

COMMISSION OF INQUIRY INTO  
CERTAIN ASPECTS OF THE TRIAL  
AND CONVICTION OF JAMES DRISKELL

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The Honourable Patrick LeSage, Q.C. Commissioner

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Transcript of Proceedings  
before the Commission sitting  
at the Winnipeg Convention Centre  
Winnipeg, Manitoba

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Tuesday, August 1, 2006

Volume 10

INQUIRY PROCEEDINGS

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INDEX OF PROCEEDINGS

DESCRIPTION:	PAGE
THOMAS BURTON ANDERSON, continued	
- BY MR. LOCKYER	2088
- BY MR. GATES	2183
- BY MR. ABRA	2218
- BY MR. KENNEDY	2268
- BY MR. PROBER	2299
- BY MR. OLSON	2312
- BY MS. CARSWELL	2318

## INDEX OF EXHIBITS

10A	Book of documents for Lockyer's cross-examination of Anderson	2089
10B	Excerpt from notebook	2089
10C	Excerpt from notebook	2090
11	CD of telephone call by Zanidean to Brodsky	2183
12	Extract from Hall/Ewatski report	2255
13	Page 4 of the Hall and Ewatski report	2295

1 TUESDAY, AUGUST 1, 2006,

2 Upon commencing at 9:30 a.m.

3 THE CLERK: Order, all rise. This Commission of  
4 Inquiry is now in session. Please be seated.

5 THE COMMISSIONER: Sergeant Anderson. Good  
6 morning, Sergeant. Good morning, Mr. Lockyer.

7 MR. LOCKYER: Good morning, Mr. Commissioner.  
8 Nice to be back, but I don't think that anyone  
9 thinks it is nice to have me back.

10 THE COMMISSIONER: We have missed you.

11 MR. LOCKYER: Comments I have heard were being  
12 made in my absence yesterday. I think a quick  
13 application to whatever the equivalent here is  
14 to the divisional court may be in order.

15 I have a book of materials, with two bits  
16 of paper to go with it, to file as the next  
17 exhibit, please, Mr. Commissioner, for this  
18 witness.

19 BY MR. LOCKYER:

20 Q Mr. Anderson, I want to ask you first about the  
21 whole police position surrounding Mr. Zanidean  
22 and Mr. Gumieny. Am I right that the position  
23 of the police has always been that the main  
24 reason that they are credible is because they  
25 barely knew each other and yet sort of came

1 forward independently of each other and gave  
2 similar stories; is that right?

3 A I don't know if I would characterize it that  
4 way. The fact that Mr. Gumieny and Mr. Zanidean  
5 came forward independently and didn't know each  
6 other really well wasn't, I think, the only  
7 point of corroboration for their evidence.

8 Q And gave similar stories, I say?

9 A Yes.

10 Q Right. And your first -- if you look at the  
11 book that's meant to be in front of you?

12 MR. LOCKYER: Could be it entered as exhibit 10?

13 (EXHIBIT 10 A: Book of documents for  
14 Lockyer's cross-examination of Anderson)

15 MR. LOCKYER: And then perhaps 10 A, B and C for  
16 the scraps of paper. 10 A is the book; B can be  
17 the first page of the notes. It should really  
18 be in one of the tabs, but it didn't get in  
19 there.

20 THE COMMISSIONER: And B will be the excerpt of  
21 the notebook. Mr. Lockyer, maybe you can  
22 identify that.

23 (EXHIBIT 10B: Excerpt from notebook)

24 MR. LOCKYER: Yes. And then the other one C, if  
25 you would.

1 (EXHIBIT 10C: Excerpt from notebook)

2 BY MR. LOCKYER:

3 Q If you go to tab 1 of the blue book, sir, you  
4 will see you have there your partner's notes,  
5 Mr. Paul's notes; do you see that?

6 A Yes, I do.

7 Q For October 9th of 1990. And his first entry,  
8 you will see is at 1630, 4:30 in the afternoon.

9 "Phone call received from a male who said  
10 he knew who killed Perry Harder, says it is  
11 Jim Driskell. Arrangement made to meet the  
12 informant in Lockport."

13 And then 1715, meaning 45 minutes later at  
14 quarter past 5:00 in the afternoon, he is with  
15 you and the two of you meet the person you  
16 identify as an informant, and it is  
17 Mr. Zanidean; is that right, sir?

18 A Yes, sir, that's correct.

19 Q If you look at tab 2, sir, it is your notes for  
20 the same period, for the same day. They begin,  
21 as you can see, Tuesday, October 9th. The  
22 reason I started with Paul's is you don't  
23 actually identify the time of the call as being  
24 4:30, but you have put here,

25 "Al Paul received call from male claiming

1 he has info on murder of Perry Harder.

2 Sergeant Paul arranges meet with male in  
3 Lockport, Manitoba, as he doesn't want to  
4 be seen talking to police in Winnipeg."

5 Right?

6 A Yes, sir, that's correct.

7 Q And then over the page, 1715, so this is where  
8 you marry up in terms of time with Paul's notes.

9 "Arrive at Lockport Hotel parking lot at  
10 corner of..."

11 whatever streets they are.

12 A Henderson highway.

13 Q And Zanidean is in a car; right?

14 A Yes.

15 Q And you start talking to him.

16 Now, so what we have there is that Zanidean  
17 calls in at 4:30, that's his first contact with  
18 the police. And then you go out to Lockport,  
19 which I think is a sort of a 25 minute drive  
20 from where Mr. Zanidean was, from his home  
21 anyway to Lockport, is that right, 20, 25  
22 minutes?

23 A That sounds right. That time of day it may take  
24 a little longer.

25 Q And same kind of time for you, from where you



1 two were as well?

2 A A bit longer than that.

3 Q A bit longer, all right. So, essentially,  
4 pretty soon after you got this message from  
5 Paul, you guys packed up and headed out?

6 A That's correct, sir.

7 Q And then if we go to tab 3, sir, we see  
8 Zanidean's, an extract from Zanidean's trial  
9 testimony. I might say, by the way, those notes  
10 of yourself and Paul also marry up with the  
11 supplementary reports that you subsequently  
12 prepared in terms of the time that you were  
13 called and the time that you met Mr. Zanidean.  
14 All right. If we then go to tab 3, sir, you  
15 will see an extract from Mr. Zanidean's direct  
16 examination, and he says at the bottom of page  
17 32, he was asked rather, do you see the last  
18 line?

19 "Q What brought you to the police to tell  
20 them what you knew? Why did you come to  
21 the police?

22 A There is a number of reasons why I came  
23 to the police. One, I knew Perry.

24 Q Yes.

25 A And I knew that Jim was the one that

1 did it.

2 Q Um-hum.

3 A And another, I was a little scared  
4 because I seen John drive down my alley  
5 with the police and I figured that John  
6 would try to get me involved.

7 Q Yes. And so to prevent that you came  
8 to the police?

9 A Right."

10 And you see at the bottom of the page,  
11 Mr. Dangerfield essentially concludes with that  
12 in his examination-in-chief of Mr. Zanidean. Do  
13 you see that, sir?

14 A Yes, I see.

15 Q Do you recall that being Mr. Zanidean's  
16 position, sir, in particular that he saw John,  
17 meaning Gumieny, driving down his alley with the  
18 police, and he figured that Gumieny might be  
19 trying to get him involved?

20 A I don't recall that, no.

21 Q You don't recall that?

22 A No, I would have to check my notes and  
23 supplementary reports, I don't know if it  
24 mentions it or not.

25 Q So you don't recall that that was the motivation

1 for him coming forward, ultimately the position  
2 that he took, that he saw Gumieny in a police  
3 car and --

4 A No. I recall finding out later from the other  
5 detectives that were dealing with Mr. Gumieny  
6 that they had driven down Mr. Zanidean's back  
7 lane, yes, I remember that.

8 Q And then, sir, we see if you turn to the next  
9 tab, you will see an extract from the Perry Dean  
10 Harder homicide review where --

11 A This is tab 4?

12 Q It is. Where in the top paragraph you will see  
13 under the heading Reath Zanidean,

14 "Ray Zanidean, a 30 year old male was the  
15 other critical witness in the prosecution  
16 against Driskell. It is certain that his  
17 evidence given in testimony was the prime  
18 reason the jury convicted Driskell for the  
19 murder of Perry Dean Harder."

20 If you go to the bottom of the page,

21 "On October 9th, Gumieny lead investigators  
22 to this residence..."

23 meaning, sorry, that's Zanidean's residence, all  
24 right, are you with me?

25 A Yes, I am.

1 Q If you read the previous paragraph you will see  
2 that.

3 "As he was pointing out the house, Zanidean  
4 was seen in his backyard and he obviously  
5 saw Gumieny in the rear of the police unit.  
6 This chance meeting was to be the catalyst  
7 for the next series of events in this  
8 investigation. Within a matter of hours,  
9 Ray Zanidean made a telephone call to the  
10 police indicating that he had crucial  
11 information regarding the murder of Harder.  
12 The timing of this telephone call is  
13 interesting as it took place at  
14 approximately 4:30 in the afternoon on  
15 October 9th, and investigators met him in  
16 person at 5:15 the same day."

17 That's all consistent with what I have taken you  
18 through, is that right? What I have read to you  
19 there?

20 A I'm following what you read, if that's what you  
21 are asking me, yes.

22 Q And it is consistent with the note entries and  
23 indeed Zanidean's evidence?

24 A The timing is, yes.

25 Q Yes. And then just a little further down that

1 page, the third paragraph,

2 "In explaining why he came forward with  
3 this information, Zanidean said he had been  
4 watching a television show."

5 A If I could just stop you, where exactly are we?

6 Q Three paragraphs down on 70?

7 A Yes, I see.

8 Q "In explaining why he came forward with  
9 this information, Zanidean said he had been  
10 watching a television show about unsolved  
11 murders and his conscience got the better  
12 of him. He felt if only one person came  
13 forward in each of these murder  
14 investigations, they would all be solved.  
15 This appears to be a very noble gesture on  
16 his part, however, it appears the real  
17 reason he came forward was because he had  
18 observed Gumieny with police and he was  
19 concerned about being linked to Driskell."  
20 Now, if you look at the loose, one of the  
21 loose documents, which is exhibit C, you will  
22 see in fact that the bottom -- this is an  
23 extract from Mr. Zanidean's statement of  
24 October 9th, as reported in a supplementary  
25 report by Paul, sir, a conversation that you

1           were present at. And you will see there at the  
2           bottom it says,

3                     "Last night I was watching television and  
4                     they were mentioning four unsolved murders.  
5                     I thought if only one person came forward  
6                     in each one, they would be solved. I  
7                     thought then that I knew something about  
8                     this one and I decided to call the police.  
9                     If someone did that to my brother, I would  
10                    want someone to come forward...",  
11           et cetera et cetera. Do you see that?

12   A       Yes, I do sir.

13   Q       And that's obviously the comment that the  
14            authors of the Perry Dean homicide review are  
15            not particularly believing of?

16   A       Yes.

17   Q       And just for your information, sir, where it  
18            says "bullshit" there, that was written some  
19            months later on this document by Susan Fehr, and  
20            I understand at the instance of what her husband  
21            told her, that in fact what was written there  
22            was indeed just that. All right. That's for  
23            your information. Did you know that?

24   A       No, I didn't know that, sir.

25   Q       This was one of the documents that she wrote on

1           that I think you heard about Sergeant Paul  
2           trying to take off Mr. Kovnats, rather than let  
3           him walk away with them. Do you remember that?

4    A    I have heard about that incident, yes.

5    Q    That's when that got written and taken away by  
6           Mr. Kovnats.

7                   Now, that scenario, sir, is sort of a  
8           credible scenario, at least superficially, don't  
9           you think? The scenario that, leave aside  
10          Mr. Zanidean's sort of claim of wanting to come  
11          forward because he felt bad and so on and so  
12          forth, which doesn't sound very consistent with  
13          the man that you got to know; is that right?

14   A    Well, just to back up a bit to answer your  
15          question about his motivation, to tell you the  
16          truth, I don't remember when I became aware --  
17          now that you point out to me these excerpts from  
18          the Hall and Ewatski review, I certainly  
19          remember Mr. Zanidean's explanation, as it is  
20          written here in Sergeant Paul's report, the  
21          television, felt sorry for Perry Harder's family  
22          scenario. I don't honestly remember when I  
23          became aware of Mr. Gumieny being driven down  
24          the back lane. And it may have been from the  
25          detectives closer to the time of the

1 investigation, or it may have been when I read  
2 the Hall and Ewatski report, I don't know.

3 Q I think it actually came, the first time  
4 Mr. Zanidean talked about it, sir, at least  
5 Mr. Zanidean did, was in one of the intercepted  
6 communications, or taped conversations that he  
7 had with Mr. Driskell a couple of weeks after  
8 you first met Mr. Zanidean. That's for your  
9 information, that's when he first talked about  
10 it. In other words, he talked about it to  
11 Mr. Driskell. Do you follow me?

12 A No, I don't follow you.

13 Q He told Mr. Driskell that he had seen John  
14 Gumieny in a police car outside his house?

15 A Oh, that could be.

16 Q And that was the first time that he said it?

17 A I wasn't --

18 Q October 15th, I'm advised, was the day he said  
19 it.

20 A I wasn't up to speed on the contents of those  
21 body pack transcripts, so I can't say for sure  
22 if that's where I first found out or not.

23 Q You can see, sir, that in fact Mr. Zanidean's  
24 claim in his testimony that that's why he came  
25 forward, or one of the two reasons he came



1 forward, is a significant reason and an  
2 understandable explanation of why he might have  
3 come forward if indeed he had seen Mr. Gumieny  
4 in a police car right outside of his house?

5 A Yes.

6 Q It is that, sir, that gives me cause for  
7 concern. And I want to explain to you why and  
8 see if you have any explanation for this.

9 First of all, Mr. Commissioner, I think I  
10 should point out to you that I had hoped before  
11 I embarked on this cross-examination that I  
12 would have the statements of the two retired  
13 officers, Osborne and Williams, that were made  
14 to the Commission, but I understand they are  
15 still not available. So that's a bit  
16 unfortunate, but nevertheless I'm going to  
17 proceed. Am I wrong? Are they now available?

18 MR. CODE: We have certainly completed them and  
19 sent them to Mr. Wolson some time ago. Are we  
20 still waiting for them back?

21 MR. WOLSON: We are. I have given them to the  
22 officers and I'm waiting to get them back. We  
23 have one back, and the other one from officer  
24 Williams has not come back yet. And I hoped to  
25 have them back and to Commission Counsel within

1 the next few days. And I told Mr. Dawe, quite  
2 some time ago, that I couldn't attend to them  
3 right away because I was just burdened with so  
4 much other work on this matter. But we have  
5 them out to the officers and are waiting to get  
6 them back.

7 MR. LOCKYER: And I say that, Mr. Anderson, it  
8 is no fault of yours they haven't provided their  
9 statement yet. But I want to take you to tab 5,  
10 and what you are looking at there are the notes  
11 of Sergeant Osborne, as he then was.

12 THE COMMISSIONER: If you would help me, were  
13 those two officers, the officers that dealt with  
14 Gumieny?

15 MR. LOCKYER: They were, yes, Mr. Commissioner.  
16 I should have said that.

17 THE COMMISSIONER: I should have known that.

18 BY MR. LOCKYER:

19 Q That's to your knowledge as well, right,  
20 Sergeant Anderson?

21 A I am sorry?

22 Q Osborne and Williams were the ones that dealt  
23 with Gumieny?

24 A Yes.

25 Q They were your equivalent with Gumieny, to you

1           doing Zanidean, so to speak; is that correct?

2    A       Yes, that's correct.

3    Q       If you look at the notes, sir, you will see at

4           the top the entry for October 9th, 1990, in

5           Osborne's notes, sir; do you see that? And this

6           is, we can see that we are looking at the

7           beginning of his entry at the top of the page

8           there; do you see that?

9    A       Yes, sir.

10   Q       And it says, I can't read it, is it second

11           Tuesday -- that doesn't make any sense --

12           something Tuesday?

13   A       Second relief, meaning day shift, Tuesday.

14   Q       Is that what that means, second relief, okay.

15                       "Clear, 15 degrees, Sergeant H Williams..."

16           that means who he is with, and his shift is

17           7:00 in the morning until 4:00 in the afternoon;

18           is that right?

19   A       Yes, sir, that's correct.

20   Q       Is that what that means, 07 to 1600?

21   A       Yes, sir.

22   Q       It looks like worked late, sir, because he is

23           still working late 1735, at 5:35 in the

24           afternoon; do you see that?

25   A       Yes, I do, sir.

- 1 Q At 5:35 he goes to 832 Arden Avenue and he is  
2 with John Gumieny; do you see that?
- 3 A Yes, sir.
- 4 Q And presumably, sir, in these early days of  
5 dealing with these kinds of people, I mean,  
6 neither Mr. Gumieny nor Mr. Zanidean are exactly  
7 upstanding citizens from the perspective of  
8 police officers, is that fair to say?
- 9 A Well, most people involved in this case were  
10 criminals, sir, yes.
- 11 Q So the answer to my question is, yes, they were  
12 not seen as particularly upstanding individuals?
- 13 A They were seen by me as criminals.
- 14 Q Okay. Fair enough. And in those early days  
15 especially, sir, would you presumably, and I  
16 believe you did carefully document your time  
17 with them and your dealings with them; is that  
18 right?
- 19 A Carefully document --
- 20 Q In your notes I mean?
- 21 A Yes, sir.
- 22 Q You would carefully note any encounter with them  
23 and any dealings that you had with them, early  
24 on especially; am I right?
- 25 A Early on, yes, sir.

1 Q As time developed and you end up living in motel  
2 rooms with Zanidean, I doubt that you documented  
3 that sort of minute by minute; am I right?

4 A You are right about that, sir.

5 Q But early on it is very important to document  
6 all meetings and all conversations that took  
7 place; am I right?

8 A Yes, sir.

9 Q If we look we see at 1735, Osborne is apparently  
10 doing just that, 832 Arden Avenue with John  
11 Gumieny. And I understand that's where  
12 Mr. Gumieny's girlfriend lives, sir, 832 Arden  
13 Avenue. You may have known that?

14 A No, I didn't know that.

15 Q You can take it from me. You will see,  
16 "Informed wished to speak with him..."  
17 In other words, Osborne is saying we told  
18 Gumieny that we wished to speak with him in  
19 relation to his knowledge concerning the death  
20 of Perry Harder. For your information, sir, the  
21 previous contact that these officers had had  
22 with Gumieny, and it was documented both in  
23 their notes and in a Supp report was on  
24 October 6, three days earlier. All right, can  
25 you follow that?

1 A Yes, I don't see that here but I will take your  
2 word for it.

3 Q Sorry, I didn't give you that page. It is in  
4 actually exhibit B, is it? So they say.

5 "Informed wished to speak to him in  
6 relation to knowledge concerning the death  
7 of Perry Harder. Agreed to accompany to  
8 station for interview."

9 Do you see that, sir?

10 A Yes, sir, I do.

11 Q And then they give his name and some details  
12 about him, age, and Bridgette Michaud is I  
13 believe his girlfriend. And if you turn the  
14 page, sir, you will see that he obviously  
15 accompanies them and he gives a statement to  
16 them down at the station. Do you see that?  
17 Then if look at 470, if you look at the bottom  
18 right-hand corner, the statement concludes at  
19 9:40 in the evening. Do you see that, sir?

20 A Yes, I see that, but I don't know about  
21 statement, it looks to me like they are  
22 interviewing him verbally here, I don't see  
23 anywhere where it says they have taken a written  
24 statement.

25 Q I call that a statement, verbal or otherwise.

1           They talk to him, they have a conversation with  
2           him, one form or another?

3    A       Yes, sir.

4    Q       Now, the problem that I have here, Detective  
5           Anderson, is that the predicate of Zanidean  
6           coming forward, namely that he saw Gumieny  
7           outside of his house in a police car, which lead  
8           him to come, or contact the police, seems to  
9           fall apart when you look at the times.  Because  
10          Osborne, by the time Osborne and Williams -- and  
11          I might say we don't have Williams' notes, he  
12          has lost them or they have been destroyed, they  
13          are not available -- by the time Osborne and  
14          Williams come to Gumieny, Mr. Zanidean is  
15          already chatting to you in Lockport.  He has  
16          been at it, talking to you for 20 minutes in  
17          Lockport by this time.  You meet him in Lockport  
18          at 1715.  They don't come to Gumieny until 20  
19          minutes after that.  So we have actually moved  
20          on an hour and 20 minutes from when Gumieny  
21          first calls into the police station.  So the  
22          predicate of how Zanidean came forward seems to  
23          not work.  Do you see my point?

24   A       Well, I don't, sir, because I'm not sure what  
25          day it was that they drove John Gumieny down the

1 back lane. I don't know whether it was this  
2 days or another one mentioned here in the notes.

3 Q You remember that, first of all, Ewatski in his  
4 report talked about Zanidean coming down hours  
5 later. All right? Do you remember that? Go  
6 back to tab 4, bottom of 69.

7 "Within a matter of hours, Ray Zanidean  
8 made a telephone call to the police."

9 And if you will go to the body pack, and I'm  
10 sorry, I don't have it, Zanidean is making it  
11 clear that it happened that same day. And in  
12 any event, if we go back over the previous days  
13 of the dealings that Gumieny had with Osborne  
14 and Williams, there is no reference to them ever  
15 taking him to any residence of Zanidean or  
16 anything else, it is just not there.

17 A Well --

18 Q So the whole predicate of Zanidean coming  
19 forward seems to be utterly and entirely false?

20 A First of all, I can't accept some of your  
21 assumptions there, because I don't know what day  
22 it was that Detectives Williams and Osborne  
23 drove John Gumieny down that back lane.

24 Q Well, according to them, sir, there was no such  
25 day because they didn't record it anywhere. You



1 have already told us how important it would be  
2 to record your dealings with these kinds of  
3 chaps?

4 A What you didn't tell me, sir, is it is not  
5 recorded here. Now I understand. But I don't  
6 believe that this would be -- this must not be  
7 the day that they drove him down the back lane,  
8 or else they did and they didn't record it.

9 Q Well, it couldn't have been this day, sir. I  
10 mean, they talk about, if you read the notes, it  
11 just doesn't read that way, of Osborne.

12 "1735, 832 Arden with John Gumieny.

13 Informed wished to speak to him in relation  
14 to his knowledge concerning the death of  
15 Perry Harder."

16 It doesn't sound like they have already been  
17 with him that day, does it? It is just not  
18 written that way. It is written like they made  
19 a point of going out to where Gumieny is, and  
20 saying, hey, John, we want to speak to you, can  
21 you come down and talk to us about it?

22 A I'm confused. Did you not tell me they had  
23 contact with him on the 6th?

24 Q They did, but on the 6th there is no indication  
25 at all they took him anywhere. And indeed,

1           Zanidean's position has always been that it was  
2           on the same day that he saw Gumieny in a police  
3           car outside of his residence.

4    A    Sir, that may well be, but that's not a position  
5           that I remember Mr. Zanidean taking with me.  
6           What I recall is the watching the television  
7           explanation for what motivated him to come  
8           forward. This other motivation, I know very  
9           little about. I know about it, but I can't even  
10          tell you when I knew about it, whether it was at  
11          the time it happened. I doubt if it would be  
12          because of the body pack transcript because I  
13          just wasn't in the loop on the contents of those  
14          body pack transcripts.

15   Q    Put it like this, sir, if there is no  
16          explanation anywhere in our material for how  
17          this supposed event could have taken place, it  
18          sure cuts a swath through the notion of the  
19          independence of Gumieny and Zanidean, doesn't  
20          it?

21   A    No, I don't follow that.

22   Q    Because Gumieny, in his own police statement,  
23          sir, on October 9th, himself said to the  
24          police -- and I am sorry, I don't have a copy of  
25          it. This is what Gumieny is recorded as saying

1 to the police on October 9th, sir, and this is  
2 in a police Supp prepared by Osborne, he is  
3 recorded as saying, page 3 of the Supp.

4 "The guy..."  
5 and this is October 9th,

6 "The guy that I pointed out today is the  
7 same guy that Jim and I went and visited."

8 THE COMMISSIONER: I didn't hear the end of it?

9 BY MR. LOCKYER:

10 Q "The guy that I pointed out today is the  
11 same guy that Jim and I went and visited."  
12 And if you read back into his statement, the guy  
13 that Jim and I went and visited is Zanidean. Do  
14 you see the problem?

15 A Well, I just -- I can't, I don't think that I  
16 can help you out with this, Mr. Lockyer. The  
17 fact of the matter is that the explanation that  
18 Paul and I got from Ray Zanidean is the watching  
19 television and wanting to help, if one person  
20 would help explanation. I have told you that I  
21 recall hearing about a trip down the back lane  
22 that was the likely cause of Ray Zanidean  
23 phoning us, but I can't help you out beyond  
24 that.

25 Q And if the evidence all suggests that that was

1 an impossibility that that event could have  
2 taken place, it sure puts a lot of holes in the  
3 so called independence of Zanidean and Gumieny's  
4 evidence, doesn't it?

5 A Well, I don't think -- I don't think anything  
6 puts a hole in the independence of Gumieny and  
7 Zanidean's evidence. I'm not aware of anything  
8 that would put a hole in it. My understanding  
9 of those two men was that they had one meeting  
10 before, only one meeting prior to contact with  
11 the police.

12 Q But if independently between them, they, with or  
13 without police assistance, have manufactured a  
14 motivation for Zanidean to come forward, sir, it  
15 sure causes a lot of problems, not just for  
16 their credibility, but for the credibility of  
17 the whole investigation?

18 A I don't see it that way. I don't see the  
19 motivation as being -- to me the issue is the  
20 truthfulness of their evidence and what they are  
21 telling the police.

22 Q Suffice to say you can't account, sir, for the  
23 fact that it would seem Osborne and Williams  
24 never did take, or never were taken by Gumieny  
25 to Zanidean's house?

1 A I wouldn't even accept that as a truth. It is  
2 my belief that they did take him to Zanidean's  
3 house.

4 Q All right. So you are remembering this now?

5 A No, I'm not remembering. I remember hearing  
6 this, and I can't imagine Sergeant Osborne  
7 saying he did in a supplementary if it wasn't  
8 true, in a supplementary report, if it wasn't  
9 true.

10 Q He doesn't say he did in a supplementary report,  
11 that's the whole point. He doesn't say it in  
12 his notes, he doesn't say it in a supplementary  
13 report. It is the claim of Gumieny and  
14 Zanidean, these two supposedly independent  
15 witnesses, who jointly come forward with an  
16 explanation that is not explicable by the  
17 police. That's the point. Do you see the  
18 point?

19 A Well, the point is, I find it hard to accept  
20 that Osborne and Williams did not drive John  
21 Gumieny down that back lane. That's what I have  
22 trouble accepting.

23 Q And I can understand why you would have trouble  
24 accepting it, sir, too. It would be a huge  
25 problem if that's indeed the case that they

1           didn't drive him down.

2    A    My first thought, Mr Lockyer, is that it is just  
3           not true that it didn't happen. It did happen,  
4           that's what my thought is.

5    Q    I see. Another issue, sir, that has caused me,  
6           or that might be considered to cause concern  
7           arises out of the homicide review. If you look  
8           at tab 4, sir, at the bottom of 69, there are  
9           two references to this. I have already read to  
10          you where Gumieny leads investigators to this  
11          residence, meaning Zanidean's, and as he was  
12          pointing out the house, Zanidean was sitting in  
13          his backyard, and he obviously saw Gumieny.

14                 "This chance meeting...",  
15           and it assumes it took place,

16                 "...was to be the catalyst for the next  
17                 series of events in this investigation."

18          Of course, I suggested to you that this chance  
19          meeting never happened, so it can hardly have  
20          been the catalyst for the next series of events.  
21          All right. But moving on,

22                 "Within a matter of hours, Zanidean made a  
23                 telephone call to the police indicating he  
24                 had crucial information regarding the  
25                 murder of Harder. The timing of the call

1 is interesting as it took place at  
2 approximately 1630. Investigators met with  
3 him in person at 1715, and at 2200  
4 hours...",  
5 meaning 10:00 p.m. that day,  
6 "...Zanidean called Crime Stoppers and  
7 passed on information about the murder  
8 which led to a subsequent award of money  
9 being paid to him. This aspect will be  
10 addressed later in this report."

11 If you now turn to tab 6, sir, you are looking  
12 at another extract from the homicide review.  
13 And what you see on this page, under the heading  
14 Crime Stoppers, is a criticism, if not really a  
15 suggestion of corruption, if you will, by the  
16 authors of the review that really you and your  
17 partner were playing around with the use of  
18 Crime Stoppers. If you look at the bottom of  
19 164, and it is an implicit sort of, if not an  
20 actual suggestion made by the authors of the  
21 review. Look at the last paragraph.

22 "Ray Zanidean called police on October 9th,  
23 also apparently...",  
24 also meaning as well as Gumieny,  
25 "...apparently via the regular channels.

1 He met with investigators and told them of  
2 his knowledge of Driskell's involvement in  
3 the murder. Later that same day he too  
4 called Crime Stoppers and detailed his  
5 knowledge of the crime, not telling them  
6 that he had already spoken to  
7 investigators. This contact with the  
8 program eventually lead to a reward being  
9 paid to him."

10 As I might add, it did in the case of Gumieny as  
11 well.

12 "It is not known at this time if  
13 investigators knew Zanidean was involved in  
14 the program until he admitted to it during  
15 his testimony at the Driskell trial."

16 Which he did, incidentally.

17 "Although no evidence exists suggesting  
18 investigators channeled these two witnesses  
19 into the program, it is known that this  
20 practice did occur in the past. The prime  
21 example is the Martin Shaver incident where  
22 it was revealed the practice of utilizing  
23 the Crime Stoppers program for paying  
24 police informants seemed to be a somewhat  
25 common practice. The committee is not



1           suggesting this was the case with Gumieny  
2           and/or Zanidean, but it could very well be  
3           perceived by others that this in fact did  
4           occur."

5           All right. Now, perhaps if you could help us,  
6           the Martin Shaver incident was what?

7    A       Well, the Martin Shaver incident was an  
8           investigation here in Winnipeg to do with some  
9           break and enter artists, and there was some  
10          allegations of police impropriety, and it was --  
11          when they write this, they are assuming that  
12          everyone will know what they mean by the Martin  
13          Shaver incident, I'm assuming.

14   Q       Well, it was directed to the police chief. You  
15          mean they were presuming the police chief would  
16          know what they are talking about?

17   A       I guess so, yes.

18   Q       Yes. And were you aware of this practice, sir,  
19          of channelling witnesses into the Crime Stoppers  
20          Program as a way of getting them a reward?

21   A       I remember that being an issue, whether that was  
22          proper or not, but I don't remember all of the  
23          details. That was definitely an issue at some  
24          point.

25   Q       Did you do it, sir?

1 A I don't know, I don't have any recollection of  
2 that, but it is possible.

3 Q You don't see that as being corrupt to do that?  
4 You are essentially creating a scenario where a  
5 witness can get a reward under circumstances  
6 that the system does not intend them to get an  
7 award.

8 A Well, I think this issue, not just with respect  
9 to the Perry Harder murder, I think my  
10 recollection of this issue has to do with, if  
11 someone phones Crime Stoppers, normally they  
12 remained confidential, their name was never  
13 known. But if they phoned Crime Stoppers, and  
14 it was the practice at that time for the person  
15 who manned the phone at Crime Stoppers to flag  
16 down investigators that were assigned to cases  
17 that were being spoken of over the phone, and in  
18 cases like that, I don't think it was considered  
19 corrupt if that caller phoned Crime Stoppers,  
20 dealt with the police, and also received a  
21 reward.

22 Q All right. Did you do that with Zanidean?

23 A That may have happened, but I just don't have  
24 any recollection of it.

25 Q If it happened --

1 A Mr. Zanidean, the circumstances under which  
2 Mr. Zanidean came to the police are the kind of  
3 circumstances where that could have happened,  
4 because he phoned the police, we didn't go to  
5 him.

6 Q So it may well be, you are acknowledging it may  
7 well be that you and Paul advised him, after you  
8 had interviewed him on October 9th, to then make  
9 a call to Crime Stoppers as a way of --

10 A I don't know about that, I don't have any  
11 recollection of it. He may have got a number  
12 from Crime Stoppers before Al Paul talked to him  
13 and then collected a reward, I don't know. It  
14 is the kind of scenario where that could happen,  
15 and it became a controversial issue.

16 Q I understand, sir, that Inspector Ewatski, Chief  
17 Ewatski is going to be advising us that he found  
18 out this information from Crime Stoppers, that  
19 Zanidean had in fact called them at 2200 hours,  
20 which would match quite nicely with when you  
21 finished talking with him on October 9th, and  
22 subsequently received, I think I'm right in  
23 saying, a \$500 reward. You acknowledge that you  
24 may have suggested to him, perhaps with a nod  
25 and a wink, that that might be a good move?

1 A I don't know that it would have happened that  
2 way. Again, I don't recall, I don't recall  
3 anything about that. But it may be that he  
4 collected -- he may have already been given an  
5 informant number before Al Paul talked to him.

6 Q Of course, if it happened, sir, Mr. Brodsky, as  
7 far as you know, certainly wasn't informed that  
8 Mr. Zanidean had obtained monies through the  
9 Crime Stoppers Program?

10 A I don't know, I don't know, sir.

11 Q Well, you didn't make any notes about it  
12 yourself, that you either advised him to do this  
13 or that he did this; am I right?

14 A I don't recall having any notes on that, no.

15 Q And it was certainly your understanding, sir,  
16 that Mr. Zanidean called directly into the  
17 police station and spoke to Paul; is that right?

18 A Well, he called into the Crime Stoppers line,  
19 and I believe Mr. Paul was flagged down by the  
20 Crime Stoppers worker and then spoke to him on  
21 the Crime Stoppers' phone.

22 Q It is funny that you say that, because Paul says  
23 that in his statement to the Commission. It is  
24 the first time that anyone heard of this, it is  
25 not in your notes, it is not in a report, it is

1 absolutely nowhere, until we look at Paul's  
2 statement to Commission Counsel where suddenly  
3 Paul is claiming that Zanidean first called into  
4 Crime Stoppers, and that Paul was then  
5 interrupted in a meeting and taken out of a  
6 meeting and took over the phone.

7 You have read Paul's statement, am I right,  
8 sir?

9 A No, I have not, sir.

10 Q You are aware that he says that in his  
11 statement?

12 A No, I wasn't aware of that, but I'm puzzled at  
13 why you find that puzzling?

14 Q Because it is quite contrary to what is being  
15 said here by the authors, the four authors of  
16 the homicide review, sir. That's not what they  
17 say. They are suggesting it is, in fact, quite  
18 improper conduct, it may well have been improper  
19 conduct on the part of you and your partner,  
20 because he called into the police station and  
21 then he was perhaps advised to call Crime  
22 Stoppers at 11:00 p.m.

23 A No, no.

24 Q That's what they say here, sir.

25 A Then they are wrong.

1 Q And it is now 2006, that we hear for the first  
2 time how they are wrong; is that right?

3 A Well, I don't know that that's right. It sure  
4 took a long time for that to be corrected if  
5 that misconception was there.

6 Q Well, it did --

7 A Well, maybe it was corrected earlier and you are  
8 just not aware of it. I don't know.

9 Q I kind of doubt that. I mean, just go back to  
10 Paul's notes, sir, at tab 1, look what he says.

11 "Phone call received from a male who said  
12 he knew who killed Perry Harder."

13 Not phone call to Crime Stoppers, phone call  
14 received from a male.

15 I'm going to suggest to you, sir, to sort  
16 of wind this up that really what has happened  
17 here is that Paul, and indeed you now from what  
18 you have said today, have created a story to get  
19 around the improper conduct alluded to in the  
20 Perry Dean Harder homicide review?

21 A Well, your suggestion is dead wrong.

22 Q Tab 7. Do you have any other explanation, sir,  
23 for why the first we hear of Zanidean calling  
24 into Crime Stoppers, the first we hear of it is  
25 in 2006?

1 A I find it impossible to believe that the first  
2 record of that is 2006. I have been provided  
3 with a very, very limited amount of that police  
4 file. Mr. Code has provided me with pretty much  
5 my notes and supplementary reports and a few  
6 other documents that he chose to give me. I  
7 don't have that police file. I can't say that  
8 there is nowhere where that's reported.

9 Q Well, we do, we have looked at it, and I think  
10 perhaps your counsel will be leaping to his feet  
11 if I was wrong. That might be of some  
12 assistance to you. All right.

13 A Well, that makes no sense to me at all.

14 Q All right. A lot of things don't make sense, do  
15 they, sir? In fact, these two first things  
16 don't make sense in the context of this case.  
17 And is that because there is a lot in this case  
18 that we never get to see, we have never seen?

19 A A lot of what, sir?

20 Q A lot of fishy things, if I can put it that way,  
21 sir, a lot of improper practices, that  
22 subsequently we hear alleged by the witnesses  
23 themselves, by Gumieny, by Zanidean, by the Kara  
24 brothers?

25 A You are dead wrong about that, Mr. Lockyer.

1 Q Let me move, sir, to some of the issues that you  
2 were questioned about during your  
3 examination-in-chief on Thursday, if we may.

4 First of all, sir, if I can focus on the  
5 first call for a minute that you had with PC  
6 Burton in October of 1990. I think there is a  
7 bit of a dispute as to whether it was the 28th  
8 or 30th, but I don't think it matters which date  
9 it was. You know the call that I'm talking  
10 about, sir?

11 A Yes, sir, I do.

12 Q And that call, according to you, was, by the end  
13 of the call your understanding is that Burton is  
14 going to hold off with his investigation until  
15 such time as the homicide case is finished. Am  
16 I right?

17 A Yes, sir.

18 Q And Mr. Code took you through your notes, sir,  
19 that you made of this. It is tab, if you go to  
20 Mr. Code's materials, if you would, Commission  
21 Counsel's materials, and look at your note, sir,  
22 at tab 4, at page 34. Mr. Code brought this to  
23 your attention, but I thought I might be a  
24 little more blunt about it. If you look at page  
25 34, sir, your third dash entry at sort of the



1 top of the page, are you with me?

2 A Yes.

3 Q You have written,

4 "Burton advises no evidence to confirm...",  
5 meaning no evidence to confirm Zanidean had  
6 committed the crime,

7 "...but investigation will continue."

8 Now, that's not so much an incomplete note of  
9 your conversation and leaves out the essence of  
10 your conversation with Burton, sir, or the most  
11 important feature of it, but really contradicts  
12 what Burton told you. Burton told you the  
13 investigation wouldn't continue, didn't he?

14 A I think the problem is with the note. The note  
15 doesn't explain the situation. At the  
16 conclusion of that first conversation with  
17 Constable Burton, here is what the situation  
18 was: Constable Burton offered to delay his  
19 pursuit of Mr. Zanidean until after the trial  
20 because he would focus on Mr. Zanidean's sister.  
21 He would continue investigating. And the other  
22 part of this line is that there was no evidence  
23 to suggest that what Ray Zanidean had told Tom  
24 Anderson and Al Paul, and I was relaying to  
25 Burton on the 30th, there was no evidence to

1 suggest that that was the case. He explained  
2 that they were interviewing family members.  
3 They were on, I guess a fishing expedition,  
4 suspicious of Zanidean's sister, but had no clue  
5 that Ray Zanidean and James Driskell blew up  
6 that house in Swift Current. That's the point  
7 of that line.

8 Q Your note might better have said, sir, that his  
9 investigation would stop, not his investigation  
10 would continue. Do you agree with that, sir?

11 A No, sir, I don't, because he never told me that.

12 Q He told you it was going to stop for quite a  
13 period of time until your case was over; right?

14 A He told me that he would delay his pursuit of  
15 Mr. Zanidean temporarily.

16 Q And as you know, sir, that your claim about that  
17 conversation, or your claims about it, are  
18 substantially contradicted by PC Burton's  
19 testimony, right, or Inspector Burton's  
20 testimony?

21 A I think most people in Manitoba are aware of  
22 that now, sir.

23 Q Indeed. And in your Commission interview, sir,  
24 you said -- and I can take you to it if you  
25 wish -- you said you wouldn't have dreamt of

1 asking the RCMP to postpone or abandon their  
2 investigation of Mr. Zanidean in this phone  
3 call. Do you remember saying that?

4 A Yes. And the line in that statement doesn't say  
5 everything I said to Mr. Code in that vein. I  
6 said I wouldn't dream of demanding that of a  
7 unit of the Winnipeg Police Service, of a unit  
8 outside of robbery/homicide.

9 Q And you insisted as well in your  
10 examination-in-chief that it was always made,  
11 right from the outset, very clear to  
12 Mr. Zanidean that he was going to get no rewards  
13 or favour for his evidence, including this arson  
14 charge; am I right?

15 A Including the arson charge, nothing other than  
16 witness protection, yes.

17 Q I guess he never got that point very well, am I  
18 right, given what happened in the ensuing  
19 months, even according to you?

20 A Well, I think he did get the point initially.  
21 Now, that may have changed when he retained  
22 Mr. Kovnats and things changed. But he  
23 certainly got the point initially.

24 Q And you expressed a concern in your statement to  
25 Commission Counsel that you were worried in

1 calling the RCMP that it could jeopardize your  
2 case to some extent. Am I right?

3 A No, you are not right.

4 Q I'm not right?

5 A What I was worried about was the fact that we  
6 had some serious witness protection problems on  
7 our hands with Mr. Zanidean. I mean, I can go  
8 into the rationale behind that if you like,  
9 Mr. Lockyer. But the point is that our hands  
10 weren't forced to protect Mr. Zanidean until  
11 such time as we had disclosure on Mr. Zanidean's  
12 statements.

13 Q And you were worried --

14 A This changed that.

15 Q And you were worried, if the RCMP pursued their  
16 arson investigation, sir, you were worried it  
17 could jeopardize your case?

18 A No. No, I don't see how the RCMP arson  
19 investigation could jeopardize our case. It  
20 could cause us to find a solution to the  
21 protection problem sooner than we intended to  
22 find it.

23 Q You weren't worried it could jeopardize --  
24 perhaps your case is a little far -- your  
25 witness, that is what I guess I am worried

1           about. I guess that's what I mean, sir, that it  
2           might jeopardize your ability to use Zanidean as  
3           a part of the case?

4    A       No, not at all. Because that was jeopardized  
5           the day that he and James Driskell got in a car,  
6           drove to Swift Current and committed that arson.  
7           That was coming out at the trial, come hell or  
8           high water.

9    Q       Because certainly that's the impression, sir,  
10           that Burton got from the conversation. If you  
11           go to Commission Counsel's materials at tab 11,  
12           page 2 at the top, PC Burton, as he then was,  
13           refers to a report that he wrote on November 15  
14           of 1990. And he quoted a part of it, which  
15           read:

16                        "Anderson advised that Zanidean is a  
17                        witness in a homicide prosecution as he  
18                        observed Driskell execute a Crown witness  
19                        in relation to another prosecution.  
20                        Anderson requested that we keep this  
21                        information in confidence and hold off on  
22                        pursuing Zanidean as it will endanger their  
23                        prosecution of Driskell."

24           That's the message that he got from you, sir?

25    A       Yes, sir.

1 Q Burton told us that in that first call with you,  
2 sir, he got an immediate impression of you being  
3 deceitful and dishonest. You have heard that;  
4 right?

5 A I read about that in the paper, yes, sir.

6 Q How come?

7 A I wished I knew the answer. When I review this  
8 material today, it is as if Constable Burton was  
9 speaking one language and I was speaking  
10 another. Take, for example, this paragraph that  
11 you have brought me to and allow me to break it  
12 down line by line.

13 First of all, he misunderstood or is  
14 misrepresenting here that I told him that Ray  
15 Zanidean witnessed the murder of a Crown  
16 witness. Never -- first of all, it is not the  
17 case and I didn't tell him that.

18 On to the next line,

19 "Anderson requested that we keep this  
20 information in confidence and hold off  
21 pursuing Zanidean..."

22 I never requested that he hold off pursuing  
23 Zanidean,

24 "...as it will endanger the prosecution."

25 What Mr. Burton may have misunderstood here is

1           that I told him we wouldn't make Ray Zanidean  
2           aware of the fact that the pursuit of  
3           Mr. Zanidean would be delayed. Because that  
4           would damage his credibility. That would be a  
5           perk, that would be a benefit that he received.

6    Q       Mr. Burton and you seem to have kept talking in  
7           different languages, sir, to use your  
8           expression?

9    A       I agree very much with you there.

10   Q       In every conversation that you had?

11   A       I agree very much with you there.

12   Q       And the first time that you ever came to record  
13           any of these conversations was a year after the  
14           first one, in October of '91?

15   A       Yes, sir, I was a little more naive in those  
16           days than I am today. I expected an RCMP  
17           officer to keep his word and not lie.

18   Q       I see. Because that really has to be your  
19           ultimate, since you raise it, really has to be  
20           your ultimate position with Inspector Burton,  
21           doesn't it?

22   A       It doesn't have to be, it just is, sir.

23   Q       If we examine your dealings with Mr. Zanidean  
24           for a little bit, sir, I'm going to suggest to  
25           you that you let Mr. Zanidean manipulate you in

1 your dealings with him. And I'm going to refer  
2 to two specific incidents.

3 First of all, the burning of his garage,  
4 sir, on January 23rd, of 1991. Did it ever  
5 occur to you, sir, that here we had an arsonist  
6 claiming that someone else had burnt his garage  
7 down? Did it ever occur to you that maybe  
8 Zanidean had burnt his own garage down?

9 A Yes, sir.

10 Q Did you have details of Zanidean's arsons by  
11 this time, sir?

12 A Of the Swift Current arson?

13 Q Yes?

14 A I never to this day got details of the Swift  
15 Current arson, no.

16 Q So, Sergeant Mann never passed on the details  
17 that he had received on those arsons, on two of  
18 them, on both, that he had received on  
19 December 14th of '90, he never passed them on to  
20 you?

21 A Definitely not to me, sir.

22 Q Even though he must have known that Zanidean was  
23 part of a homicide investigation and an  
24 important witness that you and your partner were  
25 controlling; am I right?



1 A I don't understand -- even though, I didn't  
2 follow you from even though on?

3 Q He would have known, Mann, that you and your  
4 partner were looking after, I'm not sure quite  
5 sure what the term is, controlling, looking  
6 after, guarding, whatever term you want to use,  
7 responsible for Mr. Zanidean, but he never  
8 turned these reports over to you that he  
9 received on December 14 of '90?

10 A Well, I don't know what Sergeant Mann knew about  
11 the Zanidean homicide matter. I don't know. I  
12 can't remember, I think it was my interview with  
13 Mr. Code --

14 Q You think that Mann may have been in complete  
15 ignorance of the fact that this material that he  
16 received from Swift Current had anything to do  
17 with a homicide case in his own department?

18 A Mr. Lockyer, there is so much confusion  
19 surrounding this, I don't know what to think. I  
20 don't understand why Ross Burton didn't tell me  
21 in the first telephone conversation -- if the  
22 tables were turned and he was phoning me and  
23 saying, hey, I have got a guy here who says he  
24 blew up a house in your town, my first thought  
25 would have been, if I were Ross Burton, oh, it

1 just so happens we sent a request to your  
2 organization to interview somebody. I didn't  
3 find out about that until I don't know when,  
4 maybe the Hall and Ewatski interview.

5 Q Sort of a left-hand/right-hand problem going on  
6 here, sir, is that what you are saying?

7 A I don't know. I have to admit, I thought a lot  
8 about that being a problem with the Swift  
9 Current detachment of the RCMP. It was as if  
10 nobody was talking to each other there. But I  
11 can't say whether we were suffering from that  
12 problem to some extent here too as well or not,  
13 I don't know. The easiest thing would have been  
14 if Constable Burton would have said, Tom, we  
15 have a request in to have Mr. Zanidean  
16 interviewed.

17 Q It seems to be happening in the Winnipeg Police  
18 Department where you and Mann aren't  
19 communicating, sir, the left-hand/right-hand  
20 problem seems to be right within your  
21 department, according to what you are saying?  
22 MR. WOLSON: I think the evidence by Sergeant  
23 Vandergraaf is that he was the one that spoke to  
24 Mann and he told Mann to back away. That was  
25 the evidence that we heard.

1 MR. LOCKYER: I'm not sure what that has got to  
2 do with anything. Mann has received a bunch of  
3 documents on the two arsons, and this witness is  
4 claiming that he never got those documents.  
5 That's the issue here.

6 MR. WOLSON: What is has to do with is that this  
7 witness said he never dealt with Mann at all,  
8 but we know that somebody else has dealt with  
9 Mann. That's what it has got to do with.

10 BY MR. LOCKYER:

11 Q Did you know, sir, that there is an occurrence  
12 that Mann -- given your counsel's objection --  
13 called Burton in Swift Current and said that you  
14 would be calling him?

15 A Do I know that Sergeant Mann called Ross Burton  
16 in Swift Current?

17 Q And said that you, Anderson, would be calling  
18 him?

19 A Absolutely not.

20 Q So Mann clearly knew about you?

21 A Well, I don't know, this is the first I heard of  
22 this, Mr. Lockyer.

23 Q And knew about your tie in with Zanidean, and  
24 yet for some reason, according to you, never  
25 passed over these significant documents to you;

1 right? That's your position, isn't it?

2 A Well, my position is that if I ever spoke to  
3 Sergeant Mann about Ray Zanidean, I don't  
4 recall. And I suspect that he is very wrong in  
5 the Hall and Ewatski report where he speculates  
6 that it might have been me. Secondly, I never  
7 saw a stitch of paper, in fact, I didn't know  
8 there was a second arson in Swift Current until  
9 July 16th when Ross Burton phoned me at home.  
10 So I can assure you, I never saw a stitch of  
11 that paper.

12 Q Of course, it means that -- given these  
13 documents apparently sort of remaining with Mann  
14 and never getting out of Mann's custody, which  
15 seems to be what you are implying at least --  
16 made it pretty easy to respond to Mr. Brodsky's  
17 disclosure request for information about those  
18 arsons to respond and say, we haven't got any  
19 information, because that's what happened.  
20 That's tab 33 and 37, I'm not going to take you  
21 to them, but you just have to look at those two  
22 tabs and you will see it.

23 A Well, if somebody answered Mr. Brodsky that we  
24 didn't have anything on the Swift Current arson,  
25 I wouldn't have known that that was anything but

1 a true statement until you brought that up this  
2 morning.

3 Q Do you remember, sir, that on this garage  
4 burning incident that one of the things that  
5 Zanidean was trying to get out of you, and by  
6 you I mean the generic you or the royal you, if  
7 I dare, was trying to get -- he had insurance  
8 for his garage but he didn't have insurance for  
9 his bike, so he was trying to get \$800 out of  
10 you for his bike; do you remember that?

11 A No, but I did learn of it some time in my  
12 preparation for this, for this testimony, and I  
13 think there may be mention of it in one of these  
14 document books.

15 Q Did you ever do a report anywhere, sir, querying  
16 whether Zanidean might have burned down his own  
17 garage?

18 A Did I ever do a report?

19 Q Yes? You seem to have some concern that he, in  
20 effect, committed another arson. Did you do  
21 anything about it?

22 A Well --

23 Q I haven't found anything.

24 A -- I don't recall exactly what we did about it.  
25 I recall somewhere, again in these booklets of

1 documents, some mention of, I think by Al Paul,  
2 his explanation that there were kids in the area  
3 burning down garages or something. But I know  
4 that was an area of suspicion that I can't  
5 recall we were able to do anything about.

6 Q Wasn't this used, sir, as a justification to  
7 help demonstrate what danger Zanidean was in  
8 from Driskell, the theory being that Driskell  
9 burned the garage down?

10 A Well, that and the series of other events, I  
11 believe, yes.

12 Q That takes me to the second one, the windshield  
13 message event, sir. Surely, you were suspicious  
14 of that, weren't you? How could you not be?

15 A Well, Mr. Lockyer, dealing with a man like Ray  
16 Zanidean, you have to be suspicious about  
17 everything.

18 Q Right.

19 A But, I don't need to tell anybody here, you  
20 don't always have evidence of that which you  
21 suspect.

22 Q But the consequence of this rather bizarre claim  
23 by Zanidean, that he was so troubled by this  
24 message that he destroyed it, which strikes me  
25 as an utterly ridiculous story, and maybe it

1           didn't you, but it sure does me, is that it lead  
2           to Zanidean getting a free flight and a free  
3           move out west to Calgary where, lo and behold,  
4           his wife was, who he wanted to be with, she was  
5           already there; right? This chap manipulated you  
6           guys around his little finger, didn't he, sir?

7       A     I don't think that he manipulated us around his  
8           little finger. I think there were times during  
9           the course of dealing with Mr. Zanidean when we  
10          were placed in bad situations. What alternative  
11          did we have? The commitment made to  
12          Mr. Zanidean by Al Paul and me wasn't that we  
13          would protect him if he got his criminal record  
14          expunged or suddenly became a good guy, we had  
15          to protect him whether he was a horrible  
16          creature or the most honest person on earth.

17       Q     Something that's interesting, sir, that perhaps  
18           reflects how you really thought about these  
19           incidents that were used as justifications for  
20           claiming that Zanidean was in mortal danger, was  
21           that neither you nor Paul had any notes, in your  
22           notebooks, about either of these incidents. Am  
23           I right? We have got one Supp report in each  
24           case -- we have a Supp report from whoever  
25           investigated the arson, I forget the name, or

1 the garage?

2 A The arson would have been treated as a separate  
3 incident with a different file number.

4 Q And we have got one report that wasn't written  
5 until five days after Zanidean told you about  
6 it, written by Paul, on the windshield message,  
7 that supposedly was left on his windshield. And  
8 not a whimper in your notes or Paul's notes  
9 about either of these events, in your working  
10 police notes, nothing. Did you know that?

11 A That may be the case, but I would have to go  
12 through my notes to confirm that.

13 Q Well, when we come to the garage burning, sir,  
14 which was January 23rd, '91, your notes and  
15 Paul's notes, and you have to look at tabs 4 and  
16 5, your last note before January 23rd was  
17 January 17. Your next note after January 23rd  
18 was January 29. Paul's notes exactly the same.  
19 In your case, if you really want to check it, go  
20 to pages 52 and 53 of tab 4, sir, and you will  
21 see it there. Your notes skip from January 17  
22 to January 29. Do you see that?

23 A I'm just missing some page numbers here, but I  
24 will find it.

25 Q Okay. It is 52, 53, I think it is the second



1 52, 53.

2 A What is it that you want to point out to me  
3 here, sir?

4 Q You have no notes between the dates of  
5 January 17 and January 29; am I right?

6 A Yes, sir, that is correct.

7 Q And Paul is the same? You don't have to go to  
8 Paul, I can just assure you -- it is on page  
9 561, for the record, in the case of Paul's  
10 notes.

11 And with respect to the windshield message,  
12 sir, it is exactly the same. There is nothing  
13 in your notes about it. Indeed, there is  
14 nothing in your notes from February 25th of '91,  
15 which is a month and a week or so before the  
16 windshield message claim, until May 6th of '91,  
17 which is another month after the windshield  
18 message claim. So, again, nothing about this  
19 windshield message in your notes, and once again  
20 exactly the same holds true for your partner,  
21 Mr. Paul, sir?

22 A Yes, sir.

23 Q Nothing in his notes between February 25 and  
24 May 6 of 1991?

25 A That appears to be correct, yes.

1 Q You didn't consider either of these events of  
2 such significance to even make a note about them  
3 in your books; am I right?

4 A Well, that's not why they are not in our books.  
5 They are not in our books consistent with other  
6 matters relating to the witness management for  
7 Ray Zanidean.

8 Q Whatever the witness management was, sir, it  
9 wasn't causing you to make any notes about it;  
10 right?

11 A I didn't make any notes about those incidents  
12 that you referred to, no.

13 Q And the windshield message claim, sir, that  
14 Zanidean made, of course, really is what lead to  
15 what you described in your interview with  
16 Commission Counsel as the blockbuster  
17 development; is that right?

18 A I --

19 Q Your conversation, according to Burton, that you  
20 claimed was the blockbuster development, you  
21 didn't date it because you didn't make a note of  
22 it, but this conversation Burton recorded as  
23 taking place on April 5th of '91, which was the  
24 very same day that Zanidean claimed for the  
25 first time a note had been left on his

1 windshield on April 4th. Are you following me?

2 A Yes, I follow you. But I told Mr. Code in my  
3 interview the trip to Alberta is something that  
4 I have no recollection of.

5 Q This isn't a trip to Alberta, this is a call,  
6 sir, to Burton that you describe as being a  
7 blockbuster development in the case?

8 A The April 5th call?

9 Q Correct?

10 A I know what you are talking about.

11 Q Which is the same day as the day that Zanidean  
12 reports this windshield message. No notes, of  
13 course, on your part, no report either, but it  
14 is the same day that the blockbuster development  
15 takes place. Am I right?

16 A Yes, sir.

17 Q And as you know, sir, your version of that call  
18 also stacks your credibility rather starkly  
19 against that of PC Burton?

20 A I'm aware of that, yes, sir.

21 Q And I'm wondering, sir, after what we heard --  
22 after what everyone except me and you heard --  
23 yesterday from Paul, sir, because he has  
24 described in this context of a decision by the  
25 RCMP not to pursue Zanidean on the arson

1 charges, he had a blockbuster development of his  
2 own. Have you read about that in the paper this  
3 morning, sir?

4 A Sergeant Paul?

5 Q Yes?

6 A No, sir.

7 Q Have you not read the papers this morning, sir?

8 A Yes, but I don't know what you are referring to.

9 Q Well, his blockbuster development, sir, or his  
10 equivalent, was a meeting that he says you and  
11 he had with Miller either in the days preceding  
12 or indeed after Mr. Driskell's trial commenced.  
13 And you had never mentioned that?

14 A No, sir.

15 Q And was there such a meeting, sir?

16 A There may very well have been, I just don't have  
17 any recollection. The contact with Mr. Miller  
18 at that time -- well, I spent more time talking  
19 to Mr. Miller than I did to my own family at  
20 that time. I couldn't begin to tell you how  
21 many meetings we had, or how many telephone  
22 conversations, or how many representations of  
23 conversations that Mr. Miller had with the  
24 divisional commander or Staff Sergeant  
25 Vandergraaf that got relayed to Sergeant Paul

1 and myself, I couldn't begin to tell you.

2 Q Of course, it would be hard for you to concur  
3 with Paul about this meeting with Miller, when  
4 he describes it, sir, because as far as you were  
5 concerned, no meeting with Miller was necessary.  
6 You had already heard a month or two earlier,  
7 two months earlier, in fact, that Swift Current  
8 wasn't going to proceed on the arson, according  
9 to you. You had known this since April 5th of  
10 '91. You didn't need a meeting with Miller to  
11 tell you; right?

12 A Yes, sir, that is true. However, I was also  
13 aware of the fact that there was ongoing  
14 discussions between Mr. Miller, Tom Orr of the  
15 RCMP Witness Protection Program, and Bill  
16 Vandergraaf.

17 Q I'm going to suggest to you, sir, that all of  
18 these contradictions and difficulties and the  
19 like come from the following scenario. That you  
20 and Paul decided that you wanted, to use a term  
21 that we have heard from another witness, you  
22 wanted a happy witness in Zanidean, sir? That  
23 in order to ensure that you had a happy witness,  
24 you took a simple route and you simply told him,  
25 of your own accord, that he wouldn't be, he

1           didn't have to worry about any arson charge in  
2           Swift Current.  But having told him that, you  
3           made it clear to him that he couldn't let it out  
4           that this was the case, because you knew only  
5           too well you had no authority to make that kind  
6           of promise to him; isn't that right, sir?  
7           Doesn't that explain all this confusion --  
8    A       No, sir, that's not right.  
9    Q       -- with everyone contradicting each other about  
10           what happened during this period of time?  
11   A       No, it doesn't at all.  
12   Q       And that in creating your stories to try and  
13           justify a position that didn't in fact happen,  
14           that's why you are running into all of these  
15           difficulties; isn't that right?  
16   A       No, sir, that's not the case at all.  
17   Q       If we look at tab 54, sir, of Commission  
18           Counsel's set of materials, volume 2, if you  
19           would.  You will see there, sir, a report from  
20           Mr. Burton, your sort of nemesis to some extent,  
21           I guess now.  At page 3, sir, heading 10, are  
22           you with me?  
23   A       Yes, sir.  
24   Q       Mr. Burton is talking about a conversation that  
25           he had with you, we are now a month after the

1 trial, July 18th of 1991, and he says that you  
2 said to him, or he is repeating his conversation  
3 with you.

4 "Sergeant Anderson also stressed the part  
5 of the deal for Zanidean's testimony was  
6 that he would not be charged for the 1990  
7 arson."

8 Presumably you would just say that has to be, I  
9 guess another lie by Burton, using your words;  
10 correct?

11 A You took the answer almost out of my mouth. I  
12 was going to say this is either another lie or  
13 another example of where Constable Burton was  
14 speaking a different language than I was.

15 Q You made it clear in an answer you gave earlier  
16 this morning, sir, that you have now read -- you  
17 have read the Perry Dean Harder homicide review  
18 cover to cover. Am I right?

19 A Not cover to cover, parts of it.

20 Q Have you read the parts in so far as they relate  
21 to you, sir?

22 A I'm not sure.

23 Q Mr. Commissioner, I haven't got it ready but I  
24 wonder if perhaps tomorrow we could file copies  
25 of this review and simply ask everyone to always

1 bring them, rather than have to keep copying  
2 bits from it. I think it is a document that we  
3 are going to refer to a lot over the next few  
4 weeks.

5 THE COMMISSIONER: All right.

6 BY MR. LOCKYER:

7 Q Page 79, sir, I mean, you spoke to the homicide  
8 review authors, am I right, sir, or two of them  
9 anyway?

10 A Yes, I did. Are you taking me to a page?

11 Q I will be in a minute.

12 A Yes, I did speak to Hall and Ewatski.

13 Q There were all sorts of union problems about  
14 cooperating with this review; is that right,  
15 sir?

16 A Well, my recollection of it, I think there was  
17 an issue of whether there should be lawyers  
18 involved or not.

19 Q And ultimately you went along with that and  
20 wouldn't be interviewed on tape; am I right?

21 A That's correct, yes.

22 Q And nevertheless, they interviewed you orally,  
23 so to speak, sir. And their conclusion, or a  
24 conclusion -- there are many conclusions in the  
25 report -- but at page 79, sir, I'm going to have



1 to read it to you, I am sorry, I don't have a  
2 copy of this.

3 THE COMMISSIONER: Just remember, not too  
4 quickly.

5 MR. LOCKYER: Yes, of course.

6 BY MR. LOCKYER:

7 Q This is a conclusion that the four authors came  
8 to, sir. And by this time they had gone through  
9 talking to you, your position, the position of  
10 Paul, the position of Burton, and they say,

11 "Nevertheless, after reviewing this aspect  
12 of the investigation it is evident an issue  
13 can be made as to how the Winnipeg Police  
14 Department dealt with Ray Zanidean. A  
15 strong suggestion may be made that some  
16 sort of a deal was struck with him in which  
17 he will be granted immunity from  
18 prosecution for the Swift Current arsons if  
19 he testified against Driskell."

20 Do you want me to read that again, sir?

21 A No, I heard you, I followed you.

22 Q I guess you don't like the strong suggestion  
23 that they suggest; am I right, sir?

24 A Well, it is just wrong, it is just plain wrong,  
25 that's all.

1 Q I mean, four very senior officers in your own  
2 police department seem to have had some trouble  
3 with the position that you were taking then, and  
4 are still taking now; is that fair?

5 A Well, then they didn't probe deep enough.

6 Q This position of yours, sir, that Mr. Zanidean  
7 wasn't told about the fact that he had immunity  
8 until after he had testified --

9 A Yes, sir.

10 Q -- whose idea was this?

11 A Well, that was a unanimous agreement that he  
12 couldn't --if we took Swift Current's offer to  
13 him and told him about it, that it would taint  
14 his evidence. And Mr. Miller was adamant that  
15 that not be done. And I don't think, I don't  
16 recall there being a sales pitch. That seemed  
17 to be understood by my supervisor, me, Al Paul,  
18 divisional commander. That's just not something  
19 we did in those days, we didn't buy evidence, we  
20 didn't pay for evidence with stayed charges or  
21 money. That is something that wasn't done.

22 Q I will leave out the money part, sir. How did  
23 you know that Mr. Miller had come to this  
24 decision? You are saying it is Miller's  
25 decision, in other words?

1 A Ultimately, yes, but understood by everyone else  
2 down the chain.

3 Q How did you come know it was Mr. Miller's  
4 decision, sir?

5 A I don't recall. This was something, as I have  
6 already explained, we were contact with  
7 Mr. Miller towards the end on an hourly basis,  
8 earlier on a daily basis, and earlier on, on a  
9 weekly basis.

10 Q So it wasn't your idea, in other words?

11 A Well, I doubt, it sure wasn't me that came up  
12 with the idea, but I understood the rationale  
13 behind it, yes.

14 Q Just look at your October '91 report, sir, it is  
15 at tab 10, if you would, of Commission Counsel's  
16 materials. And this came up in the  
17 cross-examination, my questioning of  
18 Mr. Vandergraaf, and indeed your counsel  
19 objected to a question in this regard, so I want  
20 to take you to it. Page 2 of tab 10, sir, the  
21 top paragraph, this is the first call, so to  
22 speak, or the first occasion that you are  
23 speaking, the first time that you are speaking  
24 to Burton. October 30th you say you telephone  
25 Burton, and you talk about your conversation and

1           you end up saying, four lines down,  
2                    "He offered to delay their pursuit of  
3           Zanidean until after he testified at our  
4           murder trial and said he would flag  
5           Zanidean's name on the file so that no  
6           other RCMP officer investigating the arson  
7           would pursue him. I told Burton we have  
8           made no deals with Reath Zanidean and we  
9           would not make him privy to this  
10           agreement."

11           Do you see that?

12    A       Yes, sir, I do.

13    Q       That seems to be your decision, sir, you are in  
14           the middle of a phone call and you tell Burton,  
15           we won't tell Zanidean about what you and I have  
16           just agreed to; is that correct?

17    A       That is correct, yes.

18    Q       So that looks like your decision?

19    A       Those are my words to Constable Burton, based on  
20           my understanding of how the business was done,  
21           that was the industry standard, and that didn't  
22           end there because that got relayed to my  
23           supervisor and all of the way up the chain of  
24           command to Mr. Miller. And I was right in  
25           assuming that, or at least so I was told.

1 Q If we move down a paragraph, sir, during March  
2 and April of '91, you have more conversations,  
3 and this is the one where you claim that Burton  
4 told you that he would withdraw his pursuit of  
5 Zanidean entirely. Do you see that, in the  
6 middle of the paragraph?

7 A Yes, sir, I do.

8 Q And then you say the last four lines.

9 "He assured...",  
10 meaning Burton,  
11 "...assured me that his detachment  
12 commander had approved, and I reminded him  
13 that we would not make Zanidean privy to  
14 this arrangement until after he testified."  
15 So once again, this seems to be your position,  
16 your decision that Zanidean will not be told  
17 that he is not going to be pursued at all on the  
18 arson charge; am I right?

19 A No, sir, I don't agree with you there. I  
20 didn't, in 1990 or at any other time, have  
21 anything to do with rules of evidence or  
22 prosecution strategy, or any of the rules  
23 governing the tainting of witnesses. I was  
24 operating on an understanding of the  
25 requirements of the Crown, and I was right about

1           that.

2       Q     But the Crown could hardly tell you beforehand  
3           that this is how things would go, until they had  
4           reason to think that Zanidean was going to have  
5           immunity in the first place?

6       A     Correct. But what they could do is they could  
7           listen to me telling them just exactly what you  
8           read here, me telling Constable Burton that I  
9           wouldn't be making Mr. Zanidean aware of that.  
10          And they could, Mr. Miller that is, say that's  
11          exactly what needs to be done and don't let him  
12          know until after his testimony.

13      Q     Then you say in the next line,  
14                    "Following this conversation, Paul and I  
15                    notified Johnson, Vandergraaf and Bruce  
16                    Miller."

17           Do you see that?

18      A     Yes, sir.

19      Q     That's not following that we discussed whether  
20           this was the thing to do, but rather that you  
21           guys just notified them that that's what was  
22           being done?

23      A     I was reading the wrong paragraph, if you will  
24           give me a second?

25      Q     Sorry.

1 A Yes.

2 Q And were you ever a part of -- we heard about a  
3 meeting, sir, that took place, apparently -- it  
4 is interesting how people have different  
5 memories of different meetings. There was a  
6 meeting attended by a number of people in which  
7 it was debated as to whether or not Zanidean  
8 should be told that he had immunity. Do you  
9 remember such a meeting, sir, where this issue  
10 was debated?

11 A I don't remember any meeting where, any one  
12 meeting where it was debated. I remember having  
13 discussions every step of the way, starting with  
14 the very first night with Staff Sergeant  
15 Vandergraaf, other supervisors, Inspector Randy  
16 Bell, and ultimately Mr. Miller. I don't  
17 remember one specific meeting.

18 Q You don't sort of talk about these meetings  
19 where you debate the issue in your statement  
20 with Commission Counsel. Am I right?

21 A I don't know.

22 Q The closest you get to it is that you notified  
23 one, two, three people about what your  
24 conversation had been with Burton in March and  
25 April of '91. Do you see that? That's what I

1 just read to you, that's the reference. But we  
2 heard from Vandergraaf, sir, of a meeting that  
3 you attended, that Paul attended, that Bell  
4 attended, and that Bruce Miller attended, in  
5 which the issue of whether or not to tell  
6 Zanidean was debated at some length, I think he  
7 said an hour or so?

8 A That could very easily be the case. I believe  
9 what I told Mr. Code in my interview, and if I  
10 didn't, I should have, is that these matters  
11 were discussed immediately after they happened  
12 with my supervisor, with my divisional  
13 commander. But I believe I told Mr. Code that I  
14 don't recall every instance how -- some of the  
15 times the divisional commander would be speaking  
16 to Mr. Miller and relay his instructions back,  
17 either directly to Sergeant Paul and me, or to  
18 Sergeant Vandergraaf, and then to us indirectly.  
19 THE COMMISSIONER: The division commander, I'm  
20 sorry, I have got a little confused, that would  
21 be who?

22 THE WITNESS: Well, the divisional commander at  
23 that time was an inspector, and at that time it  
24 was inspector -- I'm not sure what time we are  
25 talking about, but at one point halfway through



1 this, for the first half it was a man named  
2 Inspector Randy Bell, and for the second half or  
3 towards the end it was a man named Inspector  
4 D.K. Johnston.

5 THE COMMISSIONER: Thanks.

6 BY MR. LOCKYER:

7 Q Whether it was one meeting, or no meetings or a  
8 dozen meetings, it just seems that no one  
9 recorded anything contemporaneously with any  
10 meeting? Are you aware of any contemporaneous  
11 recording of any of these meetings?

12 A No, sir, I'm not.

13 Q You didn't make any?

14 A I believe I have come across a memo or two in  
15 these books of documents from Bruce Miller  
16 referring to meetings with me or with Al Paul or  
17 both of us, but for the most part you are  
18 correct.

19 Q But not with contents including that you are not  
20 going to tell Zanidean about his immunity?

21 A No, sir, I didn't come across anything like  
22 that.

23 Q No. And it is sort of interesting, sir,  
24 certainly it is good advice you might say to  
25 anyone, that when you are dealing with a

1 dangerous witness like Zanidean, and by  
2 dangerous I mean someone who is likely to say  
3 one thing one day and something else the next  
4 day, that's what I mean by dangerous, I don't  
5 mean physically dangerous, when you are dealing  
6 with a dangerous witness like Zanidean, an  
7 unreliable witness like Zanidean, an unsavory  
8 witness like Zanidean, would you not -- and  
9 talking tactics of how to deal with him and how  
10 to approach him and so on and so forth, would  
11 that not be the kind of circumstance where you  
12 would always want to make as many notes as you  
13 possibly could to cover you for the future if  
14 Zanidean were to turn on you?

15 A Mr. Lockyer, when one takes a retrospective view  
16 of any matter like this, and asks the question,  
17 should there have been more documentation or  
18 less, we all know what the answer is. But at  
19 the same time I didn't think -- I didn't think  
20 there was anything wrong with the documentation  
21 that was being done, and I'm not convinced today  
22 that there was, because I certainly didn't  
23 receive any representation from any of my  
24 superiors that there wasn't enough documentation  
25 happening. That is a very, very common thing

1 for a supervisor to do. I did it myself for  
2 many years following this. Go to the officer  
3 and say, that story you told us during the  
4 briefing, give us a supplementary report on  
5 this. That's a common thing to do.

6 Q We keep hearing from your counsel, sir, what an  
7 experienced and good investigator you were. And  
8 yet despite that, I mean, it cuts both ways, if  
9 you were such a good and such an experienced  
10 investigator, how could you so carelessly not  
11 document your dealings with such a dangerous  
12 witness as Zanidean? It boggles the mind.

13 A I don't accept your premise, sir.

14 Q What premise?

15 A The premise that it was careless. I don't view  
16 it as careless. Looking at it today -- I didn't  
17 approach investigations as if there was going to  
18 be an inquiry 16 years later, and that someone  
19 who could confirm my evidence would be dead. I  
20 didn't expect an RCMP officer to lie and falsify  
21 reports. So I may have taken fewer notes than I  
22 would today if I was doing this again.

23 Q Did you know, sir, that Mr. Kovnats has told  
24 Commission Counsel that you, meaning you  
25 Anderson and you Paul, that you Anderson

1 particularly, and the Crowns, had always made it  
2 clear to him that Mr. Zanidean had immunity from  
3 prosecution on the arson charge?

4 A No, that's just not true.

5 MR. WOLSON: And I can tell you as well, because  
6 it is in Kovnats' material, that when it was  
7 raised by Mr. Kovnats, it was denied way back  
8 then by Anderson and Paul.

9 MR. LOCKYER: I think Mr. Wolson is sort of  
10 going to go after me, he can do what he wants  
11 when he is after me. I'm not quite sure why he  
12 stands up and makes speeches.

13 MR. WOLSON: It is not making speeches. When  
14 evidence is misstated, it is an obligation that  
15 I have to try and put it on the record properly.

16 BY MR. LOCKYER:

17 Q Mr. Kovnats said what Mr. Kovnats said, to  
18 Commission Counsel, that you and the Crowns had  
19 promised his client immunity, and he had no  
20 doubt that his client had it, at least according  
21 to you and the Crowns. And you deny that, sir?

22 A Absolutely.

23 Q You made the suggestion, sir, that this practice  
24 of obtaining benefits for Crown witnesses, and  
25 then concealing from them the fact that they

1 have got these benefits, was a common practice  
2 in the Winnipeg Police Department and in  
3 Manitoba Justice; am I right?

4 A Well, no, I don't think I said that at all.  
5 What I said was that the industry standard, if I  
6 could call it that, is that we don't buy  
7 evidence. We don't fix charges for people, we  
8 don't --

9 Q Will you focus on the question? Was it industry  
10 standard, sir, that if you got a witness  
11 something that he wanted, as you had in the case  
12 of Zanidean, that you kept it from the witness?

13 A Well --

14 Q Is that standard practice?

15 A This was a highly unusual case, because there  
16 was never ever any intent on anyone's part, not  
17 mine, not Sergeant Paul's, not Staff Sergeant  
18 Vandergraaf's, anyone else in the  
19 robbery/homicide unit, or Mr. Miller, that Ray  
20 Zanidean and James Driskell not face justice on  
21 that arson. That was a late-breaking  
22 development that no one had ever imagined.

23 Q You know, that simply doesn't answer the  
24 question, sir, so I'm going to have to do it  
25 again I'm afraid. Let me try it this way. Had

1           you ever been involved before in the purposeful  
2           withholding of information from a witness so  
3           that he would not know a benefit he was getting  
4           from his testimony?

5    A       No, sir, not before nor after.

6    Q       Were you aware, sir, of this having occurred in  
7           the Winnipeg Police Department before or since?

8    A       No, sir.

9    Q       So, your suggestion to Burton on October '90,  
10           and then again in March of '91, or April of '91,  
11           April really of '91 we now know it to be, that  
12           what Zanidean was getting from Swift Current  
13           would not be passed on to Zanidean was not in  
14           fact, that statement of yours to Burton in those  
15           two calls, was not a reflection of Winnipeg  
16           Police practice, because you had never  
17           encountered that situation before. Is that  
18           right?

19   A       No, not that exact situation.

20           THE COMMISSIONER: Whenever it is convenient,  
21           Mr. Lockyer.

22           MR. LOCKYER: Can I just finish this area?

23           THE COMMISSIONER: Yes.

24           BY MR. LOCKYER:

25   Q       Can we at least safely assume, sir, that the

1 trial Crowns, Dangerfield and Lawlor, would have  
2 know what was going on with Zanidean, that he  
3 was safe from prosecution in Swift Current, but  
4 according to you, he hadn't been advised about  
5 it?

6 A Your question is, can we safely assume that the  
7 prosecuting Crown Attorneys were aware of what?

8 Q Of the fact that Zanidean had that immunity, but  
9 that Zanidean hadn't been told about it?

10 MR. PROBER: Mr. Commissioner, I'm going to  
11 object to that question on behalf of  
12 Mr. Dangerfield. I didn't know this judicial  
13 proceeding dealt with assumptions, and I'm  
14 objecting to the question because Mr. Lockyer is  
15 asking this witness to assume something that  
16 somebody else may have assumed. So I object on  
17 that basis.

18 BY MR. LOCKYER:

19 Q Well, I'm really simply asking a question that  
20 arises directly out of your statement to  
21 Commission Counsel, sir, at page 29, which said,  
22 "Further Anderson believes that the Crown  
23 was fully aware of the arrangements that  
24 had been reached regarding the Swift  
25 Current arson and would have corrected

1 Anderson's statement if it had been  
2 inaccurate, that statement being the  
3 statement in tab 41 in response to  
4 Mr. Brodsky's disclosure request."

5 Does that prove what you said there?

6 A The page number was?

7 Q 29 of your statement?

8 A And where are you reading?

9 Q Sort of the end of that, near the bottom, sir,  
10 of the page.

11 "Further Anderson believes that the  
12 Crown...",  
13 you have just been talking about the response to  
14 Brodsky's disclosure request. Remember you were  
15 taken through that, tab 41, on Thursday?

16 A Yes, sir.

17 Q Right. And you then say, and I will put in a  
18 few words so it is clear what you were saying  
19 here.

20 "Further Anderson believes that the Crown  
21 was fully aware of the arrangements that  
22 had been reached regarding the Swift  
23 Current arson, and would have corrected  
24 Anderson's statement in the occurrence that  
25 was responding to Brodsky's request if the



1 statements had been considered inaccurate."

2 Do you see that? Is that true, sir?

3 A Yes, sir.

4 Q What you said there?

5 A Yes.

6 Q So you had every reason to believe that the  
7 Crowns knew about what was going on?

8 A Yes, I expected they would from Mr. Miller.

9 Q And I would assume as well, sir, that you must  
10 have spent some, a fair bit of time with  
11 Mr. Dangerfield before or during the trial; am I  
12 right?

13 A Wrong.

14 Q And Mr. Lawlor?

15 A No, I don't recall having any contact with  
16 Mr. Dangerfield, and if I had any contact with  
17 Mr. Lawlor, I think it was mostly through  
18 written communication.

19 Q I find that difficult to believe, sir, that two  
20 Crowns prosecuting a case, about to call a  
21 witness who they would surely know is a very  
22 difficult witness indeed, wouldn't have spent  
23 time with you and your partner in discussing  
24 that witness. But you say you don't remember  
25 that happening?

1 A It may have to some extent, I just don't have  
2 any recollection of that at all. I might add  
3 that I wasn't the trial coordinator, so they  
4 were in contact with Staff Sergeant Vandergraaf.

5 Q I suggest you did have -- that you would have  
6 inevitably have spent considerable time with the  
7 Crowns before they called Zanidean, because of  
8 concerns as to how Zanidean might react on the  
9 witness stand?

10 A I don't think that's the case.

11 MR. LOCKYER: This is a good time,  
12 Mr. Commissioner.

13 THE COMMISSIONER: All right. We will break for  
14 15 minutes.

15 THE CLERK: All rise. This Commission of  
16 inquiry is now in recess.

17 (Proceedings recessed at 11:06 and  
18 reconvened at 11:25 a.m.)

19 THE CLERK: All rise. This Commission of  
20 Inquiry is now recommenced. Please be seated.

21 BY MR. LOCKYER:

22 Q Just two more areas that I want to ask you  
23 about. First of all, could you go to tab 41 of  
24 Commission Counsel's book? This is the report  
25 drafted in response to Mr. Brodsky's disclosure

1 requests, and I understand that you are in fact  
2 the author of the whole report. Is that right?

3 A Yes, sir, I am.

4 Q And your attention, sir, was brought by  
5 Commission Counsel to the paragraph at the  
6 bottom of the first page, right? Your attention  
7 was drawn to the paragraph at the bottom of the  
8 first page, sir, where you wrote,

9 "With respect to the second part of this  
10 question...",

11 of Mr. Brodsky's, in other words?

12 THE COMMISSIONER: Do you have a legible copy  
13 there?

14 THE WITNESS: Yes, I do, my lord.

15 BY MR. LOCKYER:

16 Q "...we are not aware of a single criminal  
17 charge outstanding against a single  
18 subpoenaed witness at the time of the  
19 deceased's disappearance."

20 It is an interesting way of putting it. Of  
21 course, I guess the arson of course happened  
22 after the deceased's disappearance, right, the  
23 Swift Current arson, about a month after?

24 A Yes, that's true. But the lines that you are  
25 reading were in answer to what I think was a --

1 I didn't understand the nature of Mr. Brodsky's  
2 question either. He was interested in this  
3 point, in knowing about at the time of Perry  
4 Harder's disappearance, which witnesses did  
5 Winnipeg Police have that had outstanding  
6 charges?

7 Q He didn't really put it that way, sir. At tab  
8 33 he said, it is item 5, it subsequently became  
9 item 6 in a memo, but item 5 of April 25th, '91  
10 he says what charges they had,

11 "The criminal records of witnesses on your  
12 the list, what charges they had at the  
13 time."

14 And you interpreted the time to be the time of  
15 the disappearance of Mr. Harder; is that right?

16 A Well --

17 Q Is that what you did?

18 A The problem that I have, Mr. Lockyer, is this  
19 whole business of letters from Mr. Brodsky that  
20 Mr. Code walked me through in my  
21 evidence-in-chief, I find confusing. I have to  
22 make the assumption that I'm answering that  
23 question.

24 Q Conveniently perhaps, at the time of the  
25 deceased's disappearance, of course, the arson

1           hadn't happened, correct? And you knew that?

2    A       Well, first of all, paragraph 5 here, I can't be  
3           absolutely certain that that's the question that  
4           I'm answering in question 6.

5    Q       Well, if you go to tab 38, sir, you will see how  
6           it gets tied in and gets changed to number 6.  
7           Go to tab 38, sir, and that I think that will  
8           answer your question. That's where the same  
9           request becomes item 6. But could we move on  
10          from here? I'm trying to have you answer, when  
11          you drafted your response, sir, you knew, of  
12          course, that the arson happened after Mr. Harder  
13          disappeared; am I right?

14   A       I knew that the arson happened after Perry  
15          Harder disappeared?

16   Q       Yes?

17   A       Yes, sir, I did.

18   Q       You then say, sir, that,

19                       "Furthermore protection is the only  
20                       favorable consideration given to any  
21                       witness. We are not aware of any stayed  
22                       charges or any other deals made with any  
23                       witness in exchange for testimony."

24           Of course, you were aware when you wrote this of  
25           a charge for which Mr. Zanidean had immunity; am

1 I right?

2 A This is written on the 18th of May, so I knew  
3 through my phone call to Swift Current that he  
4 had what amounted to immunity, but the problem  
5 is, it wasn't at all in exchange for his  
6 testimony, nor did he know about it.

7 Q And, of course, you didn't mention it in  
8 response to Brodsky's question; right?

9 A I didn't mention the Swift Current call?

10 Q The immunity?

11 A No.

12 Q And you realized that Mr. Brodsky was asking you  
13 a motivation question, he wanted to know  
14 motivation of witnesses to fabricate stories; am  
15 I right?

16 A That's a reasonable inference, yes.

17 Q Yes. And you didn't tell him in responding to  
18 this question that Mr. Zanidean had been seeking  
19 immunity? I know your position is that he  
20 hadn't been told he had it, let's forget his  
21 lawyer's position, but that's your position.  
22 But you didn't tell Mr. Brodsky in answer to the  
23 question, a motivation question, well, he had  
24 certainly been seeking immunity, did you?

25 A Let me explain, Mr. Lockyer. When requests from

1 Crown Attorneys come in to, usually the trial  
2 coordinator or the divisional commander, or the  
3 inspector, they get sent to the investigators,  
4 and sometimes the original request, each  
5 investigator doesn't get the request in its  
6 entirety, a portion of it will be photocopied.  
7 When I typed the answer to question 6, I was  
8 typing an answer to a question that I had been  
9 asked to answer.

10 Q And you certainly weren't fulsome in the  
11 information that you provided, sir. You managed  
12 to steer completely clear of the arson in  
13 Saskatchewan which had occupied a lot of your  
14 time; am I right?

15 A Well, if you are asking me if I mentioned it in  
16 this response, no, sir, I didn't.

17 Q And I'm suggesting you carefully avoided it,  
18 sir?

19 A Well, the point is, I answered the question  
20 honestly.

21 Q Did you carefully avoid it or not?

22 A I think I answered the question honestly.

23 Q Please answer the question; did you purposely  
24 avoid talking, did you purposely use words that  
25 enabled you to avoid talking about the arson,

1           sir? When you wrote this, did you say to  
2           yourself, I am not going to say anything about  
3           the arson?

4    A       I don't think I did, because the Crown Attorney  
5           knew everything about this that I knew. I  
6           answered this question to the best of my  
7           ability.

8    Q       So, you didn't purposely leave out the arson in  
9           Swift Current from your answer, am I right? You  
10          are saying you didn't?

11   A       I think what I set about to do was not describe  
12          to Mr. Brodsky about the phone call to Swift  
13          Current, or about any phones calls I had with  
14          Ross Burton, I set about to answer a specific  
15          question.

16   Q       I think perhaps your answer gives us the answer,  
17          sir, the way you have answered the question.

18                Go over the page, sir, to question 23.

19          First of all, you knew, did you not --

20   A       Where do I go?

21   Q       Just turn the page, tab 41. You knew, did you  
22          not, sir, that Mr. Zanidean had also apparently  
23          been the informant on the -- the informant and  
24          had provided the information that lead to the  
25          raid back in -- I have to get my years right --



1 in the previous year, in 1989, which had lead to  
2 the original arrest of Mr. Harder and  
3 Mr. Driskell; am I right?

4 A Yes, sir.

5 Q So when you answered that last question, sir,  
6 you would have been aware that Mr. Zanidean had  
7 been an informant, both with respect to the  
8 homicide, of course, and also with respect to  
9 the raid back in 1989; am I right?

10 A If I remembered at the time that I wrote that, I  
11 would have known that he was the informant in  
12 the chop shop business because I have seen that  
13 in my notes now.

14 Q Right. I didn't know you had seen it in your  
15 notes, I don't remember you having any notes  
16 about it, but Paul certainly did?

17 A That may be the case. You could be right.

18 Q The question there that Mr. Brodsky had asked,  
19 sir, if we go back to tab 33, was -- I'm not  
20 sure I can find the question. Suffice to say  
21 the question that he had asked was whether  
22 Mr. Zanidean had been an informant in the past?  
23 I am sorry, I can't find it quickly where he  
24 wrote that, but certainly that's the question  
25 that he asks, sir. And you responded, if you

1 look at 41 again, question 23.

2 "The Winnipeg Police Department has no  
3 information on file that we are aware of  
4 relating to Mr. Zanidean's involvement in  
5 the drug scene."

6 That's also a question that he asked?

7 A Which question is that, sir, number?

8 Q I can't find the question, but suffice to say  
9 that's a question he asked. I am sorry, I can't  
10 take you to the question quickly.

11 A The answer you are reading is question 23?

12 Q Reading your answer.

13 A Number 23?

14 Q Yes. Yes, sorry, I misunderstood what you said.

15 "The Winnipeg Police Department has no  
16 information on file that we are aware of  
17 relating to Mr. Zanidean's involvement in  
18 the drug scene. We are not aware of Mr.  
19 Zanidean ever having acted in the capacity  
20 of a police informant prior to his  
21 involvement with James Driskell."

22 Was that an answer that was designed to be sort  
23 of a half truth, sir, that that does take into  
24 account the fact that he had been a police  
25 informant on what you call the chop shop

1 charges, but doesn't actually state that as  
2 such?

3 A No, that wasn't designed to be anything but an  
4 accurate answer.

5 Q It wasn't designed to be accurate, but actually  
6 avoid giving Mr. Brodsky the information that  
7 Mr. Zanidean had been the informant back in  
8 1989?

9 A Well, I don't know if it is in Sergeant Paul's  
10 notebook, maybe I didn't realize it at the time,  
11 I don't know.

12 Q I think I'm right in saying, sir, that it wasn't  
13 until 2006 that anyone who is representing  
14 Mr. Driskell discovered that Mr. Zanidean had  
15 been the informant back in 1989. So that this  
16 answer, which perhaps gave -- provided that  
17 opportunity to identify him as such, had failed  
18 to do so. And I'm wondering if you worded it  
19 purposely to be ambiguous?

20 A No, I can assure you I did not, sir.

21 Q I'm going to suggest to you, sir, by way of  
22 rounding this off, that really what was at work  
23 here in this whole investigation, in the failure  
24 to record things in writing, in the whole  
25 seeming, ignoring of what might be considered

1 normal and proper police procedures in this  
2 case, and especially this response, tab 41, to  
3 Mr. Brodsky's disclosure request, is reflective  
4 of a culture in the police, a police culture,  
5 and also reflective of a Crown culture at work,  
6 that you were quite sure that you would get away  
7 with everything and that you would never be  
8 called to account, as you are now being called  
9 to account, sir. Is that right?

10 A You don't know how wrong you are, sir.

11 Q Can we talk about the recantation for a minute,  
12 sir, of Mr. Zanidean. You found out that he had  
13 recanted to your partner, Mr. Paul; am I right,  
14 on June 20th of 1991?

15 A Yes, I found out about that.

16 Q And I don't quite recall it, I think you were  
17 asked by Commission Counsel to justify your  
18 failure to disclose this information then and  
19 there to the Crown, and what is your  
20 justification for not disclosing this?

21 A Well, first of all, I don't know that we didn't.  
22 This is a matter that I have no recollection of  
23 until preparing for this inquiry. I don't deny  
24 that Sergeant Paul informed me of it, he would  
25 have, it makes sense that he would have, we were

1 looking after Mr. Zanidean at the time, I just  
2 don't have any recollection of it. And I expect  
3 that we did notify the Crown, but I don't know.  
4 Q Well, no report was written on it by you or Paul  
5 until two years later, am I right, sir? There  
6 is a report finally written in 1993 about it?  
7 A By Sergeant Paul?  
8 Q Yes?  
9 A Yes, but it is unthinkable that we wouldn't have  
10 discussed it with Bruce Miller. That would have  
11 been a major event.  
12 Q Oh, Bruce Miller again, all right. So Bruce  
13 Miller then seemingly, at least as far as we  
14 know, kept to himself information that  
15 Mr. Zanidean had recanted to Sergeant Paul. Am  
16 I right?  
17 A I don't know that.  
18 Q And of course, what Sergeant Paul told you was  
19 that Zanidean had said, I'm going to tell  
20 everyone that you put me up to what I have said,  
21 right? In essence, that's what Zanidean said?  
22 A In essence, that's what I understand he said,  
23 yes.  
24 Q And he said the same thing to Mr. Brodsky, you  
25 know that, sir; right?

1 A I do now, yes, sir.

2 Q And your position about that is just what --  
3 Zanidean was just in a fit of pique and there  
4 was no real meaning to what he was saying; is  
5 that your position?

6 A Well, it is perfectly understandable to me  
7 today, given the context in which it has  
8 happened, because at that time, as I think  
9 everyone knows, Mr. Miller and Mr. Kovnats were  
10 in a negotiating process, both before  
11 Mr. Zanidean's testimony and after.

12 Q Presumably that's what you thought back on  
13 June 20th of '91 when your partner first told  
14 you about it? I mean, you were right in the  
15 thick of it?

16 A Presumably, yes, that's certainly what I think  
17 today. And also at that time, this is the time  
18 frame that I've described earlier in my  
19 evidence, where Sergeant Paul and myself  
20 especially, and maybe to a lesser extent Staff  
21 Sergeant Vandergraaf, were in daily and hourly  
22 contact with Mr. Miller. That's why I say it is  
23 unthinkable that we didn't relay this event to  
24 him. And in order to -- as I recall, the  
25 June 21st blow-up with Sergeant Paul resulted in

1 an end of the arrangement we had at the hotel  
2 looking after him. And we wouldn't have dreamed  
3 of ending that arrangement without consulting  
4 with Mr. Miller.

5 Q We do have the benefit, sir, of Mr. Zanidean's  
6 recantation made to Mr. Brodsky, likely within  
7 minutes of the one that he made to your partner,  
8 Paul. Have you ever heard it, sir?

9 A Not in its entirety, I have just heard that it  
10 exists.

11 Q Could we play it, Mr. Commissioner, if could  
12 mark it as an exhibit and play it, and we have a  
13 transcript of it that can be followed --  
14 although it is very clear, as I recall -- at tab  
15 8 of that blue book.

16 THE COMMISSIONER: Tab 8 of exhibit 10A.

17 BY MR. LOCKYER:

18 Q And the note you will see, sir, Mr. Brodsky has  
19 written a memo,

20 "Somebody called at 4:55 on June 20th,  
21 would not leave a name. I recorded the  
22 conversation as follows."

23 And you will see G.G.B. is of course Mr.  
24 Brodsky, and X.X. is the person we think we now  
25 know to be Mr. Zanidean, and I imagine that you

1 are going to recognize his voice when you listen  
2 to this tape.

3 (Tape played)

4 MR. LOCKYER: Could we start again and do it a  
5 bit louder, is that possible?

6 THE CLERK: Yes.

7 MR. LOCKYER: It was a lot clearer on my car  
8 radio, for some reason.

9 (Tape played)

10 BY MR. LOCKYER:

11 Q Just one point of understanding, sir, 4735, if  
12 you look at the numbering, Mr. Brodsky asked,  
13 does he know where any of the missing items are?  
14 And the missing items, what might well have been  
15 in Brodsky's mind is missing items could have  
16 been the gun, shovels, those kind of things. Is  
17 that right?

18 A I don't what Mr. Brodsky is talking about there,  
19 sir.

20 Q Well, there were missing items. The shovels  
21 used to bury Mr. Harder's body were missing,  
22 never recovered; is that right?

23 A That's correct.

24 Q And the gun that was used to kill him was never  
25 recovered?



1 A That's also correct, sir.

2 Q And just talking in common sense terms, those  
3 may have been the missing items that Mr. Brodsky  
4 was referring to?

5 A That is possible.

6 Q You have never heard that conversation before,  
7 sir?

8 A No, sir, I haven't, I heard of it.

9 Q Did you recognize Zanidean's voice, sir?

10 A Well, I wouldn't want to identify it in court,  
11 but I don't take issue with the suggestion that  
12 it is Mr. Zanidean.

13 Q And now you have heard the tape, sir.  
14 Mr. Zanidean doesn't sound angry, does he,  
15 during the conversation? He sounds anxious more  
16 than anything, do you agree?

17 A I don't know if I agree with that or not. I  
18 didn't take any information from that.

19 Q He sounds earnest and serious, sir; is that how  
20 you heard his voice?

21 A I don't know. I don't get anything out of his  
22 voice. He is telling a story.

23 Q And what he says here, sir, is certainly  
24 reflective of what Paul told you he had said to  
25 him that same day?

1 A It sounds like the kind of thing Ray Zanidean  
2 would do to push Mr. Miller's buttons, yes, and  
3 similar to the blow-up with Mr. Paul, yes, with  
4 Sergeant Paul.

5 Q So you sort of answered a question I didn't ask  
6 and then answered my question. So it was  
7 reflective of what Paul told you he had said to  
8 him; am I right?

9 A Something similar, yes. I believe he told  
10 Sergeant Paul he would go to the media, if I  
11 remember correctly.

12 Q He doesn't say anything here about going to the  
13 media. He told Paul that he had been  
14 essentially, in short, briefed as to what to say  
15 by you and Paul. That's what he told Paul and  
16 that's what he is saying to Mr. Brodsky, in  
17 essence; am I right?

18 A I don't recall that. Would you take to me to --  
19 that would be in the supplementary to Sergeant  
20 Paul?

21 Q It is in the supplementary to Paul, yes. You  
22 don't recall him saying that to Paul, or Paul  
23 recording him saying that he was going to say  
24 that he had been told what to say?

25 A I don't recall that specifically. My off the

1 top of my head recollection is that he told  
2 Sergeant Paul that he would go to the media and  
3 recant, or something like that.

4 Q Is what Mr. Zanidean was saying here true, sir?

5 A Is what Mr. Zanidean is saying to Mr. Brodsky  
6 true?

7 Q Yes?

8 A Absolutely not.

9 Q But you have to acknowledge, don't you, sir, the  
10 Kara brothers said the same things about the  
11 officers who dealt with them, and Mr. Gumieny  
12 was subsequently to say the same thing about the  
13 officers who dealt with him. You know that,  
14 don't you?

15 A I heard about the Kara brothers making a  
16 complaint, but I wasn't aware of Mr. Gumieny  
17 making that complaint.

18 Q Pretty remarkable symmetry in the four  
19 witnesses, that they all ultimately came  
20 forward, indeed, in the case of the Karas,  
21 within 24 hours of being questioned by the  
22 police, but over time all four of them came  
23 forward with the same claim. Do you see  
24 anything in that, Mr. Anderson?

25 A If it is true that all four did, believe me,

1 that says nothing about whether or not it is  
2 true.

3 MR. LOCKYER: All right. That's all. Thank  
4 you.

5 (EXHIBIT 11: CD of telephone call by  
6 Zanidean to Brodsky)

7 THE COMMISSIONER: You may continue.

8 BY MR. GATES:

9 Q Thank you. There are three or four areas that I  
10 would like to ask you some questions about  
11 Sergeant Anderson, most of them relating to  
12 Swift Current, for obvious reasons.

13 First of all, do I understand correctly  
14 that you were the only member of the Winnipeg  
15 Police Service who was dealing directly with  
16 Constable Burton and the Swift Current  
17 Detachment regarding their arson investigation?

18 A To my knowledge, I mean, I can't tell you if  
19 Constable Burton phoned me once and ended up  
20 talking to Sergeant Paul or Sergeant Vandergraaf  
21 for a time, but to my knowledge, I was the only  
22 one talking to Constable Burton, yes, sir.

23 Q Thank you. Again, based on what we have been  
24 able to put together, it appears that you had  
25 three, four, perhaps five phone calls with

1 Constable Burton over the course of the time  
2 period that we are dealing with here; one in  
3 October, possibly two in April, two in July,  
4 five phones calls.

5 A One phone call, October 27th, where I spoke to a  
6 Swift Current Detachment person, but not  
7 Constable Burton; one on October 30th where I  
8 spoke to Constable Burton; two in April to do  
9 with the witness protection issue; and one on  
10 July 16th, one on July 18th, and now my memory  
11 is starting to fail me. I will have to check my  
12 memo.

13 Q So five phone calls with Constable Burton, a  
14 total of five phone calls?

15 A Five so far -- if I can just refer to my memo?

16 Q Okay.

17 A Yes, sir, I believe it was five.

18 Q Okay. What did you know about Constable Burton?

19 A Nothing.

20 Q Have you ever met him?

21 A No, sir.

22 Q Since this event, have you ever met him?

23 A No, sir, I haven't.

24 Q Did you know anything about his background or  
25 experience?

1 A No, sir. He sounded to me to be somebody of  
2 similar experience to me, to myself.

3 Q You knew that he was a Constable?

4 A Well, yeah, he was a Constable working in  
5 detectives, yes.

6 Q Did you know if he was a recruit or a senior  
7 constable?

8 A No, sir.

9 Q Did you make any inquiries about his level of  
10 experience?

11 A No, sir, I didn't.

12 Q Do you know someone by the name of Staff  
13 Sergeant Ron Ferguson?

14 A Well, obviously I have heard about him in  
15 connection with this inquiry, but I didn't  
16 before, no, sir.

17 Q Were you aware that he made a trip to Winnipeg  
18 after the conclusion of Mr. Driskell's trial, at  
19 which point he took a statement from  
20 Mr. Driskell?

21 A Well, I wasn't at the time, but I believe I  
22 learned that during the Hall and Ewatski review  
23 of '93.

24 Q Did you by chance meet Staff Sergeant Ferguson  
25 when he was in Winnipeg to take the statement

1 from Mr. Driskell?

2 A No, sir, I did not.

3 Q Were you in the office, the Winnipeg Police  
4 Service office, when Staff Sergeant Ferguson  
5 came to interview Mr. Driskell?

6 A No, sir, I wasn't.

7 Q If I could have your indulgence for a moment,  
8 sir?

9 THE COMMISSIONER: Certainly.

10 BY MR. GATES:

11 Q If I could have you look at exhibit 1, Sergeant  
12 Anderson, which is a book of documents that was  
13 put together for the evidence of Inspector  
14 Burton and Staff Sergeant Ferguson. I'm just  
15 going to quickly refer you to a few of them.  
16 First of all, at tab number 17?

17 A Yes, sir, I have it.

18 Q This is a telex sent from the Swift Current  
19 Detachment to the Winnipeg Police Service asking  
20 for assistance with respect to interviewing Ray  
21 Zanidean. Is that a fair characterization of  
22 what this document is?

23 A Yes, sir, it is.

24 Q Have you ever seen this before?

25 A No, sir, I haven't.

1 THE COMMISSIONER: And the date of that is --

2 MR. GATES: It is the 27th of July, 1990.

3 BY MR. GATES:

4 Q Next, tab 20, Sergeant Anderson?

5 A Yes, I am there.

6 Q This is a continuation report prepared by

7 Constable Burton in the Swift Current file dated

8 the 8th of August, 1990, in which, as you can

9 see, he indicates that he has received a call

10 from Sergeant Ian Mann of Winnipeg Police

11 Service arson unit, and that he will be

12 interviewing Ray Zanidean that day. Do you see

13 that?

14 A Yes, sir, I do see that.

15 Q Were you aware --

16 A No.

17 Q Just a second -- were you aware that Sergeant

18 Mann had planned to interview Mr. Zanidean on

19 the 8th of August, 1990, with respect to the

20 Swift Current arson?

21 A No, sir. I believe I first became aware of that

22 in '93.

23 Q Would you then perhaps turn to tab number 30?

24 Are you with me?

25 A Yes, sir, I am.



1 Q This is a letter from Constable Burton to the  
2 Winnipeg Police Department, attention Sergeant  
3 Mann, and it is dated 14th of December, 1990?

4 THE COMMISSIONER: I am sorry, Mr. Gates, I got  
5 a little behind. The number?

6 MR. GATES: Tab 30, sir.

7 THE COMMISSIONER: Thank you.

8 BY MR. GATES:

9 Q And I quote:

10 "It is my understanding that you have  
11 spoken with Tom Anderson of your force and  
12 are aware of the circumstances surrounding  
13 this investigation."

14 The letter goes on to enclose two copies of the  
15 investigation, the Swift Current investigation,  
16 to support the request that was being made of  
17 the Winnipeg Police Service. Do you see that in  
18 the letter, Sergeant Anderson?

19 A Sorry, could you direct me to where you are  
20 reading from?

21 Q The second sentence,

22 "Enclosed please find two copies of our  
23 investigation."

24 A Are we at tab 30?

25 Q Tab 30, a letter dated 14th of December, 1990,

1 to the Winnipeg Police Service, attention  
2 Sergeant Mann from Constable Burton.

3 A And the beginning of it is, Dear Sir, and if you  
4 could take me to what you are asking me about?

5 "Dear Sir, re Carol Hayek...",  
6 that's the one?

7 Q Right. The second sentence is,

8 "Enclosed please find copies of two of our  
9 investigations."

10 A Okay, I see that now.

11 Q "All relate to arsons at Hayek's  
12 residence."

13 Do you see that?

14 A Yes, sir, I do.

15 Q And do you agree that, according to this letter,  
16 Sergeant Mann was provided with copies of the  
17 Swift Current investigations relating to arsons  
18 involving Hayek's residence?

19 A That is what this letter would suggest, yes,  
20 sir.

21 Q And would you agree that, according to this  
22 letter, Constable Burton is of the understanding  
23 that Sergeant Mann had spoken to you about this  
24 request?

25 A That's what it says. I find that hard to

1 believe. But this is written December 14th of  
2 1990, Mr. Gates. I don't have the entire file,  
3 as I may have mentioned before here, I don't  
4 know if this is after Sergeant Mann and  
5 Constable Burton have had a conversation, or why  
6 Constable Burton thinks that Sergeant Mann and I  
7 have talked.

8 Q Well, I have just referred you to the August 8  
9 notation in Constable Burton's file.

10 A Which is tab --

11 Q Tab 20. So just to take you back at tab 17, we  
12 have a July 27, 1990 telex to the Winnipeg  
13 Police Service asking for assistance?

14 A Yes, I remember that. I remember seeing that  
15 just now I should say.

16 Q At tab 20 we have Constable Burton's notation of  
17 a call from Sergeant Mann on the 8th of August,  
18 1990?

19 A About his intent to interview Mr. Zanidean, yes.

20 Q Correct. And then we have at tab number 30, the  
21 letter that we were just discussing.

22 A And I just can't answer your question. I don't  
23 know how Constable Burton thought that Ian, or  
24 Sergeant Mann and I had been talking. It is  
25 possible, but I just have no recollection of it,

1 and I don't ever recall talking to Constable  
2 Burton about this matter, about this file.

3 Q Did you speak to Sergeant Mann about this  
4 matter?

5 A I don't think I did.

6 Q You don't think you did, or you didn't?

7 A I don't think I did.

8 Q You have no recollection of any discussion with  
9 Sergeant Mann, between the period of July 27th  
10 and December 14th, 1990, about the request from  
11 Swift Current for assistance in interviewing Ray  
12 Zanidean?

13 A Zero, and I strongly suspect the reason is  
14 because I didn't. I believe that Constable  
15 Burton and Sergeant Mann are confused. There is  
16 some kind of confusion going on that I can't now  
17 explain, but I just don't think that I spoke to  
18 Sergeant Mann.

19 Q Why would you say that Constable Burton and  
20 Sergeant Mann are confused?

21 A Because by December 14th of this year, Constable  
22 Burton has already spoken to me, we have had a  
23 conversation. He knows the name Tom Anderson.  
24 He and Sergeant Mann have spoken, as I  
25 understand they have, I understand that that's

1 established here somewhere in these documents.

2 So there must have been some kind of confusion  
3 between the two of them. I don't know.

4 Q Could the confusion be that you just don't  
5 remember?

6 A I don't think so. That's a possibility, that's  
7 a remote possibility, but I just don't think  
8 that I have forgotten that. Because I remember,  
9 all along, sir, being puzzled at why Constable  
10 Burton wouldn't have mentioned the fact that he  
11 had this request out here. I don't recall  
12 hearing anything about this until '93.

13 Q You are quite certain that Constable Burton  
14 never spoke to you about the discussions with  
15 Sergeant Mann, but you are not sure that  
16 Sergeant Mann spoke to you about the requests  
17 from Swift Current?

18 A About equally, sir.

19 Q I would like to talk to you next about immunity.  
20 Can you tell us what your understanding was in  
21 1990/1991, about where you would have to go to  
22 obtain approval for immunity or to not proceed  
23 with charges against an individual?

24 A Me, myself, in my own organization?

25 Q Yes?

- 1 A Well, first stop would be with the supervisor.  
2 And then the supervisor would either take it up  
3 with a Crown Attorney or refer me to the Crown  
4 Attorney, or something like that.
- 5 Q So the Crown Attorney would have to be involved;  
6 is that right?
- 7 A Yes, sir.
- 8 Q Would that invariably be the case that the Crown  
9 Attorney or Manitoba Justice would have to be  
10 involved?
- 11 A I didn't hear the first part of your question?
- 12 Q Was that invariably the case, that Manitoba  
13 Justice would have to be involved?
- 14 A Yes, that was always the case.
- 15 Q Did you have the authority to not proceed with  
16 charges against an individual?
- 17 A No, sir.
- 18 Q Did your supervisor have the authority to not  
19 proceed with charges against an individual?
- 20 A No, sir.
- 21 Q What was your understanding as to the practice  
22 in Saskatchewan?
- 23 A Well, I didn't have any -- on the same issue,  
24 you mean?
- 25 Q On the same issue?

1 A I don't recall giving it any thought.

2 Q Sorry, you didn't give it any thought?

3 A That's right, sir.

4 Q Did you take any steps to inform yourself about  
5 what level of approval would have been required  
6 in Saskatchewan to not proceed with charges  
7 against an individual?

8 A No, sir, it was unnecessary.

9 Q Why was it unnecessary?

10 A Well, because it came about in two phases, once  
11 was a conversation with Constable Burton on  
12 October 30th, in which Constable Burton offered  
13 to temporarily delay the pursuit. And I had  
14 already been told on October 27th that he was  
15 the chief investigator. And the second phase of  
16 it came in the spring of '91, when there was  
17 this witness protection requirement in Manitoba,  
18 in the RCMP offices in Manitoba here, that  
19 Mr. Zanidean not have any outstanding charges.  
20 So it made sense to me. I spoke to Constable  
21 Burton, he offered to back off altogether and go  
22 after Mr. Zanidean's sister. I agreed with  
23 Corporal Orr that he too would speak with Swift  
24 Current, and everybody was notified, everybody  
25 that had an interest was notified. There was no

1           need for me to look at what the chain of command  
2           is at the RCMP in Swift Current, because I got  
3           word from Constable Burton that his commander  
4           had approved the offer.

5       Q     You have just told us that if the situation had  
6           occurred in Manitoba, it wouldn't have been  
7           sufficient to have your supervisor's approval to  
8           not proceed with charges, it would have had to  
9           go to Manitoba Justice?

10      A     Yes, that's my expectation. That is my  
11           expectation. This isn't something, I don't  
12           think I have ever been involved in something  
13           like this, certainly not before, and I don't  
14           think after.

15      Q     Why would you think it would be different in  
16           Saskatchewan?

17      A     I don't know, I have no idea. I don't know what  
18           Constable Burton's plan was, I don't know what  
19           the conversation was that he had with his  
20           supervisors.

21      Q     But what did you, Sergeant Anderson, what did  
22           you do to satisfy yourself that the necessary  
23           approval had been obtained, before you took it  
24           upon yourself to advise Mr. Zanidean that he  
25           would not be prosecuted?



1 A I didn't do anything except tell my supervisors  
2 and Mr. Miller. And if I was stupid in not  
3 taking it further, Mr. Gates, I guess they were  
4 too, because everyone was happy with that  
5 arrangement. And Staff Sergeant Vandergraaf and  
6 Mr. Miller were in contact with Corporal Tom  
7 Orr, so everybody seemed happy with that  
8 arrangement. Nobody came back and said, you  
9 know, get an indication of how charges are  
10 abandoned in Saskatchewan.

11 Q Was this your responsibility, Sergeant Anderson?

12 A No.

13 Q Whose responsibility was this?

14 A Well, no, let me ask you before I say no, what  
15 responsibility? What are you referring to?

16 Q As I understand it, this was an ongoing dialogue  
17 from one police force to another that you had  
18 the lead role in from the Winnipeg Police  
19 Service?

20 A For one very good reason and one reason only.

21 Q But nonetheless, you had the lead role?

22 A I had contact with a Swift Current RCMP officer,  
23 that's what I had.

24 Q From whom you concluded that there was an  
25 immunity for Mr. Zanidean with respect to their

1 arson investigation?

2 A Yes, sir, I did.

3 Q Did you have any other source of information to  
4 that same effect, to confirm that?

5 A Yeah, a lack of contact by Staff Sergeant  
6 Vandergraaf, Bruce Miller, or Tom Orr, saying  
7 what happened with your phone call to Burton?  
8 It seemed to satisfy Corporal Orr's requirement,  
9 and it satisfied Bruce Miller and it satisfied  
10 Staff Sergeant Vandergraaf.

11 Q How do you know it satisfied Tom Orr's  
12 requirement?

13 A Let me rephrase that. I assumed it satisfied  
14 Tom Orr's requirement because I never heard back  
15 from him that the roadblock still existed. And  
16 this is his police force, Swift Current RCMP,  
17 Winnipeg D Division RCMP witness protection  
18 coordinator. It was Corporal Orr that informed  
19 us of the roadblock in the first place.

20 Q We are not talking about the roadblock, we are  
21 talking about the immunity, the immunity from  
22 prosecution?

23 A That's what Ray Zanidean's role in the arson was  
24 in the spring of '91, it was a roadblock.

25 Q But the immunity from prosecution came to you,

1 as I understand your evidence, solely from  
2 Constable Burton; is that correct?

3 A Yes, in the strictest sense, that is correct.  
4 It came from Constable Burton, and it is true,  
5 the only reason I knew his commander approved is  
6 the say so of Constable Burton. But I had no  
7 reason to doubt it, because I fully suspected  
8 that if it hadn't done the trick, I would have  
9 heard back from those three people I mentioned,  
10 Corporal Orr, Staff Sergeant Vandergraaf, or Mr.  
11 Miller.

12 Q In April of 1991, in either of your  
13 conversations with Constable Burton, did he make  
14 any reference to having obtained the approval  
15 from Saskatchewan Justice?

16 A No, sir.

17 Q Did you ask him if he had obtained the approval  
18 from Saskatchewan Justice?

19 A No, not at all.

20 Q If your understanding was that approval from the  
21 Attorney General was required, why didn't you  
22 ask him whether or not that approval had been  
23 obtained?

24 A I didn't probe that deeply. He was as  
25 accommodating in April as he had been in

1           October, and in October nothing changed, I  
2           didn't expect anything to change. I expected  
3           his word to be good. And I repeat, I don't  
4           think I was wrong about that, because if I was  
5           wrong about that, I would have heard back from  
6           my supervisor. I would have heard back from  
7           Bruce Miller, this problems still exists. It  
8           was Bruce Miller that sent us to see Corporal  
9           Orr in the first place.

10        Q     Do you agree that this was a very, very  
11           significant development in your investigation of  
12           the Perry Harder murder?

13        A     Constable Burton's offer of immunity, you mean?

14        Q     Yes?

15        A     Of course it was, because it facilitated and  
16           enabled Bruce Miller, later with Staff Sergeant  
17           Vandergraaf, because other than that one meeting  
18           with Corporal Orr, I don't recall being very  
19           involved in the negotiations for final formal  
20           witness protection. But that offer by Constable  
21           Burton paved the way for Tom Orr to be able to  
22           carry out Bruce Miller's instructions in terms  
23           of witness protection.

24        Q     So you are telling us, as I understand it, that  
25           relative to this very significant development on

1           your file, you relied on a telephone  
2           conversation from someone you had never met in  
3           another police organization as the sole basis  
4           for you moving forward?

5       A     Well, you seem to be dismissing, Mr. Gates, the  
6           fact that another wing of the RCMP was involved  
7           right here in Winnipeg -- Corporal Orr's Witness  
8           Protection Program. This wasn't, I had no  
9           reason to doubt what Constable Burton said would  
10          be the case and I had double -- I had even less  
11          reason to doubt, given the fact that it could  
12          all be confirmed by one of his brother officers,  
13          Corporal Orr.

14       Q     My understanding from your evidence yesterday,  
15           Sergeant Anderson, was that you were not aware  
16           at the time of the results of Corporal Orr's  
17           parallel inquiries of Swift Current at the time  
18           that you made -- at the time that this took  
19           place?

20       A     That's true, at least I don't recall being aware  
21           of it.

22       Q     So my assumption is, correct me if I'm wrong, is  
23           that the only information that you had at your  
24           disposal at that time was Constable Burton's  
25           information, the result of the April phone call?

1 A Yes, sir, that's true. But I also did already  
2 tell you that I had the absence of any further  
3 inquiries from those three men that I just  
4 mentioned. And those were the three people,  
5 Bruce Miller, Corporal Tom Orr and Staff  
6 Sergeant Vandergraaf, who were executing the  
7 plan to get Mr. Zanidean into formal, name  
8 change, relocation style witness protection.

9 Q And you had the lead on the discussions with  
10 Swift Current regarding whether or not they were  
11 pursuing charges against Mr. Zanidean?

12 A I had the contact with Constable Burton, yes,  
13 sir.

14 Q And would it be fair to assume that your  
15 supervisor, Staff Sergeant Vandergraaf,  
16 Inspector Bell and Mr. Miller were relying on  
17 you for that information?

18 A No, not at all. Because first of all, my role  
19 in providing witness protection for Ray Zanidean  
20 was very small. It was this: Carry out Bruce  
21 Miller's instructions to go see Corporal Tom Orr  
22 at the witness protection office of the RCMP in  
23 Winnipeg. And during that discussion with  
24 Corporal Orr, I volunteered the fact that I had  
25 this contact with Swift Current RCMP, Ross

1           Burton.

2       Q     But you were the only one that was dealing with  
3           Constable Burton about the Swift Current  
4           investigation; correct?

5       A     To my knowledge, correct.

6       Q     Would it be reasonable for us to assume that  
7           your supervisor, Staff Sergeant Vandergraaf,  
8           Inspector Bell and Mr. Miller were relying on  
9           you for that part of this matter?

10      A     Not at all.

11      Q     Why would that not be reasonable?

12      A     Because the real telltale, seal the deal  
13           confirmation, would be received by Corporal Orr.

14      Q     Why Corporal Orr?

15      A     Because he is an RCMP officer.

16      Q     But so what?

17      A     Well, I think that's a big so what. I'm a  
18           Winnipeg police officer. We are talking about a  
19           arson that occurred in RCMP jurisdiction in  
20           Saskatchewan, and had I never talked to Ross  
21           Burton about the Zanidean admissions in the fall  
22           of 1990, I wouldn't have even been phoning Swift  
23           Current, that would have been Corporal Orr.

24      Q     Why do you say that?

25      A     Because Corporal Orr -- I don't understand how

1           you could ask me that, sir, Corporal Orr was the  
2           witness protection coordinator.

3       Q     Yes.  But would it not be fair to say, Sergeant  
4           Anderson, that the impetus for the witness  
5           protection application for Mr. Zanidean came  
6           from the Winnipeg Police Service?  It was their  
7           application on behalf of Mr. Zanidean?

8       A     Yes, that's true, sir.

9       Q     And Corporal Orr's role, is it not fair to say,  
10          was as a facilitator?

11      A     Well, I'm not well versed in formal witness  
12          protection.  My understanding was he calls the  
13          shots on it all.  Winnipeg Police officers can't  
14          get change of identities, we can't get someone's  
15          name changed, a new SIN card, or any of those  
16          kind of things.

17      Q     Was there ever a change of identity for  
18          Mr. Zanidean?

19      A     In the end, apparently not.

20      Q     Was there ever entry into the RCMP Witness  
21          Protection Program?

22      A     No, sir.

23      Q     And ultimately, the Winnipeg Police Service, in  
24          conjunction with the Manitoba Attorney General,  
25          provided a form of witness protection on their



1 own; correct?

2 A That's roughly accurate is my -- that's roughly  
3 equal to my understanding of the situation, yes,  
4 sir.

5 Q When you say it is roughly equal, how is it not  
6 equal?

7 A Well, I don't think -- in the end I think he was  
8 given a sum of money and left to his own  
9 devices, the protection didn't continue on by  
10 Winnipeg Police.

11 Q And the RCMP had no role in that, did they?

12 A At the end, the final settlement made between  
13 Mr. Kovnats and Zanidean, and Bruce Miller, no,  
14 not to my knowledge.

15 Q Last area, Sergeant Anderson, I would like to  
16 spend a little bit of time talking to you about  
17 the October phone call with Constable Burton,  
18 and then the April phone calls.

19 First of all, with respect to the October  
20 phone call, if you have a look at your summary  
21 of the information or the statement that you  
22 gave to Commission Counsel, which is found at  
23 tab 2, I would like you to have a look at page  
24 13, if you might?

25 A Yes, sir, I'm there.

1 Q About four lines, five lines from the top of the  
2 page,

3 "Although these details are not in his  
4 contemporaneous notes, Anderson  
5 specifically recalls that Burton,  
6 unprompted, volunteered to put his  
7 investigation of Zanidean on hold until  
8 after Zanidean had testified at Driskell's  
9 trial. He also recalls Burton explaining  
10 that he would flag Zanidean's name in an  
11 RCMP data base in order to prevent any  
12 other officer who was investigating the  
13 arson from going after Zanidean."

14 Do you recall telling that to Commission  
15 Counsel, sir?

16 A Yes, sir, I do.

17 Q And then on the following page, in the first  
18 full paragraph, four lines down,

19 "Because this was an important development  
20 and good news for the investigative team,  
21 Anderson would have related it to his  
22 supervisors and the Crown that day or the  
23 day after."

24 As I understand your interview with Commission  
25 Counsel, this development, this first phone call

1 with Constable Burton was somewhat surprising to  
2 you, the results of it?

3 A This first conversation with Constable Burton?

4 Q Yes?

5 A Yes, sir.

6 Q And it was Constable Burton who, as you put it,  
7 unprompted, volunteered to put their  
8 investigation on hold?

9 A Yes, sir.

10 Q You didn't suggest it, he suggested it,  
11 unprompted?

12 A Absolutely.

13 Q Then if you go to the second conversation, on  
14 April 5th, and if you have a look at page 26 and  
15 27 -- let's start at 26 of your summary?

16 A This is my interview with Mr. Code?

17 Q Your interview with Mr. Code.

18 A And you want me to go to page --

19 Q Page 26, top of the page.  
20 "Burton was as helpful as he had been in  
21 October and spontaneously offered to  
22 permanently drop his pursuit of Zanidean  
23 altogether and focus on Zanidean's sister."  
24 Correct?

25 A Yes, sir.

1 Q That's what happened?

2 A Yes, sir.

3 Q Again, Constable Burton is, might I say  
4 surprisingly, offering to assist you in your  
5 investigation by not proceeding with his?

6 A Yes, two things about that. Just as in the  
7 October phone call, he seemed focused on that  
8 sister, and I didn't pay much heed to any of  
9 that because I didn't know the details of the  
10 case. But also in this spring call, this April  
11 call, I'm quite sure he had already been  
12 speaking with Corporal Orr. He knew a lot about  
13 the situation, or it seemed to me that he did.

14 Q This was extraordinarily helpful to you, though,  
15 nonetheless; wasn't it?

16 A Well, it was a mixed blessing. I have said  
17 before, none of us wanted to see Mr. Driskell or  
18 Zanidean escape justice on that arson, but it  
19 did remove this roadblock that we learned of in  
20 our meeting with Corporal Orr.

21 Q That was extraordinarily helpful to you in the  
22 your investigation of the Harder homicide,  
23 wasn't it, Sergeant Anderson?

24 A If I could be more precise, sir, it was  
25 extraordinarily helpful to us in fulfilling our

1 commitment to Mr. Zanidean to get him into  
2 witness protection.

3 Q It was extraordinarily helpful to you in your  
4 pursuit of your investigation relating to the  
5 Perry Harder homicide?

6 A Well, I still repeat my last answer to you, sir.  
7 I don't know what this did for anybody from an  
8 evidentiary value. It was valuable as far as  
9 protecting, executing a witness protection plan.

10 Q It allowed you, Sergeant Anderson, did it not,  
11 to fulfill one of Mr. Zanidean's conditions for  
12 becoming your most important witness in this  
13 homicide?

14 A Well, I don't think that's an accurate  
15 characterization of him, because Mr. Zanidean  
16 was a witness in our prosecution whether this  
17 was fulfilled or not. This had much, much, much  
18 more to do with fulfilling a promise Al Paul and  
19 I made to him on day one, which was to protect  
20 him.

21 Q Are you saying that you were never concerned  
22 that he wouldn't -- that he might not say  
23 anything?

24 A That's always a possibility with any witness.

25 Q Page 27, the second call in April, and I'm under

1 the heading, second April 1991 telephone  
2 conversation.

3 "His recollection of this second call is  
4 pretty strong since Burton's offer in the  
5 first call seemed too good to be true and  
6 Anderson knew that Miller and Orr would  
7 want confirmation that Burton's detachment  
8 commander had approved it. Anderson knew  
9 that Burton was a mere constable and  
10 expected the decision not to pursue the  
11 admitted perpetrator of what had been a  
12 serious crime in Swift Current would be  
13 something that required approval at a  
14 higher level."

15 Again, this second conversation on October 8th  
16 was, to use your words, confirmation of  
17 something that was too good to be true, seemed  
18 too good to be true?

19 A You misspoke, not October 8th, this conversation  
20 in April.

21 Q Sorry, April, the second conversation in April,  
22 confirmation of the earlier call in April that  
23 had seemed too good to be true?

24 A Well, yeah, on the surface of it, and that's why  
25 I asked him to check with his superiors so that

1 I could call him back.

2 Q Finally, as I recall your evidence, yesterday,  
3 Sergeant Anderson, you told Mr. Code that in  
4 conjunction with the April phone call that  
5 neither of us, that being you and Constable  
6 Burton, were happy with this resolution. You  
7 then went on to say, as I recall, that Constable  
8 Burton consoled me by telling me that they  
9 wouldn't have ever known about Zanidean and  
10 Driskell if we hadn't told them about them. Do  
11 you recall telling --

12 A Yes, sir, I do.

13 Q That Constable Burton consoled you about the  
14 resolution of this matter?

15 A Yes, sir.

16 Q Sergeant Anderson, given what I have just taken  
17 you through, would it be fair to say that  
18 Constable Burton at the time demonstrated an  
19 extraordinary level of support for what you were  
20 attempting to do here in Winnipeg with respect  
21 to the Perry Harder homicide investigation?

22 A Well, I don't think that I would characterize it  
23 that way. He was very accommodating.

24 Q And you found it surprising on occasion,  
25 correct?

- 1 A Yes.
- 2 Q Surprising at the level of his accommodation?
- 3 A Certainly in the second instance, yes, sir --
- 4 both actually, I was equally surprised, when I
- 5 dialed that number on October 27th, I fully
- 6 expected a Swift Current arson investigation to
- 7 be continuing on in Winnipeg very soon after I
- 8 dialed the phone. And at the end of the
- 9 conversation on October 30 --
- 10 Q Indeed he was --sorry?
- 11 A -- and I learned that wasn't to be the case.
- 12 Q Indeed, he was so supportive that he is
- 13 consoling you on that second call in April about
- 14 the Swift Current arson case not going ahead?
- 15 A Well, and I did -- what you neglected to read to
- 16 me from what I said to Mr. Code is that he
- 17 consoled me and himself to some extent, because
- 18 neither of us, nor was anyone else involved in
- 19 this process, Mr. Gates, happy about the fact
- 20 that Ray Zanidean and Jim Driskell wouldn't face
- 21 the music on this arson. And Constable Burton's
- 22 consolation was, well, we wouldn't have known
- 23 about it anyways if he hadn't gotten involved in
- 24 your murder.
- 25 Q I believe in referring to your testimony



1           yesterday, I did mention to you that neither one  
2           of you were happy with the resolution. Do you  
3           recall that?

4    A    Yes.

5    Q    And then I went on to say to you that Constable  
6           Burton consoled you by telling you that they,  
7           being the Swift Current RCMP Detachment,  
8           wouldn't have known about Zanidean and Driskell  
9           if it hadn't been for the Winnipeg connection?

10   A    Right. And I understand that much better now  
11           than I did then, because I didn't know then that  
12           there had been this 1988 fire. Constable  
13           Burton, clearly, to me was gunning for the  
14           sister, the owner of the house.

15           MR. GATES: Mr. Commissioner, Sergeant Anderson,  
16           those are my questions.

17           THE COMMISSIONER: Thank you, Mr. Gates. Am I  
18           to assume there are no more questions?

19           MS. CARSELL: Since no one else is standing, I  
20           will, Mr. Commissioner. I had hoped that the  
21           counsel for AIDWYC would go before the Winnipeg  
22           Police Service, if they have any questions,  
23           given the likelihood they may raise systemic  
24           issues that would affect my client.

25           THE COMMISSIONER: Mr. Kennedy, what do you have

1 to say about that?

2 MR. KENNEDY: Mr. Commissioner, any questions  
3 that I do have will relate to systemic issues.  
4 It would appear to me, just as I heard from this  
5 witness today, it would be helpful to hear the  
6 cross-examinations of the other individuals  
7 involved in this. In any event, if you decide  
8 that that's appropriate, I would simply request  
9 that I commence the examination after lunch. I  
10 just need a little bit of time to determine that  
11 the areas that I wish to cover are systemic  
12 issues. However, it would appear to me, my  
13 request would be to go after the other counsel,  
14 especially counsel for the Crown and the Police.  
15 THE COMMISSIONER: Mr. Olson?

16 MR. OLSON: Sorry, Mr. Commissioner. Because  
17 the magic word of systemic has been uttered, I  
18 think it is fair to say that we don't even know  
19 what systemic issues are going to be put into  
20 issue. So from my point of view at least, if  
21 AIDWYC is going to be dealing with systemic  
22 issues, it would be not only helpful but  
23 mandatory for them to raise the issues by way of  
24 a notice. And if that is not being done, at  
25 least they should be going first so that we see

1           what issues they are raising, so that we can  
2           address them potentially with the very same  
3           witness.

4           THE COMMISSIONER: Mr. Code.

5           MR. PROBER: I would endorse Mr. Olson's  
6           comments as well, Mr. Commissioner.

7           MR. CODE: I think we have all been asking  
8           questions about a number of obviously systemic  
9           issues, record keeping and report writing, and  
10          whether there are any police regulations dealing  
11          with record keeping and report writing are  
12          obvious systemic issues that have jumped out of  
13          this block of the last three witnesses that we  
14          have been dealing with. So that to me is the  
15          most obvious systemic issue that we are focusing  
16          on right now. If anybody hasn't got notice of  
17          that so far, then let me formally give you  
18          notice that that's a concern of Commission  
19          Counsel.

20                 In terms of the order of cross-examination,  
21          when Mr. Kennedy talked to me first on the  
22          weekend about his arrival and the issue of what  
23          order he should question the witnesses in, he  
24          said to me, like he just said to you, that his  
25          only interest was in systemic issues, and that

1           accordingly, he didn't intend to get into the  
2           facts of the case to the extent that the parties  
3           properly will develop the factual record, it  
4           would be unnecessary for him to delve into the  
5           facts he hoped.

6           So it seemed sensible, and this is what we  
7           did yesterday with Sergeant Paul, that he would  
8           let the parties deal with the factual issues,  
9           and then the factual foundation for any systemic  
10          questions he might have of this witness would be  
11          laid.

12          So that seemed to work well with Sergeant  
13          Paul and I don't see any reason why we shouldn't  
14          follow it again. Obviously, if he raises some  
15          new unforeseen systemic issue that none of us  
16          have questioned the witness about, we can always  
17          ask to re-open our examinations on that issue.

18          THE COMMISSIONER: So, what --

19          MR. OLSON: Mr. Commissioner, I feel I must rise  
20          in response to Mr. Code. I understood that  
21          Mr. Code has indeed raised some systemic issues,  
22          and fair enough, I have notice of those. I  
23          understand the reason for Mr. Lockyer following  
24          him is because he also is raising systemic  
25          issues. But it would be inappropriate and

1           unfair to then allow somebody behind all of the  
2           other people, who have systems to potentially  
3           defend or respond to, to come at the end to  
4           address those same issues, if those are the only  
5           issues, and to potentially raise new issues that  
6           we don't even know about at this stage.

7           MR. ABRA: Mr. Commissioner, I'm prepared to go  
8           ahead, on the understanding that if something  
9           comes up through Mr. Kennedy, and he and I have  
10          been conferring and he doesn't think that  
11          anything will be related to my client,  
12          Mr. Miller. So why don't I proceed now? I will  
13          certainly be going through the lunch hour in,  
14          any event.

15          MR. LOCKYER: Can I throw in two cents,  
16          Mr. Commissioner? I have been going immediately  
17          after Commission Counsel, when I don't think I  
18          should have been, but I'm sort of happy to do  
19          so, it hasn't really troubled me. The rules say  
20          I should, with this witness, for example, I  
21          think I should have gone immediately before  
22          Mr. Wolson and after everyone else, but I'm  
23          perfectly happy to basically go first after  
24          Mr. Code, in almost all cases, if not all cases,  
25          even though the rules would suggest otherwise.

1 But I'm a little surprised on this whole  
2 systemic issues. I would have thought Mr.  
3 Olson, representing who he does, the Province of  
4 Manitoba, would be raising systemic issues. I'm  
5 bewildered to hear that he isn't. He is only  
6 responding to them, as opposed to taking a lead  
7 in raising them. I would have thought the  
8 province would have been raising them. I'm  
9 surprised to hear his view on Mr. Kennedy that  
10 he is only here to respond to systemic issues.  
11 It seems to me it is an important part of his  
12 role and perhaps the role of many of us here, to  
13 raise systemic issues. The difference with  
14 Mr. Kennedy is only dealing with those kinds of  
15 issues and that's, in my submission, why he  
16 should go last.

17 THE COMMISSIONER: Mr. Abra has graciously and  
18 kindly allowed me to once again avoid making a  
19 decision. Thank you.

20 MR. ABRA: We have done very little fencing  
21 during the course of this inquiry,  
22 Mr. Commissioner. When I say fencing, I don't  
23 mean with you, of course, but I mean amongst  
24 counsel. I would have thought that the order of  
25 examination might be the least of the concerns,

1 and as I say, I'm quite prepared to go ahead as  
2 long as it is on the understanding that --

3 THE COMMISSIONER: I assure you, you will have  
4 every opportunity should you wish to re-examine  
5 on anything that comes out later.

6 MR. ABRA: Thanks very much.

7 THE COMMISSIONER: That you, Mr. Abra.

8 BY MR. ABRA:

9 Q Mr. Anderson, I'm Doug Abra, as you know, I'm  
10 representing the late Bruce Miller.

11 I would like to begin by taking you to tab  
12 5 of the first book of documents, and at page  
13 520. These are Sergeant Paul's notes that were  
14 made on October 10th of 1990, and at page 520 he  
15 has recorded and I quote:

16 "Ray then states that there could be a  
17 problem with his credibility in court."

18 And Sergeant Paul asked him why, and he replied,  
19 and Mr. Zanidean replied,

20 "Well Jim and I got involved in something  
21 this summer in Saskatchewan."

22 At which point Sergeant Paul said,

23 "What were you involved in?"

24 And Mr. Zanidean replied,

25 "We blew up a house in Swift Current, a

1 relative's place."

2 The question was then asked by Sergeant Paul,

3 "Was anyone hurt or killed?"

4 The answer was,

5 "No, the house was empty, we made sure of

6 that. I don't hurt people."

7 And then going over to the next page, according

8 to Sergeant Paul's notes there was a discussion

9 with Mr. Zanidean about making inquiries of

10 Saskatchewan and that no promises could be made,

11 at which point Mr. Zanidean supposedly replied,

12 "I understand. I just want to tell the

13 truth."

14 Now you have initially, or at least those

15 letters T.A. that appear on each of the two

16 pages beside Sergeant Paul's notes are, I

17 understand, your confirmation that you were

18 present when Mr. Zanidean made these admissions

19 and that they had been accurately reported by

20 Sergeant Paul. Is that right?

21 A Yes, sir, that's true.

22 Q So as of the first time that you met, or if it

23 wasn't the first time, certainly very early in

24 the game, with Mr. Zanidean, you were aware of

25 the fact that he had set the fire in Swift



1 Current, and even he recognized that it was  
2 going to affect his credibility, or might affect  
3 his credibility as far as being a witness for  
4 the Crown was concerned in the charge against  
5 Mr. Driskell?

6 A Yes, sir.

7 Q Right? And even he recognized that, according  
8 to what he said when he volunteered the  
9 information?

10 A Yes.

11 Q And you certainly recognized it; right?

12 A Well, he was, Ray Zanidean was already a bad  
13 guy, he had just got worse.

14 Q Well, the point is that he had a matter  
15 outstanding which he had candidly, supposedly  
16 admitted to you, and knew that it was going to  
17 affect his credibility. You are not telling us,  
18 are you, that you didn't think it was going to  
19 affect his credibility?

20 A No, I'm not telling you that I didn't think it  
21 was going affect his credibility. I'm telling  
22 you that I think it would be an issue. How big,  
23 I would have no idea.

24 Q Mr. Anderson, you have been around long enough  
25 to know darn well that if a person has a record

1 the length of what Zanidean's was, and he has  
2 another matter outstanding which he may well  
3 have committed, and which he has admitted to a  
4 charge as serious as arson, that was going to  
5 affect his credibility? In other words, he  
6 wasn't a past criminal, he was a present  
7 criminal?

8 A That is correct, yes.

9 Q And you knew darn well that was going to affect  
10 his credibility?

11 A Yes, to some extent, yes.

12 Q Now, in your statement to Mr. Code and in your  
13 testimony that you gave in answer to him last  
14 week, there were various matters in which you  
15 advised Mr. Code, either in the statement or in  
16 your testimony, that you really have no  
17 recollection of. I would like to take you to  
18 some of those.

19 Take your statement, firstly, tab 2, page  
20 11?

21 A I have it, sir.

22 Q You have no recollection, according to the first  
23 full paragraph, when Bruce Miller first became  
24 aware of the Swift Current arson; is that right?

25 A That's true, yes, sir.

1 Q Now, nextly, I would like you to go to tab 58,  
2 of the second book of documents? And in  
3 response to a question from Mr. Code, when he  
4 showed you this particular supplementary that  
5 you had prepared, you had no recollection of why  
6 you had prepared it; is that right?

7 A That is true. I think, I believe I offered the  
8 possibility that I was instructed to write it by  
9 somebody.

10 Q But this particular supplementary doesn't ring a  
11 bell with you at all, you don't recall preparing  
12 it, and you really don't recall why you prepared  
13 it, you are just speculating that somebody asked  
14 you to?

15 A That's true, sir, yes.

16 Q Nextly going back to your statement at page 21,  
17 you admitted in the last paragraph that you have  
18 no present memory of having filled in  
19 Mr. Zanidean's application for witness  
20 protection; is that right?

21 A Yes, sir, that is right.

22 Q But you are not denying the fact that you did  
23 fill it in, you just don't remember. Is that  
24 fair?

25 A I think I explained I may have filled out

1 portions of it that were split off and handed to  
2 me to fill out. I just don't know, I don't have  
3 a recollection of it.

4 Q Nextly over on page 22, in the last paragraph,  
5 you indicated to Mr. Code that you can't recall  
6 whether or not Mr. Zanidean ever discussed the  
7 issue of immunity with you; is that right?

8 A Can you take me to the line?

9 Q The last paragraph, first sentence,  
10 "Anderson does not recall Zanidean  
11 specifically discussing the immunity  
12 request with him and thinks that before  
13 March or April of 1991, he must have been  
14 advised by Miller that Zanidean through  
15 Kovnats was now making his demand."

16 A Yes, sir, that's correct.

17 Q Is that what you are telling us?

18 A Yes.

19 Q You have no recollection of Zanidean mentioning  
20 to you that he wanted immunity?

21 A No.

22 Q I see. Page 24 of your statement, you indicate  
23 there that you only have a very vague  
24 recollection of Zanidean's --

25 A Where are we, sir?

1 Q I am sorry?

2 A On page 24?

3 Q Yes, the bottom of the page,  
4 "Zanidean's relocation to Calgary."  
5 A I see that.

6 Q "On April 5, 1991, Zanidean reported that  
7 a threatening note had been left on his car  
8 windshield. Anderson only has a vague  
9 recollection of this incident and does not  
10 specifically recall whether it was the  
11 incident that prompted Zanidean's  
12 relocation to Calgary..."  
13 and so on?

14 A Yes, sir.

15 Q So you have no real recollection of that  
16 particular incident?

17 A Not sharp, no.

18 Q Do you have any recollection at all?

19 A Of this incident?

20 Q Yes?

21 A Just a faint recollection.

22 Q Just a faint recollection?

23 A Yes.

24 Q I see. Now page 25 of your statement, and I  
25 will take you to tab 21 in the book of

1 documents, tab 21 -- 25, excuse me, is the log  
2 book that's been identified as having been  
3 prepared --

4 A Tab 25 is a letter.

5 Q I am sorry, tab 21. Tab 21 is referred to at  
6 page 25 of your statement, sir. And you told  
7 Mr. Code the other day, as you have indicated on  
8 page 25 of your statement, in the first  
9 paragraph on page 25 you go on, you reiterate  
10 that you recall very little about the Calgary  
11 move, although you have a faint recollection of  
12 an issue arising relating to Zanidean's dogs.  
13 And then you go on, and the statement goes on to  
14 say,

15 "Some of the entries in the logbook that  
16 was set up to record Zanidean's weekly  
17 calls from Calgary are in Anderson's  
18 handwriting, but he does not recall this  
19 arrangement."

20 So do I understand from, that as you told Mr.  
21 Code the other day, that you really don't recall  
22 even preparing, or being involved in the  
23 preparation of that logbook?

24 A That's true, sir, yes.

25 Q And finally at page 31 of your statement, you

1 say in the first paragraph that you think it is  
2 possible that you had another Harder homicide  
3 notebook that is now missing, or that you made  
4 notes in your daily notebook of which you did  
5 not keep a copy.

6 Do you not have any recollection of whether  
7 you kept more than one notebook in this  
8 particular case?

9 A I do. I know I kept three notebooks which are  
10 included in this document book here.

11 Q Right?

12 A But I can't be certain, I can't tell you that  
13 every time something happened something didn't  
14 get jotted down in a daily notebook.

15 Q Do you have any recollection at all of keeping  
16 any notebooks other than the three that are  
17 before this inquiry?

18 A No. I recall notebooks on day-to-day matters  
19 that weren't relating to the Harder  
20 investigation.

21 Q Okay. Now, page 37 of your statement, which is  
22 tab 53 --

23 A We are on page 37 of my statement, as well as  
24 tab 53?

25 Q Tab 53 as well. You said in your statement that

1           you have no recollection of Paul calling you to  
2           discuss the June 20th blow-up, and you just have  
3           a general recollection of the termination of the  
4           protection of Zanidean; is that right?

5    A       Yes, sir.

6    Q       Did you have any input on the report  
7           supplementary which is at tab 53?

8    A       If I did, I have no recollection of it and I  
9           suspect not, because I wasn't working in  
10          robbery/homicide at that time.

11   Q       I see. Did you ever review it?

12   A       Only in preparation for this inquiry.

13   Q       I see. But it was prepared some two years after  
14          the incident; right?

15   A       Yes, sir.

16   Q       And it was prepared for the Ewatski/Hall report,  
17          according to Sergeant Paul; is that correct?

18   A       That's my understanding, sir, yes.

19   Q       I see. Had Sergeant Paul told you, prior to  
20          your reading this supplementary or being told  
21          about it in the Hall/Ewatski investigation, that  
22          amongst the things that he sees from the hotel  
23          where you were staying with Mr. Zanidean was a  
24          record that he had phoned Mr. Brodsky?

25   A       Is your question, had he told me about that?



1 Q Yes?

2 A No, sir, not to my knowledge.

3 Q He never told you about it?

4 A Not to my knowledge, no.

5 Q I see. Do you find that surprising that he  
6 would not share that information with you,  
7 considering the two of you were the ones that  
8 were babysitting Zanidean?

9 A Yes, and I'm not saying 100 per cent sure that  
10 he didn't. I just have no recollection of him  
11 bringing that to my attention, and I suspect  
12 that he didn't.

13 Q I see. Were you aware of the fact that Zanidean  
14 was threatening, while in the hotel, to recant  
15 his evidence?

16 A Well, I'm aware now of the June 21 argument that  
17 he and Sergeant Paul had, in which he threatened  
18 to do that, yes, sir.

19 Q Well, were you told about it at the time?

20 A I don't remember, but I had to have been. I was  
21 working the next shift following Al Paul.

22 Q So you would agree with me that the fact that  
23 Zanidean was threatening to recant his evidence,  
24 and apparently even went to the extent of  
25 phoning Mr. Driskell's lawyer, Greg Brodsky, it

1           was pretty significant, wasn't it?

2    A       Yes, sir.

3    Q       Yes.  And yet you really have no particular

4           recollection of it?

5    A       No, sir, I don't.

6    Q       But you did have this Supp at least to refer to,

7           although it was made some two years later?

8    A       You mean for preparation for this inquiry?

9    Q       That supplementary was prepared two years after

10          the incident, and you had the opportunity to

11          review it in preparation for your evidence here

12          today?

13   A       Yes, sir, I did.

14   Q       Yes.  And you did review it?

15   A       Yes, I did.

16   Q       And I assume you reviewed all of the other

17          documents that I referred to you in preparation

18          for your testimony to today?

19   A       I believe so, yes.

20   Q       And the purpose, of course, of reviewing those

21          documents is to refresh your memory of things

22          that happened some 15 years ago?

23   A       Well, in some cases, and in others to inform me

24          of something that I didn't know before as well.

25   Q       I see.  But all of the things that I have

1 pointed you to, sir, are things that did you  
2 have some involvement in back during the course  
3 of this investigation, but you still had to  
4 review the supplementaries in order to refresh  
5 your memory about them? In fact, a lot of them  
6 are things that you didn't recall at all, is  
7 that fair?

8 A Yes, sir.

9 MR. ABRA: I see you looking at your watch.

10 THE COMMISSIONER: I thought our time was 12:45.

11 MR. ABRA: Sorry, I thought it was 1:00 o'clock,  
12 I am sorry. No, I know it is 12:50, I thought  
13 we agreed on the break at 1:00 o'clock, but I  
14 recall now it is 12:45, I am sorry.

15 THE COMMISSIONER: What we will do is resume at  
16 2:05.

17 THE CLERK: All rise. This Commission of  
18 Inquiry is now in recess.

19 (Proceedings recessed at 12:50 and resumed  
20 at 2:05 p.m.)

21 THE CLERK: All rise. This Commission of  
22 Inquiry is now recommenced. Please be seated.

23 THE COMMISSIONER: Please go ahead, Mr. Abra.

24 MR. ABRA: Thank you, Mr. Commissioner. I  
25 thought we had lost Mr. Code.

1 BY MR. ABRA:

2 Q Mr. Anderson, you've testified in this hearing,  
3 and you've indicated in your statement to  
4 Commission Counsel, that you had numerous  
5 meetings with Bruce Miller over the period that  
6 the Driskell investigation was ongoing, and the  
7 involvement with Mr. Zanidean, and right up and  
8 through the trial. And you've testified that it  
9 was daily and hourly and so on.

10 What dates did you have these meetings?

11 A Well, I think you know the answer to that,  
12 Mr. Abra, I can't tell you.

13 Q You have no -- I'll be up front, Mr. Anderson,  
14 I've been through your notebook, I've been  
15 through every supplementary that we've been  
16 provided for these proceedings related to the  
17 whole investigation, that were prepared by you  
18 and your partner, Paul, related to everything  
19 you did. And in neither of your notebooks and  
20 in none of the supplementaries is Bruce Miller's  
21 name even mentioned. Were you aware of that?

22 A In none of the supplementaries and in what?

23 Q And your notebooks?

24 A Well, I'm just thinking. I'm thinking that I  
25 came across -- no, in my October 8th memo, I

1 believe.

2 Q Yes, it's there.

3 A Okay. Then other than that, I will accept what  
4 you say.

5 Q So notwithstanding that you supposedly met with  
6 him as much as you said, neither you nor Paul  
7 made any note of it in your notebooks and there  
8 was no supplementary prepared at any time?

9 A No, not to my knowledge, no.

10 Q And all of these meetings that you had, or many  
11 of the meetings that you had related to  
12 Mr. Zanidean; is that right?

13 A Well, certainly many of them did, yes. Not all  
14 of them, though.

15 Q So there were other things that were discussed?

16 A At meetings with Mr. Miller?

17 Q Yes?

18 A Oh, yes, of course.

19 Q Such as what?

20 A Other things to do with the investigation.

21 Q With the investigation?

22 A Yes.

23 Q Well, why would Mr. Miller be giving you any  
24 advice on the investigation when he wasn't doing  
25 the trial?

1 A Well, I didn't say that he was giving me advice.  
2 What I'm saying is that I discussed matters  
3 pertaining to this investigation, such as  
4 out-of-province travel to interview witnesses  
5 and so on.

6 Q I see. And you didn't have any meetings with  
7 Dangerfield or Mr. Lawlor, I gather from what  
8 you're testifying, throughout the time?

9 A Well, that's not exactly what I said. I said I  
10 remember none and I'm pretty sure that I didn't.  
11 Staff Sergeant Vandergraaf was the case  
12 coordinator, that wouldn't be unusual.

13 Q I see. So although you didn't end up  
14 testifying, your partner Paul did; right?

15 A Yes, sir.

16 Q And you and Paul were certainly, if not the main  
17 investigators, very significant investigators,  
18 as far as this case was concerned?

19 A I suppose significant, yes.

20 Q You and Paul were the ones who were dealing with  
21 a very, very significant Crown witness, if not  
22 the most important Crown witness, according to  
23 your own words; is that right?

24 A Yes, sir.

25 Q And yet you didn't have any meetings with

1 Dangerfield and Lawlor at all?

2 A Well, I said I don't remember any.

3 Q I see. So, obviously, you didn't put anything  
4 in your notebook with respect to those, or any  
5 supplementaries either?

6 A Well, without checking, I don't recall coming  
7 across any in my notes, no.

8 Q Now, this discussion that you say that you had  
9 with Mr. Miller where he advised you not to tell  
10 Mr. Zanidean of the immunity in Saskatchewan --  
11 or, excuse me, in Swift Current -- until after  
12 he had testified, when was that meeting?

13 A I don't know the answer to that.

14 Q Well, can you give us some idea?

15 A Well, not other than it, obviously, had to  
16 happen after my conversation with Constable  
17 Burton on what I now believe to be April 5th.

18 Q Okay. Can you give us any idea how long after  
19 April 5th it was?

20 A No, none at all.

21 Q None at all?

22 A None at all.

23 Q So whether it was a day or a week or a month,  
24 you have no idea?

25 A No. But I suspect that it was fairly soon

1 after.

2 Q I see. And this meeting that Mr. Paul testified  
3 about yesterday, you have no recollection of any  
4 such meeting?

5 A That's correct, sir, yes.

6 Q Now, Mr. Paul testified that at the meeting that  
7 you and he attended with Mr. Miller, not only  
8 did Mr. Miller say that he had obtained, or that  
9 there was going to be immunity for Mr. Zanidean,  
10 but that he worked that out with the Department  
11 of Justice in Saskatchewan. You have no  
12 recollection of that?

13 A No. But I'm not surprised, because I do  
14 remember that, as I mentioned before in my  
15 evidence, that there was these negotiations  
16 going on between Bruce Miller, Tom Orr and Staff  
17 Sergeant Vandergraaf to do with Mr. Zanidean's  
18 long-term formal protection.

19 Q But that's not what I asked you, sir. What I  
20 asked you was, do you remember any meeting at  
21 which Mr. Miller supposedly said that he had  
22 worked out immunity with Saskatchewan Justice?

23 A Well, I thought I answered that, but, no, I  
24 don't remember.

25 Q You have no recollection of a meeting taking



1 place of the nature that Paul described for us  
2 yesterday?

3 A No, sir, but I don't deny that it took place.

4 Q I see. And again, of course, you have no note  
5 of any such meeting at all?

6 A No, not that I'm aware of.

7 Q And you're aware, of course, that Vandergraaf  
8 didn't make any notes of any meetings that  
9 Mr. Miller attended where he gave the advice of  
10 the nature that you've described?

11 A Well, that really goes to the point I've been  
12 trying to make here, that wasn't the norm for  
13 the day. We didn't normally do business with  
14 somebody and then sit down and record every word  
15 in case something changed.

16 Q But, Mr. Anderson, in this case, firstly, the  
17 key Crown witness in the case against  
18 Mr. Driskell had told you, in your first  
19 meeting, that there was going to be a problem  
20 with his credibility because of the Swift  
21 Current situation; right?

22 A Yes, sir.

23 Q And you were aware of that situation from day  
24 one; right?

25 A Yes, sir.

1 Q And, again, I reiterate, the chances of getting  
2 a conviction against Mr. Driskell without  
3 Mr. Zanidean were much slimmer; right?

4 A Slimmer, yes.

5 Q And Dangerfield and Lawlor were doing the trial,  
6 to your knowledge?

7 A Yes, sir.

8 Q Did you not think that it was necessary to  
9 prepare a report to let them know exactly what  
10 the situation was, what Zanidean had told you,  
11 so they would know what they were dealing with  
12 as far as the witness was concerned?

13 A Well, Mr. Abra, I'm dependent on Mr. Code's  
14 say-so that I didn't. I don't know for sure  
15 that I didn't prepare a report.

16 Q Well, it doesn't have to be Mr. Code's say-so,  
17 Mr. Anderson. I can tell you --

18 A Well, yes, it does.

19 Q -- that we have received what we think is full  
20 disclosure from everybody here, including the  
21 Crown's office and the City of Winnipeg, or from  
22 the Police Service. And as I said earlier,  
23 there is absolutely no supplementary anywhere.  
24 And I can tell you that the supplementary police  
25 reports take up about four or five books of

1 everything that was done on this case. And  
2 we've been through them with a fine-toothed comb  
3 and there is no mention anywhere of Bruce  
4 Miller's name.

5 A Well, that very well may be. And the operative  
6 word in your question was you think you've  
7 received full disclosure. I don't know. It is  
8 16 years later.

9 Q I see. Well, that sort of is the key question,  
10 isn't it? There is nothing anywhere that you  
11 can refer to after 16 years in order to refresh  
12 your memory as to where meetings took place,  
13 when they took place, and what was discussed?

14 A Well, I'm pretty sure I didn't -- I thought we  
15 were talking about the comments that  
16 Mr. Zanidean made with respect to the fire. I  
17 thought that's what you were talking about.

18 Q No. I was talking about the investigation  
19 generally. But there was no supplementary  
20 related to Mr. Zanidean's comments pertaining to  
21 the fire until about three or four years later;  
22 am I correct?

23 A Well, I go back to my previous answer. If  
24 Mr. Code is correct that there isn't, then that  
25 would be true. But I can't assume that I didn't

1 write anything about those comments. That may  
2 be the case, but I can't assume that because I  
3 don't know that I didn't.

4 Q Well, you were shown by Mr. Code, though, the  
5 supplementary that you prepared after your  
6 meeting with Mr. Zanidean, the meetings that you  
7 had with him in October?

8 A Yes. But you --

9 Q And the gist of what you discussed with  
10 Mr. Zanidean, and what he told you about  
11 Mr. Driskell. But in none of those  
12 supplementaries did you say anything about what  
13 Mr. Zanidean had admitted with respect to Swift  
14 Current, did you?

15 A That's true, Mr. Abra. But you may remember  
16 that part of my answer was also that it was  
17 likely my intention, or maybe I even carried out  
18 my intention, and the report isn't here today,  
19 but it was likely my intention to report those  
20 matters on a separate police report. And just  
21 because you or Mr. Code tell me it is not here  
22 today, all kinds of things aren't here today  
23 that I haven't seen. There are all kinds of  
24 things that I haven't seen here today is what  
25 I'm trying to say.

1 Q Well, Mr. Anderson, Mr. Code, you told Mr. Code  
2 that you may have had the intention of starting  
3 another file related to assistance to a  
4 foreign -- to another police service; right?

5 A Yes. And I believe that that would be the  
6 proper way of reporting those comments.

7 Q Well, that may very well have been, except for  
8 the fact that you knew darn well that what  
9 Zanidean had told you as far as his credibility  
10 was concerned, not only related to Swift Current  
11 and the admission for the fire, but that it was  
12 going to have an impact on the trial in  
13 Manitoba. You knew that, didn't you?

14 A Yes. Well, that may be the case. But whether  
15 or not this report is here, there was never an  
16 intention to prevent anybody from knowing about  
17 those comments. And those comments were --  
18 everyone that had an interest in those comments  
19 was briefed on the subject matter.

20 Q I see. And then you had all of these meetings  
21 afterwards with Mr. Miller?

22 A Yes, sir.

23 Q And you didn't make any notes of any of those?

24 A No, sir, not to my knowledge.

25 Q And we've learned that Mr. Paul's notebook

1           wasn't provided to the Crown's office until late  
2           May, early June, just before the trial. Did you  
3           ever provide your notebook to the Crown's  
4           office?

5    A       I suspect I did, sir, yes.

6    Q       Well, do you know whether you did or you didn't?

7    A       Well, could I refer to you a tab?

8    Q       Yes.

9    A       Tab 54, volume 2.

10   Q       Okay.

11   A       Page 3, and this is a report by Constable Burton  
12           of the RCMP, written on the 19th of July, 1991,  
13           fairly soon after the trial. And if you look at  
14           paragraph 16 --

15           THE COMMISSIONER: I'm sorry, what page?

16           THE WITNESS: Tab 54, volume 2.

17           THE COMMISSIONER: Page 4?

18           THE WITNESS: Page 3. The first page shows the  
19           date being 19th of July '91. And if you turn to  
20           page 3, you will see paragraph 16.

21           THE COMMISSIONER: Okay.

22           BY MR. ABRA:

23    Q       Yes.

24    A       And in paragraph 16 Constable Burton is writing  
25           about a meeting that he had with his superiors

1 about the Zanidean immunity business. And he  
2 writes, if you go to the bottom, the line that  
3 starts with,

4 "Sergeant Anderson also did not advise of  
5 the evidence obtained by way of the body  
6 pack worn by Zanidean, nor did he advise  
7 that they had a written statement from  
8 Zanidean...",

9 obviously referring to the comments Zanidean  
10 made about the arson,

11 "...which related to the events surrounding  
12 the arson. This information was originally  
13 provided by Savage, Mr. Brodsky's private  
14 investigator."

15 How could he have, how could Savage have my  
16 notes if Brodsky didn't? And Brodsky would have  
17 got them from the Crown. So I think I did -- I  
18 think my notes did get to the Crown.

19 Q I see. But you have no specific recollection of  
20 having provided them to the Crown?

21 A No, I don't. I would expect to have done that  
22 and I think I did.

23 Q Well, are you aware of the fact that Constable  
24 Burton was even under the impression that it was  
25 Mr. Driskell that had worn a wire at the time

1           that he met with Mr. Zanidean, and that he  
2           learned that from Mr. Savage?

3       A     You will recall me mentioning there were times  
4           when I dealt with the Swift Current detachment  
5           when I felt they were speaking a different  
6           language. That was one of the things I was  
7           referring to. Constable Burton seemed convinced  
8           that Mr. Zanidean -- or Mr. Driskell had  
9           actually worn a body pack, and that made no  
10          sense to me, and I couldn't understand what that  
11          was about.

12       Q     The point is, whether Brodsky received copies of  
13           your notes or not, you knew that Brodsky was  
14           going to learn about the Swift Current fire?

15       A     Of course.

16       Q     He was going to learn about it from Driskell?

17       A     Of course.

18       Q     And that it was highly likely that it was going  
19           to come up at the trial?

20       A     Of course.

21       Q     And it was a critical issue, as far as  
22           Zanidean's credibility was concerned?

23       A     Well, that may be. It was some kind of an  
24           issue, I couldn't weigh the weight of it.

25       Q     Well, okay. But you knew that it was going to



1 affect his credibility, or might affect his  
2 credibility?

3 A It might, correct.

4 Q And yet you didn't prepare any police report to  
5 give to Dangerfield and Lawlor in contemplation  
6 that this would come up at trial?

7 A Well, I think I've already answered that. I  
8 said I don't know that I didn't. It appears  
9 today, from the materials that Mr. Code is  
10 providing us all with that I didn't, but I don't  
11 know for sure that I didn't.

12 Q I see. And that's your best answer?

13 A That's my best answer.

14 Q Could you go to tab 10, please?

15 Now, you testified this morning that when  
16 you first discussed the Swift Current fire with  
17 Constable Burton, and he told you that he would  
18 delay his investigation, that's what he told  
19 you?

20 A Yes, sir -- no, delay his pursuit of  
21 Mr. Zanidean.

22 Q Delay his pursuit of Mr. Zanidean. And you told  
23 him, according to what you testified to  
24 Mr. Lockyer this morning, that you would not  
25 tell Mr. Zanidean that the investigation was

1           being delayed, as far as he was concerned?

2    A       Yes, sir.

3    Q       You did that on your own initiative?

4    A       Yes, sir.

5    Q       It wasn't on the order of any superior?

6    A       Well, I immediately briefed my superiors on the

7           fact that that had happened, yes.

8    Q       But you told him, on your own initiative, that

9           that's what you were prepared to do?

10   A       Yes, sir.

11   Q       Yes. Now, when you and Burton then talked in

12           April, and you prepared the note to, or the

13           memorandum to Inspector Johns dated October 8th

14           of 1991, that was in response to a complaint

15           that had been made against you by the RCMP?

16   A       Yes, sir, that's correct.

17   Q       And it was being investigated. And was

18           Inspector Johns with the Internal Affairs Unit

19           at that time?

20   A       You know, I can't remember that. I don't know

21           why it was -- this was something that I was

22           asked to do by Deputy Chief Klippenstein.

23   Q       The bottom line is that Johns was doing the

24           investigation of this complaint against you?

25   A       Well, that was my understanding from Deputy

1 Chief Klippenstein.

2 Q In any event, you addressed it to him?

3 A Yes, sir.

4 Q And when you put this together, you had no  
5 supplementaries, of course, related to your  
6 dealings with Mr. Zanidean and Swift Current  
7 RCMP and so on, did you?

8 A Well, I had some supplementaries dealing with  
9 Mr. Zanidean.

10 Q But not as far as his admission to the Swift  
11 Current fire is concerned, did you, as far as  
12 you're aware?

13 A As far as I'm aware, correct.

14 Q And you had your notes in your notebook, which  
15 the comments are really quite perfunctory, other  
16 than the fact that he admits that he set this  
17 fire with Driskell; right?

18 A Yes, sir.

19 Q And you then talked to Burton, and according to  
20 this memorandum, and I quote:

21 "I explained the dilemma, and I believe  
22 that he had already spoken to Corporal  
23 Orr."

24 Now, that dilemma was the fact that,  
25 according to your testimony, Corporal Orr had

1 taken the position that Mr. Zanidean could not  
2 get into witness protection if there were  
3 outstanding charges; is that right?

4 A Yes, sir.

5 Q And you go on and you wrote,

6 "in any case, he had given the matter  
7 thought and he immediately offered to  
8 withdraw their pursuit of Zanidean  
9 entirely. He explained that he planned to  
10 interview James Driskell after the murder  
11 trial in an effort to gain evidence against  
12 both Zanidean and his sister, but that he  
13 would only charge his sister.

14 Approximately one week later I telephoned  
15 Constable Burton again to ensure that his  
16 proposal was agreed to by his superiors.  
17 He assured me that his detachment commander  
18 had approved. And I reminded him that we  
19 would not make Zanidean privy to the  
20 arrangement until after he testified."

21 Again, sir, isn't it true that you made that  
22 comment on your own initiative and gratuitously  
23 to Constable Burton?

24 A It's not likely in this case, because by then I  
25 would have briefed Staff Sergeant Vandergraaf, I

1 would have been speaking with Mr. Miller, and I  
2 would have had confirmation that that's what  
3 they wanted done.

4 Q Well, that's not what you've written, sir. What  
5 you went on to say is,

6 "Following this conversation with  
7 Sergeant Paul, and I notified Inspector D.  
8 Johnson, Staff Sergeant Vandergraaf and  
9 Crown Attorney Bruce Miller."

10 When you say you briefed them, what did you tell  
11 them?

12 A Probably that Constable Burton's detachment  
13 commander had agreed with his offer of the  
14 previous phone call.

15 Q You have no note anywhere of what Burton had  
16 told you?

17 A I don't believe I do, sir.

18 Q No. And you haven't even written in this note  
19 to Johns what you briefed Vandergraaf, Bell and  
20 Miller about, did you?

21 A I didn't itemize it, no.

22 Q No. You didn't put anything in, all you did was  
23 said you briefed them; right?

24 A Well, Mr. Abra, that in my experience is a  
25 fairly common way of describing to someone how

1           you relayed a body of the information without  
2           re-cataloguing each piece of information.

3       Q     But, Mr. Anderson, the problem we have is that  
4           15 years later, we're trying to figure out what  
5           you briefed them on, and you haven't written  
6           anything about what you've briefed them on. And  
7           you want -- you are telling this inquiry that  
8           you told Johnson, Bell and Miller what you had  
9           discussed with Burton; right?

10      A     Yes, sir.

11      Q     But you have no note of it anywhere, but you  
12           want the Commissioner to accept that you told  
13           them what you had talked to Burton about, when  
14           you couldn't even recall a bunch of other  
15           significant incidents on which you had prepared  
16           supplementaries, or which you had notes of, that  
17           I talked to you about this morning?

18      A     Well, Mr. Abra, I'm not an expert on memory. I  
19           have no idea why I remember some things and not  
20           others.

21      Q     Well, you tell us what you told them?

22      A     Tell you what I told Inspector Johnson,  
23           Vandergraaf and Miller you mean?

24      Q     Yes?

25      A     Well, I would have told them in this --

- 1 Q Not what you would have, what you did tell them.
- 2 A In reference to this paragraph that you are
- 3 referring to -- well, I don't have a verbatim
- 4 memory of that conversation, Mr. Abra. What I
- 5 can assure you I told them is that I had a
- 6 second conversation with Constable Burton and
- 7 that he confirmed his commander, his detachment
- 8 commander, had approved the offer he had made in
- 9 the previous conversation.
- 10 Q Were Vandergraaf, Johnson and Miller together
- 11 when you told them this or were they separate
- 12 meetings?
- 13 A I doubt it. I suspect that Vandergraaf and
- 14 Johnson would have been together. I don't know.
- 15 Q When did you tell Vandergraaf and Johnson?
- 16 A Well, I don't know, but my guess is very soon
- 17 after the phone was hung up.
- 18 Q When did you tell Miller?
- 19 A My guess would be the same. I would have had a
- 20 phone call with him fairly soon after that,
- 21 because this would be of great interest to him.
- 22 Q Yeah. And nowhere have you put in this document
- 23 when you talked to Miller or what you told him?
- 24 A That's true.
- 25 Q Now, how long after this conversation was it

1 that Miller told you not to tell Zanidean?

2 A I don't know exactly. Probably immediately,  
3 probably after the first phone call, that would  
4 be my guess. Because as I've tried to explain  
5 before, conversations and meetings with  
6 Mr. Miller were a fluid thing, they weren't a  
7 memorable thing. They were happening  
8 frequently.

9 Q Did you not think that the advice that he was  
10 giving you was rather important, rather  
11 significant?

12 A Well, there were a lot of events in this case  
13 that were significant. That no more than any  
14 other.

15 Q I see. Well, you were aware of the fact that it  
16 was highly likely that this whole issue of  
17 Zanidean setting the Swift Current fire was  
18 going to come up at the trial?

19 A Yes, of course.

20 Q Right? And one of the issues that was going to  
21 come up is whether or not he was being charged  
22 with that fire or not?

23 A Certainly.

24 Q And by not telling Zanidean that the Swift  
25 Current RCMP were going to charge him, you in



1           essence were permitting him to testify to  
2           something that was untrue, because he did  
3           testify that he had been promised nothing by  
4           Swift Current?

5       A     Well, you know, Mr. Abra, Mr. Code has already  
6           run that logic by me and I have trouble with it.  
7           I don't know how -- I just don't see how that  
8           can be hung on me. Because I would have had to  
9           have scripted Zanidean on how to testify to  
10          knowingly mislead the jury, and of course I  
11          didn't do that.

12       Q     All you had to do, Mr. Anderson, was not tell  
13          him that Swift Current had said they weren't  
14          going to charge him. And then he could  
15          knowingly testify to the fact that he wasn't, as  
16          far as he was aware, getting any immunity from  
17          Swift Current, and as far as he was concerned,  
18          it was truthful, but as far as you knew, it was  
19          false?

20       A     But that presupposes a certain kind of  
21          questioning from Mr. Brodsky. How could I have  
22          known -- how could I have known the way that  
23          Mr. Zanidean, what questions would be asked and  
24          how Mr. Zanidean would answer them?

25       Q     I see. So that's something, I expect you'll

1           agree, that Dangerfield and Lawlor should at  
2           least have known so that they could deal with it  
3           if Brodsky got into the area?

4    A       Well, I'm quite certain they would have known.  
5           I think they knew -- would have had to have  
6           known that whole issue, and they would have  
7           known about the comments in my notebook.

8    Q       On what basis?

9    A       Well, I'm not sure.

10   Q       I see.

11   A       Either from, obviously from talking to  
12           Mr. Miller, but I think probably elsewhere, too.  
13           I don't know.

14   Q       I see.

15   A       I see references in Mr. Brodsky's memo to file  
16           of Mr. Brodsky and Mr. Dangerfield and  
17           Mr. Lawlor discussing the arson deal in front of  
18           the trial judge.

19   Q       Mr. Anderson, that's come out since. What I'm  
20           asking you today is, at that time, why did you  
21           not tell Dangerfield and Lawlor that there was a  
22           problem with Zanidean's credibility?

23   A       Well, first of all, Mr. Abra, I don't know that  
24           I didn't. I don't know that they didn't get a  
25           report from me. I'm dependent on Mr. Code

1 saying there is no record of me telling them.

2 That's not necessarily the final word.

3 Q So you're telling us today that you might very  
4 well have prepared a supplementary?

5 A Well, I've told this inquiry that before, before  
6 today.

7 Q I see. Now, you did read the Ewatski/Hall  
8 report?

9 A I read portions of it, sir.

10 Q In fact, you were interviewed by at least  
11 Inspector Hall?

12 A Well, I'm pretty sure I was interviewed by both  
13 of them together.

14 Q Okay. And they asked you certain questions,  
15 many of which related to Zanidean?

16 A I don't have much memory. I remember being at  
17 an interview with them, but I couldn't really  
18 tell you what the subject matter was.

19 MR. ABRA: I see. Sorry, Mr. Commissioner. I  
20 have distributed this to other counsel already,  
21 Mr. Commissioner.

22 I am giving to you, sir, an extract from  
23 the report. Could you give this to the  
24 Commissioner, please?

25 THE COMMISSIONER: This will be Exhibit 12.

1 (EXHIBIT 12: Extract from Hall/Ewatski  
2 report)

3 BY MR. ABRA:

4 Q Specifically, sir, you will note these are pages  
5 43 and 53?

6 A Yes, sir.

7 Q You see on page 43, the second last paragraph,  
8 what Ewatski and Hall have written is,

9 "After Zanidean completed his testimony,  
10 Sergeant Tom Anderson advised him that he  
11 had been informed by the RCMP in Swift  
12 Current arson they were not going to  
13 continue their investigation into the  
14 arson."

15 Now, that's true, you told him that?

16 A Yes, sir.

17 Q Did you tell Hall and Ewatski that?

18 A I'm sure I did. I don't recall telling them,  
19 but I'm sure I did.

20 Q And over to page 53, sir? And in this  
21 particular page Ewatski and Hall are dealing  
22 with Gumieny and Zanidean and any benefits that  
23 they may have received. Had you read these  
24 portions before?

25 A I don't recall reading them. You're directing;

1 me to the bottom half of the page?

2 Q Yes.

3 A Yes, I've read that.

4 Q Okay. Did you read that when the report first  
5 came out?

6 A When the Hall and Ewatski report came out?

7 Q Yes?

8 A Well, not that I recall, no. In fact, I never  
9 saw the Hall and Ewatski report until 2003.

10 Q Well, that's fine. It only came out in 2003,  
11 did it not?

12 A I don't know.

13 Q Well, in any event, you saw it in 2003. When  
14 you read it in 2003, did you read these  
15 portions?

16 A I don't recall reading this, no.

17 Q I see. Now, in it they have written,  
18 "The investigators, Sergeants Anderson and  
19 Paul, made this information available to  
20 the RCMP in Swift Current and several  
21 contacts followed over the ensuing months  
22 between the two forces."  
23 That, of course, to Zanidean's setting of the  
24 fire. And that sentence is accurate, you did  
25 have contacts over the next couple of months

1 with Swift Current RCMP; correct?

2 A Yes, sir, that's correct.

3 Q "The exact content of these contacts is  
4 a point of contention and is dealt with in  
5 a separate section of this report."

6 That's correct, is it not, you and Burton have a  
7 big disagreement on what was discussed?

8 A Yes, sir.

9 Q "Sergeant Tom Anderson is clear in stating  
10 no promises or deals were made with Reath  
11 Zanidean for his testimony. More exactly,  
12 Zanidean was not told he would not be  
13 charged with the Swift Current arson."

14 Did you tell Ewatski and Hall that?

15 A That Zanidean was told he would not be charged  
16 with the Swift Current arson?

17 Q No. The fact that,

18 "Tom Anderson is clear in stating no  
19 promises or deals were made with Reath  
20 Zanidean for his testimony. More exactly,  
21 Zanidean was not told he would not be  
22 charged with the Swift Current arson."

23 A Well, the first part is true, and the second  
24 part is also true if you add, until after his  
25 testimony. Obviously, I told him after his

1 testimony.

2 Q All right. It goes on to say,

3 "This fact is confirmed by both Crown  
4 attorneys involved in this case who as well  
5 state they too told Zanidean there were no  
6 deals."

7 It goes on to say,

8 "After Zanidean completed his testimony,  
9 Sergeant Anderson, based on information he  
10 says he received from Constable Ross  
11 Burton, RCMP Swift Current, told Zanidean  
12 he would not be charged."

13 A Yes.

14 Q Yes. Did you tell Ewatski and Hall that?

15 A I expect I did, because it's true.

16 Q Yes. And they go on to say,

17 "This was not a deal made through Manitoba  
18 Justice Department, as confirmed by  
19 Director of Winnipeg Prosecutions,  
20 Mr. Bruce Miller, or the Saskatchewan  
21 Justice Department. This apparently is  
22 information passed to Sergeant Anderson  
23 from Constable Burton and not to Zanidean  
24 until after his testimony."

25 A Yes, sir.

1 Q Did you tell Ewatski and Hall all of that?

2 A Well, I expect that I told them some of it.  
3 This business about Manitoba Justice and the  
4 Saskatchewan Justice, I believe, is explaining  
5 the fact that this was an arrangement made by  
6 Ross Burton talking to Tom Anderson.

7 Q I see. Well, what this report says is that  
8 Bruce Miller has said that there was never any  
9 arrangement, or Bruce Miller told Ewatski and  
10 Hall that there was never any arrangement with  
11 respect to Zanidean not being charged in Swift  
12 Current or that he was being given immunity?

13 A That's not what it says at all. What it says is  
14 that Manitoba Justice and Saskatchewan Justice,  
15 and that's to be expected because no charges  
16 have been laid here, Manitoba Justice and  
17 Saskatchewan Justice did not -- I've just got to  
18 find the wording.

19 Q Mr. Anderson, it's quite clear --  
20 MR. WOLSON: Well, perhaps the witness should be  
21 given a chance.

22 BY MR. ABRA:

23 Q Go ahead. Go ahead.

24 A "This was not a deal made through  
25 Manitoba Justice, as confirmed by Director



1 of Winnipeg Prosecutions, Mr. Bruce Miller,  
2 or Saskatchewan Justice Department."

3 I don't know exactly what that means, but I take  
4 that to mean that this is an arrangement that,  
5 obviously, Mr. Miller knows about, but that he's  
6 explaining to Hall and Ewatski, I'm assuming  
7 they are writing that from an interview they had  
8 with Mr. Miller, he is explaining that Tom  
9 Anderson spoke to the Swift Current RCMP.

10 Q Right. And nowhere have Hall and Ewatski  
11 written that Miller ever told you or suggested  
12 to you that Zanidean should not be told?

13 A Well --

14 Q And I'm suggesting to you, sir, that you never  
15 told Hall and Ewatski that?

16 A I don't know whether I did or not, and I can't  
17 be responsible for what they've written. If  
18 they haven't written that and if they haven't  
19 talked to Mr. Miller about that, then they have  
20 written an incomplete report.

21 Q What I am asking you, sir, is a completely  
22 different question. Did you not tell Hall and  
23 Ewatski that Mr. Miller told you not to tell  
24 Zanidean?

25 A Well, and I already answered, I don't remember

1           what I said to them. I remember meeting with  
2           them, and I can't tell you for sure, I expect  
3           that I would have, but I can't tell you for sure  
4           that I did.

5       Q     I see. So, again, the fact that you haven't  
6           documented exactly what Miller told you and what  
7           conversations you had with him is very similar  
8           to the memo that you wrote to Inspector Johns,  
9           that being, we have no idea what you discussed  
10          with Miller. And you have nothing to show us  
11          what you did discuss with him?

12       A     That much is true.

13       Q     Go to tab 41, please? And you've been asked  
14          about this particular question number 6 a couple  
15          of times, but you responded to Mr. Lawlor -- and  
16          this was a supplementary going to Mr. Lawlor,  
17          you knew that?

18       A     Yes, sir.

19       Q     It was going to the Crown's office, in any  
20          event?

21       A     Correct.

22       Q     And that the Crown's office would then use it to  
23          respond to Brodsky's request for information?

24       A     Yes, sir.

25       Q     Yes. And you wrote what's contained in the last

1 paragraph there, and you finished it off by  
2 saying,

3 "We are not aware of any stayed charges or  
4 any other deals made with any witnesses in  
5 exchange for testimony."

6 A Yes, sir.

7 Q Now, this was written in May of 1991?

8 A That's true, yes.

9 Q You knew that Mr. Miller was dealing with the  
10 issue of witness protection; right?

11 A Yes.

12 Q And you've also told us that you think you told  
13 Miller, very soon after your conversation with  
14 Burton in April, that Swift Current was not  
15 going to charge Zanidean?

16 A Yes, sir.

17 Q And you're alleging that Miller told you not to  
18 tell Zanidean that he had immunity?

19 A Correct.

20 Q Did you not think, just maybe, to indicate in  
21 this supplementary going to Lawlor that if you  
22 have any further questions related to  
23 Mr. Zanidean specifically, you might speak to  
24 Bruce Miller?

25 A No, I didn't think of that at all.

1 Q I see. Never entered your mind?

2 A No, not necessary. Mr. Miller is their boss. I  
3 would have expected there to have been  
4 communication amongst the three of them.

5 Q But you had not given Miller anything with which  
6 to brief them, Dangerfield and Lawlor. You had  
7 given Miller nothing in writing, had you?

8 A About what?

9 Q About the deal that you had with Zanidean?

10 A No, I hadn't.

11 Q So what was Miller supposed to use to show to  
12 Dangerfield and Lawlor?

13 A Well, one of two things, verbal communication or  
14 a request from me that I write something that he  
15 might see that he needed.

16 Q But you had already received a request through  
17 Brodsky as to what was the arrangement with  
18 respect to any Crown witness as far as deals  
19 were concerned?

20 A Yes.

21 Q Yes.

22 A And I think I already testified that I answered  
23 that fairly.

24 Q And it never entered your mind to indicate that  
25 if there is any further questions in that

1           regard, consult Bruce Miller?

2    A       No, sir.

3    Q       Again, tab 53 that we talked about briefly this  
4           morning, Paul has told us that he did not draw  
5           to anyone's attention, on or about June 20th,  
6           1991, firstly, that Zanidean had threatened to  
7           recant his testimony and, secondly, that  
8           Zanidean had probably telephoned Mr. Brodsky.  
9           That's what Paul testified to yesterday. Now,  
10          you told me this morning that you expect that  
11          Paul told you that information?

12   A       Yes, sir.

13   Q       Did you pass it on to anyone?

14   A       Well, you have lumped together two things when  
15          you say information. First of all, the phone  
16          call to Mr. Brodsky, I'm not convinced I ever  
17          knew about until '93. It's possible that I  
18          did, but I just don't think I was ever told  
19          about that. And as for the June 21st threat  
20          made by Zanidean, I expect that we -- it is  
21          unthinkable that we didn't talk to Mr. Miller  
22          about that.

23   Q       To Mr. Miller?

24   A       I don't have a present-day recollection of that.  
25          And to Inspector Johnson, as well, because a

1 very, very important event followed on the heels  
2 of that blow-up with Al Paul and Ray Zanidean.  
3 The arrangement at the hotel ended. Al Paul and  
4 I didn't end that arrangement on our own. We  
5 had to get authorization to end that  
6 arrangement.

7 Q Mr. Anderson, if you had told Inspector Johnson,  
8 or if you had told Mr. Miller, do you not think  
9 that they would have told you to submit a  
10 supplementary about it?

11 A I don't know.

12 Q They often did.

13 A Well, I don't --

14 Q It's quite common for your --

15 A Well, I can't testify that they didn't tell  
16 Sergeant Paul to write one, and it didn't get  
17 done or it got done and it got lost, I just  
18 don't know.

19 Q But Sergeant Paul has already told us he didn't  
20 tell anybody, to the best of his recollection.  
21 MR. WOLSON: Sergeant Paul testified he told  
22 D.K. Johnson, and D.K. Johnson indicated that he  
23 would tell Mr. Miller. That was the evidence of  
24 Sergeant Paul.

25 MR. ABRA: Yes, without notes.

1 MR. WOLSON: Well, then it shouldn't be stated  
2 that Paul didn't tell any body because that --

3 MR. ABRA: Well, if I misstated the evidence,  
4 Mr. Wolson, then I apologize.

5 BY MR. ABRA:

6 Q Mr. Anderson, did you do anything about  
7 notifying anybody, that you know of?

8 A What my evidence is, Mr. Abra, is I don't have a  
9 recollection of that, but I can assure you it's  
10 unthinkable that I or Al Paul wouldn't have had  
11 a conversation with Mr. Miller and Inspector  
12 D.K. Johnson about the Al Paul blow-up with Ray  
13 Zanidean.

14 Q Why would you tell Mr. Miller?

15 A Well, because Mr. Miller -- maybe you haven't  
16 given me an opportunity to explain, or you  
17 didn't hear me explain this earlier. But by  
18 June 21st, Al Paul and I were waiting on the  
19 edge of our seats for Mr. Miller to conclude  
20 his negotiations with Mr. Kovnats. We were  
21 waiting for that, for them to get him out of  
22 town and into the formal Witness Protection  
23 Program, so that that hotel arrangement could  
24 end. And that's what I mean when I've said,  
25 more than once here, that at that time Al Paul

1 and Tom Anderson were Bruce Miller's worst  
2 nightmare, because we were phoning him  
3 constantly to see if finalized arrangements had  
4 taken place.

5 And to me, although I don't have a  
6 present-day recollection of it, I can't imagine  
7 that Al Paul phoned me one night and told me  
8 about this blow-out, I went in to work through  
9 the night, and we just packed up our bags and  
10 left him on his own. And Sergeant Paul has, I  
11 believe, mentioned that he spoke to Inspector  
12 Johnson.

13 Q When this supplementary was requested two  
14 years later, and was prepared two years later,  
15 what possible relevance do the contents of  
16 that supplementary have to do with witness  
17 protection? The issue in that supplementary is  
18 whether Mr. Zanidean told the truth or he  
19 didn't, when he testified?

20 A I don't know.

21 Q So, again I ask you, what would the point have  
22 been to tell Mr. Miller, without submitting  
23 something to him in writing --

24 A Well, I --

25 Q -- that he could then pass on to Dangerfield and



1 Lawlor who had done the trial?

2 A Well, I don't know that Mr. Miller didn't pass  
3 that on. I don't know.

4 Q You don't even know if he was told?

5 A Well, you've heard my evidence on that,  
6 Mr. Abra. I'm quite certain --

7 Q That you say, 15 years later, that it is  
8 inconceivable that you wouldn't have told  
9 him?

10 A It is inconceivable.

11 Q Without any notes whatsoever?

12 A That's true.

13 MR. ABRA: Might I just have a moment,  
14 Mr. Commissioner?

15 THE COMMISSIONER: Certainly.

16 MR. ABRA: If I can just have a moment.

17 THE COMMISSIONER: Certainly.

18 MR. ABRA: That's fine, Mr. Commissioner. Thank  
19 you very much. I have no further questions.

20 THE COMMISSIONER: Thank you, Mr. Abra.

21 MR. KENNEDY: Good afternoon, Mr. Commissioner.

22 THE COMMISSIONER: Good afternoon, Mr. Kennedy.

23 BY MR. KENNEDY:

24 Q Mr. Anderson, my name is Jerome Kennedy, I am  
25 appearing on behalf of the Association in

1 Defence of the Wrongly Convicted.

2 There are a couple of issues that I wish to  
3 explore with you. The first is the structure of  
4 the investigation into the Harder murder. The  
5 main document I'll be referring to,  
6 Mr. Anderson, will be your summary of interview  
7 with Commission Counsel that's at Exhibit 6A,  
8 tab 2.

9 It's my understanding, Mr. Anderson, that  
10 you retired in 2004, did you?

11 A Yes, sir, that's true.

12 Q And you retired as a sergeant?

13 A Yes, sir, I did.

14 Q At pages 1 and 2 of the summary, you outline  
15 your experience in the police force. Do you see  
16 that?

17 A Yes, sir.

18 Q You worked in uniform until October 1983. And  
19 then you worked as a detective from 1983 to  
20 2001; correct?

21 A Yes, that's correct.

22 Q And it indicates that you -- although not all  
23 of your time was spent in major crimes, you  
24 worked primarily as a homicide investigator?

25 A For the most part, yes, sir.

1 Q So there was a dedicated homicide squad. It was  
2 robbery/homicide at the time of the Harder  
3 investigation, it was called; is that correct?  
4 A Yes. That was the common name, but I guess it's  
5 official name was Division 23, Crimes Against  
6 Persons.  
7 Q Okay. And within the Division 23, Crimes  
8 Against Persons, was there a robbery/homicide  
9 unit, or were they the same thing?  
10 A They were the same thing.  
11 Q All right. Now, prior to this investigation in  
12 1990, how many homicide investigations had you  
13 been involved in, approximately?  
14 A Well, just a wild guess --  
15 Q Sure.  
16 A -- I probably had a part in 15 or 20.  
17 Q Okay. And around this time frame, for example,  
18 in 1988, '89, '90 in Winnipeg, how many  
19 homicides would there be a year, approximately  
20 again?  
21 A Well, my memory is it would be in the teens. I  
22 think we averaged around 13, 14, 15, something  
23 like that.  
24 Q Okay. So by the time that this investigation,  
25 and we will come to when it actually begins, but

1 around the time of this investigation, you  
2 certainly were experienced in homicide  
3 investigations; is that correct?

4 A Well, I wouldn't call myself the most  
5 experienced at that time. I was still a junior  
6 detective, but I had some experience in homicide  
7 investigations, sure.

8 Q Out of these 14 or 15 or 13 investigations a  
9 year, I want you to, if you can, to distinguish  
10 between the murder/manslaughter cases, where you  
11 know what the perpetrator is, but what the issue  
12 is why it happened and what happened, versus  
13 whodunits? Can you give any breakdown as to  
14 those types of cases?

15 A No, I can't do that.

16 Q Were whodunits common in homicide  
17 investigations in Winnipeg in the late '80s to  
18 1990?

19 A Yes, sir.

20 Q Because, qualitatively, or from an investigative  
21 perspective, it's a lot different to  
22 investigate a whodunit, than when you know the  
23 individual who committed the act and the  
24 question is why? Is it murder, first degree  
25 murder, second degree murder, or manslaughter,

1 correct?

2 A I don't think I agree with that.

3 Q Oh, you don't, okay. So where you have a  
4 situation where the perpetrator is known, and  
5 known early on in the investigation, and there  
6 is direct evidence, then the real decision that  
7 has to be made is the charge to be laid;  
8 correct?

9 A Well, I don't think that's the case. There's  
10 evidence to -- there are matters to be  
11 investigated and evidence to be gathered in all  
12 of these cases.

13 Q But, sir, in situations -- and, again, I would  
14 assume that -- and correct me if I'm wrong -- a  
15 lot of these murder or homicide investigations  
16 would be within the family? They would be  
17 spousal situations where the perpetrator was  
18 known early in the investigation; correct?

19 A No. I don't think that's correct.

20 Q Okay. So you don't see, qualitatively, a  
21 different approach that's taken to a -- or a  
22 distinction between the charging of a person  
23 with first degree, second degree murder, or  
24 manslaughter, as opposed to trying to solve the  
25 case as to finding the perpetrator? You don't

1 see a difference, do you?

2 A Well, a difference from what perspective?

3 Q Sir, you have to find out who committed the  
4 crime, as opposed to knowing who committed the  
5 crime?

6 A What is your question with respect to that, the  
7 difference between those two kind of cases?

8 Q Basically, if you take 15 homicides in '89, '88,  
9 as a rough example, how many of those would be  
10 cases where you would know who committed the  
11 act? You find the person, if not immediately,  
12 within days of the murder having taken place?

13 A Well, I don't know the numbers. I don't know.

14 Q Sir, to get into the robbery/homicide squad, did  
15 you have to have any particular training or  
16 courses?

17 A Not that I can recall, no.

18 Q So prior to the Harder investigation in 1990,  
19 had you attended any homicide courses?

20 A No, sir, I hadn't.

21 Q Did you have any specialized training courses  
22 that would equip you to investigate major  
23 crimes, but especially homicides?

24 A Not that I can think of.

25 Q Were there any forensic courses that you would

1 have attended prior to this investigation?

2 A Not that I can recall, sir.

3 Q Were there any departmental requirements, or  
4 directives, as to the experience and training  
5 required to become a detective in the  
6 robbery/homicide squad?

7 A Well, if there were, I'm not aware of them.

8 Q Were you aware, back around 1990, whether or not  
9 the kinds of homicide investigative courses that  
10 I'm talking about existed?

11 A No, sir.

12 Q Whether at the Canadian Police College in  
13 Ottawa, through the RCMP, or through your other  
14 police services?

15 A I don't know what was available, no.

16 Q There were, I think you've indicated, 18  
17 investigators and 5 or 6 supervisors in the  
18 robbery/homicide unit in 1990 to 1991?

19 A Something like that, yes, sir.

20 Q Are you aware if any of those investigators had  
21 attended any of the types of courses I'm  
22 talking about, being homicide investigation  
23 courses, specialized courses, forensic  
24 courses?

25 A I'm sure there had, sir, but I am just not the

1 right person to ask.

2 Q You hadn't attended any yourself?

3 A Not that I can recall, no.

4 Q So, basically, you became a homicide  
5 investigator through experience?

6 A Yes.

7 Q You would have learned from senior officers and  
8 supervisors?

9 A Yes, sir.

10 Q Consultation with Crown attorneys?

11 A Yes, sir.

12 Q And trial experience?

13 A Some, yes.

14 Q Okay. Sir, in terms of the -- I want to deal  
15 briefly with the structure of the investigation  
16 in this particular case.

17 The time line that I have in front of me is  
18 that we know that Mr. Harder was last seen on  
19 June 16th, 1990. And the preliminary inquiry  
20 was scheduled -- into the Driskell/Harder  
21 matters, were scheduled for June 21, 1990.  
22 Mr. Harder's body is found on September 30th,  
23 1990. Does that accord with your  
24 understanding?

25 A Yes, sir, it does.



1 Q We know, or I'm informed, sir, that there was a  
2 missing person's report from Mr. Harder's  
3 father, which was filed July 15th, 1990?

4 A That could be. I don't take issue with it.

5 Q I guess my question is, when did the Harder  
6 homicide investigation begin? Was it with the  
7 finding of the body? Was there any kind of  
8 investigation, prior to the finding of the body,  
9 do you know?

10 A Well, the missing person's unit is a separate  
11 unit. I don't know. I know they do follow-up  
12 inquiries when someone is reported missing. I  
13 don't know to what extent. But I suppose, for  
14 the robbery/homicide division, the investigation  
15 commenced with the finding of the body.

16 Q Okay. So, then, in terms of the structure of  
17 the investigation, was there a dedicated  
18 investigative team assigned to this  
19 investigation?

20 A No, sir.

21 Q Were there other homicide investigations  
22 ongoing at the time of the finding of  
23 Mr. Harder's body?

24 A Well, I don't have the statistics here, but that  
25 would be the norm, if there were.

1 Q So would you agree with me, sir, that in a  
2 homicide investigation a team approach is  
3 required?

4 A A team approach?

5 Q Yes.

6 A Well, you are preaching to the converted on that  
7 one. I later went on to work in a unit like  
8 that.

9 Q Okay. And we are going to deal with that  
10 shortly.

11 Was there a lead investigator assigned to  
12 this file, and if so, who was that?

13 A Well, the de facto lead investigator, I  
14 believe, was Staff Sergeant Vandergraaf, but I  
15 don't know whether he was ever given that  
16 designation.

17 Q Was there a case coordinator assigned to this  
18 file?

19 A The same answer, it was Sergeant Vandergraaf.

20 Q Was there an analyst assigned to this file?

21 A I don't know.

22 Q So when I use these terms, in terms of have you  
23 ever had involvement, or prior to your  
24 retirement, was the major case management model  
25 adopted in the Winnipeg Police Force?

1 A I'm not sure what that is?

2 Q So you don't know what that is?

3 A Well, I know that there are officers in our  
4 department that are trained in that. I don't  
5 know what you mean by "adopted"? Throughout  
6 the department, or in the homicide unit, or  
7 where?

8 Q When was the last homicide investigation that  
9 you would have been involved in, before you  
10 retired?

11 A 2003.

12 Q Okay. In 2003, when you were involved in this  
13 investigation, what was your role?

14 A Well, I was on a temporary assignment to assist  
15 the coordinator, the man in charge of a murder  
16 investigation.

17 Q During that investigation, was there someone who  
18 had the title of lead investigator?

19 A No. No, the man in charge of the case is the  
20 homicide unit supervisor.

21 Q Was there anyone, during that investigation, or  
22 any officers who had the roles or titles of case  
23 coordinator or analyst?

24 A Well, there is an analyst attached to the unit  
25 who does strictly that. He doesn't -- he is not

1 part of the investigative team, he is strictly  
2 an analyst.

3 Q I guess my question, what it's leading to, is  
4 that in 1990, without this training in  
5 homicide, without the homicide courses, training  
6 courses, I refer to what Mr. Lockyer said today,  
7 how would the left hand know what the right hand  
8 was doing, if there was no specific roles  
9 assigned?

10 A Well, there was a lot of successful work done in  
11 those days. I don't know that it was the case  
12 that the left hand didn't know what the right  
13 hand was doing. Those were, I think,  
14 Mr. Lockyer's words.

15 Q We know there is unsuccessful work, too,  
16 correct?

17 A Yes, sir.

18 Q Now, were meetings regularly held during the  
19 Harder investigation?

20 A All the time.

21 Q Were there debriefings and briefings -- I get  
22 them confused as to what's what. Were there  
23 briefings and debriefings where all members of  
24 the investigative team would gather?

25 A Yes, sir, frequently.

1 Q Okay, frequently. Were they held on a daily  
2 basis?

3 A More than a daily basis.

4 Q Did anyone keep notes as to what would go on in  
5 these meetings?

6 A Individual investigators would record matters of  
7 significance.

8 Q Was there, sir, anyone who was assigning tasks  
9 to the investigators to do, for example,  
10 neighbourhood inquiries, interviewing of  
11 individual witnesses, would anyone assign those  
12 tasks?

13 A Yes, sir.

14 Q And who was that?

15 A Well, that was a shift supervisor, who wasn't  
16 the same person all the time. It was a job that  
17 was filled on a rotating basis.

18 Q So, basically, the assignment of tasks would be  
19 by a shift supervisor, as opposed to a case  
20 coordinator or, for example, lead investigator?

21 A At least initially, yes.

22 Q You see, what I'm trying to find out is, back in  
23 1990, what structure was in place within the  
24 Winnipeg Police Services in conducting a  
25 homicide investigation to ensure that

1 information was being disseminated among the  
2 various investigators, to avoid confusion,  
3 duplication of tasks, organization of the file,  
4 et cetera? Was there any such structure in  
5 place?

6 A Well, the structure was like this, sir, the man  
7 in charge of operations was called the  
8 divisional commander. And he had -- I may not  
9 be the best one to describe this, because I  
10 can't remember. But I think he had three staff  
11 sergeants under him, and probably three  
12 sergeants, and then a group of investigators  
13 that worked three different shifts.

14 Q Was there any standard structural process in  
15 place in the Winnipeg Police Services, in 1990,  
16 for the investigation of a homicide? Were there  
17 any memos, directives from the Chief's office,  
18 as to how a homicide investigation was to be  
19 conducted?

20 A Well, there was a procedure manual, yes.

21 Q And did that procedural manual specifically  
22 relate to homicide investigations?

23 A Well, the procedural manual covered everything,  
24 all different kinds of cases. And the  
25 investigation of suspicious deaths and homicides

1 was included, as I recall. It certainly was at  
2 some point. As I say, I don't know if I am the  
3 best person to be asking all of this, because I  
4 can't guarantee you, or I can't tell you what  
5 year the manual was written, and so on.

6 Q Sir, there would have been -- and I don't know  
7 in this particular case -- we know that there  
8 was hair and fiber involved. But there would  
9 be the involvement of the forensic unit;  
10 correct?

11 A Yes, sir, very definitely.

12 Q And the forensic unit, were they a separate unit  
13 away from the robbery/homicide division?

14 A Yes, sir, that's all they did.

15 Q So who coordinated with the forensics unit?

16 A Well, the shift supervisors and later the case  
17 coordinator.

18 Q And, for example, in this case, and I know when  
19 the grave -- I am not totally familiar with the  
20 facts of the case. But the forensics unit  
21 would have attended at the scene where the  
22 grave -- where Mr. Harder's body was found;  
23 correct?

24 A Yes, sir.

25 Q Wasn't there -- didn't I see a reference to an

1 entomologist?

2 A Yes, sir.

3 Q There would have been probably dentistry  
4 involved in trying to identify the body, was  
5 there?

6 A Yes, sir.

7 Q So, again, if the forensics unit -- the  
8 robbery/homicide unit was on one floor, was it?  
9 They were all in a bullpen area, I think it was  
10 described in here?

11 A Yes, sir.

12 Q Where would the bullpen have been situated in  
13 relation to the robbery/homicide unit?

14 A Well, there were renovations and moving going on  
15 in my time there. But my memory is that they  
16 were on the same floor. Nearby, but not in  
17 that same bullpen open area, but on the same  
18 floor.

19 Q So in the Harder investigation, who would have  
20 been the liaison with the forensic unit; do you  
21 know that?

22 A Well, initially, the supervisor that was in  
23 charge on the day of the discovery. And then  
24 whoever the shift supervisor was on a continuous  
25 basis from then. It wouldn't be the same



1 person.

2 Now, closer to the time of the trial, the  
3 case coordinator, Staff Sergeant Vandergraaf,  
4 would be more likely to liaise with the  
5 forensics people.

6 Q Sir, in terms of the decision in Manitoba at  
7 that point, in 1990, the decision to lay a  
8 charge, was that solely the responsibility of  
9 the police?

10 A No, sir, that was the divisional commander in  
11 consultation with Bruce Miller.

12 Q Well, would it be --

13 A With the director of Winnipeg prosecutions.

14 Q So were the Crown consulted, prior to a charge  
15 being laid?

16 A In this case?

17 Q Regularly? I am not talking specifically about  
18 this case. But I am talking in Manitoba, around  
19 1990, were the Crown regularly consulted before  
20 homicide charges were laid?

21 A As far as I can recall, yes.

22 Q So were the Crowns, back around the time of this  
23 investigation in 1990, were they always  
24 available for consultation?

25 A Yes, but not at my level. That was quite a bit

1 higher up than me.

2 Q Now, I understand, sir, that some time after  
3 this investigation that you got promoted?  
4 Somewhere along the line you got promoted to  
5 sergeant; correct?

6 A In 1992.

7 Q Yes. And you spent a number of years as a  
8 supervisor in the homicide unit?

9 A Yes. From the spring of 1994 until December of  
10 2001.

11 Q So you would have mentored the young officers  
12 and advised young officers who were new officers  
13 coming into the homicide unit?

14 A Yes, sir.

15 Q Okay. Again, do you know if, while under your  
16 supervision, any of these officers attended any  
17 kinds of specialized courses I've earlier  
18 referred to?

19 A Yes, sir, they did.

20 Q Okay. Did you yourself attend any of them?

21 A Yes, sir, I did.

22 Q Okay. So prior to 1990, you didn't attend any  
23 of these courses, but subsequently you did?

24 A Well, I said I don't recall attending any before  
25 1990.

- 1 Q You would recall that, sergeant, wouldn't you?
- 2 A Well, not necessarily, no.
- 3 Q And during these courses, these specialized
- 4 courses, one of the focuses would be on an
- 5 organized, logical approach to a homicide
- 6 investigation; correct?
- 7 A No.
- 8 Q So if you don't organize, what do you have -- a
- 9 disorganized homicide investigation?
- 10 A Well, I just don't ever remember taking a course
- 11 where you can sum it up exactly like that.
- 12 Q Okay. I will use these terms and I will give
- 13 you very rough definitions and see if you've
- 14 ever heard of this. A case coordinator would be
- 15 an individual, a police officer, who would
- 16 review the information and determine the tasks
- 17 to be conducted by the officers to ensure
- 18 organization and non-duplication of tasks. Does
- 19 that make sense to you?
- 20 A Yes, sir, it does.
- 21 Q A lead investigator's role would be not only to
- 22 make decisions, but also out in the field
- 23 investigating. Does that make sense to you?
- 24 A Yes, sir.
- 25 Q And an analyst is someone who would conduct a

1 paper review of the file to ensure a level of  
2 objectivity, thoroughness, and to prevent  
3 jumping to conclusions. Does that make sense to  
4 you?

5 A Yes, sir it, does.

6 Q Did anyone play either of those roles at the  
7 time of the Harder investigation?

8 A Well, I think Staff Sergeant Vandergraaf could  
9 be described as a case coordinator. We had a  
10 crime analyst at the time. I don't know if --  
11 or I believe we did. If we didn't, it was very  
12 soon after. So I can't say whether this case  
13 got put to the crime analyst. And what was the  
14 third role?

15 Q The third role, there was three roles, the case  
16 coordinator, the lead investigator, and the  
17 analyst?

18 A Well, I don't think we had anybody you could  
19 describe as a lead investigator. Everybody was  
20 involved.

21 Q Okay. I want to move into the second area that  
22 I want to cover with you, sir, and that's been  
23 touched upon by numerous counsel and by  
24 Mr. Lockyer earlier.

25 Throughout these reports, the little

1 reading I've had an opportunity to do to date,  
2 it's accepted by you, I understand, that  
3 Zanidean, Ray Zanidean, was a crucial or very  
4 important witness in this investigation;  
5 correct?

6 A Yes, sir.

7 Q That I think you said earlier today, that in  
8 these kinds of investigations, or maybe in  
9 this investigation, you were dealing with  
10 criminals?

11 A Yes, sir.

12 Q That Mr. Zanidean was, in your mind at the time,  
13 or you would have been aware at the time, that  
14 Mr. Zanidean, I assume, was a crook, a con man,  
15 capable of manipulation?

16 A He was a criminal, yes, sir.

17 Q And so I again would assume, at the time, you  
18 would have always been aware, as Mr. Lockyer put  
19 it to you today, of the possibility of  
20 manipulation by an individual like Mr. Zanidean;  
21 correct?

22 A That thought was ever-present, yes.

23 Q Mr. Lockyer referred to him, again, as a  
24 dangerous witness? Not in terms of physically  
25 dangerous, but dangerous in terms of saying one

1 thing one day and changing his mind the next.

2 You agreed with that, did you?

3 A Troublesome, yes.

4 Q Would you agree that Mr. Zanidean was a witness  
5 of questionable integrity and a bad reputation?

6 A Yes, bad reputation.

7 Q Now, it's my understanding that his criminal  
8 record had been provided?

9 A Yes, sir.

10 Q And I'm not going to get into the Swift Current  
11 discussions, they have gone on at length.

12 Mr. Zanidean was making demands which you  
13 were aware of?

14 A Yes, sir.

15 Q I want to relate this, sir, to the purpose of  
16 taking notes. Back at the time of the Harder  
17 investigation, and your dealings with  
18 Mr. Zanidean, were there any regulations in  
19 place with the Winnipeg Police Services in terms  
20 of note-taking or report-making?

21 A I don't know, sir.

22 Q You don't know if they existed, or you don't  
23 know if you ever complied with them?

24 A Well, I thought you asked me if there were  
25 regulations governing the taking of notes?

- 1 Q Well, sir, for example, the RCMP has -- I don't  
2 know if it's a manual -- and Mr. Gates might be  
3 able to help us with this. But there was a  
4 manual of procedures which specifically outlines  
5 requirements for note-taking, why notes should  
6 be taken, and when notes should be taken. Was  
7 there anything like that in place in your manual  
8 of procedures or in regulations?
- 9 A I suspect in the procedure manual there was  
10 mention of it, but I don't know.
- 11 Q You suspect. Had you ever reviewed the same, or  
12 dealt with any of your superiors in relation to  
13 the same?
- 14 A In relation to the procedure manual's treatment  
15 of note-taking?
- 16 Q Yes.
- 17 A I may have. I don't recall.
- 18 Q This issue of note-taking, sir, is something  
19 that I assume you would have been trained -- you  
20 would have encountered in basic training --
- 21 A Yes.
- 22 Q -- as a police officer?
- 23 A Yes.
- 24 Q Right?
- 25 A Yes, correct.

1 Q That the taking of notes involves basic  
2 principles of police work; correct?

3 A Yes, sir.

4 Q And common sense?

5 A Yes, sir.

6 Q Correct?

7 A Yes, sir.

8 Q I want to run these by you as the purposes of  
9 taking notes and see if you agree with me.

10 One, the purpose of taking notes is to  
11 ensure accuracy and the making of  
12 contemporaneous notes helps in that regard;  
13 correct?

14 A Yes, sir.

15 Q That you then take your notebook and transfer  
16 it, depending on what police force you're  
17 working with, either on to a continuation  
18 report, or your force appears to use  
19 supplemental reports; correct?

20 A Yes, sir.

21 Q And your notes can be used as a guide?

22 A To write the report, yes, sir.

23 Q That, secondly, the notes can be utilized to  
24 provide to superiors to inform them as to what's  
25 going on in an investigation?



1 A Yes, sir.

2 Q Thirdly, that if a matter is going to court,  
3 it's basic police training, or you are to assume  
4 that a matter is going to court, so that the  
5 making of notes allows you to both refresh your  
6 memory and protects you in cross-examination;  
7 correct?

8 A To some extent, yes, sir.

9 Q I would assume, sir, that during your career you  
10 have been -- if you haven't made notes, that  
11 that's something that defence counsel would  
12 often question you on, correct, the absence of  
13 notes?

14 A Well, that is an issue that comes up often with  
15 everybody in court, I think.

16 Q So prior to 1990, had you ever been questioned  
17 on your failure to take notes?

18 A Not that I recall, but it's possible.

19 Q A second, or another issue, sir, in terms of  
20 taking notes, is that they assure that if issues  
21 arise in the future that you will have your  
22 notes to refer to; correct?

23 A Yes, sir.

24 Q For example, there could be a complaint about  
25 the investigation by a victim, by an accused?

1           There could be allegations of police brutality;  
2           correct?

3    A       Yes, sir.

4    Q       Notes help, don't they?

5    A       Yes.

6    Q       There can be internal investigations in which  
7           your notes can be provided to the investigators;  
8           correct?

9    A       Yes, sir.

10   Q       And also there could be -- wouldn't it be common  
11          sense, in dealing with a witness like Zanidean.  
12          To make notes to protect yourself against  
13          unfounded allegations, or potentially unfounded  
14          allegations in the future?

15   A       Well, could I save you some time by reminding  
16          you of my early testimony?  If you take an  
17          isolated view, or a retrospective view and ask  
18          the question, are more notes better or are less  
19          notes better, the answer is obvious, to all of  
20          those things you mentioned, of course.

21   Q       But there is nothing magic or new in the year  
22          2006.  These would have been issues that you  
23          would have learned about in your basic training,  
24          I would assume?

25   A       Oh, no, there is nothing magic about the year

1           2006. Except that, unlike the overwhelming  
2           majority of work done by police officers --  
3           unlike the majority of the work done by police  
4           officers, there is today, here in 2006, an  
5           intense inquiry.

6    Q       Yes.

7    A       And if you inquire hard and long enough on any  
8           case, you will find a shortage of notes and  
9           documentation, I would argue.

10   Q       In the Winnipeg Police Service, is that what  
11           you're saying?

12   A       In any organization.

13   Q       The last issue I want to deal with you, as to  
14           the purpose of notes, is for disclosure  
15           purposes; correct?

16   A       Yes, sir.

17   Q       Now, Mr. Commissioner, there was reference  
18           earlier today, Mr. Lockyer referred to the  
19           homicide review carried out by Inspectors Hall  
20           and Ewatski. And I think it's going to be  
21           marked as an exhibit and referred to -- or they  
22           asked other counsel to bring their copies  
23           tomorrow. I just want to review -- I have a  
24           copy here.

25           Yes. I wonder, Commissioner, would we mark

1 this page as an exhibit, or would we simply  
2 refer to the report as an exhibit tomorrow?  
3 THE COMMISSIONER: Whatever is your pleasure.  
4 MR. KENNEDY: Yes, I think I would, because I am  
5 going to ask the witness to comment on a  
6 particular section.  
7 THE COMMISSIONER: Exhibit 12?  
8 THE CLERK: 13, Mr. Commissioner.  
9 THE COMMISSIONER: Exhibit 13. And what page  
10 number is it?  
11 MR. KENNEDY: This is page 4.  
12 THE COMMISSIONER: Page 4 of the Hall and  
13 Ewatski report.  
14 (EXHIBIT 13: Page 4 of the Hall and  
15 Ewatski report)  
16 THE COMMISSIONER: Did you get your copy,  
17 sergeant?  
18 THE WITNESS: Not unless I already have it.  
19 BY MR. KENNEDY:  
20 Q Do you have a copy of the review, the  
21 Ewatski/Hall review, all of the review?  
22 A Not the entire report.  
23 Q Do you have page 4?  
24 A Thank you.  
25 MR. WOLSON: What's the exhibit number?

1 THE COMMISSIONER: It's exhibit 13.

2 MR. WOLSON: Thank you.

3 BY MR. KENNEDY:

4 Q The committee, as they refer to themselves, I  
5 want to read you a paragraph in page 4 and ask  
6 for your comment.

7 "One of the allegations being made in the  
8 media was that police had been selective in  
9 distributing information they had gathered  
10 to the Crown's office. The committee felt  
11 that by only reviewing the report/file  
12 itself, the answer to this allegation would  
13 not be provided. Simply stated, if an  
14 officer were so inclined to hold back  
15 information from the Crown, he or she would  
16 not put it in the report knowing all  
17 reports are directed to the Crown. In  
18 concert, reviewing officers likely would  
19 not find this information in the officers'  
20 notebooks either."

21 At the time of the Harder investigation,  
22 and post-conviction of Mr. Driskell, are you  
23 aware of any plan or process adopted, either by  
24 yourself or others in your force, not to make  
25 notes so that they would not be disclosed?

1 A No, absolutely not.

2 Q Have you seen this particular page before?

3 A No, sir, I haven't.

4 Q So did you, sir, in this investigation, at any  
5 time, as it's put here, "if an officer were so  
6 inclined", deliberately not make notes because  
7 they will be provided to the Crown and then to  
8 the defence?

9 A No, sir.

10 Q Now, finally, the last comment or issue, before  
11 your retirement in 2004, were there any steps  
12 taken to improve the note-taking of officers  
13 in the Winnipeg Police Services? In other  
14 words, were there any regulations, departmental  
15 memos or directives in relation to the same?

16 A Well, I don't like being the one that's asked  
17 this question, because I'm afraid I might be  
18 missing information. I don't know. I expect  
19 that what I can tell you is that the quality of  
20 note-taking has improved. It has over the  
21 years. But I don't know what changes there were  
22 in policies, procedures, or any of what you're  
23 asking.

24 Q So in terms of, when I ask you if you have any  
25 knowledge of whether or not there were any

1 regulations, departmental memos, or directives,  
2 you don't know the answer to that?

3 A I don't.

4 Q You didn't see any yourself or not aware of any  
5 yourself?

6 A Well, I may have seen them but I don't recall  
7 them now.

8 MR. KENNEDY: I don't have any further  
9 questions. Thank you, Mr. Commissioner.

10 THE COMMISSIONER: Thank you, Mr. Kennedy. This  
11 is probably a convenient time to take the  
12 afternoon recess.

13 MR. ABRA: Mr. Commissioner, I just wondered,  
14 that book that I submitted, I am not sure if I  
15 asked that to be marked as an exhibit.

16 THE COMMISSIONER: Yes, it was Exhibit 12.

17 MR. ABRA: Thank you very much.

18 THE CLERK: All rise. This Commission of  
19 Inquiry is now in recess.

20 (Proceedings recessed at 3:25 p.m. and  
21 reconvened at 3:43 p.m.)

22 THE CLERK: All rise. This Commission of  
23 Inquiry is now recommenced. Please be seated.

24 THE COMMISSIONER: Mr. Prober.

25 MR. PROBER: Mr. Commissioner.

1 BY MR. PROBER:

2 Q Mr. Anderson, we know each other and you know  
3 that I represent Mr. Dangerfield at this  
4 inquiry.

5 A Yes, sir.

6 Q Let me just clear up a couple of things, if I  
7 can, because I wasn't sure that I understood  
8 your evidence correctly. You said that at  
9 one point, I think to Mr. Abra, that you  
10 suspected, if I have got your words correctly,  
11 that you had provided your notebook to the  
12 Crown. And then you referred us to tab 54. Do  
13 you recall that?

14 A Yes, sir, I do.

15 Q Volume 2, do you want to have a look at that,  
16 please? It's tab 54, volume 2, which would be  
17 Exhibit 6B, Mr. Commissioner. You had said  
18 page 3, paragraph 16, but I think it is actually  
19 page 4?

20 A Yes, sorry, you're right.

21 Q Right, page 4?

22 A Yes.

23 Q Okay. Paragraph 16, and I think the  
24 Commissioner had corrected you on that. But in  
25 any event --



1 A I think I was on the third page of text.

2 Q Right.

3 A Which is actually the fourth page altogether.

4 Q In any event, we're there. And you based your  
5 suspicions that you had provided the Crown with  
6 your notebook on the fact that -- I think  
7 Savage -- I think the last sentence or two, that  
8 Savage had some information and you had assumed,  
9 I take it, that Savage got that from Brodsky?

10 A Well, yes. I don't know how else Constable  
11 Burton could have been told that by Savage about  
12 these comments, if not from my notebook, or some  
13 report that I wrote, that isn't here today.

14 Q But he was doing his own independent  
15 investigation. So I thought perhaps that Savage  
16 may, as a result of his own independent  
17 investigation, have got that information and  
18 passed it on to Brodsky. That is why I sort of  
19 take issue with -- it's not a huge point -- but  
20 with your suspicion that somehow the Crown had  
21 got the notebook because Savage had some  
22 information that you assumed he got from  
23 Brodsky. But Savage was out in the field doing  
24 his own independent investigation, did you know  
25 that?

1 A Well, yes, I do now.

2 Q Right.

3 A But as I've testified earlier, I've always  
4 suspected that had mine and Sergeant Paul's  
5 notes did go to the Crown. And this seemed, to  
6 me, to be confirmation that they did. I mean,  
7 it's unthinkable to me that Mr. Brodsky wouldn't  
8 have asked for my notes.

9 Q Right.

10 A If the Crown attorney had asked for my notes, if  
11 he hadn't already received them or they had been  
12 lost or something, I would have photocopied them  
13 again.

14 Q Well, again, there is no record that the Crown  
15 asked for your notes. You have no independent  
16 recollection of that, I take it?

17 A That's true.

18 Q We know that Sergeant Paul's notes were on the  
19 Department of Justice's file, but not the same  
20 with yours. But there is no issue that if you  
21 had been asked to provide your notes, you would  
22 have provided them?

23 A Absolutely.

24 Q My concern is your suspicion that somehow, based  
25 on this particular paragraph, you suspected that

1 the Crown got your notes. And I'm saying to  
2 you, perhaps, just perhaps, Savage got that  
3 information on his own, with his own independent  
4 investigation?

5 A Well, if that is the case, Mr. Prober, I can't  
6 imagine how he would get it, other than through  
7 Mr. Brodsky, or other than talking to me or  
8 Sergeant Paul. And I know that he didn't talk  
9 to me.

10 Q Or Sergeant Vandergraaf?

11 A Well, that would be very surprising if  
12 Mr. Savage was talking to Vandergraaf or anybody  
13 from --

14 Q Oh, no. But Savage talked to Burton. Savage  
15 was doing his own investigation in Saskatchewan.

16 A No, I understand that.

17 Q Okay.

18 A But in this paragraph, Constable Burton is  
19 attributing finding out about the comments made  
20 by Ray Zanidean to Tom Anderson and Al Paul  
21 about the arson, he is attributing all of that  
22 to Mr. Savage. He says it was learned at the  
23 meeting. This information was originally  
24 provided by Savage.

25 Q But the point is, you don't know where Savage

1 got it?

2 A No.

3 Q You are assuming he got it from Brodsky?

4 A Yes, sir.

5 Q And you are assuming that he got it from

6 Brodsky, because you are assuming that Brodsky

7 got your notes somehow?

8 A Yes, sir.

9 Q But that's all assumptions; right?

10 A Yes, sir.

11 Q You also, as I recall, and I think that you were

12 sort of talking at cross-purposes with Mr. Abra.

13 But when Mr. Abra asked you about the fact that

14 Zanidean was told, or was not to be told,

15 rather -- when Zanidean was not to be told

16 about the immunity until after he testified,

17 Mr. Abra asked you about Dangerfield and Lawlor

18 knowing about this, or would have to know about

19 this in case Brodsky went into it at trial. Do

20 you recall that question?

21 A Yes, sir.

22 Q Yes. And you said you were certain they would

23 have known that because of comments in your

24 notebook. I didn't understand that. Because

25 Mr. Abra, as I understood his question, was

1 talking about the fact that Zanidean was not to  
2 be told about the immunity until after he  
3 testified. And that's when Abra put to you,  
4 well, Dangerfield and Lawlor would have to know  
5 this in case Brodsky got into it. And you had  
6 said that you're certain that they would have  
7 known that because of the comments in your  
8 notebook. Is that a fair summary of the  
9 evidence or not?

10 A I'm confused. I don't know whether I misspoke  
11 or you misunderstood me. I don't know what that  
12 means.

13 Q I may have misunderstood you, but that's what I  
14 have noted and that's what my associate had  
15 noted. But the point is, there were no comments  
16 in any notebook of yours about the immunity  
17 issue?

18 A No, sir.

19 Q No. And there were certainly no comments about  
20 the fact that Zanidean was not to be told until  
21 after the trial, nothing in your notebook about  
22 that?

23 A That's true, sir.

24 Q Maybe what you were referring to, and this is  
25 what I thought, was that you may have been

1 referring to the fact of the arson, the Swift  
2 Current arson?  
3 A Yes.  
4 Q Because that was in your notebook?  
5 A Yes.  
6 Q Right?  
7 A Yes.  
8 Q Okay. Now, based on your evidence, as I  
9 understand it, you do not recall any significant  
10 direct contact with George Dangerfield during  
11 the Harder homicide investigation; is that  
12 fair?  
13 A That's true, sir, yes.  
14 Q You would have, I take it, no independent  
15 recollection of any specific meeting with  
16 Dangerfield?  
17 A That's true, sir.  
18 Q You would have, I take it, no specific note of  
19 any meeting with Dangerfield?  
20 A Yes, sir, that's true.  
21 Q You would have, I gather, no specific or  
22 independent recollection of providing any verbal  
23 information to Dangerfield, either at a meeting  
24 or on the phone, no independent recollection of  
25 that?

1 A No, sir, not directly.

2 Q You have no specific note, of course, of  
3 providing any information to Dangerfield, either  
4 at any meeting or on the phone, correct?

5 A That's correct, sir.

6 Q You did say, in your interview with Commission  
7 Counsel, that you did recall communicating with  
8 Gregg Lawlor about obtaining certain documents  
9 that had been requested by the defence, correct?

10 A Yes. But I think that that was just written  
11 correspondence, not communication.

12 Q Right. Right. Okay. Well, let's make sure  
13 that I understand you on that. But tab 1, page  
14 3. Tab 1, page 3 -- pardon me, tab 2, exhibit  
15 or volume 1, page 3.

16 A Which one was it, sir?

17 THE COMMISSIONER: It's your statement.

18 BY MR. PROBER:

19 Q It's your statement. So it would be volume 1,  
20 tab 2, page 3 of your interview.

21 A Yes, sir, I have it.

22 Q Page 3, at this top:

23 "Anderson occasionally communicated with  
24 Gregg Lawlor about obtaining documents  
25 that had been requested by the defence."

1           That's what I was referring to.

2    A       Yes, sir.

3    Q       And that's accurate, as far as you can recall?

4    A       Yes.  It's just that I think that was likely  
5           written communication.  I don't recall having a  
6           telephone conversation with him about it or  
7           anything.

8    Q       If the defence requested something, he would  
9           provide a request to you in writing, is what  
10          you're saying?

11   A       Indirectly.

12   Q       And you would get back to him with the  
13          information?

14   A       Yes, indirectly.  It might be sent to the  
15          divisional commander or Staff Sergeant  
16          Vandergraaf.

17   Q       Fair enough.  You say, I believe, as well, in  
18          your interview at page 6, that the normal way  
19          of disclosure in this kind of a case was by way  
20          of providing the Crown the P6, the statements of  
21          the witnesses, and supplemental -- the pinks of  
22          the supplemental reports; correct?

23   A       This is on page 6?

24   Q       I believe it's on page 6, yes.  I could be wrong  
25          about that.  It might be page 3.



1 A It is page 3, sir.

2 Q Right. Sorry about that, page 3. So, again,  
3 providing the P6, statements and the pinks of  
4 the supps; right?

5 A Yes. And the witness and accused's statements.

6 Q Right. Right. I wanted just to confirm  
7 something that you said in your evidence, I  
8 believe when you were being questioned by  
9 Mr. Code, following up on that information in  
10 your interview. If you could go to tab 12,  
11 please, which would be in volume 2?

12 A Yes, sir, I have it.

13 Q That is a memo to Inspector Bell, right?

14 A Yes, it is.

15 Q Related to the protection of Zanidean, right?

16 A Yes, sir.

17 Q And I believe you said that that's an example  
18 of something that wouldn't go into a  
19 supplemental report because the defence counsel  
20 would end up getting that disclosure?

21 A Yes. Yes, sir.

22 Q And that's what you said, right?

23 A Yes. And I actually --

24 Q So you knew that if the pinks went to  
25 Dangerfield, the defence was likely to get that,

1 any supplemental report?

2 A Yes. Yes, sir. And that's why this was an  
3 example of a kind of document that you would  
4 report witness protection matters on, and  
5 sometimes even on a regular supplementary, but  
6 it wouldn't get split up and sent off. The  
7 supplementary form would be the vehicle through  
8 which you would write the report, just like this  
9 blank piece of paper.

10 Q Because that's the kind of thing you wouldn't  
11 want going to defence counsel. And you knew the  
12 pinks would go to defence counsel?

13 A Yes, sir.

14 Q Okay. Now, on the witness protection matter,  
15 would you direct your attention to tab 14,  
16 please? Just to confirm that it appears, page  
17 3, that Stu Whitley, who was the Assistant  
18 Deputy Minister at the time, was involved as  
19 early as November 1990. And at tab 14, page 3  
20 of that tab, the third page, the second page of  
21 this letter, you will see the letter is copied  
22 to Whitley, Lawlor and Graham Garson, who was  
23 the Deputy Minister at the time. Do you see  
24 that?

25 A Yes, sir, I do.

1 Q Not copied to George Dangerfield?

2 A No. No, it's not.

3 Q And we see another example of Whitley's  
4 involvement in March of 1991. If you look at  
5 tab 59, please, I think it's March 4th, '91.  
6 It's a memo from Miller to Whitley?

7 A Yes, sir.

8 Q So Whitley seems to be involved, well, in  
9 November '90. And, again, we see evidence of  
10 that in March '91; correct?

11 A Yes, sir.

12 Q Now, when you were being questioned by  
13 Mr. Lockyer this morning, you may recall that  
14 he asked you to assume something and that I  
15 objected. He then took you to page 29 of your  
16 statement, your interview. And that's at,  
17 again, volume 1, tab 2. Do you have that?

18 A Yes, sir, I do.

19 Q And the first paragraph -- there appears to be  
20 only two paragraphs on the page. But in any  
21 event, towards the end of that,

22 "This was done on the advice of Bruce  
23 Miller. Accordingly, the arrangement was  
24 not a deal that had been made with  
25 Zanidean, or in exchange for his testimony.

1 Further, Anderson believes that the Crown  
2 was fully aware of the arrangements that  
3 had been reached regarding the Swift  
4 Current arson."

5 I thought I heard you say, and then Mr. Lockyer  
6 jumped to another question very quickly, I  
7 thought I heard you say the word "Miller". In  
8 other words, the Crown you are referring to  
9 there is Bruce Miller, I take it?

10 A Well, I assumed that Mr. Miller was in  
11 communication with Mr. Dangerfield and  
12 Mr. Lawlor.

13 Q I understand that. But you wouldn't know what  
14 communications existed between Miller and  
15 Dangerfield, obviously?

16 A That's true, sir, yes.

17 Q No. But my point is that the Crown there in  
18 that part of your statement, as I understood  
19 your evidence, referred to Miller?

20 A Well --

21 Q Was that wrong, or is that the generic Crown,  
22 the Crown's office?

23 A Yes.

24 Q Just the Crown's office?

25 A Yes.

1 Q Okay. Fair enough. You, obviously, couldn't  
2 tell us, based on your earlier evidence to my  
3 questions, what Dangerfield knew or didn't know  
4 about these issues, correct? You had no  
5 meetings with him that you can recall?

6 A That's true, sir, yes.

7 MR. PROBER: Thank you. Those are my questions.

8 THE COMMISSIONER: Thank you, Mr. Prober.

9 MR. OLSON: Mr. Commissioner.

10 BY MR. OLSON:

11 Q Mr. Anderson, we know one another. I just have  
12 a very few questions, sir, if I may.

13 First of all, sir, you recalled, when you  
14 gave your statement to Mr. Code on May 25th and  
15 26th of this year, that Mr. Lawlor was a more  
16 junior counsel assisting Mr. Dangerfield?

17 A Yes, sir, that's true.

18 Q That reference is at page 2 of your statement,  
19 and you stand by that?

20 A I'm sorry?

21 Q That reference was at page 2 of your statement,  
22 sir, if you wanted to look at it. I'm just  
23 saying that that's your recollection, as well?

24 A Yes.

25 Q Right. in your notebook, Mr. Anderson, it has

1           come out, and it came out in Mr. Paul's evidence  
2           as well, that there is in each of your notebooks  
3           one reference to Mr. Lawlor. In yours, if you  
4           want to check it, you don't have to, it's in tab  
5           5 -- sorry, in your tab 4, page 77. In  
6           Mr. Paul's it's tab 5, page 548. Both of those  
7           references are consistent, both of them are in  
8           respect to the meeting with Kovnats on  
9           November 13th, and in both cases it records that  
10          Mr. Kovnats was given Mr. Lawlor's name as the  
11          contact person for the Crown. Is that your  
12          recollection?

13        A     Yes, sir, that is.

14        Q     And you're aware that shortly thereafter,  
15              essentially, your contact person became  
16              Mr. Miller?

17        A     Yes, sir, that's true.

18        Q     Mr. Abra had asked you some questions, sir, and  
19              you responded at one point, offered that there  
20              was some communication with Mr. Miller about  
21              out-of-province travel. Do you recall referring  
22              to that?

23        A     Yes, sir, I do.

24        Q     There is an Exhibit 8. I don't know if you have  
25              it before you. It's a short --yes. I don't

- 1 think that's the right one, sir.
- 2 A No. This is Exhibit 12.
- 3 Q Just turn, if you would, to page 4 of Exhibit 8,  
4 Mr. Anderson, for a moment?
- 5 A Yes, sir, I'm there.
- 6 Q That's a memo from Louise Beaudette, who you  
7 understood was assisting Mr. Miller?
- 8 A Yes, sir.
- 9 Q And addressed, as it's indicated here. This is  
10 the out-of-town travel that you were referring  
11 to, I assume; is that correct?
- 12 A It's one of them, yes, sir.
- 13 Q And there were others, that there were similar  
14 arrangements made, for which the province paid  
15 to assist you and Sergeant Paul in doing the  
16 investigation?
- 17 A Yes, sir, that's correct.
- 18 Q Thank you. Finally, sir, you did have two other  
19 matters. There is -- in tab 14 of volume 2,  
20 marked as 6B in these proceedings, tab 14 of  
21 that, which Mr. Prober took you to a couple of  
22 pages, I think. There's a ledger page in there,  
23 correct?
- 24 A Yes, sir, I've found it.
- 25 Q And I understand that there may be some

1           handwriting, I just want to you confirm this,  
2           that about halfway down the page, starting with  
3           "received from Louise", and a few other entries,  
4           are those in your hand?

5    A       Yes. I believe the five entries there are mine.

6    Q       Right.

7    A       And then there are three more entries at 18, 20  
8           and 26.

9    Q       Right. And it appears that Al Paul was using  
10           the month and the day. And then when you  
11           started making the entries, it appears that you  
12           were using the day and then the month. In that  
13           first column, do you see how the dates are  
14           recorded, sir?

15   A       Well, I have not a very good copy.

16   Q       All right.

17   A       Mine is not a very good copy. The left-hand  
18           side of mine is cut out by the photocopying,  
19           mostly.

20   Q       My only point was that, immediately before the  
21           first one that you have identified, was February  
22           26th, that appears to be in Al Paul's, and it is  
23           02/26?

24   A       Yes.

25   Q       And then the next entry is 03/04?



1 A Yes, I see that.

2 Q And then beneath that, 03/05, further down?

3 A Yes, sir.

4 Q And then 03/12, 03/18. So it appears the system

5 was changed to the month and the date, as

6 opposed to perhaps the other way around. I

7 don't know. In any event, those are your

8 entries, those five entries there, sir?

9 A Yes. Well, five and then three others, eight

10 altogether.

11 Q Right at the bottom?

12 A No. Well, the bottom, two-thirds of the way

13 down or something, I think it's:

14 "3/18 received from Justice Department,

15 Louise."

16 Q All right.

17 A That's me.

18 Q And there is a second one below that, that's the

19 same?

20 A Yea. And the third one.

21 Q All right. Those three are yours, as well?

22 A Yes.

23 Q Thank you. You also had two supplemental

24 reports dated in late May. And it was your

25 recollection in your statement, if you would

1           turn to your statement, sir, at tab 2 at page  
2           28?  
3     A     Page 28?  
4     Q     Sorry, tab 2 at page 28.  
5     A     Yes, sir, I have it here.  
6     Q     Right at the top of the page you refer to  
7           Mr. Brodsky having asked for some information.  
8           And then you are responding in the May 18th  
9           report. Do you see that reference?  
10    A     Is this letter K, letter K halfway down the  
11       page, events in May 1991?  
12    Q     Sorry, I'm at tab -- yes, it starts at letter K  
13       and then carries over the next page. You will  
14       see on the next page there is a reference to  
15       May 10, '91?  
16    A     Yes, sir, I have that.  
17    Q     And at the bottom of 28, you had said, four  
18       lines up from the bottom, that you couldn't  
19       recall whether you had spoken directly to  
20       Greg Lawlor about those requests, or whether  
21       his instructions were conveyed through  
22       superiors?  
23    A     Yes, sir.  
24    Q     And you've now indicated that, to the best of  
25       your recollection, any communication was in

1 writing?

2 A That's my recollection, yes.

3 Q All right. Back to Exhibit 8, if I may, sir,  
4 that small one that you've just been handed, tab  
5 1 of that?

6 A Yes, sir, I have it.

7 Q In fact, that's the type of writing that you  
8 recall? That's how the communications would be  
9 sent back when you and Al Paul were responding  
10 to written inquiries from Mr. Lawlor?

11 A Yes, sir, that's pretty typical.

12 MR. PROBER: Thank you. Those are my questions.

13 THE COMMISSIONER: Thank you, Mr. Olson.

14 MS. CARSWELL: Good afternoon, Mr. Commissioner.

15 BY MS. CARSWELL:

16 Q Mr. Anderson, we know each other. And you know  
17 that I am here representing the Winnipeg Police  
18 Service?

19 A Yes, ma'am, I do.

20 Q Now, we have heard much evidence over the last  
21 days and weeks about the financial arrangements  
22 that were being discussed for Mr. Zanidean  
23 between, principally, Mr. Miller and Mr. Kovnats  
24 on Mr. Zanidean's behalf. And you were aware  
25 that those discussions were going on; is that

1 correct?

2 A Yes, ma'am, I was.

3 Q And it would be fair to say, I think, that you  
4 understood that you could not make, on behalf of  
5 the Winnipeg Police Service, or anyone else, any  
6 commitment with respect to financial  
7 arrangements to be made for Mr. Zanidean; is  
8 that correct?

9 A Yes, that is correct.

10 Q In fact, we heard from Staff Sergeant  
11 Vandergraaf in his evidence that he specifically  
12 reminded you of your responsibilities in this  
13 regard in that you would not be able to make  
14 commitments to Mr. Zanidean, whether that be for  
15 financial arrangements or any other  
16 arrangements. Would that be fair? Do you  
17 recall receiving that advice from Staff Sergeant  
18 Vandergraaf?

19 A Yes. And that was really just part of my  
20 understanding of the issue, that was quite a big  
21 deal that we offer witnesses nothing in exchange  
22 for testimony, but witness protection.

23 Q And it would be fair to say that that was a  
24 principle, if we could call it that, that the  
25 Winnipeg Police Service, at that time, made its

1 members well aware of, that you could afford  
2 witness protection as a result of them  
3 potentially coming to harm, as a result of their  
4 coming forward; correct?

5 A I would describe it as a big part of our  
6 education as a criminal investigator. It was a  
7 major, major plank in our education on how you  
8 do criminal investigations.

9 Q And it would be very clear, in your mind  
10 throughout this time, that one of the things  
11 that you were not to do, and you were trained  
12 not to do, was promise anything to anyone to  
13 secure their testimony?

14 A Precisely what I just said in my last answer,  
15 yes.

16 Q Now, you understand that this particular  
17 investigation occurred prior to the decision in  
18 Stinchcombe and the obligations that that  
19 imposed on both police and Crown in respect to  
20 disclosure?

21 A Yes, ma'am, I am aware of that.

22 Q And certainly at that time the practice was, as  
23 I understand it, that the officers were to make  
24 notes, and that was to be reduced into  
25 supplemental reports, and those supplementals

1 would be split and provided to the Crown  
2 attorneys; is that correct?

3 A Yes.

4 Q And those are what we've heard referred to as  
5 the pink copies of the report, there being four  
6 copies in a carbonless system?

7 A Yes, ma'am.

8 Q And often we've heard that in major cases the  
9 pinks would be delivered by hand to the Crown  
10 involved in the case, is that fair to say? You  
11 have that experience, based on your time in the  
12 homicide unit?

13 A Well, I did later. I don't know if I had had  
14 that experience at the time of this case. I  
15 wasn't that closely involved with disclosure  
16 matters.

17 Q No. All right. Now, you had indicated that it  
18 was your belief that, notwithstanding that this  
19 was prior to Stinchcombe, that you would have  
20 likely provided a copy of your notes; is that  
21 correct?

22 A Yes, ma'am.

23 Q And was that a regular practice that you and the  
24 other investigators in a major crime unit would  
25 follow?

1 A I believe so, yes.

2 Q And that was because, it would be fair to say,  
3 that you understood that it was part of your  
4 responsibility to ensure that the Crown was  
5 briefed on all aspects of the investigation  
6 going forward to do the prosecution?

7 A Well, certainly that would be the purpose. I  
8 don't know if that was my understanding. My  
9 understanding was that when the case coordinator  
10 asked for your notes, you photocopied them and  
11 handed them to him. I don't take issue with  
12 your characterization of what the purpose was.

13 Q But certainly your understanding was that it was  
14 your responsibility, and the police's  
15 responsibility, to ensure that all of the  
16 information got to the Crown so that they could  
17 appropriately conduct the case?

18 A Oh, absolutely, yes.

19 Q All right. And, in fact, I suggest that  
20 Mr. Dangerfield was not the type of Crown who  
21 would have been happy to be surprised by  
22 information not found in the file, would that be  
23 a fair characterization?

24 A Well, to me that would be a fair  
25 characterization of any Crown, any prosecuting

1 attorney. I don't know if Mr. Dangerfield was  
2 any more so.

3 Q Now, going back to 1990 and '91, the  
4 recollection of some previous witnesses was that  
5 at this particular time there were fewer Crowns  
6 involved in the prosecution of serious offences  
7 than there would be in later years in your  
8 career; correct?

9 A Fewer Crowns involved in the prosecution of  
10 murders?

11 Q Yes, back in the early '90s, '91, at the time of  
12 this incident?

13 A Yes, I think that's true.

14 Q And there would be nothing unusual at that time  
15 about a Crown attorney picking up the phone and  
16 calling an investigator directly to ask them for  
17 information that they required on the file.  
18 Would that be fair?

19 A That would be fair, yes.

20 Q And, in fact, we now know, and I suspect you  
21 know from the end of your career, that that  
22 process has become much more formalized, that  
23 now there is a request on paper that comes from  
24 the Crown for material that they require, and in  
25 most -- in all cases, paper would then go back



1 to the Crown. Was that your experience in the  
2 latter part of your career?

3 A Yes, ma'am, that's true. And just to correct my  
4 previous answer, to make it more accurate, I  
5 don't think the procedure was that much less  
6 formalized then. It would usually go -- the  
7 Crown attorney would pick up the phone and talk  
8 to the case coordinator, who would ensure that  
9 they got what they needed, or send a memo to the  
10 case coordinator.

11 Q But if I were to suggest to you that, back in  
12 the early '90s, as opposed to 2004, when you  
13 left the police service, that it was more likely  
14 in the early '90s that you would get a phone  
15 call rather than a memo, would you agree with  
16 that?

17 A Yes, I think so. I think it would usually go to  
18 the case coordinator or the divisional  
19 commander, but I think we are saying the same  
20 thing pretty much.

21 Q And Stinchcombe rather formalized that process  
22 between -- the disclosure process between Crown  
23 and police, that would be fair to say?

24 A Stinchcombe, did you say formalized it?

25 Q It helped formalize how that paper trail would

1 go back and forth between the police and the  
2 Crown?

3 A Yes, I think that's true.

4 Q Over your years then with the police service, I  
5 would suggest that you have certainly had  
6 instances where a Crown attorney would call you  
7 and ask you to provide additional information on  
8 a file?

9 A Absolutely, yes.

10 Q Where they would phone you to ask you to either  
11 do further investigation or ensure that further  
12 investigation was done on a particular matter  
13 that they had a concern on, on the file; you've  
14 had that experience?

15 A Probably on every murder case that I ever  
16 supervised.

17 Q Certainly you would have regular -- or you would  
18 have experience with them contacting you and  
19 asking for additional reports on an incident  
20 where they might wish to provide defence with  
21 disclosure?

22 A Yes, ma'am, all the time.

23 Q And I would suggest that you even had contact on  
24 occasion when a Crown would contact you and  
25 suggest that they weren't sure whether the

1 information contained in a report was correct  
2 and they wanted to ensure that it was. That's  
3 an experience you've had?

4 A Yes. That's the kind of thing that typically  
5 happened. I can't put a face on an example.  
6 But, typically, a report would make reference to  
7 an event that the Crown might call back, asking  
8 if there was a report on that event mentioned in  
9 the report, and then that would cause another  
10 report to be written. That's a typical way the  
11 Crown would flesh out what had been sent to  
12 them.

13 Q Now, in respect of this particular instance, can  
14 you tell me if you ever had the -- and I'm  
15 talking about in the Harder murder  
16 investigation -- did you ever have contact from  
17 anyone at the Crown's office to ask you for  
18 additional information on the file, that you can  
19 recall?

20 A Not that I recall, no.

21 Q Did you ever have anyone contact you and ask  
22 you to generate an additional report, relative  
23 to any particular matter that you were involved  
24 in?

25 A No, ma'am, not as far as I can remember.

1 Q Did you have anyone contact you and question you  
2 as to whether the information that you had put  
3 into any of your reports was correct?

4 A No, ma'am, not that I recall.

5 Q Now, during your examination with Mr. Code, you  
6 indicated on a number of occasions that you  
7 would be or may be asked to generate a  
8 supplemental report by a supervisor. Do you  
9 recall that you mentioned that a number of times  
10 in your evidence?

11 A Well, I think I was trying to describe to  
12 Mr. Code how the checks and balances were in  
13 place. Regardless of how well anyone thinks  
14 they worked, anyone here thinks they worked,  
15 there were those checks and balances in place,  
16 similar to those that existed when I was a  
17 supervisor. And those checks and balances are  
18 simply this, that reports, submitted by people  
19 like me in 1990, were read by a supervisor. If  
20 they are found to be deficient in any way, the  
21 first check is the supervisor asks the author of  
22 the report to expound upon an issue, or whatever  
23 the case may be.

24 And the second check is with the Crown  
25 attorney. The reports are sent to the Crown

1 attorney. And typically the Crown attorney does  
2 just what you and I have been talking about in  
3 your previous questions, they call and ask for  
4 further information or further explanation, or  
5 whatever the case may be. And part and parcel  
6 to all of that, also involved reports that went  
7 missing and had to be sent again. And  
8 sometimes -- I can think of a case where I sent  
9 complete sets of officer's notes three times.  
10 That's the reality. That's the nature of the  
11 business. Things do go missing.

12 Q Now, certainly you would agree with me, I think,  
13 that it was part of your job to generate a  
14 supplemental report, based on your notes, that  
15 was part of the general policing practice at  
16 that time?

17 A Yes, ma'am.

18 Q So it wouldn't be -- the things that you were  
19 talking about were, I take it, these checks and  
20 balances that you've explained, and not that you  
21 had an expectation that someone would have to  
22 tell you to generate a supplemental report every  
23 time you took notes?

24 A That's true, yes.

25 Q With respect to an issue involving the Swift

1 Current file, and I don't intend to take you to  
2 the documents again in book 1, that you've been  
3 taken to today, unless you need that. And if  
4 you do, I know you will tell me. But certainly,  
5 would it be fair to say, based on your evidence,  
6 that the letter from then Constable Burton that  
7 was generated in December of 1990, did you ever  
8 see that letter?

9 A I think I will have to go to the book.

10 MS. CARSWELL: That would be in Exhibit 1. I  
11 believe it's tab 30, if my memory serves me.  
12 Yes, it's tab 30.

13 MR. WOLSON: Exhibit 1?

14 BY MS. CARSWELL:

15 Q Exhibit 1, tab 30. It's the letter from  
16 Constable Burton dated December 14, 1990. Do  
17 you have that in front of you?

18 A Yes, I do. And I have the answer.

19 Q Yes.

20 A I've never seen this until today.

21 Q And following up on that, did you ever see  
22 either of the two investigative reports that are  
23 referred to as being sent with that letter?

24 A From Swift Current?

25 Q Yes.

1 A Absolutely not, no.

2 Q You indicated that it was your intention to  
3 start -- perhaps to start another file, that  
4 being an assist to another agency, with respect  
5 to the information you received from Swift  
6 Current; is that correct?

7 A Yes.

8 Q And you indicated that you weren't sure whether  
9 or not that had been done. Is that a fair  
10 summary of your evidence? You're not sure  
11 whether you did that or not?

12 A That's true, yes.

13 Q Certainly, I can tell you that there is no -- we  
14 can find no record of another file with respect  
15 to that. So I take it you wouldn't take issue  
16 with the fact that there doesn't appear to be an  
17 assist file that was opened? You may not have  
18 opened the file?

19 A That's a possibility.

20 Q During the period of time that you were  
21 guarding -- I am going to use the word guarding,  
22 and I know that is perhaps not the best  
23 technical term -- Mr. Zanidean in the hotel  
24 room --

25 MR. LOCKYER: Minding.

1 BY MS. CARSWELL:

2 Q Minding. Mr. Lockyer suggests minding, so I  
3 will go with his more gentle term. When you  
4 were minding Mr. Zanidean in the hotel room,  
5 alternately with Sergeant Paul, were you aware  
6 of what the state of the, I am going to call  
7 them the negotiations, that were going on  
8 between Mr. Miller and Mr. Kovnats?

9 A Well, to some extent, but not in any great  
10 detail.

11 Q You were certainly aware that Mr. Zanidean  
12 wasn't happy with the state of those  
13 negotiations?

14 A I had a window seat on that fact, yes, I saw  
15 that every day.

16 Q And so if your intention was, or if the  
17 service's intention was to keep him a happy  
18 person, you weren't doing a very good job of  
19 that, were you?

20 A No, ma'am.

21 Q When you talked about witness protection details  
22 that would not normally be put in a file, you  
23 indicated at one point that, in fact, that was  
24 the practice then and the practice now. And  
25 when you're talking about those type of details,



1 I would suggest to you, those were the type of  
2 details that might identify where the witness  
3 was located; correct?

4 A Yes. And I'm glad you asked me that because  
5 that's something that I don't think I've  
6 explained very well here. That was definitely  
7 the motivation behind the -- that was where the  
8 understanding occurred that we don't put those  
9 matters in notes or reports that will end up at  
10 the Crown's office and eventually with the  
11 defence counsel.

12 Now, that's not to say that every single  
13 matter pertaining to witness protection is so  
14 sensitive that it couldn't go in a report. But  
15 the motivation behind it is what you've just  
16 said, the sensitivity of trying to avoid having  
17 addresses of protected witnesses and names and  
18 relatives and so on.

19 Q So it wasn't the case that if you had a  
20 protected witness, who made an admission to you,  
21 such as we see in your notes and Sergeant Paul's  
22 notes at tabs 4 and 5, and you've been taken to  
23 that October entry a number of times, that would  
24 have been put in your notes, and that was  
25 properly put in your notes because there was

1 nothing in there, I would suggest to you, that  
2 related to the witness's protection. It didn't  
3 disclose where he was going to be residing.  
4 Ultimately, it might lead to his being outed as  
5 an informant, but that was something that would  
6 be dealt with down the line. Would that be  
7 fair?

8 A Close, it would be close to being fair. It's  
9 that the comments about the arson, there was no  
10 reason not to have those in the notebooks, there  
11 was just a reason not to detail them in the same  
12 report as the murder investigation.

13 Q Certainly now, I would suggest to you, and if  
14 you are not aware of the current practice,  
15 please feel free to say it, that clearly there  
16 is -- in most cases where you would have an  
17 individual, like a Ray Zanidean, who is going to  
18 act as an agent, there is an agent contract or  
19 letter of understanding entered into between the  
20 police service and the agent, isn't that  
21 correct, with respect to what they're intended  
22 to do, and what, if any, agreement the service  
23 is offering them, is put into a written form and  
24 signed by both the members and the agent. Are  
25 you aware of that?

1 A Well, I'm aware that just before I retired, or  
2 just after I retired, a system like that was set  
3 up. That's all I know about it.

4 Q And so, then, you wouldn't be aware that that  
5 material is then disclosed to the Crown and  
6 available to defence, or would that have  
7 occurred after your time as well?

8 A Well, either just before I retired or just  
9 after.

10 Q Now, certainly you've made a number of comments  
11 about the state of the file that you've been  
12 privy to in coming here to testify. The theory  
13 that was, the working theory during this  
14 investigation is that there was more than one  
15 individual involved in this homicide; is that  
16 fair?

17 A Yes, ma'am.

18 Q And certainly, it would be fair to say that the  
19 service would have considered this an open file,  
20 even subsequent to the conviction of  
21 Mr. Driskell?

22 A Yes.

23 Q Correct? And is it your experience, and I'm  
24 going to suggest to you that the Winnipeg Police  
25 Service has never had a policy of destroying

1 open files. That would be fair?

2 A That's fair according to my understanding, yes.

3 Q So then it's unlikely that any portion of this  
4 file would have been destroyed or gotten rid of  
5 by the Winnipeg Police Service. The file would  
6 be an intact file because it's considered an  
7 open file?

8 A That I am not going to agree with you on. That  
9 would not be the case. It is very easy for  
10 documents to be missing from the file.

11 Q All right. But I didn't suggest that it would  
12 be easy for documents to be missing. What I  
13 asked you was, certainly the police service  
14 would not destroy any portion of an open file;  
15 correct?

16 A Well, I don't know if that's true, in the  
17 strictest sense. Because one of the  
18 possibilities that I maintain, why we have no  
19 copy by me or Sergeant Paul of those admissions  
20 by Mr. Zanidean in terms of the fire, is  
21 because -- one of the possibilities that I  
22 maintain is that the report was written in  
23 1990's style, with a face sheet, with a separate  
24 file number, with a supplementary, that sat in  
25 the folder unsplit, and was destroyed by a

1 supervisor when he found out there was no  
2 charge.

3 Q All right. But I'm talking about in reference  
4 to, in particular, the supplementals or  
5 materials that would have been on the Harder  
6 homicide file. I said the murder file. The  
7 homicide investigation file has always been  
8 considered to be an open file, and you agreed  
9 with that?

10 A Yes. But what I'm talking about is that if I  
11 had written a separate report under the heading  
12 "assistance to an outside agency", and it wasn't  
13 split up, then it would be sitting in one of the  
14 folders on the supervisor's desk up on the  
15 second floor. And it is quite possible that  
16 when it became known, in April, that there were  
17 going to be no charges, that the supervisor  
18 destroyed it, or he might view it as being no  
19 need to have it.

20 Q All right. But, again, you're talking about  
21 another file that might have been generated.  
22 And I want to focus specifically on a homicide  
23 investigation file which would have a different  
24 file number.

25 A But, Ms. Carswell, you can't separate the two.

1           Because when you conduct a detailed homicide  
2           investigation, all of this other inter-related  
3           business gets reported on, and it dwells in the  
4           house of the murder file for a time, so you  
5           can't separate the two.

6       Q       Certainly, there would be evidence in B.P.R.  
7           of another report number generated, correct?

8       A       That is possible, yes.

9       Q       And if you had generated an assist, it would be  
10          given a separate report number?

11      A       That's correct.

12      Q       That's my understanding. So if there is no  
13          record of another report file, and I thought we  
14          went through this, that it's possible, based on  
15          your recollection, that that file was never  
16          opened?

17      A       That's possible. But I don't know if there was  
18          another file number taken out. I don't work for  
19          the police department anymore.

20      Q       I understand that.

21      A       And Mr. Code hasn't given me access to that kind  
22          of information.

23      Q       All right. And I'm not talking about Mr. Code  
24          giving you access. I'm talking about the  
25          Winnipeg Police Service doing a search and that

1 we can't locate any other related information.  
2 So I'd suggest to you that that would seem to  
3 support that you may not have opened another  
4 file. Would that be fair?

5 A Yes, that would be fair.

6 Q All right. And with respect then, going back,  
7 specifically taking aside the assist file and  
8 dealing strictly with the homicide file, it  
9 would be fair, then, for me to say that the  
10 Winnipeg Police Service would not destroy -- I  
11 am not talking about lost items that may  
12 happen -- but destroy anything on an open  
13 homicide file, that that just wouldn't happen,  
14 would it?

15 A Not the entire file, no.

16 Q Nor any part of the file that was the open  
17 homicide file?

18 A Well, I can't accept that. Scrap papers that  
19 are deemed to be no longer relevant could easily  
20 have been destroyed.

21 Q You'll recall Mr. Lockyer asked you a number of  
22 questions, starting this morning. And if I have  
23 failed to take your evidence down correctly, I'm  
24 sure you'll correct me. But certainly he  
25 suggested to you that the recollection of the

1           then Inspector Ewatski was that Zanidean's Crime  
2           Stoppers information came to him as a result of  
3           contacting Crime Stoppers.

4           And I just want to put into context what's  
5           going to come next by suggesting that that was  
6           not the case. What he suggests was that  
7           information came from the trial transcript which  
8           he reviewed. And it was Mr. Gumieny who went to  
9           Crime Stoppers and that was the information he  
10          sought from Crime Stoppers.

11          So putting that then into context, there  
12          were conversations between you and the two  
13          inspectors, Hall and Ewatski, relative to the  
14          investigation, correct?

15        A     Relative to the murder investigation?

16        Q     Relative to the murder investigation?

17        A     Well, there must have been, yes.

18        Q     And did you understand what their mandate was  
19              when they contacted you in 1993?

20        A     I don't remember. I may have at the time. I  
21              don't know.

22        Q     But certainly Mr. Lockyer has already covered  
23              with you that there were some difficulties  
24              between the management of the Police Service and  
25              the union, which led to a decision that members



1           could not be formally interviewed on  
2           tape-recording; is that correct?

3     A     Yes.

4     Q     Do you recall that?

5     A     Yes.

6     Q     And so that you had, what I would characterize  
7           as some informal conversations with them, where  
8           they asked for and received from you certain  
9           information. Would that be fair?

10    A     That's fair, yes.

11    Q     And my learned friend read to you a portion of  
12           the review at page 79, which was not an exhibit.  
13           And I appreciate that we will enter the whole  
14           review tomorrow, but I'm going to read this to  
15           you because I think that, to be fair, it may not  
16           have been represented in context. The whole  
17           paragraph reads at 79, it is the second last  
18           one,

19                 "Nevertheless, after reviewing this aspect  
20                 of the investigation, it is evident an  
21                 issue can be made as to how the Winnipeg  
22                 Police Department dealt with Ray Zanidean.  
23                 A strong suggestion may be made that some  
24                 sort of deal was struck with him in which  
25                 he would be granted immunity from

1 prosecution for the Swift Current arsons  
2 if he testified against Driskell."

3 And you'll remember that, I believe Mr. Lockyer  
4 suggested to you, that that seemed to suggest  
5 that they had come to some conclusions. And you  
6 had responded, well, then they don't probe  
7 deeply enough. Did I get your response  
8 correctly?

9 A Yes, ma'am, you did.

10 Q I'm going to suggest to you that what this  
11 paragraph means is exactly what it says, is that  
12 after conducting the review, a strong suggestion  
13 may be made that some sort of deal was struck  
14 with Ray Zanidean, it says "him", in which he  
15 would be granted immunity from prosecution for  
16 the Swift Current arson if he testified against  
17 Driskell. And certainly that's what's happened  
18 here, hasn't it? People are making the  
19 suggestion that Ray Zanidean was granted  
20 immunity.

21 A That's why I responded with, I wish they had  
22 probed a little deeper, maybe it wouldn't be an  
23 issue today.

24 Q And, finally, I just want to take you to the  
25 evidence this afternoon that Mr. Kennedy asked

1           you some questions on. And I think it would be  
2           fair that you were -- quite fair in saying that,  
3           having retired in 2004, you're not the right  
4           person to be answering questions on current  
5           practices of the Winnipeg Police Service. Would  
6           that be fair?

7        A     Yes. I would say that that was about the only  
8           thing that was fair in that exchange between  
9           me -- between Mr. Kennedy and myself. I mean,  
10          after all, I was a front-line investigator. I  
11          retired as a sergeant. And these questions are  
12          put to me without any forwarning, without any  
13          documents, without any manuals that I can refer  
14          to. The whole thing was unfair.

15       Q     Certainly, you wouldn't be aware of the current  
16          state of training that Winnipeg Police Service  
17          members receive, whether at the recruit stage or  
18          as a requirement to going into a major  
19          investigative unit?

20       A     That was the point I was trying to make.

21       Q     All right. And certainly, you would agree with  
22          me, that since the Harder murder investigation  
23          in 1990 and '91, up until the time that you  
24          left, there were significant changes in  
25          structure in what was then Division 23, Crimes

1           Against Persons? That whole division was  
2           changed. There was a homicide unit put in place  
3           before you left?

4    A       Yes, ma'am. Yes, certainly.

5    Q       And there may have been changes in structure  
6           since that you just can't speak to?

7    A       That's very true.

8    Q       It would also be fair to say that policing, in  
9           general, has moved on significantly since 1990  
10          and '91, since that time and the time you  
11          retired in 2004?

12   A       Yes, that's true.

13          MS. CARSWELL: Thank you.

14          MR. WOLSON: I appear to be the last man  
15          standing. I just need a minute to get my books,  
16          please.

17          THE COMMISSIONER: Certainly.

18          MR. WOLSON: I can advise you, Mr. Commissioner,  
19          that I will be well beyond the time that we have  
20          today. And before I do that, if you would mind  
21          if I asked the witness how he is carrying on?

22          THE COMMISSIONER: Absolutely.

23          BY MR. WOLSON:

24    Q       We are not going to finish today, Sergeant  
25          Anderson. It's about 20 minutes to 5:00. Are

1           you feeling up to answering more questions  
2           today?

3       A     Well, I'm pretty tired.

4           THE COMMISSIONER: Well, I'm not surprised that  
5           you would be. You've had a hard day. And I  
6           appreciate your patience and endurance. So why  
7           don't we break for today and come back in the  
8           morning?

9           THE WITNESS: I would appreciate that.

10          THE COMMISSIONER: Okay, not at all.

11          THE WITNESS: Thank you.

12          THE CLERK: All rise. This Commission of  
13          inquiry is now adjourned until tomorrow.

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15                   (PROCEEDINGS ADJOURNED AT 4:40)

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CECELIA REID and LISA REID, duly appointed  
Official Examiners in the Province of Manitoba,  
do hereby certify the foregoing pages are a true  
and correct transcript of our Stenotype notes as  
taken by us at the time and place hereinbefore  
stated.

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Cecelia Reid  
COURT REPORTER

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Lisa Reid  
COURT REPORTER

<b>A</b>			
<b>abandon</b> 2126:1	2204:2 2208:14	2220:2,2,17,19,21	<b>alleging</b> 2262:17
<b>abandoned</b> 2196:10	2256:24 2307:3	2221:5,9 2244:1,1	<b>alley</b> 2093:4,17
<b>ability</b> 2128:2	2324:4	<b>afford</b> 2320:1	<b>allow</b> 2129:11
2171:7	<b>accurately</b> 2219:19	<b>afraid</b> 2160:25	2216:1
<b>able</b> 2137:5 2183:24	<b>accused</b> 2292:25	2297:17	<b>allowed</b> 2208:10
2199:21 2290:3	<b>accused's</b> 2308:5	<b>afternoon</b> 2090:8	2217:18
2319:13	<b>acknowledge</b>	2090:14 2095:14	<b>allows</b> 2292:5
<b>Abra</b> 2085:14	2118:23 2182:9	2102:17,24	<b>alluded</b> 2121:19
2086:7 2216:7	<b>acknowledging</b>	2268:21,22	<b>alternately</b> 2331:5
2217:17,20	2118:6	2298:12 2318:14	<b>alternative</b> 2138:10
2218:6,7,8,9	<b>act</b> 2271:23 2273:11	2341:25	<b>altogether</b> 2194:21
2230:9,11,23,24	2333:18	<b>age</b> 2105:12	2206:23 2300:3
2231:1,12	<b>acted</b> 2173:19	<b>agency</b> 2330:4	2316:10
2237:13 2239:15	<b>actual</b> 2114:20	2336:12	<b>ambiguous</b> 2174:19
2241:22 2248:24	<b>adamant</b> 2149:14	<b>agent</b> 2333:18,18	<b>amount</b> 2122:3
2249:18 2250:4	<b>add</b> 2115:10 2165:2	2333:20,24	<b>amounted</b> 2169:4
2252:5 2253:23	2257:24	<b>ago</b> 2100:19 2101:2	<b>analyst</b> 2277:20
2254:19 2255:3	<b>additional</b> 2325:7	2229:22	2278:23,24
2259:22 2265:25	2325:19 2326:18	<b>agree</b> 2125:10	2279:2 2286:25
2266:3,5 2268:6	2326:22	2130:9,11	2287:10,13,17
2268:13,16,18,20	<b>address</b> 2214:2	2152:19 2180:16	<b>Anderson</b> 2086:4
2298:13,17	2216:4	2180:17 2189:15	2087:3 2088:5,20
2299:9 2303:12	<b>addressed</b> 2114:10	2189:21 2199:10	2089:14 2101:7
2303:13,17,25	2246:2 2314:9	2228:22 2253:1	2101:20 2106:5
2304:3 2313:18	<b>addresses</b> 2332:17	2272:2 2277:1	2124:24 2128:16
<b>absence</b> 2088:12	<b>adjourned</b> 2344:13	2289:4 2291:9	2128:20 2129:19
2201:2 2292:12	2344:15	2324:15 2328:12	2134:17 2146:4
<b>absolutely</b> 2120:1	<b>Administrative</b>	2335:8 2342:21	2158:25,25
2134:19 2159:22	2085:4,5,6,7	<b>agreed</b> 2105:7	2159:8 2162:22
2168:3 2182:8	<b>admission</b> 2240:11	2151:16 2194:22	2163:11,20
2206:12 2237:23	2246:10 2332:20	2230:13 2247:16	2182:24 2183:11
2297:1 2301:23	<b>admissions</b> 2202:21	2248:13 2289:2	2186:12 2187:4
2322:18 2325:9	2219:18 2335:19	2336:8	2188:11,18
2330:1 2343:22	<b>admit</b> 2133:7	<b>agreement</b> 2149:11	2191:23 2195:21
<b>accept</b> 2107:20	<b>admits</b> 2246:16	2151:10 2333:22	2196:11 2200:15
2112:1,19	<b>admitted</b> 2115:14	<b>ahead</b> 2211:14	2203:4 2204:15
2158:13 2232:3	2209:11 2220:16	2216:8 2218:1	2205:4,21
2249:12 2338:18	2221:3 2222:17	2230:23 2259:23	2207:23 2208:10
<b>accepted</b> 2288:2	2239:13	2259:23	2209:6,8 2210:3
<b>accepting</b> 2112:22	<b>adopted</b> 2277:25	<b>AIDWYC</b> 2212:21	2210:16 2212:15
2112:24	2278:5 2296:23	2213:21	2218:9 2220:24
<b>access</b> 2337:21,24	<b>advice</b> 2156:24	<b>AI</b> 2090:25 2118:12	2223:10 2224:8
<b>accommodating</b>	2232:24 2233:1	2119:5 2124:24	2231:2,13
2198:25 2210:23	2236:9 2251:9	2137:1 2138:12	2236:16 2237:17
<b>accommodation</b>	2310:22 2319:17	2149:17 2156:16	2240:1 2242:4
2211:2	<b>advise</b> 2195:24	2208:18 2228:21	2249:3 2252:12
<b>accompanies</b>	2242:4,6 2343:18	2265:2,3 2266:10	2253:19 2255:10
2105:15	<b>advised</b> 2099:18	2266:12,18,25	2256:18 2257:9
<b>accompany</b> 2105:7	2118:7 2119:12	2267:7 2302:20	2257:18 2258:9
<b>accord</b> 2144:25	2120:21 2128:16	2315:9,22 2318:9	2258:22 2259:6
2275:23	2162:4 2221:15	<b>Alan</b> 2085:10	2259:19 2260:9
<b>account</b> 2111:22	2223:14 2234:9	<b>Alberta</b> 2142:3,5	2265:7 2266:6
2173:24 2175:8,9	2255:10 2285:12	<b>allegation</b> 2296:12	2267:1 2268:24
<b>accuracy</b> 2291:11	<b>advises</b> 2124:4	<b>allegations</b> 2116:10	2269:6,9 2299:2
<b>accurate</b> 2174:4,5	<b>advising</b> 2118:17	2293:1,13,14	2302:20 2306:23
	<b>Affairs</b> 2245:18	2296:7	2311:1 2312:11
	<b>affect</b> 2212:24	<b>alleged</b> 2122:22	2312:25 2314:4
			2318:16 2343:25
			<b>Anderson's</b> 2163:1
			2163:24 2225:17
			<b>and/or</b> 2116:2
			<b>angry</b> 2180:14
			<b>answer</b> 2098:14
			2103:11 2129:7
			2146:11,15
			2157:18 2160:23
			2166:25 2168:8
			2168:10 2169:22
			2170:7,8,9,23
			2171:9,14,16,16
			2173:11,12,22
			2174:4,16
			2190:22 2208:6
			2219:4 2221:13
			2231:11 2234:13
			2238:23 2239:16
			2244:12,13
			2252:24 2277:19
			2293:19 2296:12
			2298:2 2320:14
			2324:4 2329:18
			<b>answered</b> 2135:23
			2170:19,22
			2171:6,17 2172:5
			2181:5,6 2235:23
			2244:7 2260:25
			2263:22
			<b>answering</b> 2167:22
			2168:4 2342:4
			2344:1
			<b>anxious</b> 2180:15
			<b>anybody</b> 2137:19
			2208:7 2214:16
			2240:16 2265:20
			2266:7 2287:18
			2302:12
			<b>anymore</b> 2337:19
			<b>anyone's</b> 2160:16
			2264:5
			<b>anyway</b> 2091:21
			2147:9
			<b>anyways</b> 2211:23
			<b>apart</b> 2106:9
			<b>apologize</b> 2266:4
			<b>apparently</b> 2104:9
			2114:23,25
			2135:13 2154:3
			2171:22 2203:19
			2228:24 2258:21
			<b>appear</b> 2213:4,12
			2219:15 2330:16
			2343:14
			<b>APPEARANCES</b>
			2085:9

<p><b>appearing</b> 2268:25  <b>appears</b> 2096:15,16                  2140:25 2183:24                  2244:8 2291:18                  2309:16 2310:19                  2315:9,11,22                  2316:4  <b>application</b> 2088:13                  2203:5,7 2222:19  <b>appointed</b> 2345:6  <b>appreciate</b> 2340:13                  2344:6,9  <b>approach</b> 2157:10                  2158:17 2272:21                  2277:2,4 2286:5  <b>appropriate</b> 2213:8  <b>appropriately</b>                  2322:17  <b>approval</b> 2192:22                  2194:5 2195:7,23                  2198:14,17,20,22                  2209:13  <b>approved</b> 2152:12                  2195:4 2198:5                  2209:8 2247:18                  2250:8  <b>approximately</b>                  2095:14 2114:2                  2247:14 2270:13                  2270:19  <b>April</b> 2141:23                  2142:1,8 2144:9                  2152:2 2154:25                  2161:10,11                  2167:9 2184:3,8                  2198:12,25                  2200:25 2204:18                  2206:14 2207:10                  2208:25 2209:1                  2209:20,21,21,22                  2210:4 2211:13                  2223:13 2224:6                  2234:17,19                  2245:12 2262:14                  2336:16  <b>Arden</b> 2103:1                  2104:10,12                  2108:12  <b>area</b> 2137:2,4                  2161:22 2204:15                  2253:3 2283:9,17                  2287:21  <b>areas</b> 2165:22                  2183:9 2213:11  <b>argue</b> 2294:9  <b>argument</b> 2228:16  <b>arises</b> 2113:7</p>	<p>2162:20  <b>arising</b> 2225:12  <b>arrangement</b>                  2090:11 2152:14                  2178:1,3 2196:5,8                  2225:19 2247:20                  2259:5,9,10                  2260:4 2263:17                  2265:3,4,6                  2266:23 2310:23  <b>arrangements</b>                  2162:23 2163:21                  2267:3 2311:2                  2314:14 2318:21                  2319:7,15,16  <b>arranges</b> 2091:2  <b>arrest</b> 2172:2  <b>arrival</b> 2214:22  <b>Arrive</b> 2091:9  <b>arson</b> 2126:13,15                  2127:16,18                  2128:6 2131:12                  2131:15 2135:8                  2135:24 2136:20                  2138:25 2139:2                  2142:25 2144:8                  2145:1 2146:7                  2151:6 2152:18                  2159:3 2160:21                  2162:25 2163:23                  2166:21,23                  2167:25 2168:12                  2168:14 2170:12                  2170:25 2171:3,8                  2183:17 2187:11                  2187:20 2197:1                  2197:23 2202:19                  2205:13 2207:18                  2211:6,14,21                  2221:4,24                  2242:10,12                  2253:17 2255:12                  2255:14 2257:13                  2257:16,22                  2302:21 2305:1,2                  2311:4 2333:9                  2341:16  <b>arsonist</b> 2131:5  <b>arsons</b> 2131:10,17                  2134:3 2135:18                  2148:18 2189:11                  2189:17 2341:1  <b>artists</b> 2116:9  <b>aside</b> 2098:9 2338:7  <b>asked</b> 2092:17                  2170:9 2172:18                  2172:21 2173:6,9</p>	<p>2175:17 2179:12                  2209:25 2218:18                  2219:2 2222:13                  2235:19,20                  2245:22 2252:23                  2254:14 2261:13                  2289:24 2294:22                  2297:16 2298:15                  2301:8,10,15,21                  2303:13,17                  2310:14 2313:18                  2317:7 2322:10                  2327:7 2332:4                  2335:13 2338:21                  2340:8 2341:25                  2343:21  <b>asking</b> 2095:21                  2126:1 2162:15                  2162:19 2169:12                  2170:15 2186:19                  2189:4 2190:13                  2214:7 2253:20                  2260:21 2282:3                  2297:23 2325:19                  2326:7  <b>asks</b> 2157:16                  2172:25 2327:21  <b>aspect</b> 2114:9                  2148:11 2340:19  <b>aspects</b> 2084:2                  2322:5  <b>assign</b> 2280:11  <b>assigned</b> 2117:16                  2276:18 2277:11                  2277:17,20                  2279:9  <b>assigning</b> 2280:8  <b>assignment</b> 2278:14                  2280:18  <b>assist</b> 2207:4                  2278:14 2314:15                  2330:4,17 2337:9                  2338:7  <b>assistance</b> 2111:13                  2122:12 2186:20                  2190:13 2191:11                  2240:3 2336:12  <b>Assistant</b> 2085:5,6                  2309:17  <b>assisting</b> 2312:16                  2314:7  <b>associate</b> 2085:3                  2304:14  <b>Association</b>                  2085:20,21                  2268:25  <b>assume</b> 2161:25</p>	<p>2162:6,15 2164:9                  2201:14 2202:6                  2212:18 2229:16                  2238:25 2239:2                  2272:14 2288:14                  2288:17 2290:19                  2292:3,9 2293:24                  2310:14 2314:11  <b>assumed</b> 2162:16                  2197:13 2300:8                  2300:22 2311:10  <b>assumes</b> 2113:15  <b>assuming</b> 2116:11                  2116:13 2151:25                  2260:6 2303:3,5,6  <b>assumption</b>                  2167:22 2200:22  <b>assumptions</b>                  2107:21 2162:13                  2303:9  <b>assure</b> 2135:10                  2140:8 2174:20                  2218:3 2250:5                  2266:9 2292:20  <b>assured</b> 2152:9,11                  2247:17  <b>attached</b> 2278:24  <b>attempting</b> 2210:20  <b>attend</b> 2101:2                  2285:20,22  <b>attended</b> 2154:6                  2155:3,3,4,4                  2235:7 2236:9                  2273:19 2274:1                  2274:21 2275:2                  2282:21 2285:16  <b>attending</b> 2285:24  <b>attention</b> 2123:23                  2166:4,6 2188:2                  2189:1 2228:11                  2264:5 2309:15  <b>attorney</b> 2171:4                  2193:3,4,5,9                  2198:21 2203:24                  2248:9 2301:10                  2323:1,15 2324:7                  2325:6 2327:25                  2328:1,1  <b>attorneys</b> 2162:7                  2170:1 2258:4                  2275:10 2321:2  <b>attributing</b> 2302:19                  2302:21  <b>August</b> 2084:17                  2088:1 2187:8,19                  2190:8,17  <b>author</b> 2166:2</p>	<p>2327:21  <b>authority</b> 2145:5                  2193:15,18  <b>authorization</b>                  2265:5  <b>authors</b> 2097:14                  2114:16,20                  2120:15,15                  2147:8 2148:7  <b>available</b> 2100:15                  2100:17 2106:13                  2256:19 2274:15                  2284:24 2334:6  <b>Avenue</b> 2103:1                  2104:10,13  <b>averaged</b> 2270:22  <b>avoid</b> 2170:21,24                  2170:25 2174:6                  2217:18 2281:2                  2332:16  <b>avoided</b> 2170:17  <b>award</b> 2114:8                  2117:7  <b>aware</b> 2098:16,23                  2111:7 2116:18                  2120:10,12                  2121:8 2125:21                  2130:2 2142:20                  2144:13 2153:9                  2156:10 2161:6                  2162:7,23                  2163:21 2166:16                  2168:21,24                  2172:6 2173:3,16                  2173:18 2182:16                  2185:17 2187:15                  2187:17,21                  2188:12 2200:15                  2200:20 2219:24                  2221:24 2228:13                  2228:16 2231:21                  2236:6,7,23                  2242:23 2246:12                  2246:13 2251:15                  2252:16 2262:3                  2274:7,8,20                  2288:13,18                  2289:13 2296:23                  2298:4 2311:2                  2313:14 2318:24                  2320:1,21 2331:5                  2331:11 2333:14                  2333:25 2334:1,4                  2342:15  <b>a.m</b> 2088:2 2165:18</p>
---	---	--	--	---

**B**



<p><b>B</b> 2089:15,16,20 2105:4 <b>babysitting</b> 2228:8 <b>back</b> 2088:8,9 2094:6 2098:14 2098:24 2100:20 2100:22,23,24,25 2101:6 2107:1,6 2107:12,23 2108:7 2110:12 2110:21 2112:21 2121:9 2133:24 2155:16 2159:7 2171:25 2172:9 2172:19 2174:7 2174:15 2177:12 2190:11 2194:21 2196:8 2197:14 2198:9 2199:5,6 2210:1 2222:16 2230:2 2238:23 2274:8 2280:22 2284:22 2289:16 2296:14 2307:12 2318:3,9 2323:3 2323:11,25 2324:11 2325:1 2326:7 2338:6 2344:7 <b>background</b> 2184:24 <b>backyard</b> 2095:4 2113:13 <b>bad</b> 2098:11 2138:10 2220:12 2289:5,6 <b>bags</b> 2267:9 <b>balances</b> 2327:12 2327:15,17 2328:20 <b>barely</b> 2088:25 <b>base</b> 2205:11 <b>based</b> 2151:19 2183:23 2258:9 2300:4 2301:24 2305:8 2312:2 2321:11 2328:14 2329:5 2337:14 <b>basic</b> 2290:20 2291:1 2292:3 2293:23 <b>basically</b> 2216:23 2273:8 2275:4 2280:18 <b>basis</b> 2150:7,8,9 2162:17 2200:3 2253:8 2280:2,3</p>	<p>2280:17 2283:25 <b>Beaudette</b> 2314:6 <b>becoming</b> 2208:12 <b>beginning</b> 2102:7 2189:3 <b>begins</b> 2270:25 <b>behalf</b> 2162:11 2203:7 2268:25 2318:24 2319:4 <b>behold</b> 2138:3 <b>belief</b> 2112:2 2321:18 <b>believe</b> 2103:16 2105:13 2108:6 2119:19 2122:1 2137:11 2155:8 2155:13 2156:14 2164:6,19 2181:9 2182:25 2184:17 2185:21 2187:21 2190:1 2191:14 2211:25 2222:7 2229:19 2232:1 2234:17 2240:5 2246:21 2248:17 2259:4 2267:11 2277:14 2287:11 2307:17,24 2308:8,17 2315:5 2322:1 2329:11 2341:3 <b>believes</b> 2162:22 2163:11,20 2311:1 <b>believing</b> 2097:15 <b>bell</b> 2154:16 2155:3 2156:2 2201:16 2202:8 2222:11 2248:19 2249:8 2308:13 <b>beneath</b> 2316:2 <b>benefit</b> 2130:5 2161:3 2178:5 <b>benefits</b> 2159:24 2160:1 2255:22 <b>Bergmann</b> 2085:5 <b>best</b> 2171:6 2244:12 2244:13 2265:20 2281:9 2282:3 2317:24 2330:22 <b>better</b> 2096:11 2125:8 2212:10 2293:18,19 <b>bewildered</b> 2217:5 <b>beyond</b> 2110:23 2343:19 <b>big</b> 2202:17</p>	<p>2220:22 2257:7 2319:20 2320:5 <b>bike</b> 2136:9,10 <b>Bill</b> 2144:15 <b>bit</b> 2092:2,3 2098:14 2100:15 2123:7 2130:24 2164:10 2179:5 2204:16 2213:10 2284:25 <b>bits</b> 2088:15 2147:2 <b>bizarre</b> 2137:22 <b>blank</b> 2309:9 <b>blissing</b> 2207:16 <b>blew</b> 2125:5 2132:24 2218:25 <b>block</b> 2214:13 <b>blockbuster</b> 2141:16,20 2142:7,14 2143:1 2143:9 <b>blow-out</b> 2267:8 <b>blow-up</b> 2177:25 2181:3 2227:2 2265:2 2266:12 <b>blue</b> 2090:3 2178:15 <b>blunt</b> 2123:24 <b>Bob</b> 2085:4 <b>body</b> 2099:21 2107:9 2109:12 2109:14 2179:21 2242:5 2243:9 2249:1 2266:2 2275:22 2276:7,8 2276:15,23 2282:22 2283:4 <b>boggles</b> 2158:12 <b>book</b> 2087:3 2088:15 2089:11 2089:13,16 2090:3 2165:24 2178:15 2186:12 2218:12 2222:2 2224:25 2225:2 2226:10 2298:14 2329:2,9 <b>booklets</b> 2136:25 <b>books</b> 2136:14 2141:3,4,5 2156:15 2237:25 2343:15 <b>boss</b> 2263:2 <b>bottom</b> 2092:16 2093:10 2094:20 2096:22 2097:2 2105:17 2107:6</p>	<p>2113:8 2114:18 2163:9 2166:6,7 2224:3 2242:2 2245:23 2256:1 2316:11,12 2317:17,18 <b>break</b> 2116:9 2129:11 2165:13 2230:13 2344:7 <b>breakdown</b> 2271:13 <b>Bridgette</b> 2105:12 <b>brief</b> 2263:6 <b>briefed</b> 2181:14 2240:19 2245:6 2247:25 2248:10 2248:19,23 2249:5,6 2322:5 <b>briefing</b> 2158:4 <b>briefings</b> 2279:21 2279:23 <b>briefly</b> 2264:3 2275:15 <b>bring</b> 2147:1 2294:22 <b>bringing</b> 2228:11 <b>Brodsky</b> 2087:8 2119:6 2135:23 2167:19 2169:12 2169:22 2171:12 2172:18 2174:6 2176:24 2178:6 2178:18,24 2179:12,18 2180:3 2181:16 2182:5 2183:6 2227:24 2228:25 2242:16,16 2243:12,13 2252:21 2253:3 2253:16 2263:17 2264:8,16 2300:9 2300:18,23 2301:7 2302:7 2303:3,6,6,19 2304:5 2317:7 <b>Brodsky's</b> 2135:16 2163:4,14,25 2165:25 2166:11 2167:1 2169:8 2175:3 2179:15 2242:13 2253:15 2261:23 <b>brother</b> 2097:9 2200:12 <b>brothers</b> 2122:24 2182:10,15 <b>brought</b> 2092:19</p>	<p>2123:22 2129:11 2136:1 2166:4 <b>Bruce</b> 2085:14 2153:15 2155:4 2156:15 2176:10 2176:12,12 2197:6,9 2199:7,8 2199:16,22 2201:5,20 2204:13 2218:10 2221:23 2231:5 2231:20 2235:16 2238:3 2248:9 2258:20 2259:8,9 2260:1 2262:24 2264:1 2267:1 2284:11 2310:22 2311:9 <b>Bruni</b> 2085:8 <b>brutality</b> 2293:1 <b>bullpen</b> 2283:9,12 2283:17 <b>bullshit</b> 2097:18 <b>bunch</b> 2134:2 2249:14 <b>burdened</b> 2101:3 <b>burned</b> 2136:16 2137:9 <b>burning</b> 2131:3 2136:4 2137:3 2139:13 <b>burnt</b> 2131:6,8 <b>Burton</b> 2086:4 2123:6,13 2124:4 2124:10,12,12,17 2124:18,25 2128:10,12 2129:1,8,25 2130:6,20 2132:20,25 2133:14 2134:13 2134:15 2135:9 2141:19,22 2142:6,19 2145:20,24 2146:9,13 2148:10 2150:24 2150:25 2151:7 2151:14,19 2152:3,10 2153:8 2154:24 2161:9 2161:14 2171:14 2183:16,19,22 2184:1,7,8,13,18 2186:14 2187:7 2188:1 2189:2,22 2190:5,6,23</p>
--	---	---	--	---

<p>2191:2,15,19,22 2192:10,13 2194:11,12,21 2195:3 2197:7 2198:2,4,6,13 2199:21 2200:9 2201:12 2202:1,3 2202:21 2204:17 2205:5,9 2206:1,3 2206:6,20 2207:3 2209:9 2210:6,8 2210:13,18 2212:6,13 2234:17 2241:11 2241:24 2242:24 2243:7 2244:17 2245:11 2246:19 2247:15,23 2248:15 2249:9 2249:13 2250:6 2257:6 2258:11 2258:23 2259:6 2262:14 2300:11 2302:14,18 2329:6,16 <b>Burton's</b> 2125:18 2125:19 2190:9 2190:16 2195:18 2199:13 2200:24 2209:4,7 2211:21 2248:12 <b>bury</b> 2179:21 <b>business</b> 2151:20 2167:19 2172:12 2236:13 2242:1 2259:3 2328:11 2337:3 <b>buttons</b> 2181:2 <b>buy</b> 2149:19 2160:6 <b>B.P.R.</b> 2337:6</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C</b> 2089:15,24 2096:21 <b>Calgary</b> 2138:3 2224:4,12 2225:10,17 <b>call</b> 2087:7 2090:9 2090:23,25 2095:9,12 2097:8 2105:25 2107:8 2113:23,25 2118:9 2120:21 2121:11,13,13 2123:5,9,12,13 2126:3 2129:1 2142:5,8,17</p>	<p>2150:21 2151:14 2160:6 2164:20 2169:3,9 2171:12 2173:25 2183:5 2184:5 2187:9 2190:17 2197:7 2200:25 2204:17 2204:20 2205:25 2207:7,10,11 2208:25 2209:3,5 2209:22 2210:1,4 2211:13 2248:14 2250:20 2251:3 2264:16 2271:4 2319:24 2324:15 2325:6 2326:7 2328:3 2331:6 <b>called</b> 2092:13 2111:3 2114:6,22 2115:4 2118:19 2119:16,18 2120:3,20 2134:13,15 2165:7 2175:8,8 2178:20 2270:3 2281:7 <b>caller</b> 2117:19 <b>calling</b> 2121:23 2127:1 2134:14 2134:17 2227:1 2323:16 <b>calls</b> 2091:17 2106:21 2161:15 2171:13 2183:25 2184:4,13,14 2203:12 2204:18 2225:17 <b>Canadian</b> 2274:12 <b>candidly</b> 2220:15 <b>capable</b> 2288:15 <b>capacity</b> 2173:19 <b>car</b> 2091:13 2094:3 2099:14 2100:4 2106:7 2109:3 2128:5 2179:7 2224:7 <b>carbonless</b> 2321:6 <b>card</b> 2203:15 <b>career</b> 2292:9 2323:8,21 2324:2 <b>carefully</b> 2103:16 2103:19,22 2170:17,21 <b>careless</b> 2158:15,16 <b>carelessly</b> 2158:10 <b>Carol</b> 2189:5 <b>carried</b> 2239:17</p>	<p>2294:19 <b>carries</b> 2317:13 <b>carry</b> 2199:22 2201:20 <b>carrying</b> 2343:21 <b>CARSELL</b> 2212:19 <b>Carswell</b> 2085:17 2086:11 2318:14 2318:15 2329:10 2329:14 2331:1 2336:25 2343:13 <b>case</b> 2103:9 2112:25 2115:10 2116:1 2122:16,17 2123:15 2125:1 2125:13 2127:2 2127:17,19,24 2128:3 2129:17 2132:17 2138:24 2139:11,19 2140:9 2142:7 2145:4,16 2155:8 2160:11,15 2164:20 2165:10 2172:17 2175:2 2182:20 2193:8 2193:12,14 2200:10 2207:10 2211:11,14 2215:2 2226:8 2233:11,18 2236:15,16,17 2238:1 2239:2 2240:14 2247:6 2247:24 2251:12 2258:4 2272:9,25 2275:16 2277:17 2277:24 2278:19 2278:22 2279:11 2280:19 2282:7 2282:16,18,20 2284:3,16,18 2286:14 2287:9 2287:12,15 2294:8 2302:5 2303:19 2304:5 2307:19 2321:10 2321:14 2322:9 2322:17 2324:8 2324:10,18 2325:15 2327:23 2328:5,8 2332:19 2335:9 2339:6 <b>cases</b> 2117:16,18 2216:24,24 2229:23 2271:10 2271:14 2272:12</p>	<p>2273:7,10 2281:24 2313:9 2321:8 2323:25 2333:16 <b>catalyst</b> 2095:6 2113:16,20 <b>cause</b> 2100:6 2110:22 2113:6 2127:20 2326:9 <b>caused</b> 2113:5 <b>causes</b> 2111:15 <b>causing</b> 2141:9 <b>CD</b> 2087:7 2183:5 <b>Cecelia</b> 2345:6,16 <b>cent</b> 2228:9 <b>Centre</b> 2084:13 <b>cents</b> 2216:15 <b>certain</b> 2084:2 2085:18,20 2094:16 2168:3 2192:13 2226:12 2252:20 2253:4 2254:14 2268:6 2303:22 2304:6 2306:8 2340:8 <b>certainly</b> 2098:18 2100:18 2119:7 2119:15 2126:23 2128:9 2156:24 2157:22 2169:24 2170:10 2172:16 2172:24 2177:16 2180:23 2186:9 2195:13 2211:3 2216:13 2219:23 2220:11 2232:13 2233:16 2251:23 2268:15,17 2271:2 2282:1 2304:19 2320:22 2322:7,13 2325:5 2325:17 2328:12 2329:4 2330:13 2331:11 2333:13 2334:10,18 2335:13 2337:6 2338:24 2339:22 2341:17 2342:15 2342:21 2343:4 2343:17 <b>CERTIFICATE</b> 2345:2 <b>certify</b> 2345:8 <b>cetera</b> 2097:11,11 2281:4 <b>chain</b> 2150:2 2151:23 2195:1</p>	<p><b>chance</b> 2095:6 2113:14,18 2185:24 2259:21 <b>chances</b> 2237:1 <b>change</b> 2199:2 2201:8 2203:14 2203:17 <b>changed</b> 2126:21,22 2127:14 2168:6 2199:1 2203:15 2236:15 2316:5 2343:2 <b>changes</b> 2297:21 2342:24 2343:5 <b>changing</b> 2289:1 <b>channeled</b> 2115:18 <b>channelling</b> 2116:19 <b>channels</b> 2114:25 <b>chap</b> 2138:5 <b>chaps</b> 2108:3 <b>characterization</b> 2186:21 2208:15 2322:12,23,25 <b>characterize</b> 2089:3 2210:22 2340:6 <b>charge</b> 2126:14,15 2145:1 2152:18 2159:3 2166:17 2168:25 2220:4 2221:4 2227:13 2251:25 2252:14 2262:15 2272:7 2278:15,19 2281:7 2283:23 2284:8,14 2336:2 <b>charged</b> 2146:6 2251:21 2257:13 2257:15,22 2258:12 2259:11 <b>charges</b> 2143:1 2149:20 2160:7 2167:6,10,12 2168:22 2174:1 2192:23 2193:16 2193:19 2194:6 2194:19 2195:8 2196:9 2201:11 2247:3 2259:15 2262:3 2284:20 2336:17 <b>charging</b> 2272:22 <b>chatting</b> 2106:15 <b>check</b> 2093:22 2139:19 2184:11 2209:25 2313:4 2327:21,24</p>
--	---	--	---	---

<p><b>checking</b> 2234:6  <b>checks</b> 2327:12,15  2327:17 2328:19  <b>chief</b> 2085:4  2116:14,15  2118:16 2194:15  2245:22 2246:1  <b>Chief's</b> 2281:17  <b>chop</b> 2172:12  2173:25  <b>chose</b> 2122:6  <b>circumstance</b>  2157:11  <b>circumstances</b>  2117:5 2118:1,3  2188:12  <b>citizens</b> 2103:7  <b>City</b> 2237:21  <b>claim</b> 2098:10  2099:24 2112:13  2125:16 2137:22  2140:16,18  2141:13 2152:3  2182:23  <b>claimed</b> 2141:20,24  <b>claiming</b> 2090:25  2120:3 2131:6  2134:4 2138:20  <b>claims</b> 2125:17  <b>clear</b> 2102:15  2107:11 2126:11  2145:3 2146:15  2159:2 2163:18  2170:12 2178:14  2257:9,18  2259:19 2299:6  2320:9  <b>clearer</b> 2179:7  <b>clearly</b> 2134:20  2212:13 2333:15  <b>CLERK</b> 2088:3  2165:15,19  2179:6 2230:17  2230:21 2295:8  2298:18,22  2344:12  <b>client</b> 2159:19,20  2212:24 2216:11  <b>close</b> 2333:8,8  <b>closely</b> 2321:15  <b>closer</b> 2098:25  2284:2  <b>closest</b> 2154:22  <b>clue</b> 2125:4  <b>Code</b> 2085:2  2100:18 2122:4  2123:18,22</p>	<p>2126:5 2132:13  2142:2 2155:9,13  2167:20 2206:16  2206:17 2210:3  2211:16 2214:4,7  2215:20,21  2216:24 2221:12  2221:15 2222:3  2223:5 2225:7,21  2230:25 2238:24  2239:4,21 2240:1  2240:1 2244:9  2252:5 2253:25  2308:9 2312:14  2327:5,12  2337:21,23  <b>Code's</b> 2123:20  2237:13,16  <b>collected</b> 2118:13  2119:4  <b>College</b> 2274:12  <b>column</b> 2315:13  <b>comb</b> 2238:2  <b>come</b> 2092:20  2097:10 2098:10  2100:3,24 2106:8  2106:14,18  2108:21 2109:7  2111:14 2112:15  2128:7 2129:6  2139:13 2144:19  2149:23 2150:3  2156:14,21  2170:1 2216:3  2243:19 2244:6  2251:18,21  2253:19 2270:25  2313:1 2339:5  2341:5 2344:7  <b>comes</b> 2216:9  2218:5 2292:14  2323:23  <b>coming</b> 2094:1  2106:6 2107:4,18  2128:7 2234:6  2285:13 2320:3,4  2334:12  <b>command</b> 2151:24  2195:1  <b>commander</b>  2143:24 2149:18  2152:12 2155:13  2155:15,19,22  2170:2 2195:3  2198:5 2209:8  2247:17 2248:13  2250:7,8 2281:8</p>	<p>2284:10 2307:15  2324:19  <b>commence</b> 2213:9  <b>commenced</b>  2143:12 2276:15  <b>commencing</b> 2088:2  <b>comment</b> 2097:13  2247:22 2295:5  2296:6 2297:10  <b>comments</b> 2088:11  2214:6 2238:15  2238:20 2239:1  2240:6,17,17,18  2242:9 2246:15  2253:7 2300:12  2302:19 2303:23  2304:7,15,19  2333:9 2334:10  <b>Commission</b> 2084:1  2084:12 2085:1,2  2085:3 2088:3  2100:14,25  2119:23 2120:2  2123:20 2125:23  2126:25 2128:11  2141:16 2145:17  2150:15 2154:20  2158:24 2159:18  2162:21 2165:15  2165:19,24  2166:5 2175:17  2204:22 2205:14  2205:24 2214:18  2216:17 2230:17  2230:21 2231:4  2269:7 2298:18  2298:22 2306:6  2344:12  <b>Commissioner</b>  2084:5 2088:5,7  2088:10,17  2089:20 2100:9  2101:12,15,17  2110:8 2146:23  2147:5 2148:3  2155:19 2156:5  2161:20,23  2162:10 2165:12  2165:13 2166:12  2178:11,16  2183:7 2186:9  2187:1 2188:4,7  2212:15,17,20,25  2213:2,15,16  2214:4,6 2215:18  2215:19 2216:7  2216:16 2217:17</p>	<p>2217:22 2218:3,7  2230:10,15,23,24  2241:15,17,21  2249:12 2254:19  2254:21,24,25  2268:14,15,17,18  2268:20,21,22  2294:17,25  2295:3,7,8,9,12  2295:16 2296:1  2298:9,10,13,16  2298:24,25  2299:17,24  2306:17 2312:8,9  2318:13,14  2343:17,18,22  2344:4,10  <b>commitment</b>  2138:11 2208:1  2319:6  <b>commitments</b>  2319:14  <b>committed</b> 2124:6  2128:6 2136:20  2221:3 2271:23  2273:3,4,10  <b>committee</b> 2115:25  2296:4,10  <b>common</b> 2115:25  2157:25 2158:5  2160:1 2180:2  2248:25 2265:14  2270:4 2271:16  2291:4 2293:10  <b>communicated</b>  2306:23  <b>communicating</b>  2133:19 2306:7  <b>communication</b>  2164:18 2263:4  2263:13 2306:11  2307:5 2311:11  2313:20 2317:25  <b>communications</b>  2099:6 2311:14  2318:8  <b>complaint</b> 2182:16  2182:17 2245:14  2245:24 2292:24  <b>complete</b> 2132:14  2328:9  <b>completed</b> 2100:18  2255:9 2258:8  <b>completely</b> 2170:12  2260:21  <b>complied</b> 2289:23  <b>con</b> 2288:14</p>	<p><b>concealing</b> 2159:25  <b>concern</b> 2100:7  2113:6 2126:24  2136:19 2214:18  2301:24 2325:13  <b>concerned</b> 2096:19  2144:5 2208:21  2220:4 2233:18  2237:12 2240:10  2243:22 2245:1  2246:11 2252:17  2263:19  <b>concerning</b> 2104:19  2105:6 2108:14  <b>concerns</b> 2165:8  2217:25  <b>concert</b> 2296:18  <b>conclude</b> 2266:19  <b>concluded</b> 2196:24  <b>concludes</b> 2093:11  2105:18  <b>conclusion</b> 2124:16  2147:23,24  2148:7 2185:18  <b>conclusions</b>  2147:24 2287:3  2341:5  <b>concur</b> 2144:2  <b>conditions</b> 2208:11  <b>conduct</b> 2120:18,19  2121:19 2286:25  2322:17 2337:1  <b>conducted</b> 2281:19  2286:17  <b>conducting</b> 2280:24  2341:12  <b>conferring</b> 2216:10  <b>confidence</b> 2128:21  2129:20  <b>confidential</b>  2117:12  <b>confirm</b> 2124:4,5  2139:12 2158:19  2197:4 2308:6  2309:16 2315:1  <b>confirmation</b>  2202:13 2209:7  2209:16,22  2219:17 2248:2  2301:6  <b>confirmed</b> 2200:12  2250:7 2258:3,18  2259:25  <b>confused</b> 2108:22  2155:20 2191:15  2191:20 2279:22  2304:10</p>
---	--	---	---	---

<p><b>confusing</b> 2167:21  <b>confusion</b> 2132:18                  2145:7 2191:16                  2192:2,4 2281:2  <b>conjunction</b>                  2203:24 2210:4  <b>connection</b> 2185:15                  2212:9  <b>conscience</b> 2096:11  <b>consequence</b>                  2137:22  <b>consider</b> 2141:1  <b>considerable</b>                  2165:6  <b>consideration</b>                  2168:20  <b>considered</b> 2113:6                  2117:18 2164:1                  2174:25 2334:19                  2335:6 2336:8  <b>considering</b> 2228:7  <b>consistent</b> 2095:17                  2095:22 2098:12                  2141:5 2313:7  <b>consolation</b> 2211:22  <b>consoled</b> 2210:8,13                  2211:17 2212:6  <b>consoling</b> 2211:13  <b>constable</b> 2124:17                  2124:18 2129:8                  2133:14 2146:13                  2151:19 2153:8                  2183:16,19,22                  2184:1,7,8,13,18                  2185:3,4,7 2187:7                  2188:1 2189:2,22                  2190:5,6,9,16,23                  2191:1,14,19,21                  2192:9,13                  2194:11,12,20                  2195:3,18 2198:2                  2198:4,6,13                  2199:13,20                  2200:9,24                  2201:12 2202:3                  2204:17 2206:1,3                  2206:6 2207:3                  2209:9 2210:5,7                  2210:13,18                  2211:21 2212:5                  2212:12 2234:16                  2241:11,24                  2242:23 2243:7                  2244:17 2247:15                  2247:23 2248:12                  2250:6 2258:10                  2258:23 2300:10</p>	<p>2302:18 2329:6                  2329:16  <b>constantly</b> 2267:3  <b>consult</b> 2264:1  <b>consultation</b>                  2275:10 2284:11                  2284:24  <b>consulted</b> 2284:14                  2284:19  <b>consulting</b> 2178:3  <b>contact</b> 2091:17                  2104:21 2106:8                  2108:23 2111:10                  2115:7 2143:17                  2150:6 2164:15                  2164:16 2165:4                  2177:22 2196:6                  2196:22 2197:5                  2201:12,25                  2305:10 2313:11                  2313:15 2325:23                  2325:24 2326:16                  2326:21 2327:1  <b>contacted</b> 2339:19  <b>contacting</b> 2325:18                  2339:3  <b>contacts</b> 2256:21,25                  2257:3  <b>contained</b> 2261:25                  2326:1  <b>contemplation</b>                  2244:5  <b>contemporaneous</b>                  2156:10 2205:4                  2291:12  <b>contemporaneously</b>                  2156:9  <b>content</b> 2257:3  <b>contention</b> 2257:4  <b>contents</b> 2099:20                  2109:13 2156:19                  2267:15  <b>context</b> 2122:16                  2142:24 2177:7                  2339:4,11                  2340:16  <b>continuation</b>                  2187:6 2291:17  <b>continue</b> 2124:7,13                  2124:21 2125:10                  2183:7 2204:9                  2255:13  <b>continued</b> 2086:4  <b>continuing</b> 2211:7  <b>continuous</b> 2283:24  <b>contract</b> 2333:18  <b>contradicted</b></p>	<p>2125:18  <b>contradicting</b>                  2145:9  <b>contradictions</b>                  2144:18  <b>contradicts</b> 2124:11  <b>contrary</b> 2120:14  <b>controlling</b> 2131:25                  2132:5  <b>controversial</b>                  2118:15  <b>convenient</b> 2161:20                  2298:11  <b>Conveniently</b>                  2167:24  <b>Convention</b>                  2084:13  <b>conversation</b>                  2096:25 2106:1                  2124:9,10,16                  2125:17 2128:10                  2130:10 2132:21                  2141:19,22                  2145:24 2146:2                  2150:25 2153:14                  2154:24 2178:22                  2180:6,15 2190:5                  2191:23 2194:11                  2195:19 2200:2                  2206:3,13 2209:2                  2209:15,19,21                  2211:9 2234:16                  2248:6 2250:4,6,9                  2250:25 2262:13                  2266:11 2307:6  <b>conversations</b>                  2099:6 2104:6                  2130:13 2143:22                  2143:23 2152:2                  2198:13 2251:5                  2261:7 2339:12                  2340:7  <b>converted</b> 2277:6  <b>conveyed</b> 2317:21  <b>convicted</b> 2085:23                  2094:18 2269:1  <b>conviction</b> 2084:3                  2237:2 2334:20  <b>convinced</b> 2157:21                  2243:7 2264:16  <b>cooperating</b>                  2147:14  <b>coordinated</b>                  2282:15  <b>coordinator</b> 2165:3                  2170:2 2197:18                  2203:2 2233:12</p>	<p>2277:17 2278:15                  2278:23 2280:20                  2282:17 2284:3                  2286:14 2287:9                  2287:16 2322:9                  2324:8,10,18  <b>copied</b> 2309:21                  2310:1  <b>copies</b> 2146:24                  2188:14,22                  2189:8,16                  2243:12 2294:22                  2321:5,6  <b>copy</b> 2109:24                  2148:2 2166:12                  2226:5 2294:24                  2295:16,20                  2315:15,17                  2321:20 2335:19  <b>copying</b> 2147:1  <b>corner</b> 2091:10                  2105:18  <b>Corporal</b> 2194:23                  2196:6 2197:8,18                  2198:10 2199:8                  2199:18 2200:7                  2200:13,16                  2201:5,21,24                  2202:13,14,23,25                  2203:1,9 2207:12                  2207:20 2246:22                  2246:25  <b>correct</b> 2090:18                  2091:6 2092:6                  2102:1,2,19                  2140:6,25 2142:9                  2146:10 2147:21                  2151:16,17                  2153:6 2156:18                  2168:1 2179:23                  2180:1 2190:20                  2198:2,3 2200:22                  2202:4,5 2204:1                  2206:24 2210:25                  2221:8 2223:16                  2227:17 2235:5                  2238:22,24                  2244:3 2245:16                  2246:13 2257:1,2                  2257:6 2261:21                  2262:19 2269:20                  2269:21 2270:3                  2271:3 2272:1,8                  2272:14,18,19                  2279:16 2282:10                  2282:23 2285:5                  2286:6 2288:5,21</p>	<p>2290:25 2291:2,6                  2291:13,19                  2292:7,12,22                  2293:2,8 2294:15                  2306:4,5,9                  2307:22 2310:10                  2312:4 2314:11                  2314:17,23                  2319:1,8,9 2320:4                  2321:2,21 2323:8                  2324:3 2326:1                  2327:3 2330:6                  2332:3 2333:21                  2334:23 2335:15                  2337:7,11                  2338:24 2339:14                  2340:2 2345:9  <b>corrected</b> 2121:4,7                  2162:25 2163:23                  2299:24  <b>correctly</b> 2181:11                  2183:13 2299:8                  2299:10 2338:23                  2341:8  <b>correspondence</b>                  2306:11  <b>corroboration</b>                  2089:7  <b>corrupt</b> 2117:3,19  <b>corruption</b> 2114:15  <b>counsel</b> 2085:2,3                  2100:25 2120:2                  2122:10 2126:25                  2141:16 2150:18                  2154:20 2158:6                  2158:24 2159:18                  2162:21 2166:5                  2175:17 2204:22                  2205:15,25                  2212:21 2213:13                  2213:14 2214:19                  2216:17 2217:24                  2231:4 2254:20                  2269:7 2287:23                  2292:11 2294:22                  2306:7 2308:19                  2309:11,12                  2312:16 2332:11  <b>counsel's</b> 2123:21                  2128:11 2134:12                  2145:18 2150:15                  2165:24  <b>couple</b> 2099:7                  2256:25 2261:14                  2269:2 2299:6                  2314:21  <b>course</b> 2113:18</p>
--	--	--	--	---

<p>2119:6 2135:12                  2138:9 2141:14                  2142:13 2144:2                  2148:5 2166:21                  2166:21 2167:25                  2168:12,24                  2169:7 2172:8                  2176:18 2178:23                  2184:1 2199:15                  2217:21,23                  2229:20 2230:2                  2232:18 2236:4,7                  2243:15,17,20                  2246:5 2251:19                  2252:10 2256:23                  2286:10 2293:20                  2306:2  <b>courses</b> 2273:16,19                  2273:21,25                  2274:9,21,23,23                  2274:24 2279:5,6                  2285:17,23                  2286:3,4  <b>court</b> 2088:14                  2180:10 2218:17                  2292:2,4,15                  2345:2,17,21  <b>cover</b> 2146:18,18                  2146:19,19                  2157:13 2213:11                  2287:22  <b>covered</b> 2281:23                  2339:22  <b>created</b> 2121:18  <b>creating</b> 2117:4                  2145:12  <b>creature</b> 2138:16  <b>credibility</b> 2111:16                  2111:16 2130:4                  2142:18 2218:17                  2220:2,3,17,19,21                  2221:5,10                  2236:20 2240:9                  2243:22 2244:1,2                  2253:22  <b>credible</b> 2088:24                  2098:8  <b>crime</b> 2114:6,14,18                  2115:4,5,23                  2116:19 2117:11                  2117:13,15,19                  2118:9,12,18                  2119:9,18,20,21                  2120:4,21                  2121:13,24                  2124:6 2209:12                  2273:4,5 2287:10</p>	<p>2287:13 2321:24                  2339:1,3,9,10  <b>crimes</b> 2269:23                  2270:5,7 2273:23                  2342:25  <b>criminal</b> 2138:13                  2166:16 2167:11                  2221:6,7 2288:16                  2289:7 2320:6,8  <b>criminals</b> 2103:10                  2103:13 2288:10  <b>critical</b> 2094:15                  2243:21  <b>criticism</b> 2114:14  <b>crook</b> 2288:14  <b>cross-examination</b>                  2087:3 2089:14                  2100:11 2150:17                  2214:20 2292:6  <b>cross-examinations</b>                  2213:6  <b>cross-purposes</b>                  2303:12  <b>Crown</b> 2128:18                  2129:15 2152:25                  2153:2 2159:24                  2162:7,22                  2163:12,20                  2170:1 2171:4                  2175:5,19 2176:3                  2193:3,3,5,8                  2205:22 2213:14                  2220:4 2233:21                  2233:22 2236:17                  2242:17,18,20                  2248:9 2258:3                  2263:18 2275:10                  2284:14,19                  2296:15,17                  2297:7 2299:12                  2300:5,20 2301:5                  2301:10,14                  2302:1 2307:20                  2311:1,8,17,21                  2313:11 2320:19                  2321:1,9 2322:4                  2322:16,20,25                  2323:15,24                  2324:1,7,22                  2325:2,6,24                  2326:7,11                  2327:24,25                  2328:1 2334:5  <b>Crowns</b> 2159:1,18                  2159:21 2162:1                  2164:7,20 2165:7                  2284:22 2323:5,9</p>	<p><b>Crown's</b> 2237:21                  2241:1,3 2261:19                  2261:22 2296:10                  2311:22,24                  2326:17 2332:10  <b>crucial</b> 2095:10                  2113:24 2288:3  <b>culture</b> 2175:4,4,5  <b>current</b> 2125:6                  2128:6 2131:12                  2131:15 2132:16                  2133:9 2134:13                  2134:16 2135:8                  2135:24 2144:7                  2145:2 2148:18                  2161:12 2162:3                  2162:25 2163:23                  2166:23 2169:3,9                  2171:9,13                  2183:12,16                  2184:6 2186:18                  2187:7,20                  2188:15 2189:17                  2191:11 2192:17                  2194:24 2195:2                  2196:22 2197:16                  2200:17 2201:10                  2201:25 2202:3                  2202:23 2209:12                  2211:6,14 2212:7                  2218:25 2220:1                  2221:24 2234:11                  2236:21 2239:14                  2240:10 2243:4                  2243:14 2244:16                  2246:6,11                  2251:17,25                  2252:4,13,17                  2255:12 2256:20                  2257:1,13,16,22                  2258:11 2259:12                  2260:9 2262:14                  2289:10 2305:2                  2311:4 2329:1,24                  2330:6 2333:14                  2341:1,16 2342:4                  2342:15  <b>Current's</b> 2149:12  <b>custody</b> 2135:14  <b>cut</b> 2315:18  <b>cuts</b> 2109:18 2158:8</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D</b> 2085:14,16                  2197:17 2248:7  <b>daily</b> 2150:8                  2177:21 2226:4</p>	<p>2226:14 2231:9                  2280:1,3  <b>damage</b> 2130:4  <b>danger</b> 2137:7                  2138:20  <b>Dangerfield</b>                  2085:13 2093:11                  2162:1,12                  2164:11,16                  2233:7 2234:1                  2237:5 2244:5                  2253:1,16,21                  2263:6,12                  2267:25 2299:3                  2303:17 2304:4                  2305:10,16,19,23                  2306:3 2308:25                  2310:1 2311:11                  2311:15 2312:3                  2312:16 2322:20                  2323:1  <b>dangerous</b> 2157:1,2                  2157:4,5,6                  2158:11 2288:24                  2288:25,25  <b>dare</b> 2136:7  <b>darn</b> 2220:25                  2221:9 2240:8  <b>dash</b> 2123:25  <b>data</b> 2205:11  <b>date</b> 2123:8                  2141:21 2187:1                  2241:19 2288:1                  2316:5  <b>dated</b> 2187:7                  2188:3,25                  2245:13 2316:24                  2329:16  <b>dates</b> 2140:4                  2231:10 2315:13  <b>David</b> 2085:8  <b>Dawe</b> 2085:3                  2101:1  <b>day</b> 2090:20                  2091:23 2095:16                  2099:18 2102:13                  2106:25 2107:11                  2107:21,25                  2108:7,9,17                  2109:2 2114:5                  2115:3 2128:5                  2131:14 2141:24                  2142:11,11,14                  2157:3,4 2180:25                  2187:12 2205:22                  2205:23 2208:19                  2225:7,21</p>	<p>2234:23 2236:13                  2236:23 2283:23                  2289:1 2315:10                  2315:12 2331:15                  2344:5  <b>days</b> 2101:1 2103:4                  2103:14 2104:24                  2107:2,12                  2130:16 2139:5                  2143:11 2149:19                  2273:12 2279:11                  2318:21  <b>day-to-day</b> 2226:18  <b>de</b> 2277:13  <b>dead</b> 2121:21                  2122:25 2158:19  <b>deal</b> 2146:5 2148:16                  2157:9 2202:12                  2215:8 2253:2,17                  2258:17 2259:24                  2263:9 2275:14                  2277:9 2294:13                  2310:24 2319:21                  2340:24 2341:13  <b>dealing</b> 2094:5                  2103:5 2137:15                  2138:9 2156:25                  2157:5 2183:15                  2184:2 2202:2                  2213:21 2214:10                  2214:14 2217:14                  2233:20 2237:11                  2246:8 2255:21                  2262:9 2288:9                  2293:11 2338:8  <b>dealings</b> 2103:17,23                  2107:13 2108:2                  2130:23 2131:1                  2158:11 2246:6                  2289:17  <b>deals</b> 2151:8                  2168:22 2257:10                  2257:19 2258:6                  2262:4 2263:18  <b>dealt</b> 2101:13,22                  2117:20 2134:7,8                  2148:14 2162:13                  2182:11,13                  2243:4 2257:4                  2290:12 2333:6                  2340:22  <b>Dean</b> 2094:9,19                  2097:14 2121:20                  2146:17  <b>Dear</b> 2189:3,5  <b>death</b> 2104:19                  2105:6 2108:14</p>
--	---	--	--	---

<p><b>deaths</b> 2281:25  <b>debate</b> 2154:19  <b>debated</b> 2154:7,10  2154:12 2155:6  <b>debriefings</b> 2279:21  2279:23  <b>deceased's</b> 2166:19  2166:22 2167:25  <b>deceitful</b> 2129:3  <b>December</b> 2131:19  2132:9 2188:3,25  2190:1 2191:10  2191:21 2285:9  2329:7,16  <b>decide</b> 2213:7  <b>decided</b> 2097:8  2144:20  <b>decision</b> 2142:24  2149:24,25  2150:4 2151:13  2151:18 2152:16  2209:10 2217:19  2272:6 2284:6,7  2320:17 2339:25  <b>decisions</b> 2286:22  <b>dedicated</b> 2270:1  2276:17  <b>deemed</b> 2338:19  <b>deep</b> 2149:5  <b>deeper</b> 2341:22  <b>deeply</b> 2198:24  2341:7  <b>defence</b> 2085:22  2269:1 2292:11  2297:8 2306:9,25  2307:8 2308:19  2308:25 2309:11  2309:12 2325:20  2332:11 2334:6  <b>defend</b> 2216:3  <b>deficient</b> 2327:20  <b>definitely</b> 2116:23  2131:21 2282:11  2332:6  <b>definitions</b> 2286:13  <b>degree</b> 2271:24,25  2272:23,23  <b>degrees</b> 2102:15  <b>delay</b> 2124:18  2125:14 2151:2  2194:13 2244:18  2244:20,22  <b>delayed</b> 2130:3  2245:1  <b>deliberately</b> 2297:6  <b>delivered</b> 2321:9  <b>delve</b> 2215:4</p>	<p><b>demand</b> 2223:15  <b>demanding</b> 2126:6  <b>demands</b> 2289:12  <b>demonstrate</b> 2137:7  <b>demonstrated</b>  2210:18  <b>denied</b> 2159:7  <b>dentistry</b> 2283:3  <b>deny</b> 2159:21  2175:23 2236:3  <b>denying</b> 2222:22  <b>department</b>  2132:17 2133:18  2133:21 2148:14  2149:2 2160:2  2161:7 2173:2,15  2188:2 2235:10  2258:18,21  2260:2 2278:4,6  2301:19 2316:14  2337:19 2340:22  <b>departmental</b>  2274:3 2297:14  2298:1  <b>dependent</b> 2237:13  2253:25  <b>depending</b> 2291:16  <b>Deputy</b> 2245:22,25  2309:18,23  <b>describe</b> 2142:6  2171:11 2281:9  2287:19 2320:5  2327:11  <b>described</b> 2141:15  2142:24 2177:18  2236:1,10  2283:10 2287:9  <b>describes</b> 2144:4  <b>describing</b> 2248:25  <b>DESCRIPTION</b>  2086:3  <b>designation</b>  2277:16  <b>designed</b> 2173:22  2174:3,5  <b>desk</b> 2336:14  <b>despite</b> 2158:8  <b>destroy</b> 2335:14  2338:10,12  <b>destroyed</b> 2106:12  2137:24 2335:4  2335:25 2336:18  2338:20  <b>destroying</b> 2334:25  <b>detachment</b> 2133:9  2152:11 2183:17  2184:6 2186:19</p>	<p>2209:7 2212:7  2243:4 2247:17  2248:12 2250:7  <b>detail</b> 2331:10  2333:11  <b>detailed</b> 2115:4  2337:1  <b>details</b> 2105:11  2116:23 2131:10  2131:14,16  2205:3 2207:9  2331:21,25  2332:2  <b>detective</b> 2106:4  2269:19 2271:6  2274:5  <b>detectives</b> 2094:5  2098:25 2107:22  2185:5  <b>determine</b> 2213:10  2286:16  <b>develop</b> 2215:3  <b>developed</b> 2104:1  <b>development</b>  2141:17,20  2142:7,14 2143:1  2143:9 2160:22  2199:11,25  2205:19,25  <b>devices</b> 2204:9  <b>dialed</b> 2211:5,8  <b>dialogue</b> 2196:16  <b>difference</b> 2217:13  2273:1,2,7  <b>different</b> 2130:7  2139:3 2146:14  2154:4,5 2195:15  2243:5 2260:22  2271:21 2272:21  2281:13,24  2336:23  <b>difficult</b> 2164:19,22  <b>difficulties</b> 2144:18  2145:15 2339:23  <b>dilemma</b> 2246:21  2246:24  <b>direct</b> 2092:15  2188:19 2272:6  2305:10 2309:15  <b>directed</b> 2116:14  2296:17  <b>directing</b> 2255:25  <b>directives</b> 2274:4  2281:17 2297:15  2298:1  <b>directly</b> 2119:16  2155:17 2162:20</p>	<p>2183:15 2306:1  2317:19 2323:16  <b>director</b> 2258:19  2259:25 2284:13  <b>disagreement</b>  2257:7  <b>disappearance</b>  2166:19,22  2167:4,15,25  <b>disappeared</b>  2168:13,15  <b>disclose</b> 2175:18  2333:3  <b>disclosed</b> 2296:25  2334:5  <b>disclosing</b> 2175:20  <b>disclosure</b> 2127:11  2135:17 2163:4  2163:14 2165:25  2175:3 2237:20  2238:7 2294:14  2307:19 2308:20  2320:20 2321:15  2324:22 2325:21  <b>discovered</b> 2174:14  <b>discovery</b> 2283:23  <b>discuss</b> 2227:2  2261:11  <b>discussed</b> 2153:19  2155:11 2176:10  2223:6 2232:15  2233:2 2238:13  2239:9 2244:16  2249:9 2257:7  2261:9 2318:22  <b>discussing</b> 2164:23  2190:21 2223:11  2253:17  <b>discussion</b> 2191:8  2201:23 2219:8  2234:8  <b>discussions</b> 2144:14  2154:13 2192:14  2201:9 2289:11  2318:25  <b>dishonest</b> 2129:3  <b>dismissing</b> 2200:5  <b>disorganized</b>  2286:9  <b>disposal</b> 2200:24  <b>dispute</b> 2123:7  <b>disseminated</b>  2281:1  <b>distinction</b> 2272:22  <b>distinguish</b> 2271:9  <b>distributed</b> 2254:20  <b>distributing</b> 2296:9</p>	<p><b>division</b> 2155:19  2197:17 2270:5,7  2276:14 2282:13  2342:25 2343:1  <b>divisional</b> 2088:14  2143:24 2149:18  2155:12,15,22  2170:2 2281:8  2284:10 2307:15  2324:18  <b>document</b> 2097:19  2103:16,19  2104:5 2136:14  2147:2 2158:11  2186:22 2226:10  2250:22 2269:5  2309:3  <b>documentation</b>  2157:17,20,24  2294:9  <b>documented</b> 2104:2  2104:22 2261:6  <b>documents</b> 2087:3  2089:13 2096:21  2097:25 2122:6  2134:3,4,25  2135:13 2137:1  2156:15 2186:12  2192:1 2218:12  2222:2 2225:1  2229:17,21  2306:8,24 2329:2  2335:10,12  2342:13  <b>dogs</b> 2225:12  <b>doing</b> 2102:1  2104:10 2158:22  2232:24 2237:5  2245:23 2279:8  2279:13 2300:14  2300:23 2302:15  2314:15 2331:18  2337:25  <b>double</b> 2200:10  <b>doubt</b> 2104:2  2109:11 2121:9  2150:11 2159:20  2198:7 2200:9,11  2250:13  <b>Doug</b> 2218:9  <b>dozen</b> 2156:8  <b>drafted</b> 2165:25  2168:11  <b>draw</b> 2264:4  <b>drawn</b> 2166:7  <b>dream</b> 2126:6  <b>dreamed</b> 2178:2</p>
---	--	--	--	--

<p><b>dreamt</b> 2125:25  <b>Driskell</b> 2084:3                  2085:11 2090:11                  2094:16,18                  2096:19 2099:7                  2099:11,13                  2115:15 2125:5                  2128:5,18,23                  2137:8,8 2148:19                  2160:20 2172:3                  2173:21 2174:14                  2185:20 2186:1,5                  2207:17 2210:10                  2211:20 2212:8                  2220:5 2231:6                  2236:18 2237:2                  2239:11 2242:25                  2243:8,16                  2246:17 2247:10                  2296:22 2334:21                  2341:2,17  <b>Driskell's</b> 2115:2                  2143:12 2185:18                  2205:8 2228:25  <b>Driskell/Harder</b>                  2275:20  <b>drive</b> 2091:19                  2093:4 2112:20                  2113:1  <b>driven</b> 2094:6                  2098:23  <b>driving</b> 2093:17  <b>drop</b> 2206:22  <b>drove</b> 2106:25                  2107:23 2108:7                  2128:6  <b>drug</b> 2173:5,18  <b>duly</b> 2345:6  <b>duplication</b> 2281:3  <b>dwells</b> 2337:3  <b>D.K</b> 2156:4 2265:22                  2265:22 2266:12</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>earlier</b> 2104:24                  2121:7 2144:6,7                  2146:15 2150:8,8                  2177:18 2209:22                  2237:22 2266:17                  2285:17 2287:24                  2288:7 2294:18                  2301:3 2312:2  <b>early</b> 2103:4,14,23                  2103:25 2104:5                  2219:23 2241:2                  2272:5,18                  2293:16 2309:19</p>	<p>2323:11 2324:12                  2324:14  <b>earnest</b> 2180:19  <b>earth</b> 2138:16  <b>easiest</b> 2133:13  <b>easily</b> 2155:8                  2338:19  <b>easy</b> 2135:16                  2335:9,12  <b>edge</b> 2266:19  <b>education</b> 2320:6,7  <b>effect</b> 2136:20                  2197:4  <b>effort</b> 2247:11  <b>eight</b> 2316:9  <b>either</b> 2119:12                  2138:22 2139:9                  2141:1 2142:13                  2143:11 2146:12                  2155:17 2167:2                  2193:2 2198:12                  2221:15 2234:5                  2253:11 2287:6                  2291:17 2296:20                  2296:23 2305:23                  2306:3 2325:10                  2329:22 2334:8  <b>embarked</b> 2100:11  <b>empty</b> 2219:5  <b>enabled</b> 2170:25                  2199:16  <b>enclose</b> 2188:14  <b>Enclosed</b> 2188:22                  2189:8  <b>encounter</b> 2103:22  <b>encountered</b>                  2161:17 2290:20  <b>endanger</b> 2128:22                  2129:24  <b>ended</b> 2183:19                  2265:3  <b>endorse</b> 2214:5  <b>endurance</b> 2344:6  <b>ensuing</b> 2126:18                  2256:21  <b>ensure</b> 2144:23                  2247:15 2280:25                  2286:17 2287:1                  2291:11 2322:4                  2322:15 2324:8                  2325:11 2326:2  <b>enter</b> 2116:9                  2340:13  <b>entered</b> 2089:12                  2263:1,24                  2333:19  <b>entire</b> 2190:2</p>	<p>2295:22 2338:15  <b>entirely</b> 2107:19                  2152:5 2247:9  <b>entirety</b> 2170:6                  2178:9  <b>entomologist</b>                  2283:1  <b>entries</b> 2095:22                  2225:15 2315:3,5                  2315:7,11 2316:8                  2316:8  <b>entry</b> 2090:7 2102:4                  2102:7 2123:25                  2203:20 2315:25                  2332:23  <b>equal</b> 2204:3,5,6  <b>equally</b> 2192:18                  2211:4  <b>equip</b> 2273:22  <b>equivalent</b> 2088:13                  2101:25 2143:10  <b>escape</b> 2207:18  <b>especially</b> 2103:15                  2103:24 2175:2                  2177:20 2213:14                  2273:23  <b>essence</b> 2124:9                  2176:21,22                  2181:17 2252:1  <b>essentially</b> 2092:3                  2093:11 2117:4                  2181:14 2313:15  <b>established</b> 2192:1  <b>Estate</b> 2085:14  <b>et</b> 2097:11,11                  2281:4  <b>evening</b> 2105:19  <b>event</b> 2107:12                  2109:17 2111:1                  2137:13 2176:11                  2177:23 2184:22                  2213:7 2216:14                  2246:2 2256:13                  2261:20 2265:1                  2299:25 2300:4                  2310:21 2316:7                  2326:7,8  <b>events</b> 2095:7                  2113:17,20                  2137:10 2139:9                  2141:1 2242:11                  2251:12 2317:11  <b>eventually</b> 2115:8                  2332:10  <b>everybody</b> 2194:24                  2194:24 2196:7                  2237:20 2287:19</p>	<p>2292:15  <b>ever-present</b>                  2288:22  <b>evidence</b> 2089:7                  2094:17 2095:23                  2110:25 2111:4,7                  2111:20 2115:17                  2124:4,5,22,25                  2126:13 2133:22                  2133:25 2137:20                  2149:14,19,20                  2152:21 2158:19                  2159:14 2160:7                  2177:19 2186:13                  2198:1 2200:14                  2210:2 2228:15                  2228:23 2229:11                  2235:15 2242:5                  2247:11 2265:23                  2266:3,8 2268:5                  2272:6,10,11                  2299:8 2304:9                  2305:8 2308:7                  2310:9 2311:19                  2312:2 2313:1                  2318:20 2319:11                  2327:10 2329:5                  2330:10 2337:6                  2338:23 2341:25  <b>evidence-in-chief</b>                  2167:21  <b>evident</b> 2148:12                  2340:20  <b>evidentiary</b> 2208:8  <b>Ewatski</b> 2087:11                  2098:18 2099:2                  2107:3 2118:16                  2118:17 2133:4                  2135:5 2147:12                  2185:22 2255:8                  2255:17,21                  2256:6,9 2257:14                  2258:14 2259:1,9                  2260:6,10,15,23                  2294:20 2295:13                  2295:15 2339:1                  2339:13  <b>Ewatski/Hall</b>                  2227:16 2254:7                  2295:21  <b>exact</b> 2161:19                  2257:3  <b>exactly</b> 2096:5                  2103:6 2136:24                  2139:18 2140:12                  2140:20 2153:7                  2153:11 2233:9</p>	<p>2237:9 2251:2                  2257:11,20                  2260:3 2261:6                  2286:11 2341:11  <b>examination</b>                  2092:16 2213:9                  2217:25 2327:5  <b>examinations</b>                  2215:17  <b>examination-in-c...</b>                  2093:12 2123:3                  2126:10  <b>examine</b> 2130:23  <b>Examiners</b> 2345:7  <b>example</b> 2115:21                  2129:10 2146:13                  2216:20 2270:17                  2273:9 2280:9,20                  2282:18 2290:1                  2292:24 2308:17                  2309:3 2310:3                  2326:5  <b>excerpt</b> 2087:4,6                  2089:20,23                  2090:1  <b>excerpts</b> 2098:17  <b>exchange</b> 2168:23                  2169:5 2262:5                  2310:25 2319:21                  2342:8  <b>excuse</b> 2225:1                  2234:11  <b>execute</b> 2128:18  <b>executing</b> 2201:6                  2208:9  <b>exhibit</b> 2088:17                  2089:12,13,23                  2090:1 2096:21                  2105:4 2178:12                  2178:16 2183:5                  2186:11 2254:25                  2255:1 2269:7                  2294:21 2295:1,2                  2295:7,9,14,25                  2296:1 2298:15                  2298:16 2299:17                  2306:14 2313:24                  2314:2,3 2318:3                  2329:10,13,15                  2340:12  <b>EXHIBITS</b> 2087:1  <b>existed</b> 2197:15                  2274:10 2289:22                  2311:14 2327:16  <b>exists</b> 2115:17                  2178:10 2199:7  <b>expect</b> 2158:20</p>
---	---	--	---	---

<p>2176:2 2199:2 2242:21 2252:25 2258:15 2259:2 2261:2 2264:10 2264:20 2297:18 <b>expectation</b> 2195:10,11 2328:21 <b>expected</b> 2130:16 2164:8 2199:2 2209:10 2211:6 2259:15 2263:3 <b>expedition</b> 2125:3 <b>experience</b> 2184:25 2185:2,10 2248:24 2269:15 2271:6 2274:4 2275:5,12 2321:11,14 2324:1 2325:14 2325:18 2326:3 2334:23 <b>experienced</b> 2158:7 2158:9 2271:2,5 <b>expert</b> 2249:18 <b>explain</b> 2100:7 2124:15 2145:7 2169:25 2191:17 2251:4 2266:16 2266:17 <b>explained</b> 2125:1 2150:6 2222:25 2246:21 2247:9 2328:20 2332:6 <b>explaining</b> 2096:2,8 2205:9 2259:4 2260:6,8 <b>explanation</b> 2098:19 2100:2,8 2109:7,16 2110:17,20 2112:16 2121:22 2137:2 2328:4 <b>explicable</b> 2112:16 <b>explore</b> 2269:3 <b>expound</b> 2327:22 <b>expressed</b> 2126:24 <b>expression</b> 2130:8 <b>expunged</b> 2138:14 <b>extent</b> 2127:2 2133:12 2145:20 2165:1 2177:20 2211:17 2215:2 2221:11 2228:24 2276:13 2292:8 2331:9 <b>extract</b> 2087:9</p>	<p>2092:8,15 2094:9 2096:23 2114:12 2254:22 2255:1 <b>extraordinarily</b> 2207:14,21,25 2208:3 <b>extraordinary</b> 2210:19 <b>E.W</b> 2085:12</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>fabricate</b> 2169:14 <b>face</b> 2160:20 2211:20 2326:5 2335:23 <b>facilitated</b> 2199:15 <b>facilitator</b> 2203:10 <b>fact</b> 2089:4 2096:22 2097:21 2099:23 2110:17 2111:23 2116:3 2118:19 2120:17 2122:15 2127:5 2130:2 2132:15 2135:7 2144:7,13 2145:13 2149:7 2159:25 2161:14 2162:8 2166:1 2173:24 2192:10 2200:6,11 2201:24 2211:19 2219:25 2222:22 2228:13,22 2230:5 2240:8 2242:23 2245:7 2246:16,24 2251:15 2252:15 2254:10 2256:8 2257:17 2258:3 2259:5 2261:5 2300:6 2303:13 2304:1,20 2305:1 2318:7 2319:10 2322:19 2323:20 2330:16 2331:14 2331:23 <b>facto</b> 2277:13 <b>facts</b> 2215:2,5 2282:20 <b>factual</b> 2215:3,8,9 <b>fail</b> 2184:11 <b>failed</b> 2174:17 2338:23 <b>failure</b> 2174:23 2175:18 2292:17 <b>faint</b> 2224:21,22 2225:11</p>	<p><b>fair</b> 2103:8,14 2149:4 2164:10 2186:21 2201:14 2203:3,9 2210:17 2213:18 2215:22 2222:24 2230:7 2304:8 2305:12 2307:17 2312:1 2319:3,16,23 2321:10 2322:2 2322:23,24 2323:18,19 2324:23 2329:5 2330:9 2333:7,8 2334:16,18 2335:1,2 2338:4,5 2338:9 2340:9,10 2340:15 2342:2,2 2342:6,8 2343:8 <b>fairly</b> 2234:25 2241:13 2248:25 2250:20 2263:23 <b>fall</b> 2106:9 2202:21 <b>false</b> 2107:19 2252:19 <b>falsify</b> 2158:20 <b>familiar</b> 2282:19 <b>family</b> 2098:21 2125:2 2143:19 2272:16 <b>far</b> 2119:7 2127:24 2144:4 2146:20 2176:13 2184:15 2208:8 2214:17 2220:3 2233:18 2237:12 2240:9 2243:21 2245:1 2246:10,11,13 2252:16,17,18 2263:18 2284:21 2307:3 2326:25 <b>father</b> 2276:3 <b>fault</b> 2101:8 <b>favorable</b> 2168:20 <b>favour</b> 2126:13 <b>feature</b> 2124:11 <b>February</b> 2140:14 2140:23 2315:21 <b>feel</b> 2215:19 2333:15 <b>feeling</b> 2344:1 <b>feet</b> 2122:10 <b>Fehr</b> 2097:19 <b>felt</b> 2096:12 2098:11,21 2243:5 2296:10 <b>fencing</b> 2217:20,22</p>	<p><b>Ferguson</b> 2185:13 2185:24 2186:4 2186:14 <b>fewer</b> 2158:21 2323:5,9 <b>fiber</b> 2282:8 <b>field</b> 2286:22 2300:23 <b>figure</b> 2249:4 <b>figured</b> 2093:5,18 <b>file</b> 2088:16 2122:4 2122:7 2139:3 2146:24 2151:5 2173:3,16 2187:7 2190:2,9 2191:2 2200:1 2240:3 2253:15 2277:12 2277:18,20 2281:3 2287:1 2301:19 2322:22 2323:17 2325:8 2325:13 2326:18 2329:1 2330:3,14 2330:17,18 2331:22 2334:11 2334:19 2335:4,5 2335:6,7,10,14,24 2336:6,6,7,8,21 2336:23,24 2337:4,13,15,18 2338:4,7,8,13,15 2338:16,17 <b>filed</b> 2276:3 <b>files</b> 2335:1 <b>fill</b> 2222:23 2223:2 <b>filled</b> 2222:18,25 2280:17 <b>final</b> 2199:19 2204:12 2254:2 <b>finalized</b> 2267:3 <b>finally</b> 2176:6 2210:2 2225:25 2297:10 2314:18 2341:24 <b>financial</b> 2318:21 2319:6,15 <b>find</b> 2112:19 2120:13 2122:1 2127:20,22 2133:3 2139:24 2164:19 2167:21 2172:20,23 2173:8 2188:22 2189:8,25 2228:5 2259:18 2273:3 2273:11 2280:22 2294:8 2296:19</p>	<p>2330:14 <b>finding</b> 2094:4 2272:25 2276:7,8 2276:15,22 2302:19 <b>fine</b> 2256:10 2268:18 <b>fine-toothed</b> 2238:2 <b>finger</b> 2138:6,8 <b>finish</b> 2161:22 2343:24 <b>finished</b> 2118:21 2123:15 2262:1 <b>fire</b> 2212:12 2219:25 2238:16 2238:21 2240:11 2243:14 2244:16 2246:11,17 2251:17,22 2256:24 2335:20 <b>first</b> 2088:20 2089:10,17 2090:7 2091:17 2099:3,8,9,16,22 2100:9 2106:21 2107:3,20 2113:2 2119:24 2120:3 2121:1,23,24 2122:1,15 2123:4 2123:5 2124:16 2129:1,13,16 2130:12,14 2131:3 2132:21 2132:24 2134:21 2141:25 2150:21 2150:22,23 2153:5 2154:14 2156:1 2165:23 2166:6,8 2168:2 2171:19 2175:21 2177:13 2183:13 2186:16 2187:21 2193:1,11 2197:19 2199:9 2201:18 2204:19 2205:17,25 2206:3 2209:5 2213:25 2214:21 2216:23 2218:12 2219:22,23 2221:22,23 2223:9 2225:8 2226:1 2236:18 2241:18 2244:16 2251:3 2253:23 2256:4 2257:23 2264:15 2269:3</p>
--	---	--	---	---



<p>2271:24 2272:23 2310:19 2312:13 2315:13,21 2327:21 <b>firstly</b> 2221:19 2236:16 2264:6 <b>fishing</b> 2125:3 <b>fishy</b> 2122:20 <b>fit</b> 2177:3 <b>five</b> 2139:5 2183:25 2184:4,13,14,15 2184:17 2205:1 2237:25 2315:5 2316:8,9 <b>fix</b> 2160:7 <b>flag</b> 2117:15 2151:4 2205:10 <b>flagged</b> 2119:19 <b>flesh</b> 2326:11 <b>flight</b> 2138:2 <b>floor</b> 2283:8,16,18 2336:15 <b>fluid</b> 2251:6 <b>focus</b> 2123:4 2124:20 2160:9 2206:23 2336:22 <b>focused</b> 2207:7 <b>focuses</b> 2286:4 <b>focusing</b> 2214:15 <b>folder</b> 2335:25 <b>folders</b> 2336:14 <b>follow</b> 2099:11,12 2104:25 2109:21 2132:2 2142:2 2215:14 2321:25 <b>followed</b> 2148:21 2178:13 2256:21 2265:1 <b>following</b> 2095:20 2142:1 2144:19 2153:14,19 2158:2 2205:17 2215:23 2228:21 2248:6 2308:9 2329:21 <b>follows</b> 2178:22 <b>follow-up</b> 2276:11 <b>force</b> 2188:11 2196:17 2197:16 2269:15 2277:25 2291:16,18 2296:24 <b>forced</b> 2127:10 <b>forces</b> 2256:22 <b>foregoing</b> 2345:8 <b>foreign</b> 2240:4 <b>forensic</b> 2273:25</p>	<p>2274:23 2282:9 2282:12 2283:20 <b>forensics</b> 2282:15 2282:20 2283:7 2284:5 <b>forget</b> 2138:25 2169:20 <b>forgotten</b> 2192:8 <b>form</b> 2106:2 2203:25 2309:7 2333:23 <b>formal</b> 2199:19 2201:7 2203:11 2235:18 2266:22 <b>formalize</b> 2324:25 <b>formalized</b> 2323:22 2324:6,21,24 <b>formally</b> 2214:17 2340:1 <b>forth</b> 2098:12 2157:10 2325:1 <b>forward</b> 2089:1,5 2094:1 2096:2,8 2096:13,17 2097:5,10 2098:11 2099:25 2100:1,3 2106:6 2106:22 2107:19 2109:8 2111:14 2112:15 2182:20 2182:23 2200:4 2320:4 2322:6 <b>forwarning</b> 2342:12 <b>found</b> 2099:22 2118:17 2136:23 2175:12,15 2204:22 2210:24 2275:22 2282:22 2314:24 2322:22 2327:20 2336:1 <b>foundation</b> 2215:9 <b>four</b> 2097:4 2120:15 2148:7 2149:1 2151:1 2152:8 2182:18 2182:22,25 2183:9,25 2205:1 2205:18 2237:25 2238:21 2317:17 2321:5 <b>fourth</b> 2300:3 <b>frame</b> 2177:18 2270:17 <b>free</b> 2138:2,2 2333:15 <b>frequently</b> 2251:8</p>	<p>2279:25 2280:1 <b>friend</b> 2340:11 <b>front</b> 2089:11 2231:13 2253:17 2275:17 2329:17 <b>front-line</b> 2342:10 <b>fulfill</b> 2208:11 <b>fulfilled</b> 2208:17 <b>fulfilling</b> 2207:25 2208:18 <b>full</b> 2205:18 2221:23 2237:19 2238:7 <b>fully</b> 2162:23 2163:21 2198:7 2211:5 2311:2 <b>fulsome</b> 2170:10 <b>funny</b> 2119:22 <b>further</b> 2095:25 2162:22 2163:11 2163:20 2196:3 2201:2 2262:22 2263:25 2268:19 2298:8 2311:1 2316:2 2325:11 2325:11 2328:4,4 <b>Furthermore</b> 2168:19 <b>future</b> 2157:13 2292:21 2293:14</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>gain</b> 2247:11 <b>game</b> 2219:24 <b>garage</b> 2131:3,6,8 2136:3,8,17 2137:9 2139:1,13 <b>garages</b> 2137:3 <b>Garson</b> 2309:22 <b>Gates</b> 2085:16 2086:6 2183:8 2186:10 2187:2,3 2188:4,6,8 2190:2 2196:3 2200:5 2211:19 2212:15 2212:17 2290:2 <b>gather</b> 2233:7 2279:24 2305:21 <b>gathered</b> 2272:11 2296:9 <b>general</b> 2198:21 2203:24 2227:3 2328:15 2343:9 <b>generally</b> 2238:19 <b>generate</b> 2326:22 2327:7 2328:13 2328:22</p>	<p><b>generated</b> 2329:7 2336:21 2337:7,9 <b>generic</b> 2136:6 2311:21 <b>gentle</b> 2331:3 <b>George</b> 2085:13 2305:10 2310:1 <b>gesture</b> 2096:15 <b>getting</b> 2116:20 2135:14 2138:2 2161:3,12 2237:1 2252:16 2308:20 <b>Giasson</b> 2085:4 <b>girlfriend</b> 2104:12 2105:13 <b>gist</b> 2239:9 <b>give</b> 2105:3,11 2122:6 2153:24 2158:4 2194:2 2214:17 2234:14 2234:18 2244:5 2254:23 2271:13 2286:12 <b>given</b> 2094:17 2100:21 2119:4 2126:18 2134:12 2135:12 2168:20 2177:7 2200:11 2204:8 2210:16 2212:23 2247:6 2259:12,21 2263:5,7 2266:16 2277:15 2313:10 2337:10,21 <b>gives</b> 2100:6 2105:15 2171:16 <b>giving</b> 2174:6 2194:1 2232:23 2233:1 2251:10 2254:22 2337:24 <b>glad</b> 2332:4 <b>go</b> 2088:16 2090:3 2091:18 2092:7 2092:14 2094:20 2107:5,9,12 2118:4 2121:9 2123:19 2127:7 2128:11 2139:11 2139:19 2140:7 2153:3 2158:2 2159:10 2165:23 2168:5,7 2171:18 2171:20 2172:19 2181:10 2182:2 2192:21 2194:21 2195:9 2201:21 2206:13,18</p>	<p>2212:21 2213:13 2216:7,23 2217:16 2218:1 2222:1 2225:9,13 2230:23 2238:23 2242:2 2244:14 2247:5 2258:16 2259:23,23 2261:13 2280:4 2301:5 2308:10 2308:18 2309:12 2323:25 2324:6 2324:17 2325:1 2328:11 2329:9 2331:3 2332:14 <b>goes</b> 2103:1 2188:14 2225:13 2236:11 2258:2,7 <b>going</b> 2100:16 2108:19 2118:17 2121:15 2123:14 2125:12 2126:12 2130:24 2131:1 2133:5 2135:20 2144:8,17 2146:12 2147:3 2147:25 2152:17 2153:4 2156:20 2158:17 2159:10 2160:24 2162:2 2162:10 2164:7 2171:2 2174:21 2176:19 2179:1 2181:12,23 2186:15 2191:16 2205:13 2211:14 2213:19,21,25 2216:13,16 2219:7 2220:2,16 2220:18,21 2221:4,9 2222:16 2225:9,16 2236:19 2240:12 2243:14,16,18,25 2251:18,20,25 2252:14 2255:12 2261:16,19 2262:15,21 2277:9 2283:14 2289:10 2291:25 2292:2,4 2294:20 2295:5 2309:11 2318:25 2322:6 2323:3 2330:21 2331:6,7 2333:3 2333:17 2334:24 2335:8 2336:17</p>
--	---	--	--	--

2338:6 2339:5 2340:14 2341:10 2342:18 2343:24 <b>good</b> 2088:5,6,7 2118:25 2138:14 2156:24 2158:7,9 2165:11 2196:20 2199:3 2205:20 2209:5,17,18,23 2268:21,22 2315:15,17 2318:14 2331:18 <b>gotten</b> 2211:23 2335:4 <b>governing</b> 2152:23 2289:25 <b>graciously</b> 2217:17 <b>Graham</b> 2309:22 <b>granted</b> 2148:17 2340:25 2341:15 2341:19 <b>gratuitously</b> 2247:22 <b>grave</b> 2282:19,22 <b>great</b> 2250:21 2331:9 <b>Greg</b> 2228:25 2317:20 <b>Gregg</b> 2306:8,24 <b>group</b> 2281:12 <b>guarantee</b> 2282:4 <b>guarding</b> 2132:6 2330:21,21 <b>guess</b> 2116:17 2125:3 2126:17 2127:25 2128:1 2145:21 2146:9 2148:22 2166:21 2196:3 2250:16 2250:19 2251:4 2270:4,14 2276:5 2279:3 <b>guide</b> 2291:21 <b>Gumieny</b> 2088:22 2089:4 2093:17 2093:18 2094:2,5 2094:21 2095:5 2096:18 2098:23 2099:14 2100:3 2101:14,23,25 2103:2,6 2104:11 2104:18,22 2106:6,14,18,20 2106:25 2107:13 2107:23 2108:12 2108:19 2109:2 2109:19,22,25	2111:6,24 2112:13,21 2113:10,13 2114:24 2115:10 2116:1 2122:23 2182:11,16 2255:22 2339:8 <b>Gumieny's</b> 2104:12 2111:3 <b>gun</b> 2179:16,24 <b>gunning</b> 2212:13 <b>guy</b> 2110:4,6,7,10 2110:11,12 2132:23 2138:14 2220:13 <b>guys</b> 2092:5 2138:6 2153:21 <b>G.G.B</b> 2178:23 <hr/> <b>H</b> <b>H</b> 2102:15 <b>hair</b> 2282:8 <b>half</b> 2156:1,2 2173:23 2256:1 <b>halfway</b> 2155:25 2315:2 2317:10 <b>Hall</b> 2087:11 2098:18 2099:2 2133:4 2135:5 2147:12 2185:22 2254:11 2255:8 2255:17,21 2256:6,9 2257:14 2258:14 2259:1 2259:10 2260:6 2260:10,15,22 2294:19 2295:12 2295:14 2339:13 <b>Hall/Ewatski</b> 2087:9 2227:21 2255:1 <b>hand</b> 2279:7,7,12 2279:13 2315:4 2321:9 <b>handed</b> 2223:1 2318:4 2322:11 <b>hands</b> 2127:7,9 <b>handwriting</b> 2225:18 2315:1 <b>happen</b> 2113:3,3 2118:14 2145:13 2234:16 2338:12 2338:13 <b>happened</b> 2107:11 2109:11 2113:19 2117:23,25 2118:3 2119:1,6	2121:16 2126:18 2135:19 2145:10 2155:11 2166:21 2168:1,12,14 2177:8 2197:7 2207:1 2226:13 2229:22 2245:7 2271:12,12 2326:5 2341:17 <b>happening</b> 2133:17 2157:25 2164:25 2251:7 <b>happens</b> 2133:1 <b>happy</b> 2144:22,23 2196:4,7 2210:6 2211:19 2212:2 2216:18,23 2322:21 2331:12 2331:17 <b>hard</b> 2112:19 2144:2 2189:25 2294:7 2344:5 <b>Harder</b> 2090:10 2091:1 2094:10 2094:19 2095:11 2104:20 2105:7 2108:15 2113:25 2117:9 2121:12 2121:20 2146:17 2167:15 2168:12 2168:15 2172:2 2199:12 2207:22 2208:5 2210:21 2226:2,19 2269:4 2270:2 2273:18 2275:18 2276:5 2279:19 2283:19 2287:7 2289:16 2296:21 2305:11 2326:15 2336:5 2342:22 <b>Harder's</b> 2098:21 2167:4 2179:21 2275:22 2276:2 2276:23 2282:22 <b>harm</b> 2320:3 <b>Hayek</b> 2189:5 <b>Hayek's</b> 2189:11,18 <b>head</b> 2182:1 <b>headed</b> 2092:5 <b>heading</b> 2094:13 2114:13 2145:21 2209:1 2336:11 <b>hear</b> 2110:8 2121:1 2121:23,24 2122:22 2193:11 2213:5 2217:5,9	2266:17 <b>heard</b> 2088:11 2098:1,4 2119:24 2129:3 2133:25 2134:21 2142:21 2142:22 2144:6 2144:21 2148:21 2154:2 2155:2 2178:8,9 2180:6,8 2180:13,20 2182:15 2185:14 2197:14 2198:9 2199:5,6 2213:4 2268:5 2286:14 2311:5,7 2318:20 2319:10 2321:4,8 <b>hearing</b> 2110:21 2112:5 2158:6 2192:12 2231:2 <b>heed</b> 2207:8 <b>heels</b> 2265:1 <b>held</b> 2279:18 2280:1 <b>hell</b> 2128:7 <b>help</b> 2101:12 2110:16,19,20,23 2116:5 2137:7 2290:3 2293:4 <b>helped</b> 2324:25 <b>helpful</b> 2206:20 2207:14,21,25 2208:3 2213:5,22 <b>helps</b> 2291:12 <b>Henderson</b> 2091:12 <b>hereinbefore</b> 2345:10 <b>hey</b> 2108:20 2132:23 <b>high</b> 2128:8 <b>higher</b> 2209:14 2285:1 <b>highly</b> 2160:15 2243:18 2251:16 <b>highway</b> 2091:12 <b>hold</b> 2123:14 2128:21 2129:20 2129:22 2205:7 2206:8 2296:14 <b>holds</b> 2140:20 <b>hole</b> 2111:6,8 <b>holes</b> 2111:2 <b>home</b> 2091:20 2135:9 <b>homicide</b> 2094:10 2097:14 2113:7 2114:12 2120:16 2121:20 2123:15	2128:17 2131:23 2132:11,17 2146:17 2147:7 2172:8 2207:22 2208:5,13 2210:21 2226:2 2269:24 2270:1 2270:12 2271:2,6 2271:16 2272:15 2273:19 2274:9 2274:22 2275:4 2276:6,21 2277:2 2278:6,8,20 2279:5,5 2280:25 2281:16,18,22 2284:20 2285:8 2285:13 2286:5,9 2294:19 2305:11 2321:12 2334:15 2336:6,7,22 2337:1 2338:8,13 2338:17 2343:2 <b>homicides</b> 2270:19 2273:8,23 2281:25 <b>honest</b> 2138:16 <b>honestly</b> 2098:22 2170:20,22 <b>Honourable</b> 2084:5 <b>hoped</b> 2100:10,24 2212:20 2215:5 <b>horrible</b> 2138:15 <b>hotel</b> 2091:9 2178:1 2227:22 2228:14 2265:3 2266:23 2330:23 2331:4 <b>hour</b> 2106:20 2155:7 2216:13 <b>hourly</b> 2150:7 2177:21 2231:9 <b>hours</b> 2095:8 2107:4,7 2113:22 2114:4 2118:19 2182:21 <b>house</b> 2095:3 2099:14 2100:4 2106:7 2111:25 2112:3 2113:12 2125:6 2132:24 2212:14 2218:25 2219:5 2337:4 <b>huge</b> 2112:24 2300:19 <b>hung</b> 2250:17 2252:8 <b>hurt</b> 2219:3,6 <b>husband</b> 2097:20
--	--	---	--	--

<b>I</b>				
<b>Ian</b> 2187:10 2190:23	<b>imposed</b> 2320:19	2321:17 2327:6	2302:3,23	<b>instructions</b>
<b>idea</b> 2149:10 2150:10,12 2195:17 2220:23 2234:14,18,24 2249:19 2261:9	<b>impossibility</b> 2111:1	2330:2,8 2331:23	2305:23 2306:3 2307:13 2308:9 2317:7 2322:16 2322:22 2323:17 2325:7 2326:1,18 2327:2 2328:4 2330:5 2337:22 2338:1 2339:2,7,9 2340:9	2155:16 2199:22 2201:21 2317:21
<b>identified</b> 2225:2 2315:21	<b>impossible</b> 2122:1	<b>indicates</b> 2187:9 2269:22	<b>informed</b> 2104:16 2105:5 2108:13 2119:7 2175:24 2197:18 2255:11 2276:1	<b>insurance</b> 2136:7,8 <b>intact</b> 2335:6 <b>integrity</b> 2289:5 <b>intend</b> 2117:6 2215:1 2329:1
<b>identify</b> 2089:22 2090:16,23 2174:17 2180:10 2283:4 2332:2	<b>impression</b> 2128:9 2129:2 2242:24	<b>indicating</b> 2095:10 2113:23	<b>initially</b> 2126:20,23 2219:14 2280:21 2283:22	<b>intended</b> 2127:21 2333:21
<b>identities</b> 2203:14	<b>improper</b> 2120:18 2120:18 2121:19 2122:21	<b>indication</b> 2108:24 2196:9	<b>inquire</b> 2294:7	<b>intense</b> 2294:5
<b>identity</b> 2203:17	<b>impropriety</b> 2116:10	<b>indirectly</b> 2155:18 2307:11,14	<b>inquiries</b> 2185:9 2200:17 2201:3 2219:9 2276:12 2280:10 2318:10	<b>intent</b> 2160:16 2190:19
<b>ignorance</b> 2132:15	<b>improve</b> 2297:12	<b>individual</b> 2192:23 2193:16,19 2194:7 2271:23 2280:6,11 2286:15 2288:20 2333:17 2334:15	<b>input</b> 2227:6	<b>intention</b> 2239:17 2239:18,19 2240:2,16 2330:2 2331:16,17
<b>ignite</b> 2174:25	<b>improved</b> 2297:20	<b>individuals</b> 2103:12 2213:6	<b>inquire</b> 2294:7	<b>intercepted</b> 2099:5
<b>imagine</b> 2112:6 2178:25 2267:6 2302:6	<b>inaccurate</b> 2163:2 2164:1	<b>indulgence</b> 2186:7	<b>inquiries</b> 2185:9 2200:17 2201:3 2219:9 2276:12 2280:10 2318:10	<b>interest</b> 2194:25 2214:25 2240:18 2250:21
<b>imagined</b> 2160:22	<b>inappropriate</b> 2215:25	<b>industry</b> 2151:21 2160:5,9	<b>input</b> 2227:6	<b>interested</b> 2167:2
<b>immediate</b> 2129:2	<b>incident</b> 2098:4 2115:21 2116:6,7 2116:13 2136:4 2139:3 2224:9,11 2224:16,19 2227:14 2229:10 2323:12 2325:19	<b>inevitably</b> 2165:6	<b>inquire</b> 2294:7	<b>interesting</b> 2095:13 2114:1 2138:17 2154:4 2156:23 2166:20
<b>immediately</b> 2155:11 2216:16 2216:21 2245:6 2247:7 2251:2 2273:11 2315:20	<b>incidental</b> 2115:16	<b>inference</b> 2169:16	<b>inquiries</b> 2185:9 2200:17 2201:3 2219:9 2276:12 2280:10 2318:10	<b>internal</b> 2245:18 2293:6
<b>immunity</b> 2148:17 2149:7 2153:5 2154:8 2156:20 2159:2,19 2162:8 2168:25 2169:4 2169:10,19,24 2192:19,22 2196:25 2197:21 2197:21,25 2199:13 2223:7 2223:11,20 2234:10 2235:9 2235:22 2242:1 2252:16 2259:12 2262:18 2303:16 2304:2,16 2340:25 2341:15 2341:20	<b>incidents</b> 2131:2 2138:19,22 2141:11 2249:15	<b>inform</b> 2194:4 2229:23 2291:24	<b>inquiry</b> 2084:1,20 2088:4 2158:18 2165:16,20 2175:23 2185:15 2217:21 2226:17 2227:12 2229:8 2230:18,22 2249:7 2254:5 2275:19 2294:5 2298:19,23 2299:4 2344:13	<b>interpreted</b> 2167:14 <b>interrupted</b> 2120:5 <b>interview</b> 2105:8 2125:23 2132:12 2133:2,4 2141:15 2142:3 2155:9 2186:5 2187:18 2190:19 2205:24 2206:16,17 2233:4 2247:10 2254:17 2260:7 2269:6 2306:6,20 2307:18 2308:10 2310:16
<b>impact</b> 2240:12	<b>inclined</b> 2296:14 2297:6	<b>informants</b> 2115:24	<b>insisted</b> 2126:9	<b>interviewed</b> 2118:8 2133:16 2147:20 2147:22 2254:10 2254:12 2340:1
<b>impetus</b> 2203:4	<b>included</b> 2226:10 2282:1	<b>information</b> 2095:11 2096:3,9 2097:17,23 2099:9 2104:20 2113:24 2114:7 2118:18 2128:21 2129:20 2135:17 2135:19 2161:2 2170:11 2171:24 2173:3,16 2174:6 2175:18 2176:14 2180:18 2197:3 2200:23,25 2201:17 2204:21 2220:9 2228:6 2242:12 2249:1,2 2256:19 2258:9 2258:22 2261:23 2264:11,15 2281:1 2286:16 2296:9,15,19 2297:18 2300:8 2300:17,22	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	<b>interviewing</b> 2105:22 2125:2 2186:20 2187:12 2191:11 2280:10
<b>implying</b> 2135:15	<b>including</b> 2126:13 2126:15 2156:19 2237:20	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	<b>inter-related</b> 2337:2
<b>important</b> 2104:5 2108:1 2124:11 2131:24 2205:19 2208:12 2217:11 2233:22 2251:10 2265:1 2288:4	<b>incomplete</b> 2124:8 2260:20	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	<b>invariably</b> 2193:8 2193:12
	<b>inconceivable</b> 2268:8,10	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	<b>investigate</b> 2271:22 2273:22
	<b>independence</b> 2109:19 2111:3,6	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	<b>investigated</b>
	<b>independent</b> 2112:14 2300:14 2300:16,24 2301:15 2302:3 2305:14,22,24	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	
	<b>independently</b> 2089:1,5 2111:12	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	
	<b>INDEX</b> 2086:1 2087:1	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	
	<b>indicate</b> 2223:22 2262:20 2263:24	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	
	<b>indicated</b> 2223:5 2225:7 2231:3 2265:22 2274:16 2314:9 2317:24	<b>informants</b> 2115:24	<b>inspector</b> 2118:16 2125:19 2130:20 2154:15 2155:23 2155:24 2156:2,3 2170:3 2186:13 2201:16 2202:8 2245:13,18 2248:7 2249:22 2254:11 2261:8 2264:25 2265:7 2266:11 2267:11 2308:13 2339:1	

<p>2138:25 2245:17 2272:11 <b>investigating</b> 2124:21 2151:6 2205:12 2286:23 <b>investigation</b> 2095:8 2099:1 2111:17 2113:17 2116:8 2123:14 2124:7,13 2125:9 2125:9 2126:2 2127:16,19 2131:23 2148:12 2174:23 2183:17 2188:13,15,15,23 2197:1 2199:11 2202:4 2205:7 2206:8 2207:5,22 2208:4 2210:21 2211:6 2226:20 2227:21 2230:3 2231:6,17 2232:20,21,24 2233:3 2238:18 2244:18,25 2245:24 2255:13 2269:4 2270:3,11 2270:24 2271:1 2272:5,18 2273:18 2274:1 2274:22 2275:15 2276:6,8,14,17,19 2277:2 2278:8,13 2278:16,17,21 2279:19 2280:25 2281:16,18,25 2283:19 2284:23 2285:3 2286:6,9 2287:7 2288:4,9 2289:17 2291:25 2292:25 2296:21 2297:4 2300:15 2300:17,24 2302:4,15 2305:11 2314:16 2320:17 2322:5 2325:11,12 2326:16 2333:12 2334:14 2336:7 2336:23 2337:2 2339:14,15,16 2340:20 2342:22 <b>investigations</b> 2096:14 2158:17 2189:9,17 2270:12 2271:3,7 2271:8,17</p>	<p>2272:15 2276:21 2281:22 2288:8 2293:6 2320:8 <b>investigative</b> 2205:20 2271:20 2274:9 2276:18 2279:1,24 2329:22 2342:19 <b>investigator</b> 2158:7 2158:10 2170:5 2194:15 2242:14 2269:24 2275:5 2277:11,13 2278:18 2280:20 2287:16,19 2320:6 2323:16 2342:10 <b>investigators</b> 2094:21 2095:15 2113:10 2114:2 2115:1,7,13,18 2117:16 2170:3 2233:17,17 2256:18 2274:17 2274:20 2280:6,9 2281:2,12 2293:7 2321:24 <b>investigator's</b> 2286:21 <b>involved</b> 2093:6,19 2103:9 2115:13 2147:18 2161:1 2193:5,10,13 2195:12 2199:19 2200:6 2211:18 2211:23 2213:7 2218:20,23 2225:22 2258:4 2270:13 2278:9 2278:12 2282:8 2283:4 2287:20 2309:18 2310:8 2321:10,15 2323:6,9 2326:23 2328:6 2334:15 <b>involvement</b> 2115:2 2173:4,17,21 2230:2 2231:7 2277:23 2282:9 2310:4 <b>involves</b> 2291:1 <b>involving</b> 2189:18 2328:25 <b>isolated</b> 2293:17 <b>issue</b> 2111:19 2113:5 2116:21 2116:23 2117:8</p>	<p>2117:10 2118:15 2134:5 2147:17 2148:12 2154:9 2154:19 2155:5 2180:11 2184:9 2193:23,25 2213:20 2214:15 2214:22 2215:15 2215:17 2220:22 2223:7 2225:12 2243:21,24 2251:16 2253:6 2262:10 2267:17 2271:11 2276:4 2290:18 2292:14 2292:19 2294:13 2297:10 2300:19 2301:20 2304:17 2319:20 2322:11 2327:22 2328:25 2330:15 2340:21 2341:23 <b>issues</b> 2123:1 2212:24 2213:3 2213:12,19,22,23 2214:1,9,12,25 2215:8,21,25 2216:4,5,5 2217:2 2217:4,10,13,15 2251:20 2269:2 2292:20 2293:22 2312:4 <b>item</b> 2167:8,9,9 2168:9 <b>itemize</b> 2248:21 <b>items</b> 2179:13,14,15 2179:20 2180:3 2338:11</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>J</b> 2085:21 <b>James</b> 2084:3 2085:11,11 2125:5 2128:5 2160:20 2173:21 2247:10 <b>January</b> 2131:4 2139:14,16,17,17 2139:18,21,22 2140:5,5 <b>Jay</b> 2085:13 <b>jeopardize</b> 2127:1 2127:17,19,23 2128:2 <b>jeopardized</b> 2128:4 <b>Jerome</b> 2268:24 <b>Jim</b> 2090:11</p>	<p>2092:25 2110:7 2110:11,13 2211:20 2218:20 <b>job</b> 2280:16 2328:13 2331:18 <b>John</b> 2093:4,5,16 2099:13 2103:2 2104:10 2106:25 2107:23 2108:12 2108:20 2112:20 <b>Johns</b> 2245:13,18 2245:23 2248:19 2261:8 <b>Johnson</b> 2153:15 2248:8 2249:8,22 2250:10,14,15 2264:25 2265:7 2265:22,22 2266:12 2267:12 <b>Johnston</b> 2156:4 <b>jointly</b> 2112:15 <b>Jonathan</b> 2085:3 <b>jotted</b> 2226:14 <b>judge</b> 2253:18 <b>judicial</b> 2162:12 <b>July</b> 2135:9 2146:1 2184:3,10,10 2187:2 2190:12 2191:9 2241:12 2241:19 2276:3 <b>jumped</b> 2214:12 2311:6 <b>jumping</b> 2287:3 <b>June</b> 2175:14 2177:13,25 2178:20 2227:2 2228:16 2241:2 2264:5,19 2266:18 2275:19 2275:21 <b>junior</b> 2271:5 2312:16 <b>jurisdiction</b> 2202:19 <b>jury</b> 2094:18 2252:10 <b>justice</b> 2160:3,20 2193:9,13 2195:9 2198:15,18 2207:18 2235:11 2235:22 2258:18 2258:21 2259:3,4 2259:14,14,16,17 2259:25 2260:2 2316:14 <b>Justice's</b> 2301:19 <b>justification</b> 2137:6</p>	<p>2175:20 <b>justifications</b> 2138:19 <b>justify</b> 2145:13 2175:17</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>K</b> 2085:17 2317:10 2317:10,12 <b>Kara</b> 2122:23 2182:10,15 <b>Karamchand</b> 2085:6 <b>Karas</b> 2182:20 <b>Kathy</b> 2085:6 <b>keep</b> 2128:20 2129:19 2130:17 2147:1 2158:6 2226:5 2280:4 2331:17 <b>keeping</b> 2214:9,11 2226:15 <b>Kennedy</b> 2085:21 2086:8 2212:25 2213:2 2214:21 2216:9 2217:9,14 2268:21,22,23,24 2295:4,11,19 2296:3 2298:8,10 2341:25 2342:9 <b>kept</b> 2130:6 2160:12 2176:14 2226:7,9 <b>key</b> 2236:17 2238:9 <b>kids</b> 2137:2 <b>kill</b> 2179:24 <b>killed</b> 2090:10 2121:12 2219:3 <b>kind</b> 2091:25 2118:2,14 2121:9 2145:5 2157:11 2179:16 2181:1 2191:16 2192:2 2203:16 2243:23 2252:20 2273:7 2276:7 2307:19 2309:3,10 2326:4 2337:21 <b>kindly</b> 2217:18 <b>kinds</b> 2103:5 2108:2 2217:14 2239:22,23 2274:9 2281:24 2285:17 2288:8 <b>Klippenstein</b> 2245:22 2246:1 <b>knew</b> 2088:25</p>
---	--	--	---	--

<p>2092:23,25                  2097:7 2109:10                  2115:13 2121:12                  2129:7 2132:10                  2134:20,23                  2145:4 2164:7                  2168:1,11,14                  2169:2 2171:5,5                  2171:19,21                  2185:3 2198:5                  2207:12 2209:6,8                  2220:16 2221:9                  2240:8,13                  2243:13,25                  2252:18 2253:5                  2261:17 2262:9                  2264:17 2308:24                  2309:11 2312:3  <b>know</b> 2089:3,5                  2093:23 2097:23                  2097:24 2098:13                  2099:2 2104:14                  2105:20 2107:1                  2107:21 2109:8,9                  2116:12,16                  2117:1 2118:10                  2118:13 2119:1,7                  2119:10,10                  2121:3,8 2123:9                  2125:16 2132:10                  2132:11,19                  2133:3,7,13                  2134:8,11,15,21                  2135:7 2137:3                  2139:10 2142:10                  2142:17 2143:8                  2149:23 2150:3                  2153:12 2154:21                  2157:18 2158:23                  2160:23 2161:3                  2161:11 2162:2                  2162:12 2164:21                  2169:6,13,19                  2172:14 2174:9                  2174:11 2175:10                  2175:21 2176:3                  2176:14,17,25                  2178:25 2179:13                  2180:17,21                  2182:13 2184:18                  2184:24 2185:6                  2185:12 2190:4                  2190:23 2192:3                  2195:17,17,18                  2196:9 2197:11                  2207:9 2208:7                  2212:11 2213:18</p>	<p>2216:6 2218:9                  2220:25 2223:2                  2226:9 2229:24                  2230:12 2231:11                  2234:13 2237:9                  2237:11,14                  2238:7 2239:3                  2241:6 2244:8,11                  2245:20,20                  2250:14,16                  2251:2 2252:5,7                  2253:13,23,24                  2256:12 2260:3                  2260:16 2265:11                  2265:18 2266:7                  2267:20 2268:2,3                  2268:4 2271:11                  2271:22 2273:10                  2273:13,13                  2274:15 2275:18                  2276:1,9,11,11,13                  2277:15,21                  2278:2,3,5 2279:7                  2279:11,12,15                  2282:2,6,7,18                  2283:21 2285:15                  2287:10 2289:21                  2289:22,23                  2290:2,10                  2297:18,21                  2298:2 2299:2,2                  2300:10,24                  2301:18 2302:8                  2302:25 2303:18                  2304:4,10,11                  2311:13 2312:3                  2312:11 2313:24                  2316:7 2318:16                  2318:16 2321:13                  2322:8 2323:1,20                  2323:21 2329:4                  2330:22 2334:3                  2335:16 2337:17                  2339:21  <b>knowing</b> 2167:3                  2240:16 2273:4                  2296:16 2303:18  <b>knowingly</b> 2252:10                  2252:15  <b>knowledge</b> 2101:19                  2104:19 2105:6                  2108:14 2115:2,5                  2183:18,21                  2202:5 2204:14                  2228:2,4 2232:9                  2237:6 2240:24                  2297:25</p>	<p><b>known</b> 2101:17                  2104:13 2115:12                  2115:19 2117:13                  2131:22 2132:3                  2135:25 2144:9                  2172:11 2210:9                  2211:22 2212:8                  2252:22,22                  2253:2,4,6,7                  2272:4,5,18                  2303:23 2304:7                  2336:16  <b>knows</b> 2177:9                  2191:23 2260:5  <b>Kovnats</b> 2098:2,6                  2126:22 2158:23                  2159:6,7,17,17                  2177:9 2204:13                  2223:15 2266:20                  2313:8,10                  2318:23 2331:8</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>lack</b> 2197:5  <b>laid</b> 2215:11                  2259:16 2272:7                  2284:15,20  <b>lane</b> 2094:7 2098:24                  2107:1,23 2108:7                  2110:21 2112:21  <b>language</b> 2129:9                  2146:14 2243:6  <b>languages</b> 2130:7  <b>late</b> 2102:22,23                  2218:10 2241:1                  2271:17 2316:24  <b>late-breaking</b>                  2160:21  <b>Lawlor</b> 2162:1                  2164:14,17                  2233:7 2234:1                  2237:5 2244:5                  2253:1,17,21                  2261:15,16                  2262:21 2263:6                  2263:12 2268:1                  2303:17 2304:4                  2306:8,24                  2309:22 2311:12                  2312:15 2313:3                  2317:20 2318:10  <b>Lawlor's</b> 2313:10  <b>lawyer</b> 2228:25  <b>lawyers</b> 2147:17  <b>lawyer's</b> 2169:21  <b>lay</b> 2284:7  <b>lead</b> 2094:21 2106:7</p>	<p>2115:8 2138:1                  2141:14 2171:24                  2172:1 2196:18                  2196:21 2201:9                  2217:6 2277:11                  2277:13 2278:18                  2280:20 2286:21                  2287:16,19                  2333:4  <b>leading</b> 2279:3  <b>leads</b> 2113:10  <b>leaping</b> 2122:10  <b>learn</b> 2136:11                  2243:14,16  <b>learned</b> 2185:22                  2207:19 2211:11                  2240:25 2243:2                  2275:7 2293:23                  2302:22 2340:11  <b>leave</b> 2098:9                  2149:22 2171:8                  2178:21  <b>leaves</b> 2124:9  <b>led</b> 2114:8 2339:25  <b>ledger</b> 2314:22  <b>left</b> 2139:7 2141:25                  2204:8 2224:7                  2267:10 2279:7                  2279:12 2324:13                  2342:24 2343:3  <b>left-hand</b> 2315:17  <b>left-hand/right-h...</b>                  2133:5,19  <b>Legal</b> 2085:8  <b>legible</b> 2166:12  <b>length</b> 2155:6                  2221:1 2289:11  <b>LeSage</b> 2084:5  <b>lesser</b> 2177:20  <b>letter</b> 2188:1,14,18                  2188:25 2189:15                  2189:19,22                  2190:21 2225:4                  2309:21,21                  2317:10,10,12                  2329:6,8,15,23                  2333:19  <b>letters</b> 2167:19                  2219:15  <b>let's</b> 2169:20                  2206:15 2306:12  <b>level</b> 2185:9 2194:5                  2209:14 2210:19                  2211:2 2284:25                  2287:1  <b>liaise</b> 2284:4  <b>liaison</b> 2283:20</p>	<p><b>Libman</b> 2085:10  <b>lie</b> 2130:17 2146:9                  2146:12 2158:20  <b>likelihood</b> 2212:23  <b>limited</b> 2122:3  <b>line</b> 2092:18                  2119:18 2124:22                  2125:7 2126:4                  2129:12,12,18                  2153:13 2223:8                  2242:2 2245:23                  2275:17 2285:4                  2333:6  <b>lines</b> 2151:1 2152:8                  2166:24 2205:1,1                  2205:18 2317:18  <b>linked</b> 2096:19  <b>Lisa</b> 2345:6,20  <b>list</b> 2167:12  <b>listen</b> 2153:7 2179:1  <b>little</b> 2091:24                  2093:3 2095:25                  2109:9 2123:24                  2127:24 2130:15                  2130:24 2138:6,8                  2155:20 2188:5                  2204:16 2213:10                  2217:1,20                  2225:10 2287:25                  2341:22  <b>lives</b> 2104:12  <b>living</b> 2104:1  <b>lo</b> 2138:3  <b>locate</b> 2338:1  <b>located</b> 2332:3  <b>Lockport</b> 2090:12                  2091:3,9,18,21                  2106:15,17,17  <b>Lockyer</b> 2085:11                  2086:5 2088:6,7                  2088:11,19                  2089:12,15,21,24                  2090:2 2101:7,15                  2101:18 2110:9                  2110:16 2113:2                  2122:25 2127:9                  2132:18 2134:1                  2134:10,22                  2137:15 2147:6                  2148:5,6 2156:6                  2157:15 2159:9                  2159:16 2161:21                  2161:22,24                  2162:14,18                  2165:11,21                  2166:15 2167:18                  2169:25 2178:17</p>
---	---	--	--	---

<p>2179:4,7,10 2183:3 2215:23 2216:15 2244:24 2279:6 2287:24 2288:18,23 2294:18 2310:13 2311:5 2330:25 2331:2 2338:21 2339:22 2341:3 <b>Lockyer's</b> 2087:3 2089:14 2279:14 <b>log</b> 2225:1 <b>logbook</b> 2225:15,23 <b>logic</b> 2252:6 <b>logical</b> 2286:5 <b>long</b> 2121:4 2218:2 2220:24 2234:18 2250:25 2294:7 <b>longer</b> 2091:24 2092:2,3 2338:19 <b>long-term</b> 2235:18 <b>look</b> 2089:10 2090:19 2096:20 2102:3 2104:9 2105:17,17 2106:9 2113:7 2114:18,21 2120:1 2121:10 2123:21,24 2135:21 2139:15 2145:17 2150:14 2173:1 2179:12 2186:11 2195:1 2204:20,23 2206:14 2241:13 2299:15 2310:4 2312:22 <b>looked</b> 2122:9 <b>looking</b> 2101:10 2102:6 2114:11 2132:4,5 2158:16 2176:1 2178:2 2230:9 <b>looks</b> 2102:22 2105:21 2151:18 <b>loop</b> 2109:13 <b>loose</b> 2096:20,21 <b>lord</b> 2166:14 <b>lost</b> 2106:12 2230:25 2265:17 2301:12 2338:11 <b>lot</b> 2091:9 2111:2 2111:15 2122:14 2122:17,19,20,21 2133:7 2147:3 2170:13 2179:7 2207:12 2230:5</p>	<p>2251:12 2271:21 2272:15 2279:10 <b>louder</b> 2179:5 <b>Louise</b> 2314:6 2315:3 2316:15 <b>lumped</b> 2264:14 <b>lunch</b> 2213:9 2216:13 <hr/><b>M</b><hr/><b>M</b> 2085:10 <b>magic</b> 2213:17 2293:21,25 <b>main</b> 2088:23 2233:16 2269:5 <b>maintain</b> 2335:18 2335:22 <b>major</b> 2176:11 2269:23 2273:22 2277:24 2320:7,7 2321:8,24 2342:18 <b>majority</b> 2294:2,3 <b>making</b> 2107:10 2153:9 2159:13 2182:15,17 2217:18 2219:9 2223:15 2289:12 2291:11 2292:5 2315:11 2341:18 <b>male</b> 2090:9,25 2091:2 2094:14 2121:11,14 <b>man</b> 2098:13 2137:15 2156:1,3 2278:15,19 2281:6 2288:14 2343:14 <b>managed</b> 2170:11 <b>management</b> 2141:6,8 2277:24 2339:24 <b>mandate</b> 2339:18 <b>mandatory</b> 2213:23 <b>manipulate</b> 2130:25 <b>manipulated</b> 2138:5,7 <b>manipulation</b> 2288:15,20 <b>Manitoba</b> 2084:14 2085:12 2091:3 2125:21 2160:3 2193:9,12 2194:17,18 2195:6,9 2203:24 2217:4 2240:13 2258:17 2259:3</p>	<p>2259:14,16,25 2284:6,18 2345:7 <b>Mann</b> 2131:16 2132:3,10,14 2133:18,24,24 2134:2,7,9,12,15 2134:20 2135:3 2135:13 2187:10 2187:18 2188:3 2189:2,16,23 2190:4,6,17,24 2191:3,9,15,18,20 2191:24 2192:15 2192:16 <b>manned</b> 2117:15 <b>Mann's</b> 2135:14 <b>manslaughter</b> 2271:25 2272:24 <b>manual</b> 2281:20,21 2281:23 2282:5 2290:2,4,7,9 <b>manuals</b> 2342:13 <b>manual's</b> 2290:14 <b>manufactured</b> 2111:13 <b>March</b> 2152:1 2154:24 2161:10 2223:13 2310:4,5 2310:10 <b>mark</b> 2178:12 2294:25 <b>marked</b> 2294:21 2298:15 2314:20 <b>marry</b> 2091:8 2092:10 <b>Martin</b> 2115:21 2116:6,7,12 <b>match</b> 2118:20 <b>material</b> 2109:16 2129:8 2132:15 2159:6 2323:24 2334:5 <b>materials</b> 2088:15 2123:20,21 2128:11 2145:18 2150:16 2244:9 2336:5 <b>matter</b> 2095:8 2101:4 2107:7 2110:17 2113:22 2132:11 2157:16 2175:22 2191:2,4 2202:9 2210:14 2220:14 2221:2 2240:19 2247:6 2254:18 2292:2,4 2309:14 2325:12</p>	<p>2326:23 2332:13 <b>matters</b> 2123:8 2141:6 2155:10 2221:14 2226:18 2233:2 2239:20 2272:10 2275:21 2280:6 2309:4 2314:19 2321:16 2332:9 <b>ma'am</b> 2318:19 2319:2 2320:21 2321:7,22 2324:3 2325:22 2326:25 2327:4 2328:17 2331:20 2334:17 2341:9 2343:4 <b>mean</b> 2103:5,20 2108:10 2116:12 2116:15 2121:9 2127:7 2128:1 2136:6 2147:7 2149:1 2157:2,4,5 2158:8 2177:14 2183:18 2193:24 2199:13 2217:23 2217:23 2229:8 2249:23 2260:4 2266:24 2278:5 2301:6 2342:9 <b>meaning</b> 2090:13 2093:17 2094:23 2102:13 2113:11 2114:5,24 2124:5 2152:10 2158:24 2177:4 <b>means</b> 2102:14,16 2102:20 2135:12 2260:3 2304:12 2341:11 <b>meant</b> 2089:11 <b>media</b> 2181:10,13 2182:2 2296:8 <b>meet</b> 2090:11,15 2091:2 2106:17 2185:24 <b>meeting</b> 2095:6 2111:9,10 2113:14,19 2120:5,6 2143:10 2143:15 2144:3,5 2144:10 2154:3,6 2154:9,11,12,17 2155:2 2156:7,10 2199:17 2207:20 2234:12 2235:2,4 2235:6,20,25 2236:5,19 2239:6</p>	<p>2241:25 2261:1 2302:23 2305:15 2305:19,23 2306:4 2313:8 <b>meetings</b> 2104:6 2143:21 2154:5 2154:18 2156:7,8 2156:11,16 2231:5,10 2232:10,11,16 2233:6,25 2236:8 2238:12 2239:6 2240:20 2250:12 2251:5 2279:18 2280:5 2312:5 <b>member</b> 2183:14 <b>members</b> 2085:18 2085:20 2125:2 2279:23 2320:1 2333:24 2339:25 2342:17 <b>memo</b> 2156:14 2167:9 2178:19 2184:12,15 2231:25 2253:15 2261:8 2308:13 2310:6 2314:6 2324:9,15 <b>memorable</b> 2251:7 <b>memorandum</b> 2245:13 2246:20 <b>memories</b> 2154:5 <b>memory</b> 2184:10 2222:18 2229:21 2230:5 2238:12 2249:18 2250:4 2254:16 2270:21 2283:15 2292:6 2329:11 <b>memos</b> 2281:17 2297:15 2298:1 <b>men</b> 2111:9 2201:3 <b>mention</b> 2136:13 2137:1 2169:7,9 2212:1 2238:3 2290:10 <b>mentioned</b> 2107:2 2143:13 2170:15 2190:3 2192:10 2198:9 2201:4 2231:21 2235:14 2267:11 2293:20 2326:8 2327:9 <b>mentioning</b> 2097:4 2223:19 2243:3 <b>mentions</b> 2093:24 <b>mentored</b> 2285:11</p>
---	---	--	---	--

<p><b>mere</b> 2209:9  <b>message</b> 2092:4                  2128:24 2137:13                  2137:24 2139:6                  2140:11,16,18,19                  2141:13 2142:12  <b>met</b> 2092:13                  2095:15 2099:8                  2114:2 2115:1                  2184:20,22                  2200:2 2219:22                  2232:5 2243:1  <b>Michael</b> 2085:2  <b>Michaud</b> 2105:12  <b>middle</b> 2151:14                  2152:6  <b>Miller</b> 2085:14                  2143:11,17,19,23                  2144:3,5,10,14                  2149:14,23                  2150:7 2151:24                  2153:10,16                  2154:16 2155:4                  2155:16 2156:15                  2160:19 2164:8                  2176:10,12,13                  2177:9,22 2178:4                  2196:2,6 2197:6,9                  2198:11 2199:7,8                  2199:16 2201:5                  2201:16 2202:8                  2204:13 2209:6                  2216:12 2218:10                  2221:23 2223:14                  2231:5 2232:16                  2232:23 2234:9                  2235:7,8,16,21                  2236:9 2240:21                  2248:1,9,20                  2249:8,23                  2250:10,18,23                  2251:1,6 2253:12                  2258:20 2259:8,9                  2260:1,5,8,11,19                  2260:23 2261:6                  2261:10 2262:9                  2262:13,17,24                  2263:2,5,7,11                  2264:1,21,23                  2265:8,23                  2266:11,14,15,19                  2267:22 2268:2                  2284:11 2310:6                  2310:23 2311:7,9                  2311:10,14,19                  2313:16,20                  2314:7 2318:23</p>	<p>2331:8  <b>Miller's</b> 2149:24                  2150:3 2181:2                  2199:22 2201:21                  2231:20 2238:4                  2267:1  <b>mind</b> 2158:12                  2179:15 2263:1                  2263:24 2288:12                  2289:1 2320:9                  2343:20  <b>mindings</b> 2330:25                  2331:2,2,4  <b>mine</b> 2160:17                  2301:4 2315:5,17                  2315:18  <b>Minister</b> 2309:18                  2309:23  <b>minute</b> 2091:19                  2104:3,3 2123:5                  2147:11 2175:11                  2343:15  <b>minutes</b> 2090:13                  2091:22 2106:16                  2106:19,20                  2165:14 2178:7                  2343:25  <b>misconception</b>                  2121:5  <b>mislead</b> 2252:10  <b>misrepresenting</b>                  2129:14  <b>missed</b> 2088:10  <b>missing</b> 2139:23                  2179:13,14,15,20                  2179:21 2180:3                  2226:3 2276:2,10                  2276:12 2297:18                  2328:7,11                  2335:10,12  <b>misspoke</b> 2209:19                  2304:10  <b>misstated</b> 2159:14                  2266:3  <b>misunderstood</b>                  2129:13,25                  2173:14 2304:11                  2304:13  <b>mixed</b> 2207:16  <b>model</b> 2277:24  <b>moment</b> 2186:7                  2268:13,16                  2314:4  <b>money</b> 2114:8                  2149:21,22                  2204:8  <b>monies</b> 2119:8</p>	<p><b>month</b> 2140:15,17                  2144:6 2145:25                  2166:23 2234:23                  2315:10,12                  2316:5  <b>months</b> 2097:19                  2126:19 2144:7                  2256:21,25  <b>morning</b> 2088:6,6,7                  2102:17 2136:2                  2143:3,7 2146:16                  2244:15,24                  2249:17 2264:4                  2264:10 2310:13                  2338:22 2344:8  <b>mortal</b> 2138:20  <b>motel</b> 2104:1  <b>motivated</b> 2109:7  <b>motivation</b> 2093:25                  2098:15 2109:8                  2111:14,19                  2169:13,14,23                  2332:7,15  <b>mouth</b> 2146:11  <b>move</b> 2118:25                  2123:1 2138:3                  2152:1 2168:9                  2225:11 2287:21  <b>moved</b> 2106:19                  2343:9  <b>moving</b> 2113:21                  2200:4 2283:14  <b>Mr.Abra</b> 2266:8  <b>murder</b> 2091:1                  2094:19 2095:11                  2096:13 2113:25                  2114:7 2115:3                  2117:9 2129:15                  2151:4 2199:12                  2211:24 2247:10                  2269:4 2271:24                  2271:25,25                  2272:15,23                  2273:12 2278:15                  2325:15 2326:15                  2333:12 2336:6                  2337:4 2339:15                  2339:16 2342:22  <b>murders</b> 2096:11                  2097:4 2323:10  <b>murder/manslaug...</b>                  2271:10  <b>music</b> 2211:21</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>naive</b> 2130:15  <b>name</b> 2105:11</p>	<p>2117:12 2138:25                  2151:5 2178:21                  2185:12 2191:23                  2201:7 2203:15                  2205:10 2231:21                  2238:4 2268:24                  2270:4,5 2313:10  <b>named</b> 2156:1,3  <b>names</b> 2332:17  <b>Nancy</b> 2085:7  <b>nature</b> 2167:1                  2236:1,10                  2328:10  <b>near</b> 2163:9  <b>Nearby</b> 2283:16  <b>necessarily</b> 2254:2                  2286:2  <b>necessary</b> 2144:5                  2195:22 2237:8                  2263:2  <b>need</b> 2137:19                  2144:10 2195:1                  2213:10 2329:3                  2336:19 2343:15  <b>needed</b> 2263:15                  2324:9  <b>needs</b> 2153:11  <b>neglected</b> 2211:15  <b>negotiating</b> 2177:10  <b>negotiations</b>                  2199:19 2235:15                  2266:20 2331:7                  2331:13  <b>neighbourhood</b>                  2280:10  <b>neither</b> 2103:6                  2138:21 2210:5                  2211:18 2212:1                  2231:19 2232:6  <b>nemesis</b> 2145:20  <b>never</b> 2111:24,24                  2113:19 2117:12                  2122:18,18                  2125:11 2126:17                  2129:16,22                  2131:14,16,19                  2132:7 2134:4,7                  2134:24 2135:6                  2135:10,14                  2143:13 2160:16                  2161:16 2175:7                  2179:22,24                  2180:6 2192:14                  2197:14 2200:2                  2202:20 2208:21                  2228:3 2240:15                  2256:8 2259:8,10</p>	<p>2260:14 2263:1                  2263:24 2329:20                  2334:25 2337:15  <b>nevertheless</b>                  2100:16 2147:22                  2148:11 2340:19  <b>new</b> 2203:15                  2215:15 2216:5                  2285:12 2293:21  <b>news</b> 2205:20  <b>nextly</b> 2222:1,16                  2223:4  <b>nice</b> 2088:8,9  <b>nicely</b> 2118:20  <b>night</b> 2097:3                  2154:14 2267:7,9  <b>nightmare</b> 2267:2  <b>noble</b> 2096:15  <b>nod</b> 2118:24  <b>non-duplication</b>                  2286:18  <b>norm</b> 2236:12                  2276:25  <b>normal</b> 2175:1                  2307:18  <b>normally</b> 2117:11                  2236:13 2331:22  <b>notation</b> 2190:9,16  <b>note</b> 2095:22                  2103:22 2123:21                  2124:8,14,14                  2125:8 2139:16                  2139:17 2141:2                  2141:21,25                  2178:18 2224:7                  2232:7 2236:4                  2245:12 2248:15                  2248:18 2249:11                  2255:4 2305:18                  2306:2  <b>notebook</b> 2087:4,6                  2089:21,23                  2090:1 2174:10                  2226:3,4,7,14                  2231:14 2234:4                  2240:25 2241:3                  2246:14 2253:7                  2291:15 2299:11                  2300:6,12,21                  2303:24 2304:8                  2304:16,21                  2305:4 2312:25  <b>notebooks</b> 2138:22                  2226:9,16,18                  2231:19,23                  2232:7 2296:20                  2313:2 2333:10</p>
---	--	--	--	--

<p><b>noted</b> 2304:14,15  <b>notes</b> 2089:17                  2090:4,5,19                  2091:8 2092:9                  2093:22 2101:10                  2102:3,5 2103:20                  2104:23 2106:11                  2107:2 2108:10                  2112:12 2119:11                  2119:14,25                  2121:10 2122:5                  2123:18 2138:21                  2139:8,8,10,12,14                  2139:15,18,21                  2140:4,10,13,14                  2140:19,23                  2141:9,11                  2142:12 2157:12                  2158:21 2172:13                  2172:15,15                  2205:4 2218:13                  2219:8,16 2226:4                  2234:7 2236:8                  2240:23 2242:16                  2242:18 2243:13                  2246:14 2249:16                  2265:25 2268:11                  2280:4 2289:16                  2289:25 2290:5,6                  2291:1,9,10,12,21                  2291:23 2292:5                  2292:10,13,17,20                  2292:22 2293:4,7                  2293:12,18,19                  2294:8,14                  2296:25 2297:6                  2301:5,8,10,15,18                  2301:21 2302:1                  2303:7 2320:24                  2321:20 2322:10                  2328:9,14,23                  2332:9,21,22,24                  2332:25 2345:9  <b>note-taking</b>                  2289:20 2290:5                  2290:15,18                  2297:12,20  <b>notice</b> 2213:24                  2214:16,18                  2215:22  <b>notified</b> 2153:15,21                  2154:22 2194:24                  2194:25 2248:7  <b>notify</b> 2176:3  <b>notifying</b> 2266:7  <b>notion</b> 2109:18  <b>notwithstanding</b></p>	<p>2232:5 2321:18  <b>November</b> 2128:13                  2309:19 2310:9                  2313:9  <b>number</b> 2092:22                  2118:11 2119:5                  2139:3 2154:6                  2163:6 2168:6                  2173:7,13                  2186:16 2187:23                  2188:5 2190:20                  2211:5 2214:8                  2261:14 2285:7                  2295:10,25                  2327:6,9 2332:23                  2334:10 2335:24                  2336:24 2337:7                  2337:10,18                  2338:21  <b>numbering</b> 2179:12  <b>numbers</b> 2139:23                  2273:13  <b>numerous</b> 2231:4                  2287:23</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>object</b> 2162:11,16  <b>objected</b> 2150:19                  2310:15  <b>objecting</b> 2162:14  <b>objection</b> 2134:12  <b>objectivity</b> 2287:2  <b>obligation</b> 2159:14  <b>obligations</b> 2320:18  <b>observed</b> 2096:18                  2128:18  <b>obtain</b> 2192:22  <b>obtained</b> 2119:8                  2195:23 2198:14                  2198:17,23                  2235:8 2242:5  <b>obtaining</b> 2159:24                  2306:8,24  <b>obvious</b> 2183:12                  2214:12,15                  2293:19  <b>obviously</b> 2095:4                  2097:13 2105:14                  2113:13 2185:14                  2214:8 2215:14                  2234:3,15 2242:9                  2253:11 2257:25                  2260:5 2311:15                  2312:1  <b>occasion</b> 2150:22                  2210:24 2325:24  <b>occasionally</b></p>	<p>2306:23  <b>occasions</b> 2327:6  <b>occupied</b> 2170:13  <b>occur</b> 2115:20                  2116:4 2131:5,7  <b>occurred</b> 2161:6                  2195:6 2202:19                  2320:17 2332:8                  2334:7  <b>occurrence</b> 2134:11                  2163:24  <b>October</b> 2090:7,21                  2094:21 2095:15                  2096:24 2099:18                  2102:4 2104:24                  2109:23 2110:1,5                  2114:22 2118:8                  2118:21 2123:6                  2130:14 2150:14                  2150:24 2161:9                  2184:3,5,7                  2194:12,14                  2199:1,1 2204:17                  2204:19 2206:21                  2207:7 2209:15                  2209:19 2211:5,9                  2218:14 2231:25                  2239:7 2245:13                  2269:18 2332:23  <b>offences</b> 2323:6  <b>offer</b> 2149:12                  2195:4 2199:13                  2199:20 2209:4                  2248:13 2250:8                  2319:21  <b>offered</b> 2124:18                  2151:2 2194:12                  2194:21 2206:21                  2222:7 2247:7                  2313:19  <b>offering</b> 2207:4                  2333:23  <b>office</b> 2186:3,4                  2201:22 2237:21                  2241:1,4 2261:19                  2261:22 2281:17                  2296:10 2311:22                  2311:24 2326:17                  2332:10  <b>officer</b> 2085:4                  2100:23 2130:17                  2151:6 2158:2,20                  2196:22 2202:15                  2202:18 2205:12                  2286:15 2290:22                  2296:14 2297:5  <b>officers</b> 2100:13,22</p>	<p>2101:5,13,13                  2103:8 2104:21                  2149:1 2182:11                  2182:13 2200:12                  2203:13 2275:7                  2278:3,22                  2285:11,12,12,16                  2286:17 2294:2,4                  2296:18,19                  2297:12 2320:23  <b>officer's</b> 2328:9  <b>offices</b> 2194:18  <b>official</b> 2270:5                  2345:7  <b>oh</b> 2099:15 2132:25                  2176:12 2232:18                  2272:3 2293:25                  2302:14 2322:18  <b>okay</b> 2102:14                  2103:14 2139:25                  2184:16,18                  2189:10 2226:21                  2232:3 2234:18                  2241:10,21                  2243:25 2254:14                  2256:4 2270:7,17                  2270:24 2272:3                  2272:20 2275:14                  2276:16 2277:9                  2278:12 2280:1                  2285:15,20,22                  2286:12 2287:21                  2299:23 2302:17                  2305:8 2306:12                  2309:14 2312:1                  2344:10  <b>old</b> 2094:14  <b>Olson</b> 2085:12                  2086:10 2213:15                  2213:16 2215:19                  2217:3 2312:9,10                  2318:13  <b>Olson's</b> 2214:5  <b>once</b> 2140:19                  2152:15 2183:19                  2194:10 2217:18                  2266:25  <b>ones</b> 2101:22                  2228:7 2233:20  <b>ongoing</b> 2144:13                  2196:16 2231:6                  2276:22  <b>open</b> 2283:17                  2334:19 2335:1,7                  2335:14 2336:8                  2338:12,16  <b>opened</b> 2330:17,18</p>	<p>2337:16 2338:3  <b>operating</b> 2152:24  <b>operations</b> 2281:7  <b>operative</b> 2238:5  <b>opportunity</b>                  2174:17 2218:4                  2229:10 2266:16                  2288:1  <b>opposed</b> 2217:6                  2272:24 2273:4                  2280:19 2316:6                  2324:12  <b>orally</b> 2147:22  <b>order</b> 2088:3,14                  2144:23 2177:24                  2205:11 2214:20                  2214:23 2217:24                  2230:4 2238:11                  2245:5  <b>organization</b>                  2133:2 2192:24                  2200:3 2281:3                  2286:18 2294:12  <b>organize</b> 2286:8  <b>organized</b> 2286:5  <b>original</b> 2170:4                  2172:2  <b>originally</b> 2242:12                  2302:23  <b>Orr</b> 2144:14                  2194:23 2196:7                  2197:6,18                  2198:10 2199:9                  2199:18,21                  2200:13 2201:5                  2201:21,24                  2202:13,14,23,25                  2203:1 2207:12                  2207:20 2209:6                  2235:16 2246:23                  2246:25  <b>Orr's</b> 2197:8,11,14                  2200:7,16 2203:9  <b>Osborne</b> 2100:13                  2101:11,22                  2104:9,17                  2106:10,10,13                  2107:13,22                  2108:11 2110:2                  2111:23 2112:6                  2112:20  <b>Osborne's</b> 2102:5  <b>Ottawa</b> 2274:13  <b>outed</b> 2333:4  <b>outline</b> 2269:14  <b>outlines</b> 2290:4  <b>outset</b> 2126:11</p>
--	--	--	--	--



<p><b>outside</b> 2099:14 2100:4 2106:7 2109:3 2126:8 2336:12</p> <p><b>outstanding</b> 2166:17 2167:5 2194:19 2220:15 2221:2 2247:3</p> <p><b>out-of-province</b> 2233:4 2313:21</p> <p><b>out-of-town</b> 2314:10</p> <p><b>overwhelming</b> 2294:1</p> <p><b>owner</b> 2212:14</p> <p><b>o'clock</b> 2230:11,13</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>pack</b> 2099:21 2107:9 2109:12 2109:14 2242:6 2243:9</p> <p><b>packed</b> 2092:5 2267:9</p> <p><b>page</b> 2086:3 2087:11 2089:17 2091:7 2092:16 2093:10 2094:20 2096:1 2102:7 2105:3,14 2110:3 2114:13 2123:22 2123:24 2124:1 2128:12 2139:23 2140:8 2145:21 2147:7,10,25 2150:20 2162:21 2163:6,10 2166:6 2166:8 2171:18 2171:21 2204:23 2205:2,17 2206:14,18,19,19 2208:25 2218:12 2218:14 2219:7 2221:19 2222:16 2223:4,22 2224:2 2224:3,24 2225:6 2225:8,9,25 2226:21,23 2241:11,15,17,18 2241:18,20 2255:7,20,21 2256:1 2295:1,9 2295:11,12,14,23 2296:5 2297:2 2299:18,19,21 2300:1,3 2306:13 2306:14,15,20,22</p>	<p>2307:18,23,24,25 2308:1,2 2309:16 2309:19,20,20 2310:15,20 2312:18,21 2313:5,6 2314:3 2314:22 2315:2 2317:1,3,4,6,11 2317:13,14 2340:12</p> <p><b>pages</b> 2139:20 2219:16 2255:4 2269:14 2314:22 2345:8</p> <p><b>paid</b> 2114:9 2115:9 2314:14</p> <p><b>paper</b> 2088:16 2089:16 2129:5 2135:7,11 2143:2 2287:1 2309:9 2323:23,25 2324:25</p> <p><b>papers</b> 2143:7 2338:18</p> <p><b>paragraph</b> 2094:12 2095:1 2096:1 2114:21 2129:10 2150:21 2152:1,6 2153:23 2166:5,7 2168:2 2205:18 2221:23 2222:17 2223:4,9 2225:9 2226:1 2241:14 2241:20,24 2250:2 2255:7 2262:1 2296:5 2299:18,23 2301:25 2302:18 2310:19 2340:17 2341:11</p> <p><b>paragraphs</b> 2096:6 2310:20</p> <p><b>parallel</b> 2200:17</p> <p><b>parcel</b> 2328:5</p> <p><b>pardon</b> 2306:14</p> <p><b>parking</b> 2091:9</p> <p><b>part</b> 2096:16 2120:19 2124:22 2128:3,14 2131:23 2142:13 2146:4 2149:22 2154:2 2156:17 2160:16 2166:9 2193:11 2202:9 2217:11 2239:16 2257:23,24 2269:25 2270:16</p>	<p>2279:1 2311:18 2319:19 2320:5 2322:3 2324:2 2328:5,13,15 2338:16</p> <p><b>particular</b> 2093:16 2222:4,10 2224:16 2226:8 2229:3 2255:21 2261:14 2273:15 2275:16 2282:7 2295:6 2297:2 2301:25 2320:16 2323:5 2325:12 2326:13,23 2336:4</p> <p><b>particularly</b> 2097:15 2103:12 2159:1</p> <p><b>parties</b> 2215:2,8</p> <p><b>partner</b> 2114:17 2120:19 2131:24 2132:4 2140:20 2164:23 2175:13 2177:13 2178:7 2231:18 2233:14</p> <p><b>partner's</b> 2090:4</p> <p><b>parts</b> 2146:19,20</p> <p><b>pass</b> 2264:13 2267:25 2268:2</p> <p><b>passed</b> 2114:7 2131:16,19 2134:25 2161:13 2258:22 2300:18</p> <p><b>patience</b> 2344:6</p> <p><b>Patrick</b> 2084:5</p> <p><b>Paul</b> 2090:25 2091:2 2092:5,10 2096:25 2098:1 2110:18 2118:7 2118:12 2119:5 2119:17,19,22 2120:3,4 2121:17 2124:24 2137:1 2138:12,21 2139:6 2140:7,8 2140:21 2142:23 2143:4,25 2144:3 2144:20 2148:10 2149:17 2153:14 2155:3,17 2156:16 2158:25 2159:8 2172:16 2175:13,24 2176:4,7,15,18 2177:19,25 2178:8 2180:24</p>	<p>2181:3,4,7,10,13 2181:15,15,20,21 2181:22,22 2182:2 2183:20 2208:18 2215:7 2215:13 2218:18 2218:22 2219:2 2219:20 2227:1 2227:17,19 2228:17,21 2231:18 2232:6 2233:14,16,20 2235:2,6 2236:1 2248:7 2256:19 2264:4,9,11 2265:2,3,16,19,21 2265:24 2266:2 2266:10,12,18,25 2267:7,10 2302:8 2302:20 2314:15 2315:9 2318:9 2331:5 2335:19</p> <p><b>Paul's</b> 2090:5,22 2091:8 2098:20 2120:1,7 2121:10 2139:8,15,18 2140:9 2160:17 2174:9 2218:13 2219:8,16 2240:25 2301:4 2301:18 2313:1,6 2315:22 2332:21</p> <p><b>paved</b> 2199:21</p> <p><b>pay</b> 2149:20 2207:8</p> <p><b>paying</b> 2115:23</p> <p><b>PC</b> 2123:5 2125:18 2128:12 2142:19</p> <p><b>Pelletier</b> 2085:7</p> <p><b>people</b> 2103:5,9 2125:21 2154:4,6 2154:23 2160:7 2198:9 2201:4 2216:2 2219:6 2284:5 2327:18 2341:18</p> <p><b>perceived</b> 2116:3</p> <p><b>perfectly</b> 2177:6 2216:23</p> <p><b>perfunctory</b> 2246:15</p> <p><b>period</b> 2090:20 2125:13 2145:10 2184:2 2191:9 2231:5 2330:20</p> <p><b>perk</b> 2130:5</p> <p><b>permanently</b> 2206:22</p>	<p><b>permitting</b> 2252:1</p> <p><b>perpetrator</b> 2209:11 2271:11 2272:4,17,25</p> <p><b>Perry</b> 2090:10 2091:1 2092:23 2094:9,19 2097:14 2098:21 2104:20 2105:7 2108:15 2117:9 2121:12,20 2146:17 2167:3 2168:14 2199:12 2208:5 2210:21</p> <p><b>person</b> 2090:15 2095:16 2096:12 2097:5 2110:19 2114:3 2117:14 2138:16 2178:24 2184:6 2220:25 2272:22 2273:11 2275:1 2280:16 2282:3 2284:1 2313:11,15 2331:18 2342:4</p> <p><b>Persons</b> 2270:6,8 2343:1</p> <p><b>person's</b> 2276:2,10</p> <p><b>perspective</b> 2103:7 2271:21 2273:2</p> <p><b>pertaining</b> 2233:3 2238:20 2332:13</p> <p><b>phase</b> 2194:15</p> <p><b>phases</b> 2194:10</p> <p><b>phone</b> 2090:9 2117:15,17 2119:21 2120:6 2121:11,13,13 2126:2 2151:14 2169:3 2171:12 2183:25 2184:5 2184:13,14 2197:7 2200:25 2204:17,18,20 2205:25 2207:7 2210:4 2211:8 2248:14 2250:17 2250:20 2251:3 2264:15 2305:24 2306:4 2323:15 2324:7,14 2325:10</p> <p><b>phoned</b> 2117:13,19 2118:4 2135:9 2183:19 2227:24 2267:7</p> <p><b>phones</b> 2117:11</p>
---	---	---	---	--

<p>2171:13 2184:4  <b>phoning</b> 2110:23  2132:22 2202:22  2228:25 2267:2  <b>photocopied</b> 2170:6  2301:12 2322:10  <b>photocopying</b>  2315:18  <b>physically</b> 2157:5  2288:24  <b>pick</b> 2324:7  <b>picking</b> 2323:15  <b>piece</b> 2249:2 2309:9  <b>pink</b> 2321:5  <b>pinks</b> 2307:21  2308:3,24  2309:12 2321:9  <b>pique</b> 2177:3  <b>pitch</b> 2149:16  <b>place</b> 2095:13  2104:7 2109:17  2111:2 2113:15  2114:1 2141:23  2142:15 2153:5  2154:3 2197:19  2199:9 2200:19  2219:1 2236:1,3  2238:12,13  2267:4 2273:12  2280:23 2281:5  2281:15 2289:19  2290:7 2327:13  2327:15 2343:2  2345:10  <b>placed</b> 2138:10  <b>plain</b> 2148:24  <b>plan</b> 2195:18  2201:7 2208:9  2296:23  <b>plank</b> 2320:7  <b>planned</b> 2187:18  2247:9  <b>play</b> 2178:11,12  2287:6  <b>played</b> 2179:3,9  <b>playing</b> 2114:17  <b>please</b> 2088:4,17  2165:20 2170:23  2188:22 2189:8  2230:22,23  2244:14 2254:24  2261:13 2298:23  2299:16 2308:11  2309:16 2310:5  2333:15 2343:16  <b>pleasure</b> 2295:3  <b>point</b> 2089:7</p>	<p>2098:17 2100:10  2106:23 2108:19  2112:11,17,18,19  2116:24 2125:6  2126:17,20,23  2127:9 2140:2  2155:25 2167:3  2170:19 2179:11  2185:19 2213:20  2218:22 2219:11  2220:14 2236:11  2243:12 2257:4  2267:21 2282:2  2284:7 2299:9  2300:19 2302:25  2304:15 2311:17  2313:19 2315:20  2331:23 2342:20  <b>pointed</b> 2110:6,10  2230:1  <b>pointing</b> 2095:3  2113:12  <b>police</b> 2085:17,19  2088:21,23  2091:4,18  2092:19,21,23  2093:5,8,18  2094:2 2095:5,10  2096:18 2097:8  2099:14 2100:4  2103:8 2106:7,8  2106:21 2107:8  2109:2,22,24  2110:1,2 2111:11  2111:13,21  2112:17 2113:23  2114:22 2115:24  2116:10,14,15  2117:20 2118:2,4  2119:17 2120:20  2122:3,7 2126:7  2133:17 2139:10  2148:13 2149:2  2160:2 2161:7,16  2167:5 2173:2,15  2173:20,24  2175:1,4,4  2182:22 2183:15  2186:3,19  2187:10 2188:2  2188:17 2189:1  2190:13 2196:17  2196:18 2197:16  2200:3 2202:18  2203:6,13,23  2204:10 2212:22  2213:14 2214:10</p>	<p>2237:22,24  2239:20 2240:4  2244:4 2269:15  2274:12,14  2277:25 2280:24  2281:15 2284:9  2286:15 2289:19  2290:22 2291:2  2291:16 2292:3  2293:1 2294:2,3  2294:10 2296:8  2297:13 2318:17  2319:5,25  2320:19 2324:13  2324:23 2325:1,4  2333:20 2334:24  2335:5,13  2337:19,25  2338:10 2339:24  2340:22 2342:5  2342:16  <b>police's</b> 2322:14  <b>policies</b> 2297:22  <b>policing</b> 2328:15  2343:8  <b>policy</b> 2334:25  <b>portion</b> 2170:6  2335:3,14  2340:11  <b>portions</b> 2223:1  2254:9 2255:24  2256:15  <b>position</b> 2088:21,22  2093:16 2094:1  2109:1,4 2130:20  2135:1,2 2145:13  2148:9,9,10  2149:3,6 2152:15  2169:19,21,21  2177:2,5 2247:1  <b>possibilities</b>  2335:18,21  <b>possibility</b> 2192:6,7  2208:24 2222:8  2288:19 2330:19  <b>possible</b> 2117:2  2179:5 2180:5  2190:25 2226:2  2264:17 2267:15  2292:18 2336:15  2337:8,14,17  <b>possibly</b> 2157:13  2184:3  <b>postpone</b> 2126:1  <b>post-conviction</b>  2296:22  <b>potentially</b> 2214:2</p>	<p>2216:2,5 2293:13  2320:3  <b>practice</b> 2115:20,22  2115:25 2116:18  2117:14 2159:23  2160:1,14  2161:16 2193:21  2320:22 2321:23  2328:15 2331:24  2331:24 2333:14  <b>practices</b> 2122:21  2342:5  <b>preaching</b> 2277:6  <b>preceding</b> 2143:11  <b>precise</b> 2207:24  <b>Precisely</b> 2320:14  <b>predicate</b> 2106:5,22  2107:18  <b>preliminary</b>  2275:19  <b>premise</b> 2158:13,14  2158:15  <b>preparation</b>  2136:12 2225:23  2227:12 2229:8  2229:11,17  <b>prepare</b> 2237:9,15  2244:4  <b>prepared</b> 2092:12  2110:2 2187:6  2216:7 2218:1  2222:5,6,12  2225:3 2227:13  2227:16 2229:9  2231:17 2232:8  2239:5 2245:9,12  2249:15 2254:4  2267:14  <b>preparing</b> 2175:23  2222:11 2225:22  <b>present</b> 2097:1  2219:18 2221:6  2222:18  <b>present-day</b>  2264:24 2267:6  <b>presumably</b> 2103:4  2103:15 2146:8  2177:12,16  <b>presuming</b> 2116:15  <b>presupposes</b>  2252:20  <b>pretty</b> 2092:4  2122:4 2135:16  2182:18 2209:4  2229:1 2233:10  2238:14 2254:12  2318:11 2324:20</p>	<p>2344:3  <b>prevent</b> 2093:7  2205:11 2240:16  2287:2  <b>previous</b> 2095:1  2104:21 2107:12  2172:1 2238:23  2248:14 2250:9  2323:4 2324:4  2328:3  <b>primarily</b> 2269:24  <b>prime</b> 2094:17  2115:20  <b>principally</b> 2318:23  <b>principle</b> 2319:24  <b>principles</b> 2291:2  <b>prior</b> 2111:10  2173:20 2227:19  2270:11 2273:18  2274:1 2276:8  2277:23 2284:14  2285:22 2292:16  2320:17 2321:19  <b>private</b> 2242:13  <b>privy</b> 2151:9  2152:13 2247:19  2334:12  <b>probably</b> 2248:12  2251:2,3 2253:12  2264:8 2270:16  2281:11 2283:3  2298:11 2325:15  <b>probe</b> 2149:5  2198:24 2341:6  <b>probed</b> 2341:22  <b>Prober</b> 2085:13  2086:9 2162:10  2214:5 2298:24  2298:25 2299:1  2302:5 2306:18  2312:7,8 2314:21  2318:12  <b>problem</b> 2106:4  2110:14 2112:25  2124:14 2127:21  2133:5,8,12,20  2167:18 2169:4  2218:17 2236:19  2249:3 2253:22  <b>problems</b> 2111:15  2127:6 2147:13  2199:7  <b>procedural</b> 2281:21  2281:23  <b>procedure</b> 2281:20  2290:9,14 2324:5  <b>procedures</b> 2175:1</p>
--	---	--	---	--

<p>2290:4,8 2297:22  <b>proceed</b> 2100:17                  2144:8 2192:22                  2193:15,19                  2194:6 2195:8                  2216:12  <b>proceeding</b> 2162:13                  2207:5  <b>proceedings</b>                  2084:11,20                  2086:1 2165:17                  2230:19 2231:16                  2298:20 2314:20                  2344:15  <b>process</b> 2177:10                  2211:19 2281:14                  2296:23 2323:22                  2324:21,22  <b>program</b> 2115:8,14                  2115:19,23                  2116:20 2119:9                  2144:15 2200:8                  2203:21 2266:23  <b>promise</b> 2145:6                  2208:18 2320:12  <b>promised</b> 2159:19                  2252:3  <b>promises</b> 2219:10                  2257:10,19  <b>promoted</b> 2285:3,4  <b>prompted</b> 2224:11  <b>proper</b> 2116:22                  2175:1 2240:6  <b>properly</b> 2159:15                  2215:3 2332:25  <b>proposal</b> 2247:16  <b>prosecuted</b> 2195:25  <b>prosecuting</b> 2162:7                  2164:20 2322:25  <b>prosecution</b>                  2094:15 2128:17                  2128:19,23                  2129:24 2148:18                  2152:22 2159:3                  2162:3 2197:22                  2197:25 2208:16                  2322:6 2323:6,9                  2341:1,15  <b>prosecutions</b>                  2258:19 2260:1                  2284:13  <b>protect</b> 2127:10                  2138:13,15                  2208:19 2293:12  <b>protected</b> 2332:17                  2332:20  <b>protecting</b> 2208:9</p>	<p><b>protection</b> 2126:16                  2127:6,21                  2144:15 2168:19                  2184:9 2194:17                  2197:17 2199:20                  2199:23 2200:8                  2201:8,19,22                  2203:2,5,12,21,25                  2204:9 2208:2,9                  2222:20 2227:4                  2235:18 2247:2                  2262:10 2266:22                  2267:17 2308:15                  2309:4,14                  2319:22 2320:2                  2331:21 2332:13                  2333:2  <b>protects</b> 2292:6  <b>prove</b> 2163:5  <b>provide</b> 2241:3                  2291:24 2301:21                  2307:9 2325:7,20  <b>provided</b> 2101:8                  2122:2,4 2170:11                  2171:24 2174:16                  2189:16 2203:25                  2231:16 2241:1                  2242:13,20                  2289:8 2293:7                  2296:13 2297:7                  2299:11 2300:5                  2301:22 2302:24                  2321:1,20  <b>providing</b> 2201:19                  2244:10 2305:22                  2306:3 2307:20                  2308:3  <b>province</b> 2085:12                  2217:3,8 2314:14                  2345:7  <b>purpose</b> 2229:20                  2289:15 2291:10                  2294:14 2322:7                  2322:12  <b>purposeful</b> 2161:1  <b>purposely</b> 2170:23                  2170:24 2171:8                  2174:19  <b>purposes</b> 2291:8                  2294:15  <b>pursue</b> 2142:25                  2151:7 2209:10  <b>pursued</b> 2127:15                  2152:17  <b>pursuing</b> 2128:22                  2129:21,22                  2201:11</p>	<p><b>pursuit</b> 2124:19                  2125:14 2130:2                  2151:2 2152:4                  2194:13 2206:22                  2208:4 2244:20                  2244:22 2247:8  <b>push</b> 2181:2  <b>put</b> 2090:24                  2109:15 2111:8                  2122:20 2159:15                  2163:17 2167:7                  2176:20 2183:24                  2186:13 2205:6                  2206:6,7 2213:19                  2234:3 2246:4                  2248:22 2250:22                  2287:13 2288:18                  2296:16 2297:5                  2304:3 2326:5                  2327:2 2331:22                  2332:8,24,25                  2333:23 2339:4                  2342:12 2343:2  <b>puts</b> 2111:2,6  <b>putting</b> 2166:20                  2339:11  <b>puzzled</b> 2120:12                  2192:9  <b>puzzling</b> 2120:13  <b>p.m</b> 2114:5 2120:22                  2230:20 2298:20                  2298:21  <b>P6</b> 2307:20 2308:3</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualitatively</b>                  2271:20 2272:20  <b>quality</b> 2297:19  <b>quarter</b> 2090:14  <b>querying</b> 2136:15  <b>question</b> 2098:15                  2103:11 2150:19                  2157:16 2160:9                  2160:24 2162:6                  2162:11,14,19                  2166:10 2167:2                  2167:23 2168:3,4                  2168:8 2169:8,13                  2169:18,23,23                  2170:7,8,19,22,23                  2171:6,15,17,18                  2172:5,18,20,21                  2172:24 2173:1,6                  2173:7,8,9,10,11                  2181:5,6 2190:22                  2193:11 2214:23                  2219:2 2222:3</p>	<p>2227:25 2238:6,9                  2260:22 2261:14                  2271:24 2273:6                  2276:5 2279:3                  2292:12 2293:18                  2297:17 2303:20                  2303:25 2311:6                  2327:1  <b>questionable</b>                  2289:5  <b>questioned</b> 2123:2                  2182:21 2215:16                  2292:16 2308:8                  2310:12  <b>questioning</b>                  2150:17 2252:21  <b>questions</b> 2183:10                  2212:16,18,22                  2213:2 2214:8                  2215:10 2252:23                  2254:14 2262:22                  2263:25 2268:19                  2298:9 2312:3,7                  2312:12 2313:18                  2318:12 2328:3                  2338:22 2342:1,4                  2342:11 2344:1  <b>quick</b> 2088:12  <b>quickly</b> 2148:4                  2172:23 2173:10                  2186:15 2311:6  <b>quite</b> 2101:1                  2118:20 2120:14                  2120:17 2125:12                  2132:4 2159:11                  2175:6,16                  2192:13 2207:11                  2218:1 2246:15                  2253:4 2259:19                  2265:14 2268:6                  2284:25 2319:20                  2336:15 2342:2  <b>quote</b> 2188:9                  2218:15 2246:20  <b>quoted</b> 2128:14  <b>Q.C</b> 2084:5 2085:12                  2085:14,15,16,19                  2085:21</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>R</b> 2085:15,19  <b>radio</b> 2179:8  <b>raid</b> 2171:25 2172:9  <b>raise</b> 2130:19                  2212:23 2213:23                  2216:5 2217:13  <b>raised</b> 2159:7</p>	<p>2215:21  <b>raises</b> 2215:14  <b>raising</b> 2214:1                  2215:24 2217:4,7                  2217:8  <b>Randy</b> 2154:15                  2156:2  <b>rationale</b> 2127:8                  2150:12  <b>Ray</b> 2094:14 2095:9                  2107:7 2110:18                  2110:22 2114:22                  2124:23 2125:5                  2129:14 2130:1                  2135:3 2137:15                  2141:7 2148:14                  2160:19 2181:1                  2186:20 2187:12                  2191:11 2197:23                  2201:19 2211:20                  2218:16 2220:12                  2265:2 2266:12                  2288:3 2302:20                  2333:17 2340:22                  2341:14,19  <b>RCMP</b> 2085:16                  2126:1 2127:1,15                  2127:18 2130:16                  2133:9 2142:25                  2144:15 2151:6                  2158:20 2194:18                  2195:2 2196:22                  2197:16,17                  2200:6 2201:22                  2201:25 2202:15                  2202:19 2203:20                  2204:11 2205:11                  2212:7 2241:12                  2245:15 2246:7                  2251:25 2255:11                  2256:20 2257:1                  2258:11 2260:9                  2274:13 2290:1  <b>reached</b> 2162:24                  2163:22 2311:3  <b>react</b> 2165:8  <b>read</b> 2095:1,18,20                  2099:1 2102:10                  2108:10,11                  2110:12 2113:9                  2120:7 2128:15                  2129:5 2143:2,7                  2146:16,17,20                  2148:1,20 2153:8                  2155:1 2211:15                  2254:7,9 2255:23                  2256:3,4,14,14</p>
---	---	---	--	---

<p>2296:5 2327:19 2340:11,14 <b>reading</b> 2153:23 2163:8 2166:25 2173:11,12 2188:20 2227:20 2255:25 2256:16 2288:1 <b>reads</b> 2340:17 <b>ready</b> 2146:23 <b>real</b> 2096:16 2177:4 2202:12 2224:15 2272:6 <b>reality</b> 2328:10 <b>realize</b> 2174:10 <b>realized</b> 2169:12 <b>really</b> 2089:6,17 2114:14,16 2121:16 2124:11 2130:18,19 2138:18 2139:19 2141:14 2161:11 2162:19 2167:7 2174:22 2216:19 2221:16 2222:12 2225:21 2229:3 2236:11 2246:15 2254:17 2319:19 <b>rear</b> 2095:5 <b>reason</b> 2088:24 2090:22 2094:18 2096:17 2100:1 2134:24 2153:4 2164:6 2179:8 2191:13 2196:20 2196:20 2198:5,7 2200:9,11 2215:13,23 2333:10,11 <b>reasonable</b> 2169:16 2202:6,11 <b>reasons</b> 2092:22 2099:25 2183:12 <b>Reath</b> 2094:13 2151:8 2257:10 2257:19 <b>recall</b> 2093:15,20 2093:21,25 2094:4 2109:6 2110:21 2119:2,2 2119:14 2135:4 2136:24,25 2137:5 2149:16 2150:5 2155:14 2164:15 2175:16 2177:24 2178:14 2181:18,22,25</p>	<p>2191:1 2192:11 2194:1 2199:18 2200:20 2205:14 2210:2,7,11 2212:3 2222:11 2222:12 2223:5 2223:10 2224:10 2225:10,18,21 2226:18 2230:6 2230:14 2234:6 2243:3 2249:14 2255:18,25 2256:8,16 2273:17 2274:2 2275:3 2282:1 2284:21 2285:24 2286:1 2290:17 2292:18 2298:6 2299:13 2303:11 2303:20 2305:9 2306:7 2307:3,5 2310:13 2312:5 2313:21 2317:19 2318:8 2319:17 2326:19,20 2327:4,9 2338:21 2340:4 <b>recalled</b> 2312:13 <b>recalls</b> 2205:5,9 <b>recant</b> 2182:3 2228:14,23 2264:7 <b>recantation</b> 2175:11 2178:6 <b>recanted</b> 2175:13 2176:15 <b>receive</b> 2157:23 2342:17 <b>received</b> 2090:9,25 2117:20 2118:22 2121:11,14 2130:5 2131:17 2131:18 2132:9 2132:16 2134:2 2187:9 2202:13 2237:19 2238:7 2243:12 2255:23 2258:10 2263:16 2301:11 2315:3 2316:14 2330:5 2340:8 <b>receiving</b> 2319:17 <b>recess</b> 2165:16 2230:18 2298:12 2298:19 <b>recessed</b> 2165:17 2230:19 2298:20</p>	<p><b>recognize</b> 2179:1 2180:9 <b>recognized</b> 2220:1 2220:7,11 <b>recollection</b> 2117:1 2117:10,24 2118:11 2142:4 2143:17 2147:16 2165:2 2175:22 2176:2 2182:1 2190:25 2191:8 2209:3 2221:17 2221:22 2222:5 2223:3,19,24 2224:9,15,18,21 2224:22 2225:11 2226:6,15 2227:1 2227:3,8 2228:10 2229:4 2235:3,12 2235:25 2242:19 2264:24 2265:20 2266:9 2267:6 2301:16 2305:15 2305:22,24 2312:23 2313:12 2316:25 2317:25 2318:2 2323:4 2337:15 2338:25 <b>recommenced</b> 2165:20 2230:22 2298:23 <b>reconvened</b> 2165:18 2298:21 <b>record</b> 2107:25 2108:2,8 2122:2 2130:12 2138:13 2140:9 2159:15 2174:24 2214:9 2214:11 2215:3 2220:25 2225:16 2227:24 2236:14 2254:1 2280:6 2289:8 2301:14 2330:14 2337:13 <b>recorded</b> 2108:5 2109:25 2110:3 2141:22 2156:9 2178:21 2218:15 2315:14 <b>recording</b> 2156:11 2181:23 <b>records</b> 2167:11 2313:9 <b>recovered</b> 2179:22 2179:25 <b>recruit</b> 2185:6 2342:17</p>	<p><b>reduced</b> 2320:24 <b>refer</b> 2131:1 2147:3 2184:15 2186:15 2193:3 2229:6 2238:11 2241:7 2279:6 2292:22 2295:2 2296:4 2317:6 2342:13 <b>reference</b> 2107:14 2155:1 2198:14 2250:2 2282:25 2294:17 2312:18 2312:21 2313:3 2317:9,14 2326:6 2336:3 <b>references</b> 2113:9 2253:15 2313:7 <b>referred</b> 2141:12 2190:8 2225:5 2229:17 2285:18 2288:23 2294:18 2294:21 2299:12 2311:19 2321:4 2329:23 <b>referring</b> 2143:8 2156:16 2180:4 2196:15 2211:25 2242:9 2243:7 2250:3 2269:5 2304:24 2305:1 2307:1 2311:8 2313:21 2314:10 <b>refers</b> 2128:13 <b>reflection</b> 2161:15 <b>reflective</b> 2175:3,5 2180:24 2181:7 <b>reflects</b> 2138:18 <b>refresh</b> 2229:21 2230:4 2238:11 2292:5 <b>regard</b> 2150:19 2264:1 2291:12 2319:13 <b>regarding</b> 2095:11 2113:24 2162:24 2163:22 2183:17 2201:10 2311:3 <b>Regardless</b> 2327:13 <b>regular</b> 2114:25 2309:5 2321:23 2325:17 <b>regularly</b> 2279:18 2284:17,19 <b>regulations</b> 2214:10 2289:18,25 2290:8 2297:14 2298:1</p>	<p><b>Reid</b> 2345:6,6,16,20 <b>reiterate</b> 2225:9 2237:1 <b>relate</b> 2146:20 2189:11 2213:3 2281:22 2289:15 <b>related</b> 2205:21 2216:11 2231:16 2231:18 2232:11 2238:20 2240:3 2240:10 2242:11 2246:5 2254:15 2262:22 2308:15 2333:2 2338:1 <b>relating</b> 2141:6 2173:4,17 2183:11 2189:17 2208:4 2225:12 2226:19 <b>relation</b> 2104:19 2105:6 2108:13 2128:19 2283:13 2290:12,14 2297:15 <b>relative</b> 2199:25 2326:22 2339:13 2339:15,16 <b>relatives</b> 2332:18 <b>relative's</b> 2219:1 <b>relay</b> 2155:16 2177:23 <b>relayed</b> 2143:25 2151:22 2249:1 <b>relaying</b> 2124:24 <b>relevance</b> 2267:15 <b>relevant</b> 2338:19 <b>relied</b> 2200:1 <b>relief</b> 2102:13,14 <b>relocation</b> 2201:8 2224:4,12 <b>relying</b> 2201:16 2202:8 <b>remained</b> 2117:12 <b>remaining</b> 2135:13 <b>remarkable</b> 2182:18 <b>remember</b> 2094:7 2098:3,16,19,22 2107:3,5 2109:5 2112:5 2116:21 2116:22 2126:3 2132:12 2136:3 2136:10 2148:3 2154:9,11,12,17 2163:14 2164:24 2172:15 2181:11 2190:14,14</p>
--	---	--	--	---

<p>2192:5,8 2222:23 2228:20 2233:10 2234:2 2235:14 2235:20,24 2239:15 2245:20 2249:19 2254:16 2260:25 2261:1 2281:10 2286:10 2326:25 2339:20 2341:3 <b>remembered</b> 2172:10 <b>remembering</b> 2112:4,5 <b>reminded</b> 2152:12 2247:18 2319:12 <b>reminding</b> 2293:15 <b>remote</b> 2192:7 <b>remove</b> 2207:19 <b>renovations</b> 2283:14 <b>repeat</b> 2199:3 2208:6 <b>repeating</b> 2146:2 <b>rephrase</b> 2197:13 <b>replied</b> 2218:18,19 2218:24 2219:11 <b>report</b> 2087:10,12 2096:25 2098:20 2099:2 2104:23 2107:4 2112:8,10 2112:13 2114:10 2119:25 2128:13 2135:5 2136:15 2136:18 2138:23 2138:24 2139:4 2142:13 2145:19 2147:25 2150:14 2158:4 2165:24 2166:2 2176:4,6 2187:6 2214:9,11 2227:6,16 2237:9 2237:15 2239:18 2239:19,20 2240:15 2241:11 2244:4 2253:25 2254:8,23 2255:2 2256:4,6,9 2257:5 2259:7 2260:20 2276:2 2291:18 2291:22 2295:2 2295:13,15,22 2296:16 2300:13 2308:19 2309:1,4 2309:8 2317:9 2321:5 2326:1,6,8 2326:9,10,22</p>	<p>2327:8,22 2328:14,22 2332:14 2333:12 2335:22 2336:11 2337:7,10,13 <b>reported</b> 2096:24 2122:8 2219:19 2224:6 2276:12 2337:3 <b>REPORTER</b> 2345:17,21 <b>REPORTER'S</b> 2345:2 <b>reporting</b> 2240:6 <b>reports</b> 2092:11 2093:23 2122:5 2132:8 2142:12 2158:21 2237:25 2287:25 2291:19 2296:17 2307:22 2316:24 2320:25 2325:19 2327:3 2327:18,25 2328:6 2329:22 2332:9 <b>report-making</b> 2289:20 <b>report/file</b> 2296:11 <b>represent</b> 2299:3 <b>representation</b> 2157:23 <b>representations</b> 2143:22 <b>represented</b> 2340:16 <b>representing</b> 2174:13 2217:3 2218:10 2318:17 <b>reputation</b> 2289:5,6 <b>request</b> 2133:1,15 2135:17 2163:4 2163:14,25 2168:9 2170:4,5 2175:3 2188:16 2189:24 2191:10 2192:11 2213:8 2213:13 2223:12 2261:23 2263:14 2263:16 2307:9 2323:23 <b>requested</b> 2128:20 2129:19,22 2267:13 2306:9 2306:25 2307:8 <b>requests</b> 2166:1 2169:25 2192:16 2317:20</p>	<p><b>require</b> 2323:24 <b>required</b> 2194:5 2198:21 2209:13 2274:5 2277:3 2323:17 <b>requirement</b> 2194:17 2197:8 2197:12,14 2342:18 <b>requirements</b> 2152:25 2274:3 2290:5 <b>residence</b> 2094:22 2094:23 2107:15 2109:3 2113:11 2189:12,18 <b>residing</b> 2333:3 <b>resolution</b> 2210:6 2210:14 2212:2 <b>respect</b> 2117:8 2140:11 2166:9 2172:7,8 2186:20 2187:19 2196:25 2204:19 2210:20 2234:4 2238:16 2239:13 2259:11 2263:18 2273:6 2313:8 2319:6 2320:19 2326:13 2328:25 2330:4 2330:14 2333:21 2338:6 <b>respond</b> 2135:16,18 2216:3 2217:10 2261:23 <b>responded</b> 2172:25 2261:15 2313:19 2341:6,21 <b>responding</b> 2163:25 2169:17 2217:6 2317:8 2318:9 <b>response</b> 2163:3,13 2165:25 2168:11 2169:8 2170:16 2175:2 2215:20 2222:3 2245:14 2341:7 <b>responsibilities</b> 2319:12 <b>responsibility</b> 2196:11,13,15 2284:8 2322:4,14 2322:15 <b>responsible</b> 2132:7 2260:17 <b>result</b> 2200:25 2300:16 2320:2,3</p>	<p>2339:2 <b>resulted</b> 2177:25 <b>results</b> 2200:16 2206:2 <b>resume</b> 2230:15 <b>resumed</b> 2230:19 <b>retained</b> 2126:21 <b>retired</b> 2100:12 2269:10,12 2278:10 2334:1,2 2334:8 2342:3,11 2343:11 <b>retirement</b> 2277:24 2297:11 <b>retrospective</b> 2157:15 2293:17 <b>revealed</b> 2115:22 <b>review</b> 2094:10 2097:14 2098:18 2113:7 2114:12 2114:16,21 2120:16 2121:20 2129:7 2146:17 2146:25 2147:8 2147:14 2185:22 2227:11 2229:11 2229:14 2230:4 2286:16 2287:1 2294:19,23 2295:20,21,21 2340:12,14 2341:12 <b>reviewed</b> 2229:16 2290:11 2339:8 <b>reviewing</b> 2148:11 2229:20 2296:11 2296:18 2340:19 <b>reward</b> 2115:8 2116:20 2117:5 2117:21 2118:13 2118:23 <b>rewards</b> 2126:12 <b>re-cataloguing</b> 2249:2 <b>re-examine</b> 2218:4 <b>re-open</b> 2215:17 <b>rid</b> 2335:4 <b>ridiculous</b> 2137:25 <b>right</b> 2088:22 2089:2,10 2090:17 2091:5 2091:13,21,23 2092:3,14 2093:9 2094:24 2095:18 2097:22 2098:13 2100:4 2101:3,19 2102:18 2103:18</p>	<p>2103:24 2104:3,4 2104:7,24 2107:5 2112:4 2113:21 2116:5 2117:22 2118:22 2119:13 2119:17 2120:7 2121:2,3 2122:12 2122:14 2123:16 2125:13,19 2126:11,14,18 2127:2,3,4 2129:4 2131:25 2133:20 2135:1 2137:18 2138:5,23 2140:5 2141:3,10,17 2142:15 2144:11 2145:6,8,15 2146:18 2147:5,8 2147:14,20 2148:23 2151:24 2152:18,25 2154:20 2160:3 2161:18 2163:17 2164:12 2165:13 2166:2,6,22 2167:15 2168:13 2169:1,8,15 2170:14 2171:9 2171:25 2172:3,9 2172:14,17 2174:12 2175:9 2175:13 2176:5 2176:12,16,21,25 2177:14 2179:17 2179:22 2181:8 2181:17 2183:3 2189:7 2193:6 2194:3 2200:7 2212:10 2214:16 2219:20 2220:7 2220:11 2221:24 2222:6,20,21 2223:7 2226:11 2227:4,14 2231:7 2232:12 2233:14 2233:23 2236:21 2236:24 2237:3 2240:4 2246:17 2247:3 2248:23 2249:9 2251:20 2258:2 2260:10 2262:10 2270:11 2275:1 2279:7,12 2290:24 2299:20 2299:21 2300:2 2301:2,9 2303:9 2305:6 2306:12</p>
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<p>2306:12 2308:2,4 2308:6,6,13,15,22 2312:25 2314:1 2315:6,9,16 2316:11,16,21 2317:6 2318:3 2321:17 2322:19 2335:11 2336:3 2336:20 2337:23 2338:6 2342:3,21 <b>right-hand</b> 2105:18 <b>ring</b> 2222:10 <b>rise</b> 2088:3 2165:15 2165:19 2215:19 2230:17,21 2298:18,22 2344:12 <b>roadblock</b> 2197:15 2197:19,20,24 2207:19 <b>robbery/homicide</b> 2126:8 2160:19 2227:10 2270:2,8 2273:14 2274:6 2274:18 2276:14 2282:13 2283:8 2283:13 <b>role</b> 2196:18,21 2197:23 2201:18 2203:9 2204:11 2217:12,12 2278:13 2286:21 2287:14,15 <b>roles</b> 2278:22 2279:8 2287:6,15 <b>Ron</b> 2185:13 <b>room</b> 2330:24 2331:4 <b>rooms</b> 2104:2 <b>Ross</b> 2132:20,25 2134:15 2135:9 2171:14 2201:25 2202:20 2258:10 2259:6 <b>rotating</b> 2280:17 <b>rough</b> 2273:9 2286:13 <b>roughly</b> 2204:2,2,5 <b>rounding</b> 2174:22 <b>route</b> 2144:24 <b>royal</b> 2136:6 <b>rules</b> 2152:21,22 2216:19,25 <b>run</b> 2252:6 2291:8 <b>running</b> 2145:14 <b>R.L</b> 2085:4</p>	<p style="text-align: center;"><b>S</b></p> <p><b>safe</b> 2162:3 <b>safely</b> 2161:25 2162:6 <b>sales</b> 2149:16 <b>Saskatchewan</b> 2170:13 2193:22 2194:6 2195:16 2196:10 2198:15 2198:18 2202:20 2218:21 2219:10 2234:10 2235:11 2235:22 2258:20 2259:4,14,17 2260:2 2302:15 <b>sat</b> 2335:24 <b>satisfied</b> 2197:9,9 2197:11,13 <b>satisfy</b> 2195:22 2197:8 <b>Savage</b> 2242:13,15 2243:2 2300:7,8,9 2300:11,15,21,23 2302:2,12,14,14 2302:22,24,25 <b>save</b> 2293:15 <b>saw</b> 2093:16 2094:2 2095:5 2106:6 2109:2 2113:13 2135:7,10 2256:9 2256:13 2331:14 <b>saying</b> 2104:17 2108:20 2109:25 2110:3 2112:7 2118:23 2126:3 2132:23 2133:6 2133:21 2149:24 2151:1 2163:18 2171:10 2174:12 2177:4 2181:16 2181:22,23 2182:4,5 2197:6 2208:21 2228:9 2233:2 2254:1 2262:2 2288:25 2294:11 2302:1 2307:10 2312:23 2324:19 2342:2 <b>says</b> 2090:10 2092:16 2097:2 2097:18 2102:10 2105:23 2119:22 2120:10 2121:10 2132:23 2143:10 2146:1 2167:10 2180:23 2183:1</p>	<p>2189:25 2258:10 2259:7,13,13 2302:22 2341:11 2341:14 <b>say-so</b> 2237:14,16 <b>scared</b> 2093:3 <b>scenario</b> 2098:7,8,9 2098:22 2117:4 2118:14 2144:19 <b>scene</b> 2173:5,18 2282:21 <b>scheduled</b> 2275:20 2275:21 <b>Scrap</b> 2338:18 <b>scraps</b> 2089:16 <b>scripted</b> 2252:9 <b>seal</b> 2202:12 <b>search</b> 2337:25 <b>seat</b> 2331:14 <b>seated</b> 2088:4 2165:20 2230:22 2298:23 <b>seats</b> 2266:19 <b>second</b> 2102:10,13 2102:14 2135:8 2137:12 2139:25 2153:24 2156:2 2166:9 2187:17 2188:21 2189:7 2194:15 2206:13 2208:25 2209:1,3 2209:15,21 2211:3,13 2222:2 2250:6 2255:7 2257:23 2271:25 2272:23 2287:21 2292:19 2309:20 2316:18 2327:24 2336:15 2340:17 <b>secondly</b> 2135:6 2264:7 2291:23 <b>section</b> 2257:5 2295:6 <b>secure</b> 2320:13 <b>see</b> 2090:4,5,8,21 2092:7,15,17 2093:10,13,14 2094:8,9,12 2095:1 2096:7,22 2097:1,11 2099:23 2100:8 2102:3,5,6,8,24 2103:2 2104:9,15 2105:1,9,14,16,19 2105:20,22 2106:23 2110:14 2111:18,18</p>	<p>2112:17 2113:5 2114:13 2117:3 2122:18 2127:18 2130:18 2135:22 2139:21,22 2145:19 2151:11 2152:5 2153:17 2154:25 2164:2 2168:5 2178:18 2178:23 2182:23 2187:9,12,14 2188:17 2189:10 2189:13 2199:8 2201:21 2207:17 2213:25 2215:13 2223:22 2224:5 2224:24 2227:11 2227:13,19 2228:5,13 2229:25 2230:9 2233:6,13 2234:3 2235:2 2236:4 2238:9 2240:20 2241:20 2242:19 2244:12 2251:15 2252:7,25 2253:10,14,15 2254:7,19 2255:7 2256:17 2259:7 2261:5 2263:1,15 2267:3 2269:15 2272:20 2273:1 2280:22 2282:25 2286:13 2291:9 2298:4 2309:21 2309:23 2310:3,9 2315:13 2316:1 2317:9,14 2329:8 2329:21 2332:21 <b>seeing</b> 2190:14 <b>seeking</b> 2169:18,24 <b>seemingly</b> 2176:13 <b>seen</b> 2091:4 2093:4 2095:4 2099:13 2100:3 2103:12 2103:13 2122:18 2172:12,14 2186:24 2239:23 2239:24 2275:18 2297:2 2298:6 2329:20 <b>sees</b> 2227:22 <b>selective</b> 2296:8 <b>send</b> 2324:9 <b>senior</b> 2149:1 2185:6 2275:7 <b>sense</b> 2102:11</p>	<p>2122:13,14,16 2175:25 2180:2 2194:20 2198:3 2243:10 2286:19 2286:23 2287:3 2291:4 2293:11 2335:17 <b>sensible</b> 2215:6 <b>sensitive</b> 2332:14 <b>sensitivity</b> 2332:16 <b>sent</b> 2100:19 2133:1 2170:3 2186:18 2199:8 2307:14 2309:6 2318:9 2326:11 2327:25 2328:7,8 2329:23 <b>sentence</b> 2188:21 2189:7 2223:9 2256:24 2300:7 <b>separate</b> 2139:2 2239:20 2250:11 2257:5 2276:10 2282:12 2335:23 2336:11,25 2337:5,10 <b>September</b> 2275:22 <b>sergeant</b> 2088:5,6 2091:2 2098:1,20 2101:11,20 2102:15 2112:6 2131:16 2132:10 2133:22 2134:15 2135:3 2143:4,24 2143:25 2146:4 2154:14 2155:17 2155:18 2160:17 2160:17 2165:4 2174:9 2175:24 2176:7,15,18 2177:19,21,25 2181:4,10,19 2182:2 2183:11 2183:20,20 2185:13,24 2186:4,11,14 2187:4,10,17 2188:2,18 2189:2 2189:16,23 2190:4,6,17,24 2191:3,9,15,18,20 2191:24 2192:15 2192:16 2195:21 2196:5,11 2197:5 2197:10 2198:10 2199:16 2200:15 2201:6,15 2202:7 2203:3 2204:15</p>
---	--	---	--	---

2207:23 2208:10 2210:3,16 2212:15 2215:7 2215:12 2218:13 2218:18,22 2219:2,8,16,20 2227:17,19 2228:17 2233:11 2235:17 2242:4 2247:25 2248:7,8 2255:10 2257:9 2258:9,22 2265:16,19,21,24 2267:10 2269:12 2277:14,19 2284:3 2285:5 2286:1 2287:8 2295:17 2301:4 2301:18 2302:8 2302:10 2307:15 2314:15 2319:10 2319:17 2331:5 2332:21 2335:19 2342:11 2343:24 <b>sergeants</b> 2256:18 2281:11,12 <b>series</b> 2095:7 2113:17,20 2137:10 <b>serious</b> 2127:6 2180:19 2209:12 2221:4 2323:6 <b>serves</b> 2329:11 <b>service</b> 2126:7 2183:15 2186:4 2186:19 2187:11 2188:17 2189:1 2190:13 2196:19 2203:6,23 2212:22 2237:22 2240:4 2294:10 2318:18 2319:5 2319:25 2324:13 2325:4 2333:20 2333:22 2334:19 2334:25 2335:5 2335:13 2337:25 2338:10 2339:24 2342:5,16 <b>services</b> 2085:18 2274:14 2280:24 2281:15 2289:19 2297:13 <b>service's</b> 2331:17 <b>session</b> 2088:4 <b>set</b> 2145:18 2171:11 2171:14 2219:25	2225:16 2246:16 2334:2 <b>sets</b> 2328:9 <b>setting</b> 2251:17 2256:23 <b>settlement</b> 2204:12 <b>share</b> 2228:6 <b>sharp</b> 2224:17 <b>Shaver</b> 2115:21 2116:6,7,13 <b>sheet</b> 2335:23 <b>shift</b> 2102:13,16 2228:21 2280:15 2280:19 2282:16 2283:24 <b>shifts</b> 2281:13 <b>shop</b> 2172:12 2173:25 <b>short</b> 2181:14 2313:25 <b>shortage</b> 2294:8 <b>shortly</b> 2277:10 2313:14 <b>shots</b> 2203:13 <b>shovels</b> 2179:16,20 <b>show</b> 2096:4,10 2261:10 2263:11 <b>showed</b> 2222:4 <b>shown</b> 2239:4 <b>shows</b> 2241:18 <b>side</b> 2315:18 <b>signed</b> 2333:24 <b>significance</b> 2141:2 2280:7 <b>significant</b> 2100:1 2134:25 2199:11 2199:25 2229:1 2233:17,19,21 2249:15 2251:11 2251:13 2305:9 2342:24 <b>significantly</b> 2343:9 <b>similar</b> 2089:2,8 2181:3,9 2185:2 2261:7 2314:13 2327:16 <b>simple</b> 2144:24 <b>simply</b> 2144:24 2146:25 2160:23 2162:19 2213:8 2295:1 2296:13 2327:18 <b>SIN</b> 2203:15 <b>single</b> 2166:16,17 2332:12 <b>sir</b> 2090:3,17,18,19 2091:6 2092:6,7	2092:14 2093:13 2093:16 2094:8 2096:25 2097:12 2097:17,24 2098:7 2099:4,23 2100:6 2102:3,5,9 2102:19,21,22,25 2103:3,4,10,15,21 2103:25 2104:4,8 2104:12,20 2105:9,10,14,19 2106:3,24 2107:24 2108:4,9 2109:4,15,23 2110:1 2111:14 2111:22 2112:24 2113:5,8 2114:11 2116:18,25 2118:16 2119:6 2119:10,15 2120:8,9,16,24 2121:10,15,22 2122:15,19,21 2123:1,4,10,11,17 2123:18,21,25 2124:10 2125:8 2125:10,11,16,22 2125:23 2127:16 2128:1,9,24,25 2129:2,5 2130:7 2130:15,22,24 2131:4,5,9,11,21 2133:6,19 2134:11 2136:3 2136:15 2137:6 2137:13 2138:6 2138:17 2139:13 2139:20 2140:3,6 2140:12,21,22 2141:8,13 2142:6 2142:16,17,20,21 2142:23 2143:3,6 2143:7,9,14,15 2144:4,12,17,22 2145:6,8,16,17,19 2145:21,23 2146:16,21 2147:7,8,15,23,25 2148:8,20,23 2149:6,9,22 2150:4,14,20 2151:12,13 2152:1,7,19 2153:18 2154:3,9 2155:2 2156:12 2156:21,23 2158:6,13,23	2159:21,23 2160:10,24 2161:5,6,8,25 2162:21 2163:9 2163:16 2164:2,3 2164:9,19 2166:3 2166:4,8 2167:7 2168:5,7,11,17,18 2170:11,16,18 2171:1,17,18,22 2172:4,5,19,25 2173:7,23 2174:12,20,21 2175:9,10,12 2176:5,25 2177:1 2178:5,8,18 2179:11,19 2180:1,7,8,9,13 2180:19,23 2182:4,9 2183:22 2184:17,21,23 2185:1,8,11,16 2186:2,6,8,17,23 2186:25 2187:14 2187:21,25 2188:6 2189:3,5 2189:14,20 2192:9,18 2193:7 2193:17,20 2194:3,8 2197:2 2198:16 2201:1 2201:13 2203:1,8 2203:22 2204:4 2204:25 2205:15 2205:16 2206:5,9 2206:25 2207:2 2207:24 2208:6 2210:12,15 2211:3 2219:21 2220:6 2221:21 2221:25 2222:15 2222:21 2223:16 2223:25 2224:14 2225:6,24 2227:5 2227:15,18 2228:2,18 2229:2 2229:5,13 2230:1 2230:8 2233:15 2233:24 2235:5 2235:19 2236:3 2236:22,25 2237:7 2240:22 2240:24 2241:5 2244:20 2245:2,4 2245:10,16 2246:3,18 2247:4 2247:21 2248:4	2248:17 2249:10 2254:9,22 2255:4 2255:6,16,20 2257:2,8 2258:25 2260:14,21 2261:18,24 2262:6,16 2264:2 2264:12 2269:11 2269:13,17,25 2271:19 2272:13 2273:3,14,20 2274:2,11,19,25 2275:9,11,14,25 2276:1,20 2277:1 2279:17,25 2280:8,13 2281:6 2282:6,11,14,24 2283:2,6,11 2284:6,10 2285:2 2285:14,19,21 2286:20,24 2287:5,22 2288:6 2288:11,16 2289:9,14,15,21 2290:1,18 2291:3 2291:5,7,14,20,22 2292:1,8,9,19,23 2293:3,9 2294:16 2297:3,4,9 2299:5 2299:14 2303:4,8 2303:10,21 2304:18,23 2305:13,17,20 2306:1,5,16,21 2307:2 2308:1,12 2308:16,21 2309:2,13,25 2310:7,11,18 2311:16 2312:6 2312:12,13,17,22 2313:13,17,18,23 2314:1,5,8,12,17 2314:18,24 2315:14 2316:3,8 2317:1,5,16,23 2318:3,6,11 <b>sister</b> 2124:20 2125:4 2194:22 2206:23 2207:8 2212:14 2247:12 2247:13 <b>sit</b> 2236:14 <b>sitting</b> 2084:12 2113:12 2336:13 <b>situated</b> 2283:12 <b>situation</b> 2124:15 2124:17 2161:17
---	--	--	---	--

2161:19 2195:5 2204:3 2207:13 2236:21,23 2237:10 2272:4 <b>situations</b> 2138:10 2272:13,17 <b>skip</b> 2139:21 <b>slimmer</b> 2237:3,4 <b>small</b> 2201:20 2318:4 <b>sole</b> 2200:3 <b>solely</b> 2198:1 2284:8 <b>solution</b> 2127:20 <b>solve</b> 2272:24 <b>solved</b> 2096:14 2097:6 <b>somebody</b> 2133:2 2134:8 2135:23 2162:16 2178:20 2185:1 2216:1 2222:9,13 2236:14 <b>someone's</b> 2203:14 <b>somewhat</b> 2115:24 2206:1 <b>soon</b> 2092:4 2211:7 2234:25 2241:13 2250:16,20 2262:13 2287:12 <b>sooner</b> 2127:21 <b>sorry</b> 2094:23 2098:21 2101:21 2105:3 2107:10 2109:24 2148:1 2153:25 2155:20 2172:23 2173:9 2173:14 2188:4 2188:19 2194:2 2209:21 2211:10 2213:16 2224:1 2225:5 2230:11 2230:12,14 2241:15 2254:19 2299:20 2308:2 2312:20 2313:5 2317:4,12 <b>sort</b> 2088:25 2091:19 2098:7 2098:10 2104:3 2114:19 2121:15 2123:25 2133:5 2135:13 2145:20 2148:16 2154:18 2156:23 2159:9 2163:9 2173:22 2181:5 2216:18	2238:9 2300:18 2303:12 2340:24 2341:13 <b>sorts</b> 2147:13 <b>sought</b> 2339:10 <b>sound</b> 2098:12 2108:16 2180:14 <b>sounded</b> 2185:1 <b>sounds</b> 2091:23 2180:15,19 2181:1 <b>source</b> 2197:3 <b>speak</b> 2102:1 2104:16,18 2105:5 2108:13 2108:20 2147:12 2147:23 2150:22 2191:3 2194:23 2262:23 2343:6 <b>speaking</b> 2129:9,9 2146:14 2150:23 2150:23 2155:15 2207:12 2243:5 2248:1 <b>specialized</b> 2273:21 2274:23 2285:17 2286:3 <b>specific</b> 2131:2 2154:17 2171:14 2242:19 2279:8 2305:15,18,21 2306:2 <b>specifically</b> 2181:25 2205:5 2223:11 2224:10 2255:4 2262:23 2281:21 2284:17 2290:4 2319:11 2336:22 2338:7 <b>speculates</b> 2135:5 <b>speculating</b> 2222:13 <b>speeches</b> 2159:12 2159:13 <b>speed</b> 2099:20 <b>spend</b> 2204:16 <b>spent</b> 2143:18 2164:10,22 2165:6 2269:23 2285:7 <b>split</b> 2223:1 2309:6 2321:1 2336:13 <b>spoke</b> 2119:17,20 2133:23 2135:2 2147:7 2184:5,8 2191:17 2192:14 2192:16 2194:20 2260:9 2267:11	<b>spoken</b> 2115:6 2117:17 2188:11 2189:23 2191:22 2191:24 2246:22 2317:19 <b>spontaneously</b> 2206:21 <b>spousal</b> 2272:17 <b>spring</b> 2194:16 2197:24 2207:10 2285:9 <b>squad</b> 2270:1 2273:14 2274:6 <b>stacks</b> 2142:18 <b>staff</b> 2085:1,7,8 2143:24 2154:14 2160:17 2165:4 2177:20 2185:12 2185:24 2186:4 2186:14 2196:5 2197:5,10 2198:10 2199:16 2201:5,15 2202:7 2233:11 2235:16 2247:25 2248:8 2277:14 2281:10 2284:3 2287:8 2307:15 2319:10 2319:17 <b>stage</b> 2216:6 2342:17 <b>stand</b> 2165:9 2312:19 <b>standard</b> 2151:21 2160:5,10,14 2281:14 <b>standing</b> 2212:19 2343:15 <b>stands</b> 2159:12 <b>starkly</b> 2142:18 <b>start</b> 2091:15 2179:4 2206:15 2330:3,3 <b>started</b> 2090:22 2315:11 <b>starting</b> 2154:13 2184:11 2240:2 2315:2 2338:22 <b>starts</b> 2242:3 2317:12 <b>state</b> 2174:1 2258:5 2331:6,12 2334:11 2342:16 <b>stated</b> 2266:1 2296:13 2345:11 <b>statement</b> 2096:23 2101:9 2105:15	2105:18,21,24,25 2109:22 2110:12 2119:23 2120:2,7 2120:11 2126:4 2126:24 2136:1 2154:19 2161:14 2162:20 2163:1,2 2163:3,7,24 2185:19,25 2204:21 2221:12 2221:15,19 2222:16 2223:22 2224:24 2225:6,8 2225:13,25 2226:21,23,25 2231:3 2242:7 2306:17,19 2310:16 2311:18 2312:14,18,21 2316:25 2317:1 <b>statements</b> 2100:12 2127:12 2164:1 2307:20 2308:3,5 <b>states</b> 2218:16 <b>stating</b> 2257:9,18 <b>station</b> 2105:8,16 2106:21 2119:17 2120:20 <b>statistics</b> 2276:24 <b>stayed</b> 2149:20 2168:21 2262:3 <b>staying</b> 2227:23 <b>steer</b> 2170:12 <b>Stenotype</b> 2345:9 <b>step</b> 2154:13 <b>steps</b> 2194:4 2297:11 <b>Stinchcombe</b> 2320:18 2321:19 2324:21,24 <b>stitch</b> 2135:7,10 <b>stop</b> 2096:5 2125:9 2125:12 2193:1 <b>Stoppers</b> 2114:6,14 2114:18 2115:4 2115:23 2116:19 2117:11,13,15,19 2118:9,12,18 2119:9,18,20,21 2120:4,22 2121:13,24 2339:2,3,9,10 <b>stories</b> 2089:2,8 2145:12 2169:14 <b>story</b> 2121:18 2137:25 2158:3 2180:22	<b>strategy</b> 2152:22 <b>streets</b> 2091:11 <b>stressed</b> 2146:4 <b>strictest</b> 2198:3 2335:17 <b>strictly</b> 2278:25 2279:1 2338:8 <b>strikes</b> 2137:24 <b>strong</b> 2148:15,22 2209:4 2340:23 2341:12 <b>strongly</b> 2191:13 <b>struck</b> 2148:16 2340:24 2341:13 <b>structural</b> 2281:14 <b>structure</b> 2269:3 2275:15 2276:16 2280:23 2281:4,6 2342:25 2343:5 <b>Stu</b> 2309:17 <b>Stuart</b> 2085:15 <b>stupid</b> 2196:2 <b>style</b> 2201:8 2335:23 <b>subject</b> 2240:19 2254:18 <b>submission</b> 2217:15 <b>submit</b> 2265:9 <b>submitted</b> 2298:14 2327:18 <b>submitting</b> 2267:22 <b>subpoenaed</b> 2166:18 <b>subsequent</b> 2114:8 2334:20 <b>subsequently</b> 2092:11 2118:22 2122:22 2167:8 2182:12 2285:23 <b>substantially</b> 2125:18 <b>successful</b> 2279:10 <b>suddenly</b> 2120:2 2138:14 <b>suffering</b> 2133:11 <b>suffice</b> 2111:22 2172:20 2173:8 <b>sufficient</b> 2195:7 <b>suggest</b> 2121:15 2124:23 2125:1 2130:24 2144:17 2148:23 2165:5 2174:21 2189:19 2206:10 2216:25 2322:19 2324:11 2325:5,23,25 2332:1 2333:1,13
---	---	--	--	--



<p>2334:24 2335:11 2338:2 2341:4,10 <b>suggested</b> 2113:18 2118:24 2206:10 2260:11 2338:25 2341:4 <b>suggesting</b> 2115:17 2116:1 2120:17 2170:17 2260:14 2339:5 <b>suggestion</b> 2114:15 2114:20 2121:21 2148:15,22 2159:23 2161:9 2180:11 2340:23 2341:12,19 <b>suggests</b> 2110:25 2331:2 2339:6 <b>sum</b> 2204:8 2286:11 <b>summary</b> 2204:20 2206:15 2269:6 2269:14 2304:8 2330:10 <b>summer</b> 2218:21 <b>superficially</b> 2098:8 <b>superior</b> 2245:5 <b>superiors</b> 2157:24 2209:25 2241:25 2245:6 2247:16 2290:12 2291:24 2317:22 <b>supervised</b> 2325:16 <b>supervision</b> 2285:16 <b>supervisor</b> 2149:17 2151:23 2155:12 2158:1 2193:1,2 2193:18 2199:6 2201:15 2202:7 2278:20 2280:15 2280:19 2283:22 2283:24 2285:8 2327:8,17,19,21 2336:1,17 <b>supervisors</b> 2154:15 2195:20 2196:1 2205:22 2274:17 2275:8 2282:16 <b>supervisor's</b> 2195:7 2336:14 <b>Supp</b> 2104:23 2110:2,3 2138:23 2138:24 2229:6 <b>supplemental</b> 2291:19 2307:21 2307:22 2308:19</p>	<p>2309:1 2316:23 2320:25 2327:8 2328:14,22 <b>supplementals</b> 2320:25 2336:4 <b>supplementaries</b> 2230:4 2231:20 2231:22 2234:5 2239:12 2246:5,8 2249:16 <b>supplementary</b> 2092:11 2093:23 2096:24 2112:7,8 2112:10,12 2122:5 2158:4 2181:19,21 2222:4,10 2227:7 2227:20 2229:9 2231:15 2232:8 2237:23,24 2238:19 2239:5 2254:4 2261:16 2262:21 2265:10 2267:13,16,17 2309:5,7 2335:24 <b>support</b> 2085:8 2188:16 2210:19 2338:3 <b>supportive</b> 2211:12 <b>suppose</b> 2233:19 2276:13 <b>supposed</b> 2109:17 2263:11 <b>supposedly</b> 2112:14 2139:7 2219:11 2220:15 2232:5 2235:21 <b>supps</b> 2308:4 <b>sure</b> 2099:21 2106:24 2109:18 2111:2,15 2121:3 2132:4,5 2134:1 2138:1 2146:22 2150:11 2155:24 2159:11 2172:20 2175:6 2192:15 2207:11 2219:5 2228:9 2233:10 2237:14 2238:14 2244:11 2253:9 2254:12 2255:18 2255:19 2261:2,3 2270:15 2271:7 2274:25 2278:1 2298:14 2299:7 2306:12 2325:25 2330:8,10</p>	<p>2338:24 <b>surely</b> 2137:13 2164:21 <b>surface</b> 2209:24 <b>surprised</b> 2211:4 2217:1,9 2235:13 2322:21 2344:4 <b>surprising</b> 2206:1 2210:24 2211:2 2228:5 2302:11 <b>surprisingly</b> 2207:4 <b>surrounding</b> 2088:21 2132:19 2188:12 2242:11 <b>Susan</b> 2097:19 <b>suspect</b> 2135:4 2137:21 2191:13 2227:9 2228:11 2234:25 2241:5 2250:13 2290:9 2290:11 2323:20 <b>suspected</b> 2198:7 2299:10 2301:4 2301:25 <b>suspicion</b> 2137:4 2300:20 2301:24 <b>suspicious</b> 2300:5 <b>suspiciously</b> 2125:4 2137:13,16 2281:25 <b>swath</b> 2109:18 <b>Swift</b> 2125:6 2128:6 2131:12,14 2132:16 2133:8 2134:13,16 2135:8,24 2144:7 2145:2 2148:18 2149:12 2161:12 2162:3,24 2163:22 2166:23 2169:3,9 2171:9 2171:12 2183:12 2183:16 2184:6 2186:18 2187:7 2187:20 2188:15 2189:17 2191:11 2192:17 2194:23 2195:2 2196:22 2197:16 2200:17 2201:10,25 2202:3,22 2209:12 2211:6 2211:14 2212:7 2218:25 2219:25 2221:24 2234:11 2236:20 2239:13 2240:10 2243:4</p>	<p>2243:14 2244:16 2246:6,10 2251:17,24 2252:4,13,17 2255:11 2256:20 2257:1,13,16,22 2258:11 2259:11 2260:9 2262:14 2289:10 2305:1 2311:3 2328:25 2329:24 2330:5 2341:1,16 <b>symmetry</b> 2182:18 <b>system</b> 2117:6 2316:4 2321:6 2334:2 <b>systemic</b> 2212:23 2213:3,11,17,19 2213:21 2214:8 2214:12,15,25 2215:9,15,21,24 2217:2,4,10,13 <b>systems</b> 2216:2</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tab</b> 2090:3,19 2092:7,14 2094:9 2094:11 2101:9 2107:6 2113:8 2114:11 2121:10 2121:22 2123:19 2123:22 2128:11 2135:20 2139:20 2145:17 2150:15 2150:20 2163:3 2163:15 2165:23 2167:7 2168:5,7 2171:21 2172:19 2175:2 2178:14 2178:16 2186:16 2187:4,23 2188:6 2188:24,25 2190:10,11,11,16 2190:20 2204:23 2218:11 2221:19 2222:1 2224:25 2225:1,4,5,5 2226:22,24,25 2227:7 2241:7,9 2241:16 2244:14 2261:13 2264:3 2269:8 2299:12 2299:16 2306:13 2306:14,14,20 2308:10 2309:15 2309:19,20 2310:5,17 2313:4</p>	<p>2313:5,6 2314:19 2314:20 2317:1,4 2317:12 2318:4 2329:11,12,15 <b>tables</b> 2132:22 <b>tabs</b> 2089:18 2135:22 2139:15 2332:22 <b>tactics</b> 2157:9 <b>taint</b> 2149:13 <b>tainting</b> 2152:23 <b>take</b> 2091:23 2098:2 2101:9 2104:15 2105:1 2111:24 2112:2 2125:24 2129:10 2135:20 2150:20 2173:10,23 2180:11,18 2181:18 2185:25 2189:4 2190:11 2193:2 2194:4 2221:17,19 2223:8 2224:25 2237:25 2260:3 2273:8 2276:4 2291:15 2292:17 2293:16 2298:11 2300:9,19 2301:16 2305:14 2305:18 2311:9 2322:11 2328:19 2329:1 2330:15 2330:15 2338:23 2341:24 <b>taken</b> 2095:17 2098:5 2105:23 2109:17 2111:2 2111:24 2120:5 2158:21 2163:15 2210:16 2247:1 2267:4 2272:21 2273:12 2290:6,6 2297:12 2329:3 2332:22 2337:18 2345:10 <b>takes</b> 2137:12 2142:15 2157:15 <b>talk</b> 2106:1 2108:10 2108:21 2150:25 2154:18 2175:11 2192:19 2264:21 2302:8 2324:7 <b>talked</b> 2099:4,9,10 2107:4 2118:12 2119:5 2190:7 2202:20 2214:21</p>
--	--	--	---	---

<p>2245:11 2246:19 2249:13,17 2250:23 2260:19 2264:3 2302:14 2331:21 <b>talking</b> 2091:4,15 2106:16 2116:16 2118:21 2123:9 2130:6 2133:10 2142:10 2143:18 2145:24 2148:9 2155:25 2157:9 2163:13 2170:24 2170:25 2179:18 2180:2 2183:20 2183:22 2190:24 2191:1 2197:20 2197:21 2202:18 2204:16 2238:15 2238:17,18 2253:11 2259:6 2274:10,22 2284:17,18 2302:7,12 2303:12 2304:1 2326:15 2328:2 2328:19 2331:25 2336:3,10,20 2337:23,24 2338:11 <b>tape</b> 2147:20 2179:2,3,9 2180:13 <b>taped</b> 2099:6 <b>tape-recording</b> 2340:2 <b>Tapper</b> 2085:15 <b>tasks</b> 2280:8,12,18 2281:3 2286:16 2286:18 <b>team</b> 2205:20 2276:18 2277:2,4 2279:1,24 <b>technical</b> 2330:23 <b>teens</b> 2270:21 <b>telephone</b> 2087:7 2095:9,12 2107:8 2113:23 2132:21 2143:21 2150:24 2183:5 2200:1 2209:1 2307:6 <b>telephoned</b> 2247:14 2264:8 <b>television</b> 2096:4,10 2097:3 2098:21 2109:6 2110:19 <b>telex</b> 2186:18</p>	<p>2190:12 <b>tell</b> 2092:19 2098:15 2108:4 2108:22 2109:10 2129:17 2132:20 2137:19 2143:20 2144:1,11 2151:14,15 2153:2 2155:5 2156:20 2159:5 2169:17,22 2176:19 2183:18 2192:20 2196:1 2201:2 2219:12 2226:12 2231:12 2234:9 2237:17 2237:24 2239:21 2244:25 2248:10 2249:21,22 2250:1,15,18 2251:1 2252:12 2253:21 2254:18 2255:17 2257:14 2258:14 2259:1 2260:22,23 2261:2,3 2262:18 2265:15,20,23 2266:2,14 2267:22 2282:4 2297:19 2312:2 2326:14 2328:22 2329:4 2330:13 <b>telling</b> 2111:21 2115:5 2153:7,8 2180:22 2199:24 2205:14 2210:8 2210:11 2212:6 2220:17,20,21 2223:17 2249:7 2251:24 2254:1,3 2255:18 <b>telltale</b> 2202:12 <b>temporarily</b> 2125:15 2194:13 <b>temporary</b> 2278:14 <b>term</b> 2132:5,6 2144:20 2330:23 2331:3 <b>termination</b> 2227:3 <b>terms</b> 2091:8 2092:12 2180:2 2199:22 2214:20 2275:14 2276:16 2277:22,22 2284:6 2286:12 2288:24,25 2289:19 2292:19</p>	<p>2297:24 2335:20 <b>testified</b> 2148:19 2149:8 2151:3 2152:14 2205:8 2231:2,8 2234:12 2235:2,6 2244:15 2244:23 2247:20 2263:22 2264:9 2265:21 2267:19 2301:3 2303:16 2304:3 2341:2,16 <b>testify</b> 2252:1,3,9 2252:15 2265:15 2334:12 <b>testifying</b> 2233:8,14 <b>testimony</b> 2092:9 2094:17 2099:24 2115:15 2125:19 2125:20 2136:12 2146:5 2153:12 2161:4 2168:23 2169:6 2177:11 2211:25 2221:13 2221:16 2229:18 2246:25 2255:9 2257:11,20,25 2258:1,8,24 2262:5 2264:7 2293:16 2310:25 2319:22 2320:13 <b>text</b> 2300:1 <b>Thank</b> 2183:3,9,23 2188:7 2212:17 2217:19 2230:24 2268:18,20 2295:24 2296:2 2298:9,10,17 2312:7,8 2314:18 2316:23 2318:12 2318:13 2343:13 2344:11 <b>Thanks</b> 2156:5 2218:6 <b>theory</b> 2137:8 2334:12,13 <b>thick</b> 2177:15 <b>thing</b> 2133:13 2153:20 2157:3 2157:25 2158:5 2176:24 2181:1 2182:12 2251:6,7 2270:9,10 2289:1 2309:10 2324:20 2326:4 2342:8,14 <b>things</b> 2122:14,15 2122:20 2126:22 2136:4 2153:3</p>	<p>2174:24 2179:16 2182:10 2203:16 2207:6 2227:22 2229:21,25 2230:1,6 2232:15 2232:20 2239:22 2239:24 2243:6 2249:19 2263:13 2264:14 2293:20 2299:6 2320:10 2328:11,18 <b>think</b> 2088:8,12 2089:6 2091:19 2098:1,9 2099:3 2100:9 2110:15 2111:5,5 2117:8,9 2117:18 2118:22 2122:9 2123:6,8 2124:14 2125:21 2126:20 2132:12 2132:14,19 2133:22 2136:13 2137:1 2138:7,8 2139:25 2147:2 2147:16 2149:15 2153:4 2155:6 2157:19,19 2159:9 2160:4 2164:17 2165:10 2166:25 2168:7 2170:22 2171:4 2171:11,16 2174:12 2175:16 2177:8,16 2178:24 2191:5,6 2191:7,17 2192:6 2192:7 2195:12 2195:14,15 2199:4 2202:17 2204:7,7 2208:14 2210:22 2213:18 2214:7 2216:10 2216:17,21 2220:18,20,22 2222:7,25 2226:1 2231:11 2237:8 2237:19 2238:6 2242:17,18,22 2244:7 2251:9 2253:5,12 2262:12,20,25 2263:22 2264:18 2265:8 2270:22 2272:2,9,19 2273:24 2274:16 2279:13 2281:10 2283:9 2287:8,18</p>	<p>2288:7 2292:15 2294:20 2295:4 2299:9,18,23 2300:1,6,7 2303:11 2306:10 2307:4 2310:5 2314:1,22 2316:13 2319:3 2323:13 2324:5 2324:17,17,19 2325:3 2327:11 2328:8,12 2329:9 2332:5 2340:15 2342:1 <b>thinking</b> 2231:24 2231:24 <b>thinks</b> 2088:9 2190:6 2223:12 2327:13,14 <b>third</b> 2096:1 2123:25 2287:14 2287:15 2300:1 2309:20 2316:20 <b>Thirdly</b> 2292:2 <b>THOMAS</b> 2086:4 <b>thoroughness</b> 2287:2 <b>thought</b> 2097:5,7 2113:2,4 2123:23 2132:24 2133:7 2138:18 2177:12 2190:23 2194:1,2 2217:2,7,24 2230:10,11,12,25 2235:23 2238:14 2238:17 2247:7 2288:22 2289:24 2300:15 2304:25 2311:5,7 2337:13 <b>threat</b> 2264:19 <b>threatened</b> 2228:17 2264:6 <b>threatening</b> 2224:7 2228:14,23 <b>three</b> 2096:6 2104:24 2154:23 2183:9,25 2198:9 2201:3,4 2214:13 2226:9,16 2238:21 2263:4 2281:10,11,13 2287:15 2315:7 2316:9,21 2328:9 <b>throw</b> 2216:15 <b>Thursday</b> 2123:3 2163:15 <b>tie</b> 2134:23</p>
--	---	---	--	--

<p><b>tied</b> 2168:6  <b>time</b> 2090:23                  2091:8,23,25                  2092:12,13                  2098:25 2099:3                  2099:16 2100:19                  2101:2 2103:16                  2104:1 2106:10                  2106:13,17                  2109:11 2115:12                  2117:14 2119:24                  2121:2,4 2123:15                  2125:13 2127:11                  2130:12 2131:11                  2136:11 2141:25                  2143:18,18,20                  2145:10 2148:8                  2150:23 2152:20                  2155:23,23,24                  2157:19 2164:10                  2164:23 2165:6                  2165:11 2166:18                  2167:3,13,14,14                  2167:24 2170:14                  2172:10 2174:10                  2176:1 2177:8,17                  2177:17 2182:22                  2183:21 2184:1                  2185:21 2200:16                  2200:17,18,24                  2204:16 2210:18                  2213:10 2219:22                  2219:23 2226:13                  2227:10 2228:19                  2230:10 2232:8                  2233:8 2242:25                  2245:19 2253:20                  2266:25 2269:23                  2270:2,17,24                  2271:1,5 2275:17                  2276:22 2279:20                  2280:16 2283:15                  2284:2,22 2285:2                  2287:7,10                  2288:12,13,17                  2289:16 2293:15                  2296:21 2297:5                  2298:11 2309:18                  2309:23 2319:25                  2320:10,22                  2321:11,14                  2323:5,11,14                  2325:22 2328:16                  2328:23 2330:20                  2334:7 2337:4                  2339:20 2342:23                  2343:10,10,19</p>	<p>2345:10  <b>times</b> 2106:9 2138:8                  2155:15 2243:3                  2261:15 2327:9                  2328:9 2332:23  <b>timing</b> 2095:12,24                  2113:25  <b>tired</b> 2344:3  <b>title</b> 2278:18  <b>titles</b> 2278:22  <b>today</b> 2110:6,10                  2121:18 2129:8                  2130:16 2157:21                  2158:16,22                  2177:7,17 2213:5                  2229:12,18                  2239:18,22,22,24                  2244:9 2253:20                  2254:3,6 2279:6                  2288:7,19 2294:4                  2294:18 2300:13                  2329:3,20                  2341:23 2343:20                  2343:24 2344:2,7  <b>told</b> 2097:21                  2099:13 2101:1                  2104:17 2108:1                  2110:20 2115:1                  2124:12,12,23                  2125:11,12,14                  2129:1,14 2130:1                  2133:24 2139:5                  2142:2 2144:24                  2145:2 2149:7,13                  2151:7,25 2152:4                  2152:16 2154:8                  2155:9,13 2158:3                  2158:23 2162:9                  2169:20 2176:18                  2177:13 2180:24                  2181:7,9,13,15,24                  2182:1 2194:14                  2195:5 2210:3,10                  2225:6,20                  2227:19,20,25                  2228:3,19                  2236:18 2237:10                  2239:10 2240:1,9                  2244:17,18,22                  2245:8 2248:16                  2249:8,12,21,22                  2249:25 2250:5                  2250:11,23                  2251:1 2254:5                  2255:15 2257:12                  2257:15,21,25                  2258:5,11 2259:2</p>	<p>2259:9 2260:11                  2260:12,15,23                  2261:6 2262:12                  2262:12,17                  2264:4,10,11,18                  2265:7,8,9,19,21                  2267:7,18 2268:4                  2268:8 2300:11                  2303:14,14,15                  2304:2,20  <b>Tom</b> 2124:23                  2133:14 2144:14                  2188:11 2191:23                  2196:6 2197:6,11                  2197:14 2199:21                  2201:5,21                  2235:16 2255:10                  2257:9,18 2259:6                  2260:8 2267:1                  2302:20  <b>tomorrow</b> 2146:24                  2294:23 2295:2                  2340:14 2344:13  <b>top</b> 2094:12 2102:4                  2102:7 2124:1                  2128:12 2150:21                  2182:1 2205:1                  2206:19 2306:22                  2317:6  <b>total</b> 2184:14  <b>totally</b> 2282:19  <b>touched</b> 2287:23  <b>town</b> 2132:24                  2266:22  <b>trail</b> 2324:25  <b>trained</b> 2278:4                  2290:19 2320:11  <b>training</b> 2273:15,21                  2274:4 2279:4,5                  2290:20 2292:3                  2293:23 2342:16  <b>transcript</b> 2084:11                  2109:12 2178:13                  2339:7 2345:9  <b>transcripts</b> 2099:21                  2109:14  <b>transfer</b> 2291:15  <b>travel</b> 2233:4                  2313:21 2314:10  <b>treated</b> 2139:2  <b>treatment</b> 2290:14  <b>trial</b> 2084:2 2092:8                  2115:15 2124:19                  2128:7 2143:12                  2146:1 2151:4                  2162:1 2164:11                  2165:3 2170:1</p>	<p>2185:18 2205:9                  2231:8 2232:25                  2237:5 2240:12                  2241:2,13                  2243:19 2244:6                  2247:11 2251:18                  2253:18 2268:1                  2275:12 2284:2                  2303:19 2304:21                  2339:7  <b>trick</b> 2198:8  <b>tried</b> 2251:4  <b>trip</b> 2110:21 2142:3                  2142:5 2185:17  <b>trouble</b> 2112:22,23                  2149:2 2252:6  <b>troubled</b> 2137:23                  2216:19  <b>Troublesome</b>                  2289:3  <b>true</b> 2112:8,9                  2113:3 2136:1                  2140:20 2144:12                  2159:4 2164:2                  2166:24 2182:4,6                  2182:25 2183:2                  2198:4 2200:20                  2201:1 2203:8                  2209:5,17,18,23                  2219:21 2221:25                  2222:7,15                  2225:24 2238:25                  2239:15 2247:21                  2250:24 2255:15                  2257:23,24                  2258:15 2261:12                  2262:8 2268:12                  2269:11 2301:17                  2304:23 2305:13                  2305:17,20                  2311:16 2312:6                  2312:17 2313:17                  2323:13 2324:3                  2325:3 2328:24                  2330:12 2335:16                  2343:7,12 2345:8  <b>truth</b> 2098:16                  2112:1 2173:23                  2219:13 2267:18  <b>truthful</b> 2252:18  <b>truthfulness</b>                  2111:20  <b>try</b> 2093:6 2145:12                  2159:15 2160:25  <b>trying</b> 2093:19                  2098:2 2136:5,7,9                  2168:10 2236:12</p>	<p>2239:25 2249:4                  2272:24 2280:22                  2283:4 2327:11                  2332:16 2342:20  <b>Tuesday</b> 2084:17                  2088:1 2090:21                  2102:11,12,13  <b>turn</b> 2094:8                  2105:13 2114:11                  2157:14 2171:21                  2187:23 2241:19                  2314:3 2317:1  <b>turned</b> 2132:8,22  <b>two</b> 2088:15                  2090:15 2092:1                  2099:25 2100:12                  2101:13 2111:9                  2112:14 2113:9                  2115:18 2122:15                  2131:2,17 2134:3                  2135:21 2144:6,7                  2147:8 2154:23                  2156:14 2161:15                  2164:19 2165:22                  2176:5 2184:3,3,8                  2188:14,22                  2189:8 2192:3                  2194:10 2207:6                  2216:15 2219:15                  2227:13 2228:7                  2229:7,9 2256:22                  2263:13 2264:14                  2267:13,14                  2273:7 2300:7                  2310:20 2314:18                  2316:23 2329:22                  2336:25 2337:5                  2339:12  <b>two-thirds</b> 2316:12  <b>type</b> 2318:7                  2322:20 2331:25                  2332:1  <b>typed</b> 2170:7  <b>types</b> 2271:14                  2274:21  <b>typical</b> 2318:11                  2326:10  <b>typically</b> 2326:4,6                  2328:1  <b>typing</b> 2170:8  <b>T.A</b> 2219:15</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimate</b> 2130:19,20  <b>ultimately</b> 2094:1                  2147:19 2150:1                  2154:16 2182:19</p>
---	---	---	--	--

<p>2203:23 2333:4  <b>Um-hum</b> 2093:2  <b>unanimous</b> 2149:11  <b>understand</b>                  2097:20 2100:14                  2104:11 2108:5                  2112:23 2118:16                  2132:1,20 2166:1                  2167:1 2176:22                  2183:13 2191:25                  2191:25 2196:16                  2198:1 2199:24                  2202:25 2205:24                  2212:10 2215:23                  2219:12,17                  2225:20 2243:10                  2285:2 2288:2                  2302:16 2303:24                  2305:9 2306:13                  2311:13 2314:25                  2320:16,23                  2337:20 2339:18  <b>understandable</b>                  2100:2 2177:6  <b>understanding</b>                  2111:8 2119:15                  2123:13 2151:20                  2152:24 2179:11                  2188:10 2189:22                  2192:20 2193:21                  2198:20 2200:14                  2203:12 2204:3                  2216:8 2218:2                  2227:18 2245:25                  2269:9 2275:24                  2289:7 2319:20                  2322:8,9,13                  2332:8 2333:19                  2335:2 2337:12  <b>understood</b> 2149:17                  2150:1,12                  2215:20 2299:7                  2303:25 2311:18                  2314:7 2319:4                  2322:3  <b>unfair</b> 2216:1                  2342:14  <b>unforeseen</b> 2215:15  <b>unfortunate</b>                  2100:16  <b>unfounded</b> 2293:13                  2293:13  <b>uniform</b> 2269:18  <b>union</b> 2147:13                  2339:25  <b>unit</b> 2095:5 2126:7                  2126:7 2160:19</p>	<p>2187:11 2245:18                  2270:9 2274:18                  2276:10,11                  2277:7 2278:6,20                  2278:24 2282:9                  2282:12,12,15,20                  2283:7,8,13,20                  2285:8,13                  2321:12,24                  2342:19 2343:2  <b>unnecessary</b> 2194:8                  2194:9 2215:4  <b>unprompted</b> 2205:6                  2206:7,11  <b>unreliable</b> 2157:7  <b>unsavory</b> 2157:7  <b>unsolved</b> 2096:10                  2097:4  <b>unsplit</b> 2335:25  <b>unsuccessful</b>                  2279:15  <b>unthinkable</b> 2176:9                  2177:23 2264:21                  2266:10 2301:7  <b>untrue</b> 2252:2  <b>unusual</b> 2160:15                  2233:12 2323:14  <b>upstanding</b> 2103:7                  2103:12  <b>use</b> 2114:17 2128:2                  2130:7 2132:6                  2144:20 2170:24                  2209:16 2261:22                  2263:11 2277:22                  2286:12 2291:18                  2330:21  <b>usually</b> 2170:1                  2324:6,17  <b>utilized</b> 2291:23  <b>utilizing</b> 2115:22  <b>uttered</b> 2213:17  <b>utterly</b> 2107:19                  2137:25</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>vague</b> 2223:23                  2224:8  <b>valuable</b> 2208:8  <b>value</b> 2208:8  <b>Vandergraaf</b>                  2133:23 2143:25                  2144:16 2150:18                  2153:15 2154:15                  2155:2,18 2165:4                  2177:21 2183:20                  2196:5 2197:6,10                  2198:10 2199:17</p>	<p>2201:6,15 2202:7                  2233:11 2235:17                  2236:7 2247:25                  2248:8,19                  2249:23 2250:10                  2250:13,15                  2277:14,19                  2284:3 2287:8                  2302:10,12                  2307:16 2319:11                  2319:18  <b>Vandergraaf's</b>                  2160:18  <b>various</b> 2221:14                  2281:2  <b>vehicle</b> 2309:7  <b>vein</b> 2126:5  <b>verbal</b> 2105:25                  2263:13 2305:22  <b>verbally</b> 2105:22  <b>verbatim</b> 2250:3  <b>versed</b> 2203:11  <b>version</b> 2142:17  <b>versus</b> 2271:12  <b>victim</b> 2292:25  <b>view</b> 2157:15                  2158:15 2213:20                  2217:9 2293:17                  2293:17 2336:18  <b>visited</b> 2110:7,11,13  <b>voice</b> 2179:1 2180:9                  2180:20,22  <b>volume</b> 2084:18                  2145:18 2241:9                  2241:16 2299:15                  2299:16 2306:15                  2306:19 2308:11                  2310:17 2314:19  <b>volunteered</b>                  2201:24 2205:6                  2206:7 2220:8</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waiting</b> 2100:20,22                  2101:5 2266:18                  2266:21  <b>walk</b> 2098:3  <b>walked</b> 2167:20  <b>want</b> 2088:20                  2091:3 2097:10                  2100:7 2101:9                  2108:20 2132:6                  2139:19 2140:2                  2148:20 2150:19                  2157:12 2165:22                  2180:10 2206:18                  2209:7 2219:12</p>	<p>2249:7,12 2271:9                  2275:14 2287:21                  2287:22 2289:15                  2291:8 2294:13                  2294:23 2296:5                  2299:15 2309:11                  2313:4 2315:1                  2336:22 2339:4                  2341:24  <b>wanted</b> 2138:4                  2144:20,22                  2160:11 2169:13                  2207:17 2223:20                  2248:3 2308:6                  2312:22 2326:2  <b>wanting</b> 2098:10                  2110:19  <b>wants</b> 2159:10  <b>wasn't</b> 2089:6                  2099:17,20                  2109:13 2112:7,8                  2119:7 2120:12                  2137:6 2138:12                  2139:4 2141:9                  2144:8 2149:7,21                  2150:10,11                  2157:24 2165:3                  2169:5 2174:3,5                  2174:12 2182:16                  2185:21 2186:6                  2200:8 2207:15                  2207:23 2211:11                  2219:23 2221:6                  2227:9 2229:1                  2232:24 2236:12                  2241:1 2245:5                  2252:15 2280:15                  2282:25 2299:7                  2321:15 2331:12                  2332:19 2336:12  <b>watch</b> 2230:9  <b>watching</b> 2096:4,10                  2097:3 2109:6                  2110:18  <b>water</b> 2128:8  <b>way</b> 2089:4 2092:9                  2108:11,18                  2111:18 2116:20                  2118:9 2119:2                  2122:20 2151:23                  2154:13 2159:7                  2160:25 2166:20                  2167:7 2171:17                  2174:21 2199:21                  2210:23 2213:23                  2240:6 2242:5                  2248:25 2252:22</p>	<p>2307:18,19                  2316:6,12                  2326:10 2327:20  <b>ways</b> 2158:8  <b>week</b> 2140:15                  2221:14 2234:23                  2247:14  <b>weekend</b> 2214:22  <b>weekly</b> 2150:9                  2225:16  <b>weeks</b> 2099:7                  2147:4 2318:21  <b>weight</b> 2243:24  <b>weight</b> 2243:24  <b>Wendy</b> 2085:5  <b>went</b> 2110:7,11,13                  2147:19 2210:7                  2212:5 2228:24                  2248:5 2267:8                  2277:7 2303:19                  2308:24 2328:6                  2337:14 2339:8  <b>weren't</b> 2127:10,23                  2137:14 2170:10                  2226:19 2251:6                  2252:13 2325:25                  2330:8 2331:18  <b>west</b> 2138:3  <b>we're</b> 2249:4                  2300:4  <b>we've</b> 2231:15                  2238:2 2240:25                  2321:4,8  <b>whatsoever</b>                  2268:11  <b>whimper</b> 2139:8  <b>Whitley</b> 2085:15                  2309:17,22                  2310:6,8  <b>Whitley's</b> 2310:3  <b>whodunit</b> 2271:22  <b>whodunits</b> 2271:13                  2271:16  <b>wife</b> 2138:4  <b>wild</b> 2270:14  <b>Williams</b> 2100:13                  2100:24 2101:22                  2102:15 2106:10                  2106:11,14                  2107:14,22                  2111:23 2112:20  <b>wind</b> 2121:16  <b>window</b> 2331:14  <b>windshield</b> 2137:12                  2139:6,7 2140:11                  2140:16,17,19                  2141:13 2142:1</p>
---	--	---	---	---

<p>2142:12 2224:8  <b>wing</b> 2200:6  <b>wink</b> 2118:25  <b>Winnipeg</b> 2084:13                  2084:14 2085:17                  2085:19 2091:4                  2116:8 2126:7                  2133:17 2148:13                  2160:2 2161:7,15                  2167:5 2173:2,15                  2183:14 2185:17                  2185:25 2186:3                  2186:19 2187:10                  2188:2,17 2189:1                  2190:12 2196:18                  2197:17 2200:7                  2201:23 2202:18                  2203:6,13,23                  2204:10 2210:20                  2211:7 2212:9,21                  2237:21 2258:19                  2260:1 2270:18                  2271:17 2277:25                  2280:24 2281:15                  2284:13 2289:19                  2294:10 2297:13                  2318:17 2319:5                  2319:25 2334:24                  2335:5 2337:25                  2338:10 2340:21                  2342:5,16  <b>wire</b> 2242:25  <b>wish</b> 2125:25                  2213:11 2218:4                  2269:2 2325:20                  2341:21  <b>wished</b> 2104:16,18                  2105:5 2108:13                  2129:7  <b>withdraw</b> 2152:4                  2247:8  <b>withholding</b> 2161:2  <b>witness</b> 2088:18                  2094:15 2117:5                  2126:16 2127:6                  2127:25 2128:17                  2128:18 2129:16                  2131:24 2134:3,7                  2141:6,8 2144:15                  2144:21,22,23                  2155:22 2157:1,6                  2157:7,8 2158:12                  2160:10,12                  2161:2 2162:15                  2164:21,22,24                  2165:9 2166:14                  2166:18 2168:21</p>	<p>2168:23 2184:9                  2194:17 2197:17                  2199:20,23                  2200:7 2201:8,19                  2201:22 2203:2,4                  2203:11,20,25                  2208:2,9,12,16,24                  2213:5 2214:3                  2215:10,16                  2216:20 2220:3                  2222:19 2233:21                  2233:22 2236:17                  2237:12 2241:16                  2241:18 2247:2                  2259:20 2262:10                  2263:18 2266:22                  2267:16 2288:4                  2288:24 2289:4                  2293:11 2295:5                  2295:18 2308:5                  2309:4,14                  2319:22 2320:2                  2331:21 2332:2                  2332:13,20                  2343:21 2344:9                  2344:11  <b>witnessed</b> 2129:15  <b>witnesses</b> 2112:15                  2115:18 2116:19                  2122:22 2152:23                  2159:24 2167:4                  2167:11 2169:14                  2182:19 2214:13                  2214:23 2233:4                  2262:4 2280:11                  2307:21 2319:21                  2323:4 2332:17  <b>witness's</b> 2333:2  <b>Wolson</b> 2085:19                  2100:19,21                  2133:22 2134:6                  2159:5,9,13                  2216:22 2259:20                  2265:21 2266:1,4                  2295:25 2296:2                  2329:13 2343:14                  2343:18,23  <b>wonder</b> 2146:24                  2294:25  <b>wondered</b> 2298:13  <b>wondering</b> 2142:21                  2174:18  <b>word</b> 2105:2                  2130:17 2195:3                  2199:3 2213:17                  2236:14 2238:6                  2254:2 2311:7</p>	<p>2330:21  <b>worded</b> 2174:18  <b>wording</b> 2259:18  <b>words</b> 2099:10                  2104:17 2146:9                  2149:25 2150:10                  2151:19 2163:18                  2166:11 2170:24                  2209:16 2221:5                  2233:23 2279:14                  2297:14 2299:10                  2311:8  <b>work</b> 2101:4                  2106:23 2174:22                  2175:5 2215:12                  2267:8 2277:7                  2279:10,15                  2291:2 2294:2,3                  2337:18  <b>worked</b> 2102:22                  2235:10,22                  2269:18,19,24                  2281:13 2327:14                  2327:14  <b>worker</b> 2119:20  <b>working</b> 2102:23                  2139:9 2185:4                  2227:9 2228:21                  2291:17 2334:13  <b>worn</b> 2242:6,25                  2243:9  <b>worried</b> 2126:25                  2127:5,13,15,16                  2127:23,25  <b>worry</b> 2145:1  <b>worse</b> 2220:13  <b>worst</b> 2267:1  <b>wouldn't</b> 2112:1                  2124:13 2125:25                  2126:6 2130:1                  2135:25 2144:25                  2147:20 2153:9                  2164:22 2176:9                  2178:2 2180:10                  2192:10 2195:6                  2202:22 2208:22                  2210:9 2211:20                  2211:22 2212:8                  2233:12 2266:10                  2268:8 2271:4                  2283:25 2286:1                  2293:10 2301:7                  2308:18 2309:6                  2309:10 2311:13                  2328:18 2330:15                  2334:4 2338:13                  2341:22 2342:15</p>	<p><b>write</b> 2116:11                  2222:8 2239:1                  2263:14 2265:16                  2291:22 2309:8  <b>writes</b> 2242:2  <b>writing</b> 2174:24                  2214:9,11                  2241:24 2260:7                  2263:7 2267:23                  2307:9 2318:1,7  <b>written</b> 2097:18,21                  2098:5,20                  2105:23 2108:18                  2108:18 2124:3                  2139:4,6 2164:18                  2169:2 2176:4,6                  2178:19 2190:1                  2241:12 2242:7                  2248:4,18 2249:5                  2255:8 2256:17                  2260:11,17,18,20                  2262:7 2282:5                  2306:10 2307:5                  2318:10 2326:10                  2333:23 2335:22                  2336:11  <b>wrong</b> 2100:17                  2120:25 2121:2                  2121:21 2122:11                  2122:25 2135:4                  2148:24,24                  2153:23 2157:20                  2164:13 2175:10                  2199:4,5 2200:22                  2272:14 2307:24                  2311:21  <b>Wrongly</b> 2085:22                  2269:1  <b>wrote</b> 2097:25                  2128:13 2166:8                  2168:24 2171:1                  2172:10,24                  2247:5 2261:8,25                  2300:13</p> <hr/> <p style="text-align: center;"><b>X</b></p> <hr/> <p><b>X.X</b> 2178:24</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>Yea</b> 2316:20  <b>yeah</b> 2185:4 2197:5                  2209:24 2250:22  <b>year</b> 2094:14                  2130:13 2172:1                  2191:21 2270:19                  2271:9 2282:5                  2293:21,25</p>	<p>2312:15  <b>years</b> 2158:2,18                  2171:25 2176:5                  2227:13 2229:7,9                  2229:22 2238:8                  2238:11,21                  2249:4 2267:14                  2267:14 2268:7                  2285:7 2297:21                  2323:7 2325:4  <b>yesterday</b> 2088:12                  2142:23 2200:14                  2210:2 2212:1                  2215:7 2235:3                  2236:2 2264:9  <b>young</b> 2285:11,12</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>Zanidean</b> 2087:7                  2088:21 2089:4                  2090:17 2091:13                  2091:16,20                  2092:13 2093:12                  2094:13,14                  2095:3,9 2096:3,9                  2099:4,5,8 2102:1                  2103:6 2104:2                  2106:5,14,22                  2107:4,7,10,15,18                  2109:5,19                  2110:13,18,22                  2111:3,14                  2112:14 2113:12                  2113:22 2114:6                  2114:22 2115:13                  2116:2 2117:22                  2118:1,2,19                  2119:8,16 2120:3                  2121:23 2122:23                  2124:5,19,23                  2125:5,15 2126:2                  2126:12 2127:7                  2127:10 2128:2                  2128:16,22                  2129:15,21,23                  2130:1,3,23,25                  2131:8,22 2132:7                  2132:11 2133:15                  2134:23 2135:3                  2136:5,16 2137:7                  2137:16,23                  2138:2,9,12,20                  2139:5 2141:7,14                  2141:24 2142:11                  2142:25 2144:22                  2148:14 2149:6                  2151:3,8,15</p>
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2152:5,13,16 2153:4,9 2154:7 2155:6 2156:20 2157:1,6,7,8,14 2158:12 2159:2 2160:12,20 2161:12,13 2162:2,8,9 2165:7 2165:8 2168:25 2169:18 2171:22 2172:6,22 2173:19 2174:7 2174:14 2175:12 2176:1,15,19,21 2177:3 2178:25 2180:12,14 2181:1 2182:4,5 2183:6 2186:21 2187:12,18 2190:19 2191:12 2194:19 2195:24 2196:25 2201:7 2201:11,19 2202:21 2203:5,7 2203:18 2204:13 2205:7,8,13 2206:22 2207:18 2208:1,15 2210:9 2211:20 2212:8 2218:19,24 2219:9,11,18,24 2220:12 2223:6 2223:10,14,19 2224:6 2227:4,23 2228:8,13,23 2231:7 2232:12 2234:10 2235:9 2237:3,10 2238:16 2239:6 2239:10,13 2240:9 2242:1,6,8 2242:9 2243:1,8 2244:21,22,25 2246:6,9 2247:1,8 2247:12,19 2251:1,17,24 2252:9,23,24 2254:15 2255:9 2255:22 2257:11 2257:12,15,20,21 2258:5,8,11,23 2259:11 2260:12 2260:24 2262:15 2262:18,23 2263:9 2264:6,8 2264:20 2265:2 2266:13 2267:18	2288:3,3,12,14,20 2289:4,12,18 2293:11 2302:20 2303:14,15 2304:1,20 2308:15 2310:25 2318:22 2319:7 2319:14 2330:23 2331:4,11 2333:17 2335:20 2340:22 2341:14 2341:19 <b>Zanidean's</b> 2092:8 2092:8,15 2093:15 2094:6 2094:23 2095:23 2096:23 2098:10 2098:19 2099:23 2109:1 2111:7,25 2112:2 2113:11 2124:20 2125:4 2127:11 2131:10 2146:5 2151:5 2173:4,17 2177:11 2178:5 2180:9 2194:22 2197:23 2205:10 2206:23 2208:11 2221:1 2222:19 2223:24 2224:4 2224:11 2225:12 2225:16 2235:17 2238:20 2243:22 2253:22 2256:23 2318:24 2339:1 <b>Zero</b> 2191:13 <hr/> <b>\$</b> <b>\$500</b> 2118:23 <b>\$800</b> 2136:9 <hr/> <b>0</b> <b>02/26</b> 2315:23 <b>03/04</b> 2315:25 <b>03/05</b> 2316:2 <b>03/12</b> 2316:4 <b>03/18</b> 2316:4 <b>07</b> 2102:20 <hr/> <b>1</b> <b>1</b> 2084:17 2088:1 2090:3 2121:10 2186:11 2269:14 2306:13,14,15,19 2310:17 2318:5 2329:2,10,13,15 <b>1:00</b> 2230:11,13	<b>10</b> 2084:18 2089:12 2089:13,15,16 2145:21 2150:15 2150:20 2244:14 2317:15 <b>10A</b> 2087:3 2178:16 <b>10B</b> 2087:4 2089:23 <b>10C</b> 2087:6 2090:1 <b>10th</b> 2218:14 <b>10:00</b> 2114:5 <b>100</b> 2228:9 <b>11</b> 2087:7 2128:11 2183:5 2221:20 <b>11:00</b> 2120:22 <b>11:06</b> 2165:17 <b>11:25</b> 2165:18 <b>12</b> 2087:9 2254:25 2255:1 2295:7 2298:16 2308:10 2314:2 <b>12:45</b> 2230:10,14 <b>12:50</b> 2230:12,19 <b>13</b> 2087:11 2204:24 2270:22 2271:8 2295:8,9,14 2296:1 <b>13th</b> 2313:9 <b>14</b> 2132:9 2270:22 2271:8 2309:15 2309:19 2314:19 2314:20 2329:16 <b>14th</b> 2131:19 2188:3,25 2190:1 2191:10,21 <b>15</b> 2102:15 2128:13 2165:14 2229:22 2249:4 2268:7 2270:16,22 2271:8 2273:8 <b>15th</b> 2099:18 2276:3 <b>16</b> 2158:18 2238:8 2238:11 2241:14 2241:20,24 2299:18,23 <b>16th</b> 2135:9 2184:10 2275:19 <b>1600</b> 2102:20 <b>1630</b> 2090:8 2114:2 <b>164</b> 2114:19 <b>17</b> 2139:17,21 2140:5 2186:16 2190:11 <b>1715</b> 2090:13 2091:7 2106:18 2114:3 <b>1735</b> 2102:23	2104:9 2108:12 <b>18</b> 2274:16 2315:7 <b>18th</b> 2146:1 2169:2 2184:10 2317:8 <b>19th</b> 2241:12,19 <b>1983</b> 2269:18,19 <b>1988</b> 2212:12 2270:18 <b>1989</b> 2172:1,9 2174:8,15 <b>1990</b> 2090:7 2102:4 2123:6 2128:14 2146:6 2152:20 2187:2,8,19 2188:3,25 2190:2 2190:12,18 2191:10 2202:22 2218:14 2270:12 2271:18 2273:18 2274:8,18 2275:19,21,23 2276:3 2279:4 2280:23 2281:15 2284:7,19,23 2285:22,25 2292:16 2309:19 2323:3 2327:19 2329:7,16 2342:23 2343:9 <b>1990's</b> 2335:23 <b>1990/1991</b> 2192:21 <b>1991</b> 2131:4 2140:24 2146:1 2175:14 2198:12 2209:1 2223:13 2224:6 2241:12 2245:14 2262:7 2264:6 2274:18 2310:4 2317:11 <b>1992</b> 2285:6 <b>1993</b> 2176:6 2339:19 <b>1994</b> 2285:9 <hr/> <b>2</b> <b>2</b> 2090:19 2128:12 2145:18 2150:20 2204:23 2221:19 2241:9,16 2269:8 2269:14 2299:15 2299:16 2306:14 2306:20 2308:11 2310:17 2312:18 2312:21 2314:19 2317:1,4 <b>2:05</b> 2230:16,20 <b>20</b> 2091:21 2106:16	2106:18,20 2187:4 2190:11 2190:16 2270:16 2315:7 2343:25 <b>20th</b> 2175:14 2177:13 2178:20 2227:2 2264:5 <b>2001</b> 2269:20 2285:10 <b>2003</b> 2256:9,10,13 2256:14 2278:11 2278:12 <b>2004</b> 2269:10 2297:11 2324:12 2342:3 2343:11 <b>2006</b> 2084:17 2088:1 2121:1,25 2122:2 2174:13 2293:22 2294:1,4 <b>2088</b> 2086:5 <b>2089</b> 2087:3,4 <b>2090</b> 2087:6 <b>21</b> 2222:16 2224:25 2225:1,5,5 2228:16 2275:21 <b>21st</b> 2177:25 2264:19 2266:18 <b>2183</b> 2086:6 2087:7 <b>22</b> 2223:4 <b>2200</b> 2114:3 2118:19 <b>2218</b> 2086:7 <b>2255</b> 2087:9 <b>2268</b> 2086:8 <b>2295</b> 2087:11 <b>2299</b> 2086:9 <b>23</b> 2171:18 2173:1 2173:11,13 2270:5,7 2342:25 <b>23rd</b> 2131:4 2139:14,16,17 <b>2312</b> 2086:10 <b>2318</b> 2086:11 <b>24</b> 2182:21 2223:22 2224:2 <b>25</b> 2091:19,21 2140:23 2224:24 2225:1,4,6,8,9 <b>25th</b> 2140:14 2167:9 2312:14 <b>26</b> 2206:14,15,19 2315:8 <b>26th</b> 2312:15 2315:22 <b>27</b> 2190:12 2206:15 2208:25 <b>27th</b> 2184:5 2187:2
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<p>2191:9 2194:14 2211:5 <b>28</b> 2317:2,3,4,17 <b>28th</b> 2123:7 <b>29</b> 2139:18,22 2140:5 2162:21 2163:7 2310:15</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>3</b> 2092:7,14 2110:3 2145:21 2241:11 2241:18,20 2299:18 2306:14 2306:14,15,20,22 2307:25 2308:1,2 2309:17,19 <b>3/18</b> 2316:14 <b>3:25</b> 2298:20 <b>3:43</b> 2298:21 <b>30</b> 2094:14 2187:23 2188:6,24,25 2190:20 2211:9 2329:11,12,15 <b>30th</b> 2123:8 2124:25 2150:24 2184:7 2194:12 2275:22 <b>31</b> 2225:25 <b>32</b> 2092:17 <b>33</b> 2135:20 2167:8 2172:19 <b>34</b> 2123:22,25 <b>37</b> 2135:20 2226:21 2226:23 <b>38</b> 2168:5,7</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>4</b> 2087:11 2094:11 2107:6 2113:8 2123:22 2139:15 2139:20 2241:17 2295:11,12,14,23 2296:5 2299:19 2299:21 2313:5 2314:3 2332:22 <b>4th</b> 2142:1 2310:5 <b>4:00</b> 2102:17 <b>4:30</b> 2090:8,24 2091:17 2095:14 <b>4:40</b> 2344:15 <b>4:55</b> 2178:20 <b>41</b> 2163:3,15 2165:23 2171:21 2173:1 2175:2 2261:13 <b>43</b> 2255:5,7 <b>45</b> 2090:13</p>	<p><b>470</b> 2105:17 <b>4735</b> 2179:11</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>5</b> 2101:9 2139:16 2167:8,9 2168:2 2218:12 2224:6 2274:17 2313:5,6 2332:22 <b>5th</b> 2141:23 2142:8 2144:9 2206:14 2234:17,19 <b>5:00</b> 2090:14 2343:25 <b>5:15</b> 2095:16 <b>5:35</b> 2102:23 2103:1 <b>52</b> 2139:20,25 2140:1 <b>520</b> 2218:13,14 <b>53</b> 2139:20,25 2140:1 2226:22 2226:24,25 2227:7 2255:5,20 2264:3 <b>54</b> 2145:17 2241:9 2241:16 2299:12 2299:16 <b>548</b> 2313:6 <b>561</b> 2140:9 <b>58</b> 2222:1 <b>59</b> 2310:5</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>6</b> 2104:24 2114:11 2140:24 2167:9 2168:4,6,9 2170:7 2261:14 2274:17 2307:18,23,24 <b>6A</b> 2269:7 <b>6B</b> 2299:17 2314:20 <b>6th</b> 2108:23,24 2140:16 <b>69</b> 2107:6 2113:8</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p><b>7</b> 2121:22 <b>7:00</b> 2102:17 <b>70</b> 2096:6 <b>77</b> 2313:5 <b>79</b> 2147:7,25 2340:12,17</p> <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <p><b>8</b> 2178:15,16 2190:8 2313:24 2314:3 2318:3</p>	<p><b>8th</b> 2187:8,19 2190:17 2209:15 2209:19 2231:25 2245:13 <b>80s</b> 2271:17 <b>832</b> 2103:1 2104:10 2104:12 2108:12 <b>88</b> 2273:8 <b>89</b> 2270:18 2273:8</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>9th</b> 2090:7,21 2094:21 2095:15 2096:24 2102:4 2109:23 2110:1,5 2114:22 2118:8 2118:21 <b>9:30</b> 2088:2 <b>9:40</b> 2105:19 <b>90</b> 2131:19 2132:9 2161:9 2270:18 2310:9 <b>90s</b> 2323:11 2324:12,14 <b>91</b> 2130:14 2139:14 2140:14,16 2141:23 2144:10 2150:14 2152:2 2154:25 2161:10 2161:10,11 2167:9 2177:13 2194:16 2197:24 2241:19 2310:5 2310:10 2317:15 2323:3,11 2342:23 2343:10 <b>93</b> 2185:23 2187:22 2192:12 2264:17</p>		
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