

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
Sheraton Cavalier Hotel at
Saskatoon, Saskatchewan

On Tuesday, December 6th, 2005

Volume 104

Inquiry Proceedings



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INDEX OF PROCEEDINGS

<u>DESCRIPTION:</u>	<u>PAGE:</u>
<u>HOWARD STERLING SHANNON, SWORN</u>	
- MS. MONAR ENWEANI	20930
- BY MS. MCLEAN	20968
<u>IAN MCLAREN MCDONALD, SWORN</u>	
- BY MR. HARDY	20975
- BY MR. GIBSON	21094
- BY MR. LORAN	21101
- BY MS. KNOX	21103
- BY MR. WOLCH	21121



Transcript of Proceedings

(Reconvened at 9:05 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

MS. MONAR ENWEANI: Good morning,
Mr. Commissioner. Our first witness today is
Howard Shannon. Mr. Shannon, please come
forward, and Mr. Shannon is represented by legal
counsel, Mr. Martin Johnson is here with him
today.

COMMISSIONER MacCALLUM: Mr. Johnson.

Right over here, Mr. Shannon, please.

HOWARD STERLING SHANNON, sworn:

MS. MONAR ENWEANI:

Q Good morning, Mr. Shannon.

A Good morning, Vanessa.

Q Thank you for coming and agreeing to testify. Mr.
Shannon, can you tell us where you currently
reside?

A Kelowna, British Columbia.

Q And what is your age, sir?

A 62.

Q And are you presently working?

A Yes.

Q And can you tell me a little bit about your



1 occupation?

2 A Yes. I am still in the same subscription business
3 I was in back in '69, been at it some 44 years.

4 Q All right. And I understand that in 1969 you were
5 working for Maclean Hunter?

6 A Yes, that's correct.

7 Q And what was your position at that time?

8 A I was Mr. F.E. Brown's assistant, Fred was the
9 manager for Maclean's Magazine for the prairie
10 region from -- oh, he was about 45 years in this
11 business. I was his assistant back in '69, his
12 field supervisor.

13 Q All right. And what duties did that position
14 entail?

15 A Right. It really involved supervising some sub
16 supervisors that were working for Maclean's. It
17 involved managing the direct field sales marketing
18 teams.

19 Q All right. You had your own sales crew then at
20 the time did you?

21 A I was responsible for one that sort of came
22 directly under me, as well as three or four other
23 young guys, like Roger Renaud, for example, I
24 think there were two more besides Roger at the
25 time.



1 Q All right. And I take it that your position
2 involved quite a bit of travel?

3 A Yes, it did.

4 Q And that was exclusively in Western Canada?

5 A Yes.

6 Q All right.

7 A At that time.

8 Q Okay. And I understand that in the course of your
9 employment you came to meet David Milgaard; is
10 that correct?

11 A Yes, I did.

12 Q And do you recall when you first met David
13 Milgaard?

14 A Yes. It was here in Saskatoon. I had come in
15 from Edmonton and Roger Renaud, who was a sub
16 supervisor, had come in from, I think he had come
17 in from Regina, but just prior to that he had been
18 in Manitoba, and I drove in here to Saskatoon to
19 the motel that they were staying at and we were
20 staying and that was the first time I saw David
21 Milgaard. He was sitting up and -- it was an
22 older motel that had a motel on one side, a motel,
23 and you drove through the, underneath sort of a
24 canopy type of thing and David was sitting up
25 there with another boy playing a guitar. I drove



1 in and he was just a young kid. We started to
2 unpack and I was looking at these two young guys
3 up there and I was about to ask Roger about it and
4 the police drove into the motel and Roger was busy
5 with them and I was busy unpacking. The police
6 took one of the young guys away. It turned out to
7 be David Milgaard.

8 Q All right.

9 A Yeah.

10 Q At the time did you have any idea why the police
11 wanted to question him?

12 A Not right then I sure didn't. I asked Roger, I
13 went over and asked him what it was all about and
14 he told me that, about this murder that had
15 happened and he told me that they were questioning
16 this young guy and Roger was, you know, he said he
17 didn't do anything like that at all, just
18 something was really wrong, and that was how we
19 kind of left it, and I went on about the business
20 of unpacking, I remember I was having some
21 problems with one of the trailers, and a short
22 time after that Roger, I would say maybe an hour,
23 hour and a half, he got a call, I'm not sure from,
24 whether it was the police or from David, and we
25 went to the police station to pick up David.



1 Q All right. In terms of when this happened, do you
2 have a recollection --

3 A Yes.

4 Q -- of the time or the date?

5 A I don't have a recollection of the exact date, no,
6 but this all happened at the same time when I
7 drove in and it was in the middle of the day sort
8 of thing.

9 Q We've seen documents that indicate Mr. Milgaard
10 was questioned by the police in Saskatoon in April
11 of 1969.

12 A That would be right, yes.

13 Q All right.

14 A So we went to the police station to pick him up
15 and we met with a policeman up there and he was an
16 older man, I don't know his name, but he was a bit
17 of a crusty old guy, I guess we all get a bit
18 crusty as we get older, but he had a very
19 different -- he kind of was looking at him as
20 being kind of a cool kid when in fact I remember
21 sitting and listening to him talking with the boy
22 and talking with Roger and my impression was that
23 he wasn't a cool kid at all, he was just a kid
24 trying to -- just a kid defending himself kind of
25 thing, you know.



1 Q You went --

2 A He wasn't cool, not a bit, but that was the
3 impression that the chap, you know, the detective
4 I presume he was.

5 Q The purpose for going to the police station at
6 that time, was that to pick up David?

7 A Pick him up and bring him back to the hotel, yes.

8 Q All right. Once you had left the police station,
9 did you have any discussion with David Milgaard?

10 A We probably had some discussion, but I don't
11 recall what the discussion at that point, from the
12 police station back was. Roger and I had talked
13 going down to the police station about, you know,
14 my feelings were that even being questioned about
15 this -- just a few years prior to that Tony
16 Merchant and Howard Adams from Toronto, our head
17 office at Maclean's, and Fred Brown were very
18 involved in setting up the Direct Sellers Act here
19 in Saskatchewan, it was the first Direct Sellers
20 Act in the country, and they were adamant about
21 the type of people that would be canvassing and,
22 you know, they were very concerned to make sure
23 that they qualified to be licensed properly in the
24 province, and I told Roger how I thought, you
25 know, even being questioned about something like



1 that, perhaps we should just let him go and at
2 least tell Fred Brown about this.

3 Q And you did speak to Mr. Brown?

4 A Yes, we went down that week. Roger was put off
5 that I felt that way because he really liked this
6 young guy and had had him for a few months, which
7 I wasn't aware of at all, I never really was aware
8 of who was working with Roger over in Manitoba.
9 We went down to see Fred and I told Fred what I
10 knew of it and Fred asked me what I thought of the
11 boy and I said 'I think he's just an innocent kid,
12 I don't think he had anything to do with it,' is
13 what I told Fred, but I said 'you make the
14 decision,' and Roger spoke with him and Fred
15 called me into his office and Roger was still
16 there talking with him and Fred said, you know, 'I
17 think that you are right, Howard, I think it's
18 probably better that we do let him go.'

19 Q All right. So he was let go for a period of time?

20 A Yes.

21 Q And he rejoined you later on; is that correct?

22 A Yes. Fred moved the marketing team to Edmonton
23 and it wasn't very long after we were up in
24 Edmonton, perhaps a week or two weeks, we got a
25 telegram, you know, it was the last of the days



1 where they pedaled up to the motel with a
2 telegram. It was words to the effect that David
3 Milgaard was arriving with his brother on such and
4 such a train at such and such a time and you are
5 to pick him up sort of thing and we are going to
6 employ him, and his mother has been in to see me
7 and it was quite a lengthy thing, you know, he was
8 adamant that I was to pick him up and that was
9 that and employ him. His mom had come in and was
10 quite put off that he was fired for really no
11 reason, you know, and threatened to go to the
12 labour board, I recall something in there about
13 the labour board or labour relations or something
14 to that effect, but at that point that was the
15 telegram.

16 I believe Roger went down and
17 got the boys and I recall when they got to the
18 motel David was very happy, like, he was a very
19 happy kind of kid, and Roger had two of his, his
20 two little young boys there and I recall seeing
21 David with the young boys, just, like, baby boys,
22 you know, Darcy and Keith were very young, and
23 David was so pleased to see these two little boys,
24 you know, and he was just a kid himself. Like I
25 say, we had so many, many of them started very



1 young canvassing in those years, and he just
2 seemed like a very normal kid, happy to be back at
3 his job. That was that.

4 He was -- unlike things I had
5 read about him about being around girls, he was
6 just a super kid around the girls, he was very,
7 very nice and polite when I was there and I never
8 saw David to be anything other than a very
9 typical -- I have a 16-year-old myself, came a
10 little late in our life, our third child, but he's
11 16 and really my 16-year-old is not much different
12 than Mrs. Milgaard's 16-year-old.

13 Q Mr. Shannon, you speak of being in Edmonton. Do
14 you recall being in Prince George in May of 1969?

15 A Yeah. That was --

16 Q And can you tell me what you recall about May 30th
17 of 1969?

18 A When he was arrested, yes. Well, we got a
19 telegram, of course we always got a telegram to
20 move the team wherever Maclean's wanted the
21 demographics, they would move these marketing
22 teams, and dispatched us to, I think the itinerary
23 was Prince George -- Kelowna, or Kamloops rather,
24 those two cities, and we left for there. We
25 weren't there very long, I think only a few days



1 when we had arrived and I got a call from Fred
2 Brown really early in the morning, I think it was
3 around six o'clock, 6:30 in the morning, and
4 Torchy Schell, Sergeant Torchy Schell was on the
5 phone with him. Torchy Schell was a fellow that
6 we had all come to know, or at least I had, he was
7 an RCMP officer, but he was also kind of a scout
8 for the Leafs back in those days, and in those
9 years we travelled throughout the province and we
10 would always run into Torchy, you know, he would
11 be at the Estevan games or the Weyburn game or
12 something like that, so I knew him reasonably
13 well, and of course he would kid with me often
14 about the direct sales kids and the problems that
15 he would perceive that they were and that sort of
16 thing, but he was a very nice man, and he called
17 me, along with Fred Brown, and told me that -- he
18 asked me first if I had David Milgaard with me and
19 I assured him I did.

20 He told me that he had to know
21 where I was staying. I told him where we were
22 staying, about seven miles out of Prince George,
23 north on highway 97 and the name of the motel, and
24 he said, 'look, Howard,' he said, 'we've got a
25 warrant for murder for this David Milgaard.' I



1 said -- gee, I don't know what I said to him,
2 something like 'you've got to be kidding' or
3 something like that, 'the kid couldn't kill
4 nobody,' you know, nothing like what he was
5 accused of, and him and Fred talked with me about
6 it. He said he would like to send the police out.
7 I told him not to do something like that, I said
8 Roger's children are here, we had a whole pile of
9 the young girls here, I said that would be just a
10 terrible thing to do, I said 'I'll just go wake
11 him up and take him in,' and he said no, he said,
12 you know, it's murder and on and on and that sort
13 of thing and I said, you know, 'Torchy, you guys
14 have just got this one really wrong, it's just a
15 kid here, it's nothing like you think,' so he
16 agreed, he said, 'well, you know, I can't stop
17 you,' sort of thing, something to that effect, he
18 was actually kind of agreeable, and Mr. Brown
19 certainly was.

20 So I think I woke Roger Renaud
21 up and told Roger what the circumstances were and
22 I believe that Roger went and talked to him. I
23 know I got showered and got cleaned up and Dave
24 got cleaned up and just everything was quite
25 normal. I went and saw the motel owner because he



1 had been peaking through the window, I presumed he
2 had been listening to the telephone call, and I
3 recall talking to Roger about getting David's
4 young brother sent home right away on a bus, also
5 I talked with him about taking over the sales
6 staff, where to send people, that kind of thing.

7 David joined me, I told David
8 what the circumstances were. I don't think he had
9 any -- I don't think the idea of a warrant really
10 sunk in, what that meant to David. I understood
11 they were going to arrest him, a warrant being a
12 warrant.

13 Q You specifically told him that there was a warrant
14 out for his arrest?

15 A Yeah, I told him about the whole phone call, I
16 told him everything, and Mr. Brown had called and
17 explained everything to him, including what
18 Sergeant Schell told me, so David said -- and I
19 told Dave, I said "Dave, the best thing is to go
20 in there and get it cleaned up and, you know, it's
21 obviously a mistake, and deal with this". David
22 wasn't too friendly about me, you have to
23 remember, because I -- he looked at me as a
24 16-year-old, I was the fellow who kind of let him
25 go, you know, causing his mum to have to, you



1 know, or his mum was quite ticked about it and
2 made sure that the young guy got his job back, you
3 know. So going into town, I mean the only thing I
4 do remember about going into town is his attitude,
5 he had a very -- he was a really nice kid, he
6 wasn't -- he had a little bit of a chip, you know,
7 trying to be around the other boys, but when he
8 was with me he was a very, very nice kid, and he
9 said "Mr. Shannon, I didn't do this", you know,
10 that kind of talk, you know, and I said -- I told
11 him I didn't believe he did either.

12 We got to the police station,
13 and it wasn't a very good situation then, they --
14 we, Dave and I went in there and I explained to
15 them who David -- David had come in to surrender
16 and to deal with this warrant for murder, and the
17 fellow asked -- talked to David a little bit, and
18 then I told him about the phone call, and he went
19 away and came back and he said "no", he said, "we
20 don't have anything like that here". So David
21 kind of got upset at me then, he says "well what
22 in the, you know, heck are you doin'", you know,
23 and he was really put off at me, and he was going
24 out the door. I said "David, just a minute", you
25 know, I said to the guy, I said, "you go and call



1 this Sergeant Torchy Schell". What took place
2 then was unreal. David was standing off to one
3 side, kind of put off with me, and I was standing
4 on the other side, and the police came running
5 around, several of them, about six of them at
6 least, and jumped right over top of the counter,
7 great big, huge police, pounced on David and
8 myself, and they brought out leg irons and put
9 them around his legs up here above his knees and
10 down below on his ankles, or big, huge, giant
11 handcuffs type of thing, and he was just a little
12 guy, 16. So, I mean, you to have picture this,
13 you know, it was -- and of course the big fellow
14 who was over me, he was -- he didn't hit me but he
15 was sure prepared to, I'll tell you.

16 Q Yeah.

17 A We -- they took him away and told me to leave, and
18 basically that was it. And David was mad and
19 uttering stupid stuff and, you know, and -- but
20 you could see the kid was just totally terrified.

21 Q Yeah. So you, I take it then, returned to the
22 motel in Prince George?

23 A Yes, I did.

24 Q And was your understanding that David was being
25 taken back to Saskatoon?



1 A I didn't know what was happening at that point. I
2 just assumed that. I tried to reach Mr. Brown all
3 that morning and didn't have any success at all.

4 Q All right. That, I take it, would have been the
5 last time that you saw David Milgaard?

6 A I saw, the last time I ever saw him, I saw him one
7 more time after that in my life.

8 Q All right. Umm --

9 A But that was the last I saw him that day.

10 Q Right.

11 A That day, what did happen that day was the radio
12 station was, it was such a big thing on the radio,
13 every 15, 30 minutes they would come out with how
14 he was captured up there, this went on for hours
15 and hours, and in those days Prince George wasn't
16 a very big place, you know. But I, finally I
17 phoned the radio station and told them that he had
18 not been captured, he had come in and surrendered,
19 and about an hour later these two big policemen
20 came out, they were native policemen, great big
21 fellows, one of them that had kind of lumbered
22 over me, and told me to get this bunch of rabble
23 the heck out of this community, and "do it now",
24 kind of thing. So we packed, I packed everyone up
25 that evening and re-organized everything, I had



1 gotten hold of Mr. Brown and he was really upset
2 about that, and we had re-organized all these
3 young people and got out of there.

4 Q All right. After 1969, do you recall what your
5 next involvement in this matter was?

6 A Yeah. It was just a coincidence of -- in all the
7 world. My girlfriend, became my wife, that we
8 were coming in from Thunder Bay, I had been
9 transferred to Toronto shortly after that, and I
10 was working out of our Maclean's head office, and
11 --

12 Q What time was this, or what year, do you have a
13 recollection?

14 A This was about the early '70s, the very early
15 '70s, the first time I think I met Mrs. Milgaard
16 then. It was just a coincidence in a million. We
17 came in to see one of my supervisors in Winnipeg
18 that was living at a thing called the South Winds
19 Apartment Block, and it was on the Pembina
20 Highway, and we came in, it was late at night, we
21 were really tired, we had driven a long way, and
22 stopped in to see Barry LaForge, and he was with
23 Mrs. Milgaard in the hallway. And Mrs. Milgaard
24 confronted me, I had never met Mrs. Milgaard in my
25 life, but she was -- she was very distraught, she



1 was very upset at me, that -- telling me that she,
2 that her son was innocent and all that sort of
3 thing. And of course Roger Renaud had gone to all
4 of these trials because he was -- he knew. He
5 knew, you know, he really was involved there, but
6 I hadn't. I didn't know anything after, I had
7 never seen David again and I had never been to any
8 trials or nothin' like that, and I had certainly
9 never knew Mrs. Milgaard, but here this little
10 lady was in the hallway, and it turned into a
11 terrible situation, she was crying and her -- I
12 believe she told me then, or possibly the next
13 time, that her husband had left her up in Northern
14 Saskatchewan, some town, Langenburg, she had no
15 money, and her son was sentenced to life in prison
16 under something, and it was -- it was terrible.
17 We went into Barry LaForge's apartment, this went
18 on for a long time, she was -- she -- it was the
19 most pitiful thing you had ever seen, my
20 girlfriend was crying, we were all, we were so
21 upset.

22 Q At that time did Mrs. Milgaard request assistance
23 from you?

24 A She did. She had nothing. I think we gave -- my
25 wife says we gave her \$500 so -- I recall giving



1 her some money I think to help at that time, but
2 it was a personal thing, like nothing to do with
3 David, it was a personal thing. I never saw
4 Mrs. Milgaard again until some years later she
5 contacted me again, and this time it was more to
6 -- a sensible, a much more sensible of a
7 conversation, but she needed help to try to get a
8 lawyer and to try to do some things to try to
9 constructively help.

10 Q And do you recall when that meeting --

11 A That would have been in about, I would think, '77,
12 '70 -- '77-'78, somewhere right in there. And I
13 did help Mrs. Milgaard then, and I thought that
14 was the end of it, I didn't think there was any
15 more to it. I never saw David or anything after
16 that, I always -- my wife and I just often thought
17 of this young guy.

18 Q Right. If we could call up doc. ID 155237.

19 A On the screen?

20 Q Yeah.

21 A Oh, I'm sorry, okay.

22 Q Mr. Shannon, your name appears at the top of this
23 document with the date of February 3rd, 1981?

24 A That's better. Okay. 1981?

25 Q Yes.



1 A Okay.

2 Q And I understand you have had a chance to review
3 this document?

4 A Yeah, I read that, --

5 Q Yes.

6 A -- with you.

7 Q And would I be correct in assuming that this is a
8 transcript of a phone conversation?

9 A Yeah. That was the third time that I heard from
10 something connected with David was this Peter
11 fellow. He was a --

12 Q Peter Carlyle-Gordge?

13 A Yeah, that was the name, Peter Carlyle-Gordge. He
14 contacted me and we had -- I'm just, I see the
15 date there, but I -- it seems to me it was much
16 earlier, but it's certainly possible. We -- he
17 contacted me, we had quite a discussion, like what
18 had happened. I explained to him that David had
19 come in and surrendered and, you know, had done
20 whatever was involved there.

21 Q Did he contact you out of the blue?

22 A Out of the blue, yeah, and he told me that
23 Mrs. Milgaard had told him about me and we had
24 quite, quite a very lengthy conversation in
25 person. I don't recall this particular telephone



1 conversation but, having looked at all the things,
2 it's exactly what I would have said, you know. I,
3 he says I took him down there, but as far as I was
4 concerned it was strictly voluntary. It certainly
5 was. He didn't -- he wasn't captured, for
6 goodness sakes, he -- I told him what was
7 happening and he came in and voluntarily
8 surrendered, that was the end of the situation.

9 Q So this document accurately reflects the
10 conversation that you would have had --

11 A Yes.

12 Q -- with Mr. Carlyle-Gordge?

13 A Very much, yeah.

14 Q All right.

15 A There is a few things I could add about it, but --

16 Q Umm, I don't intend to go through the document
17 with you in detail, but I would like to ask you
18 about a few portions of the document.

19 A Yeah.

20 Q If we can turn to doc. ID 155239, the bottom of
21 the page reads:

22 "Do you remember anything that David
23 said at the time, in Prince
24 George?"

25 "No, just that he said that he didn't do



1 it and that was all there was to it.

2 And, you know, he insisted on it."

3 And the next page, 155240.

4 A Uh-huh.

5 Q This appears to be you speaking, you say:

6 "Yeah, and, uh, when I told him that
7 this time it was a warrant for his
8 arrest, he just said to me 'Mr. Shannon,
9 I'm just innocent; I just didn't do
10 that.' you know. And that was basically
11 his attitude."

12 A Yeah, that's just basically the way it was. Many
13 of you, I'm sure, have 16-year-olds, and he was
14 just a young boy, it was obvious to anybody that
15 he didn't -- could not have done any such a thing.

16 Q If I could take you further down the page.

17 A Uh-huh.

18 Q "Do you recall anything about that time
19 in Saskatoon? (discusses rapes)",
20 And I believe that's Peter speaking, and your
21 answer:

22 "Yeah, there was a couple of very
23 similar, prior to this thing,,,2 of them
24 I believe. It was during those years
25 (60s). In Saskatoon there was a great



1 deal of hysteria about it, there really
2 was. And I don't know, I remember that
3 police that questioned him in Saskatoon,
4 they -- it was a pretty tough old
5 seasoned cop. you know, and he said to
6 me something to the effect that 'this
7 kid is so cool', you know. (can't
8 recall his name). I just remember he
9 was a pretty callous old guy and he said
10 to me 'This kid is so cool'. But
11 somehow or other, I remember thinking at
12 the same time that he had the kid
13 figured wrong, that the kid was cool
14 alright, but it wasn't because the kid
15 was 'smart' or was sneaky or anything,
16 or outwitting him -- It was just a case
17 of plain naive. If you understand what
18 I mean. They felt the kid was something
19 other than what he was."

20 And --

21 A That's just the way it was.

22 Q -- I just want to ask you, here, you mention being
23 aware of prior rapes; can you tell me --

24 A Well Mr. Brown, you know, Fred Brown, you know,
25 our -- the Regional Manager from Mclean's, he



1 would keep us aware of anything of significance
2 because we had young girls canvassing in the
3 province and throughout Western Canada, so any
4 kinds of incidents to do with direct sales,
5 licensing, problems, issues, Fred would make me
6 aware of these various things regardless of if I
7 would be say Edmonton, Calgary, wherever I would
8 be he would send us out pretty comprehensive
9 information, as he had it, to make us aware.

10 Q At that time did you have any understanding of why
11 you were being asked of your knowledge of these
12 prior rapes?

13 A You know, I don't -- I don't recall that. Just
14 the -- you know, we were made aware by Maclean's
15 of situations because we had a lot of young people
16 canvassing, and so it was important that we knew,
17 you know, whatever was an issue such as something
18 like that.

19 Q All right. If I could -- if we could bring up
20 doc. ID 332564.

21 A Okay.

22 Q Mr. Shannon, this appears to be a note of a
23 telephone conversation between yourself and Mr.
24 Merchant, I believe Mr. Merchant has identified it
25 as such, and it's dated April 28th, --



1 A Uh-huh.

2 Q -- the year isn't on it but the document is from
3 1981; do you recall contacting Tony Merchant at
4 this time?

5 A Yeah.

6 Q And for what purpose?

7 A What happened was that in my discussion with this
8 Peter Carlyle-Gordge, he seems to have deleted out
9 a good portion of this transcript that he has,
10 telephone conversation or the -- or even the
11 meetings that he taped. We discussed helping
12 David and Mrs. Milgaard and how to go about doing
13 it was, you know, in my opinion the --
14 Mrs. Milgaard had kind of used the money as wisely
15 as I'm sure she felt she should use it with a
16 lawyer, I'm not sure the chap's name, but I felt
17 that they should have used -- that maybe, if we
18 were going to continue to try to help her, I asked
19 you to -- Peter to contribute money and that I
20 would go half if he would go half sort of thing,
21 you know, I was certainly prepared to help out a
22 bit, and that portion, I haven't been able to find
23 that, he deleted it or whatever, but he told me he
24 did not want to contribute financially, he wasn't
25 in any position to do that. I told him -- and,



1 ironically, Roger Renaud had just come back a
2 short time before that and Roger and I had talked
3 about that they needed to get somebody like a Tony
4 Merchant. And the reason I had suggested Tony
5 Merchant, he had been Maclean's lawyer for many
6 years and he was a great young fellow and a really
7 smart young, you know -- in my opinion he had --
8 one of the very bright guys, and I explained that
9 to Peter, that this man really was a very good
10 person and possibly the best that they could get
11 because he had some great connections, and I told
12 him I'd have to speak to Mr. Brown. I wasn't
13 working for Fred at that time, or Fred had
14 retired, I should say, and I had started my own
15 company in '76, so I told him that I would speak
16 to Mr. Brown to see if I could -- if it was all
17 right for me to speak to Tony Merchant. So I did,
18 and Mr. Brown was a bit put off that I had gotten
19 myself involved in all this again, but he did
20 agree that Tony Merchant would be the best person
21 for me to see, and that's why I went ahead and
22 pursued it and contacted him. And in terms of the
23 deposit, it was just exactly what it was, a
24 deposit. Umm, it --

25 Q Well --



1 A We -- I explained to him everything, I told him
2 about this Peter trying to help, Mrs. Milgaard's
3 attempts to try to do what she could, and he
4 agreed to do what he could do, and we had a, about
5 a seven-year relationship after that, you know,
6 there was --

7 Q Was the idea for Mr. Merchant to assist in any way
8 possible or were there -- was there a specific
9 objective in terms of --

10 A Well, to assist in any way possible really was,
11 from my perspective, you know, --

12 Q All right.

13 A -- to try to get this young guy out of there, you
14 know.

15 Q All right. If we could bring up doc. ID 332575.
16 Mr. Shannon, this is a letter dated June 4th, 1982
17 to you from Tony Merchant.

18 A Can you blow it up for me?

19 Q Just reading from the first paragraph:

20 "There are, as you know, a number of
21 curiosities about the *Milgaard* case. We
22 have not, however, been able to
23 establish any sort of breakthrough."

24 And down at the bottom of that page:

25 "I am continuing to work under the



1 direction of Mrs. Milgaard."

2 Is it fair to say that you weren't instructing
3 Mr. Merchant?

4 A No, I wasn't instructing Mr. Merchant at all, I
5 totally left it to him. And he had, he was
6 working with Mrs. Milgaard and with this chap
7 Peter from -- the writer, and really that was
8 basically the way it was going, although Tony and
9 I talked a fair amount, he kept me abreast of what
10 was happening, that's for sure.

11 Q Through reporting letters?

12 A Umm, not just letters, lots of telephone calls,
13 lots of, you know, telephone conversations. He,
14 as the years went by he had -- he became, I think,
15 quite frustrated with Mrs. Milgaard, he -- he
16 alluded that to me, like you know, he alluded that
17 to me. He was having a very difficult time, I
18 think, in trying to assist because of some perhaps
19 personality conflict or something, I really never
20 understood what it was all about, but I could tell
21 that Tony was very, very upset from time to time,
22 you know, with his efforts to try to help and get
23 this matter dealt with, you know.

24 Q Okay.

25 A That was the way I heard it.



1 Q If we could bring up doc. ID 012907. Mr. Shannon,
2 I believe this is a copy of a letter which you
3 wrote, it's dated April 20th of 1983, and it
4 appears by this letter you are making an offer of
5 employment to Mr. Milgaard; do you recall writing
6 this letter?

7 A Yeah. *(Witness reading)* Yeah, what happened was
8 in the early, like as I mentioned earlier, about
9 '79 Renaud came back to work, he was bilingual and
10 he approached me to do a contract with us and he
11 wanted to work in Quebec and that worked out. He,
12 he was very much in touch with David Milgaard and
13 saw him a lot, he would travel up to the
14 penitentiaries to visit him and that sort of
15 thing. One particular time I was in Kingston with
16 Bob Clark, one of our supervisors that came from
17 Kingston area, and Roger asked me to go along with
18 him to -- if I'd like to, and I told him sure I'd
19 come over, so I went over and visited with David.
20 It was a quite an experience, and Roger seemed to
21 have a great rapport with him, and I was just
22 quite shocked about some things, you know. But in
23 terms of this letter, he had gotten shot or
24 something like that, trying to break out or
25 something. It was the idea that to try to get him



1 a parole, like you know, to try to get him out,
2 you know, he had served so many years.

3 Q Uh-huh.

4 A And it was the only time I ever saw David Milgaard
5 from the time when the police had arrested him,
6 and I don't know if many of you have been to a
7 penitentiary, I hadn't, and it was really quite a
8 sight, quite a thing.

9 Q Uh-huh.

10 A He was absolutely a young man growing up in a --
11 the wrong place, and it was quite a situation, I
12 felt really compelled to try to get him out. And
13 in addition to this letter, there was another call
14 from Tony regarding this sort of thing, where he
15 had been involved in drugs in the penitentiary for
16 some period of time and wasn't even able to speak,
17 I think, with Mr. Merchant, you know.

18 Q Perhaps I could refer you to a document. If we
19 could bring up document 217537, --

20 A Uh-huh.

21 Q -- Mr. Shannon, this is a copy of a letter dated
22 October 25th, 1983 addressed to you, it's from Mr.
23 Merchant.

24 A Okay.

25 Q Perhaps I'm mistaken, I believe the doc. ID that I



1 am looking at is 219537. Thank you. Mr. Merchant
2 writes:

3 "I am sending a copy of this letter to
4 Mrs. Milgaard. She probably already
5 knows about the difficulties which arose
6 on approximately October 11.

7 By the 11th of October David
8 was noted by the staff to be
9 uncommunicative and essentially somewhat
10 'spaced out'. This situation had
11 apparently existed for some time before
12 that date but the problem was
13 sufficiently serious that by October 11
14 he was told to stay in his cell for the
15 day. Drugs are quite common in the
16 institution and it was thought that he
17 might simply have been on some kind of
18 drugs or having problems as a result of
19 involvement with drugs.

20 By Thursday it was apparent
21 that he was not having a drug problem
22 but that there was a mental breakdown of
23 some sort and on October 14 he was
24 transferred to a psychiatric centre. He
25 is now under medication."



1 A Uh-huh.

2 Q And if we turn to the next page, 219538, Mr.
3 Merchant writes:

4 "The incident will set back David's
5 release by a very considerable period of
6 time. That remains to be seen and I
7 quite frankly intend to wait a month or
8 so before even contacting Mr. Steinburg
9 once again."

10 A Yeah. Well, I took a bit of a dim view about
11 that, I didn't -- I wasn't too pleased about it.
12 However, you know, my wife had a different point
13 of view, and my wife and I talked about this, and
14 at that time -- and she felt that if we didn't get
15 him out of there, that he might commit suicide,
16 and that kind of -- Linda and I, by that time, had
17 been -- made quite a commitment that we were going
18 to do what we could.

19 In addition, Roger Renaud had
20 contributed some monies to help us with some of
21 the costs, which really was pretty darn good
22 because he was a single dad with two little kids
23 out there in Quebec, and so Roger did what he
24 could to help, which was excellent, really, and he
25 was a person who genuinely believed in this kid.



1 Q Uh-huh.

2 A Roger was a fellow who was a street-smart sort of
3 young guy, to tell you the truth he's the type of
4 fellow that could read somebody at 100 paces with
5 his eyes closed, I've never met a guy like Roger
6 Renaud. But he was very much in favour of trying
7 to help this young guy, I can tell you, --

8 Q If --

9 A -- and this was the period of time when Roger
10 was -- really came up to the plate, you know.

11 Q If we can bring up doc. ID 216123. Mr. Shannon,
12 this again is another letter addressed to you from
13 Mr. Merchant dated February 27th, 1984, and at
14 this time he is writing:

15 "I don't know whether you want to
16 reconsider financing David's situation."

17 At some point had you made a decision --

18 A Well I think that probably was part and parcel of
19 my dim view.

20 Q Right.

21 A You see, I talked with Tony about it and explained
22 to him, you know, how I kind of felt about that,
23 they all knew how I felt about that, but I
24 also understood from -- you know, I had taken into
25 account the fact that he could have committed



1 suicide, you know, --

2 Q Right.

3 A -- and I -- we continued on with everything.

4 Q Yes.

5 A Yeah.

6 Q If we could bring up doc. ID 216145. Mr. Shannon,
7 this appears to be an invoice --

8 A Uh-huh.

9 Q -- sent to you, it's dated March 15th, 1986 from
10 Mr. Merchant. Although there are no fees billed,
11 just disbursements, --

12 A Uh-huh.

13 Q -- this is the last document that I'm aware of --

14 A Uh-huh.

15 Q -- in terms of correspondence between you and Mr.
16 Merchant; do you recall the relationship with him
17 ending at this time?

18 A No, it ended in '87, toward the -- sometime in
19 1987 is when it finally finished.

20 Q And how did it end?

21 A Well it ended in the -- it ended in this respect.
22 Tony had done so much work, like I paid for a
23 considerable amount of work, of course, and it
24 would -- and it may appear like it was a good deal
25 of money, and I suppose it was at the time, but he



1 had done -- and I stress this -- yeoman's work.
2 He did five times the monies that he ever billed
3 me for. He, Mr. Merchant was unbelievably
4 committed to this, he -- the more he got into it
5 the more he was determined to see it through, and
6 he was very, very disappointed in the end with his
7 relationship -- and I hate to say this -- but with
8 Mrs. Milgaard. He was just frustrated, and I felt
9 that, and I guess I should just come out and say
10 it, he was -- he had reached practically the end
11 of his rope, I think, with it all, you know. I
12 didn't really -- I just left it up to him, I told
13 him that -- I don't recall the discussion on
14 whether to continue or not to continue, but I do
15 recall leaving it basically up to Mr. Merchant.

16 Q All right.

17 A You know, we left it open, I mean I think if he
18 would have come back to me and said there was hope
19 I'm quite sure -- by that time, you know, I was
20 doing quite well with my -- my business had grown
21 considerably and we had -- you know, there were
22 times during this period that I would like to say
23 that I -- there was, you know, we had our oldest
24 son born, my youngest daughter born, there was
25 some tough times with all this stuff, but we



1 managed reasonably well, and were able to see our
2 commitment through. And I was inspired by two
3 people, Roger Renaud's commitment, Roger being a
4 different sort of chap, but Mr. Merchant's
5 commitment was tremendous.

6 Q If I could just refer to a page of Mr. Merchant's
7 testimony from last week, it's page 20475.

8 A I haven't seen anything, I haven't read any of Mr.
9 Merchant's --

10 Q No, I just, I have one quick question for you,
11 Mr. Shannon.

12 A All right.

13 Q Mr. Merchant mentioned, at the middle of the page
14 here, he states:

15 "... and I asked him how he knew him,
16 what the relationship was, and David had
17 worked for him when David was illegally
18 at large in Toronto."

19 There, Mr. Merchant is speaking of how you came
20 to know David; is this correct?

21 A How I came to know him?

22 Q Yes. You didn't have any association with
23 Mr. Milgaard in 1980 during his escape?

24 A No, no, heavens no.

25 Q All right.



1 A Nothing like that at all.

2 Q If we could bring up doc ID 269317, Mr. Shannon,
3 this is a copy of a book written by Mrs. Milgaard
4 called "A Mother's Story, The Fight To Free My Son
5 David," and if I could just refer you to a passage
6 in the book starting at page 269423, Mrs. Milgaard
7 writes:

8 "Our detective work took a bizarre twist
9 when a businessman who had worked with
10 David at Maclean Hunter offered to pay
11 our legal bills. The only condition was
12 that we had to drop our lawyer, Gary
13 Young, and higher high-profile Regina
14 lawyer Tony Merchant. The reasoning, we
15 were told, was that Tony Merchant, the
16 son-in-law of federal Liberal cabinet
17 minister Otto Lang, brought with him
18 much-needed political connections. We
19 were very happy with Gary Young, but the
20 offer seemed generous and the money was
21 badly needed. Besides, perhaps a
22 political insider might pull some
23 strings and there was clearly a
24 political dimension to David's
25 predicament. It wasn't until a few



1 years later that we learned that the
2 businessman, whom we considered so
3 generous, had actually applied to
4 collect reward money for urging David to
5 turn himself in to the police back in
6 1969. Was he now suddenly feeling
7 guilty? Or was he trying to trick us?"
8 Were you aware of this passage in Mrs. Milgaard's
9 book prior to today?

10 A Yes. A few years ago I was at a health club and I
11 picked up her autobiography, or what I thought was
12 her autobiography, and I thought I would read it
13 because I never heard from Mrs. Milgaard after.
14 There was an occasion where Mrs. Milgaard
15 approached me while she was working with Mr.
16 Merchant to ask for some special assistance to
17 deal with a private investigator I believe and she
18 wanted to go to Vancouver to, and required monies
19 to do that, and it was a considerable amount of
20 money because it was a very, very important thing
21 to her to investigate this young lady, I don't
22 know the name. I had never heard from Mrs.
23 Milgaard after that meeting, I had actually never
24 saw her again until today.

25 Now, this, I picked up this book



1 and I can tell you that in the first book, there
2 was another book written where Mrs. Milgaard
3 referred to me as an angel and I thought that was
4 very, very nice. However, she wasn't supposed to
5 tell a soul that I was doing this and funding this
6 situation.

7 Q You had asked that your name not be disclosed?

8 A Yes, that's right, and in terms of their remarks
9 about the political dimensions and all this and
10 Mr. Merchant, I never saw him as a high profile
11 fellow at all, I saw him as a very smart young
12 lawyer working for Maclean's that I felt would be
13 in the best position to help Mrs. Milgaard, and I
14 talked with, as I said earlier, with Mr. Brown to
15 make sure he felt the same way and that it was all
16 right with him that I approached Maclean's lawyer,
17 so that part of it. Now, in terms of this other
18 business of this reward, that devastated me, it
19 devastated me.

20 Q You had never applied at any time for the reward?

21 A Never ever, ever -- I don't even know if I knew
22 there was a reward. In fact, when you told me it
23 three days ago, you said to me the police had a
24 reward for \$2,000 and the police were the ones who
25 called me to see if David was working and David



1 voluntarily went in and surrendered, so I could
2 not imagine how they would want to reward me for
3 that. I never applied for nothing. I knew
4 nothing and applied for absolutely nothing, and
5 this morning Mrs. Milgaard apologized to me for
6 that and I gratefully accept her apology. I must
7 say that at the time it devastated me and my
8 family. I was shocked. I'm very appreciative
9 that Mrs. Milgaard acknowledged this. I don't
10 know where she is here, but I thank you again,
11 Ms. Milgaard, I appreciate your apology very, very
12 much. I want my children to know I would never be
13 that kind of man.

14 Q I have no further questions for you, Mr. Shannon.
15 There may be others who do.

16 A Thank you. That's fine.

17 **BY MS. McLEAN:**

18 Q Good morning, Mr. Shannon. My name is Joanne
19 McLean, which I think gets me a job at Maclean's.
20 I am Mrs. Milgaard's lawyer.

21 A Okay.

22 Q I was actually going to start off by repeating on
23 the record her apology to you, but I want to
24 explore a little bit about just how that kind of
25 thing happens.



1 A Sure.

2 Q Now, when you were testifying this morning you had
3 put to you that Mr. Merchant's evidence was that
4 you had met David while he was unlawfully at large
5 and that's not correct.

6 A Not at all.

7 Q But it's just the kind of information that, as it
8 filters down from people, it can change.

9 A Uh-huh.

10 Q You understand that. And I think you told us this
11 morning that one of the times when you saw David
12 in jail, that you thought he had been shot while
13 trying to break out or something?

14 A Something to that effect, yes. That's -- I guess
15 I might have -- I don't know if that was earlier
16 or after when I visited with him.

17 Q Yeah.

18 A So I can't really be sure except that it was
19 sometime in that area.

20 Q It's just secondhand information that's coming
21 down to you and it mutates a little bit?

22 A I think so. I think my memory could be a bit off
23 on it as well.

24 Q And David was in fact, as we'll hear evidence
25 later, he was in fact shot while unlawfully at



1 large, he had been out for several months and he
2 was in fact shot in the back later.

3 A Yes, that's what I heard, yes.

4 Q Now, Mrs. Milgaard had a lawyer, Gary Young?

5 A Uh-huh.

6 Q And then when you very graciously agreed to help
7 her, one of the things that you wanted was for Mr.
8 Merchant to take over the case for the reasons
9 that you've given us; yes?

10 A Yes, but prior to that Mrs. Milgaard and I had
11 met --

12 Q Yes.

13 A -- and I had assisted Mrs. Milgaard.

14 Q Yes.

15 A She sought out her own legal fellow and did her
16 own thing. She -- when Peter came to see me,
17 that's when I learned that Mrs. Milgaard had
18 reached sort of dead-end streets again and Peter
19 explained that to me.

20 Q Right. So when Mr. Merchant got involved, one of
21 the first things he did, or one of the things he
22 did in the early days was try and find out who got
23 the reward that was offered for the arrest and
24 conviction of David Milgaard. Could we look at
25 106849, please. This is a letter that Mr.



1 Merchant wrote to the Saskatoon Police Services
2 board in -- I'm sorry, it's the Saskatoon Police
3 Commission at that time.

4 A Uh-huh.

5 Q July 13th of 1981, he's writing:

6 "I act for David Milgaard in connection
7 with certain legal work being done on
8 his behalf.

9 Please advise on the names of
10 the people who received the reward out
11 of the police fund in connection with
12 the arrest and conviction of Mr. David
13 Milgaard."

14 A Uh-huh.

15 Q Document 106852, please, and about two months
16 later he gets a response from the chief of police
17 on September the 14th indicating that he had
18 canvassed it with the Saskatoon Board of Police
19 Commissioners and they've:

20 "... advised me that they are not
21 inclined to release the name(s) of the
22 person(s) who received the reward in
23 connection with the arrest and
24 conviction of Mr. David Milgaard."

25 So that's in 1981.



1 A Uh-huh.

2 Q Could we see 301318, please, is the document
3 number, and then it's at page 322 of that. I just
4 want to show you what was there in the police
5 files that was not released in 1981. This is a
6 letter, it's written by a fellow --

7 A Can you make it a little bit bigger for me?

8 Q Yeah, we'll blow it up. It's written by a fellow
9 named Gerald Popowych and it's dated June the 10th
10 of 1969.

11 A Okay.

12 Q And it's written from Prince George, B.C.

13 A Uh-huh.

14 Q And this is an application, it says in the first
15 line:

16 "I would like to apply for the \$2000
17 reward offered for information leading
18 to the arrest of David Milgaard --"

19 And then he goes on to say:

20 "David Milgaard came to my home on May
21 29th, 1969, presumably selling magazine
22 subscriptions. My wife and I signed for
23 a subscription to Maclean's while he was
24 in our house, but as parts of his sales
25 pitch and background story sounded



1 ambiguous we phoned the police
2 immediately after he departed."

3 He goes on to say that he had some contact with
4 the police and then:

5 "The following day we heard on the news
6 of Milgaard's arrest and subsequently
7 contacted the local RCMP who advised us
8 to contact you directly regarding a
9 reward, as this was out of their
10 jurisdiction.

11 I have enclosed a copy of
12 Maclean Reader Service receipt and order
13 which are both signed by Milgaard."

14 And that is in fact his application for the
15 reward. You will be happy to know he did not
16 receive it.

17 A I am.

18 Q But what got to -- what got to Joyce sometime in
19 the mid '80s through various sources, you can see
20 how it may have gone through some permutation and
21 became an employer at Maclean's or in fact
22 yourself?

23 A Yeah. Well, it's a stretch, but --

24 Q You know, some of her sources bore very ripe and
25 accurate fruit and some of it was not.



1 A I'm certain. My heart absolutely goes out to Mrs.
2 Milgaard and her son. I was hurt by what was
3 said, but I never ever -- as parents of our own
4 children, we can't even imagine what Mrs. Milgaard
5 has been through.

6 Q Thank you. And again, on behalf of Mrs. Milgaard,
7 her apologies, on behalf of the entire Milgaard
8 family thank you so much for what you did.

9 A You're welcome. I was pleased to do it.

10 MR. HARDY: There's no re-examination,
11 Mr. Commissioner, and perhaps we could take the
12 morning break now. Our next witness is Dr.
13 McDonald. I don't see him here yet, but we will
14 hopefully find him on the break.

15 COMMISSIONER MacCALLUM: Thanks, Mr.
16 Shannon, for coming here.

17 A You are very welcome, sir.

18 (Adjourned at 10:02 a.m.)

19 (Reconvened at 10:20 a.m.)

20 MR. HARDY: Our next witness is Dr.
21 McDonald.

22 **IAN McLAREN McDONALD, sworn:**

23 MR. HARDY: Mr. Commissioner, Dr. McDonald
24 is here with his legal counsel Anne Wallace.

25 COMMISSIONER MacCALLUM: Oh, Ms. Wallace.



1 MS. WALLACE: Good morning.

2 BY MR. HARDY:

3 Q Good morning, Dr. McDonald, thank you for
4 attending today to give testimony. I understand
5 you currently reside in Saskatoon?

6 A I do.

7 Q And how old are you, sir?

8 A 77.

9 Q And am I correct that you've worked throughout
10 your career as a psychiatrist?

11 A Yes.

12 Q And have you been employed as well throughout that
13 time period at the University of Saskatchewan?

14 A Yes, until 1995.

15 Q Okay. And did your positions at the University of
16 Saskatchewan include head of psychiatry?

17 A Yes.

18 Q And that was for a period of time from 1971 until
19 1983?

20 A Yes.

21 Q And am I correct that you were the dean of
22 medicine as well?

23 A Yes.

24 Q And that was from 1983 until 1993?

25 A Right.



1 Q And I take it throughout your career then during
2 your time with the university that you have
3 practiced clinical psychiatry?

4 A Right.

5 Q And would you have been practicing clinical
6 psychiatry then in 1969?

7 A Yes.

8 Q And would your work in 1969 also include forensic
9 psychiatry?

10 A Yes.

11 Q And can you tell us about that, what the
12 circumstances were that would call upon that sort
13 of work?

14 A Well, I finished my training at the University of
15 Colorado, at Denver, Colorado, and part of my
16 instruction there was in forensic psychiatry under
17 Dr. John MacDonald who was an
18 internationally-known forensic psychiatrist, so
19 when I left Colorado and came to Saskatoon, word
20 got around that I had had that experience, and
21 really there wasn't much work in this area, so
22 this wasn't a full-time task for me, it was kind
23 of a fringe activity, and I was involved in a few
24 capital cases.

25 Q And perhaps tell us the circumstances that would



1 call for that sort of work and what you might
2 engage in on those occasions?

3 A Well, usually the issues were fitness to stand
4 trial and responsibility, whether there's any
5 issue of sanity or insanity, there would be those
6 two issues in capital cases.

7 Q So in large part this related then to assessments
8 of accused individuals?

9 A Yes.

10 Q And was your work in that respect performed on
11 behalf of the Crown in most instances or also for
12 the defence?

13 A It wasn't -- it was whoever called me.

14 Q So for both?

15 A Yes.

16 Q And how often would you be called upon to conduct
17 those sorts of assessments?

18 A Not very often. Saskatoon was a rather quiet,
19 small city and relatively peaceful. There were a
20 few capital cases I could count on my fingers of
21 one hand I think.

22 Q And perhaps you've touched on this already, but
23 I'll ask the question, can you give us an idea, a
24 general idea of the role that psychiatry had to
25 play in the criminal process in 1970 from your



1 recollection?

2 A Well, in Saskatchewan the tradition was that
3 psychiatry was involved in capital cases right
4 from the outset under the leadership of Dr.
5 McKerracher who was the first professor of
6 psychiatry and Dr. Sam Watson who was in charge of
7 psychiatric services in Saskatchewan, they were
8 both committed to diverting mentally ill people
9 from the criminal justice system, and this would
10 be being there first on the scene to see whether
11 the person was obviously psychotic or mentally
12 retarded to the point where they would not be able
13 to understand the nature of the proceedings, and
14 also called upon by either side to give evidence
15 on the question of whether the person was insane,
16 legally insane at the time of the offence, but
17 primarily the first is to divert people who
18 shouldn't be in the criminal justice system.

19 Q And, Dr. McDonald, I understand that you had some
20 direct involvement with the David Milgaard case in
21 1969?

22 A I did.

23 Q And can you tell us what your recollection is in
24 that respect of your earliest involvement?

25 A Now, I have to preface my remarks, that was 36



1 years ago and an awful lot has happened in my
2 professional life since then, so I don't remember
3 great details. What I do remember was my office
4 got a call either from the Crown prosecutor or his
5 office that Mr. Milgaard had been apprehended, was
6 being brought to the police station, and they were
7 requesting an early assessment of him by myself.

8 Q And do you recall having a direct conversation
9 with any particular individual in this respect,
10 and when I say that, I mean in terms of receiving
11 the request to see Mr. Milgaard, do you recall
12 speaking with Mr. Caldwell directly?

13 A No. The message I got was from, through my
14 secretary at that time.

15 Q And what did you know about Mr. Milgaard's
16 situation going into the interview?

17 A Not very much other than I think he was suspected
18 of murder.

19 Q And can you tell us again, when you went to see
20 Mr. Milgaard, what would have been the purpose or
21 the focus of the interview?

22 A That initial interview was to get an idea of
23 whether he was fit to stand trial.

24 Q And where did that interview take place?

25 A It was in the police station.



1 Q And do you recall who was present?

2 A Just Mr. Milgaard and myself.

3 Q I'm going to show you a document for some context.
4 If we could bring up document 006764, please, and,
5 Dr. McDonald, this appears to be an internal memo
6 of the Saskatoon Police Service, it's directed
7 from a Detective Hanson to Chief of Police James
8 Kettles regarding prisoner David Milgaard. You'll
9 see at the outset of the paragraph:

10 "On June 2, 1969, Dr. MacDonald examined
11 alone person from 8:10 p.m. to 9:30 p.m.
12 in prisoner interview room."

13 And would that generally fit with your
14 recollection, the date being June 2nd, and it
15 appears the time of the interview being in the
16 evening of that date?

17 A Well, I wasn't sure of the date or the time, but I
18 will accept that.

19 Q And can you tell us a little more about that
20 interview? What do you recall?

21 A Well, first of all, it was suggested to me that
22 the police would like to be present during the
23 interview and the reason expressed, as I recall,
24 was their concern about Mr. Milgaard being an
25 escape risk and I told him that I didn't usually



1 have policemen in interviews and they accepted
2 that.

3 Q And what about your discussions with Mr. Milgaard
4 during the course of the interview, can you tell
5 us what you recall of those?

6 A Not a great deal. He was co-operative. I didn't
7 think he was guarded, withholding information. I
8 was surprised by the amount of information he was
9 offering to me.

10 Q And, for example, do you recall any specific
11 comments made by Mr. Milgaard in the course of the
12 interview?

13 A No specific comments.

14 Q And what was your general impression of Mr.
15 Milgaard?

16 A Well, at that time he had given me enough of his
17 history that I knew that he had had a troubled
18 past. I wasn't concerned about him from a
19 psychiatric standpoint, I didn't think he was
20 violent or a threat. I thought we had a good
21 interview. I was really just trying to see if he
22 was able to function psychologically, his
23 cognition and thinking.

24 Q And we saw from the document it would appear that
25 the interview took approximately an hour or an



1 hour and 20 minutes, and can you give us any more
2 detail in terms of how you would have proceeded
3 through the course of the interview? You've
4 mentioned you would have gathered a history, I
5 take it, from Mr. Milgaard?

6 A Yes, yes.

7 Q Can you tell us sort of what you recall of how
8 that interview proceeded?

9 A Quite frankly, no, other than it was interrupted
10 an hour and 20 minutes by the police telling me
11 they had other activities for Mr. Milgaard.

12 Q For example, do you feel that you were able to get
13 a complete history from Mr. Milgaard in terms of
14 his past?

15 A No, but I got a fair amount of history.

16 Q And --

17 A And I also, before we left, I asked him to sign
18 release of information slips for a number of
19 agencies that he had mentioned during the course
20 of the interview and I recall those being Yorkton
21 Psychiatric Centre, Winnipeg Child Guidance Clinic
22 and I think it was Munroe Wing and the Paul Dojack
23 Centre in Regina.

24 Q So your recollection is that Mr. Milgaard
25 specifically mentioned these institutions?



1 A Yes.

2 Q And in what respect was he mentioning them?

3 A Well, in the course of the interview as to his
4 past history.

5 Q And am I taking it from what you are saying that
6 he was advising you that he had attended at these
7 institutions?

8 A Yes.

9 Q And you mentioned, did you have Mr. Milgaard sign
10 some documents then relating to that information?

11 A Yes. The standard release of information form
12 which we use at the hospital which designates who
13 the request is going to and for what reason and is
14 signed by Mr. Milgaard and witnessed by myself.

15 Q And I take it Mr. Milgaard willingly signed those
16 documents?

17 A Yes, he did.

18 Q And how did the interview conclude? I think you
19 mentioned that there was an interruption?

20 A There was a knock on the door. That's how it
21 concluded.

22 Q And what happened; do you recall?

23 A The policeman told me they had needed Mr. Milgaard
24 for some other activity.

25 Q And I take it then that you were, or you were



1 intending to spend more time with Mr. Milgaard?

2 A Yes, yes.

3 Q And how much more time, at what point would your
4 planned interview have been interrupted?

5 A Approximately two -- a full two hours.

6 Q And then what impact did that interruption have on
7 your interview?

8 A It ended it.

9 Q In respect of your ability then to draw
10 conclusions or walk away from the interview with
11 information, did it impact that?

12 A Well, it didn't allow me a complete diagnosis, but
13 it gave me enough impression of him clinically
14 that he wasn't psychotic.

15 Q So that is one of the conclusions you were able to
16 draw?

17 A Yes.

18 Q Any other conclusions that you were able to draw?

19 A That I felt he had a, his history was suggestive
20 of behaviour disorder.

21 Q Okay. And I take it you were also able to
22 conclude that he was fit, so to speak, to stand
23 trial?

24 A Yes, on that evening. Of course you would have to
25 repeat that evaluation immediately before the



1 trial itself to ensure that his fitness was
2 maintained during that period of time, over that
3 period of time, between the initial interview and
4 the starting of the Court proceedings.

5 Q Okay. Did you take notes during this interview?

6 A Yes.

7 Q And do we have those notes still today?

8 A No, we don't.

9 Q They've been destroyed?

10 A They are not -- yes, I guess they were.

11 Q Okay. And I take it --

12 A See, the point was he was no longer my patient or
13 a person of interest to me the next day when he
14 informed me that he had been advised by his lawyer
15 not to continue talking to me.

16 Q Okay. And I want to ask you questions about that
17 in a moment, but you mentioned earlier that you
18 were able to draw perhaps -- and I'm using my own
19 words, so correct me if I'm wrong -- perhaps a
20 preliminary conclusion that Mr. Milgaard had a
21 behaviour disorder. Did I hear that correctly?

22 A Yes, at least.

23 Q And that was from your discussions with Mr.
24 Milgaard during this interview?

25 A From the history he presented to me.



1 Q And I realize again, and I thank you that you are
2 trying your best to do this, but can you recall
3 any particulars about the information that he was
4 providing to you that allowed you to reach that
5 sort of preliminary conclusion?

6 A Oh, one of the first things he mentioned to me was
7 that he, I think he was asked to leave
8 kindergarten class because of behaviour problems
9 and subsequent to that he had other troubles in
10 the school system. As an adult psychiatrist, that
11 was quite unusual, for me to hear somebody who was
12 requiring professional help at age five or six.

13 Q And that's a specific recollection of information
14 that you gathered from Mr. Milgaard?

15 A Yes.

16 Q And anything else that you can specifically
17 recall?

18 A Well, he told me about being in Yorkton
19 Psychiatric Centre and he mentioned Munroe Wing
20 and I think Dojack Centre it's called in Regina,
21 or was called.

22 Q And would his mention of those institutions,
23 without further details, have assisted you in
24 reaching your conclusions somehow that he may be
25 suffering from a behaviour disorder?



1 A Oh, yes, yes, the idea that he had trouble so
2 early in life and persisted until he was certainly
3 in Yorkton, not counting the offence that he was
4 going to be charged with.

5 Q Okay. And in the context of this interview, and I
6 guess perhaps immediately afterwards, or at that
7 time, did you speak to anyone else with respect to
8 your meeting with Mr. Milgaard, and I'm thinking,
9 and maybe we'll go through a couple of categories,
10 but any investigators, for example, at the police
11 station following your interview?

12 A No.

13 Q Do you recall speaking with any family members of
14 Mr. Milgaard's in and around the time of the
15 interview?

16 A No.

17 Q And did you report to anyone respecting that first
18 interview?

19 A No. I reported following the aborted second
20 interview.

21 Q Okay, and I do want to ask you about that in just
22 a moment. I'm going to show you a couple of
23 documents before we go there. If I can turn
24 first, please, to 006762, and you'll see again
25 it's another internal memo, Dr. McDonald, a



1 Saskatoon Police Service memo, and it looks to be
2 from a Detective McCorriston again to the Chief of
3 Police James Kettles, the date being June 2nd --

4 A Can you magnify that?

5 Q Yeah, I'm going to take you to the parts I want in
6 just a moment, but the date is again June 2nd,
7 1969. If we could look at the first paragraph,
8 you'll note that it indicates from 12:20 p.m. to
9 12:45 p.m., June 2nd, David Milgaard was visited
10 by his mother Joyce Milgaard, and if we can go
11 down, please, to this paragraph, it indicates:

12 "Mrs. Milgaard stated she did not wish
13 her son to be examined by any doctor or
14 psychiatrist prior to her consultation
15 with a lawyer. She indicated they are
16 of Christian Science faith and these
17 types of medical examinations are
18 against their religious belief."

19 Now, I believe the time of your interview would
20 have been after this apparent meeting between
21 David and his mother Joyce. At the time of your
22 interview, were you aware of a request from Mrs.
23 Milgaard that she not be seen by a doctor or a
24 psychiatrist?

25 A No, I was not.



1 Q And if you were aware of that request, would you
2 have proceeded with your interview?

3 A If I would, I would ask Mr. Milgaard himself. He
4 was 16, he could make up his own mind, whether he
5 wanted to see a doctor or not.

6 Q Okay. And perhaps just one more document to give
7 that some clarification, if we could turn to
8 006765, again an internal police memo, it looks
9 like Herman Dimmitt is reporting to the chief of
10 police, and if we could move down the page a bit,
11 please, it looks like Mr. Milgaard advised his
12 mother as to the visit that he had had with you on
13 June 2nd. There's no further information relating
14 to that.

15 Dr. McDonald, turning to the
16 issue of a possible second meeting with Mr.
17 Milgaard, can you tell us your recollection in
18 that regard?

19 A The only thing I remember from that was meeting
20 Mr. Milgaard in an office, I imagine it was the
21 same office, and he was very polite to me and
22 politely informed me that he had been advised by
23 his lawyer Mr. Tallis not to have further
24 discussions with Dr. McDonald.

25 Q And how soon after your first meeting with Mr.



1 Milgaard would that have taken place?

2 A I think it was the next day.

3 Q Okay. And was that the extent then of your
4 meeting with Mr. Milgaard, simply that exchange
5 that you've just mentioned?

6 A Yes.

7 Q You didn't have an opportunity otherwise to
8 discuss any further details with Mr. Milgaard or
9 otherwise?

10 A No. I respected his request.

11 Q So you did, though, want a second meeting with
12 him. Was that, I take it then, to complete what
13 you intended to complete during your first
14 meeting?

15 A At least that.

16 Q And when you say at least that, what do you mean?

17 A If I was asked to report on the issue of
18 responsibility for his actions, I would have
19 needed more time to go into details relating to
20 the crime, his knowledge and his mental state at
21 the time of the alleged incident, and that would
22 have taken another two to four hours I would
23 think.

24 Q So perhaps even a further meeting after this
25 second meeting?



1 A Oh, yes.

2 Q Okay. And bear with me as I make my way through
3 this, I'm not familiar with psychiatry in this
4 respect, but would part of your task then be in
5 fact to try and make some sort of determination of
6 whether Mr. Milgaard was capable of the crime that
7 he had been accused of?

8 A Not really that. It would -- state of mind at the
9 time of the crime.

10 Q So it wouldn't be then inquiries directed towards
11 an opinion sort of on the ultimate question then I
12 take it?

13 A No, it's not fact finding as to whether he did it
14 or did not.

15 Q And is it then solely directed towards issues, as
16 you say, of competence, or if perhaps a defence of
17 insanity or something of that nature arose in the
18 course of the trial, would that be what your
19 efforts were directed towards addressing?

20 A If the defence of insanity had been raised, that
21 certainly would be one reason for going into it.

22 Q And --

23 A But frequently prosecutors want answers to both
24 things, fitness to stand trial, and some idea
25 about mental state at the time of the alleged



1 offence.

2 Q So what, in effect, could you say about Mr.
3 Milgaard, then, after your first meeting and then
4 your second brief meeting? What were you in a
5 position to, for example, report to Mr. Caldwell
6 or any other individual about Mr. Milgaard?

7 A Well, at that day he was fit to stand trial, but
8 that was only valid for that day; that there was
9 no overt evidence of any major psychiatric
10 disorder; that there was suggestive evidence of a
11 behavioural disorder, and that would have been it.

12 Q Okay. And you mentioned those authorization forms
13 that you had Mr. Milgaard sign; what did you do
14 with those forms?

15 A The next morning my secretary mailed them out to
16 the -- these various centres.

17 Q And when you say "the next morning" is that
18 following your first interview?

19 A That's right. So I imagine that would have been
20 Tuesday if the interview was on Monday.

21 Q And, again, did you provide any sort of report,
22 following your attempted second meeting did you
23 provide any sort of report, do you recall, to Mr.
24 Caldwell?

25 A I don't have it on record. My recollection is I



1 wrote about a two or three-line report stating
2 that the interview sessions had been terminated at
3 the -- Mr. Milgaard's request, and that the only
4 thing I could say based on that, that they -- he
5 was fit to stand trial. Very brief.

6 Q Okay. And I realize that I've been dwelling on
7 this for a little bit, but would you have been in
8 a position, for example, to offer a diagnosis of
9 Mr. Milgaard's condition following your meetings
10 with him?

11 A Based on that information alone I would have
12 thought yes, I could say that he would -- had a
13 behaviour disorder.

14 Q You felt you had gathered enough information for
15 that purpose?

16 A From him, yes.

17 Q And what in effect then, perhaps you should tell
18 us, is a behaviour disorder?

19 A Well there are three general types of emotional
20 problems; one is a -- disorders which cause the
21 patient pain or discomfort, and these are the,
22 some of the psychoses and some of the neuroses;
23 other disorders which cause the patient discomfort
24 because of the restrictions imposed by the
25 disorder on the patient, we'll take obsessive



1 compulsive neurosis; and the third group in which
2 the problems aren't -- don't affect the patient
3 directly but affect others, and we'd call these
4 personality disorders.

5 Q Meaning behaviour disorders; is that the third
6 category?

7 A Meaning -- yeah, yes.

8 Q And can you give us some examples of, for example,
9 an individual who you consider suffering from a
10 behaviour disorder; what are we looking at with
11 respect to that individual?

12 A Well, when their behaviour interferes with the
13 people around them, whether it's the family or the
14 community.

15 Q Can you give us some examples?

16 A Well, antisocial personality is the classic one.

17 Q But, practically seeing, how are we seeing this
18 manifest itself in the person's day-to-day life?

19 A Well it's usually problems with reliability either
20 as an employee, a family member, or a spouse;
21 antisocial behaviour, getting in trouble with
22 authority, either the law or people they relate
23 to; umm, inability to form sustaining
24 relationships over time, lack of responsibility,
25 inability to plan for the future, seemingly no



1 concern about the implications of their behaviour
2 on their future or the future of others.

3 Q And would this, then -- and I realize you can't
4 recall specifics necessarily -- but this was the
5 sort of information that you had gathered from Mr.
6 Milgaard when you had met with him?

7 A Yes.

8 Q Okay. You had mentioned providing perhaps, I
9 think you said you recall, perhaps a short written
10 report to Mr. Caldwell, and we haven't seen that
11 document, I'm not saying it doesn't exist. We do
12 have reference to the examination, if we could
13 look at 066541, please. You will see it's an
14 invoice directed to Mr. Caldwell regarding Mr.
15 Milgaard, and it says:

16 "Examination and report",
17 and from yourself. And I think perhaps we've
18 covered it, but in terms of the report, would it
19 be that short note that you mentioned to us that
20 you may have provided to Mr. Caldwell?

21 A Yes, yes.

22 Q So not in terms of a more comprehensive report of
23 any nature?

24 A No.

25 Q In written form?



1 A No.

2 Q Would you have had a verbal discussion with Mr.
3 Caldwell about your meetings with Mr. Milgaard
4 afterwards?

5 A Yes, and I can't remember when. I remember
6 encountering Mr. Caldwell and I think he inquired
7 as did I have any information. I think he knew
8 that I had sent out letters, and he, I think his
9 inquiry was "was there any result of these".

10 Q And -- but before that, sort of immediately
11 following, for example, your second attempted
12 meeting, would there have been, for example, a
13 direct telephone call to Mr. Caldwell or a verbal
14 report otherwise?

15 A No, I don't think so, I think I got that very
16 brief document off very quickly.

17 Q Okay. And I want to talk to you for a moment
18 about the time period prior to your meeting with
19 Mr. Milgaard; do you recall having any other
20 involvement in the investigation of the murder of
21 Gail Miller?

22 A No, I have no recollection.

23 Q And you and I have looked at this document
24 together previously, but if we could bring up,
25 please, 009327, and you will see it's a Saskatoon



1 Police Department investigation report dated
2 February 19th, that should be 1969, this is during
3 the course of the investigation into the murder of
4 Gail Miller. I'm going to read this to you, Dr.
5 McDonald, it's a report by Lieutenant Penkala, and
6 he states:

7 "On February 18th, 1969, I contacted
8 Dr. Ian MacDonald, Department of
9 Psychiatry, University of Sask.,
10 regarding this case. The purpose of the
11 consultation was to obtain professional
12 opinion on the type of person who may be
13 capable of this type of crime.

14 Dr. MacDonald was advised of
15 the general facts concerning this case
16 and was shown photographs of the scene
17 and the victim.

18 Dr. MacDonald will submit a
19 written report of his opinions in this
20 case, he did not offer an opinion at the
21 time and preferred to further study the
22 facts."

23 Do you have any recollection of a discussion with
24 Lieutenant Penkala of this nature, Dr. McDonald?

25 A No, I don't.



1 Q And it sounds like it perhaps, at least as
2 Lieutenant Penkala is reporting, it may have been
3 a face-to-face meeting. I only say that because
4 it appears that you were shown photographs at the
5 time; but none of what I have just read to you
6 refreshes your memory as to any sort of meeting?

7 A Not at all. It would be most unusual for me to
8 engage in this kind of activity. I have no
9 competence --

10 Q And I wanted to --

11 A -- in this area.

12 Q Yeah, I wanted to ask you that next, then. I take
13 it, from what you have just said, this isn't the
14 type of task you would have agreed to perform?

15 A No, because I had no business to perform it.

16 Q Okay. So following your interviews with Mr.
17 Milgaard, Dr. McDonald, do you recall being
18 involved in any respect in preparations for the
19 preliminary hearing or trial?

20 A No.

21 Q Do you recall, for example, any discussions with
22 the prosecutor, Mr. Caldwell, leading up to either
23 the preliminary hearing or the trial?

24 A Well I told him about a document I received from
25 Yorkton Psychiatric Centre and the statement that



1 appeared in one, one of the recordings of a
2 meeting, and that's the only discussion I had with
3 him.

4 Q Can you tell us about that; is this the same
5 meeting you referred to earlier in your testimony,
6 then, when you perhaps came -- ran into Mr.
7 Caldwell?

8 A Yes, yes.

9 Q Okay. And tell us about that then; what
10 transpired?

11 A Well in the recording of the meeting one social
12 worker -- excuse me, and I think she was cited by
13 name -- was quoted as making the observation that
14 "if David doesn't get help he's going to kill
15 somebody, period. But that's just a stab in the
16 dark, period."

17 Q And that is the comment you recall reading in this
18 report?

19 A Yes.

20 Q And I think you've started to tell us; what form
21 did this document take?

22 A Oh, it was among the documents forwarded to me by
23 the Yorkton Psychiatric Centre in response to my
24 written request of, I guess, June the 3rd.

25 Q And the document itself, did you say, I think you



1 mentioned minutes of a meeting?

2 A Yes, of a -- discussing Mr. Milgaard's case.

3 Q And do you have any recollection of where in
4 particular, on the face of the document, this
5 comment was?

6 A Between the borders.

7 Q Okay. And have you told us everything you can
8 about the context of that comment as best you
9 could gather from the document?

10 A Yes, it was a number of general comments that were
11 recorded by whoever was taking the minutes of the
12 meeting.

13 Q Okay. And you advised Mr. Caldwell, then, of this
14 comment?

15 A Yes.

16 Q And can you tell us about that?

17 A Well I thought it was an incredible comment. A.,
18 it's a -- we're talking about a man who has been
19 charged or suspected of stabbing a woman to death
20 on a, I don't know what, a winter morning when it
21 was dark, around 7:00. I mean it was very sick
22 humour if you looked at it. This I found a
23 shocker, and I showed it to Mr. Caldwell and he
24 shared my reaction, he thought this was bizarre.

25 Q For what purpose were you showing it to Mr.



1 Caldwell?

2 A Because it was bizarre.

3 Q Did you feel that it had some value, for purposes
4 of the case, as it was ongoing?

5 A No, none.

6 Q And you say that assertively; why is that?

7 A Well, we have no evidence to support that
8 assertion, nothing was offered in the document.

9 Q And am I hearing you correctly, then, you felt it
10 was a bizarre comment, ironic comment, but,
11 otherwise, that was the only reason you were
12 bringing it to Mr. Caldwell's attention?

13 A That's it, yes. Mr. Caldwell, as you probably
14 have surmised from these proceedings, has a sense
15 of humour.

16 Q Okay. Did it have any sort of clinical
17 significance for you?

18 A None whatsoever.

19 Q And did you relay that sentiment on to Mr.
20 Caldwell at the time that you were advising him of
21 the comment?

22 A I don't think we even discussed it, I thought we
23 shared our reaction to it. He, as I recall, he
24 was so shocked that anybody would record this as
25 having any other reaction. I did not think it had



1 made any impact on him as a valid assessment of
2 Mr. Milgaard.

3 **Q** Is it, and I realize you cannot speak for Mr.
4 Caldwell, but is it possible that he could have
5 been left with that impression, perhaps not having
6 the expertise that you did with respect to such
7 matters?

8 **A** I suppose anything is possible.

9 **Q** Okay. And I know that you have had a chance --
10 and we have materials that you have provided to
11 the Commission, Dr. McDonald, in the form of your
12 file as it still exists today, and I -- we will
13 talk about that more at a later point in your
14 testimony. I understand, though, you have had a
15 chance to review those materials again for
16 purposes of your testimony, and I take it that
17 that comment isn't contained in your materials as
18 they still exist?

19 **A** It is not.

20 **Q** Okay. And, again, I'll cover that perhaps in a
21 little bit more detail when I talk about your
22 file. If we could turn, please -- I should first
23 ask you; do you have any other recollection of any
24 other matters discussed with Mr. Caldwell in
25 preparing for the preliminary hearing or the



1 trial?

2 A No, I think that was the only one, that it -- that
3 impressed me as worthy of passing on to him.

4 Q And do you recall Mr. Caldwell reviewing the other
5 documents that you were -- were in your possession
6 at that time?

7 A I have a recollection, I think, that he wanted to
8 see the file, the documents, and it's my
9 recollection as saying that I would not let them
10 out of my custody, after all they were
11 professional documents and they should be limited
12 circulation from professional to professional, but
13 I agreed that if he wanted to and came up to my
14 office, that my secretary would let him look at
15 them, and I think that's the extent.

16 Q Okay. And --

17 A I have no idea of whether this actually happened
18 but I suspect it did.

19 Q Okay. I'm going to turn your attention to
20 document ID 007024. And Dr. McDonald, we've
21 previously identified this document in the course
22 of Mr. Caldwell's testimony, and it is some of Mr.
23 Caldwell's notes in preparation for the
24 preliminary hearing, and it looks to be a to-do
25 list of sorts. And I'm going to direct your



1 attention to item number 3 -- I'm sorry, I guess I
2 can read it as it is, my apologies. It states,
3 'McD re John and hysterical amnesia-off/on?'; do
4 you have any recollection of discussing such an
5 issue with Mr. Caldwell?

6 A No, I have no recollection.

7 Q And again, in talking about prior to the criminal
8 proceedings in the form of the preliminary hearing
9 and the trial taking place, do you have any
10 recollection of -- at all of talking to Mr.
11 Caldwell about the witness, Nichol John?

12 A I can't recall.

13 Q And I'll take you to some testimony that Mr.
14 Caldwell gave in the course of these hearings. If
15 we could turn, please, to page 16083 of the
16 transcript I'm going to read this to you. Mr.
17 Hodson is examining Mr. Caldwell, as I say this
18 just took place a short time ago in the course of
19 these hearings, Dr. McDonald:

20 "Q And then if we could go down, number 3,
21 it says 'McD', which I presume is
22 McDonald, 're John and hysterical
23 amnesia off/on'; can you tell us what
24 that means?

25 A Well I knew a very limited amount



1 about the three or four different
2 kinds of amnesia from the *Hartridge*
3 murder trial, and obviously, here,
4 evidently I wanted to ask Dr. McDonald
5 about Nichol John and hysterical
6 amnesia. I think the 'off/on' would
7 refer to the episode in which, having
8 been shown the clothing of Gail
9 Miller, she now recalled something
10 which she didn't moments before, is
11 the -- is my reading of that, sir.

12 Q ... Nichol John testified on September
13 the 4th, '69 at the preliminary hearing,
14 and I'm not sure, but it appears that
15 these notes may have been prior to that.
16 And so does this, would this note relate
17 to the issue of her remembering the
18 murder when she met with Inspector
19 Roberts, is that what you think that
20 refers to?

21 A Well, yeah, but not that Dr. McDonald
22 was in any way a witness or involved
23 in that, but whether that would be a
24 sensible explanation of why one minute
25 she couldn't remember and having



1 been -- shortly thereafter shown the
2 clothes, she purported to remember and
3 described the murder to some extent."

4 And does any of what I have just read to you, Dr.
5 McDonald, refresh your memory as to a possible
6 conversation you had with Mr. Caldwell?

7 A No, it doesn't.

8 Q And can you tell us what 'hysterical amnesia' is?

9 A Well, it's an amnesia that patients in the
10 hysterical dissociated states have for the living
11 situation which they are, they may forget about
12 being in a fight or forget about some traumatic
13 situation. Umm, it's an amnesia that frequently,
14 if not invariably, recovers over time, as opposed
15 to an organic amnesia which occurs with the head
16 injuries, and maybe most multiple seizures, in
17 which there is no recovery.

18 Q And Mr. Caldwell mentions the *Hartridge* trial and
19 perhaps your prior involvement in that matter; do
20 you recall being involved in that capacity in
21 perhaps a previous trial with Mr. Caldwell where
22 that issue arose?

23 A I remember the trial, I don't remember the
24 specific issue, but I think I know what it refers
25 to.



1 Q No recollection, though, of dealing with that
2 issue in the case of David Milgaard though?

3 A None whatsoever.

4 Q Okay. I'll turn your attention to another note by
5 Mr. Caldwell, it's document 007049, the date is
6 August 7th, again this is prior to the preliminary
7 hearing, item number 5. It again appears to be
8 sort of a to-do list of sorts and it states, 'I.
9 McD re Dr. Andrew, Yorkton, & his medical
10 history.' And do you recall a discussion, Dr.
11 McDonald, about Dr. Andrew of Yorkton and his
12 medical history?

13 A Dr. Andrew, I think, was the Clinical Director of
14 Yorkton at the time that Mr. Milgaard was a
15 patient there. I don't recall the details of
16 this.

17 Q Safe to assume though, perhaps, that you had
18 gathered this information from the records which
19 you had received pursuant to the authorizations?

20 A Well that, the name, would be part of the records.
21 I remember Dr. Andrews' name is part of the
22 discharge documentation, it's signed by him, and
23 he is a Clinical Director so he would sign most of
24 these documents for any patient departing.

25 Q So perhaps -- sorry -- perhaps likely, then, that



1 you might have advised Mr. Caldwell of Dr. Andrew?

2 A I suppose.

3 Q I see.

4 A Doesn't stand out in my mind, memory.

5 Q And in terms of the records that you have
6 received, and we have been talking about the
7 Yorkton records, how soon after your request for
8 those records were they received; do you recall?

9 A I thought within two to four weeks.

10 Q Okay. And again, we'll make reference to some of
11 these materials at a later point in your
12 testimony, we've identified them in the course of
13 the -- these proceedings to some extent. I'm
14 going to direct your attention to some further
15 excerpts from the testimony of Mr. Caldwell. If
16 we could turn, please, to page 16010, this is
17 again with respect to that same entry that we were
18 discussing, I'll read a portion of this to you.

19 It states:

20 "Q And then I, which I think is -- you tell
21 me if I'm not using the correct full
22 names, but, 'Ian McDonald re Dr. Andrew,
23 Yorkton, and his medical history.'

24 A That's all correct, sir.

25 Q And what does that refer to?



1 A Oh, I assume someone suggested that a
2 Dr. Andrew of Yorkton had a medical
3 history, or some of it, on David
4 Milgaard is the way I take that.

5 Q Is --

6 A That would be part of the whole effort
7 of being ready to deal with any
8 defence of drunkenness or insanity in
9 the murder trial if it happened.

10 Q So would this be you getting
11 Dr. McDonald to get this information
12 or --

13 A It would, but I can't see any evidence
14 that anything happened on that.
15 There's no check mark."

16 And I wanted to ask; is it possible that you had
17 only pursued these records from the Yorkton
18 Psychiatric Centre, or otherwise, after you had
19 been requested to do so by Mr. Caldwell?

20 A No, I did not pursue. The only contact I had
21 about their records was that letter I sent out on
22 June the 3rd and their response to it.

23 Q And you've talked about consent forms, and I'm
24 just hoping you can tell us a little bit about
25 that time period; would it have been possible for



1 you, as a medical professional, to request the
2 records that we have been speaking about directly
3 without a signed authorization?

4 A It would not have been ethical --

5 Q Okay. And --

6 A -- or legal, according to the College of
7 Physicians and Surgeons, you should get a signed
8 release.

9 Q So at that time you required a signed release?

10 A Yes.

11 Q And that's the manner in which you proceeded in
12 this case?

13 A Yes.

14 Q I turn your attention next to document 049715.
15 And we've previously identified this document in
16 the course of the hearings, Dr. McDonald, it is a
17 summary prepared for Mr. Caldwell by the Saskatoon
18 Police Service and the case preparation officer in
19 particular, who was Elmer Ullrich at the time.
20 And if we can turn, please, to page 049735 of that
21 document I just note for reference in the middle
22 of the document it states:

23 "Dr. Andrew ... Psychiatry, Yorkton,
24 Sask. Has previously examined Milgaard
25 and knows his medical history. No



1 statement."

2 And, other than Mr. Caldwell do you recall
3 discussing with anyone else Dr. Andrew, or the
4 existence of Dr. Andrew, and Mr. Milgaard's
5 medical history?

6 A No.

7 Q You didn't advise the police, then, of Dr. Andrew
8 or Mr. Milgaard's medical history?

9 A I don't think so. I'd have no reason to.

10 Q Okay. That wouldn't be something that you would
11 ordinarily have done in that circumstance?

12 A No, not ordinarily, no, not at all.

13 Q And it's very possible that the case preparation
14 officer could have gathered that information from
15 Mr. Caldwell himself but I just wanted to ask you
16 that question. And I understand, Dr. McDonald,
17 you did not testify at the preliminary hearing or
18 the trial of David Milgaard?

19 A That's right.

20 Q I'm just going to show you a document 006942,
21 please. This is a list of witnesses, the document
22 originally having been prepared, as I understand
23 the evidence, by, again, the case preparation
24 officer, Elmer Ullrich, and we see notes on the
25 document otherwise, some of which I think have



1 been identified as Mr. Caldwell's. If we could
2 turn to the next page, please, and we see
3 reference to yourself, 'Dr. Ian McDonald, excused
4 by Mr. Caldwell'; and do you recall why you were
5 excused from testifying?

6 A No. I had nothing to testify about. I told Mr.
7 Caldwell, in that brief letter, all I had.

8 Q Okay.

9 A So no knowledge.

10 Q So you didn't feel you had enough information to
11 offer anything in terms of testimony at the trial?

12 A Other than to say I thought, on June the 2nd, he
13 was fit.

14 Q And of course yes, and we're not aware -- and
15 perhaps as the evidence may have already confirmed
16 and will still confirm -- it may be that you were
17 not required for decisions made by others, but is
18 that as much as you can recall in terms of being
19 excused from testifying?

20 A I wasn't realized I was excused -- I didn't
21 realize -- I knew that I wasn't being called.

22 Q Okay.

23 A And, by that time, I had really disassociated
24 myself from the whole case.

25 Q And when you say "by this time", this is just



1 prior to the preliminary hearing, so we're talking
2 perhaps a month and a half or two months after
3 your meeting with Mr. Milgaard; what do you mean
4 when you say you have dissociated, you had
5 dissociated yourself entirely from the case?

6 A I had done what I had to do, I communicated what I
7 -- my conclusion, and I didn't feel I had any
8 further part in the proceedings.

9 Q Okay. I'm going to refer you to some further
10 notes by Mr. Caldwell. If we could go, please, to
11 document 006929, and these are notes, I believe it
12 has been confirmed, in preparation for trial, and
13 if we could turn, please, to page 006936, again
14 Mr. Caldwell's notes, number 56 -- or 57, that one
15 reads:

16 "McD - can this accused be locked up as
17 psychopath?"

18 And then in brackets the answer being "(no)." Do
19 you recall any sort of discussion of this nature
20 with Mr. Caldwell?

21 A No, I don't recall that.

22 Q And again, it's a to-do list, I'm not sure that we
23 can take anything more from that, other than in
24 brackets it seems that some sort of response has
25 been gathered from somewhere.



1 A This isn't to say it didn't happen, I just don't
2 recall it.

3 Q Okay.

4 A Again, it's 36 years ago.

5 Q Sure. And let's take a look at Mr. Caldwell's
6 testimony relating to the entry. If we can turn,
7 please, to page 16347, start mid sentence here, if
8 you can follow along:

9 "57, 'McD,' who I assume is McDonald,
10 'conversation this a.m., he locked up as
11 psychopath' ..."

12 Mr. Caldwell answers:

13 "A Yeah, that would be Dr. McDonald, and I
14 have 'can this accused be locked up as a
15 psychopath,' and I see the answer no.
16 That was also written by me, but I
17 assume I had, you know, consulted
18 Dr. McDonald.

19 Q And what would -- what do you mean by
20 locked up as psychopath?

21 A Well, that would be something in the
22 range of dangerous sexual offenders
23 which I was involved with a couple of
24 those. There were very clear
25 prerequisites when you tried to launch



1 those things and what I knew of Mr.
2 Milgaard at that point led me to
3 wonder if he could be, if that could
4 happen, and it clearly couldn't."

5 Does any of that refresh your memory as to a
6 possible consultation?

7 A No, it doesn't. Dangerous sexual offender is an
8 entirely different issue.

9 Q Okay. But if Mr. Caldwell had asked you the
10 question of whether or not you could offer an
11 opinion on whether Mr. Milgaard was a psychopath
12 at that time, how would you have responded to such
13 an inquiry?

14 A Well, it was my impression that he was a
15 sociopath. Psychopath is, does not have much
16 credence in psychiatric terminology, sociopathy
17 was more accepted at that time, so I would have --
18 my hunch was, based on the evidence that Mr.
19 Milgaard gave me, was that he suffered from a
20 behaviour disorder more, most likely sociopath,
21 than having a psychosis or a significant mental
22 illness.

23 Q What would have been, at that time, your
24 definition of a psychopath?

25 A I can't remember. In '69 we went through a series



1 of reviews of the nomenclature in psychiatry
2 starting with the Diagnostic Statistical Manual,
3 the famous DSM, and I think we were in either DSM
4 I or DSM II. We're now in DSM IV. In those days
5 a psychopath really ranged from moderate degrees
6 of people who were nuisances within the community
7 because they were unreliable and got into petty
8 thefts to extreme psychopaths who would be the
9 serial killers of today, so that was -- to help
10 you understand this, there's a textbook which I
11 was trying to find on psychiatry and on the
12 chapter headed psychopathy, there's a quotation
13 from somebody who said, "I can't define a
14 hippopotamus, but I know one when I see one," and
15 this is sort of the rule in psychiatry of that
16 day, there is no clear-cut definition.

17 Q It was a very broadly used term then at this point
18 in time?

19 A Yes.

20 Q Okay. And am I taking you to say that it would
21 have captured within it what you later, or perhaps
22 at the time, called a sociopath?

23 A Yes.

24 Q And so if the question had been put to you at this
25 time as to whether Mr. Milgaard was a psychopath,



1 would you have perhaps then offered your
2 conclusion that he perhaps was a sociopath?

3 A Yes, I would say a sociopath.

4 Q Do you recall any sort of discussion of that
5 nature --

6 A No.

7 Q -- with Mr. Caldwell?

8 A None at all.

9 Q I'm going to ask you a little bit more about those
10 definitions in a moment, but I think that's
11 satisfactory for this portion.

12 Do you recall having any other
13 form of involvement in the criminal process
14 relating to Mr. Milgaard other than what we've
15 discussed?

16 A I don't recall any.

17 Q And I'm talking right from the beginning of your
18 involvement on June 2nd, 1969, have we covered any
19 of your involvement, or all of your involvement as
20 best you can recall?

21 A Yes. I was not involved in the preliminary or in
22 the trial.

23 Q Okay. Do you recall learning of Mr. Milgaard's
24 conviction?

25 A I don't recall. I'm sure I did.



1 Q Do you recall having a reaction to that news at
2 all?

3 A None.

4 Q Okay. And the next record we have of your
5 involvement in this matter, Dr. McDonald,
6 surrounds certain communications that were passing
7 between yourself, Mr. Caldwell and the National
8 Parole Board during the 1970s. Generally
9 speaking, do you recall your involvement in that
10 regard?

11 A Yes, I do.

12 Q Okay. And we'll make our way through some
13 documents that speak to that. I would like to
14 turn first to document 000753, and you'll see it's
15 a letter -- actually, if we could go to the full
16 document, please. It's a letter from yourself to
17 Mr. Caldwell, the date being June 5th, 1972, I'm
18 going to read portions of this to you, deal with
19 the first paragraph first:

20 "In recent telephone conversations, you
21 have asked me for a diagnostic label for
22 the above noted. Having reviewed my
23 file, which is based on one interview
24 with this individual, plus reports from
25 Yorkton Psychiatric Center, the Munroe



1 Wing, Regina and the Child Guidance
2 Clinic of greater Winnipeg, I would
3 conclude that this young man was
4 suffering from a severe behaviour
5 disorder which I would think best be
6 called sociopathic personality. I did
7 not find any evidence of formal
8 psychiatric disorder, e.g.
9 schizophrenia."

10 The first part of that paragraph refers to some
11 recent telephone conversations. Do you recall
12 discussions with Mr. Caldwell in and around this
13 time period relating to this matter?

14 A Not in detail. I think in general I understood
15 that he was anxious to get, send a message to the
16 National Parole Board about his concerns about his
17 patient and he was looking for some evidence that
18 would support his recommendation and I think he
19 was leaning on me to give a report on Mr. Milgaard
20 and this is my response. Now, the hidden message
21 in this is if any person, other professionals read
22 this report, I played out the extent of my
23 examination, the basis for arriving at a
24 conclusion, and they may say, well, one interview
25 was not enough, and relying on this external view



1 is helpful, but is that sufficient. In a sense
2 it's a heads up.

3 Q Okay. And I think I want to pursue some of those
4 details with you. Firstly, though, you are
5 referring to your file and reports from a number
6 of the institutions that I've just read to you.
7 Is it safe to assume that you had records at the
8 time of this letter from each of these
9 institutions?

10 A I would think so. I don't think I was making that
11 up.

12 Q No, and I'm not suggesting for a moment, but I do
13 want to clarify that, and we're going to be seeing
14 this issue continue on as we go through your
15 testimony.

16 A In fairness, I remember Yorkton and the Child
17 Guidance more clearly than Munroe Wing and it may
18 have been that it was later coming in.

19 Q And again, would these records have been records
20 that you gathered in close proximity to your
21 original meeting with Mr. Milgaard?

22 A They would have been in response to the requests
23 that went out the morning after my interview with
24 Mr. Milgaard.

25 Q Okay. And you conclude that this young man was



1 suffering from a severe behaviour disorder which I
2 would think best be called sociopathic
3 personality?

4 A Yes.

5 Q And I'm not sure how to ask this exactly, but you
6 might have to help me along. Did you consider
7 that you were providing a formal diagnosis at this
8 point?

9 A A diagnosis based on a limited examination.

10 Q And when you say limited, that's what you've set
11 out previously --

12 A That's right.

13 Q -- in your letter, the one meeting and the review
14 of the reports from the institutions noted?

15 A Yeah.

16 Q But you would agree with me that you are offering
17 a conclusion in relation to Mr. Milgaard?

18 A Yeah.

19 Q Okay. And is there anything else you can tell us
20 in terms of how you would characterize that
21 conclusion? How were you intending it to be read?

22 A Well, they had had to evaluate, give weight to it
23 based on what I said were the conditions that led
24 me to conclude that.

25 Q Okay. And --



1 A You must remember, we see a lot, in the course of
2 our work we see a lot of patients and we arrive at
3 conclusions based on a number of facts which
4 aren't necessarily stated in documents. For
5 instance, you learn about human behaviour, you
6 find clues that recur in certain groups of
7 patients and that helps you, it helps you arrive
8 at conclusions. For instance, a neurologist
9 noting a limp on the right lower limb knows from
10 his experience that's something going on in the
11 left frontal or motor area of the brain. He
12 doesn't need an x-ray, he really does need to do a
13 neurological examination based on his experience,
14 that's a safe conclusion to come to in the
15 majority of cases. There will be cases where it's
16 not right, but your diagnosis is really a
17 probability, and so that's what I'm saying, I had
18 seen enough behaviour disorders and the history up
19 until Yorkton was indicative of a problem of
20 behaviour going back to age five.

21 Q And the fact that you weren't able to complete the
22 range of meetings that had been planned with Mr.
23 Milgaard did not impact then your ability to offer
24 this conclusion?

25 A No, no.



1 Q And why would that be the case?

2 A I think the odds are, based on the information he
3 gave me and the information from the other
4 sources, that I could come to that conclusion in
5 '72, rather than in '69 where I did not have these
6 collateral sources of information, so I felt much
7 more comfortable in '72 making that diagnosis than
8 in '69.

9 Q Would you have been in a better position to make
10 the diagnosis if you had a further opportunity to
11 meet with Mr. Milgaard?

12 A In '69?

13 Q Yes.

14 A Not without a collateral source of information.

15 Q And, I'm sorry, perhaps I'm not clear. Even at
16 this point, when you are offering the conclusion,
17 would you have been more comfortable with offering
18 the conclusion that you've put forward if you had
19 had the opportunity to meet with Mr. Milgaard and
20 assess him to completion?

21 A I don't think so. I think I got enough from him,
22 but I wanted other information, you know. Like in
23 your operation here, you have to test the
24 credibility of information. You do that by
25 getting collateral sources of information, whether



1 it's documents or written reports and so on to try
2 to see if this is consistent with the evidence
3 given, and all this re-affirmed my clinical
4 impression.

5 Q You were relying, in effect, then, upon the
6 written report?

7 A No, my initial record wasn't on -- in '69 it was
8 on my clinical experience.

9 Q Okay, fair enough. So your conclusion based upon
10 that meeting as well as the written record that
11 you had received?

12 A Yes. You mean for the '72?

13 Q Yes.

14 A Yes.

15 Q Yes. And so do I read it correctly, you mentioned
16 severe behaviour disorder, is that the same thing
17 then as sociopathic personality?

18 A Yes.

19 Q And you've described it -- have we covered
20 sociopathic personality then? You had previously
21 described for us indicators of a behaviour
22 disorder. Did those same descriptors then apply
23 for a sociopathic personality?

24 A Yes.

25 Q And sociopathic personality doesn't carry any more



1 weight or significance than severe behaviour
2 disorder?

3 A In terms of what?

4 Q Well, I'm asking you if they mean, in effect, the
5 same thing.

6 A Yes.

7 Q They do?

8 A Yeah. One is accepted by the medical record
9 librarians and the other isn't.

10 Q And is it the latter that's accepted?

11 A Sociopathy, yes.

12 Q And is somebody with sociopathic personality,
13 would they be referred to as a sociopath?

14 A Yes.

15 Q And would your conclusion here have been
16 influenced by the fact that Mr. Milgaard had been
17 convicted by this time of murder?

18 A No.

19 Q And what was your understanding, Dr. McDonald, as
20 to how this information was going to be used, in
21 particular your conclusion?

22 A Oh, I knew it was going to the National Parole
23 Board, but I had worked with the National Parole
24 Board for years, seeing clients at Prince Albert,
25 and I know that they vet these opinions very



1 carefully, and by laying it out this way, they
2 would see whether this met their standards for
3 acceptable evidence. Usually, in my experience,
4 the National Parole Board asks for a second
5 opinion by another psychiatrist.

6 **Q** And you say laying it out in these circumstances.
7 Have we covered that already, do you mean the
8 qualifier that you put on it in terms of one
9 interview?

10 **A** Yes.

11 **Q** And the records you've reviewed?

12 **A** Yes. You see, many of the people seen by the
13 National Parole Board have spent years in the
14 penitentiary service, they've had multiple
15 examinations by psychologists and psychiatrists
16 and prison officials, so there's a wealth of data
17 available for them to make their decisions,
18 whatever. The question is in this case I had very
19 limited contact with Mr. Milgaard and the only
20 other thing that sort of re-affirmed my clinical
21 impression based on that one contact were the
22 supportive data from these other places which laid
23 out the problems that had existed from age five on
24 to 14.

25 **Q** Okay. If we could move down to the second



1 paragraph of that letter, I'll read this one as
2 well:

3 "I would think that if the parole
4 authorities are interested in following
5 up this case, that they might be advised
6 to contact Yorkton Psychiatric Center
7 which has a fairly voluminous file on
8 him. Munroe Wing also has some valuable
9 information and of course, the Winnipeg
10 Child Guidance Clinic has reports of
11 evaluations done in November, 1960, when
12 Mr. Milgaard was in primary school.
13 Finally, the Department of Social
14 Welfare provided information with
15 respect to Mr. Milgaard's stay in the
16 Correctional School in Regina, in the
17 spring of 1966. This might also be
18 useful."

19 Do you recall whether you had a copy of the
20 fairly voluminous file from Yorkton Psychiatric
21 Centre at the time?

22 A I'm not happy with the adjective voluminous, but
23 yes, I did have a copy of the file from Yorkton.

24 Q And did you have what you understood to be the
25 complete records of the other places mentioned?



1 A No, I don't say the complete records. Whatever
2 they chose to send me.

3 Q Yeah, I meant to phrase it with that qualifier,
4 what you understood to be, in effect, the records
5 that related to Mr. Milgaard's stay at these
6 particular institutions?

7 A Yes.

8 Q Okay. And do you remember any of the other
9 records in particular? I know we've seen the
10 Yorkton records, or some of them in the course of
11 this hearing. For example, do you remember in
12 particular the Munroe Wing records?

13 A No, I don't remember that.

14 Q And what about the Winnipeg Child Guidance
15 Clinic's?

16 A I do remember that.

17 Q And what do you remember of those records?

18 A Well, I was surprised that they would send on the
19 record, to cover the page with blue, I was
20 interested because it was on the letterhead of the
21 Winnipeg General where I did a lot of my medical
22 training, so that's why it stood out in my mind,
23 and that's about it.

24 Q Why were you surprised to get the records from
25 there?



1 A Well, people looking after children are very
2 jealous of their documents, they are very loath to
3 have them out in general circulation. That's it.
4 And also it had been so long before that I was
5 surprised that they had, the document was still in
6 their files.

7 Q Do you remember in particular having the records
8 from the correctional school in Regina relating to
9 the spring of 1966?

10 A I don't have a recollection of that.

11 Q Okay. And we were talking about the Winnipeg
12 Child Guidance Clinic records. Anything in terms
13 of the contents of those records that you recall
14 of significance?

15 A Well, I think the one thing was that Mr. Milgaard
16 was reported to have been a behavioural problem in
17 kindergarten, and I think subsequently for other
18 grades, and as I mentioned before, this really
19 struck me as early onset of behavioural problems,
20 and a behaviour disorder really relates to almost
21 a lifetime pattern of behaviour. In sociopathy,
22 one of the criteria, the symptoms must appear by
23 the age of 15 and they certainly did with Mr.
24 Milgaard.

25 Q And I had wanted to ask you that. You reminded me



1 of a previous question I had, whether or not this
2 was a diagnosis that could be applied to a
3 teenager, and I take it from your answer just now
4 that it could be?

5 A It could be in those days. Now I think you have
6 to survive to 18 before they will allow this
7 diagnosis.

8 Q Why is that, for today's purposes?

9 A Decided by committee.

10 Q And do you have any insight into that decision?

11 A None at all. I guess they hope in adolescence
12 that all people have a chance to change for the
13 better.

14 Q I'm going to turn your attention to some
15 correspondence that followed this letter from
16 yourself, Dr. McDonald, and if we could bring up
17 document 067384, this is a letter from Mr.
18 Caldwell dated June 14th, 1972, the chairman of
19 the National Parole Board, regarding David Edgar
20 Milgaard, Saskatchewan Penitentiary. We've
21 previously reviewed this correspondence in the
22 course of Mr. Caldwell's testimony. I turn your
23 attention in particular to page 067386, I'll read
24 a portion to you, Dr. McDonald:

25 "In preparing this case, I had the



1 privilege of reading Milgaard's entire
2 psychiatric history, which, as it
3 happened, was very well documented since
4 his early youth. He had been in
5 constant trouble since kindergarten
6 days, and the file even contains
7 predictions by social workers who had
8 examined Milgaard, that he would one day
9 kill somebody."

10 Does that information that Mr. Caldwell is
11 relaying there fit with your recollection of the
12 document that we were discussing, Dr. McDonald?

13 A Yes, except predictions by "a" social worker, as I
14 recall it was a single person.

15 Q Singular?

16 A Yes, and I think she was identified by name.

17 Q And I think Mr. Caldwell clarified that in some of
18 his testimony, and we'll turn to some of that
19 testimony now in respect of that paragraph I just
20 read, page 17043, please, starting at the very
21 bottom, this is again Mr. Caldwell being examined
22 in the course of these hearings, Dr. McDonald.

23 "Q And then you go on to say --"

24 On the next page we see the paragraph that I've
25 just read to you, and continuing on after that



1 quoted paragraph:

2 "Let me just go back to say "in
3 preparing the case I had the privilege
4 of reading the entire psychiatric
5 history"?

6 A Yes.

7 Q Where would you have gotten that from?

8 A Well Dr. McDonald must have collected
9 those so-called chart from those four
10 sources that he mentioned, --

11 Q Yes.

12 A -- and I would have read it in his
13 custody, if you will, and there was a
14 comment at the end of one of these
15 reports that he would some day kill
16 someone, by a social worker, that's
17 how that evolved."

18 And do you recall Mr. Caldwell reading the entire
19 psychiatric history in your custody prior to
20 trial?

21 A I don't recall him reading it in my custody. I
22 think I referred to it before when he -- I think
23 he came up to the office and whether it was in the
24 presence of my secretary or not, the document did
25 not leave the office or the ward.



1 Q You would accept his recollection then though that
2 he likely had an opportunity to review your file
3 materials?

4 A Oh, yes.

5 Q Okay. Were you aware that Mr. Caldwell was going
6 to refer to this particular comment in his
7 communication to the National Parole Board?

8 A No, I was not.

9 Q Would you have been comfortable with this use had
10 you known that he was intending on referring to
11 the comment?

12 A I personally would not be comfortable.

13 Q And why would that be?

14 A Well, I thought it would document -- the statement
15 was unsupported by anything. It was like when you
16 are at a ball game and somebody says kill the ump,
17 you don't lay charges about them, you have to take
18 it in context and see how serious people are, and
19 this was, I thought, an off-the-cuff comment by
20 the social worker, at least that's what I
21 attributed it.

22 Q Okay. If we could go back to the page in the
23 letter we were referring to, 067386, there's
24 another short portion here I'll bring to your
25 attention, just one sentence in the midst of that



1 section. Mr. Caldwell states:

2 "While I no longer have his psychiatric
3 history available to me, it was an
4 extremely lengthy record of continual
5 trouble with educational institutions,
6 persons attempting to help him,
7 etcetera."

8 And does that fit with your recollection of the
9 contents of those materials, Dr. McDonald?

10 A Well, taken as a whole, it would be fairly
11 lengthy, but in terms of psychiatric records
12 individually, they weren't "fairly lengthy."

13 Q Sorry --

14 A I don't think the individual reports were
15 extraordinarily long or lengthy, but they were
16 complete.

17 Q Okay. And just down at the bottom of the page,
18 I'll read this paragraph to you as well:

19 "Milgaard was examined for the Crown by
20 Doctor I.M. McDonald, who is now
21 Professor and head of the Department of
22 Psychiatry at University Hospital,
23 Saskatoon, and it is Doctor McDonald's
24 opinion that Milgaard is suffering from
25 a severe behaviour disorder best called



1 a sociopathic personality. Doctor
2 McDonald points out that if your
3 officers are interested in following up
4 this case, the Yorkton Psychiatric
5 Centre has a fairly voluminous file on
6 Milgaard, with other information being
7 available through Munroe Wing of Regina
8 General Hospital, the Winnipeg Child
9 Guidance Clinic and the Department of
10 Welfare for the Province of Saskatchewan
11 with respect to Milgaard's stay in
12 Regina Correctional School in the spring
13 of 1966."

14 Now, were you aware that your conclusion, as you
15 offered in your correspondence in 1972, was going
16 to be used by Mr. Caldwell in this fashion?

17 A Well, yes, and that's why I said that I phrased it
18 the way I did, pointing out it was based on a one
19 hour and 20 minute interview, plus the reports
20 that I had received. Yeah, I knew that was going
21 forward.

22 Q And you were comfortable with the use of that
23 information then in that respect?

24 A I'm not sure I was comfortable, but I agreed to
25 it.



1 Q Okay.

2 A I thought to professionals who were viewing my
3 letter, they would say one hour and then this
4 other documentation, and really what I'm saying by
5 this, you make your own judgment, you get the
6 documents that I looked at and see whether you
7 agree.

8 Q And I think we've covered it, I don't think you
9 specifically refer to the interview being one hour
10 in your letter, but you do mention that it was one
11 interview with the individual.

12 A One interview, all right. No.

13 Q Okay. I'm going to refer you to some further
14 passages of Mr. Caldwell's testimony at this
15 hearing relating to the comment that we've been
16 discussing by a social worker in one of the
17 documents. If we could turn to page 17622,
18 please, and in particular -- I'm sorry, page 17623
19 starting here, I'll give you some context to this,
20 Dr. McDonald, that you perhaps won't be aware of.
21 They were discussing a 19 -- or some 1983 notes by
22 Mr. Caldwell where on one of the pages was written
23 in quotes "a stab in the dark" and Mr. Hodson was
24 examining:

25 "Q And then down at the bottom it says, "A



1 stab in the dark." Do you know what
2 that refers to?

3 A Yeah, that's that note by a social
4 worker on the psychiatric file saying
5 I think some day he may kill someone,
6 but that would only be a stab in the
7 dark, that's what that refers to.

8 Q And do you have a recollection of
9 reading that summary?

10 A Yes, I did, in the materials I believe
11 that Dr. McDonald had.

12 Q I see. And when would you have read
13 that then?

14 A Sometime after he got the so-called
15 chart in from those three or four
16 other institutions, I must have gone
17 up and read it in his office I
18 assume."

19 And you too then recall that comment having that
20 phrase, "A stab in the dark," Dr. McDonald?

21 A Very much so.

22 Q Okay. I'm going to read you another portion at
23 18313. This is Mr. Wolch, now, examining Mr.
24 Caldwell, again in the course of these hearings.
25 We begin here, it reads:



1 "Q Okay. And I just want to take you back,
2 then, to 067384 ...",
3 and that's the letter, Dr. McDonald, we have been
4 referring to from Mr. Caldwell to the parole
5 board?

6 A Yes.

7 Q "... and the third page, 86. There's a
8 prediction here he will kill again.
9 Here we are."

10 And they read that paragraph, again, that I had
11 brought to your attention. And the answer of
12 Mr. Caldwell then follows that quoted paragraph:

13 "A Mr. Wolch, I can explain that, if you
14 will. There was a report by a social
15 worker of two or three or however many
16 pages. The very last paragraph said, I
17 believe, that some day he will kill
18 somebody, but this is just a stab in the
19 dark, that jumped out at -- and it's not
20 on this file, Mr. Wolch, to the best of
21 my -- and I know that existed. I saw it
22 at the time and the particular
23 terminology was --

24 Q All I'm saying to you, sir, is that if
25 you go through all the reports, and as



1 you know most reports review previous
2 reports --

3 A Yes.

4 Q -- it's obviously you are always looking
5 at previous reports --

6 A Yeah.

7 Q -- and the prison psychiatric file which
8 is three or four feet high --

9 A Yeah.

10 Q -- I have never come across anything
11 like that.

12 A Uh-huh.

13 Q And don't know where it comes from,
14 that's all I'm saying.

15 A Mr. Wolch, the one thing I just
16 mentioned, I have known about all the
17 way through, and it was such an
18 unusual terminology, it ended a report
19 in my memory and, you know, was very
20 striking, and to my eye, Mr. Wolch,
21 it's not in this material."

22 And, again, I think we've covered it, Dr.
23 McDonald, but you share Mr. Caldwell's
24 recollection in that respect?

25 A I do.



1 Q And am I hearing you correctly that it was that
2 aspect that stood out for you as well?

3 A Oh yes.

4 Q The 'stab in the dark' portion?

5 A Both.

6 Q Okay. I'm going to turn your attention to some
7 further communications relating to the parole
8 authorities and Mr. Caldwell and yourself that
9 followed. These are 1974 matters, and firstly
10 I'll have you look at a document, doc. ID 006837.
11 This is a note of a telephone attendance, you will
12 see your name, 'Ian McD', the date being September
13 24th, 1974, and I believe this has been confirmed
14 to be in Mr. Caldwell's writing, so it appears to
15 be a message from yourself. And the written
16 portion states, 'Write him with a signed release
17 from M', I take to be McDonald, 'to release all,
18 any info McD might have to release his psychiatric
19 history.' And then the last part, 'if not P
20 board', and I think Mr. Caldwell suggested that
21 might mean parole board, 'might conclude he is
22 not', and again I think Mr. Caldwell suggested the
23 last word was "rehabilitated".

24 MS. KNOX: The actual note is 'signed
25 release from M', my client tells me that means



1 'signed release from Milgaard'.

2 BY MR. HARDY:

3 Q Oh, I'm sorry, if -- I read that wrong. I'm
4 sorry, that probably is obvious.

5 Did you want me to read that to
6 you again, Dr. McDonald, or do you have the --

7 A No.

8 Q -- gist of it?

9 A Yes.

10 Q And you recall leaving a message of this nature?

11 A No.

12 Q Okay. And do you recall any ongoing discussions
13 with Mr. Caldwell relating to this issue into the
14 mid-1970s?

15 A I don't recall. I'm sure we talked about it from
16 time to time.

17 Q And you'd agreed with me, though, that if indeed
18 this is a message left by you, that you are now
19 inviting a request for your records?

20 A Yes. Again, this is going back to the point that
21 these were records obtained on a professional
22 basis under a release signed by Mr. Milgaard. We
23 were taking another step. I did not feel that
24 original approval for Mr. Milgaard extended beyond
25 '69 to '74, that we would have to go through it



1 again. It was really protecting his rights.

2 **Q** Right. But you were comfortable in terms of
3 releasing those records, yourself, upon receipt of
4 a written release?

5 **A** Yes.

6 **Q** Okay. And just in terms of the last portion I've
7 read to you, 'if not parole board might conclude
8 he is not rehabilitated', I don't know if you have
9 any recollection of that matter or any ability to
10 assist us with that comment; would that be a
11 comment that you were providing at that time?

12 **A** No.

13 **Q** You are quite certain of that?

14 **A** Yeah, yeah.

15 **Q** And how would you characterize that, then? And I
16 know you can only speculate for us, but do I take
17 from that that you are suggesting this was Mr.
18 Caldwell's comment, then, at the end of this note?

19 **A** I don't know whose comment it was.

20 **Q** Okay. Not your comment?

21 **A** That's not mine.

22 COMMISSIONER MacCALLUM: What was the
23 comment again?

24 MR. HARDY: I'm sorry, Mr. Commissioner,
25 I'm referring to the very last portion of the



1 note, after the invitation has been made to seek
2 the records, and it says, 'if not parole board
3 might conclude he is not rehabilitated', and I
4 believe that if -- that's referring to the fact
5 that if Mr. Milgaard does not provide the
6 release.

7 COMMISSIONER MacCALLUM: Thanks.

8 BY MR. HARDY:

9 Q Let me take you now to a letter from, a further
10 letter from Mr. Caldwell to the parole board dated
11 September 27th, 1974, and that document is 006833.
12 And, again, it's to the Chairman of the National
13 Parole Board regarding David Milgaard from Mr.
14 Caldwell. I'll just look at these paragraphs,
15 I'll read this to you, Dr. McDonald:

16 "On June 14, 1972, I wrote a rather
17 lengthy letter to Mr. Street ...",
18 the former chairman:

19 "... and enclosed photographs concerning
20 the above prisoner, and as a result of
21 speaking with you at Banff, on my return
22 to Saskatoon I contacted Dr. ...
23 McDonald, Professor of Psychiatry at
24 University Hospital, Saskatoon, with
25 respect to the whereabouts of Milgaard's



1 psychiatric history, which is a rather
2 extensive and well-documented one, as
3 set out at the bottom of page 3 and the
4 top of page 4 of my letter of June 14,
5 1972.

6 Dr. McDonald advises me that he
7 still has all the psychiatric history
8 pertaining to Milgaard on his file, and
9 says that if you will contact him,
10 enclosing a signed release from
11 Milgaard, authorizing the release of any
12 information Dr. McDonald might have
13 pertaining to his psychiatric history,
14 Dr. McDonald would then be in a position
15 to forward all these materials to you
16 for placement on your file, so that they
17 will be available to the Board when the
18 question of parole of this prisoner
19 comes up."

20 And I don't know if you could help us with this
21 but would you assume at this point in time then,
22 in 1974, Dr. McDonald, that you still had the
23 complete collection of records that we previously
24 referred to in the context of your letter of
25 1972?



1 A Well, if I advised Mr. Caldwell that at that time,
2 I must have known that they were there.

3 Q Okay.

4 A In '74.

5 Q I'm going to read on in the next paragraph. It
6 states:

7 "I would strongly urge that you attempt
8 to obtain such a release from Milgaard
9 and get this material on your file,
10 since it presents a very well-documented
11 history of Milgaard's psychiatric
12 make-up going back to his very early
13 youth. I would assume that if Milgaard
14 would not sign such a release thereby
15 preventing the board, in due course,
16 from having access to the largest
17 possible set of reference materials upon
18 which to judge whether he was once again
19 fit to be in society, that the Board
20 might conceivably take this refusal as
21 some evidence that he was not
22 rehabilitated."

23 And I point that out simply to note that it seems
24 to echo the telephone message that we have
25 previously looked at, and I think your position



1 quite clearly on that was that was not a thought
2 that you had expressed at the time, or at this
3 point in time?

4 A No.

5 Q Okay. Turn, next, to the document 006831. We're
6 continuing through the 1970s here, Dr. McDonald,
7 and it appears -- we're not certain from the
8 record, there is one further document that
9 precedes this, I don't think I need to refer to
10 it -- but it appears that the parole board did not
11 pursue the records in 1974, at the time that the
12 invitation was offered, but are doing so now in
13 1977, August of 1977, and it's directed to
14 yourself. Do you recall receiving a request from
15 Ms. Meronek of the parole service enclosing a
16 signed authorization from Mr. Milgaard and
17 requesting your collection of records?

18 A No, I don't remember this specific. Doesn't mean
19 it didn't happen, I just don't recall it.

20 Q Sure, I'm -- I understand, and we'll move to
21 another document that hopefully will give us some
22 clarification. If we could turn to 039513,
23 please, and you will see again it's some telephone
24 messages, I think, that have all been stapled to a
25 single page. I'm just going to refer you to a



1 couple of them, the first one being in the top
2 right-hand corner. And you will see, again this
3 is a message or a writing by Mr. Caldwell as we've
4 confirmed in his testimony, it's dated September
5 8th, 1977, and he writes, 'Ask McD if material he
6 will send includes that mentioned on page 4 of my
7 letter to Street of June 14th, 1972', and I don't
8 think we need to turn back to that letter, I can
9 advise you that the material he is speaking of
10 there is a list of material from the various
11 institutions that are mentioned in that letter.

12 And then if we can go to this
13 message, which is just a couple of days after that
14 message I read to you, again in Mr. Caldwell's
15 writing appears to be a message from yourself
16 dated September 12th, 1977, it states, 'McD has
17 given her names of the places Milgaard has been in
18 and told her to write all the various places
19 direct.' So would it appear by this time, Dr.
20 McDonald, that you had decided that it might be
21 best that the parole authorities seek out the
22 various records directly from the institutions
23 noted?

24 A Yes. I think at that time, by this time, I was
25 getting a little tired of being involved. After



1 all, I had closed the case on June the 3rd, '69,
2 this is eight years later and we're still getting
3 correspondence, and I thought I was not going to
4 be sort of the conduit for this, that it would
5 have to be contact between the board and the
6 original sources.

7 Q Okay.

8 A That was really getting out of the --

9 Q And that's your recollection with respect to this
10 matter?

11 A Yeah, I'm sure that's what it was, yeah. It's not
12 my recollection but I suspect that was my
13 thinking.

14 Q Okay. Fair enough. Do you recall any further
15 dealings respecting the parole authorities, at
16 all, other than what we've outlined here?

17 A Not that I recall.

18 Q Okay. Mr. Commissioner, I know we're just a touch
19 early, but I think this is probably a good time to
20 break.

21 COMMISSIONER MacCALLUM: Sure.

22 *(Adjourned at 11:53 a.m.)*

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

24 BY MR. HARDY:

25 Q Good afternoon, Dr. McDonald. I would like to



1 start this afternoon by talking about the file
2 that you provided to the Commission in preparation
3 for your testimony, and we've taken a look at
4 those documents, and again for reference sake I'll
5 mention those document IDs again; 325155, 325157,
6 325159, 325166, 325172, 325173, 325175, 325182,
7 325190, and 325194. And you have had a chance I
8 take it, Dr. McDonald, to again review those
9 materials that exist in the file that you still
10 have today?

11 A Yes.

12 Q And do I assume correctly that the files, so to
13 speak, that you had on this matter in 1969-1972
14 was much larger than what currently exists in your
15 materials today?

16 A Certainly larger.

17 Q And do you -- can you tell us what happened to the
18 rest of the material?

19 A In words of one syllable, no.

20 Q Can you give us any speculation on the matter,
21 what may have happened through the years to that
22 material?

23 A Over the past 36 years?

24 Q Yes?

25 A I've moved office about seven or eight times, I



1 have had at least eight secretaries, all of whom
2 are dedicated to organizing my life, which means
3 cutting out excess filing. I lost track of the
4 file from '69 until '83 when a folder with the
5 contents, most of the contents that are there
6 today was delivered from the Department of
7 Psychiatry to the Dean's Office, and it was put
8 away there by myself and ten years later
9 discovered by myself, rediscovered when I was
10 leaving that office and going back to the
11 Department of Psychiatry.

12 In calling it a file I would
13 have this caveat. On June the 3rd we did not
14 register Mr. Milgaard as a patient of mine or
15 register him as a file in the Department of
16 Psychiatry, University Hospital, if it was it
17 would be tagged, it would be indexed, and there
18 would be a trace of it recorded. To me this was
19 no longer a case, on June the 3rd, as soon as Mr.
20 Milgaard said he was -- he had been instructed not
21 to say anything further, so I was out of the
22 picture.

23 When the -- when this happened
24 it was obviously put away in an open file,
25 whatever it is, and kept there. It was delivered



1 to me in '83 with a bunch of other loose material,
2 meaning correspondence that went back to 1958 that
3 somehow had got stored away and out of sight in a
4 couple of small filing cabinets with 5 by 6 index
5 cards of patient information which was delivered
6 to my home in '93 and is still there.

7 Q Okay. And you mentioned some 1958 documentation,
8 I don't think I have seen anything of that nature,
9 did you mean --

10 A Personal correspondence.

11 Q Okay. Was that --

12 A Exclusive of this or any other forensic.

13 Q So in terms of what we received as your file --
14 and I'll continue to use that word if you don't
15 mind -- in terms of your file, I take it that some
16 of what you've just described to us wasn't on that
17 file? You've -- and, again, I'm just taking from
18 what you mentioned about a 1958 reference?

19 A Oh, yeah, none of that. This was separate. The
20 Milgaard folder was separate, and it wasn't
21 indexed, it was in just a file folder, and I --
22 that my 5 by 6 cards that made patient notes of
23 that one interview were discarded. I can't say
24 when they were discarded but it was when I knew
25 that my information would not be required again,



1 which I think was well before '74. I think
2 probably at the time the verdict came down, or
3 shortly thereafter, I got rid of this material.
4 Some of the materials, certainly the material from
5 Yorkton was there in '72 or '74, the material from
6 the Child Guidance Clinic was there, whether the
7 other materials from Regina were there I don't
8 know, I don't remember. All I know is when I came
9 to take it out of my -- the Dean's Office on June
10 30th, 1993, that that material that you have had
11 in your possession was all that remained.

12 Q Okay. And I take it, then, you didn't have a
13 direct hand in the culling of those file materials
14 or of a -- I'm not sure what the right word to use
15 is -- but of the disposing of those file materials
16 over the years?

17 A Some I would have, but I don't know. I, for
18 instance the Yorkton thing, I don't know why
19 that's missing. I suppose that one speculation is
20 I may have taken it out to show somebody, but --
21 and didn't get it back in. But no, there is no
22 intentional culling by myself.

23 Q Okay. And, no, and I didn't mean to imply that
24 with my question. You mentioned the one document;
25 is that the document with the prediction by the



1 social worker --

2 A Yes.

3 Q -- that you are referring to?

4 A Yes.

5 Q And I'm just trying to get a handle on this; would
6 there have been any design or method, with respect
7 to the disposal of materials through the years,
8 that you are aware of?

9 A I suspect some of my secretaries had designs and
10 methods which related to a lot of my material, but
11 they saved me from accumulating too much stuff
12 that need not be kept.

13 Q Okay. And, again, were you speculating when you
14 were talking about the one document that we've
15 been discussing with the prediction by the social
16 worker -- excuse me -- as to what might have
17 happened to that document?

18 A I have no, I have no idea.

19 Q Okay.

20 A I was shocked to find it missing when I reviewed
21 the file after '93.

22 Q In 1993?

23 A Yes.

24 Q Okay. So, and just taking a look at what has
25 continued to exist on that file -- and again, Dr.



1 McDonald, I believe you've confirmed for us that
2 you've again reviewed those materials, the
3 surviving materials; --

4 A Uh-huh.

5 Q -- would that be correct?

6 A Uh-huh, yes.

7 Q And that, based upon that information alone, would
8 you still be comfortable with the conclusion that
9 you offered in 1972 in your letter?

10 A Yes.

11 Q Okay. And in terms, again, of what has survived,
12 so to speak, it would also be fair to say, I
13 assume, that Mr. Caldwell would have had access to
14 those materials during the time periods that we
15 were discussing prior to trial?

16 A He would have had access on that one occasion when
17 I think he came up, to my recollection he came up
18 to the department and looked at the file, but not
19 any other occasion.

20 Q And in terms of the additional material I can
21 advise you, Mr. Commissioner, we have taken a
22 search of sorts for that material within our
23 database, and what we've used as our parameters
24 for searching is anything dated pre-1969 that
25 might relate to Mr. Milgaard's mental health or



1 records of that nature, and we have found some
2 further documents, and in large part those
3 documents were provided by the parties, and in --
4 in fact in all instances that was the case.

5 We had gone to the further
6 effort, I can advise you, of subpoenaing records
7 from the Yorkton Mental Health Region, and we
8 received materials from them, and again that
9 material in large part duplicated what existed
10 already on our database in terms of pre-1969
11 material.

12 We also received records from
13 the National Parole Board relating to whatever
14 they may have accessed in terms of pre-1969
15 records, and again, that material had already been
16 duplicated in our database.

17 I've created a document so that
18 we can keep track of these additional materials
19 that we've located and if we could bring up,
20 please, document ID 332987. And again, Mr.
21 Commissioner, this is simply a document, a
22 Commission document that we have created, and it
23 identifies only pre-1969 records relating to Mr.
24 Milgaard that are not presently located on Dr.
25 McDonald's file as he provided to us. I should



1 make a couple of comments respecting the document.

2 You will see the Source column
3 in most instances only refers to a single source,
4 and that should not be taken as indicative of that
5 source being the sole source, it's the source that
6 associates with the document ID that we have
7 mentioned. As you can see, much of this material
8 was found within Mr. Milgaard's material, copies
9 of some of the material was found within the
10 Government of Saskatchewan material as well. And
11 I misspoke earlier, there was a single document,
12 additional document that we received, the first
13 entry from the Sunrise Health Region relating to
14 the Yorkton matters, and we've included that
15 document, as well, that wasn't previously on our
16 database.

17 I should also state our search
18 is not exhausted at this point in time, and with
19 respect to these new materials, I'm going to be
20 referring to some of them. I -- there may still
21 be an issue with respect to a publication ban, I
22 know that we had talked about that with respect to
23 the other pre-1969 materials that exist on Dr.
24 McDonald's file, but perhaps we can leave that to
25 the submissions of the other parties.



1 COMMISSIONER MacCALLUM: Okay.

2 BY MR. HARDY:

3 Q And Dr. McDonald, you have had an opportunity --
4 and, again, I'm referring to the additional
5 materials that are identified by this document --
6 you have had an opportunity to review those
7 materials?

8 A Yes. Briefly.

9 Q Do you recognize any of those documents as having
10 once existed on your original file? And I'm
11 sorry, Dr. McDonald, I had understood that you had
12 taken the time to review the collection of
13 materials that we had identified as additional
14 materials that had not been located on your file
15 as it was provided to us; would I be correct in
16 that?

17 A Yes.

18 Q Okay. Yeah. And I'm only saying that because I
19 see you are looking at the screen, you won't see
20 the actual materials there.

21 A No, I'm just trying to recognize the source.

22 Q I see. I'm sorry.

23 A If you could bring it a bit larger that would help
24 too.

25 Q Sure, if we could enlarge?



1 A Good, thank you. Umm, I think the number 1, I had
2 nothing relating to November 14th, 1966.

3 Q The --

4 A The earliest --

5 Q I'm sorry.

6 A The earliest document I had was related -- I stand
7 corrected, I do have that, yes. That was the
8 document, all of our documents, that I had from
9 the Yorkton Psychiatric Centre.

10 Q Okay.

11 A He was admitted in November 14th, '66 and
12 discharged in February '67.

13 The November 15th, 1966, I don't
14 remember seeing the EEG result.

15 The next one, document bearing
16 reference to Yorkton Regional High School, no, I
17 don't remember the -- this document. I would only
18 have had that from the Yorkton Psychiatric Centre,
19 because that was a specific request, and I did not
20 go to the educational reports on Mr. Milgaard.

21 And the confidential report, the
22 next one, late '66 or '67 of the educational
23 psychologist, I don't remember seeing that.

24 April 5th, 67, I have a hunch
25 that I did see that, I could -- you know, I don't



1 remember clearly.

2 Q And we can bring up that document, Dr. McDonald,
3 if it would assist in terms of looking at --

4 A No, I'm just going back to my memory.

5 Q Yeah.

6 A What I recall.

7 Q Please continue then.

8 A The report by Dr. Conway, no, I don't remember
9 that.

10 Q Okay. If we can go to the next page, there might
11 be a couple of further entries.

12 A The -- as far as I can tell, the record from
13 Regina Qu'Appelle Health Region dated November
14 30th, 2005 related to admissions for physical
15 diseases, had nothing to do with the Munroe Wing
16 as I recall. I don't remember that last document,
17 sequence of events and transfer summary, no.

18 Q And do you know, the document that's being
19 referred to there, are you recalling reviewing it
20 prior to testifying today?

21 A Well, I saw it at noon.

22 Q Okay. I just want to be sure we're talking of the
23 same document, whether you have a recollection of
24 that document. I should have also mentioned,
25 Mr. Commissioner, that we did also subpoena as



1 well the Regina Qu'Appelle Health Region relating
2 to the Munroe Wing reference and we did receive
3 back a collection of material, as Dr. McDonald has
4 confirmed, that largely related to some injuries
5 that Mr. Milgaard had suffered and did not relate
6 though to attendance at the Munroe Wing, but we
7 have provided access to those documents to the
8 other parties.

9 And, Dr. McDonald, if you can
10 follow me through on this, if we again consider
11 what material exists on your file today as
12 provided to the Commission, and if I ask you to
13 consider what you recall of the other material
14 that once existed on your file, can you recall
15 anything specific that impacted your conclusion in
16 1972?

17 A No.

18 Q Nothing specific out of those documents?

19 A I can't recall Munroe Wing or the Dojack, Paul
20 Dojack Centre.

21 Q And again, it's with -- I'm asking this with
22 respect to the additional materials, not the ones
23 that we have on your file today, and I simply want
24 to be certain that there's nothing that stands out
25 in your mind within those materials as being



1 significant or important for the conclusion that
2 you offered in 1972.

3 A As I recall from reviewing it a few minutes ago,
4 no, nothing that was contrary.

5 Q Okay. There is one document I do want to bring to
6 your attention, Dr. McDonald, and I'm doing so
7 only because it's specifically referenced within
8 the Yorkton material that exists on your file
9 today, and I'll refer you first to a couple of
10 portions from the Yorkton material, as I say, that
11 does exist on your file as provided to the
12 Commission. If we could turn, I believe it's to
13 document 325175, and you'll perhaps recognize this
14 document, Dr. McDonald. The only portion I wanted
15 to refer your attention to was this first
16 paragraph which notes:

17 "This situation was referred by Mr. P.
18 Tomaszewski, Educational Psychologist,
19 with the Yorkton - Melville Health
20 Region, with Dr. Zbeetnoff acting as the
21 referring physician."

22 And if we could then, please, turn to page 325182
23 dated December 8th, '66, just the first portion,
24 summary recording:

25 "On November 23rd, 1966, Dr. Andrews,



1 Paul Tomaszewski, Educational
2 Psychologist with the Yorkton - Melville
3 Public Health Region, and this worker
4 conferenced this case at Y.P.C.
5 Discussed at this meeting was some of
6 the boy's rather disturbing background,
7 as well as observations of this boy
8 while at the Yorkton Psychiatric Centre.
9 Also discussed extensively were the
10 results of Mr. Tomaszewski's personality
11 and psychological tests.

12 (Mr. Tomaszewski had seen the boy at the
13 Langenburg High School on November 7 and
14 also conducted testing here at the
15 Psychiatric Centre on November 18.) See
16 file for more explicit information re
17 psychological tests."

18 If we could then turn to page 171901 of document
19 171899 and this was part of the additional
20 material that I provided to you, Dr. McDonald,
21 for your review. You'll see the dates
22 referenced, November 7 and 18th, and as well the
23 indication that this is a report by the
24 educational psychologist, Yorkton - Melville
25 Health Region No. 10, and it would appear to be



1 associated with the entries that I just read to
2 you from the Yorkton materials that exist on your
3 file. Do you recognize this document as having
4 previously existed on your file, Dr. McDonald?

5 A No, I don't.

6 Q And is it your belief that this document did not
7 previously exist on your file?

8 A No, I don't. All I'm saying is I don't recognize
9 it.

10 Q Okay. And perhaps what I'll do is I just want to
11 briefly look at portions of this document, and in
12 particular there's some introductory comments --

13 MS. KNOX: Mr. Commissioner, I rise only,
14 not to interrupt, but just to indicate for the
15 record that the documents that we have beginning
16 with the number 171899, and I had discussed this
17 with Mr. Hardy, each page of them appears to be
18 an incomplete document. If we take them and
19 compare them to other versions, it's cut off
20 about halfway down the page, so in referring the
21 Doctor to them, it might be important that he
22 know that each of the pages would appear to be an
23 incomplete of what he may have had in 1969, 1970,
24 but for -- and it appears just to be a copying
25 error, but each page is sort of cut off at the



1 same halfway mark as you go through.

2 COMMISSIONER MacCALLUM: I see.

3 MS. KNOX: So I think it might be a copying
4 error, but each of these doesn't represent what
5 was likely the full document in its original
6 version, unless there's a full copy somewhere
7 that I don't have.

8 COMMISSIONER MacCALLUM: Okay.

9 MR. HARDY: Thank you, Ms. Knox, I was
10 going to point that out, it becomes quite
11 apparent on this document as it reads into the
12 next page, but thank you nonetheless.

13 I think Mr. Wolch wanted to
14 make a submission.

15 MR. WOLCH: Mr. Commissioner, just the
16 general concern that our position has not changed
17 that if there is a document that someone will say
18 that they saw and it affected their course of
19 conduct, then we say yes, they should be allowed
20 to do that, but if we're just going to go fishing
21 through reports that nobody claims to have seen
22 and that may be well out of context, I'm not sure
23 what the benefit is, and I've heard nothing to
24 indicate that there's something here that
25 somebody will have relied upon to affect a course



1 of conduct and I simply point that out.

2 COMMISSIONER MacCALLUM: Oh, yes, I don't
3 think we've heard the end of that inquiry. We're
4 still trying to determine whether the doctor
5 recognized it as having been part of his file.

6 MR. WOLCH: I thought he said he didn't
7 know. Maybe I'm wrong.

8 COMMISSIONER MacCALLUM: So far he said he
9 didn't know, but we're not finished. With
10 respect to this last one he said that he doesn't
11 recognize it and can't say it was ever on his
12 file and then Mr. Hardy I believe was
13 interrupted, so just continue, please.

14 BY MR. HARDY:

15 Q Thank you, Mr. Commissioner. Just a couple of
16 questions relating to the document, Dr. McDonald,
17 and I note that there's some introductory comments
18 and I note as well there is a diagnosis
19 referencing behaviour disorder, and I'm wondering
20 if that refreshes your memory at all in terms of
21 something that you may have relied upon at the
22 time that you had material in your possession
23 prior to 1972?

24 A No.

25 Q Okay.



1 A I relied primarily on my clinical impression from
2 that hour and 20 minute interview.

3 Q And just --

4 A Supported by the other documentation.

5 Q Okay. And just a couple of further questions, if
6 we turn to the next page of this document, I don't
7 intend to review the contents of this with you,
8 Dr. McDonald. There's reference at the top to a
9 California Test of Personality and then secondly a
10 Symonds Picture Story Test. Are those tests that
11 you are familiar with or that you can educate us
12 on in relation to it all?

13 A No. These are tests that are used by
14 psychologists, not psychiatrists, so the person
15 who asked would be a clinical psychologist.

16 Q Would you routinely rely on the results of tests
17 of this nature, and stepping away from this
18 matter, but would you rely on tests of this nature
19 in your psychiatric work in terms of assessing
20 individuals?

21 A There are times when I call for psychological
22 testing, but we don't do it routinely. We use it,
23 for instance, in assessing competence. People in
24 medicine, surgery, and this is where I do my work
25 within a tertiary care hospital, and competence to



1 make decisions, medical decisions and decisions
2 regarding finances and so on, but we don't
3 routinely use psychological testing, and it rarely
4 replaces your clinical judgment.

5 Q Okay. I'm going to move on, Dr. McDonald, and
6 review other portions of your material. We've
7 been talking about pre-1969 material and there's
8 some post-1969 material on your file as it exists
9 today and that you provided to the Commission, and
10 the first document I'm going to show you is
11 document ID 325166, and do you recognize that
12 document, Dr. McDonald?

13 A Yes, with the notation at the top left-hand
14 corner, CBC internal.

15 Q And what is this document?

16 A I suspect -- I recognize it. I'm not sure to its
17 origin. I suspect it's material that came to me
18 along with other material from Mr. Eric Malling of
19 the CBC. I think he was doing, researching for
20 the Fifth Estate, I think that was the program he
21 was with. My -- I'm not clear, but my guess would
22 be this came to me along with some report, the
23 Vancouver pathologist I think directed to Mr.
24 Wolch, I think Dr. Ferris was the author, and Eric
25 Malling directed me via phone message to pass this



1 on to Dr. Emson who was the professor of pathology
2 when I was dean, and I did this, but I think Eric
3 passed on this particular item, plus other pages
4 at that time, and I think that is around '89 as I
5 recall, having reviewed the file.

6 Q And so this isn't a document that you created, Dr.
7 McDonald?

8 A No, not at all.

9 Q And did Eric Malling tell you anything else about
10 this document when he provided it to you?

11 A No, not really. I can't recall what transpired in
12 the phone call with him. I knew he was
13 researching this and I guess he's letting me know.
14 I told him, advised him the same way I advised the
15 National Parole Board, if you are interested in
16 doing background for it, you should contact the
17 sources that I had contacted, Yorkton Psych
18 Centre, Munroe Wing, Paul Dojack.

19 Q And what was your relationship with Mr. Malling,
20 how did Mr. Malling know you at this time?

21 A Do you want the long story?

22 Q Not too long.

23 A Okay. Mr. Malling took out my wife's cousin, they
24 were both students at the University of
25 Saskatchewan. I think they both worked with the



1 Sheaf. This is where Mr. Malling was getting his
2 early journalism experience and fortunately my
3 wife's cousin was a good, reliable babysitter and
4 we had five children, we needed respite time from
5 them and they would come over, so we knew Eric
6 that way, and I guess Eric may have had a card
7 x-ray that he kept names of people on, but he
8 later, after he grew up, he called me from time to
9 time asking for advice as to where he should go
10 for information on medical issues, so we had that
11 connection.

12 Q And was this communication --

13 A I would like to add also among our circle of
14 friends, and it's too bad you didn't know this
15 before, was Mr. Tony Merchant.

16 Q Right, I think I heard that. And would this
17 communication then be of that sort of nature that
18 you just mentioned to me, Mr. Malling seeking
19 perhaps some assistance from you?

20 A I think he's letting me know where he was in terms
21 of their investigation.

22 Q What did you understand Mr. Malling was doing at
23 the time?

24 A Oh, I think they were trying to do a program on
25 Mr. Milgaard.



1 Q And do you have a specific recollection of
2 reviewing this document?

3 A No specific. I know I've reviewed it.

4 Q And it seems to run as a bit of a chronology of
5 Mr. Milgaard's psychiatric history at least for
6 the most part dealing with his post-incarceration
7 time period. I see there's notes on the front
8 page as well. Do you recognize those notes at
9 all?

10 A Well, they were there before they arrived at my
11 office.

12 Q That is not your handwriting then?

13 A No.

14 Q And you've taken a look at the markings and
15 handwriting throughout this document?

16 A Yes, yes.

17 Q And is any of it your --

18 A None.

19 Q -- work? And are you aware whether, I think I
20 need to ask this question as well, is the
21 handwriting your thoughts that were perhaps being
22 written down by someone else?

23 A I would doubt it. No, I think this is generated,
24 wherever it was, CBC, it looks like the same kind
25 of writing style in the light according to that



1 note on the upper left-hand part of page 1.

2 Q Okay. And do you recall, again with respect to
3 this document, was Mr. Malling asking you to do
4 something in particular in relation to this
5 document, Dr. McDonald?

6 A I don't recall at all that. He wasn't asking me
7 advice on this, no.

8 Q Okay. Let's look at a couple of the other
9 materials, I think you've mentioned --

10 A Just --

11 Q Yes?

12 A I think he was passing this along for my
13 information, along with the letter to Dr. Emson, I
14 suppose was for my edification if nothing else.

15 Q Okay. And perhaps we should look at some of these
16 other documents that may have been associated with
17 this same communication, and I'm going to show you
18 first, again this is material that is on your
19 present day file, document ID 325194, you've had
20 an opportunity to review this document?

21 A Yes, I have.

22 Q It's a report I believe by Dr. Rockstro?

23 A Yes.

24 Q Was this received from Mr. Malling as well?

25 A I think it came in the same package.



1 Q And did you have any idea or knowledge at the time
2 where Mr. Malling had received this document from?

3 A I was rather intrigued because this is highly
4 confidential material and the Canadian
5 Correctional Service had very strict regulations
6 about releasing this information and here it was a
7 highly confidential document being transmitted
8 from CBC to me.

9 Q And did you ask Mr. Malling how he had obtained
10 this document?

11 A No.

12 Q You didn't. And what did Mr. Malling want you to
13 do with this document?

14 A Nothing. I think again this is for edification.

15 Q Let's take a look at a couple of the other
16 materials. Next would be 325157, do you recognize
17 this document, Dr. McDonald?

18 A Bring it up?

19 Q Sure, if we could maybe enlarge the first portion.

20 A Oh, yes.

21 Q And that's directed to you from Dr. Emson?

22 A That's right.

23 Q And it looks like it's referring to the report of
24 Dr. Ferris?

25 A Which I mentioned, yes.



1 Q Which also exists on your file --

2 A Yes.

3 Q -- as document 325195, and we don't need to bring
4 that one up. And can you tell us, you told us a
5 little bit about this already, but can you tell us
6 what led to this material being in your
7 possession?

8 A I was a conduit between Eric Malling and
9 Dr. Emson. Dr. Emson, having received Malling's
10 request through me, decided to reply to Malling
11 through me.

12 Q And I see there's a fax copy to Eric Malling at
13 the top. Do you recognize that handwriting?

14 A I recognize the initials.

15 Q And --

16 A It's one of my many secretaries.

17 Q So this was likely sent back to Mr. Malling at
18 your direction?

19 A Yes.

20 Q Let's look as well at 325155, please, this is a
21 fax sheet, Dr. McDonald, three pages apparently
22 were sent to Mr. Malling, and I'm assuming perhaps
23 that this may have been related to the fax comment
24 that we saw on the other document, and would you
25 agree with me on that?



1 A I suspect it probably is Dr. Emson's response.

2 Q Okay. Did you send any of your file material to
3 Mr. Malling?

4 A No.

5 Q Okay. And did you provide him with any other
6 information relating to Mr. Milgaard?

7 A He asked me what I thought of doing a documentary
8 on David Milgaard and I said, well, if you are
9 going to do it, make sure you do the whole
10 profile, and suggested that the sources he could
11 get more information were the sources I've told
12 everybody.

13 Q You were inviting him to access the materials from
14 the various institutions that we're speaking of?

15 A Yes, that he should go to them for this
16 information. Put another way, I was not going to
17 provide it.

18 Q Okay. Did you have a concern that he would report
19 on the matter without having reviewed those
20 materials?

21 A I've been concerned by reports that have been
22 rather superficial, and by that meaning not going
23 into the total background.

24 Q And --

25 A So I thought -- I really felt that if he was going



1 to put an article up for public view, that he
2 should be well fortified to answer all questions,
3 that he should have the whole story.

4 Q I'm going to refer you to a further document, one
5 last page that's found within your file materials,
6 325190, and it's actually page 325193 of this
7 document. I know you and I had taken a look at
8 this together. Do you recognize that page at all?

9 A I haven't the foggiest idea of what this is.

10 Q No idea what that relates to?

11 A Not at all.

12 Q That's not your handwriting?

13 A Not my handwriting.

14 Q Okay.

15 A And it was by itself as I recall.

16 Q Yes, it is just a single page, that's right.

17 A Yeah.

18 Q And, Dr. McDonald, I understand that you discussed
19 this matter with the RCMP in 1993 during an
20 investigation that they were conducting?

21 A I was interviewed by the RCMP.

22 Q And you recall that interview?

23 A I do.

24 Q I'm going to refer you to notes that were taken in
25 relation to that interview, the document is



1 034527. You've had an opportunity, Dr. McDonald,
2 have you, to consider these notes prior to
3 testifying today?

4 A Yes.

5 Q I would like to take you through some portions.
6 Again, these are notes by an RCMP officer relating
7 initially to attempts to contact you and, as we
8 get into the document further, relating to a
9 meeting that took place with you, and you'll see
10 the date being February, 1993. If we could move
11 forward, please, to page 034528, and the first
12 paragraph is just an introduction of yourself.
13 I'll read some portions to you from this document.
14 The second paragraph reads:

15 "Dr. McDonald advised that when he is
16 asked to see a subject it can involve
17 his seeing the person for three
18 sessions. In this particular case he
19 only saw Milgaard once and that
20 interview lasted a little over an hour.
21 Dr. McDonald advised that his records
22 have since been destroyed in this case."

23 The only question I want to ask you from that
24 paragraph, Dr. McDonald, did you provide the RCMP
25 with access to the file materials that you have



1 provided to us in 1993?

2 A I don't recall. What I was talking about then was
3 my clinical notes.

4 Q Okay. I'm going to read on to the next paragraph:

5 "Dr. McDonald interviewed Milgaard at
6 the Saskatoon City Police Station. He
7 recalls the police being apprehensive
8 about Milgaard, with regards to the
9 security of him. There appeared to be a
10 concern that he may try to escape. Dr.
11 McDonald recalled a reference to that,
12 however, he could not be specific about
13 that."

14 And that's accurate information, Dr. McDonald?

15 A That's what I recall.

16 Q And I think you've told us about that earlier
17 today, it was a comment perhaps by an officer?

18 A Yes. They were very anxious about Mr. Milgaard.

19 Q Okay. And did that relate to the request that one
20 of them attend in the interview room?

21 A Well, I took that as a sign of their anxiety.

22 Q Okay.

23 A They are not the only police force that requested
24 to be within the room and sometimes it makes
25 sense.



1 Q Do you have any other specific recollection
2 relating to this perception that you had at that
3 time?

4 A No, no.

5 Q Okay.

6 A I -- well, recollection is I found Mr. Milgaard to
7 be a very polite young man, easy to talk to,
8 received me as pleasantly as the circumstances
9 would allow. I was not at all anxious about being
10 with him. I had nothing that I could see or hear
11 that made me feel that he was a threat to escape
12 or do anything.

13 Q I'll skip past the next paragraph, if we could go
14 to the bottom of the page, it states:

15 "An interesting point: Dr. McDonald
16 indicated that he often finds people
17 that he interviews to protest their
18 innocence right off the bat. In
19 Milgaard's case, he did not."

20 Can you recall providing this information to the
21 RCMP in 1993?

22 A I don't.

23 Q You don't remember that?

24 A But that doesn't mean that I didn't say it.

25 Q Do you accept likely that you advised them of



1 that?

2 A Sure, sure.

3 Q And is this a recollection that you have, of
4 having that thought or consideration back at the
5 time that you were meeting with Mr. Milgaard?

6 A That what?

7 Q This observation that you shared, that Mr.
8 Milgaard did not protest his innocence?

9 A Oh, yeah, I remember that. We didn't really get
10 to that point of discussing. Our discussion took
11 place around his early life and we didn't touch
12 upon the alleged crime, guilt or innocence or
13 anything, I just was really trying to get the
14 background to establish the context for this man,
15 young man, so maybe in the third hour or the
16 fourth hour I would get to the issue of the
17 offence, attitude towards his mental state at the
18 time, but not in this first hour and 20 minutes.

19 Q But correct me if I'm wrong, Dr. McDonald, this
20 seems to be a specific recollection that you had
21 and by reading this, and again please give us your
22 input, it seems that you found that noteworthy in
23 some respect?

24 A I don't recall it being particularly noteworthy.

25 Q You don't recall thinking that at the time?



1 A No, no, and I don't know, maybe I did say to him
2 that it was the exception, but in thinking back in
3 my experience with Mr. Milgaard, I don't recall
4 that as standing out.

5 Q Okay. I'm going to skip past the next two
6 paragraphs. If we could go to the bottom of the
7 page, please, starting:

8 "Dr. McDonald spoke very highly of Mr.
9 Tallis. He feels that the Milgaard
10 matter was handled well."

11 And do you recall providing this information to
12 the RCMP?

13 A I do that.

14 Q And I'm assuming, from what you've told us, that
15 you weren't closely following the trial or the
16 conduct of the defence; can you give us any
17 clarification with respect to that comment?

18 A Yes. Mr. Tallis suggested he didn't want his
19 client interviewed any further.

20 I've always been impressed by
21 how -- 'easy' is not the term I would like to
22 use -- but how it's been, I guess, easy to
23 interview people charged with serious offence, and
24 lawyers know it, and they don't try to abort this
25 at all. On the one hand, if they are concerned



1 about fitness, maybe they would like to go ahead
2 with it; but then when you get into dealing with
3 the state of the mind of the accused at the time I
4 think lawyers are taking a gamble on what will be
5 revealed in discussing the circumstances, and I've
6 always wondered why they haven't -- if they were
7 fairly convinced that insanity wasn't a defence at
8 the time I wouldn't like to see a psychiatrist,
9 who I don't know listening to what the accused may
10 choose to drop in an interview situation.

11 Q So I take it it's that particular aspect that you
12 are impressed by regarding Mr. Tallis?

13 A Well I have to say that I had another experience
14 with Mr. Tallis as a witness in a marital dispute
15 involving a lawyer of some repute, and I was
16 treating his wife and I was asked to give
17 testimony, and Mr. Tallis, after I gave him
18 testimony, asked to see my notes.

19 That's another thing, I have
20 never seen, I've been in practice for 50 years,
21 and a lawyer has never asked to -- Mr. Tallis, I'm
22 sure, didn't ask after that because I couldn't
23 read those notes.

24 Q I'll take you to the next page, top of the page.

25 A What I am saying, I have known Mr. Tallis really



1 on the bench, I was in front of him in a hearing
2 in the Northwest Territories when he was on the
3 bench, and he has been a very careful, credible,
4 very ethical practitioner, in my limited
5 experience.

6 Q Okay. And the comment at the top of the page:

7 "From past experiences with Mr. Tallis,
8 he has been questioned by him in Court,
9 he feels Mr. Tallis to be thorough,
10 prepared and competent."

11 And I think you are confirming for us that's your
12 recollection of Mr. Tallis and your dealings with
13 him?

14 A Yes.

15 Q Okay. I take you to the next paragraph:

16 "Dr. McDonald had no complaints about
17 Saskatoon City Police. He feels they
18 handled the matter well. The only
19 S'toon P.D. member he recalls dealing
20 with was Penkala & he expressed no
21 concerns in regards to him."

22 And in particular, in relation to the comment
23 about Lieutenant Penkala, I think you advised us
24 earlier that you did not recall the specific
25 interaction that's referred to in the report I



1 brought to your attention; do you recall specific
2 dealings with Lieutenant Penkala during the
3 investigation otherwise?

4 A Not, not this. I had had dealings with him
5 before, and I had formed an opinion on his
6 professionalism before, but no, I can't remember
7 that episode with Mr. Penkala and the pictures.

8 Q So are we to take this, then, as perhaps just a
9 general comment about Lieutenant Penkala?

10 A Yes, as well as the city police, I can't remember
11 saying they handled the case well. I had nothing
12 to do with it beyond the hour and 20 minutes I
13 spent with Mr. Milgaard in the police station, I
14 know -- you know, this is -- could be taken out of
15 context and say 'they were careful during the
16 investigation', I don't, I have no opinion on that
17 whatsoever.

18 Q You had no knowledge of any such matters?

19 A No. In fact I would have to tell you that, after
20 I sent the note on June the 3rd to Mr. Caldwell to
21 the extent that I would not be pursuing this
22 further, I did not really follow the case at all
23 other than to -- a casual view through the
24 *StarPhoenix*, but I do not follow Court cases as a
25 rule.



1 Q Okay. Continue on down the page. Next paragraph:
2 "Beyond Mr. Caldwell's request ... the
3 only other person that he recalls
4 contacting him about this case was
5 reporter Eric Malling, who he believes
6 was doing some investigative reporting
7 on the Milgaard matter. Dr. McDonald
8 recalls suggesting to Malling that there
9 was a lot more to Mr. Milgaard than the
10 papers presented."

11 Do you recall providing that information to the
12 RCMP?

13 A Yes, in that general way that I discussed earlier,
14 that he should get the total picture.

15 Q And it says:
16 "... more to Mr. Milgaard than the
17 papers presented ..."?

18 A Right.

19 Q What papers are you referring to?

20 A Well, the *StarPhoenix*.

21 Q Okay. Newspaper articles?

22 A Yes.

23 Q And I'm going to take you back just for a moment
24 to the reappraisal report that we had looked at
25 earlier, again it's 325166, and I see the one



1 comment in writing at the top. It says:

2 "There is more to this",

3 and again, I think you've answered but I did feel
4 compelled to bring you back to this again, Dr.

5 McDonald; is that potentially your comment? I

6 take it that's not your handwriting, you've
7 confirmed for us?

8 A Well, as a general statement, I just said that I
9 felt there was more to the story than the papers
10 presented.

11 Q I'm wondering about this specific comment, is --
12 that's not in your handwriting I think you've
13 confirmed?

14 A No, that's not, none of this writing is mine, not
15 a thing on these pages.

16 Q And is it possible that you could have relayed
17 that comment to someone who was dealing with this
18 document before it came to your attention?

19 A Well the only person would be Mr. Malling.

20 Q Okay. If we could go back to the RCMP notes,
21 please, page 034532, I'll read you the next
22 paragraph. It states:

23 "Dr. McDonald recalled from the Yorkton
24 Psychiatric Centre file on Milgaard, a
25 reference to the effect "that if he



1 (Milgaard) doesn't get help he is going
2 to kill someone." "

3 Do you recall providing that information to the
4 RCMP?

5 A I don't recall, but I'm sure I did.

6 Q Okay. And I note that there's --

7 A And I --

8 Q -- no reference to the portion of the comment --

9 A And I don't know --

10 Q -- 'stab in the dark'?

11 A And I don't know the significance of that.

12 Q And, if you had provided this information to the
13 RCMP in 1993, would you have provided that portion
14 of the comment?

15 A I don't know why I would exclude it. There are
16 two elements to that, one is the reference to the
17 prediction that he is going to kill somebody, and
18 that the other thing with that is just it's a stab
19 in the dark, which was eerily apropos of what had
20 transpired. And I don't think anybody in this
21 room would have read that and, knowing that
22 background, wouldn't have had the same reaction.

23 Q And I guess what I am wondering, and maybe we can
24 ask it a little bit more widely, at any point when
25 you would have been advising someone of that



1 comment that you recalled, would you have included
2 the 'stab in the dark' portion?

3 A I don't recall. The person I recall talking to,
4 the police, I don't know if I included that or
5 not. I don't know. I don't think I would have
6 left it out for any conscious or deliberate
7 reason. I know, when I read it to Mr. Caldwell
8 initially or showed him it, that that was -- I was
9 equally interested in the 'stab in the dark'.

10 Q Okay. I'll take you to the next paragraph. It
11 states:

12 "In review of Milgaard, Dr. McDonald
13 found no major psychiatric disorder.
14 For example Schizophrenia. Milgaard was
15 not psychotic. He saw Milgaard more in
16 the terms of having a personality
17 disorder. Feeling that Milgaard was a
18 Sociopath."

19 And that confirms, I think, the information that
20 you previously advised us of. And I'll read on
21 to the next paragraph:

22 "Note: According to Dr. McDonald,
23 denial, even over a lengthy period of
24 time, is consistent with a person
25 suffering from a sociopathic



1 personality."

2 Do you recall providing this information to the
3 RCMP in 1993?

4 A I don't recall the date held of that discussion 12
5 years ago, but I'm sure I did.

6 Q And can you tell us why you would have been making
7 that comment?

8 A At -- maybe this came from the Mounties asking me,
9 I don't know why I'd spon -- I wouldn't
10 spontaneously come up with it, but it was in
11 response to something.

12 Q That's your recollection on the matter?

13 A I don't recall it. This is what I am saying
14 probably happened.

15 Q Okay. I'll turn you to the next page, and I'm not
16 going to -- the next paragraph, I think, deals
17 with some discussions on sodium pentothal, and
18 perhaps the RCMP officers were asking you some
19 specific questions on that. I'm going to bring
20 your attention, though, to the bottom of the page.
21 It states:

22 "Dr. McDonald was not called to give
23 evidence, (actually excused) because he
24 had nothing of value to say. There was
25 no question as to Milgaard's sanity.



1 Milgaard made no admissions to him
2 during the interview."

3 And that would have been information you provided
4 to the RCMP?

5 A It sounds like it.

6 Q And the next sentence:

7 "Dr. McDonald feels that Milgaard was
8 capable of this murder."

9 And did you provide that information to the RCMP
10 in 1993?

11 A I'm sure I did.

12 Q And on what basis?

13 A Anybody is capable of this murder, or the vast
14 majority of people, under what circumstances and
15 under what conditions. It's a kind of a fatuous
16 statement.

17 Q Would it be fair -- was this your view in 1993,
18 and specifically with respect to Mr. Milgaard?

19 A Well I didn't think that he was a dangerous, he
20 was a -- he -- a potential murderer, but people do
21 all kinds of things.

22 Q It just strikes me that the comment likely would
23 have been recorded because you had raised it as
24 having some additional significance for yourself,
25 and I just want to be sure I pursue that fully



1 with you.

2 A There --

3 Q Is there anything else you can tell us about this?

4 A There was nothing in the interview I had with him,
5 nor in any of the documents I obtained from any of
6 the investigations or assessment done before I had
7 seen him, exclusive of that comment of the one
8 social worker, the two comments, that would
9 indicate that he was a danger to people. Other
10 people suggested that they may, I could not see
11 that. He was a nuisance, and there is no question
12 about it, difficult in school, difficult in the
13 community, certainly difficult at home, but as far
14 as I remember there was no offence against
15 anybody.

16 But everybody is, you know, if
17 you join up, if you are an American soldier and
18 end up in Iraq, you would do a lot of things you
19 wouldn't normally do. The circumstances change
20 but the potential is there.

21 Q And, again, thank you for being patient with me as
22 I ask questions in this area. Just, I -- I think
23 about some of the other comments I have seen in
24 the documents. There is a comment, for example,
25 "there's more to Mr. Milgaard than the papers



1 presented"?

2 A And I think I've answered that.

3 Q Yes.

4 A And we're talking about his background, that's all
5 I'm talking about.

6 Q Okay. And nothing, though, of that nature that
7 compelled you to make this comment to the RCMP in
8 1993?

9 A In the nature that 'he is a ticking bomb'? No.

10 Q Okay. Do you think at this time, and if I'm
11 hearing you correctly it seems to me that you are
12 perhaps saying that if you were making this
13 comment, that you would have been saying "is Mr.
14 Milgaard capable of murder? Well, anybody is
15 capable of murder."

16 A I would think so.

17 Q And is that what you are telling me, that you
18 think that's the purpose for which it was recorded
19 on this document?

20 A Oh, I'm not sure the purpose it was recorded, I
21 didn't do the recording.

22 Q The context of it being recorded would be of that
23 nature though?

24 A I would hope so.

25 Q Okay. Nothing further that you can recall in



1 relation to that?

2 A No.

3 Q Move on to the next paragraph:

4 "Dr. McDonald indicated that Serge
5 Kujawa is an old friend. Nothing
6 learned in that area."

7 And would that be correct information that you
8 were providing to --

9 A Mr. Kujawa and I served on the Lieutenant
10 Governor's Review Board for over 25 years
11 together, yes he is a good friend, was and still
12 is.

13 Q Okay. Thank you, Dr. McDonald. I'm just about
14 through, I'll turn your attention to one further
15 document, it's 162295. And I can't tell you who
16 the author of this document is, I could make a
17 guess that it's Robert Bruce who was offering some
18 assistance to the Milgaards, although I stand to
19 be corrected on that. You will see that your name
20 is identified at the top of the page, and the only
21 comment I'm particularly interested in is the last
22 comment, and it says:

23 "Spoke with Eric Malling to scuttle
24 orig. 5th Estate. according to Sandra
25 Bartlett."



1 And do you have any idea what this comment may be
2 referring to?

3 A I -- my guess is it refers to my warning to Eric
4 to do a complete work-up.

5 Q Okay.

6 A I didn't tell him to scuttle it. I would not
7 advise anybody how to do their business.

8 Q Okay. If you can just give me a moment, Dr.
9 McDonald, I want to check on one further document.

10 Those are all the questions I
11 have, Dr. McDonald, thank you. My Friends may
12 have some questions for you.

13 Mr. Commissioner, I haven't
14 canvassed an order, but I don't know if you want
15 to take a break at this particular time? This is
16 our last witness for today.

17 COMMISSIONER MacCALLUM: Well, it wouldn't
18 be a bad idea to take a break now and arrange
19 order of cross-examination. How many, can you
20 indicate how many, one, two, three, four?

21 MR. HARDY: I see four.

22 COMMISSIONER MacCALLUM: Yeah.

23 *(Adjourned at 2:32 p.m.)*

24 *(Reconvened at 2:49 p.m.)*

25 MR. HARDY: We've decided upon an order,



1 Mr. Commissioner, and Mr. Gibson will be
2 starting.

3 COMMISSIONER MacCALLUM: Thank you.

4 **BY MR. GIBSON:**

5 **Q** Dr. McDonald, my name is Bruce Gibson, I'm for the
6 RCMP, and I'm just going to chat with you briefly
7 about your contact with the RCMP back in 1993,
8 already coming on, I guess, 13 years ago now.

9 I take it at that time, prior to
10 the RCMP showing up and visiting with you about
11 this case, you hadn't had a great deal of
12 opportunity or cause to go back and look at the
13 work that you had done on the Milgaard file?

14 **A** That's right.

15 **Q** And if we could just put up that investigation
16 report, 044621, and if we could just go to the
17 next page on that. And, again, it looks like the
18 RCMP came out and visited with you March 1st of
19 1993, and I believe your recollection was that it
20 was somewhere around that time that you sat down
21 with the RCMP; correct?

22 **A** As far as I --

23 **Q** As far as you can recall?

24 **A** Yeah, I can't disagree with this.

25 **Q** All right. And do you recall Officer Einar



1 Jorgenson; do you remember the gentleman at all?

2 A No, I don't.

3 Q It was just, from your recollection it was an RCMP
4 officer just asking you some questions and taking
5 some notes?

6 A Yes. I have been interviewed by CSIS officers as
7 well and I don't know their -- them either.

8 Q They like to keep their identity secret anyways.

9 A It's hard to hide a face.

10 Q That's good. They probably had their cloaking
11 devices on.

12 If I could just touch a little
13 bit on that interview, if I can just scroll down
14 that page, if I can just stop right there. And
15 your evidence was that you only had contact with
16 Mr. Milgaard one time, and that your interview
17 lasted a little over an hour; is that correct?

18 A An hour and 20 minutes.

19 Q And, again, I believe your recollection, when you
20 were going through this document with Mr. Hardy,
21 was that, for all intents and purposes, you don't
22 take dispute with the notes that were written down
23 by Officer Jorgenson? Those are his notes, they
24 are not yours, but it would be reasonable for him
25 to take the notes that he did based on the



1 interview that he had with you; correct?

2 A Yeah, with the exception to the statement about
3 predicting Milgaard would kill.

4 Q Okay. And again if we can just have a look at
5 that portion of this document, just try to find
6 that, if we can go to page 044627 and it's just at
7 the bottom there, and we'll go on to the next
8 page, it says:

9 "Dr. McDonald feels that Milgaard was
10 capable of this murder."

11 And, again, your recollection of that is you
12 thought, at the time, that you may have or may
13 not have included in your comment with Officer
14 Jorgenson that that was just a 'stab in the
15 dark', that's something that you had read in the
16 past; correct?

17 A I'm sorry, go back?

18 Q All right. When you were, when you were
19 discussing this with Officer Jorgenson and he
20 wrote down Milgaard was capable of the murder,
21 and we've just gone through that:

22 "Dr. McDonald feels that Milgaard was
23 capable of the murder.",

24 if I recall your evidence with Mr. Hardy you said
25 that you may have also included, in that, that



1 that was just a 'stab in the dark', referencing
2 back --

3 A No, no, well, I shouldn't say that --

4 Q Okay.

5 A -- because I can in no way predict who is going to
6 be a murderer or not. This is really black art,
7 anybody saying that somebody is going to do
8 something or not, because -- and I said of the
9 example currently we have law-abiding, God knows,
10 God-fearing American soldiers going over there and
11 committing atrocities which nobody anticipated.
12 But things, as Mr. Brunsfeld (ph) said, 'stuff
13 happens', and so I can't say that Mr. Milgaard was
14 not capable or was capable, anybody could do it
15 under specific circumstances.

16 Q And in the circumstances --

17 A This is just life.

18 Q Okay. And in the circumstances that you spoke
19 with Officer Jorgenson you, again, were
20 speculating that anyone was capable of doing that?

21 A Under the circum -- special circumstances.

22 Q All right. And at that point in time, if you
23 recall, Mr. Milgaard was out of jail, there was a
24 good deal of press about him; correct?

25 A I guess.



1 Q And there was no DNA which would have -- which
2 clearly would absolve him of the crime; correct?

3 A I don't know.

4 Q You don't recall that at the time then?

5 A I've really not followed this case that carefully.

6 Q So again, now that I have managed to muddy the
7 waters completely here, if I understand you
8 correctly, that the comment that you would have
9 made to Officer Jorgenson, you don't dispute that
10 you made that comment, but then again in
11 clarification you are saying that that's
12 something, that you were speculating that Mr.
13 Milgaard, or anyone in the right circumstances,
14 could be capable of a crime like that?

15 A I think I would have -- knowing myself, my answer
16 would have been "well anybody, Mr. Milgaard is
17 capable, as anybody is capable".

18 Q Okay. And you would agree, at that time, that if
19 -- the Miller murder was unsolved; correct?
20 Again, do you remember that?

21 A No, I don't.

22 Q All right.

23 A I wasn't even thinking about it.

24 MR. HARDY: Bruce, I'm sorry, I think that
25 you had started in with -- the 'stab in the dark'



1 comment didn't relate to this portion that you
2 were referring to.

3 MR. GIBSON: Oh, it did not? My error.

4 MR. HARDY: No, it was the earlier portion
5 about the prediction from the social worker, and
6 we --

7 MR. GIBSON: Okay.

8 MR. HARDY: -- can get the page for you if
9 you like.

10 MR. GIBSON: Okay.

11 MR. HARDY: But he wasn't referring to the
12 'stab in the dark' with this entry that is up on
13 the screen now.

14 MR. GIBSON: Okay. My apologies. It's not
15 crucial for me, for my purposes.

16 BY MR. GIBSON:

17 Q But in 1993 you would agree that the Miller murder
18 wasn't solved?

19 A Well in retrospect it wasn't, no.

20 Q Mr. Milgaard had been released?

21 A I, quite frankly I don't remember what was -- I
22 was within three months of stepping down as Dean,
23 a major shift in my life. I guess I was focused
24 on that more than what had happened 30 years
25 before.



1 Q Okay. And in your -- again, and I'm not going to
2 belabour this any further, in your discussion with
3 the RCMP, then, it was your view that it was
4 possible that Mr. Milgaard, or anyone in the right
5 circumstances could commit such a crime; is that
6 fair to say?

7 A Oh yes. I don't think it should be inscribed in
8 the Charter of Rights, but it --

9 Q Okay.

10 A -- it's one of the things that can happen.

11 Q And do you recall, when you met with the RCMP, did
12 they explain to you the purpose for meeting with
13 you? Did they explain to you that they were
14 investigating allegations of a police cover-up or
15 prosecutorial wrongdoing when they met with you?

16 A I don't recall it being expressed in that terms,
17 but they, they told me what they were there for.
18 I mean I've --

19 Q And, again, if we look at the synopsis here of the
20 RCMP continuation report -- and, again, I'm not
21 going to belabour that with you, doctor -- but
22 there is no reference in the synopsis as to
23 whether Mr. Milgaard was capable of the murder or
24 not. The focus appeared to be on your dealings
25 with Mr. Milgaard, the time that you spent with



1 him, approximately an hour when you went to see
2 him at the Saskatoon City Police station, and
3 again --

4 A And whether Mr. Kujawa was a friend of mine.

5 Q Exactly. And your dealings, then, with the city
6 police --

7 A Yeah.

8 Q -- and with the prosecutor, and whether you had
9 anything to offer on the investigation with
10 respect to the allegations, does that ring a bell
11 with you at all?

12 A Well, I think so, yes.

13 Q Okay. Thank you very much.

14 A Right.

15 **BY MR. LORAN:**

16 Q Good afternoon, Dr. McDonald. I'm Pat Loran, and
17 I'm on for the Saskatoon Police Service, and I
18 just wanted to ask you about one matter. I think
19 Mr. Hardy alluded to it after lunch.

20 Can I ask for document 009327?
21 Perhaps we can blow this up a bit, enlarge it.
22 Thanks. Do you recall this document having been
23 put to you before lunch?

24 A Yes, I do.

25 Q Would it be fair to say, Dr. McDonald -- I think



1 it was your evidence but correct me if I'm
2 wrong -- that back in 1969 you would have been one
3 of the few individuals in Saskatoon, in the
4 Saskatoon area with expertise to give psychiatric
5 opinions of the sort that's referred to here;
6 would that be fair to say?

7 A What I am suggesting to you, this isn't
8 psychiatric opinion.

9 Q All right. Would you have been one of the go-to
10 people at the time?

11 A For general questions, but I'd, I --

12 Q You object --

13 A You know, this is a special area of expertise
14 which -- it can be found primarily in the States,
15 I think the FBI has some expertise in this area,
16 but I don't think, I don't think people go to a
17 psychiatrist to see "can you tell me the, what's
18 the personality of a person who, multiple stabbing
19 of a person, you know, at 7:00 a.m. on a February
20 or January morning with 35 below", no, I don't.

21 Q You are uncomfortable with the suggestion that you
22 would have been qualified to give this opinion; is
23 that what I hear you saying?

24 A I'm just not qualified, period.

25 Q Okay. But would it be fair to say that you would



1 have been one of the people in Saskatoon that
2 enforcement agencies would have turned to for
3 psychiatric opinions at this time?

4 A Yes.

5 Q Now I realize it's been 36 years, you've responded
6 to a number of the questions by saying that you
7 don't have a specific recollection; would it be
8 fair to say, with regard to this document, that
9 you simply have no recollection of the
10 conversation referred to in the memo, or do you
11 have a specific recollection that you were not
12 contacted by Lieutenant Penkala?

13 A I have no recollection, period.

14 Q Thank you. That's all.

15 BY MS. KNOX:

16 Q Dr. McDonald, I've introduced myself to you, for
17 the record I'm Catherine Knox and I act as counsel
18 for Mr. Caldwell, who has been known to you for
19 many years and who you knew to be the prosecutor
20 on the file. And I, although I brought a pile of
21 papers with me, I don't intend to be very long, I
22 just have a few areas that I want to touch on with
23 you.

24 You indicated in your evidence
25 that after you did the interview with Mr. Milgaard



1 on June 2nd, 1969, and you got the message on June
2 3rd that his lawyer didn't want you talking to him
3 any more, that basically that was the end of your
4 involvement in the active part of the case prior
5 to preliminary inquiry and trial; did I understand
6 you correctly in that regard?

7 A Yes, apart from that time somewhere between June
8 the 2nd and when the preliminary took place where
9 I told Mr. Caldwell, answered his inquiry as to
10 whether we had got the reports.

11 Q Okay. I'm just going to ask to bring up document
12 number 0 -- oh, just give me a moment while I
13 check my number here -- 105629. Dr. McDonald,
14 contained in Mr. Caldwell's file, which was
15 retained and has been provided to the Inquiry, is
16 a subpoena which was issued to you requiring your
17 attendance at the preliminary inquiry on the 18th
18 of August, 1969. Now the note that was shown to
19 you this morning indicates that you were excused
20 and that you didn't in fact have to attend, but do
21 you remember getting a subpoena with the
22 possibility that you might be needed at the
23 preliminary inquiry?

24 A No, I don't remember that.

25 Q Okay. Then would I -- I'm -- I'll suggest to you,



1 and see if you agree with me, that in the early
2 stage when a person is arrested for an offence
3 like this, and a psychiatrist, a forensic
4 psychiatrist does as you did, you went in to
5 assess the issue of fitness, that depending on the
6 defences that may be offered your opinion might
7 become important because you had, in fact, seen
8 the individual soon after his arrest and you did
9 formulate an opinion that he was fit for trial?

10 A Yes, yeah.

11 Q That's a practice that you would be familiar
12 with --

13 A Sure, yeah, yeah.

14 Q -- as a psychiatrist?

15 A But remember that I would insist on assessing him
16 immediately before the trial, so that has a life
17 expectancy of one second, it's valid for the
18 moment I saw him but I would want to -- things can
19 happen --

20 Q Okay.

21 A -- even in six weeks or in eight weeks, so I would
22 want to see him immediately the night before the
23 opening of the trial.

24 Q Yeah. And I, if I can follow you, the subpoena is
25 issued so that you are available, if Mr. Tallis



1 had raised the issue of fitness, before you would
2 give an opinion, if I am hearing what you are
3 saying, in the Court, you would want to see him
4 again?

5 A Oh yes, yes.

6 Q Okay. But in this case all that happened was the
7 subpoena was issued, fitness was not raised so you
8 weren't needed, and as the notes in the file
9 indicate you were excused from attending in
10 accordance with the subpoena; fair summary of --

11 A I guess so.

12 Q Okay.

13 A I don't remember the subpoena but I'm sure, if
14 it's there, it's there.

15 Q Okay. I think there is something there that says
16 it was served on you too, and a telephone message
17 about you calling in relation to it, but certainly
18 not to suggest that you ever gave evidence, but
19 that the possibility remained open that you might
20 be needed?

21 A That's in Mr. Caldwell's file but it's not in my
22 file.

23 Q Okay. Now, sir, with respect to the information
24 that you obtained, and again if I understood you
25 correctly this morning, after you saw Mr. Milgaard



1 on June 2nd and you got the authorizations to
2 access his medical records, it was your decision,
3 a medical decision as it were, to get your
4 secretary to request those, you didn't do it at
5 the request of the Crown, you did it --

6 A Yes.

7 Q -- as a practicing psychiatrist?

8 A It was my practice to do that.

9 Q Okay.

10 A If there's any indication of previous medical, or
11 particularly psychiatric treatment, I would
12 automatically try to access this information.

13 Q And again, in the event that down the road you
14 might be needed to do further work or give expert
15 opinion in respect of this?

16 A It's a part of my practice with patients who
17 haven't been in a criminal justice system,
18 everyday patient. If they come into my initial
19 assessment and they record they've been seen by
20 doctors, psychiatrists, social workers or anybody
21 else, even for people that I'm seeing for
22 independent medical assessments or compensation
23 boards, I get permission to access their other
24 records. I'm a great believer in collateral
25 information.



1 Q Thank you. And, sir, in obtaining collateral
2 information, and you can reflect beyond this case
3 if you wish, but is it your experience when you
4 send a request to a fellow psychiatrist or a
5 psychiatric institution like the Yorkton
6 Psychiatric Centre, or any other, asking for a
7 file on an individual who has given you his
8 authorization, that you would expect to receive
9 their full file?

10 A Whatever is relevant to my request.

11 Q Yeah.

12 A On the form requesting information, you have to be
13 specific of what information you are asking about,
14 is it for the previous admission investigations,
15 previous medical record, medical experience, and
16 you designate that and send it to whoever the
17 agency is or agent and it's good for that reason
18 only, and this is the, when the
19 patient/client/inmate signs it, specific
20 permission for a specific bit of information, it's
21 not a net that you throw out to see what you can
22 bring in.

23 Q But in relation to an institution like the Yorkton
24 Psychiatric Centre where he had been a patient I
25 think from November 14th of '66 until February,



1 '67, you are dealing with him in '69, would you
2 anticipate that you would get the full file in
3 relation to that single admission because he did
4 only have the one admission and stay there?

5 A I would hope so.

6 Q Okay. And if there were related records, like the
7 social history indicates there were psychologist
8 reports and things of that nature on the file that
9 were there on him and that the psychologist was
10 involved in his assessments, would you anticipate
11 and expect that you would get those too?

12 A Not necessarily. I can't even get them in
13 University Hospital, I have to have a specific
14 release relating to the psychologist.

15 Q Okay. Was that the practice back in 1969, that
16 there had to be a specific release relating to a
17 psychologist?

18 A I don't know. I would guess.

19 Q Okay. But you don't know?

20 A I don't know.

21 Q Okay. Now, sir, you indicated, and a couple of
22 times you described the discussions or the
23 reaction that you had to the statement that was
24 included in a social worker report in the file
25 about the possibility that, or the prediction,



1 albeit wrongly, that one day Mr. Milgaard might
2 kill somebody, or would kill somebody but that it
3 was only a stab in the dark, you've described
4 drawing it to other people's attention. At one
5 point in time you indicated that it was in the
6 vein of humour, but later in your testimony today
7 you've described it as being eerily apropos of
8 what transpired in 1969, and I caveat that by
9 saying what everybody, or a lot of people believed
10 that Mr. Milgaard had in fact stabbed a woman to
11 death, that in that context in 1969, 1970, '71,
12 '72, for people who had a belief that in fact he
13 had done this, it was kind of eery wasn't it?

14 A It certainly was.

15 Q And in your conversation with Mr. Caldwell, would
16 you agree with me that he was one of the people
17 who found it kind of eery?

18 A Oh, yes.

19 Q He didn't treat it as ha, ha, joke, joke, he took
20 that as being very --

21 A It was a mixture. I think, I'm not speaking for
22 Mr. Caldwell, but I thought we were of one mind,
23 that it was extraordinary --

24 Q Yeah.

25 A -- a social worker would make an observation like



1 this. I felt it was extraordinary that anybody
2 would record it for posterity.

3 **Q** And in terms of recording it, sir, I looked for a
4 document, and I can't find one, and I don't know
5 if I found it in documentary evidence or it was
6 told to me, but is it your memory that this
7 comment was contained in a chronology of a case
8 conference?

9 **A** Yes.

10 **Q** That there were in fact various participants in a
11 meeting?

12 **A** Yes.

13 **Q** One of the participants, a social worker, made
14 this comment in the group and it was recorded in
15 the group?

16 **A** That's right.

17 **Q** Okay. So that is your memory, that it was a
18 document of some page or pages?

19 **A** Right.

20 **Q** With a list of attendance of a number of
21 professionals?

22 **A** Right.

23 **Q** And one of them who was doing the recording,
24 recording this as being raised in the meeting and
25 reported in the meeting as a prediction?



1 A Right.

2 Q And, sir, you were referred earlier to a letter
3 where Mr. Caldwell in writing to the parole board
4 used the plural, social workers. Given that he
5 saw a case conference report, would his use of
6 social workers perhaps not be an overstatement or
7 inappropriate given that it was made in the
8 context of a meeting with several people as
9 opposed to the written musings of one person?

10 A You mean several people said that?

11 Q Several people were in the room when the
12 conference was held that it was recorded, it was a
13 group discussion?

14 A That doesn't apply to authorship of the remark.

15 Q No, not to authorship of the remark, but that it
16 was in the presence of --

17 A That's all I was interested in, is the authorship.

18 Q Okay. Now, sir, just bear with me a moment, I
19 have to go through my notes here. In 1972, and I
20 can bring up the document if you need it, but
21 you'll recall that you responded to an inquiry
22 from Mr. Caldwell and you gave him the diagnosis
23 for Mr. Milgaard that confirmed a severe
24 behavioural disorder and the sociopathic
25 diagnosis. You were aware, were you not, when you



1 did that letter to him, that he was going to
2 convey that information that he was obtaining from
3 you to the National Parole Board?

4 A Yes.

5 Q You were aware that Mr. Caldwell had an apparently
6 genuine and honest, deep-seated belief that David
7 Milgaard was guilty of this crime?

8 A I certainly was.

9 Q And you were aware that he had a deep-seated and
10 apparently honest belief that he could, given the
11 psychological information as he saw it in your
12 file, that he could re-offend if he didn't get
13 proper treatment within the institution?

14 A Not in my personal file.

15 Q No, no, but in terms of your discussions with him,
16 you were aware of the reason why he was making, or
17 getting this information to make representations
18 to the National Parole Board on this issue and
19 about this person?

20 A Well, I think it was based on the evidence brought
21 from other centres of a long history of offences,
22 and also his behaviour in the Yorkton Psychiatric
23 Centre.

24 Q As well as the other centres that you got the
25 information from that he reviewed in your office?



1 A Yes, yes.

2 Q But it was based on information that he came to
3 learn through prosecuting him and through the file
4 that you were able to gather in respect of his
5 past history?

6 A I assume so.

7 Q Yes. Mr. Caldwell made the observation in one of
8 his letters to the parole board that it was very
9 unusual to find such a well-documented history on
10 an individual from such a young age of behavioural
11 problems dating to kindergarten, and you passed
12 comment on that today. Was he right, that it was
13 unusual to find that well documented a history on
14 a young person back in 1969?

15 A Oh, two things, to find documented history from
16 any organizations in '69 would be unusual.

17 Q Uh-huh.

18 A To find this length of a history of this sort of
19 behaviour which affected the home, the school and
20 the community, starting at age five, in my
21 experience -- and that's all I'm saying, I don't
22 know of Mr. Caldwell's experience -- but my
23 experience was it was unusual, and I think I said
24 that earlier today.

25 Q Okay. And would it be the kind of information,



1 being so unusual even in your experience, that
2 might have coloured your discussions with Mr.
3 Caldwell as to the significance that it might have
4 in assessing David Milgaard's future behaviour?

5 A Umm, let's go back a bit.

6 Q Okay.

7 A These documents were up until the time he was 14
8 or 15. The current DSM IV indicates that you
9 can't make this diagnosis until 18.

10 Q Right.

11 A Symptoms should be there before 15, but that
12 doesn't mean there can't be change. Some people
13 do change. A lot don't.

14 Q Uh-huh.

15 A But, you know, you don't put the final diagnosis
16 until they are 18. Now, when we saw him, this is
17 well before DSM IV and we were making the
18 diagnosis well before 18. I don't know Mr.
19 Caldwell's understanding of the records, I don't
20 know lawyers' understanding of medical records or
21 psychiatric records, but I know my understanding,
22 and that's what I can speak for.

23 Q Okay. I'm going to bring up 006845 if I can,
24 which is your June 5th letter, before I ask you
25 this next question. Just bring out the second



1 paragraph. Was there a particular reason or any
2 reason in corresponding to Mr. Caldwell in respect
3 of your telephone discussions that you expressed
4 the view that, and I'll paraphrase here, this
5 isn't your language, that he should encourage or
6 suggest to the parole authorities that they should
7 look at the past records if they were interested
8 in following up on the case, did you consider
9 those records to be an important tool for parole
10 authorities to have in their possession?

11 A Yes, in much the same way as I referred this to
12 Eric Malling.

13 Q Right.

14 A That you have to have the whole story, not just a
15 slice.

16 Q Okay. And the subsequent correspondence indicates
17 that Mr. Caldwell did in fact do as you suggested
18 in his letter to the parole board in '72 and '74,
19 he suggested they should get the records and then
20 he followed up with you and you suggested that the
21 authorities should get an authorization and go
22 directly to source to get the reports, but did you
23 continue to share with Mr. Caldwell your belief
24 that these records might be of some importance or
25 that they should be considered in assessing David



1 Milgaard within the parole prison system?

2 A I thought, and still do today, that they would be
3 essential.

4 Q Okay. So when he was conveying that information
5 to the parole board, he was conveying information
6 based on discussions with you and you as the
7 forensic psychiatrist were of the belief that
8 these records were essential?

9 A I don't know if he based his report on discussions
10 with me or what he based it on, but I would say
11 that was what I was hoping. I wanted to get out
12 of the conduit here, I was getting tired of people
13 going through other agencies through me. I was by
14 this time department head, I had a lot in my hands
15 other than going over old cases from which I
16 abandoned years before, so I was hoping this would
17 take place between the National Parole Board and
18 these other agencies as communication should.

19 Q But -- and I appreciate that, and I know that in
20 1977 you did that. My only point in my question
21 to you though is you shared the view, or you
22 encouraged -- and maybe encouraged is the wrong
23 word, you supported Mr. Caldwell in the belief
24 that this information should be accessed by the
25 parole service?



1 A Yes.

2 Q So he wasn't just going off half-cocked, there was
3 a forensic opinion that he had access that said
4 these records could be important?

5 A Yes.

6 Q Okay. Now, sir, in the -- and I'm going to bring
7 up now if I could 006838. Oh. Could I bring up
8 the page after that, please? No.

9 Mr. Commissioner, if you could just bear with me,
10 I have a copy of something that's in the binder --
11 oh, there it is. Thank you. If I could bring out
12 this little telephone message pad for you, and
13 Mr. Hardy has referred you to that, and this is in
14 reference to a discussion that Mr. Caldwell had
15 with you in 1974 -- September, 1974, where he
16 documented that there should be a signed release
17 from Mr. Milgaard to get the institutional reports
18 that you had obtained on him from his past, you
19 see the text of that. What Mr. Caldwell appears
20 to have documented is that you should write him or
21 someone should write him, Mr. Caldwell or somebody
22 should write him with a signed release from
23 Milgaard to release all and any info McDonald
24 might have pertinent to his psychiatric history,
25 and this is information that Mr. Caldwell recorded



1 in 1974 after an apparent telephone discussion
2 with you, which is basically repeating what you
3 put in your letter in '72 you will agree. Now,
4 you indicated that you don't think you said the
5 last part, 'if not - board might consider he's not
6 rehabilitated,' and I'm interested in that
7 sentence only in the context of earlier evidence.
8 You said you do or did work for the National
9 Parole Board as part of your practice?

10 A As a consultant, yes.

11 Q Yes. Would it be fair, as a consultant, for you,
12 or to say to you that the parole board would in
13 fact consider someone's refusal to release their
14 full psychiatric history as perhaps an indication
15 of less than full interest at rehabilitation?

16 A I would have no opinion on that.

17 Q Okay. So in your experience with the parole
18 board, you don't know whether or not that in fact
19 would be the case?

20 A I don't think that issue ever was raised in any of
21 the cases I was involved in.

22 Q If you were doing a psychiatric assessment for the
23 parole board on anybody, let's put Mr. Milgaard
24 aside, would you want to have the full psychiatric
25 history?



1 A Sure.

2 Q And if that individual refused to give you an
3 authorization to get his full psychiatric history,
4 would that impact your assessment in terms of his
5 rehabilitation, treatment, public risk in future?

6 A Unless there were ways of getting information
7 other than through his permission.

8 Q Or good reasons why he wouldn't give it to you?

9 A Yeah, right.

10 Q But certainly it would be a factor that would go
11 into weighing risk assessment for parole purposes
12 wouldn't it?

13 A Well, I guess so.

14 Q Okay.

15 A But how much weight you would give it is the
16 issue.

17 Q Okay. I'm finished with that document, thank you.
18 Now, Dr. McDonald, just a final couple of
19 questions. During the course of your dealings
20 with Mr. Caldwell, and we've touched on that
21 through '69 when David Milgaard was arrested
22 through to 1972 when he talked to you about
23 sending information to the parole board, '74 when
24 he talked to you again about the parole board, and
25 1977, would it be fair to say that you, you knew



1 and continued to know that he held the belief that
2 Mr. Milgaard was guilty of the murder of Gail
3 Miller?

4 A Oh, yes.

5 Q Did you at any point in time in your capacity, and
6 I'm not suggesting that you should have, but for
7 the record did you at any point in time in your
8 dealings with Mr. Caldwell attempt to suggest to
9 him that he was wrong, that he might be wrong or
10 to dissuade him from his view of the case?

11 A No.

12 Q Okay. So in all the dealings you had with him,
13 you responded to his inquiries with the
14 understanding that he believed this young man was
15 guilty of the murder of Gail Miller?

16 A Yes.

17 MS. KNOX: Thank you.

18 **BY MR. WOLCH:**

19 Q Dr. McDonald, I'm Hersh Wolch and I'm David
20 Milgaard's lawyer. I only have a few questions
21 for you I think.

22 During your testimony, you quite
23 correctly referred to having met with Mr.
24 Milgaard, but really you were meeting with a young
25 kid, weren't you, as opposed to Mr. Milgaard?



1 A Under the law it was Mr. Milgaard.

2 Q But to you it was really a kid, I mean, a
3 16-year-old boy?

4 A Well, there are a lot of 18-year-olds that are
5 kids.

6 Q Okay. But to you he was a young boy?

7 A A young man.

8 Q Young man. And as I understand it, the purpose
9 was to determine fitness; is that correct?

10 A Uh-huh.

11 Q Now, that's very different than determining
12 whether a person has a defence of not guilty by
13 reason of insanity?

14 A Yes, indeed, they are two separate issues.

15 Q Very different. Now, what does fitness entail?

16 A The ability to think about matters, to have
17 judgments based on facts, to measure your words,
18 competence.

19 Q Yes. I always thought that it was defined
20 primarily as the ability to instruct counsel, that
21 if you can instruct counsel as to --

22 A One of my colleagues who was a judge said the
23 important thing was recognize which lawyer must be
24 paid.

25 Q That's a lot of magazine subscriptions.



1 A Yes.

2 Q In any event, though, it is --

3 A To instruct counsel, yes.

4 Q Yes. Now, what bases was there to believe that
5 Mr. Milgaard, or David, might not have been able
6 to instruct counsel, what objective criteria were
7 there that would warrant your looking into him?

8 A Well, I had no criteria. The request was to see
9 if there were criteria to warrant recommending
10 that he wasn't competent or he was competent.

11 Q Was there any suggestion that Mr. Tallis was
12 having any difficulty or expressed any difficulty
13 or any lawyer said I'm having difficulty taking
14 instructions?

15 A I had no contact with Mr. Tallis.

16 Q Wasn't there an inherent risk that this young man
17 would come in front of you and could make a
18 damaging admission and could prejudice any defence
19 he might have?

20 A Yes.

21 Q Did you express to Mr. Caldwell any concern that
22 look, what if he says something, am I going to be
23 a witness, am I going to be --

24 A Because when we start out I warned him that what
25 he says may appear later on in Court, warn him



1 that he has to be careful, which is a standard
2 warning in all these cases, or my standard
3 warning.

4 Q But no --

5 A This is not a doctor/patient relationship.

6 Q Okay. So are you telling him there's no
7 confidentiality?

8 A Essentially, yes. There is restricted
9 confidentiality, that is, you don't go tell
10 everybody, but it may be transmitted to the --

11 Q So you would say to him, look, what you tell me
12 could be used against you?

13 A It may, maybe, yes, words to that effect. I don't
14 remember the words.

15 Q Wouldn't it be better for you to have an open
16 dialogue with him in order to make an assessment?

17 A Like what?

18 Q Well, if you could say to the patient, look, it's
19 between you and me, you can reveal whatever you
20 want, I'm not going to repeat it, wouldn't that be
21 a better way of getting to determine the mental
22 state of the person?

23 A I regard a twofold thing, to also, if there's any
24 evidence of mental illness, then to pursue further
25 to see whether he was legally able to be



1 responsible for his actions.

2 Q Okay, but that's premised on his saying to you I
3 did it?

4 A Not necessarily.

5 Q Well, how could you determine whether he's
6 responsible for actions if you don't know if the
7 actions occurred?

8 A Well, you can find out his mental state, it really
9 comes down to doing that, finding his cognition,
10 his ability to think, his ability to reason, you
11 find out if he's subject to mood swings, his
12 innate intelligence, all of these things.

13 Q But you had no difficulty talking to him, he was
14 co-operative?

15 A No, I had no difficulty at all.

16 Q He understood your questions?

17 A Yes, he did.

18 Q He answered them appropriately?

19 A He did.

20 Q It strikes me that it might take you five or 10
21 minutes to realize that he can talk to his lawyer
22 and instruct his lawyer and I don't know why you
23 have to go further than that.

24 A Because I might run up against a man like you in
25 Court.



1 Q Yeah.

2 A I would want to have enough information to answer
3 your many different approaches to the same
4 question.

5 Q Okay, but we're talking here about fitness, not
6 about the defence.

7 A Mine?

8 Q Not your fitness, David's fitness.

9 A Yes, that's right.

10 Q Okay.

11 A This may satisfy you as a lawyer, but there are
12 other lawyers it wouldn't satisfy, they would want
13 to have more information.

14 Q No, I'm just wondering about why any lawyer would
15 even ever consent to his client going to see you
16 when anything he says could be used in Court later
17 on.

18 A You should ask your colleagues. I wondered that
19 too.

20 Q Okay. And David signed documents saying you can
21 get medical, you can get previous history forms
22 and background and things like that?

23 A Yes, he did.

24 Q Did you explain to him as to who might have access
25 to those reports?



1 A No, I did not. It was for my purpose.

2 Q Well, is that correct, sir, for your purposes
3 or --

4 A For my purpose to arrive at a conclusion, and then
5 if this would be taken into Court, then of course
6 you and the Crown would have the obligation I
7 think to find on what I based my conclusion, and
8 it would be based on more than this one slice of
9 behaviour.

10 Q Oh, I appreciate that, but what I'm getting at is
11 we've heard several times that you allowed Mr.
12 Caldwell access to those records and I'm wondering
13 on what basis you did that and why you did that.

14 A Well, when I was getting this information I was
15 really, in a sense, acting as an agent for the
16 Crown.

17 Q So you saw yourself as a Crown agent?

18 A Yes, because if you requested me to do this job, I
19 would have been your agent.

20 Q Had Mr. --

21 A I'm not independent when I'm going into these
22 things, somebody has requested, and I'm
23 accountable to them for my assessment.

24 Q But David wouldn't know that you were a Crown
25 agent, you didn't say I'm here for the Crown;



1 would that be fair?

2 A I can't remember exactly the words --

3 Q Okay.

4 A -- again.

5 Q But you certainly didn't tell him that you would
6 share his history with the Crown?

7 A I'm sure not. Well, I implied that this may
8 occur, may crop up in the Court, so it's not
9 without consequences.

10 Q Had Mr. Tallis said look, Doctor, I want to see
11 all those reports, will you give me a copy, what
12 would you have said?

13 A Fine.

14 Q So you would have showed it to him too?

15 A Sure.

16 Q But you didn't bring it to his attention that you
17 had them?

18 A I wasn't in touch with Mr. Tallis.

19 Q Okay.

20 A He didn't call me.

21 Q Doctor, I'm not being critical, I'm trying to get
22 the facts.

23 A I know.

24 Q But you didn't bring it to his attention?

25 A Nor did he bring to my attention that he didn't



1 want -- it works two ways.

2 Q Okay. It's hypothetical, but had the police come
3 to you and said I want to see those records, would
4 you have turned them over?

5 A No.

6 Q Now, you indicated the records you got showed
7 David to be, I think your words, a trouble-maker,
8 he seemed to be running away all the time, that
9 kind of stuff?

10 A Yeah.

11 Q Okay.

12 A These were records that we obtained from these
13 other sources.

14 Q Right. Now, I think we're all aware of the fact
15 that virtually every school in the country there
16 are quite a few trouble-makers. Would you agree
17 with that?

18 A Oh, of course. Every block.

19 Q On every block, yeah. You know, I picked up the
20 paper yesterday, they are fighting in schools with
21 mace or whatever else.

22 A Well, you come from Winnipeg, you know what's
23 happening there.

24 Q That was Winnipeg's paper.

25 A That's right.



1 Q Broke into my old school and maced the kids, that
2 was yesterday.

3 A The police, the teachers --

4 Q No, another school.

5 A Another school.

6 Q I mean, if you've got a history of all those kids,
7 every one of them would have a history now of
8 macing and fighting and God knows what?

9 A Danny O'Mack against St. John's?

10 Q Calvin.

11 A Oh, even worse.

12 Q That's right. So you've got kids in trouble all
13 the time really, lots of them?

14 A Yeah.

15 Q And lots of them have violence, they are fighting
16 in the school yards, they are pulling out knives,
17 who knows what, I mean, you must come across that
18 quite a bit in assessing young people in your
19 career. It's not surprising?

20 A Oh, at this -- you have got to be kidding, it's an
21 entirely different world than it was in '69,
22 entirely different.

23 Q What I'm getting at is that it seems to be focused
24 on the fact that there's lots of material on
25 David, but isn't what's more important the content



1 of the material?

2 A In terms of --

3 Q Of the importance of the material, it's the
4 content --

5 A You mean that's significant?

6 Q Yeah. Isn't that true?

7 A Well, material significance has to be seen in the
8 broader context. You are not just taking into
9 account one elopement from home, a lot of kids run
10 away from home, but repeated, if repeated
11 break-ins, it's a pattern.

12 Q There's a big difference between a kid who runs
13 away from home and is a smart aleck in school to a
14 kid who is stabbing classmates and running a gang,
15 there's quite a difference?

16 A Yes, there is.

17 Q Okay. Did you make any effort or was it brought
18 to your attention what David was doing just prior
19 to his arrest in terms of work?

20 A No.

21 Q For example, would it have been important to even
22 know that he was gainfully employed and working
23 with several individuals who would speak rather
24 highly of him at the time?

25 A And doing what?



1 Q Selling magazine subscriptions for Maclean's.

2 It's a job that a number of famous people had in
3 those days starting off.

4 A And it's a job that a lot of infamous people had
5 as well.

6 Q Pardon me?

7 A And a job that a lot of infamous people did.

8 Q Oh yes.

9 A I've come across people who got into this and it
10 was a scam.

11 Q Well, I can name you a senator and a
12 multi-billionaire who did it, but --

13 A Well one would be questionable.

14 Q Touché. But my point is that had you learned he
15 was gainfully employed, and we have had a couple
16 of witnesses here who have told us about it, very
17 decent people who would speak well of him at that
18 time; would that not be information you would want
19 to have?

20 A It would be helpful. Any information was helpful.

21 Q Okay.

22 A Yeah.

23 Q But you never had that information?

24 A I didn't have that information. I suppose, if I
25 had carried on the interviews, it might have come



1 up.

2 Q And I take it, with the benefit of hindsight, you
3 could see, now, how particularly difficult
4 interviews with yourself and other psychiatrists
5 would be when the interviewer is perceived to
6 believe that the interviewee is guilty of rape and
7 murder? It's very difficult to be interviewed
8 when the person seems to believe you are guilty?

9 A But I didn't believe that he was guilty of rape or
10 murder, I knew nothing about it.

11 Q Okay. But you knew he was charged with this?

12 A Yes, I knew he was charged.

13 Q And --

14 A That's a difference, I understand.

15 Q And it's a huge difference. But it's pretty
16 difficult, is it not, to cast that totally aside?

17 A In terms of determining competence, no, that's not
18 difficult.

19 Q No, but competence you are correct, that I mean
20 he's competent?

21 A Yes.

22 Q But in terms of determining his make-up or
23 anything about him?

24 A Well the information we got in the past, of
25 course, is -- far antedated this alleged event --



1 Q Right.

2 A -- where -- that's why it was past history. Age 5
3 had nothing to do with that.

4 Q Well you've got the past history, then you've got
5 a gap, a recent gap the last year or two before he
6 saw you?

7 A Sure, yes.

8 Q But what I am saying is I just don't know how, as
9 a psychiatrist, you can just cast aside the fact
10 that a number of people are saying he's guilty of
11 a vicious rape and a murder in assessing him?

12 A I hadn't had the opinions of people saying he was
13 guilty of vicious. When I went in to see him that
14 night I knew he had been apprehended, that he was
15 suspected, but I didn't know that he was guilty of
16 that. And I tend to block out what the police
17 tell me, and in fact they didn't tell me much, all
18 they asked me at this time was about whether they
19 could sit in the interview room with me.

20 Q Well you, as a psychiatrist have you seen people
21 who have been convicted of that kind of crime,
22 have you talked to?

23 A Of killing?

24 Q Yes?

25 A Yes.



1 Q And I take it the conviction affects how you deal
2 with that person or what you believe; would it
3 not?

4 A Well I -- I -- I'm sure it's part of your
5 knowledge bank on the person, yes.

6 Q Yeah. And in the prison system you would have
7 interviewed murderers I take it?

8 A Indeed.

9 Q And can you imagine how difficult it might be for
10 a person who's innocent to be interviewed by a
11 psychiatrist who believes they are guilty?

12 A Oh yes.

13 Q It would be a horrible thing to go through; would
14 it not?

15 A I imagine.

16 Q Just one last thing, this, I just want to deal
17 briefly with the 'stab in the dark' comment. Now
18 that comment, I take it, could or should be
19 retrievable from really three written sources;
20 that is your file; the file, the originating file
21 from whomever sent it to you; and the penitentiary
22 services who would have received it from the
23 originator in getting David's background. Those
24 are three reasonable places to look --

25 A Yes, yes.



1 Q -- for that written comment; correct?

2 A Right.

3 Q Now as far as we know it hasn't been found in any
4 one of those sources, and that's reasonably
5 remarkable, would you agree?

6 A I agree.

7 Q Is it not possible that the following scenario is
8 what actually happened -- and I'm not attributing
9 any ill motive to anybody -- but is it not
10 possible that in your conversations with Mr.
11 Caldwell way, way back, the question was posed to
12 you "doctor, is there anything to indicate that
13 David would, would be violent or might be
14 violent", and that you would have replied in black
15 humour "that would be a stab in the dark", and
16 that with the passage of time, with the passage of
17 time --

18 A May I stop this? No.

19 Q I'll finish the question.

20 A Okay.

21 Q -- with the passage of time that became a memory
22 of having been in a report; is that not a possible
23 scenario? You mentioned the sense of humour, I
24 think you volunteered that, that it was a joking
25 comment between two professionals that, as years



1 go by --

2 A Is this, in effect, a repressed memory is what you
3 are suggesting?

4 Q Well, it's more realistic than some I've heard.
5 I'm saying not a repressed memory, but that as
6 time goes by you remembered that comment, but it
7 didn't come from a report, because first of all
8 you say it's an inappropriate comment, there is no
9 bases for it, in other words even if it's
10 inappropriate there should be a history giving
11 rise to it; and the three sources that would have
12 it in writing, none of them have it?

13 A I can't explain the last. I remember reading it,
14 I remember it literally jumping off the page at
15 me, and when Caldwell, Mr. Caldwell asked me "had
16 the reports arrived" I mentioned this to him, and
17 I think he saw it again for himself when he came
18 to my office to look at the reports.

19 Q But you can't explain --

20 A I can't.

21 Q -- the remarkable fact that three sources don't
22 have it?

23 A No, I can't explain it.

24 Q Those are all my questions, Mr. Commissioner.

25 MR. HARDY: I have no questions on



1 re-examination, Mr. Commissioner, although there
2 was the issue of a publication ban, potentially,
3 with respect to those additional materials. I
4 don't know if the parties have any submissions on
5 that but I did want to raise it before we
6 conclude.

7 MR. WOLCH: I would prefer to keep the ban.

8 MR. HARDY: Mr. Wolch has indicated a
9 preference to keep the ban, it's similar to the
10 materials that we had the ban in relation to
11 before?

12 COMMISSIONER MacCALLUM: Well, I don't
13 think the existing ban covered the materials that
14 you are --

15 MR. HARDY: No, I -- correct.

16 COMMISSIONER MacCALLUM: But it should. So
17 if you have the numbers to announce, for the sake
18 of the record, it would be --

19 MR. HARDY: I can announce them. The
20 numbers are page 332960 of document 332946 --
21 actually, let me back up, I don't think that's
22 probably the right way to do it, I'll just say
23 the doc. IDs; 332946, 171899, 027690, 171899 --
24 I'm, that's a repeat -- 171919, 027697, 332968,
25 332969, 032347.



1 COMMISSIONER MacCALLUM: Thank you. There
2 will be a publication ban for each of those
3 documents.

4 MR. HARDY: Thank you, Mr. Commissioner.

5 COMMISSIONER MacCALLUM: That's it? Thank
6 you very much, Dr. McDonald, you are excused.
7 A Thank you.

8 MR. HARDY: That is our last witness for
9 the day.

10 COMMISSIONER MacCALLUM: Okay.

11 *(Adjourned at 3:45 p.m.)*

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\$	'look [1] - 20939:24	044627 [1] - 21096:6	17043 [1] - 21031:20	20971:5, 20971:25, 20972:5
\$2,000 [1] - 20967:24 \$2000 [1] - 20972:16 \$500 [1] - 20946:25	'mcd [3] - 21004:3, 21014:9, 21047:16 'mcd' [1] - 21004:21 'might' [1] - 21040:21 'mr' [1] - 20950:8 'off/on' [1] - 21005:6 're' [1] - 21004:22 'signed' [2] - 21040:24, 21041:1 'smart' [1] - 20951:15 'spaced' [1] - 20959:10 'stab' [9] - 21040:4, 21086:10, 21087:2, 21087:9, 21096:14, 21097:1, 21098:25, 21099:12, 21135:17 'stuff' [1] - 21097:12 'the' [1] - 20940:3 'they' [1] - 21083:15 'this' [2] - 20951:6, 20951:10 'to' [1] - 21040:17 'torchy' [1] - 20940:13 'we've' [1] - 20939:24 'well' [1] - 20940:16 'write' [1] - 21040:16 'you' [1] - 20936:13 'you've' [1] - 20940:2	049715 [1] - 21010:14 049735 [1] - 21010:20 066541 [1] - 20995:13 067384 [2] - 21030:17, 21038:2 067386 [2] - 21030:23, 21033:23	171899 [4] - 21062:19, 21063:16, 21138:23 171901 [1] - 21062:18 171919 [1] - 21138:24 17622 [1] - 21036:17 17623 [1] - 21036:18 18 [5] - 21030:6, 21062:15, 21115:9, 21115:16, 21115:18 18-year-olds [1] - 21122:4 18313 [1] - 21037:23 18th [3] - 20997:7, 21062:22, 21104:17 19 [1] - 21036:21 1958 [3] - 21051:2, 21051:7, 21051:18 1960 [1] - 21027:11 1966 [6] - 21027:17, 21029:9, 21035:13, 21058:2, 21058:13, 21061:25 1969 [24] - 20931:4, 20934:11, 20938:14, 20938:17, 20945:4, 20966:6, 20972:10, 20972:21, 20976:6, 20976:8, 20978:21, 20980:10, 20988:7, 20997:2, 20997:7, 21017:18, 21063:23, 21102:2, 21104:1, 21104:18, 21109:15, 21110:8, 21110:11, 21114:14 1969-1972 [1] - 21049:13 1970 [3] - 20977:25, 21063:23, 21110:11 1970s [2] - 21018:8, 21046:6 1971 [1] - 20975:18 1972 [13] - 21018:17, 21030:18, 21035:15, 21043:16, 21044:5, 21044:25, 21047:7, 21054:9, 21060:16, 21061:2, 21065:23, 21112:19, 21120:22 1974 [8] - 21040:9, 21040:13, 21043:11, 21044:22, 21046:11, 21118:15, 21119:1 1977 [6] - 21046:13, 21047:5, 21047:16, 21117:20, 21120:25 1980 [1] - 20964:23 1981 [6] - 20947:23, 20947:24, 20953:3,	1982 [1] - 20955:16 1983 [5] - 20957:3, 20958:22, 20975:19, 20975:24, 21036:21 1984 [1] - 20961:13 1986 [1] - 20962:9 1987 [1] - 20962:19 1993 [15] - 20975:24, 21052:10, 21053:22, 21075:19, 21076:10, 21077:1, 21078:21, 21086:13, 21088:3, 21089:10, 21089:17, 21091:8, 21094:7, 21094:19, 21099:17 1995 [1] - 20975:14 19th [1] - 20997:2 1:30 [1] - 21048:23 1st [1] - 21094:18
'		1		
<p>'66' [4] - 21058:11, 21058:22, 21061:23, 21108:25 '67' [3] - 21058:12, 21058:22, 21109:1 '69' [15] - 20931:3, 20931:11, 21005:13, 21015:25, 21023:5, 21023:8, 21023:12, 21024:7, 21041:25, 21048:1, 21050:4, 21109:1, 21114:16, 21120:21, 21130:21 '70' [1] - 20947:12 '70s' [2] - 20945:14, 20945:15 '71' [1] - 21110:11 '72' [7] - 21023:5, 21023:7, 21024:12, 21052:5, 21110:12, 21116:18, 21119:3 '74' [6] - 21041:25, 21045:4, 21052:1, 21052:5, 21116:18, 21120:23 '76' [1] - 20954:15 '77' [1] - 20947:11 '77-78' [1] - 20947:12 '79' [1] - 20957:9 '80s' [1] - 20973:19 '83' [2] - 21050:4, 21051:1 '87' [1] - 20962:18 '89' [1] - 21068:4 '93' [2] - 21051:6, 21053:21 'ask' [1] - 21047:5 'can' [1] - 21014:14 'conversation' [1] - 21014:10 'dr' [1] - 21012:3 'easy' [1] - 21080:21 'he' [1] - 21091:9 'hysterical' [1] - 21006:8 'i'll' [1] - 20940:10 'ian' [2] - 21008:22, 21040:12 'if' [4] - 21040:19, 21042:7, 21043:2, 21119:5</p>	0	<p>1 [2] - 21058:1, 21071:1 10 [2] - 21062:25, 21125:20 100 [1] - 20961:4 104 [1] - 20926:22 105629 [1] - 21104:13 106849 [1] - 20970:25 106852 [1] - 20971:15 10:02 [1] - 20974:18 10:20 [1] - 20974:19 10th [1] - 20972:9 11 [2] - 20959:6, 20959:13 11:53 [1] - 21048:22 11th [1] - 20959:7 12 [1] - 21088:4 12:20 [1] - 20988:8 12:45 [1] - 20988:9 12th [1] - 21047:16 13 [1] - 21094:8 13th [1] - 20971:5 14 [5] - 20959:23, 21026:24, 21043:16, 21044:4, 21115:7 14th [6] - 20971:17, 21030:18, 21047:7, 21058:2, 21058:11, 21108:25 15 [4] - 20944:13, 21029:23, 21115:8, 21115:11 155237 [1] - 20947:18 155239 [1] - 20949:20 155240 [1] - 20950:3 15th [2] - 20962:9, 21058:13 16 [3] - 20938:11, 20943:12, 20989:4 16-year-old [5] - 20938:9, 20938:11, 20938:12, 20941:24, 21122:3 16-year-olds [1] - 20950:13 16010 [1] - 21008:16 16083 [1] - 21004:15 162295 [1] - 21092:15 16347 [1] - 21014:7</p>	<p>17043 [1] - 21031:20 171899 [4] - 21062:19, 21063:16, 21138:23 171901 [1] - 21062:18 171919 [1] - 21138:24 17622 [1] - 21036:17 17623 [1] - 21036:18 18 [5] - 21030:6, 21062:15, 21115:9, 21115:16, 21115:18 18-year-olds [1] - 21122:4 18313 [1] - 21037:23 18th [3] - 20997:7, 21062:22, 21104:17 19 [1] - 21036:21 1958 [3] - 21051:2, 21051:7, 21051:18 1960 [1] - 21027:11 1966 [6] - 21027:17, 21029:9, 21035:13, 21058:2, 21058:13, 21061:25 1969 [24] - 20931:4, 20934:11, 20938:14, 20938:17, 20945:4, 20966:6, 20972:10, 20972:21, 20976:6, 20976:8, 20978:21, 20980:10, 20988:7, 20997:2, 20997:7, 21017:18, 21063:23, 21102:2, 21104:1, 21104:18, 21109:15, 21110:8, 21110:11, 21114:14 1969-1972 [1] - 21049:13 1970 [3] - 20977:25, 21063:23, 21110:11 1970s [2] - 21018:8, 21046:6 1971 [1] - 20975:18 1972 [13] - 21018:17, 21030:18, 21035:15, 21043:16, 21044:5, 21044:25, 21047:7, 21054:9, 21060:16, 21061:2, 21065:23, 21112:19, 21120:22 1974 [8] - 21040:9, 21040:13, 21043:11, 21044:22, 21046:11, 21118:15, 21119:1 1977 [6] - 21046:13, 21047:5, 21047:16, 21117:20, 21120:25 1980 [1] - 20964:23 1981 [6] - 20947:23, 20947:24, 20953:3,</p>	
				2
				<p>2 [1] - 20980:10 20 [7] - 20982:1, 20982:10, 21035:19, 21066:2, 21079:18, 21083:12, 21095:18 2005 [2] - 20926:21, 21059:14 20475 [1] - 20964:7 20930 [1] - 20929:4 20968 [1] - 20929:5 20975 [1] - 20929:7 20th [1] - 20957:3 21094 [1] - 20929:8 21101 [1] - 20929:9 21103 [1] - 20929:10 21121 [1] - 20929:11 216123 [1] - 20961:11 216145 [1] - 20962:6 217537 [1] - 20958:19 219537 [1] - 20959:1 219538 [1] - 20960:2 23rd [1] - 21061:25 24th [1] - 21040:13 25 [1] - 21092:10 25th [1] - 20958:22 269317 [1] - 20965:2 269423 [1] - 20965:6 27th [2] - 20961:13, 21043:11 28th [1] - 20952:25 29th [1] - 20972:21 2:32 [1] - 21093:23 2:49 [1] - 21093:24 2nd [10] - 20980:14, 20988:3, 20988:6,</p>



20988:9, 20989:13, 21012:12, 21017:18, 21104:1, 21104:8, 21107:1	4th [2] - 20955:16, 21005:13	21022:23, 21042:9, 21122:16, 21122:20, 21125:10, 21140:7	21103:17	affect [3] - 20994:2, 20994:3, 21064:25	
3	5	able [15] - 20953:22, 20955:22, 20958:16, 20964:1, 20978:12, 20981:22, 20982:12, 20984:15, 20984:18, 20984:21, 20985:18, 21022:21, 21114:4, 21123:5, 21124:25	acting [2] - 21061:20, 21127:15	affected [2] - 21064:18, 21114:19	
3 [3] - 21004:1, 21004:20, 21044:3 30 [2] - 20944:13, 21099:24 301318 [1] - 20972:2 30th [3] - 20938:16, 21052:10, 21059:14 322 [1] - 20972:3 325155 [2] - 21049:5, 21073:20 325157 [2] - 21049:5, 21072:16 325159 [1] - 21049:6 325166 [3] - 21049:6, 21067:11, 21084:25 325172 [1] - 21049:6 325173 [1] - 21049:6 325175 [2] - 21049:6, 21061:13 325182 [2] - 21049:6, 21061:22 325190 [2] - 21049:7, 21075:6 325193 [1] - 21075:6 325194 [2] - 21049:7, 21071:19 325195 [1] - 21073:3 332564 [1] - 20952:20 332575 [1] - 20955:15 332946 [2] - 21138:20, 21138:23 332960 [1] - 21138:20 332968 [1] - 21138:24 332969 [1] - 21138:25 332987 [1] - 21055:20 35 [1] - 21102:20 36 [4] - 20978:25, 21014:4, 21049:23, 21103:5 3:45 [1] - 21139:11 3rd [8] - 20947:23, 20999:24, 21009:22, 21048:1, 21050:13, 21050:19, 21083:20, 21104:2	5 [4] - 21007:7, 21051:4, 21051:22, 21134:2 50 [1] - 21081:20 56 [1] - 21013:14 57 [2] - 21013:14, 21014:9 5th [4] - 21018:17, 21058:24, 21092:24, 21115:24	abort [1] - 21080:24 aborted [1] - 20987:19 abreast [1] - 20956:9 absolutely [3] - 20958:10, 20968:4, 20974:1 absolve [1] - 21098:2 accept [4] - 20968:6, 20980:18, 21033:1, 21078:25 acceptable [1] - 21026:3 accepted [4] - 20981:1, 21015:17, 21025:8, 21025:10 access [12] - 21045:16, 21054:13, 21054:16, 21060:7, 21074:13, 21076:25, 21107:2, 21107:12, 21107:23, 21118:3, 21126:24, 21127:12 accessed [2] - 21055:14, 21117:24 accordance [1] - 21106:10 According [1] - 21087:22 according [3] - 21010:6, 21070:25, 21092:24 account [2] - 20961:25, 21131:9 accountable [1] - 21127:23 accumulating [1] - 21053:11 accurate [2] - 20973:25, 21077:14 accurately [1] - 20949:9 accused [7] - 20940:5, 20977:8, 20991:7, 21013:16, 21014:14, 21081:3, 21081:9 acknowledged [1] - 20968:9 Act [2] - 20935:18, 20935:20 act [2] - 20971:6,	actions [4] - 20990:18, 21125:1, 21125:6, 21125:7 active [1] - 21104:4 activities [1] - 20982:11 activity [3] - 20976:23, 20983:24, 20998:8 actual [2] - 21040:24, 21057:20 adamant [2] - 20935:20, 20937:8 Adams [1] - 20935:16 add [2] - 20949:15, 21069:13 addition [2] - 20958:13, 20960:19 additional [9] - 21054:20, 21055:18, 21056:12, 21057:4, 21057:13, 21060:22, 21062:19, 21089:24, 21138:3 addressed [2] - 20958:22, 20961:12 addressing [1] - 20991:19 adjective [1] - 21027:22 Adjourned [4] - 20974:18, 21048:22, 21093:23, 21139:11 admission [4] - 21108:14, 21109:3, 21109:4, 21123:18 admissions [2] - 21059:14, 21089:1 admitted [1] - 21058:11 adolescence [1] - 21030:11 adult [1] - 20986:10 advice [2] - 21069:9, 21071:7 advise [6] - 20971:9, 21011:7, 21047:9, 21054:21, 21055:6, 21093:7 advised [17] - 20971:20, 20973:7, 20985:14, 20989:11, 20989:22, 20997:14, 21000:13, 21008:1, 21027:5, 21045:1, 21068:14, 21076:15, 21076:21, 21078:25, 21082:23, 21087:20 advises [1] - 21044:6 advising [3] - 20983:6, 21001:20, 21086:25	affected [2] - 21064:18, 21114:19 affects [1] - 21135:1 affirmed [2] - 21024:3, 21026:20 afternoon [3] - 21048:25, 21049:1, 21101:16 afterwards [2] - 20987:6, 20996:4 age [7] - 20930:21, 20986:12, 21022:20, 21026:23, 21029:23, 21114:10, 21114:20 Age [1] - 21134:2 agencies [4] - 20982:19, 21103:2, 21117:13, 21117:18 agency [1] - 21108:17 agent [5] - 21108:17, 21127:15, 21127:17, 21127:19, 21127:25 ago [8] - 20966:10, 20967:23, 20979:1, 21004:18, 21014:4, 21061:3, 21088:5, 21094:8 agree [12] - 20954:20, 21021:16, 21036:7, 21073:25, 21098:18, 21099:17, 21105:1, 21110:16, 21119:3, 21129:16, 21136:5, 21136:6 agreeable [1] - 20940:18 agreed [7] - 20940:16, 20955:4, 20970:6, 20998:14, 21003:13, 21035:24, 21041:17 agreeing [1] - 20930:17 ahead [2] - 20954:21, 21081:1 albeit [1] - 21110:1 Albert [1] - 21025:24 aleck [1] - 21131:13 allegations [2] - 21100:14, 21101:10 alleged [4] - 20990:21, 20991:25, 21079:12, 21133:25 allow [3] - 20984:12, 21030:6, 21078:9 allowed [3] - 20986:4, 21064:19, 21127:11 alluded [3] - 20956:16, 21101:19 almost [1] - 21029:20	
4	6	abandon [1] - 21022:23, 21042:9, 21122:16, 21122:20, 21125:10, 21140:7 able [15] - 20953:22, 20955:22, 20958:16, 20964:1, 20978:12, 20981:22, 20982:12, 20984:15, 20984:18, 20984:21, 20985:18, 21022:21, 21114:4, 21123:5, 21124:25 abort [1] - 21080:24 aborted [1] - 20987:19 abreast [1] - 20956:9 absolutely [3] - 20958:10, 20968:4, 20974:1 absolve [1] - 21098:2 accept [4] - 20968:6, 20980:18, 21033:1, 21078:25 acceptable [1] - 21026:3 accepted [4] - 20981:1, 21015:17, 21025:8, 21025:10 access [12] - 21045:16, 21054:13, 21054:16, 21060:7, 21074:13, 21076:25, 21107:2, 21107:12, 21107:23, 21118:3, 21126:24, 21127:12 accessed [2] - 21055:14, 21117:24 accordance [1] - 21106:10 According [1] - 21087:22 according [3] - 21010:6, 21070:25, 21092:24 account [2] - 20961:25, 21131:9 accountable [1] - 21127:23 accumulating [1] - 21053:11 accurate [2] - 20973:25, 21077:14 accurately [1] - 20949:9 accused [7] - 20940:5, 20977:8, 20991:7, 21013:16, 21014:14, 21081:3, 21081:9 acknowledged [1] - 20968:9 Act [2] - 20935:18, 20935:20 act [2] - 20971:6,	7	advised [17] - 20971:20, 20973:7, 20985:14, 20989:11, 20989:22, 20997:14, 21000:13, 21008:1, 21027:5, 21045:1, 21068:14, 21076:15, 21076:21, 21078:25, 21082:23, 21087:20 advises [1] - 21044:6 advising [3] - 20983:6, 21001:20, 21086:25	7 [2] - 21062:13, 21062:22 77 [1] - 20975:8 7:00 [2] - 21000:21, 21102:19 7th [1] - 21007:6
4 [2] - 21044:4, 21047:6 44 [1] - 20931:3 45 [1] - 20931:10	8	86 [1] - 21038:7 8:10 [1] - 20980:11 8th [2] - 21047:5, 21061:23	advised [17] - 20971:20, 20973:7, 20985:14, 20989:11, 20989:22, 20997:14, 21000:13, 21008:1, 21027:5, 21045:1, 21068:14, 21076:15, 21076:21, 21078:25, 21082:23, 21087:20 advises [1] - 21044:6 advising [3] - 20983:6, 21001:20, 21086:25	8	
	9	97 [1] - 20939:23 9:05 [1] - 20930:2 9:30 [1] - 20980:11	advised [17] - 20971:20, 20973:7, 20985:14, 20989:11, 20989:22, 20997:14, 21000:13, 21008:1, 21027:5, 21045:1, 21068:14, 21076:15, 21076:21, 21078:25, 21082:23, 21087:20 advises [1] - 21044:6 advising [3] - 20983:6, 21001:20, 21086:25	9	
	A	abandoned [1] - 21117:16 abiding [1] - 21097:9 ability [8] - 20984:9,	advised [17] - 20971:20, 20973:7, 20985:14, 20989:11, 20989:22, 20997:14, 21000:13, 21008:1, 21027:5, 21045:1, 21068:14, 21076:15, 21076:21, 21078:25, 21082:23, 21087:20 advises [1] - 21044:6 advising [3] - 20983:6, 21001:20, 21086:25	9	



<p>alone [3] - 20980:11, 20993:11, 21054:7 alright [1] - 20951:14 ambiguous [1] - 20973:1 American [2] - 21090:17, 21097:10 amnesia [7] - 21004:3, 21004:23, 21005:2, 21005:6, 21006:9, 21006:13, 21006:15 amnesia' [1] - 21006:8 amnesia-off/on [1] - 21004:3 amount [6] - 20956:9, 20962:23, 20966:19, 20981:8, 20982:15, 21004:25 Andrew [10] - 21007:9, 21007:11, 21007:13, 21008:1, 21008:22, 21009:2, 21010:23, 21011:3, 21011:4, 21011:7 Andrews [1] - 21061:25 Andrews' [1] - 21007:21 angel [1] - 20967:3 ankles [1] - 20943:10 Anne [1] - 20974:24 announce [2] - 21138:17, 21138:19 answer [8] - 20950:21, 21013:18, 21014:15, 21030:3, 21038:11, 21075:2, 21098:15, 21126:2 answered [4] - 21085:3, 21091:2, 21104:9, 21125:18 answers [2] - 20991:23, 21014:12 antedated [1] - 21133:25 anticipate [2] - 21109:2, 21109:10 anticipated [1] - 21097:11 antisocial [2] - 20994:16, 20994:21 anxiety [1] - 21077:21 anxious [3] - 21019:15, 21077:18, 21078:9 anyways [1] - 21095:8 apart [1] - 21104:7 Apartment [1] - 20945:19 apartment [1] - 20946:17 apologies [3] - 20974:7, 21004:2,</p>	<p>21099:14 apologized [1] - 20968:5 apology [3] - 20968:6, 20968:11, 20968:23 apparent [4] - 20959:20, 20988:20, 21064:11, 21119:1 appear [7] - 20962:24, 20981:24, 21029:22, 21047:19, 21062:25, 21063:22, 21123:25 Appearances [1] - 20928:1 appeared [3] - 20999:1, 21077:9, 21100:24 application [2] - 20972:14, 20973:14 applied [5] - 20966:3, 20967:20, 20968:3, 20968:4, 21030:2 apply [3] - 20972:16, 21024:22, 21112:14 appreciate [3] - 20968:11, 21117:19, 21127:10 appreciative [1] - 20968:8 apprehended [2] - 20979:5, 21134:14 apprehensive [1] - 21077:7 approached [3] - 20957:10, 20966:15, 20967:16 approaches [1] - 21126:3 appropriately [1] - 21125:18 approval [1] - 21041:24 April [4] - 20934:10, 20952:25, 20957:3, 21058:24 apropos [2] - 21086:19, 21110:7 area [10] - 20957:17, 20969:19, 20976:21, 20998:11, 21022:11, 21090:22, 21092:6, 21102:4, 21102:13, 21102:15 areas [1] - 21103:22 arose [3] - 20959:5, 20991:17, 21006:22 arrange [1] - 21093:18 arrest [10] - 20941:11, 20941:14, 20950:8, 20970:23, 20971:12, 20971:23, 20972:18, 20973:6, 21105:8,</p>	<p>21131:19 arrested [4] - 20938:18, 20958:5, 21105:2, 21120:21 arrive [3] - 21022:2, 21022:7, 21127:4 arrived [3] - 20939:1, 21070:10, 21137:16 arriving [2] - 20937:3, 21019:23 art [1] - 21097:6 article [1] - 21075:1 articles [1] - 21084:21 aside [3] - 21119:24, 21133:16, 21134:9 aspect [2] - 21040:2, 21081:11 assertion [1] - 21001:8 assertively [1] - 21001:6 assess [2] - 21023:20, 21105:5 assessing [7] - 21066:19, 21066:23, 21105:15, 21115:4, 21116:25, 21130:18, 21134:11 assessment [9] - 20979:7, 21002:1, 21090:6, 21107:19, 21119:22, 21120:4, 21120:11, 21124:16, 21127:23 assessments [4] - 20977:7, 20977:17, 21107:22, 21109:10 assist [5] - 20955:7, 20955:10, 20956:18, 21042:10, 21059:3 assistance [4] - 20946:22, 20966:16, 21069:19, 21092:18 Assistant [4] - 20927:2, 20927:3, 20927:6, 20927:7 assistant [2] - 20931:8, 20931:11 assisted [2] - 20970:13, 20986:23 associated [2] - 21063:1, 21071:16 associates [1] - 21056:6 association [1] - 20964:22 assume [11] - 21007:17, 21009:1, 21014:9, 21014:17, 21020:7, 21037:18, 21044:21, 21045:13, 21049:12,</p>	<p>21054:13, 21114:6 assumed [1] - 20944:2 assuming [3] - 20948:7, 21073:22, 21080:14 assured [1] - 20939:19 atrocities [1] - 21097:11 attempt [2] - 21045:7, 21121:8 attempted [2] - 20992:22, 20996:11 attempting [1] - 21034:6 attempts [2] - 20955:3, 21076:7 attend [2] - 21077:20, 21104:20 attendance [4] - 21040:11, 21060:6, 21104:17, 21111:20 attended [1] - 20983:6 attending [2] - 20975:4, 21106:9 attention [22] - 21001:12, 21003:19, 21004:1, 21007:4, 21008:14, 21010:14, 21030:14, 21030:23, 21033:25, 21038:11, 21040:6, 21061:6, 21061:15, 21083:1, 21085:18, 21088:20, 21092:14, 21110:4, 21128:16, 21128:24, 21128:25, 21131:18 attitude [3] - 20942:4, 20950:11, 21079:17 attributed [1] - 21033:21 attributing [1] - 21136:8 Audio [1] - 20927:14 August [3] - 21007:6, 21046:13, 21104:18 author [2] - 21067:24, 21092:16 authorities [7] - 21027:4, 21040:8, 21047:21, 21048:15, 21116:6, 21116:10, 21116:21 authority [1] - 20994:22 authorization [6] - 20992:12, 21010:3, 21046:16, 21108:8, 21116:21, 21120:3 authorizations [2] - 21007:19, 21107:1 authorizing [1] - 21044:11 authorship [3] -</p>	<p>21112:14, 21112:15, 21112:17 autobiography [2] - 20966:11, 20966:12 automatically [1] - 21107:12 available [5] - 21026:17, 21034:3, 21035:7, 21044:17, 21105:25 aware [22] - 20936:7, 20951:23, 20952:1, 20952:6, 20952:9, 20952:14, 20962:13, 20966:8, 20988:22, 20989:1, 21012:14, 21033:5, 21035:14, 21036:20, 21053:8, 21070:19, 21112:25, 21113:5, 21113:9, 21113:16, 21129:14 awful [1] - 20979:1</p> <hr/> <p style="text-align: center;">B</p> <p>baby [1] - 20937:21 babysitter [1] - 21069:3 background [9] - 20972:25, 21062:6, 21068:16, 21074:23, 21079:14, 21086:22, 21091:4, 21126:22, 21135:23 bad [2] - 21069:14, 21093:18 badly [1] - 20965:21 ball [1] - 21033:16 ban [7] - 21056:21, 21138:2, 21138:7, 21138:9, 21138:10, 21138:13, 21139:2 Banff [1] - 21043:21 bank [1] - 21135:5 Barry [2] - 20945:22, 20946:17 Bartlett [1] - 21092:25 based [21] - 20993:4, 21015:18, 21018:23, 21021:9, 21021:23, 21022:3, 21022:13, 21023:2, 21024:9, 21026:21, 21035:18, 21054:7, 21095:25, 21113:20, 21114:2, 21117:6, 21117:9, 21117:10, 21122:17, 21127:7, 21127:8 Based [1] - 20993:11 bases [2] - 21123:4,</p>
--	--	--	---	--



<p>21137:9 basis [4] - 21019:23, 21041:22, 21089:12, 21127:13 bat [1] - 21078:18 Bay[1] - 20945:8 Bc[1] - 20972:12 bear [3] - 20991:2, 21112:18, 21118:9 bearing [1] - 21058:15 became [4] - 20945:7, 20956:14, 20973:21, 21136:21 become [1] - 21105:7 becomes [1] - 21064:10 begin [1] - 21037:25 beginning [2] - 21017:17, 21063:15 behalf [4] - 20971:8, 20974:6, 20974:7, 20977:11 behaviour [28] - 20984:20, 20985:21, 20986:8, 20986:25, 20993:13, 20993:18, 20994:5, 20994:10, 20994:12, 20994:21, 20995:1, 21015:20, 21019:4, 21021:1, 21022:5, 21022:18, 21022:20, 21024:16, 21024:21, 21025:1, 21029:20, 21029:21, 21034:25, 21065:19, 21113:22, 21114:19, 21115:4, 21127:9 behavioural [5] - 20992:11, 21029:16, 21029:19, 21112:24, 21114:10 Beitel [1] - 20927:10 belabour [2] - 21100:2, 21100:21 belief [9] - 20988:18, 21063:6, 21110:12, 21113:6, 21113:10, 21116:23, 21117:7, 21117:23, 21121:1 believer [1] - 21107:24 believes [2] - 21084:5, 21135:11 bell [1] - 21101:10 below [2] - 20943:10, 21102:20 bench [2] - 21082:1, 21082:3 Bench [4] - 21140:1, 21140:3, 21140:14, 21140:20 benefit [2] - 21064:23,</p>	<p>21133:2 best [13] - 20941:19, 20954:10, 20954:20, 20967:13, 20986:2, 21000:8, 21017:20, 21019:5, 21021:2, 21034:25, 21038:20, 21047:21, 21140:6 better [6] - 20936:18, 20947:24, 21023:9, 21030:13, 21124:15, 21124:21 Between [1] - 21000:6 between [12] - 20952:23, 20962:15, 20985:3, 20988:20, 21018:7, 21048:5, 21073:8, 21104:7, 21117:17, 21124:19, 21131:12, 21136:25 beyond [3] - 21041:24, 21083:12, 21108:2 Beyond [1] - 21084:2 big [8] - 20943:7, 20943:10, 20943:13, 20944:12, 20944:16, 20944:19, 20944:20, 21131:12 bigger [1] - 20972:7 bilingual [1] - 20957:9 billed [2] - 20962:10, 20963:2 billionaire [1] - 21132:12 bills [1] - 20965:11 binder [1] - 21118:10 bit [28] - 20930:25, 20932:2, 20934:16, 20934:17, 20935:2, 20942:6, 20942:17, 20953:22, 20954:18, 20960:10, 20968:24, 20969:21, 20969:22, 20972:7, 20989:10, 20993:7, 21002:21, 21009:24, 21017:9, 21057:23, 21070:4, 21073:5, 21086:24, 21095:13, 21101:21, 21108:20, 21115:5, 21130:18 bizarre [4] - 20965:8, 21000:24, 21001:2, 21001:10 black [2] - 21097:6, 21136:14 Block[1] - 20945:19 block [3] - 21129:18, 21129:19, 21134:16 blow [3] - 20955:18,</p>	<p>20972:8, 21101:21 blue [3] - 20948:21, 20948:22, 21028:19 board [21] - 20937:12, 20937:13, 20971:2, 21038:5, 21040:21, 21042:7, 21043:2, 21043:10, 21045:15, 21046:10, 21048:5, 21112:3, 21114:8, 21116:18, 21117:5, 21119:5, 21119:12, 21119:18, 21119:23, 21120:23, 21120:24 Board[19] - 20971:18, 21018:8, 21019:16, 21025:23, 21025:24, 21026:4, 21026:13, 21030:19, 21033:7, 21043:13, 21044:17, 21045:19, 21055:13, 21068:15, 21092:10, 21113:3, 21113:18, 21117:17, 21119:9 board' [1] - 21040:20 boards [1] - 21107:23 Bob [1] - 20957:16 Bobs [1] - 20928:5 bomb' [1] - 21091:9 book [6] - 20965:3, 20965:6, 20966:9, 20966:25, 20967:1, 20967:2 borders [1] - 21000:6 bore [1] - 20973:24 born [2] - 20963:24 Boswell [1] - 20927:5 bottom [10] - 20949:20, 20955:24, 21031:21, 21034:17, 21036:25, 21044:3, 21078:14, 21080:6, 21088:20, 21096:7 boy [8] - 20932:25, 20934:21, 20936:11, 20950:14, 21062:7, 21062:12, 21122:3, 21122:6 boy's [1] - 21062:6 Boychuk [1] - 20928:8 boys [6] - 20937:17, 20937:20, 20937:21, 20937:23, 20942:7 brackets [2] - 21013:18, 21013:24 brain [1] - 21022:11 break [8] - 20957:24, 20969:13, 20974:12, 20974:14, 21048:20, 21093:15, 21093:18,</p>	<p>21131:11 break-ins [1] - 21131:11 breakdown [1] - 20959:22 breakthrough [1] - 20955:23 brief [4] - 20992:4, 20993:5, 20996:16, 21012:7 briefly [3] - 21063:11, 21094:6, 21135:17 Briefly [1] - 21057:8 bright [1] - 20954:8 Bring [1] - 21072:18 bring [30] - 20935:7, 20952:19, 20955:15, 20957:1, 20958:19, 20961:11, 20962:6, 20965:2, 20980:4, 20996:24, 21030:16, 21033:24, 21055:19, 21057:23, 21059:2, 21061:5, 21073:3, 21085:4, 21088:19, 21104:11, 21108:22, 21112:20, 21115:23, 21115:25, 21118:6, 21118:7, 21118:11, 21128:16, 21128:24, 21128:25 bringing [1] - 21001:12 British [1] - 20930:20 broader [1] - 21131:8 broadly [1] - 21016:17 Broke [1] - 21130:1 brother [2] - 20937:3, 20941:4 brought [8] - 20943:8, 20965:17, 20979:6, 21038:11, 21083:1, 21103:20, 21113:20, 21131:17 Brown [15] - 20935:17, 20936:2, 20936:3, 20939:2, 20939:17, 20940:18, 20941:16, 20944:2, 20945:1, 20951:24, 20954:12, 20954:16, 20954:18, 20967:14 Brown's [1] - 20931:8 Bruce [4] - 20928:9, 21092:17, 21094:5, 21098:24 Brunsfeld [1] - 21097:12 bunch [2] - 20944:22, 21051:1 bus [1] - 20941:4</p>	<p>business [7] - 20931:2, 20931:11, 20933:19, 20963:20, 20967:18, 20998:15, 21093:7 businessman [2] - 20965:9, 20966:2 busy [2] - 20933:4, 20933:5</p>
C				
<p>cabinet [1] - 20965:16 cabinets [1] - 21051:4 Caldwell[90] - 20928:5, 20979:12, 20992:5, 20992:24, 20995:10, 20995:14, 20995:20, 20996:3, 20996:6, 20996:13, 20998:22, 20999:7, 21000:13, 21000:23, 21001:1, 21001:13, 21001:20, 21002:4, 21002:24, 21003:4, 21004:5, 21004:11, 21004:14, 21004:17, 21006:6, 21006:18, 21006:21, 21007:5, 21008:1, 21008:15, 21009:19, 21010:17, 21011:2, 21011:15, 21012:7, 21013:10, 21013:20, 21014:12, 21015:9, 21017:7, 21018:7, 21018:17, 21019:12, 21030:18, 21031:10, 21031:17, 21031:21, 21032:18, 21033:5, 21034:1, 21035:16, 21036:22, 21037:24, 21038:4, 21038:12, 21040:8, 21040:20, 21040:22, 21041:13, 21043:10, 21043:14, 21045:1, 21047:3, 21054:13, 21083:20, 21087:7, 21103:18, 21104:9, 21110:15, 21110:22, 21112:3, 21112:22, 21113:5, 21114:7, 21115:3, 21116:2, 21116:17, 21116:23, 21117:23, 21118:14, 21118:19, 21118:21, 21118:25, 21120:20, 21121:8, 21123:21, 21127:12, 21136:11, 21137:15 Caldwell [1] - 21012:4</p>				



<p>Caldwells [17] - 21001:12, 21003:22, 21003:23, 21012:1, 21013:14, 21014:5, 21030:22, 21036:14, 21039:23, 21040:14, 21042:18, 21047:14, 21084:2, 21104:14, 21106:21, 21114:22, 21115:19</p> <p>Calgary [1] - 20952:7</p> <p>California [1] - 21066:9</p> <p>callous [1] - 20951:9</p> <p>Calvin [1] - 21130:10</p> <p>Canada [3] - 20928:12, 20932:4, 20952:3</p> <p>Canadian [1] - 21072:4</p> <p>Candace [1] - 20927:4</p> <p>cannot [1] - 21002:3</p> <p>canopy [1] - 20932:24</p> <p>canvassed [2] - 20971:18, 21093:14</p> <p>canvassing [4] - 20935:21, 20938:1, 20952:2, 20952:16</p> <p>capable [16] - 20991:6, 20997:13, 21089:8, 21089:13, 21091:14, 21091:15, 21096:10, 21096:20, 21096:23, 21097:14, 21097:20, 21098:14, 21098:17, 21100:23</p> <p>capacity [2] - 21006:20, 21121:5</p> <p>capital [4] - 20976:24, 20977:6, 20977:20, 20978:3</p> <p>captured [4] - 20944:14, 20944:18, 20949:5, 21016:21</p> <p>card [1] - 21069:6</p> <p>cards [2] - 21051:5, 21051:22</p> <p>care [1] - 21066:25</p> <p>career [3] - 20975:10, 20976:1, 21130:19</p> <p>careful [3] - 21082:3, 21083:15, 21124:1</p> <p>carefully [2] - 21026:1, 21098:5</p> <p>Carlyle [4] - 20948:12, 20948:13, 20949:12, 20953:8</p> <p>Carlyle-gordge [4] - 20948:12, 20948:13, 20949:12, 20953:8</p> <p>carried [1] - 21132:25</p> <p>carry [1] - 21024:25</p> <p>case [42] - 20951:16,</p>	<p>20955:21, 20970:8, 20978:20, 20997:10, 20997:15, 20997:20, 21000:2, 21001:4, 21007:2, 21010:12, 21010:18, 21011:13, 21011:23, 21012:24, 21013:5, 21023:1, 21026:18, 21027:5, 21030:25, 21032:3, 21035:4, 21048:1, 21050:19, 21055:4, 21062:4, 21076:18, 21076:22, 21078:19, 21083:11, 21083:22, 21084:4, 21094:11, 21098:5, 21104:4, 21106:6, 21108:2, 21111:7, 21112:5, 21116:8, 21119:19, 21121:10</p> <p>cases [10] - 20976:24, 20977:6, 20977:20, 20978:3, 21022:15, 21083:24, 21117:15, 21119:21, 21124:2</p> <p>cast [2] - 21133:16, 21134:9</p> <p>casual [1] - 21083:23</p> <p>categories [1] - 20987:9</p> <p>category [1] - 20994:6</p> <p>Catherine [2] - 20928:5, 21103:17</p> <p>causing [1] - 20941:25</p> <p>Cavalier [1] - 20926:16</p> <p>caveat [2] - 21050:13, 21110:8</p> <p>Cbc [4] - 21067:14, 21067:19, 21070:24, 21072:8</p> <p>cell [1] - 20959:14</p> <p>Center [2] - 21018:25, 21027:6</p> <p>centre [1] - 20959:24</p> <p>Centre [19] - 20982:21, 20982:23, 20986:19, 20986:20, 20998:25, 20999:23, 21009:18, 21027:21, 21035:5, 21058:9, 21058:18, 21060:20, 21062:8, 21062:15, 21068:18, 21085:24, 21108:6, 21108:24, 21113:23</p> <p>centres [3] - 20992:16, 21113:21, 21113:24</p> <p>certain [7] - 20971:7, 20974:1, 21018:6, 21022:6, 21042:13,</p>	<p>21046:7, 21060:24</p> <p>certainly [15] - 20940:19, 20946:8, 20948:16, 20949:4, 20953:21, 20987:2, 20991:21, 21029:23, 21052:4, 21090:13, 21106:17, 21110:14, 21113:8, 21120:10, 21128:5</p> <p>Certainly [1] - 21049:16</p> <p>Certificates [1] - 21140:1</p> <p>certify [1] - 21140:4</p> <p>chairman [2] - 21030:18, 21043:18</p> <p>Chairman [1] - 21043:12</p> <p>chance [5] - 20948:2, 21002:9, 21002:15, 21030:12, 21049:7</p> <p>change [5] - 20969:8, 21030:12, 21090:19, 21115:12, 21115:13</p> <p>changed [1] - 21064:16</p> <p>chap [3] - 20935:3, 20956:6, 20964:4</p> <p>chap's [1] - 20953:16</p> <p>chapter [1] - 21016:12</p> <p>characterize [2] - 21021:20, 21042:15</p> <p>charge [1] - 20978:6</p> <p>charged [5] - 20987:4, 21000:19, 21080:23, 21133:11, 21133:12</p> <p>charges [1] - 21033:17</p> <p>chart [2] - 21032:9, 21037:15</p> <p>Charter [1] - 21100:8</p> <p>chat [1] - 21094:6</p> <p>check [3] - 21009:15, 21093:9, 21104:13</p> <p>Chief [2] - 20980:7, 20988:2</p> <p>chief [2] - 20971:16, 20989:9</p> <p>child [1] - 20938:10</p> <p>Child [8] - 20982:21, 21019:1, 21020:16, 21027:10, 21028:14, 21029:12, 21035:8, 21052:6</p> <p>children [5] - 20940:8, 20968:12, 20974:4, 21029:1, 21069:4</p> <p>chip [1] - 20942:6</p> <p>choose [1] - 21081:10</p> <p>chose [1] - 21028:2</p> <p>Chris [1] - 20928:8</p> <p>Christian [1] - 20988:16</p>	<p>chronology [2] - 21070:4, 21111:7</p> <p>circle [1] - 21069:13</p> <p>circulation [2] - 21003:12, 21029:3</p> <p>circum [1] - 21097:21</p> <p>circumstance [1] - 21011:11</p> <p>circumstances [15] - 20940:21, 20941:8, 20976:12, 20976:25, 21026:6, 21078:8, 21081:5, 21089:14, 21090:19, 21097:15, 21097:16, 21097:18, 21097:21, 21098:13, 21100:5</p> <p>cited [1] - 20999:12</p> <p>cities [1] - 20938:24</p> <p>city [3] - 20977:19, 21083:10, 21101:5</p> <p>City [3] - 21077:6, 21082:17, 21101:2</p> <p>claims [1] - 21064:21</p> <p>clarification [4] - 20989:7, 21046:22, 21080:17, 21098:11</p> <p>clarified [1] - 21031:17</p> <p>clarify [1] - 21020:13</p> <p>Clark [1] - 20957:16</p> <p>class [1] - 20986:8</p> <p>classic [1] - 20994:16</p> <p>classmates [1] - 21131:14</p> <p>cleaned [3] - 20940:23, 20940:24, 20941:20</p> <p>clear [4] - 21014:24, 21016:16, 21023:15, 21067:21</p> <p>clear-cut [1] - 21016:16</p> <p>clearly [6] - 20965:23, 21015:4, 21020:17, 21046:1, 21059:1, 21098:2</p> <p>Clerk [1] - 20927:10</p> <p>client [3] - 21040:25, 21080:19, 21126:15</p> <p>clients [1] - 21025:24</p> <p>Clinic [6] - 20982:21, 21019:2, 21027:10, 21029:12, 21035:9, 21052:6</p> <p>Clinic's [1] - 21028:15</p> <p>Clinical [2] - 21007:13, 21007:23</p> <p>clinical [10] - 20976:3, 20976:5, 21001:16, 21024:3, 21024:8, 21026:20, 21066:1, 21066:15, 21067:4,</p>	<p>21077:3</p> <p>clinically [1] - 20984:13</p> <p>cloaking [1] - 21095:10</p> <p>close [1] - 21020:20</p> <p>closed [2] - 20961:5, 21048:1</p> <p>closely [1] - 21080:15</p> <p>clothes [1] - 21006:2</p> <p>clothing [1] - 21005:8</p> <p>club [1] - 20966:10</p> <p>clues [1] - 21022:6</p> <p>co [2] - 20981:6, 21125:14</p> <p>co-operative [2] - 20981:6, 21125:14</p> <p>cocked [1] - 21118:2</p> <p>cognition [2] - 20981:23, 21125:9</p> <p>coincidence [2] - 20945:6, 20945:16</p> <p>collateral [5] - 21023:6, 21023:14, 21023:25, 21107:24, 21108:1</p> <p>colleagues [2] - 21122:22, 21126:18</p> <p>collect [1] - 20966:4</p> <p>collected [1] - 21032:8</p> <p>collection [4] - 21044:23, 21046:17, 21057:12, 21060:3</p> <p>College [1] - 21010:6</p> <p>Colorado [3] - 20976:15, 20976:19</p> <p>coloured [1] - 21115:2</p> <p>Columbia [1] - 20930:20</p> <p>column [1] - 21056:2</p> <p>comfortable [8] - 21023:7, 21023:17, 21033:9, 21033:12, 21035:22, 21035:24, 21042:2, 21054:8</p> <p>coming [6] - 20930:17, 20945:8, 20969:20, 20974:16, 21020:18, 21094:8</p> <p>comment [56] - 20999:17, 21000:5, 21000:8, 21000:14, 21000:17, 21001:10, 21001:21, 21002:17, 21032:14, 21033:6, 21033:11, 21033:19, 21036:15, 21037:19, 21042:10, 21042:11, 21042:18, 21042:19, 21042:20, 21042:23, 21073:23, 21077:17, 21080:17, 21082:6, 21082:22, 21083:9, 21085:1, 21085:5,</p>
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<p>21085:11, 21085:17, 21086:8, 21086:14, 21087:1, 21088:7, 21089:22, 21090:7, 21090:24, 21091:7, 21091:13, 21092:21, 21092:22, 21093:1, 21096:13, 21098:8, 21098:10, 21099:1, 21111:7, 21111:14, 21114:12, 21135:17, 21135:18, 21136:1, 21136:25, 21137:6, 21137:8</p> <p>comments [8] - 20981:11, 20981:13, 21000:10, 21056:1, 21063:12, 21065:17, 21090:8, 21090:23</p> <p>Commission [13] - 20926:2, 20926:14, 20927:1, 20927:2, 20927:3, 20927:10, 20971:3, 21002:11, 21049:2, 21055:22, 21060:12, 21061:12, 21067:9</p> <p>Commissioner [37] - 20930:3, 20930:6, 20930:11, 20974:11, 20974:15, 20974:23, 20974:25, 21042:22, 21042:24, 21043:7, 21048:18, 21048:21, 21054:21, 21055:21, 21057:1, 21059:25, 21063:13, 21064:2, 21064:8, 21064:15, 21065:2, 21065:8, 21065:15, 21093:13, 21093:17, 21093:22, 21094:1, 21094:3, 21118:9, 21137:24, 21138:1, 21138:12, 21138:16, 21139:1, 21139:4, 21139:5, 21139:10</p> <p>Commissioners [1] - 20971:19</p> <p>commit [2] - 20960:15, 21100:5</p> <p>commitment [4] - 20960:17, 20964:2, 20964:3, 20964:5</p> <p>committed [3] - 20961:25, 20963:4, 20978:8</p> <p>committee [1] - 21030:9</p> <p>committing [1] -</p>	<p>21097:11</p> <p>common [1] - 20959:15</p> <p>communicated [1] - 21013:6</p> <p>communication [5] - 21033:7, 21069:12, 21069:17, 21071:17, 21117:18</p> <p>communications [2] - 21018:6, 21040:7</p> <p>community [5] - 20944:23, 20994:14, 21016:6, 21090:13, 21114:20</p> <p>company [1] - 20954:15</p> <p>compare [1] - 21063:19</p> <p>compelled [3] - 20958:12, 21085:4, 21091:7</p> <p>compensation [1] - 21107:22</p> <p>competence [7] - 20991:16, 20998:9, 21066:23, 21066:25, 21122:18, 21133:17, 21133:19</p> <p>competent [4] - 21082:10, 21123:10, 21133:20</p> <p>complaints [1] - 21082:16</p> <p>complete [10] - 20982:13, 20984:12, 20990:12, 20990:13, 21022:21, 21027:25, 21028:1, 21034:16, 21044:23, 21093:4</p> <p>completely [1] - 21098:7</p> <p>completion [1] - 21023:20</p> <p>comprehensive [2] - 20952:8, 20995:22</p> <p>compulsive [1] - 20994:1</p> <p>conceivably [1] - 21045:20</p> <p>concern [6] - 20980:24, 20995:1, 21064:16, 21074:18, 21077:10, 21123:21</p> <p>concerned [5] - 20935:22, 20949:4, 20981:18, 21074:21, 21080:25</p> <p>concerning [2] - 20997:15, 21043:19</p> <p>concerns [2] - 21019:16, 21082:21</p> <p>conclude [9] -</p>	<p>20983:18, 20984:22, 21019:3, 21020:25, 21021:24, 21040:21, 21042:7, 21043:3, 21138:6</p> <p>concluded [1] - 20983:21</p> <p>conclusion [21] - 20985:20, 20986:5, 21013:7, 21017:2, 21019:24, 21021:17, 21021:21, 21022:14, 21022:24, 21023:4, 21023:16, 21023:18, 21024:9, 21025:15, 21025:21, 21035:14, 21054:8, 21060:15, 21061:1, 21127:4, 21127:7</p> <p>conclusions [6] - 20984:10, 20984:15, 20984:18, 20986:24, 21022:3, 21022:8</p> <p>condition [2] - 20965:11, 20993:9</p> <p>conditions [2] - 21021:23, 21089:15</p> <p>conduct [4] - 20977:16, 21064:19, 21065:1, 21080:16</p> <p>conducted [1] - 21062:14</p> <p>conducting [1] - 21075:20</p> <p>conduit [3] - 21048:4, 21073:8, 21117:12</p> <p>conference [3] - 21111:8, 21112:5, 21112:12</p> <p>conferenced [1] - 21062:4</p> <p>confidential [3] - 21058:21, 21072:4, 21072:7</p> <p>confidentiality [2] - 21124:7, 21124:9</p> <p>confirm [1] - 21012:16</p> <p>confirmed [9] - 21012:15, 21013:12, 21040:13, 21047:4, 21054:1, 21060:4, 21085:7, 21085:13, 21112:23</p> <p>confirming [1] - 21082:11</p> <p>confirms [1] - 21087:19</p> <p>conflict [1] - 20956:19</p> <p>confronted [1] - 20945:24</p> <p>Congram [1] - 20927:4</p>	<p>connected [1] - 20948:10</p> <p>connection [4] - 20971:6, 20971:11, 20971:23, 21069:11</p> <p>connections [2] - 20954:11, 20965:18</p> <p>conscious [1] - 21087:6</p> <p>consent [2] - 21009:23, 21126:15</p> <p>consequences [1] - 21128:9</p> <p>consider [8] - 20994:9, 21021:6, 21060:10, 21060:13, 21076:2, 21116:8, 21119:5, 21119:13</p> <p>considerable [3] - 20960:5, 20962:23, 20966:19</p> <p>considerably [1] - 20963:21</p> <p>consideration [1] - 21079:4</p> <p>considered [2] - 20966:2, 21116:25</p> <p>consistent [2] - 21024:2, 21087:24</p> <p>constant [1] - 21031:5</p> <p>constructively [1] - 20947:9</p> <p>consultant [2] - 21119:10, 21119:11</p> <p>consultation [3] - 20988:14, 20997:11, 21015:6</p> <p>consulted [1] - 21014:17</p> <p>contact [14] - 20948:21, 20973:3, 20973:8, 21009:20, 21026:19, 21026:21, 21027:6, 21044:9, 21048:5, 21068:16, 21076:7, 21094:7, 21095:15, 21123:15</p> <p>contacted [9] - 20947:5, 20948:14, 20948:17, 20954:22, 20973:7, 20997:7, 21043:22, 21068:17, 21103:12</p> <p>contacting [3] - 20953:3, 20960:8, 21084:4</p> <p>contain [1] - 21140:5</p> <p>contained [3] - 21002:17, 21104:14, 21111:7</p> <p>contains [1] - 21031:6</p>	<p>content [2] - 21130:25, 21131:4</p> <p>contents [5] - 21029:13, 21034:9, 21050:5, 21066:7</p> <p>context [14] - 20980:3, 20987:5, 21000:8, 21033:18, 21036:19, 21044:24, 21064:22, 21079:14, 21083:15, 21091:22, 21110:11, 21112:8, 21119:7, 21131:8</p> <p>continual [1] - 21034:4</p> <p>continuation [1] - 21100:20</p> <p>Continue [1] - 21084:1</p> <p>continue [9] - 20953:18, 20963:14, 20985:15, 21020:14, 21051:14, 21059:7, 21065:13, 21116:23</p> <p>continued [3] - 20962:3, 21053:25, 21121:1</p> <p>continuing [3] - 20955:25, 21031:25, 21046:6</p> <p>contract [1] - 20957:10</p> <p>contrary [1] - 21061:4</p> <p>contribute [2] - 20953:19, 20953:24</p> <p>contributed [1] - 20960:20</p> <p>conversation [11] - 20947:7, 20948:8, 20948:24, 20949:1, 20949:10, 20952:23, 20953:10, 20979:8, 21006:6, 21103:10, 21110:15</p> <p>conversations [4] - 20956:13, 21018:20, 21019:11, 21136:10</p> <p>convey [1] - 21113:2</p> <p>conveying [2] - 21117:4, 21117:5</p> <p>convicted [2] - 21025:17, 21134:21</p> <p>conviction [5] - 20970:24, 20971:12, 20971:24, 21017:24, 21135:1</p> <p>Conviction [1] - 20926:4</p> <p>convinced [1] - 21081:7</p> <p>Conway [1] - 21059:8</p> <p>cool [4] - 20934:20, 20934:23, 20935:2, 20951:13</p>
--	--	--	---	--



<p>cool^[2] - 20951:7, 20951:10 cop^[1] - 20951:5 copies^[1] - 21056:8 copy^[11] - 20957:2, 20958:21, 20959:3, 20965:3, 20973:11, 21027:19, 21027:23, 21064:6, 21073:12, 21118:10, 21128:11 copying^[2] - 21063:24, 21064:3 corner^[2] - 21047:2, 21067:14 correct^[29] - 20931:6, 20932:10, 20936:21, 20948:7, 20964:20, 20969:5, 20975:9, 20975:21, 20985:19, 21008:21, 21008:24, 21054:5, 21057:15, 21079:19, 21092:7, 21094:21, 21095:17, 21096:1, 21096:16, 21097:24, 21098:2, 21098:19, 21102:1, 21122:9, 21127:2, 21133:19, 21136:1, 21138:15, 21140:5 corrected^[2] - 21058:7, 21092:19 Correctional^[3] - 21027:16, 21035:12, 21072:5 correctional^[1] - 21029:8 correctly^[10] - 20985:21, 21001:9, 21024:15, 21040:1, 21049:12, 21091:11, 21098:8, 21104:6, 21106:25, 21121:23 correspondence^[8] - 20962:15, 21030:15, 21030:21, 21035:15, 21048:3, 21051:2, 21051:10, 21116:16 corresponding^[1] - 21116:2 costs^[1] - 20960:21 Cotler^[1] - 20928:12 Counsel^[3] - 20927:2, 20927:3, 20930:4 counsel^[7] - 20930:9, 20974:24, 21103:17, 21122:20, 21122:21, 21123:3, 21123:6 count^[1] - 20977:20 counter^[1] - 20943:6 counting^[1] - 20987:3</p>	<p>country^[2] - 20935:20, 21129:15 couple^[17] - 20950:22, 20987:9, 20987:22, 21014:23, 21047:1, 21047:13, 21051:4, 21056:1, 21059:11, 21061:9, 21065:15, 21066:5, 21071:8, 21072:15, 21109:21, 21120:18, 21132:15 course^[33] - 20932:8, 20938:19, 20939:13, 20943:13, 20946:3, 20962:23, 20981:4, 20981:11, 20982:3, 20982:19, 20983:3, 20984:24, 20991:18, 20997:3, 21003:21, 21004:14, 21004:18, 21008:12, 21010:16, 21012:14, 21022:1, 21027:9, 21028:10, 21030:22, 21031:22, 21037:24, 21045:15, 21064:18, 21064:25, 21120:19, 21127:5, 21129:18, 21133:25 Court^[14] - 20927:11, 20985:4, 21082:8, 21083:24, 21106:3, 21123:25, 21125:25, 21126:16, 21127:5, 21128:8, 21140:1, 21140:3, 21140:14, 21140:20 cousin^[2] - 21068:23, 21069:3 cover^[3] - 21002:20, 21028:19, 21100:14 cover-up^[1] - 21100:14 covered^[7] - 20995:18, 21017:18, 21024:19, 21026:7, 21036:8, 21039:22, 21138:13 created^[3] - 21055:17, 21055:22, 21068:6 credence^[1] - 21015:16 credibility^[1] - 21023:24 credible^[1] - 21082:3 crew^[1] - 20931:19 crime^[10] - 20990:20, 20991:6, 20991:9, 20997:13, 21079:12, 21098:2, 21098:14, 21100:5, 21113:7, 21134:21 criminal^[6] - 20977:25, 20978:9, 20978:18,</p>	<p>21004:7, 21017:13, 21107:17 criteria^[4] - 21029:22, 21123:6, 21123:8, 21123:9 critical^[1] - 21128:21 crop^[1] - 21128:8 cross^[1] - 21093:19 cross-examination^[1] - 21093:19 Crown^[10] - 20977:11, 20979:4, 21034:19, 21107:5, 21127:6, 21127:16, 21127:17, 21127:24, 21127:25, 21128:6 crucial^[1] - 21099:15 crusty^[2] - 20934:17, 20934:18 crying^[2] - 20946:11, 20946:20 Csis^[1] - 21095:6 Csr^[8] - 20927:11, 20927:12, 21140:2, 21140:12, 21140:13, 21140:18, 21140:19 cuff^[1] - 21033:19 culling^[2] - 21052:13, 21052:22 curiosities^[1] - 20955:21 current^[1] - 21115:8 custody^[4] - 21003:10, 21032:13, 21032:19, 21032:21 cut^[3] - 21016:16, 21063:19, 21063:25 cutting^[1] - 21050:3</p>	<p>21087:9, 21096:15, 21097:1, 21098:25, 21099:12, 21135:17 darn^[1] - 20960:21 data^[2] - 21026:16, 21026:22 database^[4] - 21054:23, 21055:10, 21055:16, 21056:16 date^[15] - 20934:4, 20934:5, 20947:23, 20948:15, 20959:12, 20980:14, 20980:16, 20980:17, 20988:3, 20988:6, 21007:5, 21018:17, 21040:12, 21076:10, 21088:4 dated^[15] - 20952:25, 20955:16, 20957:3, 20958:21, 20961:13, 20962:9, 20972:9, 20997:1, 21030:18, 21043:10, 21047:4, 21047:16, 21054:24, 21059:13, 21061:23 dates^[1] - 21062:21 dating^[1] - 21114:11 daughter^[1] - 20963:24 Dave^[4] - 20940:23, 20941:19, 20942:14 David^[85] - 20926:4, 20928:2, 20928:11, 20932:9, 20932:12, 20932:20, 20932:24, 20933:7, 20933:24, 20933:25, 20935:6, 20935:9, 20937:2, 20937:18, 20937:21, 20937:23, 20938:8, 20939:18, 20939:25, 20941:7, 20941:10, 20941:18, 20941:21, 20942:15, 20942:17, 20942:20, 20942:24, 20943:2, 20943:7, 20943:18, 20943:24, 20944:5, 20946:7, 20947:3, 20947:15, 20948:10, 20948:18, 20949:22, 20953:12, 20957:12, 20957:19, 20958:4, 20959:7, 20964:16, 20964:17, 20964:20, 20965:5, 20965:10, 20966:4, 20967:25, 20969:4, 20969:11, 20969:24, 20970:24, 20971:6, 20971:12, 20971:24, 20972:18, 20972:20,</p>	<p>20978:20, 20980:8, 20988:9, 20988:21, 20999:14, 21007:2, 21009:3, 21011:18, 21030:19, 21043:13, 21074:8, 21113:6, 21115:4, 21116:25, 21120:21, 21121:19, 21123:5, 21126:20, 21127:24, 21129:7, 21130:25, 21131:18, 21136:13 David's^[6] - 20941:3, 20960:4, 20961:16, 20965:24, 21126:8, 21135:23 day-to-day^[1] - 20994:18 days^[11] - 20936:25, 20938:25, 20939:8, 20944:15, 20967:23, 20970:22, 21016:4, 21030:5, 21031:6, 21047:13, 21132:3 dead^[1] - 20970:18 dead-end^[1] - 20970:18 deal^[12] - 20941:21, 20942:16, 20951:1, 20962:24, 20966:17, 20981:6, 21009:7, 21018:18, 21094:11, 21097:24, 21135:1, 21135:16 dealing^[6] - 21007:1, 21070:6, 21081:2, 21082:19, 21085:17, 21109:1 dealings^[9] - 21048:15, 21082:12, 21083:2, 21083:4, 21100:24, 21101:5, 21120:19, 21121:8, 21121:12 deals^[1] - 21088:16 dealt^[1] - 20956:23 dean^[2] - 20975:21, 21068:2 Dean^[1] - 21099:22 Dean's^[2] - 21050:7, 21052:9 death^[2] - 21000:19, 21110:11 December^[2] - 20926:21, 21061:23 decent^[1] - 21132:17 decided^[3] - 21047:20, 21073:10, 21093:25 Decided^[1] - 21030:9 decision^[5] - 20936:14, 20961:17, 21030:10,</p>
D				
<p>dad^[1] - 20960:22 damaging^[1] - 21123:18 danger^[1] - 21090:9 dangerous^[2] - 21014:22, 21089:19 Dangerous^[1] - 21015:7 Danny^[1] - 21130:9 Darcy^[1] - 20937:22 dark^[10] - 20999:16, 21000:21, 21036:23, 21037:1, 21037:7, 21037:20, 21038:19, 21086:19, 21110:3, 21136:15 dark'^[9] - 21040:4, 21086:10, 21087:2,</p>				



<p>21107:2, 21107:3 decisions [5] - 21012:17, 21026:17, 21067:1 dedicated [1] - 21050:2 deep [2] - 21113:6, 21113:9 deep-seated [2] - 21113:6, 21113:9 defence [9] - 20977:12, 20991:16, 20991:20, 21009:8, 21080:16, 21081:7, 21122:12, 21123:18, 21126:6 defences [1] - 21105:6 defending [1] - 20934:24 define [1] - 21016:13 defined [1] - 21122:19 definition [2] - 21015:24, 21016:16 definitions [1] - 21017:10 degrees [1] - 21016:5 deleted [2] - 20953:8, 20953:23 deliberate [1] - 21087:6 delivered [3] - 21050:6, 21050:25, 21051:5 demographics [1] - 20938:21 denial [1] - 21087:23 Denver [1] - 20976:15 departed [1] - 20973:2 departing [1] - 21007:24 Department [8] - 20997:1, 20997:8, 21027:13, 21034:21, 21035:9, 21050:6, 21050:11, 21050:15 department [2] - 21054:18, 21117:14 deposit [2] - 20954:23, 20954:24 described [7] - 21006:3, 21024:19, 21024:21, 21051:16, 21109:22, 21110:3, 21110:7 Description [1] - 20929:2 descriptors [1] - 21024:22 design [1] - 21053:6 designate [1] - 21108:16 designates [1] - 20983:12 designs [1] - 21053:9</p>	<p>destroyed [2] - 20985:9, 21076:22 detail [4] - 20949:17, 20982:2, 21002:21, 21019:14 details [6] - 20979:3, 20986:23, 20990:8, 20990:19, 21007:15, 21020:4 detective [2] - 20935:3, 20965:8 Detective [2] - 20980:7, 20988:2 determination [1] - 20991:5 determine [4] - 21065:4, 21122:9, 21124:21, 21125:5 determined [1] - 20963:5 determining [3] - 21122:11, 21133:17, 21133:22 devastated [3] - 20967:18, 20967:19, 20968:7 devices [1] - 21095:11 diagnosis [15] - 20984:12, 20993:8, 21021:7, 21021:9, 21022:16, 21023:7, 21023:10, 21030:2, 21030:7, 21065:18, 21112:22, 21112:25, 21115:9, 21115:15, 21115:18 Diagnostic [1] - 21016:2 diagnostic [1] - 21018:21 dialogue [1] - 21124:16 difference [4] - 21131:12, 21131:15, 21133:14, 21133:15 different [11] - 20934:19, 20938:11, 20960:12, 20964:4, 21005:1, 21015:8, 21122:11, 21122:15, 21126:3, 21130:21, 21130:22 difficult [9] - 20956:17, 21090:12, 21090:13, 21133:3, 21133:7, 21133:16, 21133:18, 21135:9 difficulties [1] - 20959:5 difficulty [5] - 21123:12, 21123:13,</p>	<p>21125:13, 21125:15 dim [2] - 20960:10, 20961:19 dimension [1] - 20965:24 dimensions [1] - 20967:9 Dimmitt [1] - 20989:9 Direct [2] - 20935:18, 20935:19 direct [10] - 20931:17, 20939:14, 20952:4, 20978:20, 20979:8, 20996:13, 21003:25, 21008:14, 21047:19, 21052:13 directed [9] - 20980:6, 20991:10, 20991:15, 20991:19, 20995:14, 21046:13, 21067:23, 21067:25, 21072:21 direction [2] - 20956:1, 21073:18 directly [7] - 20931:22, 20973:8, 20979:12, 20994:3, 21010:2, 21047:22, 21116:22 Director [3] - 20927:4, 21007:13, 21007:23 disagree [1] - 21094:24 disappointed [1] - 20963:6 disassociated [1] - 21012:23 disbursements [1] - 20962:11 discarded [2] - 21051:23, 21051:24 discharge [1] - 21007:22 discharged [1] - 21058:12 disclosed [1] - 20967:7 discomfort [2] - 20993:21, 20993:23 discovered [1] - 21050:9 discuss [1] - 20990:8 discussed [8] - 20953:11, 21001:22, 21002:24, 21017:15, 21062:9, 21063:16, 21075:18, 21084:13 Discussed [1] - 21062:5 discusses [1] - 20950:19 discussing [12] - 21000:2, 21004:4, 21008:18, 21011:3, 21031:12, 21036:16,</p>	<p>21036:21, 21053:15, 21054:15, 21079:10, 21081:5, 21096:19 discussion [18] - 20935:9, 20935:10, 20935:11, 20948:17, 20953:7, 20963:13, 20996:2, 20997:23, 20999:2, 21007:10, 21013:19, 21017:4, 21079:10, 21088:4, 21100:2, 21112:13, 21118:14, 21119:1 discussions [13] - 20981:3, 20985:23, 20989:24, 20998:21, 21019:12, 21041:12, 21088:17, 21109:22, 21113:15, 21115:2, 21116:3, 21117:6, 21117:9 diseases [1] - 21059:15 disorder [22] - 20984:20, 20985:21, 20986:25, 20992:10, 20992:11, 20993:13, 20993:18, 20993:25, 20994:10, 21015:20, 21019:5, 21019:8, 21021:1, 21024:16, 21024:22, 21025:2, 21029:20, 21034:25, 21065:19, 21087:13, 21087:17, 21112:24 disorders [5] - 20993:20, 20993:23, 20994:4, 20994:5, 21022:18 dispatched [1] - 20938:22 disposal [1] - 21053:7 disposing [1] - 21052:15 dispute [3] - 21081:14, 21095:22, 21098:9 dissociated [3] - 21006:10, 21013:4, 21013:5 dissuade [1] - 21121:10 distraught [1] - 20945:25 disturbing [1] - 21062:6 divert [1] - 20978:17 diverting [1] - 20978:8 Dna [1] - 21098:1 doc [11] - 20947:18, 20949:20, 20952:20, 20955:15, 20957:1, 20958:25, 20961:11, 20962:6, 20965:2,</p>	<p>21040:10, 21138:23 doctor [6] - 20988:13, 20988:23, 20989:5, 21065:4, 21100:21, 21136:12 Doctor [6] - 21034:20, 21034:23, 21035:1, 21063:21, 21128:10, 21128:21 doctor/patient [1] - 21124:5 doctors [1] - 21107:20 Document [4] - 20927:5, 20927:6, 20927:7, 20971:15 document [123] - 20947:23, 20948:3, 20949:9, 20949:16, 20949:18, 20953:2, 20958:18, 20958:19, 20962:13, 20972:2, 20980:3, 20980:4, 20981:24, 20989:6, 20995:11, 20996:16, 20996:23, 20998:24, 20999:21, 20999:25, 21000:4, 21000:9, 21001:8, 21003:20, 21003:21, 21007:5, 21010:14, 21010:15, 21010:21, 21010:22, 21011:20, 21011:21, 21011:25, 21013:11, 21018:14, 21018:16, 21029:5, 21030:17, 21031:12, 21032:24, 21033:14, 21040:10, 21043:11, 21046:5, 21046:8, 21046:21, 21049:5, 21052:24, 21052:25, 21053:14, 21053:17, 21055:17, 21055:20, 21055:21, 21055:22, 21056:1, 21056:6, 21056:11, 21056:12, 21056:15, 21057:5, 21058:6, 21058:8, 21058:15, 21058:17, 21059:2, 21059:16, 21059:18, 21059:23, 21059:24, 21061:5, 21061:13, 21061:14, 21062:18, 21063:3, 21063:6, 21063:11, 21063:18, 21064:5, 21064:11, 21064:17, 21065:16, 21066:6, 21067:10, 21067:11, 21067:12, 21067:15, 21068:6,</p>
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<p>21068:10, 21070:2, 21070:15, 21071:3, 21071:5, 21071:19, 21071:20, 21072:2, 21072:7, 21072:10, 21072:13, 21072:17, 21073:3, 21073:24, 21075:4, 21075:7, 21075:25, 21076:8, 21076:13, 21085:18, 21091:19, 21092:15, 21092:16, 21093:9, 21095:20, 21096:5, 21101:20, 21101:22, 21103:8, 21104:11, 21111:4, 21111:18, 21112:20, 21120:17, 21138:20</p> <p>documentary [2] - 21074:7, 21111:5</p> <p>documentation [4] - 21007:22, 21036:4, 21051:7, 21066:4</p> <p>documented [8] - 21031:3, 21044:2, 21045:10, 21114:9, 21114:13, 21114:15, 21118:16, 21118:20</p> <p>documents [29] - 20934:9, 20983:10, 20983:16, 20987:23, 20999:22, 21003:5, 21003:8, 21003:11, 21007:24, 21018:13, 21022:4, 21024:1, 21029:2, 21036:6, 21036:17, 21049:4, 21055:2, 21055:3, 21057:9, 21058:8, 21060:7, 21060:18, 21063:15, 21071:16, 21090:5, 21090:24, 21115:7, 21126:20, 21139:3</p> <p>doin' [1] - 20942:22</p> <p>Dojack [5] - 20982:22, 20986:20, 21060:19, 21060:20, 21068:18</p> <p>Don [1] - 20927:12</p> <p>Donald [2] - 21140:2, 21140:19</p> <p>done [11] - 20948:19, 20950:15, 20962:22, 20963:1, 20971:7, 21011:11, 21013:6, 21027:11, 21090:6, 21094:13, 21110:13</p> <p>door [2] - 20942:24, 20983:20</p> <p>doubt [1] - 21070:23</p>	<p>down [27] - 20935:13, 20936:4, 20936:9, 20937:16, 20943:10, 20949:3, 20950:16, 20955:24, 20969:8, 20969:21, 20988:11, 20989:10, 21004:20, 21026:25, 21034:17, 21036:25, 21052:2, 21063:20, 21070:22, 21084:1, 21094:20, 21095:13, 21095:22, 21096:20, 21099:22, 21107:13, 21125:9</p> <p>Dr [131] - 20974:12, 20974:20, 20974:23, 20975:3, 20976:17, 20978:4, 20978:6, 20978:19, 20980:5, 20980:10, 20987:25, 20989:15, 20989:24, 20997:4, 20997:8, 20997:14, 20997:18, 20997:24, 20998:17, 21002:11, 21003:20, 21004:19, 21005:4, 21005:21, 21006:4, 21007:9, 21007:10, 21007:11, 21007:13, 21007:21, 21008:1, 21008:22, 21009:2, 21009:11, 21010:16, 21010:23, 21011:3, 21011:4, 21011:7, 21011:16, 21014:13, 21014:18, 21018:5, 21025:19, 21030:16, 21030:24, 21031:12, 21031:22, 21032:8, 21034:9, 21036:20, 21037:11, 21037:20, 21038:3, 21039:22, 21041:6, 21043:15, 21043:22, 21044:6, 21044:12, 21044:14, 21044:22, 21046:6, 21047:19, 21048:25, 21049:8, 21053:25, 21055:24, 21056:23, 21057:3, 21057:11, 21059:2, 21059:8, 21060:3, 21060:9, 21061:6, 21061:14, 21061:20, 21061:25, 21062:20, 21063:4, 21065:16, 21066:8, 21067:5, 21067:12, 21067:24, 21068:1, 21068:6, 21071:5, 21071:13, 21071:22, 21072:17, 21072:21,</p>	<p>21072:24, 21073:9, 21073:21, 21074:1, 21075:18, 21076:1, 21076:15, 21076:21, 21076:24, 21077:5, 21077:10, 21077:14, 21078:15, 21079:19, 21080:8, 21082:16, 21084:7, 21085:4, 21085:23, 21087:12, 21087:22, 21088:22, 21089:7, 21092:4, 21092:13, 21093:8, 21093:11, 21094:5, 21096:9, 21096:22, 21101:16, 21101:25, 21103:16, 21104:13, 21120:18, 21121:19, 21139:6</p> <p>draw [4] - 20984:9, 20984:16, 20984:18, 20985:18</p> <p>drawing [1] - 21110:4</p> <p>driven [1] - 20945:21</p> <p>drop [2] - 20965:12, 21081:10</p> <p>drove [5] - 20932:18, 20932:23, 20932:25, 20933:4, 20934:7</p> <p>drug [1] - 20959:21</p> <p>drugs [3] - 20958:15, 20959:18, 20959:19</p> <p>Drugs [1] - 20959:15</p> <p>drunkenness [1] - 21009:8</p> <p>Dsm [6] - 21016:3, 21016:4, 21115:8, 21115:17</p> <p>due [1] - 21045:15</p> <p>uplicated [2] - 21055:9, 21055:16</p> <p>During [2] - 21120:19, 21121:22</p> <p>during [18] - 20950:24, 20963:22, 20964:23, 20976:1, 20980:22, 20981:4, 20982:19, 20985:2, 20985:5, 20985:24, 20990:13, 20997:2, 21018:8, 21054:14, 21075:19, 21083:2, 21083:15, 21089:2</p> <p>duties [1] - 20931:13</p> <p>dwelling [1] - 20993:6</p>	<p>earliest [3] - 20978:24, 21058:4, 21058:6</p> <p>early [14] - 20939:2, 20945:14, 20957:8, 20970:22, 20979:7, 20987:2, 21029:19, 21031:4, 21045:12, 21048:19, 21069:2, 21079:11, 21105:1</p> <p>easy [2] - 21078:7, 21080:22</p> <p>echo [1] - 21045:24</p> <p>Eddie [1] - 20928:8</p> <p>Edgar [1] - 21030:19</p> <p>edification [2] - 21071:14, 21072:14</p> <p>Edmonton [5] - 20932:15, 20936:22, 20936:24, 20938:13, 20952:7</p> <p>educate [1] - 21066:11</p> <p>educational [4] - 21034:5, 21058:20, 21058:22, 21062:24</p> <p>Educational [2] - 21061:18, 21062:1</p> <p>Edward [1] - 20926:7</p> <p>Eeg [1] - 21058:14</p> <p>eerily [2] - 21086:19, 21110:7</p> <p>eery [2] - 21110:13, 21110:17</p> <p>effect [13] - 20937:2, 20937:14, 20940:17, 20951:6, 20969:14, 20992:2, 20993:17, 21024:5, 21025:4, 21028:4, 21085:25, 21124:13, 21137:2</p> <p>effort [3] - 21009:6, 21055:6, 21131:17</p> <p>efforts [2] - 20956:22, 20991:19</p> <p>Eg [1] - 21019:8</p> <p>eight [4] - 21048:2, 21049:25, 21050:1, 21105:21</p> <p>Einar [1] - 21094:25</p> <p>either [8] - 20942:11, 20978:14, 20979:4, 20994:19, 20994:22, 20998:22, 21016:3, 21095:7</p> <p>elements [1] - 21086:16</p> <p>Elmer [2] - 21010:19, 21011:24</p> <p>elopement [1] - 21131:9</p> <p>emotional [1] - 20993:19</p>	<p>employ [2] - 20937:6, 20937:9</p> <p>employed [3] - 20975:12, 21131:22, 21132:15</p> <p>employee [1] - 20994:20</p> <p>employer [1] - 20973:21</p> <p>employment [2] - 20932:9, 20957:5</p> <p>Emson [5] - 21068:1, 21071:13, 21072:21, 21073:9</p> <p>Emson's [1] - 21074:1</p> <p>enclosed [2] - 20973:11, 21043:19</p> <p>enclosing [2] - 21044:10, 21046:15</p> <p>encountering [1] - 20996:6</p> <p>encourage [1] - 21116:5</p> <p>encouraged [2] - 21117:22</p> <p>end [11] - 20947:14, 20949:8, 20962:20, 20963:6, 20963:10, 20970:18, 21032:14, 21042:18, 21065:3, 21090:18, 21104:3</p> <p>ended [5] - 20962:18, 20962:21, 20984:8, 21039:18</p> <p>ending [1] - 20962:17</p> <p>enforcement [1] - 21103:2</p> <p>engage [2] - 20977:2, 20998:8</p> <p>enlarge [3] - 21057:25, 21072:19, 21101:21</p> <p>ensure [1] - 20985:1</p> <p>entail [2] - 20931:14, 21122:15</p> <p>entire [4] - 20974:7, 21031:1, 21032:4, 21032:18</p> <p>entirely [4] - 21013:5, 21015:8, 21130:21, 21130:22</p> <p>entries [2] - 21059:11, 21063:1</p> <p>entry [4] - 21008:17, 21014:6, 21056:13, 21099:12</p> <p>Enweani [4] - 20927:3, 20929:4, 20930:5, 20930:14</p> <p>episode [2] - 21005:7, 21083:7</p>
		<p>E</p>		
		<p>Eamon [1] - 20928:10</p>		



<p>equally [1] - 21087:9 Eric[12] - 21067:18, 21067:24, 21068:2, 21068:9, 21069:5, 21069:6, 21073:8, 21073:12, 21084:5, 21092:23, 21093:3, 21116:12 error [3] - 21063:25, 21064:4, 21099:3 escape [4] - 20964:23, 20980:25, 21077:10, 21078:11 Esq[5] - 20927:2, 20928:7, 20928:8, 20928:9, 20928:10 essential [2] - 21117:3, 21117:8 essentially [1] - 20959:9 Essentially [1] - 21124:8 Esson [1] - 20927:13 establish [2] - 20955:23, 21079:14 Estate[2] - 21067:20, 21092:24 Estevan [1] - 20939:11 etcetera [1] - 21034:7 ethical [2] - 21010:4, 21082:4 evaluate [1] - 21021:22 evaluation [1] - 20984:25 evaluations [1] - 21027:11 evening [3] - 20944:25, 20980:16, 20984:24 event [3] - 21107:13, 21123:2, 21133:25 events [1] - 21059:17 everyday [1] - 21107:18 evidence [25] - 20969:3, 20969:24, 20978:14, 20992:9, 20992:10, 21001:7, 21009:13, 21011:23, 21012:15, 21015:18, 21019:7, 21019:17, 21024:2, 21026:3, 21045:21, 21088:23, 21095:15, 21096:24, 21102:1, 21103:24, 21106:18, 21111:5, 21113:20, 21119:7, 21124:24 evidently [1] - 21005:4 evolved [1] - 21032:17 exact [1] - 20934:5 exactly [4] - 20949:2, 20954:23, 21021:5,</p>	<p>21128:2 Exactly [1] - 21101:5 examination [7] - 20974:10, 20995:12, 21019:23, 21021:9, 21022:13, 21093:19, 21138:1 Examination [1] - 20995:16 examinations [2] - 20988:17, 21026:15 examined [6] - 20980:10, 20988:13, 21010:24, 21031:8, 21031:21, 21034:19 examining [3] - 21004:17, 21036:24, 21037:23 example [15] - 20931:23, 20981:10, 20982:12, 20987:10, 20992:5, 20993:8, 20994:8, 20996:11, 20996:12, 20998:21, 21028:11, 21087:14, 21090:24, 21097:9, 21131:21 examples [2] - 20994:8, 20994:15 excellent [1] - 20960:24 except [2] - 20969:18, 21031:13 exception [2] - 21080:2, 21096:2 excerpts [1] - 21008:15 excess [1] - 21050:3 exchange [1] - 20990:4 exclude [1] - 21086:15 Exclusive [1] - 21051:12 exclusive [1] - 21090:7 exclusively [1] - 20932:4 excuse [2] - 20999:12, 21053:16 excused [8] - 21012:3, 21012:5, 21012:19, 21012:20, 21088:23, 21104:19, 21106:9, 21139:6 Executive [1] - 20927:4 exhausted [1] - 21056:18 exist [8] - 20995:11, 21002:18, 21049:9, 21053:25, 21056:23, 21061:11, 21063:2, 21063:7 existed [7] - 20959:11, 21026:23, 21038:21,</p>	<p>21055:9, 21057:10, 21060:14, 21063:4 existence [1] - 21011:4 existing [1] - 21138:13 exists [6] - 21002:12, 21049:14, 21060:11, 21061:8, 21067:8, 21073:1 expect [2] - 21108:8, 21109:11 expectancy [1] - 21105:17 experience [17] - 20957:20, 20976:20, 21022:10, 21022:13, 21024:8, 21026:3, 21069:2, 21080:3, 21081:13, 21082:5, 21108:3, 21108:15, 21114:21, 21114:22, 21114:23, 21115:1, 21119:17 experiences [1] - 21082:7 expert [1] - 21107:14 expertise [4] - 21002:6, 21102:4, 21102:13, 21102:15 explain [7] - 21038:13, 21100:12, 21100:13, 21126:24, 21137:13, 21137:19, 21137:23 explained [7] - 20941:17, 20942:14, 20948:18, 20954:8, 20955:1, 20961:21, 20970:19 explanation [1] - 21005:24 explicit [1] - 21062:16 explore [1] - 20968:24 express [1] - 21123:21 expressed [6] - 20980:23, 21046:2, 21082:20, 21100:16, 21116:3, 21123:12 extended [1] - 21041:24 extensive [1] - 21044:2 extensively [1] - 21062:9 extent [6] - 20990:3, 21003:15, 21006:3, 21008:13, 21019:22, 21083:21 external [1] - 21019:25 extraordinarily [1] - 21034:15 extraordinary [2] - 21110:23, 21111:1 extreme [1] - 21016:8</p>	<p>extremely [1] - 21034:4 eye [1] - 21039:20 eyes [1] - 20961:5</p> <p style="text-align: center;">F</p> <p>face [4] - 20998:3, 21000:4, 21095:9 face-to-face [1] - 20998:3 fact [28] - 20934:20, 20961:25, 20967:22, 20969:24, 20969:25, 20970:2, 20973:14, 20973:21, 20991:5, 20991:13, 21022:21, 21025:16, 21043:4, 21055:4, 21083:19, 21104:20, 21105:7, 21110:10, 21110:12, 21111:10, 21116:17, 21119:13, 21119:18, 21129:14, 21130:24, 21134:9, 21134:17, 21137:21 factor [1] - 21120:10 facts [5] - 20997:15, 20997:22, 21022:3, 21122:17, 21128:22 Fair[1] - 21048:14 fair [15] - 20956:2, 20956:9, 20982:15, 21024:9, 21054:12, 21089:17, 21100:6, 21101:25, 21102:6, 21102:25, 21103:8, 21106:10, 21119:11, 21120:25, 21128:1 fairly [6] - 21027:7, 21027:20, 21034:10, 21034:12, 21035:5, 21081:7 fairness [1] - 21020:16 faith [1] - 20988:16 familiar [3] - 20991:3, 21066:11, 21105:11 family [5] - 20968:8, 20974:8, 20987:13, 20994:13, 20994:20 famous [2] - 21016:3, 21132:2 far [8] - 20949:3, 21059:12, 21065:8, 21090:13, 21094:22, 21094:23, 21133:25, 21136:3 fashion [1] - 21035:16 fatuous [1] - 21089:15 favour [1] - 20961:6</p>	<p>fax [3] - 21073:12, 21073:21, 21073:23 Fbi[1] - 21102:15 Fe[1] - 20931:8 fearing [1] - 21097:10 February[8] - 20947:23, 20961:13, 20997:2, 20997:7, 21058:12, 21076:10, 21102:19, 21108:25 federal [1] - 20965:16 feelings [1] - 20935:14 fees [1] - 20962:10 feet [1] - 21039:8 fellow [13] - 20939:5, 20941:24, 20942:17, 20943:13, 20948:11, 20954:6, 20961:2, 20961:4, 20967:11, 20970:15, 20972:6, 20972:8, 21108:4 fellows [1] - 20944:21 felt [18] - 20936:5, 20951:18, 20953:15, 20953:16, 20958:12, 20960:14, 20961:22, 20961:23, 20963:8, 20967:12, 20967:15, 20984:19, 20993:14, 21001:9, 21023:6, 21074:25, 21085:9, 21111:1 Ferris[2] - 21067:24, 20931:24 few [14] - 20935:15, 20936:6, 20938:25, 20949:15, 20949:18, 20965:25, 20966:10, 20976:23, 20977:20, 21061:3, 21102:3, 21103:22, 21121:20, 21129:16 field [2] - 20931:12, 20931:17 Fifth[1] - 21067:20 fight [1] - 21006:12 Fight[1] - 20965:4 fighting [3] - 21129:20, 21130:8, 21130:15 figured [1] - 20951:13 file [72] - 21002:12, 21002:22, 21003:8, 21018:23, 21020:5, 21027:7, 21027:20, 21027:23, 21031:6, 21033:2, 21035:5, 21037:4, 21038:20, 21039:7, 21044:8, 21044:16, 21045:9, 21049:1, 21049:9,</p>
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21050:4, 21050:12, 21050:15, 21050:24, 21051:13, 21051:15, 21051:17, 21051:21, 21052:13, 21052:15, 21053:21, 21053:25, 21054:18, 21055:25, 21056:24, 21057:10, 21057:14, 21060:11, 21060:14, 21060:23, 21061:8, 21061:11, 21062:16, 21063:3, 21063:4, 21063:7, 21065:5, 21065:12, 21067:8, 21068:5, 21071:19, 21073:1, 21074:2, 21075:5, 21076:25, 21085:24, 21094:13, 21103:20, 21104:14, 21106:8, 21106:21, 21106:22, 21108:7, 21108:9, 21109:2, 21109:8, 21109:24, 21113:12, 21113:14, 21114:3, 21135:20 files [3] - 20972:5, 21029:6, 21049:12 filing [2] - 21050:3, 21051:4 filters [1] - 20969:8 final [2] - 21115:15, 21120:18 Finally [1] - 21027:13 finally [2] - 20944:16, 20962:19 finances [1] - 21067:2 financially [1] - 20953:24 financing [1] - 20961:16 Fine [1] - 21128:13 fine [1] - 20968:16 fingers [1] - 20977:20 finish [1] - 21136:19 finished [4] - 20962:19, 20976:14, 21065:9, 21120:17 fired [1] - 20937:10 first [38] - 20930:6, 20932:12, 20932:20, 20935:19, 20939:18, 20945:15, 20955:19, 20967:1, 20970:21, 20972:14, 20978:5, 20978:10, 20978:17, 20980:21, 20986:6, 20987:17, 20987:24, 20988:7, 20989:25, 20990:13, 20992:3,	20992:18, 21002:22, 21018:14, 21018:19, 21019:10, 21047:1, 21056:12, 21061:9, 21061:15, 21061:23, 21067:10, 21071:18, 21072:19, 21076:11, 21079:18, 21137:7 Firstly [1] - 21020:4 firstly [1] - 21040:9 Fisher [1] - 20928:10 fishing [1] - 21064:20 fit [10] - 20979:23, 20980:13, 20984:22, 20992:7, 20993:5, 21012:13, 21031:11, 21034:8, 21045:19, 21105:9 fitness [12] - 20977:3, 20985:1, 20991:24, 21081:1, 21105:5, 21106:1, 21106:7, 21122:9, 21122:15, 21126:5, 21126:8 five [7] - 20963:2, 20986:12, 21022:20, 21026:23, 21069:4, 21114:20, 21125:20 focus [2] - 20979:21, 21100:24 focused [2] - 21099:23, 21130:23 foggiest [1] - 21075:9 folder [3] - 21050:4, 21051:20, 21051:21 follow [5] - 21014:8, 21060:10, 21083:22, 21083:24, 21105:24 followed [4] - 21030:15, 21040:9, 21098:5, 21116:20 following [13] - 20973:5, 20987:11, 20987:19, 20992:18, 20992:22, 20993:9, 20996:11, 20998:16, 21027:4, 21035:3, 21080:15, 21116:8, 21136:7 follows [1] - 21038:12 force [1] - 21077:23 foregoing [1] - 21140:4 forensic [7] - 20976:8, 20976:16, 20976:18, 21051:12, 21105:3, 21117:7, 21118:3 forget [2] - 21006:11, 21006:12 form [8] - 20983:11, 20994:23, 20995:25,	20999:20, 21002:11, 21004:8, 21017:13, 21108:12 formal [2] - 21019:7, 21021:7 formed [1] - 21083:5 former [1] - 21043:18 forms [4] - 20992:12, 20992:14, 21009:23, 21126:21 formulate [1] - 21105:9 fortified [1] - 21075:2 fortunately [1] - 21069:2 forward [5] - 20930:8, 21023:18, 21035:21, 21044:15, 21076:11 forwarded [1] - 20999:22 four [9] - 20931:22, 20990:22, 21005:1, 21008:9, 21032:9, 21037:15, 21039:8, 21093:20, 21093:21 fourth [1] - 21079:16 frankly [3] - 20960:7, 20982:9, 21099:21 Framer [1] - 20928:11 Fred [17] - 20931:8, 20935:17, 20936:2, 20936:9, 20936:10, 20936:13, 20936:14, 20936:16, 20936:22, 20939:1, 20939:17, 20940:5, 20951:24, 20952:5, 20954:13 Free [1] - 20965:4 frequently [2] - 20991:23, 21006:13 friend [3] - 21092:5, 21092:11, 21101:4 friendly [1] - 20941:22 Friends [1] - 21093:11 friends [1] - 21069:14 fringe [1] - 20976:23 front [3] - 21070:7, 21082:1, 21123:17 frontal [1] - 21022:11 fruit [1] - 20973:25 frustrated [2] - 20956:15, 20963:8 full [12] - 20976:22, 20984:5, 21008:21, 21018:15, 21064:5, 21064:6, 21108:9, 21109:2, 21119:14, 21119:15, 21119:24, 21120:3 full-time [1] - 20976:22 fully [1] - 21089:25	function [1] - 20981:22 fund [1] - 20971:11 funding [1] - 20967:5 future [5] - 20994:25, 20995:2, 21115:4, 21120:5	G	21094:4, 21094:5, 21099:3, 21099:7, 21099:10, 21099:14, 21099:16 girlfriend [2] - 20945:7, 20946:20 girls [4] - 20938:5, 20938:6, 20940:9, 20952:2 gist [1] - 21041:8 given [7] - 20970:9, 20981:16, 21024:3, 21047:17, 21108:7, 21112:7, 21113:10 Given [1] - 21112:4 go-to [1] - 21102:9 God [3] - 21097:9, 21097:10, 21130:8 God-fearing [1] - 21097:10 goodness [1] - 20949:6 gordge [4] - 20948:12, 20948:13, 20949:12, 20953:8 Government [2] - 20928:4, 21056:10 Governor's [1] - 21092:10 graciously [1] - 20970:6 grades [1] - 21029:18 gratefully [1] - 20968:6 great [10] - 20943:7, 20944:20, 20950:25, 20954:6, 20954:11, 20957:21, 20979:3, 20981:6, 21094:11, 21107:24 greater [1] - 21019:2 grew [1] - 21069:8 group [4] - 20994:1, 21111:14, 21111:15, 21112:13 groups [1] - 21022:6 growing [1] - 20958:10 grown [1] - 20963:20 guarded [1] - 20981:7 guess [21] - 20934:17, 20963:9, 20969:14, 20985:10, 20987:6, 20999:24, 21004:1, 21030:11, 21067:21, 21068:13, 21069:6, 21080:22, 21086:23, 21092:17, 21093:3, 21094:8, 21097:25, 21099:23, 21106:11, 21109:18, 21120:13 Guidance [8] - 20982:21, 21019:1,
---	--	---	---	----------	---



21020:17, 21027:10, 21028:14, 21029:12, 21035:9, 21052:6 guilt [1] - 21079:12 guilty [12] - 20966:7, 21113:7, 21121:2, 21121:15, 21122:12, 21133:6, 21133:8, 21133:9, 21134:10, 21134:13, 21134:15, 21135:11 guitar [1] - 20932:25 guy [12] - 20933:16, 20934:17, 20936:6, 20942:2, 20942:25, 20943:12, 20947:17, 20951:9, 20955:13, 20961:3, 20961:5, 20961:7 guys [5] - 20931:23, 20933:2, 20933:6, 20940:13, 20954:8	20975:2, 21041:2, 21042:24, 21043:8, 21048:24, 21057:2, 21063:17, 21064:9, 21065:12, 21065:14, 21093:21, 21093:25, 21095:20, 21096:24, 21098:24, 21099:4, 21099:8, 21099:11, 21101:19, 21118:13, 21137:25, 21138:8, 21138:15, 21138:19, 21139:4, 21139:8 Hartridge [2] - 21005:2, 21006:18 hate [1] - 20963:7 head [6] - 20935:16, 20945:10, 20975:16, 21006:15, 21034:21, 21117:14 headed [1] - 21016:12 heads [1] - 21020:2 health [2] - 20966:10, 21054:25 Health [7] - 21055:7, 21056:13, 21059:13, 21060:1, 21061:19, 21062:3, 21062:25 hear [5] - 20969:24, 20985:21, 20986:11, 21078:10, 21102:23 heard [11] - 20948:9, 20956:25, 20966:13, 20966:22, 20970:3, 20973:5, 21064:23, 21065:3, 21069:16, 21127:11, 21137:4 hearing [16] - 20998:19, 20998:23, 21001:9, 21002:25, 21003:24, 21004:8, 21005:13, 21007:7, 21011:17, 21013:1, 21028:11, 21036:15, 21040:1, 21082:1, 21091:11, 21106:2 hearings [5] - 21004:14, 21004:19, 21010:16, 21031:22, 21037:24 heart [1] - 20974:1 heavens [1] - 20964:24 heck [2] - 20942:22, 20944:23 held [3] - 21088:4, 21112:12, 21121:1 help [21] - 20947:1, 20947:7, 20947:9, 20947:13, 20953:18, 20953:21, 20955:2,	20956:22, 20960:20, 20960:24, 20961:7, 20967:13, 20970:6, 20986:12, 20999:14, 21016:9, 21021:6, 21034:6, 21044:20, 21057:23, 21086:1 helpful [3] - 21020:1, 21132:20 helping [1] - 20953:11 helps [2] - 21022:7 hereby [1] - 21140:4 herein [1] - 21140:6 Herman [1] - 20989:9 Hersh [2] - 20928:2, 21121:19 hidden [1] - 21019:20 hide [1] - 21095:9 high [3] - 20965:13, 20967:10, 21039:8 High [2] - 21058:16, 21062:13 high-profile [1] - 20965:13 higher [1] - 20965:13 highly [4] - 21072:3, 21072:7, 21080:8, 21131:24 Highway [1] - 20945:20 highway [1] - 20939:23 himself [6] - 20934:24, 20937:24, 20966:5, 20989:3, 21011:15, 21137:17 hindsight [1] - 21133:2 Hinz [3] - 20927:11, 21140:2, 21140:13 hippopotamus [1] - 21016:14 history [43] - 20981:17, 20982:4, 20982:13, 20982:15, 20983:4, 20984:19, 20985:25, 21007:10, 21007:12, 21008:23, 21009:3, 21010:25, 21011:5, 21011:8, 21022:18, 21031:2, 21032:5, 21032:19, 21034:3, 21040:19, 21044:1, 21044:7, 21044:13, 21045:11, 21070:5, 21109:7, 21113:21, 21114:5, 21114:9, 21114:13, 21114:15, 21114:18, 21118:24, 21119:14, 21119:25, 21120:3, 21126:21, 21128:6, 21130:6, 21130:7, 21134:2,	21134:4, 21137:10 hit [1] - 20943:14 Hodson [2] - 21004:17, 21036:23 hold [1] - 20945:1 home [8] - 20941:4, 20972:20, 21051:6, 21090:13, 21114:19, 21131:9, 21131:10, 21131:13 Hon [1] - 20928:12 honest [2] - 21113:6, 21113:10 Honourable [1] - 20926:6 hope [4] - 20963:18, 21030:11, 21091:24, 21109:5 hopefully [2] - 20974:14, 21046:21 hoping [3] - 21009:24, 21117:11, 21117:16 horrible [1] - 21135:13 hospital [2] - 20983:12, 21066:25 Hospital [5] - 21034:22, 21035:8, 21043:24, 21050:16, 21109:13 hotel [1] - 20935:7 Hotel [1] - 20926:16 hour [18] - 20933:22, 20933:23, 20944:19, 20981:25, 20982:1, 20982:10, 21035:19, 21036:3, 21036:9, 21066:2, 21076:20, 21079:15, 21079:16, 21079:18, 21083:12, 21095:17, 21095:18, 21101:1 hours [4] - 20944:14, 20944:15, 20984:5, 20990:22 house [1] - 20972:24 Howard [6] - 20929:3, 20930:7, 20930:13, 20935:16, 20936:17, 20939:24 huge [3] - 20943:7, 20943:10, 21133:15 Hugh [1] - 20927:13 human [1] - 21022:5 humour [5] - 21000:22, 21001:15, 21110:6, 21136:15, 21136:23 hunch [2] - 21015:18, 21058:24 Hunter [2] - 20931:5, 20965:10 hurt [1] - 20974:2	husband [1] - 20946:13 hypothetical [1] - 21129:2 hysteria [1] - 20951:1 hysterical [4] - 21004:3, 21004:22, 21005:5, 21006:10
I				
H				lan [4] - 20929:6, 20974:22, 20997:8, 21012:3 Id [15] - 20947:18, 20949:20, 20952:20, 20955:15, 20957:1, 20958:25, 20961:11, 20962:6, 20965:2, 21003:20, 21040:10, 21055:20, 21056:6, 21067:11, 21071:19 idea [16] - 20933:10, 20941:9, 20955:7, 20957:25, 20977:23, 20977:24, 20979:22, 20987:1, 20991:24, 21003:17, 21053:18, 21072:1, 21075:9, 21075:10, 21093:1, 21093:18 identified [9] - 20952:24, 21003:21, 21008:12, 21010:15, 21012:1, 21031:16, 21057:5, 21057:13, 21092:20 identifies [1] - 21055:23 identity [1] - 21095:8 ids [2] - 21049:5, 21138:23 li [1] - 21016:4 ill [2] - 20978:8, 21136:9 illegally [1] - 20964:17 illness [2] - 21015:22, 21124:24 imagine [6] - 20968:2, 20974:4, 20989:20, 20992:19, 21135:9, 21135:15 immediately [6] - 20973:2, 20984:25, 20987:6, 20996:10, 21105:16, 21105:22 impact [5] - 20984:6, 20984:11, 21002:1, 21022:23, 21120:4 impacted [1] - 21060:15 implications [1] -



<p>20995:1 implied [1] - 21128:7 imply [1] - 21052:23 importance [2] - 21116:24, 21131:3 important [10] - 20952:16, 20966:20, 21061:1, 21063:21, 21105:7, 21116:9, 21118:4, 21122:23, 21130:25, 21131:21 imposed [1] - 20993:24 impressed [3] - 21003:3, 21080:20, 21081:12 impression [9] - 20934:22, 20935:3, 20981:14, 20984:13, 21002:5, 21015:14, 21024:4, 21026:21, 21066:1 inability [2] - 20994:23, 20994:25 inappropriate [3] - 21112:7, 21137:8, 21137:10 incarceration [1] - 21070:6 incident [2] - 20960:4, 20990:21 incidents [1] - 20952:4 inclined [1] - 20971:21 include [2] - 20975:16, 20976:8 included [6] - 21056:14, 21087:1, 21087:4, 21096:13, 21096:25, 21109:24 includes [1] - 21047:6 including [1] - 20941:17 incomplete [2] - 21063:18, 21063:23 incredible [1] - 21000:17 indeed [2] - 21041:17, 21122:14 Indeed [1] - 21135:8 independent [2] - 21107:22, 21127:21 Index [1] - 20929:1 index [1] - 21051:4 indexed [2] - 21050:17, 21051:21 indicate [7] - 20934:9, 21063:14, 21064:24, 21090:9, 21093:20, 21106:9, 21136:12 indicated [9] - 20988:15, 21078:16,</p>	<p>21092:4, 21103:24, 21109:21, 21110:5, 21119:4, 21129:6, 21138:8 indicates [6] - 20988:8, 20988:11, 21104:19, 21109:7, 21115:8, 21116:16 indicating [1] - 20971:17 indication [3] - 21062:23, 21107:10, 21119:14 indicative [2] - 21022:19, 21056:4 indicators [1] - 21024:21 individual [11] - 20979:9, 20992:6, 20994:9, 20994:11, 21018:24, 21034:14, 21036:11, 21105:8, 21108:7, 21114:10, 21120:2 individually [1] - 21034:12 individuals [4] - 20977:8, 21066:20, 21102:3, 21131:23 infamous [2] - 21132:4, 21132:7 influenced [1] - 21025:16 info [2] - 21040:18, 21118:23 information [83] - 20952:9, 20969:7, 20969:20, 20972:17, 20981:7, 20981:8, 20982:18, 20983:10, 20983:11, 20984:11, 20986:3, 20986:13, 20989:13, 20993:11, 20993:14, 20995:5, 20996:7, 21007:18, 21009:11, 21011:14, 21012:10, 21023:2, 21023:3, 21023:6, 21023:14, 21023:22, 21023:24, 21023:25, 21025:20, 21027:9, 21027:14, 21031:10, 21035:6, 21035:23, 21044:12, 21051:5, 21051:25, 21054:7, 21062:16, 21069:10, 21071:13, 21072:6, 21074:6, 21074:11, 21074:16, 21077:14, 21078:20, 21080:11,</p>	<p>21084:11, 21086:3, 21086:12, 21087:19, 21088:2, 21089:3, 21089:9, 21092:7, 21106:23, 21107:12, 21107:25, 21108:2, 21108:12, 21108:13, 21108:20, 21113:2, 21113:11, 21113:17, 21113:25, 21114:2, 21114:25, 21117:4, 21117:5, 21117:24, 21118:25, 21120:6, 21120:23, 21126:2, 21126:13, 21127:14, 21132:18, 21132:20, 21132:23, 21132:24, 21133:24 informed [2] - 20985:14, 20989:22 inherent [1] - 21123:16 initial [4] - 20979:22, 20985:3, 21024:7, 21107:18 initials [1] - 21073:14 injures [1] - 21060:4 injuries [1] - 21006:16 Inland [1] - 20927:14 innate [1] - 21125:12 innocence [3] - 21078:18, 21079:8, 21079:12 innocent [4] - 20936:11, 20946:2, 20950:9, 21135:10 input [1] - 21079:22 inquired [1] - 20996:6 inquiries [2] - 20991:10, 21121:13 Inquiry [3] - 20926:2, 20926:23, 21104:15 inquiry [8] - 20996:9, 21015:13, 21065:3, 21104:5, 21104:9, 21104:17, 21104:23, 21112:21 insane [2] - 20978:15, 20978:16 insanity [6] - 20977:5, 20991:17, 20991:20, 21009:8, 21081:7, 21122:13 inscribed [1] - 21100:7 insider [1] - 20965:22 insight [1] - 21030:10 insist [1] - 21105:15 insisted [1] - 20950:2 Inspector [1] - 21005:18 inspired [1] - 20964:2</p>	<p>instance [4] - 21022:5, 21022:8, 21052:18, 21066:23 instances [3] - 20977:11, 21055:4, 21056:3 institution [4] - 20959:16, 21108:5, 21108:23, 21113:13 institutional [1] - 21118:17 institutions [12] - 20982:25, 20983:7, 20986:22, 21020:6, 21020:9, 21021:14, 21028:6, 21034:5, 21037:16, 21047:11, 21047:22, 21074:14 instruct [5] - 21122:20, 21122:21, 21123:3, 21123:6, 21125:22 instructed [1] - 21050:20 instructing [2] - 20956:2, 20956:4 instruction [1] - 20976:16 instructions [1] - 21123:14 intelligence [1] - 21125:12 intend [4] - 20949:16, 20960:7, 21066:7, 21103:21 intended [1] - 20990:13 intending [3] - 20984:1, 21021:21, 21033:10 intentional [1] - 21052:22 intents [1] - 21095:21 interaction [1] - 21082:25 interest [2] - 20985:13, 21119:15 interested [9] - 21027:4, 21028:20, 21035:3, 21068:15, 21087:9, 21092:21, 21112:17, 21116:7, 21119:6 interesting [1] - 21078:15 interferes [1] - 20994:12 internal [4] - 20980:5, 20987:25, 20989:8, 21067:14 internationally [1] - 20976:18 internationally-known</p>	<p>[1] - 20976:18 interrupt [1] - 21063:14 interrupted [3] - 20982:9, 20984:4, 21065:13 interruption [2] - 20983:19, 20984:6 interview [57] - 20979:16, 20979:21, 20979:22, 20979:24, 20980:12, 20980:15, 20980:20, 20980:23, 20981:4, 20981:12, 20981:21, 20981:25, 20982:3, 20982:8, 20982:20, 20983:3, 20983:18, 20984:4, 20984:7, 20984:10, 20985:3, 20985:5, 20985:24, 20987:5, 20987:11, 20987:15, 20987:18, 20987:20, 20988:19, 20988:22, 20989:2, 20992:18, 20992:20, 20993:2, 21018:23, 21019:24, 21020:23, 21026:9, 21035:19, 21036:9, 21036:11, 21036:12, 21051:23, 21066:2, 21075:22, 21075:25, 21076:20, 21077:20, 21080:23, 21081:10, 21089:2, 21090:4, 21095:13, 21095:16, 21096:1, 21103:25, 21134:19 interviewed [7] - 21075:21, 21077:5, 21080:19, 21095:6, 21133:7, 21135:7, 21135:10 interviewee [1] - 21133:6 interviewer [1] - 21133:5 interviews [5] - 20981:1, 20998:16, 21078:17, 21132:25, 21133:4 intrigued [1] - 21072:3 introduced [1] - 21103:16 introduction [1] - 21076:12 introductory [2] - 21063:12, 21065:17 invariably [1] - 21006:14 investigate [1] -</p>
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<p>20966:21 investigating [1] - 21100:14 investigation [8] - 20996:20, 20997:1, 20997:3, 21069:21, 21075:20, 21083:3, 21094:15, 21101:9 investigation' [1] - 21083:16 investigations [2] - 21090:6, 21108:14 investigative [1] - 21084:6 investigator [1] - 20966:17 investigators [1] - 20987:10 invitation [2] - 21043:1, 21046:12 inviting [2] - 21041:19, 21074:13 invoice [2] - 20962:7, 20995:14 involve [1] - 21076:16 involved [19] - 20931:15, 20931:17, 20932:2, 20935:18, 20946:5, 20948:20, 20954:19, 20958:15, 20970:20, 20976:23, 20978:3, 20998:18, 21005:22, 21006:20, 21014:23, 21017:21, 21047:25, 21109:10, 21119:21 involvement [13] - 20945:5, 20959:19, 20978:20, 20978:24, 20996:20, 21006:19, 21017:13, 21017:18, 21017:19, 21018:5, 21018:9, 21104:4 involving [1] - 21081:15 Iraq [1] - 21090:18 Irene [1] - 20927:10 ironic [1] - 21001:10 ironically [1] - 20954:1 irons [1] - 20943:8 Irwin [1] - 20928:12 Isabelle [1] - 20927:6 issue [20] - 20952:17, 20977:5, 20989:16, 20990:17, 21004:5, 21005:17, 21006:22, 21006:24, 21007:2, 21015:8, 21020:14, 21041:13, 21056:21, 21079:16, 21105:5, 21106:1, 21113:18,</p>	<p>21119:20, 21120:16, 21138:2 issued [3] - 21104:16, 21105:25, 21106:7 issues [6] - 20952:5, 20977:3, 20977:6, 20991:15, 21069:10, 21122:14 item [3] - 21004:1, 21007:7, 21068:3 itinerary [1] - 20938:22 itself [4] - 20985:1, 20994:18, 20999:25, 21075:15 lv [3] - 21016:4, 21115:8, 21115:17</p>	<p>July[1] - 20971:5 jumped [2] - 20943:6, 21038:19 jumping [1] - 21137:14 June[27] - 20955:16, 20972:9, 20980:10, 20980:14, 20988:3, 20988:6, 20988:9, 20989:13, 20999:24, 21009:22, 21012:12, 21017:18, 21018:17, 21030:18, 21043:16, 21044:4, 21047:7, 21048:1, 21050:13, 21050:19, 21052:9, 21083:20, 21104:1, 21104:7, 21107:1, 21115:24 jurisdiction [1] - 20973:10 Justice[2] - 20926:6, 20928:11 justice [3] - 20978:9, 20978:18, 21107:17</p>	<p>kidding [1] - 21130:20 kidding' [1] - 20940:2 kids [7] - 20939:14, 20960:22, 21122:5, 21130:1, 21130:6, 21130:12, 21131:9 kill [13] - 20940:3, 20999:14, 21031:9, 21032:15, 21033:16, 21037:5, 21038:8, 21038:17, 21086:2, 21086:17, 21096:3, 21110:2 killers [1] - 21016:9 killing [1] - 21134:23 kind [30] - 20933:19, 20934:19, 20934:20, 20934:24, 20937:19, 20939:7, 20940:18, 20941:6, 20941:24, 20942:10, 20942:21, 20943:3, 20944:21, 20944:24, 20953:14, 20959:17, 20960:16, 20961:22, 20968:13, 20968:24, 20969:7, 20976:22, 20998:8, 21070:24, 21089:15, 21110:13, 21110:17, 21114:25, 21129:9, 21134:21 kindergarten [4] - 20986:8, 21029:17, 21031:5, 21114:11 kinds [3] - 20952:4, 21005:2, 21089:21 Kingston [2] - 20957:15, 20957:17 knees [1] - 20943:9 knives [1] - 21130:16 knock [1] - 20983:20 knowing [2] - 21086:21, 21098:15 knowledge [7] - 20952:11, 20990:20, 21012:9, 21072:1, 21083:18, 21135:5, 21140:6 known [6] - 20976:18, 21033:10, 21039:16, 21045:2, 21081:25, 21103:18 knows [6] - 20959:5, 21010:25, 21022:9, 21097:9, 21130:8, 21130:17 Knox[9] - 20928:5, 20929:10, 21040:24, 21063:13, 21064:3, 21064:9, 21103:15,</p>	<p>21103:17, 21121:17 Krogan[1] - 20928:4 Kujawa[4] - 20928:6, 21092:5, 21092:9, 21101:4</p>
	J			L
<p>involve [1] - 21076:16 involved [19] - 20931:15, 20931:17, 20932:2, 20935:18, 20946:5, 20948:20, 20954:19, 20958:15, 20970:20, 20976:23, 20978:3, 20998:18, 21005:22, 21006:20, 21014:23, 21017:21, 21047:25, 21109:10, 21119:21 involvement [13] - 20945:5, 20959:19, 20978:20, 20978:24, 20996:20, 21006:19, 21017:13, 21017:18, 21017:19, 21018:5, 21018:9, 21104:4 involving [1] - 21081:15 Iraq [1] - 21090:18 Irene [1] - 20927:10 ironic [1] - 21001:10 ironically [1] - 20954:1 irons [1] - 20943:8 Irwin [1] - 20928:12 Isabelle [1] - 20927:6 issue [20] - 20952:17, 20977:5, 20989:16, 20990:17, 21004:5, 21005:17, 21006:22, 21006:24, 21007:2, 21015:8, 21020:14, 21041:13, 21056:21, 21079:16, 21105:5, 21106:1, 21113:18,</p>	<p>jail [2] - 20969:12, 21097:23 James[2] - 20980:7, 20988:3 January[1] - 21102:20 jealous [1] - 21029:2 Joanne[2] - 20928:3, 20968:18 job [7] - 20938:3, 20942:2, 20968:19, 21127:18, 21132:2, 21132:4, 21132:7 Jodie[1] - 20927:7 John[6] - 20976:17, 21004:3, 21004:11, 21004:22, 21005:5, 21005:12 Johrfs [1] - 21130:9 Johnson[2] - 20930:9, 20930:11 join [1] - 21090:17 joined [1] - 20941:7 joke [2] - 21110:19 joking [1] - 21136:24 Jordan[1] - 20927:2 Jorgenson[6] - 21095:1, 21095:23, 21096:14, 21096:19, 21097:19, 21098:9 journalism [1] - 21069:2 Joyce[4] - 20928:3, 20973:18, 20988:10, 20988:21 judge [2] - 21045:18, 21122:22 judgment [2] - 21036:5, 21067:4 judgments [1] - 21122:17</p>	K	<p>Kamloops[1] - 20938:23 Kara[1] - 20927:6 Karen[3] - 20927:11, 21140:2, 21140:13 Karst[1] - 20928:8 keep [5] - 20952:1, 21055:18, 21095:8, 21138:7, 21138:9 Keith[1] - 20937:22 Kelowna[2] - 20930:20, 20938:23 Kendry[1] - 20927:7 kept [4] - 20956:9, 21050:25, 21053:12, 21069:7 Kettles[2] - 20980:8, 20988:3 kid [27] - 20933:1, 20934:20, 20934:23, 20934:24, 20936:11, 20937:19, 20937:24, 20938:2, 20938:6, 20939:13, 20940:3, 20940:15, 20942:5, 20942:8, 20943:20, 20951:7, 20951:10, 20951:12, 20951:13, 20951:14, 20951:18, 20960:25, 21121:25, 21122:2, 21131:12, 21131:14</p>	<p>label [1] - 21018:21 labour [3] - 20937:12, 20937:13 lack [1] - 20994:24 lady [2] - 20946:10, 20966:21 Laforge[1] - 20945:22 Laforgés [1] - 20946:17 laid [1] - 21026:22 Lana[1] - 20928:4 Lang[1] - 20965:17 Langenburg[2] - 20946:14, 21062:13 language [1] - 21116:5 large [6] - 20964:18, 20969:4, 20970:1, 20977:7, 21055:2, 21055:9 largely [1] - 21060:4 larger [3] - 21049:14, 21049:16, 21057:23 largest [1] - 21045:16 Larry[2] - 20927:14, 20928:10 last [2] - 20936:25, 20944:5, 20944:6, 20944:9, 20962:13, 20964:7, 21038:16, 21040:19, 21040:23, 21042:6, 21042:25, 21059:16, 21065:10, 21075:5, 21092:21, 21093:16, 21119:5, 21134:5, 21135:16, 21137:13, 21139:8 lasted [2] - 21076:20, 21095:17 late [3] - 20938:10, 20945:20, 21058:22 latter [1] - 21025:10 launch [1] - 21014:25 law [4] - 20965:16, 20994:22, 21097:9, 21122:1 law-abiding [1] - 21097:9 lawyer [22] - 20947:8, 20953:16, 20954:5, 20965:12, 20965:14, 20967:12, 20967:16, 20968:20, 20970:4,</p>



<p>20985:14, 20988:15, 20989:23, 21081:15, 21081:21, 21104:2, 21121:20, 21122:23, 21123:13, 21125:21, 21125:22, 21126:11, 21126:14</p> <p>lawyers [3] - 21080:24, 21081:4, 21126:12</p> <p>lawyers' [1] - 21115:20</p> <p>lay [1] - 21033:17</p> <p>laying [2] - 21026:1, 21026:6</p> <p>leadership [1] - 20978:4</p> <p>leading [2] - 20972:17, 20998:22</p> <p>Leafs [1] - 20939:8</p> <p>leaning [1] - 21019:19</p> <p>learn [2] - 21022:5, 21114:3</p> <p>learned [4] - 20966:1, 20970:17, 21092:6, 21132:14</p> <p>learning [1] - 21017:23</p> <p>least [10] - 20936:2, 20939:6, 20943:6, 20985:22, 20990:15, 20990:16, 20998:1, 21033:20, 21050:1, 21070:5</p> <p>leave [4] - 20943:17, 20986:7, 21032:25, 21056:24</p> <p>leaving [3] - 20963:15, 21041:10, 21050:10</p> <p>led [3] - 21015:2, 21021:23, 21073:6</p> <p>left [15] - 20933:19, 20935:8, 20938:24, 20946:13, 20956:5, 20963:12, 20963:17, 20976:19, 20982:17, 21002:5, 21022:11, 21041:18, 21067:13, 21071:1, 21087:6</p> <p>left-hand [2] - 21067:13, 21071:1</p> <p>leg [1] - 20943:8</p> <p>legal [6] - 20930:8, 20965:11, 20970:15, 20971:7, 20974:24, 21010:6</p> <p>legally [2] - 20978:16, 21124:25</p> <p>legs [1] - 20943:9</p> <p>length [1] - 21114:18</p> <p>lengthy [8] - 20937:7, 20948:24, 21034:4, 21034:11, 21034:12,</p>	<p>21034:15, 21043:17, 21087:23</p> <p>less [1] - 21119:15</p> <p>letter [39] - 20955:16, 20957:2, 20957:4, 20957:6, 20957:23, 20958:13, 20958:21, 20959:3, 20961:12, 20970:25, 20972:6, 21009:21, 21012:7, 21018:15, 21018:16, 21020:8, 21021:13, 21027:1, 21030:15, 21030:17, 21033:23, 21036:3, 21036:10, 21038:3, 21043:9, 21043:10, 21043:17, 21044:4, 21044:24, 21047:7, 21047:8, 21047:11, 21054:9, 21071:13, 21112:2, 21113:1, 21115:24, 21116:18, 21119:3</p> <p>letterhead [1] - 21028:20</p> <p>letters [4] - 20956:11, 20956:12, 20996:8, 21114:8</p> <p>letting [2] - 21068:13, 21069:20</p> <p>Liberal [1] - 20965:16</p> <p>librarians [1] - 21025:9</p> <p>licensed [1] - 20935:23</p> <p>licensing [1] - 20952:5</p> <p>Lieutenant [8] - 20997:5, 20997:24, 20998:2, 21082:23, 21083:2, 21083:9, 21092:9, 21103:12</p> <p>life [12] - 20938:10, 20944:7, 20945:25, 20946:15, 20979:2, 20987:2, 20994:18, 21050:2, 21079:11, 21097:17, 21099:23, 21105:16</p> <p>lifetime [1] - 21029:21</p> <p>light [1] - 21070:25</p> <p>likely [7] - 21007:25, 21015:20, 21033:2, 21064:5, 21073:17, 21078:25, 21089:22</p> <p>limb [1] - 21022:9</p> <p>limited [6] - 21003:11, 21004:25, 21021:9, 21021:10, 21026:19, 21082:4</p> <p>limp [1] - 21022:9</p> <p>Linda [1] - 20960:16</p> <p>line [2] - 20972:15,</p>	<p>20993:1</p> <p>list [6] - 21003:25, 21007:8, 21011:21, 21013:22, 21047:10, 21111:20</p> <p>listening [3] - 20934:21, 20941:2, 21081:9</p> <p>literally [1] - 21137:14</p> <p>living [2] - 20945:18, 21006:10</p> <p>loath [1] - 21029:2</p> <p>local [1] - 20973:7</p> <p>located [3] - 21055:19, 21055:24, 21057:14</p> <p>locked [4] - 21013:16, 21014:10, 21014:14, 21014:20</p> <p>look [26] - 20970:24, 20988:7, 20995:13, 21003:14, 21014:5, 21040:10, 21043:14, 21049:3, 21053:24, 21063:11, 21070:14, 21071:8, 21071:15, 21072:15, 21073:20, 21075:7, 21094:12, 21096:4, 21100:19, 21116:7, 21123:22, 21124:11, 21124:18, 21128:10, 21135:24, 21137:18</p> <p>looked [9] - 20941:23, 20949:1, 20996:23, 21000:22, 21036:6, 21045:25, 21054:18, 21084:24, 21111:3</p> <p>looking [10] - 20933:2, 20934:19, 20959:1, 20994:10, 21019:17, 21029:1, 21039:4, 21057:19, 21059:3, 21123:7</p> <p>looks [7] - 20988:1, 20989:8, 20989:11, 21003:24, 21070:24, 21072:23, 21094:17</p> <p>loose [1] - 21051:1</p> <p>Loran [4] - 20928:7, 20929:9, 21101:15, 21101:16</p> <p>lost [1] - 21050:3</p> <p>lower [1] - 21022:9</p> <p>lumbered [1] - 20944:21</p> <p>lunch [2] - 21101:19, 21101:23</p>	<p style="text-align: center;">M</p> <p>M' [2] - 21040:17, 21040:25</p> <p>Maccallum [21] - 20926:7, 20930:3, 20930:11, 20974:15, 20974:25, 21042:22, 21043:7, 21048:21, 21057:1, 21064:2, 21064:8, 21065:2, 21065:8, 21093:17, 21093:22, 21094:3, 21138:12, 21138:16, 21139:1, 21139:5, 21139:10</p> <p>Macdonald [5] - 20976:17, 20980:10, 20997:8, 20997:14, 20997:18</p> <p>mace [1] - 21129:21</p> <p>maced [1] - 21130:1</p> <p>macing [1] - 21130:8</p> <p>Maclean [3] - 20931:5, 20965:10, 20973:12</p> <p>Maclean's [13] - 20931:9, 20931:16, 20935:17, 20938:20, 20945:10, 20952:14, 20954:5, 20967:12, 20967:16, 20968:19, 20972:23, 20973:21, 21132:1</p> <p>mad [1] - 20943:18</p> <p>Magazine [1] - 20931:9</p> <p>magazine [3] - 20972:21, 21122:25, 21132:1</p> <p>magnify [1] - 20988:4</p> <p>mailed [1] - 20992:15</p> <p>maintained [1] - 20985:2</p> <p>major [3] - 20992:9, 21087:13, 21099:23</p> <p>majority [2] - 21022:15, 21089:14</p> <p>make-up [2] - 21045:12, 21133:22</p> <p>maker [1] - 21129:7</p> <p>makers [1] - 21129:16</p> <p>Malling [25] - 21067:18, 21067:25, 21068:9, 21068:19, 21068:20, 21068:23, 21069:1, 21069:18, 21069:22, 21071:3, 21071:24, 21072:2, 21072:9, 21072:12, 21073:8, 21073:10, 21073:12,</p>	<p>21073:17, 21073:22, 21074:3, 21084:5, 21084:8, 21085:19, 21092:23, 21116:12</p> <p>Malling's [1] - 21073:9</p> <p>man [16] - 20934:16, 20939:16, 20954:9, 20958:10, 20968:13, 21000:18, 21019:3, 21020:25, 21078:7, 21079:14, 21079:15, 21121:14, 21122:7, 21122:8, 21123:16, 21125:24</p> <p>managed [2] - 20964:1, 21098:6</p> <p>Manager [2] - 20927:5, 20951:25</p> <p>manager [1] - 20931:9</p> <p>managing [1] - 20931:17</p> <p>manifest [1] - 20994:18</p> <p>Manitoba [2] - 20932:18, 20936:8</p> <p>manner [1] - 21010:11</p> <p>Manual [1] - 21016:2</p> <p>March [2] - 20962:9, 21094:18</p> <p>marital [1] - 21081:14</p> <p>mark [2] - 21009:15, 21064:1</p> <p>marketing [3] - 20931:17, 20936:22, 20938:21</p> <p>markings [1] - 21070:14</p> <p>Martin [1] - 20930:9</p> <p>material [42] - 21039:21, 21045:9, 21047:5, 21047:9, 21047:10, 21049:18, 21049:22, 21051:1, 21052:3, 21052:4, 21052:5, 21052:10, 21053:10, 21054:20, 21054:22, 21055:9, 21055:11, 21055:15, 21056:7, 21056:8, 21056:9, 21056:10, 21060:3, 21060:11, 21060:13, 21061:8, 21061:10, 21062:20, 21065:22, 21067:6, 21067:7, 21067:8, 21067:17, 21067:18, 21071:18, 21072:4, 21073:6, 21074:2, 21130:24, 21131:1, 21131:3, 21131:7</p> <p>materials [40] -</p>
--	--	---	--	--



<p>21002:10, 21002:15, 21002:17, 21008:11, 21033:3, 21034:9, 21037:10, 21044:15, 21045:17, 21049:9, 21049:15, 21052:4, 21052:7, 21052:13, 21052:15, 21053:7, 21054:2, 21054:3, 21054:14, 21055:8, 21055:18, 21056:19, 21056:23, 21057:5, 21057:7, 21057:13, 21057:14, 21057:20, 21060:22, 21060:25, 21063:2, 21071:9, 21072:16, 21074:13, 21074:20, 21075:5, 21076:25, 21138:3, 21138:10, 21138:13</p> <p>matter [17] - 20945:5, 20956:23, 21006:19, 21018:5, 21019:13, 21042:9, 21048:10, 21049:13, 21049:20, 21066:18, 21074:19, 21075:19, 21080:10, 21082:18, 21084:7, 21088:12, 21101:18</p> <p>matters [6] - 21002:7, 21002:24, 21040:9, 21056:14, 21083:18, 21122:16</p> <p>Mccorriston [1] - 20988:2</p> <p>Mcd [4] - 21007:9, 21013:16, 21040:18, 21047:5</p> <p>Mcd' [1] - 21040:12</p> <p>Mcdonald [109] - 20929:6, 20974:13, 20974:21, 20974:22, 20974:23, 20975:3, 20978:19, 20980:5, 20987:25, 20989:15, 20989:24, 20997:5, 20997:24, 20998:17, 21002:11, 21003:20, 21004:19, 21004:22, 21005:4, 21005:21, 21006:5, 21007:11, 21008:22, 21009:11, 21010:16, 21011:16, 21012:3, 21014:9, 21014:13, 21014:18, 21018:5, 21025:19, 21030:16, 21030:24, 21031:12, 21031:22, 21032:8, 21034:9, 21034:20, 21035:2,</p>	<p>21036:20, 21037:11, 21037:20, 21038:3, 21039:23, 21040:17, 21041:6, 21043:15, 21043:23, 21044:6, 21044:12, 21044:14, 21044:22, 21046:6, 21047:20, 21048:25, 21049:8, 21054:1, 21057:3, 21057:11, 21059:2, 21060:3, 21060:9, 21061:6, 21061:14, 21062:20, 21063:4, 21065:16, 21066:8, 21067:5, 21067:12, 21068:7, 21071:5, 21072:17, 21073:21, 21075:18, 21076:1, 21076:15, 21076:21, 21076:24, 21077:5, 21077:11, 21077:14, 21078:15, 21079:19, 21080:8, 21082:16, 21084:7, 21085:5, 21085:23, 21087:12, 21087:22, 21088:22, 21089:7, 21092:4, 21092:13, 21093:9, 21093:11, 21094:5, 21096:9, 21096:22, 21101:16, 21101:25, 21103:16, 21104:13, 21118:23, 21120:18, 21121:19, 21139:6</p> <p>Mcdonald's [3] - 21034:23, 21055:25, 21056:24</p> <p>Mckerracher [1] - 20978:5</p> <p>Mclaren [2] - 20929:6, 20974:22</p> <p>Mclean [4] - 20928:3, 20929:5, 20968:17, 20968:19</p> <p>Mclean's [1] - 20951:25</p> <p>mean [25] - 20942:3, 20943:12, 20951:18, 20963:17, 20979:10, 20990:16, 21000:21, 21013:3, 21014:19, 21024:12, 21025:4, 21026:7, 21040:21, 21046:18, 21051:9, 21052:23, 21078:24, 21100:18, 21112:10, 21115:12, 21122:2, 21130:6, 21130:17, 21131:5, 21133:19</p> <p>meaning [2] - 21051:2,</p>	<p>21074:22</p> <p>Meaning [2] - 20994:5, 20994:7</p> <p>means [3] - 21004:24, 21040:25, 21050:2</p> <p>meant [2] - 20941:10, 21028:3</p> <p>measure [1] - 21122:17</p> <p>medical [21] - 20988:17, 21007:9, 21007:12, 21008:23, 21009:2, 21010:1, 21010:25, 21011:5, 21011:8, 21025:8, 21028:21, 21067:1, 21069:10, 21107:2, 21107:3, 21107:10, 21107:22, 21108:15, 21115:20, 21126:21</p> <p>medication [1] - 20959:25</p> <p>medicine [2] - 20975:22, 21066:24</p> <p>meet [3] - 20932:9, 21023:11, 21023:19</p> <p>meeting [37] - 20947:10, 20966:23, 20987:8, 20988:20, 20989:16, 20989:19, 20989:25, 20990:4, 20990:11, 20990:14, 20990:24, 20990:25, 20992:3, 20992:4, 20992:22, 20996:12, 20996:18, 20998:3, 20998:6, 20999:2, 20999:5, 20999:11, 21000:1, 21000:12, 21013:3, 21020:21, 21021:13, 21024:10, 21062:5, 21076:9, 21079:5, 21100:12, 21111:11, 21111:24, 21111:25, 21112:8, 21121:24</p> <p>meetings [4] - 20953:11, 20993:9, 20996:3, 21022:22</p> <p>Melville [3] - 21061:19, 21062:2, 21062:24</p> <p>member [2] - 20994:20, 21082:19</p> <p>members [1] - 20987:13</p> <p>memo [5] - 20980:5, 20987:25, 20988:1, 20989:8, 21103:10</p> <p>memory [13] - 20969:22, 20998:6, 21006:5, 21008:4,</p>	<p>21015:5, 21039:19, 21059:4, 21065:20, 21111:6, 21111:17, 21136:21, 21137:2, 21137:5</p> <p>mental [9] - 20959:22, 20990:20, 20991:25, 21015:21, 21054:25, 21079:17, 21124:21, 21124:24, 21125:8</p> <p>Mental [1] - 21055:7</p> <p>mentally [2] - 20978:8, 20978:11</p> <p>mention [4] - 20951:22, 20986:22, 21036:10, 21049:5</p> <p>mentioned [32] - 20957:8, 20964:13, 20982:4, 20982:19, 20982:25, 20983:9, 20983:19, 20985:17, 20986:6, 20986:19, 20990:5, 20992:12, 20995:8, 20995:19, 21000:1, 21024:15, 21027:25, 21029:18, 21032:10, 21039:16, 21047:6, 21047:11, 21051:7, 21051:18, 21052:24, 21056:7, 21059:24, 21069:18, 21071:9, 21072:25, 21136:23, 21137:16</p> <p>mentioning [1] - 20983:2</p> <p>mentions [1] - 21006:18</p> <p>Merchant [31] - 20935:16, 20952:24, 20953:3, 20954:4, 20954:5, 20954:17, 20954:20, 20955:7, 20955:17, 20956:3, 20956:4, 20958:17, 20958:23, 20959:1, 20960:3, 20961:13, 20962:10, 20962:16, 20963:3, 20963:15, 20964:13, 20964:19, 20965:14, 20965:15, 20966:16, 20967:10, 20970:8, 20970:20, 20971:1, 21069:15</p> <p>Merchant's [4] - 20964:4, 20964:6, 20964:9, 20969:3</p> <p>Meronek [1] - 21046:15</p> <p>message [15] - 20979:13, 21019:15, 21019:20, 21040:15,</p>	<p>21041:10, 21041:18, 21045:24, 21047:3, 21047:13, 21047:14, 21047:15, 21067:25, 21104:1, 21106:16, 21118:12</p> <p>messages [1] - 21046:24</p> <p>met [13] - 20932:12, 20934:15, 20945:15, 20945:24, 20961:5, 20969:4, 20970:11, 20995:6, 21005:18, 21026:2, 21100:11, 21100:15, 21121:23</p> <p>method [1] - 21053:6</p> <p>methods [1] - 21053:10</p> <p>Meyer [3] - 20927:12, 21140:2, 21140:19</p> <p>mid [2] - 20973:19, 21014:7</p> <p>mid-1970s [1] - 21041:14</p> <p>middle [3] - 20934:7, 20964:13, 21010:21</p> <p>midst [1] - 21033:25</p> <p>might [40] - 20959:17, 20960:15, 20965:22, 20969:15, 20977:1, 21008:1, 21021:6, 21027:5, 21027:17, 21040:18, 21040:21, 21042:7, 21043:3, 21044:12, 21045:20, 21047:20, 21053:16, 21054:25, 21059:10, 21063:21, 21064:3, 21104:22, 21105:6, 21106:19, 21107:14, 21110:1, 21115:2, 21115:3, 21116:24, 21118:24, 21119:5, 21121:9, 21123:5, 21123:19, 21125:20, 21125:24, 21126:24, 21132:25, 21135:9, 21136:13</p> <p>miles [1] - 20939:22</p> <p>Milgaard [204] - 20926:4, 20928:2, 20928:3, 20932:9, 20932:13, 20932:21, 20933:7, 20934:9, 20935:9, 20937:3, 20939:18, 20939:25, 20944:5, 20945:15, 20945:23, 20945:24, 20946:9, 20946:22, 20947:4, 20947:13, 20948:23, 20953:12,</p>
--	--	---	---	--



20953:14, 20955:21, 20956:1, 20956:6, 20956:15, 20957:5, 20957:12, 20958:4, 20959:4, 20963:8, 20964:23, 20965:3, 20965:6, 20966:13, 20966:14, 20966:23, 20967:2, 20967:13, 20968:5, 20968:9, 20968:11, 20970:4, 20970:10, 20970:13, 20970:17, 20970:24, 20971:6, 20971:13, 20971:24, 20972:18, 20972:20, 20973:13, 20974:2, 20974:4, 20974:6, 20974:7, 20978:20, 20979:5, 20979:11, 20979:20, 20980:2, 20980:8, 20980:24, 20981:3, 20981:11, 20981:15, 20982:5, 20982:11, 20982:13, 20982:24, 20983:9, 20983:14, 20983:15, 20983:23, 20984:1, 20985:20, 20985:24, 20986:14, 20987:8, 20988:9, 20988:10, 20988:12, 20988:23, 20989:3, 20989:11, 20989:17, 20989:20, 20990:1, 20990:4, 20990:8, 20991:6, 20992:3, 20992:6, 20992:13, 20995:6, 20995:15, 20996:3, 20996:19, 20998:17, 21002:2, 21007:2, 21007:14, 21009:4, 21010:24, 21011:18, 21013:3, 21015:2, 21015:11, 21015:19, 21016:25, 21017:14, 21019:19, 21020:21, 21020:24, 21021:17, 21022:23, 21023:11, 21023:19, 21025:16, 21026:19, 21027:12, 21029:15, 21029:24, 21030:20, 21031:8, 21034:19, 21034:24, 21035:6, 21041:22, 21041:24, 21043:5, 21043:13, 21044:8, 21044:11, 21045:8, 21045:13, 21046:16, 21047:17, 21050:14, 21050:20, 21051:20, 21055:24,	21058:20, 21060:5, 21069:25, 21074:6, 21074:8, 21076:19, 21077:5, 21077:8, 21077:18, 21078:6, 21079:5, 21079:8, 21080:3, 21080:9, 21083:13, 21084:7, 21084:9, 21084:16, 21085:24, 21086:1, 21087:12, 21087:14, 21087:15, 21087:17, 21089:1, 21089:7, 21089:18, 21090:25, 21091:14, 21094:13, 21095:16, 21096:3, 21096:9, 21096:20, 21096:22, 21097:13, 21097:23, 21098:13, 21098:16, 21099:20, 21100:4, 21100:23, 21100:25, 21103:25, 21106:25, 21110:1, 21110:10, 21112:23, 21113:7, 21117:1, 21118:17, 21118:23, 21119:23, 21120:21, 21121:2, 21121:24, 21121:25, 21122:1, 21123:5 Milgaard' [1] - 21041:1 Milgaard's [26] - 20938:12, 20955:2, 20966:8, 20968:20, 20973:6, 20979:15, 20987:14, 20993:3, 20993:9, 21000:2, 21011:4, 21011:8, 21017:23, 21027:15, 21028:5, 21031:1, 21035:11, 21043:25, 21045:11, 21054:25, 21056:8, 21070:5, 21078:19, 21088:25, 21115:4, 21121:20 Milgaards [1] - 21092:18 Miller [7] - 20996:21, 20997:4, 21005:9, 21098:19, 21099:17, 21121:3, 21121:15 million [1] - 20945:16 mind [8] - 20989:4, 20991:8, 21008:4, 21028:22, 21051:15, 21060:25, 21081:3, 21110:22 mine [4] - 21042:21, 21050:14, 21085:14, 21101:4	Mine [1] - 21126:7 Minister [1] - 20928:11 minister [1] - 20965:17 minute [4] - 20942:24, 21005:24, 21035:19, 21066:2 minutes [10] - 20944:13, 20982:1, 20982:10, 21000:1, 21000:11, 21061:3, 21079:18, 21083:12, 21095:18, 21125:21 missing [2] - 21052:19, 21053:20 misspoke [1] - 21056:11 mistake [1] - 20941:21 mistaken [1] - 20958:25 mixture [1] - 21110:21 moderate [1] - 21016:5 mom [1] - 20937:9 moment [11] - 20985:17, 20987:22, 20988:6, 20996:17, 21017:10, 21020:12, 21084:23, 21093:8, 21104:12, 21105:18, 21112:18 moments [1] - 21005:10 Monar [4] - 20927:3, 20929:4, 20930:5, 20930:14 Monday [1] - 20992:20 money [8] - 20946:15, 20947:1, 20953:14, 20953:19, 20962:25, 20965:20, 20966:4, 20966:20 monies [3] - 20960:20, 20963:2, 20966:18 month [2] - 20960:7, 21013:2 months [5] - 20936:6, 20970:1, 20971:15, 21013:2, 21099:22 mood [1] - 21125:11 morning [22] - 20930:3, 20930:4, 20930:5, 20930:15, 20930:16, 20939:2, 20939:3, 20944:3, 20968:5, 20968:18, 20969:2, 20969:11, 20974:12, 20975:1, 20975:3, 20992:15, 20992:17, 21000:20, 21020:23, 21102:20, 21104:19, 21106:25 most [10] - 20946:19,	20977:11, 20998:7, 21006:16, 21007:23, 21015:20, 21039:1, 21050:5, 21056:3, 21070:6 motel [10] - 20932:19, 20932:22, 20933:4, 20937:1, 20937:18, 20939:23, 20940:25, 20943:22 mother [4] - 20937:6, 20988:10, 20988:21, 20989:12 Mother's [1] - 20965:4 motive [1] - 21136:9 motor [1] - 21022:11 Mounties [1] - 21088:8 move [7] - 20938:20, 20938:21, 20989:10, 21026:25, 21046:20, 21067:5, 21076:10 Move [1] - 21092:3 moved [2] - 20936:22, 21049:25 much-needed [1] - 20965:18 muddy [1] - 21098:6 multi [1] - 21132:12 multi-billionaire [1] - 21132:12 multiple [3] - 21006:16, 21026:14, 21102:18 mum [2] - 20941:25, 20942:1 Munroe [12] - 20982:22, 20986:19, 21018:25, 21020:17, 21027:8, 21028:12, 21035:7, 21059:15, 21060:2, 21060:6, 21060:19, 21068:18 murder [27] - 20933:14, 20939:25, 20940:12, 20942:16, 20979:18, 20996:20, 20997:3, 21005:3, 21005:18, 21006:3, 21009:9, 21025:17, 21089:8, 21089:13, 21091:14, 21091:15, 21096:10, 21096:20, 21096:23, 21098:19, 21099:17, 21100:23, 21121:2, 21121:15, 21133:7, 21133:10, 21134:11 murderer [2] - 21089:20, 21097:6 murderers [1] - 21135:7 musings [1] - 21112:9 must [8] - 20968:6,	21022:1, 21029:22, 21032:8, 21037:16, 21045:2, 21122:23, 21130:17 mutates [1] - 20969:21 N naive [1] - 20951:17 name [17] - 20934:16, 20939:23, 20947:22, 20948:13, 20951:8, 20953:16, 20966:22, 20967:7, 20968:18, 20999:13, 21007:20, 21007:21, 21031:16, 21040:12, 21092:19, 21094:5, 21132:11 name(s) [1] - 20971:21 named [1] - 20972:9 names [4] - 20971:9, 21008:22, 21047:17, 21069:7 National [15] - 21018:7, 21019:16, 21025:22, 21025:23, 21026:4, 21026:13, 21030:19, 21033:7, 21043:12, 21055:13, 21068:15, 21113:3, 21113:18, 21117:17, 21119:8 native [1] - 20944:20 nature [16] - 20978:13, 20991:17, 20995:23, 20997:24, 21013:19, 21017:5, 21041:10, 21051:8, 21055:1, 21066:17, 21066:18, 21069:17, 21091:6, 21091:9, 21091:23, 21109:8 necessarily [4] - 20995:4, 21022:4, 21109:12, 21125:4 need [8] - 21022:12, 21046:9, 21047:8, 21053:12, 21070:20, 21073:3, 21112:20 needed [11] - 20947:7, 20954:3, 20965:18, 20965:21, 20983:23, 20990:19, 21069:4, 21104:22, 21106:8, 21106:20, 21107:14 net [1] - 21108:21 neurological [1] - 21022:13 neurologist [1] - 21022:8
--	--	--	--	---



<p>neuroses [1] - 20993:22</p> <p>neurosis [1] - 20994:1</p> <p>never [22] - 20936:7, 20938:7, 20945:24, 20946:7, 20946:9, 20947:3, 20947:15, 20956:19, 20961:5, 20966:13, 20966:22, 20966:23, 20967:10, 20967:20, 20968:3, 20968:12, 20974:3, 21039:10, 21081:20, 21081:21, 21132:23</p> <p>Never [1] - 20967:21</p> <p>new [1] - 21056:19</p> <p>news [2] - 20973:5, 21018:1</p> <p>Newspaper [1] - 21084:21</p> <p>Next [2] - 21072:16, 21084:1</p> <p>next [37] - 20945:5, 20946:12, 20950:3, 20960:2, 20974:12, 20974:20, 20985:13, 20990:2, 20992:15, 20992:17, 20998:12, 21010:14, 21012:2, 21018:4, 21031:24, 21045:5, 21046:5, 21058:15, 21058:22, 21059:10, 21064:12, 21066:6, 21077:4, 21078:13, 21080:5, 21081:24, 21082:15, 21085:21, 21087:10, 21087:21, 21088:15, 21088:16, 21089:6, 21092:3, 21094:17, 21096:7, 21115:25</p> <p>nice [5] - 20938:7, 20939:16, 20942:5, 20942:8, 20967:4</p> <p>Nichol [3] - 21004:11, 21005:5, 21005:12</p> <p>night [3] - 20945:20, 21105:22, 21134:14</p> <p>nobody [3] - 20940:4, 21064:21, 21097:11</p> <p>nomenclature [1] - 21016:1</p> <p>none [5] - 20998:5, 21001:5, 21051:19, 21085:14, 21137:12</p> <p>None [6] - 21001:18, 21007:3, 21017:8, 21018:3, 21030:11, 21070:18</p> <p>nonetheless [1] -</p>	<p>21064:12</p> <p>noon [1] - 21059:21</p> <p>normal [2] - 20938:2, 20940:25</p> <p>normally [1] - 21090:19</p> <p>north [1] - 20939:23</p> <p>Northern [1] - 20946:13</p> <p>Northwest [1] - 21082:2</p> <p>not [1] - 21040:22</p> <p>notation [1] - 21067:13</p> <p>note [18] - 20952:22, 20988:8, 20995:19, 21005:16, 21007:4, 21010:21, 21037:3, 21040:11, 21040:24, 21042:18, 21043:1, 21045:23, 21065:17, 21065:18, 21071:1, 21083:20, 21086:6, 21104:18</p> <p>Note [1] - 21087:22</p> <p>noted [4] - 20959:8, 21018:22, 21021:14, 21047:23</p> <p>notes [27] - 20985:5, 20985:7, 21003:23, 21005:15, 21011:24, 21013:10, 21013:11, 21013:14, 21036:21, 21051:22, 21061:16, 21070:7, 21070:8, 21075:24, 21076:2, 21076:6, 21077:3, 21081:18, 21081:23, 21085:20, 21095:5, 21095:22, 21095:23, 21095:25, 21106:8, 21112:19, 21140:6</p> <p>noteworthy [2] - 21079:22, 21079:24</p> <p>nothin' [1] - 20946:8</p> <p>nothing [22] - 20940:4, 20940:15, 20946:24, 20947:2, 20968:3, 20968:4, 21001:8, 21012:6, 21058:2, 21059:15, 21060:24, 21061:4, 21064:23, 21071:14, 21078:10, 21083:11, 21088:24, 21090:4, 21091:6, 21133:10, 21134:3</p> <p>Nothing [5] - 20965:1, 21060:18, 21072:14, 21091:25, 21092:5</p> <p>noting [1] - 21022:9</p> <p>November [10] - 21027:11, 21058:2, 21058:11, 21058:13, 21059:13, 21061:25,</p>	<p>21062:13, 21062:15, 21062:22, 21108:25</p> <p>nuisance [1] - 21090:11</p> <p>nuisances [1] - 21016:6</p> <p>number [18] - 20955:20, 20972:3, 20982:18, 21000:10, 21004:1, 21004:20, 21007:7, 21013:14, 21020:5, 21022:3, 21058:1, 21063:16, 21103:6, 21104:12, 21104:13, 21111:20, 21132:2, 21134:10</p> <p>numbers [2] - 21138:17, 21138:20</p>	<p>odds [1] - 21023:2</p> <p>off-the-cuff [1] - 21033:19</p> <p>off/on [1] - 21004:3</p> <p>off/on' [1] - 21004:23</p> <p>offence [7] - 20978:16, 20987:3, 20992:1, 21079:17, 21080:23, 21090:14, 21105:2</p> <p>offences [1] - 21113:21</p> <p>offend [1] - 21113:12</p> <p>offender [1] - 21015:7</p> <p>offenders [1] - 21014:22</p> <p>offer [8] - 20957:4, 20965:20, 20993:8, 20997:20, 21012:11, 21015:10, 21022:23, 21101:9</p> <p>offered [10] - 20965:10, 20970:23, 20972:17, 21001:8, 21017:1, 21035:15, 21046:12, 21054:9, 21061:2, 21105:6</p> <p>offering [5] - 20981:9, 21021:16, 21023:16, 21023:17, 21092:17</p> <p>office [16] - 20935:17, 20936:15, 20945:10, 20979:3, 20979:5, 20989:20, 20989:21, 21003:14, 21032:23, 21032:25, 21037:17, 21049:25, 21050:10, 21070:11, 21113:25, 21137:18</p> <p>Office [2] - 21050:7, 21052:9</p> <p>Officer [7] - 20927:13, 21094:25, 21095:23, 21096:13, 21096:19, 21097:19, 21098:9</p> <p>officer [7] - 20939:7, 21010:18, 21011:14, 21011:24, 21076:6, 21077:17, 21095:4</p> <p>officers [3] - 21035:3, 21088:18, 21095:6</p> <p>Official [5] - 20927:11, 21140:1, 21140:3, 21140:14, 21140:20</p> <p>officials [1] - 21026:16</p> <p>often [5] - 20939:13, 20947:16, 20977:16, 20977:18, 21078:16</p> <p>old [7] - 20934:17, 20951:4, 20951:9, 20975:7, 21092:5, 21117:15, 21130:1</p>	<p>older [3] - 20932:22, 20934:16, 20934:18</p> <p>oldest [1] - 20963:23</p> <p>once [5] - 20960:9, 21045:18, 21057:10, 21060:14, 21076:19</p> <p>Once [1] - 20935:8</p> <p>One [5] - 20957:15, 21025:8, 21036:12, 21111:13, 21122:22</p> <p>one [95] - 20931:21, 20932:22, 20933:6, 20933:21, 20940:14, 20943:2, 20944:6, 20944:21, 20945:17, 20954:8, 20957:16, 20964:10, 20969:11, 20970:7, 20970:20, 20970:21, 20977:21, 20984:15, 20986:6, 20989:6, 20991:21, 20993:20, 20994:16, 20999:1, 20999:11, 21003:2, 21005:24, 21013:14, 21016:14, 21018:23, 21019:24, 21021:13, 21026:8, 21026:21, 21027:1, 21029:15, 21029:22, 21031:8, 21032:14, 21033:25, 21035:18, 21036:3, 21036:9, 21036:10, 21036:16, 21036:22, 21039:15, 21044:2, 21046:8, 21047:1, 21049:19, 21051:23, 21052:19, 21052:24, 21053:14, 21054:16, 21058:15, 21058:22, 21061:5, 21065:10, 21073:4, 21073:16, 21075:4, 21077:19, 21080:25, 21084:25, 21086:16, 21090:7, 21092:14, 21093:9, 21093:20, 21095:16, 21100:10, 21101:18, 21102:2, 21102:9, 21103:1, 21105:17, 21109:4, 21110:1, 21110:4, 21110:16, 21110:22, 21111:4, 21111:23, 21112:9, 21114:7, 21127:8, 21130:7, 21131:9, 21132:13, 21135:16, 21136:4</p> <p>ones [2] - 20967:24, 21060:22</p> <p>ongoing [2] - 21001:4,</p>
O				
		<p>o'clock [1] - 20939:3</p> <p>O'keefe [1] - 20928:10</p> <p>O'mack [1] - 21130:9</p> <p>object [1] - 21102:12</p> <p>objective [2] - 20955:9, 21123:6</p> <p>obligation [1] - 21127:6</p> <p>observation [4] - 20999:13, 21079:7, 21110:25, 21114:7</p> <p>observations [1] - 21062:7</p> <p>obsessive [1] - 20993:25</p> <p>obtain [2] - 20997:11, 21045:8</p> <p>obtained [6] - 21041:21, 21072:9, 21090:5, 21106:24, 21118:18, 21129:12</p> <p>obtaining [2] - 21108:1, 21113:2</p> <p>obvious [2] - 20950:14, 21041:4</p> <p>obviously [5] - 20941:21, 20978:11, 21005:3, 21039:4, 21050:24</p> <p>occasion [3] - 20966:14, 21054:16, 21054:19</p> <p>occasions [1] - 20977:2</p> <p>occupation [1] - 20931:1</p> <p>occur [1] - 21128:8</p> <p>occurred [1] - 21125:7</p> <p>occurs [1] - 21006:15</p> <p>October [5] - 20958:22, 20959:6, 20959:7, 20959:13, 20959:23</p>		



<p>21041:12 onset [1] - 21029:19 open [4] - 20963:17, 21050:24, 21106:19, 21124:15 opening [1] - 21105:23 operation [1] - 21023:23 operative [2] - 20981:6, 21125:14 opinion [18] - 20953:13, 20954:7, 20991:11, 20997:12, 20997:20, 21015:11, 21026:5, 21034:24, 21083:5, 21083:16, 21102:8, 21102:22, 21105:6, 21105:9, 21106:2, 21107:15, 21118:3, 21119:16 opinions [5] - 20997:19, 21025:25, 21102:5, 21103:3, 21134:12 opportunity [9] - 20990:7, 21023:10, 21023:19, 21033:2, 21057:3, 21057:6, 21071:20, 21076:1, 21094:12 opposed [3] - 21006:14, 21112:9, 21121:25 order [5] - 20973:12, 21093:14, 21093:19, 21093:25, 21124:16 ordinarily [2] - 21011:11, 21011:12 organic [1] - 21006:15 organizations [1] - 21114:16 organized [2] - 20944:25, 20945:2 organizing [1] - 21050:2 orig [1] - 21092:24 origin [1] - 21067:17 original [5] - 21020:21, 21041:24, 21048:6, 21057:10, 21064:5 originally [1] - 21011:22 originating [1] - 21135:20 originator [1] - 21135:23 otherwise [7] - 20990:7, 20990:9, 20996:14, 21001:11, 21009:18, 21011:25, 21083:3</p>	<p>Otto [1] - 20965:17 out [1] - 20959:10 outlined [1] - 21048:16 outset [2] - 20978:4, 20980:9 outwitting [1] - 20951:16 overstatement [1] - 21112:6 overt [1] - 20992:9 own [8] - 20931:19, 20954:14, 20970:15, 20970:16, 20974:3, 20985:18, 20989:4, 21036:5 owner [1] - 20940:25</p> <p style="text-align: center;">P</p> <p>paces [1] - 20961:4 package [1] - 21071:25 packed [2] - 20944:24 pad [1] - 21118:12 Page [1] - 20929:2 page [64] - 20949:21, 20950:3, 20950:16, 20955:24, 20960:2, 20964:6, 20964:7, 20964:13, 20965:6, 20972:3, 20989:10, 21004:15, 21008:16, 21010:20, 21012:2, 21013:13, 21014:7, 21028:19, 21030:23, 21031:20, 21031:24, 21033:22, 21034:17, 21036:17, 21036:18, 21038:7, 21044:3, 21044:4, 21046:25, 21047:6, 21059:10, 21061:22, 21062:18, 21063:17, 21063:20, 21063:25, 21064:12, 21066:6, 21070:8, 21071:1, 21075:5, 21075:6, 21075:8, 21075:16, 21076:11, 21078:14, 21080:7, 21081:24, 21082:6, 21084:1, 21085:21, 21088:15, 21088:20, 21092:20, 21094:17, 21095:14, 21096:6, 21096:8, 21099:8, 21111:18, 21118:8, 21137:14, 21138:20 pages [8] - 21036:22, 21038:16, 21063:22, 21068:3, 21073:21,</p>	<p>21085:15, 21111:18, 21140:4 paid [2] - 20962:22, 21122:24 pain [1] - 20993:21 paper [2] - 21129:20, 21129:24 papers [6] - 21084:10, 21084:17, 21084:19, 21085:9, 21090:25, 21103:21 paragraph [29] - 20955:19, 20980:9, 20988:7, 20988:11, 21018:19, 21019:10, 21027:1, 21031:19, 21031:24, 21032:1, 21034:18, 21038:10, 21038:12, 21038:16, 21045:5, 21061:16, 21076:12, 21076:14, 21076:24, 21077:4, 21078:13, 21082:15, 21084:1, 21085:22, 21087:10, 21087:21, 21088:16, 21092:3, 21116:1 paragraphs [2] - 21043:14, 21080:6 parameters [1] - 21054:23 paraphrase [1] - 21116:4 parcel [1] - 20961:18 Pardon [1] - 21132:6 parents [1] - 20974:3 parole [27] - 20958:1, 21027:3, 21038:4, 21040:7, 21040:21, 21042:7, 21043:2, 21043:10, 21044:18, 21046:10, 21046:15, 21047:21, 21048:15, 21112:3, 21114:8, 21116:6, 21116:9, 21116:18, 21117:1, 21117:5, 21117:25, 21119:12, 21119:17, 21119:23, 21120:11, 21120:23, 21120:24 Parole [15] - 21018:8, 21019:16, 21025:22, 21025:23, 21026:4, 21026:13, 21030:19, 21033:7, 21043:13, 21055:13, 21068:15, 21113:3, 21113:18, 21117:17, 21119:9 part [22] - 20961:18, 20967:17, 20976:15,</p>	<p>20977:7, 20991:4, 21007:20, 21007:21, 21009:6, 21013:8, 21019:10, 21040:19, 21055:2, 21055:9, 21062:19, 21065:5, 21070:6, 21071:1, 21104:4, 21107:16, 21119:5, 21119:9, 21135:4 participants [2] - 21111:10, 21111:13 particular [22] - 20948:25, 20957:15, 20979:9, 21000:4, 21010:19, 21025:21, 21028:6, 21028:9, 21028:12, 21029:7, 21030:23, 21033:6, 21036:18, 21038:22, 21063:12, 21068:3, 21071:4, 21076:18, 21081:11, 21082:22, 21093:15, 21116:1 particularly [4] - 21079:24, 21092:21, 21107:11, 21133:3 particulars [1] - 20986:3 parties [4] - 21055:3, 21056:25, 21060:8, 21138:4 parts [2] - 20972:24, 20988:5 pass [1] - 21067:25 passage [5] - 20965:5, 20966:8, 21136:16, 21136:21 passages [1] - 21036:14 passed [2] - 21068:3, 21114:11 passing [3] - 21003:3, 21018:6, 21071:12 past [14] - 20981:18, 20982:14, 20983:4, 21049:23, 21078:13, 21080:5, 21082:7, 21096:16, 21114:5, 21116:7, 21118:18, 21133:24, 21134:2, 21134:4 Pat [2] - 20928:7, 21101:16 pathologist [1] - 21067:23 pathology [1] - 21068:1 patient [15] - 20985:12, 20993:21, 20993:23, 20993:25, 20994:2,</p>	<p>21007:15, 21007:24, 21019:17, 21050:14, 21051:5, 21051:22, 21090:21, 21107:18, 21108:24, 21124:18 patient/client/inmate [1] - 21108:19 patients [4] - 21006:9, 21022:2, 21022:7, 21107:16 pattern [2] - 21029:21, 21131:11 Paul [4] - 20982:22, 21060:19, 21062:1, 21068:18 pay [1] - 20965:10 Pd [1] - 21082:19 peaceful [1] - 20977:19 peaking [1] - 20941:1 pedaled [1] - 20937:1 Pembina [1] - 20945:19 penitentiaries [1] - 20957:14 Penitentiary [1] - 21030:20 penitentiary [4] - 20958:7, 20958:15, 21026:14, 21135:21 Penkala [9] - 20997:5, 20997:24, 20998:2, 21082:20, 21082:23, 21083:2, 21083:7, 21083:9, 21103:12 pentothal [1] - 21088:17 people [44] - 20935:21, 20941:6, 20945:3, 20952:15, 20964:3, 20969:8, 20971:10, 20978:8, 20978:17, 20994:13, 20994:22, 21016:6, 21026:12, 21029:1, 21030:12, 21033:18, 21069:7, 21078:16, 21080:23, 21089:14, 21089:20, 21090:9, 21090:10, 21102:10, 21102:16, 21103:1, 21107:21, 21110:9, 21110:12, 21110:16, 21112:8, 21112:10, 21112:11, 21115:12, 21117:12, 21130:18, 21132:2, 21132:4, 21132:7, 21132:9, 21132:17, 21134:10, 21134:12, 21134:20 People [1] - 21066:23 people's [1] - 21110:4</p>
---	---	---	---	--



<p>perceive [1] - 20939:15 perceived [1] - 21133:5 perception [1] - 21078:2 perform [2] - 20998:14, 20998:15 performed [1] - 20977:10 perhaps [46] - 20936:1, 20936:24, 20956:18, 20965:21, 20974:11, 20976:25, 20977:22, 20985:18, 20985:19, 20987:6, 20989:6, 20990:24, 20991:16, 20993:17, 20995:8, 20995:9, 20995:17, 20998:1, 20999:6, 21002:5, 21002:20, 21006:19, 21006:21, 21007:17, 21007:25, 21012:15, 21013:2, 21016:21, 21017:1, 21017:2, 21023:15, 21036:20, 21056:24, 21061:13, 21063:10, 21069:19, 21070:21, 21071:15, 21073:22, 21077:17, 21083:8, 21088:18, 21091:12, 21112:6, 21119:14 Perhaps [3] - 20958:18, 20958:25, 21101:21 period [18] - 20936:19, 20958:16, 20960:5, 20961:9, 20963:22, 20975:13, 20975:18, 20985:2, 20985:3, 20996:18, 20999:15, 20999:16, 21009:25, 21019:13, 21070:7, 21087:23, 21102:24, 21103:13 periods [1] - 21054:14 permission [3] - 21107:23, 21108:20, 21120:7 permutation [1] - 20973:20 persisted [1] - 20987:2 person [29] - 20948:25, 20954:10, 20954:20, 20960:25, 20978:11, 20978:15, 20980:11, 20985:13, 20997:12, 21019:21, 21031:14, 21066:14, 21076:17, 21084:3, 21085:19, 21087:3, 21087:24, 21102:18, 21102:19,</p>	<p>21105:2, 21112:9, 21113:19, 21114:14, 21122:12, 21124:22, 21133:8, 21135:2, 21135:5, 21135:10 person's [1] - 20994:18 person(s) [1] - 20971:22 personal [3] - 20947:2, 20947:3, 21113:14 Personal [1] - 21051:10 personality [15] - 20956:19, 20994:4, 20994:16, 21019:6, 21021:3, 21024:17, 21024:20, 21024:23, 21024:25, 21025:12, 21035:1, 21062:10, 21087:16, 21088:1, 21102:18 Personality [1] - 21066:9 personally [1] - 21033:12 persons [1] - 21034:6 perspective [1] - 20955:11 pertaining [2] - 21044:8, 21044:13 pertinent [1] - 21118:24 Peter [11] - 20948:10, 20948:12, 20948:13, 20950:20, 20953:8, 20953:19, 20954:9, 20955:2, 20956:7, 20970:16, 20970:18 petty [1] - 21016:7 ph [1] - 21097:12 phone [6] - 20939:5, 20941:15, 20942:18, 20948:8, 21067:25, 21068:12 phoned [2] - 20944:17, 20973:1 photographs [1] - 20997:16 photographs [2] - 20998:4, 21043:19 phrase [2] - 21028:3, 21037:20 phrased [1] - 21035:17 physical [1] - 21059:14 physician [1] - 21061:21 Physicians [1] - 21010:7 Pick [1] - 20935:7 pick [5] - 20933:25, 20934:14, 20935:6, 20937:5, 20937:8 picked [3] - 20966:11,</p>	<p>20966:25, 21129:19 Picture [1] - 21066:10 picture [3] - 20943:12, 21050:22, 21084:14 pictures [1] - 21083:7 pile [2] - 20940:8, 21103:20 pitch [1] - 20972:25 pitiful [1] - 20946:19 place [11] - 20943:1, 20944:16, 20958:11, 20979:24, 20990:1, 21004:9, 21004:18, 21076:9, 21079:11, 21104:8, 21117:17 placement [1] - 21044:16 places [5] - 21026:22, 21027:25, 21047:17, 21047:18, 21135:24 plain [1] - 20951:17 plan [1] - 20994:25 planned [2] - 20984:4, 21022:22 plate [1] - 20961:10 play [1] - 20977:25 played [1] - 21019:22 playing [1] - 20932:25 pleasantly [1] - 21078:8 pleased [3] - 20937:23, 20960:11, 20974:9 plural [1] - 21112:4 plus [3] - 21018:24, 21035:19, 21068:3 Pm [8] - 20980:11, 20988:8, 20988:9, 21048:23, 21093:23, 21093:24, 21139:11 point [30] - 20935:11, 20937:14, 20944:1, 20960:12, 20961:17, 20978:12, 20984:3, 20985:12, 21002:13, 21008:11, 21015:2, 21016:17, 21021:8, 21023:16, 21041:20, 21044:21, 21045:23, 21046:3, 21056:18, 21064:10, 21065:1, 21078:15, 21079:10, 21086:24, 21097:22, 21110:5, 21117:20, 21121:5, 21121:7, 21132:14 pointing [1] - 21035:18 points [1] - 21035:2 Police [14] - 20928:7, 20971:1, 20971:2, 20971:18, 20980:6, 20980:7, 20988:1,</p>	<p>20988:3, 20997:1, 21010:18, 21077:6, 21082:17, 21101:2, 21101:17 police [43] - 20933:4, 20933:5, 20933:10, 20933:24, 20933:25, 20934:10, 20934:14, 20935:5, 20935:8, 20935:12, 20935:13, 20940:6, 20942:12, 20943:4, 20943:7, 20951:3, 20958:5, 20966:5, 20967:23, 20967:24, 20971:11, 20971:16, 20972:4, 20973:1, 20973:4, 20979:6, 20979:25, 20980:22, 20982:10, 20987:10, 20989:8, 20989:10, 21011:7, 21077:7, 21077:23, 21083:10, 21083:13, 21087:4, 21100:14, 21101:6, 21129:2, 21130:3, 21134:16 policeman [2] - 20934:15, 20983:23 policemen [3] - 20944:19, 20944:20, 20981:1 polite [3] - 20938:7, 20989:21, 21078:7 politely [1] - 20989:22 political [4] - 20965:18, 20965:22, 20965:24, 20967:9 Popowych [1] - 20972:9 portion [20] - 20953:9, 20953:22, 21008:18, 21017:11, 21030:24, 21033:24, 21037:22, 21040:4, 21040:16, 21042:6, 21042:25, 21061:14, 21061:23, 21072:19, 21086:8, 21086:13, 21087:2, 21096:5, 21099:1, 21099:4 portions [7] - 20949:18, 21018:18, 21061:10, 21063:11, 21067:6, 21076:5, 21076:13 posed [1] - 21136:11 position [11] - 20931:7, 20931:13, 20932:1, 20953:25, 20967:13, 20992:5, 20993:8, 21023:9, 21044:14, 21045:25, 21064:16</p>	<p>positions [1] - 20975:15 possession [5] - 21003:5, 21052:11, 21065:22, 21073:7, 21116:10 possibility [3] - 21104:22, 21106:19, 21109:25 possible [17] - 20948:16, 20955:8, 20955:10, 20989:16, 21002:4, 21002:8, 21006:5, 21009:16, 21009:25, 21011:13, 21015:6, 21045:17, 21085:16, 21100:4, 21136:7, 21136:10, 21136:22 possibly [2] - 20946:12, 20954:10 post [1] - 21070:6 post-1969 [1] - 21067:8 post-incarceration [1] - 21070:6 posterity [1] - 21111:2 potential [2] - 21089:20, 21090:20 potentially [2] - 21085:5, 21138:2 pounded [1] - 20943:7 practically [2] - 20963:10, 20994:17 practice [6] - 21081:20, 21105:11, 21107:8, 21107:16, 21109:15, 21119:9 practiced [1] - 20976:3 practicing [2] - 20976:5, 21107:7 practitioner [1] - 21082:4 prairie [1] - 20931:9 pre-1969 [6] - 21054:24, 21055:10, 21055:14, 21055:23, 21056:23, 21067:7 precedes [1] - 21046:9 predicament [1] - 20965:25 predict [1] - 21097:5 predicting [1] - 21096:3 prediction [7] - 21038:8, 21052:25, 21053:15, 21086:17, 21099:5, 21109:25, 21111:25 predictions [2] - 21031:7, 21031:13 preface [1] - 20978:25</p>
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<p>prefer [1] - 21138:7</p> <p>preference [1] - 21138:9</p> <p>preferred [1] - 20997:21</p> <p>Prehodchenko [1] - 20927:14</p> <p>prejudice [1] - 21123:18</p> <p>preliminary [16] - 20985:20, 20986:5, 20998:19, 20998:23, 21002:25, 21003:24, 21004:8, 21005:13, 21007:6, 21011:17, 21013:1, 21017:21, 21104:5, 21104:8, 21104:17, 21104:23</p> <p>premiered [1] - 21125:2</p> <p>preparation [6] - 21003:23, 21010:18, 21011:13, 21011:23, 21013:12, 21049:2</p> <p>preparations [1] - 20998:18</p> <p>prepared [5] - 20943:15, 20953:21, 21010:17, 21011:22, 21082:10</p> <p>preparing [3] - 21002:25, 21030:25, 21032:3</p> <p>prerequisites [1] - 21014:25</p> <p>presence [2] - 21032:24, 21112:16</p> <p>present [3] - 20980:1, 20980:22, 21071:19</p> <p>presented [5] - 20985:25, 21084:10, 21084:17, 21085:10, 21091:1</p> <p>presently [2] - 20930:23, 21055:24</p> <p>presents [1] - 21045:10</p> <p>press [1] - 21097:24</p> <p>presumably [1] - 20972:21</p> <p>presume [2] - 20935:4, 21004:21</p> <p>presumed [1] - 20941:1</p> <p>pretty [5] - 20951:4, 20951:9, 20952:8, 20960:21, 21133:15</p> <p>preventing [1] - 21045:15</p> <p>previous [8] - 21006:21, 21030:1, 21039:1, 21039:5, 21107:10, 21108:14, 21108:15, 21126:21</p>	<p>previously [13] - 20996:24, 21003:21, 21010:15, 21010:24, 21021:11, 21024:20, 21030:21, 21044:23, 21045:25, 21056:15, 21063:4, 21063:7, 21087:20</p> <p>primarily [4] - 20978:17, 21066:1, 21102:14, 21122:20</p> <p>primary [1] - 21027:12</p> <p>Prince [8] - 20938:14, 20938:23, 20939:22, 20943:22, 20944:15, 20949:23, 20972:12, 21025:24</p> <p>prison [5] - 20946:15, 21026:16, 21039:7, 21117:1, 21135:6</p> <p>prisoner [4] - 20980:8, 20980:12, 21043:20, 21044:18</p> <p>private [1] - 20966:17</p> <p>privilege [2] - 21031:1, 21032:3</p> <p>probability [1] - 21022:17</p> <p>problem [4] - 20959:12, 20959:21, 21022:19, 21029:16</p> <p>problems [11] - 20933:21, 20939:14, 20952:5, 20959:18, 20986:8, 20993:20, 20994:2, 20994:19, 21026:23, 21029:19, 21114:11</p> <p>proceeded [4] - 20982:2, 20982:8, 20989:2, 21010:11</p> <p>proceedings [6] - 20978:13, 20985:4, 21001:14, 21004:8, 21008:13, 21013:8</p> <p>Proceedings [4] - 20926:12, 20926:23, 20929:1, 20930:1</p> <p>process [2] - 20977:25, 21017:13</p> <p>professional [8] - 20979:2, 20986:12, 20997:11, 21003:11, 21003:12, 21010:1, 21041:21</p> <p>professionalism [1] - 21083:6</p> <p>professionals [4] - 21019:21, 21036:2, 21111:21, 21136:25</p>	<p>professor [2] - 20978:5, 21068:1</p> <p>Professor [2] - 21034:21, 21043:23</p> <p>profile [3] - 20965:13, 20967:10, 21074:10</p> <p>program [2] - 21067:20, 21069:24</p> <p>proper [1] - 21113:13</p> <p>properly [1] - 20935:23</p> <p>prosecuting [1] - 21114:3</p> <p>prosecutor [4] - 20979:4, 20998:22, 21101:8, 21103:19</p> <p>prosecutorial [1] - 21100:15</p> <p>prosecutors [1] - 20991:23</p> <p>protecting [1] - 21042:1</p> <p>protest [2] - 21078:17, 21079:8</p> <p>provide [7] - 20992:21, 20992:23, 21043:5, 21074:5, 21074:17, 21076:24, 21089:9</p> <p>provided [18] - 20995:20, 21002:10, 21027:14, 21049:2, 21055:3, 21055:25, 21057:15, 21060:7, 21060:12, 21061:11, 21062:20, 21067:9, 21068:10, 21077:1, 21086:12, 21086:13, 21089:3, 21104:15</p> <p>providing [10] - 20986:4, 20995:8, 21021:7, 21042:11, 21078:20, 21080:11, 21084:11, 21086:3, 21088:2, 21092:8</p> <p>Province [2] - 21035:10, 21140:3</p> <p>province [3] - 20935:24, 20939:9, 20952:3</p> <p>proximity [1] - 21020:20</p> <p>Psych [1] - 21068:17</p> <p>psychiatric [32] - 20959:24, 20978:7, 20981:19, 20992:9, 21015:16, 21019:8, 21031:2, 21032:4, 21032:19, 21034:2, 21034:11, 21037:4, 21039:7, 21040:18, 21044:1, 21044:7, 21044:13, 21045:11,</p>	<p>21066:19, 21070:5, 21087:13, 21102:4, 21102:8, 21103:3, 21107:11, 21108:5, 21115:21, 21118:24, 21119:14, 21119:22, 21119:24, 21120:3</p> <p>Psychiatric [17] - 20982:21, 20986:19, 20998:25, 20999:23, 21009:18, 21018:25, 21027:6, 21027:20, 21035:4, 21058:9, 21058:18, 21062:8, 21062:15, 21085:24, 21108:6, 21108:24, 21113:22</p> <p>psychiatrist [17] - 20975:10, 20976:18, 20986:10, 20988:14, 20988:24, 21026:5, 21081:8, 21102:17, 21105:3, 21105:4, 21105:14, 21107:7, 21108:4, 21117:7, 21134:9, 21134:20, 21135:11</p> <p>psychiatrists [4] - 21026:15, 21066:14, 21107:20, 21133:4</p> <p>psychiatry [12] - 20975:16, 20976:3, 20976:6, 20976:9, 20976:16, 20977:24, 20978:3, 20978:6, 20991:3, 21016:1, 21016:11, 21016:15</p> <p>Psychiatry [7] - 20997:9, 21010:23, 21034:22, 21043:23, 21050:7, 21050:11, 21050:16</p> <p>psychological [5] - 21062:11, 21062:17, 21066:21, 21067:3, 21113:11</p> <p>psychologically [1] - 20981:22</p> <p>psychologist [7] - 21058:23, 21062:24, 21066:15, 21109:7, 21109:9, 21109:14, 21109:17</p> <p>Psychologist [2] - 21061:18, 21062:2</p> <p>psychologists [2] - 21026:15, 21066:14</p> <p>psychopath [7] - 21013:17, 21014:15, 21014:20, 21015:11,</p>	<p>21015:24, 21016:5, 21016:25</p> <p>Psychopath [1] - 21015:15</p> <p>psychopath' [1] - 21014:11</p> <p>psychopaths [1] - 21016:8</p> <p>psychopathy [1] - 21016:12</p> <p>psychoses [1] - 20993:22</p> <p>psychosis [1] - 21015:21</p> <p>psychotic [3] - 20978:11, 20984:14, 21087:15</p> <p>public [2] - 21075:1, 21120:5</p> <p>Public [1] - 21062:3</p> <p>publication [3] - 21056:21, 21138:2, 21139:2</p> <p>pull [1] - 20965:22</p> <p>pulling [1] - 21130:16</p> <p>purported [1] - 21006:2</p> <p>purpose [12] - 20935:5, 20953:6, 20979:20, 20993:15, 20997:10, 21000:25, 21091:18, 21091:20, 21100:12, 21122:8, 21127:1, 21127:4</p> <p>purposes [7] - 21001:3, 21002:16, 21030:8, 21095:21, 21099:15, 21120:11, 21127:2</p> <p>pursuant [1] - 21007:19</p> <p>pursue [5] - 21009:20, 21020:3, 21046:11, 21089:25, 21124:24</p> <p>pursued [2] - 20954:22, 21009:17</p> <p>pursuing [1] - 21083:21</p> <p>Put [1] - 21074:16</p> <p>put [18] - 20936:4, 20937:10, 20942:23, 20943:3, 20943:8, 20954:18, 20969:3, 21016:24, 21023:18, 21026:8, 21050:7, 21050:24, 21075:1, 21094:15, 21101:23, 21115:15, 21119:3, 21119:23</p>
Q				
Qb [1] - 20927:11				



<p>Qc^[3] - 20928:2, 20928:6, 20928:11</p> <p>Qu'appelle ^[2] - 21059:13, 21060:1</p> <p>qualified ^[3] - 20935:23, 21102:22, 21102:24</p> <p>qualifier ^[2] - 21026:8, 21028:3</p> <p>Quebec^[2] - 20957:11, 20960:23</p> <p>Queen's ^[4] - 21140:1, 21140:3, 21140:14, 21140:20</p> <p>questionable ^[1] - 21132:13</p> <p>questioned ^[5] - 20934:10, 20935:14, 20935:25, 20951:3, 21082:8</p> <p>questioning ^[1] - 20933:15</p> <p>questions ^[17] - 20968:14, 20985:16, 21065:16, 21066:5, 21075:2, 21088:19, 21090:22, 21093:10, 21093:12, 21095:4, 21102:11, 21103:6, 21120:19, 21121:20, 21125:16, 21137:24, 21137:25</p> <p>quick ^[1] - 20964:10</p> <p>quickly ^[1] - 20996:16</p> <p>quiet ^[1] - 20977:18</p> <p>Quite^[1] - 20982:9</p> <p>quite ^[28] - 20932:2, 20937:7, 20937:10, 20940:24, 20942:1, 20948:17, 20948:24, 20956:15, 20957:20, 20957:22, 20958:7, 20958:8, 20958:11, 20959:15, 20960:7, 20960:17, 20963:19, 20963:20, 20986:11, 21042:13, 21046:1, 21064:10, 21099:21, 21121:22, 21129:16, 21130:18, 21131:15</p> <p>quotation ^[1] - 21016:12</p> <p>quoted ^[3] - 20999:13, 21032:1, 21038:12</p> <p>quotes ^[1] - 21036:23</p>	<p>radio ^[3] - 20944:11, 20944:12, 20944:17</p> <p>raise ^[1] - 21138:5</p> <p>raised ^[6] - 20991:20, 21089:23, 21106:1, 21106:7, 21111:24, 21119:20</p> <p>ran ^[1] - 20999:6</p> <p>range ^[2] - 21014:22, 21022:22</p> <p>ranged ^[1] - 21016:5</p> <p>rape ^[3] - 21133:6, 21133:9, 21134:11</p> <p>rapes ^[3] - 20950:19, 20951:23, 20952:12</p> <p>rapport ^[1] - 20957:21</p> <p>rarely ^[1] - 21067:3</p> <p>rather ^[9] - 20938:23, 20977:18, 21023:5, 21043:16, 21044:1, 21062:6, 21072:3, 21074:22, 21131:23</p> <p>ray ^[2] - 21022:12, 21069:7</p> <p>Rcmp^[27] - 20928:9, 20939:7, 20973:7, 21075:19, 21075:21, 21076:6, 21076:24, 21078:21, 21080:12, 21084:12, 21085:20, 21086:4, 21086:13, 21088:3, 21088:18, 21089:4, 21089:9, 21091:7, 21094:6, 21094:7, 21094:10, 21094:18, 21094:21, 21095:3, 21100:3, 21100:11, 21100:20</p> <p>re ^[11] - 20944:25, 20945:2, 20974:10, 21004:3, 21007:9, 21008:22, 21024:3, 21026:20, 21062:16, 21113:12, 21138:1</p> <p>re-affirmed ^[2] - 21024:3, 21026:20</p> <p>re-examination ^[2] - 20974:10, 21138:1</p> <p>re-offend ^[1] - 21113:12</p> <p>re-organized ^[2] - 20944:25, 20945:2</p> <p>reach ^[2] - 20944:2, 20986:4</p> <p>reached ^[2] - 20963:10, 20970:18</p> <p>reaching ^[1] - 20986:24</p> <p>reaction ^[6] - 21000:24, 21001:23, 21001:25, 21018:1, 21086:22, 21109:23</p>	<p>read ^[41] - 20938:5, 20948:4, 20961:4, 20964:8, 20966:12, 20997:4, 20998:5, 21004:2, 21004:16, 21006:4, 21008:18, 21018:18, 21019:21, 21020:6, 21021:21, 21024:15, 21027:1, 21030:23, 21031:20, 21031:25, 21032:12, 21034:18, 21037:12, 21037:17, 21037:22, 21038:10, 21041:3, 21041:5, 21042:7, 21043:15, 21045:5, 21047:14, 21063:1, 21076:13, 21077:4, 21081:23, 21085:21, 21086:21, 21087:7, 21087:20, 21096:15</p> <p>Reader^[1] - 20973:12</p> <p>reading ^[11] - 20955:19, 20957:7, 20999:17, 21005:11, 21031:1, 21032:4, 21032:18, 21032:21, 21037:9, 21079:21, 21137:13</p> <p>reads ^[5] - 20949:21, 21013:15, 21037:25, 21064:11, 21076:14</p> <p>ready ^[1] - 21009:7</p> <p>realistic ^[1] - 21137:4</p> <p>realize ^[7] - 20986:1, 20993:6, 20995:3, 21002:3, 21012:21, 21103:5, 21125:21</p> <p>realized ^[1] - 21012:20</p> <p>really ^[53] - 20931:15, 20933:18, 20936:5, 20936:7, 20937:10, 20938:11, 20939:2, 20940:14, 20941:9, 20942:5, 20942:23, 20945:1, 20945:21, 20946:5, 20951:1, 20954:6, 20954:9, 20955:10, 20956:7, 20956:19, 20958:7, 20958:12, 20960:21, 20960:24, 20961:10, 20963:12, 20969:18, 20976:21, 20981:21, 20991:8, 21012:23, 21016:5, 21022:12, 21022:16, 21029:18, 21029:20, 21036:4, 21042:1, 21048:8, 21068:11, 21074:25, 21079:9, 21079:13,</p>	<p>21081:25, 21083:22, 21097:6, 21098:5, 21121:24, 21122:2, 21125:8, 21127:15, 21130:13, 21135:19</p> <p>reappraisal ^[1] - 21084:24</p> <p>reason ^[14] - 20937:11, 20954:4, 20980:23, 20983:13, 20991:21, 21001:11, 21011:9, 21087:7, 21108:17, 21113:16, 21116:1, 21116:2, 21122:13, 21125:10</p> <p>reasonable ^[2] - 21095:24, 21135:24</p> <p>reasonably ^[3] - 20939:12, 20964:1, 21136:4</p> <p>reasoning ^[1] - 20965:14</p> <p>reasons ^[2] - 20970:8, 21120:8</p> <p>recalled ^[4] - 21005:9, 21077:11, 21085:23, 21087:1</p> <p>recalling ^[1] - 21059:19</p> <p>receipt ^[2] - 20973:12, 21042:3</p> <p>receive ^[3] - 20973:16, 21060:2, 21108:8</p> <p>received ^[17] - 20971:10, 20971:22, 20998:24, 21007:19, 21008:6, 21008:8, 21024:11, 21035:20, 21051:13, 21055:8, 21055:12, 21056:12, 21071:24, 21072:2, 21073:9, 21078:8, 21135:22</p> <p>receiving ^[2] - 20979:10, 21046:14</p> <p>recent ^[3] - 21018:20, 21019:11, 21134:5</p> <p>recognize ^[14] - 21057:9, 21057:21, 21061:13, 21063:3, 21063:8, 21065:11, 21067:11, 21067:16, 21070:8, 21072:16, 21073:13, 21073:14, 21075:8, 21122:23</p> <p>recognized ^[1] - 21065:5</p> <p>recollection ^[46] - 20934:2, 20934:5, 20945:13, 20978:1, 20978:23, 20980:14,</p>	<p>20982:24, 20986:13, 20989:17, 20992:25, 20996:22, 20997:23, 21000:3, 21002:23, 21003:7, 21003:9, 21004:4, 21004:6, 21004:10, 21007:1, 21029:10, 21031:11, 21033:1, 21034:8, 21037:8, 21039:24, 21042:9, 21048:9, 21048:12, 21054:17, 21059:23, 21070:1, 21078:1, 21078:6, 21079:3, 21079:20, 21082:12, 21088:12, 21094:19, 21095:3, 21095:19, 21096:11, 21103:7, 21103:9, 21103:11, 21103:13</p> <p>recommendation ^[1] - 21019:18</p> <p>recommending ^[1] - 21123:9</p> <p>reconsider ^[1] - 20961:16</p> <p>Reconvened^[4] - 20930:2, 20974:19, 21048:23, 21093:24</p> <p>record ^[18] - 20968:23, 20992:25, 21001:24, 21018:4, 21024:7, 21024:10, 21025:8, 21028:19, 21034:4, 21046:8, 21059:12, 21063:15, 21103:17, 21107:19, 21108:15, 21111:2, 21121:7, 21138:18</p> <p>recorded ^[9] - 21000:11, 21050:18, 21089:23, 21091:18, 21091:20, 21091:22, 21111:14, 21112:12, 21118:25</p> <p>recording ^[6] - 20999:11, 21061:24, 21091:21, 21111:3, 21111:23, 21111:24</p> <p>recordings ^[1] - 20999:1</p> <p>records ^[54] - 21007:18, 21007:20, 21008:5, 21008:7, 21008:8, 21009:17, 21009:21, 21010:2, 21020:7, 21020:19, 21026:11, 21027:25, 21028:1, 21028:4, 21028:9, 21028:10, 21028:12,</p>
R				
rabble ^[1] - 20944:22				



<p>21028:17, 21028:24, 21029:7, 21029:12, 21029:13, 21034:11, 21041:19, 21041:21, 21042:3, 21043:2, 21044:23, 21046:11, 21046:17, 21047:22, 21055:1, 21055:6, 21055:12, 21055:15, 21055:23, 21076:21, 21107:2, 21107:24, 21109:6, 21115:19, 21115:20, 21115:21, 21116:7, 21116:9, 21116:19, 21116:24, 21117:8, 21118:4, 21127:12, 21129:3, 21129:6, 21129:12</p> <p>recovers [1] - 21006:14</p> <p>recovery [1] - 21006:17</p> <p>recur [1] - 21022:6</p> <p>rediscovered [1] - 21050:9</p> <p>refer [15] - 20958:18, 20964:6, 20965:5, 21005:7, 21008:25, 21013:9, 21033:6, 21036:9, 21036:13, 21046:9, 21046:25, 21061:9, 21061:15, 21075:4, 21075:24</p> <p>reference [16] - 20995:12, 21008:10, 21010:21, 21012:3, 21045:17, 21049:4, 21051:18, 21058:16, 21060:2, 21066:8, 21077:11, 21085:25, 21086:8, 21086:16, 21100:22, 21118:14</p> <p>referenced [2] - 21061:7, 21062:22</p> <p>referencing [2] - 21065:19, 21097:1</p> <p>referred [14] - 20967:3, 20999:5, 21025:13, 21032:22, 21044:24, 21059:19, 21061:17, 21082:25, 21102:5, 21103:10, 21112:2, 21116:11, 21118:13, 21121:23</p> <p>referring [16] - 21020:5, 21033:10, 21033:23, 21038:4, 21042:25, 21043:4, 21053:3, 21056:20, 21057:4, 21061:21, 21063:20, 21072:23, 21084:19, 21093:2, 21099:2,</p>	<p>21099:11</p> <p>refers [7] - 21005:20, 21006:24, 21019:10, 21037:2, 21037:7, 21056:3, 21093:3</p> <p>reflect [1] - 21108:2</p> <p>reflects [1] - 20949:9</p> <p>refresh [2] - 21006:5, 21015:5</p> <p>refreshes [2] - 20998:6, 21065:20</p> <p>refusal [2] - 21045:20, 21119:13</p> <p>refused [1] - 21120:2</p> <p>regard [5] - 20989:18, 21018:10, 21103:8, 21104:6, 21124:23</p> <p>regarding [9] - 20958:14, 20973:8, 20980:8, 20995:14, 20997:10, 21030:19, 21043:13, 21067:2, 21081:12</p> <p>regardless [1] - 20952:6</p> <p>regards [2] - 21077:8, 21082:21</p> <p>Regina [12] - 20932:17, 20965:13, 20982:23, 20986:20, 21019:1, 21027:16, 21029:8, 21035:7, 21035:12, 21052:7, 21059:13, 21060:1</p> <p>region [1] - 20931:10</p> <p>Region [7] - 21055:7, 21056:13, 21059:13, 21060:1, 21061:20, 21062:3, 21062:25</p> <p>Regional [2] - 20951:25, 21058:16</p> <p>register [2] - 21050:14, 21050:15</p> <p>regulations [1] - 21072:5</p> <p>rehabilitated [3] - 21040:23, 21045:22, 21119:6</p> <p>rehabilitated' [2] - 21042:8, 21043:3</p> <p>rehabilitation [2] - 21119:15, 21120:5</p> <p>rejoined [1] - 20936:21</p> <p>relate [6] - 20994:22, 21005:16, 21054:25, 21060:5, 21077:19, 21099:1</p> <p>related [8] - 20977:7, 21028:5, 21053:10, 21058:6, 21059:14,</p>	<p>21060:4, 21073:23, 21109:6</p> <p>relates [2] - 21029:20, 21075:10</p> <p>relating [2] - 20983:10, 20989:13, 20990:19, 21014:6, 21017:14, 21019:13, 21029:8, 21036:15, 21040:7, 21041:13, 21055:13, 21055:23, 21056:13, 21058:2, 21060:1, 21065:16, 21074:6, 21076:6, 21076:8, 21078:2, 21109:14, 21109:16</p> <p>relation [10] - 21021:17, 21066:12, 21071:4, 21075:25, 21082:22, 21092:1, 21106:17, 21108:23, 21109:3, 21138:10</p> <p>relations [1] - 20937:13</p> <p>relationship [6] - 20955:5, 20962:16, 20963:7, 20964:16, 21068:19, 21124:5</p> <p>relationships [1] - 20994:24</p> <p>relatively [1] - 20977:19</p> <p>relay [1] - 21001:19</p> <p>relayed [1] - 21085:16</p> <p>relaying [1] - 21031:11</p> <p>release [24] - 20960:5, 20971:21, 20982:18, 20983:11, 21010:8, 21010:9, 21040:16, 21040:17, 21040:18, 21040:25, 21041:1, 21041:22, 21042:4, 21043:6, 21044:10, 21044:11, 21045:8, 21045:14, 21109:14, 21109:16, 21118:16, 21118:22, 21118:23, 21119:13</p> <p>released [2] - 20972:5, 21099:20</p> <p>releasing [2] - 21042:3, 21072:6</p> <p>relevant [1] - 21108:10</p> <p>reliability [1] - 20994:19</p> <p>reliable [1] - 21069:3</p> <p>relied [3] - 21064:25, 21065:21, 21066:1</p> <p>religious [1] - 20988:18</p> <p>rely [2] - 21066:16, 21066:18</p> <p>relying [2] - 21019:25, 21024:5</p>	<p>remained [2] - 21052:11, 21106:19</p> <p>remains [1] - 20960:6</p> <p>remark [2] - 21112:14, 21112:15</p> <p>remarkable [2] - 21136:5, 21137:21</p> <p>remarks [2] - 20967:8, 20978:25</p> <p>remember [51] - 20933:20, 20934:20, 20941:23, 20942:4, 20949:22, 20951:2, 20951:8, 20951:11, 20979:2, 20979:3, 20989:19, 20996:5, 21005:25, 21006:2, 21006:23, 21007:21, 21015:25, 21020:16, 21022:1, 21028:8, 21028:11, 21028:13, 21028:16, 21028:17, 21029:7, 21046:18, 21052:8, 21058:14, 21058:17, 21058:23, 21059:1, 21059:8, 21059:16, 21078:23, 21079:9, 21083:6, 21083:10, 21090:14, 21095:1, 21098:20, 21099:21, 21104:21, 21104:24, 21105:15, 21106:13, 21124:14, 21128:2, 21137:13, 21137:14</p> <p>remembered [1] - 21137:6</p> <p>remembering [1] - 21005:17</p> <p>reminded [1] - 21029:25</p> <p>Renaud [8] - 20931:23, 20932:15, 20940:20, 20946:3, 20954:1, 20957:9, 20960:19, 20961:6</p> <p>Renauds [1] - 20964:3</p> <p>repeat [3] - 20984:25, 21124:20, 21138:24</p> <p>repeated [2] - 21131:10</p> <p>repeating [2] - 20968:22, 21119:2</p> <p>replaces [1] - 21067:4</p> <p>replied [1] - 21136:14</p> <p>reply [1] - 21073:10</p> <p>report [36] - 20987:17, 20990:17, 20992:5, 20992:21, 20992:23, 20993:1, 20995:10, 20995:16, 20995:18,</p>	<p>20995:22, 20996:14, 20997:1, 20997:5, 20997:19, 20999:18, 21019:19, 21019:22, 21024:6, 21038:14, 21039:18, 21058:21, 21059:8, 21062:23, 21067:22, 21071:22, 21072:23, 21074:18, 21082:25, 21084:24, 21094:16, 21100:20, 21109:24, 21112:5, 21117:9, 21136:22, 21137:7</p> <p>reported [3] - 20987:19, 21029:16, 21111:25</p> <p>reporter [1] - 21084:5</p> <p>Reporters [2] - 21140:14, 21140:20</p> <p>Reporters [2] - 20927:11, 21140:3</p> <p>Reporters [1] - 21140:1</p> <p>reporting [4] - 20956:11, 20989:9, 20998:2, 21084:6</p> <p>reports [23] - 21018:24, 21020:5, 21021:14, 21024:1, 21027:10, 21032:15, 21034:14, 21035:19, 21038:25, 21039:1, 21039:2, 21039:5, 21058:20, 21064:21, 21074:21, 21104:10, 21109:8, 21116:22, 21118:17, 21126:25, 21128:11, 21137:16, 21137:18</p> <p>represent [1] - 21064:4</p> <p>representations [1] - 21113:17</p> <p>represented [1] - 20930:8</p> <p>repressed [2] - 21137:2, 21137:5</p> <p>repute [1] - 21081:15</p> <p>request [21] - 20946:22, 20979:11, 20983:13, 20988:22, 20989:1, 20990:10, 20993:3, 20999:24, 21008:7, 21010:1, 21041:19, 21046:14, 21058:19, 21073:10, 21077:19, 21084:2, 21107:4, 21107:5, 21108:4, 21108:10, 21123:8</p> <p>requested [4] - 21009:19, 21077:23, 21127:18, 21127:22</p> <p>requesting [3] -</p>
---	--	---	---	---



20979:7, 21046:17, 21108:12 requests [1] - 21020:22 required [4] - 20966:18, 21010:9, 21012:17, 21051:25 requiring [2] - 20986:12, 21104:16 researching [2] - 21067:19, 21068:13 reside [2] - 20930:19, 20975:5 respect [35] - 20962:21, 20977:10, 20978:24, 20979:9, 20983:2, 20984:9, 20987:7, 20991:4, 20994:11, 20998:18, 21002:6, 21008:17, 21027:15, 21031:19, 21035:11, 21035:23, 21039:24, 21043:25, 21048:9, 21053:6, 21056:19, 21056:21, 21056:22, 21060:22, 21065:10, 21071:2, 21079:23, 21080:17, 21089:18, 21101:10, 21106:23, 21107:15, 21114:4, 21116:2, 21138:3 respected [1] - 20990:10 respecting [3] - 20987:17, 21048:15, 21056:1 respite [1] - 21069:4 responded [4] - 21015:12, 21103:5, 21112:21, 21121:13 response [8] - 20971:16, 20999:23, 21009:22, 21013:24, 21019:20, 21020:22, 21074:1, 21088:11 responsibility [3] - 20977:4, 20990:18, 20994:24 responsible [3] - 20931:21, 21125:1, 21125:6 rest [1] - 21049:18 restricted [1] - 21124:8 restrictions [1] - 20993:24 result [4] - 20959:18, 20996:9, 21043:20, 21058:14 results [2] - 21062:10, 21066:16 retained [1] - 21104:15	retarded [1] - 20978:12 retired [1] - 20954:14 retrievable [1] - 21135:19 retrospect [1] - 21099:19 return [1] - 21043:21 returned [1] - 20943:21 reveal [1] - 21124:19 revealed [1] - 21081:5 Review [1] - 21092:10 review [13] - 20948:2, 21002:15, 21021:13, 21033:2, 21039:1, 21049:8, 21057:6, 21057:12, 21062:21, 21066:7, 21067:6, 21071:20, 21087:12 reviewed [9] - 21018:22, 21026:11, 21030:21, 21053:20, 21054:2, 21068:5, 21070:3, 21074:19, 21113:25 reviewing [4] - 21003:4, 21059:19, 21061:3, 21070:2 reviews [1] - 21016:1 reward [12] - 20966:4, 20967:18, 20967:20, 20967:22, 20967:24, 20968:2, 20970:23, 20971:10, 20971:22, 20972:17, 20973:9, 20973:15 rid [1] - 21052:3 right-hand [1] - 21047:2 Rights [1] - 21100:8 rights [1] - 21042:1 ring [1] - 21101:10 ripe [1] - 20973:24 rise [2] - 21063:13, 21137:11 risk [4] - 20980:25, 21120:5, 21120:11, 21123:16 road [1] - 21107:13 Robert [1] - 21092:17 Roberts [1] - 21005:19 Rockstro [1] - 21071:22 Roger [33] - 20931:23, 20931:24, 20932:15, 20933:3, 20933:4, 20933:12, 20933:16, 20933:22, 20934:22, 20935:12, 20935:24, 20936:4, 20936:8, 20936:14, 20936:15, 20937:16, 20937:19, 20940:20, 20940:21,	20940:22, 20941:3, 20946:3, 20954:1, 20954:2, 20957:17, 20957:20, 20960:19, 20960:23, 20961:2, 20961:5, 20961:9, 20964:3 Rogefs [1] - 20940:8 role [1] - 20977:24 room [6] - 20980:12, 21077:20, 21077:24, 21086:21, 21112:11, 21134:19 rope [1] - 20963:11 routinely [3] - 21066:16, 21066:22, 21067:3 Rpr [4] - 20927:12, 21140:2, 21140:18, 21140:19 rule [2] - 21016:15, 21083:25 run [4] - 20939:10, 21070:4, 21125:24, 21131:9 running [3] - 20943:4, 21129:8, 21131:14 runs [1] - 21131:12	20932:14, 20932:18, 20934:10, 20943:25, 20950:19, 20950:25, 20951:3, 20971:1, 20971:2, 20971:18, 20975:5, 20976:19, 20977:18, 20980:6, 20988:1, 20996:25, 21010:17, 21034:23, 21043:22, 21043:24, 21077:6, 21082:17, 21101:2, 21101:17, 21102:3, 21102:4, 21103:1 sat [1] - 21094:20 satisfactory [1] - 21017:11 satisfy [2] - 21126:11, 21126:12 saved [1] - 21053:11 saw [31] - 20932:20, 20938:8, 20940:25, 20944:5, 20944:6, 20944:9, 20947:3, 20947:15, 20957:13, 20958:4, 20966:24, 20967:10, 20967:11, 20969:11, 20981:24, 21038:21, 21059:21, 21064:18, 21073:24, 21076:19, 21087:15, 21105:18, 21106:25, 21112:5, 21113:11, 21115:16, 21127:17, 21134:6, 21137:17 scam [1] - 21132:10 scenario [2] - 21136:7, 21136:23 scene [2] - 20978:10, 20997:16 Schell [5] - 20939:4, 20939:5, 20941:18, 20943:1 Schizophrenia [1] - 21087:14 schizophrenia [1] - 21019:9 School [4] - 21027:16, 21035:12, 21058:16, 21062:13 school [11] - 20986:10, 21027:12, 21029:8, 21090:12, 21114:19, 21129:15, 21130:1, 21130:4, 21130:5, 21130:16, 21131:13 schools [1] - 21129:20 Science [1] - 20988:16 scout [1] - 20939:7 screen [3] - 20947:19,	21057:19, 21099:13 scroll [1] - 21095:13 scuttle [2] - 21092:23, 21093:6 search [2] - 21054:22, 21056:17 searching [1] - 21054:24 seasoned [1] - 20951:5 seated [2] - 21113:6, 21113:9 second [12] - 20987:19, 20989:16, 20990:11, 20990:25, 20992:4, 20992:22, 20996:11, 21026:4, 21026:25, 21076:14, 21105:17, 21115:25 secondhand [1] - 20969:20 secondly [1] - 21066:9 secret [1] - 21095:8 secretaries [3] - 21050:1, 21053:9, 21073:16 secretary [5] - 20979:14, 20992:15, 21003:14, 21032:24, 21107:4 section [1] - 21034:1 security [1] - 21077:9 Security [1] - 20927:13 See [2] - 20985:12, 21062:15 see [79] - 20936:9, 20937:6, 20937:23, 20943:20, 20945:17, 20945:22, 20948:14, 20954:16, 20954:21, 20961:21, 20963:5, 20964:1, 20967:25, 20970:16, 20972:2, 20973:19, 20974:13, 20978:10, 20979:11, 20979:19, 20980:9, 20981:21, 20987:24, 20989:5, 20995:13, 20996:25, 21003:8, 21008:3, 21009:13, 21011:24, 21012:2, 21014:15, 21016:14, 21018:14, 21022:1, 21022:2, 21024:2, 21026:2, 21026:12, 21031:24, 21033:18, 21036:6, 21037:12, 21040:12, 21046:23, 21047:2, 21056:2, 21056:7, 21057:19, 21057:22, 21058:25,
S				
<p>Stoon [1] - 21082:19 Safe[1] - 21007:17 safe [2] - 21020:7, 21022:14 sake [2] - 21049:4, 21138:17 sakes [1] - 20949:6 sales [6] - 20931:17, 20931:19, 20939:14, 20941:5, 20952:4, 20972:24 Sam[1] - 20978:6 Sandra[2] - 20927:5, 21092:24 sanity [2] - 20977:5, 21088:25 Sask[2] - 20997:9, 21010:24 Saskatchewan [13] - 20926:17, 20928:4, 20935:19, 20946:14, 20975:13, 20975:16, 20978:2, 20978:7, 21030:20, 21035:10, 21056:10, 21068:25, 21140:4 Saskatoon [29] - 20926:17, 20928:7,</p>				



<p>21062:21, 21064:2, 21070:7, 21073:12, 21076:9, 21076:16, 21078:10, 21081:8, 21081:18, 21084:25, 21090:10, 21092:19, 21093:21, 21101:1, 21102:17, 21105:1, 21105:22, 21106:3, 21108:21, 21118:19, 21123:8, 21124:25, 21126:15, 21128:10, 21129:3, 21133:3, 21134:13</p> <p>seeing [9] - 20937:20, 20994:17, 21020:13, 21025:24, 21058:14, 21058:23, 21076:17, 21107:21</p> <p>seek [2] - 21043:1, 21047:21</p> <p>seeking [1] - 21069:18</p> <p>seemingly [1] - 20994:25</p> <p>seizures [1] - 21006:16</p> <p>Sellers [2] - 20935:18, 20935:19</p> <p>selling [1] - 20972:21</p> <p>Selling [1] - 21132:1</p> <p>senator [1] - 21132:11</p> <p>send [10] - 20940:6, 20941:6, 20952:8, 21019:15, 21028:2, 21028:18, 21047:6, 21074:2, 21108:4, 21108:16</p> <p>sending [2] - 20959:3, 21120:23</p> <p>sense [5] - 21001:14, 21020:1, 21077:25, 21127:15, 21136:23</p> <p>sensible [3] - 20947:6, 21005:24</p> <p>sent [8] - 20941:4, 20962:9, 20996:8, 21009:21, 21073:17, 21073:22, 21083:20, 21135:21</p> <p>sentence [4] - 21014:7, 21033:25, 21089:6, 21119:7</p> <p>sentenced [1] - 20946:15</p> <p>sentiment [1] - 21001:19</p> <p>separate [3] - 21051:19, 21051:20, 21122:14</p> <p>September [7] - 20971:17, 21005:12, 21040:12, 21043:11,</p>	<p>21047:4, 21047:16, 21118:15</p> <p>sequence [1] - 21059:17</p> <p>Serge [2] - 20928:6, 21092:4</p> <p>Sergeant [3] - 20939:4, 20941:18, 20943:1</p> <p>serial [1] - 21016:9</p> <p>series [1] - 21015:25</p> <p>serious [3] - 20959:13, 21033:18, 21080:23</p> <p>served [3] - 20958:2, 21092:9, 21106:16</p> <p>service [3] - 21026:14, 21046:15, 21117:25</p> <p>Service [7] - 20928:7, 20973:12, 20980:6, 20988:1, 21010:18, 21072:5, 21101:17</p> <p>Services [1] - 20971:1</p> <p>services [2] - 20978:7, 21135:22</p> <p>sessions [2] - 20993:2, 21076:18</p> <p>set [4] - 20960:4, 21021:10, 21044:3, 21045:17</p> <p>setting [1] - 20935:18</p> <p>seven [3] - 20939:22, 20955:5, 21049:25</p> <p>seven-year [1] - 20955:5</p> <p>Several [1] - 21112:11</p> <p>several [6] - 20943:5, 20970:1, 21112:8, 21112:10, 21127:11, 21131:23</p> <p>severe [6] - 21019:4, 21021:1, 21024:16, 21025:1, 21034:25, 21112:23</p> <p>sexual [2] - 21014:22, 21015:7</p> <p>Shannon [23] - 20929:3, 20930:7, 20930:8, 20930:12, 20930:13, 20930:15, 20930:18, 20938:13, 20942:9, 20947:22, 20950:8, 20952:22, 20955:16, 20957:1, 20958:21, 20961:11, 20962:6, 20964:11, 20965:2, 20968:14, 20968:18, 20974:16</p> <p>share [3] - 21039:23, 21116:23, 21128:6</p> <p>shared [4] - 21000:24, 21001:23, 21079:7,</p>	<p>21117:21</p> <p>Sheaf [1] - 21069:1</p> <p>sheet [1] - 21073:21</p> <p>Sheraton [1] - 20926:16</p> <p>shift [1] - 21099:23</p> <p>shocked [4] - 20957:22, 20968:8, 21001:24, 21053:20</p> <p>shocker [1] - 21000:23</p> <p>short [6] - 20933:21, 20954:2, 20995:9, 20995:19, 21004:18, 21033:24</p> <p>shorthand [1] - 21140:5</p> <p>shortly [3] - 20945:9, 21006:1, 21052:3</p> <p>shot [4] - 20957:23, 20969:12, 20969:25, 20970:2</p> <p>show [7] - 20972:4, 20980:3, 20987:22, 21011:20, 21052:20, 21067:10, 21071:17</p> <p>showed [4] - 21000:23, 21087:8, 21128:14, 21129:6</p> <p>showered [1] - 20940:23</p> <p>showing [2] - 21000:25, 21094:10</p> <p>shown [5] - 20997:16, 20998:4, 21005:8, 21006:1, 21104:18</p> <p>sick [1] - 21000:21</p> <p>side [4] - 20932:22, 20943:3, 20943:4, 20978:14</p> <p>sight [2] - 20958:8, 21051:3</p> <p>sign [6] - 20982:17, 20983:9, 20992:13, 21007:23, 21045:14, 21077:21</p> <p>signed [15] - 20972:22, 20973:13, 20983:14, 20983:15, 21007:22, 21010:3, 21010:7, 21010:9, 21040:16, 21041:22, 21044:10, 21046:16, 21118:16, 21118:22, 21126:20</p> <p>significance [8] - 20952:1, 21001:17, 21025:1, 21029:14, 21086:11, 21089:24, 21115:3, 21131:7</p> <p>significant [3] - 21015:21, 21061:1, 21131:5</p> <p>signs [1] - 21108:19</p>	<p>similar [2] - 20950:23, 21138:9</p> <p>simply [7] - 20959:17, 20990:4, 21045:23, 21055:21, 21060:23, 21065:1, 21103:9</p> <p>single [7] - 20960:22, 21031:14, 21046:25, 21056:3, 21056:11, 21075:16, 21109:3</p> <p>Singular [1] - 21031:15</p> <p>sit [1] - 21134:19</p> <p>sitting [4] - 20926:15, 20932:21, 20932:24, 20934:21</p> <p>situation [12] - 20942:13, 20946:11, 20949:8, 20958:11, 20959:10, 20961:16, 20967:6, 20979:16, 21006:11, 21006:13, 21061:17, 21081:10</p> <p>situations [1] - 20952:15</p> <p>six [4] - 20939:3, 20943:5, 20986:12, 21105:21</p> <p>skill [1] - 21140:6</p> <p>skip [2] - 21078:13, 21080:5</p> <p>slice [2] - 21116:15, 21127:8</p> <p>slips [1] - 20982:18</p> <p>small [2] - 20977:19, 21051:4</p> <p>smart [4] - 20954:7, 20961:2, 20967:11, 21131:13</p> <p>sneaky [1] - 20951:15</p> <p>so-called [2] - 21032:9, 21037:14</p> <p>social [19] - 20999:11, 21031:7, 21031:13, 21032:16, 21033:20, 21036:16, 21037:3, 21038:14, 21053:1, 21053:15, 21090:8, 21099:5, 21107:20, 21109:7, 21109:24, 21110:25, 21111:13, 21112:4, 21112:6</p> <p>Social [1] - 21027:13</p> <p>society [1] - 21045:19</p> <p>Sociopath [1] - 21087:18</p> <p>sociopath [6] - 21015:15, 21015:20, 21016:22, 21017:2, 21017:3, 21025:13</p> <p>sociopathic [10] -</p>	<p>21019:6, 21021:2, 21024:17, 21024:20, 21024:23, 21024:25, 21025:12, 21035:1, 21087:25, 21112:24</p> <p>Sociopathy [1] - 21025:11</p> <p>sociopathy [2] - 21015:16, 21029:21</p> <p>sodium [1] - 21088:17</p> <p>soldier [1] - 21090:17</p> <p>soldiers [1] - 21097:10</p> <p>sole [1] - 21056:5</p> <p>solely [1] - 20991:15</p> <p>solved [1] - 21099:18</p> <p>someone [9] - 21009:1, 21032:16, 21037:5, 21064:17, 21070:22, 21085:17, 21086:2, 21086:25, 21118:21</p> <p>sometime [3] - 20962:18, 20969:19, 20973:18</p> <p>Sometime [1] - 21037:14</p> <p>sometimes [1] - 21077:24</p> <p>somewhat [1] - 20959:9</p> <p>somewhere [5] - 20947:12, 21013:25, 21064:6, 21094:20, 21104:7</p> <p>son [6] - 20946:2, 20946:15, 20963:24, 20965:16, 20974:2, 20988:13</p> <p>Son [1] - 20965:4</p> <p>son-in-law [1] - 20965:16</p> <p>soon [4] - 20989:25, 21008:7, 21050:19, 21105:8</p> <p>Sorry [1] - 21034:13</p> <p>sorry [14] - 20947:21, 20971:2, 21004:1, 21007:25, 21023:15, 21036:18, 21041:3, 21041:4, 21042:24, 21057:11, 21057:22, 21058:5, 21096:17, 21098:24</p> <p>sort [39] - 20931:21, 20932:23, 20934:7, 20937:5, 20939:15, 20940:12, 20940:17, 20946:2, 20953:20, 20955:23, 20957:14, 20958:14, 20959:23, 20961:2, 20964:4, 20970:18, 20976:12,</p>
--	--	---	---	---



<p>20977:1, 20982:7, 20986:5, 20991:5, 20991:11, 20992:21, 20992:23, 20995:5, 20996:10, 20998:6, 21001:16, 21007:8, 21013:19, 21013:24, 21016:15, 21017:4, 21026:20, 21048:4, 21063:25, 21069:17, 21102:5, 21114:18</p> <p>sorts [4] - 20977:17, 21003:25, 21007:8, 21054:22</p> <p>sought [1] - 20970:15</p> <p>soul [1] - 20967:5</p> <p>sounded [1] - 20972:25</p> <p>sounds [2] - 20998:1, 21089:5</p> <p>Source [1] - 21056:2</p> <p>source [7] - 21023:14, 21056:3, 21056:5, 21057:21, 21116:22</p> <p>sources [15] - 20973:19, 20973:24, 21023:4, 21023:6, 21023:25, 21032:10, 21048:6, 21068:17, 21074:10, 21074:11, 21129:13, 21135:19, 21136:4, 21137:11, 21137:21</p> <p>South [1] - 20945:18</p> <p>speaking [11] - 20950:5, 20950:20, 20964:19, 20979:12, 20987:13, 21010:2, 21018:9, 21043:21, 21047:9, 21074:14, 21110:21</p> <p>special [3] - 20966:16, 21097:21, 21102:13</p> <p>specific [26] - 20955:8, 20981:10, 20981:13, 20986:13, 21006:24, 21046:18, 21058:19, 21060:15, 21060:18, 21070:1, 21070:3, 21077:12, 21078:1, 21079:20, 21082:24, 21083:1, 21085:11, 21088:19, 21097:15, 21103:7, 21103:11, 21108:13, 21108:19, 21108:20, 21109:13, 21109:16</p> <p>specifically [6] - 20941:13, 20982:25, 20986:16, 21036:9, 21061:7, 21089:18</p>	<p>specifics [1] - 20995:4</p> <p>speculate [1] - 21042:16</p> <p>speculating [3] - 21053:13, 21097:20, 21098:12</p> <p>speculation [2] - 21049:20, 21052:19</p> <p>spend [1] - 20984:1</p> <p>spent [3] - 21026:13, 21083:13, 21100:25</p> <p>spontaneously [1] - 21088:10</p> <p>spouse [1] - 20994:20</p> <p>spring [3] - 21027:17, 21029:9, 21035:12</p> <p>St [1] - 21130:9</p> <p>stab [9] - 20999:15, 21036:23, 21037:1, 21037:6, 21037:20, 21038:18, 21086:18, 21110:3, 21136:15</p> <p>stabbed [1] - 21110:10</p> <p>stabbing [3] - 21000:19, 21102:18, 21131:14</p> <p>staff [2] - 20941:6, 20959:8</p> <p>Staff [2] - 20927:1, 20927:9</p> <p>stage [1] - 21105:2</p> <p>stand [9] - 20977:3, 20979:23, 20984:22, 20991:24, 20992:7, 20993:5, 21008:4, 21058:6, 21092:18</p> <p>standard [3] - 20983:11, 21124:1, 21124:2</p> <p>standards [1] - 21026:2</p> <p>standing [3] - 20943:2, 20943:3, 21080:4</p> <p>standpoint [1] - 20981:19</p> <p>stands [1] - 21060:24</p> <p>stapled [1] - 21046:24</p> <p>Starphoenix [2] - 21083:24, 21084:20</p> <p>start [4] - 20968:22, 21014:7, 21049:1, 21123:24</p> <p>started [5] - 20933:1, 20937:25, 20954:14, 20999:20, 21098:25</p> <p>starting [9] - 20965:6, 20985:4, 21016:2, 21031:20, 21036:19, 21080:7, 21094:2, 21114:20, 21132:3</p>	<p>state [8] - 20990:20, 20991:8, 20991:25, 21056:17, 21079:17, 21081:3, 21124:22, 21125:8</p> <p>statement [7] - 20998:25, 21011:1, 21033:14, 21085:8, 21089:16, 21096:2, 21109:23</p> <p>States [1] - 21102:14</p> <p>states [15] - 20964:14, 20997:6, 21004:2, 21006:10, 21007:8, 21008:19, 21010:22, 21034:1, 21040:16, 21045:6, 21047:16, 21078:14, 21085:22, 21087:11, 21088:21</p> <p>stating [1] - 20993:1</p> <p>station [14] - 20933:25, 20934:14, 20935:5, 20935:8, 20935:12, 20935:13, 20942:12, 20944:12, 20944:17, 20979:6, 20979:25, 20987:11, 21083:13, 21101:2</p> <p>Station [1] - 21077:6</p> <p>Statistical [1] - 21016:2</p> <p>stay [5] - 20959:14, 21027:15, 21028:5, 21035:11, 21109:4</p> <p>staying [4] - 20932:19, 20932:20, 20939:21, 20939:22</p> <p>Steinburg [1] - 20960:8</p> <p>step [1] - 21041:23</p> <p>stepping [2] - 21066:17, 21099:22</p> <p>Sterling [2] - 20929:3, 20930:13</p> <p>still [17] - 20931:2, 20936:15, 20985:7, 21002:12, 21002:18, 21012:16, 21029:5, 21044:7, 21044:22, 21048:2, 21049:9, 21051:6, 21054:8, 21056:20, 21065:4, 21092:11, 21117:2</p> <p>stood [2] - 21028:22, 21040:2</p> <p>stop [3] - 20940:16, 21095:14, 21136:18</p> <p>stopped [1] - 20945:22</p> <p>stored [1] - 21051:3</p> <p>Story [2] - 20965:4, 21066:10</p> <p>story [5] - 20972:25,</p>	<p>21068:21, 21075:3, 21085:9, 21116:14</p> <p>Street [2] - 21043:17, 21047:7</p> <p>street [1] - 20961:2</p> <p>street-smart [1] - 20961:2</p> <p>streets [1] - 20970:18</p> <p>stress [1] - 20963:1</p> <p>stretch [1] - 20973:23</p> <p>strict [1] - 21072:5</p> <p>strictly [1] - 20949:4</p> <p>strikes [2] - 21089:22, 21125:20</p> <p>striking [1] - 21039:20</p> <p>strings [1] - 20965:23</p> <p>strongly [1] - 21045:7</p> <p>struck [1] - 21029:19</p> <p>students [1] - 21068:24</p> <p>study [1] - 20997:21</p> <p>stuff [4] - 20943:19, 20963:25, 21053:11, 21129:9</p> <p>stupid [1] - 20943:19</p> <p>style [1] - 21070:25</p> <p>sub [2] - 20931:15, 20932:15</p> <p>subject [2] - 21076:16, 21125:11</p> <p>submission [1] - 21064:14</p> <p>submissions [2] - 21056:25, 21138:4</p> <p>submit [1] - 20997:18</p> <p>subpoena [7] - 21059:25, 21104:16, 21104:21, 21105:24, 21106:7, 21106:10, 21106:13</p> <p>subpoenaing [1] - 21055:6</p> <p>subscription [2] - 20931:2, 20972:23</p> <p>subscriptions [3] - 20972:22, 21122:25, 21132:1</p> <p>subsequent [2] - 20986:9, 21116:16</p> <p>subsequently [2] - 20973:6, 21029:17</p> <p>success [1] - 20944:3</p> <p>suddenly [1] - 20966:6</p> <p>suffered [2] - 21015:19, 21060:5</p> <p>suffering [6] - 20986:25, 20994:9, 21019:4, 21021:1, 21034:24, 21087:25</p> <p>sufficient [1] - 21020:1</p> <p>sufficiently [1] -</p>	<p>20959:13</p> <p>suggest [4] - 21104:25, 21106:18, 21116:6, 21121:8</p> <p>suggested [11] - 20954:4, 20980:21, 21009:1, 21040:20, 21040:22, 21074:10, 21080:18, 21090:10, 21116:17, 21116:19, 21116:20</p> <p>suggesting [6] - 21020:12, 21042:17, 21084:8, 21102:7, 21121:6, 21137:3</p> <p>suggestion [2] - 21102:21, 21123:11</p> <p>suggestive [2] - 20984:19, 20992:10</p> <p>suicide [2] - 20960:15, 20962:1</p> <p>summary [5] - 21010:17, 21037:9, 21059:17, 21061:24, 21106:10</p> <p>sunk [1] - 20941:10</p> <p>Sunrise [1] - 21056:13</p> <p>super [1] - 20938:6</p> <p>superficial [1] - 21074:22</p> <p>supervising [1] - 20931:15</p> <p>supervisor [2] - 20931:12, 20932:16</p> <p>supervisors [3] - 20931:16, 20945:17, 20957:16</p> <p>Support [1] - 20927:9</p> <p>support [2] - 21001:7, 21019:18</p> <p>Supported [1] - 21066:4</p> <p>supported [1] - 21117:23</p> <p>supportive [1] - 21026:22</p> <p>suppose [6] - 20962:25, 21002:8, 21008:2, 21052:19, 21071:14, 21132:24</p> <p>supposed [1] - 20967:4</p> <p>Surgeons [1] - 21010:7</p> <p>surgery [1] - 21066:24</p> <p>surmised [1] - 21001:14</p> <p>surprised [4] - 20981:8, 21028:18, 21028:24, 21029:5</p> <p>surprising [1] - 21130:19</p> <p>surrender [1] -</p>
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20942:15 surrendered [4] - 20944:18, 20948:19, 20949:8, 20968:1 surrounds [1] - 21018:6 survive [1] - 21030:6 survived [1] - 21054:11 surviving [1] - 21054:3 suspect [6] - 21003:18, 21048:12, 21053:9, 21067:16, 21067:17, 21074:1 suspected [3] - 20979:17, 21000:19, 21134:15 sustaining [1] - 20994:23 swings [1] - 21125:11 Sworn [2] - 20929:3, 20929:6 sworn [2] - 20930:13, 20974:22 syllable [1] - 21049:19 Symonds [1] - 21066:10 symptoms [1] - 21029:22 Symptoms [1] - 21115:11 synopsis [2] - 21100:19, 21100:22 system [6] - 20978:9, 20978:18, 20986:10, 21107:17, 21117:1, 21135:6	telegram [5] - 20936:25, 20937:2, 20937:15, 20938:19 telephone [16] - 20941:2, 20948:25, 20952:23, 20953:10, 20956:12, 20956:13, 20996:13, 21018:20, 21019:11, 21040:11, 21045:24, 21046:23, 21106:16, 21116:3, 21118:12, 21119:1 ten [1] - 21050:8 tend [1] - 21134:16 term [2] - 21016:17, 21080:21 terminated [1] - 20993:2 terminology [3] - 21015:16, 21038:23, 21039:18 terms [41] - 20934:1, 20954:22, 20955:9, 20957:23, 20962:15, 20967:8, 20967:17, 20979:10, 20982:2, 20982:13, 20995:18, 20995:22, 21008:5, 21012:11, 21012:18, 21021:20, 21025:3, 21026:8, 21029:12, 21034:11, 21042:2, 21042:6, 21051:13, 21051:15, 21054:11, 21054:20, 21055:10, 21055:14, 21059:3, 21065:20, 21066:19, 21069:20, 21087:16, 21100:16, 21111:3, 21113:15, 21120:4, 21131:2, 21131:19, 21133:17, 21133:22 terrible [3] - 20940:10, 20946:11, 20946:16 terrified [1] - 20943:20 Territories [1] - 21082:2 tertiary [1] - 21066:25 test [1] - 21023:23 Test [2] - 21066:9, 21066:10 testified [1] - 21005:12 testify [3] - 20930:17, 21011:17, 21012:6 testifying [5] - 20969:2, 21012:5, 21012:19, 21059:20, 21076:3 testimony [22] - 20964:7, 20975:4, 20999:5, 21002:14, 21002:16, 21003:22,	21004:13, 21008:12, 21008:15, 21012:11, 21014:6, 21020:15, 21030:22, 21031:18, 21031:19, 21036:14, 21047:4, 21049:3, 21081:17, 21081:18, 21110:6, 21121:22 Testimony [1] - 20926:14 testing [3] - 21062:14, 21066:22, 21067:3 tests [6] - 21062:11, 21062:17, 21066:10, 21066:13, 21066:16, 21066:18 text [1] - 21118:19 textbook [1] - 21016:10 thefts [1] - 21016:8 thereafter [2] - 21006:1, 21052:3 thereby [1] - 21045:14 They've [1] - 20985:9 they've [3] - 20971:19, 21026:14, 21107:19 thing,,,2 [1] - 20950:23 thinking [7] - 20951:11, 20981:23, 20987:8, 21048:13, 21079:25, 21080:2, 21098:23 third [6] - 20938:10, 20948:9, 20994:1, 20994:5, 21038:7, 21079:15 thorough [1] - 21082:9 thoughts [1] - 21070:21 threat [2] - 20981:20, 21078:11 threatened [1] - 20937:11 three [16] - 20931:22, 20967:23, 20993:1, 20993:19, 21005:1, 21037:15, 21038:15, 21039:8, 21073:21, 21076:17, 21093:20, 21099:22, 21135:19, 21135:24, 21137:11, 21137:21 three-line [1] - 20993:1 throughout [6] - 20939:9, 20952:3, 20975:9, 20975:12, 20976:1, 21070:15 throw [1] - 21108:21 Thunder [1] - 20945:8 Thursday [1] - 20959:20 ticked [1] - 20942:1 ticking [1] - 21091:9 tired [3] - 20945:21,	21047:25, 21117:12 to-do [3] - 21003:24, 21007:8, 21013:22 today [23] - 20930:6, 20930:10, 20966:9, 20966:24, 20975:4, 20985:7, 21002:12, 21016:9, 21049:10, 21049:15, 21050:6, 21059:20, 21060:11, 21060:23, 21061:9, 21067:9, 21076:3, 21077:17, 21093:16, 21110:6, 21114:12, 21114:24, 21117:2 today's [1] - 21030:8 together [3] - 20996:24, 21075:8, 21092:11 Tomaszewski [3] - 21061:18, 21062:1, 21062:12 Tomaszewski's [1] - 21062:10 Tony [15] - 20935:15, 20953:3, 20954:3, 20954:4, 20954:17, 20954:20, 20955:17, 20956:8, 20956:21, 20958:14, 20961:21, 20962:22, 20965:14, 20965:15, 21069:15 took [14] - 20933:6, 20943:1, 20943:17, 20949:3, 20960:10, 20965:8, 20981:25, 21004:18, 21068:23, 21076:9, 21077:21, 21079:10, 21104:8, 21110:19 tool [1] - 21116:9 top [11] - 20943:6, 20947:22, 21044:4, 21047:1, 21066:8, 21067:13, 21073:13, 21081:24, 21082:6, 21085:1, 21092:20 Torchy [5] - 20939:4, 20939:5, 20939:10, 20943:1 Toronto [3] - 20935:16, 20945:9, 20964:18 total [2] - 21074:23, 21084:14 totally [3] - 20943:20, 20956:5, 21133:16 touch [6] - 20957:12, 21048:18, 21079:11, 21095:12, 21103:22, 21128:18 touched [2] - 20977:22,	21120:20 Touché [1] - 21132:14 tough [2] - 20951:4, 20963:25 toward [1] - 20962:18 towards [4] - 20991:10, 20991:15, 20991:19, 21079:17 town [3] - 20942:3, 20942:4, 20946:14 trace [1] - 21050:18 track [2] - 21050:3, 21055:18 tradition [1] - 20978:2 trailers [1] - 20933:21 train [1] - 20937:4 training [2] - 20976:14, 21028:22 transcript [3] - 20948:8, 20953:9, 21004:16 Transcript [2] - 20926:12, 20930:1 transcription [1] - 21140:5 transfer [1] - 21059:17 transferred [2] - 20945:9, 20959:24 transmitted [2] - 21072:7, 21124:10 transpired [4] - 20999:10, 21068:11, 21086:20, 21110:8 traumatic [1] - 21006:12 travel [2] - 20932:2, 20957:13 travelled [1] - 20939:9 treat [1] - 21110:19 treating [1] - 21081:16 treatment [3] - 21107:11, 21113:13, 21120:5 tremendous [1] - 20964:5 trial [28] - 20977:4, 20979:23, 20984:23, 20985:1, 20991:18, 20991:24, 20992:7, 20993:5, 20998:19, 20998:23, 21003:1, 21004:9, 21005:3, 21006:18, 21006:21, 21006:23, 21009:9, 21011:18, 21012:11, 21013:12, 21017:22, 21032:20, 21054:15, 21080:15, 21104:5, 21105:9, 21105:16, 21105:23 trials [2] - 20946:4,
T				
tagged [1] - 21050:17 Tallis [16] - 20989:23, 21080:9, 21080:18, 21081:12, 21081:14, 21081:17, 21081:21, 21081:25, 21082:7, 21082:9, 21082:12, 21105:25, 21123:11, 21123:15, 21128:10, 21128:18 taped [1] - 20953:11 task [3] - 20976:22, 20991:4, 20998:14 Td [1] - 20928:5 teachers [1] - 21130:3 team [2] - 20936:22, 20938:20 teams [2] - 20931:18, 20938:22 Technician [1] - 20927:14 teenager [1] - 21030:3				



20946:8 trick [1] - 20966:7 tried [2] - 20944:2, 21014:25 trouble [7] - 20987:1, 20994:21, 21031:5, 21034:5, 21129:7, 21129:16, 21130:12 trouble-maker [1] - 21129:7 trouble-makers [1] - 21129:16 troubled [1] - 20981:17 troubles [1] - 20986:9 true [2] - 21131:6, 21140:5 truth [1] - 20961:3 try [17] - 20947:7, 20947:8, 20953:18, 20955:3, 20955:13, 20956:22, 20957:25, 20958:1, 20958:12, 20970:22, 20991:5, 21024:1, 21077:10, 21080:24, 21096:5, 21107:12 trying [17] - 20934:24, 20942:7, 20955:2, 20956:18, 20957:24, 20961:6, 20966:7, 20969:13, 20981:21, 20986:2, 21016:11, 21053:5, 21057:21, 21065:4, 21069:24, 21079:13, 21128:21 Tuesday [2] - 20926:21, 20992:20 turn [29] - 20949:20, 20960:2, 20966:5, 20987:23, 20989:7, 21002:22, 21003:19, 21004:15, 21007:4, 21008:16, 21010:14, 21010:20, 21012:2, 21013:13, 21014:6, 21018:14, 21030:14, 21030:22, 21031:18, 21036:17, 21040:6, 21046:22, 21047:8, 21061:12, 21061:22, 21062:18, 21066:6, 21088:15, 21092:14 Turn [1] - 21046:5 turned [4] - 20933:6, 20946:10, 21103:2, 21129:4 turning [1] - 20989:15 twist [1] - 20965:8 two [28] - 20931:24, 20933:2, 20936:24,	20937:19, 20937:20, 20937:23, 20938:24, 20944:19, 20960:22, 20964:2, 20971:15, 20977:6, 20984:5, 20990:22, 20993:1, 21008:9, 21013:2, 21038:15, 21080:5, 21086:16, 21090:8, 21093:20, 21114:15, 21122:14, 21129:1, 21134:5, 21136:25 twofold [1] - 21124:23 type [7] - 20932:24, 20935:21, 20943:11, 20961:3, 20997:12, 20997:13, 20998:14 types [2] - 20988:17, 20993:19 typical [1] - 20938:9	21050:16, 21068:24, 21109:13 unlawfully [2] - 20969:4, 20969:25 unless [1] - 21064:6 Unless [1] - 21120:6 unlike [1] - 20938:4 unpack [1] - 20933:2 unpacking [2] - 20933:5, 20933:20 unreal [1] - 20943:2 unreliable [1] - 21016:7 unsolved [1] - 21098:19 unsupported [1] - 21033:15 unusual [8] - 20986:11, 20998:7, 21039:18, 21114:9, 21114:13, 21114:16, 21114:23, 21115:1 up [89] - 20932:21, 20932:24, 20933:3, 20933:25, 20934:14, 20934:15, 20935:6, 20935:7, 20935:18, 20936:23, 20937:1, 20937:5, 20937:8, 20940:11, 20940:21, 20940:23, 20940:24, 20941:20, 20943:9, 20944:14, 20944:24, 20946:13, 20947:18, 20952:19, 20955:15, 20955:18, 20957:1, 20957:13, 20958:10, 20958:19, 20961:10, 20961:11, 20962:6, 20963:12, 20963:15, 20965:2, 20966:11, 20966:25, 20972:8, 20980:4, 20989:4, 20996:24, 20998:22, 21003:13, 21013:16, 21014:10, 21014:14, 21014:20, 21020:2, 21020:11, 21022:18, 21027:5, 21030:16, 21032:23, 21035:3, 21037:17, 21044:19, 21045:12, 21054:17, 21055:19, 21059:2, 21069:8, 21072:18, 21073:4, 21075:1, 21088:10, 21090:17, 21090:18, 21093:4, 21094:10, 21094:15, 21099:12, 21100:14, 21101:21, 21104:11, 21112:20, 21115:7, 21115:23, 21116:8,	21116:20, 21118:7, 21125:24, 21128:8, 21129:19, 21133:1, 21133:22, 21138:21 upper [1] - 21071:1 upset [5] - 20942:21, 20945:1, 20946:1, 20946:21, 20956:21 urge [1] - 21045:7 urging [1] - 20966:4 useful [1] - 21027:18 uttering [1] - 20943:19	voluminous [4] - 21027:7, 21027:20, 21027:22, 21035:5 voluntarily [2] - 20949:7, 20968:1 voluntary [1] - 20949:4 volunteered [1] - 21136:24	
	U			W	
Ullrich [2] - 21010:19, 21011:24 ultimate [1] - 20991:11 umm [1] - 20994:23 Umm [7] - 20944:8, 20949:16, 20954:24, 20956:12, 21006:13, 21058:1, 21115:5 ump [1] - 21033:16 unbelievably [1] - 20963:3 uncomfortable [1] - 21102:21 uncommunicative [1] - 20959:9 Under [2] - 21097:21, 21122:1 under [10] - 20931:22, 20946:16, 20955:25, 20959:25, 20976:16, 20978:4, 21041:22, 21089:14, 21089:15, 21097:15 underneath [1] - 20932:23 understood [9] - 20941:10, 20956:20, 20961:24, 21019:14, 21027:24, 21028:4, 21057:11, 21106:24, 21125:16 university [1] - 20976:2 University [9] - 20975:13, 20975:15, 20976:14, 20997:9, 21034:22, 21043:24,			V	wait [1] - 20960:7 wake [1] - 20940:10 walk [1] - 20984:10 Wallace [3] - 20974:24, 20974:25, 20975:1 ward [1] - 21032:25 warn [1] - 21123:25 warned [1] - 21123:24 warning [3] - 21093:3, 21124:2, 21124:3 warrant [9] - 20939:25, 20941:9, 20941:11, 20941:12, 20941:13, 20942:16, 20950:7, 21123:7, 21123:9 waters [1] - 21098:7 Watson [1] - 20978:6 ways [2] - 21120:6, 21129:1 wealth [1] - 21026:16 week [3] - 20936:4, 20936:24, 20964:7 weeks [4] - 20936:24, 21008:9, 21105:21 weighing [1] - 21120:11 weight [3] - 21021:22, 21025:1, 21120:15 welcome [2] - 20974:9, 20974:17 Welfare [2] - 21027:14, 21035:10 well-documented [3] - 21044:2, 21045:10, 21114:9 Western [2] - 20932:4, 20952:3 Weyburn [1] - 20939:11 whatsoever [3] - 21001:18, 21007:3, 21083:17 whereabouts [1] - 21043:25 whole [8] - 20940:8, 20941:15, 21009:6, 21012:24, 21034:10, 21074:9, 21075:3, 21116:14 widely [1] - 21086:24	
			valid [3] - 20992:8, 21002:1, 21105:17 valuable [1] - 21027:8 value [2] - 21001:3, 21088:24 Vancouver [2] - 20966:18, 21067:23 Vanessa [2] - 20927:3, 20930:16 various [8] - 20952:6, 20973:19, 20992:16, 21047:10, 21047:18, 21047:22, 21074:14, 21111:10 vast [1] - 21089:13 vein [1] - 21110:6 verbal [2] - 20996:2, 20996:13 verdict [1] - 21052:2 version [1] - 21064:6 versions [1] - 21063:19 vet [1] - 21025:25 via [1] - 21067:25 vicious [2] - 21134:11, 21134:13 victim [1] - 20997:17 view [11] - 20960:10, 20960:13, 20961:19, 21019:25, 21075:1, 21083:23, 21089:17, 21100:3, 21116:4, 21117:21, 21121:10 viewing [1] - 21036:2 violence [1] - 21130:15 violent [3] - 20981:20, 21136:13, 21136:14 virtually [1] - 21129:15 visit [2] - 20957:14, 20989:12 visited [4] - 20957:19, 20969:16, 20988:9, 21094:18 visiting [1] - 21094:10 Volume [1] - 20926:22		



<p>wife [7] - 20945:7, 20946:25, 20947:16, 20960:12, 20960:13, 20972:22, 21081:16 wife's [2] - 21068:23, 21069:3 willingly [1] - 20983:15 Wilson [1] - 20928:6 window [1] - 20941:1 Winds [1] - 20945:18 Wing [12] - 20982:22, 20986:19, 21019:1, 21020:17, 21027:8, 21028:12, 21035:7, 21059:15, 21060:2, 21060:6, 21060:19, 21068:18 Winnipeg [9] - 20945:17, 20982:21, 21019:2, 21027:9, 21028:14, 21028:21, 21029:11, 21035:8, 21129:22 Winnipeg's [1] - 21129:24 winter [1] - 21000:20 wisely [1] - 20953:14 wish [2] - 20988:12, 21108:3 withholding [1] - 20981:7 witness [9] - 20930:6, 20974:12, 20974:20, 21004:11, 21005:22, 21081:14, 21093:16, 21123:23, 21139:8 Witness [1] - 20957:7 witnessed [1] - 20983:14 witnesses [2] - 21011:21, 21132:16 woke [1] - 20940:20 Wolch [15] - 20928:2, 20929:11, 21037:23, 21038:13, 21038:20, 21039:15, 21039:20, 21064:13, 21064:15, 21065:6, 21067:24, 21121:18, 21121:19, 21138:7, 21138:8 woman [2] - 21000:19, 21110:10 wonder [1] - 21015:3 wondered [2] - 21081:6, 21126:18 wondering [5] - 21065:19, 21085:11, 21086:23, 21126:14, 21127:12 word [5] - 20976:19,</p>	<p>21040:23, 21051:14, 21052:14, 21117:23 words [9] - 20937:2, 20985:19, 21049:19, 21122:17, 21124:13, 21124:14, 21128:2, 21129:7, 21137:9 work-up [1] - 21093:4 worker [15] - 20999:12, 21031:13, 21032:16, 21033:20, 21036:16, 21037:4, 21038:15, 21053:1, 21053:16, 21062:3, 21090:8, 21099:5, 21109:24, 21110:25, 21111:13 workers [4] - 21031:7, 21107:20, 21112:4, 21112:6 works [1] - 21129:1 world [2] - 20945:7, 21130:21 worse [1] - 21130:11 worthy [1] - 21003:3 write [4] - 21047:18, 21118:20, 21118:21, 21118:22 writer [1] - 20956:7 writes [4] - 20959:2, 20960:3, 20965:7, 21047:5 writing [11] - 20957:5, 20961:14, 20971:5, 21040:14, 21047:3, 21047:15, 21070:25, 21085:1, 21085:14, 21112:3, 21137:12 written [21] - 20965:3, 20967:2, 20972:6, 20972:8, 20972:12, 20995:9, 20995:25, 20997:19, 20999:24, 21014:16, 21024:1, 21024:6, 21024:10, 21036:22, 21040:15, 21042:4, 21070:22, 21095:22, 21112:9, 21135:19, 21136:1 wrongdoing [1] - 21100:15 Wrongful [1] - 20926:3 wrongly [1] - 21110:1 wrote [5] - 20957:3, 20971:1, 20993:1, 21043:16, 21096:20</p>	<p>21069:7</p> <p style="text-align: center;">Y</p> <p>yards [1] - 21130:16 year [4] - 20945:12, 20953:2, 20955:5, 21134:5 years [31] - 20931:3, 20931:10, 20935:15, 20938:1, 20939:9, 20947:4, 20950:24, 20954:6, 20956:14, 20958:2, 20966:1, 20966:10, 20979:1, 21014:4, 21025:24, 21026:13, 21048:2, 21049:21, 21049:23, 21050:8, 21052:16, 21053:7, 21081:20, 21088:5, 21092:10, 21094:8, 21099:24, 21103:5, 21103:19, 21117:16, 21136:25 yeoman's [1] - 20963:1 yesterday [2] - 21129:20, 21130:2 Yorkton [40] - 20982:20, 20986:18, 20987:3, 20998:25, 20999:23, 21007:9, 21007:11, 21007:14, 21008:7, 21008:23, 21009:2, 21009:17, 21010:23, 21018:25, 21020:16, 21022:19, 21027:6, 21027:20, 21027:23, 21028:10, 21035:4, 21052:5, 21052:18, 21055:7, 21056:14, 21058:9, 21058:16, 21058:18, 21061:8, 21061:10, 21061:19, 21062:2, 21062:8, 21062:24, 21063:2, 21068:17, 21085:23, 21108:5, 21108:23, 21113:22 young [38] - 20931:23, 20933:1, 20933:2, 20933:6, 20933:16, 20936:6, 20937:20, 20937:21, 20937:22, 20938:1, 20940:9, 20941:4, 20942:2, 20945:3, 20947:17, 20950:14, 20952:2, 20952:15, 20954:6, 20954:7, 20955:13, 20958:10, 20961:3,</p>	<p>20961:7, 20966:21, 20967:11, 21019:3, 21020:25, 21078:7, 21079:15, 21114:10, 21114:14, 21121:14, 21121:24, 21122:6, 21122:7, 21123:16, 21130:18 Young [4] - 20965:13, 20965:19, 20970:4, 21122:8 youngest [1] - 20963:24 yourself [17] - 20952:23, 20973:22, 20995:17, 21012:3, 21013:5, 21018:7, 21018:16, 21030:16, 21040:8, 21040:15, 21042:3, 21046:14, 21047:15, 21076:12, 21089:24, 21127:17, 21133:4 youth [2] - 21031:4, 21045:13 Ypc [1] - 21062:4</p>
	X		Z
			<p>Zbeetnoff [1] - 21061:20</p>

