039:4 'who' [1] - 16017:6 'whole' [1] - 16012:25 'why' [2] - 16018:4, 16024:21 'will' [2] - 16078:8, 16088:25 'wilson' [2] - 16089:8, 16091:6 'with' [3] - 16008:15, 16064:16, 16067:1 'witnesses' [2] - 16122:25, 16126:11 'write' [1] - 16087:4 'yes' [1] - 16018:21 'yes' [3] - 16056:1, 16056:9, 16091:10 'you' [3] - 16039:23, 16091:9, 16091:25	16106:21 006301 [1] - 15987:18 006369 [2] - 16128:24, 16129:25 006373 [1] - 16133:18 006383 [1] - 16138:23 006389 [1] - 16138:24 006432 [1] - 16138:25 006645 [1] - 15912:15 006674 [1] - 15989:1 006709 [1] - 15938:25 006712 [1] - 15942:16 006942 [1] - 16035:22 007 [1] - 16074:9 007011 [1] - 16139:23 007014 [2] - 16121:14, 16125:17 007016 [2] - 16134:24, 16138:16 007021 [1] - 16094:4 007022 [1] - 16088:3 007023 [1] - 16090:19 007024 [1] - 16076:24 007025 [1] - 16076:16 007026 [1] - 16125:4 007027 [1] - 16074:17 007028 [1] - 16067:16 007029 [1] - 16063:15 007030 [1] - 16063:5 007035 [1] - 16059:18 007036 [1] - 16062:17 007037 [1] - 16057:7 007038 [3] - 16048:9, 16053:21, 16056:21 007039 [1] - 16047:7 007040 [1] - 16028:9 007042 [2] - 16043:12, 16044:6 007043 [1] - 16036:13 007045 [1] - 16033:16 007047 [1] - 16034:15 007049 [3] - 16005:11, 16014:1, 16020:14 007052 [1] - 16025:21 007063 [1] - 16043:18 009 [1] - 16013:9 009226 [1] - 16029:3 009231 [1] - 15943:18 009233 [1] - 15914:7 009254 [2] - 15914:14, 15914:17 009261 [1] - 16015:4 009264 [1] - 16019:19 009268 [1] - 16019:21 009374 [3] - 16013:11, 16049:22, 16050:2 009384 [2] - 16013:11, 16054:13 009386 [1] - 16050:15
			0	
			003847 [2] - 16098:6,	



<p>00939 [1] - 16055:6 009390 [1] - 16050:10 009391 [1] - 16050:13 009426 [1] - 16038:1 009431 [1] - 15988:16 030692 [2] - 16100:23, 16110:19 030704 [1] - 16111:21 045348 [1] - 16071:18 045351 [1] - 16072:1 045354 [1] - 16072:16 048305 [1] - 16116:6</p>	<p>12th [2] - 16038:16, 16043:5 13 [1] - 16018:4 14 [1] - 16018:20 1400 [1] - 15972:10 14th [1] - 16071:25 15 [5] - 15956:12, 15956:18, 15957:2, 15957:5, 16018:25 15897 [1] - 15896:4 15th [5] - 16036:15, 16043:8, 16044:8, 16044:25, 16048:25 17th [1] - 16047:11 183170 [2] - 16132:15, 16136:20 18th [7] - 15915:6, 15916:3, 15916:20, 16006:18, 16014:5, 16033:18, 16048:15 1962 [1] - 15980:16 1968 [2] - 16052:15, 16069:14 1969 [26] - 15897:16, 15898:6, 15915:10, 15916:5, 15916:7, 15936:18, 15978:25, 16004:5, 16006:11, 16009:2, 16030:14, 16031:4, 16033:18, 16035:17, 16049:4, 16052:4, 16052:18, 16053:16, 16057:8, 16073:4, 16073:8, 16088:5, 16094:12, 16095:17, 16116:10 1970 [1] - 16052:16 1989 [1] - 16137:23 1993 [2] - 16071:25, 16073:24 1:30 [2] - 16033:14, 16088:25</p>	<p>2005 [1] - 15893:21 20th [14] - 15972:10, 16001:2, 16001:15, 16002:7, 16048:12, 16049:7, 16053:16, 16054:6, 16056:23, 16057:20, 16058:13, 16060:18, 16060:21, 16061:9 21 [1] - 16140:20 21st [1] - 16057:8 22nd [3] - 16059:22, 16060:1, 16061:25 23 [2] - 15938:24, 16128:21 23rd [4] - 15903:2, 15965:24, 15966:1, 16109:18 24 [1] - 15938:24 24th [7] - 15903:2, 15916:7, 15919:15, 16004:5, 16109:19, 16111:17, 16114:24 25 [7] - 16063:18, 16128:22, 16128:23, 16129:1, 16129:15, 16130:2, 16130:13 25/69 [1] - 16068:1 25th [1] - 16019:19 26th [1] - 16066:18 27 [1] - 16026:13 273 [2] - 15914:6, 15914:8 277 [1] - 15914:6 289 [1] - 16013:12 29 [1] - 16076:19 290 [3] - 16013:6, 16013:10, 16013:13 29th [1] - 16145:6 2:47 [1] - 16097:20 2nd [1] - 16095:17 2nd' [1] - 16060:6</p>	<p>16035:17, 16129:9, 16133:21, 16141:11 31/69 [1] - 15911:10 31a [1] - 16141:11 31st [5] - 15945:12, 15986:8, 16133:9, 16144:23, 16145:6 32 [2] - 16138:18, 16138:22 334 [1] - 16137:3 349 [1] - 16050:18 35 [2] - 16037:5, 16037:6 355 [1] - 15914:18 355356 [1] - 15914:17 36 [1] - 16043:13 374 [3] - 16014:17, 16015:3, 16015:4 383 [1] - 16050:20 384 [1] - 16054:12 386 [1] - 16050:22 389 [1] - 16055:8 39 [1] - 16047:8 391 [1] - 16019:21 392 [4] - 16019:2, 16019:15, 16019:20, 16020:11 393 [1] - 16018:22 3:06 [1] - 16097:21 3rd [8] - 15938:23, 15943:22, 16043:23, 16045:7, 16045:22, 16088:5, 16132:20, 16134:7</p>	<p>16100:3 51 [2] - 16076:17, 16077:7 54 [1] - 16088:4 55 [1] - 16094:5 58 [2] - 16121:19, 16126:7 59 [1] - 16121:19 5:00 [1] - 16061:21 5:50 [1] - 16133:8 5th [1] - 16132:20</p>
<p>1</p>				<p>6</p>
<p>1 [27] - 15909:1, 15916:25, 15917:1, 15917:4, 15917:6, 15961:15, 15986:25, 15990:14, 16005:25, 16006:21, 16014:3, 16018:13, 16018:15, 16026:23, 16028:10, 16038:2, 16039:6, 16047:13, 16054:12, 16054:14, 16054:16, 16054:19, 16090:24, 16093:4, 16094:8, 16119:3, 16122:23 1/2 [1] - 15924:13 10 [1] - 16014:14 10-15 [1] - 15923:24 100 [1] - 15901:10 105605 [1] - 15897:5 105608 [3] - 15908:13, 15922:6, 15945:6 105614 [1] - 15974:8 105624 [1] - 15980:19 10:29 [1] - 15974:5 10:50 [1] - 15974:6 10th [5] - 16043:15, 16043:18, 16044:8, 16046:16, 16147:13 11 [3] - 16007:13, 16015:13, 16015:21 117 [7] - 16132:14, 16132:16, 16132:18, 16135:6, 16136:19, 16136:20 11:59 [1] - 16033:13 11th [8] - 15916:5, 16006:25, 16009:8, 16009:15, 16024:25, 16029:10, 16033:20, 16048:16 11th' [1] - 16018:15 12 [2] - 16016:2, 16122:25 12:00 [1] - 16147:13</p>	<p>2</p>	<p>3</p>	<p>4</p>	<p>6 [4] - 16010:19, 16055:8, 16134:6, 16134:11 60 [3] - 15978:12, 16121:15, 16121:19 607 [1] - 15898:12 620 [1] - 15978:12 627 [1] - 15984:16 63 [1] - 16139:23 67-8 [1] - 16015:14 6:00 [1] - 16133:2 6:35-6:45 [1] - 15910:5 6:45 [2] - 15996:24, 15997:3 6:49 [1] - 16137:2</p>
			<p>4</p>	<p>7</p>
			<p>4 [5] - 15917:7, 15961:21, 16018:16, 16055:4, 16084:20 40 [1] - 16048:9 408(1)(d) [1] - 16037:11 42 [1] - 16059:19 47 [2] - 16063:16, 16138:25 48 [1] - 16067:17 49 [1] - 16074:17 4:00 [1] - 16148:12 4th [6] - 15893:21, 15937:7, 16084:7, 16094:12, 16101:1, 16101:3</p>	<p>7 [3] - 16006:10, 16011:17, 16055:9 7049 [1] - 16012:22 705 [1] - 16112:7 706 [1] - 16112:6 75 [1] - 16047:14 78 [3] - 15938:20, 15943:20, 15943:22 7:00 [2] - 15910:5, 15971:18 7:10 [1] - 15972:21 7:30 [1] - 15997:22 7:40 [3] - 15998:1, 16132:25, 16133:22 7:52 [1] - 16132:21 7th [4] - 15914:8, 16006:17, 16009:2, 16026:11</p>
			<p>5</p>	<p>8</p>
	<p>2 [22] - 15917:7, 15961:18, 16006:23, 16007:2, 16007:20, 16014:4, 16018:15, 16028:19, 16039:6, 16045:2, 16054:19, 16054:22, 16055:17, 16078:17, 16090:20, 16091:2, 16091:24, 16120:16, 16123:4, 16124:17, 16124:18 20 [1] - 16061:25 200 [2] - 15948:17, 15949:9</p>	<p>3 [13] - 15917:7, 15961:19, 16007:20, 16014:4, 16018:16, 16020:17, 16054:9, 16054:25, 16064:10, 16083:18, 16089:14, 16121:3, 16123:15 3-4 [1] - 15958:4 30 [3] - 16001:14, 16006:4, 16131:22 300 [1] - 16137:2 30th [3] - 15945:12, 16143:14, 16145:6 31 [5] - 15915:22,</p>	<p>5 [6] - 15943:19, 15944:1, 16049:4, 16076:20, 16085:14,</p>	<p>8 [3] - 16012:23, 16055:25, 16086:8 80 [1] - 15893:22 81 [2] - 15912:13,</p>



<p>15912:16 8:45 [1] - 16064:7 8th [8] - 16043:23, 16116:19, 16121:22, 16122:16, 16127:14, 16127:17, 16140:6, 16140:7</p>	<p>15948:8 accomplished [1] - 16022:16 accord [1] - 15923:20 accordance [2] - 15925:8, 16113:4 according [12] - 15919:3, 15923:8, 15924:20, 15952:24, 15953:16, 15953:21, 15959:2, 16005:4, 16041:4, 16081:14, 16092:6, 16093:13 account [5] - 15915:21, 15942:13, 15956:9, 15982:17, 16071:9 accurate [2] - 15982:17, 16110:16 accusations [1] - 15963:5 accused [11] - 15902:9, 15903:18, 15903:22, 15910:24, 16000:2, 16011:6, 16119:5, 16124:18, 16134:21, 16136:10, 16145:14 acid [11] - 15945:10, 15945:21, 15945:25, 15946:7, 16016:9, 16016:20, 16017:1, 16017:6, 16017:17, 16017:19, 16018:2 acknowledged [1] - 15983:2 Act [2] - 16037:13, 16114:12 act [2] - 16069:20, 16069:21 actions [2] - 15942:7, 15977:23 activities [2] - 15917:15, 15983:1 actual [5] - 15960:16, 15961:22, 16040:7, 16041:21, 16056:15 add [5] - 15958:11, 15985:3, 15985:4, 16023:4, 16133:18 added [2] - 15965:25, 16147:1 addition [2] - 15975:17, 16146:2 additional [8] - 16028:21, 16069:5, 16069:11, 16116:23, 16118:2, 16118:17, 16118:20, 16141:6 address [8] - 15903:7, 15911:13, 15949:16, 15949:17, 15962:7,</p>	<p>15987:23, 16137:14, 16137:20 Adeline [2] - 15908:24, 15909:24 Adjourned [4] - 15974:5, 16033:13, 16097:20, 16148:12 adjourned [1] - 15897:6 admissibility [4] - 16119:3, 16120:18, 16121:1, 16121:10 admissible [3] - 16016:21, 16017:10, 16027:20 admission [5] - 15902:9, 15957:23, 15957:24, 15983:19, 16099:9 admissions [4] - 15902:15, 15983:9, 15983:16, 16010:21 admitted [3] - 15991:10, 16023:11, 16081:11 admitting [1] - 15952:7 admonition [1] - 15963:14 adopting [1] - 16142:22 advance [1] - 16037:2 advantage [1] - 16034:10 advice [1] - 16093:18 advise [3] - 15984:19, 16028:20, 16091:6 advised [7] - 16014:9, 16061:24, 16066:16, 16108:18, 16124:24, 16129:5, 16129:10 affairs [3] - 15919:9, 15920:21, 15955:20 affidavit [4] - 16037:21, 16063:7, 16063:10, 16065:2 afraid [6] - 15941:18, 15977:16, 15977:22, 15978:4, 16105:11, 16120:15 afternoon [5] - 16019:4, 16019:10, 16057:19, 16147:17, 16147:24 afternoon [1] - 16019:7 afterwards [1] - 15996:9 age [1] - 16069:15 agent [3] - 15947:3, 15969:11, 16125:23 ago [3] - 16016:24, 16129:24, 16144:24 agree [7] - 15903:4, 15918:23, 15975:16,</p>	<p>15979:18, 15991:2, 15997:24, 15998:3 ahead [9] - 15903:12, 15936:6, 15942:24, 15952:3, 16034:2, 16034:5, 16038:12, 16044:6, 16140:17 Aid [1] - 16147:6 al [2] - 16084:20, 16084:25 Albert [11] - 15975:15, 15986:12, 15990:14, 16045:1, 16049:3, 16068:5, 16072:4, 16072:7, 16072:9, 16072:11, 16098:12 Alberta [1] - 16072:24 alert [1] - 15903:25 Alexander [1] - 15895:14 Aline [1] - 16035:3 alive [1] - 15910:16 allegation [1] - 15967:15 alleged [2] - 16051:16, 16119:6 allegedly [1] - 15906:7 alley [21] - 15924:15, 15924:17, 15924:21, 15924:24, 15924:25, 15925:1, 15925:24, 15927:18, 15929:1, 15929:24, 15930:10, 15931:21, 15971:20, 15972:1, 15972:3, 16103:9, 16112:3, 16133:11, 16133:16 alleys [2] - 15983:2, 16010:24 allow [1] - 16036:19 alone [1] - 15903:11 alright [1] - 15902:5 also [1] - 16027:25 alter [1] - 15968:9 amaze [1] - 16135:8 amnesia [4] - 16004:21, 16083:20, 16083:23, 16084:1 amount [3] - 15933:3, 16071:1, 16083:22 amounts [1] - 15979:3 analysis [2] - 15940:16, 16041:23 and [1] - 16115:25 Andrew [2] - 16010:4, 16010:8 answer [9] - 15954:25, 16007:24, 16008:1, 16018:21, 16022:4, 16032:2, 16072:1,</p>	<p>16091:10, 16140:15 answered [3] - 15962:4, 16022:19, 16092:1 answers [1] - 16091:8 antigen [2] - 15994:16, 16041:24 antigens [10] - 15993:18, 15993:20, 15993:23, 15994:20, 15994:24, 16039:25, 16041:13, 16041:15, 16042:5, 16042:10 Anyway [1] - 16133:24 apart [2] - 15995:3, 16045:16 apartment [2] - 16132:22, 16133:10 apparent [2] - 15959:16, 16128:13 appear [5] - 15926:4, 15950:25, 15958:16, 16069:19, 16116:25 Appearances [1] - 15895:1 appeared [9] - 15944:4, 15944:14, 15945:22, 15958:25, 15969:25, 16043:21, 16044:18, 16069:23, 16095:12 appends [1] - 16124:22 applicator [1] - 16133:25 applies [1] - 16090:17 appreciate [6] - 15918:17, 15928:16, 15948:13, 15997:6, 16119:8, 16148:10 approached [1] - 15904:2 approaching [2] - 15961:9, 15969:22 appropriate [2] - 16097:19, 16148:8 approx [3] - 15956:12, 15972:21, 15973:23 April [5] - 15915:6, 15916:3, 15916:20, 15937:7, 16014:5 apt [1] - 16064:8 area [14] - 15923:25, 15924:1, 15924:2, 15924:3, 15924:6, 15925:15, 15933:3, 15973:21, 15996:5, 16015:23, 16075:11, 16076:14, 16100:22, 16148:10 area [1] - 16075:10 areas [4] - 15929:17, 15960:15, 15961:3,</p>
9				
<p>9 [1] - 16014:1 9(2) [3] - 16082:20, 16113:9, 16114:11 93 [2] - 15938:21, 15938:23 94 [3] - 15912:14, 15912:16, 15912:17 95 [2] - 15909:2, 16141:19 98 [2] - 16141:4, 16141:6 99 [1] - 16141:6 9:00 [2] - 15897:2, 16064:14 9:45 [1] - 16066:16 9th [2] - 16116:10, 16140:3</p>				
A				
<p>A [1] - 16013:1 abandon [1] - 15966:21 abhorrent [1] - 16070:16 abilities [1] - 16146:11 ability [1] - 16149:7 able [27] - 15960:19, 15970:14, 15970:16, 16032:1, 16040:21, 16052:25, 16053:13, 16057:24, 16058:15, 16059:2, 16063:25, 16073:17, 16077:4, 16091:15, 16103:17, 16105:7, 16107:3, 16110:4, 16127:9, 16128:3, 16128:10, 16134:18, 16138:11, 16141:24, 16144:12, 16147:14, 16147:15 above [1] - 16126:23 absence [1] - 16114:20 Absolutely [1] - 15937:15 absolutely [1] - 15967:21 accepted [1] - 15928:5 accomplices [1] -</p>				



<p>15961:21 arguable [2] - 15946:11, 16001:18 arguably [1] - 15957:2 argue [3] - 15934:15, 15937:16, 15946:3 Armand [1] - 16067:10 arose [1] - 16143:7 arranged [2] - 16124:1, 16124:11 arrested [1] - 16073:5 arrived [7] - 15977:19, 15990:9, 16035:19, 16132:25, 16133:7, 16133:21, 16134:6 arrow [2] - 16040:13, 16040:15 article [1] - 15899:12 articles [1] - 15898:24 aside [3] - 15991:22, 15991:25, 15992:6 aspect [1] - 16078:10 aspects [1] - 15962:12 assailant [1] - 16000:12 assault [2] - 16119:17, 16120:1 assaulted [3] - 16020:5, 16020:22, 16120:6 assaulting [1] - 16019:1 assertions [1] - 16046:7 assess [3] - 15905:17, 16020:25, 16093:23 assessing [6] - 15918:18, 15929:11, 15940:19, 15984:3, 15998:4, 16002:24 assessment [14] - 15905:24, 15906:13, 15907:3, 15907:24, 15917:25, 15919:6, 15944:13, 15944:16, 15946:22, 15977:13, 15978:5, 15982:14, 15983:6, 16075:1 assign [1] - 15978:16 assigned [2] - 15959:19, 15959:20 assist [9] - 15925:19, 16031:9, 16059:7, 16060:16, 16066:6, 16106:3, 16109:3, 16124:5, 16125:4 assistance [6] - 15956:3, 16057:25, 16059:2, 16083:3, 16106:24, 16141:24 Assistant [2] - 15894:5, 15894:6 assisting [1] - 16030:22</p>	<p>associated [1] - 16099:16 assume [54] - 15899:6, 15899:19, 15905:3, 15910:6, 15913:1, 15930:20, 15936:12, 15944:10, 15951:14, 15957:25, 15969:2, 15973:13, 15977:2, 15981:4, 15983:24, 15988:12, 15988:24, 15992:4, 15992:14, 15992:23, 15995:2, 15996:18, 15997:19, 15998:10, 15998:23, 16008:1, 16010:8, 16014:11, 16018:3, 16020:20, 16022:17, 16023:2, 16026:22, 16033:25, 16035:5, 16036:11, 16037:18, 16039:10, 16039:14, 16050:6, 16050:9, 16058:17, 16061:24, 16065:10, 16079:18, 16089:15, 16091:7, 16094:21, 16094:23, 16122:8, 16122:13, 16123:17, 16127:18, 16136:14 assumed [3] - 16012:10, 16060:10, 16095:11 assuming [10] - 15921:13, 15972:6, 15977:8, 16008:13, 16010:19, 16011:17, 16011:20, 16025:7, 16043:5, 16085:2 assumption [2] - 16065:10, 16115:8 asterisk [1] - 16089:1 attack [3] - 15923:17, 16095:3, 16105:18 attempt [4] - 15937:23, 15969:6, 15969:7, 16145:16 attempted [3] - 15924:14, 15925:13, 16003:22 attend [4] - 16036:11, 16123:25, 16124:2, 16124:10 attending [1] - 16147:12 attention [1] - 15936:11 attribute [1] - 16105:6 Audio [1] - 15894:13 audio [7] - 16078:24, 16079:3, 16079:18,</p>	<p>16080:5, 16080:6, 16082:1, 16083:13 august [1] - 15918:19 August [46] - 15898:6, 16006:10, 16006:17, 16006:18, 16006:24, 16007:13, 16009:2, 16009:8, 16009:14, 16018:14, 16026:2, 16026:11, 16033:18, 16033:20, 16036:15, 16038:16, 16043:5, 16043:8, 16044:8, 16044:25, 16047:11, 16048:12, 16048:15, 16048:25, 16049:6, 16049:9, 16052:18, 16053:16, 16054:5, 16056:23, 16057:8, 16057:20, 16058:13, 16059:22, 16060:1, 16060:18, 16060:21, 16061:9, 16061:25, 16063:18, 16066:18, 16068:1, 16073:7, 16076:19, 16077:3, 16140:19 auto [3] - 15972:9, 15972:14, 15972:22 autopsy [3] - 16046:12, 16046:17, 16046:20 available [5] - 16057:11, 16063:2, 16098:23, 16142:14, 16147:25 Ave [6] - 15948:17, 15949:10, 15958:5, 15970:1, 15970:4, 16137:2 Avenue [9] - 15925:2, 15971:20, 15971:23, 15971:25, 15972:17, 15985:8, 16000:25, 16137:3 awaited [1] - 15939:9 aware [16] - 15903:20, 15930:12, 15930:21, 15970:21, 15971:15, 16028:24, 16030:24, 16032:10, 16046:8, 16058:20, 16071:17, 16072:3, 16079:6, 16081:24, 16082:4, 16096:4 awkwardly [2] - 15921:18, 16135:11 Aylesbury [2] - 16087:5, 16119:12 Aylesbury [1] - 16125:23</p>	<p style="text-align: center;">B</p> <p>background [1] - 15911:16 bag [2] - 15900:9, 15900:11 Balzer [1] - 16131:22 Barb [2] - 16024:21, 16025:1 Barbara [1] - 16024:23 Barrett [1] - 16014:12 base [1] - 15948:10 Based [2] - 15966:14, 16091:15 based [19] - 15908:16, 15918:15, 15931:5, 15941:19, 15942:4, 15963:24, 15997:7, 16002:2, 16009:20, 16031:12, 16041:5, 16053:4, 16060:10, 16091:19, 16096:24, 16118:10, 16118:11, 16118:22, 16130:25 basement [1] - 15936:20 basic [1] - 16102:3 basis [4] - 15905:5, 15905:8, 15910:4, 15972:24 bath [4] - 16069:16, 16072:10, 16072:12, 16073:14 battery [3] - 16016:9, 16016:19, 16017:6 be [1] - 16025:18 Beauchamp [1] - 15937:8 became [8] - 15924:15, 15924:24, 15940:9, 15948:16, 15948:20, 15949:8, 15973:22, 16043:25 become [2] - 16049:21, 16128:13 bed [1] - 16035:18 began [1] - 16033:18 begin [1] - 16114:6 beginning [1] - 15967:4 behaviour [2] - 15901:18, 16070:17 behind [5] - 15905:3, 15972:2, 15995:21, 16054:11, 16112:5 Beitel [1] - 15894:9 belief [1] - 15921:20 believable [1] - 15957:11 believes [2] - 15931:15,</p>	<p>15956:5 belong [1] - 16034:13 belonging [1] - 15937:13 Bench [5] - 15928:11, 16149:1, 16149:3, 16149:14, 16149:18 Berard [4] - 16024:22, 16025:1, 16025:7, 16025:12 beside [1] - 16123:16 best [5] - 15954:25, 16044:23, 16146:10, 16146:22, 16149:6 better [3] - 16008:6, 16093:25, 16125:13 better' [1] - 16007:25 between [7] - 15968:22, 15971:20, 16044:7, 16073:7, 16079:18, 16092:25, 16140:5 beyond [3] - 15912:2, 16002:19, 16066:12 binder [1] - 16099:1 bit [27] - 15897:9, 15900:2, 15903:12, 15919:11, 15919:23, 15922:10, 15926:3, 15929:19, 15930:25, 15936:15, 15946:17, 15948:14, 15949:15, 15950:19, 15980:1, 15993:1, 16030:21, 16032:15, 16044:16, 16048:13, 16078:15, 16095:13, 16096:3, 16100:13, 16104:3, 16109:12, 16137:25 blade [3] - 15947:16, 16038:23, 16095:9 Blanchette [1] - 16067:10 blank [1] - 16090:7 bleeding [1] - 16075:20 Bleeding [1] - 16094:20 Bleeding' [1] - 16075:8 blk [3] - 15948:17, 15949:9, 15972:10 Blk [1] - 16137:2 block [5] - 15924:13, 15973:23, 16004:19, 16132:22, 16133:10 blood [54] - 15932:12, 15933:1, 15933:8, 15933:20, 15935:5, 15935:6, 15935:7, 15937:20, 15946:2, 15946:7, 15958:25, 15959:3, 15974:17, 15976:5, 15986:16,</p>
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<p>15987:7, 15990:15, 15991:23, 15993:13, 15993:16, 15993:17, 15994:16, 15994:18, 15995:3, 15995:12, 15996:7, 15996:10, 15996:16, 16010:24, 16014:21, 16015:5, 16038:23, 16039:4, 16039:23, 16039:25, 16040:2, 16040:7, 16040:18, 16040:24, 16041:9, 16041:15, 16041:21, 16041:25, 16042:9, 16042:15, 16042:16, 16042:20, 16042:25, 16055:17, 16069:19, 16069:23, 16072:12, 16075:12, 16075:20</p> <p>blood^[1] - 16056:16 bloody^[1] - 15958:16 blow^[2] - 15964:9, 15964:10 blue^[3] - 15935:4, 15938:6, 16055:12 board^[1] - 15989:2 Bobs^[1] - 15895:5 bodily^[2] - 15993:19, 15993:24 body^[9] - 15924:22, 15951:15, 15972:25, 15973:2, 15992:9, 16000:11, 16009:23, 16039:25, 16095:18 bone^[1] - 16095:18 bone-handled^[1] - 16095:18 book^[1] - 16116:25 bored^[1] - 16079:17 Boswell^[1] - 15894:4 bottom^[28] - 15929:23, 15934:20, 15943:12, 15975:15, 15978:21, 15986:6, 16011:16, 16011:17, 16012:16, 16019:22, 16020:16, 16024:20, 16034:18, 16035:2, 16040:16, 16050:22, 16061:14, 16066:20, 16074:21, 16094:19, 16112:8, 16116:15, 16124:17, 16125:18, 16132:18, 16133:23, 16134:9, 16138:10</p> <p>bounce^[1] - 16002:19 bound^[1] - 16024:5 boy^[1] - 16129:6 Boychuk^[1] - 15895:8</p>	<p>boyfriend^[1] - 16129:11 bracket^[1] - 16056:3 brackets^[1] - 16091:3 braggadocio^[1] - 15905:20 Brand^[1] - 16047:22 break^[11] - 15922:8, 15922:11, 15974:4, 16028:12, 16028:13, 16028:25, 16029:8, 16031:25, 16033:12, 16097:19, 16148:8 break-in^[6] - 15922:8, 15922:11, 16028:12, 16028:25, 16029:8, 16031:25 breaking^[3] - 15947:24, 15948:4, 15948:10 breath^[2] - 15954:7, 15954:14 breathing^[2] - 15951:10, 15956:14 brief^[6] - 15908:16, 15960:15, 15987:23, 16029:24, 16116:25, 16117:1 briefed^[1] - 16119:1 briefly^[3] - 15978:20, 15978:24, 16039:11 bring^[2] - 16004:4, 16005:9 broadly^[1] - 15922:4 broken^[2] - 16085:20, 16095:8 brother^[1] - 15986:12 Brother^[1] - 16016:4 brought^[5] - 16053:20, 16065:4, 16065:12, 16125:20, 16134:8 Bruce^[1] - 15895:9 building^[2] - 16101:20, 16134:13 buildings^[1] - 16112:4 bus^[3] - 15985:7, 16001:16, 16002:6 business^[4] - 15998:14, 16063:1, 16094:3, 16119:13 busy^[2] - 16002:8, 16125:25</p>	<p>15908:3, 15933:1, 15936:9, 15936:13, 15936:19, 15936:25, 15937:13, 15958:17, 15962:25, 15975:16, 15975:17, 15975:20, 15976:7, 15976:13, 15976:15, 15976:20, 15977:8, 15977:15, 15981:13, 15981:23, 15986:6, 15990:15, 15990:18, 15991:2, 16003:23, 16016:11, 16034:2, 16034:5, 16034:8, 16035:3, 16035:4, 16035:12, 16045:16, 16047:13, 16049:3, 16049:8, 16062:21, 16066:7, 16066:23, 16067:9, 16067:12, 16068:5, 16068:22, 16069:3, 16069:20, 16069:25, 16071:3, 16072:4, 16074:12, 16087:1, 16098:13 Cadrain^[2] - 16066:20, 16067:20 Cadrain's^[16] - 15904:25, 15907:17, 15935:2, 15935:25, 15959:6, 15977:9, 15986:14, 15986:22, 15987:6, 15990:23, 16016:10, 16017:5, 16017:7, 16045:2, 16071:7, 16071:12 Cadrains^[2] - 15937:20, 16010:25 Cadrains'^[1] - 15946:2 Caffery^[2] - 16058:10, 16077:22 Caffrey^[3] - 16142:4, 16142:17, 16142:25 Cal^[2] - 16047:14, 16061:23 Caldwell^[72] - 15895:5, 15896:3, 15897:3, 15897:6, 15897:22, 15899:1, 15900:7, 15902:7, 15903:6, 15905:25, 15914:25, 15915:8, 15921:9, 15922:12, 15923:2, 15926:4, 15928:16, 15930:13, 15932:15, 15936:16, 15938:25, 15942:9, 15944:7, 15945:15, 15948:1, 15958:12, 15969:15,</p>	<p>15971:10, 15974:10, 15989:19, 15990:22, 15999:19, 16005:12, 16031:9, 16033:17, 16036:4, 16037:2, 16037:15, 16038:4, 16049:25, 16053:13, 16058:16, 16059:8, 16063:19, 16068:4, 16070:6, 16073:19, 16075:25, 16079:6, 16081:5, 16089:19, 16091:15, 16095:1, 16097:23, 16100:4, 16101:4, 16103:15, 16106:1, 16113:3, 16116:20, 16117:14, 16124:5, 16125:10, 16130:15, 16135:21, 16137:7, 16139:2, 16139:24, 16141:3, 16142:16, 16145:7, 16146:16 Caldwells^[3] - 16005:13, 16068:6, 16106:24 Calgary^[23] - 15898:19, 15901:25, 15904:2, 15952:1, 15952:2, 15952:5, 15952:11, 15952:23, 15954:14, 15959:15, 15959:23, 15960:7, 15976:21, 16066:23, 16069:13, 16070:3, 16072:3, 16078:21, 16086:17, 16088:10, 16091:12, 16109:7, 16147:3 call^[1] - 15984:24 Calvin^[1] - 15895:14 Campbell^[1] - 15974:19 Canada^[1] - 15895:13 Candace^[1] - 15894:3 cannot^[1] - 16120:19 cans^[1] - 15931:17 Canton^[2] - 16128:21, 16143:10 capacity^[1] - 16087:15 captured^[2] - 15971:11, 16082:1 car^[41] - 15898:22, 15900:5, 15903:18, 15922:9, 15923:9, 15925:9, 15925:14, 15929:25, 15931:14, 15932:4, 15933:24, 15934:6, 15934:8, 15950:7, 15950:8, 15950:16, 15951:9, 15951:22, 15953:12,</p>	<p>15954:12, 15956:13, 15956:17, 15956:21, 15957:9, 15957:18, 15960:22, 15972:16, 15973:23, 15974:24, 15975:2, 15975:9, 15976:22, 15976:25, 15978:9, 15991:14, 16003:5, 16055:12, 16056:4, 16112:1, 16113:19, 16113:23 car^[1] - 16115:22 carefully^[1] - 16119:1 caretaker^[1] - 15971:1 carry^[5] - 16055:6, 16078:16, 16089:7, 16090:5, 16118:23 Carry^[1] - 16064:6 Carrying^[1] - 16055:4 case^[86] - 15897:14, 15897:17, 15897:19, 15897:23, 15898:1, 15898:10, 15898:21, 15899:2, 15901:12, 15905:24, 15906:13, 15907:3, 15909:16, 15910:7, 15911:6, 15913:1, 15918:1, 15918:18, 15919:18, 15921:15, 15921:17, 15923:13, 15926:20, 15927:12, 15929:4, 15930:14, 15933:25, 15934:1, 15934:5, 15934:8, 15935:22, 15937:24, 15944:9, 15944:16, 15951:16, 15957:19, 15962:24, 15977:24, 15982:14, 15983:6, 15983:16, 15984:4, 15984:7, 15986:20, 15997:3, 15998:4, 16002:13, 16002:24, 16003:4, 16011:4, 16011:6, 16015:2, 16016:22, 16017:10, 16022:1, 16022:9, 16030:5, 16044:12, 16047:4, 16049:15, 16053:6, 16053:24, 16056:25, 16058:8, 16058:9, 16060:11, 16060:25, 16070:18, 16071:6, 16075:2, 16075:6, 16077:12, 16077:16, 16077:21, 16078:5, 16078:14, 16110:3, 16110:5, 16110:7,</p>
	C			
	<p>Cadrain^[58] - 15898:18, 15904:2, 15905:2, 15905:7, 15905:12, 15907:6, 15907:13,</p>			



<p>16117:1, 16120:12, 16121:3, 16122:13, 16125:1, 16131:5, 16146:9 Case^[1] - 15987:20 cases^[4] - 15939:16, 15939:18, 16097:17, 16139:3 cast^[1] - 16000:2 category^[9] - 15967:6, 15969:1, 15984:16, 16130:7, 16132:5, 16136:7, 16143:6, 16144:11, 16146:21 cathedral^[1] - 16010:25 Catherine^[1] - 15895:5 caught^[1] - 15936:10 caused^[5] - 15955:6, 15977:21, 15999:15, 16075:8, 16075:19 causes^[1] - 16108:16 caution^[1] - 16030:9 cautious^[1] - 15977:18 Cavalier^[1] - 16079:17 Celine^[6] - 15986:6, 15986:14, 15986:22, 16035:4, 16035:12, 16035:16 cells^[2] - 16065:12, 16065:14 Centre^[1] - 16020:8 centre^[1] - 16121:1 certain^[6] - 15929:6, 15942:4, 16022:18, 16050:7, 16057:11, 16082:12 Certainly^[1] - 15909:17 certainly^[35] - 15901:6, 15902:14, 15905:11, 15913:9, 15913:10, 15914:3, 15919:7, 15926:4, 15926:24, 15932:1, 15936:8, 15936:10, 15940:1, 15944:19, 15945:4, 15945:5, 15959:21, 15960:9, 15963:15, 15980:17, 16001:18, 16003:8, 16027:9, 16027:11, 16036:7, 16046:19, 16057:21, 16058:22, 16065:3, 16089:20, 16093:24, 16105:4, 16130:24, 16139:20, 16140:1 Certificate^[1] - 16149:1 certify^[1] - 16149:4 challenge^[1] - 16114:2 challenging^[1] -</p>	<p>16002:15 Champs^[2] - 16019:3, 16019:10 change^[7] - 15929:3, 15939:18, 15945:13, 15946:1, 15946:22, 15950:2, 16018:2 changed^[14] - 15934:24, 15945:11, 15945:16, 15945:24, 15946:4, 15946:6, 15963:13, 15976:8, 15976:14, 15986:19, 16017:1, 16017:14, 16017:23, 16065:19 changing^[1] - 15976:9 Chapel^[2] - 15924:18, 15972:11 characteristic^[1] - 16024:4 characterized^[1] - 16085:6 charge^[8] - 15922:13, 15942:23, 16028:13, 16028:16, 16028:24, 16037:12, 16052:8, 16052:15 charged^[4] - 15911:10, 15941:18, 16037:10, 16043:7 chart^[4] - 15979:4, 16088:20, 16088:24 Chartier^[4] - 16079:7, 16079:16, 16080:8 Chartier's^[1] - 16081:17 charts^[1] - 16089:11 check^[23] - 15900:6, 15933:20, 15985:14, 15985:25, 16007:2, 16007:3, 16007:10, 16010:18, 16039:1, 16047:14, 16056:14, 16057:22, 16058:23, 16060:11, 16060:14, 16071:4, 16085:10, 16086:7, 16094:13, 16132:8, 16132:10, 16147:11, 16147:19 Checked^[1] - 16132:21 checked^[2] - 16137:2, 16138:6 checking^[3] - 16039:20, 16055:11, 16119:17 checks^[2] - 16009:11, 16124:19 chief^[5] - 15969:8, 15977:25, 16054:18, 16114:9, 16123:17</p>	<p>Chief^[1] - 16043:6 Chiefs^[1] - 16089:12 Chris^[1] - 15895:8 Chrysler^[1] - 16015:14 church^[6] - 15969:20, 15971:1, 15971:18, 15971:19, 15973:19 Cib^[2] - 15942:23, 15943:4 circled^[1] - 16065:20 circumstances^[1] - 15921:13 citation^[1] - 16011:8 City^[7] - 15907:21, 15908:4, 16030:23, 16031:11, 16032:18, 16057:25, 16072:25 city^[11] - 15923:24, 15988:1, 16029:22, 16029:23, 16030:6, 16032:25, 16033:3, 16033:9, 16043:24, 16059:12, 16088:10 civilian^[4] - 16027:4, 16140:22, 16141:1, 16141:19 claim^[1] - 15973:22 claimed^[5] - 15920:4, 15925:17, 15951:3, 16045:25, 16069:20 clashed^[1] - 15910:20 clean^[1] - 15978:9 cleaning^[2] - 15974:24, 15975:1 clear^[4] - 15918:5, 15978:3, 16049:21, 16116:14 clearly^[8] - 15903:9, 15925:4, 15954:1, 15963:13, 16022:5, 16086:20, 16094:3, 16109:5 Clearly^[1] - 15911:6 Clerk^[1] - 15894:9 close^[1] - 16126:12 closest^[1] - 16144:10 closing^[2] - 15949:17, 15998:25 Clothes^[1] - 16089:14 clothes^[20] - 15932:12, 15933:9, 15934:23, 15945:11, 15945:13, 15945:16, 15976:9, 15976:14, 15986:19, 16010:23, 16010:24, 16016:8, 16016:19, 16017:1, 16017:5, 16017:14, 16017:24, 16084:17, 16089:16, 16090:10</p>	<p>clothesmen^[1] - 16073:1 clothing^[9] - 15933:20, 15934:21, 15945:10, 15976:8, 15986:17, 15992:18, 15992:19, 16017:20, 16084:3 co^[1] - 16028:22 co-operation^[1] - 16028:22 coat^[8] - 15970:15, 15970:19, 15999:10, 15999:15, 16018:21, 16064:3, 16086:5, 16089:21 coin^[1] - 15995:18 cold^[2] - 15970:9, 16113:24 collapsed^[1] - 15940:11 collection^[2] - 16050:16, 16061:1 collects^[1] - 16038:24 Collegiate^[1] - 16070:3 colour^[2] - 16005:17, 16021:11 coloured^[5] - 16005:14, 16007:22, 16012:3, 16014:7, 16036:21 column^[1] - 16126:16 com^[1] - 16074:3 coming^[1] - 16144:10 comment^[2] - 16105:14, 16143:10 comments^[2] - 15967:1, 16018:11 Commission^[7] - 15893:2, 15893:14, 15894:1, 15894:2, 15894:9, 16074:3, 16116:7 commission^[1] - 16119:4 Commissioner^[12] - 15912:20, 15964:23, 16005:13, 16007:7, 16007:8, 16007:11, 16036:17, 16048:22, 16087:20, 16087:23, 16088:1, 16148:9 commit^[6] - 15915:13, 15957:13, 15996:12, 15996:19, 16037:11, 16043:7 committal^[2] - 16114:17, 16114:19 committed^[2] - 15915:23, 15995:17 common^[1] - 15906:6</p>	<p>compact^[17] - 15898:21, 15899:2, 15899:6, 15899:18, 15900:5, 15900:8, 15900:11, 15900:13, 15900:23, 15901:5, 15959:9, 15959:12, 15990:17, 16007:21, 16008:5, 16034:20, 16035:2 compacts^[1] - 15900:16 companions^[2] - 15902:10, 15906:3 company^[1] - 15943:10 compared^[1] - 16135:15 compartment^[1] - 15933:24 compelling^[1] - 16105:18 competing^[1] - 15946:8 compiled^[1] - 15988:24 complete^[3] - 15902:20, 15903:3, 16121:4 completely^[1] - 16054:3 completion^[2] - 15908:7, 16058:5 concern^[3] - 16004:15, 16104:23, 16143:7 concerned^[7] - 15915:14, 15927:5, 15960:18, 15960:24, 15961:23, 16095:2, 16106:10 concerning^[4] - 16049:13, 16053:23, 16056:24, 16146:7 concerns^[7] - 15898:11, 15903:15, 15904:24, 15962:8, 16031:23, 16071:2, 16105:25 conclude^[3] - 15932:20, 15932:22, 16007:16 concluded^[5] - 15944:18, 15997:17, 15998:9, 16052:20, 16053:6 conclusions^[1] - 16055:16 concurrent^[1] - 16037:14 condition^[1] - 16113:22 conditions^[3] -</p>
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<p>16040:18, 16042:20, 16042:24 conducted [2] - 15993:19, 16081:9 confessions [1] - 16145:19 confirm [1] - 15975:8 confirmed [1] - 15964:8 confirms [1] - 16015:10 conflicted [1] - 15910:23 Congram[1] - 15894:3 connected [5] - 15917:20, 15918:9, 15918:11, 15935:10, 15935:19 connection [5] - 16058:3, 16058:12, 16120:21, 16121:6, 16146:4 consider [12] - 15933:7, 15940:3, 15976:12, 15998:4, 15999:25, 16000:22, 16001:11, 16002:18, 16002:22, 16003:24, 16011:10, 16107:22 consideration [1] - 15907:16 considered [5] - 15898:8, 15900:20, 15901:19, 15906:25, 16119:22 considering [3] - 15898:7, 16001:17, 16004:2 consistent [2] - 16000:11, 16111:16 conspiracy [2] - 16037:10, 16043:7 constitutes [1] - 16144:5 construction [1] - 16132:22 constructive [1] - 15962:13 consumed [1] - 15906:4 contain [1] - 16149:5 contained [1] - 15983:19 containing [1] - 16069:17 contents [2] - 15899:24, 15934:2 context [1] - 16099:13 Continued[1] - 15896:3 continued [2] - 15897:3, 15924:13 continuity [9] -</p>	<p>15978:23, 15979:1, 15979:16, 15979:24, 15988:18, 15988:20, 15989:7, 16055:23, 16089:24 Contractors[1] - 16137:4 control [1] - 15979:13 conversation [3] - 16028:3, 16044:14, 16057:19 conversations [1] - 16014:8 conversations' [1] - 16014:10 conveyed [1] - 16139:21 convicted [1] - 15904:15 Conviction[1] - 15893:4 convincing [2] - 15943:9, 16051:20 convincing [2] - 15917:18, 15919:2 cope [2] - 16110:2, 16114:15 copies [12] - 15968:16, 16044:2, 16044:24, 16049:12, 16053:21, 16117:22, 16144:24, 16145:1, 16145:9, 16145:12, 16145:13, 16146:2 copy [4] - 16046:12, 16049:2, 16083:11, 16107:3 Corey[4] - 16037:8, 16043:5, 16043:6, 16043:8 corner [16] - 15930:9, 16006:4, 16043:13, 16047:8, 16050:18, 16050:20, 16059:19, 16063:16, 16067:17, 16067:19, 16076:17, 16088:4, 16094:5, 16121:15, 16126:7, 16132:23 coroner [1] - 16009:24 Corporal[2] - 16032:3, 16059:24 Correct[3] - 15990:1, 16011:23, 16100:8 correct [92] - 15904:10, 15909:10, 15910:3, 15913:12, 15913:16, 15913:23, 15919:12, 15919:14, 15924:23, 15927:14, 15928:8,</p>	<p>15931:21, 15936:2, 15937:10, 15940:21, 15940:25, 15941:6, 15945:4, 15951:4, 15953:9, 15955:20, 15965:16, 15971:21, 15972:19, 15972:25, 15974:13, 15975:19, 15978:18, 15990:5, 15991:7, 15991:8, 15991:21, 15992:4, 15992:14, 15992:20, 15995:22, 15996:6, 15996:17, 15997:12, 16001:23, 16006:11, 16009:18, 16010:3, 16010:6, 16013:16, 16020:12, 16021:13, 16023:13, 16025:11, 16035:24, 16037:17, 16037:23, 16038:19, 16039:22, 16041:22, 16042:6, 16042:10, 16042:16, 16043:11, 16045:8, 16045:12, 16045:14, 16045:15, 16047:4, 16048:17, 16051:17, 16057:1, 16062:25, 16065:11, 16066:1, 16066:8, 16068:24, 16071:9, 16076:4, 16076:21, 16076:22, 16080:16, 16080:17, 16082:24, 16084:23, 16088:5, 16089:19, 16102:22, 16102:23, 16106:13, 16107:6, 16115:14, 16121:20, 16121:24, 16145:23, 16145:24, 16149:5 corrected [4] - 15920:11, 15921:2, 15985:12, 16104:7 correctly [2] - 15983:18, 16058:8 correspond [3] - 15909:7, 15912:23, 15988:5 correspondence [2] - 16036:14, 16038:2 corresponds [2] - 15987:22, 16033:24 corroborate [5] - 15947:6, 15986:11, 15995:20, 16027:12, 16070:4 corroborating [1] - 15958:17 corroboration [1] -</p>	<p>15959:5 cosmetic [4] - 15900:9, 15933:25, 15934:1, 15934:8 Cotler[1] - 15895:13 Coughlan[1] - 16037:10 Counsel[1] - 15894:2 counsel [18] - 15939:24, 15940:2, 15979:18, 15998:19, 16005:16, 16033:19, 16033:22, 16039:16, 16049:24, 16106:3, 16115:24, 16117:6, 16117:17, 16117:21, 16124:24, 16125:16, 16131:4, 16142:7 country [2] - 16030:7, 16033:5 couple [11] - 15932:2, 15937:8, 15938:2, 15961:15, 15974:21, 15988:16, 15991:17, 16072:6, 16111:22, 16113:16, 16139:3 course [13] - 15899:7, 15918:3, 15929:12, 15977:19, 16044:17, 16066:14, 16079:11, 16081:11, 16095:13, 16102:9, 16104:19, 16131:7, 16146:14 Court[18] - 15894:10, 15929:10, 15932:22, 15979:15, 16008:4, 16037:9, 16043:21, 16043:22, 16057:17, 16062:13, 16081:15, 16089:11, 16092:18, 16093:5, 16149:1, 16149:3, 16149:14, 16149:18 court [3] - 15908:16, 15942:4, 16029:24 courtroom [1] - 16111:9 cover [3] - 15964:20, 15966:19, 16055:12 covered [4] - 15897:9, 15976:16, 15990:14, 16094:14 covering [2] - 15961:20, 16132:12 Cox[1] - 15895:11 Craik[1] - 16087:5 cream [1] - 16015:14 credibility [7] - 15903:15, 15904:24, 15927:8, 16071:2,</p>	<p>16071:7, 16071:8, 16093:24 credible [1] - 16142:9 crew [1] - 15977:19 crime [8] - 15904:13, 15917:20, 15918:9, 15918:12, 15995:17, 15996:12, 16060:23, 16120:21 Crime[4] - 16049:12, 16049:16, 16053:22, 16056:24 criminal [2] - 15939:16, 15975:13 Criminal[1] - 16020:7 crisp [1] - 15970:8 critical [1] - 15897:25 cross [14] - 15939:25, 15940:10, 15966:17, 15966:19, 15966:25, 15998:20, 16011:2, 16011:13, 16011:16, 16030:7, 16033:5, 16046:9, 16114:7, 16145:20 cross-country [2] - 16030:7, 16033:5 cross-examination [8] - 15940:10, 15966:17, 15966:19, 15966:25, 15998:20, 16011:13, 16011:16, 16145:20 cross-examination' [1] - 16011:2 cross-examine [3] - 15939:25, 16046:9, 16114:7 crossed [3] - 16047:15, 16047:18, 16077:18 Crown[19] - 15897:18, 15897:19, 15900:21, 15901:3, 15901:20, 15925:8, 15931:25, 15937:12, 15938:18, 15959:18, 15960:8, 15962:22, 15995:16, 15999:22, 16000:24, 16011:5, 16121:5, 16123:5, 16147:5 Crown's [7] - 15975:2, 15983:16, 15984:4, 15985:9, 15986:23, 16075:2, 16075:6 crux [1] - 16104:24 Csr[8] - 15894:10, 15894:11, 16149:2, 16149:12, 16149:13, 16149:16, 16149:17 Current[3] - 16008:15, 16008:20, 16009:17</p>
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<p>custody [4] - 16064:21, 16064:23, 16065:3, 16065:5</p>	<p>16103:8, 16105:11 Davis [1] - 15978:8 days [6] - 16003:2, 16003:18, 16026:20, 16038:17, 16077:4, 16122:24</p>	<p>16091:1 delivered [1] - 15897:15 demeanour [1] - 16106:11</p>	<p>15899:22, 15918:2, 15921:16, 15947:2, 15982:6, 16067:23, 16079:15, 16137:12 detector [2] - 16022:14, 16121:7</p>	<p>disbelieved [2] - 15932:23, 16002:2 Disbury [2] - 16117:10, 16117:24 discards [1] - 15936:14 disclosed [1] - 16135:22</p>
D				
<p>D/c' [1] - 16123:17 D/sgt [1] - 15924:2 dad [1] - 16134:8 Dallison [5] - 16058:10, 16077:21, 16142:4, 16142:17, 16142:25 damage [1] - 15945:21 damaged [1] - 16017:19 Danchuk [3] - 15938:4, 16086:23, 16124:18 Danchuk' [1] - 16086:10 Danchuk's [1] - 15932:7 Danchuks [4] - 15974:11, 15996:8, 15997:25, 16145:13 date [21] - 15913:21, 16009:9, 16012:20, 16026:9, 16033:11, 16039:13, 16045:18, 16058:14, 16060:18, 16062:19, 16077:11, 16094:11, 16101:1, 16116:20, 16121:23, 16122:10, 16122:24, 16127:12, 16127:13, 16133:3, 16147:17 Date [1] - 15979:7 dated [4] - 16033:20, 16049:3, 16049:6, 16058:13 dates [3] - 15966:8, 16026:10, 16048:23 dating [1] - 16106:7 Dave [7] - 15943:8, 15943:9, 16091:12, 16112:1, 16112:17, 16112:23, 16113:18 David [33] - 15893:4, 15895:2, 15895:11, 15896:3, 15897:3, 15914:12, 15938:11, 15951:3, 15952:6, 15952:11, 15952:23, 15953:13, 15953:20, 15954:13, 15954:14, 15980:14, 15992:2, 15992:10, 15999:13, 16008:20, 16009:4, 16009:17, 16010:10, 16025:2, 16053:8, 16072:4, 16072:8, 16072:9, 16073:5, 16073:12, 16093:11,</p>	<p>deal [8] - 15940:5, 15940:14, 15982:3, 16010:13, 16096:1, 16125:2, 16140:11, 16141:16 dealing [7] - 15956:20, 15968:3, 15968:21, 15968:25, 16023:3, 16051:23, 16120:23 dealings [4] - 15907:18, 15908:4, 16033:18, 16117:16 deals [2] - 15915:5, 16018:24 dealt [4] - 15966:24, 15970:24, 15996:21, 16094:2 death [6] - 15907:8, 15999:16, 16009:24, 16012:1, 16075:14, 16075:23 December [2] - 16052:16, 16071:25 deceptive [2] - 16091:18, 16092:20 decide [1] - 16034:21 decide' [1] - 15928:3 decided [4] - 15940:23, 16034:12, 16035:9, 16035:20 deciding [1] - 16119:24 decipher [1] - 16066:2 decision [5] - 15985:1, 15985:2, 15998:13, 15998:15, 16035:11 declaration [1] - 16017:9 declared [3] - 16010:25, 16011:14, 16016:21 defence [19] - 15939:24, 15940:2, 15998:19, 16010:13, 16033:19, 16057:25, 16059:3, 16077:21, 16084:22, 16085:1, 16085:7, 16087:25, 16115:24, 16117:6, 16117:16, 16117:21, 16131:4, 16141:25, 16142:14 definitely [1] - 16012:21 definition [2] - 15960:23, 16139:15 deliberately [1] -</p>	<p>denial [2] - 15983:24, 16092:19 denied [8] - 15927:16, 15941:12, 15963:6, 15964:8, 15982:25, 15984:11, 16010:23, 16045:24 Denning [1] - 16058:9 Dennis [3] - 16087:9, 16143:12, 16143:17 deny [1] - 15941:23 denying [1] - 15991:18 depart [1] - 15901:14 Department [2] - 16058:1, 16147:3 department [3] - 16033:11, 16078:13, 16146:23 departure [1] - 15979:17 deputy [1] - 16123:17 Deputy [1] - 16043:6 Describe [1] - 16008:6 describe [6] - 15917:3, 15922:22, 15934:1, 15934:21, 15958:6, 16007:21 described [2] - 15969:24, 16084:18 describes [2] - 15959:8, 15970:6 Description [1] - 15896:2 description [4] - 15906:7, 15941:9, 15989:6, 16015:17 desire [1] - 15901:14 Det [2] - 15904:4, 16088:13 Det/sgt [2] - 16068:3, 16068:13 detachment [1] - 16088:14 detail [4] - 15987:16, 15993:1, 16063:22, 16080:13 detailed [1] - 15994:3 details [4] - 15921:24, 15982:15, 16002:15, 16043:9 Detection [4] - 16049:13, 16049:16, 16053:22, 16056:24 detection [1] - 16060:23 Detective [8] -</p>	<p>15927:9, 15940:10, 16091:17, 16091:18, 16092:20 determining [1] - 16060:16 deterred [1] - 15931:5 detract [1] - 15907:23 developed [1] - 15897:18 Devon [1] - 16072:24 Diewold [8] - 15970:25, 15971:7, 15971:17, 15971:25, 15972:5, 15973:24, 16047:20, 16047:21 differed [2] - 15942:10, 16001:8 difference [2] - 15953:25, 16092:25 different [22] - 15910:14, 15966:8, 15967:11, 15967:12, 15987:11, 16005:14, 16005:15, 16007:22, 16012:3, 16014:6, 16021:11, 16027:23, 16046:6, 16051:12, 16051:22, 16053:3, 16054:2, 16083:23, 16085:16, 16085:23, 16144:8, 16148:10 differentiated [1] - 15988:14 differently [1] - 16109:12 difficult [1] - 15905:19 direct [1] - 15981:9 directed [2] - 16036:18, 16117:10 direction [2] - 15935:21, 16112:23 directions [3] - 15948:16, 15972:12, 16001:3 directly [2] - 15935:10, 15992:9 Director [1] - 15894:3 disbelieve [1] - 15953:23</p>	<p>15932:23, 16002:2 discards [1] - 15936:14 disclosed [1] - 16135:22 disconnected [1] - 15922:15 discount [1] - 16005:8 discovered [2] - 15989:15, 16071:16 discoveries [1] - 16030:4 discrepancies [1] - 15949:18 discuss [4] - 16115:24, 16116:22, 16118:2, 16118:17 discussed [4] - 15947:23, 16119:10, 16119:21, 16130:25 discussing [2] - 16056:19, 16133:24 discussion [6] - 15948:7, 15948:13, 16039:8, 16095:24, 16112:11, 16115:2 discussions [2] - 16091:19, 16097:8 dispose [1] - 16069:19 disposing [1] - 15975:5 dispute [1] - 16030:18 distance [1] - 15898:20 distinct [1] - 15922:3 distinction [1] - 15900:9 ditches [1] - 15899:14 Division [1] - 16030:7 do' [1] - 15931:12 doc [2] - 16013:11, 16138:22 Document [3] - 15894:4, 15894:5, 15894:6 document [24] - 15897:7, 15897:11, 15897:21, 15909:13, 15913:7, 15913:18, 15987:18, 15988:24, 15989:4, 15989:13, 15989:18, 16019:19, 16026:16, 16033:20, 16043:13, 16048:5, 16048:9, 16048:12, 16048:22, 16088:7, 16100:4, 16116:7, 16119:8, 16135:4 documents [6] - 15988:17, 15993:24,</p>



<p>16059:14, 16078:15, 16100:2, 16124:13 Dodge [1] - 16015:14 Doell [2] - 15985:6, 15985:13 dog [1] - 15899:14 Don [2] - 15894:11, 15911:23 Donald [2] - 16149:2, 16149:17 done [23] - 15912:9, 15919:5, 15962:18, 15989:18, 15993:16, 15998:7, 16000:5, 16000:19, 16001:15, 16006:7, 16007:3, 16007:9, 16025:19, 16028:15, 16045:25, 16054:6, 16066:12, 16092:14, 16095:25, 16108:19, 16119:15, 16128:18, 16147:23 donor [2] - 15994:17, 16041:25 donor's [1] - 16042:16 door [2] - 15935:2, 15935:25 doors [1] - 15937:9 double [6] - 16056:4, 16075:8, 16094:9, 16096:11, 16096:16 double-edged [3] - 16094:9, 16096:11, 16096:16 doubt [7] - 15926:22, 15960:17, 15960:23, 15961:22, 16000:3, 16094:1, 16118:9 doubt' [1] - 15961:3 doubting [4] - 15903:1, 15903:3, 15961:25, 16030:1 doubts [1] - 15926:5 Douglas [1] - 15894:2 down [77] - 15901:23, 15902:16, 15904:1, 15905:22, 15911:7, 15924:10, 15925:11, 15929:23, 15932:7, 15933:21, 15934:20, 15937:9, 15944:1, 15946:19, 15947:22, 15948:14, 15950:6, 15956:11, 15957:5, 15957:21, 15960:10, 15961:5, 15969:9, 15972:1, 15973:7, 15973:15, 15975:15, 15976:20, 15977:7, 15978:13, 15978:21,</p>	<p>15979:4, 15986:6, 16000:25, 16002:13, 16007:4, 16009:22, 16011:17, 16014:14, 16018:20, 16020:16, 16034:18, 16035:2, 16039:18, 16041:9, 16046:11, 16056:9, 16061:13, 16062:25, 16066:15, 16067:9, 16070:5, 16072:21, 16074:20, 16078:12, 16083:18, 16085:14, 16091:24, 16096:14, 16098:22, 16100:19, 16103:9, 16112:7, 16116:15, 16120:16, 16122:2, 16123:4, 16125:17, 16130:3, 16130:4, 16131:21, 16133:23, 16134:9, 16143:12, 16145:13, 16146:10, 16146:22 Dr [19] - 15980:13, 15980:15, 16000:10, 16010:1, 16010:4, 16010:8, 16010:15, 16012:10, 16036:3, 16041:1, 16046:14, 16075:18, 16076:2, 16076:10, 16083:25, 16084:13, 16094:21, 16096:6, 16096:22 draft [1] - 16063:7 drag [1] - 16103:9 drew [1] - 16072:14 driven [2] - 15948:22, 16144:22 driver [7] - 15976:24, 15976:25, 16062:1, 16062:2, 16062:9, 16077:17, 16144:21 driver's [1] - 15933:13 drivers [2] - 15901:9, 15974:20 driving [4] - 15898:20, 15901:7, 15932:6, 15983:2 Drove [1] - 15923:24 drove [4] - 15901:10, 15924:1, 15926:21, 16001:3 drug [1] - 15905:23 drugs [4] - 15906:3, 15906:4, 15906:13, 16069:16 drugs' [1] - 16066:24 drunkenness [1] - 16010:13 drywall [2] - 16133:1,</p>	<p>16133:25 Drywall [1] - 16134:2 due [4] - 15899:7, 16048:19, 16095:12, 16146:14 During [1] - 15944:3 during [10] - 15918:20, 15942:2, 15943:10, 15943:13, 15963:2, 16031:18, 16044:17, 16079:11, 16081:11, 16107:16 duty [2] - 16142:7, 16142:18</p> <p style="text-align: center;">E</p> <p>Eamon [1] - 15895:10 Early [1] - 15907:6 early [6] - 15915:10, 15945:12, 15990:8, 16043:24, 16095:14, 16143:7 east [3] - 15971:20, 15972:14, 15973:24 east-west [2] - 15971:20, 15972:14 Ed [6] - 16066:23, 16067:4, 16067:5, 16067:7, 16070:1, 16070:2 Eddie [1] - 15895:8 edge [2] - 15979:6, 16056:5 edged [4] - 16075:8, 16094:9, 16096:11, 16096:16 Edmondson [3] - 16031:1, 16047:22, 16123:11 Edmonton [5] - 15906:21, 16037:9, 16043:6, 16043:9, 16066:3 Edward [2] - 15893:7, 16071:24 effect [24] - 15915:22, 15920:25, 15940:7, 15962:20, 15963:3, 15963:9, 15983:4, 15984:10, 15998:15, 16002:19, 16003:7, 16003:9, 16004:10, 16027:12, 16036:12, 16040:15, 16078:12, 16089:11, 16093:20, 16095:8, 16113:9, 16114:7, 16142:22, 16146:20</p>	<p>effort [1] - 16010:12 eight [1] - 16091:24 Either [2] - 16024:13, 16106:20 either [29] - 15898:6, 15925:25, 15926:19, 15927:11, 15927:18, 15927:25, 15929:9, 15931:10, 15953:4, 15953:7, 15953:8, 15992:19, 15993:4, 16014:12, 16036:9, 16040:25, 16044:11, 16044:14, 16061:12, 16079:15, 16083:11, 16096:14, 16099:2, 16100:15, 16136:15, 16142:12, 16145:5, 16145:16, 16145:17 elaborate [1] - 16146:15 elasticity [1] - 15910:12 element [3] - 15941:15, 15996:19, 15997:9 Element [1] - 16020:7 elements [1] - 16082:22 elevator [14] - 15922:8, 15922:11, 15946:20, 15946:23, 15947:3, 15947:4, 15969:11, 16028:12, 16029:1, 16029:7, 16031:24, 16119:12, 16125:23, 16125:25 eliminate [1] - 16097:3 eliminated [5] - 16014:15, 16014:20, 16014:25, 16143:18, 16143:23 Elliott [8] - 16087:9, 16087:12, 16128:14, 16143:12, 16143:17, 16143:23, 16143:24, 16144:16 Elliott' [2] - 16126:18, 16126:22 Elmer [2] - 16087:9, 16125:7 Elmer' [2] - 16124:25, 16125:5 elsewhere [2] - 15907:12, 16107:5 Elson [2] - 15895:7, 15985:21 emerged [1] - 15936:8 emphasize [1] - 16146:5 employee [1] - 16133:1 employment [1] - 16020:3</p>	<p>Emson [19] - 15980:13, 15980:15, 16011:25, 16012:10, 16013:7, 16040:18, 16041:1, 16042:21, 16046:14, 16075:7, 16075:18, 16076:10, 16085:14, 16094:6, 16094:7, 16094:21, 16096:6, 16096:22, 16097:6 Emson' [1] - 16123:11 Emson's [2] - 16000:10, 16076:3 enable [1] - 16063:11 enclose [4] - 16046:12, 16049:2, 16145:1, 16145:12 enclosing [2] - 16053:21, 16060:23 encountered [2] - 15939:20, 15970:14 encourage [2] - 15967:18, 15968:9 encouraged [1] - 15967:13 end [12] - 15921:5, 15931:11, 15941:18, 15955:15, 15983:10, 16036:10, 16042:16, 16083:16, 16086:20, 16116:1, 16116:16, 16133:11 ended [10] - 15898:8, 15910:1, 15913:22, 15923:16, 15928:9, 15949:2, 16003:1, 16023:6, 16067:8, 16141:4 ends [1] - 16034:11 engaged [1] - 16082:19 engagement [1] - 16043:23 enlist [1] - 16109:10 enroute [5] - 15922:20, 15923:5, 15947:12, 15947:23, 15959:15 ensure [1] - 15980:2 enter [1] - 16028:13 entered [1] - 16075:5 entering [4] - 15947:24, 15948:4, 15948:10, 15972:16 enterprise [1] - 16078:23 entire [2] - 15925:25, 15927:19 entrance [7] - 15924:16, 15924:17, 15924:25, 15925:24, 15927:18, 15929:2,</p>
---	---	--	---	---



<p>15972:3 entries [1] - 15897:7 entry [1] - 16137:8 episode [8] - 16022:1, 16054:3, 16084:2, 16102:5, 16104:25, 16106:4, 16108:12, 16120:10 episodes [1] - 16052:12 equal [2] - 15968:8, 16054:19 equally [1] - 16137:20 error [2] - 15913:24, 15914:2 escape [2] - 16003:20, 16102:3 especially [2] - 15960:16, 15961:21 Esq [5] - 15895:3, 15895:7, 15895:8, 15895:9, 15895:10 essentially [8] - 15949:13, 15980:21, 15980:22, 15990:9, 16027:18, 16079:21, 16101:20, 16137:13 Esson [1] - 15894:12 establish [10] - 15938:10, 15979:15, 15980:3, 15982:1, 16039:4, 16040:3, 16041:17, 16042:3, 16042:5, 16082:22 established [3] - 15937:18, 15994:11, 16099:22 estimate [2] - 16009:23, 16113:25 estimates [1] - 15910:13 et [2] - 16084:20, 16084:25 etc [1] - 16007:21 etcetera [9] - 15901:9, 15917:7, 15963:7, 15972:7, 15981:24, 16028:22, 16054:20, 16058:24, 16078:18 Etcetera [1] - 15944:7 etcetera' [1] - 16077:17 evening [4] - 16019:10, 16061:25, 16143:13, 16143:15 evening' [1] - 16019:4 event [6] - 15963:1, 15972:12, 16057:14, 16072:21, 16099:5, 16116:18 events [8] - 15920:5, 15977:9, 15984:14,</p>	<p>15986:15, 15990:23, 16000:22, 16004:1, 16071:13 eventually [2] - 15939:18, 15945:19 everything' [2] - 15927:21, 15929:3 Evidence [1] - 16114:11 evidence [190] - 15897:13, 15899:5, 15899:10, 15899:13, 15903:10, 15903:14, 15903:21, 15904:9, 15905:25, 15906:23, 15907:12, 15907:17, 15907:24, 15908:20, 15909:1, 15909:19, 15910:1, 15910:4, 15910:22, 15913:17, 15918:1, 15922:7, 15923:2, 15923:15, 15924:5, 15929:7, 15931:24, 15933:11, 15933:15, 15934:11, 15934:12, 15934:14, 15934:18, 15935:3, 15935:9, 15935:15, 15937:1, 15937:9, 15937:21, 15937:22, 15937:25, 15938:5, 15938:10, 15940:9, 15941:7, 15941:19, 15944:17, 15945:7, 15946:13, 15946:20, 15947:1, 15948:5, 15949:6, 15949:11, 15951:15, 15952:8, 15953:21, 15953:23, 15956:22, 15957:1, 15957:8, 15957:16, 15958:2, 15958:8, 15958:17, 15958:21, 15959:12, 15959:20, 15959:21, 15960:6, 15960:8, 15964:2, 15967:10, 15967:15, 15968:19, 15968:23, 15969:4, 15972:24, 15974:18, 15974:21, 15977:3, 15978:16, 15979:12, 15979:14, 15980:21, 15980:23, 15980:24, 15981:2, 15981:9, 15982:19, 15984:3, 15986:3, 15986:11, 15990:12, 15990:16, 15991:2, 15991:9, 15991:20, 15992:1, 15992:10, 15992:24, 15993:4, 15993:21, 15994:3,</p>	<p>15994:5, 15994:8, 15994:14, 15995:4, 15995:8, 15995:10, 15995:15, 15995:19, 15997:6, 15997:14, everything' [15] - 15997:21, 16000:10, 16001:13, 16001:24, 16003:4, 16003:6, 16003:8, 16003:9, 16005:2, 16010:17, 16018:19, 16023:4, 16024:6, 16026:23, 16030:21, 16031:10, 16034:7, 16034:12, 16035:21, 16037:14, 16039:2, 16039:20, 16039:21, 16041:2, 16043:21, 16046:3, 16054:10, 16056:2, 16057:24, 16059:2, 16068:23, 16075:5, 16076:3, 16077:20, 16080:15, 16081:1, 16081:4, 16081:14, 16081:17, 16082:13, 16083:7, 16085:4, 16085:7, 16092:16, 16092:17, 16092:21, 16092:22, 16092:23, 16093:5, 16093:21, 16095:14, 16097:14, 16097:25, 16100:14, 16100:25, 16101:8, 16105:18, 16114:16, 16114:18, 16114:20, 16119:3, 16119:22, 16119:25, 16120:18, 16120:25, 16121:11, 16126:11, 16126:19, 16130:7, 16135:10, 16136:9, 16139:14, 16141:24, 16144:5, 16144:11 evidence' [3] - 16084:22, 16085:1, 16126:10 evidentiary [1] - 16055:19 evidently [16] - 15988:22, 16009:7, 16018:15, 16027:5, 16028:4, 16062:14, 16064:5, 16075:17, 16083:25, 16091:25, 16094:11, 16097:13, 16126:16, 16126:21, 16132:1, 16147:23 ex [2] - 16013:1, 16013:3 Ex [2] - 16013:4,</p>	<p>16013:5 exact [1] - 15944:5 exactly [5] - 15948:25, 15949:20, 15984:25, 16048:21, 16081:22 examination [15] - 15940:10, 15966:17, 15966:19, 15966:25, 15977:25, 15998:20, 16011:13, 16011:16, 16024:12, 16024:14, 16049:14, 16053:23, 16056:25, 16114:9, 16145:20 examination' [1] - 16011:2 examination-in-chief [2] - 15977:25, 16114:9 examine [4] - 15939:25, 16046:9, 16054:18, 16114:7 examined [1] - 15969:8 example [9] - 15914:5, 15917:9, 15957:7, 15963:18, 15971:14, 15980:4, 15981:1, 15992:12, 16064:17 except [2] - 15976:19, 16120:14 Exception [1] - 16026:25 exception [2] - 16027:6, 16027:15 excited [1] - 15975:24 excused [2] - 16036:3, 16123:9 Executive [1] - 15894:3 exercise [1] - 16083:3 exhibit [3] - 15978:16, 15989:2, 15989:14 exhibits [13] - 15947:14, 15978:14, 15981:3, 15982:4, 15988:17, 15988:21, 16040:5, 16049:14, 16049:23, 16053:23, 16056:25, 16060:25, 16123:2 existed [1] - 16080:7 expand [3] - 16001:24, 16032:15, 16052:2 expect [6] - 15955:24, 16018:18, 16033:3, 16055:22, 16111:18, 16148:4 expectation [2] - 15940:8, 16110:21 expectations [1] - 16110:25 expected [4] -</p>	<p>15933:19, 16032:23, 16053:9, 16105:3 explain [18] - 15900:21, 15940:4, 15984:24, 15994:15, 15994:19, 15999:22, 16025:14, 16034:6, 16040:17, 16040:21, 16041:2, 16042:5, 16042:9, 16042:15, 16042:19, 16042:24, 16053:4, 16108:10 explained [4] - 15942:9, 15955:22, 15999:25, 16002:16 explaining [1] - 15984:12 explains [1] - 16013:23 explanation [5] - 16025:19, 16032:7, 16077:12, 16084:15, 16109:17 Explanations [1] - 16076:12 explanations [1] - 16012:8 explored [1] - 15956:2 extent [4] - 15928:4, 15956:22, 16082:14, 16084:19 extremely [1] - 16022:13 eye [1] - 15897:25 eyes [1] - 15953:9 eyewitness [2] - 16080:15, 16080:21</p> <p style="text-align: center;">F</p> <p>F [3] - 16006:14, 16012:22, 16026:5 F [3] - 16006:14, 16012:23, 16026:5 F [3] - 16006:14, 16021:20, 16026:5 face [3] - 15949:10, 16050:9, 16061:10 facing [3] - 15971:19, 15972:14, 15972:17 fact [63] - 15899:16, 15901:9, 15903:22, 15903:25, 15905:25, 15906:7, 15906:12, 15907:22, 15911:2, 15914:14, 15918:21, 15926:11, 15927:15, 15930:11, 15931:5, 15932:18, 15933:1, 15933:6, 15934:7,</p>
---	---	---	---	---



<p>15937:19, 15938:9, 15939:24, 15940:14, 15943:15, 15944:12, 15946:4, 15947:19, 15949:19, 15952:18, 15968:16, 15970:18, 15974:23, 15984:11, 15987:5, 15987:8, 15994:10, 15995:19, 15998:7, 15999:13, 15999:15, 16000:7, 16002:25, 16007:24, 16020:3, 16025:19, 16029:24, 16033:8, 16034:17, 16045:16, 16066:12, 16066:21, 16083:1, 16089:13, 16096:24, 16104:15, 16105:6, 16105:17, 16109:7, 16115:3, 16115:25, 16124:11, 16134:10 factor [5] - 15904:23, 15930:19, 15941:17, 15976:19, 15996:11 factoring [1] - 15984:4 factors [1] - 15941:20 facts [13] - 15925:23, 15926:21, 15944:21, 15973:16, 16001:25, 16006:15, 16006:19, 16007:18, 16012:12, 16013:20, 16026:3, 16026:21, 16142:10 facts' [1] - 16006:13 factual [2] - 15955:2, 15963:13 Fair[1] - 16088:16 fair [50] - 15898:1, 15901:2, 15908:10, 15908:21, 15908:22, 15910:14, 15916:1, 15929:22, 15933:4, 15934:9, 15935:23, 15938:13, 15939:5, 15942:21, 15944:25, 15957:10, 15962:1, 15963:22, 15967:16, 15973:12, 15974:17, 15975:13, 15976:2, 15980:1, 15980:24, 15981:3, 15984:13, 15985:2, 15991:4, 15992:3, 15994:11, 15994:21, 15995:1, 15995:8, 15996:5, 15996:13, 15999:3, 16007:16, 16030:21, 16041:4, 16042:12, 16042:21, 16044:16,</p>	<p>16069:9, 16096:5, 16101:10, 16102:17, 16115:8, 16131:16, 16139:7 fairly [4] - 15909:12, 15955:2, 15990:8, 16038:7 fairness [4] - 15938:1, 15966:6, 15986:18, 15999:19 faith [2] - 15928:12, 15956:8 faked [1] - 15976:22 fall [5] - 16046:4, 16130:7, 16143:6, 16146:18, 16146:21 falling [6] - 16085:4, 16128:23, 16129:5, 16129:10, 16129:15, 16130:13 fallings [1] - 16143:11 familiar [3] - 15978:24, 16052:5, 16144:14 far [21] - 15906:13, 15915:13, 15929:4, 15934:16, 15957:17, 15960:17, 15960:24, 15961:23, 15968:3, 15979:1, 15982:13, 15992:24, 15996:7, 15999:4, 16003:6, 16022:20, 16023:9, 16040:25, 16056:23, 16099:13, 16143:6 fare [1] - 16131:24 farfetched [1] - 16134:19 farm [1] - 16067:13 fashion [3] - 15921:5, 15983:17, 16027:4 favourable [3] - 15903:24, 15918:4, 16000:1 fear [3] - 15941:15, 16003:11, 16102:4 fearful [1] - 15942:5 Feb[1] - 16134:7 February[1] - 16132:19 Feehan[3] - 16067:4, 16067:8, 16070:2 Feehar [1] - 16067:6 feet [1] - 15958:4 fellas [1] - 16015:18 fellow [3] - 15971:1, 16138:20, 16139:4 fellows [2] - 16068:9, 16087:14 felt [12] - 15941:6, 15949:12, 15950:2, 15961:12, 15962:13,</p>	<p>15969:7, 16009:1, 16071:6, 16093:24, 16104:24, 16114:18, 16147:22 female [2] - 15969:22, 15955:16 females [2] - 16069:15, 16069:22 fence [2] - 16095:21 few [7] - 15897:7, 15900:1, 15902:3, 15902:13, 15959:25, 15974:20, 16091:14 fibres [2] - 15992:13, 15995:12 figure [1] - 15898:1 figuring [1] - 16040:24 file [62] - 15908:16, 15939:1, 15948:6, 15962:25, 15968:15, 15989:13, 16005:23, 16005:25, 16012:17, 16013:19, 16013:22, 16026:7, 16026:14, 16028:23, 16029:4, 16029:11, 16029:15, 16029:19, 16030:1, 16030:3, 16030:14, 16031:13, 16033:9, 16036:14, 16036:20, 16036:22, 16038:2, 16044:9, 16044:17, 16051:12, 16051:22, 16052:9, 16053:3, 16053:8, 16054:3, 16055:8, 16058:19, 16059:20, 16061:2, 16070:25, 16116:11, 16116:13, 16116:22, 16117:7, 16117:8, 16117:25, 16118:2, 16118:16, 16122:19, 16127:23, 16128:9, 16130:19, 16131:3, 16137:16, 16138:5, 16138:6, 16139:19, 16144:12, 16144:15, 16145:2, 16146:11 files [4] - 16033:20, 16049:25, 16052:5, 16107:5 final [1] - 15940:16 fine [12] - 15908:11, 16005:18, 16007:1, 16016:17, 16036:25, 16038:14, 16061:13, 16077:25, 16085:11, 16131:21, 16140:17, 16141:17 finger [1] - 15929:19</p>	<p>finish [1] - 15974:9 finished [1] - 16048:15 first [52] - 15898:9, 15907:13, 15909:24, 15913:9, 15913:10, 15915:20, 15916:5, 15919:17, 15921:14, 15922:17, 15925:21, 15927:16, 15928:21, 15938:22, 15940:18, 15941:2, 15941:23, 15942:11, 15942:15, 15943:5, 15943:7, 15960:12, 15964:5, 15965:3, 15965:6, 15965:8, 15982:24, 16015:15, 16016:10, 16016:11, 16017:7, 16023:3, 16026:11, 16040:9, 16043:20, 16051:23, 16057:16, 16059:5, 16064:12, 16069:12, 16074:1, 16080:22, 16081:7, 16082:12, 16089:6, 16093:22, 16103:11, 16103:15, 16107:17, 16127:17, 16133:25 firsthand [1] - 15939:13 Firstly[1] - 16086:12 Fisher[11] - 15895:10, 15936:8, 15936:15, 15936:19, 15937:3, 16137:3, 16137:9, 16137:18, 16137:19, 16138:5, 16138:7 fit [12] - 15905:24, 15910:20, 15960:22, 15973:15, 15973:16, 15975:25, 15976:3, 15986:23, 16002:8, 16064:24, 16132:4, 16136:7 five [7] - 15996:24, 16007:10, 16055:5, 16094:15, 16104:2, 16106:14, 16140:24 fixed [2] - 15951:11, 15957:22 flashlight [5] - 15922:10, 15946:21, 15946:23, 15947:2, 16126:3 floor [1] - 16133:14 fluid [5] - 16011:18, 16012:25, 16043:3, 16055:18, 16056:15 fluids [4] - 15993:19, 15993:24, 16040:1, 16041:15</p>	<p>fly [1] - 16124:11 focus [1] - 15937:6 fog [1] - 15972:7 Fogel[4] - 16009:23, 16009:24, 16010:1, 16035:7 folder [2] - 16038:3, 16049:23 follow [15] - 15900:10, 15953:2, 15965:19, 16014:24, 16015:22, 16018:10, 16018:11, 16018:17, 16048:25, 16060:20, 16070:21, 16073:18, 16073:21, 16124:22, 16128:17 follow-up [6] - 15965:19, 16048:25, 16073:18, 16073:21, 16124:22, 16128:17 followed [3] - 15917:7, 16034:9, 16135:7 following [4] - 15984:18, 16057:8, 16062:22, 16118:25 follows [2] - 16026:5, 16077:1 foolscap [1] - 16099:1 force [1] - 15985:5 forced [1] - 16076:7 foregoing [1] - 16149:4 forensical [1] - 15995:11 forget [1] - 15954:3 forgotten [1] - 16102:16 form [6] - 15956:6, 15988:25, 16037:6, 16074:14, 16074:16, 16137:20 formal [1] - 16035:23 formed [1] - 15921:19 formerly [3] - 16064:13, 16069:4, 16069:8 Fort[2] - 16037:12, 16037:16 forth [1] - 16120:23 fortunately [1] - 15989:17 forwarded [1] - 16146:1 fought [3] - 15902:2, 15902:12, 15959:25 Four[1] - 16055:3 four [7] - 15898:16, 15900:15, 15962:12, 16007:10, 16083:23, 16104:2, 16148:10 frame [12] - 15910:22, 15910:23, 15916:4, 15916:13, 15976:17, 15997:4, 15997:11,</p>
--	---	---	---	--



15997:20, 15997:23, 15998:8, 15999:4, 16001:11 Frank ^[1] - 16141:7 frankly ^[1] - 15971:15 Fraser ^[5] - 16062:4, 16124:19, 16141:10, 16144:25, 16145:4 fraud ^[2] - 16037:11, 16043:7 Framer ^[1] - 15895:11 free ^[3] - 15904:8, 15925:14, 15925:19 free-standing ^[1] - 15904:8 frequently ^[1] - 15939:17 fresh ^[1] - 16100:21 Friday ^[4] - 16043:9, 16067:10, 16076:20, 16133:21 friend ^[1] - 16129:6 friends ^[3] - 15903:18, 15903:22, 16035:18 frightened ^[3] - 15933:17, 15969:25, 15977:10 front ^[4] - 15916:24, 15940:5, 16051:2, 16088:7 frozen ^[10] - 15991:22, 15992:6, 15992:25, 15993:3, 15993:10, 15994:20, 16038:23, 16038:24, 16041:24, 16043:3 full ^[5] - 16010:3, 16122:3, 16127:1, 16136:23, 16139:11 function ^[1] - 16109:8 funeral ^[5] - 15924:16, 15925:5, 15972:3, 15995:22, 16112:5 Funeral ^[2] - 15924:18, 15972:11 future ^[1] - 16146:19	15992:20, 15996:23, 15998:8, 16000:11, 16000:23, 16002:5, 16002:6, 16008:5, 16008:12, 16008:15, 16008:19, 16009:4, 16009:16, 16012:13, 16030:24, 16031:7, 16031:25, 16032:11, 16046:13, 16061:24, 16076:4, 16084:3, 16089:21, 16090:13, 16090:25, 16095:3, 16099:13, 16129:9, 16138:4, 16138:20, 16139:4, 16143:13, 16144:1, 16144:22 Gaifs ^[1] - 16008:10 garbage ^[4] - 15931:16, 15931:17, 15931:21, 15952:13 Garrett ^[1] - 15895:6 gather ^[4] - 15906:5, 15978:15, 16090:11, 16118:19 general ^[9] - 15903:16, 15939:16, 15963:9, 15973:21, 16020:24, 16040:23, 16058:18, 16075:21, 16127:10 generally ^[3] - 15941:10, 15963:17, 16023:1 genitalia ^[3] - 16076:4, 16094:11, 16097:12 George ^[3] - 16132:24, 16133:19, 16133:20 Gerse ^[5] - 15935:4, 15935:17, 15938:11, 16047:21, 16123:11 ghost ^[2] - 15958:6, 15970:7 Gibson ^[1] - 15895:9 girl ^[39] - 15902:1, 15902:12, 15917:16, 15930:1, 15930:7, 15933:7, 15943:14, 15948:15, 15950:12, 15950:18, 15951:3, 15951:7, 15952:7, 15952:12, 15952:24, 15953:13, 15953:18, 15953:20, 15954:13, 15954:15, 15954:16, 15958:3, 15959:24, 15991:11, 15991:15, 15999:14, 16000:9, 16002:25, 16003:17, 16019:1, 16020:5, 16020:23, 16023:11,	16072:10, 16103:9, 16103:20, 16113:6, 16120:6 girl's ^[1] - 15970:8 girlfriend ^[4] - 16086:9, 16086:23, 16131:25, 16132:2 girls' ^[1] - 16067:2 given ^[20] - 15920:23, 15928:18, 15937:8, 15944:13, 15944:19, 15956:5, 15968:22, 15991:6, 15991:9, 15991:17, 15996:20, 16029:23, 16030:12, 16069:4, 16069:8, 16069:15, 16089:16, 16102:22, 16115:13 glad ^[2] - 16096:20, 16107:7 glance ^[2] - 15988:2, 16140:10 glove ^[1] - 15933:24 Gm ^[1] - 16090:13 Gmm ^[1] - 16090:25 go-round ^[1] - 15913:9 Government ^[1] - 15895:4 grab ^[5] - 15953:13, 15954:13, 16103:8, 16103:20, 16113:6 grabbed ^[7] - 15902:2, 15902:12, 15930:3, 15934:5, 15934:12, 15952:12, 15959:24 green ^[1] - 16107:1 group ^[11] - 16013:1, 16013:3, 16013:6, 16015:6, 16034:8, 16039:4, 16039:24, 16041:7, 16041:10, 16050:11, 16051:3 Grouping ^[1] - 16039:6 grouping ^[1] - 16120:25 guess ^[21] - 15905:19, 15923:14, 15938:8, 15964:5, 15967:4, 15976:19, 15995:16, 16002:17, 16027:3, 16030:20, 16031:23, 16040:13, 16070:16, 16081:24, 16083:10, 16085:3, 16091:23, 16093:4, 16107:7, 16128:3, 16130:9 guest ^[1] - 16064:3 guide ^[2] - 15909:18, 15964:19 guilt ^[5] - 15901:13, 15904:18, 15906:9,	16046:4, 16136:9 guilty ^[1] - 16043:8 gun ^[3] - 15904:3, 15904:14, 15990:18 guy ^[2] - 16089:15, 16090:8 Gw ^[1] - 16125:23	16064:12, 16066:3, 16070:15, 16086:25, 16087:18, 16087:22, 16105:10, 16120:14, 16123:24, 16127:10, 16139:9, 16146:19 headlights ^[1] - 15972:20 headquarters ^[1] - 16030:8 Health ^[1] - 16037:13 hear ^[6] - 15925:6, 15958:7, 15970:7, 16058:11, 16074:6, 16146:14 heard ^[27] - 15899:13, 15906:23, 15908:25, 15935:17, 15967:10, 15967:14, 15991:13, 15992:11, 15993:10, 16003:15, 16024:4, 16024:7, 16025:1, 16030:21, 16031:10, 16037:14, 16074:1, 16081:4, 16092:16, 16092:21, 16095:16, 16098:13, 16098:22, 16100:18, 16128:14, 16131:1, 16134:12 hearing ^[50] - 15903:13, 15915:1, 15919:24, 15941:13, 15941:24, 15962:17, 15964:13, 15968:13, 15968:23, 15980:22, 15982:2, 15990:12, 15994:15, 16033:17, 16045:1, 16045:19, 16048:14, 16048:23, 16058:5, 16060:9, 16063:12, 16068:24, 16071:19, 16073:23, 16079:13, 16080:14, 16084:7, 16097:24, 16097:25, 16098:2, 16099:17, 16100:25, 16101:4, 16101:9, 16101:16, 16102:8, 16102:19, 16104:10, 16105:14, 16105:15, 16107:19, 16109:3, 16110:19, 16110:21, 16113:13, 16114:1, 16114:12, 16115:21, 16124:10, 16124:12 hears ^[1] - 16067:11 hearsay ^[3] - 16026:25, 16027:5, 16027:15 heavily ^[2] - 15951:10, 15956:14
G			H	
Gail ^[53] - 15899:8, 15899:10, 15899:20, 15900:5, 15900:22, 15901:4, 15909:25, 15910:9, 15923:17, 15924:21, 15931:20, 15936:13, 15937:13, 15937:18, 15975:11, 15985:7, 15987:20, 15992:2, 15992:8,			hairs ^[2] - 15992:13, 16043:2 halfway ^[1] - 16007:4 Halyk ^[1] - 16011:4 hand ^[28] - 15930:6, 15930:12, 15931:1, 15931:4, 15931:7, 15955:9, 16000:6, 16000:9, 16006:4, 16009:7, 16043:13, 16056:10, 16059:19, 16063:16, 16067:19, 16076:17, 16088:4, 16094:5, 16094:9, 16094:10, 16096:21, 16097:5, 16121:15, 16126:7, 16126:15 handed ^[7] - 15930:14, 15930:22, 16000:7, 16000:12, 16096:25, 16097:2, 16097:3 handle ^[2] - 15947:16, 16095:9 handled ^[4] - 15979:8, 15988:21, 15988:23, 16095:18 handling ^[2] - 15980:23, 15982:3 hands ^[1] - 15932:13 handwriting ^[4] - 15916:25, 15943:20, 16051:13, 16067:21 handwritten ^[2] - 16013:25, 16098:7 hang ^[2] - 15952:2, 16066:21 hanging ^[1] - 16099:25 happy ^[3] - 15987:16, 16052:1, 16140:11 hard ^[1] - 16120:13 Harris ^[2] - 16138:18, 16138:19 Harris' ^[1] - 16138:23 Hartridge ^[1] - 16083:24 head ^[2] - 15943:3, 16040:15 heading ^[16] - 16020:25, 16040:23, 16046:4, 16058:18,	



<p>held [5] - 15930:6, 15930:11, 15947:18, 16028:16, 16066:17</p> <p>help [6] - 15909:19, 15965:22, 16104:3, 16112:13, 16125:6, 16131:8</p> <p>helped [4] - 16015:15, 16015:18, 16021:21, 16022:4</p> <p>helpful [3] - 16005:20, 16062:3, 16077:20</p> <p>Henry [2] - 15975:15, 16068:5</p> <p>her' [1] - 16111:13</p> <p>hereby [1] - 16149:4</p> <p>herein [1] - 16149:6</p> <p>herself [1] - 16003:20</p> <p>Hersh [1] - 15895:2</p> <p>hesitation [1] - 16131:6</p> <p>Hicks [1] - 16133:24</p> <p>hide [3] - 15944:5, 15944:15, 15945:3</p> <p>highway [2] - 15976:23, 16032:4</p> <p>him' [1] - 16070:9</p> <p>himself [2] - 16117:25, 16142:13</p> <p>hinge [1] - 15979:4</p> <p>Hinz [3] - 15894:10, 16149:2, 16149:13</p> <p>history [2] - 16010:5, 16010:9</p> <p>hit [3] - 15902:1, 15902:12, 15959:24</p> <p>hitchhiking [1] - 16067:14</p> <p>Hodson [88] - 15894:2, 15896:4, 15897:4, 15901:1, 15901:21, 15906:9, 15907:4, 15912:3, 15913:1, 15915:15, 15917:9, 15918:16, 15920:19, 15925:5, 15926:22, 15927:25, 15928:8, 15930:18, 15933:11, 15934:19, 15936:7, 15937:24, 15939:15, 15941:4, 15944:22, 15950:2, 15953:9, 15954:24, 15962:10, 15964:25, 15967:25, 15974:7, 15977:2, 15979:8, 15981:19, 15985:10, 15985:22, 15988:12, 15990:19, 15993:7, 16001:25, 16004:2, 16004:22, 16005:20, 16006:1,</p>	<p>16006:3, 16007:6, 16007:12, 16009:7, 16012:10, 16016:1, 16016:7, 16019:8, 16026:15, 16030:9, 16031:15, 16033:15, 16036:24, 16038:10, 16038:15, 16040:9, 16050:3, 16050:23, 16051:25, 16053:9, 16054:12, 16061:11, 16062:16, 16063:6, 16068:7, 16071:17, 16074:1, 16088:2, 16090:18, 16097:18, 16097:22, 16098:24, 16103:3, 16107:6, 16107:9, 16107:24, 16110:2, 16118:9, 16122:10, 16124:17, 16139:22, 16148:4, 16148:7</p> <p>hold [4] - 15930:1, 16011:6, 16016:21, 16017:10</p> <p>holding [4] - 16090:12, 16091:1, 16091:5, 16145:19</p> <p>hole [1] - 16079:17</p> <p>home [9] - 15924:16, 15925:5, 15945:11, 15972:3, 15995:22, 16035:16, 16088:11, 16112:5, 16144:1</p> <p>Hon [1] - 15895:13</p> <p>honestly [1] - 15909:22</p> <p>Honourable [1] - 15893:6</p> <p>hope [10] - 15901:21, 16003:13, 16006:25, 16022:14, 16044:21, 16053:17, 16056:12, 16123:3, 16123:13, 16147:6</p> <p>hoping [1] - 15969:18</p> <p>Hotel [3] - 15893:16, 16019:3, 16019:11</p> <p>Hotel' [1] - 16019:12</p> <p>Hounjet [1] - 16047:21</p> <p>hour [4] - 15901:10, 16116:21, 16118:1, 16122:16</p> <p>house [10] - 15910:3, 15936:9, 15936:14, 15936:25, 15937:13, 15942:4, 15946:2, 15987:6, 15996:24, 16003:23</p> <p>Hugh [1] - 15894:12</p> <p>human [2] - 15993:11</p>	<p>hung [1] - 15940:12</p> <p>hunting [1] - 16095:19</p> <p>hurry [2] - 15974:23, 15990:16</p> <p>hurt [2] - 16090:14, 16091:4</p> <p>hysterical [5] - 15950:8, 15950:16, 16004:21, 16083:20, 16084:1</p>	<p>in' [3] - 16056:1, 16056:8, 16056:10</p> <p>inability [1] - 15927:6</p> <p>incarcerated [1] - 16037:23</p> <p>incident [7] - 15946:23, 15959:23, 16072:3, 16072:6, 16073:14, 16073:15, 16145:5</p> <p>incidents [1] - 16073:13</p> <p>included [2] - 15921:25, 16061:4</p> <p>includes [1] - 15914:10</p> <p>including [2] - 15916:10, 16109:6</p> <p>inconsistency [1] - 15940:15</p> <p>inconsistent [1] - 15968:22</p> <p>incriminate [1] - 15937:14</p> <p>incriminated [1] - 16024:10</p> <p>incriminating [25] - 15902:14, 15916:9, 15919:25, 15920:5, 15920:15, 15941:13, 15941:25, 15975:6, 15991:3, 16023:9, 16023:12, 16024:9, 16080:16, 16082:12, 16092:21, 16092:22, 16092:23, 16093:11, 16103:22, 16104:9, 16104:18, 16105:7, 16107:18, 16108:5, 16110:23</p> <p>indeed [1] - 16092:5</p> <p>independent [1] - 16057:6</p> <p>Index [1] - 15896:1</p> <p>index [1] - 15987:25</p> <p>indicate [4] - 15910:16, 15984:22, 16075:22, 16115:11</p> <p>indicated [5] - 15910:22, 15982:22, 16035:17, 16036:20, 16120:7</p> <p>indicates [5] - 15947:1, 16008:25, 16011:18, 16121:23, 16122:15</p> <p>indicating [3] - 15919:13, 16098:21, 16126:19</p> <p>indication [3] - 15901:13, 16015:25, 16054:7</p> <p>indications [1] - 16087:13</p>	<p>indicative [1] - 15904:18</p> <p>individual [2] - 16028:18, 16138:21</p> <p>individually [1] - 16066:14</p> <p>Indyk [6] - 15958:1, 15958:2, 15958:11, 15969:11, 15969:15, 15970:24</p> <p>infer [2] - 16015:8, 16021:3</p> <p>inference [1] - 15901:4</p> <p>information [45] - 15904:5, 15904:7, 15904:25, 15909:10, 15911:17, 15919:25, 15921:10, 15956:16, 15968:22, 15971:7, 15971:11, 15974:11, 16010:16, 16012:18, 16020:1, 16020:21, 16021:15, 16030:11, 16055:10, 16055:21, 16062:9, 16069:1, 16069:5, 16069:11, 16070:14, 16073:11, 16073:24, 16091:2, 16100:19, 16103:23, 16105:8, 16107:18, 16134:15, 16136:3, 16136:13, 16136:21, 16137:8, 16138:9, 16138:10, 16139:2, 16139:8, 16143:10, 16144:10, 16147:12, 16147:20</p> <p>Information [1] - 16028:21</p> <p>informed [2] - 15907:13, 16143:21</p> <p>infront [3] - 15972:22, 15976:10, 15976:22</p> <p>initial [1] - 16125:12</p> <p>injuries [4] - 16075:13, 16075:21, 16094:10, 16097:11</p> <p>injury [2] - 16012:13, 16076:3</p> <p>ink [4] - 16005:14, 16007:22, 16008:24, 16107:11</p> <p>Inland [1] - 15894:13</p> <p>innocent [7] - 16126:12, 16126:20, 16127:25, 16130:21, 16139:14, 16142:12, 16144:7</p> <p>Inquiries [1] - 16019:24</p> <p>inquiries [1] - 16146:6</p>
I				
<p>lan [1] - 16036:3</p> <p>Id [1] - 16013:11</p> <p>identification [3] - 15980:25, 15992:12, 16125:25</p> <p>identified [8] - 15899:7, 15947:3, 15949:17, 15993:11, 15993:12, 16051:9, 16120:20, 16140:25</p> <p>identifies [3] - 15958:15, 16048:23, 16128:20</p> <p>identify [16] - 15908:20, 15910:8, 15922:18, 15922:24, 15947:14, 15947:19, 15970:15, 15970:16, 15988:16, 16014:11, 16026:12, 16029:25, 16033:22, 16036:22, 16127:24, 16131:3</p> <p>Ids [1] - 16138:22</p> <p>imagine [3] - 15905:4, 15953:8, 16078:7</p> <p>immediately [2] - 15973:1, 16061:17</p> <p>impartial [1] - 16093:22</p> <p>implicit [1] - 16009:19</p> <p>Implicitly [1] - 15998:9</p> <p>importance [2] - 15907:2, 15938:17</p> <p>important [16] - 15909:13, 15923:1, 15956:25, 15957:18, 15967:6, 15972:23, 15973:12, 15973:15, 15985:8, 15997:11, 15997:23, 15999:4, 16100:6, 16121:4, 16121:11, 16131:7</p> <p>impression [1] - 16110:11</p> <p>impressions [1] - 15982:13</p> <p>improve [2] - 15949:25, 16001:24</p>				



<p>Inquiry [7] - 15893:2, 15893:23, 15993:21, 16030:22, 16031:18, 16081:18, 16095:14 inquiry [5] - 15920:22, 15920:25, 15935:15, 15985:19, 15985:23 insanity [2] - 16010:14, 16070:19 inspector [3] - 15942:22, 16032:13, 16091:8 Inspector [41] - 15915:16, 15921:20, 15942:16, 15944:2, 15944:12, 15955:14, 15955:15, 16004:6, 16005:3, 16005:4, 16022:2, 16022:22, 16022:24, 16023:24, 16023:25, 16078:21, 16079:8, 16079:19, 16080:19, 16080:23, 16081:5, 16081:12, 16081:25, 16082:15, 16083:2, 16084:11, 16088:9, 16089:21, 16090:23, 16091:11, 16092:7, 16092:14, 16092:17, 16093:3, 16093:12, 16103:11, 16108:24, 16109:7, 16109:18, 16124:11, 16147:2 installments [1] - 16044:12 instance [6] - 15899:9, 15903:8, 16068:20, 16070:11, 16082:18, 16087:2 instructed [1] - 16028:13 insufficient [1] - 16083:6 intact [1] - 16003:20 intended [1] - 15966:19 intentionally [1] - 16090:14 intercourse [11] - 16008:12, 16008:13, 16011:19, 16012:1, 16012:4, 16012:9, 16067:1, 16069:18, 16075:14, 16075:23, 16076:7 interest [1] - 15966:10 interested [1] - 15935:14 interim [1] - 15918:16 intermittent [1] -</p>	<p>16048:17 internally [1] - 16002:17 interpretation [1] - 16093:17 interpreted [1] - 15904:11 interrupt [1] - 16093:14 interview [18] - 15914:12, 15944:3, 15963:2, 15964:17, 15968:11, 15968:12, 16066:7, 16068:22, 16073:25, 16079:8, 16080:19, 16081:25, 16082:11, 16094:17, 16102:6, 16102:9, 16109:1, 16147:15 interviewed [18] - 15917:11, 15920:24, 15977:23, 16004:6, 16004:7, 16005:2, 16064:18, 16064:22, 16068:4, 16070:7, 16081:5, 16101:6, 16101:9, 16101:15, 16105:9, 16124:14, 16137:12, 16148:1 interviewing [5] - 15944:14, 15962:16, 15962:22, 16089:18, 16089:22 interviews [14] - 15942:3, 16064:10, 16065:24, 16066:11, 16068:18, 16083:12, 16086:8, 16086:9, 16086:15, 16088:21, 16102:19, 16104:20, 16107:18, 16111:4 invariable [1] - 16097:16 invariably [1] - 15963:7 investigate [1] - 16080:18 investigating [1] - 16033:1 investigation [14] - 15909:7, 15909:9, 15918:22, 15971:12, 16029:6, 16030:23, 16031:7, 16032:1, 16032:12, 16095:6, 16117:20, 16133:6, 16140:23, 16143:8 investigator [3] - 15912:11, 15981:8, 16053:10 investigators [5] - 16002:11, 16002:20,</p>	<p>16143:20, 16144:14, 16146:12 invited [1] - 16069:24 involve [1] - 16078:6 involved [19] - 15919:2, 15925:5, 15926:1, 15926:19, 15927:20, 15927:23, 15948:2, 15982:25, 16011:4, 16022:8, 16030:22, 16031:6, 16043:25, 16044:21, 16072:9, 16079:2, 16084:14, 16085:25, 16098:18 involved' [1] - 15927:24 involvement [2] - 15984:11, 15991:18 involves [1] - 16093:17 involving [1] - 16072:4 Irene [1] - 15894:9 Irwin [1] - 15895:13 Isabelle [1] - 15894:5 issue [20] - 15900:20, 15900:25, 15945:14, 15945:18, 15956:20, 15968:4, 15978:23, 15991:23, 15995:3, 15998:5, 15998:17, 15998:18, 16017:23, 16042:23, 16062:15, 16070:18, 16075:25, 16084:10, 16089:20, 16089:24 issues [2] - 15898:10, 15979:23 Item [1] - 15979:7 item [4] - 15904:8, 15989:6, 16064:10, 16100:3 items [10] - 15900:8, 15936:13, 15937:12, 15964:18, 16100:11, 16104:8, 16106:15, 16120:22, 16120:23</p>	<p>Jan[5] - 15911:10, 15945:11, 15945:12, 15986:8, 16133:8 January[8] - 15915:22, 16035:16, 16129:9, 16133:21, 16143:14, 16144:23, 16145:5, 16145:6 job [2] - 15912:11, 15980:9 Jodie[1] - 15894:6 Joe[6] - 16038:18, 16038:24, 16039:13, 16064:4, 16064:5 John[137] - 15898:17, 15898:21, 15902:18, 15903:17, 15904:4, 15904:13, 15909:6, 15911:7, 15912:1, 15913:8, 15914:10, 15915:6, 15915:9, 15915:21, 15917:11, 15918:10, 15918:22, 15919:25, 15920:14, 15923:8, 15924:11, 15924:20, 15925:16, 15925:24, 15926:6, 15926:18, 15927:9, 15927:15, 15928:6, 15928:18, 15929:16, 15931:14, 15931:15, 15932:3, 15932:8, 15932:16, 15932:24, 15933:4, 15933:6, 15933:23, 15938:3, 15941:21, 15942:3, 15944:19, 15947:18, 15949:19, 15950:7, 15950:11, 15950:16, 15950:17, 15951:2, 15951:6, 15951:12, 15951:20, 15952:6, 15952:15, 15952:20, 15953:2, 15954:3, 15954:12, 15959:15, 15960:3, 15962:25, 15969:23, 15970:17, 15972:2, 15973:8, 15973:22, 15975:17, 15976:11, 15977:10, 15977:22, 15977:24, 15981:13, 15991:6, 15991:13, 15995:5, 15995:21, 15995:24, 15999:13, 16000:3, 16000:8, 16000:23, 16001:8, 16002:4, 16002:24, 16003:6, 16004:4, 16005:5, 16007:21, 16019:3,</p>	<p>16019:9, 16021:16, 16021:22, 16024:22, 16026:23, 16027:15, 16034:1, 16034:3, 16034:7, 16034:14, 16037:10, 16045:13, 16047:2, 16062:21, 16065:18, 16066:7, 16079:8, 16080:14, 16081:6, 16081:10, 16082:1, 16082:5, 16082:11, 16082:23, 16083:12, 16083:19, 16084:1, 16084:6, 16086:5, 16088:22, 16089:18, 16089:22, 16097:24, 16098:1, 16098:13, 16099:10, 16102:10, 16102:24, 16103:17, 16107:16, 16109:17, 16110:5, 16115:3, 16119:19, 16120:7, 16120:15 Johrl [1] - 16022:5 Johrls [14] - 15916:5, 15918:1, 15930:25, 15959:12, 15970:19, 15976:16, 15984:14, 16018:21, 16024:25, 16027:24, 16028:7, 16064:3, 16081:24, 16100:24 joined [2] - 15977:18, 16034:8 Joyce[1] - 15895:3 judge [2] - 15928:10, 15931:10 judge's [1] - 15935:20 July[9] - 15897:16, 15898:5, 15918:19, 16028:10, 16030:14, 16043:22, 16043:23, 16043:25, 16073:7 Julyaugust [1] - 15918:19 jump [1] - 15903:12 jumping [3] - 16085:22, 16105:11, 16146:23 June[7] - 16029:10, 16030:14, 16043:15, 16043:18, 16044:8, 16046:15, 16073:7 jury [15] - 15910:7, 15928:3, 15928:10, 15931:10, 15935:21, 15940:5, 15949:16, 15957:17, 15998:18, 15998:22, 15999:20, 15999:21, 16001:22, 16002:1</p>
J				
		<p>jabbed [7] - 15902:3, 15902:11, 15902:13, 15952:12, 15953:18, 15954:15, 15959:25 jabbing [2] - 16000:9, 16023:11 Jack[1] - 16133:24 Jackfish[1] - 16067:9 jail [4] - 16037:12, 16037:16, 16065:11, 16065:14 James[1] - 15895:3</p>		



<p>Justice^[3] - 15893:6, 15895:12, 15895:14 justification ^[1] - 15929:10</p>	<p>15930:12, 15931:1, 15931:6, 15943:8, 15947:13, 15947:19, 15950:13, 15950:19, 15951:8, 15952:12, 15953:18, 15960:1, 15992:11, 15992:12, 15995:5, 15995:6, 16000:9, 16023:11, 16064:7, 16075:19, 16085:20, 16091:13, 16095:7, 16095:17, 16095:19, 16096:12, 16096:15, 16138:20, 16139:4</p>	<p>16041:6, 16046:22, 16050:1, 16050:4, 16050:11, 16051:2, 16051:3, 16051:5, 16051:24, 16053:15, 16055:11, 16056:12, 16057:3, 16058:14, 16060:2, 16060:17, 16060:23, 16061:1, 16062:12, 16062:14, 16064:4, 16086:5, 16123:6</p>	<p>15907:22, 15936:11, 15936:21, 16079:23, 16080:3, 16108:11, 16146:8</p>	<p>lessen ^[1] - 15904:15 letter ^[43] - 15978:16, 16024:21, 16028:10, 16029:2, 16029:18, 16036:10, 16043:15, 16043:23, 16044:1, 16044:13, 16046:16, 16048:25, 16049:1, 16049:20, 16053:18, 16053:20, 16056:23, 16057:8, 16058:14, 16059:10, 16060:22, 16062:6, 16077:12, 16077:13, 16077:16, 16077:22, 16078:2, 16078:5, 16085:5, 16087:18, 16087:22, 16124:21, 16128:17, 16132:8, 16140:2, 16140:3, 16140:9, 16140:15, 16140:19, 16140:20, 16142:1, 16144:2</p>
K				
<p>Kara^[1] - 15894:5 Karen^[3] - 15894:10, 16149:2, 16149:13 Karst^[23] - 15895:8, 15904:4, 15917:4, 15917:11, 15919:3, 15919:7, 15921:16, 15981:1, 15982:6, 16010:20, 16014:3, 16014:12, 16016:21, 16019:1, 16028:5, 16066:7, 16066:8, 16066:16, 16084:21, 16085:12, 16087:12, 16101:6, 16123:11 Karst' ^[2] - 16019:23, 16064:16 Karst's ^[6] - 15914:11, 15915:6, 15916:20, 15918:2, 16016:10, 16016:11 keep ^[3] - 15950:9, 16050:21, 16076:23 keeping ^[1] - 16064:17 Kendry^[1] - 15894:6 kept ^[2] - 16071:10, 16098:25 key ^[9] - 15908:20, 15909:23, 15918:23, 15938:18, 15939:2, 15975:18, 15990:12, 16045:20, 16110:22 kill ^[6] - 15990:18, 16098:14, 16099:11, 16105:21, 16131:24, 16132:2 killing ^[2] - 16011:19, 16026:25 kind ^[6] - 15922:25, 15947:15, 15951:9, 15956:13, 16057:10, 16058:8 kinds ^[1] - 16083:23 Kirby^[1] - 16059:25 Kleiv^[3] - 15978:13, 15980:7, 15988:21 Kliev^[1] - 16123:1 knife ^[39] - 15902:3, 15902:11, 15922:21, 15922:22, 15922:24, 15922:25, 15930:4, 15930:6, 15930:8,</p>	<p>Knives ^[13] - 16085:16, 16085:23, 16085:24, 16085:25, 16094:8, 16094:24, 16095:2, 16095:15, 16096:6, 16096:15, 16096:16, 16131:24, 16132:1 knowing ^[4] - 15911:20, 16009:4, 16037:19, 16045:24 knowledge ^[14] - 15904:12, 15906:5, 15925:22, 15926:17, 15927:16, 15927:17, 15939:13, 15939:14, 15994:6, 16009:21, 16076:14, 16085:3, 16092:19, 16149:6 known ^[14] - 15899:17, 15899:20, 15899:23, 15915:19, 15944:21, 15954:22, 15973:16, 15994:23, 15996:23, 16018:25, 16021:5, 16023:4, 16054:5, 16133:5 known' ^[1] - 16018:8 knows ^[2] - 16002:2, 16142:9 Knox^[11] - 15895:5, 15985:18, 16005:24, 16016:5, 16026:12, 16036:17, 16038:5, 16038:10, 16038:12, 16049:23, 16106:24 Krogan^[1] - 15895:4 Kujawa^[1] - 15895:6</p>	<p>Lab^[1] - 16058:18 Laboratory^[4] - 16049:13, 16049:16, 16053:22, 16056:24 lack ^[4] - 15925:22, 15926:17, 16011:20, 16075:21 ladies ^[1] - 15900:16 lady ^[4] - 15906:20, 15906:21, 15969:20, 15973:19 laid ^[4] - 16028:21, 16028:25, 16052:8, 16052:15 Lake^[1] - 16067:10 Lana^[1] - 15895:4 lane ^[8] - 15950:12, 15950:18, 15951:7, 15972:9, 15972:15, 15972:16, 15973:6, 15973:7 Lapchuk^[1] - 16141:7 Laplante^[1] - 16138:25 large ^[3] - 15967:8, 15981:18, 15985:5 largely ^[1] - 15922:15 Larry^[9] - 15894:13, 15895:10, 15936:19, 16137:3, 16137:9, 16137:18, 16137:19, 16138:5, 16138:7 last ^[8] - 15910:15, 16029:13, 16064:15, 16074:2, 16077:3, 16087:20, 16129:21, 16138:24 lasted ^[1] - 15919:9 late ^[3] - 15945:11, 15997:22, 16052:14 latter ^[1] - 16024:3 law ^[1] - 15911:18 Law^[2] - 16025:23, 16026:1 lay ^[1] - 16028:13 layman ^[1] - 16004:18 leading ^[3] - 15936:13, 15950:1, 16135:10 learn ^[8] - 15907:20,</p>	<p>learned ^[8] - 15907:8, 15907:11, 15907:17, 15908:3, 15945:1, 16031:15, 16079:15, 16080:1 learning ^[2] - 16079:14, 16098:1 least ^[8] - 15902:25, 15915:3, 15915:4, 15933:2, 15993:24, 16036:10, 16041:4, 16086:7 leave ^[2] - 15975:23, 16034:13 leaving ^[1] - 16017:1 led ^[1] - 15935:9 ledger ^[1] - 16000:17 leer ^[4] - 15958:9, 15996:15, 15997:15, 15998:2 left ^[28] - 15898:13, 15910:2, 15910:4, 15929:8, 15930:14, 15930:22, 15943:10, 15956:2, 15979:6, 15996:23, 15997:12, 16000:6, 16000:7, 16001:5, 16002:7, 16009:7, 16017:24, 16056:5, 16056:10, 16056:14, 16094:9, 16096:21, 16096:25, 16097:2, 16112:18, 16122:24, 16126:15 left-handed ^[5] - 15930:14, 15930:22, 16000:7, 16096:25, 16097:2 Legal^[1] - 16147:6 legal ^[2] - 16027:6, 16114:10 legitimate ^[2] - 15926:24, 15950:3 legitimately ^[2] - 15900:16, 15926:16 Lehner^[7] - 16128:22, 16128:25, 16129:8, 16129:15, 16130:2, 16130:13, 16143:10 length ^[1] - 15960:21 lengthy ^[2] - 15906:17, 15982:22 Les^[5] - 16129:6, 16129:11, 16129:16, 16130:14, 16143:9 Leslie^[1] - 16143:17</p>	<p>lessen ^[1] - 15904:15 letter ^[43] - 15978:16, 16024:21, 16028:10, 16029:2, 16029:18, 16036:10, 16043:15, 16043:23, 16044:1, 16044:13, 16046:16, 16048:25, 16049:1, 16049:20, 16053:18, 16053:20, 16056:23, 16057:8, 16058:14, 16059:10, 16060:22, 16062:6, 16077:12, 16077:13, 16077:16, 16077:22, 16078:2, 16078:5, 16085:5, 16087:18, 16087:22, 16124:21, 16128:17, 16132:8, 16140:2, 16140:3, 16140:9, 16140:15, 16140:19, 16140:20, 16142:1, 16144:2 letters ^[2] - 16008:10, 16117:2 letting ^[1] - 15961:19 lie ^[2] - 16022:13, 16121:7 lied ^[3] - 16089:8, 16090:15, 16091:2 life ^[1] - 15900:14 light ^[6] - 15923:21, 15934:15, 15934:17, 15944:25, 16057:18, 16146:9 likelihood ^[3] - 15904:15, 15964:18, 16085:19 likely ^[14] - 15900:22, 15910:8, 15912:8, 15933:8, 15996:23, 16001:16, 16009:18, 16021:18, 16027:24, 16028:6, 16028:7, 16060:8, 16110:5, 16115:8 limited ^[3] - 16022:13, 16063:2, 16083:22 line ^[4] - 15972:6, 16051:18, 16053:3, 16090:15 lines ^[1] - 16091:24 link ^[1] - 15938:10 linked ^[5] - 15975:9, 15992:2, 15992:9, 15992:19, 16120:20 list ^[11] - 15984:20, 15985:3, 15985:4, 16009:8, 16035:23, 16047:18, 16047:23,</p>
	L			
<p>l ^[1] - 16025:22 lab ^[27] - 16038:25, 16039:5, 16040:5,</p>				



16050:1, 16098:25, 16100:10, 16147:5 List ^[1] - 15988:17 listed ^[3] - 15984:18, 15986:12, 15988:10 listen ^[1] - 16080:5 lists ^[2] - 15987:21, 16034:16 lived ^[1] - 15936:19 lives ^[1] - 16070:1 living ^[3] - 15936:9, 16072:18, 16072:22 Lloyd ^[2] - 16138:19, 16138:23 locate ^[4] - 15925:20, 15926:12, 15927:6, 16107:3 located ^[3] - 15899:16, 16095:17, 16106:25 location ^[8] - 15925:4, 15925:7, 15948:17, 15949:9, 15950:5, 15972:25, 15973:24, 15989:6 Lockyer ^[1] - 15895:3 logical ^[1] - 16041:1 look ^[35] - 15901:22, 15911:3, 15914:4, 15933:8, 15938:12, 15939:22, 15940:18, 15941:1, 15952:21, 15953:4, 15955:7, 15969:5, 15986:14, 15995:15, 15995:17, 16005:17, 16005:23, 16022:25, 16037:5, 16037:7, 16038:5, 16047:25, 16058:4, 16059:4, 16059:5, 16059:19, 16065:1, 16076:21, 16077:17, 16078:8, 16086:6, 16087:24, 16088:24, 16108:8, 16117:21 looked ^[6] - 15919:17, 15919:18, 15940:20, 16043:17, 16061:1, 16130:11 looking ^[18] - 15897:25, 15901:16, 15930:16, 15933:23, 15935:23, 15956:24, 15972:1, 15972:5, 15973:7, 15973:14, 16005:10, 16024:16, 16027:14, 16074:3, 16077:20, 16086:14, 16135:7, 16136:8 lookit ^[7] - 15900:21, 15949:6, 15953:19,	15966:15, 15968:5, 16002:5, 16108:25 looks ^[28] - 15978:13, 16007:22, 16013:15, 16014:6, 16021:12, 16027:23, 16029:21, 16034:19, 16035:22, 16035:25, 16040:6, 16043:4, 16045:9, 16050:23, 16052:25, 16055:14, 16055:25, 16060:1, 16060:4, 16062:20, 16063:2, 16066:19, 16069:1, 16076:19, 16088:9, 16116:15, 16117:9, 16135:4 Lord ^[1] - 16058:9 Low ^[1] - 16075:11 lower ^[1] - 16095:21 Lsd ^[1] - 16037:13 Luboff ^[1] - 16117:1 lump ^[1] - 15994:20 lumps ^[9] - 15991:22, 15992:6, 15992:25, 15993:3, 15993:10, 16038:24, 16038:25, 16041:5, 16043:3 lying ^[1] - 16089:2	Magistrate ^[1] - 16037:9 magistrate ^[1] - 16037:10 main ^[3] - 16064:12, 16118:19, 16120:25 maintain ^[1] - 15925:18 male ^[1] - 15970:4 male's ^[1] - 15970:6 man ^[3] - 16143:15, 16143:24, 16144:22 Manager ^[1] - 15894:4 manner ^[2] - 15908:3, 15968:10 manufactured ^[1] - 15979:3 map ^[3] - 15933:23, 15949:3, 15958:8 March ^[14] - 15907:6, 15914:8, 15915:10, 15916:5, 15938:22, 15943:22, 16014:4, 16024:25, 16045:2, 16045:7, 16045:22, 16049:4, 16095:17 Marcoux ^[1] - 16098:12 Marie ^[2] - 15958:1, 15958:2 marijuana ^[1] - 15905:23 mark ^[18] - 15949:2, 16006:23, 16007:2, 16010:18, 16011:10, 16014:5, 16027:21, 16034:11, 16034:20, 16035:6, 16040:2, 16040:6, 16051:18, 16051:21, 16064:4, 16085:10, 16086:7, 16125:25 marked ^[1] - 16047:14 marks ^[6] - 15999:11, 15999:14, 16007:3, 16007:10, 16040:10, 16094:13 Mary ^[1] - 16098:12 Mary's ^[1] - 16010:25 Masonry ^[1] - 16137:4 match ^[1] - 15912:22 matched ^[1] - 16095:9 matches ^[1] - 15949:10 material ^[8] - 15930:15, 15979:6, 16030:19, 16058:2, 16121:8, 16142:10, 16143:5, 16146:1 materials ^[3] - 15906:18, 16074:3, 16130:23 matter ^[9] - 15901:19,	15936:7, 15966:10, 16044:4, 16058:4, 16062:13, 16104:25, 16118:19, 16148:5 mattered ^[1] - 16032:24 matters ^[3] - 16002:15, 16052:6, 16077:19 Mccorrison ^[5] - 15899:22, 15931:19, 16123:1, 16137:8, 16137:12 Mccorrison's ^[2] - 16132:19, 16136:22 Mcdonald ^[8] - 16010:4, 16010:15, 16036:3, 16036:6, 16059:25, 16083:19, 16083:25, 16084:13 Mcquhae ^[2] - 15974:19, 16047:21 me ^[1] - 16074:12 mean ^[28] - 15917:3, 15925:24, 15927:20, 15927:25, 15939:7, 15940:11, 15980:25, 15981:11, 15993:22, 16007:5, 16007:9, 16046:22, 16047:17, 16052:23, 16054:8, 16055:20, 16078:8, 16078:24, 16080:8, 16092:3, 16093:18, 16094:13, 16110:14, 16116:1, 16124:20, 16125:7, 16137:20, 16138:7 meaning ^[3] - 15926:18, 15960:20, 15960:21 Meaning ^[1] - 16088:22 means ^[12] - 15917:6, 15927:19, 15988:9, 16009:13, 16014:8, 16036:11, 16061:16, 16083:21, 16084:24, 16085:10, 16090:7, 16094:17 meant ^[6] - 15960:19, 15993:23, 16022:6, 16053:5, 16053:9, 16125:12 measurable ^[1] - 15999:9 Mechanical ^[1] - 16134:2 medical ^[2] - 16010:4, 16010:9 meeting ^[20] - 16022:21, 16039:8, 16039:14, 16065:13, 16066:17, 16101:22,	16118:13, 16122:6, 16122:9, 16122:14, 16122:21, 16127:8, 16127:12, 16127:18, 16127:23, 16129:19, 16130:17, 16136:15, 16140:5, 16147:21 meetings ^[2] - 16063:25, 16103:17 Melnyk ^[1] - 16141:7 members ^[1] - 16020:7 memo ^[6] - 16116:17, 16121:23, 16122:10, 16122:15, 16127:15, 16140:6 memorandum ^[3] - 16116:9, 16116:11, 16118:23 memories ^[1] - 15953:25 memory ^[10] - 15990:2, 16004:19, 16005:9, 16023:8, 16037:18, 16042:11, 16047:6, 16095:7, 16103:15, 16103:16 men ^[4] - 15925:18, 15925:21, 15926:13, 15927:6 mention ^[3] - 15943:14, 16058:6, 16111:3 mentioned ^[16] - 15905:15, 15926:13, 15942:2, 15978:21, 15988:14, 16016:24, 16017:22, 16028:3, 16067:14, 16075:20, 16077:22, 16086:24, 16101:18, 16122:10, 16132:6, 16145:15 met ^[9] - 15942:18, 16068:2, 16069:13, 16084:11, 16103:10, 16116:20, 16118:1, 16121:24, 16122:16 met' ^[1] - 16068:11 method ^[1] - 15988:14 Meyer ^[3] - 15894:11, 16149:2, 16149:17 mid ^[1] - 16116:16 mid-sentence ^[1] - 16116:16 middle ^[1] - 15916:21 might ^[40] - 15900:12, 15903:23, 15928:23, 15932:21, 15933:8, 15941:18, 15942:10, 15961:6, 15966:16, 15984:24, 15994:24, 15996:11, 15996:12,
M				
M' ^[1] - 16018:4 Maccallum ^[6] - 15893:7, 15964:23, 16007:7, 16007:11, 16087:20, 16088:1 machine ^[1] - 16079:4 Mackie ^[29] - 15916:7, 15924:2, 15937:8, 15947:2, 15980:6, 15980:7, 15981:1, 16004:9, 16006:24, 16007:14, 16007:17, 16007:24, 16009:3, 16009:5, 16009:20, 16018:11, 16018:14, 16019:20, 16025:6, 16025:10, 16025:11, 16066:8, 16068:3, 16068:13, 16108:7, 16108:13, 16108:17, 16123:10 Mackie' ^[1] - 16008:23 Mackie's ^[1] - 16019:22 Macrae ^[4] - 16062:4, 16124:19, 16141:10, 16144:25 Mafia ^[1] - 15905:14				



<p>16000:1, 16000:2, 16000:16, 16000:18, 16002:1, 16003:17, 16016:1, 16025:14, 16027:6, 16027:11, 16041:24, 16053:5, 16054:7, 16058:6, 16069:19, 16071:4, 16080:20, 16083:1, 16087:24, 16106:1, 16106:11, 16109:4, 16111:9, 16117:21, 16136:8, 16139:7, 16148:7</p> <p>Mil [1] - 16014:1</p> <p>miles [1] - 15901:10</p> <p>Milgaard [177] - 15893:4, 15895:2, 15895:3, 15898:17, 15898:19, 15898:23, 15899:9, 15901:9, 15901:18, 15901:25, 15904:2, 15904:19, 15904:21, 15905:1, 15905:13, 15906:2, 15906:21, 15906:24, 15910:24, 15914:12, 15915:11, 15915:23, 15917:19, 15918:5, 15919:1, 15919:4, 15922:8, 15922:21, 15923:5, 15923:9, 15924:6, 15925:13, 15929:24, 15930:14, 15931:15, 15932:5, 15933:2, 15933:14, 15934:5, 15934:12, 15934:22, 15936:4, 15936:24, 15937:6, 15937:14, 15938:11, 15941:14, 15941:16, 15942:5, 15943:9, 15944:20, 15945:13, 15945:16, 15945:23, 15946:4, 15947:13, 15948:3, 15950:11, 15950:18, 15951:3, 15951:6, 15951:9, 15952:7, 15953:16, 15954:15, 15956:12, 15956:17, 15956:21, 15957:9, 15957:17, 15957:22, 15958:8, 15958:24, 15959:9, 15959:24, 15960:7, 15960:22, 15967:14, 15967:19, 15967:24, 15970:10, 15974:15, 15974:22, 15975:22, 15975:24, 15976:8, 15976:13, 15976:22,</p>	<p>15977:11, 15977:16, 15977:22, 15980:14, 15982:8, 15986:9, 15986:18, 15987:6, 15990:15, 15990:16, 15991:3, 15991:10, 15991:14, 15991:17, 15992:2, 15992:10, 15992:16, 15992:22, 15992:23, 15993:6, 15993:17, 15993:22, 15994:2, 15994:7, 15994:9, 15995:17, 15996:9, 15996:16, 15997:16, 15998:6, 15999:13, 16000:7, 16000:18, 16001:5, 16001:14, 16002:7, 16002:25, 16008:12, 16008:20, 16009:5, 16009:17, 16010:10, 16010:20, 16010:22, 16016:18, 16017:4, 16017:10, 16017:23, 16018:5, 16019:1, 16020:5, 16020:9, 16020:22, 16023:10, 16024:10, 16024:21, 16025:2, 16025:13, 16026:24, 16027:10, 16027:16, 16028:15, 16028:24, 16031:5, 16035:18, 16040:2, 16041:17, 16042:3, 16045:25, 16050:1, 16051:4, 16052:20, 16053:8, 16069:13, 16069:14, 16069:24, 16072:5, 16073:12, 16093:12, 16096:25, 16097:11, 16103:8, 16103:20, 16104:9, 16105:11, 16113:6, 16120:6, 16138:4</p> <p>Milgaard's [18] - 15917:14, 15932:12, 15935:11, 15936:14, 15937:19, 15958:15, 15959:3, 15982:9, 15983:5, 15984:6, 15986:17, 15994:18, 15995:7, 15996:2, 16010:20, 16011:11, 16014:3, 16046:4</p> <p>Milgaards [3] - 15998:1, 16019:25, 16116:9</p> <p>milk [1] - 16073:14</p> <p>Miller [45] - 15899:8, 15899:10, 15910:2, 15910:9, 15923:17,</p>	<p>15937:13, 15975:11, 15985:7, 15987:20, 15992:2, 15992:20, 15996:23, 15998:8, 16000:24, 16001:15, 16002:6, 16008:10, 16008:16, 16008:18, 16008:19, 16009:17, 16012:13, 16030:24, 16031:7, 16032:1, 16032:11, 16034:20, 16035:7, 16046:13, 16084:3, 16090:13, 16090:25, 16095:3, 16098:12, 16098:19, 16099:13, 16129:9, 16138:4, 16138:19, 16138:21, 16138:23, 16139:4, 16143:13, 16144:1, 16144:22</p> <p>Miller's [19] - 15899:21, 15900:5, 15900:23, 15901:5, 15907:8, 15909:25, 15924:22, 15931:20, 15936:13, 15937:18, 15992:9, 16000:11, 16007:21, 16008:5, 16009:4, 16009:16, 16061:24, 16076:4, 16089:21</p> <p>mind [11] - 15905:5, 15928:24, 15929:18, 15932:15, 15936:17, 15941:11, 15941:22, 15942:8, 15950:9, 16100:21, 16109:16</p> <p>mindful [1] - 15999:3</p> <p>mine [3] - 15964:19, 16051:20, 16059:4</p> <p>Minister [1] - 15895:12</p> <p>minus [1] - 15996:24</p> <p>minute [5] - 15915:12, 15933:19, 15952:3, 16012:24, 16084:16</p> <p>minutes [8] - 15923:24, 15956:12, 15956:18, 15957:2, 15957:6, 15957:8, 15957:9, 15996:25</p> <p>misplacing [1] - 16103:13</p> <p>Miss [2] - 15947:18, 16046:13</p> <p>missed [1] - 16073:20</p> <p>missing [1] - 16107:2</p> <p>misstating [1] - 16004:20</p> <p>mistaken [7] - 15935:16, 15971:23, 16080:22, 16089:18,</p>	<p>16095:22, 16103:4, 16106:5</p> <p>mistrust [1] - 16082:18</p> <p>mitigates [1] - 16011:25</p> <p>mix [1] - 15984:5</p> <p>modesty [1] - 15976:19</p> <p>Molchanko [1] - 16060:1</p> <p>moment [25] - 15914:16, 15916:25, 15921:25, 15930:20, 15937:6, 15954:4, 15962:18, 15987:9, 15991:23, 15992:6, 15995:18, 16016:24, 16024:16, 16034:19, 16037:21, 16045:3, 16046:23, 16048:7, 16058:20, 16071:11, 16088:15, 16116:16, 16122:2, 16125:14, 16129:23</p> <p>moments [2] - 15930:2, 16084:4</p> <p>Monday [4] - 16007:13, 16009:8, 16064:14, 16134:7</p> <p>money [4] - 15947:25, 15948:11, 16061:19, 16061:23</p> <p>month [2] - 15919:13, 16037:13</p> <p>months [3] - 15899:15, 16037:11, 16073:6</p> <p>morning [21] - 15906:1, 15915:11, 15915:21, 15917:15, 15936:4, 15936:25, 15943:10, 15946:1, 15946:5, 15953:11, 15954:8, 15961:18, 15965:25, 15983:1, 15984:13, 15986:15, 15997:16, 16018:2, 16035:16, 16094:16, 16144:23</p> <p>Morris [7] - 16132:14, 16133:7, 16134:1, 16134:15, 16135:6, 16136:22, 16138:11</p> <p>Morrison [1] - 16079:16</p> <p>most [4] - 16076:14, 16097:17, 16108:5, 16144:14</p> <p>Motel [2] - 15996:15, 15997:15</p> <p>mother [2] - 16007:20, 16070:2</p> <p>motive [2] - 15923:18, 16027:20</p> <p>moved [1] - 15933:12</p>	<p>moving [1] - 16148:9</p> <p>murder [65] - 15906:2, 15907:14, 15907:18, 15908:3, 15910:16, 15910:22, 15915:13, 15915:24, 15916:11, 15919:14, 15922:13, 15922:25, 15923:25, 15924:7, 15925:17, 15934:22, 15943:14, 15943:16, 15945:17, 15945:24, 15946:6, 15950:23, 15951:1, 15951:13, 15952:6, 15952:19, 15952:21, 15953:12, 15954:7, 15961:19, 15974:15, 15991:7, 15992:8, 15992:20, 15997:18, 16003:22, 16004:12, 16004:16, 16005:6, 16010:14, 16025:3, 16030:24, 16031:7, 16032:1, 16032:12, 16045:24, 16081:13, 16083:24, 16084:11, 16084:18, 16091:1, 16092:5, 16095:11, 16102:11, 16103:1, 16103:4, 16103:7, 16103:12, 16109:1, 16109:20, 16115:14, 16119:6, 16143:19</p> <p>murder' [1] - 16024:23</p> <p>murdered [1] - 15910:9</p> <p>Murray [2] - 16138:17, 16138:18</p> <p>Must [1] - 16040:3</p> <p>must [15] - 15954:22, 15962:18, 15980:16, 15998:9, 16012:6, 16021:17, 16034:23, 16047:17, 16078:11, 16086:24, 16088:13, 16089:9, 16090:9, 16094:7, 16142:12</p>
N				
<p>nail [2] - 15957:5, 15961:4</p> <p>name [10] - 15987:21, 16054:11, 16117:2, 16133:5, 16133:25, 16137:13, 16137:18, 16137:19, 16138:5, 16138:7</p> <p>named [2] - 15926:13</p> <p>names [10] - 16010:3,</p>				



<p>16031:1, 16035:3, 16044:22, 16052:22, 16073:2, 16127:4, 16144:15, 16147:2 narrow [1] - 16096:14 nature [7] - 15938:7, 15966:17, 15992:13, 15995:13, 16002:9, 16120:24, 16139:5 Nb [2] - 16098:24, 16100:5 near [5] - 15924:21, 15937:13, 15965:15, 15969:20, 16070:2 necessarily [3] - 15918:15, 15932:24, 16007:4 need [17] - 15932:10, 15946:1, 15971:5, 15984:23, 15989:12, 16004:3, 16005:21, 16018:1, 16018:22, 16020:10, 16038:3, 16047:25, 16050:21, 16063:8, 16139:1, 16139:25, 16147:22 need' [1] - 15978:17 needed [3] - 15978:25, 16082:17, 16114:16 needs [1] - 16038:12 neutral [1] - 15993:5 Never [1] - 15934:23 never [5] - 15943:8, 15943:9, 15943:13, 15975:8, 16094:2 new [3] - 16023:7, 16070:14, 16132:21 next [64] - 15901:7, 15908:12, 15914:16, 15915:7, 15917:8, 15922:17, 15923:4, 15931:13, 15935:2, 15935:25, 15937:20, 15939:10, 15946:1, 15952:5, 15953:15, 15954:14, 15955:10, 15958:14, 15965:25, 15969:14, 15976:6, 15978:7, 15978:14, 15980:12, 16003:2, 16003:18, 16004:10, 16006:14, 16013:13, 16018:2, 16021:19, 16025:21, 16029:9, 16036:2, 16040:17, 16041:22, 16042:17, 16054:21, 16054:24, 16055:2, 16055:4, 16055:6, 16055:24, 16062:20, 16064:10,</p>	<p>16069:25, 16076:24, 16082:5, 16088:3, 16090:15, 16090:19, 16091:10, 16094:14, 16094:22, 16112:6, 16113:16, 16125:22, 16126:21, 16132:14, 16132:17, 16134:4, 16136:20, 16143:15, 16144:3 Next [7] - 15938:15, 15974:19, 16012:22, 16038:1, 16042:19, 16094:15, 16112:14 Nichol [86] - 15903:17, 15909:5, 15911:7, 15912:1, 15913:8, 15914:10, 15915:5, 15915:8, 15916:4, 15917:11, 15918:1, 15918:10, 15918:22, 15919:24, 15923:8, 15932:8, 15932:16, 15933:4, 15933:6, 15938:3, 15941:21, 15942:3, 15950:16, 15950:17, 15951:2, 15951:20, 15952:6, 15952:15, 15952:16, 15952:19, 15952:23, 15952:25, 15953:2, 15953:12, 15953:19, 15954:3, 15954:12, 15955:9, 15959:11, 15970:18, 15972:1, 15973:8, 15976:11, 15976:16, 15977:24, 15981:13, 15991:6, 15991:13, 15999:13, 16000:8, 16002:24, 16004:4, 16005:5, 16018:21, 16019:2, 16021:16, 16024:24, 16027:15, 16027:24, 16028:7, 16045:13, 16079:8, 16080:14, 16081:2, 16081:6, 16081:9, 16081:24, 16081:25, 16084:1, 16084:6, 16089:22, 16097:23, 16098:1, 16098:13, 16099:10, 16100:24, 16102:10, 16102:24, 16103:17, 16107:16, 16109:17, 16110:5, 16115:3, 16119:18, 16120:7 Nichols [1] - 15922:7 Nicholas [1] - 16143:10 Nicholjohn [1] -</p>	<p>15917:17 Nickey [2] - 15954:19 night [2] - 15945:16, 15945:24 ninety [1] - 16140:24 ninety-five [1] - 16140:24 nobody [1] - 15934:4 non [5] - 15993:22, 15993:25, 15994:2, 15994:17, 16041:25 non-secretor [5] - 15993:22, 15993:25, 15994:2, 15994:17, 16041:25 none [3] - 15932:21, 16097:14, 16144:5 noon [2] - 16122:25, 16147:13 normally [2] - 15981:8, 16056:11 north [5] - 15958:4, 15970:1, 15970:4, 15972:9, 15973:6 north-south [1] - 15973:6 note [82] - 15925:12, 15946:20, 15950:20, 15960:11, 15961:2, 15961:14, 15961:24, 15971:2, 15980:20, 16008:23, 16011:9, 16012:11, 16013:25, 16014:24, 16015:8, 16015:22, 16015:25, 16016:16, 16019:20, 16020:17, 16021:3, 16021:4, 16022:7, 16034:2, 16034:6, 16040:21, 16041:5, 16042:14, 16043:4, 16044:20, 16045:2, 16045:17, 16047:13, 16053:2, 16056:1, 16056:3, 16058:19, 16059:17, 16059:18, 16059:22, 16061:16, 16064:10, 16065:16, 16067:3, 16084:10, 16086:12, 16088:19, 16091:15, 16094:5, 16098:7, 16098:10, 16098:11, 16098:20, 16099:3, 16100:14, 16100:15, 16101:5, 16105:20, 16107:10, 16119:16, 16119:18, 16120:2, 16120:3, 16120:7, 16121:16, 16123:7, 16123:22,</p>	<p>16125:12, 16125:24, 16127:11, 16129:12, 16129:14, 16129:15, 16130:12, 16132:7, 16134:23, 16135:2, 16135:13, 16135:15, 16136:2, 16145:22 Note [2] - 15925:15, 15973:21 noted [4] - 15988:21, 16006:23, 16090:14, 16142:3 notes [62] - 15900:1, 15900:18, 15943:24, 15962:5, 15962:7, 15962:8, 15962:19, 15963:3, 15970:25, 16005:12, 16005:14, 16005:15, 16005:17, 16005:25, 16006:18, 16009:3, 16015:13, 16024:18, 16025:24, 16026:5, 16036:13, 16039:8, 16056:11, 16060:2, 16060:17, 16063:18, 16063:24, 16074:20, 16084:8, 16090:6, 16091:21, 16094:19, 16100:4, 16106:19, 16115:11, 16116:24, 16116:25, 16117:3, 16118:6, 16122:1, 16122:6, 16122:21, 16124:7, 16127:8, 16127:13, 16127:15, 16128:4, 16128:8, 16129:3, 16130:16, 16130:17, 16130:19, 16130:20, 16131:13, 16131:15, 16136:11, 16139:18, 16140:6, 16147:11, 16147:19, 16149:6 Nothing [1] - 16108:19 nothing [19] - 15905:3, 15925:17, 15926:20, 15929:20, 15944:4, 15944:15, 15945:2, 15960:13, 15992:5, 15992:8, 15992:17, 15996:10, 16053:7, 16093:25, 16099:12, 16105:23, 16126:19, 16130:6 nothing' [1] - 16098:16 notice [6] - 15920:21, 15974:16, 16021:2, 16034:10, 16113:21 noticed [1] - 15996:9 November [1] -</p>	<p>16052:15 number [62] - 15911:14, 15912:17, 15914:8, 15916:9, 15917:5, 15943:20, 15944:1, 15973:4, 15974:8, 15978:21, 15979:19, 15982:1, 15984:20, 15986:25, 15987:22, 15989:10, 16005:25, 16006:21, 16007:20, 16010:19, 16011:17, 16012:23, 16014:1, 16014:14, 16015:13, 16026:23, 16029:6, 16036:18, 16036:23, 16037:5, 16043:13, 16047:8, 16047:14, 16050:24, 16054:9, 16063:16, 16067:16, 16076:16, 16078:17, 16083:18, 16085:14, 16086:8, 16088:4, 16088:10, 16088:11, 16088:14, 16091:24, 16093:4, 16094:5, 16122:23, 16123:4, 16126:7, 16128:21, 16128:22, 16128:23, 16129:1, 16129:15, 16130:13, 16131:22, 16138:18, 16141:1 Number [4] - 15990:14, 16014:3, 16016:2, 16084:20 numbered [4] - 15909:1, 15912:24, 15913:14, 16077:7 numberings [1] - 16006:7 numbers [14] - 15908:25, 15909:5, 15909:6, 15909:8, 15912:21, 15912:23, 15914:4, 15914:5, 15969:13, 15988:5, 16026:12, 16026:13, 16033:24, 16044:23 nurse's [1] - 16005:3 nutshell [1] - 16129:17 Nyczai [2] - 15908:24, 15909:24</p>
O				
<p>o'clock [1] - 16148:10 O'keefe [1] - 15895:10 oath [1] - 16111:9 objectionable [1] -</p>				



<p>16142:23 objects [1] - 16120:19 obligation [1] - 16143:1 obliged [1] - 16058:3 observation [1] - 15931:1 observed [7] - 15910:5, 15929:24, 15931:15, 15947:12, 15987:6, 15996:16, 16069:21 Observed [5] - 15932:12, 15969:22, 15970:4, 15972:9, 15976:5 observing [1] - 15973:25 obtained [5] - 15958:23, 15968:16, 16070:7, 16140:21, 16140:22 obtaining [2] - 15904:3, 15958:8 obvious [2] - 15902:7, 15960:25 obviously [8] - 15910:17, 15910:21, 15910:25, 15940:20, 15997:1, 15998:16, 16054:8, 16083:24 occasion [5] - 16069:15, 16069:22, 16069:24, 16117:6, 16117:20 occasions [2] - 15938:2, 15971:10 occupants [1] - 15903:18 occur [1] - 16107:15 occurred [4] - 15901:15, 15922:16, 16052:14, 16110:5 October [2] - 15893:21, 16052:14 odd [1] - 15928:25 of [1] - 16016:3 off/on [1] - 16083:20 offence [14] - 15899:11, 15901:15, 15901:19, 15922:14, 15926:1, 15927:23, 15948:9, 15957:14, 15960:13, 15960:16, 15961:22, 15975:13, 15983:22, 15996:20 offences [2] - 16119:4, 16119:10 offer [1] - 16020:2 offhand [5] - 15988:12, 16050:24, 16120:1, 16123:3, 16123:13</p>	<p>office [8] - 15942:3, 15943:4, 16052:9, 16068:6, 16101:19, 16102:2, 16108:15, 16147:13 officer [10] - 15911:13, 15911:25, 15942:20, 15943:4, 15963:2, 15981:12, 16018:17, 16032:22, 16087:5, 16108:18 Officer [5] - 15894:12, 15978:13, 16079:7, 16081:17, 16095:16 officers [14] - 15978:22, 15979:1, 15980:20, 15980:23, 15980:25, 15982:2, 16018:12, 16021:18, 16031:6, 16065:23, 16066:13, 16085:9, 16087:14, 16147:25 Officers [1] - 16147:10 Official [5] - 15894:10, 16149:1, 16149:3, 16149:14, 16149:18 officially [3] - 15907:7, 15907:11, 15907:25 often [2] - 15979:18, 16044:21 Oleksyn [2] - 16066:16, 16123:1 Oliver [1] - 16095:17 omit [6] - 15979:18, 16051:18, 16051:21, 16053:3, 16055:9, 16055:15 once [8] - 15913:13, 15915:3, 15915:4, 15921:12, 16025:25, 16044:12, 16052:2, 16111:8 One [2] - 16072:8, 16101:14 one [123] - 15900:16, 15901:15, 15902:10, 15909:24, 15911:11, 15911:17, 15914:16, 15916:13, 15917:16, 15918:7, 15918:21, 15921:14, 15930:4, 15931:9, 15931:18, 15932:20, 15934:10, 15934:17, 15936:12, 15938:6, 15938:7, 15940:24, 15941:2, 15941:3, 15941:17, 15942:2, 15943:22, 15946:3, 15946:6, 15947:3, 15949:8,</p>	<p>15949:25, 15952:4, 15954:7, 15955:1, 15955:9, 15960:21, 15960:25, 15964:5, 15965:19, 15965:20, 15966:7, 15973:23, 15983:9, 15989:14, 16002:20, 16003:15, 16003:25, 16009:21, 16012:7, 16014:22, 16020:1, 16021:18, 16021:25, 16022:2, 16026:17, 16027:3, 16032:7, 16037:13, 16042:23, 16044:11, 16044:19, 16045:11, 16050:8, 16050:14, 16050:20, 16052:10, 16054:12, 16054:24, 16056:14, 16062:3, 16065:18, 16066:13, 16069:15, 16069:22, 16069:24, 16075:20, 16076:6, 16077:6, 16082:22, 16082:25, 16084:15, 16085:24, 16087:9, 16094:8, 16094:22, 16094:24, 16095:2, 16095:7, 16095:8, 16095:20, 16096:4, 16096:5, 16097:3, 16098:20, 16099:3, 16100:17, 16101:18, 16101:21, 16101:24, 16101:25, 16104:14, 16105:18, 16106:20, 16109:6, 16109:8, 16112:23, 16116:21, 16125:24, 16126:21, 16129:21, 16130:24, 16132:14, 16135:16, 16137:11, 16137:24, 16138:24, 16141:10, 16141:11, 16143:12 ones [8] - 15909:23, 15988:23, 16049:18, 16064:11, 16079:3, 16080:8, 16095:12, 16141:7 open [1] - 15940:1 opened [1] - 15971:17 opening [2] - 15949:15, 15999:20 operation [1] - 16028:22 operator [2] - 15956:4, 16022:18 opinion [5] - 15955:16, 16141:23, 16144:4,</p>	<p>16144:8, 16145:4 opportunity [1] - 16003:20 opposed [2] - 15927:2, 16033:4 or [1] - 16027:21 order [7] - 16025:20, 16033:21, 16043:10, 16050:7, 16062:12, 16063:11, 16114:17 orders [1] - 16089:12 ordinarily [2] - 16109:8, 16114:7 Ordinarily [1] - 16027:3 organized [2] - 16054:11, 16054:17 original [16] - 15921:20, 15969:2, 16005:14, 16038:4, 16038:7, 16039:16, 16045:6, 16049:24, 16051:2, 16087:8, 16095:6, 16099:2, 16100:15, 16106:25, 16107:3, 16140:1 originally [2] - 15919:1, 15925:16 originals [1] - 16037:1 Orlee [4] - 16128:25, 16129:8, 16130:2, 16143:10 otherwise [5] - 15930:21, 15937:23, 15998:11, 16103:18, 16136:18 out [1] - 16077:13 outcome [1] - 16028:17 outline [1] - 15990:13 outlining [1] - 15908:9 overall [3] - 16003:3, 16105:10, 16106:10 overwhelming [2] - 15904:23, 15911:4 own [9] - 15897:18, 15923:20, 15950:1, 15953:21, 15954:5, 15989:15, 16032:10, 16036:20, 16128:8</p>	<p>15909:8, 15914:4, 15914:17, 15915:7, 15916:24, 15916:25, 15917:4, 15917:6, 15917:8, 15922:17, 15931:13, 15938:15, 15942:16, 15943:19, 15951:21, 15958:14, 15969:13, 15969:14, 15974:8, 15974:19, 15976:6, 15978:7, 15978:10, 15978:12, 15978:15, 15979:4, 15980:12, 15984:16, 15989:9, 16006:4, 16006:9, 16006:14, 16006:23, 16007:5, 16007:20, 16012:22, 16012:23, 16013:6, 16013:13, 16015:3, 16015:11, 16018:13, 16019:2, 16019:15, 16019:20, 16020:17, 16021:19, 16025:22, 16026:11, 16029:9, 16033:24, 16034:15, 16034:16, 16036:1, 16036:2, 16040:17, 16041:22, 16042:17, 16042:19, 16053:14, 16054:10, 16054:12, 16054:16, 16054:19, 16054:21, 16054:24, 16055:2, 16055:4, 16055:7, 16055:24, 16072:1, 16072:16, 16074:17, 16076:24, 16090:19, 16090:20, 16100:3, 16106:17, 16112:6, 16112:14, 16113:16, 16116:9, 16116:14, 16121:15, 16122:3, 16125:22, 16126:6, 16127:1, 16127:17, 16130:16, 16132:14, 16132:18, 16134:4, 16135:6, 16136:6, 16136:19, 16136:20, 16136:23, 16136:25, 16138:9, 16138:12, 16139:11, 16139:23, 16141:12, 16144:3 pages [6] - 15914:6, 15971:4, 15989:10, 16041:3, 16121:18, 16149:4 paint [1] - 16060:5 painter [1] - 16132:24 pairs [1] - 15945:21</p>
P				
<p>P.2 [2] - 16006:22, 16054:22 packages [1] - 15976:24 Page [1] - 15896:2 page [113] - 15898:12, 15908:7, 15908:12, 15909:5, 15909:6,</p>				



<p>panties [1] - 16011:18 pants [6] - 15945:20, 15945:21, 15945:24, 15946:1, 15946:5, 15946:6 paper [1] - 16037:6 paragraph [4] - 15901:7, 15922:18, 15966:1, 16120:16 Paragraph [1] - 16123:15 parallel [1] - 15934:19 pardon [7] - 15903:17, 15962:24, 15978:12, 15991:10, 16019:22, 16032:13, 16114:5 Pardon [4] - 16054:11, 16074:15, 16087:22, 16098:4 park [2] - 16019:3, 16019:9 parked [2] - 16143:15, 16143:25 part [47] - 15898:15, 15899:1, 15901:2, 15904:19, 15904:21, 15905:12, 15907:16, 15910:7, 15911:8, 15914:2, 15941:5, 15941:15, 15942:9, 15944:16, 15950:4, 15951:13, 15951:15, 15952:8, 15957:18, 15961:20, 15966:18, 15975:4, 15980:9, 15985:8, 15989:5, 16010:12, 16013:3, 16013:22, 16029:24, 16032:9, 16044:22, 16050:10, 16051:3, 16053:7, 16078:23, 16079:4, 16080:15, 16085:22, 16098:10, 16100:5, 16101:14, 16106:13, 16106:23, 16120:12, 16127:15, 16139:18 particular [6] - 15917:15, 16005:22, 16057:14, 16112:4, 16120:21, 16121:3 particularly [3] - 15918:6, 16092:17, 16113:22 particulars [1] - 16075:4 parties [2] - 15948:8, 16139:3 parts [8] - 16011:21, 16012:14, 16067:24,</p>	<p>16075:22, 16082:12, 16110:22, 16110:23, 16117:8 parts' [1] - 16075:13 party [4] - 15922:2, 15996:3, 16138:20, 16138:22 passed [3] - 15972:22, 16136:14, 16140:10 pathologist [1] - 15980:14 pathology [1] - 16076:15 patrol [1] - 16032:5 pause [5] - 15932:14, 15956:15, 16074:9, 16089:3, 16117:4 Paynter [26] - 15993:19, 16013:7, 16040:5, 16041:20, 16042:8, 16050:12, 16051:7, 16054:8, 16054:9, 16054:11, 16054:14, 16054:16, 16054:22, 16054:25, 16055:4, 16055:8, 16055:9, 16055:20, 16055:25, 16056:2, 16059:25, 16060:5, 16060:7, 16062:25, 16076:20 Paynter's [3] - 16013:15, 16013:21, 16060:17 Peggy [6] - 16008:16, 16008:18, 16009:3, 16009:16, 16034:20, 16098:18 pen [5] - 16012:3, 16014:7, 16021:11, 16027:23, 16085:11 pencilled [1] - 16117:1 pending [1] - 16028:16 Penkala [8] - 15993:4, 16038:18, 16039:9, 16041:6, 16042:22, 16064:5, 16066:16, 16123:1 people [19] - 15906:6, 15908:20, 15910:13, 15939:12, 15939:17, 15966:20, 15981:15, 15984:20, 15984:24, 15985:4, 15991:1, 16021:1, 16024:5, 16041:2, 16047:23, 16087:10, 16128:15, 16136:8, 16137:11 perceived [1] - 15961:13 performed [1] -</p>	<p>15977:25 Perhaps [3] - 16005:19, 16038:5, 16049:24 perhaps [8] - 15904:18, 15906:1, 15913:18, 15975:7, 16002:24, 16029:23, 16098:5, 16109:16 period [2] - 16052:19, 16107:16 perpetrator [1] - 15998:7 person [16] - 15936:9, 15953:9, 15955:14, 15979:13, 15980:6, 15993:13, 16003:21, 16076:13, 16093:23, 16097:4, 16101:7, 16123:6, 16125:2, 16132:1, 16133:6, 16134:5 person' [2] - 16100:3, 16100:11 personally [1] - 15933:18 persons [3] - 16146:7, 16146:20, 16147:7 perspective [2] - 15903:1, 16002:3 phenomenon [1] - 16004:17 phone [11] - 15911:14, 16044:19, 16059:24, 16062:14, 16067:10, 16088:10, 16088:12, 16122:9, 16123:21, 16124:2, 16124:3 phone' [1] - 16123:20 phoned [4] - 15911:23, 16053:10, 16094:13, 16138:2 phoning [1] - 15911:25 photocopies [1] - 16107:4 photocopy [1] - 16036:21 phrase [3] - 15903:9, 16093:10, 16109:12 Physical [1] - 15995:10 physical [12] - 15978:15, 15979:12, 15979:14, 15980:24, 15981:3, 15982:4, 15991:20, 15992:1, 15992:10, 15992:24, 15995:4, 15995:7 picked [2] - 16024:23, 16025:3 pics [1] - 16094:22 piece [11] - 15899:5,</p>	<p>15904:7, 15931:24, 15937:21, 15937:25, 15956:25, 15960:8, 15972:23, 15979:12, 16046:3, 16070:14 pieces [1] - 16105:7 pinpoint [1] - 15910:15 place [17] - 15899:5, 15901:11, 15904:6, 15906:8, 15910:2, 15910:17, 15927:5, 15944:22, 15967:7, 15984:5, 15997:18, 16011:19, 16092:5, 16101:19, 16105:14, 16106:4, 16145:5 placed [1] - 16069:16 places [1] - 15966:6 placing [1] - 15924:6 plain [1] - 16073:1 Plan [1] - 16147:6 plan [1] - 16147:21 play [3] - 15906:14, 15921:11, 15944:16 played [9] - 15907:3, 15907:16, 15917:25, 15919:5, 15961:20, 15986:4, 16075:1, 16083:16, 16086:18 plead [1] - 16043:7 pleased [3] - 16058:11, 16146:9, 16146:13 plus [1] - 15996:24 Pm [8] - 16008:16, 16033:14, 16061:21, 16064:14, 16064:19, 16097:20, 16097:21, 16148:12 pockets [1] - 15930:5 point [42] - 15903:19, 15904:25, 15907:4, 15913:5, 15918:21, 15921:4, 15928:4, 15929:7, 15933:18, 15936:7, 15936:11, 15938:3, 15938:8, 15939:25, 15945:4, 15956:8, 15962:14, 15967:25, 15979:17, 15985:10, 15987:4, 15994:5, 16001:18, 16007:2, 16009:15, 16042:22, 16048:3, 16057:21, 16058:23, 16075:4, 16086:17, 16096:5, 16097:10, 16105:12, 16114:1, 16114:13, 16114:15, 16116:3, 16134:20, 16137:18, 16138:13,</p>	<p>16146:24 pointed [1] - 15994:6 pointing [5] - 16046:3, 16056:9, 16077:13, 16077:16, 16136:9 points [3] - 15932:2, 15943:7, 16118:25 poked [1] - 16091:13 police [152] - 15897:13, 15897:15, 15897:23, 15898:15, 15899:14, 15900:22, 15901:20, 15901:23, 15902:16, 15902:20, 15902:24, 15903:1, 15904:20, 15905:12, 15907:9, 15907:15, 15907:18, 15907:20, 15908:7, 15908:9, 15909:7, 15909:9, 15910:19, 15911:9, 15911:16, 15912:3, 15912:18, 15912:25, 15914:11, 15914:24, 15915:9, 15916:3, 15918:21, 15920:6, 15920:8, 15921:10, 15925:12, 15925:20, 15926:5, 15926:12, 15927:1, 15927:13, 15928:25, 15930:21, 15935:1, 15935:22, 15935:24, 15938:3, 15939:3, 15943:16, 15945:8, 15948:25, 15950:20, 15950:21, 15951:16, 15956:16, 15958:20, 15960:11, 15960:12, 15961:2, 15961:14, 15961:16, 15961:24, 15962:6, 15962:8, 15963:1, 15965:7, 15965:8, 15969:12, 15969:22, 15970:12, 15970:18, 15971:4, 15971:5, 15971:6, 15971:7, 15971:12, 15973:20, 15974:9, 15974:21, 15978:15, 15978:22, 15979:1, 15980:3, 15980:20, 15980:23, 15981:8, 15981:12, 15982:1, 15982:10, 15984:6, 15985:5, 15987:22, 15988:1, 15988:18, 15989:19, 15989:20, 15990:3, 16002:4, 16008:19, 16013:10, 16013:19, 16013:22,</p>
--	--	--	--	--



<p>16015:5, 16018:12, 16018:17, 16019:20, 16020:18, 16021:4, 16021:18, 16029:5, 16029:22, 16029:23, 16030:6, 16032:17, 16032:25, 16033:3, 16033:9, 16033:10, 16043:24, 16044:9, 16051:9, 16059:12, 16065:14, 16066:13, 16067:23, 16069:4, 16070:20, 16071:13, 16071:20, 16072:18, 16072:22, 16073:9, 16073:18, 16073:20, 16074:7, 16078:13, 16079:24, 16082:11, 16085:8, 16088:10, 16117:20, 16120:5, 16129:23, 16131:16, 16132:17, 16138:9, 16143:22, 16146:23, 16147:19</p> <p>Police [12] - 15895:7, 15907:22, 15908:5, 15925:21, 16020:8, 16029:10, 16030:23, 16031:11, 16032:18, 16058:1, 16147:3, 16147:10</p> <p>police [1] - 16069:8</p> <p>policeman [2] - 16064:18, 16101:24</p> <p>policeman's [1] - 16083:7</p> <p>Policemen [1] - 16072:25</p> <p>policemen [2] - 15981:24, 16102:1</p> <p>polygraph [26] - 15916:14, 15919:21, 15920:1, 15955:11, 15956:4, 15961:7, 15965:9, 15965:17, 15965:25, 16004:24, 16004:25, 16021:20, 16022:1, 16022:3, 16022:8, 16022:16, 16022:20, 16023:14, 16024:12, 16024:14, 16078:19, 16080:24, 16081:9, 16081:10, 16092:8, 16108:2</p> <p>polygraphed [1] - 16004:6</p> <p>position [4] - 15926:24, 15940:6, 15999:21, 16057:5</p> <p>positive [1] - 16014:13</p>	<p>possession [6] - 15922:21, 15947:13, 15979:13, 15995:7, 16037:13, 16088:21</p> <p>possible [12] - 15903:5, 16035:8, 16077:20, 16087:15, 16087:16, 16098:23, 16102:13, 16127:24, 16130:20, 16138:14, 16138:15, 16139:13</p> <p>possibly [12] - 15936:12, 15941:17, 16046:9, 16053:17, 16062:3, 16070:22, 16098:18, 16119:12, 16120:14, 16134:20, 16143:5, 16144:10</p> <p>post [16] - 15919:20, 15920:1, 15955:11, 15961:7, 15961:8, 15965:9, 15965:17, 16012:1, 16012:2, 16023:14, 16025:6, 16075:14, 16075:15, 16075:23, 16108:2</p> <p>Post [1] - 15919:21</p> <p>post-death [2] - 16075:14, 16075:23</p> <p>Post-polygraph [1] - 15919:21</p> <p>post-polygraph [5] - 15920:1, 15961:7, 15965:9, 15965:17, 16023:14</p> <p>post-resistance [2] - 16075:15, 16075:23</p> <p>post-statement [1] - 15961:8</p> <p>post-winnipeg [1] - 16025:6</p> <p>practice [12] - 15962:21, 15963:24, 15964:14, 15968:2, 15968:20, 15968:25, 16044:15, 16053:4, 16102:21, 16117:5, 16127:22, 16131:2</p> <p>practices [3] - 15966:14, 16002:12, 16118:11</p> <p>Pratt [3] - 15969:10, 16123:11, 16125:23</p> <p>pre [2] - 15963:4, 16017:1</p> <p>precise [1] - 16077:11</p> <p>precisely [1] - 15999:9</p> <p>preference [1] - 16036:20</p> <p>Prehodchenko [1] -</p>	<p>15894:13</p> <p>prelim [33] - 15918:20, 15921:5, 15927:11, 15928:10, 15929:16, 15946:14, 15962:23, 15963:16, 15964:21, 15968:18, 15969:3, 15969:17, 16006:17, 16034:3, 16034:11, 16036:7, 16037:15, 16038:17, 16039:19, 16042:24, 16047:12, 16059:23, 16065:13, 16103:18, 16104:6, 16106:2, 16106:4, 16106:11, 16109:23, 16111:16, 16116:1, 16122:25</p> <p>preliminary [45] - 15903:13, 15915:1, 15919:24, 15920:22, 15920:25, 15962:16, 15964:13, 15968:13, 15968:23, 15980:22, 15982:2, 15985:19, 15985:23, 15990:12, 15994:15, 16033:17, 16045:1, 16045:19, 16048:14, 16058:5, 16060:8, 16063:12, 16068:23, 16080:13, 16084:7, 16097:24, 16097:25, 16099:16, 16100:24, 16101:4, 16101:8, 16101:16, 16102:8, 16102:18, 16104:10, 16107:19, 16109:3, 16110:19, 16110:20, 16113:13, 16114:1, 16114:12, 16115:21, 16124:10, 16124:12</p> <p>preparation [5] - 15909:15, 15914:25, 15963:22, 16100:5, 16119:1</p> <p>preparations [1] - 15939:2</p> <p>prepared [8] - 15897:12, 15908:9, 15988:19, 16003:10, 16029:7, 16046:13, 16067:23, 16110:7</p> <p>preparing [2] - 15930:13, 15944:9</p> <p>presence [1] - 16056:15</p> <p>present [7] - 15986:8, 16020:2, 16047:3, 16068:18, 16070:3, 16098:19, 16101:22</p>	<p>presentation [1] - 15909:15</p> <p>presented [1] - 15979:15</p> <p>presenting [1] - 15930:13</p> <p>pressing [1] - 15950:1</p> <p>presumably [15] - 15904:14, 15907:22, 15931:2, 15944:8, 15987:3, 15990:8, 16015:24, 16038:18, 16062:24, 16065:4, 16100:21, 16123:25, 16124:1, 16124:19, 16135:6</p> <p>presume [9] - 15976:16, 16014:1, 16018:4, 16025:5, 16054:22, 16066:24, 16083:19, 16096:11, 16115:12</p> <p>presumed [1] - 16027:5</p> <p>pretty [4] - 15902:6, 15923:1, 16099:7, 16099:8</p> <p>prevent [3] - 15903:20, 15929:20, 15963:5</p> <p>previous [12] - 15913:6, 15951:21, 16012:4, 16012:8, 16012:23, 16019:3, 16019:4, 16019:7, 16019:9, 16041:3, 16102:19, 16114:2</p> <p>previously [1] - 16113:5</p> <p>primarily [2] - 15981:2, 15982:3</p> <p>Pringle [1] - 15895:14</p> <p>print [2] - 16079:24, 16136:15</p> <p>printed [1] - 16079:4</p> <p>prisoner [7] - 16126:12, 16126:20, 16127:25, 16130:21, 16139:14, 16142:11, 16144:6</p> <p>private [4] - 16011:21, 16012:14, 16075:13, 16075:22</p> <p>pro [2] - 16084:21, 16085:6</p> <p>probation [2] - 15911:13, 15911:25</p> <p>probed [1] - 15966:15</p> <p>problem [1] - 15910:25</p> <p>procedure [3] - 16011:3, 16058:7, 16082:20</p> <p>proceed [1] - 15928:12</p>	<p>proceeded [1] - 15998:12</p> <p>proceeding [1] - 15903:21</p> <p>Proceedings [4] - 15893:12, 15893:23, 15896:1, 15897:1</p> <p>proceedings [3] - 15903:10, 15919:8, 16028:17</p> <p>process [2] - 15927:9, 16113:9</p> <p>produce [2] - 16021:20, 16022:3</p> <p>produced [1] - 16111:4</p> <p>product [1] - 16035:25</p> <p>production [2] - 16121:4, 16121:7</p> <p>prompted [2] - 16058:21, 16059:11</p> <p>promptly [1] - 16098:23</p> <p>proof [1] - 16082:23</p> <p>propensity [1] - 16021:1</p> <p>property [1] - 15899:8</p> <p>propose [6] - 15912:20, 15974:10, 15978:11, 16057:23, 16059:1, 16138:17</p> <p>proposed [4] - 15964:20, 16064:11, 16118:21, 16119:15</p> <p>pros [1] - 16138:4</p> <p>prosecuting [3] - 16032:4, 16032:5, 16142:7</p> <p>prosecution [10] - 15910:25, 15980:15, 16031:4, 16032:9, 16053:8, 16057:12, 16057:14, 16070:23, 16079:11, 16138:5</p> <p>prosecutor [12] - 15918:18, 15928:2, 15961:4, 15962:5, 15979:11, 15980:2, 15980:9, 16028:20, 16043:25, 16068:4, 16082:10, 16093:19</p> <p>prosecutor's [1] - 16028:23</p> <p>prove [2] - 15980:9, 16011:11</p> <p>proved [2] - 16040:4, 16041:18</p> <p>proven [3] - 15922:1, 15983:17, 16011:5</p> <p>provide [6] - 15908:21, 15909:9, 15909:20, 15968:17, 16135:10,</p>
--	---	---	--	---



16139:18 provided [10] - 15913:12, 15913:13, 15913:15, 15913:19, 15913:21, 15916:9, 15971:8, 16031:13, 16069:2, 16114:24 providing [1] - 15908:23 Province [1] - 16149:3 public [1] - 16043:2 Public [1] - 16037:12 Pull [1] - 16117:2 pulled [2] - 15930:4, 16139:4 Purdue [1] - 16129:6 purported [1] - 16084:18 purpose [2] - 15897:21, 16090:1 purposes [3] - 16076:1, 16145:18, 16145:20 purse [28] - 15899:21, 15899:24, 15900:6, 15900:8, 15900:11, 15900:24, 15902:2, 15902:4, 15902:11, 15902:12, 15902:13, 15923:6, 15923:10, 15923:16, 15930:3, 15931:16, 15931:20, 15934:19, 15947:25, 15948:11, 15952:13, 15954:18, 15959:25, 15960:1, 16027:20, 16061:24, 16091:13 purse [1] - 16061:19 purses [1] - 15948:3 pursue [4] - 15987:16, 16046:9, 16076:9, 16083:15 pursued [3] - 16071:16, 16083:10, 16086:6 pursuing [2] - 15938:9, 15938:12 push [4] - 15925:13, 16001:4, 16001:12, 16015:19 pushing [1] - 15925:19 put [56] - 15897:15, 15902:4, 15902:13, 15908:15, 15911:9, 15912:18, 15917:4, 15921:18, 15924:19, 15924:20, 15925:7, 15925:12, 15929:19, 15937:9, 15947:7, 15949:2, 15952:13, 15960:1, 15960:20, 15969:12, 15977:5,	15978:14, 15979:10, 15981:14, 15983:8, 15983:15, 15984:3, 15984:8, 15991:22, 15992:5, 16000:17, 16008:25, 16012:6, 16025:23, 16039:23, 16045:10, 16053:2, 16053:3, 16054:7, 16055:15, 16056:10, 16061:7, 16075:24, 16085:12, 16102:18, 16107:8, 16109:19, 16111:17, 16115:20, 16119:25, 16131:11, 16132:11, 16135:11, 16135:13, 16136:2, 16144:2 putting [14] - 15906:19, 15929:4, 15931:16, 15961:14, 15976:8, 15979:11, 15991:25, 15994:5, 16002:10, 16034:5, 16056:2, 16111:8, 16119:22, 16145:18 Pyra [1] - 16047:22	16089:2 quickly [3] - 15901:14, 16043:17, 16111:22 quite [7] - 15903:5, 15939:17, 15979:18, 16005:18, 16066:2, 16086:18, 16095:13 quizzing [1] - 15961:10 quote [5] - 16126:11, 16126:12, 16142:6, 16142:16, 16142:25 quoted [1] - 15913:14	16036:22, 16071:25, 16087:5, 16123:6 re [19] - 16006:13, 16007:17, 16010:4, 16012:12, 16013:19, 16018:25, 16025:23, 16026:1, 16027:20, 16043:9, 16061:19, 16077:16, 16078:2, 16078:18, 16084:25, 16088:21, 16090:12, 16090:24, 16135:6 Re [3] - 15988:17, 15988:21, 16037:8 re [2] - 16013:7, 16064:4 reaction [2] - 15898:10, 15933:10 read [57] - 15906:25, 15913:18, 15914:23, 15915:3, 15915:4, 15916:22, 15917:21, 15926:9, 15926:18, 15927:1, 15939:2, 15939:9, 15943:23, 15944:8, 15944:10, 15962:1, 15968:17, 15968:19, 15972:18, 15987:2, 15990:7, 15998:25, 16003:15, 16013:23, 16017:20, 16020:18, 16038:21, 16042:2, 16042:7, 16045:21, 16055:13, 16064:1, 16064:14, 16067:7, 16073:24, 16077:15, 16078:5, 16079:15, 16087:8, 16091:14, 16093:5, 16098:9, 16113:15, 16125:21, 16129:21, 16131:23, 16132:7, 16136:21, 16137:5, 16140:9, 16140:13, 16141:2, 16141:19, 16141:21, 16144:25, 16145:8 readily [1] - 16006:6 reading [12] - 15905:1, 15926:11, 15982:8, 15993:7, 16002:17, 16021:4, 16078:7, 16084:5, 16086:16, 16089:5, 16130:5, 16145:3 ready [2] - 16010:13, 16114:14 realization [1] - 15941:5 realize [3] - 15935:13, 16093:6, 16100:12	realized [1] - 16103:12 really [2] - 15971:19, 16134:10 realm [1] - 15912:2 rear [1] - 16132:21 reason [15] - 15928:11, 15942:19, 15959:16, 16027:7, 16041:23, 16049:19, 16054:4, 16070:20, 16071:4, 16082:18, 16094:1, 16099:23, 16108:13, 16114:10, 16139:17 reasonable [1] - 15953:15 reasoning [2] - 15996:18, 16034:4 reasons [7] - 15906:15, 15919:10, 15946:6, 15963:14, 15994:24, 16109:6, 16120:14 reassured [1] - 16014:23 rebut [1] - 16017:18 rebuttal [2] - 16016:25, 16017:13 recalled [2] - 16005:6, 16084:4 received [14] - 15897:22, 15913:10, 15914:25, 15951:16, 15968:18, 15989:22, 15989:24, 15990:3, 16029:9, 16033:11, 16044:8, 16049:19, 16078:9, 16116:7 receiving [1] - 16031:5 recently [5] - 15930:16, 15939:7, 15998:25, 16031:16, 16071:15 recite [1] - 16049:20 recited [3] - 15921:1, 15966:19, 15979:9 reciting [1] - 15951:12 recognized [1] - 16042:23 recollect [1] - 16101:18 recollection [33] - 15900:3, 15903:6, 15906:19, 15907:2, 15907:15, 15912:5, 15962:15, 15967:22, 15983:4, 15986:3, 16032:21, 16044:15, 16051:23, 16052:1, 16053:2, 16059:7, 16065:13, 16070:9, 16071:19, 16073:23, 16074:6, 16074:25, 16076:5, 16093:2,
	Q	R		
	Qb [1] - 15894:10 Qc [4] - 15895:2, 15895:6, 15895:11, 15895:14 qualms [1] - 16071:7 Queen's [5] - 15928:10, 16149:1, 16149:3, 16149:14, 16149:18 questioned [4] - 15907:14, 15915:20, 15992:16, 16025:13 questioning [2] - 15900:10, 16081:11 Questions [2] - 16025:23, 16026:1 questions [24] - 15898:5, 15917:14, 15930:15, 15964:20, 15966:16, 16005:18, 16007:17, 16018:12, 16018:15, 16022:18, 16024:5, 16024:18, 16026:20, 16038:21, 16075:17, 16089:8, 16089:12, 16090:12, 16090:24, 16111:23, 16111:24, 16113:17, 16116:22, 16140:14 questions' [1] -	Rs [1] - 16088:20 Radisson [1] - 15893:16 raise [1] - 16001:18 raised [2] - 15998:19, 16097:6 raising [2] - 15970:12, 16057:17 ran [4] - 15931:14, 15942:3, 16101:20, 16102:2 rank [1] - 15938:16 rape [3] - 16051:16, 16052:5 rapes [1] - 16052:14 rapist [2] - 16014:15, 16015:1 Rasmussen [3] - 15996:15, 15997:15, 15997:20 rather [2] - 15946:7, 15971:12 Rather [1] - 15956:7 rationale [1] - 15941:11 rationalize [4] - 15900:23, 15939:12, 15941:23, 15953:5 Ray [8] - 15916:7, 16006:24, 16007:14, 16008:23, 16009:20, 16018:14, 16025:5, 16108:13 Raymond [2] - 16004:9, 16138:24 Rcmp [25] - 15895:9, 15942:17, 15942:21, 15943:4, 16006:8, 16026:13, 16028:10, 16029:6, 16029:21, 16029:22, 16030:5, 16030:22, 16031:5, 16031:6, 16031:14, 16031:24, 16031:25, 16032:10, 16032:22, 16032:25, 16036:18,		



<p>16099:5, 16100:18, 16101:12, 16102:7, 16102:9, 16103:24, 16110:4, 16118:5, 16127:19 recollections [1] - 16066:10 reconciled [1] - 15944:20 Reconvened[4] - 15897:2, 15974:6, 16033:14, 16097:21 record [7] - 15912:14, 15969:14, 15971:7, 15979:2, 15991:25, 16044:23, 16141:3 recorded [3] - 16081:22, 16101:14, 16101:25 recording [4] - 16079:7, 16079:19, 16082:10, 16083:2 recounted [1] - 15983:1 recounting [1] - 16080:20 recovered [6] - 15898:25, 15899:13, 15899:18, 15899:21, 15946:21, 15979:14 red [1] - 16085:11 reduced [2] - 16070:17, 16071:10 ref [1] - 15914:20 refer [14] - 15908:24, 16006:15, 16010:7, 16038:6, 16039:1, 16040:22, 16055:21, 16084:2, 16085:18, 16090:6, 16091:4, 16094:20, 16123:12, 16124:24 reference [25] - 15901:8, 15901:17, 15902:24, 15905:22, 15909:4, 15909:6, 15911:9, 15914:10, 15914:22, 15917:10, 15938:20, 15968:15, 15971:4, 15978:8, 15982:7, 15999:1, 16013:18, 16024:24, 16032:17, 16065:17, 16077:6, 16077:18, 16086:22, 16119:16, 16137:1 referenced [3] - 15913:11, 15990:4, 16129:3 references [3] - 15967:10, 16028:11,</p>	<p>16127:3 referred [7] - 15913:20, 15951:21, 15965:2, 15966:7, 15989:23, 16021:5, 16029:4 referring [4] - 15964:24, 16015:9, 16016:18, 16020:18 refers [19] - 15969:12, 15988:22, 16006:22, 16011:7, 16012:5, 16014:18, 16015:21, 16016:12, 16027:2, 16028:2, 16043:15, 16044:13, 16056:7, 16078:20, 16084:12, 16088:19, 16094:6, 16096:11, 16123:2 reflect [2] - 15932:24, 15948:20 reflected [1] - 15951:17 regarding [2] - 16006:19, 16031:24 regards [3] - 15917:14, 16019:25, 16020:2 Regina[21] - 15907:14, 15907:15, 15907:18, 15907:20, 15907:23, 15908:4, 15911:11, 15942:23, 15943:3, 15945:16, 15946:5, 16017:1, 16017:15, 16017:24, 16019:1, 16019:24, 16020:6, 16032:4, 16119:18, 16120:6, 16147:4 Reid[1] - 16123:1 reinforce [1] - 16109:10 relate [4] - 16084:10, 16089:3, 16112:3, 16141:14 Related[1] - 16046:21 related [11] - 15981:2, 15992:17, 16028:5, 16044:3, 16046:16, 16046:19, 16051:10, 16058:16, 16060:25, 16062:8, 16075:16 relates [4] - 16021:24, 16050:13, 16052:3, 16126:2 relating [5] - 16029:7, 16031:25, 16052:6, 16055:11, 16114:8 relation [1] - 16140:23 relationship [1] - 15906:24 relatively [1] - 16031:16 relevance [1] - 16121:2 relevant [2] - 16048:24,</p>	<p>16057:13 reluctance [1] - 15942:12 reluctant [2] - 16109:6, 16109:9 remained [1] - 15940:10 remains [3] - 15960:15, 15961:21, 16088:20 remark [1] - 16087:21 remarkable [1] - 15936:10 remarks [2] - 15999:20, 16013:16 remember [39] - 15898:6, 15899:1, 15905:14, 15905:15, 15920:4, 15920:5, 15934:25, 15945:14, 15949:21, 15952:8, 15968:6, 15974:24, 15982:8, 15993:14, 16001:6, 16004:11, 16004:16, 16008:21, 16043:19, 16064:25, 16070:12, 16072:7, 16072:13, 16079:2, 16079:13, 16084:16, 16084:18, 16090:3, 16096:9, 16096:15, 16098:6, 16101:21, 16103:17, 16103:23, 16110:6, 16119:25, 16120:10, 16120:11, 16140:5 remember' [1] - 16110:9 remembering [1] - 16084:10 reminder [1] - 16063:24 repeat [11] - 15919:25, 16080:14, 16104:7, 16104:11, 16104:19, 16105:7, 16106:1, 16107:17, 16107:19, 16109:2, 16111:9 repeated [4] - 16069:3, 16102:25, 16103:19, 16104:21 repeating [4] - 15999:6, 16108:9, 16109:2, 16115:4 rephrase [3] - 15981:11, 16023:22, 16092:16 replied [1] - 15902:18 reply [3] - 16044:7, 16077:16, 16078:5 report [50] - 15914:7, 15914:9, 15914:11,</p>	<p>15915:6, 15916:3, 15916:20, 15916:22, 15920:16, 15920:22, 15971:12, 16013:10, 16013:21, 16015:5, 16015:9, 16018:24, 16019:20, 16019:22, 16019:23, 16020:18, 16021:4, 16021:6, 16029:5, 16029:7, 16029:21, 16029:22, 16031:24, 16033:2, 16033:8, 16046:13, 16046:17, 16046:20, 16050:8, 16050:12, 16051:3, 16051:10, 16051:24, 16053:7, 16053:14, 16057:3, 16067:23, 16068:16, 16073:18, 16073:21, 16101:16, 16120:5, 16129:23, 16132:17, 16132:19, 16138:10 reported [3] - 16011:4, 16039:6, 16087:1 Reporter[2] - 16149:14, 16149:18 Reporters[2] - 15894:10, 16149:3 Reporters [1] - 16149:1 Reports[4] - 16049:13, 16049:16, 16053:22, 16058:18 reports [36] - 15909:8, 15909:9, 15914:24, 15971:4, 15971:5, 15971:6, 15990:4, 16031:5, 16031:14, 16031:25, 16032:10, 16032:11, 16032:22, 16044:3, 16046:16, 16046:19, 16046:21, 16046:22, 16050:1, 16050:4, 16050:11, 16051:4, 16051:5, 16053:15, 16054:16, 16055:11, 16056:13, 16056:24, 16057:13, 16058:15, 16060:18, 16061:1, 16079:25, 16117:20, 16131:16, 16146:3 reports' [1] - 16060:23 represented [1] - 15982:16 request [7] - 16057:16, 16077:19, 16085:5, 16087:23, 16136:12, 16137:15, 16139:19 requested [2] -</p>	<p>16046:5, 16147:1 requests [1] - 16146:13 required [3] - 15984:19, 16060:6, 16147:5 requiring' [2] - 16122:5, 16123:7 reread [1] - 16077:19 residence [3] - 15986:8, 15986:10, 16020:3 resistance [2] - 16075:15, 16075:23 respect [6] - 15993:5, 16007:9, 16046:6, 16079:20, 16083:6, 16119:4 respectively [1] - 16088:23 response [1] - 15956:10 responsibility [1] - 15983:20 responsible [1] - 16085:21 rest [2] - 15913:22, 16126:24 restate [1] - 15897:9 result [3] - 16023:5, 16069:20, 16123:9 results [2] - 16086:14, 16086:21 retained [1] - 16065:5 retest [2] - 16040:5, 16041:19 retested [1] - 16041:20 Retired[1] - 15895:15 returned [5] - 15907:6, 15922:9, 15951:9, 15956:12 returning [2] - 15932:3, 15950:7 revealed [3] - 16020:4, 16098:19, 16133:6 review [6] - 16116:21, 16118:1, 16118:16, 16122:19, 16131:15, 16139:19 reviewed [1] - 16002:13 reviewing [4] - 15906:19, 15939:6, 16002:23, 16039:21 Rick[1] - 15895:7 rid [7] - 15904:3, 15904:14, 15934:18, 16016:2, 16016:8, 16016:19, 16017:5 Riddell[12] - 15915:16, 15916:6, 15921:21, 15938:23, 15942:16, 15944:2, 15944:13, 15965:3, 15965:12,</p>
---	--	---	--	---



<p>16024:25, 16031:1, 16045:7 Riddells [1] - 15943:24 ride [1] - 16131:25 right-hand [10] - 16006:4, 16043:13, 16059:19, 16063:16, 16067:19, 16076:17, 16088:4, 16094:5, 16121:15, 16126:7 right-handed [1] - 16000:12 rightly [1] - 15933:17 ripped [1] - 15958:24 Rm[4] - 16006:24, 16007:13, 16018:14, 16025:5 road [1] - 15904:16 roads [1] - 15901:11 Roberts [1] - 16088:21 Roberts[50] - 15896:3, 15897:3, 15952:10, 15955:14, 15955:15, 16004:6, 16004:13, 16005:3, 16005:4, 16022:2, 16022:22, 16022:24, 16023:24, 16023:25, 16078:18, 16078:21, 16079:19, 16080:23, 16081:5, 16081:12, 16081:14, 16081:25, 16082:15, 16083:2, 16084:11, 16088:9, 16089:4, 16089:17, 16089:21, 16089:25, 16090:9, 16090:23, 16091:11, 16091:12, 16092:7, 16092:15, 16093:3, 16093:12, 16093:13, 16103:11, 16108:4, 16108:24, 16109:7, 16109:18, 16123:21, 16124:2, 16124:11, 16125:20, 16147:2 Roberts [5] - 16079:8, 16080:19, 16092:17, 16094:1, 16123:16 Robertson[1] - 15911:24 Robinson[1] - 15911:24 role [5] - 15906:14, 15919:5, 15921:11, 15986:3, 16075:1 rolling [2] - 15947:24, 15948:11 Ron[25] - 15915:9, 15938:15, 15947:1, 15950:14, 15952:2, 15952:18, 15952:22,</p>	<p>15952:25, 15954:4, 15958:20, 15958:21, 15962:9, 15962:16, 15963:17, 15975:8, 16015:17, 16022:20, 16045:6, 16081:6, 16082:8, 16093:20, 16112:9, 16112:18, 16112:23 room [7] - 16098:2, 16098:3, 16098:17, 16098:20, 16099:15, 16099:24, 16105:15 roommate [1] - 15909:25 rooms [1] - 16079:18 roughly [1] - 16073:3 round [1] - 15913:9 route [1] - 16108:1 Rpr[4] - 15894:11, 16149:2, 16149:16, 16149:17 ruled [1] - 16145:17 rules [1] - 16114:8 rumour [2] - 16077:17, 16078:12 rumour [1] - 16078:8 rumours [3] - 16078:10, 16132:8, 16132:9 run [3] - 16007:4, 16078:12, 16127:10 running [4] - 15951:10, 15956:13, 15958:3, 16108:14</p>	<p>16023:12, 16027:20, 16028:4, 16029:9, 16030:23, 16031:11, 16032:17, 16065:12, 16067:15, 16072:25, 16147:7 sat [2] - 16002:13, 16048:24 satisfaction [1] - 16143:19 satisfied [5] - 15920:20, 15967:25, 15979:21, 16009:15, 16107:25 satisfy [1] - 16109:16 save [2] - 16011:1, 16011:15 saw [34] - 15901:8, 15901:17, 15932:22, 15933:1, 15934:23, 15950:17, 15953:13, 15954:13, 15958:18, 15959:3, 15974:14, 15976:13, 15976:16, 15996:4, 15996:9, 15996:16, 15997:15, 15997:25, 15999:13, 16000:8, 16002:25, 16048:18, 16074:1, 16092:4, 16098:15, 16099:10, 16101:5, 16105:22, 16107:23, 16113:6, 16143:15, 16143:24, 16145:22 scenario [1] - 16003:21 scene [7] - 15922:24, 15923:25, 15992:8, 15992:20, 15993:2, 16085:20, 16100:1 schedules [1] - 16048:19 Schellenberg [14] - 16066:23, 16070:1, 16070:6, 16070:21, 16071:5, 16071:24, 16072:2, 16073:19, 16073:25, 16074:10, 16086:9, 16086:12, 16086:15, 16087:1 Schellenberg's [1] - 16071:14 school [1] - 16067:4 scientific [1] - 16093:23 scientifically [1] - 16014:20 screamed [1] - 15959:15 screen [6] - 16005:21, 16021:7, 16065:21, 16106:21, 16107:11, 16107:14</p>	<p>scroll [30] - 15901:23, 15902:16, 15904:1, 15924:10, 15932:7, 15933:21, 15944:1, 15946:19, 15947:22, 15948:14, 15950:6, 15956:11, 15957:21, 15960:10, 15976:20, 15977:7, 16009:22, 16034:19, 16039:18, 16041:9, 16046:11, 16067:9, 16070:5, 16085:14, 16122:2, 16130:4, 16131:21, 16133:23, 16143:12, 16145:13 Scroll[2] - 15905:22, 16035:2 search [4] - 16015:14, 16015:23, 16137:16, 16138:4 seat [4] - 15933:13, 15958:24, 16003:7, 16055:12 second [34] - 15912:16, 15916:6, 15916:8, 15916:11, 15916:19, 15918:6, 15918:10, 15919:19, 15920:17, 15920:20, 15921:1, 15921:12, 15928:5, 15928:18, 15940:7, 15940:24, 15941:3, 15941:6, 15942:11, 15955:19, 15989:8, 16023:7, 16045:4, 16045:10, 16045:17, 16046:6, 16049:2, 16049:8, 16059:4, 16066:21, 16089:4, 16089:9, 16126:16, 16133:14 Second[2] - 16037:12, 16047:13 secondly [6] - 15937:17, 15973:7, 15974:23, 15990:3, 15992:15, 16031:12 seconds [1] - 16001:14 secrete [2] - 16039:25, 16041:15 secreted [1] - 15993:18 secretor [23] - 15993:13, 15993:22, 15993:25, 15994:2, 15994:10, 15994:17, 15994:24, 15994:25, 16013:1, 16013:2, 16013:6, 16013:16, 16039:24, 16039:25,</p>	<p>16040:3, 16040:4, 16041:10, 16041:14, 16041:18, 16041:19, 16041:25, 16042:4 secretor's [1] - 16040:24 section [2] - 16082:20, 16114:11 secure [1] - 16114:17 Security[1] - 15894:12 See[1] - 16026:8 see [132] - 15900:25, 15901:21, 15906:22, 15908:24, 15909:4, 15911:4, 15911:5, 15911:8, 15912:13, 15912:15, 15914:3, 15914:6, 15914:8, 15914:16, 15914:18, 15914:19, 15914:21, 15923:11, 15926:7, 15928:7, 15931:13, 15931:19, 15932:19, 15933:1, 15938:1, 15938:20, 15943:18, 15946:12, 15946:19, 15954:1, 15958:14, 15962:13, 15964:8, 15964:17, 15964:22, 15972:7, 15973:20, 15974:20, 15975:15, 15975:20, 15978:20, 15980:13, 15980:21, 15982:19, 15985:6, 15986:16, 15987:7, 15987:19, 15988:8, 15989:7, 15998:17, 15999:20, 16006:14, 16006:20, 16007:4, 16009:11, 16010:17, 16012:9, 16012:22, 16013:9, 16013:12, 16013:13, 16013:14, 16015:3, 16015:4, 16015:6, 16015:11, 16017:16, 16018:16, 16020:11, 16020:16, 16026:10, 16026:11, 16026:16, 16027:3, 16027:7, 16027:11, 16033:2, 16033:6, 16034:1, 16034:9, 16036:1, 16037:1, 16038:4, 16039:7, 16044:24, 16047:11, 16050:18, 16051:15, 16054:22, 16055:9, 16056:5, 16057:22, 16058:23, 16062:24, 16063:3, 16071:8,</p>
S		<p>sake [1] - 16055:23 saliva [4] - 16014:17, 16014:21, 16040:4, 16041:18 sample [2] - 16040:2, 16041:16 Sandra[1] - 15894:4 Saskatchewan [5] - 15893:17, 15895:4, 16037:12, 16037:17, 16149:4 Saskatoon [32] - 15893:17, 15895:7, 15898:21, 15901:14, 15902:1, 15902:22, 15906:22, 15907:7, 15907:21, 15922:20, 15923:5, 15943:11, 15943:15, 15947:12, 15947:23, 15977:20, 15982:23, 16014:4, 16017:2, 16017:20,</p>	<p>schedules [1] - 16048:19 Schellenberg [14] - 16066:23, 16070:1, 16070:6, 16070:21, 16071:5, 16071:24, 16072:2, 16073:19, 16073:25, 16074:10, 16086:9, 16086:12, 16086:15, 16087:1 Schellenberg's [1] - 16071:14 school [1] - 16067:4 scientific [1] - 16093:23 scientifically [1] - 16014:20 screamed [1] - 15959:15 screen [6] - 16005:21, 16021:7, 16065:21, 16106:21, 16107:11, 16107:14</p>	<p>secreted [1] - 15993:18 secretor [23] - 15993:13, 15993:22, 15993:25, 15994:2, 15994:10, 15994:17, 15994:24, 15994:25, 16013:1, 16013:2, 16013:6, 16013:16, 16039:24, 16039:25,</p>



<p>16073:10, 16076:23, 16085:10, 16086:19, 16087:3, 16087:7, 16091:6, 16091:24, 16097:3, 16097:10, 16099:14, 16107:10, 16107:13, 16109:24, 16111:23, 16112:1, 16113:2, 16113:18, 16114:16, 16116:12, 16125:5, 16128:25, 16129:4, 16129:8, 16131:22, 16132:12, 16132:16, 16132:17, 16136:20, 16136:25, 16139:25, 16140:10, 16141:22, 16142:23, seeing [5] - 15910:19, 15941:23, 15950:11, 15951:6, 15990:15, seeking [2] - 15994:15, 16032:11, seem [7] - 15902:19, 15960:17, 15960:23, 15961:3, 16023:4, 16072:10, 16106:17, sees [1] - 15973:11, self [1] - 16121:10, semen [10] - 15993:11, 15994:17, 15994:19, 15994:25, 16041:21, 16041:24, 16042:1, 16042:6, 16042:9, 16042:15, seminal [4] - 16012:25, 16043:3, 16055:17, 16056:15, send [2] - 16046:1, 16088:24, sending [1] - 16049:6, sends [1] - 16038:25, senior [1] - 15942:20, sense [24] - 15897:25, 15901:13, 15903:16, 15921:9, 15923:14, 15923:17, 15944:21, 15953:19, 15955:8, 15977:17, 15995:10, 16003:3, 16003:13, 16013:22, 16017:18, 16039:20, 16075:5, 16085:25, 16086:17, 16087:16, 16093:22, 16110:12, 16135:16, 16146:22, sensible [2] - 16003:19, 16084:15, sent [28] - 15899:14, 16029:10, 16032:18, 16033:9, 16045:7,</p>	<p>16045:11, 16045:18, 16046:20, 16047:15, 16047:17, 16049:5, 16049:9, 16049:17, 16049:18, 16050:5, 16050:9, 16053:15, 16054:1, 16054:3, 16057:3, 16058:14, 16060:19, 16060:22, 16061:8, 16081:9, 16142:22, 16146:3, sentence [5] - 15911:12, 15949:8, 16043:9, 16065:7, 16116:16, sentenced [3] - 16037:11, 16037:13, 16043:8, September [19] - 16048:16, 16060:6, 16062:24, 16076:20, 16084:6, 16088:5, 16094:12, 16100:25, 16101:3, 16116:10, 16116:19, 16121:22, 16122:16, 16127:14, 16127:17, 16140:3, 16140:6, 16140:7, 16147:13, sequence [5] - 16003:25, 16054:19, 16076:24, 16104:1, 16104:13, Serge [1] - 15895:6, Sergeant [1] - 16108:13, series [2] - 16061:18, 16137:11, serious [2] - 15904:20, 15904:22, service [1] - 15898:14, Service [1] - 15895:7, servicing [1] - 16121:11, set [7] - 15920:22, 15926:21, 15960:14, 16001:25, 16046:6, 16081:18, 16142:17, sets [1] - 15940:23, setting [2] - 16003:11, 16053:18, seven [5] - 15997:4, 15997:21, 16104:8, 16104:14, 16106:14, several [1] - 15959:16, sex [1] - 16072:10, sexual [10] - 16008:13, 16011:18, 16011:25, 16012:4, 16012:8, 16067:1, 16069:17, 16070:16, 16075:14, 16075:22,</p>	<p>shall [1] - 16058:11, shape [1] - 16137:19, share [3] - 15927:3, 16117:21, 16134:17, shared [2] - 16118:13, 16131:18, Sharon [6] - 15906:16, 15906:17, 16074:21, 16074:22, 16086:3, 16086:4, sharp [1] - 15970:9, Shawchuk [2] - 16047:21, 16123:10, shed [1] - 16146:8, sheet [1] - 15964:19, Sheraton [1] - 16079:16, ship [1] - 15966:21, Shirley [3] - 15946:13, 16124:8, 16147:4, shock [1] - 16005:9, shoes [3] - 15958:9, 15970:11, 16018:7, shoplifting [1] - 15911:11, short [2] - 15898:20, 16021:2, Short [1] - 16066:16, shorthand [3] - 16013:2, 16090:25, 16149:5, shortly [7] - 15899:11, 15906:22, 15959:22, 15997:20, 16029:11, 16039:19, 16084:17, Shorty [1] - 15981:12, show [25] - 15912:14, 15912:21, 16011:8, 16018:7, 16030:2, 16034:12, 16037:21, 16045:3, 16045:17, 16048:13, 16049:25, 16064:9, 16067:10, 16078:15, 16117:7, 16124:21, 16126:12, 16126:18, 16126:20, 16127:25, 16130:21, 16131:3, 16139:14, 16142:11, 16144:6, Show [1] - 16126:16, showed [6] - 15993:17, 16015:24, 16053:11, 16120:2, 16128:5, 16129:21, showing [2] - 16124:7, 16128:4, shown [10] - 15965:11, 15965:20, 15966:5, 16005:3, 16084:3, 16084:17, 16108:4, 16118:14, 16129:19,</p>	<p>16138:12, shows [3] - 15948:6, 15963:1, 16006:25, Si [2] - 16008:13, 16067:1, side [3] - 15901:10, 15995:18, 16000:17, Sidney [1] - 16010:1, sight [2] - 15915:12, 15972:6, sighting [1] - 15996:7, sights [1] - 16004:18, signature [1] - 15920:7, significance [18] - 15899:4, 15901:11, 15902:6, 15904:6, 15905:17, 15906:20, 15917:24, 15922:12, 15923:12, 15926:15, 15959:17, 15977:6, 15984:5, 16012:25, 16094:10, 16097:15, 16105:13, 16137:10, Significance [1] - 16008:11, significance' [2] - 16025:9, 16025:17, significant [14] - 15906:14, 15908:2, 15923:20, 15929:20, 15931:24, 15934:8, 15934:14, 15936:2, 15937:21, 15947:20, 15960:8, 15975:2, 15987:8, 16105:16, signs [1] - 16011:20, similar [1] - 15900:8, similarly [1] - 15920:3, Simon [1] - 15985:6, simple [1] - 15931:3, simply [12] - 15921:14, 15956:9, 15963:4, 15968:5, 15976:15, 16015:9, 16046:19, 16083:7, 16108:19, 16111:1, 16136:1, 16137:11, single [3] - 16075:8, 16094:9, 16096:11, single-edged [1] - 16075:8, Sion' [2] - 16067:4, 16067:8, sister [3] - 16008:6, 16035:13, 16035:15, sit [1] - 16048:16, sitting [2] - 15893:15, 16112:17, situation [9] - 15928:1, 15928:17, 15939:16,</p>	<p>15941:22, 15955:2, 16016:23, 16031:19, 16055:19, 16097:13, six [3] - 16038:17, 16091:24, 16106:14, sketches [1] - 15983:10, skill [1] - 16149:6, slotting [1] - 16106:8, small [1] - 15947:5, snatch [3] - 15923:6, 15923:10, 16027:20, snatching [4] - 15923:16, 15947:25, 15948:3, 15948:11, snow [7] - 15970:9, 15991:22, 15992:6, 15992:25, 15993:4, 15994:20, 16038:23, so' [1] - 16008:24, so-called [6] - 15928:5, 15955:18, 16022:13, 16023:15, 16115:15, 16121:10, solicitor [1] - 16142:8, Someone [1] - 16086:24, someone [20] - 15923:7, 15923:10, 15923:16, 15931:3, 15947:24, 15948:11, 15972:22, 16002:20, 16004:16, 16010:8, 16012:7, 16012:18, 16012:21, 16016:2, 16016:8, 16016:19, 16017:4, 16022:3, 16052:9, 16078:21, Sometime [1] - 16073:7, sometime [3] - 15897:16, 16029:11, 16044:7, sometimes [2] - 15929:13, 15966:20, somewhat [2] - 15934:18, 15997:7, somewhere [13] - 15904:16, 15905:15, 15910:24, 15913:18, 15997:4, 16003:16, 16021:16, 16059:17, 16079:9, 16079:24, 16099:2, 16100:19, 16107:2, Somewhere [1] - 16101:14, soon [2] - 16046:21, 16100:20, sorry [19] - 15925:12, 15955:4, 15972:13, 16016:6, 16019:13, 16040:11, 16040:13,</p>
---	--	--	---	---



<p>16040:14, 16049:20, 16050:13, 16050:15, 16064:7, 16068:10, 16107:12, 16111:14, 16112:7, 16114:22, 16127:11, 16139:23 Sorry [5] - 15936:6, 15959:2, 16007:7, 16087:20, 16107:10 sort [18] - 15898:10, 15931:10, 15943:3, 15953:24, 15969:1, 15992:17, 15996:20, 15996:21, 16001:22, 16002:15, 16002:23, 16003:25, 16005:16, 16012:12, 16075:19, 16076:1, 16132:13, 16146:23 sought [1] - 16020:6 sound [2] - 16037:22, 16066:8 sounds [1] - 16088:14 Source [1] - 16126:15 south [5] - 15948:18, 15949:10, 15973:2, 15973:6, 16132:23 South [2] - 16137:3 speaking [2] - 16035:15, 16087:13 special [1] - 15969:1 specific [5] - 15903:8, 15948:25, 16081:20, 16146:6, 16146:7 specifically [5] - 15962:7, 15963:19, 15982:24, 16001:17, 16120:20 speeds [1] - 15901:10 Spence [10] - 16087:12, 16126:22, 16128:14, 16128:23, 16129:6, 16129:11, 16143:9, 16143:17, 16143:22, 16144:16 Spence' [3] - 16128:22, 16129:16, 16130:14 spend [1] - 16003:17 spent [2] - 15939:5, 16081:15 sperm [12] - 16039:3, 16039:6, 16039:24, 16040:8, 16040:18, 16040:24, 16041:6, 16041:10, 16041:13, 16042:20, 16042:25, 16075:20 sperm' [2] - 16040:20, 16075:12 spermatozoa [1] -</p>	<p>15993:12 spirit [1] - 16146:17 spoken [4] - 15912:3, 15930:1, 16136:16, 16144:13 spot [6] - 15949:20, 15974:4, 16033:12, 16050:24, 16097:19, 16148:8 spring [3] - 15960:25, 16069:13, 16098:25 St [2] - 15972:10, 16010:25 stab [11] - 15950:12, 15950:18, 15951:3, 15951:7, 15953:13, 15954:13, 15999:11, 15999:14, 16002:25, 16103:9, 16103:20 stabbed [7] - 15952:7, 15952:24, 15953:17, 15953:20, 15954:15, 15991:11, 15991:15 stabbing [9] - 15930:7, 15933:7, 15952:21, 15954:8, 15954:9, 15954:11, 15999:14, 16003:17, 16104:16 Stabs [1] - 16094:8 Staff [2] - 15894:1, 15894:8 stage [5] - 15919:8, 15927:11, 15948:19, 16014:19, 16045:1 stamp [1] - 16033:11 stand [8] - 15920:11, 15921:2, 15929:5, 15939:24, 15985:12, 16102:18, 16104:7, 16115:20 standing [2] - 15903:11, 15904:8 stapled [5] - 16050:1, 16050:7, 16050:11, 16051:4, 16061:2 star [1] - 16039:23 start [3] - 16038:17, 16062:1, 16113:8 started [7] - 15898:19, 15919:10, 15979:6, 16032:3, 16048:15, 16059:23, 16113:9 starting [1] - 16050:2 starts [3] - 16006:17, 16039:13, 16047:12 state [6] - 15919:9, 15920:21, 15923:25, 15955:19, 15983:18, 16005:10 statement [175] -</p>	<p>15904:17, 15905:11, 15906:17, 15906:23, 15906:25, 15908:25, 15912:17, 15912:23, 15916:5, 15916:6, 15916:8, 15916:11, 15916:19, 15917:25, 15918:7, 15918:11, 15919:13, 15919:19, 15920:1, 15920:7, 15920:18, 15920:20, 15920:23, 15921:1, 15921:12, 15921:20, 15922:4, 15932:10, 15932:11, 15938:22, 15938:23, 15940:7, 15940:18, 15941:6, 15941:25, 15942:15, 15943:5, 15943:7, 15943:19, 15943:23, 15944:1, 15944:11, 15948:24, 15950:15, 15951:24, 15952:4, 15952:11, 15954:4, 15955:7, 15955:19, 15956:6, 15961:8, 15964:3, 15964:15, 15964:23, 15965:1, 15965:4, 15965:12, 15965:18, 15965:24, 15966:2, 15966:7, 15968:8, 15968:23, 15969:3, 15971:3, 15971:13, 15976:16, 15982:7, 15982:9, 15982:13, 15982:22, 15982:24, 15982:25, 15983:19, 15983:25, 15986:14, 15986:16, 15986:23, 15987:2, 15987:23, 15991:6, 15991:10, 15996:2, 16004:4, 16004:5, 16004:9, 16005:5, 16008:19, 16009:4, 16009:16, 16010:20, 16016:11, 16017:7, 16017:19, 16022:21, 16023:3, 16023:7, 16023:10, 16023:13, 16023:19, 16023:21, 16024:9, 16024:10, 16024:11, 16024:25, 16027:25, 16028:7, 16029:13, 16035:17, 16045:2, 16045:4, 16045:6, 16045:11, 16045:17, 16045:22, 16045:23, 16046:7, 16047:14, 16049:3, 16049:5, 16049:8,</p>	<p>16061:5, 16070:7, 16070:13, 16070:18, 16070:22, 16071:24, 16073:21, 16074:23, 16074:25, 16075:3, 16081:3, 16082:4, 16082:5, 16082:23, 16082:24, 16086:2, 16092:23, 16093:11, 16098:1, 16102:21, 16102:24, 16103:3, 16103:8, 16103:10, 16103:23, 16104:9, 16105:8, 16106:2, 16107:23, 16108:6, 16108:8, 16109:19, 16110:23, 16110:24, 16111:10, 16111:17, 16113:5, 16114:25, 16115:13, 16128:21, 16128:25, 16129:9, 16129:22, 16130:2, 16130:11, 16133:19, 16138:22, 16138:24, 16138:25, 16139:25, 16142:3, 16142:13 statement' [2] - 16016:10, 16074:22 Statements [1] - 15987:20 statements [97] - 15903:2, 15907:12, 15909:1, 15910:19, 15912:13, 15912:16, 15912:24, 15913:11, 15913:20, 15915:9, 15915:15, 15916:8, 15916:9, 15920:15, 15928:5, 15928:22, 15938:5, 15938:20, 15938:24, 15940:20, 15940:23, 15942:10, 15944:18, 15948:19, 15949:6, 15951:18, 15965:8, 15965:9, 15965:18, 15966:11, 15969:13, 15983:5, 15984:6, 15987:21, 15987:25, 15988:4, 15988:5, 15988:10, 15989:22, 15991:18, 16011:5, 16011:12, 16014:3, 16014:7, 16014:10, 16022:23, 16044:3, 16044:24, 16045:10, 16045:13, 16045:20, 16047:1, 16047:5, 16047:19, 16047:24, 16048:4, 16057:11, 16057:16, 16059:6, 16059:11,</p>	<p>16069:9, 16077:1, 16078:7, 16080:16, 16091:17, 16091:18, 16104:18, 16114:2, 16115:17, 16121:5, 16124:18, 16127:3, 16128:6, 16128:20, 16130:18, 16131:16, 16132:12, 16138:18, 16138:19, 16139:2, 16139:8, 16140:21, 16141:1, 16141:4, 16141:6, 16141:10, 16141:19, 16141:21, 16144:25, 16145:1, 16145:3, 16145:8, 16145:12, 16145:13, 16145:17, 16146:3 statements' [3] - 15928:18, 16124:18, 16124:19 states [5] - 15902:17, 15951:17, 16040:22, 16070:1, 16133:7 stating [3] - 15916:10, 16069:25, 16142:6 station [2] - 15898:14, 16065:14 Stephanie [1] - 15895:11 steps [2] - 15970:7, 15970:8 Stewart' [1] - 16059:24 stick [2] - 15963:12, 15967:8 still [20] - 15902:22, 15903:3, 15925:15, 15928:22, 15929:17, 15932:16, 15960:15, 15961:3, 15961:21, 15972:21, 16004:1, 16017:19, 16034:21, 16036:7, 16089:5, 16090:23, 16097:2, 16112:15, 16112:17, 16122:24 stolen [1] - 15902:11 stop [2] - 16001:16, 16002:6 stopped [2] - 16000:23, 16001:2 stopping [1] - 15958:3 story [12] - 15902:22, 15903:4, 15907:10, 15917:18, 15919:3, 15960:14, 15995:21, 16069:3, 16069:7, 16070:4, 16071:3, 16110:17 straightforward [5] -</p>
--	--	--	---	--



<p>15944:4, 15944:15, 15945:2, 16032:6, 16038:8 Street [3] - 16001:2, 16001:16, 16002:7 street [3] - 16002:8, 16143:16, 16143:25 strength [2] - 15944:23, 16139:22 stretch [2] - 15967:13, 15967:18 strike [1] - 16021:1 striking [2] - 16099:7, 16099:8 stringer [1] - 16095:21 striped [1] - 15938:7 strong [3] - 15928:23, 15949:18, 16110:10 stuck [22] - 15924:12, 15924:15, 15924:24, 15925:9, 15925:18, 15926:7, 15948:16, 15948:20, 15949:1, 15949:3, 15949:7, 15949:8, 15949:20, 15950:5, 15972:2, 15973:9, 15973:22, 16001:4, 16001:9, 16001:12, 16112:2, 16112:15 stuck' [1] - 16015:15 stuff [1] - 16038:24 subdivision [1] - 15943:3 subject [5] - 15913:24, 15968:4, 15999:6, 16022:19, 16118:19 Subject [1] - 15914:1 subjected [1] - 16080:23 submissions [1] - 15998:18 Submissions [1] - 15998:22 subpoena [2] - 16124:1, 16124:8 subpoena' [1] - 16123:18 subpoenaed [2] - 16036:1, 16089:11 subsequently [1] - 15945:1 subtract [1] - 15985:3 successful [1] - 15937:23 suggest [11] - 15900:12, 15903:23, 15963:12, 15975:4, 15975:6, 15988:3, 15996:12, 15997:3,</p>	<p>16000:18, 16124:7, 16124:13 suggested [7] - 15918:8, 15921:15, 15974:22, 16010:8, 16125:16, 16141:25, 16144:15 suggesting [4] - 15967:11, 15981:25, 16130:22, 16135:21 suggestion [8] - 15901:3, 15945:23, 15986:20, 15987:10, 15987:13, 16087:2, 16120:5, 16146:20 suggests [2] - 15992:1, 16145:7 summaries [1] - 15980:20 summarize [6] - 15945:9, 15948:15, 15982:21, 15990:11, 15994:18, 16041:4 summarized [1] - 16058:9 summarizes [1] - 15922:18 summarizing [2] - 15922:7, 15924:11 Summary [1] - 16006:23 summary [47] - 15897:13, 15897:14, 15897:19, 15898:2, 15898:15, 15902:17, 15902:25, 15905:10, 15908:8, 15908:13, 15908:23, 15912:23, 15913:11, 15913:19, 15913:20, 15914:15, 15914:23, 15918:3, 15920:12, 15922:6, 15923:9, 15931:20, 15932:9, 15935:1, 15944:10, 15945:7, 15950:9, 15951:17, 15956:16, 15958:20, 15962:6, 15974:9, 15975:20, 15987:23, 15988:6, 15988:11, 15989:20, 15989:21, 15989:23, 15990:5, 15991:1, 15994:21, 16033:23, 16036:2, 16044:9 summer [2] - 16019:3, 16073:6 summer' [1] - 16019:10 Superintendent [2] - 16028:11, 16090:8 supplement [1] -</p>	<p>16082:15 supplied [2] - 16144:9, 16144:24 support [2] - 16037:19, 16130:6 Support [1] - 15894:8 supported [1] - 15941:7 supportive [1] - 15995:16 suppose [11] - 15905:21, 15923:22, 15946:3, 15947:5, 16027:13, 16046:21, 16079:5, 16079:21, 16085:19, 16092:11, 16136:7 supposed [1] - 16144:21 supposedly [1] - 16146:8 Supreme [3] - 16081:15, 16092:18, 16093:5 surface [2] - 15946:25, 16099:1 surfaced [1] - 16062:3 surprised [2] - 15930:17, 16090:4 surrounding [2] - 15921:13, 15925:23 survived [1] - 15989:17 suspect [5] - 15963:16, 16078:9, 16087:10, 16114:14, 16135:10 suspects [5] - 16087:15, 16128:22, 16135:5, 16143:18, 16143:23 suspended [1] - 15911:12 Swift [3] - 16008:15, 16008:20, 16009:17 swore [1] - 16063:13 sworn [1] - 16115:13</p>	<p>Tallis [59] - 15895:14, 15946:14, 15966:9, 16033:19, 16043:20, 16044:1, 16044:16, 16045:7, 16046:1, 16046:5, 16046:8, 16046:15, 16047:16, 16050:5, 16053:15, 16054:1, 16057:4, 16057:9, 16058:21, 16060:19, 16060:22, 16061:9, 16061:23, 16062:8, 16078:3, 16078:9, 16078:22, 16087:18, 16087:22, 16097:9, 16114:25, 16115:3, 16115:15, 16117:25, 16118:13, 16119:11, 16122:7, 16124:13, 16125:19, 16127:8, 16127:14, 16127:23, 16128:5, 16129:19, 16130:17, 16130:25, 16131:19, 16132:10, 16134:17, 16135:24, 16138:12, 16139:19, 16140:5, 16141:15, 16142:20, 16143:21, 16145:8, 16147:18, 16148:1 Tallis' [11] - 15998:25, 16043:15, 16077:19, 16085:4, 16116:11, 16116:13, 16121:23, 16122:15, 16127:14, 16132:8, 16136:12 tape [9] - 15979:5, 16080:5, 16080:19, 16080:20, 16081:18, 16082:1, 16083:1, 16083:11, 16083:13 tapes [5] - 16078:18, 16078:23, 16078:25, 16079:3, 16080:6 taught [1] - 15900:14 taxi [7] - 16062:1, 16062:2, 16062:9, 16077:17, 16131:25, 16134:6, 16144:21 Tdr [1] - 15895:5 tears [1] - 16101:20 Technician [1] - 15894:13 techniques [1] - 16079:2 teen [1] - 16069:15 telephone [2] - 16044:14, 16044:16 temp [1] - 16009:23 temperament [1] -</p>	<p>16021:1 tend [5] - 15903:23, 16126:20, 16127:24, 16130:21, 16142:11 tended [2] - 15937:14, 15939:17 tender [2] - 16011:1, 16011:15 tending [1] - 16130:8 tends [2] - 16139:14, 16144:6 tentative [3] - 16033:21, 16062:19, 16062:20 term [1] - 15907:24 termed [1] - 15993:25 terminology [1] - 16030:8 terms [6] - 15906:9, 15938:17, 15961:9, 15998:20, 16075:21, 16097:16 terrified [1] - 15959:21 test [11] - 15916:14, 15993:18, 16014:17, 16014:22, 16022:3, 16023:5, 16023:21, 16040:4, 16079:4, 16090:16, 16091:3 test' [1] - 16078:19 tested [12] - 15935:5, 15945:20, 15955:14, 15994:9, 16022:24, 16023:19, 16092:8, 16092:18, 16092:24, 16093:3, 16093:12, 16108:3 testified [13] - 15897:24, 15931:6, 15969:16, 15971:2, 15985:14, 15985:20, 15985:23, 15995:6, 16011:7, 16084:6, 16099:20, 16099:24, 16101:1 testifies [2] - 16010:22, 16017:11 testifies' [1] - 16016:22 testify [14] - 15910:1, 15920:14, 15929:14, 15931:3, 15985:18, 16011:13, 16027:9, 16076:21, 16102:5, 16105:3, 16109:22, 16110:20, 16111:16, 16124:12 testifying [3] - 15949:2, 15963:9, 16101:3 testimony [2] - 15981:6, 16080:15 Testimony [1] -</p>
T				
<p>tactical [1] - 16114:10 talks [20] - 15898:15, 15901:7, 15901:23, 15902:25, 15914:9, 15922:7, 15923:23, 15932:6, 15933:21, 15958:7, 15973:18, 15976:21, 15985:7, 15986:15, 16045:3, 16059:25, 16075:7, 16120:16, 16135:4, 16140:19</p>				



<p>15893:14 testing [1] - 16023:2 tests [3] - 15993:16, 16021:20, 16041:18 that' [2] - 16110:6, 16126:18 theft [1] - 16028:14 them' [1] - 15929:21 themselves [1] - 15968:19 then-statement [1] - 15964:3 theories [1] - 15946:8 theory [17] - 15897:18, 15900:22, 15901:3, 15908:9, 15925:9, 15937:12, 15959:18, 15975:3, 15976:1, 15985:9, 15986:24, 15995:16, 16000:24, 16003:15, 16017:22, 16076:6, 16130:6 thereabouts [1] - 16004:24 thereafter [2] - 15899:11, 16084:17 therefore [4] - 15933:18, 16012:2, 16025:16, 16144:9 thereon [1] - 15979:8 thinking [9] - 15921:11, 15926:14, 15928:24, 15928:25, 15961:9, 15973:2, 16104:12, 16111:8, 16120:22 thinks [3] - 16008:24, 16009:5, 16081:18 third [8] - 15902:24, 15922:2, 15967:7, 15996:3, 16034:16, 16054:10, 16123:24, 16126:6 third-party [1] - 15922:2 thirdly [1] - 15973:11 Thomas[2] - 15896:3, 15897:3 thoughts [1] - 15948:1 threat [1] - 15904:21 three [29] - 15899:15, 15900:15, 15908:7, 15920:24, 15962:24, 15966:18, 15967:1, 15967:3, 15981:16, 15981:21, 16003:2, 16003:18, 16007:10, 16037:11, 16045:20, 16064:11, 16066:13, 16083:22, 16098:21, 16098:22, 16101:15,</p>	<p>16104:2, 16111:3, 16115:17, 16121:18, 16141:6, 16141:13 three-page [1] - 15908:7 three-part [1] - 15966:18 threw [5] - 15898:23, 15934:5, 15934:13, 15959:9, 15990:17 thrown [1] - 15899:8 Thursday[4] - 16026:11, 16094:16, 16101:2, 16125:9 timing [2] - 15999:1, 16000:21 title [1] - 16051:4 Tkachuk[5] - 16133:7, 16134:15, 16134:21, 16136:22, 16138:11 Tkachuk [2] - 16132:15, 16135:6 today [4] - 15943:17, 15986:3, 16043:17, 16120:2 together [8] - 15897:15, 15908:16, 15910:20, 15978:14, 16045:10, 16050:1, 16050:7, 16051:4 Took[2] - 16040:3, 16041:18 took [17] - 15897:17, 15897:20, 15898:23, 15943:24, 15954:18, 15959:9, 15982:8, 16011:19, 16091:13, 16093:18, 16101:19, 16106:4, 16108:6, 16108:7, 16139:8, 16144:1, 16145:5 tooke [1] - 15934:23 top [49] - 15914:9, 15914:18, 15917:1, 15931:14, 15943:19, 15976:7, 15987:20, 15989:5, 16006:4, 16006:10, 16006:13, 16012:12, 16013:12, 16015:4, 16020:11, 16021:19, 16025:22, 16031:8, 16036:19, 16037:7, 16039:10, 16042:19, 16043:13, 16047:8, 16048:10, 16050:12, 16050:18, 16050:20, 16051:8, 16059:19, 16063:16, 16067:19, 16074:18, 16076:17, 16087:3,</p>	<p>16088:4, 16094:5, 16094:24, 16098:10, 16106:23, 16111:19, 16116:18, 16121:15, 16121:19, 16126:7, 16126:9, 16136:21, 16136:25, 16139:9 topic [4] - 16056:18, 16093:24, 16094:2, 16119:14 topics [1] - 16039:15 toque [12] - 15935:1, 15935:4, 15935:11, 15935:15, 15935:25, 15936:24, 15937:17, 15937:19, 15938:4, 15938:6, 15938:11, 16120:22 totalling [1] - 16140:24 touch [5] - 15900:2, 15946:17, 15970:24, 16078:16, 16137:25 touched [11] - 15902:23, 15910:21, 15922:10, 15926:3, 15934:25, 15958:10, 15960:5, 15976:6, 15978:10, 15996:8, 16086:3 touching [1] - 16080:12 tow [2] - 15901:8, 15974:20 toward [2] - 15933:12, 16133:15 towards [1] - 16026:13 Towards[1] - 16001:2 town [1] - 15975:23 track [3] - 16064:17, 16146:10, 16146:22 trailed [1] - 15983:9 transcribed [1] - 16100:16 transcript [7] - 15968:17, 16060:13, 16100:24, 16110:19, 16111:22, 16113:15, 16114:4 Transcript[2] - 15893:12, 15897:1 transcription [1] - 16149:5 transcripts [1] - 15968:13 transferred [1] - 16099:3 transport [2] - 15976:23, 16063:11 trash [3] - 15902:4, 15902:14, 15960:1 Trav[4] - 15958:9,</p>	<p>15996:15, 15997:15, 15998:2 Trava-leer [4] - 15958:9, 15996:15, 15997:15, 15998:2 travelling [2] - 15902:10, 15906:3 trial [53] - 15897:20, 15898:9, 15903:13, 15904:9, 15915:1, 15920:3, 15927:11, 15928:11, 15929:16, 15935:3, 15935:10, 15937:10, 15949:1, 15949:14, 15955:25, 15956:9, 15963:15, 15968:11, 15968:24, 15969:8, 15969:16, 15971:2, 15975:18, 15978:1, 15980:22, 15982:3, 15985:14, 15985:21, 15985:24, 15989:4, 15994:15, 15997:21, 16010:14, 16036:9, 16042:23, 16052:19, 16076:1, 16080:14, 16082:19, 16083:24, 16096:18, 16098:25, 16100:6, 16104:6, 16104:10, 16104:19, 16106:2, 16106:12, 16107:20, 16114:20, 16119:2, 16131:7, 16145:21 tried [1] - 16001:4 trigger [2] - 16004:18, 16089:13 triggered [1] - 16059:4 trip [6] - 15906:1, 15906:22, 15943:13, 15976:21, 15977:19, 16003:1 trouble [3] - 15911:18, 15976:22, 16106:7 trouser's [1] - 15958:24 trousers [4] - 15958:15, 15958:25, 15959:4, 16055:12 truck [4] - 15901:8, 15974:20, 15976:23, 16073:15 true [14] - 15921:21, 15942:13, 15944:24, 15953:24, 15956:5, 15956:8, 16000:4, 16008:15, 16024:1, 16024:2, 16091:17, 16092:24, 16108:6, 16149:5 trunk [1] - 15976:24</p>	<p>truth [8] - 15902:20, 15919:19, 15920:8, 15925:25, 15927:19, 15939:19, 15961:13, 16106:13 truth' [1] - 15920:18 truthful [10] - 15920:21, 15928:21, 15928:22, 15932:19, 15940:24, 15941:2, 15955:17, 15969:7, 16093:13, 16105:1 truthfully [1] - 16022:19 try [12] - 15899:15, 15939:11, 15941:22, 15953:4, 15953:5, 15961:4, 15970:19, 16001:12, 16003:10, 16042:4, 16109:9 trying [21] - 15898:1, 15898:5, 15910:8, 15910:15, 15921:9, 15950:1, 15957:5, 15976:1, 15982:1, 16002:15, 16008:3, 16010:24, 16012:12, 16020:21, 16020:25, 16034:21, 16076:1, 16102:6, 16103:14, 16128:2, 16130:15 tub [4] - 16069:16, 16072:10, 16072:12, 16073:14 Tuesday[6] - 15893:21, 16064:14, 16066:15, 16066:18, 16076:25, 16077:15 Tuesday [1] - 16126:1 Tuesdaywednesday [1] - 16077:15 Tuesdaywednesday' [1] - 16076:25 turn [9] - 15924:14, 15924:24, 15938:15, 15948:16, 15949:9, 16001:3, 16001:12, 16033:16, 16097:23 turned [3] - 15946:24, 15970:1, 16058:1 turns [5] - 16007:1, 16026:9, 16048:2, 16077:11, 16123:14 two [58] - 15900:15, 15904:12, 15913:14, 15915:13, 15916:8, 15916:21, 15920:24, 15925:18, 15925:21, 15926:12, 15927:6, 15931:17, 15938:23, 15940:20, 15940:23,</p>
---	--	---	--	---



15943:7, 15946:8, 15952:4, 15957:7, 15957:9, 15965:8, 15965:18, 15966:1, 15966:11, 15971:4, 15979:4, 15987:11, 16000:8, 16003:18, 16015:18, 16031:9, 16034:5, 16038:23, 16038:24, 16040:9, 16041:5, 16045:10, 16045:13, 16047:2, 16052:12, 16052:13, 16055:17, 16072:24, 16073:13, 16074:2, 16079:18, 16085:24, 16087:14, 16089:2, 16089:8, 16091:23, 16092:25, 16122:24, 16138:18, 16138:19, 16141:10, 16144:25 two-page [1] - 15979:4 type [12] - 15921:10, 15935:6, 15937:24, 15968:3, 15993:13, 15993:17, 16015:6, 16040:2, 16041:7, 16041:17, 16056:1, 16056:3 type' [1] - 16039:6 typed [2] - 15999:5, 16139:25 types [2] - 15966:16, 16002:14 typing [1] - 15988:24	15965:21, 15982:11, 15985:15, 16021:7, 16023:20, 16026:4, 16027:18, 16032:13, 16059:13, 16060:20, 16063:1, 16075:3, 16077:2, 16077:6, 16079:1, 16080:3, 16082:25, 16114:3, 16117:9, 16118:21, 16122:8, 16125:1, 16128:11, 16135:14 unable [3] - 15925:14, 15925:20, 15926:12 unanswered [1] - 15917:13 uncertain [2] - 15925:15, 15927:17 uncertainty [5] - 15925:23, 15926:17, 15927:12, 15929:1, 15961:6 unclear [1] - 15929:19 under [20] - 15977:8, 16020:24, 16040:18, 16040:23, 16042:20, 16042:24, 16046:4, 16051:4, 16056:18, 16058:17, 16065:6, 16070:15, 16085:4, 16086:25, 16091:23, 16105:10, 16111:8, 16120:14, 16127:10, 16146:18 Under [1] - 16087:18 underlined [1] - 16091:10 underneath [2] - 16084:21, 16085:11 understood [7] - 15929:7, 16091:16, 16093:3, 16097:1, 16106:12, 16142:8, 16142:18 undertakings [1] - 16044:22 undoubtedly [7] - 15906:25, 15939:21, 15982:11, 16005:7, 16025:10, 16032:5, 16123:9 unfold [1] - 15955:25 unfortunate [1] - 16109:24 unhappy [1] - 16105:4 unheard [1] - 15939:15 uniform [4] - 15999:16, 16005:3, 16005:10, 16108:4 unknown [2] -	16143:15, 16143:24 Unless [1] - 15913:3 unless [14] - 15946:2, 15963:12, 15983:15, 15987:16, 16005:22, 16055:22, 16058:19, 16066:3, 16067:11, 16077:6, 16089:11, 16103:4, 16107:2, 16127:11 unpleasant [2] - 16004:18, 16004:20 unpredictable [1] - 15929:13 unstuck [1] - 15926:7 unsure [1] - 15967:2 untruthful [2] - 15926:19, 16091:19 untruthfulness [1] - 15997:10 untruths [2] - 15939:17, 16024:6 unusual [7] - 15908:2, 15955:2, 15974:16, 15996:10, 15999:12, 16003:2, 16003:3 up [107] - 15897:5, 15898:8, 15901:10, 15908:12, 15910:1, 15912:15, 15913:22, 15914:5, 15914:7, 15914:17, 15923:16, 15927:13, 15928:9, 15933:10, 15936:13, 15938:21, 15938:25, 15940:19, 15943:18, 15949:2, 15965:19, 15968:4, 15974:9, 15978:15, 15988:16, 15989:1, 16001:3, 16003:1, 16004:4, 16005:21, 16006:25, 16008:16, 16009:6, 16011:8, 16013:9, 16013:12, 16014:25, 16015:4, 16015:22, 16015:24, 16018:7, 16018:10, 16018:11, 16018:17, 16018:22, 16019:17, 16020:11, 16023:4, 16023:6, 16023:24, 16024:23, 16025:3, 16027:7, 16030:7, 16030:20, 16031:2, 16034:8, 16034:19, 16035:19, 16038:1, 16043:18, 16048:25, 16049:22, 16051:22, 16052:19, 16053:11, 16053:21,	16054:8, 16054:13, 16062:15, 16064:9, 16067:8, 16067:16, 16070:21, 16071:18, 16071:22, 16072:20, 16073:18, 16073:21, 16077:17, 16078:8, 16081:18, 16083:17, 16086:20, 16088:3, 16094:17, 16098:5, 16102:20, 16106:19, 16106:21, 16116:18, 16119:13, 16123:13, 16124:22, 16125:4, 16125:13, 16128:17, 16128:24, 16132:15, 16133:17, 16133:18, 16135:19, 16136:20, 16136:23, 16138:17, 16141:4, 16146:19 upset [2] - 16108:12, 16108:17 urologist [2] - 16041:1, 16042:21 urologist' [1] - 16040:19 useful [4] - 16010:21, 16035:21, 16044:18, 16087:24 uses [1] - 16004:10 usual [1] - 15983:17 Ute [1] - 16141:7 utilize [1] - 16114:11	varying [1] - 15903:9 vehicle [21] - 15924:6, 15924:20, 15925:7, 15967:14, 15967:20, 15967:24, 15972:2, 15973:8, 15992:15, 15992:18, 15992:19, 15996:4, 16001:4, 16001:5, 16001:8, 16001:12, 16002:7, 16015:17, 16015:23, 16143:16, 16143:25 verified [1] - 16024:12 versa [1] - 16099:4 version [9] - 15953:8, 15977:9, 15984:12, 15984:14, 15990:23, 15995:25, 16000:22, 16005:17, 16071:12 versions [1] - 15910:14 versus [2] - 15982:19, 16010:21 via [2] - 16026:23, 16060:11 vice [1] - 16099:4 vicinity [4] - 15948:21, 15949:1, 15972:10, 16095:18 view [20] - 15907:19, 15918:11, 15921:14, 15923:21, 15927:3, 15929:6, 15932:25, 15936:8, 15937:15, 15939:23, 15940:18, 15940:24, 15941:1, 15944:18, 15945:1, 15947:18, 15949:11, 16054:2, 16055:19 viewed [5] - 15897:24, 15904:18, 15957:23, 15998:13, 16093:20 views [3] - 15918:3, 15950:3, 15984:10 virgin [1] - 16072:15 virgins [1] - 16069:23 visually [1] - 15933:20 Volume [1] - 15893:22 voluntary [5] - 16011:1, 16011:6, 16011:12, 16011:15, 16145:17 volunteering [1] - 16146:21 vs [5] - 16058:10, 16077:21, 16142:4, 16142:17, 16142:25	
U			V		
U-turn [6] - 15924:14, 15924:24, 15948:16, 15949:9, 16001:3, 16001:12 Ullrich [18] - 15897:12, 15908:9, 15908:13, 15908:15, 15912:22, 15978:14, 15984:22, 15988:6, 16033:23, 16035:25, 16044:9, 16044:10, 16067:24, 16068:2, 16085:8, 16101:23, 16126:17 Ullrich's [2] - 15935:1, 16068:15 ultimately [2] - 15897:20, 15989:23 umm [5] - 15980:16, 16032:13, 16066:21, 16129:13 Umm [25] - 15924:23,			V1 [12] - 16051:16, 16052:4, 16052:7, 16052:13, 16052:23, 16053:12, 16054:25, 16057:2, 16061:4 V2 [15] - 16051:15, 16052:3, 16052:6, 16052:14, 16052:23, 16053:12, 16054:25, 16057:3, 16061:4 vagina [1] - 16094:20 vaginal [2] - 16075:10, 16075:11 value [5] - 15959:11, 15959:20, 16055:19, 16074:12, 16082:9 valued [1] - 15919:7 varied [1] - 15997:7 various [8] - 15945:21, 16020:7, 16030:5, 16057:12, 16135:18, 16137:13, 16146:2, 16147:10		
			W		
				wait [1] - 16038:11	



<p>waiting [4] - 16098:3, 16098:17, 16099:15, 16099:24</p> <p>walk [3] - 15958:7, 15970:6, 15996:20</p> <p>walked [1] - 15970:1</p> <p>walking [2] - 15970:4, 16000:24</p> <p>wall [1] - 16079:17</p> <p>wallet [2] - 15937:7, 15980:4</p> <p>wants [3] - 16070:6, 16123:15, 16123:25</p> <p>wants' [1] - 16122:5</p> <p>Wascana [1] - 16019:4</p> <p>Wascana' [1] - 16019:11</p> <p>water [3] - 15943:1, 16069:17, 16069:18</p> <p>ways [1] - 15967:11</p> <p>Weafer [4] - 16028:12, 16029:18, 16032:3, 16087:4</p> <p>weakness [1] - 16139:22</p> <p>weapon [1] - 16095:12</p> <p>wearing [3] - 15938:4, 15938:6, 15958:9</p> <p>Wearing [1] - 15934:22</p> <p>Wednesday [4] - 16057:20, 16122:25, 16125:8, 16147:8</p> <p>wednesday [1] - 16077:15</p> <p>Wednesday' [2] - 16067:11, 16067:12</p> <p>wednesday' [1] - 16076:25</p> <p>week [5] - 16062:20, 16062:22, 16074:2, 16077:3, 16094:16</p> <p>weeks [1] - 16026:20</p> <p>weight [2] - 15906:8, 15947:7</p> <p>Weinmeyer [3] - 16132:24, 16133:19, 16133:20</p> <p>west [5] - 15971:20, 15972:10, 15972:14, 16132:23</p> <p>Westwood [2] - 15924:18, 15972:11</p> <p>whatsoever [1] - 16138:8</p> <p>whereabouts [1] - 16019:25</p> <p>whereas [1] - 15970:8</p> <p>which' [1] - 16126:11</p> <p>white [1] - 16117:2</p> <p>who' [1] - 16016:9</p> <p>whole [2] - 16010:12,</p>	<p>16102:5</p> <p>Williams [10] - 15906:16, 15906:18, 16074:21, 16074:22, 16086:2, 16086:3, 16086:4, 16137:15, 16137:22, 16138:2</p> <p>willing [1] - 16110:11</p> <p>willingly [1] - 16110:15</p> <p>Wilson [168] - 15895:6, 15898:17, 15901:25, 15902:18, 15902:21, 15903:9, 15904:4, 15904:12, 15915:9, 15915:20, 15924:13, 15925:13, 15925:16, 15925:24, 15926:6, 15926:18, 15927:8, 15927:15, 15928:5, 15928:17, 15929:15, 15932:3, 15933:1, 15933:12, 15938:15, 15938:17, 15939:23, 15940:14, 15941:12, 15942:14, 15943:23, 15944:3, 15944:11, 15944:14, 15944:19, 15945:2, 15945:15, 15946:13, 15947:1, 15947:19, 15948:2, 15948:10, 15948:15, 15948:20, 15949:19, 15950:10, 15950:14, 15950:21, 15950:25, 15951:12, 15951:22, 15951:23, 15952:2, 15952:3, 15952:4, 15952:10, 15952:15, 15952:18, 15952:23, 15952:25, 15953:1, 15953:11, 15953:17, 15954:20, 15954:21, 15955:13, 15955:16, 15955:18, 15956:3, 15958:15, 15958:20, 15959:2, 15959:3, 15959:8, 15960:3, 15960:12, 15960:17, 15960:24, 15961:5, 15961:9, 15961:16, 15961:23, 15961:25, 15962:16, 15962:24, 15963:18, 15965:2, 15966:12, 15967:11, 15967:18, 15973:21, 15975:17, 15976:13, 15977:10, 15977:21, 15981:14, 15984:14, 15991:9, 15991:13, 15992:15, 15992:21, 15995:5, 15995:21,</p>	<p>15995:24, 16000:23, 16001:8, 16002:4, 16014:15, 16014:25, 16015:18, 16016:25, 16017:13, 16020:4, 16021:21, 16022:5, 16022:6, 16022:20, 16022:23, 16023:6, 16023:10, 16024:1, 16024:2, 16026:24, 16027:9, 16027:13, 16027:16, 16027:24, 16028:5, 16034:1, 16034:3, 16034:14, 16037:8, 16037:16, 16037:23, 16043:6, 16045:22, 16047:2, 16063:12, 16064:13, 16064:21, 16065:11, 16066:7, 16079:21, 16080:23, 16081:6, 16081:7, 16081:13, 16082:8, 16082:11, 16083:11, 16088:22, 16089:2, 16090:24, 16091:7, 16091:12, 16091:17, 16092:4, 16092:6, 16092:8, 16092:22, 16093:23, 16108:2, 16123:15, 16123:25, 16124:8, 16125:8, 16125:19, 16147:4</p> <p>Wilson' [2] - 16062:12, 16123:16</p> <p>Wilson's [32] - 15903:1, 15903:2, 15903:14, 15940:7, 15943:5, 15944:17, 15945:7, 15946:13, 15948:24, 15949:6, 15954:4, 15955:7, 15956:16, 15958:21, 15960:6, 15961:24, 15962:9, 15975:9, 15976:9, 16001:13, 16003:5, 16015:5, 16015:10, 16023:12, 16024:9, 16034:7, 16045:6, 16055:12, 16091:8, 16092:19, 16093:11, 16093:21</p> <p>window [4] - 15898:24, 15934:13, 15959:10, 15990:17</p> <p>Winnipeg [2] - 16014:4, 16025:13</p> <p>winnipeg [1] - 16025:6</p> <p>wish [11] - 15898:12, 15926:2, 15979:22,</p>	<p>16005:16, 16028:20, 16031:19, 16033:16, 16037:1, 16077:24, 16146:4, 16147:16</p> <p>Wispinski [1] - 16024:24</p> <p>Witness [2] - 15926:11, 16126:16</p> <p>witness [60] - 15908:13, 15909:10, 15912:22, 15912:23, 15912:24, 15913:11, 15913:19, 15913:20, 15914:15, 15914:23, 15918:24, 15922:6, 15938:18, 15940:4, 15950:1, 15968:3, 15968:11, 15968:21, 15968:25, 15971:3, 15971:11, 15971:13, 15973:8, 15975:18, 15985:1, 15986:13, 15988:5, 15988:6, 15988:10, 15989:21, 15989:22, 15989:23, 15990:4, 15995:20, 16033:21, 16043:10, 16044:3, 16045:19, 16047:23, 16050:8, 16051:9, 16057:15, 16059:5, 16059:11, 16068:5, 16074:11, 16084:14, 16098:17, 16099:24, 16102:22, 16105:15, 16111:2, 16111:7, 16114:5, 16115:25, 16126:17, 16141:19, 16142:10, 16142:13</p> <p>witness' [1] - 16126:10</p> <p>Witness' [1] - 16126:13</p> <p>witnessed [18] - 15916:10, 15919:14, 15933:6, 15952:20, 15952:21, 15991:7, 16003:16, 16004:11, 16081:12, 16102:11, 16102:25, 16103:4, 16103:7, 16103:8, 16103:12, 16103:20, 16109:20, 16115:14</p> <p>witnesses [56] - 15904:13, 15911:3, 15911:18, 15922:2, 15927:10, 15932:21, 15938:16, 15939:3, 15939:20, 15941:17, 15953:5, 15953:7, 15962:22, 15963:8, 15968:17, 15968:18, 15969:10, 15974:14,</p>	<p>15977:13, 15978:22, 15980:3, 15981:16, 15981:22, 15984:19, 15984:23, 16034:17, 16035:8, 16035:23, 16044:22, 16045:20, 16047:2, 16057:12, 16057:23, 16058:25, 16059:24, 16060:3, 16062:3, 16062:15, 16062:19, 16062:20, 16064:12, 16068:19, 16098:2, 16111:19, 16116:23, 16118:3, 16118:18, 16118:20, 16121:5, 16125:3, 16127:24, 16130:20, 16139:13, 16140:22, 16141:23, 16147:5</p> <p>Witnesses [1] - 16058:18</p> <p>witnesses' [1] - 16123:5</p> <p>witnessing [4] - 15941:12, 16005:6, 16104:15, 16109:1</p> <p>Wolch [1] - 15895:2</p> <p>woman [1] - 15902:11</p> <p>wonder [1] - 16036:17</p> <p>wondering [14] - 15949:5, 15955:6, 15986:2, 15988:6, 15999:2, 16001:20, 16004:15, 16005:13, 16005:24, 16032:16, 16032:20, 16115:23, 16134:16, 16135:12</p> <p>Wood [5] - 16028:11, 16029:18, 16089:15, 16090:8, 16090:10</p> <p>Wood' [1] - 16090:7</p> <p>word [5] - 15910:12, 15928:23, 15949:18, 15976:18, 16076:2</p> <p>wording [1] - 16100:20</p> <p>words [22] - 15898:8, 15900:11, 15915:22, 15926:20, 15929:2, 15946:10, 15948:21, 15949:12, 15953:1, 15981:21, 15988:22, 15992:5, 15995:24, 16000:2, 16004:10, 16036:12, 16041:11, 16085:5, 16087:23, 16092:10, 16108:3, 16126:19</p> <p>works [1] - 16134:2</p> <p>Works [1] - 16137:4</p> <p>worlds [1] - 15955:1</p>
---	---	--	---	--



<p>worn [1] - 15934:21 worry [1] - 16020:10 worth [1] - 16107:25 wounds [8] - 16000:11, 16064:7, 16075:7, 16075:19, 16085:21, 16085:24, 16096:13, 16097:4 wounds' [1] - 16085:17 write [1] - 16014:14 writing [8] - 16008:1, 16012:16, 16054:8, 16056:7, 16061:5, 16071:10, 16085:12, 16100:19 written [7] - 16056:8, 16082:3, 16082:5, 16090:17, 16090:24, 16094:8, 16109:19 Wrongful [1] - 15893:3 wrongly [1] - 15933:17 wrote [7] - 15990:19, 16012:17, 16014:9, 16036:11, 16044:1, 16098:22, 16100:20</p>	<p>16140:13, 16147:1 youth [1] - 16020:4 Yup [3] - 15956:19, 16006:12, 16080:17 yup [3] - 15901:6, 15909:11, 16068:25</p>
X	
<p>Xs [2] - 15988:4, 15988:15</p>	
Y	
<p>yards [1] - 15973:4 year [1] - 15911:11 yellowish [1] - 16038:24 yesterday [24] - 15897:10, 15897:17, 15897:24, 15898:2, 15902:23, 15908:19, 15910:11, 15910:21, 15913:8, 15913:17, 15922:10, 15926:3, 15958:10, 15974:12, 15996:8, 15997:6, 15999:7, 15999:10, 16004:12, 16035:15, 16043:19, 16043:22, 16117:5, 16117:19 Yesterday [1] - 15897:5 Yorkton [2] - 16010:4, 16010:9 you' [1] - 16110:8 young [3] - 15906:6, 15906:21, 16067:1 yourself [5] - 15912:5, 16009:16, 16130:20,</p>	

