

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

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

On Monday, June 12th, 2006

Volume 161

Inquiry Proceedings



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Mr. Hersh Wolch, Q.C., **for** Mr. David Milgaard
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Ms. Lana Krogan-Stevely, **for** Government of Saskatchewan
Ms. Catherine Knox, **for** Mr. T.D.R. (Bobs) Caldwell
Mr. Garrett Wilson, Q.C., **for** Mr. Serge Kujawa
Mr. Chris Boychuk, Esq., **for** Mr. Eddie Karst
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Mr. Marvin Bloos, Q.C., **for** Mr. Larry Fisher
Mr. David Frayer, Q.C., and Ms. Jennifer Cox,
 for Minister of Justice
 (Canada), The Hon. Vic Toews
Mr. Marshall Hopkins, Esq., **for** Justice Calvin Tallis
 (Retired)



1
2
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5
6
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10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF PROCEEDINGS

DESCRIPTION:

PAGE:

JOYCE IOLA MILGAARD, CONTINUED

| | |
|-------------------------|-------|
| - BY MS. KNOX | 33100 |
| - (EXCERPT OF TAPE 30) | 33184 |
| - (EXCERPT ENDED) | 33190 |
| - (EXCERPT OF TAPE 30) | 33191 |
| - (EXCERPT ENDED) | 33204 |
| - (EXCERPT OF TAPE 123) | 33232 |
| - (END OF TAPE) | 33242 |
| - (EXCERPT OF TAPE 123) | 33248 |
| - (EXCERPT ENDED) | 33252 |



Transcript of Proceedings

(Reconvened at 1:05 p.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

JOYCE IOLA MILGAARD, continued:

BY MS. KNOX:

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6
7 Q Good afternoon, Mrs. Milgaard. For the record
8 only, my name is Catherine Knox and, as you know,
9 I'm here as counsel for T.D.R. Caldwell who was
01:05 10 the prosecutor at your son's preliminary inquiry
11 and trial in 1969, 1970.

12 A Yes, thank you.

13 Q Okay. Now, Mrs. Milgaard, we've spent, I would
14 like to be able to say many days, but we've
01:05 15 actually spent many months in various hearing
16 rooms since this Inquiry convened hearing evidence
17 in January of 2005. We've heard from a large
18 number of witnesses, we've looked at a lot of
19 documents and for many of us we've been
01:06 20 cross-referencing materials that go back to '69
21 forward into the present time and I presume you,
22 with your counsel, have been doing some of that as
23 well in spite of all the work that you've done on
24 this file since your son was arrested in 1969.
01:06 25 Would I be correct in that?



1 A Yes.

2 Q Okay. Now, at the outset I want to state to you
3 what my purpose is in conducting this
4 cross-examination and there are a number of things
01:06 5 that I hope that you will understand and
6 appreciate. Number 1, my client is now, has been
7 and since the DNA results became available in 1997
8 has maintained a deep apology to you and your
9 family; you are aware of that? You heard, as I
01:06 10 understand from your book, the press conference
11 where he apologized to you, to your son and to
12 anyone affected by the decisions that they had
13 made and the work that they had done? I believe
14 it was on July 21st, 1997. Do you remember seeing
01:07 15 that press conference?

16 A I don't have a current memory of it, but I know it
17 took place and I can remember some of the things
18 that happened there, yes.

19 Q Okay. You in fact referred to it in your book in
01:07 20 a discussion that you had with your daughter when
21 you saw, you watched the press conference, you
22 watched my client and his then counsel Mr. Halyk
23 and Mr. Kujawa doing a response to the DNA
24 results. Do you remember that?

01:07 25 A If I wrote it in my book, I remembered it at that



1 time.

2 Q Okay. That was one I didn't get a page reference
3 for, but if you bear with me, I think I can find
4 it fairly quickly. It's at page 251 of your book
01:08 5 and, Mr. Commissioner, for the record, I'm
6 referring to Mrs. Milgaard's novel *A Mother's*
7 *Story*, the document number 269317, and the
8 document page in our system is 269578, if I could
9 have that brought up, please, and if you want to
01:08 10 look at your copy of your book, it is page 251.

11 A I don't have it here.

12 Q Okay.

13 A That's fine.

14 Q If you would just look at the screen, beginning at
01:08 15 the very top of the page 251, do you see that you
16 wrote that:

17 "On July 21, there was an amazing press
18 conference --"

19 You indicated in Regina. In fact, it was here in
01:08 20 Saskatoon, but that's a minor detail that I
21 wouldn't take issue with.

22 "Serge Kujawa, former head of
23 prosecutions who had handled David's
24 appeal, and Bobs Caldwell, who had
01:08 25 prosecuted his trial, flanked their



1 lawyer, Si Halyk, Kujawa and Caldwell
2 were mum, letting the pleasant --"

3 And I might take issue with that at times,

4 "-- Mr. Halyk do all of the talking."

01:09 5 And you quoted:

6 "They both extend their sincerest
7 apologies to David Milgaard, his family
8 and all others directly affected by the
9 failure of the system that resulted in
01:09 10 his wrongful conviction," Halyk said.

11 "They fully understand that there is
12 nothing they can say today that will
13 ease this horrible injustice and pain
14 that has been inflicted on Milgaard and
01:09 15 his family by this wrongful conviction."

16 Do you remember it now?

17 A Yes, I can remember writing this.

18 Q And he went on to say that he:

19 "... stopped short of saying that his
01:09 20 clients admitted to any wrongdoing,
21 saying the failure was strictly that of
22 the legal system."

23 And the press conference went on to indicate that
24 Mr. Kujawa and Mr. Caldwell were joining you,
01:09 25 your son and your family in requesting of the



1 Government of Saskatchewan that they ask, or
2 arrange for a public inquiry because they, like
3 you, needed to know for their peace of mind, in
4 effect, how this could have happened. Do you
01:10 5 remember that?

6 A I don't recall them saying that.

7 Q Okay. If we could bring up document 332039?

8 A I can certainly accept it.

9 Q I can just show you in the documents. 332039. If
01:10 10 we could go to -- and this is the transcript of
11 the press conference which is a Commission
12 document. If we can go to the next page, please,
13 332040, and if we can bring out this paragraph,
14 please. You'll see that Mr. Halyk said at the
01:10 15 press conference:

16 "That being said, my clients have
17 instructed me to join with David
18 Milgaard, his family and others in
19 requesting that the Minister of Justice
01:10 20 for Saskatchewan take immediate steps to
21 direct a full judicial inquiry into all
22 of the circumstances and factors that
23 resulted in the wrongful conviction of
24 David Milgaard. We ask that this
01:11 25 decision by him be one that includes an



1 instruction that the inquiry be held as
2 soon as is practicably possible."

3 Do you see that?

4 A Yes, I do.

01:11 5 Q So on July 21st, the day after the DNA report was
6 released in England, you'll agree that my client
7 stepped forward and said I am terribly sorry about
8 what happened and please, I join with her and her
9 family, let's have an inquiry to see what went
01:11 10 wrong?

11 A Yes, I see that.

12 Q If we could go to the last page, please, 332041,
13 the last paragraph, please, Mr. Halyk concluded by
14 saying that on behalf of my client and Mr. Kujawa:
01:11 15 "My client's believe it to be of the
16 utmost importance that all those
17 concerned and the public have an
18 opportunity to become, through this
19 process, fully aware of all the
01:12 20 circumstances surrounding this tragedy."

21 Do you remember that being said by them?

22 A No, but I see it was.

23 Q Mrs. Milgaard, would you agree that that step
24 forward at that very early stage by my client was
01:12 25 perhaps, and I know that you had a lot of issues



1 and made a lot of allegations about him over the
2 years, but this is perhaps more consistent with a
3 man who has come to the realization that a belief
4 he held for many years based on a good faith
01:12 5 judgment that he thought he had made when he
6 learned that he was wrong, he wanted to know how
7 is it possible that this thing went so wrong just
8 like you needed to know or wanted to know how it
9 was that it went wrong. Do you agree that that
01:12 10 appeared to be what he was saying in that press
11 conference?

12 A Absolutely.

13 Q And, Mrs. Milgaard, would you agree with me that
14 if Mr. Caldwell was the man that you and Mr. Asper
01:13 15 and others had accused him of being so many times
16 in the previous years, that it would be highly
17 unlikely that he would want a full government
18 inquiry to look at every single thing he did; in
19 fact, in his case, thoughts that he had, because
01:13 20 his thoughts were written in his file many times,
21 to see what had happened that caused your son to
22 be wrongfully convicted?

23 A I lost the question.

24 Q Was that request for an inquiry in your mind
01:13 25 consistent with a man who was acting in good faith



1 with an honest belief that he had prosecuted the
2 right man or was it consistent with the man you
3 were accusing him of being, somebody who knowingly
4 let your son stay in jail for 21 years for a crime
01:13 5 he knew he didn't commit?

6 A Well, probably it would not be consistent with
7 what I thought of Mr. Caldwell.

8 Q Okay. Mrs. Milgaard, you know that since 1997,
9 that Mr. Caldwell has maintained an apologetic
01:14 10 state towards you, he has expressed regret for
11 what happened to your son and continued up until
12 the time of this Inquiry to express deep regret
13 about what happened to your son and the part that
14 he played that gave, in giving rise to his
01:14 15 wrongful conviction don't you?

16 A Yes, I know that.

17 Q Okay. Mrs. Milgaard, you also know through
18 various sources, don't you, that Mr. Caldwell
19 adamantly denies many of the allegations of
01:14 20 wrongdoing that you've made against him over the
21 years?

22 A Yes, I do.

23 Q Okay. Mrs. Milgaard, you have sat through the
24 Inquiry, you have read the many records that are
01:14 25 available to us, you have listened to the



1 evidence. Is it your belief today as you stated
2 in your book in 1999 that Mr. Caldwell engaged in
3 misconduct in any aspect of the investigation,
4 prosecution of your son David Milgaard in 1969,
01:15 5 1970?

6 A I would not say that he had, the way you put it,
7 something about misconduct. I believe that
8 terrible mistakes were made. I still have not
9 been able to wash this man clean as far as I'm
01:15 10 concerned. Just looking at the file that he had
11 with all of the information that was in it, all of
12 the things that have come out in this Inquiry have
13 not made me feel that he wasn't responsible in
14 some way. Now, having said that, I have not said
01:16 15 it -- I don't believe it was deliberate misconduct
16 on his part. Does that help?

17 Q It will help him I'm sure.

18 A Okay.

19 Q Now, Mrs. Milgaard, you've indicated, and I'll
01:16 20 borrow and use your expression, that you haven't
21 been able to wash him clean because of what you've
22 heard at the Inquiry and the things that you've
23 seen in the file, and I appreciate that probably
24 as much as I don't want to be standing here, you
01:16 25 don't want to be sitting there, but I do have a



1 duty to my client to try to establish on the
2 record what it is that you believe, based on what
3 you've seen in the file and what you've heard at
4 the Inquiry that he has done wrong. It might be
01:17 5 helpful if I take you through it in a guided way
6 because I've identified places where you've
7 accused him of misconduct, but if it's your
8 presence, you can tell me what you now hold to be
9 the beliefs as to what you've heard at this
01:17 10 Inquiry that makes you unable to wash him clean.
11 Would you prefer that I take you through it or
12 would you prefer to respond?

13 A Either way. I'm fine either way.

14 Q Okay. Then maybe that I'll start with some of the
01:17 15 allegations that you made against him and we can
16 go by them allegation by allegation and where you
17 need documents I'll try to have the documents
18 available for you, but as I review the file and
19 the information that went out into the public, one
01:17 20 of the first allegations that you made against my
21 client that was accusing him of misconduct or
22 wrongdoing was an allegation you made in 1980
23 about a knife from the murder trial going missing.
24 Do you remember that allegation?

01:18 25 A Yes, I do. I honestly do not know why we became



1 so focused on that knife, but at that particular
2 time it had seemed very important that that knife
3 had gone missing and that was my understanding
4 until I got to the Inquiry, that it actually had
01:18 5 gone missing from a policeman's locker, and that
6 it was mysteriously gone missing.

7 Q Can you tell us today where you ever got the
8 notion that this knife had mysteriously gone
9 missing?

01:18 10 A No, I cannot.

11 Q Okay. Now, as I look at the record, and others
12 may have more information because there's so much
13 information I think we all tend to get lost, one
14 of the first times, if not the first time, that
01:19 15 you spoke to the possibility or the suggestion of
16 wrongdoing in that regard was when you did a press
17 release in December, I believe it was December
18 26th of 1980 where you started your campaign
19 posting the \$10,000 reward?

01:19 20 A Okay.

21 Q Do you remember saying in the media that one of
22 the things that you were hoping to get information
23 on was about a knife that had mysteriously gone
24 missing during the trial.

01:19 25 A Well, that tells you it was back in the early



1 days.

2 Q Yeah.

3 A That's when we thought of it.

4 Q Yeah, and trust me, I'm not here to trick you or
01:19 5 anything like that, I'm going to try, as
6 comprehensively as I can, to put the pieces of
7 information that exist in the record to you, and
8 if at any time you need to look at something else
9 and you let me know, I'll try to get it for you if
01:20 10 I don't have the number readily available, but if
11 we could bring up 162192, please, as a starting
12 document on this point. If we could bring out the
13 paragraph in that big circle I've got there,
14 there's one about the knife. You see the
01:20 15 paragraph there reads:

16 "She said she would like information
17 about unsolved mysteries related to the
18 crime, including the disappearance of
19 one of the knives found at the scene
01:20 20 from a police locker."

21 A Uh huh.

22 Q Okay? Now, by that, we're assuming that you are
23 referring to the police locker -- sorry, the knife
24 that was found by Constable Oliver on February
01:20 25 28th, 1969?



1 A Yes.

2 Q And can we agree that the evidence from the police
3 investigation file shows a number of things. The
4 first thing it shows is that this knife was found
01:21 5 on the lower stringer of a fence on the back of
6 one of the yards behind which Gail Miller's body
7 was found?

8 A Yes.

9 Q Now you stated in your book that this knife was
01:21 10 found the day after the murder or the day of the
11 murder, I'm not exactly sure which of those
12 phrases you used, but you referred to the knife in
13 your book in 1999 as being found on the day of or
14 the day after the murder; do you remember that?

01:21 15 A I don't remember that, but if it's in my book I'm
16 probably remembering something from long ago, and
17 that was my remembrance of it.

18 Q Okay. As a matter of curiosity, when you were
19 writing your book in 1999, you had all of this
01:21 20 documentary record available to you to go check;
21 didn't you?

22 A All of which documentary record?

23 Q The police file and everything that had been given
24 to you and your lawyers 1989-1990 up to and
01:22 25 including the Supreme Court of Canada reference;



1 that was all available to you I take it?

2 A I wouldn't have had it at that time, however Peter
3 would have, Peter Edwards would have had it at
4 that time. He was the one that co-wrote the book
01:22 5 with me, and basically I gave him all my taped
6 conversations and information and everything that
7 I had, and --

8 Q Did you --

9 A -- we sort of collaborated together, we would send
01:22 10 things back. But I know, and I've tried in my own
11 mind to figure out what was it about that knife
12 that became so important that eventually just
13 disappeared as far as importance was concerned.

14 Q But the knife became sort of the elephant in the
01:22 15 room with respect to my client, didn't it,
16 regarding allegations that continued to be made
17 about him, allegations that got more elaborate
18 with the passing of time; would you agree?

19 A I didn't know that, I can't remember that the
01:23 20 knife was really tied to Mr. Caldwell.

21 Q Okay.

22 A In my thinking, I don't know that now.

23 Q I'm going to suggest to you that whether it was in
24 your thinking, others on your behalf made bold
01:23 25 accusations that claimed that he made the knife



1 disappear, and if you'll bear with me I'll take
2 you along the path of inflation -- and I don't
3 mean that in a disrespectful way -- but an
4 inflation of the concept of the knife mysteriously
01:23 5 going missing to an attribution of misconduct by
6 him in deliberately losing the knife, and I'll
7 take you there as we go through the documents.

8 A Okay.

9 Q Are you aware, as you look back on what was said
01:23 10 about him by Mr. Asper, Mr. Robert Bruce who was
11 working with you, and others on your behalf, that
12 at a certain point in time they accused him of
13 deliberately getting rid of the knife?

14 A I don't have any current memory of that happening,
01:24 15 but I accept that that probably did, and, you
16 know, it will be documented in the stories.

17 Q Okay. Now Mrs. Milgaard, with respect to the
18 absence of a current memory, can you, having sat
19 as you have for most of the days of this Inquiry
01:24 20 since January of 2005, point to any evidence that
21 has become available to support the notion that
22 either intentionally or accidentally Mr. Caldwell
23 took part in getting rid of a knife that he had
24 reason to believe might be the murder weapon?

01:24 25 A Absolutely not.



1 Q None?

2 A None.

3 Q Okay. Thank you for that. And, ma'am, I want to
4 take you back in terms of the evolution of this
01:25 5 allegation against him, and I will be brief in
6 light of your response, but do you recall the
7 evidence that was given at the preliminary inquiry
8 with respect to the second knife that was found on
9 February 28th, 1969?

01:25 10 A No, I'm sorry, I don't.

11 Q Okay. I'm gonna suggest to you that the
12 transcript from the preliminary inquiry, and in
13 particular the evidence of Officer Kleiv who was
14 the chief exhibit man for the trial, indicated
01:25 15 that -- that he indicated in his evidence, in
16 response to questions from Mr. Tallis, that the
17 knife had been found by Constable Oliver on
18 February 28th, that it was turned over to him,
19 that they had done some investigation with respect
01:25 20 to trying to identify ownership of the knife, and
21 that the knife, at that particular time, he didn't
22 have it at the preliminary inquiry but he
23 undertook to check his notes for Mr. Tallis and to
24 identify where the note was -- or sorry -- where
01:26 25 the knife was; --



1 A Uh-huh.

2 Q -- do you remember that from the preliminary
3 inquiry?

4 A I remember it from here.

01:26 5 Q Okay. Mr. Commissioner, for reference, the
6 transcript numbers for Officer Kleiv's evidence at
7 the preliminary inquiry are page -- at page
8 108185, and then references within his testimony
9 with respect to the knife were found at 108255 to
01:26 10 108261, and then again the knife is referenced in
11 his cross-examination at 108271.

12 COMMISSIONER MacCALLUM: Are those our
13 transcript numbers?

14 MS. KNOX: Yes.

01:26 15 COMMISSIONER MacCALLUM: Okay.

16 MS. KNOX: Yes.

17 BY MS. KNOX:

18 Q And, Mrs. Milgaard, the record shows, or the
19 record from the preliminary inquiry shows that
01:26 20 Officer Kleiv, or Officer -- Kleiv was recalled in
21 redirect; that he testified that, as
22 investigators, they had not been able to establish
23 a connection between that knife and the death of
24 Gail Miller; do you remember hearing that from the
01:27 25 preliminary inquiry?



1 A I don't remember anything from the preliminary
2 inquiry itself, I would be aware of that from
3 having reviewed the evidence here.

4 Q Okay. So, when you made the statement in the
01:27 5 paper in December of 1990 that the knife had
6 mysteriously appeared, were you keeping conscious
7 the evidence of Officer Kleiv that the police had
8 not been able to establish any connection between
9 that knife and the death of Gail Miller?

01:27 10 A I can remember that we established a connection
11 between the knife and Gail Miller because it was a
12 double-edged blade, okay?

13 Q Uh-huh?

14 A The other knife was found underneath her body and
01:27 15 it was broken, so I believe our theory at the time
16 was that he -- this double-edged blade was the --
17 another knife that he subsequently had, and that
18 had left the marks that they did testify to could
19 have been by a double-edged blade, and that's why
01:28 20 we felt that that knife should have been brought
21 in. But that's just the kind of background I have
22 in memory there, but I think that was a reason for
23 thinking it was mysterious, and yet, as I've gone
24 through the Inquiry, I couldn't understand how we
01:28 25 gave it that much importance.



1 Q Okay. And, when you were positing a theory that
2 it might have been that knife, did you pay any
3 attention to the evidence of the other
4 identification officer, Mr. Penkala, on his
01:28 5 examination at the trial, that, at the time that
6 knife was found approximately a month after Gail
7 Miller died, it was resting under a couple of feet
8 of snow on a fence where there were no signs that
9 anybody had been near the fence to deposit it or
01:29 10 any indications of any activity in the area of the
11 fence that would have allowed someone to place it
12 there?

13 A I can't recall the exact testimony, but I don't --
14 I do remember the knife appearing, or in -- when
01:29 15 they brought it up.

16 Q Mr. Commissioner, the evidence of Mr. Penkala in
17 that regard is found at the transcript page 177176
18 beginning, and his specific evidence with respect
19 to the knife and the fact that it was found under
01:29 20 a stringer fence that was covered in up to two
21 feet of snow was found at pages 177214 and 177220.
22 Okay.

23 Now, Mrs. Milgaard, in coming up
24 with the suggestion or the belief that a double
01:30 25 -edged knife might have caused the wounds, you've



1 made reference sometimes to evidence at -- being
2 offered at the trial. I'm going to suggest to you
3 that there was no evidence offered at the trial
4 that these wounds were caused by a knife with a
01:30 5 double edge; can you think of anything to suggest
6 that I am wrong in that?

7 A I believe that one of the witnesses, must have
8 been forensic, you know, that somewhere one of
9 them gave testimony that it could have been a
01:30 10 double -- when he was describing the knife wounds,
11 whether it was on cross or whatever it was, but my
12 memory is very, very definite, that's something
13 that's sort of always been there, that there was
14 that possibility, and I remember that from way
01:30 15 back when.

16 Q Mrs. Milgaard, I'm gonna suggest to you that what
17 you're talking about is a question that was put to
18 I believe it was Officer Kleiv by Mr. Tallis,
19 whether it could have been, there was an objection
01:31 20 to him answering the question because he didn't
21 have the expertise and it was suggested that Dr.
22 Emson would be the better witness to answer that,
23 --

24 A Uh-huh.

01:31 25 Q -- because he hadn't seen the wounds, he was being



1 shown photographs?

2 A Okay.

3 Q And that's the only reference in the transcript,
4 either preliminary or trial, that I have been able
01:31 5 to find about whether wounds could have been
6 caused by a double-edged knife?

7 A Well, that must have been where the thought
8 entered.

9 Q Okay. So when you were going forward with the
01:31 10 suggestion and this grew like topsy to the point
11 where my client was deliberately accused of
12 getting rid of the knife to prevent it going into
13 evidence, that was on the basis of perhaps that
14 single reference to whether it would be single,
01:31 15 double-edged at the preliminary inquiry, you are
16 suggesting?

17 A It could have been. It could have been that with
18 the number of conversations that we had, let's
19 face it, I was starting from the premise that my
01:32 20 son was innocent, that he didn't do it, --

21 Q Okay?

22 A -- and consequently anything that didn't fit we
23 were examining.

24 Q Okay.

01:32 25 A And so we got all kinds of ideas about the knife



1 and everything.

2 Q Okay.

3 A And that's where it would come from.

4 Q Mrs. Milgaard, when these assertions or
01:32 5 allegations were being made against my client,
6 nobody was putting into those allegations that it
7 was a theory that you had, or that they were
8 stating as facts that he had made the murder
9 weapon, or one of the murder weapons, disappear,
01:32 10 and you were saying there was something very
11 strange about that and, by implication, it was
12 evidence of misconduct on his part; that's how it
13 was reported in the press, wasn't it?

14 A It probably was.

01:32 15 Q Now you've indicated that you'd learned at the
16 preliminary inquiry that that theory -- because I
17 suggest to you that there was no evidence of any
18 substance to it anywhere -- that theory is one
19 that you are now satisfied had no truth to it; you
01:33 20 accept that the knife did not mysteriously go
21 missing?

22 A That's correct.

23 Q And I take it you accept that the evidence from
24 Dr. Emson at the trial as found in the
01:33 25 transcript -- and Dr. Emson's evidence is at



1 transcript page 211993 -- but his evidence was
2 that it was his impression, as the forensic
3 expert, that the wounds were caused by a
4 single-edged knife?

01:33 5 A Yes.

6 Q Okay. He didn't say that they were caused by a
7 double-edged knife, he said it was his impression
8 they were caused by a single-edged knife? Okay.
9 So -- and you're aware that the records show that
01:33 10 the knife was made available to Mr. Tallis when he
11 requested Officer Kleiv to look at his notebook
12 and locate it during preliminary inquiry?

13 A I found that out here.

14 Q Okay. You are aware, through the records in Mr.
01:34 15 Caldwell's file, that they established a chain of
16 custody, as it were, for that knife?

17 A Yes, --

18 Q I'm going to re --

19 A -- I found that out here.

01:34 20 Q I'm going to refer you to 009423 for the
21 reference, the reference point that I make to
22 that, if I could have it brought up, please. The
23 number 2 in that listing found in Mr. Caldwell's
24 file that essentially set out the chain of
01:34 25 custody?



1 A Whose document is this?

2 Q That's the handwriting of, I think, probably
3 Officer Penkala at the time. This is from Mr.
4 Caldwell's file.

01:34 5 A It's almost identical to my writing.

6 Q Okay.

7 A And so, when I looked at it, I thought "have --
8 did I write this, where did it come from?"

9 Q Okay. I'll -- would you like to see a coloured
01:35 10 photocopy of it from his file to put your mind at
11 rest?

12 A Yeah, I really would. I think a fingerprint, or a
13 handwriting expert would have to -- this is my
14 writing here, and here, and they are just -- okay.

01:35 15 Q You can hold onto that if you want, --

16 A Okay.

17 Q -- and I'll get it back from you, but --

18 A It's amazing.

19 Q -- did you go to school with the nuns?

01:35 20 A No.

21 Q It looked like the way the nuns taught people to
22 write.

23 A Okay.

24 Q Maybe officer or chief Penkala or retired chief
01:35 25 Penkala went to the same time kind of school that



1 you did?

2 A Teacher.

3 Q Okay. But that is, from Mr. Caldwell's file, the
4 establishment of the chain of custody, done in,
01:35 5 apparently in response to Mr. Tallis' inquiry at
6 the preliminary inquiry.

7 Then if we could go to 007005,
8 please, and a series of notes from various
9 officers done by Mr. Caldwell on the 10th of
01:36 10 September, 1969, during the preliminary inquiry
11 with respect to questions that Mr. Tallis had
12 raised of the officers, and the response, and you
13 see number 3 refers to the hunting knife, and
14 again he is recording the chain of custody, that
01:36 15 it was received by Officer Kleiv from Mr. --
16 Constable Oliver, he was there when he found it
17 but didn't see where it came from, that -- and
18 then you see the note here:

19 "Kleiv still has the knife?" --

01:36 20 A Uh-huh.

21 Q -- at the preliminary inquiry? And, as I said,
22 the record shows that Officer Kleiv was recalled
23 but -- after this meeting, Mr. Tallis had some
24 questions of him, but appeared not to have any
01:36 25 concerns about the location of the knife because



1 he didn't raise it with him. Now, Mrs. Milgaard,
2 you've also heard the evidence -- and I won't go
3 into it in detail, we're all familiar with it --
4 of Mr. Tallis that in fact, far from the knife
01:37 5 disappearing, he made a decision that he didn't
6 want that knife to be introduced as an exhibit at
7 trial because of some things that Nichol John had
8 said about a hunting knife being in your son's
9 car?

01:37 10 A Yes, I've heard that here, and I thought to myself
11 in hindsight if we'd gone back and talked to Mr.
12 Tallis when we were reinvestigating instead of
13 being suspicious of him I might have found out a
14 lot that would have subsequently saved everybody a
01:37 15 lot of heartache.

16 Q And Mrs. Milgaard, may I suggest to you that if
17 you had followed through on your original
18 instruction to Mr. Young to get access to the
19 Crown file, and you had gone to the Crown file,
01:37 20 even allowing that by that time Mr. Tallis was on
21 the Bench and you were --

22 A Uh-huh.

23 Q -- not as available, but that from 1981 forward
24 Mr. Caldwell had offered his file to your lawyer
01:38 25 and you would have found that in his file, readily



1 viable to you, wouldn't you?

2 A Yes.

3 Q You have a page of it in front of you?

4 A Yes.

01:38 5 Q If we could go to page 332405, please. And I
6 think, if we could go back to 404, to give you a
7 re-memory of -- remember this story?

8 A I remember this story.

9 Q Okay. I know you like the hairdo so that's why I
01:38 10 went back. If we could go back to the next page
11 of it, please. This is a story of March 15th,
12 1990 in Saskatoon, Mr. Caldwell's home community
13 where he lived, and in that story the theory that
14 you indicated that you had about the knife was
01:38 15 very bluntly stated --

16 A Uh-huh.

17 Q -- to be the question -- a question of a missing
18 knife, double-edged bone handle, and this is where
19 the first reference was made that it was found
01:39 20 near the body on the day of the murder. Now I
21 appreciate, I'm not sure if it was you or Mr.
22 Asper who gave that information, but certainly
23 that was misinformation, wasn't it, because we
24 were -- you were talking about the knife found a
01:39 25 month after the murder that had been buried in a



1 couple of feet of snow; okay?

2 A Yes.

3 Q And now it's a little bit confusing, because this
4 story makes reference to a second knife found when
01:39 5 the snow was melted that was single-edged, and I'm
6 not sure exactly what you or Mr. Asper are talking
7 about or whether the press got it wrong, but
8 certainly that the implication is that the Crown
9 hadn't shown the proper knife or hadn't introduced
01:40 10 the proper weapon as the murder weapon, and that
11 the testimony at the preliminary inquiry hadn't
12 ruled out that her wounds were caused by a
13 double-edged knife?

14 A Yes, and it would -- it's still my understanding
01:40 15 that they didn't rule it out that it was a
16 double-edged blade.

17 Q Okay, well we can go back and look at the
18 transcript, but my suggestion to you is that Dr.
19 Emson said he believed the wounds were caused by a
01:40 20 single-edged blade, and the only person who
21 commented on double-edged was the one officer who
22 hadn't been part of the autopsy examination,
23 hadn't seen the wounds, was being asked to look at
24 photographs and offer an opinion?

01:40 25 A And I think that's exactly what I had a memory of



1 was him, his opinion, saying that it could have
2 been by double-edged blade, --

3 Q Okay?

4 A -- and so that kept in my thought and, obviously,
01:40 5 when we were -- I must have passed it on to David
6 Asper, --

7 Q Okay?

8 A -- you know, and --

9 Q And --

01:41 10 A -- that's how it happened.

11 Q And the theory continued to grow?

12 A It did.

13 Q Now, in fairness to you, you indicated, or Mr.
14 Asper has indicated that he read the transcripts,
01:41 15 you gave him the preliminary inquiry transcripts,
16 you gave him the trial transcript?

17 A Yes.

18 Q There is a reference by you in your book, and by
19 him, to Sergeant Pearson, that he read those
01:41 20 transcripts, he knew the file inside out, in fact
21 he offered to help Sergeant Pearson because he
22 knew the file so well. So, allowing that all that
23 it was was your impression of an officer, would
24 you have expected or could you have expected that
01:41 25 Mr. Asper might have caught you in that mistake



1 and maybe corrected you on it, is that the kind of
2 thing you would have expected or hoped for from
3 your lawyer?

4 A Well, we were going through so much at that time
01:41 5 that I think he did a marvelous job.

6 Q And I'm not here to knock him, I appreciate that,
7 but, you know, there is a question of a system
8 needing checks and balances, and I suggest to you
9 your lawyer is supposed to be your balance
01:42 10 sometimes?

11 A Yes.

12 Q Particularly in emotional moments or emotional
13 cases like you were going through?

14 A Yes, but I think David Asper became very
01:42 15 emotionally involved in the case, and maybe it was
16 his emotion as well that swept us onward, I don't
17 know, but I feel that he did an excellent job for
18 us.

19 Q Okay. Mrs. Milgaard, there is a memo, and I -- we
01:42 20 can bring it up again if you want, but do you
21 remember a memo or a draft press release that was
22 done for you by David Asper in September of 1992,
23 and I don't know if it ever got issued, but there
24 was a press release where he sent you a fax cover
01:42 25 sheet saying "here it is, you know, go get him



1 "kind of thing, and in it he did a paragraph about
2 the missing knife, and this was September 1992,
3 well after the Supreme Court of Canada hearing; do
4 you remember that draft press release?

01:42 5 A I remember it being brought up here recently.

6 Q Okay. If you need it, we can bring it up again,
7 the number is 6 -- 162465.

8 A And what did you want me to say about it?

9 Q Okay. Do you -- I was going to ask you whether
01:43 10 you ever actually did issue that press release in
11 September of 1992? If we could go to the next
12 page, please.

13 A I have no idea. I issued so many press releases
14 that --

01:43 15 Q And the next page after that.

16 A -- you'd have to, I'd have to go and look back
17 through all the newspaper clippings to find out if
18 the story came out.

19 Q Okay. Can I ask you this, when the -- and if we
01:43 20 could go to the next page, please, that's the
21 paragraph about the knife. When you read this
22 did, at any point in time do you have any memory
23 of thinking "hold on a minute, this was only a
24 theory we had, now it's being put forward and I'm,
01:43 25 it's being drafted for me to put forward in a



1 press release as a bald fact"?

2 A No, I don't think that I would have thought that
3 in reading it, I probably would have accepted
4 it, --

01:44 5 Q Okay.

6 A -- but I honestly don't know if this was released
7 or --

8 Q Okay. Mrs. Milgaard, did you at any point in time
9 issue any caution to Mr. Asper, to Mr. Wolch, to
01:44 10 Mr. Rodin when he became involved, or to Bob
11 Bruce, to say that this idea that something wrong
12 had been done by my client with this knife was
13 based on a theory that you had as opposed to any
14 factual information you had when you put it out
01:44 15 there?

16 A No, I don't believe I did.

17 Q Mrs. Milgaard, I appreciate that you have said, as
18 a result of your presence at this Inquiry, that
19 you are now satisfied that my client didn't do
01:44 20 anything to deliberately or maliciously get rid of
21 a weapon that was connected to this murder, but in
22 your book in 1999 you have accused him of
23 deliberately getting rid of evidence, haven't you?

24 A Probably, at that time, we really did believe that
01:45 25 he had done that.



1 Q In 1999, Mrs. Milgaard? Your book was written in
2 1999, wasn't it?

3 A Yes, it was.

4 Q If we could refer to 26 -- oh, I've made a mistake
01:45 5 here, because I only have five numbers in my --
6 you had, as I've indicated to you or I believe
7 you've indicated or agreed with me, you had the
8 file information from the prosecution by the time
9 the Supreme Court of Canada reference finished in
01:45 10 1992; correct?

11 A We had the -- I'm sorry, I don't understand, "the
12 file"?

13 Q The Crown file?

14 A The Crown file? That's Mr. Caldwell's file?

01:45 15 Q Yes.

16 A Yes. Whether I had gone through it in thinking
17 about the knife, because I honestly don't
18 remember, and as I said, did not know why we
19 placed so much importance on it, and in going back
01:46 20 through and seeing that it's mentioned all the
21 time, it was even mentioned on our fact sheet --

22 Q Uh-huh?

23 A -- as a fact.

24 Q Uh-huh?

01:46 25 A And certainly, when we were going through that



1 list, I tried to make sure that everything that
2 was on the fact sheet was, in fact, a fact.

3 Q Uh-huh?

4 A So I don't know where it gained this importance in
01:46 5 our thinking.

6 Q Okay.

7 A I don't know. It's obviously a mistake that we
8 should have found and stopped, --

9 Q Uh-huh?

01:46 10 A -- and I'm sorry that that didn't happen.

11 Q Mrs. Milgaard, I'm -- I've suggested to you that
12 you had the Crown file, or much of the Crown file,
13 available to you by the time the Supreme Court of
14 Canada reference, and I take it you agree with
01:47 15 that?

16 A Yes.

17 Q By January of 1994 you had available to you, as
18 did Mr. Edwards, the report of the investigation
19 that was done by the RCMP into your September 1992
01:47 20 allegations against Mr. Romanow, Mr. Lysyk, and
21 all the other officials, of a high-level
22 conspiracy; didn't you?

23 A I don't believe I did have. I don't believe I saw
24 that report until I got here.

01:47 25 Q Mrs. Milgaard, that report was released to the



1 public, you were a member of the public, apart
2 from being a very interested party, --

3 A I was.

4 Q -- you did press releases on that report, didn't
01:47 5 you?

6 A I don't remember that, if I did.

7 Q Okay. I'll pull up references to that in various
8 media documentation that's gonna be provided to
9 you. Would you not agree with me that you had an
01:48 10 absolute full knowledge after September, I believe

11 it was the 18th, 1992, that the Government of
12 Saskatchewan had ordered an RCMP investigation to
13 be conducted into your allegations of misconduct
14 against Mr. Romanow, Mr. Kujawa, Mr. Caldwell, and
01:48 15 many others in the Saskatoon Justice Department
16 and the Saskatoon Police Service?

17 A I knew they were doing the investigation, yes.

18 Q Okay. Mrs. Milgaard, you knew that your lawyer
19 had gone with Greg Rodin, a young lawyer in his
01:48 20 firm, and with Bob Bruce, and done an extensive
21 investigation or done an extensive interview with
22 Murray Sawatzky; didn't you?

23 A I was probably aware of it, yes.

24 Q And you, yourself, had spent two days with
01:48 25 Mr. Sawatzky and another officer from the RCMP, I



1 think the taped transcription of your interview
2 with them comprised about nine tapes?

3 A Yes.

4 Q And you had continued to communicate with
01:49 5 Inspector Sawatzky because he asked you for some
6 additional documentation, we have letters between
7 him and you going up until December 1993,
8 remember, about what you had shown Michael
9 Breckenridge?

01:49 10 A Right.

11 Q Okay. And you had a full knowledge, did you not,
12 when that report was referred to the Alberta
13 Department of Justice because the Province of
14 Saskatchewan wanted an outside review of it to
01:49 15 avoid continuing accusation by you that there
16 would be a prejudiced investigation, as it were,
17 if it stayed within Saskatchewan?

18 A Yes.

19 Q Okay. You had a full knowledge that senior
01:49 20 prosecutors in the Alberta Justice Department
21 worked with Inspector Sawatzky, reviewed the
22 report, and prepared a report for Saskatchewan
23 Justice?

24 A Yes.

01:50 25 Q Okay. You had full knowledge, didn't you, that



1 the conclusion of that RCMP report was that much
2 and many of the allegations made about many
3 people, including my client, were without
4 foundation?

01:50 5 A Yes.

6 Q In fact, there was at least one allegation -- I
7 don't remember which one -- that earned the label
8 of "absurd" among -- as a descriptor by the RCMP?

9 COMMISSIONER MacCALLUM: Did that not come
01:50 10 from Alberta?

11 MS. KNOX: Yes, from Alberta Justice.

12 COMMISSIONER MacCALLUM: Alberta Justice?

13 MS. KNOX: Yes.

14 BY MS. KNOX:

01:50 15 Q But you were fully aware that that investigation
16 resulted in a detailed, lengthy report?

17 A I was aware that a report was made. I do feel
18 that you have -- it's hard for me to explain, even
19 at this point, at that point in time my distrust
01:51 20 of the system because of everything that we had
21 gone through, that I wasn't willing to wash anyone
22 clean.

23 Q Mrs. Milgaard --

24 A Regardless of what any of them said in their
01:51 25 reports.



1 Q Mrs. Milgaard, whatever your personal suspicions
2 would have been and whatever your unwillingness
3 may have been to wash anyone clean, do you not
4 consider that it was incumbent upon you to review
01:51 5 what the RCMP determined as a result of the
6 allegations that you and your lawyer made about
7 various people, including my client?

8 A If you didn't believe the paper it was written on
9 type of thing in your thinking, why would you go
01:52 10 through it?

11 Q Pardon me?

12 A If you -- if you think something is false, if you
13 think that it's, there's no merit to something,
14 why would you go through it? I know that that
01:52 15 maybe sounds wrong and naive and I would like to
16 go back and look at all these reports and say to
17 myself, now, if I had done this, this would have
18 happened, if I had done that, that would have
19 happened, but I didn't do it, I did what I thought
01:52 20 was best at the time.

21 Q But, Mrs. Milgaard, you wrote your book in 1999?

22 A Yes.

23 Q You wrote your book six years, seven years after
24 your son was released from jail, two years
01:52 25 approximately after the DNA results had exonerated



1 him, so you at that point in time had the pleasure
2 of knowing that you had achieved your objective,
3 you had gotten your son his freedom and you had
4 gotten exoneration for him?

01:53 5 A Right.

6 Q So I don't understand how it is that you wouldn't
7 have taken the prudent step, or if you didn't take
8 it, that your co-author Mr. Edwards wouldn't have
9 taken the prudent step of checking the facts
01:53 10 before you put very serious allegations of
11 misconduct on paper against people who you now
12 know were not guilty of those very acts of
13 misconduct, like the missing knife allegation?

14 A I can't explain it.

01:53 15 Q Mrs. Milgaard, I'm going to suggest to you that --

16 A I didn't deliberately do it, you know.

17 Q How could you ignore the result of a major RCMP
18 investigation that you had effectively demanded
19 and gotten from the Government of Saskatchewan
01:54 20 when you were sitting down to write that book some
21 four years later?

22 A I can't explain it.

23 Q Mrs. Milgaard, is it possible, and I mean this
24 with no disrespect, that the truth wouldn't have
01:54 25 sold many books?



1 A Absolutely not.

2 Q Why then did you resort to not telling the
3 accurate story when the accurate story was there
4 in black and white for you to give?

01:54 5 A Perhaps I had not accepted what you call the
6 accurate story.

7 Q Mrs. Milgaard, if it was simply a question of not
8 accepting the accurate story, why didn't you write
9 in your book this continues to be my belief in
01:54 10 spite of the fact that a major investigation was
11 done by a national police service at my request,
12 which investigation found this allegation that I'm
13 about to make about that man has no basis in fact,
14 why didn't you put that in your book?

01:55 15 A I put in my book what I believed at the time.

16 Q Mrs. Milgaard, in 1999 you had substantial reason
17 to believe differently, didn't you, you chose not
18 to write it, but the records were there for you to
19 use weren't they?

01:55 20 A The records were there to be used as you've
21 pointed out, yes.

22 Q And nowhere did you write a caveat and say this is
23 the stuff that I believed for a long time, but it
24 turns out that I was wrong, you put it forward in
01:55 25 1999 and it continues to be in the public media.



1 If I walk into McNally Robinson tonight and buy
2 that book, it continues to be there without any
3 caveat to say I was wrong doesn't it?

4 A Yes, it does.

01:56 5 Q Mrs. Milgaard, so that we're absolutely clear,
6 because times when I read the transcript of your
7 evidence there are variations, so that we are
8 absolutely clear, you are satisfied and you accept
9 today, based on the evidence that you have seen
01:56 10 and which you know to be available, that what you
11 wrote in *A Mother's Story* about Mr. Caldwell and
12 his engaging in some misconduct with respect to a
13 knife that was part of the investigation is
14 absolutely wrong?

01:56 15 A I do agree with that today.

16 Q And every press clipping and every media and story
17 that we're going to look at as we go through the
18 days of this Inquiry that claim that there was
19 something mysterious and nefarious done by him
01:56 20 and/or others with respect to a knife that would
21 have been or was the murder weapon are all
22 absolute untruths?

23 A If it's in relation to the knife, I will go that
24 far, yes.

01:57 25 Q It's an absolute lie; are we agreed on that?



1 A On the knife, yes.

2 Q Thank you. Mrs. Milgaard, I want to go to an area
3 that has been covered by others and it's somewhat
4 peripheral to my client in a direct way, but
01:57 5 nonetheless impacts on the impression created by
6 you and others of his involvement in this case,
7 and that's your continuing allegation that when
8 you began your quest in December, 1980 to
9 determine how it was that your son was wrongfully
01:58 10 convicted, that people in power were behind you
11 shutting doors in your face, telling witnesses not
12 to talk to you?

13 A Yes.

14 Q You've repeated that many times?

01:58 15 A Yes, because it happened.

16 Q Okay. Now, I was unclear as I reviewed the
17 transcript with respect to your position today.
18 You indicated at one point in your evidence that
19 you were appearing on a talk show in Saskatoon,
01:58 20 *The Roy Norris Show*?

21 A I could have, yes, many times.

22 Q I can refer you to your book and I can refer you
23 to a transcript in the tapes that you provided to
24 the Commission in February where you talked about
01:58 25 having, and I'm going to use the words, sort of an



1 epiphany when you were on the show, and again, I
2 don't even know for sure what that word exactly
3 means, but to me it means that you realize that
4 something that you believed for a long time or you
01:59 5 said for a long time is in fact a mistake. Do you
6 remember saying to others that when you were on
7 *The Roy Norris Show* and he questioned you about
8 your allegation or your assertion, that the police
9 were telling witnesses not to talk to you, you
01:59 10 realized that what you were being told by
11 witnesses was that the police said they didn't
12 have to talk to you?

13 A I don't recall it, but if I did say it, that was
14 my belief.

01:59 15 Q Okay. Mrs. Milgaard --

16 COMMISSIONER MacCALLUM: When was it you
17 believed when you spoke to Mr. Norris on the
18 show?

19 A I don't recall it. I would have to look at, you
01:59 20 know, hear the evidence of me talking about it. I
21 honestly don't remember it, Commissioner.

22 BY MS. KNOX:

23 Q Mrs. Milgaard, if I could direct you to a portion
24 of a transcript. Mr. Commissioner, this is a
02:00 25 tape, or a conversation that's contained on tape



1 number 152 and the conversation itself begins at
2 page 337136. The other party to the conversation,
3 for your benefit, Mrs. Milgaard, is Donna Friesen.

4 A Uh-huh.

02:00 5 Q It says, "Donna (a female reporter)."

6 A Okay.

7 Q And you were communicating, if you took to the
8 very bottom of the page, you see -- oh, sorry I
9 put the red line over it. "Conversation between

02:00 10 Joyce Milgaard and Donna (female reporter)"?

11 A Okay.

12 Q There's other information to suggest that the last
13 name of this woman is Friesen.

14 A Okay.

02:00 15 Q And just for the record, were you communicating
16 with a female reporter in Saskatoon, or at least
17 in Saskatchewan, by the name of Donna Friesen?

18 A Probably.

19 Q Do you remember the name?

02:01 20 A No.

21 Q Okay.

22 A There were so many.

23 Q Okay. If we could go to page 337139, please, and
24 I'm going to get it brought up from here forward,
02:01 25 and, Mrs. Milgaard, you see you asked the



1 question:

2 "Did you hear the Roy Norris Show by any
3 chance today?"

4 A Uh-huh.

02:01 5 Q And, Mr. Commissioner, in fairness to the witness,
6 I'm going to ask her to read this page and the
7 next page before I pose questions because it needs
8 to have a context for her I think. You can
9 indicate when you are ready to move to the next
02:02 10 page, please. And it's really the next page that
11 it becomes significant, but I just want you to get
12 the whole context of your discussion.

13 A Okay.

14 Q But basically you are talking about your, the
02:02 15 calls that you were getting on the show and the
16 support that you were getting from the people of
17 Saskatoon. That talk show used to be in
18 Saskatoon?

19 A Uh-huh.

02:02 20 Q Or Saskatchewan I suppose, it could have been a
21 long-distance call.

22 A You can go on now.

23 Q If you could just go through, this particular
24 paragraph here is important, and I'll take you to
02:02 25 other references, but if you could read that long



1 paragraph, please.

2 A I remember this now. I had totally forgotten it,
3 but I remember it now.

4 Q And I appreciate it's hard to remember things that
02:03 5 are in the past, and I know from personal
6 experience it's even harder when you are sitting
7 on the witness stand, but effectively what you
8 indicated was that Mr. Norris questioned you about
9 the assertion that you were continually making
02:03 10 that the police were telling people not to talk to
11 you?

12 A Yes.

13 Q And you said he more or less stopped you in your
14 tracks, or you said:

02:04 15 "And all of a sudden it just stopped me
16 dead in my tracks and I...I...then I
17 sort of turned my thought and listened
18 and you know it was. They did. And I
19 said you know you're right. That's what
02:04 20 they did say. They said you don't have
21 to talk to Mrs. Milgaard."

22 A And then, you know, I've gone right back to that
23 because I honestly, until reading this right now,
24 had, still had the belief that the police had said
02:04 25 don't talk to Mrs. Milgaard.



1 Q Uh-huh.

2 A But I remember now this happening. I think it's
3 important that I didn't want, and it said here:

4 "Well I guess there's nothing real... I
02:04 5 mean I think I've asked you this before
6 and I seem to remember your answer was
7 you didn't really want to lay blame but
8 do you feel...I mean is there some
9 accountability here from Saskatoon that
02:05 10 you still would like someone --"

11 Can I read the rest of that?

12 Q You can, and I'll let you read it absolutely, but
13 I want to stay focused on the issue that I'm
14 dealing with right now, and that's whether the
02:05 15 constant claim that you make then and that you've
16 continued to make, including in this hearing room,
17 that police told witnesses not to talk to you?

18 A Uh-huh.

19 Q And I'll give you the whole transcript if you wish
02:05 20 to read it --

21 A Yeah.

22 Q -- because you do talk about the accountability of
23 Saskatchewan and you go on to talk about the fact
24 that in that phone show you got lots of support
02:05 25 from the people of Saskatchewan?



1 A Uh-huh.

2 Q I'm not looking to minimize the rest of the
3 conversation, and we can play the whole thing,
4 frankly, if you want, if that will help you, but
02:05 5 my -- the only point that I wanted to raise with
6 you, or the question was, and I think based on
7 your book, this is the conversation, or a show
8 that you appeared on in July of 1991, I may be
9 wrong about that, and I don't know, Commission
02:06 10 Counsel can help me, as to whether we actually
11 have this tape, but certainly in your book you
12 indicated you appeared on his show in 1991.

13 A Well, I did appear on his show many different
14 times.

02:06 15 Q Okay. So then that doesn't help that we know you
16 appeared in 19 -- or July, 1991?

17 A No.

18 Q But clearly this is after you made an appearance?

19 A Obviously, yes.

02:06 20 Q And, Mrs. Milgaard, I can go further and say when
21 we look at this whole conversation, in this
22 conversation between you and Mrs. Friesen, this is
23 a conversation that took place after *The Fifth*
24 *Estate* aired a program in September of '91, after
02:06 25 there was an airing of a program about David's



1 case on *A Current Affair*, the American program, so
2 this conversation is clearly sometime in the late
3 summer or early fall of 1991; okay?

4 A Okay.

02:06 5 Q And that can be established through other
6 conversation, you just getting back from England,
7 a whole bunch of things, okay, so we can put the
8 time frame on it if we work at it. But my only
9 point, to go back, take myself back to getting on
02:07 10 topic, that although you had said pre this
11 discussion with Ms. Friesen and pre your
12 appearance on *The Roy Norris Show* in the fall of
13 1991, that the police were telling witnesses not
14 to talk to you, you clearly said that on that
02:07 15 show, "He made me stop and think for a minute and
16 I realized that I hadn't been stating that
17 correctly, what the witnesses were telling me was
18 that the police didn't, the police said they
19 didn't have to talk to me." Are we agreed on
02:07 20 that?

21 A Yes.

22 Q And then you go on to say, "But then that makes me
23 wonder why they would be out talking to them," and
24 you see that?

02:07 25 A Yeah.



1 Q Why would they do that, why would they drag them
2 all the way down from Saskatoon to Regina.

3 A Yeah.

4 Q Now, in terms of your refreshing your memory, I
02:07 5 want to take you way back, and do you remember,
6 and we've gone through documents, in your early
7 retainer of Mr. Young in January of 1980,
8 December, January, 1981, you asked him to do
9 things for you, you wanted him to get transcripts
02:08 10 from the preliminary inquiry and the trial; do you
11 remember that?

12 A Yes.

13 Q You wanted him to get Mr. Caldwell's file for you?

14 A Uh-huh.

02:08 15 Q You wanted him to get Mr. Tallis' file and you
16 wanted, or his file indicates that you requested
17 his assistance, either you or Chris O'Brien, in
18 getting contact with certain witnesses, the
19 witnesses being Ron Wilson, Nichol John and Albert
02:08 20 Cadrain. Do you remember Mr. Young documenting
21 that in his file?

22 A I do.

23 Q Now, I have the document somewhere and I could
24 bring up the numbers if we need them, but do you
02:08 25 remember that in, I think it was on January 12th,



1 1991, Mr. Young wrote a letter to the Saskatoon
2 Police Service following some phone calls and in
3 the letter he indicated that he had been requested
4 or he was requesting their assistance in locating
02:09 5 those three people because you had retained him,
6 you were wanting to take a look at the
7 circumstances of David's conviction and you were
8 wanting to talk to them. Do you remember he sent
9 that letter, and we have it in our document data
02:09 10 base.

11 A Yes.

12 Q And do you remember that there were some memos
13 then on the file of calls between him and the
14 chief of police?

02:09 15 A Yes.

16 Q And do you remember that there's a memo on the
17 file on the 22nd of January that you called him
18 and said that you had changed your mind, you
19 didn't want the police to contact Albert Cadrain,
02:09 20 Ron Wilson or Nichol John to let them know that
21 you were looking to speak to them. Do you
22 remember that?

23 A Yes, I remember that coming up.

24 Q And do you have a memory of making that call
02:09 25 sometime between when you first spoke to him and



1 the 22nd of January, you made a decision that that
2 wasn't the right strategy, and I'm going to
3 suggest to you that it was in that interim time
4 that Mr. Carlyle-Gordge came in the picture and he
02:10 5 may have contributed to that change of strategy?

6 A It's possible, but I have no current memory of my
7 dealings with Gary Young.

8 Q But you have seen all of those --

9 A I've seen the documentation.

02:10 10 Q And you accept that his file record from the day
11 would be accurate?

12 A I'm sure it was.

13 Q Now, do you remember him, a telephone message, and
14 I'll bring this up if you need to look at it, I
02:10 15 just can't lay my hand on it in all the material
16 I've got here. I thought I was so organized and
17 I'm not. But there's a memo of a call on January
18 23rd I believe is the date of the phone memo, and
19 it's a call back to him from the chief of
02:10 20 police --

21 MS. McLEAN: Who is him?

22 BY MS. KNOX:

23 Q Gary Young, a call back to Gary Young from the
24 chief of police, and Mr. Young makes a note on the
02:10 25 memo that it was too late for him to communicate a



1 request, and I'm interpreting that as your request
2 that he not contact Wilson, John and Cadrain, but
3 there's documentation in the file about Mr. Young
4 not being able to get a request to him in time.

02:11 5 Do you remember that phone memo?

6 A No.

7 Q Mrs. Milgaard, the record shows that after Gary
8 Young sent that letter on January 12th, 1981, the
9 chief of police directed that those three people
02:11 10 be contacted at your request and you are aware of
11 that?

12 A Yes.

13 Q And you are aware that by the, within days, all
14 three of them were contacted by the police?

02:11 15 A Yes.

16 Q There are letters on file, or memos back to the
17 chief saying that all three of them had been
18 contacted and all three of them said that they
19 didn't wish to speak with you?

02:11 20 A Correct.

21 Q So basically, if I could summarize what I'm saying
22 here, is you asked the police to contact them, the
23 police went out and contacted them, but in the
24 meantime you changed your mind. Are we agreed so
02:11 25 far?



1 A Right.

2 Q According to the record. So when you said on *The*
3 *Roy Norris Show*, "But why would they bother going
4 out to talk to them" --

02:12 5 A Oh, no way.

6 Q No?

7 A No way. We're talking about two different things.

8 Q What two different things are we talking?

9 A We're talking absolutely two different things.

02:12 10 I'm talking about when I first went out to see the
11 witnesses on my own, not at this other time.

12 You've got the times mixed up.

13 Q Okay, Mrs. Milgaard, when did you first -- and it
14 may well be.

02:12 15 A Oh, yeah, definitely.

16 Q When did you first go out to see the witnesses on
17 your own?

18 A That would have been in 1980.

19 Q Yeah.

02:12 20 A Okay.

21 Q No, the first record that we have of you doing
22 contact with witnesses was in early January, 1981,
23 you did your poster, the reward poster is December
24 24th, 1980?

02:12 25 A Right.



1 Q You did --

2 A So it would have been --

3 Q -- your press release December 26, so we're
4 talking Christmas Eve, Boxing Day of 1980?

02:13 5 A Right, and it was when I went out and interviewed
6 the witnesses that I found at that time that --
7 and that's when the -- this was before Gary Young
8 had even been involved in it.

9 Q Mrs. Milgaard, can you think about this real
02:13 10 careful now because I may be getting mixed up, you
11 may be getting mixed up. The evidence that you've
12 given this Commission is that you basically
13 trusted that David's -- David would work his way
14 through the parole system and he would be released
02:13 15 from jail on parole and then as a family you would
16 confront his conviction?

17 A Right.

18 Q Am I correct in that?

19 A Right.

02:13 20 Q And that you maintained that approach, as it were,
21 and I mean no disrespect by that term, until after
22 your son escaped --

23 A And was shot.

24 Q And that was in 1980?

02:13 25 A That's right.



1 Q That you were sitting on his hospital bed in
2 Toronto after he was shot terribly distressed
3 because you had concluded now that he had escaped
4 for the second time, that he was never going to be
02:14 5 freed by the parole authorities?

6 A Correct.

7 Q And that you made a call to your family and said
8 we have to help David?

9 A Right.

02:14 10 Q This would have been late 1980; right?

11 A That's right.

12 Q Okay. Now, you talked about having some money and
13 that it was hard for you to ask your family, but
14 that you made a decision as a family that you
02:14 15 needed to do this for your son and they for their
16 brother?

17 A Right.

18 Q Okay. So we're into the fall of 1980?

19 A What was the date of my hiring of Gary Young?

02:14 20 Q Your first phone calls to him were right around
21 the same time, December, 1980, the same time you
22 put the poster up and the same time you did the
23 story in *The Leader Post*.

24 A It was in December of 1980?

02:14 25 Q '80.



1 A '81?

2 Q '80.

3 A 1980 that I hired Gary Young?

4 Q Uh-huh. The documentation in his file indicates
02:15 5 that you were making calls to him about arranging
6 a meeting with him in mid January, you wanted him
7 to get back to you because you had to book a
8 flight.

9 A Okay. And when did he give me the information
02:15 10 about the police?

11 Q January, 1981. January, 1981, the next couple of
12 weeks.

13 A Is when he asked for that information from the
14 police?

02:15 15 Q Yeah. You contacted him in December and from his
16 file it looks like before you had a face-to-face
17 meeting even he was acting on your instructions by
18 telephone and generating some phone calls and
19 correspondence to the police.

02:15 20 A Now, when you were talking about these three
21 witnesses, when I am talking about the witnesses,
22 I wasn't really -- I probably said witness, but
23 when I was going out on my own and the kids were
24 and we were all out in the area when we went back
02:16 25 to see the scene of the crime and everything, this



1 would be before, like, when we started to do the
2 video and everything, and when I went out knocking
3 on doors, it was at that time that people told me
4 that the police had said that, what I hesitate to
02:16 5 say, don't talk to Mrs. Milgaard, but that you
6 don't have to talk to Mrs. Milgaard. I think
7 that -- and my memory of it is that it was not the
8 three major witnesses, it was other people that we
9 were going around, that the police had actually
02:16 10 been out in the area going around and talking to
11 people and saying they didn't have to talk to me.
12 That's my memory of it.

13 Q Okay. But you've got me confused as to time.

14 A Yeah, I am too, because --

02:17 15 Q All the records indicate that you started on this
16 venture in December of 1980.

17 A Yes, that would be the time that we advertised the
18 reward.

19 Q Okay. So you're coming to Saskatoon, you are
02:17 20 going to meet with Mr. Young in January, like, a
21 couple of weeks after you put your poster up?

22 A Yes, but first of all, we were working in the area
23 going around asking questions of people.

24 Q Okay.

02:17 25 A Now --



1 Q Mrs. Milgaard, you are talking, and I may be
2 totally confusing you, you may be totally
3 confusing me, but you were talking about seeing
4 witnesses in Regina and the police going down to
02:17 5 Regina and talking to witnesses. Now, were the
6 witnesses in Regina not Ron Wilson, Nichol John,
7 Craig Melnyk, George Lapchuk?

8 A Yes, they were.

9 Q Okay.

02:17 10 A And it was Lapchuk and Melnyk and those people
11 that I had been going down to see.

12 Q Okay. So we're talking about Ron Wilson, Nichol
13 John, George Lapchuk --

14 A No, no, not Ron Wilson, Nichol John. I believe
02:18 15 the ones that I was seeing at that time with my
16 son were George and Lapchuk. Wilson might have
17 been in there too. Yes, he was.

18 Q Because you taped your conversations with --

19 A Yes, with Wilson, and I would have the dates on
02:18 20 them at that time.

21 Q Yeah.

22 A And --

23 Q And January, 1981.

24 A And it should be on those tapes what they said.

02:18 25 Q Okay. Now, Mrs. Milgaard --



1 A So we might even be able to research that.

2 Q Okay. Mrs. Milgaard, in the tapes of Lapchuk and
3 Melnyk and those, there's no suggestion, that I
4 can recall, that anybody was saying that the
02:18 5 police told them not to talk to you. In Ron
6 Wilson's tape he did say the police told me not to
7 talk to you, but I'm going to talk to you anyway,
8 but he's the only one.

9 A That's probably where I'm picking this up from
02:19 10 then.

11 Q Okay. So then let's narrow that down a bit.
12 We've got one person who said the police told me
13 not to talk to you, but I'm going to anyway, and
14 out of that you were making repeated, recurring,
02:19 15 frequent statements in the public media that the
16 police had gone out and told witnesses not to talk
17 to you; is that --

18 A There could have been another one that I don't
19 recall at this time, but the only reason I recall
02:19 20 Wilson's is the tape has been played recently.

21 Q And you know now, don't you, that the reason why
22 the police were in touch with Mr. Wilson before
23 you talked to him was because Mr. Young had asked
24 them to on your behalf?

02:19 25 A Yes, I know that now.



1 Q Okay. Now, Mrs. Milgaard, other than Ron Wilson
2 saying to you the police told me not to, and
3 you've heard his testimony at this Inquiry that
4 the police didn't tell him not to talk to you,
02:19 5 that that was something that he said if I remember
6 his evidence correctly, but he wasn't discouraged
7 from talking to you, can you think of any witness
8 who said to you -- or give us the name of any
9 witness, the police saying, or the witness saying
02:20 10 the police told me not to talk to you?

11 A No, I cannot.

12 Q Not a single one, is there, anywhere in our
13 records?

14 A Not that I can think of.

02:20 15 Q And not even in your memory?

16 A No.

17 Q Now, would you accept that with Ron Wilson the
18 reason why the police were in touch with him in
19 January, 1981 before you talked to him on tape and
02:20 20 he said that was at the request of Mr. Young?

21 A Probably, now that you've put those things
22 together.

23 Q So if we can go back to the transcript of *The Roy*
24 *Norris Show* and you said "I realize I was wrong,
02:20 25 the witnesses weren't saying that the police told



1 them not to talk to me, they were saying the
2 police told me I didn't have to talk to you," and
3 you went on to say, "But why would the police be
4 out talking to them," would you now accept that
02:21 5 the likely reason the police were out was because
6 you asked them to go through your lawyer?

7 A Yes.

8 Q Now Mrs. Milgaard, when you appeared on the
9 various programs and media interviews that will be
02:21 10 played here eventually, you kept repeating that
11 the police were spooking witnesses, they were
12 telling them not to talk to you, that there were
13 people in power who obviously didn't want you --
14 and I'm summarizing many hours of tape that I have
02:21 15 watched -- but basically you were putting out a
16 very strong message in the Saskatchewan public
17 that the Saskatoon Police Service were out there
18 trying to prevent you from finding information
19 about the circumstances leading to your son's
02:21 20 conviction; weren't you?

21 A Yes, I was.

22 Q And Mrs. Milgaard, even after you were on *The Roy*
23 *Norris Show* in the fall of 1991 and you
24 acknowledged that you had been, up to that point
02:22 25 in time, misstating that fact -- and I accept, or



1 I assume innocently misstating it -- but when you
2 acknowledged on *The Roy Norris Show* you had been
3 mistakenly asserting that fact you then went on to
4 continuously and repeatedly make the same wrong
02:22 5 assertion time and again; didn't you?

6 A Well, I'm not sure, if you could show me?

7 Q Mrs. Milgaard, you made that assertion in your
8 book --

9 A Yes.

02:22 10 Q -- in 1999, and Mrs. Milgaard, at various points
11 of time during your testimony in this Inquiry
12 you've made that assertion too; haven't you?

13 A Yes, because I have felt that was the truth.

14 Q Okay. Now we can belabour this by bringing up all
02:22 15 the documents, and I will, I know I have them, but
16 my question to you now is: Is it your evidence
17 that you have reason, good reason, to believe that
18 you have -- you could give us -- point us to
19 specific evidence that police talked to witnesses
02:23 20 over the years and said "don't talk to
21 Mrs. Milgaard", or is it as you said on *The Roy
22 Norris Show*, police sometimes told witnesses, who
23 you had set out to talk to, that they didn't have
24 to talk to you?

02:23 25 A I believe the latter is correct.



1 Q That all the police did is they went to the
2 witnesses, as it turns out at the request of your
3 lawyer, and they said to them "you don't have to
4 talk to her"?

02:23 5 A That's right.

6 Q Okay. So, again, a person going into McNally
7 Robinson tonight and buying *A Mother's Story*, who
8 reads in that book various references that you
9 make to the fact that the police engaged in a
02:23 10 campaign -- and that's not your word but that's
11 the effect of what you write -- that the police
12 engaged in a campaign of blocking your efforts to
13 get at the truth about your son's conviction by
14 trying to prevent you having access to witnesses,
02:23 15 that that's just not true; is it?

16 A Not in that area, no.

17 Q You say "not in that very"?

18 A "Not in that area".

19 Q "Not in that area"?

20 A No.

21 Q Sorry, I didn't hear you right. But, essentially,
22 there is no -- nothing in the record, and you have
23 no independent evidence, that the police ever went
24 out and obstructed people in wanting -- in their
02:24 25 -- if they wished to talk to you?



1 A Well, other than the ones that they did talk to.

2 Q The ones -- let's, Mrs. Milgaard, let's be very
3 careful with our language.

4 A The ones that they talked to, I'm talking about,
02:24 5 were Nichol John, --

6 Q Uh-huh?

7 A -- and Ron Wilson, --

8 Q Uh-huh?

9 A -- and George Lapchuk, --

02:24 10 Q Uh-huh?

11 A -- and Melnyk.

12 Q And those witnesses assert that the police never
13 told them not to talk to you?

14 A They have testified to that, yes.

02:25 15 Q And the one departure from that is that one
16 statement from Ron Wilson in one of his
17 conversations with you -- I'm not sure if it's the
18 one where you believed him to be very drunk or
19 whether it was one where he was sober, but he's
20 the only person that ever said it -- but he's the
21 only person who ever said it, and all he said is
22 "I'm gonna talk to you anyway"?

23 A Yeah, but I got the impression from him that he
24 was told not to talk to me, I got the impression
02:25 25 from the others the same thing, and believed that.



1 Obviously, during this *Roy Norris Show* I had a
2 flashback or something that gave me a little more
3 clarity of thought that came up at that time, and
4 I said it on the show.

02:25 5 Q Okay.

6 A But I have, right up until today, thoroughly
7 believed that the police did go down and say
8 "don't talk to Mrs. Milgaard", so I have
9 thoroughly believed that.

02:25 10 Q Mrs. Milgaard, can we agree that you now know --

11 A And I was wrong.

12 Q -- that you were wrong?

13 A Yes, we can agree on that.

14 Q So when we go back, and when we look at
02:26 15 transcript, and when we have to make submission to
16 this Commissioner at the end of this long process
17 that we're going through, we can say that
18 Mrs. Milgaard has testified under oath that she
19 knows that the Saskatoon Police Service, or other
02:26 20 persons in authority, did not go out and tell
21 witnesses not to talk to her?

22 A They went out and spoke to them, saying that --

23 Q At the request of Mrs. Milgaard's lawyer.

24 A -- saying that they did not have to talk to me; is
02:26 25 that correct?



1 Q I hope that's where we are, because that's
2 certainly what the record suggests, and what you
3 said on *The Roy Norris Show*.

4 A I would agree with that.

02:26 5 Q Okay. Mr. Commissioner, this might be --

6 COMMISSIONER MacCALLUM: I don't know how
7 she can. She said that she first of all had the
8 impression that the witnesses were told by the
9 police not to talk to her?

02:27 10 MS. KNOX: Yes.

11 COMMISSIONER MacCALLUM: And then when she
12 found ought, at Roy Norris' suggestion, that
13 maybe it was only "you don't have to talk to
14 her", she admitted it. Now she has -- but, since
02:27 15 then, she has thoroughly believed the first to be
16 true?

17 MS. KNOX: Uh-huh.

18 A Yes.

19 COMMISSIONER MacCALLUM: That's right, that
02:27 20 the police told witnesses not to talk to you,
21 notwithstanding what you said at -- what you and
22 Mr. Norris discussed?

23 A Yes.

24 COMMISSIONER MacCALLUM: That's what she
02:27 25 thinks now. Okay. We'll take our recess, 15



1 minutes.

2 (Adjourned at 2:27 p.m.)

3 (Reconvened at 2:48 p.m.)

4 BY MS. KNOX:

02:48 5 Q Thank you, Mr. Commissioner.

6 Mr. Commissioner, I just need to
7 go back, just for a moment, and with respect to
8 the area of evidence that we were concluding prior
9 to the break, and your summary of Mrs. Milgaard's
02:48 10 position as it has evolved.

11 And, Mrs. Milgaard, the
12 Commissioner appeared to state -- and I don't have
13 the record to listen to -- but appeared to believe
14 that you were saying that it is your belief today,
02:48 15 as it had been after -- before *The Roy Norris Show*
16 and after *The Roy Norris Show*, that the police
17 went out and told people not to talk to you, but
18 is it not in fact your belief, now, that the
19 police didn't do that, that they simply told
02:48 20 witnesses they didn't have to talk to you?

21 A From the evidence that I have heard here at the
22 Inquiry, I believe that to be the truth.

23 Q And from that "evidence" you're referring to
24 documentary records, including those from Mr.
02:48 25 Young's file, where he in fact solicited the



1 police to go out and talk to witnesses?

2 A Yes, I do.

3 Q And, Mrs. Milgaard, during the break I took an
4 opportunity to show you some documents that I
02:49 5 couldn't lay my hands on in this area.

6 And Mr. Commissioner, for the
7 record, the documents that outlined the history or
8 the progression of the police contact with the
9 witnesses are the letter that Mr. Young wrote to
02:49 10 the chief of police on January 6th, 1981, document
11 ID 331961; the specific letter that he sent on
12 January 12th that directly addresses the witness
13 issue, 331953. If we could bring that up. And,
14 Mrs. Milgaard, you'll see that -- and I've showed
02:49 15 you this -- that he specifically asked for their
16 assistance in locating the following people, and
17 it's the three that I referred to you, with the
18 indication that you would want to try to speak to
19 them.

02:49 20 The next document in this regard
21 which confirmed that contact had occurred before
22 you told him to not have the police do that would
23 be a letter -- and we don't need to bring this
24 up -- but for the record it's confirmation that
02:50 25 the police contacted Albert Cadrain on January



1 16th, which is document 106839; confirmation that
2 the police contacted Nichol John on January 21st
3 and Ron Wilson on January 21st, the document
4 number being 106841.

02:50 5 COMMISSIONER MacCALLUM: 10 --

6 MS. KNOX: Sorry, 106841.

7 COMMISSIONER MacCALLUM: Thank you.

8 BY MS. KNOX:

9 Q A memo on Mr. Young's file January 22nd, following
02:50 10 a conversation with Chief Gibbon, again confirming
11 witness contact with Albert Cadrain, being 331941.
12 And the phone memo that I referred you to, we
13 could bring that one up, please -- actually my
14 copy doesn't, oh sorry, yes it does -- 331939. If
02:51 15 we could bring out this part here, please. Now,
16 Mrs. Milgaard, I didn't copy the document of Mr.
17 Young that you called him on January 22nd and said
18 you had changed your mind about the police
19 contacting the witnesses, but you will see this is
02:51 20 a memo from Chief Gibbon, and it talks about them,
21 the police, have in fact been in contact with
22 three persons, and there is a notation:

23 "... will have delivered ...",

24 something, presumably the letter, confirming
02:51 25 that, and Mr. Young wrote in brackets:



1 "(In response to my call of Jan 22/81 -
2 I wasn't able to reach him in time.)"

3 And that's what I suggested to you I took to mean
4 he wasn't -- by the time he got your message and
02:51 5 called the chief the witnesses had already been
6 contacted; do you see that?

7 A I see that.

8 Q Okay. And then, of course, there's the letter
9 back on January 23rd, which presumably is what
02:52 10 he's talking about that he's going to have
11 delivered, 331932, wherein he confirms that all
12 three witnesses have said that they don't wish to
13 speak with you or have their addresses given out.

14 Then if we can go to Commission
02:52 15 document 337731. And, Mrs. Milgaard, I'm bringing
16 this one up because this may assist you when you
17 were earlier asking when you had made contact with
18 witnesses. I showed you this during the break,
19 this is a document com -- prepared by Commission's
02:52 20 staff of witnesses contacted and interviewed by
21 you and/or Chris O'Brien, Peter Carlyle-Gordge,
22 and Paul Henderson, and you'll see that your first
23 contacts with the witnesses appear to have started
24 on January 24th, 1981? Do you see there was a
02:52 25 series of interviews, Bob Harris on the 24th,



1 George Lapchuk 24th, Nichol John the 25th, George
2 Lapchuk again on the 26th, Ron Wilson on the 26th,
3 then Dennis Elliott, Shirley Wilson, and it goes
4 through various other people contacted. But this
02:53 5 would appear, from what the Commission has been
6 able to call together, that your first contact was
7 not until after Mr. Young had contacted the city
8 police and after he was unable to get notice to
9 the city police that you didn't, in fact, want
02:53 10 witnesses contacted?

11 A Okay.

12 Q Okay. Okay. Now, Mrs. Milgaard, the next area
13 that I want to go with you is to do with Albert
14 Cadrain. If you'll bear with me, my -- but do you
02:54 15 recall being asked by Mr., I think it was by
16 Mr. Fox during his cross-examination of you, about
17 whether you held a belief, at the time of trial,
18 that Albert Cadrain was mentally ill?

19 A Could I see that?

02:54 20 Q I knew you were gonna ask me. In fact, it's a
21 question by Mr. Hodson, if we could bring up
22 transcript page 29581. Okay? And if we could go
23 to the bottom -- and this is Mr. Hodson, there is
24 a portion with Mr. Fox as well, but I'll take it
02:54 25 in order -- the very bottom of the page. The very



1 bottom of the page Mr. Hodson asked you:

2 "... did you notice anything unusual
3 about his evidence while he testified?",
4 you indicated that you can't remember, then his
02:55 5 next question was:

6 "Any concerns about his mental condition
7 or mental condition at the time, do you
8 recall anything of ...",
9 and if we could go to the top of the next page:

02:55 10 "... of that nature?"

11 and you ind -- you said:

12 "No, I can't.",
13 being this part, this part here, but you
14 indicated to Mr. Hodson that you don't have a
02:55 15 recollection of anything to do, or any suggestion
16 that Mr. Cadrain was mentally ill at the time of
17 trial?

18 A That's right.

19 Q Okay. Now, Mrs. Milgaard, it was unclear to me as
02:55 20 I went through the record, because in your cross
21 with Mr. Fox -- and I don't have the transcript
22 reference -- he did ask you a similar question and
23 you seemed to be answering differently, except you
24 indicated that you viewed Albert to be a simple
02:55 25 boy, probably intellectually challenged?



1 A I did.

2 Q Okay. Now Mrs. Milgaard, just so that we're clear
3 on the record, you're aware that the evidence
4 before this Commission is that at the time before
02:56 5 the preliminary inquiry, and at the time of the
6 trial, no one in Mr. Cadrain's family, included
7 Dennis Cadrain, ever suggested to the authorities
8 that Albert might be suffering from any form of
9 mental illness; you're aware that's the evidence,
02:56 10 correct?

11 A No, I thought the evidence of his brother
12 indicated that, because of him being constantly
13 picked up by the police and questioned, that it
14 made him become mental.

02:56 15 Q But my question to you is were you aware or are
16 you aware of any evidence that anyone brought to
17 the attention of the authorities, and in
18 particular, from my perspective, my client, that
19 Albert might be suffering a deterioration in his
02:56 20 mental health?

21 A No, not that I am aware of.

22 Q Okay. And would you agree with me that, whether
23 you have a memory of his evidence in the courtroom
24 on either occasion, that when one looks at the
02:57 25 transcript of his evidence, both at the



1 preliminary inquiry and the trial, there are no
2 obvious indications or nothing that comes
3 screaming out to suggest that this young boy was
4 mentally ill?

02:57 5 A Well, in parts of the testimony -- and I'm not
6 sure because I'm thinking in all of the different
7 times that he testified -- it seemed to me, in
8 looking back at them, that he leaped around --
9 sorry -- he leaped around in his testimony, like
02:57 10 just went -- for instance he introduced the Mafia
11 into it --

12 Q Yeah.

13 A -- and different things of that area that, to me,
14 was obviously that this is a -- was a disturbed
02:57 15 boy.

16 Q But, Mrs. Milgaard, you remember the interview or
17 the evidence that your son gave on tape for this
18 Commission in Vancouver where Mr. Hodson
19 questioned him as to whether, just to pull Albert
02:58 20 Cadrain's leg, he might have said something to him
21 like that, and he said it's possible?

22 A Yes, --

23 Q All right.

24 A -- and it is possible, but I know in --

02:58 25 Q The mere fact that he said things that, you know,



1 in retrospect might be a little bit odd wouldn't
2 be a screaming alarm to anybody, and it wasn't a
3 screaming alarm to you, I take it, that you went
4 to Mr. Tallis and said "this young boy is nuts"?

02:58 5 A No, I didn't.

6 Q Okay. And, Mrs. Milgaard, in fact aren't -- you
7 are aware, I believe, it's been raised by me, and
8 I presume you were in the room, that even Mr.
9 Wolch as your counsel, when he was interviewed by
02:58 10 Mr. Sawatzky or Inspector Sawatzky in 1992 -- and,
11 Mr. Commissioner, the document ID for that
12 transcript of that interview was 023046 --
13 stated -- and if we could bring up 023059 -- Mr.
14 Wolch himself stated, in talking to Inspector
02:59 15 Sawatzky -- and if we could bring out this part
16 right here -- he is saying to him, he's talking
17 about Albert, he is saying:

18 "We could show him to you on tape.",
19 and he said, he makes the statement:

02:59 20 "It would appear that he had some mental
21 problems early on."

22 Going through the trial you don't have any sense
23 of him being mentally ill. This is the statement
24 made by your counsel, an experienced counsel who
02:59 25 had reviewed the transcript, and who was of the



1 view there were no obvious indicators of mental
2 illness at the time this young boy gave his
3 testimony at David's trial; would you agree with
4 that?

02:59 5 A Yes, but then his own brother says he was
6 extremely mentally ill, and I remember -- of
7 course that flavours my thought, because I
8 remember his brother saying that to us, that he
9 felt he was mentally ill through it.

02:59 10 Q But his brother said that in 1985, didn't he, in
11 his first -- his interview with Mr.
12 Carlyle-Gordge?

13 A Yes.

14 Q And subsequently, with more elaboration, in his
03:00 15 interview with Mr. Henderson in 1990?

16 A Yes.

17 Q So the trial was 1970, his brother disclosed that
18 or said that to Mr. Carlyle-Gordge 15 years later,
19 and then to Mr. Henderson 20 years later?

03:00 20 A But he was talking about what he was like at the
21 trial.

22 Q Yes. But, Mrs. Milgaard, would you agree with me
23 that Dennis Cadrain never indicated at any time,
24 and we have no evidence to suggest, that he ever
03:00 25 went to anyone in authority to say "be careful



1 with my brother, I think he might be mentally
2 unstable"?

3 A I have seen no evidence of it, no.

4 Q So if Dennis had that belief, as his brother, you
03:00 5 have no reason to believe, and we have no evidence
6 unless there is something that I am missing, that
7 that was ever communicated to the police or ever
8 communicated to Mr. Caldwell; would you agree with
9 that?

03:00 10 A I would agree with that.

11 Q And, Mrs. Milgaard, you are aware that other
12 family members take substantial issue with Dennis'
13 characterization of him, you've heard them testify
14 here?

03:01 15 A Yes.

16 Q And you're aware as well, are you not, that the
17 first time there's any record of mental illness
18 manifesting itself for Albert Cadrain was two
19 years after the trial, he went into the hospital
03:01 20 in 1972?

21 A That's correct.

22 Q Okay. Mrs. Milgaard, this was knowledge that you
23 had as part and parcel of your information bank on
24 this file throughout the course of your
03:01 25 investigation and throughout the time of your



1 discussions with the media about Albert Cadrain,
2 and certainly during the time in 1999, or I'm not
3 sure when you started your book, but up to the
4 time when your book was published in 1999; isn't
03:01 5 it? You knew that nobody had put forward, in an
6 official capacity, that Albert Cadrain was maybe
7 mentally ill at the time of the trial?

8 A No one had put it forth in an official capacity,
9 but his brother had put it forth to us.

03:02 10 Q In 1985 --

11 A Yes.

12 Q -- and in 1990? But with respect to what my
13 client, Mr. Tallis, the judge, the jury, anybody
14 would have seen in January 1970, there were no
03:02 15 obvious signs of mental illness; were there?

16 A That's correct.

17 Q Okay. Mrs. Milgaard, I want to refer you again to
18 your book at page 269367.

19 COMMISSIONER MacCALLUM: Doc. ID, please?

03:02 20 MS. KNOX: Sorry, the doc. ID for the book
21 is 269317.

22 COMMISSIONER MacCALLUM: Thank you.

23 BY MS. KNOX:

24 Q And, Mrs. Milgaard, I'm referring to -- you to a
03:02 25 portion of the chapter that you have entitled the



1 trial, and you've made a statement in your book --
2 oh, sorry, I'm not supposed to touch this with my
3 pen so I'm trying to do it, if we could start
4 right here before the word:

03:03 5 "And the jury unfortunately ..."?

6 If we could bring it up just up another line,
7 yes, that's good. Okay. You see where you're
8 talking about Mr. Cadrain giving evidence in the
9 trial and you make the statement:

03:03 10 "And the jury unfortunately never heard
11 that Shorty was diagnosed as a paranoid
12 schizophrenic. They just heard Shorty
13 describing David as a crazyman."

14 Do you see you wrote that in your book?

03:03 15 A Yes.

16 Q Mrs. Milgaard, one reading that is left, or I'm
17 left with the impression that, at the time of the
18 trial, Mr. Cadrain had been diagnosed as a
19 paranoid schizophrenic and that information wasn't
03:03 20 shared with the Court; is that what you intended
21 to convey here?

22 A No, absolutely not.

23 Q Did you anywhere in your book, that I may have
24 missed, make any reference to the fact that Mr.
03:04 25 Cadrain's mental illness didn't match, or his



1 diagnosis as a paranoid schizophrenic didn't occur
2 until two years after the trial?

3 A No. But earlier on in the book, on that same
4 page, if you just go up above there --

03:04 5 Q Surely?

6 A -- it says:

7 "Next, it was Shorty Cadrain's turn on
8 the stand."

9 Q Okay. If we could bring out that paragraph?

03:04 10 A And I think I had sort of put right here what he
11 was:

12 "To me, Shorty was a simple, mentally
13 challenged boy whom I had tried to
14 protect from the other kids."

03:04 15 So I wasn't sort of indicating him as a paranoid
16 schizophrenic, I think I was telling what he was
17 like at that time. I can see that, the inference
18 that you are drawing here, but it wasn't my
19 intention for that.

03:04 20 Q Okay. Mrs. --

21 A When I look at it as you're looking at it, I can
22 see what you're saying, but that was never my
23 intention.

24 Q Mrs. Milgaard, would you agree with me that there
03:05 25 are many simple, mentally challenged people in our



1 community who do not suffer from mental illness?

2 A Yes.

3 Q And the link that you are asking us to make, I
4 guess it escapes me, but what you clearly state in
03:05 5 this book is that the jury wasn't told that he was
6 paranoid schizophrenic without stating --

7 A Well the jury wouldn't have known at that time.

8 Q -- without stating that nobody knew, in 1970, that
9 this man would end up being -- developing and
03:05 10 being diagnosed as paranoid schizophrenic?

11 A I agree.

12 Q So again, if we go back to my McNally Robinson
13 visit tonight, anybody picking up this book would
14 be easily forgiven if they concluded that my
03:05 15 client and other officials put on the stand a
16 young man who was a paranoid schizophrenic, and
17 kept his mental illness a secret from the jury,
18 who had to make a determination of his
19 credibility; wouldn't they?

03:06 20 A Yes.

21 Q Mrs. Milgaard, can you appreciate the impact on
22 somebody who doesn't know the whole story,
23 somebody who hasn't sat in this hearing room the
24 days that we've sat here, the impact that this
03:06 25 kind of a statement would have on individuals who



1 were looking to assess the professionalism, the
2 competence of people like the Saskatoon Police
3 Service, my client, and other officials who were
4 involved in the trial of your son?

03:06 5 A Yes.

6 Q Was it your intention, when you wrote this book,
7 that this kind of throw-away comment, without
8 context or explanation, would be part of a
9 sensationalization of a story that would cause
03:06 10 better sales than the truth, which appears to be
11 that some good men made honest mistakes?

12 A No, it was not my intention.

13 Q Mrs. Milgaard, the next area that I want to take
14 you to is the issue of the allegation made in
03:07 15 document 004752 on the 17th of July, 1990 that my
16 client had withheld a witness statement from
17 counsel for your son; do you see that story?

18 A Can it be blown up so I can read it?

19 Q Absolutely. Mrs. Milgaard, this is the story
03:08 20 written by Dan Lett, would you like to read the
21 whole thing?

22 A Yes.

23 Q Okay. Perhaps, if the staff could bring it up by
24 columns, up -- oh, I did it again -- bring it up
03:08 25 by columns so that you have -- and as you're



1 finished, if you let them know, we can move.

2 A So this says that:

3 "A statement given by a star
4 witness in the David Milgaard case that
03:08 5 could have discredited his entire
6 testimony appears to have been withheld
7 from defence counsel ... two lawyers
8 close to the case have charged."

9 So this is something you're saying that I
03:08 10 charged?

11 Q That ultimately you repeated, but I was prefacing
12 where I was going by showing you that story. Do
13 you remember reading that story in the paper on
14 July 17th?

03:09 15 A I probably did, but I'll just read it through.

16 Q Okay.

17 A Okay, next paragraph, please. Okay, I remember
18 reading this part now. Go ahead.

19 Q Mrs. Milgaard, at the time you read that story in
03:11 20 the paper on July 17th, 1990, you knew that the
21 statements being made in that story that Ron
22 Wilson's first statement had not been provided to
23 Mr. Tallis were not true, didn't you?

24 A I don't know.

03:11 25 Q Perhaps to assist you in refreshing your memory,



1 there is a tape recording of a conversation
2 between you and Dan Lett --

3 A Okay.

4 Q -- the day of or the day following this story.

03:11 5 Mr. Commissioner, for the record, it's contained
6 on tape number 30. The tape doc. ID is 336991,
7 the transcript doc. ID is 336054, and if we could
8 start the tape, I've asked that the clip be
9 prepared at 409 with the accompanying transcript
03:12 10 starting at page 336059. Mrs. Milgaard, this is
11 an area that I intend to spend some time on. In
12 fairness to you, I want you to listen to some
13 discussions that you had on tape on the day of or
14 the days after this story.

03:12 15 A Okay.

16 Q The transcript, Mr. Commissioner, it starts at
17 page 6 of tape number 30. Now if we could start
18 the tape.

19 **(Excerpt of tape 30)**

10:41 20 MRS. JOYCE MILGAARD: Hello Dan?

21 MR. DAN LETT: Hello, Joyce, how are you?
22 Good. I'm just -- can you hang on just a 'sec,
23 I've got somebody wavin' at me here.

24 MRS. JOYCE MILGAARD: Sure.

10:42 25 MR. DAN LETT: Okay. (Pause). Sorry,



1 Joyce .

2 MRS. JOYCE MILGAARD: Yeah. I was just
3 going through, you know, it's been bugging me
4 ever since I read that story, because I was so
10:43 5 sure --

6 MR. DAN LETT: Uh-huh.

7 MRS. JOYCE MILGAARD: -- that somewhere
8 Tallis talked about that original statement.

9 MR. DAN LETT: Yeah. Well I have -- did
10:43 10 you find anything yet?

11 MRS. JOYCE MILGAARD: Yeah. There is
12 something in the prelim here, I've got it in
13 front of me, it's just --

14 MR. DAN LETT: Okay, I've got mine here
10:44 15 too.

16 MRS. JOYCE MILGAARD: What, the prelim or
17 the trial?

18 MR. DAN LETT: I've got both.

19 MRS. JOYCE MILGAARD: Okay, and did you not
10:44 20 find anything?

21 MR. DAN LETT: What page?

22 MRS. JOYCE MILGAARD: Okay. I'm at 5,
23 let's see, where is it, 530 something. 540.

24 MR. DAN LETT: Okay. Umm, da da da da da.
10:44 25 Uh-huh.



1 MRS. JOYCE MILGAARD: And this is about
2 Riddell, talking to Riddell.

3 MR. DAN LETT: Yeah. And this is Tallis?

4 MRS. JOYCE MILGAARD: Yup. This is a
10:44 5 cross-examination by Tallis.

6 MR. DAN LETT: "You told him the truth,
7 didn't you, no I didn't, you didn't tell him the
8 truth, no, just part of the truth, yes, and the
9 part that I've referred to here was the truth,
10:45 10 yes. But you didn't tell him the whole truth
11 ..."

12 MRS. JOYCE MILGAARD: Continued on 1114
13 where it says --

14 MR. DAN LETT: Yeah. Well I -- geez, you
10:45 15 know, umm.

16 MRS. JOYCE MILGAARD: That's right there in
17 the transcript.

18 MR. DAN LETT: Yeah. Well, you know, I
19 couldn't find anything, and I talked to David
10:46 20 yesterday, and he was sure that there was
21 something in here.

22 MRS. JOYCE MILGAARD: Well, I, I -- when I
23 read that, you know, I said to David, I said "you
24 know, David, I'm sure there is something there".

10:46 25 MR. DAN LETT: Yeah.



1 MRS. JOYCE MILGAARD: Either in the prelim
2 or somewhere.

3 MR. DAN LETT: Yeah.

4 MRS. JOYCE MILGAARD: So that's in the
10:46 5 prelim, and then in the cross-exam of him in the
6 trial, there is also something in there as well.

7 MR. DAN LETT: Uh-huh.

8 MRS. JOYCE MILGAARD: Umm, and I haven't
9 got that page documented, but I've got it in, you
10:46 10 know, in the cross-exam of him. Now he doesn't
11 say, he doesn't have the statement and he doesn't
12 have a date on the statement, and see like I
13 think that if he really had the statement --

14 MR. DAN LETT: Yeah.

10:47 15 MRS. JOYCE MILGAARD: -- that he would
16 have -- and I mean only David would know this --
17 but I would presume --

18 MR. DAN LETT: Yeah.

19 MRS. JOYCE MILGAARD: -- as a lawyer he
10:47 20 would have called the statement into evidence.
21 It was never brought in.

22 MR. DAN LETT: Well, yeah, the fair -- well
23 I suppose the one thing that we really can't do
24 is we can't bring up the issue of Tallis and
10:47 25 incompetency, which really may have, you know,



1 that may be an element at work here. But, you
2 know, I still find it surprising that, that, that
3 he couldn't have used it more to his advantage.

4 MRS. JOYCE MILGAARD: Well, you see, when I
10:47 5 read this --

6 MR. DAN LETT: Yeah.

7 MRS. JOYCE MILGAARD: -- I mean you can
8 read it two ways.

9 MR. DAN LETT: Yeah.

10:48 10 MRS. JOYCE MILGAARD: Like if we read it
11 that he has just, that he hasn't had the
12 statement, and he just knows that he talked to
13 Riddell.

14 MR. DAN LETT: Right, right.

10:48 15 MRS. JOYCE MILGAARD: Now that's reading it
16 one way. Now maybe if he had the statement, --

17 MR. DAN LETT: Yeah.

18 MRS. JOYCE MILGAARD: -- a written
19 statement --

10:48 20 MR. DAN LETT: Yeah.

21 MRS. JOYCE MILGAARD: -- that he could have
22 called in to evidence, "well didn't you say such
23 and such, didn't you say this"?

24 MR. DAN LETT: Yeah.

10:48 25 MRS. JOYCE MILGAARD: I think this is what



1 David is getting at.

2 MR. DAN LETT: Yeah.

10:49 3 MRS. JOYCE MILGAARD: But that was the
4 part, when I looked it up, I thought well he is
5 mentioning Riddell.

6 MR. DAN LETT: Yeah.

7 MRS. JOYCE MILGAARD: He is mentioning, you
8 know, that he told him, and he said "statement"
9 in that sentence.

10:49 10 MR. DAN LETT: Yeah.

11 MRS. JOYCE MILGAARD: So that's why I
12 wondered whether he had an actual statement to
13 look at.

14 MR. DAN LETT: Yeah. I can't believe it
10:49 15 wouldn't have been called into evidence if he had
16 actually had it, you know.

17 MRS. JOYCE MILGAARD: Well, Hersh has made
18 -- Hersh is on this panel with him this week and
19 that's a question, I said to David "get Hersh to
10:49 20 ask him".

21 MR. DAN LETT: Ask who?

22 MRS. JOYCE MILGAARD: Tallis.

23 MR. DAN LETT: Tallis is coming to
24 Winnipeg?

10:49 25 MRS. JOYCE MILGAARD: No, Tallis is on a



1 panel with Hersh in Edmonton this week.

2 MR. DAN LETT: Well what day?

3 MRS. JOYCE MILGAARD: All week. Sometime

4 --

10:49 5 MR. DAN LETT: You're kidding.

6 MRS. JOYCE MILGAARD: No, I'm not.

7 MR. DAN LETT: And what's the panel on?

8 MRS. JOYCE MILGAARD: I don't even know.

9 Something on law.

10:50 10 MR. DAN LETT: Geez. Okay. Well I'll
11 check.

12 MRS. JOYCE MILGAARD: So they will be
13 having lunches, and stuff, and all the rest of
14 it.

10:50 15 MR. DAN LETT: That's crazy.

16 MRS. JOYCE MILGAARD: Yeah.

17 MR. DAN LETT: Umm, okay, well I'll check
18 into that, I'll check into that."

19 **(Excerpt ended)**

03:20 20 BY MS. KNOX:

21 Q Can you stop the tape there. Mrs. Milgaard, does
22 that assist you in refreshing your memory that
23 when you read the story that Dan Lett had wrote --
24 written, that you immediately had a memory that in
03:20 25 fact that story was wrong, that Mr. Tallis had



1 certainly knowledge of the statement as your
2 discussion unfolds, but that he had cross-examined
3 Ron Wilson about this matter both at the
4 preliminary inquiry and the trial?

03:20 5 A Yes. I think that's evident here.

6 Q Okay. Now I need to go to tape, still on tape 30,
7 and I've asked for a further portion to be played,
8 and this is a discussion between yourself and
9 David Asper on the same subject area. The clip is
03:21 10 CK-5 as the staff have given it to me and if we
11 could have the tape and the transcript
12 simultaneously, please. Mr. Commissioner, the
13 transcription of this conversation in tape 30
14 begins at page 53. The first page of the
03:21 15 conversation is document ID 336106, for the
16 record.

17 COMMISSIONER MacCALLUM: Thank you.

18 **(Excerpt of tape 30 played)**

19 MR. DAVID ASPER: Hi.

12:02 20 MRS. JOYCE MILGAARD: Hi.

21 MR. DAVID ASPER: Umm, a couple things.

22 MRS. JOYCE MILGAARD: Uh-huh.

23 MR. DAVID ASPER: Let me tell you about the
24 status of the case first.

12:02 25 MRS. JOYCE MILGAARD: Okay.



1 MR. DAVID ASPER: Umm, I've played
2 telephone tag with Watson over the past couple of
3 days. As you know, Hersh is in Edmonton.

4 MRS. JOYCE MILGAARD: Uh-huh, with Tallis.

12:03 5 MR. DAVID ASPER: Tallis didn't show.

6 MRS. JOYCE MILGAARD: Really.

7 MR. DAVID ASPER: But Williams is there.

8 MRS. JOYCE MILGAARD: Really.

9 MR. DAVID ASPER: And Williams has been
12:03 10 spending a lot of time with the Head Prosecutor
11 from Saskatchewan, who's also there.

12 MRS. JOYCE MILGAARD: Uh-huh.

13 MR. DAVID ASPER: And we can speculate all
14 we want, but I, I would think that those
12:04 15 conversations must be related to how do we
16 logistically, you know, deal with this case, not
17 whether it's gonna be re-opened, but we're gonna
18 re-open now, what do we do. Okay?

19 Umm, Williams also saw Fisher,
12:04 20 and he won't tell Hersh anything about their
21 meeting, but Hersh thinks he's going back.

22 MRS. JOYCE MILGAARD: Really.

23 MR. DAVID ASPER: Which I think is a good
24 sign.

12:04 25 MRS. JOYCE MILGAARD: Hmm.



1 MR. DAVID ASPER: Umm, next thing. When I
2 told Hersh about the statements --

3 MRS. JOYCE MILGAARD: Uh-huh?

4 MR. DAVID ASPER: -- he gasped. He said "I
12:06 5 shouldn't be surprised but I, it's just amazing".

6 MRS. JOYCE MILGAARD: Okay, yeah.

7 MR. DAVID ASPER: Like, yet another thing.

8 MRS. JOYCE MILGAARD: Uh-huh.

9 MR. DAVID ASPER: Okay.

12:07 10 MRS. JOYCE MILGAARD: The only problem is,
11 according to the testimony, I think Tallis knew
12 about these statements.

13 MR. DAVID ASPER: Yes, except he never put
14 them directly to him, he does -- there is a short
12:07 15 passage where he talks about "when you first
16 spoke with the police you told them nothing
17 happened".

18 MRS. JOYCE MILGAARD: But, no, there is a
19 part there where he talked about the statement to
12:07 20 Riddell.

21 MR. DAVID ASPER: Yeah?

22 MRS. JOYCE MILGAARD: I've got the, I've
23 got page numbers for you, and I'd like you to
24 look at what I give you, okay?

12:08 25 MR. DAVID ASPER: Okay.



1 MRS. JOYCE MILGAARD: Hold on. (Pause) now
2 it may be in my being naive in the matter that I
3 don't, you know, that I am not understanding it
4 the way I should so you, you read these
12:08 5 references.

6 MR. DAVID ASPER: This is, this is trial
7 transcript; right?

8 MRS. JOYCE MILGAARD: All right. Yeah,
9 this one is trial transcript.

12:09 10 MR. DAVID ASPER: Okay.

11 MRS. JOYCE MILGAARD: Page 320 -- page 291,
12 police visits in March, Riddell is mentioned;
13 page 292, "at the time Riddell was there there
14 was no suggestion you were a suspect in
12:09 15 connection with the case, I don't believe so,
16 there might have been, I'm not aware" --

17 MR. DAVID ASPER: Correct.

18 MRS. JOYCE MILGAARD: -- "but it was at
19 that time I gave the statement to him" --

12:09 20 MR. DAVID ASPER: Uh-huh.

21 MRS. JOYCE MILGAARD: -- he says. Okay?

22 MR. DAVID ASPER: Uh-huh.

23 MRS. JOYCE MILGAARD: Then on page 324 and
24 325 --

12:10 25 MR. DAVID ASPER: Uh-huh.



1 MRS. JOYCE MILGAARD: -- and 331 and 349,
2 on page 349, this is when the jury was out and
3 the Court said that they had no recollection of
4 any specific statement.

12:10 5 MR. DAVID ASPER: That's right.

6 MRS. JOYCE MILGAARD: Yeah. And then page
7 540.

8 MR. DAVID ASPER: This is what I am saying.
9 When you have -- you see, umm, I don't know that
10 Tallis necessarily has a copy of the actual
11 statement.

12 MRS. JOYCE MILGAARD: Uh-huh.

13 MR. DAVID ASPER: Umm, very often the Crown
14 will write a letter saying that "he made a
15 statement to, umm, on such and such a date to
16 such and such an officer" --

17 MRS. JOYCE MILGAARD: Uh-huh?

18 MR. DAVID ASPER: -- "and provided no
19 useful information", or something like that.

12:11 20 MRS. JOYCE MILGAARD: Right.

21 MR. DAVID ASPER: Because let me tell you,
22 and, and I don't think you will find a lawyer who
23 will disagree with me, that when you have in your
24 hand that statement, you put it to him word for
12:11 25 word, and you show him the statement --



1 MRS. JOYCE MILGAARD: Yeah, some --

2 MR. DAVID ASPER: -- and you show it to the
3 jury.

4 MRS. JOYCE MILGAARD: Uh-huh. Uh-huh. So
12:12 5 this is like, umm, the same thing as he did
6 almost with what he said on the prelim?

7 MR. DAVID ASPER: Yeah.

8 MRS. JOYCE MILGAARD: Yeah. Well, he
9 hasn't that -- he hasn't done that, but I know in
12:12 10 the --

11 MR. DAVID ASPER: It doesn't mean that he
12 has the statement.

13 MRS. JOYCE MILGAARD: Okay.

14 MR. DAVID ASPER: All it means is that he
12:13 15 knows, umm, that a statement may have been given,
16 umm, to Riddell.

17 MRS. JOYCE MILGAARD: Uh-huh.

18 MR. DAVID ASPER: Period.

19 MRS. JOYCE MILGAARD: But wouldn't, if he
12:13 20 knew that, wouldn't he get the statement?

21 MR. DAVID ASPER: Not necessarily. Not
22 necessarily. To this day, Joyce, I have trouble,
23 I mean in this era of the Charter and acute
24 awareness of procedural fairness --

12:13 25 MRS. JOYCE MILGAARD: Uh-huh.



1 MR. DAVID ASPER: -- I still have trouble
2 getting statements from the Crown.

3 MRS. JOYCE MILGAARD: Okay. Well, there
4 was something else in here that I --

12:14 5 MR. DAVID ASPER: And in addition, in
6 addition --

7 MRS. JOYCE MILGAARD: Uh-huh?

8 MR. DAVID ASPER: -- let me just -- I mean
9 it goes beyond simply taking him through the
12:14 10 statement word for word. When Wilson testifies
11 at the trial that the car gets stuck and he and
12 David get out of the car, --

13 MRS. JOYCE MILGAARD: Uh-huh?

14 MR. DAVID ASPER: -- well, that's
12:14 15 contradictory to his first statement.

16 MRS. JOYCE MILGAARD: Entirely.

17 MR. DAVID ASPER: And he was not
18 cross-examined on that, he was -- I mean when --
19 Tallis didn't get up and say "your evidence is
12:15 20 that the car got stuck and you two were apart, is
21 that right, right".

22 MRS. JOYCE MILGAARD: Uh-huh.

23 MR. DAVID ASPER: Umm, "do you recall
24 making this statement and do you recall in that
12:15 25 statement saying that you were never apart?"



1 MRS. JOYCE MILGAARD: Right.

2 MR. DAVID ASPER: I mean those, those are
3 the red flags that tell me that he doesn't have
4 the statement, that he may have a general idea
12:15 5 that one was given and that it was a -- a -- in
6 essence a denial of any involvement.

7 MRS. JOYCE MILGAARD: But are you saying,
8 then, that it's not -- well, I don't know.

9 MR. DAVID ASPER: Because it inhibits the
12:15 10 ability of the defence to make full answer in
11 defence --

12 MRS. JOYCE MILGAARD: Uh-huh.

13 MR. DAVID ASPER: -- when you don't know
14 the details, because what you get is the Crown
12:16 15 decides the value of the statement, and editing
16 the information in the statement in a summary.

17 MRS. JOYCE MILGAARD: Okay. Here it is,
18 the one that I had in the, in the prelim, page
19 540, it's in the prelim.

12:16 20 MR. DAVID ASPER: Okay.

21 MRS. JOYCE MILGAARD: Umm, it says "and who
22 was the first policeman to -- I take it you knew
23 nothing about the murder of the girl in Saskatoon
24 on January 31st until the policeman told you
12:16 25 about it, that's right, and who was the first "--



1 MR. DAVID ASPER: Is this
2 cross-examination?

3 MRS. JOYCE MILGAARD: This is prelim page
4 540, it doesn't, on the prelim it doesn't tell
12:17 5 you --

6 MR. DAVID ASPER: Well what does it say at
7 --

8 MRS. JOYCE MILGAARD: -- ahead what it is.

9 MR. DAVID ASPER: Does it -- okay, okay.

12:17 10 MRS. JOYCE MILGAARD: I think it's
11 examined, or I think it must be, because it's
12 Tallis.

13 MR. DAVID ASPER: Okay.

14 MRS. JOYCE MILGAARD: I think it's Tallis.

12:18 15 MR. DAVID ASPER: Okay. Whatever.

16 MRS. JOYCE MILGAARD: And "Ken Walters in
17 Regina and that would be on approximately what
18 date, sometimes in March, sometime in March and I
19 take it that during the trip up to Alberta there
12:18 20 was never any mention about the murder of a girl
21 in Saskatoon, no there wasn't, so that when you
22 told Mr. Riddell that all during this trip there
23 was never any mention about the murder of a girl
24 in Saskatoon, in fact I didn't even know about
12:19 25 this murder until the police told me today you



1 were telling him the truth, were you, yes", and
2 then "I take it Mr. Riddell was the type of
3 person who was friendly and courteous with you,
4 yes he was, he literally let you tell your own
12:19 5 story, yes, and you weren't cross-examined on
6 answers and so on by him, I was when -- every
7 once in a while, every once in a while, but to
8 the best of your ability at that time you told
9 him the truth didn't you, no I didn't, you didn't
12:19 10 tell him the truth, no, just part of the truth,
11 and the part that I have referred to here was the
12 truth, yes, but you didn't tell him the complete
13 truth you say and it was later on after you've
14 told us when you think, I think on May the 22nd,
12:20 15 that you made some reference implicating David".

16 MR. DAVID ASPER: Uh-huh.

17 MRS. JOYCE MILGAARD: And that's when he
18 goes on.

19 MR. DAVID ASPER: It doesn't, it doesn't
12:20 20 mean he's got the statement.

21 MRS. JOYCE MILGAARD: And then he says
22 here, "now" -- on page 541 -- "now when you had
23 this meeting or discussion with Mr. Riddell on
24 March the 3rd I take it that before you gave him
12:20 25 any statement you told him that there was nothing



1 to hide about what had happened on the trip and,
2 and you know, and you'd be straightforward with
3 him and to the best of the ability and the jacket
4 he was wearing and, umm, what, all the rest of
12:21 5 it", and then he goes into this stuff there.

6 MR. DAVID ASPER: Yeah. No, I -- listen,
7 as I say, umm, what could very well have happened
8 is that Tallis would -- or Caldwell would tell
9 Tallis that Wilson was interviewed and gave a
12:21 10 statement in which he describes nothing
11 happening, I --

12 MRS. JOYCE MILGAARD: It's interesting,
13 it's to the RCMP that his statement of innocence
14 is, and it's the Saskatoon one that --

12:22 15 MR. DAVID ASPER: Well, because the
16 Saskatoon Police have an interest.

17 MRS. JOYCE MILGAARD: Right.

18 MR. DAVID ASPER: The RCMP, you know, are
19 probably doing --

12:22 20 MRS. JOYCE MILGAARD: Just a job.

21 MR. DAVID ASPER: -- just a job.

22 MRS. JOYCE MILGAARD: A statement, yeah.

23 MR. DAVID ASPER: Umm, I don't, I don't, I
24 don't think that any of that --

12:22 25 MRS. JOYCE MILGAARD: Okay. Well --



1 MR. DAVID ASPER: Umm, --

2 MRS. JOYCE MILGAARD: -- that's fine, but I

3 --

4 MR. DAVID ASPER: Because, because --

12:22 5 MRS. JOYCE MILGAARD: -- I dug them out

6 because I remembered that part of it, I

7 remembered --

8 MR. DAVID ASPER: Oh, yeah, oh --

9 MRS. JOYCE MILGAARD: -- in there about

12:23 10 Riddell and his statement.

11 MR. DAVID ASPER: Oh yeah, oh yeah.

12 MRS. JOYCE MILGAARD: So when I read that

13 in the paper yesterday I just about freaked right

14 out.

12:23 15 MR. DAVID ASPER: No, no, I -- no, no, I --

16 I don't think that any of that makes it any less

17 clean.

18 MRS. JOYCE MILGAARD: Okay.

19 MR. DAVID ASPER: Because as I say, and

12:23 20 particularly at the trial, Joyce, at the

21 preliminary inquiry you can ask any questions

22 because there is no downside, I mean you know

23 he's going to get committed to stand trial.

24 MRS. JOYCE MILGAARD: Uh-huh.

12:23 25 MR. DAVID ASPER: But when you are at the



1 trial, in front of a jury, --

2 MRS. JOYCE MILGAARD: Uh-huh.

3 MR. DAVID ASPER: -- if Cadrain -- if

4 Tallis had the statement --

01:26 5 MRS. JOYCE MILGAARD: Uh-huh.

6 MR. DAVID ASPER: -- then there's some

7 serious questions about his --

8 MRS. JOYCE MILGAARD: That the --

9 MR. DAVID ASPER: -- conduct of the
01:26 10 defence.

11 MRS. JOYCE MILGAARD: Right.

12 MR. DAVID ASPER: If he didn't have the
13 statement, then there's very, very, very grave
14 problems with the prosecution, because a summary
01:26 15 of the statement does not suffice. And I mean,
16 look, Tallis is in there theoretically fighting
17 for Dave's life.

18 MRS. JOYCE MILGAARD: Uh-huh.

19 MR. DAVID ASPER: Everything is on the
01:26 20 line.

21 MRS. JOYCE MILGAARD: Uh-huh.

22 MR. DAVID ASPER: You are telling me that
23 he would not put the contra -- Wilson's
24 contradictions to him?

01:27 25 MRS. JOYCE MILGAARD: No.



1 MR. DAVID ASPER: Come on. Come on.

2 MRS. JOYCE MILGAARD: Okay.

3 MR. DAVID ASPER: His only hope is to
4 discredit Wilson.

01:27 5 MRS. JOYCE MILGAARD: What is -- what did
6 your litigation lawyer say?

7 MR. DAVID ASPER: He hasn't reported to me
8 yet."

9 **(Excerpt ended)**

10 BY MS. KNOX:

11 Q If we can stop there. You are moving into a
12 different subject area now.

13 But, Mrs. Milgaard, would you
14 agree with me that, and I believe this
03:32 15 conversation with Mr. Asper to be July 18th, as
16 was the one with Mr. Lett, was the day after the
17 story it sounds like as we listen to you?

18 A Uh-huh.

19 Q But would you agree that you had a substantial
03:32 20 awareness on the 18th of July, 1990 that Mr.
21 Caldwell had disclosed, if not the physical paper,
22 the content of Ron Wilson's statement of March
23 3rd, 1969?

24 A Obviously I was reading from the transcripts at
03:32 25 the time. I have no memory of this, or, like,



1 current memory of it, but certainly I was trying
2 to tell it to David, but he seemed to reassure me
3 that it was all right.

4 Q Okay. Mrs. Milgaard --

03:32 5 COMMISSIONER MacCALLUM: The answer is yes,
6 you knew on the 18th of July that disclosure had
7 taken place?

8 A Yes. I knew that disclosure had taken place?

9 COMMISSIONER MacCALLUM: Yes. That was the
03:33 10 question.

11 A Okay. I quite often don't get what the root of
12 the question is. I don't believe that I knew
13 disclosure had taken place. From what I said in
14 the statements there, isn't disclosure, and maybe
03:33 15 I'm not understanding the question right,
16 disclosure is when they hand the statement over to
17 you?

18 BY MS. KNOX:

19 Q Mrs. Milgaard, disclosure is when your lawyer has
03:33 20 knowledge of the case that the Crown has against
21 you, and would you agree with me, based on what
22 you read to Mr. Lett and to Mr. Asper, it was
23 clear, absolutely crystal clear, that Mr. Tallis
24 had knowledge, number 1, that Ron Wilson had
03:33 25 talked to Inspector Riddell from the RCMP, as you



1 note, in early March of 1969, and that the
2 contact, or the content of what he had
3 communicated in his statement to him was in the
4 possession of your, of David's lawyer at the time
03:34 5 of the preliminary inquiry and the trial?

6 A Well, I didn't read that from that. I read that,
7 from what David told me, I understood that they
8 had the information -- that although he had the
9 information, that he maybe didn't have a
03:34 10 statement, it may have been something that he was
11 told.

12 COMMISSIONER MacCALLUM: David Asper you
13 mean?

14 A Yes, yes.

03:34 15 BY MS. KNOX:

16 Q So what you are saying is that you might have let
17 David Asper talk you out of the strength of your
18 belief that caused you to almost freak, as you put
19 it, when you read the story in the paper because
03:34 20 you knew that Mr. Tallis, you knew in your mind
21 that Mr. Tallis had that first statement?

22 A I did not know in my mind that Tallis had that
23 first statement.

24 Q Why did you almost freak when you read it in the
03:34 25 paper as you said to him?



1 A Well, I almost -- because he said that and I
2 thought I don't know whether that's right, I don't
3 know that Tallis had the statement, and so
4 naturally I would freak, and so I went right back
03:35 5 to find out whether he did, but in going through
6 it with David Asper, he more or less explained to
7 me that you can't have the -- you know, you don't
8 have to have the statement, you may have just told
9 him something.

03:35 10 Q But, Mrs. Milgaard, as long as he knew about the
11 statement or what Ron Wilson had said, then the
12 story in the paper was wrong, wasn't it, because
13 what the story in the paper had said the previous
14 day was that the information hadn't been given to
03:35 15 Mr. Tallis --

16 A I think it said the statement had not been given
17 to him; isn't that correct?

18 Q Mrs. Milgaard, can we go back, or can we bring up
19 004752 again. If we could go to the first
03:36 20 paragraph, please, it reads, does it not:

21 "A statement given by a star witness in
22 the David Milgaard case that could have
23 discredited his entire testimony appears
24 to have been withheld from defence
03:36 25 counsel during the 1969 trial, two



1 lawyers close to the case have charged."

2 A Okay.

3 Q Okay.

4 A A statement given by a star witness, so what Mr.
03:36 5 Asper and I discussed was the fact that he may
6 never have given him that statement, he may have
7 just told him about it.

8 Q Mrs. Milgaard, did it matter a hoot whether he had
9 the paper in the context of this story?

03:36 10 A Well, because David said that if he had the
11 statement, he would have cross-examined him on it.
12 Now, I don't know a lot about, and especially at
13 that time, I didn't know a lot about what went on,
14 so I took what David Asper told me and I believed
03:37 15 and I ran with it. I didn't sort of go back over
16 this, I tried to point out to both of them what I
17 thought and in both cases, as you can see, and I
18 wasn't the one, it's the lawyers close to the case
19 that charged it, it wasn't me that made the
03:37 20 statement in the first place.

21 Q Mrs. Milgaard, isn't it true that for weeks and
22 months prior to this story appearing in the paper,
23 when you were appearing in various, or at various
24 media events, you were quoted repeatedly as saying
03:37 25 that these three people, or the two people, Nichol



1 John and Ron Wilson -- three of them actually,
2 Albert Cadrain, on initial contact with the police
3 had given statements that indicated that your son
4 David was innocent of the murder of Gail Miller,
03:38 5 that all three of them had told the police they
6 didn't know anything about Gail Miller's murder?

7 A Yes, I remember saying that.

8 Q And in fact in the audiotapes that we're going to
9 be seeing, you said it quite clearly and you kept
03:38 10 saying how could this have changed? In their
11 first contacts with the police they gave
12 statements of absolute innocence and it was only
13 after they spent time with the police and they
14 were threatened that things changed, you were
03:38 15 saying that in March, you were saying it in
16 January, you were saying it in an interview with
17 Colleen Wilson on March 15th, 1990, you made that
18 statement; did you not?

19 A I don't know.

03:38 20 Q The tape will show that you did.

21 A Yes.

22 Q And we are going to play the tape. To save time I
23 don't think we need to do it now, but I suggest to
24 you that in 1990, March 15th, you said it to her.
03:38 25 You said it to somebody on a CKND *Dayside* story,



1 you said it in a number of forums, on *The Shirley*
2 *Show*, that these witnesses initially, when they
3 were contacted by the police, all gave innocent
4 explanations and it was only after, by
03:39 5 implication, the police worked them over that they
6 changed their stories to implicate your son,
7 didn't you?

8 A I still believe that.

9 Q And with respect to the newspaper story that
03:39 10 appeared in the paper, the day that you read that
11 you knew that this was wrong, didn't you, you had
12 known that since 1969, didn't you?

13 A No, I did not.

14 Q Mrs. Milgaard, were you sitting in the witness
03:39 15 room for the entirety of your son's preliminary
16 inquiry?

17 A Yes.

18 Q Did you hear all of the evidence that was given at
19 your son's preliminary inquiry?

03:39 20 A Yes.

21 Q Did you have discussions with Mr. Tallis as
22 counsel for your son about the things these
23 witnesses were saying against your son and did you
24 have discussions with him about how their first
03:39 25 statements of innocence had changed to implicating



1 your son?

2 A I don't remember that.

3 Q Mrs. Milgaard, I'm going to direct you to a
4 passage from the preliminary inquiry transcript.

03:40 5 Mr. Commissioner, this is at the commencement of
6 the evidence of Albert Cadrain and the transcript
7 page that I have is 007869. In terms of the
8 transcript itself, it's page 586. If we could
9 bring out the top paragraph, please. Mrs.
03:40 10 Milgaard, this is Mr. Caldwell speaking, it's at
11 the end of Ron Wilson's evidence and before the
12 commencement of Albert Cadrain. Mr. Caldwell
13 indicates, as you see:

14 "I call Albert Cadrain."

03:40 15 And he says in open court:

16 "I might mention I have supplied My
17 Learned Friend with the two statements
18 made by this witness, two made by
19 Wilson, two or three as the case may be,
03:40 20 the one has two pages added the day
21 after it started and two made by Ms.
22 John ahead of the witnesses being called
23 ..."

24 And he talks about the laboratory reports, the
03:41 25 autopsy report. Would you agree with me, I



1 believe this was April 28th, 1969, a clear,
2 unequivocal statement was made on the record in
3 court that all of Ron Wilson's statements had
4 been turned over to your lawyer prior to this
03:41 5 point?

6 A It would certainly look like that by the record.

7 Q And Mrs. Milgaard, when you went in 1981 or
8 1983 -- I forget the exact date and you will have
9 to forgive me -- but when you went to Mr. --
03:41 10 1981 -- but when you went to Mr. Young's office
11 and you looked at Mr. Tallis' file, Ron Wilson's
12 statements were on that file, weren't they?

13 A I don't recall.

14 Q Okay. Do you recall that, when you talked to Ron
03:41 15 Wilson in January of 1981, you talked to him about
16 his first statement? And we have the transcript
17 of that conversation where, when he was first
18 approached by the police, he said he knew nothing
19 of the murder of Gail Miller, that they had no
03:42 20 connection to the murder of Gail Miller?

21 A I remember hearing that here.

22 Q You talked to him about it?

23 A Yes.

24 Q And you know you talked to him about it in
03:42 25 January?



1 A It was on the tape.

2 Q January 25th, 1981. You heard it in the courtroom
3 on August 28th, 1969, you saw it in Mr. Young's
4 file in 1981, the statements were there, you made
03:42 5 copies of the statements; didn't you?

6 A I don't recall.

7 Q You made 85 pages of -- or photocopies from his
8 file?

9 A I remember that came up, that we did that, and at
03:42 10 the time I have no memory of doing that in Mr.
11 Young's office, but I agreed that I had done it.

12 Q And the things that you had asked him to get for
13 you were the witness statements, weren't they?

14 A That's right.

03:42 15 Q Okay. Now Mrs. Milgaard, with respect to whether
16 they were on that file, could we bring up document
17 007042, please? This is the letter directed to
18 Mr. Tallis on August 15th, 1969 from my client,
19 Mr. Caldwell. If we could bring out the body of
03:43 20 it, please. Pursuant:

21 "... to your letter of June 10 ... and
22 our telephone conversation, enclosed for
23 your use are copies of the following
24 statements:"

03:43 25 number 1, Albert Cadrain; number 2, R.D. Wilson



1 March 3rd, 1969; number 3, R.D. Wilson May 23rd
2 and 24th, 1969 put together as one statement.

3 On Mr. Tallis' file those
4 statements were there, weren't they, as is
03:43 5 obvious and apparent from this?

6 A Yes, and were they the first statements?

7 Q Yeah. March 3rd, 1969, the statement that on July
8 17th Dan Lett accused my client of not disclosing,
9 agreed?

03:44 10 A If this is -- if this is the same statement.

11 Q It is the same statement, Mrs. Milgaard, would you
12 like it brought up?

13 A No, if you say it's the same statement.

14 Q It's the same statement. Mrs. Milgaard, there was
03:44 15 even a note in Mr. Young's file that that's the --
16 that Ron Wilson's statements were in the file he
17 got for you; do you remember that?

18 A That there was a note?

19 Q That -- and Mr. Young made a note of the fact that
03:44 20 Ron Wilson's statement was in Mr. Tallis' file,
21 but you say today that you have no memory of
22 seeing that statement that was so important to you
23 on Mr. Tallis' file, when you looked at it, in
24 1981?

03:44 25 A I have no memory of that, I'm sorry.



1 Q Mrs. Milgaard, how then would you have known to be
2 able to discuss it with Ron Wilson on January
3 25th, I believe it was, 1981, about the content of
4 his first statement?

03:45 5 A I don't know that I did unless, prior to talking
6 to him on the phone, I had access to these things.

7 Q Accessed it because it was in your possession,
8 having gotten it from Mr. Young's file, perhaps?

9 A If we were researching or something, and someone
03:45 10 had come up with it at that time, I don't know.

11 Q Mrs. Milgaard, if we could go back to document
12 337731, your contact with Ron Wilson was on
13 January 26th?

14 A Uh-huh.

03:46 15 Q We have various document ID's for your discussion
16 with him, and if you wish to review them we can
17 bring one up, but you will recall from hearing the
18 evidence at this Inquiry that you did discuss his
19 first statement with Ron Wilson in that
03:46 20 transcription?

21 A Yeah.

22 Q That you -- you had a tape recorder in your purse,
23 as you said, and you recorded what he was saying,
24 and on January 26th, 1981 you discussed with him
03:46 25 his first statement; didn't you?



1 A That could be.

2 Q I --

3 A I don't have any memory of it at the moment.

4 Q Are we --

5 A That was a long time ago.

6 Q Are we safe in concluding, Mrs. Milgaard, that it
7 was recorded by you and transcribed by you, or
8 somebody on your behalf, is an accurate
9 transcription?

03:46 10 A Yes, I would say it would be.

11 Q Would you agree with me that it leads to the
12 inevitable conclusion that on January 26th, 1981,
13 you, whether you remembered it because Mr.
14 Caldwell said it on the record at page 586 of the
03:47 15 preliminary inquiry transcript or because Mr.
16 Tallis had cross-examined Ron Wilson on it both at
17 the preliminary inquiry and at the trial, you had
18 a memory, a clear memory on January 26th, 1981
19 that Ron Wilson had given a statement that was not
03:47 20 inculpatory of your son to Inspector Riddell in
21 1969?

22 A I may have had that memory. I don't know that
23 today.

24 Q Would you accept that you must have had that
03:47 25 memory because you talked to him about that



1 statement?

2 A If I talked to him about it at that time, I must
3 have had that memory.

4 Q Mr. Commissioner, for the record, the transcript
03:48 5 of the preliminary inquiry that Mrs. Milgaard
6 refers to with respect to Ron Wilson's evidence
7 has, the version I have has a document number
8 108525, his evidence in terms of the numerical
9 pages started at page 371 and continued through
03:48 10 over, I believe you -- I believe over two days,
11 but he makes references, there are references to
12 the statement between pages 108589 to 108605 at
13 various points, and then there -- it's revisited
14 by Mr. Tallis from pages 108692 to 108694 at the
03:48 15 preliminary inquiry.

16 Mr. Commissioner, with respect
17 to the trial, the transcript for the trial, Ron
18 Wilson's evidence begins at page 179, he commenced
19 his evidence on the 20th of January, 1970, our
03:49 20 document number or the document number I have is
21 211035 as the first page of his transcript, there
22 is discussion of the fact of his first statement
23 found at pages -- through pages 211147 to 211156,
24 and again at 211180 through to 211182. These
03:49 25 would be some of the portions that Mrs. Milgaard



1 was referring to.

2 Mrs. Milgaard, you had had that
3 transcript since January of 1981, Mr. Young's file
4 indicates that he sent it to you about January
03:50 5 14th, 1981?

6 A Yes.

7 Q And you had easy access to that transcript all
8 through the years between 1981 and when this story
9 appeared in the paper in July 1990; didn't you?

03:50 10 A I wouldn't say "easy access to it".

11 Q Well you got it that morning, it must have been in
12 your basement, in your car?

13 A It probably would have if I had looked for it
14 and --

15 Q Yes.

16 A -- had memory of it.

17 Q It was in your home, you're quoting from it in
18 your two conversations that we've just listened to
19 with Dan Lett and David Asper, so it was right
03:50 20 there readily at hand for you, maybe with some
21 effort, but you didn't have to go to another city
22 to get it, you had it, and you reviewed it the day
23 that you saw this newspaper story; didn't you?

24 A I think I researched the transcripts, did I not?

03:51 25 Q Uh-huh.



1 A Yeah.

2 Q You're reading from it, so --

3 A Yeah.

03:51 4 Q -- it's no stretch for me to say to you or ask if
5 you'll agree that you had them in your possession?

6 A Yes, I think we had them at the office.

7 Q And included in your possession was the portion of
8 the transcript from the preliminary inquiry where
9 Mr. Caldwell said, at the commencement of David --
03:51 10 of Albert Cadrain's evidence, that those
11 statements had been turned over?

12 A Yes.

13 Q It was there?

14 A Yes.

03:51 15 Q That you didn't remember it, or didn't go looking
16 for it, is a separate issue. Now Mrs. Milgaard,
17 at that time you also had, didn't you, a copy of
18 the closing address that Mr. Tallis -- Mr.
19 Caldwell gave to the jury on about January 30th,
03:51 20 1970 at your son's trial?

21 A I don't know.

22 Q Certain -- if we could bring up document number
23 332045. Mrs. Milgaard, this is a letter that's
24 been called up before at this, or at these
03:52 25 proceedings, it's a letter to Mr. Caldwell written



1 by Peter Carlyle-Gordge, you'll remember, on the
2 22nd of February, --

3 A Oh, yes, I heard about that.

4 Q -- 1983? If we could go to the second page,
03:52 5 please, and if we could bring out this part, a
6 notation in Mr. Caldwell's handwriting that on the
7 25th of February, 1983 he sent a copy of his
8 opening and closing address to Mr.
9 Carlyle-Gordge; --

03:52 10 A Yes.

11 Q -- agreed? And you have given testimony, at
12 various places in these proceedings, that you were
13 receiving information that was being obtained by
14 Mr. Carlyle-Gordge?

03:52 15 A Yes.

16 Q And, Mrs. Milgaard, you received a copy of the
17 closing address that was forwarded under cover of
18 that note to Mr. Carlyle-Gordge; didn't you?

19 A I may have.

03:53 20 Q I'm going to ask to have brought up from Mr.
21 Caldwell's file document number 007311. Do you
22 recognize that document?

23 A I have seen it often here.

24 Q Mrs. Milgaard, you've seen it also at your own
03:53 25 home, haven't you, you had that as a part of your



1 documentary record? In fact in a telephone
2 discussion, the reference for which I can find,
3 you talked to David Asper about this very document
4 once; didn't you?

03:53 5 A I may have. I have no current memory of any of
6 this.

7 Q Do you have a memory of telling David Asper to
8 look at the closing address that was done by Mr.
9 Caldwell because it had some interesting
03:54 10 information in it?

11 A No, I do not.

12 Q Do you have a memory of telling David Asper that
13 the closing address was his original document with
14 his notes on it, handwritten notes on it, made by
03:54 15 Mr. Caldwell?

16 A No, I don't recall that either.

17 Q Okay. Mrs. Milgaard, I'm going to direct you to
18 -- and I'll get that taped reference for you --
19 I'm going to direct you to page 007327 of the
03:54 20 handwritten version, or the original version with
21 handwritten notes, of the closing to the jury.
22 And if we could bring out this part, please. In
23 his comments to the jury -- and I presume you were
24 present in the courtroom for these late January
03:54 25 1970 --



1 A Yes, I would have been.

2 Q -- Mr. -- and I've compared this to the full
3 transcript, this is pretty close -- but in your
4 possession you had this summary of what he said to
03:54 5 the jury; didn't you:

6 "Ron Wilson stood up to a
7 very thorough cross-examination by my
8 learned friend, and during the course of
9 this, he readily admitted that he had,
03:55 10 at first, withheld what he knew of this
11 episode from the investigators during
12 the early stages of the investigation,
13 that being when he was interviewed by
14 Inspector Riddell in Regina. He
03:55 15 admitted that he told Inspector Riddell
16 nobody in their car had anything to do
17 with the murder, and said that he did
18 not give Inspector Riddell everything he
19 knew, and that he continued this
03:55 20 attitude when later interviewed by Det.
21 Karst and, in fact, persisted in this
22 position right up until May 22nd or 23rd
23 when, according to the evidence, he had
24 the long interview with a policeman at
03:55 25 the Cavalier Hotel in Saskatoon. He



1 says he continued to deny that any of
2 his party was to blame about the death
3 until he came to Saskatoon, telling part
4 of the true story for the first time
03:55 5 only on March 22nd in Regina, and the
6 rest of it in Saskatoon on the 23rd or
7 24th ..."

8 Do you remember Mr. Caldwell telling the jury
9 that when you sat in the jury -- in the courtroom
03:56 10 for the trial?

11 A No, I do not. I think the whole prelim, the
12 trial, I have absolutely no memory of anything
13 except when they found him guilty.

14 Q Mrs. Milgaard, I will bring up the transcript of
03:56 15 your conversation with David Asper that will
16 confirm that you had this in your possession, and
17 that you talked to him about it, if you'll bear
18 with me. But for now I want to reference for the
19 record that the transcript of Mr. Caldwell's
03:56 20 closing address to the jury, the official
21 transcript bears document number 141905, that the
22 exact wording is not 100 percent but it's
23 amazingly close.

24 And the formal on-the-record
03:57 25 transcription, Mr. Commissioner, begins at page 26



1 of the address to the jury document which has
2 document number 141931, and with the exception of
3 very minor changes what was in the opening -- or
4 the closing address that was provided to Mr.
03:57 5 Carlyle-Gordge, and the record will show to
6 Mrs. Asper (sic), was exactly what he said to the
7 jury in his closing address to them. It starts
8 here -- sorry -- and it begins very much the same:

9 "Now Wilson stood up to a
03:57 10 very thorough and capable
11 cross-examination by my learned friend.
12 During this he readily admitted, as I
13 said -- which would be evident anyway --
14 that at first he had withheld what he
03:57 15 knew of this episode from the
16 investigators ...",
17 and it continues it on, as I said, much as is in
18 his typed version, but for the record and for
19 reference of everybody involved, that was part of
03:58 20 the closing address.

21 Mrs. Milgaard, accepting for
22 the moment that you might not be readily able to
23 bring to mind what was happening in the trial, I
24 refer you to a document 331926. And this has
03:58 25 come up before, it's another document from Mr.



1 Young's file, and in the document or the memo Mr.
2 Young is recording certain actions he's taken
3 referencing a phone call he has had with Mr.
4 Caldwell who said:

03:58 5 "he gave copies of material statements
6 to Tallis ...",

7 and also -- and went on to say:

8 "... however, he is prepared to give
9 over his file to me - but will not
03:58 10 release copies to Mrs. Milgaard."

11 But you'll see here that Mr. Young was told that
12 material statements had been turned over to Mr.
13 Tallis, and can we assume that he would have
14 communicated that information to you?

03:59 15 A But it doesn't say what material statements.

16 Q Well "material" would be a matter of
17 interpretation, Mrs. Milgaard, but we've already
18 referred you to the letter or I've already
19 referred you, have I not, to the letter that Mr.
03:59 20 Caldwell sent to Mr. Tallis on the 15th of August,
21 1969 where he documented that he turned over Ron
22 Wilson's statements, his first to Inspector
23 Riddell on March 3rd, 1969 and his second over two
24 days to Detective Karst on March 23rd?

03:59 25 A Yes, I remember you showing me that.



1 Q So, if you could, would you agree that in
2 "material statements", by implication, if we look
3 back to my client's letter of August 15th, he
4 included Ron Wilson's statements?

03:59 5 A I would think so, yes.

6 COMMISSIONER MacCALLUM: But did Young tell
7 you this? That was the question.

8 A I don't remember any of my dealings with Mr.
9 Young, Commissioner.

04:00 10 BY MS. KNOX:

11 Q Mrs. Milgaard, what did you do with the material
12 that you copied from Mr. Tallis' file when it was
13 sent over to Mr. Young's office for you that
14 spring?

04:00 15 A Put it in all, with all of the other boxes of
16 things that I had, and took it to Mr. Wolch's
17 office.

18 Q Okay. Between 1981, when you got it, and 1986,
19 whatever date that was when you took everything to
04:00 20 Mr. Wolch's office, what did you do with that
21 material? And, well, we're talking approximately
22 five years in there, give or take a few months?

23 A Well, I would have had it with me, we would -- if
24 that was when Peter was working with me we'd have
04:00 25 been going through it.



1 Q Reading it, debating it, figuring out what could
2 have happened that witness statements went from
3 being "don't know nothing about a murder" to --

4 A Yeah. And now, of course, we know that they
04:01 5 didn't see any of the things that they said they
6 saw.

7 Q Mrs. Milgaard, if you could stay on topics, we're
8 talking now about what you saw and what you had in
9 your possession. You had, I suggest, in your
04:01 10 possession actual copies of Ron Wilson's
11 statements of March 3rd, 1969 and May 23rd and
12 24th; did you not?

13 A I don't know. I can't tell you that for sure.

14 Q Okay. Would you agree with me that the records
04:01 15 would appear to suggest that those were provided
16 to you?

17 A Yes.

18 Q Okay. But you can't say with certainty today
19 whether you actually received them, what you do
04:01 20 know is that you had read it, because you talked
21 to Ron Wilson about it on January 26th, 1981?

22 A Yes, I must have.

23 Q So at some point in time you must have read that
24 statement, whether you read it and didn't keep a
04:01 25 copy or whether you took a copy and you don't know



1 where your copy is now?

2 A I presume my copies are here at the Commission.

3 Q Okay. Mrs. Milgaard, when you read this story on

4 July 17th, 1990 and when you were concerned about

04:02 5 it and after you talked to David Asper about it,

6 did you take any further steps to be sure that you

7 were -- or that the story was right, or did you

8 walk blindly into that reasoning that Mr. Asper

9 tried to prevail upon you that, well, he could

04:02 10 have known about the statement without having the

11 physical paper?

12 A I have no recollection, currently, of even that

13 conversation with David Asper, so that I can't

14 give you my rationale at the time because I don't

04:02 15 even remember what went on at that time.

16 Q Mrs. Milgaard, would you agree with me, at least

17 based on the taped conversations that you had with

18 Dan Lett and Dan -- and David Asper after those

19 phone -- after that article, that you were very

04:02 20 alert to the issue?

21 A I was questioning them, that was obvious to me.

22 Q And very concerned because you didn't believe the

23 story accurately represented the record?

24 A I had wondered if it did and, from what David

04:03 25 Asper talked to me about, I felt that he explained



1 it very well to me.

2 Q Okay. Now, Mrs. Milgaard, the record shows that
3 you went from your conversations with Mr. Asper
4 and with Mr. Lett, where you said "I believe Mr.
04:03 5 Tallis had the statement, these are the reasons
6 why I believed it," or at least at the end of your
7 conversation with David Asper you knew that he had
8 the information, to having various conversations
9 with the media about this issue; didn't you?

04:03 10 A I don't recall.

11 Q Mrs. Milgaard, you said, when Mr. Hodson first
12 began to question you I believe on May 8th -- and
13 I'm sure that it seems like a long time ago to you
14 -- that you started taping your conversations in
04:04 15 1990 because it was important to you that anything
16 that you said about issues to do with this case be
17 the truth?

18 A That's correct.

19 Q Do you remember that? You said it was important
04:04 20 to you to be sure that, if you were going to
21 repeat something that you were told or that you
22 believed, that it was an accurate representation?

23 A That's correct.

24 Q Now, Mrs. Milgaard, I'm gonna suggest to you that
04:04 25 in -- immediately following this story you engaged



1 in what would perhaps be kindly described as a
2 very unfortunate chain of misinformation to the
3 media, and I'm gonna suggest to you that you went
4 from your discussion with David Asper where the
04:05 5 advice from him, or his suggestion was "well, just
6 because he questioned him about it at the
7 preliminary inquiry and trial doesn't mean he had
8 the statement", to making bald assertions to
9 various representatives in the public media that
04:05 10 my client had not disclosed the statement; do you
11 have a memory of doing that?

12 A No, I do not.

13 Q Perhaps we could bring up clip CK number 1.

14 Mr. Commissioner, this is tape
04:05 15 123, the tape document ID is 337007, the
16 transcript doc. ID is 337002.

17 And, for the record, this is a
18 conversation between Mrs. Milgaard and Cec Rosner.
19 Mrs. Milgaard, you knew Cec Rosner well; didn't
04:05 20 you?

21 A Well, he was a -- one of the many reporters.

22 Q Who you were in frequent communication with?

23 A Yes.

24 COMMISSIONER MacCALLUM: This is, spell his
04:06 25 name for me, please?



1 MS. KNOX: C-E-C and R-O-S-N-E-R, I
2 believe, was the second name.

3 COMMISSIONER MacCALLUM: Thank you very
4 much.

04:06 5 BY MS. KNOX:

6 Q And I believe he was the author or co-author of
7 the book with Carl Karp; wasn't he?

8 A That's right.

9 Q Okay. If we could start that tape with the
04:06 10 transcription beginning --

11 COMMISSIONER MacCALLUM: I missed the date,
12 I'm sorry?

13 MS. KNOX: Mr. Commissioner, it appears to
14 be July 18th, it's immediately following the July
15 17th news story in the *Winnipeg Free Press*, and
16 you'll see as you listen and follow the
17 transcript why I conclude that it was probably
18 the 8th -- the 18th, the next day.

19 COMMISSIONER MacCALLUM: Okay.

04:06 20 A Of what year are we in now?

21 BY MS. KNOX:

22 Q 1990.

23 A Okay.

24 Q It was the day after the story in the *Winnipeg*
04:06 25 *Free Press* --



1 A Okay.

2 Q -- and your discussions with Mr. Lett and with Mr.
3 Asper where you expressed your concern about the
4 accuracy of the story.

5 **(Excerpt of Tape 123)**

6 MRS. JOYCE MILGAARD: Yes, well, I talked
7 to Geoff York and he had asked me to
8 call you.

9 MR. CEC ROSNER: Okay.

10 MRS. JOYCE MILGAARD: Basically, Dan Lett
11 picked up a story yesterday from -- I
12 don't know if you got it on -- if it
13 came over the wire, but he contacted --
14 how familiar are you with the case,
15 first of all?

16 MR. CEC ROSNER: Well, I'm quite familiar.
17 I did get the package of information
18 that David Asper sent to me when I was
19 working at Canadian Press, and you and I
20 have spoken when I was working at CP
21 about a month or so ago.

22 MRS. JOYCE MILGAARD: Yeah, so you are
23 fairly familiar?

24 MR. CEC ROSNER: I think so, yeah.

25 MRS. JOYCE MILGAARD: Okay. Well, Wilson



1 *apparently -- this hasn't been reported*
2 *yet, but he's even lost his job.*

3 MR. CEC ROSNER: *Wilson.*

4 MRS. JOYCE MILGAARD: *Yeah.*

5 MR. CEC ROSNER: *Oh, you're kidding.*

6 MRS. JOYCE MILGAARD: *No, I'm not.*

7 MR. CEC ROSNER: *Is this the chap who*
8 *signed the --*

9 MRS. JOYCE MILGAARD: *Affidavit.*

10 MR. CEC ROSNER: *-- sort of recantation in*
11 *British Columbia.*

12 MRS. JOYCE MILGAARD: *No, no -- well, yeah,*
13 *in B.C.*

14 MR. CEC ROSNER: *Yeah, he lives in -- in*
15 *B.C.*

16 MRS. JOYCE MILGAARD: *Nakusp, yeah.*

17 MR. CEC ROSNER: *Right. Right.*

18 MRS. JOYCE MILGAARD: *And the thing is that*
19 *he's on holidays right now, but after*
20 *his holidays they told him not to come*
21 *back. Now, that hasn't been published*
22 *yet, but he's feeling pretty down about*
23 *the whole situation.*

24 MR. CEC ROSNER: *Yeah.*

25 MRS. JOYCE MILGAARD: *What did get*



1 published, Dan happened to phone Watson,
2 his lawyer, and -- just to find out if
3 Justice had been out to see him yet,
4 which they haven't, but apparently
5 they're out west this week, so hopefully
6 they're out there to see him --

7 MR. CEC ROSNER: Okay.

8 MRS. JOYCE MILGAARD: -- but one of the
9 things that he found out was Watson
10 received from the Justice Department,
11 from Williams, copies of Statements that
12 Wilson had made, and with this was the
13 original Statement that Wilson had made,
14 and in his original Statement he said,
15 "I'm convinced David Milgaard never left
16 our company during the morning we're in
17 Saskatoon." He also says, you know, he
18 never saw the knife or did he see blood
19 on his clothes, all of the things that
20 he's now saying they had in an original
21 Statement. Interesting thing was, he
22 was never cross-examined on this
23 original Statement which means either
24 Tallis had it, and you know, didn't
25 cross-examine on it which David Asper



1 and other lawyers say, you know, if
2 anyone knew that he'd made that they
3 would definitely -- so it sort of looks
4 like non-disclosure.

5 MR. CEC ROSNER: So we're not sure -- the
6 transcripts of the trial don't indicate
7 whether it was --

8 MRS. JOYCE MILGAARD: Oh, they do indicate
9 --

10 MR. CEC ROSNER: -- whether that original
11 Statement was tendered in evidence.

12 MRS. JOYCE MILGAARD: Oh, it wasn't
13 tendered in evidence. It definitely
14 wasn't. It wasn't even --

15 MR. CEC ROSNER: Okay.

16 MRS. JOYCE MILGAARD: -- suggested that
17 there was one.

18 MR. CEC ROSNER: Okay.

19 MRS. JOYCE MILGAARD: So this is what this
20 situation looks like right now.

21 MR. CEC ROSNER: Mhmm.

22 MRS. JOYCE MILGAARD: Now, Wilson, in this
23 interview, said, like, that he had with
24 Lett, said that he's even more confident
25 than ever that similar Statements must



1 exist for the other witnesses, like
2 Nicole, John and Albert Cadrain that
3 would also --

4 MR. CEC ROSNER: Okay, so that there must
5 be similar original Statements somehow
6 -- where --

7 MRS. JOYCE MILGAARD: Somewhere in the
8 Saskatoon Police files.

9 MR. CEC ROSNER: If they haven't been
10 purged by now.

11 MRS. JOYCE MILGAARD: Well, this one
12 wasn't. I mean, obviously Williams got
13 it from somewhere, but you see what was
14 happening was Watson was refusing to let
15 Wilson talk to Justice until he'd gone
16 over his Statement with him, and over
17 the trial transcript. He wanted to make
18 sure that he knew exactly what he was
19 talking about and to familiarize himself
20 with the case. So --

21 MR. CEC ROSNER: Watson wanted that
22 opportunity.

23 MRS. JOYCE MILGAARD: Yes, and he --

24 MR. CEC ROSNER: Yeah.

25 MRS. JOYCE MILGAARD: -- and he wrote to



1 Williams and said he wanted his original
2 Statement, meaning the one that he
3 originally gave to the police in May --

4 MR. CEC ROSNER: Right.

5 MRS. JOYCE MILGAARD: -- but hah, the
6 original Statement came along with it,
7 which was a real eye-opener --

8 MR. CEC ROSNER: Mhmm.

9 MRS. JOYCE MILGAARD: -- because Wilson
10 couldn't even remember making it, but he
11 knew that he'd originally told him, but
12 he didn't know he'd put it in a
13 Statement form.

14 MR. CEC ROSNER: Okay. You're going over a
15 couple of things here that I'm not
16 familiar with, okay. I don't blame you,
17 and I'm glad that you are because you've
18 given me the story in a nutshell, but I
19 -- and I think I've guessed correctly.
20 There are some gaps in my knowledge.

21 MRS. JOYCE MILGAARD: All right.

22 MR. CEC ROSNER: What is Watson's first
23 name, the lawyer.

24 MRS. JOYCE MILGAARD: The lawyer, okay. I
25 don't even know it --



1 MR. CEC ROSNER: Okay.

2 MRS. JOYCE MILGAARD: -- but let me see if
3 it's in the -- Ken Watson, a B.C. lawyer
4 --

5 MR. CEC ROSNER: Okay.

6 MRS. JOYCE MILGAARD: -- representing
7 Wilson.

8 MR. CEC ROSNER: Do you know where in B.C.,
9 Ken Watson.

10 MRS. JOYCE MILGAARD: Yeah, he's in --
11 listen I can do you one better --

12 MR. CEC ROSNER: Oh, listen --

13 MRS. JOYCE MILGAARD: -- I've wrote down
14 his number somewhere.

15 MR. CEC ROSNER: Oh, okay.

16 MRS. JOYCE MILGAARD: I remembered when I
17 was talking to David Asper because David
18 Asper wasn't having any problem getting
19 -- getting in touch when he couldn't get
20 him -- 265 --

21 MR. CEC ROSNER: Yeah.

22 MRS. JOYCE MILGAARD: -- 3641.

23 MR. CEC ROSNER: Okay. Okay, next question
24 has to do with Wilson. Did you say that
25 there was a request for his original



1 Statement from Justice -- the Justice
2 Department asked for -- or Asper -- or
3 Watson, yeah, okay.

4 MRS. JOYCE MILGAARD: Watson asked Justice
5 Department for Wilson's original
6 Statement.

7 MR. CEC ROSNER: Okay. When talked to
8 police -- you say he talked to police.

9 MRS. JOYCE MILGAARD: When he talked to
10 Williams in the Justice Department in
11 Ottawa, and that's where it came from.

12 MR. CEC ROSNER: Okay.

13 MRS. JOYCE MILGAARD: So now whether
14 Williams --

15 MR. CEC ROSNER: And "he" meaning Watson --
16 when "he" meaning Watson, not Wilson --

17 MRS. JOYCE MILGAARD: Right.

18 MR. CEC ROSNER: -- because Wilson has not
19 talked to Williams in the Justice
20 Department at this point.

21 MRS. JOYCE MILGAARD: No. No.

22 MR. CEC ROSNER: Okay.

23 MRS. JOYCE MILGAARD: Okay?

24 MR. CEC ROSNER: I just wanted to clarify
25 that.



1 MRS. JOYCE MILGAARD: Okay.

2 MR. CEC ROSNER: Okay, so -- so Watson was
3 expecting, when he asked for an original
4 Statement he was expecting the first
5 Statement that Wilson would have made to
6 police in Saskatoon back in (INAUDIBLE).

7 MRS. JOYCE MILGAARD: He was expecting the
8 Statement that incriminated David?

9 MR. CEC ROSNER: I see, yeah.

10 MRS. JOYCE MILGAARD: Okay, so he got two
11 Statements. So -- and Ken said he was
12 shocked when he opened a package from
13 the Justice Department containing, among
14 other things, the two conflicting
15 Statements. Watson said: "Not only does
16 the first Statement lend credibility to
17 his client's recent recant of his
18 testimony, it suggests a serious
19 omission of information given to
20 Tallis."

21 MR. CEC ROSNER: Mhmm.

22 MRS. JOYCE MILGAARD: "I can see no reason
23 for the Statement to be withheld."
24 Watson said: "Any lawyer would have
25 questioned and it would have been



1 *quickly exposed in a court."*

2 MR. CEC ROSNER: *Okay. So you're reading*
3 *from Dan Lett's story yesterday in the*
4 *Free Press.*

5 MRS. JOYCE MILGAARD: *Mhmm. Mhmm.*

6 MR. CEC ROSNER: *All right. Okay.*

7 MRS. JOYCE MILGAARD: *So this is the*
8 *situation there.*

9 MR. CEC ROSNER: *Mhmm.*

10 MRS. JOYCE MILGAARD: *Now, I'm convinced,*
11 *and always have been, that all of those*
12 *kids told the truth when --*

13 MR. CEC ROSNER: *Mhmm.*

14 MRS. JOYCE MILGAARD: *-- they first started*
15 *out because --*

16 MR. CEC ROSNER: *Sure.*

17 MRS. JOYCE MILGAARD: *-- they told me they*
18 *did. They all said that. So those*
19 *other statements are somewhere, and I*
20 *think they're going to surface. The*
21 *other thing is, it would be very*
22 *interesting because I think it would be*
23 *interesting if there was cameramen out*
24 *beside that Saskatoon Hospital. I have*
25 *a feeling that Williams is going to be*



1 out there interviewing Fisher ..."

2 (End of tape)

3 Q We can stop there. Mrs. Milgaard, you go on to
4 discuss with Mr. Rosner about whether the press
04:13 5 should have a camera outside to catch Mr. Williams
6 going in to interview Fisher. But on the subject
7 to -- for which I directed your attention to this
8 tape, would you agree with me, as we listened to
9 that tape, that one would be hard-pressed to
04:14 10 remember that you had reservations about the
11 accuracy of the story that was reported in the
12 free, in the *Winnipeg Free Press*, and that you
13 seemed to be encouraging this reporter to adopt
14 the story in the *Free Press* as being the truth?

04:13 15 A Yes. Well, obviously after getting that
16 information from Watson, that became very exciting
17 because he was excited about it.

18 Q But, Mrs. Milgaard, appreciating that it came from
19 Watson and he was excited, would you agree with me
04:14 20 he was the new kid on the block and he didn't know
21 very much about the case?

22 A But he was a lawyer.

23 Q Yeah, it doesn't matter that he's a lawyer, you
24 knew better when he said to Dan Lett that this
04:14 25 information wasn't known to Mr. Tallis because you



1 read, we just listened to the tapes of you reading
2 to Mr. Lett and to Mr. Asper parts of the
3 transcript from the preliminary inquiry and trial
4 that clearly showed Mr. Tallis had this
04:15 5 information, didn't we?

6 A Yes, we did, but at the time that it came from
7 Mr. Watson, and I worked with him on it, I really
8 thought that this was a different statement.

9 Q Okay. You are going to have to help me because --

04:15 10 A It was an original statement where he said he saw
11 nothing, and, I mean, I was telling him word for
12 word what Mr. Watson had told me, or, well, told
13 us --

14 Q Yeah.

04:15 15 A -- in essence. So obviously, and I'm going back
16 to the time when I talked to Cec Rosner, I was
17 really believing what we were getting. I thought
18 it was something else.

19 Q Mrs. Milgaard, you said to either David Asper or
04:15 20 Dan Lett, when I read that story in the paper I
21 nearly freaked, I knew somewhere there was some
22 information that told me Mr. Tallis had that
23 statement, I went and got the transcripts, this is
24 what's in the transcripts. So now you are saying
04:16 25 to me that you thought that they were talking



1 about a different story?

2 A Well, no, they were talking about -- I thought
3 there could have been other statements. From the
4 way Watson was speaking and what he was saying, I
04:16 5 thought there was another statement there, and so
6 that's why I felt it was very important that the
7 story be out there.

8 Q Mrs. Milgaard, don't you see, that what you were
9 doing with Mr. Rosner was encouraging him to
04:16 10 repeat information that Dan Lett had printed that
11 you knew to be wrong?

12 A No. I was encouraging him to talk to Mr. Watson
13 and to get the information from him. I wasn't
14 giving him the information.

04:16 15 Q Why didn't you tell him that you had the
16 transcripts from the preliminary inquiry and from
17 the trial and you knew that if he called
18 Mr. Watson he would get wrong information,
19 wrong -- innocent wrong information from
04:17 20 Mr. Watson?

21 A No. I thought what Mr. Watson was telling was
22 something new. Now, maybe you can't understand
23 that, but at the time that's what I thought, and I
24 thought it was something new, and I thought that
04:17 25 he could then talk to him and get his information



1 and everything from them, and my neck feels
2 exactly the same way.

3 Q Mrs. Milgaard, you'll forgive me if I say to you
4 that that makes no sense in light of your
04:17 5 conversations with Mr. Lett and with Mr. Asper.

6 A After I talked to David Asper, I obviously went
7 over to David Asper's view.

8 Q But how did that --

9 A And then Watson --

04:17 10 Q -- get you to the view that Watson had an entirely
11 different statement than the Riddell statement
12 that Mr. Tallis had asked about which Mr. Caldwell
13 had disclosed on April 18th, 1969?

14 A Because when Watson called, he was talking about
04:18 15 something that was new and not incriminating and
16 he went on and on about it and also he said the
17 same thing that David was saying, which was if
18 Tallis had it, he would definitely have done
19 something with it and this -- I mean, he was on
04:18 20 the same page as David Asper was and I guess
21 that's why I got on the same page. That's the
22 only reason I can give you, I'm sorry.

23 Q Okay, okay, I know I have to stop and let you
24 finish your answers, and I'm trying, but how did
04:18 25 that get you to the statement you made to me three



1 minutes ago that you thought that Ken Watson was
2 talking about an entirely different statement than
3 the March 3rd?

4 A An earlier statement, I thought there could have
04:19 5 been an earlier statement when he talked.

6 Q Mrs. Milgaard, I didn't check because this has
7 caught me completely by surprise, but my memory is
8 that Ken Watson sent the statement that he was
9 talking about to David Asper when he got it.

04:19 10 A Well, I don't know about that, I don't remember
11 that part of it, and you are zeroing in on
12 information way back when that I don't have
13 current memory about and so I can't -- I mean, I
14 can only go by what I hear on these tapes.

04:19 15 Q Mrs. Milgaard, this was 1990?

16 A Yes.

17 Q You had your tapes that you could go back and
18 check, you told us that's why you started --

19 A That's why you've got them here.

04:19 20 Q But it's why you started making them, was so that
21 you would have them, that you could check them in
22 1990 so that if you were going to repeat anything
23 or say anything, you wanted to be sure you were
24 giving accurate information.

04:20 25 A And with Mr. Cec Rosner, I sent him to the source



1 of the information, to Ken Watson, because he was
2 the one that had contacted -- that we got the
3 information from, so I wasn't giving him that
4 information, I was giving them Mr. Watson. Don't
04:20 5 you understand that?

6 Q What I don't understand is why you didn't tell him
7 what you told Mr. Lett and Mr. Asper.

8 A Because Mr. Asper I guess must have convinced me
9 that it was right.

04:20 10 Q Okay. I'm going to move because -- if we could
11 bring up clip CK number 2, please. Mr.
12 Commissioner, this is also an excerpt from tape
13 123 and it is a conversation between Mrs. Milgaard
14 and Kim Ternowetski, T-E-R-N-O-W-E-T-S-K-I is the
04:21 15 spelling, a CBC news reporter. The transcription
16 of this conversation is, begins at page 337037 and
17 it follows in time immediately after the Cec
18 Rosner conversation. Mrs. Milgaard, before we
19 start playing the tape, you knew Kim Ternowetski?

04:21 20 A I haven't a clue. Is it a male or a female?

21 Q You've got me, because I didn't listen to the
22 tape, I relied on the transcript. Perhaps we'll
23 both find out.

24 A And what is the date of this?

04:21 25 Q This is immediately following -- you appear to



1 have engaged in a series of phone calls. The Cec
2 Rosner conversation ends at page 60 of the
3 transcription of tape 123 and we're now going to
4 page 63.

04:22 5 A And what --

6 Q Sorry, Cec Rosner ended at page 62 and this
7 immediately follows.

8 A Okay. So what date, what year?

9 Q July 18th of 17th, whichever.

04:22 10 A Of what year?

11 Q 1990.

12 A 1990, okay.

13 Q All these conversations are taking place the day
14 of or the day after the *Winnipeg Free Press* story.

04:22 15 A That story, okay.

16 **(Excerpt of tape 123 played)**

17 MRS. JOYCE MILGAARD: *Hi.*

18 MS. KIM TERNOWETSKI: *Hello.*

19 MRS. JOYCE MILGAARD: *How are you?*

20 MS. KIM TERNOWETSKI: *Just fine, thanks,*
21 *how can we help you.*

22 MRS. JOYCE MILGAARD: *Well, your editor*
23 *told me to -- or your news desk there said to*
24 *give you a call --*

25 MS. KIM TERNOWETSKI: *Okay.*



1 MRS. JOYCE MILGAARD: -- when anything was
2 cooking. Is there anyone I should talk to there?

3 MS. KIM TERNOWETSKI: Sure, just a minute.
4 Okay. Hi, My name is Kim Ternowetski, go ahead.

5 MRS. JOYCE MILGAARD: Okay. Well, I don't
6 know if you're aware of the Free Press article
7 this morning on the case.

8 MS. KIM TERNOWETSKI: Not this morning.

9 MRS. JOYCE MILGAARD: Okay. Actually, what
10 happened, Dan Lett contacted Ken Watson out in
11 B.C. who is Wilson's lawyer. How familiar with
12 the case, are you.

13 MS. KIM TERNOWETSKI: Oh, pretty familiar.
14 I saw the -- I've seen a few things on it.

15 MRS. JOYCE MILGAARD: Okay. Well, Wilson
16 is the one that recanted his testimony
17 completely. Okay.

18 MS. KIM TERNOWETSKI: Right, okay.

19 MRS. JOYCE MILGAARD: Watson sent -- asked
20 the Justice Department for his original
21 Statement, meaning the one in which he
22 incriminated Wilson -- or David --

23 MS. KIM TERNOWETSKI: Mhmm.

24 MRS. JOYCE MILGAARD: -- and lo and behold
25 this morning he opened up a package from the



1 Justice Department and it contained two
2 conflicting Statements. He'd given an original
3 Statements that's almost identical to the one
4 he's just given us. Justice had it all the time,
5 and Tallis couldn't have had it. This is what
6 Watson says. He said, "I can see no reason for
7 the Statement to be withheld. Any lawyer would
8 have questioned it and it would have been quickly
9 exposed in court." So I mean, that kind of stuff
10 should have exposed in court that he had made an
11 original Statement saying, you know, that he saw
12 nothing and that he was never separated from
13 David for one minute during all the time David
14 was in Saskatoon.

15 MS. KIM TERNOWETSKI: So he received his
16 original Statement plus the one that was
17 submitted in court.

18 MRS. JOYCE MILGAARD: Yeah, so he got two
19 of them. The original four-page Statement was
20 witnessed by RCMP Inspector J.A.B. Riddell,
21 "described an uneventful trip to Saskatoon the
22 morning of January 31st. In the Statement Wilson
23 noted he never saw Milgaard with a knife as he
24 later testified, nor did he see blood on his
25 clothes, and other damning disclosure at the



1 trial. In addition, Wilson rebuts a major Crown
2 argument by saying Milgaard did not leave the car
3 for a period of 15 minutes when they became
4 stuck." Caldwell argued that David had killed
5 Gail Miller in the time he was away from the car.
6 And then in quotes: "I am convinced that David
7 Milgaard never left our company during the
8 morning we were in Saskatoon, Wilson's original
9 Statement said."

10 MS. KIM TERNOWETSKI: Mmhmm.

11 MRS. JOYCE MILGAARD: And then they
12 interviewed Wilson and he said he didn't remember
13 giving the first Statement. Like he said all
14 along, he told him that, but he didn't remember
15 putting it in writing --

16 MS. KIM TERNOWETSKI: Mmhmm.

17 MRS. JOYCE MILGAARD: -- but he firmly
18 believes that Tallis could have broken him on the
19 stand if they had -- if it had just been used at
20 the trial.

21 MS. KIM TERNOWETSKI: Mmhmm.

22 MRS. JOYCE MILGAARD: And guess what,
23 Wilson has been fired -- fired from his job.

24 MS. KIM TERNOWETSKI: Really.

25 MRS. JOYCE MILGAARD: Yeah.



1 MS. KIM TERNOWETSKI: What was he doing.

2 MRS. JOYCE MILGAARD: He's working in a
3 tire -- a tire shop, salesman or something out
4 there, but I guess the publicity, you know, it's
5 a small town --

6 **(Excerpt ended)**

7 BY MS. KNOX:

8 Q You can stop the tape there. Mrs. Milgaard, is
9 that helpful in clarifying --

04:25 10 MR. HODSON: Sorry, I think the name is Kim
11 Ternacity, T-E-R-N-A-C-I-T-Y is the name, who
12 works for CBC.

13 COMMISSIONER MacCALLUM: Ternacity?

14 MR. HODSON: Ternacity.

04:25 15 COMMISSIONER MacCALLUM: I'm sorry, say it
16 again?

17 MR. HODSON: T-E-R-N-A-C-I-T-Y. The
18 transcript says Ternowetski, but I think it's Kim
19 Ternacity, who I know to be a CBC television
04:25 20 reporter at the time and I believe that's who it
21 refers to, if that assists.

22 MS. KNOX: And I'm sure Mr. Hodson is
23 correct on that. I was relying on the spelling
24 in the transcript.

04:25 25 COMMISSIONER MacCALLUM: Okay.



1 BY MS. KNOX:

2 Q Mrs. Milgaard, we're getting perilously close to
3 having to shut down for the day, but may I suggest
4 to you if we go back to page 337038 of that that
04:26 5 accompanied that clip, where you make the
6 statement to Kim Ternacity that:

7 "The original four-page Statement was
8 witnessed by RCMP Inspector J.A.B.
9 Riddell, "described an uneventful trip
10 to Saskatoon the morning of January 31st.
11 In the Statement Wilson noted he never
12 saw Milgaard ..."

13 Etcetera, etcetera, that your earlier suggestion
14 that you thought it must be a different statement
04:26 15 makes no sense because you knew from court, you
16 knew from the cross-examination of Mr. Wilson by
17 Mr. Tallis at both trial and preliminary inquiry
18 that Inspector Riddell took the only original
19 statement from him, didn't you, so when you found
04:27 20 out about the statement that Watson had, you knew
21 it was Inspector Riddell's statement; did you
22 not?

23 A I must have from this.

24 Q Must have. Mrs. Milgaard, come on, we just heard
04:27 25 the words coming out of your mouth.



1 A Well, I agree, I must have.

2 Q So again, to go back to what this appears to
3 suggest, my question to you was how you went from
4 the knowledge base that you had that you discussed
04:27 5 with Mr. Lett and with Mr. Asper to putting out to
6 other members of the press --

7 A Well, because we got the Watson information and
8 that to me was exciting, we were having something
9 new that was happening, and you have to go back to
04:27 10 the fact of 1990, my son was still in prison. I
11 tried to get everything I could out to the public
12 because I was trying to get his case re-opened.

13 Q Mrs. Milgaard, I'll conclude with a question that
14 I hope you don't take in any wrong way, but may I
04:28 15 suggest to you that what this line of
16 communications between yourself and the press and
17 Mr. Asper and Mr. Lett suggests, that contrary to
18 what you told Mr. Hodson, truth wasn't your guide
19 in some of what you did to help your son, and you
04:28 20 can be forgiven for that may I say, but many times
21 what you looked to do was you created, you looked
22 to create sensational news headlines at the
23 expense of people like my client, didn't you?

24 A No, I did not.

04:28 25 Q You did create sensational headlines at his



1 express though, didn't you?

2 A I did create sensational headlines.

3 MS. KNOX: Thank you. I'll see you in the
4 morning.

04:28 5 (Adjourned at 4:28 p.m.)

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1 OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:

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

8
9
10
11
12 _____, CSR

13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

15
16 _____, RPR, CSR

17 Donald G. Meyer, RPR, CSR

18 Official Queen's Bench Court Reporter



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|-----------|--|--|---|--|
| \$ | <p>141931 [1] - 33224:2 14th [1] - 33218:5 15 [3] - 33166:25, 33176:18, 33251:3 152 [1] - 33143:1 15th [6] - 33126:11, 33209:17, 33209:24, 33213:18, 33225:20, 33226:3 161 [1] - 33096:22 162192 [1] - 33111:11 162465 [1] - 33130:7 16th [1] - 33169:1 177176 [1] - 33118:17 177214 [1] - 33118:21 177220 [1] - 33118:21 179 [1] - 33217:18 17th [7] - 33182:15, 33183:14, 33183:20, 33214:8, 33228:4, 33231:15, 33248:9 18th [8] - 33134:11, 33204:15, 33204:20, 33205:6, 33231:14, 33231:18, 33245:13, 33248:9 19 [1] - 33147:16 1969 [21] - 33100:11, 33100:24, 33108:4, 33111:25, 33115:9, 33124:10, 33204:23, 33206:1, 33207:25, 33210:12, 33212:1, 33213:3, 33213:18, 33214:1, 33214:2, 33214:7, 33216:21, 33225:21, 33225:23, 33227:11, 33245:13 1970 [8] - 33100:11, 33108:5, 33176:17, 33178:14, 33181:8, 33217:19, 33219:20, 33221:25 1972 [1] - 33177:20 1980 [14] - 33109:22, 33110:18, 33141:8, 33149:7, 33153:18, 33153:24, 33154:4, 33154:24, 33155:10, 33155:18, 33155:21, 33155:24, 33156:3, 33157:16 1981 [25] - 33125:23, 33149:8, 33152:8, 33153:22, 33156:11, 33158:23, 33160:19, 33168:10, 33170:24, 33212:7, 33212:10, 33212:15, 33213:2, 33213:4, 33214:24,</p> | <p>33215:3, 33215:24, 33216:12, 33216:18, 33218:3, 33218:5, 33218:8, 33226:18, 33227:21 1983 [3] - 33212:8, 33220:4, 33220:7 1985 [2] - 33176:10, 33178:10 1986 [1] - 33226:18 1989-1990 [1] - 33112:24 1990 [18] - 33117:5, 33126:12, 33176:15, 33178:12, 33182:15, 33183:20, 33204:20, 33209:17, 33209:24, 33218:9, 33228:4, 33229:15, 33231:22, 33246:15, 33246:22, 33248:11, 33248:12, 33254:10 1991 [7] - 33147:8, 33147:12, 33147:16, 33148:3, 33148:13, 33150:1, 33161:23 1992 [7] - 33129:22, 33130:2, 33130:11, 33132:10, 33133:19, 33134:11, 33175:10 1993 [1] - 33135:7 1994 [1] - 33133:17 1997 [3] - 33101:7, 33101:14, 33107:8 1999 [12] - 33108:2, 33112:13, 33112:19, 33131:22, 33132:1, 33132:2, 33137:21, 33139:16, 33139:25, 33162:10, 33178:2, 33178:4 1:05 [1] - 33100:2</p> | <p>211993 [1] - 33122:1 21st [4] - 33101:14, 33105:5, 33169:2, 33169:3 22/81 [1] - 33170:1 22nd [8] - 33150:17, 33151:1, 33169:9, 33169:17, 33200:14, 33220:2, 33222:22, 33223:5 23rd [7] - 33151:18, 33170:9, 33214:1, 33222:22, 33223:6, 33225:24, 33227:11 24th [7] - 33153:24, 33170:24, 33170:25, 33171:1, 33214:2, 33223:7, 33227:12 251 [3] - 33102:4, 33102:10, 33102:15 25th [4] - 33171:1, 33213:2, 33215:3, 33220:7 26 [3] - 33132:4, 33154:3, 33223:25 265 [1] - 33238:20 269317 [2] - 33102:7, 33178:21 269367 [1] - 33178:18 269578 [1] - 33102:8 26th [8] - 33110:18, 33171:2, 33215:13, 33215:24, 33216:12, 33216:18, 33227:21 28th [5] - 33111:25, 33115:9, 33115:18, 33212:1, 33213:3 291 [1] - 33194:11 292 [1] - 33194:13 29581 [1] - 33171:22 2:27 [1] - 33167:2 2:48 [1] - 33167:3</p> | <p>33100 [1] - 33099:4 33184 [1] - 33099:5 33190 [1] - 33099:6 33191 [1] - 33099:7 331926 [1] - 33224:24 331932 [1] - 33170:11 331939 [1] - 33169:14 331941 [1] - 33169:11 331953 [1] - 33168:13 331961 [1] - 33168:11 332039 [2] - 33104:7, 33104:9 33204 [1] - 33099:8 332040 [1] - 33104:13 332041 [1] - 33105:12 332045 [1] - 33219:23 33232 [1] - 33099:9 332405 [1] - 33126:5 33242 [1] - 33099:10 33248 [1] - 33099:11 33252 [1] - 33099:12 336054 [1] - 33184:7 336059 [1] - 33184:10 336106 [1] - 33191:15 336991 [1] - 33184:6 337002 [1] - 33230:16 337007 [1] - 33230:15 337037 [1] - 33247:16 337038 [1] - 33253:4 337136 [1] - 33143:2 337139 [1] - 33143:23 337731 [2] - 33170:15, 33215:12 349 [2] - 33195:1, 33195:2 3641 [1] - 33238:22 371 [1] - 33217:9 3rd [7] - 33200:24, 33204:23, 33214:1, 33214:7, 33225:23, 33227:11, 33246:3</p> |
| 0 | <p>004752 [2] - 33182:15, 33207:19 007005 [1] - 33124:7 007042 [1] - 33213:17 007311 [1] - 33220:21 007327 [1] - 33221:19 007869 [1] - 33211:7 009423 [1] - 33122:20 023046 [1] - 33175:12 023059 [1] - 33175:13</p> | | | |
| 1 | <p>1 [4] - 33101:6, 33205:24, 33213:25, 33230:13 10 [2] - 33169:5, 33213:21 100 [1] - 33223:22 106839 [1] - 33169:1 106841 [2] - 33169:4, 33169:6 108185 [1] - 33116:8 108255 [1] - 33116:9 108261 [1] - 33116:10 108271 [1] - 33116:11 108525 [1] - 33217:8 108589 [1] - 33217:12 108605 [1] - 33217:12 108692 [1] - 33217:14 108694 [1] - 33217:14 10th [1] - 33124:9 1114 [1] - 33186:12 123 [7] - 33099:9, 33099:11, 33230:15, 33232:5, 33247:13, 33248:3, 33248:16 12th [4] - 33096:21, 33149:25, 33152:8, 33168:12 141905 [1] - 33223:21</p> | | | |
| | | 2 | 3 | 4 |
| | | <p>2 [3] - 33122:23, 33213:25, 33247:11 20 [1] - 33176:19 2005 [2] - 33100:17, 33114:20 2006 [1] - 33096:21 20th [1] - 33217:19 21 [2] - 33102:17, 33107:4 211035 [1] - 33217:21 211147 [1] - 33217:23 211156 [1] - 33217:23 211180 [1] - 33217:24 211182 [1] - 33217:24</p> | <p>3 [2] - 33124:13, 33214:1 30 [8] - 33099:5, 33099:7, 33184:6, 33184:17, 33184:19, 33191:6, 33191:13, 33191:18 30th [1] - 33219:19 31st [3] - 33198:24, 33250:22, 33253:10 320 [1] - 33194:11 324 [1] - 33194:23 325 [1] - 33194:24 331 [1] - 33195:1</p> | <p>404 [1] - 33126:6 409 [1] - 33184:9 4:28 [1] - 33255:5</p> |
| | | | | 5 |
| | | | | <p>5 [1] - 33185:22 53 [1] - 33191:14 530 [1] - 33185:23 540 [4] - 33185:23, 33195:7, 33198:19, 33199:4 541 [1] - 33200:22 586 [2] - 33211:8,</p> |



| | | | | |
|---|---|---|---|--|
| 33216:14 | 33114:22 | advantage [1] - 33188:3 | 33142:8, 33182:14 | 33101:6, 33108:23, |
| 6 | accompanied [1] - 33253:5 | advertised [1] - 33157:17 | allegations [13] - 33106:1, 33107:19, | 33126:21, 33129:6, |
| 6 [2] - 33130:7, 33184:17 | accompanying [1] - 33184:9 | advice [1] - 33230:5 | 33109:15, 33109:20, | 33131:17, 33145:4, |
| 60 [1] - 33248:2 | According [1] - 33153:2 | Affair [1] - 33148:1 | 33113:16, 33113:17, | 33181:21 |
| 62 [1] - 33248:6 | according [2] - 33193:11, 33222:23 | affected [2] - 33101:12, 33103:8 | 33121:5, 33121:6, | appreciating [1] - 33242:18 |
| 63 [1] - 33248:4 | accountability [2] - 33146:9, 33146:22 | Affidavit [1] - 33233:9 | 33133:20, 33134:13, | approach [1] - 33154:20 |
| 6th [1] - 33168:10 | accuracy [2] - 33232:4, 33242:11 | afternoon [1] - 33100:7 | 33136:2, 33137:6, | approached [1] - 33212:18 |
| 8 | accurate [8] - 33139:3, 33139:6, 33139:8, | ago [5] - 33112:16, 33216:5, 33229:13, | 33138:10 | April [2] - 33212:1, 33245:13 |
| 85 [1] - 33213:7 | 33151:11, 33216:8, | 33232:21, 33246:1 | allowed [1] - 33118:11 | area [16] - 33118:10, |
| 8th [2] - 33229:12, 33231:18 | 33229:22, 33246:24 | agree [31] - 33105:6, 33105:23, 33106:9, | allowing [2] - 33125:20, 33128:22 | 33141:2, 33156:24, |
| A | accurately [1] - 33228:23 | 33106:13, 33112:2, | almost [6] - 33123:5, 33196:6, 33206:18, | 33157:10, 33157:22, |
| ability [4] - 33198:10, 33200:8, 33201:3, 33256:7 | accusation [1] - 33135:15 | 33113:18, 33133:14, | 33206:24, 33207:1, | 33163:16, 33163:18, |
| able [12] - 33100:14, 33108:9, 33108:21, 33116:22, 33117:8, 33120:4, 33152:4, 33159:1, 33170:2, 33171:6, 33215:2, 33224:22 | accusations [1] - 33113:25 | 33134:9, 33140:15, | amazing [3] - 33102:17, 33123:18, 33193:5 | 33163:19, 33167:8, |
| absence [1] - 33114:18 | accused [6] - 33106:15, 33109:7, 33114:12, 33120:11, 33131:22, 33214:8 | 33165:10, 33165:13, | amazingly [1] - 33223:23 | 33168:5, 33171:12, |
| absolute [4] - 33134:10, 33140:22, 33140:25, 33209:12 | accusing [2] - 33107:3, 33109:21 | 33166:4, 33173:22, | American [1] - 33148:1 | 33174:13, 33182:13, |
| absolutely [8] - 33140:5, 33140:8, 33140:14, 33146:12, 33153:9, 33179:22, 33205:23, 33223:12 | achieved [1] - 33138:2 | 33176:3, 33176:22, | answer [4] - 33119:22, 33146:6, 33198:10, 33205:5 | 33184:11, 33191:9, 33204:12 |
| Absolutely [4] - 33106:12, 33114:25, 33139:1, 33182:19 | acknowledged [2] - 33161:24, 33162:2 | 33177:8, 33177:10, | answering [2] - 33119:20, 33172:23 | argued [1] - 33251:4 |
| absurd [1] - 33136:8 | acting [2] - 33106:25, 33156:17 | 33180:24, 33181:11, | answers [2] - 33200:6, 33245:24 | argument [1] - 33251:2 |
| accept [10] - 33104:8, 33114:15, 33121:20, 33121:23, 33140:8, 33151:10, 33160:17, 33161:4, 33161:25, 33216:24 | actions [1] - 33225:2 | 33204:14, 33204:19, | anyway [4] - 33159:7, 33159:13, 33164:22, 33224:13 | arrange [1] - 33104:2 |
| accepted [2] - 33131:3, 33139:5 | activity [1] - 33118:10 | 33205:21, 33211:25, | apart [3] - 33134:1, 33197:20, 33197:25 | arranging [1] - 33156:5 |
| accepting [2] - 33139:8, 33224:21 | acts [1] - 33138:12 | 33216:11, 33219:5, | apologetic [1] - 33107:9 | arrested [1] - 33100:24 |
| access [5] - 33125:18, 33163:14, 33215:6, 33218:7, 33218:10 | actual [3] - 33189:12, 33195:10, 33227:10 | 33226:1, 33227:14, | apologies [1] - 33103:7 | article [2] - 33228:19, 33249:6 |
| Accessed [1] - 33215:7 | acute [1] - 33196:23 | 33228:16, 33242:8, | apologized [1] - 33101:11 | aspect [1] - 33108:3 |
| accidentally [1] - 33216:14 | adamantly [1] - 33107:19 | 33242:19, 33254:1 | apology [1] - 33101:8 | Asper [119] - 33106:14, |
| | added [1] - 33211:20 | agreed [7] - 33132:7, 33140:25, 33148:19, 33152:24, 33213:11, 33214:9, 33220:11 | apparent [1] - 33214:5 | 33114:10, 33126:22, |
| | addition [3] - 33197:5, 33197:6, 33251:1 | ahead [4] - 33183:18, 33199:8, 33211:22, 33249:4 | appeal [1] - 33102:24 | 33127:6, 33128:6, |
| | additional [1] - 33135:6 | aired [1] - 33147:24 | appear [6] - 33147:13, 33170:23, 33171:5, 33175:20, 33227:15, 33247:25 | 33128:14, 33128:25, |
| | address [10] - 33219:18, 33220:8, 33220:17, 33221:8, 33221:13, 33223:20, 33224:1, 33224:4, 33224:7, 33224:20 | airing [1] - 33147:25 | appearance [2] - 33147:18, 33148:12 | 33129:14, 33129:22, |
| | addresses [2] - 33168:12, 33170:13 | alarm [2] - 33175:2, 33175:3 | Appearances [1] - 33098:1 | 33131:9, 33191:9, |
| | Adjoined [2] - 33167:2, 33255:5 | Albert [21] - 33149:19, 33150:19, 33168:25, 33169:11, 33171:13, 33171:18, 33172:24, 33173:8, 33173:19, 33174:19, 33175:17, 33177:18, 33178:1, 33178:6, 33209:2, 33211:6, 33211:12, 33211:14, 33213:25, 33219:10, 33236:2 | appeared [11] - 33106:10, 33117:6, 33124:24, 33147:8, 33147:12, 33147:16, 33161:8, 33167:12, 33167:13, 33210:10, 33218:9 | 33191:19, 33191:21, |
| | admitted [5] - 33103:20, 33166:14, 33222:9, 33222:15, 33224:12 | Alberta [6] - 33135:12, 33135:20, 33136:10, 33136:11, 33136:12, 33199:19 | appearing [4] - 33118:14, 33141:19, 33208:22, 33208:23 | 33191:23, 33192:1, |
| | adopt [1] - 33242:13 | alert [1] - 33228:20 | appreciate [7] - 33101:11 | 33192:5, 33192:7, |
| | | allegation [11] - 33109:16, 33109:22, 33109:24, 33115:5, 33136:6, 33138:13, 33139:12, 33141:7, | | 33192:9, 33192:13, |
| | | | | 33192:23, 33193:1, |
| | | | | 33193:4, 33193:7, |
| | | | | 33193:9, 33193:13, |
| | | | | 33193:21, 33193:25, |
| | | | | 33194:6, 33194:10, |
| | | | | 33194:17, 33194:20, |
| | | | | 33194:22, 33194:25, |
| | | | | 33195:5, 33195:8, |
| | | | | 33195:13, 33195:18, |
| | | | | 33195:21, 33196:2, |
| | | | | 33196:7, 33196:11, |
| | | | | 33196:14, 33196:18, |
| | | | | 33196:21, 33197:1, |
| | | | | 33197:5, 33197:8, |
| | | | | 33197:14, 33197:17, |
| | | | | 33197:23, 33198:2, |
| | | | | 33198:9, 33198:13, |
| | | | | 33198:20, 33199:1, |
| | | | | 33199:6, 33199:9, |
| | | | | 33199:13, 33199:15, |
| | | | | 33200:16, 33200:19, |



| | | | | |
|--|--|---|---|---|
| <p>33201:6, 33201:15, 33201:18, 33201:21, 33201:23, 33202:1, 33202:4, 33202:8, 33202:11, 33202:15, 33202:19, 33202:25, 33203:3, 33203:6, 33203:9, 33203:12, 33203:19, 33203:22, 33204:1, 33204:3, 33204:7, 33204:15, 33205:22, 33206:12, 33206:17, 33207:6, 33208:5, 33208:14, 33218:19, 33221:3, 33221:7, 33221:12, 33223:15, 33224:6, 33228:5, 33228:8, 33228:13, 33228:18, 33228:25, 33229:3, 33229:7, 33230:4, 33232:3, 33232:18, 33234:25, 33238:17, 33238:18, 33239:2, 33243:2, 33243:19, 33245:5, 33245:6, 33245:20, 33246:9, 33247:7, 33247:8, 33254:5, 33254:17</p> <p>Asper's [1] - 33245:7 assert [1] - 33164:12 asserting [1] - 33162:3 assertion [5] - 33142:8, 33145:9, 33162:5, 33162:7, 33162:12 assertions [2] - 33121:4, 33230:8 assess [1] - 33182:1 assist [3] - 33170:16, 33183:25, 33190:22 assistance [3] - 33149:17, 33150:4, 33168:16 Assistant [1] - 33097:5 assists [1] - 33252:21 assume [2] - 33162:1, 33225:13 assuming [1] - 33111:22 attention [3] - 33118:3, 33173:17, 33242:7 attitude [1] - 33222:20 attribution [1] - 33114:5 Audio [1] - 33097:12 audiotapes [1] - 33209:8 August [4] - 33213:3, 33213:18, 33225:20, 33226:3 author [3] - 33138:8,</p> | <p>33231:6 authorities [3] - 33155:5, 33173:7, 33173:17 authority [2] - 33165:20, 33176:25 autopsy [2] - 33127:22, 33211:25 available [12] - 33101:7, 33107:25, 33109:18, 33111:10, 33112:20, 33113:1, 33114:21, 33122:10, 33125:23, 33133:13, 33133:17, 33140:10 avoid [1] - 33135:15 aware [21] - 33101:9, 33105:19, 33114:9, 33117:2, 33122:9, 33122:14, 33134:23, 33136:15, 33136:17, 33152:10, 33152:13, 33173:3, 33173:9, 33173:15, 33173:16, 33173:21, 33175:7, 33177:11, 33177:16, 33194:16, 33249:6 awareness [2] - 33196:24, 33204:20</p> | <p>33131:10, 33242:16, 33251:3 become [3] - 33105:18, 33114:21, 33173:14 becomes [1] - 33144:11 bed [1] - 33155:1 began [2] - 33141:8, 33229:12 beginning [3] - 33102:14, 33118:18, 33231:10 begins [6] - 33143:1, 33191:14, 33217:18, 33223:25, 33224:8, 33247:16 behalf [5] - 33105:14, 33113:24, 33114:11, 33159:24, 33216:8 behind [2] - 33112:6, 33141:10 behold [1] - 33249:24 Beitel [1] - 33097:8 belabour [1] - 33162:14 belief [12] - 33106:3, 33107:1, 33108:1, 33118:24, 33139:9, 33142:14, 33145:24, 33167:14, 33167:18, 33171:17, 33177:4, 33206:18 beliefs [1] - 33109:9 believes [1] - 33251:18 Bench [5] - 33125:21, 33256:1, 33256:3, 33256:14, 33256:18 benefit [1] - 33143:3 beside [1] - 33241:24 best [4] - 33137:20, 33200:8, 33201:3, 33256:6 better [4] - 33119:22, 33182:10, 33238:11, 33242:24 Between [1] - 33226:18 between [15] - 33116:23, 33117:8, 33117:11, 33135:6, 33143:9, 33147:22, 33150:13, 33150:25, 33184:2, 33191:8, 33217:12, 33218:8, 33230:18, 33247:13, 33254:16 beyond [1] - 33197:9 big [1] - 33111:13 bit [3] - 33127:3, 33159:11, 33175:1 black [1] - 33139:4 blade [6] - 33117:12, 33117:16, 33117:19,</p> | <p>33127:16, 33127:20, 33128:2 blame [3] - 33146:7, 33223:2, 33237:16 blindly [1] - 33228:8 block [1] - 33242:20 blocking [1] - 33163:12 blood [2] - 33234:18, 33250:24 Bloos [1] - 33098:9 blown [1] - 33182:18 bluntly [1] - 33126:15 Bob [3] - 33131:10, 33134:20, 33170:25 Bobs [2] - 33098:5, 33102:24 body [4] - 33112:6, 33117:14, 33126:20, 33213:19 bold [1] - 33113:24 bone [1] - 33126:18 book [39] - 33101:10, 33101:19, 33101:25, 33102:4, 33102:10, 33108:2, 33112:9, 33112:13, 33112:15, 33112:19, 33113:4, 33128:18, 33131:22, 33132:1, 33137:21, 33137:23, 33138:20, 33139:9, 33139:14, 33139:15, 33140:2, 33141:22, 33147:7, 33147:11, 33156:7, 33162:8, 33163:8, 33178:3, 33178:4, 33178:18, 33178:20, 33179:1, 33179:14, 33179:23, 33180:3, 33181:5, 33181:13, 33182:6, 33231:7 books [1] - 33138:25 borrow [1] - 33108:20 Boswell [1] - 33097:4 bother [1] - 33153:3 bottom [4] - 33143:8, 33171:23, 33171:25, 33172:1 boxes [1] - 33226:15 Boxing [1] - 33154:4 boy [6] - 33172:25, 33174:3, 33174:15, 33175:4, 33176:2, 33180:13 Boychuk [1] - 33098:7 brackets [1] - 33169:25 break [3] - 33167:9, 33168:3, 33170:18 Breckenridge [1] - 33135:9</p> | <p>brief [1] - 33115:5 bring [32] - 33104:7, 33104:13, 33111:11, 33111:12, 33129:20, 33130:6, 33149:24, 33151:14, 33168:13, 33168:23, 33169:13, 33169:15, 33171:21, 33175:13, 33175:15, 33179:6, 33180:9, 33182:23, 33182:24, 33187:24, 33207:18, 33211:9, 33213:16, 33213:19, 33215:17, 33219:22, 33220:5, 33221:22, 33223:14, 33224:23, 33230:13, 33247:11 bringing [2] - 33162:14, 33170:15 British [1] - 33233:11 broken [2] - 33117:15, 33251:18 brother [9] - 33155:16, 33173:11, 33176:5, 33176:8, 33176:10, 33176:17, 33177:1, 33177:4, 33178:9 brought [10] - 33102:9, 33117:20, 33118:15, 33122:22, 33130:5, 33143:24, 33173:16, 33187:21, 33214:12, 33220:20 Bruce [4] - 33098:8, 33114:10, 33131:11, 33134:20 bugging [1] - 33185:3 bunch [1] - 33148:7 buried [1] - 33126:25 buy [1] - 33140:1 buying [1] - 33163:7</p> |
| | B | | | |
| | <p>background [1] - 33117:21 balance [1] - 33129:9 balances [1] - 33129:8 bald [2] - 33131:1, 33230:8 bank [1] - 33177:23 base [2] - 33150:10, 33254:4 based [7] - 33106:4, 33109:2, 33131:13, 33140:9, 33147:6, 33205:21, 33228:17 basement [1] - 33218:12 basis [2] - 33120:13, 33139:13 Bc [5] - 33233:13, 33233:15, 33238:3, 33238:8, 33249:11 bear [4] - 33102:3, 33114:1, 33171:14, 33223:17 bears [1] - 33223:21 became [8] - 33101:7, 33109:25, 33113:12, 33113:14, 33129:14,</p> | | | C |
| | | | | <p>Cadrain [22] - 33149:20, 33150:19, 33152:2, 33168:25, 33169:11, 33171:14, 33171:18, 33172:16, 33173:7, 33176:23, 33177:18, 33178:1, 33178:6, 33179:8, 33179:18, 33203:3, 33209:2, 33211:6, 33211:12, 33211:14, 33213:25, 33236:2 Cadrain's [5] - 33173:6, 33174:20, 33179:25,</p> |



| | | | | |
|---|---|--|---|---|
| <p>33180:7, 33219:10 Caldwell^[33] - 33098:5, 33100:9, 33102:24, 33103:1, 33103:24, 33106:14, 33107:7, 33107:9, 33107:18, 33108:2, 33113:20, 33114:22, 33124:9, 33125:24, 33134:14, 33140:11, 33177:8, 33201:8, 33204:21, 33211:10, 33211:12, 33213:19, 33216:14, 33219:9, 33219:19, 33219:25, 33221:9, 33221:15, 33223:8, 33225:4, 33225:20, 33245:12, 33251:4 Caldwells^[10] - 33122:15, 33122:23, 33123:4, 33124:3, 33126:12, 33132:14, 33149:13, 33220:6, 33220:21, 33223:19 Calvin^[1] - 33098:13 camera^[1] - 33242:5 cameramen^[1] - 33241:23 campaign^[3] - 33110:18, 33163:10, 33163:12 Canada^[5] - 33098:12, 33112:25, 33130:3, 33132:9, 33133:14 Canadian^[1] - 33232:19 Candace^[1] - 33097:3 cannot^[2] - 33110:10, 33160:11 capable^[1] - 33224:10 capacity^[2] - 33178:6, 33178:8 car^[8] - 33125:9, 33197:11, 33197:12, 33197:20, 33218:12, 33222:16, 33251:2, 33251:5 careful^[3] - 33154:10, 33164:3, 33176:25 Carl^[1] - 33231:7 Carlyle^[9] - 33151:4, 33170:21, 33176:12, 33176:18, 33220:1, 33220:9, 33220:14, 33220:18, 33224:5 Carlyle-gordge^[9] - 33151:4, 33170:21, 33176:12, 33176:18, 33220:1, 33220:9, 33220:14, 33220:18, 33224:5</p> | <p>case^[21] - 33106:19, 33129:15, 33141:6, 33148:1, 33183:4, 33183:8, 33191:24, 33192:16, 33194:15, 33205:20, 33207:22, 33208:1, 33208:18, 33211:19, 33229:16, 33232:14, 33236:20, 33242:21, 33249:7, 33249:12, 33254:12 cases^[2] - 33129:13, 33208:17 catch^[1] - 33242:5 Catherine^[2] - 33098:5, 33100:8 caught^[2] - 33128:25, 33246:7 caused^[10] - 33106:21, 33118:25, 33119:4, 33120:6, 33122:3, 33122:6, 33122:8, 33127:12, 33127:19, 33206:18 caution^[1] - 33131:9 Cavalier^[1] - 33222:25 caveat^[2] - 33139:22, 33140:3 Cbc^[3] - 33247:15, 33252:12, 33252:19 Cec^[53] - 33230:18, 33230:19, 33231:1, 33232:9, 33232:16, 33232:24, 33233:3, 33233:5, 33233:7, 33233:10, 33233:14, 33233:17, 33233:24, 33234:7, 33235:5, 33235:10, 33235:15, 33235:18, 33235:21, 33236:4, 33236:9, 33236:21, 33236:24, 33237:4, 33237:8, 33237:14, 33237:22, 33238:1, 33238:5, 33238:8, 33238:12, 33238:15, 33238:21, 33238:23, 33239:7, 33239:12, 33239:15, 33239:18, 33239:22, 33239:24, 33240:2, 33240:9, 33240:21, 33241:2, 33241:6, 33241:9, 33241:13, 33241:16, 33243:16, 33246:25, 33247:17, 33248:1, 33248:6 Certain^[1] - 33219:22 certain^[3] - 33114:12, 33149:18, 33225:2</p> | <p>certainly^[10] - 33104:8, 33126:22, 33127:8, 33132:25, 33147:11, 33166:2, 33178:2, 33191:1, 33205:1, 33212:6 certainty^[1] - 33227:18 Certificate^[1] - 33256:1 certify^[1] - 33256:4 chain^[5] - 33122:15, 33122:24, 33124:4, 33124:14, 33230:2 challenged^[3] - 33172:25, 33180:13, 33180:25 chance^[1] - 33144:3 change^[1] - 33151:5 changed^[7] - 33150:18, 33152:24, 33169:18, 33209:10, 33209:14, 33210:6, 33210:25 changes^[1] - 33224:3 chap^[1] - 33233:7 chapter^[1] - 33178:25 characterization^[1] - 33177:13 charged^[4] - 33183:8, 33183:10, 33208:1, 33208:19 Charter^[1] - 33196:23 check^[8] - 33112:20, 33115:23, 33190:11, 33190:17, 33190:18, 33246:6, 33246:18, 33246:21 checking^[1] - 33138:9 checks^[1] - 33129:8 Cheryl^[1] - 33097:5 Chief^[2] - 33169:10, 33169:20 chief^[10] - 33115:14, 33123:24, 33150:14, 33151:19, 33151:24, 33152:9, 33152:17, 33168:10, 33170:5 chose^[1] - 33139:17 Chris^[3] - 33098:7, 33149:17, 33170:21 Christmas^[1] - 33154:4 circle^[1] - 33111:13 circumstances^[4] - 33104:22, 33105:20, 33150:7, 33161:19 city^[3] - 33171:7, 33171:9, 33218:21 Ck^[2] - 33230:13, 33247:11 Ck-5^[1] - 33191:10 Cknd^[1] - 33209:25 claim^[2] - 33140:18,</p> | <p>33146:15 claimed^[1] - 33113:25 clarify^[1] - 33239:24 clarifying^[1] - 33252:9 clarity^[1] - 33165:3 clean^[6] - 33108:9, 33108:21, 33109:10, 33136:22, 33137:3, 33202:17 clear^[7] - 33140:5, 33140:8, 33173:2, 33205:23, 33212:1, 33216:18 clearly^[6] - 33147:18, 33148:2, 33148:14, 33181:4, 33209:9, 33243:4 Clerk^[1] - 33097:8 client^[24] - 33101:6, 33101:22, 33105:6, 33105:14, 33105:24, 33109:1, 33109:21, 33113:15, 33120:11, 33121:5, 33131:12, 33131:19, 33136:3, 33137:7, 33141:4, 33173:18, 33178:13, 33181:15, 33182:3, 33182:16, 33213:18, 33214:8, 33230:10, 33254:23 client's^[2] - 33105:15, 33226:3 clients^[2] - 33103:20, 33104:16 client's^[1] - 33240:17 clip^[5] - 33184:8, 33191:9, 33230:13, 33247:11, 33253:5 clipping^[1] - 33140:16 clippings^[1] - 33130:17 close^[6] - 33183:8, 33208:1, 33208:18, 33222:3, 33223:23, 33253:2 closing^[10] - 33219:18, 33220:8, 33220:17, 33221:8, 33221:13, 33221:21, 33223:20, 33224:4, 33224:7, 33224:20 clothes^[2] - 33234:19, 33250:25 clue^[1] - 33247:20 co^[3] - 33113:4, 33138:8, 33231:6 co-author^[2] - 33138:8, 33231:6 co-wrote^[1] - 33113:4</p> | <p>collaborated^[1] - 33113:9 Colleen^[1] - 33209:17 coloured^[1] - 33123:9 Columbia^[1] - 33233:11 columns^[2] - 33182:24, 33182:25 com^[1] - 33170:19 coming^[5] - 33118:23, 33150:23, 33157:19, 33189:23, 33253:25 commenced^[1] - 33217:18 commencement^[3] - 33211:5, 33211:12, 33219:9 comment^[1] - 33182:7 commented^[1] - 33127:21 comments^[1] - 33221:23 Commission^[14] - 33096:2, 33096:14, 33097:1, 33097:2, 33097:8, 33104:11, 33141:24, 33147:9, 33154:12, 33170:14, 33171:5, 33173:4, 33174:18, 33228:2 Commission's^[1] - 33170:19 Commissioner^[50] - 33100:3, 33102:5, 33116:5, 33116:12, 33116:15, 33118:16, 33136:9, 33136:12, 33142:16, 33142:21, 33142:24, 33144:5, 33165:16, 33166:5, 33166:6, 33166:11, 33166:19, 33166:24, 33167:5, 33167:6, 33167:12, 33168:6, 33169:5, 33169:7, 33175:11, 33178:19, 33178:22, 33184:5, 33184:16, 33191:12, 33191:17, 33205:5, 33205:9, 33206:12, 33211:5, 33217:4, 33217:16, 33223:25, 33226:6, 33226:9, 33230:14, 33230:24, 33231:3, 33231:11, 33231:13, 33231:19, 33247:12, 33252:13, 33252:15, 33252:25 commit^[1] - 33107:5 committed^[1] - 33202:23</p> |
|---|---|--|---|---|



| | | | | |
|--|---|--|--|--|
| <p>communicate [2] - 33135:4, 33151:25</p> <p>communicated [4] - 33177:7, 33177:8, 33206:3, 33225:14</p> <p>communicating [2] - 33143:7, 33143:15</p> <p>communication [1] - 33230:22</p> <p>communications [1] - 33254:16</p> <p>community [2] - 33126:12, 33181:1</p> <p>company [2] - 33234:16, 33251:7</p> <p>compared [1] - 33222:2</p> <p>competence [1] - 33182:2</p> <p>complete [1] - 33200:12</p> <p>completely [2] - 33246:7, 33249:17</p> <p>comprehensively [1] - 33111:6</p> <p>comprised [1] - 33135:2</p> <p>concept [1] - 33114:4</p> <p>concern [1] - 33232:3</p> <p>concerned [5] - 33105:17, 33108:10, 33113:13, 33228:4, 33228:22</p> <p>concerns [2] - 33124:25, 33172:6</p> <p>conclude [2] - 33231:17, 33254:13</p> <p>concluded [3] - 33105:13, 33155:3, 33181:14</p> <p>concluding [2] - 33167:8, 33216:6</p> <p>conclusion [2] - 33136:1, 33216:12</p> <p>condition [2] - 33172:6, 33172:7</p> <p>conduct [1] - 33203:9</p> <p>conducted [1] - 33134:13</p> <p>conducting [1] - 33101:3</p> <p>conference [8] - 33101:10, 33101:15, 33101:21, 33102:18, 33103:23, 33104:11, 33104:15, 33106:11</p> <p>confident [1] - 33235:24</p> <p>confirm [1] - 33223:16</p> <p>confirmation [2] - 33168:24, 33169:1</p> <p>confirmed [1] -</p> | <p>33168:21</p> <p>confirming [2] - 33169:10, 33169:24</p> <p>confirms [1] - 33170:11</p> <p>conflicting [2] - 33240:14, 33250:2</p> <p>confront [1] - 33154:16</p> <p>confused [1] - 33157:13</p> <p>confusing [3] - 33127:3, 33158:2, 33158:3</p> <p>Congram [1] - 33097:3</p> <p>connected [1] - 33131:21</p> <p>connection [5] - 33116:23, 33117:8, 33117:10, 33194:15, 33212:20</p> <p>conscious [1] - 33117:6</p> <p>consequently [1] - 33120:22</p> <p>consider [1] - 33137:4</p> <p>consistent [4] - 33106:2, 33106:25, 33107:2, 33107:6</p> <p>conspiracy [1] - 33133:22</p> <p>Constable [3] - 33111:24, 33115:17, 33124:16</p> <p>constant [1] - 33146:15</p> <p>constantly [1] - 33173:12</p> <p>contact [14] - 33149:18, 33150:19, 33152:2, 33152:22, 33153:22, 33168:8, 33168:21, 33169:11, 33169:21, 33170:17, 33171:6, 33206:2, 33209:2, 33215:12</p> <p>contacted [16] - 33152:10, 33152:14, 33152:18, 33152:23, 33156:15, 33168:25, 33169:2, 33170:6, 33170:20, 33171:4, 33171:7, 33171:10, 33210:3, 33232:13, 33247:2, 33249:10</p> <p>contacting [1] - 33169:19</p> <p>contacts [2] - 33170:23, 33209:11</p> <p>contain [1] - 33256:5</p> <p>contained [3] - 33142:25, 33184:5, 33250:1</p> <p>containing [1] -</p> | <p>33240:13</p> <p>content [3] - 33204:22, 33206:2, 33215:3</p> <p>context [4] - 33144:8, 33144:12, 33182:8, 33208:9</p> <p>continually [1] - 33145:9</p> <p>Continued [2] - 33099:3, 33186:12</p> <p>continued [9] - 33100:5, 33107:11, 33113:16, 33128:11, 33135:4, 33146:16, 33217:9, 33222:19, 33223:1</p> <p>continues [4] - 33139:9, 33139:25, 33140:2, 33224:17</p> <p>continuing [2] - 33135:15, 33141:7</p> <p>continuously [1] - 33162:4</p> <p>contra [1] - 33203:23</p> <p>contradictions [1] - 33203:24</p> <p>contradictory [1] - 33197:15</p> <p>contrary [1] - 33254:17</p> <p>contributed [1] - 33151:5</p> <p>convened [1] - 33100:16</p> <p>conversation [25] - 33142:25, 33143:1, 33143:2, 33147:3, 33147:7, 33147:21, 33147:22, 33147:23, 33148:2, 33148:6, 33169:10, 33184:1, 33191:13, 33191:15, 33204:15, 33212:17, 33213:22, 33223:15, 33228:13, 33229:7, 33230:18, 33247:13, 33247:16, 33247:18, 33248:2</p> <p>Conversation [1] - 33143:9</p> <p>conversations [12] - 33113:6, 33120:18, 33158:18, 33164:17, 33192:15, 33218:18, 33228:17, 33229:3, 33229:8, 33229:14, 33245:5, 33248:13</p> <p>convey [1] - 33179:21</p> <p>convicted [2] - 33106:22, 33141:10</p> <p>Conviction [1] -</p> | <p>33096:4</p> <p>conviction [8] - 33103:10, 33103:15, 33104:23, 33107:15, 33150:7, 33154:16, 33161:20, 33163:13</p> <p>convicted [4] - 33234:15, 33241:10, 33247:8, 33251:6</p> <p>cooking [1] - 33249:2</p> <p>copied [1] - 33226:12</p> <p>copies [7] - 33213:5, 33213:23, 33225:5, 33225:10, 33227:10, 33228:2, 33234:11</p> <p>copy [10] - 33102:10, 33169:14, 33169:16, 33195:10, 33219:17, 33220:7, 33220:16, 33227:25, 33228:1</p> <p>correct [14] - 33100:25, 33121:22, 33132:10, 33154:18, 33162:25, 33165:25, 33173:10, 33177:21, 33178:16, 33207:17, 33229:18, 33229:23, 33252:23, 33256:5</p> <p>Correct [3] - 33152:20, 33155:6, 33194:17</p> <p>corrected [1] - 33129:1</p> <p>correctly [3] - 33148:17, 33160:6, 33237:19</p> <p>correspondence [1] - 33156:19</p> <p>couldn't [3] - 33237:10, 33238:19, 33250:5</p> <p>Counsel [3] - 33097:2, 33100:4, 33147:10</p> <p>counsel [10] - 33100:9, 33100:22, 33101:22, 33175:9, 33175:24, 33182:17, 33183:7, 33207:25, 33210:22</p> <p>couple [7] - 33118:7, 33127:1, 33156:11, 33157:21, 33191:21, 33192:2, 33237:15</p> <p>course [5] - 33170:8, 33176:7, 33177:24, 33222:8, 33227:4</p> <p>court [5] - 33211:15, 33212:3, 33250:10, 33250:17, 33253:15</p> <p>Court [11] - 33097:9, 33112:25, 33130:3, 33132:9, 33133:13, 33179:20, 33195:3, 33256:1, 33256:3,</p> | <p>33256:14, 33256:18</p> <p>court. [2] - 33241:1, 33250:9</p> <p>courteous [1] - 33200:3</p> <p>courtroom [4] - 33173:23, 33213:2, 33221:24, 33223:9</p> <p>cover [2] - 33129:24, 33220:17</p> <p>covered [2] - 33118:20, 33141:3</p> <p>Cox [1] - 33098:10</p> <p>Cp [1] - 33232:20</p> <p>Craig [1] - 33158:7</p> <p>crazy [1] - 33190:15</p> <p>crazyman [1] - 33179:13</p> <p>create [3] - 33254:22, 33254:25, 33255:2</p> <p>created [2] - 33141:5, 33254:21</p> <p>credibility [2] - 33181:19, 33240:16</p> <p>crime [3] - 33107:4, 33111:18, 33156:25</p> <p>cross [20] - 33100:20, 33101:4, 33116:11, 33119:11, 33171:16, 33172:20, 33186:5, 33187:5, 33187:10, 33191:2, 33197:18, 33199:2, 33200:5, 33208:11, 33216:16, 33222:7, 33224:11, 33234:22, 33234:25, 33253:16</p> <p>cross-exam [2] - 33187:5, 33187:10</p> <p>cross-examination [8] - 33101:4, 33116:11, 33171:16, 33186:5, 33199:2, 33222:7, 33224:11, 33253:16</p> <p>cross-examine [1] - 33234:25</p> <p>cross-examined [6] - 33191:2, 33197:18, 33200:5, 33208:11, 33216:16, 33234:22</p> <p>cross-referencing [1] - 33100:20</p> <p>Crown [12] - 33125:19, 33127:8, 33132:13, 33132:14, 33133:12, 33195:13, 33197:2, 33198:14, 33205:20, 33251:1</p> <p>crystal [1] - 33205:23</p> <p>Csr [8] - 33097:9, 33097:10, 33256:2,</p> |
|--|---|--|--|--|



| | | | | |
|---|---|--|---|--|
| <p>33256:12, 33256:13, 33256:16, 33256:17 curiosity [1] - 33112:18 current [7] - 33101:16, 33114:14, 33114:18, 33151:6, 33205:1, 33221:5, 33246:13 Current[1] - 33148:1 custody [4] - 33122:16, 33122:25, 33124:4, 33124:14</p> | <p>33183:4, 33186:19, 33186:23, 33186:24, 33187:16, 33189:1, 33189:19, 33191:9, 33191:19, 33191:21, 33191:23, 33192:1, 33192:5, 33192:7, 33192:9, 33192:13, 33192:23, 33193:1, 33193:4, 33193:7, 33193:9, 33193:13, 33193:21, 33193:25, 33194:6, 33194:10, 33194:17, 33194:20, 33194:22, 33194:25, 33195:5, 33195:8, 33195:13, 33195:18, 33195:21, 33196:2, 33196:7, 33196:11, 33196:14, 33196:18, 33196:21, 33197:1, 33197:5, 33197:8, 33197:12, 33197:14, 33197:17, 33197:23, 33198:2, 33198:9, 33198:13, 33198:20, 33199:1, 33199:6, 33199:9, 33199:13, 33199:15, 33200:15, 33200:16, 33200:19, 33201:6, 33201:15, 33201:18, 33201:21, 33201:23, 33202:1, 33202:4, 33202:8, 33202:11, 33202:15, 33202:19, 33202:25, 33203:3, 33203:6, 33203:9, 33203:12, 33203:19, 33203:22, 33204:1, 33204:3, 33204:7, 33205:2, 33206:7, 33206:12, 33206:17, 33207:6, 33207:22, 33208:10, 33208:14, 33209:4, 33218:19, 33219:9, 33221:3, 33221:7, 33221:12, 33223:15, 33228:5, 33228:13, 33228:18, 33228:24, 33229:7, 33230:4, 33232:18, 33234:15, 33234:25, 33238:17, 33240:8, 33243:19, 33245:6, 33245:7, 33245:17, 33245:20, 33246:9, 33249:22, 33250:13, 33251:4, 33251:6 David's [6] - 33102:23, 33147:25, 33150:7,</p> | <p>33154:13, 33176:3, 33206:4 days [11] - 33100:14, 33111:1, 33114:19, 33134:24, 33140:18, 33152:13, 33181:24, 33184:14, 33192:3, 33217:10, 33225:24 Dayside [1] - 33209:25 dead [1] - 33145:16 deal [1] - 33192:16 dealing [1] - 33146:14 dealings [2] - 33151:7, 33226:8 death [3] - 33116:23, 33117:9, 33223:2 debating [1] - 33227:1 December [12] - 33110:17, 33117:5, 33135:7, 33141:8, 33149:8, 33153:23, 33154:3, 33155:21, 33155:24, 33156:15, 33157:16 decides [1] - 33198:15 decision [4] - 33104:25, 33125:5, 33151:1, 33155:14 decisions [1] - 33101:12 deep [2] - 33101:8, 33107:12 defence [5] - 33183:7, 33198:10, 33198:11, 33203:10, 33207:24 definite [1] - 33119:12 definitely [4] - 33153:15, 33235:3, 33235:13, 33245:18 deliberate [1] - 33108:15 deliberately [6] - 33114:6, 33114:13, 33120:11, 33131:20, 33131:23, 33138:16 delivered [2] - 33169:23, 33170:11 demand [1] - 33138:18 denial [1] - 33198:6 denies [1] - 33107:19 Dennis [4] - 33171:3, 33173:7, 33176:23, 33177:4 Dennis' [1] - 33177:12 deny [1] - 33223:1 Department [11] - 33134:15, 33135:13, 33135:20, 33234:10, 33239:2, 33239:5,</p> | <p>33239:10, 33239:20, 33240:13, 33249:20, 33250:1 departure [1] - 33164:15 deposit [1] - 33118:9 described [1] - 33230:1 describes [1] - 33201:10 describing [2] - 33119:10, 33179:13 Description [1] - 33099:2 descriptor [1] - 33136:8 desk [1] - 33248:23 Det [1] - 33222:20 detail [2] - 33102:20, 33125:3 detailed [1] - 33136:16 details [1] - 33198:14 Detective [1] - 33225:24 deterioration [1] - 33173:19 determination [1] - 33181:18 determine [1] - 33141:9 determined [1] - 33137:5 developing [1] - 33181:9 diagnosed [3] - 33179:11, 33179:18, 33181:10 diagnosis [1] - 33180:1 didn't [4] - 33234:24, 33237:12, 33251:12, 33251:14 died [1] - 33118:7 different [12] - 33147:13, 33153:7, 33153:8, 33153:9, 33174:6, 33174:13, 33204:12, 33243:8, 33244:1, 33245:11, 33246:2, 33253:14 differently [2] - 33139:17, 33172:23 direct [6] - 33104:21, 33141:4, 33142:23, 33211:3, 33221:17, 33221:19 directed [3] - 33152:9, 33213:17, 33242:7 directly [3] - 33103:8, 33168:12, 33193:14 Director [1] - 33097:3 disagree [1] - 33195:23 disappear [2] - 33114:1, 33121:9 disappearance [1] -</p> | <p>33111:18 disappeared [1] - 33113:13 disappearing [1] - 33125:5 disclosed [4] - 33176:17, 33204:21, 33230:10, 33245:13 disclosing [1] - 33214:8 disclosure [8] - 33205:6, 33205:8, 33205:13, 33205:14, 33205:16, 33205:19, 33235:4, 33250:25 discouraged [1] - 33160:6 discredit [1] - 33204:4 discredited [2] - 33183:5, 33207:23 discuss [3] - 33215:2, 33215:18, 33242:4 discussed [4] - 33166:22, 33208:5, 33215:24, 33254:4 discussion [10] - 33101:20, 33144:12, 33148:11, 33191:2, 33191:8, 33200:23, 33215:15, 33217:22, 33221:2, 33230:4 discussions [5] - 33178:1, 33184:13, 33210:21, 33210:24, 33232:2 disrespect [2] - 33138:24, 33154:21 disrespectful [1] - 33114:3 distance [1] - 33144:21 distressed [1] - 33155:2 distrust [1] - 33136:19 disturbed [1] - 33174:14 Dna [4] - 33101:7, 33101:23, 33105:5, 33137:25 Doc [1] - 33178:19 doc [4] - 33178:20, 33184:6, 33184:7, 33230:16 document [36] - 33102:7, 33102:8, 33104:7, 33104:12, 33111:12, 33123:1, 33149:23, 33150:9, 33168:10, 33168:20, 33169:1, 33169:3, 33169:16, 33170:15,</p> |
| D | | | | |
| <p>damming [1] - 33250:25 Dan [51] - 33182:20, 33184:2, 33184:20, 33184:21, 33184:25, 33185:6, 33185:9, 33185:14, 33185:18, 33185:21, 33185:24, 33186:3, 33186:6, 33186:14, 33186:18, 33186:25, 33187:3, 33187:7, 33187:14, 33187:18, 33187:22, 33188:6, 33188:9, 33188:14, 33188:17, 33188:20, 33188:24, 33189:2, 33189:6, 33189:10, 33189:14, 33189:21, 33189:23, 33190:2, 33190:5, 33190:7, 33190:10, 33190:15, 33190:17, 33190:23, 33214:8, 33218:19, 33228:18, 33232:10, 33234:1, 33241:3, 33242:24, 33243:20, 33244:10, 33249:10 data [1] - 33150:9 date [10] - 33151:18, 33155:19, 33187:12, 33195:15, 33199:18, 33212:8, 33226:19, 33231:11, 33247:24, 33248:8 dates [1] - 33158:19 daughter [1] - 33101:20 Dave's [1] - 33203:17 David [132] - 33096:4, 33098:2, 33098:10, 33103:7, 33104:17, 33104:24, 33108:4, 33128:5, 33129:14, 33129:22, 33154:13, 33155:8, 33179:13,</p> | | | | |



| | | | | |
|---|--|---|---|---|
| <p>33170:19, 33175:11, 33182:15, 33191:15, 33213:16, 33215:11, 33215:15, 33217:7, 33217:20, 33219:22, 33220:21, 33220:22, 33221:3, 33221:13, 33223:21, 33224:1, 33224:2, 33224:24, 33224:25, 33225:1, 33230:15</p> <p>Document [2] - 33097:4, 33097:5</p> <p>documentary [4] - 33112:20, 33112:22, 33167:24, 33221:1</p> <p>documentation [5] - 33134:8, 33135:6, 33151:9, 33152:3, 33156:4</p> <p>documented [3] - 33114:16, 33187:9, 33225:12</p> <p>documenting [1] - 33149:20</p> <p>documents [9] - 33100:19, 33104:9, 33109:17, 33114:7, 33149:6, 33162:15, 33168:4, 33168:7</p> <p>Don [1] - 33097:10</p> <p>Donald [2] - 33256:2, 33256:17</p> <p>done [20] - 33100:23, 33101:13, 33109:4, 33115:19, 33124:4, 33124:9, 33129:22, 33131:12, 33131:25, 33133:19, 33134:20, 33134:21, 33137:17, 33137:18, 33139:11, 33140:19, 33196:9, 33213:11, 33221:8, 33245:18</p> <p>Donna [4] - 33143:3, 33143:5, 33143:10, 33143:17</p> <p>don't [5] - 33232:12, 33235:6, 33237:16, 33237:25, 33249:5</p> <p>doors [2] - 33141:11, 33157:3</p> <p>double [14] - 33117:12, 33117:16, 33117:19, 33118:24, 33119:5, 33119:10, 33120:6, 33120:15, 33122:7, 33126:18, 33127:13, 33128:2</p> | <p>double-edged [11] - 33117:12, 33117:16, 33117:19, 33120:6, 33120:15, 33122:7, 33126:18, 33127:13, 33127:16, 33127:21, 33128:2</p> <p>Douglas [1] - 33097:2</p> <p>down [9] - 33138:20, 33149:2, 33158:4, 33158:11, 33159:11, 33165:7, 33233:22, 33238:13, 33253:3</p> <p>downside [1] - 33202:22</p> <p>Dr [4] - 33119:21, 33121:24, 33121:25, 33127:18</p> <p>draft [2] - 33129:21, 33130:4</p> <p>drafted [1] - 33130:25</p> <p>drag [1] - 33149:1</p> <p>drawing [1] - 33180:18</p> <p>drunk [1] - 33164:18</p> <p>dug [1] - 33202:5</p> <p>During [1] - 33224:12</p> <p>during [17] - 33110:24, 33122:12, 33124:10, 33162:11, 33165:1, 33168:3, 33170:18, 33171:16, 33178:2, 33199:19, 33199:22, 33207:25, 33222:8, 33222:11, 33234:16, 33250:13, 33251:7</p> <p>duty [1] - 33109:1</p> | <p>33128:2</p> <p>editing [1] - 33198:15</p> <p>editor [1] - 33248:22</p> <p>Edmonton [2] - 33190:1, 33192:3</p> <p>Edward [1] - 33096:7</p> <p>Edwards [3] - 33113:3, 33133:18, 33138:8</p> <p>effect [2] - 33104:4, 33163:11</p> <p>effectively [2] - 33138:18, 33145:7</p> <p>effort [1] - 33218:21</p> <p>efforts [1] - 33163:12</p> <p>Either [2] - 33109:13, 33187:1</p> <p>either [8] - 33109:13, 33114:22, 33120:4, 33149:17, 33173:24, 33221:16, 33234:23, 33243:19</p> <p>elaborate [1] - 33113:17</p> <p>elaboration [1] - 33176:14</p> <p>element [1] - 33188:1</p> <p>elephant [1] - 33113:14</p> <p>Ellerman [1] - 33097:5</p> <p>Elliott [1] - 33171:3</p> <p>emotion [1] - 33129:16</p> <p>emotional [2] - 33129:12</p> <p>emotionally [1] - 33129:15</p> <p>Emson [3] - 33119:22, 33121:24, 33127:19</p> <p>Emson's [1] - 33121:25</p> <p>enclosed [1] - 33213:22</p> <p>encouraging [3] - 33242:13, 33244:9, 33244:12</p> <p>End [2] - 33099:10, 33242:2</p> <p>end [4] - 33165:16, 33181:9, 33211:11, 33229:6</p> <p>ended [4] - 33190:19, 33204:9, 33248:6, 33252:6</p> <p>Ended [3] - 33099:6, 33099:8, 33099:12</p> <p>ends [1] - 33248:2</p> <p>engaged [5] - 33108:2, 33163:9, 33163:12, 33229:25, 33248:1</p> <p>engaging [1] - 33140:12</p> <p>England [2] - 33105:6, 33148:6</p> <p>entered [1] - 33120:8</p> | <p>entire [2] - 33183:5, 33207:23</p> <p>Entirely [1] - 33197:16</p> <p>entirely [2] - 33245:10, 33246:2</p> <p>entirety [1] - 33210:15</p> <p>entitled [1] - 33178:25</p> <p>epiphany [1] - 33142:1</p> <p>episode [2] - 33222:11, 33224:15</p> <p>era [1] - 33196:23</p> <p>escaped [2] - 33154:22, 33155:3</p> <p>escapes [1] - 33181:4</p> <p>especially [1] - 33208:12</p> <p>Esq [3] - 33098:7, 33098:8, 33098:13</p> <p>essence [2] - 33198:6, 33243:15</p> <p>essentially [2] - 33122:24, 33163:21</p> <p>establish [3] - 33109:1, 33116:22, 33117:8</p> <p>established [3] - 33117:10, 33122:15, 33148:5</p> <p>establishment [1] - 33124:4</p> <p>Estate [1] - 33147:24</p> <p>Etcetera [1] - 33253:13</p> <p>etcetera [1] - 33253:13</p> <p>Eve [1] - 33154:4</p> <p>events [1] - 33208:24</p> <p>eventually [2] - 33113:12, 33161:10</p> <p>evidence [63] - 33100:16, 33108:1, 33112:2, 33114:20, 33115:7, 33115:13, 33115:15, 33116:6, 33117:3, 33117:7, 33118:3, 33118:16, 33118:18, 33119:1, 33119:3, 33120:13, 33121:12, 33121:17, 33121:23, 33121:25, 33122:1, 33125:2, 33131:23, 33140:7, 33140:9, 33141:18, 33142:20, 33154:11, 33160:6, 33162:16, 33162:19, 33163:23, 33167:8, 33167:21, 33167:23, 33172:3, 33173:3, 33173:9, 33173:11, 33173:16, 33173:23, 33173:25, 33174:17, 33176:24, 33177:3, 33177:5,</p> | <p>33179:8, 33187:20, 33188:22, 33189:15, 33197:19, 33210:18, 33211:6, 33211:11, 33215:18, 33217:6, 33217:8, 33217:18, 33217:19, 33219:10, 33222:23, 33235:11, 33235:13</p> <p>evident [2] - 33191:5, 33224:13</p> <p>evolution [1] - 33115:4</p> <p>evolved [1] - 33167:10</p> <p>exact [3] - 33118:13, 33212:8, 33223:22</p> <p>exactly [7] - 33112:11, 33127:6, 33127:25, 33142:2, 33224:6, 33236:18, 33245:2</p> <p>exam [2] - 33187:5, 33187:10</p> <p>examination [10] - 33101:4, 33116:11, 33118:5, 33127:22, 33171:16, 33186:5, 33199:2, 33222:7, 33224:11, 33253:16</p> <p>examine [1] - 33234:25</p> <p>examined [7] - 33191:2, 33197:18, 33199:11, 33200:5, 33208:11, 33216:16, 33234:22</p> <p>examining [1] - 33120:23</p> <p>excellent [1] - 33129:17</p> <p>except [3] - 33172:23, 33193:13, 33223:13</p> <p>exception [1] - 33224:2</p> <p>Excerpt [14] - 33099:5, 33099:6, 33099:7, 33099:8, 33099:9, 33099:11, 33099:12, 33184:19, 33190:19, 33191:18, 33204:9, 33232:5, 33248:16, 33252:6</p> <p>excited [2] - 33242:17, 33242:19</p> <p>exciting [2] - 33242:16, 33254:8</p> <p>Executive [1] - 33097:3</p> <p>exhibit [2] - 33115:14, 33125:6</p> <p>exist [2] - 33111:7, 33236:1</p> <p>exonerated [1] - 33137:25</p> <p>exoneration [1] - 33138:4</p> |
| <p>E</p> | | | | |
| <p>33170:19, 33175:11, 33182:15, 33191:15, 33213:16, 33215:11, 33215:15, 33217:7, 33217:20, 33219:22, 33220:21, 33220:22, 33221:3, 33221:13, 33223:21, 33224:1, 33224:2, 33224:24, 33224:25, 33225:1, 33230:15</p> <p>Document [2] - 33097:4, 33097:5</p> <p>documentary [4] - 33112:20, 33112:22, 33167:24, 33221:1</p> <p>documentation [5] - 33134:8, 33135:6, 33151:9, 33152:3, 33156:4</p> <p>documented [3] - 33114:16, 33187:9, 33225:12</p> <p>documenting [1] - 33149:20</p> <p>documents [9] - 33100:19, 33104:9, 33109:17, 33114:7, 33149:6, 33162:15, 33168:4, 33168:7</p> <p>Don [1] - 33097:10</p> <p>Donald [2] - 33256:2, 33256:17</p> <p>done [20] - 33100:23, 33101:13, 33109:4, 33115:19, 33124:4, 33124:9, 33129:22, 33131:12, 33131:25, 33133:19, 33134:20, 33134:21, 33137:17, 33137:18, 33139:11, 33140:19, 33196:9, 33213:11, 33221:8, 33245:18</p> <p>Donna [4] - 33143:3, 33143:5, 33143:10, 33143:17</p> <p>don't [5] - 33232:12, 33235:6, 33237:16, 33237:25, 33249:5</p> <p>doors [2] - 33141:11, 33157:3</p> <p>double [14] - 33117:12, 33117:16, 33117:19, 33118:24, 33119:5, 33119:10, 33120:6, 33120:15, 33122:7, 33126:18, 33127:13, 33127:16, 33127:21, 33128:2</p> | <p>early [8] - 33105:24, 33110:25, 33148:3, 33149:6, 33153:22, 33175:21, 33206:1, 33222:12</p> <p>earned [1] - 33136:7</p> <p>ease [1] - 33103:13</p> <p>easily [1] - 33181:14</p> <p>easy [2] - 33218:7, 33218:10</p> <p>Eddie [1] - 33098:7</p> <p>edge [1] - 33119:5</p> <p>edged [16] - 33117:12, 33117:16, 33117:19, 33118:25, 33120:6, 33120:15, 33122:4, 33122:7, 33122:8, 33126:18, 33127:5, 33127:13, 33127:16, 33127:20, 33127:21,</p> | <p>33128:2</p> <p>editing [1] - 33198:15</p> <p>editor [1] - 33248:22</p> <p>Edmonton [2] - 33190:1, 33192:3</p> <p>Edward [1] - 33096:7</p> <p>Edwards [3] - 33113:3, 33133:18, 33138:8</p> <p>effect [2] - 33104:4, 33163:11</p> <p>effectively [2] - 33138:18, 33145:7</p> <p>effort [1] - 33218:21</p> <p>efforts [1] - 33163:12</p> <p>Either [2] - 33109:13, 33187:1</p> <p>either [8] - 33109:13, 33114:22, 33120:4, 33149:17, 33173:24, 33221:16, 33234:23, 33243:19</p> <p>elaborate [1] - 33113:17</p> <p>elaboration [1] - 33176:14</p> <p>element [1] - 33188:1</p> <p>elephant [1] - 33113:14</p> <p>Ellerman [1] - 33097:5</p> <p>Elliott [1] - 33171:3</p> <p>emotion [1] - 33129:16</p> <p>emotional [2] - 33129:12</p> <p>emotionally [1] - 33129:15</p> <p>Emson [3] - 33119:22, 33121:24, 33127:19</p> <p>Emson's [1] - 33121:25</p> <p>enclosed [1] - 33213:22</p> <p>encouraging [3] - 33242:13, 33244:9, 33244:12</p> <p>End [2] - 33099:10, 33242:2</p> <p>end [4] - 33165:16, 33181:9, 33211:11, 33229:6</p> <p>ended [4] - 33190:19, 33204:9, 33248:6, 33252:6</p> <p>Ended [3] - 33099:6, 33099:8, 33099:12</p> <p>ends [1] - 33248:2</p> <p>engaged [5] - 33108:2, 33163:9, 33163:12, 33229:25, 33248:1</p> <p>engaging [1] - 33140:12</p> <p>England [2] - 33105:6, 33148:6</p> <p>entered [1] - 33120:8</p> | <p>entire [2] - 33183:5, 33207:23</p> <p>Entirely [1] - 33197:16</p> <p>entirely [2] - 33245:10, 33246:2</p> <p>entirety [1] - 33210:15</p> <p>entitled [1] - 33178:25</p> <p>epiphany [1] - 33142:1</p> <p>episode [2] - 33222:11, 33224:15</p> <p>era [1] - 33196:23</p> <p>escaped [2] - 33154:22, 33155:3</p> <p>escapes [1] - 33181:4</p> <p>especially [1] - 33208:12</p> <p>Esq [3] - 33098:7, 33098:8, 33098:13</p> <p>essence [2] - 33198:6, 33243:15</p> <p>essentially [2] - 33122:24, 33163:21</p> <p>establish [3] - 33109:1, 33116:22, 33117:8</p> <p>established [3] - 33117:10, 33122:15, 33148:5</p> <p>establishment [1] - 33124:4</p> <p>Estate [1] - 33147:24</p> <p>Etcetera [1] - 33253:13</p> <p>etcetera [1] - 33253:13</p> <p>Eve [1] - 33154:4</p> <p>events [1] - 33208:24</p> <p>eventually [2] - 33113:12, 33161:10</p> <p>evidence [63] - 33100:16, 33108:1, 33112:2, 33114:20, 33115:7, 33115:13, 33115:15, 33116:6, 33117:3, 33117:7, 33118:3, 33118:16, 33118:18, 33119:1, 33119:3, 33120:13, 33121:12, 33121:17, 33121:23, 33121:25, 33122:1, 33125:2, 33131:23, 33140:7, 33140:9, 33141:18, 33142:20, 33154:11, 33160:6, 33162:16, 33162:19, 33163:23, 33167:8, 33167:21, 33167:23, 33172:3, 33173:3, 33173:9, 33173:11, 33173:16, 33173:23, 33173:25, 33174:17, 33176:24, 33177:3, 33177:5,</p> | <p>33179:8, 33187:20, 33188:22, 33189:15, 33197:19, 33210:18, 33211:6, 33211:11, 33215:18, 33217:6, 33217:8, 33217:18, 33217:19, 33219:10, 33222:23, 33235:11, 33235:13</p> <p>evident [2] - 33191:5, 33224:13</p> <p>evolution [1] - 33115:4</p> <p>evolved [1] - 33167:10</p> <p>exact [3] - 33118:13, 33212:8, 33223:22</p> <p>exactly [7] - 33112:11, 33127:6, 33127:25, 33142:2, 33224:6, 33236:18, 33245:2</p> <p>exam [2] - 33187:5, 33187:10</p> <p>examination [10] - 33101:4, 33116:11, 33118:5, 33127:22, 33171:16, 33186:5, 33199:2, 33222:7, 33224:11, 33253:16</p> <p>examine [1] - 33234:25</p> <p>examined [7] - 33191:2, 33197:18, 33199:11, 33200:5, 33208:11, 33216:16, 33234:22</p> <p>examining [1] - 33120:23</p> <p>excellent [1] - 33129:17</p> <p>except [3] - 33172:23, 33193:13, 33223:13</p> <p>exception [1] - 33224:2</p> <p>Excerpt [14] - 33099:5, 33099:6, 33099:7, 33099:8, 33099:9, 33099:11, 33099:12, 33184:19, 33190:19, 33191:18, 33204:9, 33232:5, 33248:16, 33252:6</p> <p>excited [2] - 33242:17, 33242:19</p> <p>exciting [2] - 33242:16, 33254:8</p> <p>Executive [1] - 33097:3</p> <p>exhibit [2] - 33115:14, 33125:6</p> <p>exist [2] - 33111:7, 33236:1</p> <p>exonerated [1] - 33137:25</p> <p>exoneration [1] - 33138:4</p> |



| | | | | |
|---|--|--|--|---|
| <p>expected [3] - 33128:24, 33129:2 expecting [3] - 33240:3, 33240:4, 33240:7 expense [1] - 33254:23 experience [1] - 33145:6 experienced [1] - 33175:24 expert [2] - 33122:3, 33123:13 expertise [1] - 33119:21 explain [3] - 33136:18, 33138:14, 33138:22 explained [2] - 33207:6, 33228:25 explanation [1] - 33182:8 explanations [1] - 33210:4 exposed [3] - 33241:1, 33250:9, 33250:10 express [2] - 33107:12, 33255:1 expressed [2] - 33107:10, 33232:3 expression [1] - 33108:20 extend [1] - 33103:6 extensive [2] - 33134:20, 33134:21 extremely [1] - 33176:6 eye [1] - 33237:7 eye-opener [1] - 33237:7</p> | <p>33222:21, 33254:10 factors [1] - 33104:22 facts [2] - 33121:8, 33138:9 factual [1] - 33131:14 failure [2] - 33103:9, 33103:21 fair [1] - 33187:22 fairly [2] - 33102:4, 33232:23 fairness [4] - 33128:13, 33144:5, 33184:12, 33196:24 faith [2] - 33106:4, 33106:25 fall [4] - 33148:3, 33148:12, 33155:18, 33161:23 false [1] - 33137:12 familiar [7] - 33125:3, 33232:14, 33232:16, 33232:23, 33237:16, 33249:11, 33249:13 familiarize [1] - 33236:19 family [12] - 33101:9, 33103:7, 33103:15, 33103:25, 33104:18, 33105:9, 33154:15, 33155:7, 33155:13, 33155:14, 33173:6, 33177:12 far [5] - 33108:9, 33113:13, 33125:4, 33140:24, 33152:25 fax [1] - 33129:24 February [6] - 33111:24, 33115:9, 33115:18, 33141:24, 33220:2, 33220:7 feel...i [1] - 33146:8 feet [3] - 33118:7, 33118:21, 33127:1 felt [5] - 33117:20, 33162:13, 33176:9, 33228:25, 33244:6 female [4] - 33143:5, 33143:10, 33143:16, 33247:20 fence [5] - 33112:5, 33118:8, 33118:9, 33118:11, 33118:20 few [2] - 33226:22, 33249:14 Fifth [1] - 33147:23 fighting [1] - 33203:16 figure [1] - 33113:11 figuring [1] - 33227:1 file [56] - 33100:24, 33106:20, 33108:10,</p> | <p>33108:23, 33109:3, 33109:18, 33112:3, 33112:23, 33122:15, 33122:24, 33123:4, 33123:10, 33124:3, 33125:19, 33125:24, 33125:25, 33128:20, 33128:22, 33132:8, 33132:12, 33132:13, 33132:14, 33133:12, 33149:13, 33149:15, 33149:16, 33149:21, 33150:13, 33150:17, 33151:10, 33152:3, 33152:16, 33156:4, 33156:16, 33167:25, 33169:9, 33177:24, 33212:11, 33212:12, 33213:4, 33213:8, 33213:16, 33214:3, 33214:15, 33214:16, 33214:20, 33214:23, 33215:8, 33218:3, 33220:21, 33225:1, 33225:9, 33226:12 files [1] - 33236:8 fine [4] - 33102:13, 33109:13, 33202:2, 33248:20 fingerprint [1] - 33123:12 finish [1] - 33245:24 finished [2] - 33132:9, 33183:1 fired [2] - 33251:23 firm [1] - 33134:20 firmly [1] - 33251:17 first [50] - 33109:20, 33110:14, 33112:4, 33126:19, 33150:25, 33153:10, 33153:13, 33153:16, 33153:21, 33155:20, 33157:22, 33166:7, 33166:15, 33170:22, 33171:6, 33176:11, 33177:17, 33183:22, 33191:14, 33191:24, 33193:15, 33197:15, 33198:22, 33198:25, 33206:21, 33206:23, 33207:19, 33208:20, 33209:11, 33210:24, 33212:16, 33212:17, 33214:6, 33215:4, 33215:19, 33215:25, 33217:21, 33217:22, 33222:10, 33223:4, 33224:14, 33225:22, 33229:11, 33232:15, 33237:22,</p> | <p>33240:4, 33240:16, 33241:14, 33251:13 Fisher [4] - 33098:9, 33192:19, 33242:1, 33242:6 fit [1] - 33120:22 Fitzgerald [1] - 33097:12 five [2] - 33132:5, 33226:22 flags [1] - 33198:3 flanked [1] - 33102:25 flashback [1] - 33165:2 flavours [1] - 33176:7 flight [1] - 33156:8 focused [2] - 33110:1, 33146:13 follow [1] - 33231:16 followed [1] - 33125:17 following [8] - 33150:2, 33168:16, 33169:9, 33184:4, 33213:23, 33229:25, 33231:14, 33247:25 follows [2] - 33247:17, 33248:7 foregoing [1] - 33256:4 forensic [2] - 33119:8, 33122:2 forget [1] - 33212:8 forgive [2] - 33212:9, 33245:3 forgiven [2] - 33181:14, 33254:20 forgotten [1] - 33145:2 form [2] - 33173:8, 33237:13 formal [1] - 33223:24 former [1] - 33102:22 forth [2] - 33178:8, 33178:9 forums [1] - 33210:1 forward [10] - 33100:21, 33105:7, 33105:24, 33120:9, 33125:23, 33130:24, 33130:25, 33139:24, 33143:24, 33178:5 forwarded [1] - 33220:17 foundation [1] - 33136:4 four [3] - 33138:21, 33250:19, 33253:7 four-page [2] - 33250:19, 33253:7 Fox [3] - 33171:16, 33171:24, 33172:21 frame [1] - 33148:8 frankly [1] - 33147:4</p> | <p>Framer [1] - 33098:10 freak [3] - 33206:18, 33206:24, 33207:4 freaked [2] - 33202:13, 33243:21 free [1] - 33242:12 Free [7] - 33231:15, 33231:25, 33241:4, 33242:12, 33242:14, 33248:14, 33249:6 freed [1] - 33155:5 freedom [1] - 33138:3 frequent [2] - 33159:15, 33230:22 friend [2] - 33222:8, 33224:11 Friend [1] - 33211:17 friendly [1] - 33200:3 Friesen [5] - 33143:3, 33143:13, 33143:17, 33147:22, 33148:11 front [3] - 33126:3, 33185:13, 33203:1 full [8] - 33104:21, 33106:17, 33134:10, 33135:11, 33135:19, 33135:25, 33198:10, 33222:2 fully [3] - 33103:11, 33105:19, 33136:15</p> |
| G | | | | |
| <p>Gail [10] - 33112:6, 33116:24, 33117:9, 33117:11, 33118:6, 33209:4, 33209:6, 33212:19, 33212:20, 33251:5 gained [1] - 33133:4 gaps [1] - 33237:20 Garrett [1] - 33098:6 Gary [7] - 33151:7, 33151:23, 33152:7, 33154:7, 33155:19, 33156:3 gaspd [1] - 33193:4 geez [1] - 33186:14 Geez [1] - 33190:10 general [1] - 33198:4 generating [1] - 33156:18 Geoff [1] - 33232:7 George [6] - 33158:7, 33158:13, 33158:16, 33164:9, 33171:1 Gibbon [2] - 33169:10, 33169:20 Gibson [1] - 33098:8</p> | | | | |



| | | | | |
|---|--|--|--|---|
| <p>girl [3] - 33198:23, 33199:20, 33199:23 given [21] - 33112:23, 33115:7, 33154:12, 33170:13, 33183:3, 33191:10, 33196:15, 33198:5, 33207:14, 33207:16, 33207:21, 33208:4, 33208:6, 33209:3, 33210:18, 33216:19, 33220:11, 33237:18, 33240:19, 33250:2, 33250:4 glad [1] - 33237:17 gonna [9] - 33115:11, 33119:16, 33134:8, 33164:22, 33171:20, 33192:17, 33229:24, 33230:3 gordge [9] - 33151:4, 33170:21, 33176:12, 33176:18, 33220:1, 33220:9, 33220:14, 33220:18, 33224:5 government [1] - 33106:17 Government[4] - 33098:4, 33104:1, 33134:11, 33138:19 grave [1] - 33203:13 Greg[1] - 33134:19 grew [1] - 33120:10 grow [1] - 33128:11 guess [6] - 33146:4, 33181:4, 33245:20, 33247:8, 33251:22, 33252:4 guessed [1] - 33237:19 guide [1] - 33254:18 guided [1] - 33109:5 guilty [2] - 33138:12, 33223:13</p> | <p>33220:6 handwritten [3] - 33221:14, 33221:20, 33221:21 hang [1] - 33184:22 hard [4] - 33136:18, 33145:4, 33155:13, 33242:9 hard-pressed [1] - 33242:9 harder [1] - 33145:6 Harris[1] - 33170:25 hasn't [2] - 33233:1, 33233:21 haven't [2] - 33234:4, 33236:9 Head[1] - 33192:10 head [1] - 33102:22 headlines [3] - 33254:22, 33254:25, 33255:2 health [1] - 33173:20 hear [5] - 33142:20, 33144:2, 33163:21, 33210:18, 33246:14 heard [15] - 33100:17, 33101:9, 33108:22, 33109:3, 33109:9, 33125:2, 33125:10, 33160:3, 33167:21, 33177:13, 33179:10, 33179:12, 33213:2, 33220:3, 33253:24 hearing [8] - 33100:15, 33100:16, 33116:24, 33130:3, 33146:16, 33181:23, 33212:21, 33215:17 heartache [1] - 33125:15 held [3] - 33105:1, 33106:4, 33171:17 Hello [3] - 33184:20, 33184:21, 33248:18 help [10] - 33108:16, 33108:17, 33128:21, 33147:4, 33147:10, 33147:15, 33155:8, 33243:9, 33248:21, 33254:19 helpful [2] - 33109:5, 33252:9 Henderson [3] - 33170:22, 33176:15, 33176:19 hereby [1] - 33256:4 herein [1] - 33256:6 Hersh[9] - 33098:2, 33189:17, 33189:18, 33189:19, 33190:1,</p> | <p>33192:3, 33192:20, 33192:21, 33193:2 hesitate [1] - 33157:4 He'd [1] - 33250:2 he'd [4] - 33235:2, 33236:15, 33237:11, 33237:12 he's [7] - 33233:2, 33233:19, 33233:22, 33234:20, 33235:24, 33238:10, 33250:4 He's [1] - 33252:2 Hi[4] - 33191:19, 33191:20, 33248:17, 33249:4 hide [1] - 33201:1 high [1] - 33133:21 high-level [1] - 33133:21 highly [1] - 33106:16 himself [2] - 33175:14, 33236:19 hindsight [1] - 33125:11 Hinz[3] - 33097:9, 33256:2, 33256:13 hired [1] - 33156:3 hiring [1] - 33155:19 history [1] - 33168:7 Hmm [1] - 33192:25 Hodson[12] - 33097:2, 33171:21, 33171:23, 33172:1, 33172:14, 33174:18, 33229:11, 33252:10, 33252:14, 33252:17, 33252:22, 33254:18 Hold [1] - 33194:1 hold [3] - 33109:8, 33123:15, 33130:23 holidays [2] - 33233:19, 33233:20 home [3] - 33126:12, 33218:17, 33220:25 Hon [1] - 33098:12 honest [2] - 33107:1, 33182:11 honestly [5] - 33109:25, 33131:6, 33132:17, 33142:21, 33145:23 Honourable [1] - 33096:6 hoot [1] - 33208:8 hope [4] - 33101:5, 33166:1, 33204:3, 33254:14 hoped [1] - 33129:2 hopefully [1] - 33234:5 hoping [1] - 33110:22 Hopkins[1] - 33098:13</p> | <p>horrible [1] - 33103:13 hospital [2] - 33155:1, 33177:19 Hospital [1] - 33241:24 Hotel[1] - 33222:25 hours [1] - 33161:14 hunting [2] - 33124:13, 33125:8</p> | <p>33229:15, 33229:19, 33244:6 impression [8] - 33122:2, 33122:7, 33128:23, 33141:5, 33164:23, 33164:24, 33166:8, 33179:17 Inaudible [1] - 33240:6 included [3] - 33173:6, 33219:7, 33226:4 includes [1] - 33104:25 including [6] - 33111:18, 33112:25, 33136:3, 33137:7, 33146:16, 33167:24 incompetency [1] - 33187:25 incriminated [2] - 33240:8, 33249:22 incriminating [1] - 33245:15 inculpatory [1] - 33216:20 incumbent [1] - 33137:4 ind [1] - 33172:11 independent [1] - 33163:23 Index [1] - 33099:1 indicate [5] - 33103:23, 33144:9, 33157:15, 33235:6, 33235:8 indicated [20] - 33102:19, 33108:19, 33115:14, 33115:15, 33121:15, 33126:14, 33128:13, 33128:14, 33132:6, 33132:7, 33141:18, 33145:8, 33147:12, 33150:3, 33172:4, 33172:14, 33172:24, 33173:12, 33176:23, 33209:3 indicates [4] - 33149:16, 33156:4, 33211:13, 33218:4 indicating [1] - 33180:15 indication [1] - 33168:18 indications [2] - 33118:10, 33174:2 indicators [1] - 33176:1 individuals [1] - 33181:25 inevitable [1] - 33216:12 inference [1] - 33180:17 inflation [2] - 33114:2,</p> |
| H | | | I | |
| <p>hah [1] - 33237:5 hairdo [1] - 33126:9 Halyk[6] - 33101:22, 33103:1, 33103:4, 33103:10, 33104:14, 33105:13 hand [4] - 33151:15, 33195:24, 33205:16, 33218:20 handle [1] - 33126:18 handled [1] - 33102:23 hands [1] - 33168:5 handwriting [3] - 33123:2, 33123:13,</p> | | | <p>I...i...then [1] - 33145:16 Id [9] - 33168:11, 33175:11, 33178:19, 33178:20, 33184:6, 33184:7, 33191:15, 33230:15, 33230:16 Id's [1] - 33215:15 idea [3] - 33130:13, 33131:11, 33198:4 ideas [1] - 33120:25 identical [2] - 33123:5, 33250:3 identification [1] - 33118:4 identified [1] - 33109:6 identify [2] - 33115:20, 33115:24 ignore [1] - 33138:17 ill [7] - 33171:18, 33172:16, 33174:4, 33175:23, 33176:6, 33176:9, 33178:7 illness [7] - 33173:9, 33176:2, 33177:17, 33178:15, 33179:25, 33181:1, 33181:17 immediate [1] - 33104:20 immediately [6] - 33190:24, 33229:25, 33231:14, 33247:17, 33247:25, 33248:7 impact [2] - 33181:21, 33181:24 impacts [1] - 33141:5 implicate [1] - 33210:6 implicating [2] - 33200:15, 33210:25 implication [4] - 33121:11, 33127:8, 33210:5, 33226:2 importance [5] - 33105:16, 33113:13, 33117:25, 33132:19, 33133:4 important [8] - 33110:2, 33113:12, 33144:24, 33146:3, 33214:22,</p> | |



| | | | | |
|---|---|---|--|---|
| <p>33114:4 inflicted [1] - 33103:14 information [44] - 33108:11, 33109:19, 33110:12, 33110:13, 33110:22, 33111:7, 33111:16, 33113:6, 33126:22, 33131:14, 33132:8, 33143:12, 33156:9, 33156:13, 33161:18, 33177:23, 33179:19, 33195:19, 33198:16, 33206:8, 33206:9, 33207:14, 33220:13, 33221:10, 33225:14, 33229:8, 33232:17, 33240:19, 33242:16, 33242:25, 33243:5, 33243:22, 33244:10, 33244:13, 33244:14, 33244:18, 33244:19, 33244:25, 33246:12, 33246:24, 33247:1, 33247:3, 33247:4, 33254:7 inhibits [1] - 33198:9 initial [1] - 33209:2 injustice [1] - 33103:13 Inland [1] - 33097:12 innocence [3] - 33201:13, 33209:12, 33210:25 innocent [4] - 33120:20, 33209:4, 33210:3, 33244:19 innocently [1] - 33162:1 inquiry [42] - 33100:10, 33104:2, 33104:21, 33105:1, 33105:9, 33106:18, 33106:24, 33115:7, 33115:12, 33115:22, 33116:3, 33116:7, 33116:19, 33116:25, 33117:2, 33120:15, 33121:16, 33122:12, 33124:5, 33124:6, 33124:10, 33124:21, 33127:11, 33128:15, 33149:10, 33173:5, 33174:1, 33191:4, 33202:21, 33206:5, 33210:16, 33210:19, 33211:4, 33216:15, 33216:17, 33217:5, 33217:15, 33219:8, 33230:7, 33243:3, 33244:16, 33253:17 Inquiry [18] - 33096:2,</p> | <p>33096:23, 33100:16, 33107:12, 33107:24, 33108:12, 33108:22, 33109:4, 33109:10, 33110:4, 33114:19, 33117:24, 33131:18, 33140:18, 33160:3, 33162:11, 33167:22, 33215:18 inside [1] - 33128:20 Inspector [14] - 33135:5, 33135:21, 33175:10, 33175:14, 33205:25, 33216:20, 33222:14, 33222:15, 33222:18, 33225:22, 33250:20, 33253:8, 33253:18, 33253:21 instance [1] - 33174:10 instead [1] - 33125:12 instructed [1] - 33104:17 instruction [2] - 33105:1, 33125:18 instructions [1] - 33156:17 intellectually [1] - 33172:25 intend [1] - 33184:11 intended [1] - 33179:20 intention [4] - 33180:19, 33180:23, 33182:6, 33182:12 intentionally [1] - 33114:22 interest [1] - 33201:16 interested [1] - 33134:2 Interesting [1] - 33234:21 interesting [4] - 33201:12, 33221:9, 33241:22, 33241:23 interim [1] - 33151:3 interpretation [1] - 33225:17 interpreting [1] - 33152:1 interview [10] - 33134:21, 33135:1, 33174:16, 33175:12, 33176:11, 33176:15, 33209:16, 33222:24, 33235:23, 33242:6 interviewed [7] - 33154:5, 33170:20, 33175:9, 33201:9, 33222:13, 33222:20, 33251:12 interviewing [1] - 33242:1</p> | <p>interviews [2] - 33161:9, 33170:25 introduced [3] - 33125:6, 33127:9, 33174:10 investigation [15] - 33108:3, 33112:3, 33115:19, 33133:18, 33134:12, 33134:17, 33134:21, 33135:16, 33136:15, 33138:18, 33139:10, 33139:12, 33140:13, 33177:25, 33222:12 investigators [3] - 33116:22, 33222:11, 33224:16 involved [5] - 33129:15, 33131:10, 33154:8, 33182:4, 33224:19 involvement [2] - 33141:6, 33198:6 lola [2] - 33099:3, 33100:5 Irene [1] - 33097:8 issue [12] - 33102:21, 33103:3, 33130:10, 33131:9, 33146:13, 33168:13, 33177:12, 33182:14, 33187:24, 33219:16, 33228:20, 33229:9 issued [2] - 33129:23, 33130:13 issues [2] - 33105:25, 33229:16 itself [4] - 33117:2, 33143:1, 33177:18, 33211:8 it's [2] - 33238:3, 33252:4 I'm [5] - 33232:16, 33233:6, 33237:15, 33237:17, 33241:10 I've [3] - 33237:19, 33238:13, 33249:14</p> | <p>33151:1, 33151:17, 33152:8, 33153:22, 33156:6, 33156:11, 33157:20, 33158:23, 33160:19, 33168:10, 33168:12, 33168:25, 33169:2, 33169:3, 33169:9, 33169:17, 33170:9, 33170:24, 33178:14, 33198:24, 33209:16, 33212:15, 33212:25, 33213:2, 33215:2, 33215:13, 33215:24, 33216:12, 33216:18, 33217:19, 33218:3, 33218:4, 33219:19, 33221:24, 33227:21, 33250:22, 33253:10 Jennifer[1] - 33098:10 Jerry[1] - 33097:11 Joanne[1] - 33098:3 job [6] - 33129:5, 33129:17, 33201:20, 33201:21, 33233:2, 33251:23 John[13] - 33125:7, 33149:19, 33150:20, 33152:2, 33158:6, 33158:13, 33158:14, 33164:5, 33169:2, 33171:1, 33209:1, 33211:22, 33236:2 join [2] - 33104:17, 33105:8 joining [1] - 33103:24 Joyce[175] - 33098:3, 33099:3, 33100:5, 33143:10, 33184:20, 33184:21, 33184:24, 33185:1, 33185:2, 33185:7, 33185:11, 33185:16, 33185:19, 33185:22, 33186:1, 33186:4, 33186:12, 33186:16, 33186:22, 33187:1, 33187:4, 33187:8, 33187:15, 33187:19, 33188:4, 33188:7, 33188:10, 33188:15, 33188:18, 33188:21, 33188:25, 33189:3, 33189:7, 33189:11, 33189:17, 33189:22, 33189:25, 33190:3, 33190:6, 33190:8, 33190:12, 33190:16, 33191:20, 33191:22, 33191:25, 33192:4, 33192:6,</p> | <p>33192:8, 33192:12, 33192:22, 33192:25, 33193:3, 33193:6, 33193:8, 33193:10, 33193:18, 33193:22, 33194:1, 33194:8, 33194:11, 33194:18, 33194:21, 33194:23, 33195:1, 33195:6, 33195:12, 33195:17, 33195:20, 33196:1, 33196:4, 33196:8, 33196:13, 33196:17, 33196:19, 33196:22, 33196:25, 33197:3, 33197:7, 33197:13, 33197:16, 33197:22, 33198:1, 33198:7, 33198:12, 33198:17, 33198:21, 33199:3, 33199:8, 33199:10, 33199:14, 33199:16, 33200:17, 33200:21, 33201:12, 33201:17, 33201:20, 33201:22, 33201:25, 33202:2, 33202:5, 33202:9, 33202:12, 33202:18, 33202:20, 33202:24, 33203:2, 33203:5, 33203:8, 33203:11, 33203:18, 33203:21, 33203:25, 33204:2, 33204:5, 33232:6, 33232:10, 33232:22, 33232:25, 33233:4, 33233:6, 33233:9, 33233:12, 33233:16, 33233:18, 33233:25, 33234:8, 33235:8, 33235:12, 33235:16, 33235:19, 33235:22, 33236:7, 33236:11, 33236:23, 33236:25, 33237:5, 33237:9, 33237:21, 33237:24, 33238:2, 33238:6, 33238:10, 33238:13, 33238:16, 33238:22, 33239:4, 33239:9, 33239:13, 33239:17, 33239:21, 33239:23, 33240:1, 33240:7, 33240:10, 33240:22, 33241:5, 33241:7, 33241:10, 33241:14, 33241:17, 33248:17, 33248:19, 33248:22, 33249:1, 33249:5, 33249:9, 33249:15, 33249:19, 33249:24,</p> |
| J | | | | |
| <p>Jab[2] - 33250:20, 33253:8 jacket [1] - 33201:3 jail [3] - 33107:4, 33137:24, 33154:15 Jan[1] - 33170:1 January[45] - 33100:17, 33114:20, 33133:17, 33149:7, 33149:8, 33149:25, 33150:17,</p> | | | | |



| | | | | | |
|---|--|--|---|---|--|
| 33250:18, 33251:11, 33251:17, 33251:22, 33251:25, 33252:2 judge [1] - 33178:13 judgment [1] - 33106:5 judicial [1] - 33104:21 July [17] - 33101:14, 33102:17, 33105:5, 33147:8, 33147:16, 33182:15, 33183:14, 33183:20, 33204:15, 33204:20, 33205:6, 33214:7, 33218:9, 33228:4, 33231:14, 33248:9 June [2] - 33096:21, 33213:21 jury [18] - 33178:13, 33179:5, 33179:10, 33181:5, 33181:7, 33181:17, 33195:2, 33196:3, 33203:1, 33219:19, 33221:21, 33221:23, 33222:5, 33223:8, 33223:9, 33223:20, 33224:1, 33224:7 Justice [22] - 33096:6, 33098:11, 33098:13, 33104:19, 33134:15, 33135:13, 33135:20, 33135:23, 33136:11, 33136:12, 33234:3, 33234:10, 33236:15, 33239:1, 33239:4, 33239:10, 33239:19, 33240:13, 33249:20, 33250:1, 33250:4 | kids [3] - 33156:23, 33180:14, 33241:12 killed [1] - 33251:4 Kim [20] - 33247:14, 33247:19, 33248:18, 33248:20, 33248:25, 33249:3, 33249:4, 33249:8, 33249:13, 33249:18, 33249:23, 33250:15, 33251:10, 33251:16, 33251:21, 33251:24, 33252:1, 33252:10, 33252:18, 33253:6 kind [7] - 33117:21, 33123:25, 33129:1, 33130:1, 33181:25, 33182:7, 33250:9 kindly [1] - 33230:1 kinds [1] - 33120:25 Kleiv [9] - 33115:13, 33116:20, 33117:7, 33119:18, 33122:11, 33124:15, 33124:19, 33124:22 Kleiv's [1] - 33116:6 knife [71] - 33109:23, 33110:1, 33110:2, 33110:8, 33110:23, 33111:14, 33111:23, 33112:4, 33112:9, 33112:12, 33113:11, 33113:14, 33113:20, 33113:25, 33114:4, 33114:6, 33114:13, 33114:23, 33115:8, 33115:17, 33115:20, 33115:21, 33115:25, 33116:9, 33116:10, 33116:23, 33117:5, 33117:9, 33117:11, 33117:14, 33117:17, 33117:20, 33118:2, 33118:6, 33118:14, 33118:19, 33118:25, 33119:4, 33119:10, 33120:6, 33120:12, 33120:25, 33121:20, 33122:4, 33122:7, 33122:8, 33122:10, 33122:16, 33124:13, 33124:19, 33124:25, 33125:4, 33125:6, 33125:8, 33126:14, 33126:18, 33126:24, 33127:4, 33127:9, 33127:13, 33130:2, 33130:21, 33131:12, 33132:17, 33138:13, 33140:13, 33140:20, | 33140:23, 33141:1, 33234:18, 33250:23 knives [1] - 33111:19 knock [1] - 33129:6 knocking [1] - 33157:2 knowing [1] - 33138:2 knowingly [1] - 33107:3 knowledge [11] - 33134:10, 33135:11, 33135:19, 33135:25, 33177:22, 33191:1, 33205:20, 33205:24, 33237:20, 33254:4, 33256:6 known [5] - 33181:7, 33210:12, 33215:1, 33228:10, 33242:25 knows [3] - 33165:19, 33188:12, 33196:15 Knox [32] - 33098:5, 33099:4, 33100:6, 33100:8, 33116:14, 33116:16, 33116:17, 33136:11, 33136:13, 33136:14, 33142:22, 33151:22, 33166:10, 33166:17, 33167:4, 33169:6, 33169:8, 33178:20, 33178:23, 33190:20, 33204:10, 33205:18, 33206:15, 33226:10, 33231:1, 33231:5, 33231:13, 33231:21, 33252:7, 33252:22, 33253:1, 33255:3 Krogan [1] - 33098:4 Krogan-stevely [1] - 33098:4 Kujawa [7] - 33098:6, 33101:23, 33102:22, 33103:1, 33103:24, 33105:14, 33134:14 | 33105:13, 33143:12 late [4] - 33148:2, 33151:25, 33155:10, 33221:24 latter [1] - 33162:25 law [1] - 33190:9 lawyer [25] - 33103:1, 33125:24, 33129:3, 33129:9, 33134:18, 33134:19, 33137:6, 33161:6, 33163:3, 33165:23, 33187:19, 33195:22, 33204:6, 33205:19, 33206:4, 33212:4, 33234:2, 33237:23, 33237:24, 33238:3, 33240:24, 33242:22, 33242:23, 33249:11, 33250:7 lawyers [5] - 33112:24, 33183:7, 33208:1, 33208:18, 33235:1 lay [3] - 33146:7, 33151:15, 33168:5 Leader [1] - 33155:23 leading [1] - 33161:19 leads [1] - 33216:11 leaped [2] - 33174:8, 33174:9 learned [4] - 33106:6, 33121:15, 33222:8, 33224:11 Learned [1] - 33211:17 least [4] - 33136:6, 33143:16, 33228:16, 33229:6 leave [1] - 33251:2 left [5] - 33117:18, 33179:16, 33179:17, 33234:15, 33251:7 leg [1] - 33174:20 legal [1] - 33103:22 lend [1] - 33240:16 lengthy [1] - 33136:16 less [3] - 33145:13, 33202:16, 33207:6 Lett [57] - 33182:20, 33184:2, 33184:21, 33184:25, 33185:6, 33185:9, 33185:14, 33185:18, 33185:21, 33185:24, 33186:3, 33186:6, 33186:14, 33186:18, 33186:25, 33187:3, 33187:7, 33187:14, 33187:18, 33187:22, 33188:6, 33188:9, 33188:14, 33188:17, 33188:20, 33188:24, 33189:2, | 33189:6, 33189:10, 33189:14, 33189:21, 33189:23, 33190:2, 33190:5, 33190:7, 33190:10, 33190:15, 33190:17, 33190:23, 33204:16, 33205:22, 33214:8, 33218:19, 33228:18, 33229:4, 33232:2, 33232:10, 33235:24, 33242:24, 33243:2, 33243:20, 33244:10, 33245:5, 33247:7, 33249:10, 33254:5, 33254:17 letter [17] - 33150:1, 33150:3, 33150:9, 33152:8, 33168:9, 33168:11, 33168:23, 33169:24, 33170:8, 33195:14, 33213:17, 33213:21, 33219:23, 33219:25, 33225:18, 33225:19, 33226:3 letters [2] - 33135:6, 33152:16 letting [1] - 33103:2 Letts [1] - 33241:3 level [1] - 33133:21 lie [1] - 33140:25 life [1] - 33203:17 light [2] - 33115:6, 33245:4 likely [1] - 33161:5 line [4] - 33143:9, 33179:6, 33203:20, 33254:15 link [1] - 33181:3 list [1] - 33133:1 listen [8] - 33167:13, 33184:12, 33201:6, 33204:17, 33231:16, 33238:11, 33238:12, 33247:21 listened [5] - 33107:25, 33145:17, 33218:18, 33242:8, 33243:1 listing [1] - 33122:23 literally [1] - 33200:4 litigation [1] - 33204:6 lived [1] - 33126:13 lives [1] - 33233:14 lo [1] - 33249:24 locate [1] - 33122:12 locating [2] - 33150:4, 33168:16 location [1] - 33124:25 locker [3] - 33110:5, 33111:20, 33111:23 logistically [1] - | |
| K | | | | | |
| Karen [3] - 33097:9, 33256:2, 33256:13 Karp [1] - 33231:7 Karst [3] - 33098:7, 33222:21, 33225:24 keep [1] - 33227:24 keeping [1] - 33117:6 Ken [8] - 33199:16, 33238:3, 33238:9, 33240:11, 33246:1, 33246:8, 33247:1, 33249:10 kept [4] - 33128:4, 33161:10, 33181:17, 33209:9 kid [1] - 33242:20 kidding [2] - 33190:5, 33233:5 | | | | | |
| | L | | | | |
| | | label [1] - 33136:7 laboratory [1] - 33211:24 Lana [1] - 33098:4 language [1] - 33164:3 Lapchuk [8] - 33158:7, 33158:10, 33158:13, 33158:16, 33159:2, 33164:9, 33171:1, 33171:2 large [1] - 33100:17 Larry [1] - 33098:9 last [3] - 33105:12, | | | |



| | | | | |
|--|--|---|--|--|
| <p>33192:16 long-distance [1] - 33144:21 look [24] - 33102:10, 33102:14, 33106:18, 33110:11, 33111:8, 33114:9, 33122:11, 33127:17, 33127:23, 33130:16, 33137:16, 33140:17, 33142:19, 33147:21, 33150:6, 33151:14, 33165:14, 33180:21, 33189:13, 33193:24, 33203:16, 33212:6, 33221:8, 33226:2 looked [9] - 33100:18, 33123:7, 33123:21, 33189:4, 33212:11, 33214:23, 33218:13, 33254:21 looking [7] - 33108:10, 33147:2, 33150:21, 33174:8, 33180:21, 33182:1, 33219:15 looks [4] - 33156:16, 33173:24, 33235:3, 33235:20 losing [1] - 33114:6 lost [3] - 33106:23, 33110:13, 33233:2 lower [1] - 33112:5 lunches [1] - 33190:13 Lysyk[1] - 33133:20</p> | <p>33251:1 male [1] - 33247:20 maliciously [1] - 33131:20 man [10] - 33106:3, 33106:14, 33106:25, 33107:2, 33108:9, 33115:14, 33139:13, 33181:9, 33181:16 Manager [1] - 33097:4 manifesting [1] - 33177:18 March [17] - 33126:11, 33194:12, 33199:18, 33200:24, 33204:22, 33206:1, 33209:15, 33209:17, 33209:24, 33214:1, 33214:7, 33223:5, 33225:23, 33225:24, 33227:11, 33246:3 marks [1] - 33117:18 Marshall [1] - 33098:13 marvelous [1] - 33129:5 Marvin [1] - 33098:9 match [1] - 33179:25 material [8] - 33151:15, 33225:5, 33225:12, 33225:15, 33225:16, 33226:2, 33226:11, 33226:21 materials [1] - 33100:20 matter [6] - 33112:18, 33191:3, 33194:2, 33208:8, 33225:16, 33242:23 Mclean [2] - 33098:3, 33151:21 Mcnally [3] - 33140:1, 33163:6, 33181:12 mean [23] - 33114:3, 33138:23, 33146:5, 33146:8, 33154:21, 33170:3, 33187:16, 33188:7, 33196:11, 33196:23, 33197:8, 33197:18, 33198:2, 33200:20, 33202:22, 33203:15, 33206:13, 33230:7, 33236:12, 33243:11, 33245:19, 33246:13, 33250:9 meaning [4] - 33237:2, 33239:15, 33239:16, 33249:21 means [4] - 33142:3, 33196:14, 33234:23 meantime [1] - 33152:24</p> | <p>media [11] - 33110:21, 33134:8, 33139:25, 33140:16, 33159:15, 33161:9, 33178:1, 33208:24, 33229:9, 33230:3, 33230:9 meet [1] - 33157:20 meeting [5] - 33124:23, 33156:6, 33156:17, 33192:21, 33200:23 Melnyk [4] - 33158:7, 33158:10, 33159:3, 33164:11 melted [1] - 33127:5 member [1] - 33134:1 members [2] - 33177:12, 33254:6 memo [11] - 33129:19, 33129:21, 33150:16, 33151:17, 33151:18, 33151:25, 33152:5, 33169:9, 33169:12, 33169:20, 33225:1 memory [37] - 33101:16, 33114:14, 33114:18, 33117:22, 33119:12, 33126:7, 33127:25, 33130:22, 33149:4, 33150:24, 33151:6, 33157:7, 33157:12, 33160:15, 33173:23, 33183:25, 33190:22, 33190:24, 33204:25, 33205:1, 33213:10, 33214:21, 33214:25, 33216:3, 33216:18, 33216:22, 33216:25, 33217:3, 33218:16, 33221:5, 33221:7, 33221:12, 33223:12, 33230:11, 33246:7, 33246:13 memos [2] - 33150:12, 33152:16 men [1] - 33182:11 mental [12] - 33172:6, 33172:7, 33173:9, 33173:14, 33173:20, 33175:20, 33176:1, 33177:17, 33178:15, 33179:25, 33181:1, 33181:17 mentally [10] - 33171:18, 33172:16, 33174:4, 33175:23, 33176:6, 33176:9, 33177:1, 33178:7, 33180:12, 33180:25 mention [3] - 33199:20, 33199:23, 33211:16</p> | <p>mentioned [3] - 33132:20, 33132:21, 33194:12 mentioning [2] - 33189:5, 33189:7 mere [1] - 33174:25 merit [1] - 33137:13 message [3] - 33151:13, 33161:16, 33170:4 Meyer [3] - 33097:10, 33256:2, 33256:17 Michael [1] - 33135:8 mid [1] - 33156:6 might [19] - 33103:3, 33109:4, 33114:24, 33118:2, 33118:25, 33125:13, 33128:25, 33158:16, 33159:1, 33166:5, 33173:8, 33173:19, 33174:20, 33175:1, 33177:1, 33194:16, 33206:16, 33211:16, 33224:22 Milgaard [315] - 33096:4, 33098:2, 33098:3, 33099:3, 33100:5, 33100:7, 33100:13, 33103:7, 33103:14, 33104:18, 33104:24, 33105:23, 33106:13, 33107:8, 33107:17, 33107:23, 33108:4, 33108:19, 33114:17, 33116:18, 33118:23, 33119:16, 33121:4, 33125:1, 33125:16, 33129:19, 33131:8, 33131:17, 33132:1, 33133:11, 33133:25, 33134:18, 33136:23, 33137:1, 33137:21, 33138:15, 33138:23, 33139:7, 33139:16, 33140:5, 33141:2, 33142:15, 33142:23, 33143:3, 33143:10, 33143:25, 33145:21, 33145:25, 33147:20, 33152:7, 33153:13, 33154:9, 33157:5, 33157:6, 33158:1, 33158:25, 33159:2, 33160:1, 33161:8, 33161:22, 33162:7, 33162:10, 33162:21, 33164:2, 33165:8, 33165:10, 33165:18, 33167:11, 33168:3, 33168:14,</p> | <p>33169:16, 33170:15, 33171:12, 33172:19, 33173:2, 33174:16, 33175:6, 33176:22, 33177:11, 33177:22, 33178:17, 33178:24, 33179:16, 33180:24, 33181:21, 33182:13, 33182:19, 33183:4, 33183:19, 33184:10, 33184:20, 33184:24, 33185:2, 33185:7, 33185:11, 33185:16, 33185:19, 33185:22, 33186:1, 33186:4, 33186:12, 33186:16, 33186:22, 33187:1, 33187:4, 33187:8, 33187:15, 33187:19, 33188:4, 33188:7, 33188:10, 33188:15, 33188:18, 33188:21, 33188:25, 33189:3, 33189:7, 33189:11, 33189:17, 33189:22, 33189:25, 33190:3, 33190:6, 33190:8, 33190:12, 33190:16, 33190:21, 33191:20, 33191:22, 33191:25, 33192:4, 33192:6, 33192:8, 33192:12, 33192:22, 33192:25, 33193:3, 33193:6, 33193:8, 33193:10, 33193:18, 33193:22, 33194:1, 33194:8, 33194:11, 33194:18, 33194:21, 33194:23, 33195:1, 33195:6, 33195:12, 33195:17, 33195:20, 33196:1, 33196:4, 33196:8, 33196:13, 33196:17, 33196:19, 33196:25, 33197:3, 33197:7, 33197:13, 33197:16, 33197:22, 33198:1, 33198:7, 33198:12, 33198:17, 33198:21, 33199:3, 33199:8, 33199:10, 33199:14, 33199:16, 33200:17, 33200:21, 33201:12, 33201:17, 33201:20, 33201:22, 33201:25, 33202:2, 33202:5, 33202:9, 33202:12, 33202:18, 33202:24, 33203:2, 33203:5, 33203:8, 33203:11,</p> |
| M | | | | |
| <p>ma'am [1] - 33115:3 Maccallum [27] - 33096:7, 33100:3, 33116:12, 33116:15, 33136:9, 33136:12, 33142:16, 33166:6, 33166:11, 33166:19, 33166:24, 33169:5, 33169:7, 33178:19, 33178:22, 33191:17, 33205:5, 33205:9, 33206:12, 33226:6, 33230:24, 33231:3, 33231:11, 33231:19, 33252:13, 33252:15, 33252:25 Mafia [1] - 33174:10 maintained [3] - 33101:8, 33107:9, 33154:20 major [4] - 33138:17, 33139:10, 33157:8,</p> | | | | |



| | | | | |
|---|---|--|----------|--|
| 33203:18, 33203:21, 33203:25, 33204:2, 33204:5, 33204:13, 33205:4, 33205:19, 33207:10, 33207:18, 33207:22, 33208:8, 33208:21, 33210:14, 33211:3, 33211:10, 33212:7, 33213:15, 33214:11, 33214:14, 33215:1, 33215:11, 33216:6, 33217:5, 33217:25, 33218:2, 33219:16, 33219:23, 33220:16, 33220:24, 33221:17, 33223:14, 33224:21, 33225:10, 33225:17, 33226:11, 33227:7, 33228:3, 33228:16, 33229:2, 33229:11, 33229:24, 33230:18, 33230:19, 33232:6, 33232:10, 33232:22, 33232:25, 33233:4, 33233:6, 33233:9, 33233:12, 33233:16, 33233:18, 33233:25, 33234:8, 33234:15, 33235:8, 33235:12, 33235:16, 33235:19, 33235:22, 33236:7, 33236:11, 33236:23, 33236:25, 33237:5, 33237:9, 33237:21, 33237:24, 33238:2, 33238:6, 33238:10, 33238:13, 33238:16, 33238:22, 33239:4, 33239:9, 33239:13, 33239:17, 33239:21, 33239:23, 33240:1, 33240:7, 33240:10, 33240:22, 33241:5, 33241:7, 33241:10, 33241:14, 33241:17, 33242:3, 33242:18, 33243:19, 33244:8, 33245:3, 33246:6, 33246:15, 33247:13, 33247:18, 33248:17, 33248:19, 33248:22, 33249:1, 33249:5, 33249:9, 33249:15, 33249:19, 33249:24, 33250:18, 33250:23, 33251:2, 33251:7, 33251:11, 33251:17, 33251:22, 33251:25, 33252:2, 33252:8, 33253:2, 33253:12, 33253:24, | 33254:13 Milgaard's [3] - 33102:6, 33165:23, 33167:9 Miller [8] - 33116:24, 33117:9, 33117:11, 33118:7, 33209:4, 33212:19, 33212:20, 33251:5 Miller's [2] - 33112:6, 33209:6 mind [10] - 33104:3, 33106:24, 33113:11, 33123:10, 33150:18, 33152:24, 33169:18, 33206:20, 33206:22, 33224:23 mine [1] - 33185:14 minimize [1] - 33147:2 Minister [2] - 33098:11, 33104:19 minor [2] - 33102:20, 33224:3 minute [4] - 33130:23, 33148:15, 33249:3, 33250:13 minutes [3] - 33167:1, 33246:1, 33251:3 misconduct [11] - 33108:3, 33108:7, 33108:15, 33109:7, 33109:21, 33114:5, 33121:12, 33134:13, 33138:11, 33138:13, 33140:12 misinformation [2] - 33126:23, 33230:2 missed [2] - 33179:24, 33231:11 missing [12] - 33109:23, 33110:3, 33110:5, 33110:6, 33110:9, 33110:24, 33114:5, 33121:21, 33126:17, 33130:2, 33138:13, 33177:6 misstating [2] - 33161:25, 33162:1 mistake [4] - 33128:25, 33132:4, 33133:7, 33142:5 mistakenly [1] - 33162:3 mistakes [2] - 33108:8, 33182:11 mixed [3] - 33153:12, 33154:10, 33154:11 Mmhhh [11] - 33235:21, 33237:8, 33240:21, 33241:5, | 33241:9, 33241:13, 33249:23, 33251:10, 33251:16, 33251:21 moment [3] - 33167:7, 33216:3, 33224:22 moments [1] - 33129:12 Monday [1] - 33096:21 money [1] - 33155:12 month [3] - 33118:6, 33126:25, 33232:21 months [3] - 33100:15, 33208:22, 33226:22 morning [11] - 33100:3, 33100:4, 33218:11, 33234:16, 33249:7, 33249:8, 33249:25, 33250:22, 33251:8, 33253:10, 33255:4 most [1] - 33114:19 Mother's [3] - 33102:6, 33140:11, 33163:7 mouth [1] - 33253:25 move [3] - 33144:9, 33183:1, 33247:10 moving [1] - 33204:11 mum [1] - 33103:2 murder [22] - 33109:23, 33112:10, 33112:11, 33112:14, 33114:24, 33121:8, 33121:9, 33126:20, 33126:25, 33127:10, 33131:21, 33140:21, 33198:23, 33199:20, 33199:23, 33199:25, 33209:4, 33209:6, 33212:19, 33212:20, 33222:17, 33227:3 Murray [1] - 33134:22 Must [1] - 33253:24 must [16] - 33119:7, 33120:7, 33128:5, 33192:15, 33199:11, 33216:24, 33217:2, 33218:11, 33227:22, 33227:23, 33235:25, 33236:4, 33247:8, 33253:14, 33253:23, 33254:1 mysteries [1] - 33111:17 mysterious [2] - 33117:23, 33140:19 mysteriously [6] - 33110:6, 33110:8, 33110:23, 33114:4, 33117:6, 33121:20 | N | 33172:5, 33172:9, 33182:13, 33183:17, 33193:1, 33231:18, 33238:23 Nichol [10] - 33125:7, 33149:19, 33150:20, 33158:6, 33158:12, 33158:14, 33164:5, 33169:2, 33171:1, 33208:25 Nicole [1] - 33236:2 nine [1] - 33135:2 nobody [4] - 33121:6, 33178:5, 33181:8, 33222:16 non [1] - 33235:4 non-disclosure [1] - 33235:4 None [2] - 33115:1, 33115:2 nonetheless [1] - 33141:5 Norris [16] - 33141:20, 33142:7, 33142:17, 33144:2, 33145:8, 33148:12, 33153:3, 33160:24, 33161:23, 33162:2, 33162:22, 33165:1, 33166:3, 33166:22, 33167:15, 33167:16 Norris' [1] - 33166:12 notation [2] - 33169:22, 33220:6 note [8] - 33115:24, 33124:18, 33151:24, 33206:1, 33214:15, 33214:18, 33214:19, 33220:18 notebook [1] - 33122:11 noted [2] - 33250:23, 33253:11 notes [6] - 33115:23, 33124:8, 33221:14, 33221:21, 33256:6 nothing [12] - 33103:12, 33146:4, 33163:22, 33174:2, 33193:16, 33198:23, 33200:25, 33201:10, 33212:18, 33227:3, 33243:11, 33250:12 notice [2] - 33171:8, 33172:2 notion [2] - 33110:8, 33114:21 notwithstanding [1] - 33166:21 novel [1] - 33102:6 |
|---|---|--|----------|--|



| | | | | | |
|--|--|---|---|--|--|
| <p>nowhere [1] - 33139:22 number [28] - 33100:18, 33101:4, 33102:7, 33111:10, 33112:3, 33120:18, 33122:23, 33124:13, 33130:7, 33143:1, 33169:4, 33184:6, 33184:17, 33205:24, 33210:1, 33213:25, 33214:1, 33217:7, 33217:20, 33219:22, 33220:21, 33223:13, 33224:2, 33230:13, 33238:14, 33247:11 Number [1] - 33101:6 numbers [5] - 33116:6, 33116:13, 33132:5, 33149:24, 33193:23 numerical [1] - 33217:8 nuns [2] - 33123:19, 33123:21 nuts [1] - 33175:4 nutshell [1] - 33237:18</p> | <p>officer [6] - 33118:4, 33123:24, 33127:21, 33128:23, 33134:25, 33195:16 Officer [11] - 33097:11, 33115:13, 33116:6, 33116:20, 33117:7, 33119:18, 33122:11, 33123:3, 33124:15, 33124:22 officers [2] - 33124:9, 33124:12 official [3] - 33178:6, 33178:8, 33223:20 Official [5] - 33097:9, 33256:1, 33256:3, 33256:14, 33256:18 officials [3] - 33133:21, 33181:15, 33182:3 often [3] - 33195:13, 33205:11, 33220:23 Oliver [3] - 33111:24, 33115:17, 33124:16 omission [1] - 33240:19 on-the-record [1] - 33223:24 once [3] - 33200:7, 33221:4 one [56] - 33102:2, 33104:25, 33109:19, 33110:13, 33110:21, 33111:14, 33111:19, 33112:6, 33113:4, 33119:7, 33119:8, 33121:9, 33121:18, 33127:21, 33136:6, 33136:7, 33141:18, 33159:8, 33159:12, 33159:18, 33160:12, 33164:15, 33164:16, 33164:18, 33164:19, 33169:13, 33170:16, 33173:6, 33173:24, 33178:8, 33179:16, 33187:23, 33188:16, 33194:9, 33198:5, 33198:18, 33201:14, 33204:16, 33208:18, 33211:20, 33214:2, 33215:17, 33230:21, 33234:8, 33235:17, 33236:11, 33237:2, 33238:11, 33242:9, 33247:2, 33249:16, 33249:21, 33250:3, 33250:13, 33250:16 ones [4] - 33158:15, 33164:1, 33164:2, 33164:4 onward [1] - 33129:16</p> | <p>open [2] - 33192:18, 33211:15 opened [4] - 33192:17, 33240:12, 33249:25, 33254:12 opener [1] - 33237:7 opening [2] - 33220:8, 33224:3 opinion [2] - 33127:24, 33128:1 opportunity [3] - 33105:18, 33168:4, 33236:22 opposed [1] - 33131:13 order [1] - 33171:25 ordered [1] - 33134:12 organized [1] - 33151:16 original [24] - 33125:17, 33185:8, 33221:13, 33221:20, 33234:13, 33234:14, 33234:20, 33234:23, 33235:10, 33236:5, 33237:1, 33237:6, 33238:25, 33239:5, 33240:3, 33243:10, 33249:20, 33250:2, 33250:11, 33250:16, 33250:19, 33251:8, 33253:7, 33253:18 originally [2] - 33237:3, 33237:11 Ottawa [1] - 33239:11 ought [1] - 33166:12 outlined [1] - 33168:7 outset [1] - 33101:2 outside [2] - 33135:14, 33242:5 own [7] - 33113:10, 33153:11, 33153:17, 33156:23, 33176:5, 33200:4, 33220:24 ownership [1] - 33115:20</p> | <p>33130:12, 33130:15, 33130:20, 33143:2, 33143:8, 33143:23, 33144:6, 33144:7, 33144:10, 33171:22, 33171:25, 33172:1, 33172:9, 33178:18, 33180:4, 33184:10, 33184:17, 33185:21, 33187:9, 33191:14, 33193:23, 33194:11, 33194:13, 33194:23, 33195:2, 33195:6, 33198:18, 33199:3, 33200:22, 33211:7, 33211:8, 33216:14, 33217:9, 33217:18, 33217:21, 33220:4, 33221:19, 33223:25, 33245:20, 33245:21, 33247:16, 33248:2, 33248:4, 33248:6, 33250:19, 33253:4, 33253:7 pages [9] - 33118:21, 33211:20, 33213:7, 33217:9, 33217:12, 33217:14, 33217:23, 33256:4 pain [1] - 33103:13 panel [3] - 33189:18, 33190:1, 33190:7 paper [17] - 33117:5, 33137:8, 33138:11, 33183:13, 33183:20, 33202:13, 33204:21, 33206:19, 33206:25, 33207:12, 33207:13, 33208:9, 33208:22, 33210:10, 33218:9, 33228:11, 33243:20 paragraph [12] - 33104:13, 33105:13, 33111:13, 33111:15, 33130:1, 33130:21, 33144:24, 33145:1, 33180:9, 33183:17, 33207:20, 33211:9 paranoid [7] - 33179:11, 33179:19, 33180:1, 33180:15, 33181:6, 33181:10, 33181:16 parcel [1] - 33177:23 Pardon [1] - 33137:11 parole [3] - 33154:14, 33154:15, 33155:5 part [26] - 33107:13, 33108:16, 33114:23, 33121:12, 33127:22,</p> | <p>33140:13, 33169:15, 33172:13, 33175:15, 33177:23, 33182:8, 33183:18, 33186:8, 33186:9, 33189:4, 33193:19, 33200:10, 33200:11, 33202:6, 33220:5, 33220:25, 33221:22, 33223:3, 33224:19, 33246:11 particular [5] - 33110:1, 33115:13, 33115:21, 33144:23, 33173:18 Particularly [1] - 33129:12 particularly [1] - 33202:20 parts [2] - 33174:5, 33243:2 party [3] - 33134:2, 33143:2, 33223:2 passage [2] - 33193:15, 33211:4 passed [1] - 33128:5 passing [1] - 33113:18 past [2] - 33145:5, 33192:2 path [1] - 33114:2 Paul [1] - 33170:22 Pause [2] - 33184:25, 33194:1 pay [1] - 33118:2 peace [1] - 33104:3 Pearson [2] - 33128:19, 33128:21 pen [1] - 33179:3 Penkala [5] - 33118:4, 33118:16, 33123:3, 33123:24, 33123:25 people [25] - 33123:21, 33136:3, 33137:7, 33138:11, 33141:10, 33144:16, 33145:10, 33146:25, 33150:5, 33152:9, 33157:3, 33157:8, 33157:11, 33157:23, 33158:10, 33161:13, 33163:24, 33167:17, 33168:16, 33171:4, 33180:25, 33182:2, 33208:25, 33254:23 percent [1] - 33223:22 perhaps [5] - 33105:25, 33106:2, 33120:13, 33215:8, 33230:1 Perhaps [5] - 33139:5, 33182:23, 33183:25, 33230:13, 33247:22 perilously [1] - 33253:2</p> | |
| O | | | | | |
| <p>O'Brien [2] - 33149:17, 33170:21 oath [1] - 33165:18 objection [1] - 33119:19 objective [1] - 33138:2 obstructed [1] - 33163:24 obtained [1] - 33220:13 obvious [5] - 33174:2, 33176:1, 33178:15, 33214:5, 33228:21 Obviously [3] - 33147:19, 33165:1, 33204:24 obviously [8] - 33128:4, 33133:7, 33161:13, 33174:14, 33236:12, 33242:15, 33243:15, 33245:6 occasion [1] - 33173:24 occur [1] - 33180:1 occurred [1] - 33168:21 odd [1] - 33175:1 offer [1] - 33127:24 offered [4] - 33119:2, 33119:3, 33125:24, 33128:21 office [6] - 33212:10, 33213:11, 33219:6, 33226:13, 33226:17, 33226:20</p> | <p>O</p> | <p>P</p> | <p>package [3] - 33232:17, 33240:12, 33249:25 Page [2] - 33099:2, 33194:11 page [63] - 33102:2, 33102:4, 33102:8, 33102:10, 33102:15, 33104:12, 33105:12, 33116:7, 33118:17, 33122:1, 33126:3, 33126:5, 33126:10,</p> | <p>33130:12, 33130:15, 33130:20, 33143:2, 33143:8, 33143:23, 33144:6, 33144:7, 33144:10, 33171:22, 33171:25, 33172:1, 33172:9, 33178:18, 33180:4, 33184:10, 33184:17, 33185:21, 33187:9, 33191:14, 33193:23, 33194:11, 33194:13, 33194:23, 33195:2, 33195:6, 33198:18, 33199:3, 33200:22, 33211:7, 33211:8, 33216:14, 33217:9, 33217:18, 33217:21, 33220:4, 33221:19, 33223:25, 33245:20, 33245:21, 33247:16, 33248:2, 33248:4, 33248:6, 33250:19, 33253:4, 33253:7 pages [9] - 33118:21, 33211:20, 33213:7, 33217:9, 33217:12, 33217:14, 33217:23, 33256:4 pain [1] - 33103:13 panel [3] - 33189:18, 33190:1, 33190:7 paper [17] - 33117:5, 33137:8, 33138:11, 33183:13, 33183:20, 33202:13, 33204:21, 33206:19, 33206:25, 33207:12, 33207:13, 33208:9, 33208:22, 33210:10, 33218:9, 33228:11, 33243:20 paragraph [12] - 33104:13, 33105:13, 33111:13, 33111:15, 33130:1, 33130:21, 33144:24, 33145:1, 33180:9, 33183:17, 33207:20, 33211:9 paranoid [7] - 33179:11, 33179:19, 33180:1, 33180:15, 33181:6, 33181:10, 33181:16 parcel [1] - 33177:23 Pardon [1] - 33137:11 parole [3] - 33154:14, 33154:15, 33155:5 part [26] - 33107:13, 33108:16, 33114:23, 33121:12, 33127:22,</p> | <p>33140:13, 33169:15, 33172:13, 33175:15, 33177:23, 33182:8, 33183:18, 33186:8, 33186:9, 33189:4, 33193:19, 33200:10, 33200:11, 33202:6, 33220:5, 33220:25, 33221:22, 33223:3, 33224:19, 33246:11 particular [5] - 33110:1, 33115:13, 33115:21, 33144:23, 33173:18 Particularly [1] - 33129:12 particularly [1] - 33202:20 parts [2] - 33174:5, 33243:2 party [3] - 33134:2, 33143:2, 33223:2 passage [2] - 33193:15, 33211:4 passed [1] - 33128:5 passing [1] - 33113:18 past [2] - 33145:5, 33192:2 path [1] - 33114:2 Paul [1] - 33170:22 Pause [2] - 33184:25, 33194:1 pay [1] - 33118:2 peace [1] - 33104:3 Pearson [2] - 33128:19, 33128:21 pen [1] - 33179:3 Penkala [5] - 33118:4, 33118:16, 33123:3, 33123:24, 33123:25 people [25] - 33123:21, 33136:3, 33137:7, 33138:11, 33141:10, 33144:16, 33145:10, 33146:25, 33150:5, 33152:9, 33157:3, 33157:8, 33157:11, 33157:23, 33158:10, 33161:13, 33163:24, 33167:17, 33168:16, 33171:4, 33180:25, 33182:2, 33208:25, 33254:23 percent [1] - 33223:22 perhaps [5] - 33105:25, 33106:2, 33120:13, 33215:8, 33230:1 Perhaps [5] - 33139:5, 33182:23, 33183:25, 33230:13, 33247:22 perilously [1] - 33253:2</p> |



| | | | | |
|--|--|--|---|--|
| <p>Period [1] - 33196:18 period [1] - 33251:3 peripheral [1] - 33141:4 persisted [1] - 33222:21 person [6] - 33127:20, 33159:12, 33163:6, 33164:20, 33164:21, 33200:3 personal [2] - 33137:1, 33145:5 persons [2] - 33165:20, 33169:22 perspective [1] - 33173:18 Peter [5] - 33113:2, 33113:3, 33170:21, 33220:1, 33226:24 phone [12] - 33146:24, 33150:2, 33151:18, 33152:5, 33155:20, 33156:18, 33169:12, 33215:6, 33225:3, 33228:19, 33234:1, 33248:1 photocopies [1] - 33213:7 photocopy [1] - 33123:10 photographs [2] - 33120:1, 33127:24 phrases [1] - 33112:12 physical [2] - 33204:21, 33228:11 picked [2] - 33173:13, 33232:11 picking [2] - 33159:9, 33181:13 picture [1] - 33151:4 pieces [1] - 33111:6 Place [1] - 33096:16 place [8] - 33101:17, 33118:11, 33147:23, 33205:7, 33205:8, 33205:13, 33208:20, 33248:13 placed [1] - 33132:19 places [2] - 33109:6, 33220:12 play [2] - 33147:3, 33209:22 played [7] - 33107:14, 33159:20, 33161:10, 33191:7, 33191:18, 33192:1, 33248:16 playing [1] - 33247:19 pleasant [1] - 33103:2 pleasure [1] - 33138:1 plus [1] - 33250:16 Pm [4] - 33100:2,</p> | <p>33167:2, 33167:3, 33255:5 point [19] - 33111:12, 33114:12, 33114:20, 33120:10, 33122:21, 33130:22, 33131:8, 33136:19, 33138:1, 33141:18, 33147:5, 33148:9, 33161:24, 33162:18, 33208:16, 33212:5, 33227:23, 33239:20 pointed [1] - 33139:21 points [2] - 33162:10, 33217:13 Police [7] - 33134:16, 33150:2, 33161:17, 33165:19, 33182:2, 33201:16, 33236:8 police [81] - 33111:20, 33111:23, 33112:2, 33112:23, 33117:7, 33139:11, 33142:8, 33142:11, 33145:10, 33145:24, 33146:17, 33148:13, 33148:18, 33150:14, 33150:19, 33151:20, 33151:24, 33152:9, 33152:14, 33152:22, 33152:23, 33156:10, 33156:14, 33156:19, 33157:4, 33157:9, 33158:4, 33159:5, 33159:6, 33159:12, 33159:16, 33159:22, 33160:2, 33160:4, 33160:9, 33160:10, 33160:18, 33160:25, 33161:2, 33161:3, 33161:5, 33161:11, 33162:19, 33162:22, 33163:1, 33163:9, 33163:11, 33163:23, 33164:12, 33165:7, 33166:9, 33166:20, 33167:16, 33167:19, 33168:1, 33168:8, 33168:10, 33168:22, 33168:25, 33169:2, 33169:18, 33169:21, 33171:8, 33171:9, 33173:13, 33177:7, 33193:16, 33194:12, 33199:25, 33209:2, 33209:5, 33209:11, 33209:13, 33210:3, 33210:5, 33212:18, 33237:3, 33239:8, 33240:6 policeman [3] -</p> | <p>33198:22, 33198:24, 33222:24 policeman's [1] - 33110:5 portion [5] - 33142:23, 33171:24, 33178:25, 33191:7, 33219:7 portions [1] - 33217:25 pose [1] - 33144:7 positing [1] - 33118:1 position [3] - 33141:17, 33167:10, 33222:22 possession [8] - 33206:4, 33215:7, 33219:5, 33219:7, 33222:4, 33223:16, 33227:9, 33227:10 possibility [2] - 33110:15, 33119:14 possible [6] - 33105:2, 33106:7, 33138:23, 33151:6, 33174:21, 33174:24 Post [1] - 33155:23 poster [4] - 33153:23, 33155:22, 33157:21 posting [1] - 33110:19 power [2] - 33141:10, 33161:13 practicably [1] - 33105:2 pre [2] - 33148:10, 33148:11 prefacing [1] - 33183:11 prefer [2] - 33109:11, 33109:12 prejudiced [1] - 33135:16 prelim [10] - 33185:12, 33185:16, 33187:1, 33187:5, 33196:6, 33198:18, 33198:19, 33199:3, 33199:4, 33223:11 preliminary [36] - 33100:10, 33115:7, 33115:12, 33115:22, 33116:2, 33116:7, 33116:19, 33116:25, 33117:1, 33120:4, 33120:15, 33121:16, 33122:12, 33124:6, 33124:10, 33124:21, 33127:11, 33128:15, 33149:10, 33173:5, 33174:1, 33191:4, 33202:21, 33206:5, 33210:15, 33210:19, 33211:4, 33216:15,</p> | <p>33216:17, 33217:5, 33217:15, 33219:8, 33230:7, 33243:3, 33244:16, 33253:17 premise [1] - 33120:19 prepared [4] - 33135:22, 33170:19, 33184:9, 33225:8 presence [2] - 33109:8, 33131:18 present [2] - 33100:21, 33221:24 Press [8] - 33231:15, 33231:25, 33232:19, 33241:4, 33242:12, 33242:14, 33248:14, 33249:6 press [23] - 33101:10, 33101:15, 33101:21, 33102:17, 33103:23, 33104:11, 33104:15, 33106:10, 33110:16, 33121:13, 33127:7, 33129:21, 33129:24, 33130:4, 33130:10, 33130:13, 33131:1, 33134:4, 33140:16, 33154:3, 33242:4, 33254:6, 33254:16 pressed [1] - 33242:9 presumably [2] - 33169:24, 33170:9 presume [5] - 33100:21, 33175:8, 33187:17, 33221:23, 33228:2 pretty [3] - 33222:3, 33233:22, 33249:13 prevail [1] - 33228:9 prevent [3] - 33120:12, 33161:18, 33163:14 previous [2] - 33106:16, 33207:13 printed [1] - 33244:10 prison [1] - 33254:10 problem [2] - 33193:10, 33238:18 problems [2] - 33175:21, 33203:14 procedural [1] - 33196:24 proceedings [2] - 33219:25, 33220:12 Proceedings [4] - 33096:12, 33096:23, 33099:1, 33100:1 process [2] - 33105:19, 33165:16 professionalism [1] - 33182:1</p> | <p>program [3] - 33147:24, 33147:25, 33148:1 programs [1] - 33161:9 progression [1] - 33168:8 proper [2] - 33127:9, 33127:10 prosecuted [2] - 33102:25, 33107:1 prosecution [3] - 33108:4, 33132:8, 33203:14 prosecutions [1] - 33102:23 Prosecutor [1] - 33192:10 prosecutor [1] - 33100:10 prosecutors [1] - 33135:20 protect [1] - 33180:14 provided [6] - 33134:8, 33141:23, 33183:22, 33195:18, 33224:4, 33227:15 Province [2] - 33135:13, 33256:3 prudent [2] - 33138:7, 33138:9 public [10] - 33104:2, 33105:17, 33109:19, 33134:1, 33139:25, 33159:15, 33161:16, 33230:9, 33254:11 publicity [1] - 33252:4 published [3] - 33178:4, 33233:21, 33234:1 pull [2] - 33134:7, 33174:19 purged [1] - 33236:10 purpose [1] - 33101:3 purse [1] - 33215:22 Pursuant [1] - 33213:20 Put [1] - 33226:15 put [27] - 33108:6, 33111:6, 33119:17, 33123:10, 33130:24, 33130:25, 33131:14, 33138:10, 33139:14, 33139:15, 33139:24, 33143:9, 33148:7, 33155:22, 33157:21, 33160:21, 33178:5, 33178:8, 33178:9, 33180:10, 33181:15, 33193:13, 33195:24, 33203:23, 33206:18, 33214:2, 33237:12 putting [4] - 33121:6,</p> |
|--|--|--|---|--|



| | | | | |
|--|--|--|--|---|
| 33161:15, 33251:15, 33254:5 | 33192:17, 33254:12 reach [1] - 33170:2 read [34] - 33107:24, 33128:14, 33128:19, 33130:21, 33140:6, 33144:6, 33144:25, 33146:11, 33146:12, 33146:20, 33182:18, 33182:20, 33183:15, 33183:19, 33185:4, 33186:23, 33188:5, 33188:8, 33188:10, 33190:23, 33194:4, 33202:12, 33205:22, 33206:6, 33206:19, 33206:24, 33210:10, 33227:20, 33227:23, 33227:24, 33228:3, 33243:1, 33243:20 readily [6] - 33111:10, 33125:25, 33218:20, 33222:9, 33224:12, 33224:22 reading [10] - 33131:3, 33145:23, 33179:16, 33183:13, 33183:18, 33188:15, 33204:24, 33219:2, 33241:2, 33243:1 Reading [1] - 33227:1 reads [3] - 33111:15, 33163:8, 33207:20 ready [1] - 33144:9 real [3] - 33146:4, 33154:9, 33237:7 realization [1] - 33106:3 realize [2] - 33142:3, 33160:24 realized [2] - 33142:10, 33148:16 Really [4] - 33192:6, 33192:8, 33192:22, 33251:24 really [11] - 33113:20, 33123:12, 33131:24, 33144:10, 33146:7, 33156:22, 33187:13, 33187:23, 33187:25, 33243:7, 33243:17 reason [13] - 33114:24, 33117:22, 33139:16, 33159:19, 33159:21, 33160:18, 33161:5, 33162:17, 33177:5, 33240:22, 33245:22, 33250:6 reasoning [1] - 33228:8 reasons [1] - 33229:5 reassure [1] - 33205:2 rebutts [1] - 33251:1 | recalled [2] - 33116:20, 33124:22 recant [1] - 33240:17 recantation [1] - 33233:10 recanted [1] - 33249:16 received [5] - 33124:15, 33220:16, 33227:19, 33234:10, 33250:15 receiving [1] - 33220:13 recent [1] - 33240:17 recently [2] - 33130:5, 33159:20 recess [1] - 33166:25 recognize [1] - 33220:22 recollection [3] - 33172:15, 33195:3, 33228:12 Reconvened [2] - 33100:2, 33167:3 record [37] - 33100:7, 33102:5, 33109:2, 33110:11, 33111:7, 33112:20, 33112:22, 33116:18, 33116:19, 33124:22, 33143:15, 33151:10, 33152:7, 33153:2, 33153:21, 33163:22, 33166:2, 33167:13, 33168:7, 33168:24, 33172:20, 33173:3, 33177:17, 33184:5, 33191:16, 33212:2, 33212:6, 33216:14, 33217:4, 33221:1, 33223:19, 33223:24, 33224:5, 33224:18, 33228:23, 33229:2, 33230:17 recorded [2] - 33215:23, 33216:7 recorder [1] - 33215:22 recording [3] - 33124:14, 33184:1, 33225:2 records [9] - 33107:24, 33122:9, 33122:14, 33139:18, 33139:20, 33157:15, 33160:13, 33167:24, 33227:14 recurring [1] - 33159:14 red [2] - 33143:9, 33198:3 redirect [1] - 33116:21 refer [6] - 33122:20, 33132:4, 33141:22, 33178:17, 33224:24 reference [20] - 33102:2, 33112:25, | 33116:5, 33119:1, 33120:3, 33120:14, 33122:21, 33126:19, 33127:4, 33128:18, 33132:9, 33133:14, 33172:22, 33179:24, 33200:15, 33221:2, 33221:18, 33223:18, 33224:19 referenced [1] - 33116:10 references [7] - 33116:8, 33134:7, 33144:25, 33163:8, 33194:5, 33217:11 referencing [2] - 33100:20, 33225:3 referred [9] - 33101:19, 33112:12, 33135:12, 33168:17, 33169:12, 33186:9, 33200:11, 33225:18, 33225:19 referring [5] - 33102:6, 33111:23, 33167:23, 33178:24, 33218:1 refers [3] - 33124:13, 33217:6, 33252:21 refreshing [3] - 33149:4, 33183:25, 33190:22 refusing [1] - 33236:14 regard [3] - 33110:16, 33118:17, 33168:20 regarding [1] - 33113:16 Regardless [1] - 33136:24 Regina [8] - 33102:19, 33149:2, 33158:4, 33158:5, 33158:6, 33199:17, 33222:14, 33223:5 regret [2] - 33107:10, 33107:12 reinvestigating [1] - 33125:12 related [2] - 33111:17, 33192:15 relation [1] - 33140:23 release [8] - 33110:17, 33129:21, 33129:24, 33130:4, 33130:10, 33131:1, 33154:3, 33225:10 released [5] - 33105:6, 33131:6, 33133:25, 33137:24, 33154:14 releases [2] - 33130:13, 33134:4 relied [1] - 33247:22 | relying [1] - 33252:23 remember [71] - 33101:14, 33101:17, 33101:24, 33103:16, 33103:17, 33104:5, 33105:21, 33109:24, 33110:21, 33112:14, 33112:15, 33113:19, 33116:2, 33116:4, 33116:24, 33117:1, 33117:10, 33118:14, 33119:14, 33126:7, 33126:8, 33129:21, 33130:4, 33130:5, 33132:18, 33134:6, 33135:8, 33136:7, 33142:6, 33142:21, 33143:19, 33145:2, 33145:3, 33145:4, 33146:2, 33146:6, 33149:5, 33149:11, 33149:20, 33149:25, 33150:8, 33150:12, 33150:16, 33150:22, 33150:23, 33151:13, 33152:5, 33160:5, 33172:4, 33174:16, 33176:6, 33176:8, 33183:13, 33183:17, 33209:7, 33211:2, 33212:21, 33213:9, 33214:17, 33219:15, 33220:1, 33223:8, 33225:25, 33226:8, 33228:15, 33229:19, 33237:10, 33242:10, 33246:10, 33251:12, 33251:14 remembered [5] - 33101:25, 33202:6, 33202:7, 33216:13, 33238:16 remembering [1] - 33112:16 remembrance [1] - 33112:17 repeat [3] - 33229:21, 33244:10, 33246:22 repeated [3] - 33141:14, 33159:14, 33183:11 repeatedly [2] - 33162:4, 33208:24 repeating [1] - 33161:10 report [12] - 33105:5, 33133:18, 33133:24, 33133:25, 33134:4, 33135:12, 33135:22, 33136:1, 33136:16, |
| Q | | | | |
| Qb [1] - 33097:9 Qc [4] - 33098:2, 33098:6, 33098:9, 33098:10 Queen's [4] - 33256:1, 33256:3, 33256:14, 33256:18 quest [1] - 33141:8 questioned [7] - 33142:7, 33145:8, 33173:13, 33174:19, 33230:6, 33240:25, 33250:8 questioning [1] - 33228:21 questions [7] - 33115:16, 33124:11, 33124:24, 33144:7, 33157:23, 33202:21, 33203:7 quickly [3] - 33102:4, 33241:1, 33250:8 quite [3] - 33205:11, 33209:9, 33232:16 quoted [2] - 33103:5, 33208:24 quotes [1] - 33251:6 quoting [1] - 33218:17 | | | | |
| R | | | | |
| raise [2] - 33125:1, 33147:5 raised [2] - 33124:12, 33175:7 ran [1] - 33208:15 rationale [1] - 33228:14 Rcmp [13] - 33098:8, 33133:19, 33134:12, 33134:25, 33136:1, 33136:8, 33137:5, 33138:17, 33201:13, 33201:18, 33205:25, 33250:20, 33253:8 Rd [2] - 33213:25, 33214:1 re [5] - 33122:18, 33126:7, 33192:17, 33192:18, 33254:12 re-memory [1] - 33126:7 re-open [1] - 33192:18 re-opened [2] - | | | | |



| | | | | |
|---|---|---|--|---|
| <p>33136:17, 33211:25 reported [4] - 33121:13, 33204:7, 33233:1, 33242:11 Reporter[2] - 33256:14, 33256:18 reporter [6] - 33143:5, 33143:10, 33143:16, 33242:13, 33247:15, 33252:20 Reporters[2] - 33097:9, 33256:3 reporters [1] - 33230:21 Reporters[1] - 33256:1 reports [3] - 33136:25, 33137:16, 33211:24 representation [1] - 33229:22 representatives [1] - 33230:9 represented [1] - 33228:23 representing [1] - 33238:6 request [10] - 33106:24, 33139:11, 33152:1, 33152:4, 33152:10, 33160:20, 33163:2, 33165:23, 33238:25 requested [3] - 33122:11, 33149:16, 33150:3 requesting [3] - 33103:25, 33104:19, 33150:4 research [1] - 33159:1 researched [1] - 33218:24 researching [1] - 33215:9 reservations [1] - 33242:10 resort [1] - 33139:2 respect [16] - 33113:15, 33114:17, 33115:8, 33115:19, 33116:9, 33118:18, 33124:11, 33140:12, 33140:20, 33141:17, 33167:7, 33178:12, 33210:9, 33213:15, 33217:6, 33217:16 respond [1] - 33109:12 response [6] - 33101:23, 33115:6, 33115:16, 33124:5, 33124:12, 33170:1 responsible [1] - 33108:13 rest [6] - 33123:11,</p> | <p>33146:11, 33147:2, 33190:13, 33201:4, 33223:6 resting [1] - 33118:7 result [3] - 33131:18, 33137:5, 33138:17 resulted [3] - 33103:9, 33104:23, 33136:16 results [3] - 33101:7, 33101:24, 33137:25 retained [1] - 33150:5 retainer [1] - 33149:7 retired [1] - 33123:24 Retired[1] - 33098:14 retrospect [1] - 33175:1 review [4] - 33109:18, 33135:14, 33137:4, 33215:16 reviewed [5] - 33117:3, 33135:21, 33141:16, 33175:25, 33218:22 revisited [1] - 33217:13 reward [3] - 33110:19, 33153:23, 33157:18 rid [5] - 33114:13, 33114:23, 33120:12, 33131:20, 33131:23 Riddell[22] - 33186:2, 33188:13, 33189:5, 33193:20, 33194:12, 33194:13, 33196:16, 33199:22, 33200:2, 33200:23, 33202:10, 33205:25, 33216:20, 33222:14, 33222:15, 33222:18, 33225:23, 33245:11, 33250:20, 33253:9, 33253:18 Riddells [1] - 33253:21 rise [1] - 33107:14 Robert[1] - 33114:10 Robinson[3] - 33140:1, 33163:7, 33181:12 Rodin[2] - 33131:10, 33134:19 Romanow[2] - 33133:20, 33134:14 Ron[36] - 33149:19, 33150:20, 33158:6, 33158:12, 33158:14, 33159:5, 33160:1, 33160:17, 33164:7, 33164:16, 33169:3, 33171:2, 33183:21, 33191:3, 33204:22, 33205:24, 33207:11, 33209:1, 33211:11, 33212:3, 33212:11, 33212:14, 33214:16, 33214:20, 33215:2,</p> | <p>33215:12, 33215:19, 33216:16, 33216:19, 33217:6, 33217:17, 33222:6, 33225:21, 33226:4, 33227:10, 33227:21 room [5] - 33113:15, 33146:16, 33175:8, 33181:23, 33210:15 rooms [1] - 33100:16 root [1] - 33205:11 Rosner[55] - 33230:18, 33230:19, 33231:1, 33232:9, 33232:16, 33232:24, 33233:3, 33233:5, 33233:7, 33233:10, 33233:14, 33233:17, 33233:24, 33234:7, 33235:5, 33235:10, 33235:15, 33235:18, 33235:21, 33236:4, 33236:9, 33236:21, 33236:24, 33237:4, 33237:8, 33237:14, 33237:22, 33238:1, 33238:5, 33238:8, 33238:12, 33238:15, 33238:21, 33238:23, 33239:7, 33239:12, 33239:15, 33239:18, 33239:22, 33239:24, 33240:2, 33240:9, 33240:21, 33241:2, 33241:6, 33241:9, 33241:13, 33241:16, 33242:4, 33243:16, 33244:9, 33246:25, 33247:18, 33248:2, 33248:6 Roy[14] - 33141:20, 33142:7, 33144:2, 33148:12, 33153:3, 33160:23, 33161:22, 33162:2, 33162:21, 33165:1, 33166:3, 33166:12, 33167:15, 33167:16 Rpr[4] - 33097:10, 33256:2, 33256:16, 33256:17 rule [1] - 33127:15 ruled [1] - 33127:12</p> | <p>Sandra[1] - 33097:4 Saskatchewan [16] - 33096:17, 33098:4, 33104:1, 33104:20, 33134:12, 33135:14, 33135:17, 33135:22, 33138:19, 33143:17, 33144:20, 33146:23, 33146:25, 33161:16, 33192:11, 33256:4 Saskatoon [31] - 33096:17, 33102:20, 33126:12, 33134:15, 33134:16, 33141:19, 33143:16, 33144:17, 33144:18, 33146:9, 33149:2, 33150:1, 33157:19, 33161:17, 33165:19, 33182:2, 33198:23, 33199:21, 33199:24, 33201:14, 33201:16, 33222:25, 33223:3, 33223:6, 33236:8, 33240:6, 33241:24, 33250:14, 33250:21, 33251:8, 33253:10 Saskatoon." [1] - 33234:17 sat [5] - 33107:23, 33114:18, 33181:23, 33181:24, 33223:9 satisfied [3] - 33121:19, 33131:19, 33140:8 save [1] - 33209:22 saved [1] - 33125:14 saw [13] - 33101:21, 33133:23, 33192:19, 33213:3, 33218:23, 33227:6, 33227:8, 33234:18, 33243:10, 33249:14, 33250:11, 33250:23, 33253:12 Sawatzky [7] - 33134:22, 33134:25, 33135:5, 33135:21, 33175:10, 33175:15 scene [2] - 33111:19, 33156:25 schizophrenic [7] - 33179:12, 33179:19, 33180:1, 33180:16, 33181:6, 33181:10, 33181:16 school [2] - 33123:19, 33123:25 screaming [3] - 33174:3, 33175:2, 33175:3 screen [1] - 33102:14</p> | <p>second [6] - 33115:8, 33127:4, 33155:4, 33220:4, 33225:23, 33231:2 Secret [1] - 33181:17 Security [1] - 33097:11 see [51] - 33102:15, 33104:14, 33105:3, 33105:9, 33105:11, 33105:22, 33106:21, 33111:14, 33123:9, 33124:13, 33124:17, 33124:18, 33143:8, 33143:25, 33148:24, 33153:10, 33153:16, 33156:25, 33158:11, 33168:14, 33169:19, 33170:6, 33170:7, 33170:22, 33170:24, 33171:19, 33179:7, 33179:14, 33180:17, 33180:22, 33182:17, 33185:23, 33187:12, 33188:4, 33195:9, 33208:17, 33211:13, 33225:11, 33227:5, 33231:16, 33234:3, 33234:6, 33234:18, 33236:13, 33238:2, 33240:9, 33240:22, 33244:8, 33250:6, 33250:24, 33255:3 seeing [6] - 33101:14, 33132:20, 33158:3, 33158:15, 33209:9, 33214:22 seem [1] - 33146:6 send [1] - 33113:9 senior [1] - 33135:19 sensational [3] - 33254:22, 33254:25, 33255:2 sensationalization [1] - 33182:9 sense [3] - 33175:22, 33245:4, 33253:15 sent [12] - 33129:24, 33150:8, 33152:8, 33168:11, 33218:4, 33220:7, 33225:20, 33226:13, 33232:18, 33246:8, 33246:25, 33249:19 sentence [1] - 33189:9 separate [1] - 33219:16 separated [1] - 33250:12 September [7] - 33124:10, 33129:22, 33130:2, 33130:11,</p> |
| S | | | | |
| | | <p>safe [1] - 33216:6 said." [1] - 33251:9 sales [1] - 33182:10 salesman [1] - 33252:3</p> | | |



| | | | | |
|--|---|--|---|---|
| <p>33133:19, 33134:10, 33147:24</p> <p>Serge [2] - 33098:6, 33102:22</p> <p>Sergeant [2] - 33128:19, 33128:21</p> <p>series [3] - 33124:8, 33170:25, 33248:1</p> <p>serious [3] - 33138:10, 33203:7, 33240:18</p> <p>Service [5] - 33134:16, 33150:2, 33161:17, 33165:19, 33182:3</p> <p>service [1] - 33139:11</p> <p>set [2] - 33122:24, 33162:23</p> <p>seven [1] - 33137:23</p> <p>shared [1] - 33179:20</p> <p>sheet [3] - 33129:25, 33132:21, 33133:2</p> <p>Shirley [2] - 33171:3, 33210:1</p> <p>shocked [1] - 33240:12</p> <p>shop [1] - 33252:3</p> <p>short [2] - 33103:19, 33193:14</p> <p>shorthand [1] - 33256:5</p> <p>Shorty [4] - 33179:11, 33179:12, 33180:7, 33180:12</p> <p>shot [2] - 33154:23, 33155:2</p> <p>show [21] - 33104:9, 33122:9, 33141:19, 33142:1, 33142:18, 33144:15, 33144:17, 33146:24, 33147:7, 33147:12, 33147:13, 33148:15, 33162:6, 33165:4, 33168:4, 33175:18, 33192:5, 33195:25, 33196:2, 33209:20, 33224:5</p> <p>Show [14] - 33141:20, 33142:7, 33144:2, 33148:12, 33153:3, 33160:24, 33161:23, 33162:2, 33162:22, 33165:1, 33166:3, 33167:15, 33167:16, 33210:2</p> <p>showed [3] - 33168:14, 33170:18, 33243:4</p> <p>showing [2] - 33183:12, 33225:25</p> <p>shown [3] - 33120:1, 33127:9, 33135:8</p> <p>shows [7] - 33112:3, 33112:4, 33116:18, 33116:19, 33124:22,</p> | <p>33152:7, 33229:2</p> <p>shut [1] - 33253:3</p> <p>shutting [1] - 33141:11</p> <p>Si [1] - 33103:1</p> <p>sic [1] - 33224:6</p> <p>sign [1] - 33192:24</p> <p>signed [1] - 33233:8</p> <p>significant [1] - 33144:11</p> <p>signs [2] - 33118:8, 33178:15</p> <p>similar [3] - 33172:22, 33235:25, 33236:5</p> <p>simple [3] - 33172:24, 33180:12, 33180:25</p> <p>simply [3] - 33139:7, 33167:19, 33197:9</p> <p>simultaneously [1] - 33191:12</p> <p>sincerest [1] - 33103:6</p> <p>single [8] - 33106:18, 33120:14, 33122:4, 33122:8, 33127:5, 33127:20, 33160:12</p> <p>single-edged [4] - 33122:4, 33122:8, 33127:5, 33127:20</p> <p>sitting [6] - 33096:15, 33108:25, 33138:20, 33145:6, 33155:1, 33210:14</p> <p>situation [3] - 33233:23, 33235:20, 33241:8</p> <p>six [1] - 33137:23</p> <p>skill [1] - 33256:6</p> <p>small [1] - 33252:5</p> <p>snow [4] - 33118:8, 33118:21, 33127:1, 33127:5</p> <p>sober [1] - 33164:19</p> <p>sold [1] - 33138:25</p> <p>solicited [1] - 33167:25</p> <p>someone [3] - 33118:11, 33146:10, 33215:9</p> <p>sometime [3] - 33148:2, 33150:25, 33199:18</p> <p>Sometime [1] - 33190:3</p> <p>sometimes [4] - 33119:1, 33129:10, 33162:22, 33199:18</p> <p>somewhat [1] - 33141:3</p> <p>somewhere [8] - 33119:8, 33149:23, 33185:7, 33187:2, 33236:13, 33238:14, 33241:19, 33243:21</p> <p>Somewhere [1] - 33236:7</p> | <p>son [26] - 33100:24, 33101:11, 33103:25, 33106:21, 33107:4, 33107:11, 33107:13, 33108:4, 33120:20, 33137:24, 33138:3, 33141:9, 33154:22, 33155:15, 33158:16, 33174:17, 33182:4, 33182:17, 33209:3, 33210:6, 33210:22, 33210:23, 33211:1, 33216:20, 33254:10, 33254:19</p> <p>son's [7] - 33100:10, 33125:8, 33161:19, 33163:13, 33210:15, 33210:19, 33219:20</p> <p>soon [1] - 33105:2</p> <p>Sorry [6] - 33163:21, 33169:6, 33178:20, 33184:25, 33248:6, 33252:10</p> <p>sorry [15] - 33105:7, 33111:23, 33115:10, 33115:24, 33132:11, 33133:10, 33143:8, 33169:14, 33174:9, 33179:2, 33214:25, 33224:8, 33231:12, 33245:22, 33252:15</p> <p>sort [10] - 33113:9, 33113:14, 33119:13, 33141:25, 33145:17, 33180:10, 33180:15, 33208:15, 33233:10, 33235:3</p> <p>sounds [2] - 33137:15, 33204:17</p> <p>source [1] - 33246:25</p> <p>sources [1] - 33107:18</p> <p>speaking [2] - 33211:10, 33244:4</p> <p>specific [4] - 33118:18, 33162:19, 33168:11, 33195:4</p> <p>specifically [1] - 33168:15</p> <p>speculate [1] - 33192:13</p> <p>spell [1] - 33230:24</p> <p>spelling [2] - 33247:15, 33252:23</p> <p>spend [1] - 33184:11</p> <p>spending [1] - 33192:10</p> <p>spent [4] - 33100:13, 33100:15, 33134:24, 33209:13</p> <p>spite [2] - 33100:23,</p> | <p>33139:10</p> <p>spoken [1] - 33232:20</p> <p>spooking [1] - 33161:11</p> <p>spring [1] - 33226:14</p> <p>Staff [2] - 33097:1, 33097:7</p> <p>staff [3] - 33170:20, 33182:23, 33191:10</p> <p>stage [1] - 33105:24</p> <p>stages [1] - 33222:12</p> <p>stand [5] - 33145:7, 33180:8, 33181:15, 33202:23, 33251:19</p> <p>standing [1] - 33108:24</p> <p>star [3] - 33183:3, 33207:21, 33208:4</p> <p>start [6] - 33109:14, 33179:3, 33184:8, 33184:17, 33231:9, 33247:19</p> <p>started [11] - 33110:18, 33157:1, 33157:15, 33170:23, 33178:3, 33211:21, 33217:9, 33229:14, 33241:14, 33246:18, 33246:20</p> <p>starting [3] - 33111:11, 33120:19, 33184:10</p> <p>starts [2] - 33184:16, 33224:7</p> <p>state [4] - 33101:2, 33107:10, 33167:12, 33181:4</p> <p>statement [101] - 33117:4, 33164:16, 33175:19, 33175:23, 33179:1, 33179:9, 33181:25, 33182:16, 33183:3, 33183:22, 33185:8, 33187:11, 33187:12, 33187:13, 33187:20, 33188:12, 33188:16, 33188:19, 33189:8, 33189:12, 33191:1, 33193:19, 33194:19, 33195:4, 33195:11, 33195:15, 33195:24, 33195:25, 33196:12, 33196:15, 33196:20, 33197:10, 33197:15, 33197:24, 33197:25, 33198:4, 33198:15, 33198:16, 33200:20, 33200:25, 33201:10, 33201:13, 33201:22, 33202:10, 33203:4, 33203:13, 33203:15, 33204:22, 33205:16, 33206:3,</p> | <p>33206:10, 33206:21, 33206:23, 33207:3, 33207:8, 33207:11, 33207:16, 33207:21, 33208:4, 33208:6, 33208:11, 33208:20, 33209:18, 33212:2, 33212:16, 33214:2, 33214:7, 33214:10, 33214:11, 33214:13, 33214:14, 33214:20, 33214:22, 33215:4, 33215:19, 33215:25, 33216:19, 33217:1, 33217:12, 33217:22, 33227:24, 33228:10, 33229:5, 33230:8, 33230:10, 33243:8, 33243:10, 33243:23, 33244:5, 33245:11, 33245:25, 33246:2, 33246:4, 33246:5, 33246:8, 33253:6, 33253:14, 33253:19, 33253:20, 33253:21</p> <p>Statement [26] - 33234:13, 33234:14, 33234:21, 33234:23, 33235:11, 33236:16, 33237:2, 33237:6, 33237:13, 33239:1, 33239:6, 33240:4, 33240:5, 33240:8, 33240:16, 33240:23, 33249:21, 33250:7, 33250:11, 33250:16, 33250:19, 33250:22, 33251:9, 33251:13, 33253:7, 33253:11</p> <p>statements [29] - 33159:15, 33183:21, 33193:2, 33193:12, 33197:2, 33205:14, 33209:3, 33209:12, 33210:25, 33211:17, 33212:3, 33212:12, 33213:4, 33213:5, 33213:13, 33213:24, 33214:4, 33214:6, 33214:16, 33219:11, 33225:5, 33225:12, 33225:15, 33225:22, 33226:2, 33226:4, 33227:2, 33227:11, 33244:3</p> <p>Statements [8] - 33234:11, 33235:25, 33236:5, 33240:11, 33240:15, 33241:19, 33250:2, 33250:3</p> <p>stating [4] - 33121:8,</p> |
|--|---|--|---|---|



| | | | |
|--|--|---|--|
| 33148:16, 33181:6, 33181:8 status [1] - 33191:24 stay [3] - 33107:4, 33146:13, 33227:7 stayed [1] - 33135:17 step [3] - 33105:23, 33138:7, 33138:9 stepped [1] - 33105:7 steps [2] - 33104:20, 33228:6 stevelly [1] - 33098:4 still [10] - 33108:8, 33124:19, 33127:14, 33145:24, 33146:10, 33188:2, 33191:6, 33197:1, 33210:8, 33254:10 stood [2] - 33222:6, 33224:9 stop [6] - 33148:15, 33190:21, 33204:11, 33242:3, 33245:23, 33252:8 stopped [4] - 33103:19, 33133:8, 33145:13, 33145:15 stories [2] - 33114:16, 33210:6 story [54] - 33126:7, 33126:8, 33126:11, 33126:13, 33127:4, 33130:18, 33139:3, 33139:6, 33139:8, 33140:16, 33155:23, 33181:22, 33182:9, 33182:17, 33182:19, 33183:12, 33183:13, 33183:19, 33183:21, 33184:4, 33184:14, 33185:4, 33190:23, 33190:25, 33200:5, 33204:17, 33206:19, 33207:12, 33207:13, 33208:9, 33208:22, 33209:25, 33210:9, 33218:8, 33218:23, 33223:4, 33228:3, 33228:7, 33228:23, 33229:25, 33231:15, 33231:24, 33232:4, 33232:11, 33237:18, 33241:3, 33242:11, 33242:14, 33243:20, 33244:1, 33244:7, 33248:14, 33248:15 Story [3] - 33102:7, 33140:11, 33163:7 straightforward [1] - 33201:2 | strange [1] - 33121:11 strategy [2] - 33151:2, 33151:5 strength [1] - 33206:17 stretch [1] - 33219:4 strictly [1] - 33103:21 stringer [2] - 33112:5, 33118:20 strong [1] - 33161:16 stuck [2] - 33197:11, 33197:20 stuck. " [1] - 33251:4 stuff [4] - 33139:23, 33190:13, 33201:5, 33250:9 subject [3] - 33191:9, 33204:12, 33242:6 submission [1] - 33165:15 submitted [1] - 33250:17 subsequently [3] - 33117:17, 33125:14, 33176:14 substance [1] - 33121:18 substantial [3] - 33139:16, 33177:12, 33204:19 sudden [1] - 33145:15 suffer [1] - 33181:1 suffering [2] - 33173:8, 33173:19 suffice [1] - 33203:15 suggest [21] - 33113:23, 33115:11, 33119:2, 33119:5, 33119:16, 33121:17, 33125:16, 33129:8, 33138:15, 33143:12, 33151:3, 33174:3, 33176:24, 33209:23, 33227:9, 33227:15, 33229:24, 33230:3, 33253:3, 33254:3, 33254:15 suggested [5] - 33119:21, 33133:11, 33170:3, 33173:7, 33235:16 suggesting [1] - 33120:16 suggestion [10] - 33110:15, 33118:24, 33120:10, 33127:18, 33159:3, 33166:12, 33172:15, 33194:14, 33230:5, 33253:13 suggests [3] - 33166:2, 33240:18, 33254:17 | summarize [1] - 33152:21 summarizing [1] - 33161:14 summary [4] - 33167:9, 33198:16, 33203:14, 33222:4 summer [1] - 33148:3 supplied [1] - 33211:16 Support [1] - 33097:7 support [3] - 33114:21, 33144:16, 33146:24 suppose [2] - 33144:20, 33187:23 supposed [2] - 33129:9, 33179:2 Supreme [4] - 33112:25, 33130:3, 33132:9, 33133:13 Surely [1] - 33180:5 surface [1] - 33241:20 surprise [1] - 33246:7 surprised [1] - 33193:5 surprising [1] - 33188:2 surrounding [1] - 33105:20 suspect [1] - 33194:14 suspicious [1] - 33137:1 suspicious [1] - 33125:13 swept [1] - 33129:16 system [6] - 33102:8, 33103:9, 33103:22, 33129:7, 33136:20, 33154:14 | 33206:20, 33206:21, 33206:22, 33207:3, 33207:15, 33210:21, 33213:18, 33216:16, 33217:14, 33219:18, 33225:6, 33225:13, 33225:20, 33229:5, 33234:24, 33242:25, 33243:4, 33243:22, 33245:12, 33245:18, 33250:5, 33251:18, 33253:17 Tallis [7] - 33124:5, 33149:15, 33212:11, 33214:3, 33214:20, 33214:23, 33226:12 Tallis " [1] - 33240:20 tape [39] - 33142:25, 33147:11, 33159:6, 33159:20, 33160:19, 33161:14, 33174:17, 33175:18, 33184:1, 33184:6, 33184:8, 33184:13, 33184:17, 33184:18, 33184:19, 33190:21, 33191:6, 33191:11, 33191:13, 33191:18, 33209:20, 33209:22, 33213:1, 33215:22, 33230:14, 33230:15, 33231:9, 33242:2, 33242:8, 33242:9, 33247:12, 33247:19, 33247:22, 33248:3, 33248:16, 33252:8 Tape [6] - 33099:5, 33099:7, 33099:9, 33099:10, 33099:11, 33232:5 taped [5] - 33113:5, 33135:1, 33158:18, 33221:18, 33228:17 tapes [7] - 33135:2, 33141:23, 33158:24, 33159:2, 33243:1, 33246:14, 33246:17 taping [1] - 33229:14 taught [1] - 33123:21 Tcu [1] - 33096:16 Tdr [2] - 33098:5, 33100:9 Teacher [1] - 33124:2 Technician [1] - 33097:12 telephone [5] - 33151:13, 33156:18, 33192:2, 33213:22, 33221:1 television [1] - |
| T | | | |
| | | tag [1] - 33192:2 talks [3] - 33169:20, 33193:15, 33211:24 Tallis [56] - 33098:13, 33115:16, 33115:23, 33119:18, 33122:10, 33124:11, 33124:23, 33125:4, 33125:12, 33125:20, 33175:4, 33178:13, 33183:23, 33185:8, 33186:3, 33186:5, 33187:24, 33189:22, 33189:23, 33189:25, 33190:25, 33192:4, 33192:5, 33193:11, 33195:10, 33197:19, 33199:12, 33199:14, 33201:8, 33201:9, 33203:4, 33203:16, 33205:23, | |

| | | | | |
|---|---|---|--|---|
| <p>33192:21 thorough [2] - 33222:7, 33224:10 thoroughly [3] - 33165:6, 33165:9, 33166:15 thoughts [2] - 33106:19, 33106:20 threatened [1] - 33209:14 three [15] - 33150:5, 33152:9, 33152:14, 33152:17, 33152:18, 33156:20, 33157:8, 33168:17, 33169:22, 33170:12, 33208:25, 33209:1, 33209:5, 33211:19, 33245:25 throughout [2] - 33177:24, 33177:25 throw [1] - 33182:7 throw-away [1] - 33182:7 tied [1] - 33113:20 tire [2] - 33252:3 today [13] - 33103:12, 33108:1, 33110:7, 33140:9, 33140:15, 33141:17, 33144:3, 33165:6, 33167:14, 33199:25, 33214:21, 33216:23, 33227:18 Toews[1] - 33098:12 together [4] - 33113:9, 33160:22, 33171:6, 33214:2 tonight [3] - 33140:1, 33163:7, 33181:13 Tony[1] - 33097:12 took [11] - 33101:17, 33114:23, 33143:7, 33147:23, 33168:3, 33170:3, 33208:14, 33226:16, 33226:19, 33227:25, 33253:18 top [3] - 33102:15, 33172:9, 33211:9 topic [1] - 33148:10 topics [1] - 33227:7 topsy [1] - 33120:10 Toronto[1] - 33155:2 totally [3] - 33145:2, 33158:2 touch [4] - 33159:22, 33160:18, 33179:2, 33238:19 towards [1] - 33107:10 town [1] - 33252:5 tracks [2] - 33145:14, 33145:16</p> | <p>tragedy [1] - 33105:20 transcribed [1] - 33216:7 Transcript[2] - 33096:12, 33100:1 transcript [51] - 33104:10, 33115:12, 33116:6, 33116:13, 33118:17, 33120:3, 33121:25, 33122:1, 33127:18, 33128:16, 33140:6, 33141:17, 33141:23, 33142:24, 33146:19, 33160:23, 33165:15, 33171:22, 33172:21, 33173:25, 33175:12, 33175:25, 33184:7, 33184:9, 33184:16, 33186:17, 33191:11, 33194:7, 33194:9, 33211:4, 33211:6, 33211:8, 33212:16, 33216:15, 33217:4, 33217:17, 33217:21, 33218:3, 33218:7, 33219:8, 33222:3, 33223:14, 33223:19, 33223:21, 33230:16, 33231:17, 33236:17, 33243:3, 33247:22, 33252:18, 33252:24 transcription [9] - 33135:1, 33191:13, 33215:20, 33216:9, 33223:25, 33231:10, 33247:15, 33248:3, 33256:5 transcripts [10] - 33128:14, 33128:15, 33128:20, 33149:9, 33204:24, 33218:24, 33235:6, 33243:23, 33243:24, 33244:16 trial [54] - 33100:11, 33102:25, 33109:23, 33110:24, 33115:14, 33118:5, 33119:2, 33119:3, 33120:4, 33121:24, 33125:7, 33128:16, 33149:10, 33171:17, 33172:17, 33173:6, 33174:1, 33175:22, 33176:3, 33176:17, 33176:21, 33177:19, 33178:7, 33179:1, 33179:9, 33179:18, 33180:2, 33182:4, 33185:17, 33187:6, 33191:4,</p> | <p>33194:6, 33194:9, 33197:11, 33202:20, 33202:23, 33203:1, 33206:5, 33207:25, 33216:17, 33217:17, 33219:20, 33223:10, 33223:12, 33224:23, 33230:7, 33235:6, 33236:17, 33243:3, 33244:17, 33251:1, 33251:20, 33253:17 trick [1] - 33111:4 tried [6] - 33113:10, 33133:1, 33180:13, 33208:16, 33228:9, 33254:11 trip [5] - 33199:19, 33199:22, 33201:1, 33250:21, 33253:9 trouble [2] - 33196:22, 33197:1 true [6] - 33163:15, 33166:16, 33183:23, 33208:21, 33223:4, 33256:5 trust [1] - 33111:4 trusted [1] - 33154:13 truth [21] - 33121:19, 33138:24, 33162:13, 33163:13, 33167:22, 33182:10, 33186:6, 33186:8, 33186:9, 33186:10, 33200:1, 33200:9, 33200:10, 33200:12, 33200:13, 33229:17, 33241:12, 33242:14, 33254:18 try [5] - 33109:1, 33109:17, 33111:5, 33111:9, 33168:18 trying [7] - 33115:20, 33161:18, 33163:14, 33179:3, 33205:1, 33245:24, 33254:12 turn [1] - 33180:7 turned [6] - 33115:18, 33145:17, 33212:4, 33219:11, 33225:12, 33225:21 turns [2] - 33139:24, 33163:2 two [25] - 33118:20, 33134:24, 33137:24, 33153:7, 33153:8, 33153:9, 33177:18, 33180:2, 33183:7, 33188:8, 33197:20, 33207:25, 33208:25, 33211:17, 33211:18, 33211:19, 33211:20,</p> | <p>33211:21, 33217:10, 33218:18, 33225:23, 33240:10, 33240:14, 33250:1, 33250:18 type [2] - 33137:9, 33200:2 typed [1] - 33224:18</p> <p style="text-align: center;">U</p> <p>ultimately [1] - 33183:11 Umm [12] - 33185:24, 33187:8, 33190:17, 33191:21, 33192:1, 33192:19, 33193:1, 33195:13, 33197:23, 33198:21, 33201:23, 33202:1 umm [8] - 33186:15, 33195:9, 33195:15, 33196:5, 33196:15, 33196:16, 33201:4, 33201:7 unable [2] - 33109:10, 33171:8 unclear [2] - 33141:16, 33172:19 under [4] - 33118:7, 33118:19, 33165:18, 33220:17 underneath [1] - 33117:14 understood [1] - 33206:7 undertook [1] - 33115:23 unequivocal [1] - 33212:2 uneventful [2] - 33250:21, 33253:9 unfolds [1] - 33191:2 unfortunate [1] - 33230:2 unfortunately [2] - 33179:5, 33179:10 unless [2] - 33177:6, 33215:5 unlikely [1] - 33106:17 unsolved [1] - 33111:17 unstable [1] - 33177:2 untruths [1] - 33140:22 unusual [1] - 33172:2 unwillingness [1] - 33137:2 up [67] - 33102:9, 33104:7, 33107:11, 33111:11, 33112:24, 33118:15, 33118:20,</p> | <p>33118:23, 33122:22, 33129:20, 33130:5, 33130:6, 33134:7, 33135:7, 33143:24, 33149:24, 33150:23, 33151:14, 33153:12, 33154:10, 33154:11, 33155:22, 33157:21, 33159:9, 33161:24, 33162:14, 33165:3, 33165:6, 33168:13, 33168:24, 33169:13, 33170:16, 33171:21, 33173:13, 33175:13, 33178:3, 33179:6, 33180:4, 33181:9, 33181:13, 33182:18, 33182:23, 33182:24, 33187:24, 33189:4, 33197:19, 33199:19, 33207:18, 33213:9, 33213:16, 33214:12, 33215:10, 33215:17, 33219:22, 33219:24, 33220:20, 33222:6, 33222:22, 33223:14, 33224:9, 33224:25, 33230:13, 33232:11, 33247:11, 33249:25 useful [1] - 33195:19 utmost [1] - 33105:16</p> <p style="text-align: center;">V</p> <p>value [1] - 33198:15 Vancouver [1] - 33174:18 variations [1] - 33140:7 various [16] - 33100:15, 33107:18, 33124:8, 33134:7, 33137:7, 33161:9, 33162:10, 33163:8, 33171:4, 33208:23, 33215:15, 33217:13, 33220:12, 33229:8, 33230:9 venture [1] - 33157:16 version [4] - 33217:7, 33221:20, 33224:18 viable [1] - 33126:1 Vic [1] - 33098:12 video [1] - 33157:2 view [3] - 33176:1, 33245:7, 33245:10 viewed [1] - 33172:24 visit [1] - 33181:13 visits [1] - 33194:12 Volume [1] - 33096:22</p> |
|---|---|---|--|---|



| W | | | | Young's [10] - |
|--|---|--|--|--|
| <p>walk [2] - 33140:1, 33228:8</p> <p>Walters [1] - 33199:16</p> <p>wash [5] - 33108:9, 33108:21, 33109:10, 33136:21, 33137:3</p> <p>wasn't [5] - 33235:12, 33235:14, 33236:12, 33238:18</p> <p>watched [3] - 33101:21, 33101:22, 33161:15</p> <p>Watson [35] - 33192:2, 33234:1, 33234:9, 33236:14, 33236:21, 33238:3, 33238:9, 33239:3, 33239:4, 33239:15, 33239:16, 33240:2, 33240:15, 33240:24, 33242:16, 33242:19, 33243:7, 33243:12, 33244:4, 33244:12, 33244:18, 33244:20, 33244:21, 33245:9, 33245:10, 33245:14, 33246:1, 33246:8, 33247:1, 33247:4, 33249:10, 33249:19, 33250:6, 33253:20, 33254:7</p> <p>Watson's [1] - 33237:22</p> <p>wavin' [1] - 33184:23</p> <p>ways [1] - 33188:8</p> <p>weapon [6] - 33114:24, 33121:9, 33127:10, 33131:21, 33140:21</p> <p>weapons [1] - 33121:9</p> <p>wearing [1] - 33201:4</p> <p>week [4] - 33189:18, 33190:1, 33190:3, 33234:5</p> <p>weeks [3] - 33156:12, 33157:21, 33208:21</p> <p>west [1] - 33234:5</p> <p>we're [2] - 33234:16, 33235:5</p> <p>wherein [1] - 33170:11</p> <p>whichever [1] - 33248:9</p> <p>white [1] - 33139:4</p> <p>whole [10] - 33144:12, 33146:19, 33147:3, 33147:21, 33148:7, 33181:22, 33182:21, 33186:10, 33223:11, 33233:23</p> <p>Wilde [1] - 33097:11</p> <p>Williams [11] - 33192:7, 33192:9, 33192:19,</p> | <p>33234:11, 33236:12, 33237:1, 33239:10, 33239:14, 33239:19, 33241:25, 33242:5</p> <p>willing [1] - 33136:21</p> <p>Wilson [57] - 33098:6, 33149:19, 33150:20, 33152:2, 33158:6, 33158:12, 33158:14, 33158:16, 33158:19, 33159:22, 33160:1, 33160:17, 33164:7, 33164:16, 33169:3, 33171:2, 33171:3, 33191:3, 33197:10, 33201:9, 33204:4, 33205:24, 33207:11, 33209:1, 33209:17, 33211:19, 33212:15, 33213:25, 33214:1, 33215:2, 33215:12, 33215:19, 33216:16, 33216:19, 33222:6, 33224:9, 33227:21, 33232:25, 33233:3, 33234:12, 33234:13, 33235:22, 33236:15, 33237:9, 33238:7, 33238:24, 33239:16, 33239:18, 33240:5, 33249:15, 33249:22, 33250:22, 33251:1, 33251:12, 33251:23, 33253:11, 33253:16</p> <p>Wilson's [15] - 33159:6, 33159:20, 33183:22, 33203:23, 33204:22, 33211:11, 33212:3, 33212:11, 33214:16, 33214:20, 33217:6, 33217:18, 33225:22, 33226:4, 33227:10</p> <p>Wilson's [3] - 33239:5, 33249:11, 33251:8</p> <p>Winnipeg [5] - 33189:24, 33231:15, 33231:24, 33242:12, 33248:14</p> <p>wire [1] - 33232:13</p> <p>wish [4] - 33146:19, 33152:19, 33170:12, 33215:16</p> <p>wished [1] - 33163:25</p> <p>withheld [6] - 33182:16, 33183:6, 33207:24, 33222:10, 33224:14, 33250:7</p> <p>withheld. [1] - 33240:23</p> <p>witness [17] - 33119:22,</p> | <p>33144:5, 33145:7, 33156:22, 33160:7, 33160:9, 33168:12, 33169:11, 33182:16, 33183:4, 33207:21, 33208:4, 33210:14, 33211:18, 33213:13, 33227:2</p> <p>witnessed [2] - 33250:20, 33253:8</p> <p>witnesses [45] - 33100:18, 33119:7, 33141:11, 33142:9, 33142:11, 33146:17, 33148:13, 33148:17, 33149:18, 33149:19, 33153:11, 33153:16, 33153:22, 33154:6, 33156:21, 33157:8, 33158:4, 33158:5, 33158:6, 33159:16, 33160:25, 33161:11, 33162:19, 33162:22, 33163:2, 33163:14, 33164:12, 33165:21, 33166:8, 33166:20, 33167:20, 33168:1, 33168:9, 33169:19, 33170:5, 33170:12, 33170:18, 33170:20, 33170:23, 33171:10, 33210:2, 33210:23, 33211:22, 33236:1</p> <p>Wolch [4] - 33098:2, 33131:9, 33175:9, 33175:14</p> <p>Wolch's [2] - 33226:16, 33226:20</p> <p>woman [1] - 33143:13</p> <p>wonder [1] - 33148:23</p> <p>wondered [2] - 33189:12, 33228:24</p> <p>word [9] - 33142:2, 33163:10, 33179:4, 33195:24, 33195:25, 33197:10, 33243:11, 33243:12</p> <p>wording [1] - 33223:22</p> <p>words [2] - 33141:25, 33253:25</p> <p>works [1] - 33252:12</p> <p>wounds [9] - 33118:25, 33119:4, 33119:10, 33119:25, 33120:5, 33122:3, 33127:12, 33127:19, 33127:23</p> <p>write [8] - 33123:8, 33123:22, 33138:20, 33139:8, 33139:18, 33139:22, 33163:11,</p> | <p>33195:14</p> <p>writing [5] - 33103:17, 33112:19, 33123:5, 33123:14, 33251:15</p> <p>written [7] - 33106:20, 33132:1, 33137:8, 33182:20, 33188:18, 33190:24, 33219:25</p> <p>wrongdoing [4] - 33103:20, 33107:20, 33109:22, 33110:16</p> <p>Wrongful [1] - 33096:3</p> <p>wrongful [4] - 33103:10, 33103:15, 33104:23, 33107:15</p> <p>wrongfully [2] - 33106:22, 33141:9</p> <p>wrote [14] - 33101:25, 33102:16, 33113:4, 33137:21, 33137:23, 33140:11, 33150:1, 33168:9, 33169:25, 33179:14, 33182:6, 33190:23, 33236:25, 33238:13</p> | <p>Young's [10] - 33167:25, 33169:9, 33212:10, 33213:3, 33213:11, 33214:15, 33215:8, 33218:3, 33225:1, 33226:13</p> <p>yourself [3] - 33134:24, 33191:8, 33254:16</p> <p>you're [3] - 33233:5, 33241:2, 33249:6</p> <p>You're [1] - 33237:14</p> <p>you've [1] - 33237:17</p> <p>Yup [1] - 33186:4</p> |
| | | | | Z |
| | | | | zeroing [1] - 33246:11 |
| | | | | “ |
| | | | | <p>“any [1] - 33240:24</p> <p>“described [2] - 33250:21, 33253:9</p> <p>“he” [2] - 33239:15, 33239:16</p> <p>“i [3] - 33240:22, 33250:6, 33251:6</p> <p>“i'm [1] - 33234:15</p> <p>“not [1] - 33240:15</p> |
| | | | | — |
| | | | <p>yards [1] - 33112:6</p> <p>year [3] - 33231:20, 33248:8, 33248:10</p> <p>years [16] - 33106:2, 33106:4, 33106:16, 33107:4, 33107:21, 33137:23, 33137:24, 33138:21, 33162:20, 33176:18, 33176:19, 33177:19, 33180:2, 33218:8, 33226:22</p> <p>yesterday [4] - 33186:20, 33202:13, 33232:11, 33241:3</p> <p>York [1] - 33232:7</p> <p>young [5] - 33134:19, 33174:3, 33175:4, 33176:2, 33181:16</p> <p>Young [25] - 33125:18, 33149:7, 33149:20, 33150:1, 33151:7, 33151:23, 33151:24, 33152:3, 33152:8, 33154:7, 33155:19, 33156:3, 33157:20, 33159:23, 33160:20, 33168:9, 33169:17, 33169:25, 33171:7, 33214:19, 33225:2, 33225:11, 33226:6, 33226:9</p> | <p>— [1] - 33249:1</p> |

